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Intellectually Disabled in the Field of Preventive and Rehabilitative Interventions

Abstract: The article attempts to describe the psychosocial functioning of people with intellectual disabilities (with particular emphasis on mild disabilities). Attention was drawn to the difficulties in an unambiguous assessment of their behavior in court and criminal proceedings, which result from the conditions of the intellectual disability itself, along with accompanying behavioral or mental disorders. As a result of the analysis of the literature and legal acts, the specificity of social rehabilitation activities undertaken towards people with intellectual disabilities in penitentiary isolation and in the probation system has been characterized.

Key words: Intellectual disability, convict, criminal responsibility, social rehabilitation.

Intellectual Disability and Social (Mal)adjustment

Disability is a complex and multi-faceted issue, discussed relatively often in the fields of medical, educational, and social sciences, and more recently in public life; less frequently in the criminal and penitentiary aspects. The term itself is relatively new (Krawczyk-Paśławska 2010, p. 12), however, people with various limitations or defects have always been present in the social sphere. Representatives of scientific disciplines perceive individuals with developmental limitations in various ways, operating or constructing different definitions of the concept of disability for the needs of their own field. This lack of uniformity is also evident

at the procedural level of disability assessment – as noted by A. Nymś-Górna, when several concepts of disability are used simultaneously within one country; a common and uniform one has not been developed in European Union countries either (Nymś-Górna 2019, p. 136).

The most well-known and globally referenced diagnostic and classification system is the Diagnostic and Statistical Manual of Mental Disorders,¹ according to the fifth edition (DSM-5) “Intellectual disability is a condition characterized by significant limitations in both intellectual functioning and adaptive with onset in the developmental period” (Bobińska et al. 2012, p. 32). These disorders occur during development, and the definition does not specify a specific age limit for their onset. However, it advocates the necessity of providing support to individuals with intellectual disabilities (referred to as ID in the text) in education, work, and independent functioning. The American Association on Intellectual and Developmental Disabilities, Ad Hoc Committee on Terminology and Classification, or AAIDD for short, further specifies the concept, stating that “intellectual disability is characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social and practical adaptive skills, with onset before age 18” (Schalock et al. 2010, p. 5).²

Four degrees of intellectual disability are distinguished: mild (55–69 IQ), moderate (40–54 IQ), severe (20–39 IQ), and profound (0–19 IQ). People with mild disabilities account for 85% of all people with ID (Patel et al., 2020, p. 27). Intellectual disability does not only concern dysfunction in the sphere of intellect; these individuals present varying developmental potentials, but equally significant disturbances in social functioning are also observed during the course of disability: all cognitive functions and processes deviate from the generally accepted norm (Grzesiak 2022, p. 85). Additionally complicating their daily lives are often co-occurring mental disorders associated with intellectual disabilities, among

¹ A lowered IQ is just one of three criteria necessary for determining intellectual disability according to the DSM-IV-TR (Diagnostic and Statistical Manual of Mental Disorders) classification. Significant deficits in adaptive functioning are also observed, including at least two of the listed areas of adaptation (communication, self-care, living in a home environment, interpersonal skills, social skills, decision-making, ability to use social resources, education, work, leisure, health care, and safety). Cf. Obiektywna i subiektywna jakość życia dorosłych osób z niepełnosprawnością intelektualną zamieszkujących województwo wielkopolskie. Uwarunkowania środowiskowe oraz poziom wsparcia realizatorów polityki społecznej. Raport z badania, Regionalny Ośrodek Polityki Społecznej w Poznaniu [Objective and subjective quality of life of adults with intellectual disabilities living in the Wielkopolskie Voivodeship. Environmental conditions and the level of support of social policy implementers. Research Report, Regional Center for Social Policy in Poznań], 2014 [accessed: 28 January 2023].

² Danuta Kopeć points out that intellectual disability is not a disease, although it has its code in ICD-10 and ICD-11, it is not a mental disorder, although it has its code in DSM-5; it is a specific state of functioning in which a significantly lower than average level of intellectual functioning coexists with limitations in adaptive skills (Kopeć 2019, p. 18). Following Hanna Grzesiak, it can be added that it is a condition that is not subject to pharmacological treatment, but only to pedagogical-psychological interventions and lasts throughout life (Grzesiak 2022, p. 85).

which mood disorders, depressive disorders, anxiety disorders, psychotic disorders, and the most frequently described behavioral disorders in intellectually disabled individuals are mentioned.³

Understanding the determinants and social functioning, as well as the perception of reality by individuals with intellectual disabilities, is crucial, especially when taking actions of an educational, corrective, punitive, or readaptive nature, although among theorists and practitioners, different positions regarding the correlation between intellectual disability and social maladjustment or criminal behavior can be observed. A whole range of bio-psycho-social determinants is present here, with particular consideration given to the role of the family environment, as deficits and disorders within it are often interpreted by outsiders, as well as pedagogues or other specialists, as intellectual disabilities. A. Mikrut's research on aggression among intellectually disabled youth showed a different way of expressing aggression compared to their non-disabled peers (perhaps stemming from a lack of trust and fear of harm by others). Individuals with ID were significantly more verbally aggressive, including threatening, using vulgar language, shouting, criticizing, but were much less likely to resort to physical aggression. Emotional

