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Assumptions of proceeding in juvenile cases in the court practice*

ABSTRAKT

Artykuł stanowi podsumowanie projektu badawczego zrealizowanego w Instytucie Nauk Prawnych Polskiej Akademii Nauk. W ramach projektu zostały przeprowadzone dwa rodzaje badań: 1) ogólnopolskie badania sondażowe skierowane do trzech grup respondentów – sędziów dla nieletnich, zawodowych kuratorów rodzinnych oraz specjalistów zatrudnionych w opiniodawczych zespołach sądowych specjalistów, 2) indywidualne półstrukturyzowane wywiady jakościowe z przedstawicielami tych trzech grup zawodowych. W artykule zostały zamieszczone tylko niektóre wyniki. Szczególna uwaga została poświęcona realizacji założeń Ustawy o postępowaniu w sprawach nieletnich w praktyce orzeczniczej sądu. Potrzebę badań w tym zakresie uzasadnia fakt ustawowego zobowiązania sędziego dla nieletnich do gromadzenia informacji o nieletnim i jego środowisku - bezpośrednio lub pośrednio przy wykorzystaniu instytucji pomocniczych.

Introduction

Treatment of juveniles in Poland are regulated by the Act on Proceeding in Juvenile Cases¹. The Act sets out the rules, aims but also assumptions for court decision. The last of them will be a subject of this article. According to the intention of the legislator, the judge is obliged in the course of proceeding to collect comprehensive knowledge of the juvenile, the family environment, health situation and living condition. It is important, not only for regulation, but also for decision process. Knowledge, or in the other words - the diagnosis of the juvenile and family environment, enables to use of an educational or corrective measure accordance with the principle of individualization. The legislator mentions how to collect this information: directly (mainly by hearing juvenile and juvenile's parents) or indirectly (by supporting institution).

In the article are presented the results of the research project realized in the Department of Criminology The Institute of Law Studies of the Polish Academy of Sciences in the 2016 year name: "Cooperation of the juvenile court with other institution to application educational and corrective measures". The aim of the project was to exam how the juvenile judges, probation officers and experts from diagnostic teams cooperate in practice to realize the assumption of the Act.

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¹ Journal of Laws of 2016, item 1654.

1. Research methodology

Main research question was: how do juvenile courts in practice implement specific assumption of the Act resulting directly from article 3, 24, 25 and 32b. Research project supposed also to provide an information about:

- In what cases juvenile judges commission to prepare two kind of evidences - a diagnostic opinion and an environmental interview?
- What questions are juvenile judges referring to supporting institution – diagnostic teams and probation officers?
- How do professional family probation officers prepare an environmental interview?
- On what basis are diagnostic opinions prepared?
- How long do the juvenile judges wait for an environmental interview / a diagnostic opinion?
- Are juvenile judges suggesting recommendations of diagnostic teams and probation officers in the scope of applying appropriate educational or corrective measures?
- What is the importance of supporting institutions for juvenile courts?

In the course of project, there were conducted two kind of researches:

- 1) national surveys addressed to juvenile judges, professional family probation officers, experts from diagnostic teams (a postal and an internet survey)
- 2) individual in-depth interviews with selected representatives of these groups (stratified sampling; sampling frame: list of courts recognizing family and juvenile matters, selection criterion: number of these cases recognized in 2015).

In the national surveys took part: 162 juvenile judges, 556 professional family probation officers and 177 experts from diagnostic teams. It was respectively: 16%, 28% and 33% of total population for each of these groups. In individual in-depth interviews took part: 30 respondents, 10 out of each group.

The article presents only some of the results, especially: 1) how often juvenile judges commission to prepare an environmental interview, how often – a diagnostic opinion, 2) what question the juvenile judges refer to the diagnostic teams and to the professional family probation officers and which of this information use in decision process, 3) how is the cooperation seen, and 4) why this cooperation is important.

2. In which cases the juvenile judges commission to prepare evidences (an environmental interview, a diagnostic opinion)

Juvenile judges were asked how often in juvenile cases they commission to prepare an environmental interview. Most of them pointed out two answer, “in any case” and “in the most cases” with the same conditions, so: “regardless of the reason for the initiation of the proceedings and to expect the effect of its termination”. On the basis of this data, it can be stated that the environmental interview is, in principle, in most cases of juveniles recognized by the court.

