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Probation officer suspended in executive proceedings

Abstract: As a result of legislative changes, from January 1, 2010, cases in which probation teams of the judicial service executing decisions in criminal matters are referred to cases in which enforcement proceedings have been suspended pursuant to art. 15 § 2 of the Executive Penal Code. Despite the lapse of 10 years from the introduction of the obligation for probation officers to perform control activities in such cases, doubts are still raised as to the role and tasks of probation officers resting in the course of executive proceedings that have been suspended and have not been performed for some time. In the course of such suspended proceedings, does the professional probation officer still retain all the qualities associated with his status as an executive authority?

The purpose of this study is to present the role of a probation officer as a authority of executive proceedings in a situation where, despite legality and enforceability, the judgment will not be enforced and will not be pending for reasons of a temporary nature and to present de lege ferenda conclusions regarding the regulation of the rights of probation officers in the discussed areas.

Keywords: Probation officer, suspended enforcement proceedings, executive penal code, enforcement of court decisions, rights of convicted persons.

Probation officers constitute a professional group with over 100 years of activity for the benefit of justice and Polish society. The range of tasks performed by this professional group translates into the level of order and security of

citizens. From the point of view of the society, and especially local communities, probation officers are the basic institution dealing with the readaptation of socially marginalized individuals at risk of social exclusion, showing problems in complying with social and legal standards[1]. New penal codification, which entered into force in 1998, significantly extended the scope, number and type of tasks performed by adult probation officers[2]. Importantly, for the first time a new authority – the probation officer – was introduced to the group of executive authorities[3] specified in Art. 2 of the Executive Penal Code. Thus, its role and responsibility in criminal executive proceedings – i.e. those in which a court decision is enforceable and is being performed – was considerably strengthened compared to the previous act. However, a condition for the competent authorities, including probation officers, to take action to enforce a decision is that certain procedural conditions permitting such executive proceedings are met. The basic premise here is enforceability. The main rule expressed in the provisions of the Executive Penal Code is that a judgment becomes enforceable when it becomes final. However, in many cases the Act also allows for exceptions to the above rule – a decision may be enforceable and subject to enforcement before it becomes final. The aim of this study is, however, to present the role of a probation officer as an executive authority in a completely different situation, namely one where, despite a decision being final and enforceable, it will not be enforced and will not be pending for reasons of a temporary nature. This situation is sanctioned by such an institution of the executive penal law as the suspension of executive proceedings (Postulski, 2011). For the sake of order, it is only worth signaling that it may also happen that the proceedings will not be enforceable, and thus will not take place for permanent reasons, such as the death of the convict. In the case of such negative grounds for further executive proceedings, the institution of discontinuance of executive proceedings will apply. The difference between these institutions is that the suspension of the executive proceedings will result in its suspension for a certain period of time (usually until the obstacle which caused the suspension has ceased to exist), but will not invalidate it, as is the case with discontinuance. In addition, discontinuance or suspension may relate to the whole of the executive proceedings, a selected part of them or incidental proceedings in the course of the executive proceedings.

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[1] Among others, M. Biernacki, Interpellation No. 23698 to the Minister of Justice on the unsuitability of legal regulations concerning the safety of work of probation officers Sejm of the 8th term. http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=7474393E (accessed: 27.09.2019).

[2] This trend (successive extension of competences of adult probation officers) can be observed continuously throughout the penal codification in force to date.

[3] As a result of the amendment of 2003, the authorities mentioned in Art. 2 of the Executive Penal Code, previously referred to as "executive authorities", were renamed to "authorities of executive proceedings". However, so far the two terms have been used interchangeably in literature.

As of 1 January 2010, in the case of probation service teams in criminal cases and in cases of offence, the so-called Zaw_k label (currently Zawk) was introduced to the registry tools for cases in which executive proceedings have been suspended pursuant to Art. 15 § 2 of the Executive Penal Code. This was due to the introduction of changes in the then binding §509 of the Ordinance of the Minister of Justice of 12 December 2003 on the organization and scope of operation of court secretariats and other departments of judicial administration (Journal of Laws of Ministry of Justice 2003.5.22 as amended)[4]. At the same time, the mode of control for this type of cases by both the head of the probation team and the probation officer was defined, which is currently in force as follows: *The label of cases in which proceedings have been suspended should be reviewed by the head of the team at least once a month, with the probation officer making a determination, at least once every three months, as to whether there is a basis for a motion for suspended proceedings to be reinstated or any other appropriate motion*[5]. It should only be mentioned that more than five years had elapsed since the introduction of the above-mentioned changes before probation officers, determining whether the obstacles to the continuation of the suspended executive proceedings have ceased to exist, obtained a statutory legitimacy to initiate proceedings before the court. In one of his articles from 2011, Kazimierz Postulski pointed out that a probation officer is not entitled to submit such a motion, and his/her possible 'motion', as such cases occurred in practice, can only be treated as a signal to initiate ex officio incidental proceedings (Postulski 2011). This situation changed on 1 July 2015, when the Act of 20 February 2015 amending the Penal Code and certain other acts came into force (Journal of Laws 2015.396). As a result of the introduced changes, in § 2 Art. 173 of the Executive Penal Code item 9a was added after item 9, indicating explicitly that the duties of probation officers include, in particular, submitting motions for suspension, initiation and discontinuance of executive proceedings. This change, which was proposed during the work of the Extraordinary Commission of the Sejm of the 7th term on amendments to the codifications, was said to be „a courtesy to probation officers".[6]

From the systemic point of view, the nature of the tasks performed by probation officers is clearly defined in Art. 1 of the Act of 27 July 2001 on Probation Officers (Journal of Laws 2018.1014 consolidated text). These are tasks of an educational and social rehabilitation, diagnostic, preventive and

[4] Amendment introduced by §1 item 25 of the Ordinance of the Minister of Justice of 15 December 2009 amending the Ordinance on the organization and scope of operation of court secretariats and other departments of judicial administration (Official Journal of the Minister of Justice 2009.13.137).

