

Paweł Kozłowski

Pomeranian University in Słupsk [pawel.kozlowski@apsl.edu.pl]

## Family probation in Poland – the dynamics of the intensity of tasks in the investigation and enforcement proceedings

**Abstract:** The article presents the dynamics of the number of tasks performed by family court probation officers in Poland in the last decade. The number of areas of tasks carried out by order of the court, both in cases undertaken before final rulings are issued and in duties performed in the course of proceedings after issuance thereof, was analyzed. On the basis of these analyses, conclusions were drawn on the number of tasks of family probation officers over the last ten years in Poland and postulates for changes, including legislative ones, resulting from the practical aspect of the performance of tasks by probation officers in family and juvenile cases were presented.

**Keywords:** Probation officer, supervision by probation officer, educational measure, parental authority, juvenile.

### Introduction

There are currently about 5,200 professional probation officers in the Polish justice system, of which over 2,000 are professional family probation officers (Wirkus, Stasiak 2018, p. 202), who are supported by about 12,000 social workers. Probation officers in Poland perform tasks of an educational, social rehabilitation, diagnostic, preventive and control nature as defined by law, which are related to the enforcement of court rulings. (The Act on probation officers). Probation officers in Poland, enforcing rulings in family and juvenile cases, perform the tasks

entrusted to them, resulting in particular from the provisions of the following acts: The Family and Guardianship Code, the Code of Civil Procedure, the Act on Juvenile Delinquency Proceedings, the Act on Upbringing in Sobriety and Counteracting Alcoholism, the Act on Mental Health Protection, the Act on Performing Certain Activities of the Central Authority in Family Cases in the Field of Legal Transactions under European Union Law and International Agreements. In the further part of the article, the dynamics of the number of individual tasks of family probation officers in the examination and then enforcement proceedings were analyzed.

## Probation officers' activities in the examination proceedings

Probation officers perform community interviews as part of the examination proceedings. As Tadeusz Jedynak points out, a *community interview is of particular importance for family courts. A family court seeking to protect the welfare of a child threatened by the actions and omissions of its parents or guardians or trying to respond appropriately to signs of demoralization of juveniles, must gather information about the individuals it intends to help* (Jedynak 2008, p. 385). The court is not able to obtain in the courtroom information on the material and living situation, family ties, care and educational as well as community conditions, and above all on the child itself, their life and development history (Jedynak 2008, p. 385). Table 1 presents data on the number of interviews conducted by family probation officers in the examination proceedings.

Table 1. Dynamics of the number of community interviews conducted by family probation officers in the examination proceedings

Year	Categories of interviews			
	Concerning juveniles, incapacitated, in drug rehabilitation obligation cases	Concerning juveniles	Divorce / separation	Total
2009	167,488	81,207	20,026	268,721
2010	166,692	76,753	20,602	264,047
2011	180,663	75,736	20,655	277,054
2012	186,322	68,629	21,236	276,187
2013	197,390	62,801	21,929	282,120
2014	218,831	40,342	22,572	281,745
2015	224,034	47,974	22,864	264,872
2016	219,991	45,303	23,129	288,423

Year	Categories of interviews			
	Concerning juveniles, incapacitated, in drug rehabilitation obligation cases	Concerning juveniles	Divorce / separation	Total
2017	224,274	46,753	23,580	297,607
2018	209,737	46,611	22,684	279,032

Source: own study based on MS 40 statistical data.

The largest number of interviews conducted by family probation officers in the enforcement proceedings concern juveniles and parental authority over them. These are both cases initiated ex officio and at the request of the parties (primarily parents). On the basis of the analyzed statistics, the categories of interviews including also cases related to, among others, the proceedings to determine a candidate for a legal guardian for a fully incapacitated person and a guardian for a partially incapacitated person, or in the proceedings to impose an obligation to undergo drug rehabilitation and in cases for placement in a psychiatric institution or a nursing home, or related to determining the life situation of the incapacitated, were not further specified. The last decade has seen an increase in the number of the aforementioned categories of interviews by 25.2%, from about 167,500 in 2009 to less than 210,000 in 2018. The number of these interviews changed in such a way that in the years 2009 and 2010 it oscillated at 167,000, then it increased in subsequent years by 180,000, 186 thousand, 197,000, 219,000, to 224,000 in 2015. Then the number of these tasks of probation officers decreased to 220,000, followed by another increase to 224,000 in 2017. In 2018, the number of these interviews decreased again to about 210,000.

In cases involving juveniles against whom proceedings for criminal acts or demoralization were initiated, there has been a 42.6% decrease over the last decade. In 2009 the probation officers performed over 81,000 of such interviews, then their number was decreasing annually, from less than 77,000, through, 76,000, 69,000, 63,000 and reached the level of just over 40,000 in 2014. This was connected with changes in the current model of separating juvenile delinquency proceedings into investigation, guardianship and educational, as well as corrective ones (Bojarski, Kruk, Strętowicz 2016). In 2015, the number of such interviews increased to approximately 48,000, after which in 2016 their number decreased to the level of just over 45,000. In the years 2017 – 2018, the number of interviews conducted by probation officers in examination proceedings in juvenile delinquency cases stabilized at the level of over 46,500.

