

Danuta Jurczyk, Andrzej Staniucha

District Court in Rybnik

Cooperation Between Probation Officers and Other Services in Implementing Prevention and Social Rehabilitation Tasks

Abstract: The article discusses the current legal regulations dealing with the tasks and duties of probation officers, as well as the misinterpretation of the role of probation officers in the mass media, among employees of other institutions and the charges of the officers. The authors have described a few of the most essential differences in working with an individual and his environment between career officers, social workers and police officers. They have stressed that understanding the differences in the scope of duties, as well as undertaking effective cooperation, are the key factors that affect the effectiveness of social rehabilitation interactions.

Key words: probation officer, social rehabilitation

Introduction

Social rehabilitation work in an open environment with individuals who violate social and legal norms and their families is the statutory responsibility of different institutions, both state, local, as well as social organizations (foundations and associations). The variety and number of institutions involved in working with persons who violate legal order causes confusion in defining the role of the probation officer in the community. Despite the fact that the current Act on probation officers of 27 July 2001 (Journal of Laws 2001, No. 97 item 1071) is already 14 years old, yet still many misunderstandings occur on the subject of the probation officer's job, particularly with regard to inter-institutional cooperation.

For those not associated with justice, this act is too often perceived as only a set of privileges concerning this professional group. Extremely important regulations are overlooked, not only in terms of competence, but also the organization of the probation service itself. Hence, probation officers are assigned roles and responsibilities which are in no way established by law, and it is even attempted to impose upon them the performance of tasks that could ultimately lead to them committing a crime, and certainly commence disciplinary actions against them.

This article will discuss the tasks carried out by probation officers, indicating the elements that are common and incompatible with the functions of other services – also working in the environment and having written in their statutory tasks assistance to individuals and families.

Key tasks performed by probation officers

The essence of work of probation officers has been specified in art. 1 of the act on probation officers stating that “probation officers carry out statutory tasks of an educational and social rehabilitative, diagnostic, preventive and controlling character, related to the execution of court judgments”. This article already excludes probation officers from carrying out actions of social assistance, psychological therapy, socio-therapeutic activities, mediation and any beyond the court’s rulings (i.e. not contained in the court’s judgments and decisions). In their work, probation officers may suggest the use of these forms, but in no way can they require this of their charges. The situation changes only when the court, often at the request of the probation officer, in the sentence or decision obliges the defendants to them.

Probation officers, within their powers, in accordance with art. 9 of the act on probation officers, in performing duties have the right to:

- 1) visit from 7.00 to 22.00 persons subject to the proceeding in their place of residence or stay, as well as closed institutions;
- 2) demand the person subject to the proceeding to present a document showing their identity;
- 3) demand necessary explanations and information from charges in custody, under supervision or other form of control ordered by the court;
- 4) view court records and draw up write-offs of them in connection with carrying out official duties and access to documentation on the charge and other persons concerned;
- 5) demand assistance in the performance of official duties from the Police and other authorities or state institutions, local government bodies, associations and social organizations in the scope of their activities, as well as from individuals (Gromek 2005, p. 83–86).

The flow of information in the context of this article is one-way in most legal regulations. Hence, attempts to interpret the obligations under art. 11, requiring the probation officer to cooperate with the relevant local government and social organizations, which statutorily deal with care, education, social rehabilitation, treatment and provision of social assistance in an open environment, aiming to obtain from the probation officer information about the reasons for establishing custody or supervision – that is, to inform about the type of offense committed by the charge or reasons of the guarded or difficult family situation – are unfounded and even lead to probation officers committing offenses ranging from abuse of powers to breaking confidentiality. The need to maintain confidentiality of the data obtained in the course of performing tasks under this act is a natural consequence of the probation officer taking an oath.