[5] §524.12 of the current Ordinance of the Minister of Justice of 19 June 2019 on the organization and scope of operation of court secretariats and other departments of judicial administration (Official Journal of the Minister of Justice 2019.138).

[6] See http://orka.sejm.gov.pl/Zapisy7.nsf/wgskrnr/NKK-80 (accessed 30.09.2019).

control nature. The said tasks, in the perspective of the work of adult probation officers, are traditionally – as indicated earlier – related to executive proceedings and are mainly carried out in the course of supervision, under the conditions of discontinued criminal proceedings, suspended custodial sentence or early release from custody. Moreover, adult probation officers carry out tasks related to serving the community sentence and supervision over compliance with prohibitions and orders specified in Art. 181a§1 of the Executive Penal Code. They also carry out activities related to organizing and controlling electronically monitored curfew and many, many other tasks (Hak 2018, p. 99, Janus-Dębska, Gronkiewicz-|-Ostaszewska 2019, pp. 9–11).

Taking into account the statutory changes that have taken place over the last dozen or so years, it can be concluded that after the period of normative and judicial domination of imprisonment as the main criminal reaction to the committed offence, the Polish legislator has implemented juridical solutions of the new philosophy of punishment, aimed at changing the previously adopted and applied punishment policy. At the same time, they correlate with the standards of European criminal policy in terms of increased use of non-detention penalties. On the basis of these changes, among the types of measures carried out mainly by adult probation officers a shift from supervision to the community sentence can be clearly seen (Skręt 2018, pp. 43–57). And it is precisely the latter that is most often involved in a situation where executive proceedings in respect of a community sentence are suspended.

In the definition found in the dictionary of the Polish language, in the context discussed here the Polish word for 'suspended' *[zawieszony]* is assigned the meaning: to stop something for a time[7]. In turn, stopping something for a time is the same thing as postponing it. If something is stopped (suspended) at a given moment and postponed, it is thus not performed. This makes it impossible to conduct any proceedings suspended without first reinstating them and thus making them enforceable again. What, then, are the roles and responsibilities of the probation officer in the course of executive proceedings that have been suspended and are not performed for some time? In the course of such suspended proceedings, does the probation officer still retain all the qualities associated with his/her status as an executive authority? This is explained neither by Art. 173 of the Executive Penal Code, which specifies in an exemplary manner a catalogue of probation officers' duties within the framework of their tasks, nor by the Ordinance of the Minister of Justice of 13 June 2016, delegated pursuant to Art. 176 of the Executive Penal Code. Also, the phrase contained in § 524 section 12 of the current Ordinance of the Minister of Justice of 19 June 2019 stating that the probation officer makes a determination as to whether there is a basis for a motion for suspended proceedings to be reinstated or any other appropriate motion, is not really an indication here either as to how such determination should

[7] See https://sjp.pl/zawieszony (accessed 30.09.2019).

be made by the probation officer during the period when the proceedings which he/she was conducting so far were suspended. Particularly in a situation where the circumstance causing the suspension of executive proceedings is a serious illness of the convict and its end is difficult to predict, and the determination requires summoning of such a person. This becomes particularly problematic when the provision entitling the probation officer to such a summons is applied in the course of the proceedings being performed, while in other legal realities (e.g. when executive proceedings are suspended in their entirety), such an action may undermine the freedom of the summoned person, who is after all subject to legal protection, limited only by the provisions of the Act. Such a situation leads to the conclusion that in such as case the probation officer loses all the qualities specified by his/her status. By losing these qualities, he/she is, in turn, deprived of a real possibility to carry out effective control actions against the perpetrators who are in the period of suspended executive proceedings, as well as to make arrangements in relation to them in accordance with the procedure provided for in § 524 section 12 of the Ordinance, without prior reinstating by the court[8]. Under these conditions, the status of executive authority given to probation officers becomes 'impaired'. On the other hand, the undertaken activities related to making determinations result in the probation officers being distracted from their basic tasks related to assisting in the social readaptation of convicts, educating them and preventing their return to crime, as well as protecting people who have been harmed by crime, which means that probation officers play an important role in the public security system. The fact that cases in which executive proceedings have been suspended are not covered by the so-called probation officers' workload standards does not help either.[9] The scale of the problem and the workload of probation officers with activities that involve making determinations as to whether the reasons for suspension of executive proceedings have ceased to exist, and thus whether there is a basis for filing a motion for suspended proceedings to be reinstated or other appropriate motion, is shown by the supervisory activities that were carried out in the Warszawa-Praga district under the commissioned supervisory activities in 2018 by the Ministry of Justice.

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[8] Kazimierz Postulski in his commentary to Art. 15 of the Executive Penal Code (legal status as of 20.09.2017) states that during the period of suspension, the court is obliged to check periodically, pursuant to Art. 14 § 1 of the Executive Penal Code, whether the reasons which caused the suspension of proceedings have ceased. Lex/el.

[9] See: Regulation of the Minister of Justice of 9 June 2003 on standards of workload of a probation officer (Journal of Laws 2003.116.1100).

Suspended enforcement proceedings on the example of the probation service teams enforcing court decisions in criminal cases of the Praga district of Warsaw

With the letter "General directions for internal administrative supervision in 2018" dated 21 December 2017[10], the Ministry of Justice ordered the supervision of the issues concerning: "The correctness (as well as timeliness) of the performance of the activities by probation officers referred to in § 509 item 11 of the Ordinance of the Minister of Justice of 12 December 2003 on the organization and scope of operation of court secretariats and other departments of the judicial administration (Official Journal of the Minister of Justice No. 5, item 22 as amended), aimed at determining whether the reasons for suspending enforcement proceedings have ceased to exist, and thus whether there is a basis for submitting a motion to continue the suspended proceedings or another relevant motion, with particular emphasis on cases where the prerequisite for suspending proceedings is the poor state of health of the convicted person and cases which may be discontinued due to the statute of limitations on the execution of a sentence".