Family probation officers also perform interviews commissioned by district courts in divorce and separation proceedings in families with minor children. However, this interview does not concern the history of the marriage or the reasons for its break-up. It refers to the way in which parents fulfil their parental

responsibilities, to the establishment of the conditions in which the children live, to their care and educational situation and further cooperation between the parties at parental level. Over the last decade, the number of such interviews has increased by 13.3%, from around 20,000 in 2009 to over 23,500 in 2017, before falling to 22,500 in 2018.

Family probation officers carry out an average of 135 interviews in Poland only in examination proceedings per year, which translates into about 13 interviews per month per probation officer, deducting holidays (Study of the Committee for Monitoring of Working Conditions, Wages and Charges Obligations of Probation Officers of the National Council of Probation Officers, Warsaw 2017). Community interviews are not included as a separate category of cases, which is controversial, in the Regulation of the Minister of Justice of 9 June 2003 on standards of workload of a probation officer (Journal of Laws of 2003 No. 116 item 1100), as it concerns the definition of the numerical framework of the supervision workload.

## The dynamics of changes in the number of tasks of probation officers in enforcement proceedings

The area of enforcement proceedings includes all the tasks that the court entrusts to probation officers for enforcement after a final ruling has been given. Table 2 presents data on the dynamics of changes in the workload associated with particular types of supervision carried out by probation officers enforcing rulings in family and juvenile cases.

Table 2. Dynamics of the number of individual types of supervision performed by family probation officers

Year	Parental authority (Opm)		Corrective or educational measures (Nw)	Alcohol (Alk)
	Number of cases	Number of people	Number of cases	Number of cases
2009	71,914	240,026	49,028	27,453
2010	75,958	250,507	49,155	27,593
2011	77,048	251,925	47,304	25,036
2012	79,433	256,508	47,415	23,900
2013	79,329	256,465	42,121	23,297
2014	79,142	255,927	42,050	23,257
2015	74,749	240,175	37,507	19,862
2016	78,427	251,816	36,133	20,736

Year	Parental authority (Opm)		Corrective or educational measures (Nw)	Alcohol (Alk)
	Number of cases	Number of people	Number of cases	Number of cases
2017	77,904	250,534	34,208	21,099
2018	77,494	247,992	32,041	19,770

Source: own study based on MS 40 statistical data.

The largest area of the tasks of family probation officers in enforcement proceedings is the supervision of the exercise of parental authority (pursuant to Article 109 § 2 Section 3 of the Family and Guardianship Code Act of 25 February 1964, Journal of Laws of 1964, No. 9, item 59). The essence of the type of supervision in question (bearing the Opm reference) is to protect the welfare of the child, and the basis for its application is the actual infringement or even the possibility of infringement of that welfare (Haak, 1995, p. 144–151). The last decade has seen a sinusoidal distribution of the dynamics of the number of court interventions in parental authority in the form of supervision by a probation officer. In 2009, there were less than 72,000 families covered by such supervision, then their number increased to less than 76,000 in 2010, about 77,000 in 2011, and then remained at the level of over 79,000 in three consecutive years. In 2015, the number of such supervisions decreased to less than 75,000. In the following year, however, there was an increase, to about 78,000 thousand, in the number of probation officers' supervisions in custody cases. In the years 2017 and 2018, their number decreased by about 500 in each year. Taking into account the entire decade, it has been established that in 2018 curators exercised 7.8% more supervision in cases relating to the exercise of parental authority than in 2009.

There are about 250,000 wards of probation officers enforcing rulings on parental authority (these are both parents and juveniles). In the last decade, the number of beneficiaries of this form of probation officers' activities ranged from 240,000 people (in 2009) to over 256,500 thousand people (in 2012) and in 2018 reached a level just below 250,000 people. It is also important to note the multitude of problems that are specific to all the wards, who are, after all, of different ages, from neonatal to adolescence (as far as juveniles are concerned), and parents/guardians who are of a wide range of ages, as well as with a variety of life experiences. This results in extensive cooperation with numerous assistance, educational, social, therapeutic and care institutions, as well as the health service and the Police (Kwadrans 2019, p. 52). It is worth noting that there are recommendations to replace the term „parental authority” with „parental responsibility” (Jaros 2015). As Paweł Jaros (2018, p. 51) points out, *the institution of parental responsibility not only incorporates all the parental powers, but also strengthens them and extends their scope. (...) It is defined as the task, attitude and relationship of parents with their child, performed with respect for their*

*dignity and rights, in accordance with the social and legal order. It is aimed at caring for the child and satisfying its needs, preparing for life in the family and society and fulfilling the maintenance obligation. It is performed, in particular, by performing duties and rights in terms of custody of the child and its property, representation, maintenance of personal relations, determination of the child's background, name and surname, place of residence. It applies mutatis mutandis to persons who, by virtue of a court decision, are responsible for the child like parents (Article 21, item 10 of the draft Family Code).*

