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## Model of the preventive supervision institution in the system of preventive tasks of probation officers for adults

**Abstract:** The institution of preventive supervision is based on familiar solutions, existing in the applicable law. It is intended as a non-legal measure that could be used by family courts in situations of domestic violence. This supervision would be imposed on individuals using violence, against whom actions taken by the working groups of Local Interdisciplinary Teams would be ineffective, and whose behavior would not meet the criteria for a violent crime to the detriment of the relatives. This measure would additionally aim at strengthening the measures undertaken by the members of the said working groups. It would be executed by probation officers for adults, who are specialized in working with adults acting against the legal order in force. This institution broadens the catalog of powers of a probation officer for adults. At the same time, it is a new solution that offers new opportunities to confront domestic violence.

**Key words:** preventive supervision, probation officer, domestic violence, "Blue Cards", Local Interdisciplinary Teams.

## Introduction

In accordance with art. 1 of the Act of 27 July 2001 on probation officers, probation officers carry out statutory tasks of an educational and social rehabilitation, diagnostic, preventive and control nature, related to the execution of court judgments. The educational, social rehabilitation and preventive character of the tasks assigned to probation officers is also emphasized by the legislator in art. 147 § 2 of the Act of 27 July 2001 Law on common courts organization. Thus, the function of court probation service in the justice system is, on the one hand, to provide the court with knowledge about a person, his or her environment, disorders in social functioning, which is necessary to issue an adequate ruling, and, on the other hand, to help the court's charges in developing or reconstructing proper mechanisms of social functioning, consistent with generally accepted and binding norms of social life (Jedynak 2008, p. 65). Therefore, the probation proceedings should take the form of an expanded form of assistance and social work, rather than a criminal sanction, becoming an alternative to the unilateral juristic and corrective vision of social rehabilitation process, so typical of modern penitentiary systems (Ambrozik 2009, p. 113). This assistance, taking place under the conditions of supervised freedom, is intended to create for the convicted person an opportunity to function properly in society and to boil down to: change of the client's attitudes in accordance with social expectations, elimination of attitudes contrary to those expectations and compensation of retardation in the development of the prisoner's pro-social personality (Bałandynowicz 2016, p. 41).

Unfortunately, in the diagnosis of the court probation service, the social rehabilitation pedagogues notice that the effects of the implementation of the humanizing function attributed to probation officers (Jedynak 2008, p. 65), coming down to maximizing the effects of preventive and educational and social rehabilitation measures, are still not fully satisfactory (Pytko 2005; Ambrozik 2016; Konopczyński 2006a, 2013, 2014; cited after Konopczyński 2019). Despite the declaration that the educational and social rehabilitation work is to be a priority, in reality "the juristic vision of the social rehabilitation process leads the way, while probation officers, in the light of the current regulations, are appointed to supervise the implementation or observance of the imposed measures rather than "to strengthen and encourage the desired way of life in accordance with legal norms in prisoners" (Ambrozik 2009, p. 112). This fact is also noticeable to practitioners, on the one hand emphasizing that the realization of the social rehabilitation function assigned to them is of the highest importance, and on the other hand admitting that they are not able to realize it effectively, citing being overburdened with cases as one of the reasons for this situation (Wójcik 2010,

p. 243). The problems related to the prioritization of the educational and social rehabilitation function of the court probation service also resound in the post-inspection reports of the supervisory authorities, which emphasize the excess of formalized duties resulting in the probation officer moving away from direct work with the client (Supreme Audit Office, 2015).

Meanwhile, the directory of tasks of institutions and bodies responsible for prevention and social rehabilitation, which include the court probation service, should include both the determination of the level of derailment and social harmfulness of the act, the decision not to impose penal sanctions, and instead to subject them to care, supportive and empowering measures, as well as the creation of a climate of acceptance for the perpetrator in the environment (Ambrozik 2016, p. 113). Of course, these measures cannot take place in isolation from social control, but it is important that they are incorporated into the educational or care measures, stimulating the individual to the desired social activity (Ambrozik 2009, p. 114).