Based on the plan of supervisory tasks of the District Probation Officer for 2018 in the adult guardianship division in all probation service teams (hereinafter abbreviated as: PST) enforcing court decisions in criminal cases of the Praga district of Warsaw, reviews were carried out pursuant to Art.37, sec. 1, item 5 of the Act of 27 July 2001 *on Probation Officers* (Journal of Laws No. 98, item 1071, as amended), which took into account the issues indicated in the above-mentioned letter of the Ministry of Justice[11].

As can be seen from the statistical data contained in the report on the activities of probation service of the District Court for Warszawa-Praga in Warsaw (marked: MS-S40r) most of the suspended enforcement proceedings relate to cases marked as "Kkow", concerning community sentences by decision of the court in accordance with Art. 45 of the Executive Penal Code[12]. Almost 94% of 1,211 of all suspended cases are "Kkow" cases, the remaining less than 6% of cases concern: parole and probation (cases marked as "Doz" and "O")[13].

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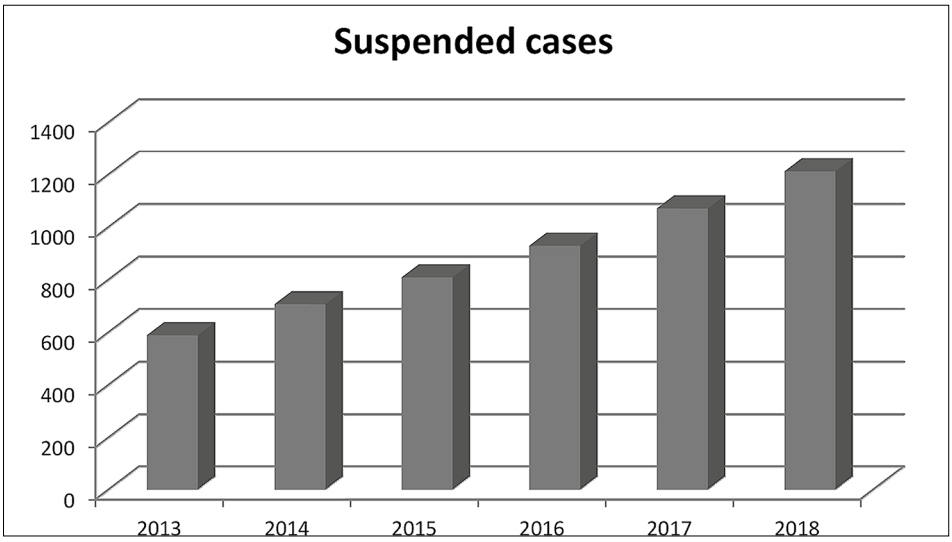
[10] Ministry of Justice, letter No. DNA-I-511-1/17 dated 21 December 2017.

[11] Review reports No: BK-422-1/18, BK-422-19/18, BK-422-21/18, BK-422-23/18, BK-422-29/18, BK-422-36/18, BK-422-43/18, BK-422-51/18, BK-422-52/18, available at the Office of the District Probation Officer of the District Court for Warszawa-Praga in Warsaw.

[12] Pursuant to § 523.1. of the Ordinance of the Minister of Justice dated 19 June 2019 on the organization and scope of operation of court secretariats and other departments of judicial administration (Official Journal of the Minister of Justice 2019.138): "Cases of enforcement of the following shall be recorded on "Kkow" list: 1) community sentence; 2) community service sentence ordered in lieu of an unpaid fine".

[13] Report on the activities of the court probation service for 2018, probation service team – Warsaw-Praga, MS-S40r, source: Ministry of Justice. The "Doz" and "O" marks indicate cases concerning parole and probation.



Graph 1. Inflow of suspended cases (including "Doz", "O" and "Kkow" cases) to probation service teams of the District Court for Warszawa-Praga in Warsaw in the years 2013–2019

Source: Report on the activities of the court probation service for 2018, probation service team – Warsaw-Praga, MS-S40r, Status of "Kkow" cases as of 31 December 2019, Ministry of Justice. Graphical representation of data – original.

At the end of 2018 in the Praga district of Warsaw there were 1,133 suspended "Kkow" cases and 3,890 "Kkow" cases remaining in execution[14], which means an additional 25.5% of such cases were under the supervision of probation officers, in case of which the execution proceedings were suspended, however the probation officers are obliged to undertake review activities in them[15]. It should be noted that the number of all suspended cases in the District Courts for the Praga district of Warsaw is systematically increasing each year from 588 cases suspended in 2013 (including "Kkow", "Doz" and "O" cases) to 1,211 cases suspended in 2018, which means that the number more than doubled in the last 5 years (an increase by 106%). The highest growth rate in the number of suspended cases concerns the District Court for Warszawa-Praga-Północ in Warsaw from 199 such cases in 2013 to 551 in 2018.

[14] Report on the activities of the court probation service for 2018, probation service team – Warsaw-Praga, MS-S40r, Status of "Kkow" cases as of 31 December 2019, source: Ministry of Justice.

[15] § 524.12. of the Ordinance of the Minister of Justice dated 19 June 2019 on the organization and scope of operation of court secretariats and other departments of judicial administration: "The label of cases in which proceedings have been suspended should be reviewed by the head of the team at least once a month, with the probation officer making a determination, at least once every three months, as to whether there is a basis for a motion for suspended proceedings to be reinstated or any other appropriate motion".

In order to determine whether the District Court for Warszawa-Praga in Warsaw is representative of other judicial districts in Poland, the nation-wide data will be indicated below. According to the national data, the majority of suspended enforcement proceedings, as in the Warszawa-Praga district, relate to cases marked as "Kkow", concerning community sentences by decision of the court in accordance with Art. 45 of the Executive Penal Code. Nearly 96% of 36,426 of all suspended cases are "Kkow" cases concerning: parole and probation[16] (cases marked as "Doz" and "O")[17].

