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Juvenile delinquency and role of correctional centers

Роль воспитательных центров и преступность несовершеннолетних

Summary

Crime among juveniles has always existed. In the modern world it is an increasingly visible and growing phenomenon, for sure. In its destructive form, it is a serious problem and it is considered a social phenomenon due to the size and various forms of its manifestations. Currently, the link between this phenomenon and development, technical progress and urbanization is underlined. Consequently, it is connected with the social mobility of the masses of the population and changes in family relations. Symptoms of this are: increased drug addiction, alcoholism, suicide and crime mainly among teenagers.

Резюме

Преступность среди несовершеннолетних всегда существовал. В современном мире, конечно же, это явление более заметным и продолжает расти. В своей деструктивной форме это серьезная проблема, и она считается социальным явлением из-за размера и различных форм ее проявлений. В настоящее время подчеркивается связь между этим явлением и развитием, техническим прогрессом и урбанизацией. Следовательно, это связано с социальной мобильностью населения и изменениями в семейных отношениях. Симптомы этого: повышенная наркомания, алкоголизм, самоубийство и преступность в основном среди подростков.

Keywords: juvenile, demoralization, youth detention centers, juvenile delinquency, correctional centers.

Ключевые слова: несовершеннолетний, деморализация, исправительные учреждения, преступность несовершеннолетних, воспитательные центры.

Notion of a juvenile

An unambiguous and strict definition of a juvenile is difficult. This is due to the need to include social, moral, psychological, or legal concepts in the analysis of the notion “juvenile”. In the structure of this term the following issues are identified: committing antisocial acts, committing acts that violate social and moral patterns, conflict with the society, behavior colliding with the values of culture in which he or she lives; juvenile acts arouse disapproval in the environment (in a narrow term), as well as in the public (in a broad term), juvenile acts require intervention of the competent authorities¹.

The notion of a “juvenile” should be distinguished from “minor” and “young criminal”. Minority is a notion derived from civil law. According to the Civil Code, a minor will be called a person who is under the age of 18 and has not entered into a marriage. Adolescence is reached when you are 18 years of age or earlier by marriage². A “young criminal” is a perpetrator who, at the time of the commission of a prohibited act has not reached the age of 21 years and has not reached the age of 24 years at the time of the trial in the first instance court³.

Criminal law can distinguish juvenile offenders under the Penal Code as persons who are under the age of 17. This category includes two groups: juveniles unable to be attributed a guilt and thus incapable of committing an offense, but are only executing a criminal offense; juveniles who may be responsible for committing criminal offenses as defined in the Penal Code⁴. Another approach is to define according to the Juvenile Act of 1982, among them: people under the age of 18 showing signs of demoralization, child who committed criminal deeds after the age of 13 but before attaining the age of 17, persons up to 21 years of age who were subject to educational or correctional measures⁵.

Demoralization of a juvenile

Demoralization is one of the key notion of the Juvenile Act. However, it is not defined there. The term demoralization is used in several situations: outlining the purpose of regulation, specifying the scope of the treatment of juveniles⁶, indicating when the proceedings could be initiated⁷, listing the circumstances of demoralization and using specific examples of behavior the legislator seeks to facilitate

¹ B. Urban, *Zachowania dewiacyjne młodzieży*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 1997, p. 52.

² Law of 23.04.1964 The Civil Code, “Journal of Laws” 1964 No. 16, item 93, as further amended.

³ Article 115 of the Law of 06.06.1997, The Penal Code, “Journal of Laws” 1997, No. 88, item 553, as further amended.

⁴ *Ibidem*, Article 1.3.

⁵ Law of 26.10.1982 on treatment of juveniles, Article 1.1.1-3, “Journal of Laws” 1982 No. 35, item 228.

⁶ *Ibidem*.

⁷ *Ibidem*, Article 2.

interpretation of this notion⁸. when deciding in the course of proceedings – the degree of demoralization should be the measure⁹.

Although there is no precise and unambiguous definition of “demoralization of a juvenile” in the Juvenile Act, Article 4 imposes on the population the obligation to respond to the demoralization of juveniles. This reaction should take form of notifying the parents or legal guardians of the juvenile and informing the school, the family court and police, or another competent authority.