Definitely different answers were given on the question about prepare diagnostic opinion. 42% respondents said that the decision to release a diagnostic opinion was issued only in some cases. Almost half of respondents admitted to allow evidence from diagnostic opinion only in cases of demoralization/crime in which they intend to give an isolation educational measure or corrective

measure. In 2015 year among the legally valid measures, 6% constituted a judgement these two measures. Therefore, it can be assumed that the commissioning of a diagnostic opinion is rather sporadic situation. This is confirmed by the results of other authors². What could be the reason? During the interviews, the judges gave mainly the waiting time for this evidence, which is an average of several months. Secondly, it is a statutory regulation. The judges must have opinion in certain situations: 1) when they intend to give isolation educational or corrective measures, 2) when they need a complex personality diagnostic.

Table 1. Cases in which evidences are prepared

	environmental interview		diagnostic opinion	
	No.	%	No.	%
in any case regardless of the reason for the initiation of the proceedings and to expect the effect of its termination	114	70,4	0	0,0
in most cases regardless of the reason for the initiation of the proceedings and to expect the effect of its termination	41	25,3	3	1,9
only in some cases regardless of the reason for the initiation of the proceedings and to expect the effect of its termination	3	1,9	68	42,0
only in some cases of demoralization/crime in which I intend to give an isolation educational measure or corrective measure	1	0,6	80	49,4
hard to say	0	0,0	3	1,9
<i>no data</i>	3	1,9	7	4,3
in all	162	100,0	162	100,0

3. What questions the juvenile judges refer to the professional family probation officers and to diagnostic teams?

Among the questions most frequently asked to probation officers were about juvenile's behavior (74%), family educational conditions (71%), the course of education (69%) and family living situation (61%). Less than half indicated juvenile's health situation and question about free time. Every third admitted that asked for suggestions about measure. Information in this regard, the judges considered the most important in the process of adjudication.

² Compare for example: D. Woźniakowska-Fajst, *Nieletnie. Niebezpieczne, niegrzeczne, niegroźne*, Warszawa 2010; W. Klaus, *Dziecko przed sądem. Wymiar sprawiedliwości wobec przestępczości młodszych nieletnich*, Warszawa 2009.

Table 2. Information included in environmental interviews

	what question juvenile judges refer to probation officers?		what information juvenile judges use in decision process?	
	No.	%	No.	%
juvenile's behavior	119	73,5	119	73,5
family educational conditions	115	71,0	115	71,0
the course of education	112	69,1	112	69,1
family living situation	98	60,5	98	60,5
juvenile's health	75	46,3	75	46,3
juvenile's free time	73	45,1	73	45,1
suggestions about measures	51	31,5	51	31,5
other	15	9,3	15	9,3
<i>Data does not add to 100 - possible multiple choice</i>				

The vast majority of the judges asked to diagnostic teams about the cause and degree of demoralization (88%), the suggestions about measure and the direction of further impacts (86%), and personality characteristics of the juvenile (80%). 62% of respondents were asking for intellectual development of a juvenile. More than every second order characteristic of the juvenile's family environment. Only one in four were interested in the course of school education. Questions for interest were asked by only 9,3% of the judges. Just as in the case of environmental interviews, the questions addressed to diagnostic teams were, in principle, the best ones needed in the adjudication process.

Table 3. Information included in diagnostic opinions

	what question juvenile judges refer to diagnostic teams?		what information juvenile judges use in decision process?	
	No.	%	No.	%
cause and degree of demoralization	143	88,3	163	92,1
suggestions about measure and the direction of further impacts	139	85,8	135	76,3
personality characteristics of the juvenile	129	79,6	134	75,7
intellectual development of a juvenile	101	62,3	44	24,9
family educational conditions	92	56,8	43	24,3
juvenile's health	59	36,4	7	4
the course of education	43	26,5	6	3,4
interests	15	9,3	0	0,0
others	1	0,6	2	1,1
<i>Data does not add to 100 - possible multiple choice</i>				

4. Do juvenile judges suggest the recommendations of diagnostic teams and professional family probation officers regarding to application of educational or corrective measures?

Juvenile judges were also asked, if they suggest the recommendation of diagnostic teams and professional family probation officers regarding to application of educational or corrective measures.

Juvenile judges declared that in the decision-making process on a particular educational or corrective measure, on average 55% were guided by recommendations in this area included in the environmental interview and in almost 79% - in the diagnostic opinion. The overall usefulness of this evidence was assessed at 80%.

