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Cooperation of the probation service with the Police – provisions of the law, challenges and restrictions

Abstract: The article discusses the cooperation between the probation service and the Police, as one of the institutions whose scope of activity is included in the tasks of both institutions. The proper implementation of the tasks assigned to probation officers requires the support from other institutions. The tasks carried out by probation officers with the participation of the Police include, i.a. compulsory removal of a person subject to parental authority or under the care of a probation officer, compulsory bringing to the medical facility of a person evading their duties or providing support when the safety of the probation officer carrying out the tasks entrusted to them is threatened. The quality of this cooperation, the effective flow of information and the consolidation of activities determines measurable effects with regard to the probation officer's charges. This text refers to general legal provisions defining the scope of Police activity in this area, as well as the analyzed detailed agreements developed in the course of cooperation.

Keywords: Probation officer, Police, Act on probation officers, Act on the Police, probation officer's safety, parental authority, safety.

Introduction

Cooperation of the probation service with other services and institutions is of great importance. Often, the proper implementation of the tasks assigned to probation officers requires the support from other institutions. One of them is undoubtedly the Police, whose tasks include, i.a. compulsory removal of a person subject to parental authority or under the care of a probation officer, compulsory bringing to the medical facility of a person evading their duties or providing support when the safety of the probation officer carrying out the tasks entrusted to them is threatened. The quality of this cooperation, the effective flow of

information and the consolidation of activities will determine measurable effects with regard to the probation officer's charges.

Analyzing the extensive scope of probation officers' cooperation with the Police, it seems justified to start with a review of general legal provisions defining the scope of Police activity in this area. They are the basis for detailed agreements at the executive level, developed in the course of ongoing inter-institutional cooperation, which define specific levels of action to be taken by the Police and probation officers.

Legal basis for cooperation between probation officers and the Police

The analysis of the legal basis defining the area of cooperation between probation officers and the Police should begin with a reference to the Constitution, where we find a justification for restricting the freedom and rights of individuals, and thus to the area of activity that is of interest to law enforcement agencies.

Constitution of the Republic of Poland, Art. 31 sec. 3: "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights."

The Police are obliged by the legislator to ensure the safety of people regardless of age, gender, nationality, origin, ability to properly grasp reality, etc. Moreover, as a unit serving the public within the framework of the tasks assigned, it is also obliged to provide assistance to other state entities in the performance of their legal activities.

The basic legal act regulating the activities of the Police, including cooperation with probation officers is the Act of 6 April 1990 on the Police. Chapter 1 containing general provisions in Art. 1 sec. 2 item 1 reads that "The basic tasks of the Police include: protection of life and health of people and property against unlawful attacks infringing these assets".

The scope of power of the Police is set out in Art. 14 sec. 2, indicating that: "The Police shall also perform activities on the order of the court, prosecutor, state administration and local government entities to the extent that this obligation is set out in separate acts". This act clearly indicates close cooperation in the scope of activities assigned to the Police by the institutions indicated in the article.

The detailed scope of cooperation between the Police and the probation service is specified in the Act of 27 July 2001 on probation officers. Art. 9 item

5 reads that “In the performance of their duties, probation officers shall have the right to: request assistance in the performance of their official duties from the Police and other state entities or institutions, local government entities, associations and social organizations, within the scope of their activities, as well as from natural persons.

Without a doubt this article clearly indicates the rights of the probation officers to request the support of the Police in carrying out the tasks entrusted to them. This article is a starting point for detailed regulation of the scope of this inter-institutional cooperation between the Police and probation officers.

Another normative act where a reference to the above-mentioned cooperation can be found is the Act of 17 November 1964 — Code of Civil Procedure (Journal of Laws 2018.0.1360), which, i.a., defines the scope of activities related to parental care in its broadest sense.

Art. 598³ reads, “If the whereabouts of a person under parental authority or guardianship are not known, the court will carry out appropriate investigations to determine the place of current residence. In particular, the court may request that the information be determined by the Police”. The Police are obliged to take action which will result in the establishment of the place of residence.

In the next Art. 598¹⁰, the legislator specifies the tasks for the Police cooperating with a probation officer during the compulsory removal of a person subject to parental authority: “At the request of the probation officer, the Police shall assist the officer in activities related to the compulsory removal of a person subject to parental authority or guardianship”.

The Police are also obliged to support the probation officer in the removal of persons who interfere with the performance of statutory duties of the probation officer, such as in the execution of a court decision in the place of residence of a person subject to parental authority. Art. 598¹¹ § 3 stipulates that “If the obliged person or other persons interfere with the enforcement of the court order at the place of residence of a person subject to parental authority or guardianship, the Police shall, at the request of the probation officer, remove these persons from the place of enforcement of the order”.