In this regard, the exception is participation of the probation officer in the work of an interdisciplinary team or working group operating under the provisions of the act of 29 July 2005 on preventing domestic violence (Journal of Laws No. 180, item 1493, as amended). Based on art. 9c.1, their members, to the extent necessary to perform tasks, can process data of persons affected by domestic violence and persons using domestic violence concerning health, addictions, convictions, decisions on penalty. The structure of this article also enables to transfer data on “other judgments given in the course of judicial or administrative proceedings” without the consent and knowledge of the persons whom this data concerns. However, this exception does not extend to other circumstances and situations. Even within the team or working group the probation officer is obliged to far-reaching precautions, so as not to go beyond the duties specified by law.

In the assessment of the realization of current tasks of probation officers, it is wrong to reason that cooperation of the probation officer with other institutions consists in two-way exchange of information. Cooperation within the meaning of the provisions of the act on probation officers should be understood as one-way receipt of information in order to properly diagnose the individual, and then involve various institutions to provide specialized assistance, for which they have been established by law.

In terms of the obligation to provide the probation officer with information, it should be noted that natural persons only have social obligation and not legal, which means that they do not incur criminal liability for refusal to cooperate with the probation officer, that is why the probation officer must appeal to their good will. It is different in relation to representatives of institutions (teachers, police officers, social assistance workers, persons responsible for organizing the execution of the penalty of restriction of liberty). In accordance with art. 9 of the act on probation officers, probation officers have the right to request help in the performance of official duties. However, according to art. 11 of the mentioned act, they are obliged to report to the court the reasons for the excessive length of

proceedings or other shortcomings in the activities of extrajudicial entities carrying out the ordered measures.

The scope of activities of a vocational probation officer performing tasks in the penal department is regulated by the act of 6 June 1997 Executive Penal Code (Journal of Laws 2013 No. 90, item. 557). The regulation contained in article 173 § 1 of the Executive Penal Code states that “the vocational probation officer organizes and conducts activities aiming to help the convict in social readaptation and prevent their return to crime, as well as consisting in control of the convict’s observance of imposed obligations judged by the court or related to custody”.

A detailed catalogue of duties is contained in § 2 of the same article. It mentions, in addition to exercising custody of the convict or offender and controlling obligations of the probation period, also incidental proceeding, i.e. the submission of requests by the probation officer to the court in relation to the people placed under their care, the performance of environmental interviews, providing post-penitentiary assistance, participation in court proceedings, execution of the penalty of restriction of liberty, as well as activities related to preparing a convict for life after leaving prison. In contrast, the scope of activities of a social probation officer is specified in art. 174 of the Executive Penal Code.

The following sentence by Michał Lewoc should be negatively assessed: “The provisions of art. 174 of the Code of Criminal Procedure define the scope of activities of the probation officer when exercising custody” (Lewoc 2011). A probation officer for adults is the executive body and its tasks are defined in the Executive Penal Code, not the Code of Criminal Procedure, which Lewoc refers to. To be precise, the scope of activities of a vocational and social probation officer in the penal department has been defined in art. 173 and 174 of the Executive Penal Code. While the list of tasks of family probation officers is regulated by the Ordinance 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). It defines that family probation officers, who are entrusted with exercising supervision, familiarize themselves with the case files and other essential sources of information about charges, and in particular with the course of previous supervisions, makes first contact with the charge no later than within 7 days from the date of receipt by the probation officers team of the judicial service of the final judgment, instructs the charge about the rights and obligations arising from court judgment and discusses the method performing the obligations arising from the court’s decision, plans a preventive and social rehabilitation, as well as care and educational interactions, cooperates with the family of the charge in the scope of conducted interactions, provides the charge with help in organizing learning, work and free time, and in solving life difficulties, controls the behavior of the charge at the place of residence, place of stay, study and work, cooperates with organizations, institutions, associations and other entities whose aim is to help the charge.

It should be emphasized that probation officers are both vocational probation officers and social probations officers, which is stated in art. 2 of the act on probation officers. This applies to both divisions of guardianship (i.e. probation officers for adults and family probation officers). But there is no division of family probation officers into family probation officers and minors, because family probation officers perform rulings in family matters, minors and those arising from the Act on raising in sobriety and preventing alcoholism (Journal of Laws 1982, No. 36, item 230).