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³ Behavioral disorders can take many forms: self-harm, aggression, outbursts of anger, destructive behavior, eating (drinking) disorders, escape behaviors, abnormal sexual behaviors. They have far-reaching physical, emotional, social, educational, and economic consequences, and their pathogenesis is not straightforward either. Kinga Bobińska and Piotr Gałęcki write that the mentioned disorders are a combination of impaired communication abilities and the ability to adapt to changing environmental conditions. Referring to McClintock's research, they also point out an increased risk of behavior disorders as a function of the degree of mental impairment, the degree of deficit in communication skills, and the lack of stimulating care from the surrounding environment of the disabled person (McClintock et al. 2003, cited from Bobińska et al. 2012, pp. 330–331). Considering the limited adaptive abilities (related to language, reading, writing, comprehension, use of the concept of money, time, numbers, managing one's behavior), social skills (including interpersonal skills, social responsibility, self-dignity, caution, level of trust, naivety, obeying laws and rules, actively avoiding being a victim of crime, solving social problems), practical (concerning daily activities, vocational skills, money management, safety behavior, using healthcare, transportation, telephone, planning daily activities), meeting the basic needs by individuals with intellectual disabilities can be difficult, causing frustration and negative emotions. All these elements somehow pave the way for abnormal behaviors, which for individuals with ID often serve as a means to achieve a goal, such as drawing attention to themselves, obtaining desired items, or avoiding certain demands placed on them; often, they take the form of provocative behaviors (Bobińska et al. 2012, pp. 330–331). Mental and behavioral disorders are much more prevalent in adult ID than in the general population, which causes diagnostic difficulties. Psychiatry specialists in the field of intellectual disabilities from the UK and Ireland have created the DC-LD classification (Diagnostic Criteria for Psychiatric Disorder for use with adults with Learning Disabilities/Mental Retardation), aimed at systematizing and assisting in diagnosis, and thus establishing a treatment plan for people with ID. The authors characterized the DC-LD system in their text, and although it is useful in diagnosing disorders, especially in individuals with significant and profound intellectual disabilities, it is worth introducing due to the need for accurate recognition of disorders co-occurring with ID. As the authors of the text point out, the DC-LD System may prove useful in forensic psychiatric adjudication or in the process of assessing the degree of disability (Kowalewska et al. 2019).

disturbances were observed in them, but compared to peers with normal intellectual functioning, they exhibited lower levels of overall aggressiveness, physical and indirect aggression, negativity, suspicion, irritability, and guilt (Mikrut 2005). The mere fact of being diagnosed with an intellectual disability does not directly result in social development disorders, maladjustment. K. Pająk presented similar conclusions from her research, by stating that “one cannot equate behavioral disorders with mild intellectual disabilities,” and according to her significantly more individuals with normal intellectual functioning exhibited difficult behaviors than minors with mild intellectual disabilities (Pająk 2014, p. 91).

Many authors point out the occurrence of emotional disorders among children and adolescents with intellectual disabilities, such as: elevated mood states, lowered mood states, unmotivated mood swings, psychomotor agitation, motor agitation, and protective and defensive reactions that are inadequate to the stimulus (Kościelak 1989, p. 53); instability, emotional lability, and weakened control mechanisms were also noted by Kostrzewski in his comparative analysis with peers with normal intellectual functioning (Kostrzewski 1981, p. 117). Based on her research, I. Obuchowska adds that it is precisely the lability and weakened control over emotions that can trigger outbursts of anger and aggressive behavior in individuals with ID, and more often than in healthy peers, one can observe states such as discouragement, passivity, and tearfulness among them. However, analyses of the literature allow K. Ćwirynka to postulate the hypothesis that due to the positive attitude of intellectually disabled individuals towards their own revalidation, these states can be overcome and utilized in the further teaching process (Obuchowska 1991, p. 226; cf. Ćwirynka 2009, p. 52).

Justyna Siemionow, on the other hand, writes about socially maladjusted minors with intellectual disabilities, which may contribute to the occurrence of unacceptable or unlawful behaviors, “difficulties in predicting the consequences of their actions for themselves and others, logical reasoning, as well as understanding the phenomena occurring in the surrounding reality – make such an individual [intellectually disabled – note by ESM] far more susceptible to negative environmental influences. The ‘outer containment’ in socially maladjusted youth, the dominance of the impulsive sphere over cognitive reasoning – are pillars maintaining the disturbed, maladaptive behaviors of the individual.” Regarding the external locus of control in intellectually disabled individuals, which is associated with their proneness to suggestion, S. Opozda-Suder also writes that “it is easy to persuade disabled individuals to do anything if they notice temporary benefits or pleasures that weaken the sense of failure and the inability to satisfy their needs. Additionally, characteristics such as limitations in abstract thinking, reduced curiosity, decreased ability to focus attention, increase susceptibility to temptation, hinder the ability to delay gratification, and consequently, incline towards immediate fulfillment of desires” (Opozda-Suder 2019, p. 268). Thus, the author points out that the lowered level of intellectual functioning significantly influences the way ID individuals

internalize approved norms and values, and to a large extent, it depends on the experiences and interactions of ID individuals with their immediate environment, which are often unfavorable due to the phenomenon of their stigmatization and stereotyping, feelings of isolation and rejection, which ID individuals then compensate for or react to in various ways.