In line with such thinking is the model of preventive supervision institution in the system of preventive tasks of probation officers for adults presented in this paper. This model takes into account the role of a probation officer consisting not only of tasks of a control character, but also of a pedagogical one, following the position of Marek Konopczyński (2012, p. 251), defining the problem of social pathologies, and thus crime, not only in a formal and legal context, but also in a pedagogical and educational one, as a problem that one may try to minimize and solve in a pedagogical (educational, social rehabilitation) way. The authors see the benefits of involving them in measures aimed at preventing domestic violence not only at the stage of enforcement proceedings, oriented at the implementation of the imposed conditions for the adoption of a specific probation measure, but also earlier, at the stage of acknowledging a problem in the family of a potential perpetrator of violent behavior, where it is needed to implement preventive measures targeted at preventing the perpetration of a crime meeting the descriptive and evaluative criteria specified in art. 207 of the Penal Code (the Act of 6 June 1997 of the Penal Code (Journal of Laws 1997, No. 88, item 553 as amended.)).

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Due to the conceptual character of the study, the sources include also the legal acts in force, which inspired the creation of the model of preventive supervision institution described below.

## Current model of solutions for the prevention of domestic violence

Domestic violence is commonly associated with abuse. There are, however, significant differences between the aforementioned concepts. Domestic violence is considered a negative social phenomenon defined in the Act of 29 July 2005 on counteracting domestic violence (Journal of Laws of 2005 No. 180, item 1493 as amended), while abuse is a type of a crime against the family and guardianship (Chapter XXVI of the Penal Code), which in the currently binding Polish Penal Code is described in art. 207 (Journal of Laws 1997, No. 88, item 553 as amended.). Separation of the phenomenon of domestic violence and the crime of abuse, and adoption of regulations pertaining to them based on two different legal acts, imposes different methods of dealing with people who engage in these negatively regarded behaviors.

The Act on counteracting domestic violence „places particular emphasis on the development of prevention, as an effective form of assistance in situations where there is no domestic violence yet, but the family may be at risk of it” (Council of Ministers 2009). The Act of 10 June 2010 amending the Act on counteracting domestic violence and certain other acts (Journal of Laws 2010 No. 125 item 842) introduced to the Act the „Blue Cards” procedure (hereinafter referred to as BC), which, in accordance with the adopted definition in art. 9d sec. 2 of the aforementioned Act, covers all activities undertaken and carried out by representatives of organizational units of social assistance, municipal commissions for solving alcohol problems, the Police, education and health care, in connection with a justified suspicion of domestic violence. The work on the BC procedure was initiated in 1994 by the State Agency for Solving Alcohol Problems. The idea attracted the interest of the Warsaw Police, which as a rule intervened most frequently in situations of domestic violence. Joint efforts resulted in the development of the BC documentation (Kozłowska 2015, p. 5). The procedure was legitimized by the Ordinance No. 25 of the Chief of Police dated 10 November 1998 on the manner of carrying out by police officers a domestic intervention against domestic violence under the name „Blue Cards”. However, it was only the aforementioned 2010 amendments to the Act on counteracting domestic violence that led in 2011 to the issue of the Regulation of the Council of Ministers of 13 September 2011 on the „Blue Cards” procedure and on the model “Blue Card” forms (Journal of Laws 2011 No. 209 item 1245).

The concept referred to above was aimed at creating suitable conditions for a systemic and interdisciplinary model of working with a family affected by domestic violence (Sasal 2005, p. 69). This model assumed using the method of „Local Interdisciplinary Teams” (hereinafter LIT), consisting of representatives of

the services that provide assistance on a daily basis. Therefore, the next step was to establish LIT and working groups<sup>1</sup>. The aforesaid method of work assumed that in the situation of involvement of many entities in the prevention of domestic violence, not only does this increase the effectiveness of the undertaken measures as a result of the family being provided with comprehensive assistance, but also the responsibility for the undertaken measures will not be borne by only one entity.

The legitimacy of LIT was provided by the introduction of this method of work into the Act on counteracting domestic violence by virtue of the aforementioned amendment of 2010. The composition of the LIT was established, consisting of representatives of social assistance, the Municipal Commissions for Solving Alcohol Problems (hereinafter MCSAP), the Police, education, health care, NGOs and probation officers. The composition of the working groups was determined in a similar way, except that the presence of the probation officer was optional and in practice based on whether the family was currently of interest to the court as part of the enforcement proceedings.

