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## **Children in institutional re-socialisation and education – on the edge of contemporary trends**

### **Summary**

This article analyses the situation of a child placed in an isolation facility in the context of contemporary trends in treating children and adolescents by the judiciary and in educational and re-socialisation facilities. The system of juvenile re-socialisation in Poland, regulated by the Act on Juvenile Delinquency Proceedings of 1982, covers children and adolescents in connection with their deprivation or with committing a punishable offence and it provides for institutional educational measures and reformatory measures in the form of sending a minor to a juvenile detention centre. Although a prison sentence passed on minors is an exception to the rule of adjudicating educational and reformatory measures, according to international regulations, the category of juvenile imprisonment is broader than serving a sentence in prison. It is our intention to consider the situation of a child placed outside their home in an institution where they are exposed to confinement by a court or another administrative body.

**Keywords:** children, education, resocialisation

### **Introduction**

Children abandoned by parents or deprived of parental care for other reasons evoke the need to protect them and care for them in society, in public institutions and in NGOs. On the other hand, children placed in educational, socialisation and re-socialisation facilities evoke completely different feelings. A considerable portion of the society is very severe towards minors who commit punishable offences or who are just incorrigible. The justice system in Poland is very punitive (Krajewski 2012). There is a trend towards passing long-term prison sentences even for children and adolescents sent to juvenile detention centres and often for those placed in educational or socialisation facilities. There are no prisons

for minors in Poland, but minors<sup>1</sup> can be lawfully placed in prison for juveniles (i.e. who are legally adults, who committed crime before they were 21 or were not yet 24 when the sentence in the first instance was passed<sup>2</sup>), and then – like juveniles – they serve a prison sentence with all its consequences.

### **Approaches to minors in the judiciary**

There is no single, widely-accepted approach to juvenile delinquents in modern states of our cultural circle, and the systems of handling juvenile cases vary in many regards. Various systems of legislation usually regulate the following issues differently: establishing penal liability and making it conditional on the child's age, public and social bodies and institutions which handle juvenile cases, procedure (penal, civil, administrative) or institutional response to juveniles' behaviour. These diversities are a consequence of various ways of combining elements from two opposite models of handling juveniles, having been developed since the times of Enlightenment. The penal and care models, referred to as paradigms of handling juvenile-related cases, range on a scale from an extremely juridical and punitive approach, stemming directly from the classic Enlightenment school of the penal law to the caring approach, ideologically linked to positivism and the welfare state doctrine and corrective thinking (Stańdo-Kawecka 2016). The extreme models do not exist in the institutional practice; contemporary justice systems regarding juvenile cases and systems of minor re-socialisation are combinations of various elements from various models, where these elements are present at various degrees of saturation. For example, Dignan and Cavadino distinguish several models of the justice systems in regard to juvenile cases, ranging from an extremely juridical approach to an extremely caring one (Dignan and Cavadino 2007: 47).

There is an unresolved on-going dispute in the literature between the permissive and punitive approaches to re-socialisation of juvenile delinquents. The historical perspective shows that which approach dominates depends on the social and political climate, or the adopted paradigm in methodology of scientific research. For example, permissivism dominated in Poland in the 1990s (Szecówka 1996; 1995), although this approach was dwindling in western countries at the time. Currently, it is difficult to identify clear trends in handling juvenile-related cases and another draft amendment of the Act on Juvenile Delinquency Proceedings seems to go towards maintaining the status quo and the extremely protective traditions in treating juveniles, while at the same time decreasing the limits when educational and reformative measures are applied in association with a minor committing a punishable offence<sup>3</sup>.

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<sup>1</sup> Art. 1 of the Act on Juvenile Delinquency Proceedings of 1982, Journal of Laws, 1982 No 35 item 228 and Art. 10 of the Penal Code of 1997, Journal of Laws, 1997 No 88 item 553 as subsequently amended.