In addition, the aforementioned J. Siemionov, sees another important issue regarding the difficulty in distinguishing mild intellectual disability from neglect. The accumulation of factors such as lack of recognition of needs (deprivation), lack of parental involvement in the child's developmental process, improper parenting attitudes, emotional neglect may manifest in behaviors that are constitutive for describing mild intellectual disability. Ewa Jarosz pointed out that "experiencing abuse can be a cause of developmental disorders and the emergence of disabilities (...) and further pointed out that in the case of children with disabilities, there is an increased risk of harm in all its forms, and at the same time, for many reasons, these children are particularly vulnerable to developing serious and extensive consequences of such behavior" (Jarosz 2011; cf. Żywucka-Kozłowska 2013).

E. Jarosz emphasizes the multifaceted and complex interrelationship of child abuse with disabilities. She distinguished three main research perspectives: disability of children as the context for the occurrence of the phenomenon of harm within their family; disability of children as a consequence of experiencing abuse from loved ones; child abuse as behaviors and situations determined by parents' disabilities. She notes the dominance in research of the first of the mentioned trends (Jarosz 2011). E. Żywucka-Kozłowska also points to correlations between intellectual disability and threats arising from the failure of others to fulfill their obligations or as a result of their deliberate actions, when the ID individual becomes a victim. The author addresses the issue of safety threats in everyday situations in the family home, at school, and in other care and educational institutions, considering mental retardation (the author uses this term) as a predisposing factor in harming so-called vulnerable individuals (Żywucka-Kozłowska 2013, p. 255 et seq.).

In summary, behavioral disorders occurring in individuals with intellectual disabilities are a conglomerate of adverse endogenous and exogenous factors, but attributing developmental social disorders to individuals with intellectual disabilities solely based on the presence of reduced intellectual capacity is too much of a simplification and a mistake.

This was aptly expressed by Wiesław Ambrozik: "...criminals are often a victim of adverse social factors that have led them to social and criminal deviance, and not a depraved criminal by their own will, against whom nothing more can be done than to implement an adequate system of punishment, which are essentially revenge and repression for the committed acts" (Ambrozik 2008, p. 194). The aforementioned system of punishment can be particularly harsh for individuals with intellectual disabilities, who may not always fully understand the interventions made towards them.

Criminal Liability of Intellectually Disabled Perpetrators

“Intellectual disability, even when confirmed by a judgment, does not in itself exempt a person who has committed an offense from criminal responsibility. Nor does the incapacitation of the perpetrator preclude such liability” (Szeroczyńska 2014). Documents attesting to the specified conditions are significant in the scope of civil, social, educational, or tax law, but have no effect in criminal law.⁴

Article 1 § 3 of the Polish Penal Code (Journal of Laws of 2022, item 1138, as amended) stipulates that “a perpetrator of a criminal act does not commit a crime if guilt cannot be attributed to them at the time of the act” (there is no crime without guilt), therefore, the priority task for the prosecution and the court is to verify the perpetrator’s sanity at the time of committing the criminal act. This is one of the circumstances excluding guilt, “a person does not commit a crime if, due to mental illness, intellectual disability, or other impairment of mental functions, they could not recognize the significance of their actions at the time or direct their behavior” (Article 31 § 1 of the Polish Penal Code). Determining the state of mental health, more precisely, the opinion issued by experts, is crucial evidence for determining the sanity or limited sanity of the perpetrator of a criminal act. In practice, these are most often forensic psychiatric opinions, but other opinions from psychiatrists with expertise in other specialties are also possible (Gaberle 2001, pp. 34–44; Habzda-Siwiek 2006;⁵ these issues are also regulated in the Polish Code of Criminal Procedure, Article 202 § 2).

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⁴ It is worth mentioning on this occasion that numerous legal acts, despite their numerous amendments, still lack unified terminology for people with disabilities. Many still operate with old terminology: The Polish Family and Guardianship Code uses the term “mental retardation” in Article 12 (Act of 25 February 1964 (i.e. Journal of Laws of 2020, item 1359), in Polish education law, the concept of mental impairment was used until 2015 (Regulation of the Minister of National Education of 17 November 2010 on the conditions for organizing education, upbringing and care for children and young people with disabilities and social maladjustment in and general or integrative kindergartens, schools and departments (i.e. Journal of Laws of 2014, item 414), the term “mental retardation” is still present in Article 3 of the Polish Act on Mental Health Protection (Act of 19 August 1994 on Mental Health Protection, i.e. Journal of Laws of 2020, item 685), as well as in the regulations on disability adjudication. Article 31 § 1 of the Polish Penal Code also applies the concept of mental retardation when it stipulates circumstances excluding guilt (Act of 6 June 1997 – Penal Code, i.e. Journal of Laws of 2022, item 1138), as is the case in the Polish Executive Penal Code, in Article 96 on serving a sentence in a therapeutic system (Act of 6 June 1997 – Executive Penal Code, i.e. Journal of Laws of 2023, item 127). The intricacies associated with the legal assessment of the situation of intellectually disabled minors and juveniles were also pointed out by Anna Nowak (2018, pp. 181–189).