The second type of supervision, in terms of the number of enforcement proceedings conducted by family probation officers, is supervision as educational means imposed both on juvenile offenders and persons exhibiting symptoms of demoralization (Kozłowski 2016 a, Opora 2010). Based on the Regulation of the Minister of Justice of 24 June 2014 on the supervision of juveniles (bearing the Nw reference), in this respect the probation officer shall carry out the following catalogue of tasks: get acquainted with the juvenile's case files and other necessary sources of information concerning the juvenile, including, among others, the course of any educational measures taken so far; diagnose the personal, family and community situation of the juvenile; plan and select the optimal methods of control and influence on the juvenile; maintain contact with the juvenile and provide him/her with the necessary assistance in the form of information and guidance in solving life problems, especially in undertaking and arranging for his/her study, work, treatment or therapy; establish and maintain contact with the juvenile's family or guardian, in person and by telephone or by subpoena, if circumstances so require, also maintain personal contact with his/her community and help to solve the diagnosed problems hindering the juvenile's social rehabilitation and control; monitor the conduct of the juvenile, at his/her place of residence, stay, study and, if necessary, at the place of work; in particular, familiarize himself/herself with the current situation of the juvenile, consult the educational and training establishments and the place of employment; establish contact, if necessary, with associations, institutions and social organizations dealing with social assistance, work placement, treatment or therapeutic interactions; obtain, if necessary, information about the juvenile and his/her community from the Police, local government institutions and government administration bodies and cooperate with these entities; draw up and keep legible records of the supervision over the juvenile, if possible using the IT system (§ 7. 1 of the Regulation of the Minister of Justice of 24 June 2014 on the supervision of juveniles (Journal of Laws of 2014, item 855)).

As regards the tasks related to the supervision of juveniles, there has been a negative trend in the dynamics of their number over the last decade. In the years 2009–2010, probation officers implemented over 49,000 of this type of educational measures, in the following two years the number of such supervisions oscillated at 47,000. In 2013, the number of these educational measures decreased

to 42,000 and remained at this level also in 2014. In 2015, the number of the described supervisions decreased by 4,500, then by less than 1,500 in 2016, and by less than 1,000 in 2017. In 2018, probation officers supervised just over 32,000 juveniles. Comparing the number of supervision of juveniles over the last decade, the number of juveniles was found to have decreased by 34.6% over that period. It is worth quoting numbers showing the demographic background, because in the analyzed period the number of people aged 13–17 in Poland decreased by almost 120,000, i.e. by about 6.1%. (Statistics Poland's statistics).

However, the decrease in the absolute number of such educational measures should not be associated with underestimating the problems caused by juveniles, since the decrease in the number of both punishable acts and educational measures concerns a significant decrease mainly in the number of thefts and burglary. However, the number of punishable acts involving aggression against life or health, as well as against property (robbery extortion, robbery, theft) by underage girls and boys is relatively constant (Kozłowski 2017, p. 131–146). In the case of activities concerning this type of supervision, although formally the persons covered by social rehabilitation measures are minors, their parents or guardians are also covered by guidance measures at the level of co-organization of the educational and social rehabilitation process. In the case of juveniles, it is necessary, in individual cases, to cooperate closely in the organization of educational, preventive, educational and therapeutic activities in the most important social communities where juveniles live, develop, educate and work.

The third type of supervision by family probation officers is related to the drug rehabilitation obligation (bearing Alk. reference) imposed by the court, under Article 31 of the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism (Journal of Laws of 1982 No. 35, item 230). Such an obligation lasts for 2 years from the date on which the court decision becomes final, and the court may apply probation for this period. Analyses show that in the last decade the probation officers' supervision was imposed in 42% to 49% of such rulings (<https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>).

The probation officer, when supervising an individual who has been ordered to undergo drug rehabilitation, organizes and carries out activities aimed at helping the latter to achieve the objectives of treatment. On the basis of Article 31, Sec. 6, items 1 – 9 the duties of probation officers enforcing this type of ruling were defined, which include in particular: taking the necessary measures to ensure that an individual undergoing drug rehabilitation complies with a court ruling; maintaining systematic contact with an individual undergoing drug rehabilitation and providing him/her with the necessary assistance to resolve life difficulties, and in particular to initiate and continue drug rehabilitation; getting familiarized with the results of the drug rehabilitation and liaising with the treatment facility to coordinate the stages of achieving the objectives of the drug rehabilitation; motivating an individual undergoing drug rehabilitation to establish

contacts with appropriate treatment facilities (residential or non-residential) and self-help organizations or groups of alcohol addicts; maintaining contact with family members of an individual undergoing drug rehabilitation who share a common household; influencing the community in which an individual obliged to undergo drug rehabilitation is staying or to which he or she is supposed to return, especially in terms of shaping an appropriate attitude towards that person; submitting written reports on the course of drug rehabilitation to the court within the time limits specified by the court, but at least every 2 months; where necessary, to cooperate with local authorities and social organizations in order to provide an individual obliged to undergo drug rehabilitation or his/her family with appropriate assistance, consisting in particular in facilitating employment, providing temporary accommodation and material benefits; where necessary, to cooperate with the employer in order to fulfil the obligations imposed on an individual obliged to undergo drug rehabilitation. In addition to these tasks, it is also the responsibility of the probation officer, who personally carries out such supervision or entrusts it to the social worker, to submit motions to the court to change the decision on the type of rehab treatment facility and to declare the termination of the obligation to undergo drug rehabilitation. Moreover, the probation officer is also obliged to notify the court about the need to take other necessary actions related to the supervision (Article 37 of the Act on Upbringing in Sobriety and Counteracting Alcoholism).