It should be noted that the amendment to the Act was then perceived as a modern legal solution, consistent with global standards in the field of counteracting domestic violence, although some of the solutions aroused controversy and public discussion (Nowak 2012, p. 351).

## Role of the probation officer in the BC procedure

Expectations of the probation officers who are members of the working groups are always high, especially in the context of the legal response to the incorrect behavior of persons subject to the BC procedure. It also happens that these expectations often go beyond the statutory mandate of the work of probation officers and beyond the scope of their competences (Jurczuk, Staniucha 2015, p. 121).

In order to support the efforts of the working groups, a practice of the LIT notifying the family court of the occurrence of domestic violence in the family in which minor children are brought up has developed over the years, in order to subject the parental authority to constant control by the court by means of the supervision of the family probation officer (within the limits of parental authority). This procedure aims to reinforce the measures undertaken by the working groups,

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<sup>1</sup> This method was promoted in the Podlaskie Voivodeship as part of a series of trainings on behalf of the Regional Social Policy Centre in cooperation with the Prevention Department of the Voivodeship Police Headquarter in Białystok and the Child and Family Support Centre in Białystok in 2006. At that time, the training team consisted of Anna Tuszyńska and Beata Goworko-Składanek from the Child and Family Support Centre together with Joanna Lisowska and Edyta Sokół-Górecka from the Prevention Department of the Voivodeship Police Headquarter in Białystok.

by the introduction into the family of another agent who will ensure that the well-being of the child, who has already been threatened by the occurrence of domestic violence, is not violated. The broadening of the circle of people involved in stopping domestic violence, in this case, is justified by the specificity of the phenomenon of child abuse, which is so complex and multidimensional that limiting and preventing it requires the involvement of many disciplines and many different professionals. For this reason, the modern standard of action in local systems of protecting children from abuse or, more generally, in actions against domestic violence, is and should continue to be the cooperation of institutions and services within multidisciplinary teams (Jarosz, Nowak, p. 53).

As a rule, the task of a family probation officer is to strengthen the parental attitudes of parents who have limited parental authority by supervision, contributing to the improvement of mutual relations between family members, control over the care of minors and whether the family provides children with appropriate conditions for their proper broadly understood development.

Family probation officers are usually active members of working groups because the law imposes on them the obligation to prepare and apply to the court with properly justified requests for a change of the court decision in a situation requiring such a change (pursuant to § 5 item 7 of the Regulation of the Minister of Justice of 12 June 2003 on the detailed manner of exercising the powers and duties of probation officers (Journal of Laws 2014, item 989, consolidated text)). The tools available to the family probation officer who exercises supervision due to the limitation of parental authority of both or one of the parents, in a family subject to the BC procedure, in the absence of improvement of educational conditions in the environment of minor children as a result of the occurrence of domestic violence, are applying to the court to issue additional restrictive orders in the form of imposing on the parents certain obligations, such as undertaking specialist therapy or stopping violence, maintaining sobriety, as well as placing the minor children in foster care. Family probation officers also submit applications to entities other than the court, and notify the MCSAP of the need to initiate and conduct proceedings aimed at imposing an obligation to undergo withdrawal treatment or to the prosecutor's office of the possibility of committing a crime by adult family members, e.g. abuse or other violent crime.

Family probation officers, due to their supervision over the treatment of alcohol addicts, can apply to the court for a change of treatment from outpatient to inpatient conditions, when the reason for the domestic violence in the family is the abuse of alcohol by the person subject to supervision.

Family probation officers may also participate in the working group in relation to the supervision of a minor. In this case, their measures are aimed at the parent or other family member using violence. In accordance with the § 9.2. of the Ordinance of the Minister of Justice of 24 June 2014 on the Supervision of Minors (Journal of Laws of 2014, item 855), probation officers shall immediately

notify the court of events that require the issuance of guardianship orders, in particular in the case of a threat to the life or health of a minor or other persons, and at the same time take actions necessary to avert the threat. They may also submit motions to entities other than the court and notify the aforementioned entities.