At the end of 2018, in the entire country, there were 34,902 suspended "Kkow" cases and 128,948 remaining in execution, which means an additional 27% of "Kkow" cases were under the supervision of probation officers in which enforcement proceedings were suspended. These data are similar to the share indicated above for the Praga district of Warsaw. A steady increase in the total number of "Zawk" cases[18] can be observer in all District Courts, from 23,295 cases suspended in 2013 (including "Kkow", "Doz" and "O" cases) to 36,426 cases suspended in 2018, which means that the number increased by more than half in the last 5 years (an increase by 56%). The comparison of the above data indicates a higher growth rate of "Zawk" cases in the Warszawa-Praga district than the average growth rate of such cases in Poland. There is a great diversity of this dynamic in individual districts of the largest urban areas in 2013 – 2018[19], e.g. growth: in Gdańsk — by 118%, in Warsaw-Prague — by 106%, in Wrocław — by 92%, in Warsaw — by 80%, in Kraków — by 56%, in Poznań — by 31%, in Łódź — by 13%. It would probably be worthwhile to analyze such a wide variety of these data in more detail, however this is not the subject of this article.

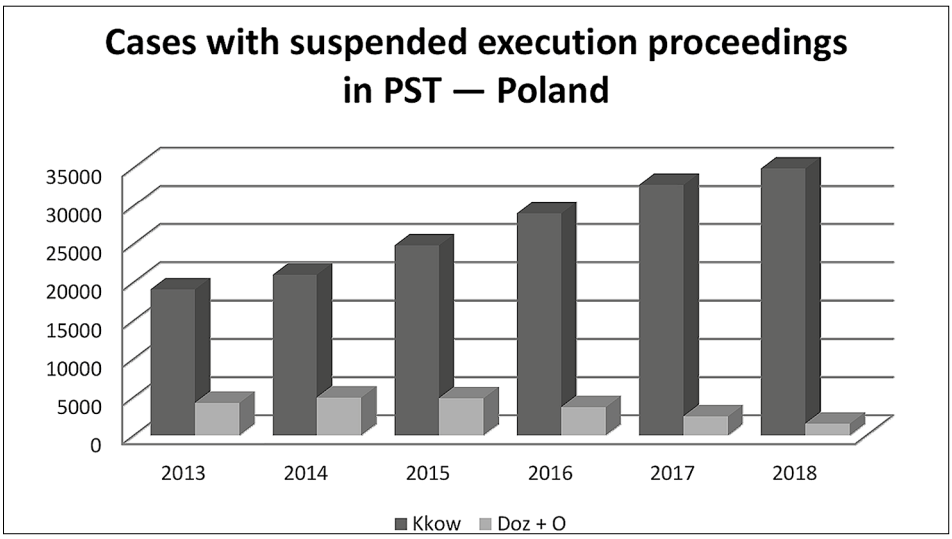
Review carried out by the district probation officer in the Warszawa-Praga district: "The correctness (as well as timeliness) of the performance of the activities by probation officers, referred to in § 509 item 11 of the Ordinance of the Minister

[16] Report on the activities of the court probation service for 2018, probation service team – Poland, MS-S40r, source: Ministry of Justice.

[17] Pursuant to § 521.1. of the Ordinance of the Minister of Justice dated 19 June 2019 on the organization and scope of operation of court secretariats and other departments of judicial administration: "Cases of enforcement of the following shall be recorded on "Doz" list: 1) probation officer supervision; 2) supervision referred to in Art. 181a § 2 of the Executive Penal Code, over the enforcement of a prohibition from entering certain areas or staying in certain environments, restraining orders, limitation of the freedom of movement, as well as an order to temporarily leave the premises occupied together with the injured party; 3) custodial sentence with the use of electronic monitoring systems; 4) a punitive measure using electronic monitoring systems; 5) a security measure using electronic monitoring systems.

[18] Pursuant to § 524.9. of the Ordinance of the Minister of Justice dated 19 June 2019 on the organization and scope of operation of court secretariats and other departments of judicial administration: "The full names of persons whose enforcement proceedings have been suspended shall be entered in the "Zawk" label".

[19] Report on the activities of the court probation service for 2013 and 2018, probation service team – Poland, MS-S40r, source: Ministry of Justice.



Graph 2. Inflow of suspended cases ("Kkow" cases and "Doz" with "O" cases) to probation service teams in Poland in the years 2013–2018.

Source: Report on the activities of the court probation service for 2013 – 2018, probation service team – Poland, MS-S40r, Ministry of Justice. Graphical representation of data – original.

of Justice of 12 December 2003 on the organization and scope of operation of court secretariats and other departments of the judicial administration, aimed at determining whether the reasons for suspending enforcement proceedings have ceased to exist, and thus whether there is a basis for submitting an motion to continue the suspended proceedings or another relevant motion, with particular emphasis on cases where the prerequisite for suspending proceedings is the poor state of health of the convicted person and cases which may be discontinued due to the statute of limitations on the execution of a sentence" made it possible to identify the most frequent prerequisites for suspending enforcement proceedings (data provided by heads of PST)[20]:

1. Incarceration in penitentiary institutions (serving a sentence in another case, custody) — **791 cases**.
2. Problems with determining the place of residence (e.g. homeless people) — **170 cases**.
3. Performing social service sentenced in another case — **101 cases**.
4. Long-term illness (physical and mental illnesses) — **99 cases**.
5. Disability (holding a valid medical certificate and/or administrative decision) — 22 cases.

[20] Numerical data on the reasons for suspending enforcement proceedings were provided by individual PSTs as of the date of the review, i.e. concerning different deadlines in 2018.

6. Serving a sentence with the use of electronic monitoring systems in another case – **13 cases**.
7. Pregnancy and childcare – **12 cases**.
8. Emigration for work – **2 cases**.
9. Stay in addiction treatment centers – **1 case**.

It follows from the above data that enforcement proceedings are most often suspended due to: incarceration in penitentiary institutions (serving a prison sentence in another case or being held in temporary custody), problems with determining the place of residence (e.g. homeless people, without permanent residence), performing social service sentenced in another case, long-term illnesses (physical and mental illnesses). These four factors are decisive in 96% of suspended enforcement cases.