With respect to the act on raising in sobriety, family probation officers who exercise supervision of persons who are obliged to undertake drug rehabilitation, submit to the court reports from the course of supervision, present proposals for changing the method of treatment or cessation of the obligation. The implementation of these tasks is in no way related to the possibility of using coercion against the person required to undertake drug rehabilitation, transfer to facilities or conducting therapy by the probation officers (even if they were prepared for this as part of their education). Moreover, it should be noted that supervision of the person obliged to undertake drug rehabilitation exercised by the family probation officer also has nothing to do with supervision conducted by a probation officer for adults, during which the convict has been subjected to the probation obligation of rehabilitation.

Cooperation of probation officers with the Police

In reference to the previously mentioned one-way character of information provided to probation officers by authorities and institutions; only in the system Police-probation officer in specific cases is it two-way. The most important event in terms of cooperation of the probation court service with the Police was, according to the act of 10 June 2010 on amending the law on counteracting domestic violence and some other acts (Journal of Laws No. 125, item 842), the signing by the Minister of Justice, the Chief of Police and representatives of the National Board of Probation Officers on 29 November 2010 of “The procedures of cooperation of the probation service and Police officers in relation to people for whom a court judgment is being executed in connection with committing criminal offenses involving violence or threats”. The essence of cooperation are matters referred to in the very name of that “Procedure”. Its individual points determine the need for mutual sharing of information about the division of fields between probation officers on the one hand, and on the other – with district constables, as well as contact data, sending information to the competent chief of Police on entrusting custody or supervision of the perpetrator to a specific probation officer. The information is then passed onto the district constable, in the district where the convict lives.

It is impossible to ignore the fact that the mentioned acts in the article, both of legislation and regulations, are acts of universally binding law, and the mentioned “Procedures” are only a procedural solution to the issues of cooperation between two services, which are in contact anyway within interdisciplinary teams or working groups appointed by the act on counteracting violence.

Nonetheless, it is difficult not to argue with Lewoc’s position presented in the article *New procedures of cooperation of Police officers with judicial probation service* maintaining that in accordance with the ordinance of the chief of Police, it is the district constable in connection with the personal current examination gains information on the people residing or staying in his official region, who due of their past, current lifestyle and behavior pose a threat to public order and security and in relation to them “takes the following actions: conducts prophylactic interviews with them, applies means of educational and social interaction towards them, or asks for their application, initiates activities in the scope of organizing help in placing the person in a rehabilitation, therapy or care facility” (Lewoc 2011). Neither the authors of this paper, nor district constables who were presented this position have encountered a situation in which district constables initiated the placement of a minor in a care facility. The authors of the article have never come across such a case, and until now notifying family courts has taken place only in the case of intervention activities of Police, not through routine work of district constables. The same situation applies to placement in a treatment institution and rehabilitation facility.

In practice, the initiation of such actions is limited by Police to the submission of notifications to Municipal Commissions for Solving Alcohol Problems. In such cases, it may come to notifying the court by the Commission in relation to a specific person. The need to undergo rehabilitation treatment is decided by the court. In the case when the person does not turn up at the rehabilitation treatment facility, the court orders the Police to bring in this person. It should be remembered that, for the establishment of supervision of the person required to undergo rehabilitation treatment (regardless of whether in a stationary or non-stationary facility), the district constable is the source of information for the probation officer. The probation officer in these cases was mentioned in the Act on education in sobriety, as ones who can submit a request for changing the method of treatment.

Cooperation of probation officers with Police takes place not only based on the above-mentioned “Procedures”. Particularly important is cooperation of probation officers with Police officers in one of the most severe procedures, evoking many emotions, which is the forceful removal of a person subject to parental authority and placing them in a foster family or care and education facility, in the course of which the family vocational probation officer is the organizer of the procedure (art. 598 of the CCP), because only under applicable law is it the authority that can enforce the removal of a minor.