The aforementioned Act on probation officers refers to activities which are carried out by the Police and which may be necessary to perform the tasks entrusted to the probation officer in a proper manner. Art. 598^{11a} entered into force on 27 August 2018. § 1. of this article refers to such Police activities as searches. “In order to determine the whereabouts of a person subject to compulsory removal, the court may, on request of the probation officer, decide to carry out a search of the premises and other places if there are reasonable grounds for believing that the person occupies said premises.” The following §2 specifies that “a search is conducted by the Police on the basis of a court order”. Relevant reports of such activities shall be forwarded (copies of them) immediately to the court. (§ 7).

Another area of cooperation between the Police and probation officers is direct support of the probation officer during removal a person under parental authority in a situation where the welfare of that person may be or has been compromised. Art. 598¹² in § 1 reads: “When removing a person subject to parental authority or guardianship, the probation officer should exercise extreme caution and do their utmost to ensure that the well-being of that person is not compromised, and in particular that they do not suffer physical or moral harm. If necessary, the probation officer may request the assistance of a social services or another institution established for such purpose”.

Removal of a child from the family and placing it in a foreign environment is a situation that police officers may encounter in their daily work.

According to the data of the General Police Headquarters, obtained from the Voivodeship Police Headquarters/Capital City Police Headquarters, in the period from 1 January 2017 to 4 December 2017 police officers throughout the country carried out a total of 2137 interventions related to the act of removal a child from the family. This figure includes interventions in support of probation officers (556 events).

The Act on upbringing in sobriety and counteracting alcoholism is a legal act worth mentioning when analyzing the cooperation between the Police and probation officers. Art. 31 sec. 1 refers to the appointment of a probation officer in connection with the person's obligation to undergo treatment. “When deciding on the obligation to undergo treatment, the court may order probation officer supervision for the duration of that obligation.” Art. 32 sec. 3 specifies the task entrusted to the Police. “The court shall order that a person evading the performance of the obligations referred to in sec. 1 and 2 be compulsorily brought to the medical facility by the Police.” The Police shall carry out the task in accordance with the court's decisions. (Art. 33a) 1. The Police shall carry out the task referred to in Art. 30 sec.1 and Art. 32 sec. 3 by order of the court and in accordance with the rulings thereof. The Police confiscate belongings from the person being brought in, the use of which could cause self-harm or endanger the life or health of others. The person must obey the police officer's orders in order to be brought in. Police officers may apply direct measures of restraint if the person being brought in resists or behaves aggressively, and if “the person being brought in is intoxicated, they may be placed in a sobering center, an institution referred to in Art. 39 sec. 3 or a Police station until sober. After the person being brought in becomes sober, the Police shall enforce the court order”.

The Act of 29 July 2005 on counteracting domestic violence should undoubtedly be mentioned as well. Art. 12d, sec. 1 refers to the situation “where the motion of a probation officer to order the enforcement of a conditionally suspended prison sentence or the revocation of parole concerns a person convicted for a violent crime or an unlawful threat against a family member who during the trial period grossly violated the legal order, again with a violent crime or

an unlawful threat against the family member, the court competent to consider the application shall order the detention and compulsory bringing the convicted person to the hearing to consider the motion”. This Article specifies another task of the Police which intertwines with the tasks carried out by probation officers.

Among the provisions worth mentioning in the context of this cooperation is the Regulation of 13 June 2016 of the Minister of Justice on the manner and procedure for the performance of the activities of probation officers in executive penal cases.

§ 4 refers to the aforementioned cooperation of probation officers with the Police. “1. As soon as the supervision is ordered, however no later than within 7 days from the date of it being ordered, the probation officer:

- 1) shall summon on the convicted person to appear before the officer in person and inform them that they have been placed under supervision, unless supervision has previously been entrusted to the social probation officer;
- 2) shall forward the information about the person convicted for a violent crime or an unlawful threat to the Police station having jurisdiction over the place of permanent residence of the convicted person.”

Inter-institutional cooperation is not without significance in the performance of the tasks in relation to persons who have been subject to probation measures and who have been placed under probation officer’s supervision. The exchange of information between entities, including probation officers and the Police, is a crucial tool for undertaking and implementing cooperation. The obligation of the Police to take action or provide assistance to the probation officers is an obligation resulting from the Act on the Police. The Police identify the problems faced by both authorities – probation officers and the Police. These are similar issues related, for example, to the size of our unit, the range of tasks entrusted and performed as well as the varying degrees of complexity of these tasks.