According to A. Nowak, demoralization is a state of personality characterized by a negative attitude towards social expectations, in accordance with the social relations of a juvenile¹⁰.

Article 4.1 of the Juvenile Act gives example catalog of circumstances and behaviors of demoralisation of juvenile. These are: truancy, neglect of school education, escape from home, vagrancy, use of alcohol or other drugs, taking part in criminal gangs, breaking the principles of community life and committing criminal deeds. In the commentaries to the Juvenile Act, it is commonly understood that the demoralization of juveniles means a situation characterized by negative attitudes and behavior of a juvenile towards norms in the society as well as generally accepted principles of conduct¹¹.

Demoralization, which is not accompanied by criminal deeds but is characterized by behaviors contrary to other than legal, social norms, is called moral derailment. G. Harasimiak points out that different definitions of demoralization are focused on the internal state, which manifests itself in a specific – external behavior. On the other hand, in the case of demoralizing circumstances, the emphasis is put at objective facts that may be based on the attitudes and internal structure of the person¹².

Forms of juvenile delinquency

Two approaches to juvenile delinquency can be distinguished – broad and narrow. According to the broad approach juvenile delinquency includes all deeds committed by juveniles, not only those that violate certain norms of criminal law but also show signs of social maladjustment. On the other hand, a narrow understanding of crime defines only acts committed by juveniles violating provisions

⁸ Ibidem, Article 4.1.

⁹ G. Harasimiak, *Demoralizacja jako podstawowe pojęcie postępowania z nieletnimi*, Wydawnictwo Uniwersytet Szczeciński, Szczecin 2001, p. 278.

¹⁰ A. Nowak, *Zapobieganie demoralizacji i przestępczości nieletnich w świetle regulacji prawnych*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2000, p. 22.

¹¹ K. Grześkowiak, A. Krukowski, W. Patulski, E. Warzocha, *Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, Wydawnictwo Prawnicze, Warszawa 1991, p. 16.

¹² G. Harasimiak, *Demoralizacja jako...*, op. cit., p. 279–283.

of criminal law¹³. Another point of view is legal understanding, ie. the situation specified in the law.

In the Psychological Dictionary, the notion of social maladjustment is broadly presented as “the inability to adapt one’s actions to one’s own position, role, statute in social groups, maladjustment to norms and attitudes accepted by these groups”¹⁴, and narrowly as “situation of an individual who does not accept and does not implement standards, attitudes and socially desirable roles”¹⁵.

However, as O. Lipkowski points out, social maladjustment is not always linked with conflict with the environment. It is common that a person comes from a demoralized community and such behavior is accepted in this environment. On the other hand, an individual adapted to a normal environment is not adapted to a demoralized environment. According to O. Lipkowski, “socially maladjusted is an individual who, due to character disorders caused by unfavorable external or internal developmental conditions, has increased difficulty in adapting to widely accepted social norms and in fulfilling his or her life tasks”¹⁶.

Types of correctional centers

Youth correctional centers, as well as youth sociotherapy centers, operate on the basis of the Article 2.5 of the Act of 7 September 1991 on the Education System¹⁷. The provisions of the Article 5.5a state that districts are responsible for the establishment and supervision of youth correctional centers and youth sociotherapy centers. It is possible to set up a non-public institutions.

Statute and tasks of these institutions are defined by two regulations: the regulation of the Minister of National Education of 12 May 2011 on the types of, and the detailed operational arrangements for, public institutions, the conditions to be provided for children and young people attending them, the level of fees and rules for charging fees from parents¹⁸, the regulation of the Minister of National Education and Sport of 7 March 2005 on the framework statutes of public institutions¹⁹.

Youth correctional center is dedicated to juveniles who are socially maladjusted and require the use of a special organization of learning, working methods as well

¹³ G. Grabarczyk, *Odpowiedzialność nieletnich w Polskim prawie karnym*, „Studia z Zakresu Nauk Prawnoustrojowych” 2008, No. 1, p. 81.

¹⁴ W. Szewczuk, *Słownik psychologiczny*, Wydawnictwo Wiedza Powszechna, Warszawa 1998, p. 165.

¹⁵ Ibidem.

¹⁶ O. Lipkowski, *Wychowanie dzieci społecznie niedostosowanych*, PZWS, Warszawa 1966, p. 2.