<sup>2</sup> Art. 115 § 10 of the Penal Code of 1997, Journal of Laws, 1997 No 88 item 553 as subsequently amended.

<sup>3</sup> Here we are referring to our undocumented knowledge on the work of another committee for amendment of the juvenile law and the draft juvenile act prepared by this team in 2018.

Along with model approaches of the system of justice applicable to juvenile cases, or in consequence of the systems of minor re-socialisation, great importance can be assigned to childhood studies, which reveal a specific method of handling a child or an adolescent by educational, caring or re-socialisation institutions. Interdisciplinary studies of psychologists, pedagogues, sociologists, anthropologists, philosophers, physicians and lawyers conducted in the west of Europe and in Poland are based on the constructivist paradigm and they focus on the historical, sociological, philosophical and political perspective. Śliwerski regards them as a contemporary continuation of paidocentrism (Śliwerski 2007) and although not uniform in terms of methodology, they enable one to grasp the main trends in perceiving and treating a child by the society and its institutions. The greatest inspiration for the description and explanation of the situation of a child placed in isolation facilities is provided by Monk's "concept of law sensitive to children's needs" (Monk 2008; Kuształ 2016; Kuształ 2018); he analysed the areas of children's activity, such as: healthcare, education, sexuality and the system of justice, and concluded that – although it might seem otherwise – the issue of protecting children and their rights are not the focus of attention of each institution established for this purpose. His interdisciplinary studies led to the conclusion that in the system of justice "establishing a child's intellectual potential legitimised political and social claims for justice at the expense of safeguarding properly the child's interests. Therefore, the law refers to widely recognised opinions on a child as a passive object of paternalistic actions taken by institutions managed by adults or – depending on the social and political environment – to the opinions of a conscious, responsible child, capable of shouldering the blame and accepting punishment" (Monk 2008). It is here that this concept clearly corresponds with models of the system of justice in juvenile cases, providing a kind of ideological justification for them.

### **Inconvenience of staying in unusual confined space**

"Prisons do not have their own logic of existence, regardless of their purpose, which is to fight crime. Therefore, their value is measured by the results of their work: the effects achieved in fighting crime" (Loss 1933: 79). One can say that prison cells and corridors have always been the place where a person who has lost their way and committed a punishable offence is changed. However, it is not true, because the issue of correction of the imprisoned has been an issue of minor importance; retaliation and revenge for the crime have been the essence of the punishment. "Although prison is the proper punishment only when the punishment can improve the man (...), the prison itself existed long before it was started to be used to punish criminals" (Rabinowicz 1933: 2–3). According to Bugajski, in the distant past "imprisonment was rarely used as punishment in itself (...). It was regarded as a measure too lenient, insufficient. Punishment was seen as something supposed to frighten off potential perpetrators or as an act of revenge; therefore death penalty or corporal punishment was used" (Bugajski 1929: 141). Despite the evolution in treating imprisoned people, the very fact of placing someone in a confined space is associated with many inconveniences, both in the individual and social sphere.

“Basically, a prisoner is in an awful mood; they are affected by the passing of time – day after night, night after day, and again... Due to its destructive monotony and lack of any sensations, a day in prison is the time of boredom and longing. On the other hand, night is full of unpleasant dreams or even nightmares, or it is sleepless and then memories or fantasies come” (Szpakowski 1937: 14). This is what the prison-related discourse looked like many years ago; it was focused on inconveniences of isolation felt by the incarcerated. Garmada even talks about a prison disease. “The time when the first symptoms appear varies. Certain deviations from normality in the prisoner’s mental state may appear after a few weeks. They appear later in more mentally resilient individuals, but a keen observer will notice them not later than within a year. In my view, the prison disease occurs with various intensity and in various forms, but it does not spare anyone. Its forms and symptoms are affected by the intellectual level, traits of character, the period of stay at the place of confinement and the prisoner’s occupation.” (Garmada 1970: 20). Imprisonment is beyond doubt a difficult situation, with all the consequences, both in the sphere of individual and social needs. Goffman (Goffman 1975: 151–177) talks about totality and its features in the context of institutional isolation places. People put in places of penitentiary confinement find themselves in a specific pattern of functioning and the life behind bars cannot even resemble comfortable existence. Regardless of the age, sex or place, an imprisoned person feels multidimensional discomfort and deprivation of needs. According to Waligóra, in prison “all human needs are frustrated at best, and many of them are blocked. Unable to satisfy their needs, or achieve their goals, an imprisoned person is constantly tense and sees their state of mind as unpleasant and unbearable” (Waligóra 1984: 60). Frustration and deprivation, especially of the possibility of satisfying one’s mental and cultural needs, are extreme inconveniences observed in a penitentiary space. Among them, the need for emotional contact, partnership, intimacy, independence or participation acquire a specific meaning. According to Machel, inmates feel increasing uncertainty, mistrust and the sense of threat, which ultimately results in long-term states of anxiety (Machel 1994: 52).