Areas of cooperation and initiatives undertaken in recent years

2010 – agreement on cooperation between the probation service and the Police

The first agreement was signed on 29 November 2010 in Warsaw between the Minister of Justice and the General Commandant of the Police. Its aim was to work out procedures for cooperation between the probation service and police officers in relation to persons against whom a court decision is executed in connection with committing violent crimes or unlawful threats.

Agreement on the cooperation of the probation service with the Police – provisions

This agreement regulated the tasks of both parties of the agreement. The agreement specifies measures for the prompt and proper exchange of information and the effective response or necessity to influence persons against whom a court decision is executed in connection with committing violent crimes or unlawful threats.

The agreement states that: the probation service and the Police establish and maintain mutual cooperation. The methods of cooperation may be regulated and discussed by the heads of the probation service teams and poviats/city or district Police commandants at joint meetings organized with the participation or upon notice of district court presidents. The methods of cooperation should be developed on the basis of the existing legal regulations, which, due to local conditions, will result in the most effective exchange of information, as well as various forms of cooperation and interaction with the charges.

It has been assumed that the heads of probation service teams and commandants of Police organizational units will exchange information on an ongoing basis on the territorial divisions of the work of public officers (probation officers and police patrols assigned to districts).

It was also clarified that each district police patrol should be informed about the probation officers carrying out activities in the area, and each probation officer should be informed about the district police patrol on duty in the said area. The probation officer, when collecting data for the report on the supervision over an adult or a minor — the perpetrator of a criminal act, will, if necessary, make contact with the district police patrol to exchange information about the charge.

The form of contact itself remained undefined and therefore arbitrary, each time justified by the needs of a particular case. It is assumed, however, that it is advisable that the first meeting of the probation officer with the district police patrol in a specific case should take place by way of a personal meeting, unless the probation officer's contacts with the district police patrol occur on a regular basis. The probation officer should provide the district police patrol with information on the content of the court decision in order to discuss possible joint action.

In the event that an officer of the district police patrol, in connection with the performance of their official duties, comes into possession of information about the intervention, detention, ongoing investigation or prosecution of the charge for the committed offences, search, provisional detention and other relevant circumstances, they shall pass the information to the probation officer immediately.

The officer of the district police patrol should inform the probation officer of any signs of a possible breach of probationary duties related to:

- refraining from alcohol abuse,

- refraining from entering certain areas or staying in certain environments,
- a restraining order,
- a prohibition on contracting certain persons.

The agreement defined the tasks of both parties in quite a detailed manner, which was undoubtedly intended to facilitate ongoing contacts between representatives of both institutions. Which was indeed confirmed in practice.

Undoubtedly, provisions such as the unrestricted form of contact between the entities, as well as mutual exchange of information on the territorial divisions of district probation and district police patrols were good solutions. This way both parties had knowledge of the events involving the charge.

However, during the implementation of the provisions contained in the agreement, no problems and doubts related to the prompt exchange of information were identified, which became the subject of subsequent agreements. This document entered into force on 1 January 2011 and remained binding until 31 December 2012.

2012 – Police activities – improving information flow

Due to the positive results of the agreement, the General Police Headquarters undertook activities related to the maintenance of this cooperation in order to develop various forms of interaction and cooperation in this area, as well as the most effective exchange of information. This resulted in a meeting which took place on 8 November 2012 in Warsaw, during which an annex to the earlier Agreement concluded on 29 November 2010 was signed. between the Minister of Justice and the General Commandant of the Police and the Director of the State Agency for the Prevention of Alcohol-Related Problems, which concerned the establishment and functioning of an intervention and information telephone line for victims of domestic abuse wronged by persons previously convicted for violent crimes or unlawful threats against a family member acting within the framework of the National Domestic Abuse Help Center — “The Blue Line” (orig. *Niebieska Linia*).

The Annex entered into force on 1 January 2013 and extended the duration of the Agreement until 31 December 2017.

“The Blue Line” was designed to accept reports from witnesses or victims of domestic abuse and to inform the Police that a person who has already been convicted of domestic abuse is again hurting their loved ones.

The Police are obliged to verify the report and take further actions, resulting from the Act on the Police, the Act on counteracting domestic violence, the Agreement and the “Procedures of cooperation between the probation service and police officers (...)”, and then pass on the information to the probation officer.

It has been assumed that the probation officer, on the basis of data from the Police, will be able to submit a motion to the court to revoke the suspension of

a sentence on the grounds of a breach of probation or unfulfillment of probation conditions.

“The Blue Line” will monitor the further course of a given intervention and collect information from the Police, probation officers and the court about the effects of the actions taken.

Despite the existing cooperation between the two institutions, the need to define further areas has arisen over time in the ever-changing social reality.