As an explanation of the high degree of convergence with the verdict, one of the respondents said:

"It is said that the judge is the highest expert, but the judge is not a specialist. The judge examines all evidence and issues a ruling. On the other hand, specialists are the educator, psychologist, psychiatrist, who has the right tools to assess relationships or health. And here the judge is rather based on these opinions. Rarely happens that there is a different judgment than the suggestion³".

5. Evaluation of the cooperation

Researched institution evaluated their cooperation rather well. Almost 80% of juvenile judges pointed out answers well and very well. In a similar proportion - 77% - were recorded the responses of professional family probation officers. Slightly worse cooperation with the court was assessed by experts from diagnostic teams. 63% said "well" and "very well". 30% of them chose the answer „I have no opinion”. Some of them explained that this cooperation is simply not there. They get an order and make an opinion.

Table 4. Evaluation of the cooperation

	juvenile judges		professional probation officers		specialist from the diagnostic team	
	No.	%	No.	%	No.	%
very bad	3	1,9	7	1,3	0	0,0
bad	4	2,5	15	2,7	3	1,7
I have no opinion	13	8,0	75	13,5	53	29,9
well	99	61,1	315	56,7	70	39,5
very well	30	18,5	113	20,3	42	23,7
<i>no data</i>	<i>13</i>	<i>8,0</i>	<i>31</i>	<i>5,6</i>	<i>9</i>	<i>5,1</i>
in all	162	100,0	556	100,0	177	100,0

Instead of a summary - why cooperation is important?

As already mentioned, the juvenile court's task is to carry out or order a thorough juvenile diagnosis. Although the Act does not require the court to conduct an environmental interview in any juvenile case, in Grześkowiak's opinion in this way should be understand the legislator's intentions.

³ Respondent 9/j/interview.

A good interview is defined as the life story of a juvenile compared to the groups in which he was grow up⁴. Interview must be useful for the court⁵. Similar requirements are posed before diagnostic opinions⁶. On the basis of the interview, or independently of it, the court should make a decision to conduct research in the diagnostic teams⁷. For the assessment of the supporting institutions for juvenile courts, respondents were asked in the course of qualitative interviews. Most of them considered that supporting institutions are necessary for the functioning of juvenile courts. As a confirming this statement one of the judge said:

"Unfortunately, we are not educated in the psychological, psychiatric, and pedagogical fields, and we do not have that deep knowledge, and this knowledge is necessary for our judgment. Without this we would not be able to handle it, it is for us actually the whole problem. Because we know what to use, we have the means from which the rules as justified, but we do not know how to choose these measures alone, because we do not know the psyche of data juvenile. Neither psyche nor environment. We need to enter the environment through a professional probation officers, we must investigate it by a doctor and we can only comprehensively know where he can be placed. And if we put a juvenile delinquent in a child care home, then it's a mistake that can lead to further consequences⁸".

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⁴ K. Grześkowiak, *Nieletni przed sądem*, Warszawa 1986, p. 81-83; K. Grześkowiak, A. Krukowski, W. Patulski, E. Warzocha, *Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, Warszawa 1984, p. 93.

⁵ Z. Rosiak, *Sprawy karne nieletnich*, [in:] *Polskie sądy rodzinne w świetle badań empirycznych* (ed.) A. Strzembosz, Warszawa 1983, p. 114.

⁶ S. Nieuciński, *Psychologiczna diagnoza a ekspertyza psychologiczna dla potrzeb sądu. Analiza makrostrukturalna* [in:] „Diagnoza psychologiczna rozpoznawana przez sądy rodzinne. Materiały na sympozjum”, Kraków, 1985, p. 150.

⁷ K. Grześkowiak, A. Krukowski, W. Patulski, E. Warzocha, *Ustawa...*, p. 93.

⁸ Respondent 1/j/interview.

ABSTRACT

Article is a summary of the research project realized in The Institute of Law Studies of the Polish Academy of Sciences. In the course of project, there were conducted national surveys addressed to juvenile judges, professional family probation officers, experts from diagnostic teams and the individual in-depth interviews with selected representatives of these groups. The aim of the article is to present the results of the researches, the mainly the answer on the question how do juvenile courts realize in practice the assumptions of the Act on Proceeding in Juvenile Cases. Researches, in the application of law, have been considered particularly important because the law obliges the juvenile judges to collect information about juvenile and his/her environment – directly or indirectly (by supporting institutions).

Słowa kluczowe: postępowanie w sprawach nieletnich, kurator, sąd dla nieletnich

Key words: juvenile justice, probation officer, juvenile court