Table 1. Reasons for suspending enforcement proceedings in the Warszawa-Praga district

No.	Reasons for suspending proceedings	Number of "Kkow" cases suspended as of 3 Dec. 2018	Number of "Doz" and "O" cases suspended as of 3 Dec. 2018
1	Incarceration in penitentiary institutions (serving a sentence in another case, custody)	721	70
2	Long-term illness (physical and mental illnesses)	99	0
3	Disability (holding a valid medical certificate)	22	0
4	Problems with determining the place of residence (e.g. homeless people)	159	11
5	Stay in addiction treatment centers	1	0
6	Pregnancy and childcare	12	0
7	Emigration for work	1	1
8	Performing social service sentenced in another case	101	0
9	Other (please specify which)	13 Serving a sentence with the use of electronic monitoring systems in another case	0
10	Total	1129	82

The large number of suspended "Kkow" cases due to the state of health of the convicted persons and problems with determining their place of residence is quite surprising, taking into account the content of Art. 58 § 2a of the Penal Code: "Community sentence in the form of the obligation referred to in Art. 34 § 1a item 1 shall not be ruled should the state of health of the defendant or their personal characteristics and conditions justify the assumption that the defendant will not be able to fulfil this obligation". The legislator, introducing the provision of Art. 58§2a of the Penal Code, drew attention to the need to determine the possibility of performing social service work by the defendant prior to its ruling: "In the new provision of § 2a in Art. 58 of the Penal Code a significant guarantee standard has been introduced. Unpaid controlled social service work would not be ruled against defendants in case of whom, due to their state of health or their personal characteristics and conditions, it would be reasonable to assume that they will not be able to perform such work. The introduction of the draft provision is justified by the fact that in practice there are cases where the community sentence is ruled, especially in rulings made at a court hearing without the defendant's presence, against persons who are unfit to perform such work (...). The personal characteristics and conditions referred to in the draft provision include in particular the family situation of the defendant, who, for example, directly cares for minor children or elderly persons, sick family members and is unable to provide them with care while performing social service. This provision will also apply where the accused has had a prior community sentence and has appealed against its enforcement, which may justify the presumption that it is not appropriate to reinstate such a sentence for this person"[21].

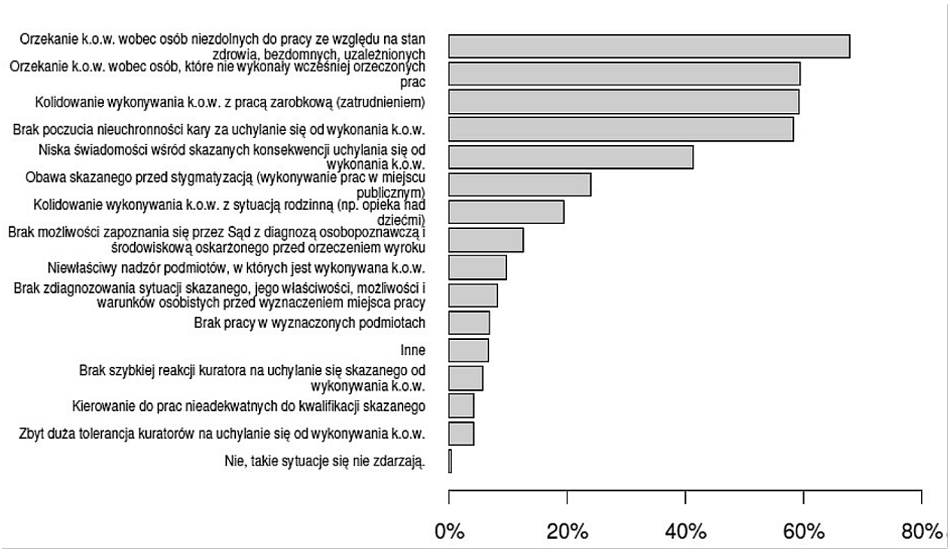
This has been the case for many years. Even at the stage of surveys carried out by the co-author of this article in 2014, probation officers pointed out problems with the performance social service works due to the state of health, homelessness, addictions or other personal characteristics and conditions of the convicted persons hindering the efficient enforcement of court decision (Janus-Dębska 2014, Janus-Dębska 2016).

In the above-mentioned survey also judges pointed out the lack of sufficient information about the perpetrator of an offence (health condition, family and professional situation) – 29% of respondents and the lack of criminological prognosis before ruling – 10% of respondents[22].

Therefore, factors influencing the suspension of cases of community service sentences should be sought out already at the stage of sentence ruling. The lack of

[21] A draft act amending the Penal Code, the Code of Criminal Procedure, the Executive Penal Code, the Fiscal Penal Code acts as well as certain other acts. Justification, Document No. 1394, Warsaw, 21 November 2008. Art. 58 of the Penal Coded added by the Act of 5 November 2009 (Journal of Laws of 206 item 1589)

[22] Ibidem. The data refers to the reasons given by the judges for the low amount of community sentence rulings.