⁵ Ewa Habzda-Siwiek (2006, issue 2), in her text, succinctly describes the importance of seeking opinions on the mental health status of a potential perpetrator of a prohibited act, pointing out theoretical and practical problems that may arise in seeking such opinions.

These procedural provisions are particularly significant, and at this point, I emphasize their importance for individuals with intellectual disabilities because, on the one hand, due to the complexity and lack of terminological uniformity of intellectual disabilities themselves in the literature and legal acts, and on the other hand, legal consequences in the form of prison isolation – a thorough and precise diagnosis of mental health status, determination of intellectual and psychosocial functioning levels of a person with ID (sometimes requiring forensic psychiatric observation, art. 203 of the Criminal Procedure Code) guarantees the proper conduct of criminal proceedings, i.e., not only assessing the perpetrator's sanity at the time of the offense but also their current health status and ability to participate in the proceedings (a comprehensive assessment of the perpetrator's psychological profile).

Insanity or significantly limited sanity is always determined at the time of the offense and in relation to a specific criminal act. "The determination of insanity consists of two components: psychiatric and psychological. Accordingly, the intellect factor is responsible for recognizing the significance of the act, while alternatively opposed to it, the will factor for the ability to direct one's intellect" (Bobińska et al. 2012, p. 532).

In the context of the psychosocial functioning of people with varying degrees of intellectual disability described in this text, Kinga Bobińska et al. point out that a person with mild ID may recognize the significance of the incriminated act and its consequences related to a simple understanding of social norms, and therefore, the accountability of such a person is not abolished. However, a person with a more profound intellectual disability may understand the essence of the committed act but may not comprehend it in socio-legal terms, which results in limited accountability up to insanity (Bobińska et al. 2012, p. 532).

Furthermore, Małgorzata Szeroczyńska points out that "(in)sanity is examined point-wise – it refers only to the moment of the act (not even the day, but exactly the moment of the event) – and situation-wise – in relation to specific behavior" (Szeroczyńska 2014, p. 291). This means that the determination of insanity results in a lack of conviction but does not preclude the application of other measures such as preventive security measures.⁶ Committing an act in a state of insanity, if its social harm was significant and there is a likelihood that the perpetrator will commit further dangerous acts in the future and this is related to their intellectual disability may result in the placement of the perpetrator in a psychiatric institution (in specifically justified cases). In other situations, when ID was mentally sound during the committed act, they are held accountable according to general principles like fully capable perpetrators, although circumstances influencing a milder punishment may arise (significantly limited sanity). Therefore,

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⁶ Article 93 a § 1 of the Polish Penal Code stipulates that the security measures include electronic monitoring of the place of residence, therapy, addiction treatment, and placement in a psychiatric facility.

comprehensive diagnosis of perpetrators with developmental and psychological deficits is even more necessary. Such individuals, by breaking the legal norm, may lack the knowledge that their behavior is prohibited (lack of capacity to recognize the act), may also be unaware of the consequences it will cause (inability to understand the actual consequences), and may not be able to guide their behavior according to prevailing social standards.

Intellectually Disabled Individuals in the Penitentiary Facility

It may be wondered whether the multitude of factors mentioned in this text, which should be subjected to research, or the complexity of the nature of individuals burdened with dysfunctions, disorders, or mental illnesses, or perhaps deficiencies in the area of criminal and judicial procedures and the functioning of the penal system lead to the incarceration of individuals whose presence in the prison environment is highly questionable?

Interesting observations on this topic were made by American researchers, indicating a higher percentage of ID inmates in prisons (in the United States) compared to the prevalence of intellectual disabilities in the general population. This may be due to a number of reasons: criminal acts committed by ID individuals are generally not planned, result from impaired control of impulsive behavior, lack of ability to anticipate consequences, inability to cope with emotionally difficult, stressful situations, and prolonged emotional tension. Reduced intellectual abilities cause ID perpetrators not to evaluate their intentions, lead to distorted ability to properly interpret social situations, which makes them more likely to be captured. The aforementioned researchers also point out that ID individuals most often do not act alone, and that the emotional hunger, need for acceptance, and the outer containment present in them [as mentioned above by Justyna Siemionow] often cause them to become victims manipulated into committing crimes by criminal groups (Caldera et al. 2001, cited from: Bobińska et al. 2012, pp. 530–531).