There were 73,463 people, including 3,037 women, in 130 prisons and places of custody in Poland<sup>4</sup> on 30 September 2018. These included 7,552 (413 women) in custody, 64,956 (2,570 women) imprisoned, 955 (54 women) punished (Ministry of Justice, Central Board of Prison Service, 2018). This group of several thousand people, with various sentences and various outlooks for the future, experiences a range of difficult situations. Apart from the deprivation aspects mentioned above, mental disorders resulting from imprisonment should also be emphasised. The relationship between imprisonment and reactive psychoses, or situational psychoses, was noted by Ciosek (2001: 223). They are usually said to include reactive depression, hallucinations, anxiety and persecution complex, as well as primitive reactions. Their underlying causes include mental traumas, e.g. death of a close person, divorce, but also imprisonment (Ciosek 2001: 224). The very stay at a re-socialisation facility is a source of negative emotions. A multitude of unpredictable

<sup>4</sup> Intended purpose of prisons and places of custody as of 1 October 2018 [www.sw.gov.pl](http://www.sw.gov.pl).

and uncontrolled moments in incarcerated reality must imply a state of emotional instability of an imprisoned person, which can lead to mental disorders. Irrational behaviour caused by emotions are normal in inmates and personnel. Permanent lack of emotional stability is a path towards mental disorders (Przybyliński 2005: 141). In the context of negative consequences of isolation, one cannot fail to mention neuroses, overburdens or sexual disorders in inmates. Time is also an important factor regardless of the age of a person staying in institutional space of re-socialisation and education. It is an ally for some and a nightmare of thinking of the future for others. "Time flows slowly, it seems endless, while space is reduced to the minimum, to a confined box of the cell. The longer the time, the greater the suffering" (Rabinowicz 1933: 137). There is a natural need in each imprisoned person for realising the concept of time, because a number of details from prison life are connected with the issue of time in the prisoner's mind (Szpakowski 1937: 10). Time is obviously associated with loneliness, and "the lethal force of loneliness stems from the huge disproportion between time and space". (...). Loneliness in prison is not penance, nor does it result in betterment; it is the opposite: it causes the prisoner's mental decomposition (Rabinowicz 1933: 137). Regarding studying the effectiveness of re-socialisation, Ambrozik claims: "Committing a punishable offence is sanctioned by revenge, by isolation, by repayment, by isolation, moral and legal betterment, etc., or by special educational or re-educational and re-socialisation measures. Each of these forms of punishment deprives an individual of freedom of action and social participation, while at the same time stigmatising, excluding, marginalising and eliminating them from social life. Therefore, it is not possible for re-socialisation of those individuals to take place in an atmosphere of duress" (Ambrozik 2016: 205). Konopczyński's considerations are similar when he presents myths concerning the re-socialisation reality. According to one of them, institutions of re-socialisation change a criminal into a better person, i.e. "it is a social myth that isolation of a criminal from the rest of the society is a good way of achieving a permanent positive transformation" (Konopczyński 2014: 13).