Legend (order as in the graph):
Community sentence for persons incapable of working due to their state of health, the homeless, addicts
Community sentence for persons who have not carried out the previously ordered work
The execution of a community sentence collides with gainful employment
Lack of sense of inevitability of justice in case of evasion of a community sentence
Low awareness among convicted persons of the consequences of evading execution of a community sentence
Convicted person's fear of being stigmatized (performing work in a public place)
The execution of a community sentence collides with family life (e.g. childcare)
The Court being unable to review the defendant's personal diagnosis and social enquiry report before ruling
Inappropriate supervision of the entities in which the community sentence is executed
Lack of diagnosis of the convicted person's situation, personal characteristics, capabilities and conditions before the appointment of the workplace
No work available at the assigned entities
Other
Lack of a prompt reaction from the probation officer to the convicted person's evasion of the community sentence
Directing the convicted person to work that does not match their qualifications
Excessive leniency on the part of probation officers to evasion of the execution of the community sentence
No, such situations do not occur

Graph 3. The answers of probation officers to the survey question: *Do you often find that convicted persons do not carry out the sentenced social service work or carry out the work but on a part-time and/or irregular basis? If so, please indicate what is most often the reason for such a situation, according to your professional experience.*

sufficient information about the suspect or defendant, proper diagnosis of deficits, diagnosis of their state of health, personal characteristics and conditions, before the ruling of a community sentence, poses difficulties with its subsequent enforcement or if there is a prolonged hindrance and leads to the suspension of enforcement proceedings. In most European countries, reports drawn up by probation services or social workers, for the purposes of pre-trial or court proceedings, allow for the ruling of a sentence appropriate to the state of health, personal characteristics and conditions of the defendant. In Poland, the prosecutor's offices and courts occasionally use the possibility to have probation officers conduct a social enquiry

in accordance with Art. 214 of the Code of Criminal Procedure[23], during which probation officers can gather information about the suspect or the defendant on factors that may hinder or even prevent the effective enforcement of the non-custodial sentence ruled.

The analysis of statistical data contained in the MS-S40 report shows an increase in the number of cases suspended for a period of over 2 years in the entire country. In 2013 there were 5,638 of such cases, while in 2018 – 11,003[24], thus the reasons for the suspensions are largely of a long-term nature.

In the report on probation service activities, in section 2.1. "Requests of probation officers for adults" the data on the number of probation officers' requests to suspend enforcement proceedings were not distinguished, however, the review carried out indicates a significant share of probation officers in initiating such incidental proceedings. They are also initiated at the request of the convicted person and the authorities, in particular as regards social service work, ruled in lieu of an unpaid fine (Art. 45 of the Executive Penal Code).

Suspended cases generate a number of time-consuming activities on the part of both probation officers and judges:

— § 524 item 12 of the Ordinance of the Minister of Justice of 19 June 2019 on the organization and scope of operation of court secretariats and other departments of judicial administration: "The label of cases in which proceedings have been suspended should be reviewed by the head of the team at least once a month, with the probation officer making a determination, at least once every three months, as to whether there is a basis for a motion for suspended proceedings to be reinstated or any other appropriate motion".
— § 425 item 5 of the above Ordinance: "The label of cases in which proceedings have been suspended should be reviewed by the head of the department at least once a month, and at least once every three months a review of the case files shall be carried out aimed to determine whether there is a basis for a motion for suspended proceedings to be reinstated or any other appropriate motion".

These activities are not included in the probation officer's workload standards resulting from 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). The Regulation of the Minister of Justice of 13 June 2016 on the *manner and procedure for the performance of the activities of probation officers in executive penal*

[23] Art. 214§1 of the Code of Criminal Procedure: "If need, and in particular if it is necessary to determine the information concerning the personal characteristics and conditions as well as the information about the current life of the defendant, the court, and in pre-trial proceedings – the prosecutor, shall order that a social enquiry be carried out on the defendant by a probation officer or another entity authorized in accordance with separate regulations, and in justified cases by the Police".

[24] Report on the activities of the court probation service for 2013 and 2018, probation service team — Poland, MS-S40r, source: Ministry of Justice.

cases does not indicate what obligations are imposed on the probation officer in connection with the supervision of suspended enforcement proceedings.

The analysis of case files in the Warszawa-Praga district shows that in addition to making entries in the label of cases in which proceedings have been suspended (KURATOR IT system), the probation officers collect the necessary documentation in a file marked "Zawk", although the applicable regulations require probation officers to keep the "Zawk" file, however it is justified for practical reasons. The probation officers make arrangements as to whether there are grounds for filing a request for reinstatement of suspended proceedings, which is helpful in the activities of the head of the department under § 418 item 5 of the above-mentioned Ordinance.

In cases where a fine has been substituted with community service and the convicted person is serving a prison sentence ruled in another case, a good solution might be in submitting an request to the director of the penitentiary institution to send the convicted person to paid work in order to enforce the fine (the convicted person may be released from the substitute sentence at any time by paying the fine). The same can be done in cases where the convicted person has been ordered to pay compensation for damage or other financial obligations (e.g. under Art. 72 § 2 of the Penal Code or Art. 46 § 1 of the Penal Code) and the proceedings have been suspended only in part (the part relating to social service work). In this way, the convicted person may compensate the victim, by way of a pecuniary benefit or damages, within a shorter period of time, while serving a prison sentence. In the suspended "Doz" cases, in the situation where the convicted person serves a prison sentence ruled in another case, the end of which exceeds the probation period, the probation officer may consider applying under Art. 74 § 2a of the Penal Code[25] for exemption of such a person from supervision.

Taking the provision of Art. 15 § 4 of the Executive Penal Code[26] (suspension of the limitation period) into account, despite years-long suspensions of controlled enforcement proceedings in connection with the convicted person serving a prison sentence ruled in another case (66% of all the grounds for suspension of enforcement proceedings listed in Table 1), they are not at risk of being discontinued due to the statute of limitations on the execution of the sentence.

Statistical data contained in MS-S40r do not allow to divide the suspended "Kkow" cases into those ruled on the basis of the Penal Code and the Code of Offences, however, the review carried out in the Warszawa-Praga district indicates

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[25] Art. 74§2a of the Penal Code: "Exemption from supervision may also occur if supervision is impossible or significantly hindered for reasons not attributable to the convicted person".