The measures taken by the working group are also enhanced by the presence of a probation officer for adults, who supervises the person using violence in connection with his or her criminal activity. In such a situation, it is often the case that in a situation where the person using violence, and at the same time being under the supervision of the probation officer, still does not refrain from acts of violence against relatives, the probation officer for adults is the entity that can take quite restrictive steps aimed at applying to the court to resume a conditionally discontinued criminal proceedings or to order the execution of a conditionally suspended sentence, as well as to revoke conditional early release from serving the rest of the sentence. It should be noted that professional probation officers for adults, as part of their supervision of the perpetrator of domestic violence, have a legal obligation to participate in interdisciplinary team and working group meetings (Regulation 2016, § 16.1.5).

However, it should be remembered that the BC procedure is also carried out in families that are not of interest to the court. These are families in which violence occurs between adult members, e.g. the person using violence against an elderly parent or elderly parents is an adult child, or violence occurs in marriages/concubinages where it's just the spouses/partners sharing the apartment, as well as when violence occurs between adult relatives such as siblings living together. In such situations, the possibilities of taking action against both the victims and the perpetrators of violence are reduced. In such situations, the composition of the working group is significantly reduced and it usually consists only of an officer of the district police patrol and social workers dealing with the prevention of domestic violence. The possibilities of institutional influence and control are thus significantly reduced.

The weaknesses of the procedure also include the fact that the social workers dealing with the prevention of domestic violence take up their duties only during working hours, for example, in Białystok between 07.30 am and 3.30 pm, except for Mondays when MOPR (Eng. *Municipal Family Support Centre*) works until 5 pm. Limited working hours lead to the social worker not being able to meet the person who is the subject of the procedure, especially if that person is only available at home after 5 pm. Another weakness of the procedure is that it does not apply to people between 17 and 18 years old who commit violence against their family members.

## Model of preventive supervision institution

The Supreme Audit Office (hereinafter referred to as NIK – Pol. *Najwyższa Izba Kontroli*) has negatively assessed the effectiveness of the tasks carried out so far by the public administration in the field of preventing domestic violence. The auditors' report highlighted significant discrepancies between the assumed objectives of the amended Act on counteracting domestic violence of 29 July 2005, as well as the executive provisions in the form of the Regulation of the Council of Ministers on the BC procedure and their functioning in everyday practice. The results of the audit emphasize the low effectiveness in ensuring permanent elimination of violence, which is mainly due to insufficient specialist assistance and the lack of effective methods of encouraging perpetrators to participate in the BC procedure (Supreme Audit Office 2016, p. 10). It turns out that in the units controlled by the Supreme Audit Office only 2–3% of perpetrators of violence took part in corrective and educational measures, while in general only 10–20% of perpetrators of domestic violence appeared when summoned by the chairman of the interdisciplinary team (Supreme Audit Office 2016, p. 83–84).

Bearing in mind, in particular, the lack of effective methods of convincing the perpetrators to participate in the procedure, mentioned by the NIK report, it would be appropriate to consider the introduction of new solutions to the procedure. Especially since the current legal situation does not provide sufficient tools for members of working groups, apart from those they are equipped with due to their professional functions. The procedure itself is mainly based on non-legal measures of influence, consisting in building in the perpetrator a positive motivation to stop using violence and take part in the measures carried out by the working group. Legal measures of response are limited to applying for and conducting a procedure to impose an obligation to undergo withdrawal treatment or, if there are minor children in the family, to notify the family court, or, as a last resort, to notify law enforcement agencies of a crime of abuse or other violent crime. In order to broaden the catalog of legal measures of response, especially in the situation when there is no possibility of effective cooperation with the perpetrator or postponing the moment of initiation of criminal proceedings by the LIT, the solution proposed by the Authors is preventive supervision, an original concept consisting in the introduction into the BC procedure of a probation officer for adults at the request of the chairman of the LIT, submitted to the family court.

Preventive supervision, preceded by a final decision to apply this form of prevention to the perpetrator of domestic violence by the family court, would be carried out, as already mentioned above, by professional and social probation officers, performing their duties in cases falling under the jurisdiction



of criminal divisions, entities specializing in working with adults acting against the legal order in force and carrying out tasks in the field of broadly understood prevention. This is because, as stated by Marek Konopczyński (2006b, pp. 111–114), the work of the entities of the probation service should take into account those concepts of social rehabilitation that focus on the search for and support of development potentials in the individuals, which create an opportunity to build a completely new individual and social identity, completely different from the previous one.