So how can one combine the reformatory and punitive functions of the re-socialisation process? Ambrozik claims that "elimination of punishment in a criminological and legal approach from the system of re-socialisation would be a reckless, dangerous or downright impossible move in many cases, to say the least, and it would have consequences that are difficult to predict" (Ambrozik 2016: 2015). Being aware of the impossibility of eliminating freedom deprivation from the system of justice, both for adults and minors, and considering all its consequences described above, we would like to focus on juveniles serving a punishment of isolation. Due to the stage of development that a young person is in, these deprivations are greater because of the age. The feeling of deprivation of developmental needs and adverse development conditions cause permanent behaviour disorders, which evolve towards crime (Urban, 2000); results of studies based on the R-N-R model indicate that the first imprisonment is the strongest risk factor for later imprisonments (Stańdo-Kawecka 2010: 891–907).

### **Imprisoned children in selected regulations of international law**

According to rules of international law, placing a minor (Bulenda 2013: 441 ff.) in a place of confinement is regarded as imprisonment. UN's Rules for the Protection of Juveniles Deprived of their Liberty of 1990 state that it is "any form of deprivation of liberty, detention of persons up to the age of 18 years in a public or private facility, which the child must not leave, by order of a judicial, administrative or public authority" (United Nations Resolution, 1990). This definition is very broad, and its adoption means that virtually all stationary measures applied to socially ill-adapted children and youth, such as youth educational centres, stationary youth sociotherapy centres, correctional facilities or intervention facilities (youth hostels and emergency youth centres), as well as care and educational facilities, which, as a rule, do not perform rehabilitation tasks, but whose activities are part of such tasks and functions (Act of 9 June 2011 concerning Family Support and Foster Care, 2011), are regarded as isolation facilities, or ones in which a person is deprived of their liberty. However, it must be emphasised that the purpose of isolation is important – protection of a minor, education, re-socialisation, rather than punishment for a criminal offence.

The Convention on the Rights of the Child derives the principles of treating a child deprived of their liberty from the principle of the child's best interests and refers in particular to the prohibition of torture and cruel, inhuman or degrading treatment of the child, the prohibition of capital punishment and life imprisonment. "Imprisonment itself is based on the *ultima ratio* principle and it should be as short as possible and executed humanely, while respecting the person's dignity and taking into account the child's needs arising from their age. Such treatment should be aimed at reintegration of the child and at the child assuming a constructive role in the future" (Kusztal 2018: 284). There are a number of legal acts in the European law which protect the child, with those related to the specific situation of separating a child from their family. These acts are international agreements, such as the European Convention on the Exercise of Children's Rights (European Convention on the Exercise of Children's Rights, 1997) or recommendations which, although not mandatory, are the basis for proceedings before international law bodies. The latest Guidelines of the Committee of Ministers of the Council of Europe on a children-friendly judicial system of 2010 (Guidelines, 2010). The guidelines clearly indicate that the rights of the child guaranteed by the judiciary include re-socialisation. A prison sentence should be pronounced on a child not because of the child's (educational or care-related) needs, but mainly based on the principle of proportionality. The child's age, their developmental needs, both physical and mental, defined as the child's welfare and the need for protection, are not a priority. Any abuse and abnormality in observing the rights of minors deprived of their liberty is prevented by the National Mechanism of Prevention operating under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment (Ombudsman Report 2016). Moreover, cases related to minors deprived of their liberty are relatively rarely referred to international bodies dealing with human rights protection for many reasons, including system-related and political reasons (Newsletter of the Helsinki Foundation for Human Rights; 15 May 2016)