The situation of disabled offenders in Poland was examined a few years ago, among others, by the Ombudsman conducting visits to penitentiary units and diagnostic centers. It was then noted that information about disabilities may go unnoticed or be considered insignificant at various stages of criminal proceedings:

Police officers do not record them; prosecutors do not appoint experts when there are doubts about a person's mental health; courts ignore circumstances indicating that a person may have difficulty exercising their rights (no mandatory defense counsel is provided!); sentences are also passed that do not take into account the convicted person's ability to serve the sentence; probation officers request placement in prison of someone who has not paid the imposed fine or has not performed community service work specified in the sentence – without seeing the person, and the court does

not verify whether such a person can serve the adjudicated sentence; Prison Service officers do not provide important information about the inmate to prosecutors, courts, or the penitentiary judge. They do not know how to react in such a situation, because they are not sufficiently trained. The prison judges do not receive signals that would lead them to take action within the scope of their competence: to meet a prisoner whose situation requires intervention, to make recommendations to the Prison Service, to apply for a break from their sentence.⁷

The mentioned irregularities at various stages of judicial proceedings are not meant to be a reason for criticizing the justice system, but they do not allow us to remain indifferent to the media-highlighted cases of Radosław A., Arkadiusz K., Patryk K., i.e., men who despite their moderately or significantly reduced intellectual capacity confirmed by relevant documents (including disability certificates, diagnosed mental illness, expert opinions, documents of incapacitation), and manifesting observable behavioral disorders such as: lack of reading and writing skills, lack of temporal orientation, inability to work, helplessness in isolation, reacting with crying, hiding under the bed, etc., found themselves in prison, experiencing additional hardships⁸ because individuals with disabilities, regardless of their type and degree, struggle with difficulties in adapting to prison conditions (Belzyt, Połom 2017, p. 124). They have become an infamous example of the malfunctioning of the justice apparatus, which requires constant monitoring, and as a result, actions were taken in the form of complex motions to the court for the reopening of proceedings, consideration of possible appeals or pardons both in relation to the mentioned men and other intellectually disabled perpetrators (analysis of court proceedings initiated by the Ombudsman questioned approximately 40% of the previous decisions; Dawidziuk, Mazur 2017, p. 9).

While maintaining relative objectivity in assessing the situation, it must be borne in mind that mentally ill or intellectually disabled persons do not always manifest significant behavioral disorders, and even going through the subsequent stages of criminal proceedings (detention, police interrogation, filing of charges, during arrest) in the absence of prior documentation attesting to illness and/or disability, they may not be properly diagnosed and subjected to further verification

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⁷ <https://bip.brpo.gov.pl/pl/content/wiezniowie-o-umyslowosci-dzieci-chorzy-psychicznie-rpopowiadalo-o-wynikach-badan-w-wiezieniach> (accessed: 27.01.2023).

⁸ M. Snopek wrote more broadly about the reasons for the degradation of prisoners and reducing them to the role of a victim, recognizing that persons with victim-like qualities are considered to be not only infantile individuals or those with a fearful attitude to the environment, but also those who exhibit certain behaviors such as wetting the bed at night (for various reasons), physical effeminacy, speech defects (lisping), or visual impairments (strabismus), low IQ, are inept in life, etc. Individuals who do not conform to the masculine ideal, are fearful, tearful, or whose appearance is effeminate, etc., are more exposed to harassment from other inmates. Interestingly, physical disability is not a factor influencing degradation in the prison environment, and it is much less significant compared to the psychological predispositions of individual inmates; see Snopek 2013.

on this account. Janusz Heinzman writes that „mildly mentally handicapped people try not to expose their intellectual deficits. They mask and hide their limited memory, impaired counting, and difficulty concentrating. They often “compensate with their demeanor,” but they are also overwhelmed by a difficult situation (e.g., the presence of the police), further limiting cognitive abilities, and they may be treated as individuals consciously avoiding, for example, remembering events, describing facts, and details of the crime. The fact that they often “want to appear good” and meet someone else’s expectations, such as those of interrogators, causes them to agree to suggestions, admit to something they did not do, take the blame for others” (Dawidziuk, Mazur 2017, p. 21 et seq.). Perhaps this is the reason, as the author further observes, that mild intellectual disability is rarely identified at the time of arrest, initial police interrogations, charging, or imposition of detention. “It is only during the serving of the sentence [though not always – note by ESM] that irreversible deficits of adaptive and social adjustment disorders in terms of communication with others become apparent. Such individuals cannot accumulate conceptual, social, and practical skills to help them function in everyday life, which is why they are often exploited by more dominant individuals in correctional facilities, although not necessarily with significantly higher IQ” (Dawidziuk, Mazur 2017, p. 21 et seq.). Furthermore, it happens that placement in isolation conditions and the accompanying negative emotions can activate a condition that was in remission, and they can also trigger illness and behaviors requiring a response and assessment from the Prison Service.

The multitude and complexity of situations on the border between normality and mental illness, intellectual disability demonstrate how essential diagnosis is.⁹ Examinations collected in pre-trial and jurisdictional proceedings, as well as psychological and psychiatric examinations in executive proceedings, are needed in the process of classifying convicts and, in particular, identifying those who require specialized interventions such as psychological, medical or rehabilitative care.

