

Introduction

Recently, despite numerous protests from educational and pedagogical circles and especially the circle of educators centered around KNP PAN (Committee of Pedagogical Sciences of the Polish Academy of Sciences) and the Correctional Pedagogy Section of KNP PAN, despite the rejection in its entirety of the Act on the support and social rehabilitation of juveniles by the Senate of the Republic of Poland, the Polish Parliament passed it and the President of the Republic of Poland signed it, which means that the controversial and, in the opinion of educators, socially harmful law came into force on September 1, 2022.

It is difficult to find in the Act on the support and social rehabilitation of juveniles justification for the provisions on the possibility of realizing the principle of care and assistance in achieving the mission of socialization, social readaptation, reintegration and reculturation of young people, despite the beautifully sounding title and the provisions in the Preamble.

For in its essence, the Act is geared towards a more advanced social isolation of juveniles than before, a higher conviction rate, at the expense of their educational and correctional relations, family relations and, above all, the development of correct bonds with society.

The Act on the support and social rehabilitation of juveniles copies a number of provisions of the previous 40-year-old Act on juvenile delinquency proceedings (1982).

We are referring first of all to the coincidence of Articles 5, 6, 7, with subsections, of the Act on juvenile delinquency proceedings with Article 7, with subsections, of the Act on the support and social rehabilitation of juveniles, which are the most important, from a substantive point of view, part of the Act under review, as they concern the educational measures that can be applied by the courts to children and adolescents.

As it turns out, the educational measures specified in the Act on the support and social rehabilitation of juveniles of June 2022 overlap almost entirely with the educational measures of the Act dated 1982!

Therefore, it turns out that for the authors of the Act on the support and social rehabilitation of juveniles, the educational measures used in 1982 are sufficient, appropriate and relevant to today's reality!

The achievements of modern psychological and pedagogical sciences have been completely ignored and the reproduction of educational methods from the communist era should probably not be regarded as a model of pedagogical conduct.

The Act under review introduces a new educational solution that was not included in the Act on juvenile delinquency proceedings, which is still in effect – the institution of District Educational Center, whose purpose and tasks are undefined and it is unclear for which category of juveniles it is to be intended.

If specialists in special pedagogy and psychology are to be employed there, it must be said that there is already a shortage of such personnel in correctional institutions and youth educational centers, so it is difficult to expect that professional personnel will suddenly be found to work in District Educational Centers.

The same can be said about the budget issue – if there is a lack of funding for the development of existing juvenile facilities, it cannot be expected that such funding will be found for District Education Centers, which by their very nature will need this funding to an increased extent.

Funding such facilities at the beginning of their operations or just to sustain them at a basic level of operation would likely be an unnecessary expense and wasted funds.

A very controversial idea is to set the lower age of demoralization at 10 years old. Although the legal community has been calling for years for a statutory definition of such a limit, which until now has been an undoubted legislative gap that could provoke abuses in this regard, but in the opinions I am aware of, they did not refer to a specific age and did not substantively justify the legitimacy of the 10-year age limit specified in the Act under review.

The basic question is: is the child at the age of 10 sufficiently developed (mentally, e.g., cognitively, emotionally; biologically and socially) to be able to (consciously, reasonably) stand before the court and understand and at least partially accept the educational measures applied to him/her?

Another danger here is that court rulings are generally based on two factors: the level of demoralization (very difficult to diagnose and generally measured by the child's behavior not the psychological-social-biological conditions of that behavior) and the social harmfulness of the act committed. Indeed, one can imagine a situation in which a 10-year-old child is implicated, under the guise of presence, in a serious crime such as murder. Then they can be described as highly demoralized, participating in an act of high social harm, and one can apply to him/her a measure of placement in a correctional facility where he/she will be housed with demoralized 18-21 year olds. At that point, the 10-year-old will probably demoralize himself/herself in real terms and will join the ranks of criminals in the future.

Modern scientific knowledge in the social sciences clearly indicates that the lower limit of demoralization, set at the age of 10 is a flawed solution from a psychological, biological-medical and pedagogical point of view, and should be moved to the age of 13.

The Act in question also directly defines the means of direct coercion that can be used against juveniles placed in a social rehabilitation facility.