## Conclusion

Depriving children and adolescence of liberty is the object of interest of pedagogues, lawyers and psychologists; it is dealt with by international organisations and NGOs, and it is present in the media discourse. Changing the ways minors are treated in the west and in the USA towards punitive treatment did not lead to any significant changes in Poland, with the educational measures applied by Polish courts, such as placement in a youth educational centre, should be regarded – in accordance with regulations of international law – as deprivation of liberty. The inconveniences of imprisonment described above are felt much more strongly by children and adolescents because of developmental factors. At the same time, according to the concept of child's welfare, present in the interdisciplinary discourse, deprivation of liberty should be used as rarely as possible in response to the legally relevant behaviour of minors. These simultaneous trends in the judiciary related to minors clearly show that careful decisions need to be taken towards individualisation of educational or corrective measures taken towards the juvenile person. This is because the consequences of imprisonment are so damaging to the development of a child and an adult that – because of the child's welfare – educational and re-socialisation measures in an open environment should be preferred.

## References

- Ambrozik W. (2016), *Pedagogika resocjalizacyjna. W stronę społeczeństwa systemu oddziaływań*. Kraków, Impuls.
- Bugajski Z. (opracował) (1928), *Kalendarz funkcjonariusza więziennego na rok 1929*. Warszawa.
- Bulenda T. (2013), *Uwięzieni w okresie małoletności*. W: A. Rzepliński, I. Rzeplińska, M. Niełaczna, P. Wiktorska (red.), *Pozbawienie wolności. Funkcje i koszty. Księga jubileuszowa Profesora Teodora Szymanowskiego*. Warszawa, Wolters Kluwer.
- Ciosek M. (2001), *Psychologia sądowa i penitencjarna*. Warszawa, PWN.
- Dignan J., Cavadino M. (2007), *The Penal System: An Introduction*. 4th Edition, Sage Publication, London 2007.
- Europejska konwencja o wykonywaniu praw dzieci*, sporządzona w Strasburgu dnia 25 stycznia 1996 r., ratyfikowana przez Polskę w dniu 29 lipca 1997 r., Dz.U. 2000 nr 107 poz. 1128.
- Garmada L. (1970), *Samouszkodzenia ciała*. Warszawa, PZWL.
- Goffman E. (1975), *Charakterystyka instytucji totalnych*. W: W. Derczyński, A. Jasińska – Kania, J. Szacki (red.), *Elementy teorii socjologicznych: materiały do dziejów współczesnej socjologii zachodniej*. Warszawa, PWN.
- Gromek K. (2001), *Komentarz do art. 3 ustawy o postępowaniu w sprawach nieletnich*, Lex Online (dostęp: 1.03.2001).
- Krajewski K. (2012), *Czy w Europie istnieją dwie odrębne strefy klimatu penalnego*. W: K. Kardas, T. Sroka, W. Wróbel (red.), *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla*. Warszawa, Wolters Kluwer.
- Kuształ J. (2011), *Europejskie tendencje w zapobieganiu przestępczości nieletnich*, „Probacja”, nr 4.
- Kuształ J. (2016), *Uczeń zagrożony niedostosowaniem a profilaktyczne zadania szkoły*. „Edukacja Elementarna w Teorii i Praktyce”, t. 11, nr 2 (40).