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⁹ Psychological diagnosis, with particular emphasis on clinical diagnosis, according to Andrzej Lewicki, involves, firstly, describing the behavior disorders of the examined person in various areas of life: family, professional, social, but also occurring in the course of the examination, during the activities performed in the course of executive proceedings; second, identifying the mental dysfunctions (emotional, motivational, cognitive) that underlie these disorders; third, determining the importance of psychological mechanisms in the etiology of the disorders (cf. Lewicki 1978). Stanisław Nieciński proposed a bimodal diagnosis for the needs of the court, taking into account both external-objective and internal references. The first plane concerns interaction with the environment, while the second reflects the subjective aspect of a person’s personality (cf. Nieciński 1990). Wiola Friedrich, in her text, observes that social rehabilitation pedagogy specifies the subject and object of diagnosis with regard to penitentiary diagnosis. She also posits that for practitioners of social rehabilitation education, diagnosis is identified with the recognized state of affairs, the introduction of intervention and corrective actions, and determining the effectiveness of the actions taken. In the initial contact with a convicted person, it is important to recognize behavioral disorders but also factors that may affect human functioning – hindering or facilitating the process of their social rehabilitation (cf. Friedrich 2015, p. 46).

According to the provisions of Articles 96 and 97 of the Polish Executive Penal Code,¹⁰ they should then be directed to serve their sentence in the therapeutic system and, according to § 4 of Article 96, be referred to a specialized therapeutic ward.¹¹ The purpose of the measures taken for this group of prisoners is to prevent the aggravation of pathological personality traits, restore mental balance, develop social coexistence skills, prevent the deterioration of their health, and prepare them for independent living (Article 97 § 1 of the Polish Executive Penal Code). For individuals with intellectual disabilities, it is crucial to have a genuinely individualized social rehabilitation and therapeutic program. This program should, firstly, be implemented immediately upon their placement in a penitentiary to minimize the mentioned adaptation problems; secondly, it should consider the type and severity of their deficits/disorders, which may limit their ability to benefit even from the therapeutic system. The insufficient availability of addiction treatment programs, and social rehabilitation programs for inmates with significant deficits in writing, reading, understanding text, and reduced cognitive abilities have already been highlighted by studies conducted by the staff of the Ombudsman Office (Dawidziuk, Mazur 2017, pp. 216–231). In other words, there is an urgent need to prepare programs dedicated to individuals with various degrees and types of disabilities so that their time in isolation contributes to their psychosocial development progress. This way, individuals with intellectual disabilities would not pose a burden or challenge to the penitentiary staff and other inmates.

It is hard not to agree with the thesis that in its current form, the penitentiary system does not fulfill its function concerning individuals with intellectual disabilities, both in terms of organizational and pedagogical (and perhaps even the need for re-education, revalidation?) preparation of the Prison Service, but the idea of profiling the establishments requires legislative, organizational measures. It seems to me that the state of organization of the Polish system of social rehabilitation of offenders, including those with various mental deficits, still allows for seeking solutions within the existing procedures. Bearing in mind the aforementioned difficulties faced by individuals with intellectual disabilities in the prison environment, it is justified to consider using preventive measures and/or probation penalties.

People with Intellectual Disabilities Under Probation

Information about intellectually disabled offenders in penitentiary conditions is available in Prison Service statistics (in the nomenclature of the Code mentally

¹⁰ Polish Act of 6 June 1997 — Executive Penal Code (i.e. Journal of Laws of 2023, item 127).

¹¹ J. Heitzman suggests that for the achievement of corrective goals of imprisonment, dividing it into three systems of enforcement may not be sufficient for intellectually disabled individuals and advocates for profiling prisons for individual groups of convicts, with a higher number of employed psychologists, psychiatrists, and other specialists than guards (Dawidziuk, Mazur 2017, p. 24).

retarded), they are qualified to serve their sentences in the therapeutic system, joining the ranks of inmates with so-called non-psychotic mental disorders, including those convicted of crimes committed in connection with sexual preference disorders, those addicted to a psychoactive substance, and convicts with physical disabilities requiring specialized interventions, especially psychological, medical or rehabilitation care (Article 96 § 1 of the Polish Executive Penal Code).

The issue of disabled, mentally disturbed individuals in closed conditions is also a point of interest and scientific exploration among Polish researchers, as evidenced by numerous texts (Nawrocka K., Zozula J. 2020; Nymś-Górna 2019; Sakowicz-Boboryko et al. 2018; Malinowska 2018; Fajfer-Kruczek 2017; Braun 2013). However, there are relatively few scientific studies and literature addressing intellectually disabled offenders of prohibited acts placed under probation, including under the supervision of a probation officer or electronic surveillance. It is difficult to operate with numerical data in this case since the Probation Service in Poland does not keep records of convicts with intellectual disabilities in statistics.

I myself once practiced as a probation officer for adults, and I still remember supervising defendants with mild intellectual disabilities. While the family environment of those under supervision may vary in terms of dysfunctionality and complexity of difficult situations, which is not surprising, the behavior of the supervised individuals with diminished intellectual capacity, sometimes deviating significantly from the norm, can not only be surprising (especially if not documented) but also present a challenge for the probation officer. It is hard not to agree with Małgorzata Osińska's words that "cooperation with a disabled person requires not only the adaptation of the probation officer to the existing situation and undertaking actions that deviate from the usual proceedings but also thorough theoretical preparation in the field of special pedagogy" (Osińska 2017, p. 134).