Another example of probation officers' cooperation with Police are amended regulations on the method of performing duties and powers by probation officers in executive penal matters issued on the basis of art. 176 of the act of 6 June 1997 Executive Penal Code (Journal of Laws No. 90, item 557 as amended), which introduced the categorization of persons placed under custody of a probation officer. In art.169b. § 1 we read: "in order to ensure optimum impact on those for whom supervision is exercised, and use the proper method of control of these people, there are three groups of risk of returning to crime: 1) reduced-risk group (A), 2) primary group (B), 3) high-risk group (C). In the case of the high-risk group, which comprises:

- repeat offenders, convicts who after judgment or during parole committed a similar crime;
- addicts, convicted of an offense in connection with the use of alcohol, narcotic drugs or psychotropic substances;
- persons convicted of crimes against sexual freedom or morality to the detriment of a minor, as well as for crimes against sexual freedom committed in connection with the disturbance of mental functions of a sexual nature other than mental illness;
- convicts with mental disorders, if such disorders were related to committing the offense;
- persons convicted in connection with the use of domestic violence, who live with the victim in the same household during parole;
- convicts associated with criminal subcultures or groups that have relations with the criminal environment, and
- convicts who due to other circumstances require increased social rehabilitation interactions;
- pursuant to § 10 the probation officer is required to maintain close cooperation with the Police in order to obtain and exchange information on the observance of the law by the convicted – while the commitment to maintaining close cooperation with the Police should also be treated one-way, pursuant to the provision of the act on probation officers except in a situation related to violence and illegal threat, referred to in the act on counteracting domestic violence".

In the environment of probation officers, much controversy has been caused by conducting trainings in the scope of implementing legal regulations of testing sobriety, and then equipping probation officers with breathalyzers and sets that enable to detect the use of psychoactive drugs in their charges. In fact, these tasks have been shifted from the duties which were previously assigned to Police officers to probation officers. The paradox is that the probation officer can test only a person in custody or minor, but there are no such powers in relation to the drunk parents of a thirteen-year-old minor who is solely under their "care" and in this case Police officers must be called.

The probation officer and social worker

Philanthropy, collecting money and cooperation at the regional level in the scope of supporting families or individuals with a difficult, often dramatic, financial situation, cannot replace the existing services for this purpose, who have been statutorily established to provide social assistance. Such an approach, with serious historical burdens, can in no way be continued in the contemporary model of guardianship. Under the current legal condition, actions of this nature should be treated as supportive, temporary and targeted at showing the person in need of the possibility of turning to the right entities for help.

Social workers carry out their activities under the act on social assistance and the resources available come from the state or municipality budget. Financial social assistance provided by the employee is long-term and it is not marked by any deadline, and the income criterion is essential in awarding benefits. Social work is provided to improve the functioning of individuals and families in their social environment. It is conducted with individuals and families, in order to develop or enhance their activeness and independence in life, and with the local community to ensure cooperation and coordination of actions between institutions and organizations that are relevant to meeting the needs of community members. Social work can be carried out through social contract. In social work, methods and techniques are used that are relevant to its activities, applied with respect to the dignity of the person and their right to self-determination.

However, the work of probation officers is a social rehabilitation job containing only elements of social work. It is incorrect to say that probation officers and social workers perform the same tasks. While nobody expects social rehabilitation work from employees of social welfare centers, such is expected of probation officers. Probation officers do not perform social work within the meaning of the act on social assistance. As part of their tasks, they conduct social activities concerning: financial assistance, counseling, help in learning, employment, medical care and accommodation (Jedynak, Stasiak 2010, p. 464).

The given forms raise many doubts. Probation officers not only do not conduct, supervise or have facilities at their disposal which organize such activities, but limit themselves mainly to searching for them and indicating them (mainly in terms of the obligations imposed on them by the court). A kind of exception is the Probation Centres run by probation officers, where juveniles are referred by court pursuant to art. 6 of the act of 26 October 1982 on juvenile delinquency proceedings.