- Kusztal J. (2018), *Dobro dziecka w procesie resocjalizacji. Aspekty pedagogiczne i prawne*. Kraków, WUJ.
- Loss J (1933), *Więzenia w Polsce. Cyfry i Fakty*. Warszawa.
- Machel H. (1994), *Wprowadzenie do pedagogiki penitencjarnej*. Gdańsk, Wydawnictwo UG.
- Ministerstwo Sprawiedliwości Centralny Zarząd Służby Więziennej. Miesięczna Informacja Statystyczna, wrzesień 2018 r. [www.sw.gov.pl](http://www.sw.gov.pl) (dostęp: 15.10.2018)
- Monk D. (2008), *Dzieciństwo i prawo, w czym najlepiej pojętym interesie* W: M.J. Kehily (oprac.) *Wprowadzenie do badań nad dzieciństwem*. Kraków, WAM.
- Newsletter Helsińskiej Fundacji Praw Człowieka z 5.05.2017
- Przybyliński S. (2005), *Podkultura więzienna – wielowymiarowość rzeczywistości penitencjarnej*. Kraków, Impuls.
- Rabinowicz L. (1933), *Podstawy nauki o więziennictwie*. Warszawa, Gebethner i Wolff.
- Raport Rzecznika Praw Obywatelskich z wizytacji w zakładach poprawczych i schroniskach dla nieletnich przeprowadzonych przez Krajowy Mechanizm Prewencji w latach 2008–2015, Warszawa, <https://www.rpo.gov.pl/sites/default/files/Raport%20zaklady%20poprawcze%20i%20nieletni.pdf>. (dostęp: 11.07.2017).
- Rezolucja Zgromadzenia Ogólnego ONZ 45.113 z dnia 14 grudnia 1990 – Reguły Narodów Zjednoczonych dotyczące ochrony osób nieletnich pozbawionych wolności (Reguły Hawańskie) [https://bip.ms.gov.pl/Data/Files/...onz/prawa\\_czlow\\_26\\_6.doc](https://bip.ms.gov.pl/Data/Files/...onz/prawa_czlow_26_6.doc) (dostęp, 10.11.2018)
- Stańdo-Kawecka B. (2016), *Wybrane problemy odpowiedzialności nieletnich w światłach zmieniających się paradygmatów*. W: M. Konopczyński, Ł. Kwadrans, K. Stasiak (red.), *Polska Kuratela Sądowa na przełomie wieków. Nadzieje, oczekiwania, dylematy*. Kraków, Impuls.
- Stańdo-Kawecka B. (2010), *Ruch „What Works” i „Nowa Resocjalizacja” – nowa perspektywa w polityce karnej?* W: V. Konarska-Wrzosek, J. Lachowski, J. Wójcikiewicz (red.), *Węzłowe problemy prawa karnego, kryminologii i polityki kryminalnej. Księga pamiątkowa ofiarowana Profesorowi Andrzejowi Markowi*. Warszawa, Oficyna Wolters Kluwer.
- Szczepaska-Pustkowska M. (2011), *Od filozofii dzieciństwa do dziecięcej filozofii życia. Casus władzy (i demokracji)*. Kraków, Impuls.
- Szcówka A. (1995), *Modyfikacje w oddziaływaniach resocjalizacyjnych placówek ministerstwa sprawiedliwości*. „Szkola Specjalna”, nr 4.
- Szcówka A. (1996), *Między punitywnością a permissywnością w resocjalizacji nieletnich*. „Opieka – Wychowanie – Terapia”, nr 4.
- Szapkowski J. (1937), *Z psychologii przeżyć więziennych*. Według odczytu wygłoszonego we wrześniu 1933 r. na XIII Zjeździe Psychiatrów Polskich w Poznaniu i Kościanie jako sekcji XIV Zjazdu Lekarzy i Przyrodników Polskich, Warszawa.
- Śliwerski B. (2007), *Pedagogika dziecka. Studium pajdocentryzmu*. Gdańsk, Gdańskie Wydawnictwo Psychologiczne.
- Urban B. (2000), *Zaburzenia w zachowaniu i przestępczość młodzieży*. Kraków, Wydawnictwo UJ.
- Ustawa z dnia 9 czerwca 2011r. o wspieraniu rodziny i systemie opieki zastępczej, Dz. U., 2011, nr 149, poz. 887, z późn. zm.
- Waligóra B. (1984), *Deprywacja potrzeb u osób pozbawionych wolności*. W: B. Hołyst (red.), *Problemy współczesnej penitencjarystyki w Polsce*. Tom I, Warszawa, Wydawnictwa Prawnicze.
- Wytyczne Komitetu Ministrów Rady Europy w sprawie wymiaru sprawiedliwości przyjaznego przyjęte przez Komitet Ministrów Rady Europy w dniu 17 listopada 2010 r. wraz z uzasadnieniem, dok. pdf (dostęp: 12.07.2017).