Over the last decade, the number of instances of probation officer's supervision over the method of drug rehabilitation decreased from about 27,000 thousand in the years 2009 and 2010 through 25,000 in 2011, 24,000 a year later, 23,000 in 2013 and 2014, to less than 20,000 in 2015. Subsequently, the number of instances of such supervisions increased by about 1,000 and oscillated around 21,000 in the years 2016–2017, and then fell to less than 20,000 in 2018.

Apart from supervision, family probation officers also perform other tasks in the enforcement proceedings. A summary of their intensity over the last decade is given in Table 3.

An extremely burdensome task in the enforcement proceedings is the probation officer's involvement in the contacts between the parent (and sometimes another person such as grandparents) and the underage child. Krzysztof Stasiak (Stasiak 2018, p. 822–834) wrote extensively about the difficulties in performing such tasks and legislative changes in this area. Judicial decisions concerning this matter are made in a situation of disagreement between the parents and in connection with a hot conflict in which the juvenile is also involved. Taking into account the current legal status, parents, as well as their children, have the right but also the obligation to maintain contact with each other (Gromek 2018, p. 916–929). The provisions of the Family and Guardianship Code indicate that if the welfare of the child so requires, the guardianship court restricts parental contact with the child. For example, the court may order a parent to meet with a child only



in the presence of a probation officer at a designated place and time. This has been specified only to a small extent by the Regulation of the Minister of Justice of 12 June 2003 on the detailed method of exercising powers and duties of probation officers (Journal of Laws 2003, No. 112, item 1064).

Table 3. Dynamics of the number of family probation officers' cases, other than supervision, in the enforcement proceedings

Year	Obligations imposed on juveniles	Probation center	Participation in contacts (number of cases)	Removing a child	Control interviews in supervisions performed by social workers	Participation in enforcement meetings	Interviews in enforcement proceedings	Other cases
2009	–	1,687	586	1,945	36,942	47,328	69,157	26,070
2010	–	1,692	691	1,610	36,747	47,486	68,325	29,828
2011	–	1,475	805	1,794	36,942	38,161	68,120	31,597
2012	–	1,606	1,102	1,563	36,411	35,812	64,929	28,537
2013	3,091	1,554	1,349	1,401	36,558	38,749	63,788	39,041
2014	2,284	1,402	1,754	1,349	35,113	46,735	59,951	20,874
2015	3,042	1,426	1,971	1,247	38,335	46,774	61,716	19,204
2016	3,282	1,463	1,965	1,108	35,277	49,167	50,072	16,999
2017	3,449	1,430	2,390	1,229	38,482	49,330	51,386	9,298
2018	3,344	1,456	2,410	1,176	38,759	53,025	56,321	8,206

Source: own study based on MS 40 statistical data.

It states that:

- the probation officer is to appear at the place and date of the parent-child meeting specified by the court, is to be present throughout the visit, is to ensure that the visit does not last longer than decided by the court (§ 10, Sec. 1 of the Regulation),
- the probation officer shall immediately submit a written memo to the court (§ 10, Sec. 2 of the Regulation) of each presence during the visit.

Such a vague regulation of the issue in question should be considered far from being sufficient. In the complaints to the Ombudsman concerning the course of the meeting, parents complain on the one hand about – in their opinion – too much passivity, and on the other hand, too much activity of the probation officer during the meeting (General Speech of the Ombudsman to the Minister of Justice of 22.01.2019, No. IV.7021.28.2019.MO).

Problems related to the lack of detailed legal regulations concerning the status of a probation officer, present during parent-child meetings, generate most complaints against probation officers. In the light of current legislation, it is not clear how to solve some seemingly trivial situations, such as, for example: can the probation officer use the toilet (thus creating a state of 'absence' during a visit for a short period of time), or should he/she go to the toilet with the juvenile? Who is supposed to cover the costs of the probation officer's commute or presence in places requiring the purchase of an entrance ticket? If the parent wants to take the child to the pool, is the probation officer obliged to enter the changing room with them? (General Speech of the Ombudsman to the Minister of Justice of 22.01.2019, No. IV.7021.28.2019.MO). The Ombudsman also pointed to the issue of visits scheduled on Saturdays, Sundays and holidays and to the problem of long hours of meetings to be attended by probation officers.

Similar problem areas were also pointed out by the Children's Ombudsman. He pointed out that in the current state of law, the child's situation is not properly secured during the parent's contacts with the underage child in the presence of the probation officer. Therefore, a postulate was put forward that probation officers should have actual influence on the course of the parental visit, *inter alia*, in terms of having the powers to end the visit (General Speech of the Children's Ombudsman to the Minister of Justice in the general speech of 18 February 2016, No. ZSR.422.9.2016.MK)

Probation officers' participation in the visits of parents (or of other person) is one of those tasks whose number has been clearly increasing over the last decade. In the analyzed period, the number of such rulings increased by 411%, from 586 in 2009 to 2,410 in 2018. The problem areas, both at the level of legislative regulations, shortcomings in enforcement regulations, and in the aspect of the probation officer's preparation, as well as the preparation of the parties (Stasiak 2018, pp. 831–833) for this task, and finally the probation officer's participation in each individual case take different forms. The generality of the provisions give the parties to the proceedings, who are usually in a violent conflict, ample room for a wide range of interpretations and subjective assessments. It should also be noted that in 2018, 2,410 rulings involved the participation of probation officers in 22,431 meetings related thereto.