¹⁷ Law of 07.09.1991 on the Education System, “Journal of Laws” 2004. No. 256, item 2572.

¹⁸ Regulation of the Minister of National Education of 12 May 2011 on the types of, and the detailed operational arrangements for, public institutions, the conditions to be provided for children and young people attending them, the level of fees and rules for charging fees from parents, “Journal of Laws” No. 109, item 631.

¹⁹ Regulation of the Minister of National Education and Sport of 7 March 2005 on the framework statutes of public institutions, “Journal of Laws” No. 52, item 466.

as education and social reintegration. Juveniles with mild mental disabilities may also be charges of these institutions, and they are subjected to revalidation at the center.

The symptoms of demoralization of juveniles are: breaking the principles of community life, committing criminal deeds, systematic neglect of school education or vocational training, use of alcohol or other drugs, prostitution, vagrancy, taking part in criminal gangs. Juveniles may be placed in the youth correctional center without their guilt, for example in the case of negligence, low educational competence of parents and family dysfunction (alcohol or psychoactive addiction, unlawfulness, violence, psychiatric disorders, serious and inherited health problems, material deprivation)²⁰.

The decision to put a juvenile in the youth correctional center is taken by the Department for Resocialization and Sociotherapy of the Centre for Education Development. The child is placed in the center on the basis of the regulation of the Minister of National Education of 27 December 2011 on the detailed rules for the placing, admission, transfer, dismissal and residence of juveniles in a youth correctional centers²¹.

The most important criteria for choosing a center for a juvenile are: location in the vicinity of juvenile's place of residence, education in the appropriate type of school. However, there are cases when a juvenile is placed in a center far from home. This involves the choice of the appropriate school, in case of lack of the offer in the closer center, and the intervention mode²².

The main tasks of the youth correctional center are: elimination of the causes and symptoms of social maladjustment, preparation of charges to live in accordance with common social and legal norms. These tasks are accomplished through: resocialization and therapeutic activities, care, learning and development of artistic potential, solving and learning to cope with emotional problems, improving social adaptation, shaping self-reliance, preparation for work and living in society, organization and provision of psychological and pedagogical assistance. Each charge of a center who has a special educational needs has an individual educational and therapeutic program²³.

On 1 January 2012, new solutions for the operation of youth correctional centers and youth sociotherapy centers began to apply. By the end of 2011, juveniles could be put in a center on the basis of a court corrective order, ie. putting

²⁰ T. Kaniowska, *Funkcjonowanie młodzieżowych ośrodków wychowawczych i młodzieżowych ośrodków socjoterapii w systemie oświaty*, „Trendy” 2015, No. 4, p. 13–16.

²¹ Regulation of the Minister of National Education of 27 December 2011 on the detailed rules for the placing, admission, transfer, dismissal and residence of juveniles in a youth correctional centers, “Journal of Laws” No. 296, item 1755.

²² T. Kaniowska, *Analiza zasadności umieszczania nieletnich w MOW i MOS*, Wydawnictwo ORE, Warszawa 2013, p. 3.

²³ T. Kaniowska, *Funkcjonowanie młodzieżowych ...*, op. cit., p. 14.

a juvenile in a center. In the case of youth sociotherapy centers, there was also a possibility of putting a child in the center on the basis of a decision on the need for special education, which is issued by a psychological and pedagogical clinic at the request of parents. That possibility still exists. What has changed in the regulations is that it is not possible to open a youth sociotherapy center unless there is at least one of the following type of school: primary or lower secondary school or upper secondary school²⁴. Paragraph 19.3 specifies that a youth sociopathy center which does not provide full time care may operate in justified cases. Moreover, it is not possible any more to run in public schools special branches for socially maladjusted juveniles or being at the risk of social maladjustment²⁵.

The provisions after their amendment concerning fugitives from the correctional institution allow to put them temporarily in a correctional intervention center or in the Juvenile Police Unit. In addition, fugitives from youth correctional centers, youth detention centers and youth shelters may be kept in the Juvenile Police Unit temporarily²⁶.