2013 – Police activities – improving information flow

4 January 2013. The General Commandant of the Police issued a letter to the Minister of Justice, in which he pointed out that the current legal regulations concerning the possibility of collecting and processing personal data by the Police make it impossible to introduce systemic solutions that would be satisfactory with regard to cooperation between the Police and probation officers.

It was pointed out in the letter that “on the basis of the procedure of cooperation between the probation service and police officers in relation to persons against whom a court decision is executed in connection with committing a violent crime or an unlawful threat, such information is provided by probation officers to poviats Police commandants having appropriate jurisdiction (city/district) in a paper form.

In accordance with the applicable legal regulations, documents are collected in paper form only in a given organizational unit of the Police, which significantly hinders, and often even prevents access to them by police officers in the rest of the country. Taking into account that the purpose of the prohibitions specified in Art. 72 § 1 of the Penal Code is primarily to protect the injured parties and other persons protected by the prohibition by isolating them from the convicted person and providing them with a sense of security and freedom from fear, access by the Police to full data in this respect seems necessary. Such access will be made possible by implementing one of the following:

- 1) amendment of Art. 20 section 2a of the Act of 6 April 1990 on the Police and its extension to enable the collection, acquisition, storing, processing and use, for the purpose of the performance of statutory tasks, of information, including personal data, including those on persons convicted for committing crimes prosecuted on public indictment, also without their knowledge and consent; or
- 2) allowing the Police on-line access to the National Criminal Register in the discussed scope.

The Police pointed out the validity of the second solution, which should be pursued by providing the Police with on-line access.

This solution was motivated by data from which it was clear that Poland is one of the leading European countries when it comes to conditional suspension

of sentence execution. Among the crimes punishable under Art. 207 § 1 of the Penal Code, in 2011 as many as 81.5 % of cases were sentenced to prison with conditional suspension of the sentence. The number of convicted persons under supervision of probation services per 100,000 residents (data as of the end of 2009) in Poland amounted to 1056 and was 7 times higher than e.g. in Scandinavian countries such as: Sweden or Denmark.

An equally important factor in favor of such a solution was the signing of the Council of Europe Convention on preventing and combating violence against women and domestic violence by Poland on 18 December 2012, drawn up in Istanbul on 11 May 2011, according to Art. 53 sec. 3 of the Convention, "Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions".

The last of the factors raised in the letter in favor of giving the Police on-line access to the National Criminal Register was the need to consider the amendment of the Act of 27 July 2001 *on probation officers* (Journal of Laws No. 98, item 1071, as amended) within the scope of imposing an obligation on the Police to inform the probation officer on their own initiative about the circumstances referred to in § 5 section 4 of *the Agreement* signed by us. Regulating such activities in a legal act would have an impact on the regulation of emerging legal doubts as to the correctness of the Police activity when providing such information to probation officers.

Position of the Ministry of Justice – improving information flow

The amendments to the regulations in force at that time proposed by the General Commandant of the Police met with the approval of the Minister of Justice, expressed in the letter of 21 February 2013.

The Ministry of Justice assured that it will do its utmost to develop solutions enabling the Police to access data collected in the National Criminal Register during the works on the amendment of the Act on the National Criminal Register, taking into account the need to protect victims of prohibited acts.

However, no specific solutions were identified as to how to make these data available. However, the possibility of providing the Police with direct access to the Register database was considered, explaining this by the lack of regulations in the current legal status, which would "constitute a basis for the Police to obtain information from the Register in connection with activities carried out at the scene of the incident, in order to verify the personal data of its participants and enable on-line access to the Register database".

The Police, on the other hand, was assured that the Ministry will do its utmost to work out solutions which will ensure that police officers have access to data collected in the Register for the purpose of protection of victims of domestic abuse. In addition, in its statement it accepted “the proposal of the General Commandant of the Police concerning the amendment of the Act of 27 July 2001 on probation officers (Journal of Laws No. 98, item 1071, as amended) within the scope of imposing on the Police an obligation to inform the probation officer about circumstances which may indicate a breach of probation by the supervised person. It was assured that “adequate changes in this matter will be analyzed at the stage of drafting the amendment to the Act by the Ministry of Justice”.