Pursuant to the Act,¹² probation officers perform specified by law educational and social rehabilitation, diagnostic, preventive and control tasks related to the enforcement of court judgments (i.e. Journal of Laws of 2020.0.167, Article 1), but given the specificity of working with mentally, intellectually impaired defendants, expanding the catalog of tasks to include social rehabilitation and revalidation should be considered. However, this is not straightforward and obvious, since the range of tasks assigned to probation officers is already broad, and each successive change in the law tends to expand this catalog. In addition, in carrying out their statutory tasks, acting in accordance with the law, in certain organizational structures, the probation officer, in accordance with the Code of Ethics for Probation Officers,¹³ has the authority to freely choose the methods and means of interventions in accordance with the current state of knowledge in pedagogy,

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¹² Polish Act on Probation Officers of 27 July 2001 (i.e. Journal of Laws 2020.0.167)

¹³ Resolution of the National Council of Probation Officers of 6 May 2004, Code of Ethics for Probation Officers, Article 5.

psychology and social rehabilitation and social work. Responding to the needs of their clients, assisting them in the process of active independent living and assuming constructive social roles, they themselves assume various roles, i.e. facilitator, mediator, advisor.

It is important for the probation officer to build and remain in a close relationship with the client, according to Maciej Muskała and Justyna Kuształ (2018, p. 31 et seq.) – its quality and consistency are crucial for effective practice. The authors also observe a shift from the previously commonly used model of case work (working with the individual) to case management (directing, managing the individual), a change in the methodology of social rehabilitation intervention, which is otherwise debatable. The dominance of the control-repressive model in practice leads to the fact that despite the importance attached to educational methods aimed at instilling appropriate social attitudes in the supervised person, the probation officer activities during supervision tend to focus more on monitoring, preventing, and safeguarding (Ambrozik 2009, p. 116). This distorts the firmly grounded pedagogical ideas developed by the classics of social rehabilitation when it comes to etiotropic actions (removing the causes of individual behavior disorders mainly through the use of rewards and reprimands), ergotropic actions (developing motivational habits competitive to habits that lead to negative reactions), semiotropic actions (strengthening the resilience of the client, reinforcing the desired results of social rehabilitation, achieved in the course of ergotropic actions) used in the case work (Czapów 1978; Czapów, Jedlewski 1971). Thanks to the anthropotechnical and cultural-technical procedures, the probation officer has the opportunity to have a wide-ranging impact on the defendant and their family, since the main emphasis has been on broadly defined care and education.

Anna Janus-Dębska points out that for the effective actions carried out by probation officers, especially those of a preventive and social rehabilitation nature, education and so-called academic knowledge alone may prove insufficient. Instead, their prior voluntary, pedagogical, and support experiences gain strength, along with social competencies, resources such as sensitivity, observational skills, inquisitiveness, seeking unconventional solutions, and sometimes intuitive actions. Additionally, communication skills such as active listening, paraphrasing, adapting language to the capabilities and needs of the supervised individuals are crucial (Janus-Dębska 2016, p.100). The profession of probation officer should therefore, be practiced by people who are open to others, reflective and forward-thinking, not taking responsibility for others, but responsible for their own actions in relation to the clients, which is also confirmed by Marek Konopczyński. According to Konopczyński, probation officer should primarily be a pedagogue and educator rather than someone administering the fate of their clients¹⁴ (Konopczyński 2019,

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¹⁴ As Marek Konopczyński (2019) writes about the personal and social potential of probation officers. The former comprises the following dimensions: professionalism stemming from higher

p. 21). Extremely important in all helping professions, including the probation service, is maintaining the autonomy and dignity of individuals, as emphasized by Andrzej Bałandynowicz. This becomes particularly significant in working with people with disabilities. He stresses that every person has absolute value, and stereotypes suggesting some are better or worse, such as flawed or disabled individuals, should be rejected. He also suggests refraining from relativism in assessing the entities performing evaluations and not solely judging individuals based on their actions but evaluating them as individuals, rejecting subjective attitudes towards them (Bałandynowicz 2012, p. 113). It is difficult not to agree with this standpoint, which even more strongly emphasizes seeing a probation officer as a person with high moral qualities. These and other indicated qualities somewhat establish the archetype of a probation officer, which is usually verified in their daily interactions with the clients. Therefore, it is equally important for the probation officer to have the ability to utilize support and assistance from other specialists, services, and institutions,¹⁵ as highlighted by A. Bałandynowicz. A probation officer alone cannot conduct the entire diagnostic process. The author points out that the trend of using specialized services is observed worldwide in the probation field, where professional diagnoses are provided by teams of specialists including doctors, psychologists, educators, and sociologists (Bałandynowicz 2012, p.114). Diagnostic assessment of personal-cognitive and environmental factors constitutes a crucial initial stage of the probationary procedure, upon which the planning and course of social rehabilitation work with clients depend. Focus research conducted by Karolina Goede (2020) with specialist probation officers supervising individuals with mild intellectual disabilities revealed deficiencies in necessary documentation for the diagnostic process; lack of medical documentation concerning the mental health status of clients, including diagnoses considering the level of intellectual, cognitive, and social functions, as well as indications for therapy, the lack of a certificate specifying the degree of disability, etc. Consequently, information regarding intellectual disabilities was often gathered by curators incidentally when observing the behavior of the clients, interviewing them, or inferring them on the basis of the special school they completed. Additionally, considering other accompanying disorders associated with intellectual disabilities mentioned in this text (the so-called dual or triple diagnosis), a range of tasks addressed to probation officers