Another emotionally charged task performed by family probation officers is taking a child away on the basis of the provisions of Article 598 of the Code of Civil Procedure. The number of such rulings has decreased by 39.5% over the last decade. In 2009, the courts issued 1,945 such rulings, in the following year their number decreased to 1,610, and then increased to 1,794 in 2011. In 2012, 1,563 rulings on the forced removal of a child were issued, and their number was decreasing over the following years to the level of 1,108 in 2016. In the following year, their number increased to 1,229, and then decreased again to 1,176 in 2018. The procedure for the enforcement of a decision to remove a person from

parental authority or from parental custody was presented by T. Jedynak and N. Górską in the form of an algorithm (Jedynak, Górską 2014, pp. 649–663).

As Violetta Konarska- Wrzosek (2018, p. 37) points out, it is important to remember the child's right to grow up in their natural family and the fact that taking a child away from the family is often associated with their emotional suffering. Therefore, interference with parental authority, which is linked to a change in the child's environment, should take place when the child's further stay in the family threatens its welfare or its normal development to a significant degree.

This is an area of tasks that require care, referring, on the one hand, to 'saving' the child from a situation threatening its welfare (in this case, health or life), on the other hand, the mere performance of this task by the probation officer in cooperation with other entities must, as far as possible, be consistent with the welfare of the child (Wirkus 2018, p. 778–814, Stojanowska 2000, p. 55 –65). The principle of the child's welfare takes precedence over other principles. The subjects of „family law” relations and public authorities must be guided in their actions by the welfare of the child (Stadniczeńko 2018, p. 19).

As part of enforcement proceedings, family probation officers also conduct educational, social rehabilitation and preventive activities in probation centers (Kozłowski, Stasiak 2018; Kozłowski 2018a, pp. 33–42; Kozłowski 2018b, pp. 273–290; Konaszewski, Kwadrans 2018; Kwadrans 2016, p. 107–126). In 2018, there were 97 such institutions operating at district courts, in which daily afternoon group and individual rehabilitation classes were conducted for about 1,500 juveniles, to whom the courts applied such educational measures under Article 6, item. 6 of the Act on Juvenile Delinquency Proceedings. Over the last decade, the number of juveniles referred to probation centers has decreased by 13.7% (from less than 1,700 in 2009 to less than 1,500 in 2018), however, since 2014 it has oscillated around 1,450. What is important, social rehabilitation activity in probation centers is based on the assumption of the 'triad' of social rehabilitation – reintegration – readaptation in the family, school and local environment of a juvenile, which is in line with current trends in social rehabilitation pedagogy (Konopczyński 2013, 2014). The activity of probation centers also fulfils item 6 of the Annex to the United Nations Guidelines for the Prevention of Juvenile Delinquency. The cited provision states that it is necessary to create and develop both services and programs for preventing juvenile delinquency based on the resources of local communities (Jaros, Michalak 2016, p. 365).

In addition to these tasks, family probation officers also perform other tasks such as monitoring implementation of obligations imposed on juveniles (numbers ranging from 2,200 to about 3,500 such tasks per year in the last decade) on the basis of Art. 6, item 2 of the Act of October 26, 1982 on Juvenile Delinquency Proceedings (Journal of Laws 1982, No. 35, item 228). Besides, they perform tasks in enforcement proceedings also, among others, in matters concerning legal custody over juveniles and adults (incapacitated), foster families, or care and

educational institutions. The number of such tasks in 2009 amounted to over 26,000, and then for two consecutive years it increased to less than 30,000 in 2010 and over 31,500 in 2011. In the following year, the number of such tasks of probation officers decreased to about 28,500, after which the number increased to over 39,000 in 2013. Then the number of these so-called other tasks decreased respectively to less than 21,000 in 2014, about 19,000 in 2015, 17,000 in 2016 and slightly more than 9,000 in 2017, to the number of about 8,000 in 2018.

As part of their tasks, probation officers work in close cooperation with judges in the field of supervisions performed. One form of this cooperation is the participation of probation officers in court enforcement meetings. In the years 2009 – 2010, over 47,000 such court sessions with the participation of probation officers were held. Then, a decrease was observed in their number in 2011 to slightly over 38,000 and in the next one to less than 36,000. Since 2013, the dynamics of their number was invariably positive, and in 2018 the number of such activities amounted to over 53,000.

In addition to supervisions, probation officers also perform one-off community interviews in enforcement proceedings. Family probation officers performed over 69,000 of such tasks in 2009, followed by an initial several-year downward trend lasting until 2014 (less than 60,000) while in 2015 their number increased to less than 62,000. In 2016, the number of such interviews decreased to around 50,000, after which it increased in the next two years and reached over 56,000 in 2018. A number of problems related to some of the interviews in this category of cases were presented by the Ombudsman in the general speech to the Minister of Justice, indicating, inter alia, that they: *share the view that it is appropriate to regulate unequivocally the role of the probation officer within the framework of enforcement proceedings concerning the implementation of the guardianship court rulings, in particular with regard to conducting community interviews under these proceedings. This is all the more important because in the situations discussed here, the activities of auxiliary bodies within the judicial branch enter the sphere of constitutional and conventional freedom and human rights – freedom from arbitrary state interference and the right to respect for one's private and family life (Art. 47 of the Constitution of the Republic of Poland, Art. 8, Sec. 1 and Sec. 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Journal of Laws of 1993, No. 61, item 284, as amended)* (Speech of the Ombudsman to the Minister of Justice of 31.05.2015 No. IV.501.40.2015.MK).