Regulations legitimizing such institution should be included in the Act on counteracting domestic violence. The assumption was that the probation officer would be equipped with institutionalized, and thus feasible, means of influencing the persons covered by the procedure, which is discussed later in the paper. The Act should also provide for the possibility for the probation officer to submit appropriate applications under a special or simplified procedure under which law enforcement authorities would be obliged to take action to bring the perpetrator of violence to justice in a short period of time.

What remains to be explained is why preventive supervision should be ruled by the family court. Firstly, because this institution is treated as a non-legal measure. Secondly, because domestic violence, defined as a negative social phenomenon, affects the members of the perpetrator's family, and thus remains in the sphere of family cases. Thirdly, the inspiration for this concept was the institution of supervision over persons addicted to alcohol, in relation to whom the court ruled the obligation to undergo withdrawal treatment, which was included in the Act on Upbringing in Sobriety and Counteracting Alcoholism, which falls within the jurisdiction of the family court.

## **Tasks of the probation officer for adults in preventive supervision**

The catalog of powers and duties of probation officers for adults, and especially their general outline is defined by the Act of 27 July 2001 on probation officers (Journal of Laws 2001 No. 98, item 1071, as amended) and specified in the Regulation of 13 June 2016 of the Minister of Justice on the manner and procedure for the performance of the activities of probation officers in executive penal cases (Journal of Laws 2016 item 969). This Act also provides a description of the procedure to be followed against a person who committed a crime under art. 207 of the Penal Code, in relation to whom the court imposed one of the probation measures and submitted it during the probation period under the supervision of a probation officer. The catalog of duties of the probation officer towards the perpetrator of domestic violence as defined in § 16, sec. 1 of the Regulation includes the following duties:

1. establishing and maintaining regular contact with victims of domestic violence in a situation where they remain in the same household as the convicted person during the period of supervision;
2. cooperation with the Police, institutions and bodies of government administration and local government involved in providing assistance to the victims of violence in a given family and with non-governmental organizations operating in the area of residence of the victims in order to obtain, to the necessary extent, information about the family affected by violence;
3. if necessary, submitting to the court appropriate applications, in particular for the establishment, extension or modification of the duty: to fulfill the imposed obligation of the convicted person for the maintenance of another person, to refrain from the abuse of alcohol or other intoxicating substances, to undergo addiction therapy, to undergo therapy, to participate in corrective and educational measures, to refrain from staying in certain environments or places, to refrain from contacting the victim or other persons in a certain manner or to leave the premises occupied together with the victim;
4. becoming familiar with and, as far as possible, participating in programs for counteracting domestic violence implemented by local bodies of state government administration and local government bodies;
5. participating in meetings of the interdisciplinary team and the working group referred to in the Act of 29 July 2005 on counteracting domestic violence (Journal of Laws of 2015, item 1390).

The postulated institution of supervision over persons subject to the BC procedure due to the suspicion of domestic violence would be based on the above mentioned regulations. With regard to the principles and procedure of exercising supervision, according to art. 31 of the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism (Journal of Laws 1982 No. 35 item 230, as amended), a person subject to the supervision would be obliged to appear on the summons of the court or probation officer and comply with their instructions concerning such conduct during the period of supervision, which may lead to stopping the violence. The supervision would be carried out by a probation officer enforcing rulings in criminal cases. Entrustment of supervision should take place as soon as the ruling to be enforced is received, to a probation officer with adequate preparation for proceeding with perpetrators of domestic violence. The preventive work of the probation officer would be preceded by a prior review of the entire documentation collected earlier by the working groups/LIT. The duties of the probation officer exercising preventive supervision over the perpetrator of domestic violence would include:

1. making the necessary efforts to ensure that the person subject to preventive supervision does not engage in behaviors meeting the description of domestic violence again;
2. maintaining regular contact with victims of domestic violence;

3. cooperation, where necessary, with local state administration bodies and social organizations in order to provide both the perpetrator and the victim of domestic violence with adequate assistance, especially aimed at undertaking corrective and compensatory therapy and other forms of therapeutic assistance;
4. participation in working groups/LIT in order to report on the progress of the preventive and intervening measures in the family affected by domestic violence and the development of future preventive strategies;
5. submitting written reports on the course of preventive supervision to the Court within the time limits specified by the Court, at least every three months;
6. applying for the revocation of the supervision in case of cessation of domestic violence;
7. Submitting a notification to the law enforcement agencies of a violent crime committed by the supervised person against his/her immediate family members.