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education; a high level of occupational identification; and a low turnover rate among probationary staff, facilitating the transmission of intergenerational experiences. On the other hand, the sum of interpersonal experiences of probation officers, based on their professional competencies influencing interactions with clients in specific times and places, is referred to as social probationary potential.

¹⁵ Danuta Jurczyk and Andrzej Staniucha critically addressed the role of cooperation between probation officers and other services in the local environment, pointing out various misunderstandings in interpreting the duties and responsibilities of probation officers arising from legal acts and implemented in practice (cf. Jurczyk, Staniuch 2015).

emerges. These tasks pertain to standard case work procedures modified by methods and approaches proposed by probation officers based on their personal and professional experiences (length of service), tailored to individual needs, especially intellectual deficits, of probationers.

Data collected by K. Goede revealed areas of difficulty in working with intellectually disabled perpetrators. These include the lack of regulation in the supervision procedure of individuals with intellectual disabilities specified by law or regulation, resulting in the absence of additional powers for the probation officer regarding, for example, access to medical documentation, assessment of progress in therapy, rehabilitation, etc.

The legislator attempted to categorize cases and persons under probation supervision based on the risk of recidivism. Three risk groups have been identified: 1) reduced-risk group (A); 2) basic-risk group (B); 3) high-risk group (C) (Art. 169B of the Polish Executive Penal Code). However, qualification into a group is primarily influenced by the type of prohibited act committed; the level of intellectual development does not constitute a condition in any of the listed groups, leaving probation officers with some interpretive discretion but also uncertainty regarding the formal organization of supervision. This raises another difficulty regarding the methodology of conducting supervision in accordance with the assumptions of oligophrenopedagogy. None of the legal acts within the realm of probation do not specify the tasks and responsibilities addressed to probation officers supervising ID persons. Therefore, the so-called human factor becomes particularly significant here, that is, the sensitivity of the probation officer to the individual situation of the defendant and their family, involvement in conducting the case, and flexible application of actions that will help both the defendant and the entire family understand the situation they are in, recognize deficits and resources they possess, and skillfully manage them to avoid repeating mistakes (including the risk of committing another offense).

Similar conclusions were reached by M. Osińska, who recognized that individuals with disabilities who have committed a crime and have been placed on probation supervision as a result enter a system that is not always prepared to carry out social rehabilitation and readaptation tasks towards them. The author writes that people with disabilities sometimes need constant support in their daily functioning, and probation supervision was not established for this purpose (Osińska 2017, p. 146).

I believe that the aforementioned studies open the field for further exploration, firstly due to the lack thereof in the Polish context, and secondly, due to the increasingly noticeable presence of individuals with various intellectual, psychological, and developmental deficits in the public sphere, including within the criminal justice system. This highlights the need for the preparation of formal-legal, pedagogical, or even rehabilitative guidelines and procedures for services and specialists working with individuals with developmental deficits.

In Lieu of an Ending

Article 13(1) of the Convention on the Rights of Persons with Disabilities guarantees persons with disabilities effective access to justice on an equal basis with others, including through the obligation to introduce procedural adjustments and adjustments appropriate to the age of persons with disabilities in all legal proceedings.

With the above provision in mind, the aim is to ensure that every person with an intellectual disability is guaranteed, in particular: 1. Presumption of their capacity to represent and participate in the case; 2. Access to legal information adequate to their cognitive abilities; 3. Clear and understandable forms of procedural documents; 4. The possibility of using various forms of communication, especially not only verbal or written; 5. Participation of experts in the field of intellectual disability (communication, functioning, social situation) in the case, not necessarily court-appointed experts; 6. The possibility of benefiting from the assistance of a support person in proceedings without losing the ability to act independently; 7. The possibility of appointing a representative *ex officio* without resulting in exclusion from the proceedings; 8. Access to free legal assistance (UN Convention on the Rights of Persons with Disabilities of 13 December 2006).

The need to guarantee the rights of individuals with intellectual disabilities at various stages of criminal proceedings, including enforcement, should be of paramount concern to those working in community supervision environments as well as those employed in penitentiary institutions who have direct contact with offenders with reduced intellectual capacity. Initiating and guiding supportive, social rehabilitation, and revalidation actions largely depends on their experience, professionalism, and commitment. These actions have the potential to actively involve individuals with intellectual disabilities.

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