Professional probation officers also performed about 35 – 38 thousand control interviews under supervisions entrusted to legal guardians for direct exercise. The number of such interviews has decreased by 8.83% over the last decade. These activities are aimed, among other things, at coordinating the implementation of work plans in the individual supervisions performed by social workers. This involves the formal and substantive responsibility of the probation officer for the supervision entrusted to social workers.

Probation officers, when enforcing rulings in family, juvenile cases and in cases relating to the obligation to undergo drug rehabilitation, have the right to submit motions to the court, on the basis of which, after considering and taking them into account, the court in the current state of law may ex officio initiate proceedings relating to specific supervision. The numbers showing the listed areas of activities of family probation officers are presented in Table 4.

Table 4. Dynamics of the number of applications submitted by family probation officers in individual supervision categories

Year	Parental authority (Opm)	Corrective educational measures (Nw)	Alcohol (Alk)	Total
2009	34,432	27,371	19,748	81,551
2010	32,059	25,699	18,654	76,412
2011	35,623	26,191	17,882	79,696
2012	36,488	26,695	16,581	79,764
2013	34,967	25,247	15,336	76,550
2014	32,714	24,561	13,819	71,094
2015	32,290	20,263	13,623	66,176
2016	29,868	20,538	11,639	62,045
2017	29,341	19,067	10,910	59,318
2018	28,058	17,576	10,446	56,080

Source: own study based on MS 40 statistical data.

As can be seen from the data analysis, the numbers of motions to the court to modify or discontinue the enforcement proceedings submitted by probation officers each year ranged from about 56,000 to over 81,500. The analysis established that the number of motions was decreasing year on year. The exception was the period between 2010 and 2011, when the number of submitted motions increased by more than 3,000. In the last decade, the dynamics of the number of motions submitted to the court by family probation officers was negative, and their number in 2018 compared to 2009 decreased by 31.2%. The negative dynamics of the number of motions concerns all types of supervision in the enforcement proceedings of family probation officers. It has been, however, established that there are differences in the intensity of this trend regarding motions in individual categories of supervision. Between 2009 and 2018, this trend was as follows: for motions in parental authority cases – decrease by 18.5%, in cases related to the supervision of juveniles – decrease by 35.8%, while in cases related to the supervision of drug rehabilitation, the negative trend was most pronounced, with a decrease by 47.1%.

## Final thoughts

Family probation service is a form of appropriate family assistance and legal protection for a child based on the authority of the court. Family probation officers enforcing rulings in family and juvenile cases carry out a multitude of tasks with a high and changing quality of risks and problems resulting from social and cultural changes, which the family is the center of, and which concern both children and adults. Cases entrusted to family probation officers concern various family dysfunctions, both in the form of negligence and abuse of power or parental responsibility, which permeate the boundaries of different living, social and cultural statuses. The work of probation officers in the family space require the highest level of professionalism, ethics and respect, as well as firmness and sensitivity at the same time, because in family law, as Stanisław Leszek Stadniczeńko emphasizes, *legalism and formalism as well as equivalence of benefits cannot be dominant in practice, because the concept of the best interest of the child has the nature of the substantive law, procedures and the principle of basic legal interpretation. Its nature, included in the Convention on the Rights of the Child, indicates the need to shape and create such construction of legal acts so that they guarantee and explicitly incorporate the notion thereof* (Stadniczeńko 2018, p. 14). Therefore, there is a need to strengthen the formal role of family probation officers in implementation of enforcement proceedings and to clarify at the statutory level the powers and duties of probation officers enforcing court decisions in family cases. Steps should also be taken to raise the status of family probation officers in the provisions of the Family Code to the court's enforcement body (Stadniczeńko 2018, p. 22). Such a provision was included in Article 428 of the draft family code of the Children's Ombudsman. Family probation officers currently function as an auxiliary body of the court. Such a position of family probation officers is not in line with the scope and manner of their tasks and the level of professionalism of this professional group, as they enforce court decisions independently, subject only to the court's supervision. The currently binding Rules of Procedure of common courts do not contain provisions of a procedural nature that would standardize enforcement of court decisions in family, guardianship and juvenile cases. The statutory regulation of the position and competence of a family probation officer is important because in the performance of their duties, family probation officers interfere in the sphere of constitutional and conventional human rights and freedoms (Brudnoch, Grabowska-Moroz 2016).

In a letter to the Minister of Justice, the Ombudsman pointed out the need to appoint family probation officers as enforcement proceedings bodies and to regulate their competences by law (The Ombudsman speech to the Ministry of Justice of 31 December 2015 on defining the role of probation officers in

conducting community interviews in custody cases, ref. no. IV.501.40.2015.MK). Stanisław Leszek Stadniczeńko also drew attention to the complexity of the matter related to the areas of probation officers' activities in the family sphere, stressing that *family rights function – exist on the borderline between private and public law. The discourse on the relationship between family law and the law relating to family leads us into the area of legal theory of family protection. It should be stressed that the links between the family and society are dealt with by different sciences, conducting multiple studies, recognizing the family as a fundamental element of society functioning as an institution and community* (Stadniczeńko 2018, p. 16).