[26] Art. 15 of the Executive Penal Code: "The serving of a prison sentence, alternative custodial sentence, military custody, court custody or alternative custody, sentence for contempt and a restraint measure resulting in incarceration in the same or another case shall halt the limitation period".

that a significant part of such cases concern offences punished under the Code of Offences. As a result of incarceration ruled in another case, enforcement proceedings are often suspended for many years. The following examples concern the suspended "Kkow" cases ruled under the Code of Offences:

- Case 1. The court decision became final on 19 May 2011. (Code of Offences). The convicted person has been serving their prison sentence since 22 March 2011. The sentence ends on 20 December 2022. – from the date the sentence became final until the end of the prison sentence – 11 years.
- Case 2. The court decision became final on 2 February 2012 (Code of Offences). The convicted person has been serving their prison sentence since 24 August 2012. The sentence ends on 9 May 2021. – from the date the sentence became final until the end of the prison sentence – 9 years.
- Case 3. The court decision became final on 10 September 2014. (Code of Offences). The convicted person will be serving their prison sentence until 2 July 2027 – from the date the sentence became final until the end of the prison sentence – 13 years.
- Case 4. The court decision became final on 21 June 2012 (Code of Offences). The convicted person has been serving their prison sentence since 5 July 2011. The sentence ends on 15 August 2022 – from the date the sentence became final until the end of the prison sentence – 10 years.
- Case 5. The court decision became final on 31 January 2014. (Code of Offences) The convicted person has been serving their prison sentence since 25 November 2014. The sentence ends on 24 June 2023 – from the date the sentence became final until the end of the prison sentence – 9 years.
- Case 6. The court decision became final on 8 May 2012. (Code of Offences) The convicted person has been serving their prison sentence since 27 January 2014. The sentence ends on 16 February 2025 – from the date the sentence became final until the end of the prison sentence – 13 years.
- Case 7. The court decision became final on 7 April 2012. (Code of Offences, social service work ruled in lieu of an unpaid fine). The sentence ends on 11 February 2029 – from the date the sentence became final until the end of the prison sentence – 17 years.

The examples provided above apply only to sentences under the Code of Offences and are presented in connection with T. Bojarski's remark (Bojarski 2015): "Offences are accordingly lesser violations of the law than crimes. The sentences for them are also of accordingly lower rank and social significance, which does not support the retention of the right to carry out these sentences for many years". Probation officers in suspended cases, concerning offences punished under the Code of Offences in most cases do not apply for discontinuance of the enforcement proceedings, referring to Art. 15 § 4 of the Executive Penal Code (suspension of the limitation period). However, the analysis of the comments on Art. 45 of the Code of Offences is not unequivocal in this respect (Postulski 2011).

In the doctrine, one can also meet such opinions that as regards the court decisions issued on the basis of the Code of Offences, the defined in Art. 45 § 3 of the Code of Offences 3-year statute of limitations for the execution of such a sentence cannot be interrupted by any circumstances (Kurzępa 2008, Grzegorczyk 2013). It should be assumed that the author had also such circumstances in mind as serving a prison sentence or being held in custody as a result of a ruling in another case. Marek Mozgawa in his commentary on Art. 45 of the Code of Offences, refers to other authors, according to whom it is clear that "Also serving a prison sentence or custody does not result in the suspension of the period of the statute of limitations on the execution of other sentences or punitive measures ruled against the perpetrator" (Mozgawa 2009).

The situation is similar with sentences ruled under the Penal Code. In the oldest of the analyzed "Zawk" cases in the Warszawa-Praga district, the court decision became final in 2004.

Another important reason for suspending the enforcement proceedings is the state of the convicted person's health, which applies only to "Kkow" cases involving physical and mental illnesses and disabilities (10% of all cases listed in Table 1). The analysis of the reviewed case files shows that these factors are often of a long-term nature.

- Case 1. The court decision became final on 25 November 2011. The decision of the court to suspend the proceedings on the request of the probation officer dated 8 August 2013. The probation officer investigated and determined the state of health of the convicted person (attached certificate of 7 March 2006 stating moderate disability – permanent disability and other medical certificates; the convicted person lost their leg in a traffic accident in 2003), attached the records from the National Criminal Register (the person had eight convictions).
- Case 2. The court decision became final on 1 July 2016. The decision of the court to suspend the proceedings on the request of the probation officer dated 7 September 2016. The probation officer investigated and determined the state of health of the convicted person (attached certificate of 12 April 2012 stating severe disability – permanent disability, attached medical certificates: bilateral cataract with significant visual impairment, hypertension and damage to the central nervous system).
- Case 3. The court decision became final on 10 November 2009, damages were ordered for the injured party. The decision of the court to suspend the proceedings on the request of the probation officer dated 12 January 2010. The probation officer investigated and determined the state of health of the convicted person (attached certificate of severe disability – valid until 30 November 12, then until 31 December 2015 and then until 13 November 2023, attached medical certificates), attached notes from interviews with the convict, records from the National Criminal Register. On 28 May 2010 and

27 August 2010, the probation officer applied for discontinuance of the enforcement proceedings due to the convicted person's severe health issues (the motion was rejected).

In the case of supervising a case where the reason for suspension is the poor health of the convicted person, it may be difficult to determine on a regular basis (in accordance with the Regulation – every 3 months) whether there are grounds to apply for suspension of the proceedings or filing other appropriate application. It is often impossible or significantly hindered for a severely ill person to appear before a probation officer, when called upon[27]. In such cases the probation officers may order the convicted person, e.g. pursuant to Art. 5§2 of the Executive Penal Code, to send the relevant medical certificates by post, e-mail or fax. However, making such arrangements every 3 months, for people holding a long-term or permanent certificate of disability, generates a number of activities that bring nothing new to the case and at the same time distract the probation officers from their main tasks, which involve social readaptation in the broadest sense of the term, thus influencing in particular the economy, efficiency and speed of performing the tasks and responsibilities entrusted to them. In such a situation, it seems that the change of the wording of §524 item 12 of the Ordinance of the Minister of Justice dated 19 June 2019 to the following: "The label of cases in which proceedings have been suspended should be reviewed by the head of the team at least once every 3 months; at least once every six months, in justified cases within other time limits indicated in the order of the head of the department, the probation officer making a determination, at least once every three months, as to whether there is a basis for a motion for suspended proceedings to be reinstated or any other appropriate motion", would limit the need for such activities. Reducing the frequency of activities which probation officers are obliged to perform, would also be advisable in cases where problems with establishing the place of residence of the convicted person are grounds for suspending the enforcement proceedings (14% of all cases listed in Table 1). These factors are also of a long-term nature and most often concern persons for whom an arrest warrant was issued in another criminal proceedings (Art. 279§1 of the Code of Criminal Procedure), homeless persons, foreigners and persons for whom at the stage of the enforcement proceedings the court ordered a search in connection with an undetermined place of residence (Art. 278 of the Code of Criminal Procedure in connection with Art. 1§2 of the Executive Penal Code). Also, in a situation where the enforcement proceedings were suspended due to a long prison sentence ruled in another case or the sum of consecutive sentences,