In order to gather the necessary information on the behavior of the person subject to supervision and his/her performance of the imposed obligations, the probation officer, according to the proposed model, would be equipped with the following powers:

- a) to summon the person under supervision, who would be required to appear on the summons and to give appropriate explanations about his or her behavior and the performance of the imposed duties during the period of supervision;
- b) to demand the necessary information and explanations from such person;
- c) to make arrangements in the place of residence or stay of the person subject to supervision (similarly as it is provided for in art. 169 §3 of the Executive Penal Code (Act of 6 June 1997 – Executive Penal Code (Journal of Laws of 1997 no. 90 item 557 as amended) the person subject to supervision would be required to allow the probation officer to enter the apartment;
- d) to contact the family of the person subject to preventive supervision, including victims of violence;
- e) to collect the necessary information from government administration bodies, local government, workplaces, associations, organizations and institutions;
- f) to conduct tests for the presence of alcohol or other substances used for intoxication (the Regulation of the Minister of Justice of 16 January 2012 on methods of testing for the presence of alcohol, narcotics or psychotropic substances in the body of the convict or perpetrator subject to supervision or obliged to stop the use of alcohol or narcotic drugs or psychotropic substances, their documentation and verification (Journal of Laws 2012, item 104) would apply in this case);
- g) to conduct community interviews at the stage of the examination proceedings.

In the case of committing by the person subject to supervision of a violent crime to the detriment of the relatives, the probation officer would be obliged

to notify the law enforcement agencies, which, under a special or simplified procedure, would be obliged to take action to bring the supervised person to justice in a short period of time.

## Conclusions

Probation officers carry out statutory tasks of an educational and social rehabilitation, diagnostic, preventive and control nature, related to the execution of court judgments. This broad spectrum of tasks, which the Act imposes on probation officers, in the case of probation officers for adults comes down mainly to the control of behavior of the supervised and enforcement of their obligations arising from the ruling of the court. This means that, in accordance with the current state of the law, the formalization of the tasks of probation officers for adults has led to them carrying out mainly tasks of a control nature. The proposed preventive supervision institution by definition broadens the scope of the tasks they currently carry out to include those of a preventive nature that would actually be carried out prior to the criminal act being committed, when non-criminal reaction would still be possible, in order to prevent committing a violent crime by a person who uses domestic violence. On the other hand, because of its institutionalized nature, preventive supervision would have a greater impact on the supervised person than activities undertaken within the BC procedure. Certainly, its aim is not to postpone bringing a person using domestic violence to justice for a violent crime, but to cause them to change his or her life, using much stronger measures than those that are in the competence of the LIT and a working group, and less rigorous than those of the criminal courts.

The presentation of the preventive supervision institution in this study was intended to initiate a discussion on the legitimacy of not only broadening the competences of probation officers in the area of preventing the phenomenon of domestic violence, but also to expand beyond the scope of executive penal proceedings.

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- [25] Act of 27 July 2001, Law on Common Courts Organization (Journal of Laws 2001, No. 98, item 1070 as amended).
- [26] Act of 29 July 2005 on counteracting domestic violence (Journal of Laws 2005, No. 180, item 1493, as amended).
- [27] Act of 10 June 2010 amending the act on counteracting domestic violence and certain other acts (Journal of Laws 2010, No. 125, item 842).
- [28] Regulation of the Minister of Justice of 12 June 2003 on the detailed manner of exercising the powers and duties of probation officers (Journal of Laws 2014, item 989, consolidated text).
- [29] Regulation of the Minister of Justice of 16 January 2012 on methods of testing for the presence of alcohol, narcotics or psychotropic substances in the body of the convict or perpetrator subject to custody or obliged to stop the use of alcohol or narcotic drugs or psychotropic substances, their documentation and verification (Journal of Laws of 2012, item 104).
- [30] Regulation of the Minister of Justice of 24 June 2014 on the supervision of juveniles (Journal of Laws of 2014, item 885).
- [31] Regulation of 13 June 2016 of the Minister of Justice on the manner and procedure for the performance of the activities of probation officers in executive penal cases (Journal of Laws 2016 item 969).