The potential of family probation in terms of measures concerning juveniles should also be highlighted, in particular the underused one in the sphere of probation centers. Therefore, a postulate should be made to organize the process of social rehabilitation of juveniles based on the resources of local communities in probation centers (without placing them outside the family or school environment, for example, in a youth education center). Probation centers carry out tasks on the basis of the 'triad' of social rehabilitation – reintegration – readaptation (Konopczyński 2013, 2014), cooperating in the organizational space of various institutions from the local community, including in particular families, schools and other institutions supporting the process of prevention, education, therapy, or cultural and social development.

Moreover, it is possible to profile the probation centers in terms of creating the most homogeneous group of wards in terms of the intensity of social maladjustment – among other things, utilizing the preventive function of centers (selective and indicative level) for individuals at risk of social maladjustment to a greater extent. Probation centers also have potential in the area of supporting the educational function of the families of juveniles. It is possible to organize and conduct meetings with parents in order to not only inform them about the course of the educational measure, but also to update the diagnosis of a juvenile, to provide assistance to families at guardianship and educational level, both individually and as group educational workshops for parents/guardians of juveniles. Hence the need to strengthen the institution of probation centers, including legislative regulations (introduction of provisions on probation centers into the Act on Probation Officers), organizational regulations (so that such an institution could operate, as far as possible, at each district court), financial regulations (in order to provide probation centers with funding for all activities – including infrastructure maintenance, staff salaries, educational, sports, cultural, project activities, etc.), substantive regulations (in order to improve qualifications and competences of probation officers performing tasks in these centers through training in the National School of Judiciary and Public Prosecution).

## References

- [1] Bojarski T., Kruk E., Skrętowicz E., 2016, *Postępowanie w sprawach nieletnich. Komentarz*, Warszawa.
- [2] Brudnoch A., Grabowska-Moroz B., 2016, *Status zawodowych kuratorów sądowych w polskim wymiarze sprawiedliwości*, Helsińska Fundacja Praw Człowieka, *Analizy i Rekomendacje* No. 3/2016, Warszawa, [http://www.hfhr.pl/wp-content/uploads/2017/01/HFPC\\_analizy\\_I\\_rekomendacje\\_3\\_2016\\_Kuratorzy.pdf](http://www.hfhr.pl/wp-content/uploads/2017/01/HFPC_analizy_I_rekomendacje_3_2016_Kuratorzy.pdf) [accessed on 10.09.2019].
- [3] Gromek K., 2018, *Kodeks rodzinny i opiekuńczy. Komentarz*, 6th edition, Warszawa.
- [4] Haak H., 1995, *Kodeks rodzinny i opiekuńczy. Władza rodzicielska. Komentarz*, Toruń.
- [5] <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>
- [6] Jaros P., 2015, *Prawo dziecka do rodziców (odpowiedzialności rodzicielskiej) w kontekście polskich zobowiązań międzynarodowych*, Warszawa.
- [7] Jaros P., Michalak M., 2016, *Prawa Dziecka. Dokumenty Organizacji Narodów Zjednoczonych*, Warszawa.
- [8] Jaros P., 2018, *Podmiotowość dziecka w projekcie nowego Kodeksu rodzinnego (kilka uwag o charakterze generalnym)*, "Social Studies: Theory and Practice", 5, 2, pp. 45–61.
- [9] Jedynak T., 2008, *Wywiady środowiskowe*, [in:] *Zarys metodyki pracy kuratora sądowego*, (eds.) Jedynak T., Stasiak K., Warszawa.
- [10] Jedynak T., Górka N., 2014, *Odebranie osoby podlegającej władzy rodzicielskiej lub pozostającej pod opieką oraz udział kuratora w sprawach o umieszczenie dziecka w środowisku zastępczym*, [in:] *Zarys metodyki pracy kuratora sądowego*, (eds.) Jedynak T., Stasiak K., Warszawa.
- [11] Konarska-Wrzošek V., 2018, *Prawo a dziecko*, "Social Studies: Theory and Practice", 5, 2, pp. 33–44.
- [12] Konaszewski K., Kwadrans Ł., 2018, *Zasoby osobiste młodzieży nieprzystosowanej społecznie. Uwarunkowania środowiskowe*, Kraków.
- [13] Konopczyński M. (2013), *Kryzys resocjalizacji czy(li) sukces działań pozornych, refleksje wokół polskiej rzeczywistości resocjalizacyjnej*, Warszawa.
- [14] Konopczyński M., 2014, *Pedagogika resocjalizacyjna. W stronę działań kreujących*, Kraków.
- [15] Kozłowski P., 2016, *Wartości, cele i plany życiowe młodzieży nieprzystosowanej społecznie*, Oficyna Wydawnicza "Impuls", Kraków.
- [16] Kozłowski P., 2017, *Czyny karalne nieletnich z użyciem przemocy – analiza kryminologiczna z uwzględnieniem czynnika płci*, [in:] *Przemoc w rodzinie – ujęcie interdyscyplinarne*, Ł. Wirkus, P. Kozłowski (eds.), Oficyna Wydawnicza "Impuls", Kraków.
- [17] Kozłowski P., 2018a, *Probation center – a Polish way of complementary resocialization of minors in an open environment* "The Polish Journal of Criminology", 1, pp. 33–42.
- [18] Kozłowski P., 2018b, *Ośrodek kuratorski – przestrzeń aktualnych wyzwań grupowej nieinstytucjonalnej resocjalizacji nieletnich*, [in:] *Kuratela sądowa w Polsce. Analiza systemu. Księga pamiątkowa dedykowana dr Tadeuszowi Jedynakowi*, Stasiak K. (ed.), Toruń.