The use of direct coercive measures: handcuffs, safety belts, placement in the adaptation room of a juvenile, is from the psychological and pedagogical point of view a violation of his/her psychological and mental structures and the rights and freedoms belonging to every human being, and if there is such an absolute necessity (a threat to the life or health of the pupil or others) the direct coercive measure should be used only in definitive cases, thoroughly recognized by a specialist (psychiatrist, clinical psychologist) and, above all, precisely defined and codified.

The big problem in this regard is certainly to determine the conditions and circumstances under which the above measures could be applied to a juvenile, and to define the “final case”.

Undoubtedly, in the realities of the work of social rehabilitation facilities, this will depend on the judgment of directors, educators or others in a difficult “behavioral” situation with the juvenile. The question is whether this assessment will be a professional and balanced assessment and not an impulsive and emotion-driven one? Thus, it will be questionable whether the person undertaking such an assessment was objective at the time and what rationale actually guided him/her.

Unfortunately, the Act under review does not include a rationale for the implementation of the above principles, thus duplicating the mistakes of the existing Act on juvenile delinquency proceedings.

Article 4, section 4 of the draft Act on the support and social rehabilitation of juveniles contains a provision that has not been found in any juvenile law to date, and which appears to impose an obligation on the school that does not fit into contemporary, well-known European concepts of the public education system. It provides a formal opportunity for the school principal to use a register of punishments, which until now were reserved exclusively for the family court, shifting, as it were, responsibility for non-didactic forms of student behavior to the principal and the school.

At the same time, the wording of section 4 indicates that the director is supposed to be able to diagnose signs of demoralization and have an understanding of the code registers of criminal acts.

The cited statutory provision thus gives principals of public schools in Poland the official status of social judge and at the same time executor of punishments for students.

This bizarre situation may change the face of Polish education, from an educational and developmental face to a punitive and stigmatizing face, which has nothing to do with the educational function of school, which is to remove barriers to the personal and social development of students and practically teach them, among other things, values such as solidarity, subsidiarity, caring, etc.

Introducing formalized punishments into school life hitherto reserved for the jurisdiction of the courts will undoubtedly result in increased levels of exclusion and stigmatization of children and adolescents.

The entry into force of the provisions of Art. 4 section 4. of the Act on the support and social rehabilitation of juveniles, which transfers partial responsibility for the fate of juveniles from the judicial apparatus to school principals, is an incomprehensible and socially harmful decision.

The essence of the social rehabilitation work resulting from the solutions adopted in the Act on the support and social rehabilitation of juveniles is to adapt and adjust the wards to life in an institution and not to life at large, and the “educational” tool is the proposed harsh system of punishments provided for in the Act in question.

This “forced” adaptation and adjustment of juveniles by means of the punishment register to the rigid rules of the institution, combined with the restriction of external social contacts, has two consequences: it teaches the wards to conform within the framework of the so-called “false institutional socialization”, and deprives them of the skills and competence to function in the open environment after leaving the “walls” of the social rehabilitation institution.

It can be noted that the Act lacks proposals to make the process of readaptation and reintegration of juveniles into society more realistic. Regulations focus on limiting freedoms and liberties of an individual, which, as a result, does not contribute in any way to socialization with the social environment, and, moreover, can be the cause of even greater anti-social attitudes.

In fact, the only positive aspect that can be found in the act under review relates to the legalization of the possibility for underage mothers with children to stay in a social rehabilitation facility, which has not been formally possible until now. However, the Act does not mention underage fathers and does not create the possibility for them to take care of the child in the conditions of a social rehabilitation facility and such cases should also be taken into account.

From the perspective of both contemporary knowledge of juvenile social rehabilitation and the experience of European countries, one should have expected legal solutions aimed at improving the system of juvenile social rehabilitation in free or semi-free conditions, in close contact with the natural family environment, in the local environment closest to social environment, while instead we received a legal act that “detaches” juveniles from the family and environment and “suspends” them in a social vacuum.

The Act on the support and social rehabilitation of juveniles can thus conventionally be called the “juvenile penitentiary law”, as it is geared toward increasing the level of punitive and isolationist measures applied to juveniles.

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