As a result of the described changes, as of 1 January 2012, youth sociotherapy centers are no longer subject to the National Preventive Mechanism. These tasks were delegated to the Ombudsman. Therefore it was necessary to provide him with information on any emergency situations that took place in educational institutions where juveniles were placed, in accordance with a court order. Also, since 2009 the youth correctional center is obligated to report monthly on emergency cases to the Ombudsman.

These reports refer to the following cases: the death of a juvenile or another person, serious injury caused by a charge, employee or other person, individual or group protest a, suicide of a charge, serious disturbance, sexual abuse, bullying, beating with effect of physical injury, group or individual escapes, use of coercive measures against a juvenile²⁷.

Types of youth detention centers

The primary goal of the youth detention center is resocialization of juveniles. It involves changing the attitude of a juvenile to socially acceptable one. This

²⁴ Regulation of the Minister of National Education of 12 May 2011 on the types of, and the detailed operational arrangements for, public institutions, the conditions to be provided for children and young people attending them, the level of fees and rules for charging fees from parents, "Journal of Laws" No. 109, item 631.

²⁵ Regulation of the Minister of National Education of 17 November 2010 on the conditions for providing training, education and care for children and youth with disabilities and socially maladjusted in special kindergartens, schools, classes and centres, "Journal of Laws" No. 228, item 1489.

²⁶ Law of 26.10.1982 on treatment of juveniles, "Journal of Laws" 1982 No. 35, item 228.

²⁷ T. Kaniowska, *Analiza zasadności umieszczania...*, op. cit., p. 9–11.

direction ensures proper development of personality, shapes positive interests and builds socially accepted respect for recognized norms of social coexistence.

The following types of youth detention centers can be distinguished: resocialization, including open, semi-open and closed (with increased supervision); resocialization and revalidation for people with intellectual disabilities; resocialization and therapeutic for alcohol addicts, drug users, HIV carriers, persons with mental disorders due to organic damage to the central nervous system and mild intellectual disability²⁸.

Conditional suspension of placing a juvenile in a youth detention center

The current Juvenile Act, in line with the Penal Code of 1932, allows for a conditional suspension of placing a juvenile in a youth detention center, although it regulates differently the grounds for its application, including the prerequisite of the subject character²⁹.

Conditional suspension of placing a juvenile in a youth detention center a probationary measure that enables implementation of the thesis that a juvenile should be placed in a detention center as a measure of a last resort when other methods of correction are insufficient³⁰. It is noted that the application of this institution is justified by the particularly detrimental nature of placing in a detention center. Moreover, it prevent a juvenile against contact with the group of most demoralized peers, if there is a perspective that a sole detention order will lead to a favorable change in a juvenile's behavior³¹.

The author considers that leaving a juvenile in a natural environment with the conditional suspension of placing a juvenile in a youth detention center for a probation period is desirable from a pedagogical point of view. This is the expression of the subjective treatment of a juvenile who is allow to make a decision: a juvenile may take „responsibility” for his or her own actions and will actively cooperate in the correctional process in order to make a positive change in his or her personality and behavior. By this token he or she could avoid the discomfort of placing in a youth detention center. If a juvenile does not want or is not able to do so, the

²⁸ V. Konarska-Wrzošek, *Prawny System postępowania z nieletnimi w Polsce*, Wydawnictwo LEX, Warszawa 2013, p. 104.

²⁹ Z. Sienkiewicz, *System sądowych środków wobec nieletnich w prawie polskim*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 1989, p. 159–160.

³⁰ A. Grześkowiak, *Postępowanie w sprawach nieletnich w Polsce w świetle Reguł Minimalnych ONZ dotyczących wymiaru sprawiedliwości względem nieletnich*, [w:] B. Kowalska-Ehrlich, S. Walczak (ed.), *Prawne i pedagogiczne aspekty resocjalizacji nieletnich*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 1992, p. 71.

³¹ Z. Sienkiewicz, *System sądowych środków...*, op. cit., p. 160.

court will apply a severe but indispensable measure for obtaining a resocialization effect and place a juvenile in a youth detention center³².

Assessment of environmental conditions in which a juvenile is raised has a great importance. These conditions, as positive, favorable for the return of a juvenile to normal life, support the relative suspension of placing a juvenile in a detention center, while an environment that has or may have a demoralizing effect on a juvenile will induce the ruling of this measure in its absolute form³³.