- [19] Kwadrans Ł., 2019, *Metody pracy wychowawczo-resocjalizacyjnej i profilaktycznej stosowane przez kuratorów sądowych wykonujących orzeczenia w sprawach rodzinnych i nieletnich*, Instytut Wymiaru Sprawiedliwości, Warszawa.
- [20] Opora R., 2010, *Ewolucja niedostosowania społecznego jako rezultat zmian w zakresie odporności psychicznej i zniekształceń poznawczych*, Gdańsk.
- [21] Draft family code with justification, [http://brpd.gov.pl/sites/default/files/kodeks\\_rodzinny\\_projekt\\_z\\_uzasadnieniem.pdf](http://brpd.gov.pl/sites/default/files/kodeks_rodzinny_projekt_z_uzasadnieniem.pdf) [accessed on: 17.09.2019].
- [22] Sobieszczuk L., Budziński P., Chmiel R., Ciak G., Liedtke P., Pojnar D., Wacławiak J., 2017, *Kuratorska Służba Sądowa w Polsce wg stanu na dzień 31.12.2016 roku. Opracowanie Komisji ds. Monitorowania Warunków Pracy, Płac i Obciążeń Obowiązkami Kuratorów Krajowej Rady Kuratorów Sądowych*. Warszawa. <http://kurator.info/wp-content/uploads/2017/06/Ankieta-21-06-2017.pdf> [accessed on: 12.09.2019].
- [23] Stadniczenko S.L., 2018, *Zabezpieczenie interesu dziecka i rodziny w projekcie Kodeksu rodzinnego z 2018 roku*, "Social Studies: Theory and Practice", Vol. 5, No. 2, pp. 11–31.
- [24] Stasiak K., 2018, *Udział kuratora w ustalonych przez sąd kontaktach rodziców z dzieckiem*, [in:] *Zarys metodyki pracy kuratora sądowego*, (ed.) Stasiak K., Warszawa.
- [25] Stojanowska W., 2000, *Dobro dziecka w aspekcie sprawowanej nad nim władzy rodzicielskiej*, "Studia nad Rodziną", 4/1/6.
- [26] Wirkus Ł., 2018, *Odebranie osoby podlegającej władzy rodzicielskiej lub pozostającej pod jej opieką. Procedury postępowania kuratora sądowego*, [in:] *Zarys metodyki pracy kuratora sądowego*, (ed.) Stasiak K. Warszawa.
- [27] Wirkus Ł., Stasiak K., 2018, *Jakość życia kuratorów sądowych*, "Resocjalizacja Polska", 15, pp. 199–220.
- [28] General Speech of the Children's Ombudsman to the Minister of Justice in the general speech of 18 February 2016, No. ZSR.422.9.2016.MK [http://brpd.gov.pl/sites/default/files/informacja\\_o\\_dzialalnosci\\_rzecznika\\_praw\\_dziecka\\_za\\_rok\\_2016\\_maly.pdf](http://brpd.gov.pl/sites/default/files/informacja_o_dzialalnosci_rzecznika_praw_dziecka_za_rok_2016_maly.pdf) [accessed on: 10.09.2019].
- [29] The Ombudsman speech to the Ministry of Justice of 31 December 2015 on defining the role of probation officers in conducting community interviews in custody cases, ref. no. IV.501.40.2015.MK
- [30] General Speech of the Ombudsman to the Minister of Justice of 22.01.2019, No. IV.7021.28.2019.MO <https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20Ministra%20Sprawiedliw%C5%9Bci%20ws.%20uzupe%C5%82nienia%20uprawnien%C5%84%20i%20obowiaz%C4%85zk%C3%B3w%20kurator%C3%B3w%20s%C4%85dowych.pdf> [accessed on: 12.09.2019]

## Legal acts

- [31] Act of 26 October 1982 on educating in sobriety and counteracting alcoholism, "Journal of Laws" of 1982, No. 35, item 230
- [32] Act of 26 October 1982 on Juvenile Delinquency Proceedings, "Journal of Laws" 1982, No. 35, item 228.
- [33] Act of 25 February 1964 – Family and Guardianship Code, "Journal of Laws" of 1964, No. 9, item 59.
- [34] Act of 27 July 2001 on Probation Officer, "Journal of Laws" of 2001, No. 98, item 1071.

- [35] Act of 17 November 1964 – Code of Civil Procedure, “Journal of Laws” of 1964, No. 43, item 296.
- [36] Regulation of the Minister of Justice of 9 June 2003 on standards of workload of a probation officer, “Journal of Laws” of 2003, No. 116, item 1100.
- [37] Regulation of the Minister of Justice of 12 June 2003 on the detailed method of exercising powers and duties of probation officers, “Journal of Laws”, of 2003, No. 112, item 1064.
- [38] Regulation of the Minister of Justice of 24 June 2014 on the supervision of juveniles, “Journal of Laws” of 2014, item 855.