In terms of financial aid, the actual establishment of a probation officer moves toward organizing assistance from the Fund of Assistance to Victims and Post-Penitentiary Assistance. The fund, managed by probation officers, is currently much

smaller in comparison to previous years and the average of provided assistance is currently at the level of 100 PLN per beneficiary. According to preliminary information of the Ministry of Justice in April 2013, the division of funds in 2012 was established in proportions: 60% Central Board of the Prison Service, 28% courts, and 12% of NGOs. Not everyone knows that assistance provided by probation officers (regardless of whether it is in cash or e.g. in goods tickets) remains out of any control of social assistance help centers, is not taxable and is not reported to the tax offices. However, this is short-term aid, makeshift in nature until the beneficiary's situation is diagnosed by the employees of social assistance centers in terms of long-term assistance – of course if such a need arises.

Social work of a probation officer is therefore limited to the provision of temporary, short-term assistance, addressed mainly to families of people sent to prisons, leaving prisons and the victims of these people. It happens that incarcerated people turn to probation officers with demands (it is difficult to call their letters requests) to arrange independent housing, financial assistance of around 2000 PLN for current needs or allowing to start a business or look for a job that brings in 3000 net PLN a month, providing financial assistance for concubines intended for her children from a marriage, for whom she already receives alimony.

Another example, according to the authors, that goes far beyond the tasks of probation officers is Piotr Stępnia's sentence, stating that "convicts subjected to the custody of probation officers and fulfilling the obligations imposed on them should be provided as far as possible temporary accommodation and assistance in finding a job at the places and institutions indicated by the probation officer" (Stępnia 2008, p. 208). In reality, the probation officer does not have the legal tools that would oblige any employer to employ the person referred by the probation officer. There is no reference here to conditions related to the procedure of restriction of liberty and useful social work. The probation officer also does not have the possibilities of accommodating people leaving prisons and detention centers. In these cases, the responsibility of the probation officer is identifying solutions that are possible to implement in temporary terms, e.g. providing the address of a house for homeless people, presenting addresses of job centers. These tasks are fully reflected in article 166 § 1 of the Executive Penal Code.

The source of funds remaining under the decisiveness of the probation officer, are funds from the Fund of Assistance to Victims and Post-penitentiary Assistance, which are exemplaries and cash benefits adjudicated by the courts, deductions amounting to 10% of remuneration payable to convicts employed in prisons and for performing disciplinary sanctions, inheritances, legacies and donations, grants, collections and other sources. They are directed to two groups of extremely different beneficiaries – criminals and their victims. In contrast, funds for social assistance come from state and municipality budgets, i.e. from taxpayers, and have nothing to do with exemplaries or remuneration for convicts employed in

prisons, while the beneficiaries of them are people needing assistance, including persons released from prisons. Therefore, the cited position becomes another contribution to the misidentification of the tasks carried out by probation officers with the tasks realized by social assistance centers.

Statutorily defined forms of assistance from the fund by vocational probation officers for adults consist mainly in providing financial assistance and referring to relevant entities the perform other tasks. These are mainly job centers, social welfare centers, night shelters and houses for the homeless. Assistance in this regard is even familiarizing people released from prisons with generally available job offers in the local press.

Another misconception is that persons staying in detention centers, in connection with ongoing legal proceedings, upon leaving them also expect assistance from probation officers. But nobody informs these people that such assistance is not provided for them in any way. It is due to these mentioned reasons the misconception arises in some environments that the work of a probation officer is the same as of a social worker. The probation officer, in performing tasks of a social character, refers the convict to specific entities – including the social worker to provide help.

One should also argue with the position of Anna Witkowska-Paleń (2009, p. 178) identifying social rehabilitation work of probation officers with social work. The tasks about which she writes in the article *On the more “human” dimension of social and social rehabilitation work*, are performed by family assistants employed in social assistance centers, not by probation officers. It’s hard not to argue with the statement that “the object of their [read: probation officers and social workers – DJ, AS] are poor people, manifesting difficulties in social readaptation” (Witkowska-Paleń 2009, p. 181). The very statement “object” is controversial, but absolute critical reference should be made to the statement that probation officers deal with poor people. Poverty cannot be equated with pathology, and a poor person is not subject to custody or supervision of a probation officer due to poverty. Such people are helped by social workers employed in social assistance centers, as well as charities such as Caritas.