It is desirable for the court to always make use of the possibility of conditional suspension of placing a juvenile in a youth detention center if there is a chance that the correctional goals would be achieved without placing a juvenile in a detention center. However, it must be remembered that such rulings must be based on both subjective and objective considerations³⁴.

In a judgment adjudicating a relative suspension of placing a juvenile in a detention center, the court determines a probation period of not less than one year and no more than three years. During the probation period the court applies to a juvenile correctional measures. These measures may be combined and altered³⁵. At the same time, the court may also apply to a juvenile medical remedies. If the probation period and as well as further 3 months successfully expire the judgment to place in a detention center is considered as null and void. Juvenile data is removed from the National Criminal Register³⁶.

Until the amendment to the Juvenile Act of 15 September 2000 only the optional cancellation of the conditional suspension of placing a juvenile in a youth detention center was allowed. After amendment the Juvenile Act also provides for situations in which the cancellation of the relative suspension of placing a juvenile in a youth detention center is mandatory.

The Article 11.3 provides that the court may revoke the relative suspension and order placing a juvenile in a youth detention center if demoralization of a juvenile makes worse during the probation period. It is indicated that demoralized behavior should intensify. According to the literal reading of the provision, if the symptoms of deprivation are kept at one level conditional suspension can not be cancelled³⁷.

It is claimed in the literature that the cancellation of the conditional suspension of placing a juvenile in a youth detention center is possible only after the

³² E. Bieńkowska, A. Walczak-Żochowska, *Postępowanie w sprawach nieletnich. Komentarz*, Wydawnictwo C.H. Beck, Warszawa 2003, p. 97–98.

³³ *Ibidem*, p. 99.

³⁴ A. Gaberle, M. Korcyl-Wolska, *Komentarz do ustawy o postępowaniu w sprawach nieletnich*, Wydawnictwo ARCHE, Gdańsk 2002, p. 82.

³⁵ T. Bojarski, E. Skrętowicz, *Ustawa o postępowaniu w sprawach nieletnich z komentarzem*, Wydawnictwo KUL, Lublin 2002, p. 48.

³⁶ E. Bieńkowska, A. Walczak-Żochowska, *Postępowanie w sprawach...*, op. cit., p. 101.

³⁷ *Ibidem*, p. 100.

investigation and gathering evidences of the offense committed by a juvenile during the probation period. These evidences must make sure that a juvenile is a culprit. The mere suspicion, as insufficient, does not justify the revocation of the conditional suspension of the correctional measure³⁸. It is noted that the mandatory cancellation of conditional suspension due to stiffness of regulation adversely differs from the assumptions of the Juvenile Act. Criticism must be careful and balanced, however, since it must be taken into account that this solution was dictated by the need to respond to the most dangerous juvenile offenses.

Conditional suspension can only be canceled due to circumstances that occurred during the probation period. The cancellation may be ordered not later than 3 months after the probation period expires. After that, the judgment to place a child in a youth detention center is expunged by law. Consequently, if the offense committed during the probation period is disclosed later, a new investigation should be initiated³⁹.

The family court consisting of a single judge decides to cancel a conditional suspension of its own motion or at the request. If necessary, the court should hear the child together with parents and carers. An order to cancel a conditional suspension of placing a juvenile in a detention center is subject to a complaint⁴⁰.

Conclusions

It is undisputed that the counteracting of juvenile delinquency is one of the important tasks of social policy of the state, the education and correctional system, the institutions and social organizations, the judiciary and families. It is also commonly believed that prevention is a more effective means of eliminating these phenomena than resocialization when social maladjustment is already deeply advanced. Thus, the shift of the focus from resocialization to preventive measures is enhanced by the intensification of correction and care, provision of social assistance to children and their parents, and giving up repressive measures towards juvenile delinquents for therapeutic and correctional influences.

Probably the role of correctional centers is of a special nature, for the sake of a person to whom the correctional activities are addressed, as well as the value around which they are focussed, ie. the well-being of a juvenile.

³⁸ Ibidem, p. 84.

³⁹ A. Gaberle, M. Korcyl-Wolska, *Komentarz do ustawy...*, op. cit., p. 84.

⁴⁰ Law of 26.10.1982 on treatment of juveniles, "Journal of Laws" 1982, No. 35, item 228.

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