[27] It is unclear under which regulations the probation officer has the legitimacy to summon a person against whom enforcement proceedings have been suspended in full. Since the proceedings have been suspended in full, then the provisions concerning the enforcement stage of proceedings do not apply to them.

the end of which is years away and the defendants themselves often have yet to earn the right to apply for parole.

It should be noted that often a person placed under probation officer's supervision has a number of restrictions and obligations whose diligent observance should not result in the aforementioned problems. Among other things: the person may not change its permanent residence without the court's consent (Art. 34 § 2.1 of the Penal Code), is obliged to follow the instructions issued by the competent authorities in order to serve the sentence (Art. 5 § 2 of the Executive Penal Code), during the period of supervision, is obliged to report immediately, at the latest within 7 days of becoming aware of being placed under supervision, to the probation officer of the district court in the district where the supervision is to be executed (Art. 169 § 2 of the Executive Penal Code) and is obliged to appear at the summons of the court or the probation officer and provide explanations as to the course of supervision and the performance of the duties imposed on them, without the consent of the court not to change their permanent residence, allow the probation officer to enter their apartment and inform the officer about the change of place of employment (Art. 169 § 3 of the Executive Penal Code). Failure to comply with the above obligations should result in an appropriate request by the probation officer to initiate incidental proceedings, in line with the diagnosed circumstances as well as the findings (e.g. whether the behavior of the defendant indicates an attempt to evade justice[28]).

De lege ferenda motions:

1. The wording of § 524 item 12 of the Ordinance of the Minister of Justice of 19 June 2019 on *the organization and scope of operation of court secretariats and other departments of judicial administration* shall be changed to the following: "The label of cases in which proceedings have been suspended should be reviewed by the head of the team at least once every 3 months; at least once every six months, in justified cases within other time limits indicated in the order of the head of the department, the probation officer making a determination, at least once every three months, as to whether there is a basis for a motion for suspended proceedings to be reinstated or any other appropriate motion".
2. Amendment of Art. 5 of the Executive Penal Code by adding the following § 2a: "A convicted person suspended from enforcement proceedings shall provide explanations to the competent authorities and appear before these authorities when summoned".

[28] The Decision of the Court of Appeal in Kraków of 27 November 2005, II AKzw 641/05 "The term "to evade" indicates a negative psychological attitude of the convicted person to the imposed duties or supervision, which is an expression of their ill will, and which results in them not fulfilling the duties, despite an objective possibility, because they do not want to do so, there they act in such a way for reasons that are culpable (The Decision of the Supreme Court of 28 July 1980, V KRN 146/80, OSNKW 10-11/80 item 82)".

Furthermore, the authors see a need for more frequent recourse to enforcement proceedings suspension in part rather than in full. Particularly in those cases where, in addition to the sentence already imposed, compensatory measures, punitive measures (injunctions, bans and orders), etc., were ordered. In such situations, the persons harmed by the offence are those who suffer due to the suspension of enforcement proceedings in full. This state of affairs, which is desirable in all respects, can be achieved both at the stage of determining the subject matter of the motion under Art. 15 § 2 of the Executive Penal Code, drawn up by the probation officer, and at the stage of the courts deciding on partial suspension of proceedings in those cases where it is desirable and advisable.

The authors would also like to point out and emphasize the content of Art. 58 § 2a of the Penal Code[29] whereas the majority of court proceedings leading to community sentence in the form of controlled unpaid social service work are conducted by means of injunction (both when it comes to proceedings criminal cases and offences). Such a court decision (injunction) is issued in situations where an investigation was conducted (mainly by the Police), recognizing, on the basis of the material collected in the pre-trial proceedings and on the basis of collected evidence, that the circumstances of the act and guilt of the defendant do not raise any doubts. The court issues an injunction at a hearing without the presence of the parties, often not having sufficient knowledge of the personal conditions and characteristics of the defendant, including in particular their somatic and mental health. Therefore, it is justified to define (modify) the investigative activities conducted by the police (e.g. at the level of guidelines of the Police General Commandant), which, apart from carrying out evidentiary activities within the scope of the conducted investigation, will obviously oblige the authorities conducting the investigation to collect/obtain also the information on the health condition of the person charged with breaking the law. On the other hand, in the situation of circumstances indicating reasons not to conduct injunctive proceedings, an irreplaceable tool for collecting this type of information is social enquiry, defined in Art. 214 of the Code of Criminal Procedure, which can be used without any limitations by both prosecutor's offices and courts at their stage of respective proceedings, i.e. pre-trial or jurisdictional. Undoubtedly, the possession of such information by the court already at the stage of issuing a warrant will minimize situations, such as the imposition of the community sentence, on persons who, due to their state of health, are not able to carry out such a sentence for reasons beyond their control. As has already been shown, the highest number of suspended proceedings relates precisely to this type of

[29] "Community sentence in the form of the obligation referred to in Art. 34 § 1a item 1 (controlled unpaid social service work — author's note) shall not be ruled should the state of health of the defendant or their personal characteristics and conditions justify the assumption that the defendant will not be able to fulfil this obligation".

sentences, as it is currently the most common criminal-legal reaction to violations of the law. Ultimately, this will also translate into the efficiency of the entire enforcement proceedings, allowing for their initiation without undue delay, the principle of which principle originates directly from the standard specified in Art. 9 § 1 of the Executive Penal Code.

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