One should also critically refer to the author’s statement that the probation officer determines charges in terms of people wronged by fate contains an “emotionally positive charge” (Witkowska-Paleń 2009, p. 188). Such an approach of probation officers to working with a convict is highly unprofessional, and even negative. An adult, committing a criminal act, with full legal capacity, is aware of the negative consequences of their behavior. Therefore, they cannot be regarded as wronged by fate just because they committed a crime. Such a statement may be restricted only to minors, against whom a court order has established supervision of living conditions and upbringing. Emotional assessments must comply with the ethics of the profession of a probation officer, the essence of which is contained in the text of the oath. No emotional approach exempts a probation officer from

requiring from the charge subjected to custody or supervision, the realization of obligations imposed by the court. In this regard, the probation officer must instruct the charge of the consequences of non-compliance with obligations which is often associated with threats towards the charge.

Summary

Effective social rehabilitation in an open environment carried out by a probation officer is a process that requires the cooperation of several departments and institutions. Neither the probation officers themselves, or dispersed services are able to properly conduct social rehabilitation interactions by themselves, because it must be preceded by a thorough and reliable shared diagnosis. Examples have been provided of the lack of understanding of probation officers' tasks and their role in community work.

In social rehabilitation work in the environment of charges, cooperation of particular services is essential and necessary in order to talk about its effectiveness. Please note that the optimal outcome in this process is achieved when each of the services performs their statutory activities. The work of the probation service is not any action. It is performed almost exclusively at the request of the court, except to ex officio acts, when the probation officer is required to inform the relevant institutions just like any other citizen. A probation officer for adults, despite the fact that this institution has been operating for a shorter period, is an executive body of the court and the work of a family and minors' probation officer takes place exclusively based on citations of judgments, finding its basis in various legal acts. Any activity that goes beyond the statutory mandate is unacceptable, which is connected with breaking the law. Requiring a probation officer to act outside the scope of competence, however, happens regularly. The performance of duties by the probation officer causes the need for them to have not only very broad general knowledge, but also excellent knowledge of the local environment.

Literature

- [1] Gromek K., 2002, *Kuratorzy sądowi – komentarz do ustawy z dnia 27 lipca 2001 r.*, Lexis Nexis, Warsaw.
- [2] Jedynak T., Stasiak K., 2010, *Zarys metodyki pracy kuratora sądowego*, Lexis Nexis, Warsaw.
- [3] Lewoc M., 2001, *Nowe procedury współpracy funkcjonariuszy policji z kuratorską służbą sądową*, „Niebieska Linia”, no. 3.
- [4] Stępiak P., 2008, *Pomoc postpenitencjarna i społeczna readaptacja w świetle rozwiązań prawnych*, [in:] *Resocjalizacja. Teoria i praktyka pedagogiczna*, Vol. 2, (eds.) Urban B., Stanik J., Warsaw.

- [5] Witkowska-Paleń A., 2009, *O bardziej „ludzki” wymiar pracy socjalnej i resocjalizacyjnej* „Pedagogika Katolicka”, no. 4.

Legal acts

- [6] Act of 6 June 1997 – Penal Code (Journal of Laws 1997, No. 88, item 553).
[7] Act of 6 June 1997 – Penal Code (Journal of Laws 1997, No. 89, item 555).
[8] Act of 6 June 1997 – Executive Penal Code (Journal of Laws 1997, No. 90, item 557).
[9] Act of 27 July 2001 on court probation officers (Journal of Laws No. 97, item 1071).
[10] Act of 26 October 1982 on educating in sobriety and counteracting alcoholism (Journal of Laws 1982, No. 35, item 230).
[11] Ordinance 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 2012, item 104).
[12] Ordinance of the Minister of Justice of 10 April 2012 on the conditions and manner of conducting tests for the presence of alcohol or other substances used to put the body of a minor into a state of intoxication (Journal of Laws 2012, item 468).
[13] Ordinance 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).

Internet sources

- [14] Procedures of cooperation of the probation service and Police officers with respect to people subject to court judgment in relation to committing criminal acts involving the use of violence or illegal threat of 29 November 2010, http://ms.gov.pl/Data/Files/_public/aktual/procedury.pdf [access: 07.09.2015].