The existing legal status was also pointed out, according to which “the provisions allow the Police to impose an obligation to inform the probation officer about circumstances which may indicate a breach of probation by the supervised person. Pursuant to Art. 9 sec. 5 of the Act on probation officers, in the performance of their duties, probation officers shall have the right to: request assistance in the performance of their official duties from the Police and other state entities or institutions, local government entities, associations and social organizations, within the scope of their activities, as well as from natural persons. It was therefore concluded that it was sufficient for the probation officer to carry out the tasks provided for in item 8 of the procedures of cooperation, the obligation to send to the commandant of the Police station having appropriate jurisdiction the information on being a supervision case, included in the letter a request to provide information referred to in item 12 of these procedures. There is no doubt that in such a situation, the exchange of information about any relevant incidents involving supervised persons (detentions, interventions, searches, etc.) will take place on the basis and within the scope of the law”.

The systemic solutions proposed by the General Police Headquarters and changes in regulations, despite assurances of the Ministry of Justice, have not entered into force. The Police still do not have on-line access to the National Criminal Register.

Cooperation of probation officers with the Police – amendment of the Act – Code of Civil Procedure

Removal a child from their family and putting them in a foreign environment is a traumatic experience. All entities entitled to remove a child from the family are required to be exercise extreme caution and solely act with child’s the best interest in mind. This is undoubtedly an important area in which cooperation between the probation officers and the Police is crucial.

Art. 50 of the Constitution of the Republic of Poland ensures inviolability of the place of residence. This means that a search of the apartment, room and vehicle may only take place in the cases and in the manner specified in the Act.

Cooperation between probation officers and Police – current legal status

On 27 August 2018 a new provision entered into force — Art. 598^{11a} of the Act of 17 November 1964 — Code of Civil Procedure. The new provision authorized the Police to search premises and other places to determine the whereabouts of persons subject to compulsory removal. Performed exclusively on the basis of a court order issued at the request of a probation officer. The condition for the court to issue such order are reasonable grounds for believing that the person subject to compulsory removal occupies the said premises or place.

The explanatory memorandum to the draft act indicates: Conclusions from the analysis of the application of the provisions on the compulsory removal of a person and monitoring of this category of cases as well as the interpretation of the existing provisions on the powers of the Police prove that the introduction of changes contained in this draft is necessary in order to give the Police a legitimacy to carry out searches of premises in order to reveal the person subject to removal. These changes will contribute to a more effective enforcement of decisions in the most difficult cases. On 14 August 2018, the General Police Headquarters sent a letter to the President of the National Probation Service Board in which it positively assessed the cooperation of the probation services and police officers to date with regard to persons against whom a court decision is executed in connection with committing violent crimes or an unlawful threat. The General Police Headquarters also took the initiative to continue cooperation and expressed its approval for the renewal of the existing Agreement.

Undoubtedly, the cooperation of probation officers and Police is very important and necessary for the proper implementation of the tasks entrusted to both parties. The joint activities are a response to the changing reality and the need to adapt procedures, therefore they will constantly evolve and include new areas of professional activity. It is undoubtedly necessary, apart from adapting the mentioned procedures, to educate the probation officers as well as the police officers in this area. Inter-institutional cooperation is aimed, on the one hand, at increasing the effectiveness of probation officers' work and, on the other hand, at responding, i.e., to emerging threats of which the probation officer or their charges are the subject.

References

- [1] The Constitution of the Republic of Poland.
- [2] Act of April 6, 1990 on the Police.
- [3] Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws 2018.0.1360), Act of 27 July 2001 on probation officers.

- [4] Act on upbringing in sobriety and counteracting alcoholism.
- [5] Act of 29 July 2005 on counteracting domestic violence.
- [6] Regulation of 13 June 2016 of the Minister of Justice on the manner and procedure for the performance of the activities of probation officers in executive penal cases.
- [7] Procedures of cooperation between the probation service and police officers in relation to persons against whom a court decision is executed in connection with committing a violent crime or an unlawful threat signed by the Minister of Justice, General Commandant of the Police and the representatives of the National Probation Service Board dated 29 November 2010.
- [8] Letter of the General Commandant of the Police to the Minister of Justice dated 4 January 2013 referring to the meeting of 8 November 2012 during which an Annex to the Agreement concluded on 29 November 2010 was signed. between the Minister of Justice and the General Commandant of the Police and the Director of the State Agency for the Prevention of Alcohol-Related Problems, which concerned the establishment and functioning of an intervention and information telephone line for victims of domestic abuse wronged by persons previously convicted for violent crimes or unlawful threats against a family member acting within the framework of the National Domestic Abuse Help Center – “The Blue Line” (orig. *Niebieska Linia*) – 8 November 2012.
- [9] Letter of the Minister of Justice to the General Commandant of the Police – Warsaw, 21 February 2013, concerning improvement of Police activities in the scope of better protection of rights of victims of violence within the framework of procedures of cooperation between the probation service and police officers with regard to persons against whom court decisions are executed in connection with committing violent crimes or unlawful threats.