



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Poland



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A. Juvenile Justice

A.1. Please describe the legal framework and the main characteristics of the juvenile justice system of your country.

A.1.1. Is there a special law or code regarding juvenile justice?

A.1.2. Which courts and other special authorities are responsible for the reactions of juvenile offending (criminal courts, specialised juvenile criminal courts, family courts, special prosecutors, police etc.)?

A.1.3. What is the scope (only criminal or also antisocial behaviour) of juvenile justice? How is the age of criminal responsibility regulated (please refer to the different age groups and include the legal definitions on “child”, “youth” and “young person”)?

A.1.4. Are there specific procedural rules for young persons and how do they differ from those for adults? Are due process guarantees respected?

Since the 1980s the juvenile justice system in Poland has been regulated by the Juvenile Act (*ustawa o postępowaniu w sprawach nieletnich*). The Juvenile Act was adopted by Parliament in October 1982 and came into force in May 1983. Since its entry into force, the 1982 Juvenile Act (JA) has been amended several times. However, those amendments did not change basic assumptions of the juvenile justice system shaped in the 1980s.

The beginnings of a juvenile justice system separated from the adult criminal justice system took place in Poland in the 1920s and 1930s. At the very beginning of the twentieth century when the movement towards separate juvenile justice systems emerged in other European countries, Poland did not exist as an independent country. At that time its territory was divided between Austria, Prussia and Russia. It regained its independence in 1918. One of the most important tasks of the government after regaining independence was to unify legal provisions; different areas of the country applied former Austrian, Prussian or Russian law. In 1919 a legislative commission was set up in order to prepare drafts of both criminal and civil law. Soon after its establishment the commission started work on a draft of an act concerning juvenile offenders. The first draft of an act regulating the separate juvenile justice system was prepared by the legislative commission in 1921.¹ Due to financial reasons the 1921 draft of an act on juvenile courts was not enacted. Most of its provisions were finally included in the 1928 Code of Criminal Procedure as well as in the 1932 Criminal Code.

Proceedings in juvenile cases regulated by the 1928 Code of Criminal Procedure differed significantly from adult criminal proceedings. The Code contained provisions on separate juvenile courts, however, in practice, before World War II, juvenile courts were set up only in some of the biggest cities.² The most important feature of proceedings in juvenile cases was the dominant role of the juvenile judge. During the preparatory stage of proceedings in juvenile cases the juvenile judge served as an investigating judge who subsequently took part in adjudicating the same case at the court stage. Hearings were closed to the public and features of adversarial trial were strongly limited as were powers of the prosecution service. The same judge specialising in juvenile cases would deal with the case at its different stages in order to establish contact with the juvenile and his/her parents or caregivers, obtain extensive knowledge on his/her personality and family circumstances as well as respond to juvenile crime with the most adequate measure or sanction.³

Rules concerning the criminal responsibility of juvenile offenders were formulated in a special chapter of the 1932 Criminal Code. The age of criminal majority according to the Code was 17 years. In the meaning of the Code a 'juvenile' was a person who committed an act prohibited by the criminal law while being below the age of 17. Thus, in 1932 the legislator decided not to include pre-delinquent children who displayed problematic or immoral behaviours in the juvenile justice system. Responses to juvenile offending depended on the age of juvenile perpetrators as well as their ability to understand the meaning of the act and control their behaviours (discernment). Juveniles who committed an offence below 13 years of age as well as those who committed an offence

1 See *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej 1921*, p. 1-11.

2 *Korcyl-Wolska 2004*, p. 30.

3 *Taracha 1988*, p. 118-119.

without discernment after their 13th birthday, but prior to their 17th, were not treated as criminally responsible. Only educational measures such as reprimand, supervision by parents, other trustworthy persons or an institution as well as placement in a state or private educational institution, could be imposed on them. Juveniles aged 13 to 16 who had committed an offence with discernment as a rule were sentenced to placement in a correctional institution (*zakład poprawczy*) for an unspecified time.

Juveniles placed in correctional institutions could be institutionalised until the age of twenty-one. However, they might be granted conditional release earlier. It was also possible to impose educational measures on older juveniles acting with discernment, if the court found placing them in a correctional institution useless on the basis of the circumstances of the offence, the juvenile's character or conditions of his/her life and environment. The enforcement of the placement in a correctional institution could also be conditionally suspended by the court. According to the prevailing opinion of scholars, the placement of a juvenile in a correctional institution under the 1932 Criminal Code was a specific penalty, *quasi*-penalty or educational penalty that replaced 'ordinary' prison sentences provided for adult offenders and combined some retributive elements and a predominant rehabilitative goal.⁴

Provisions governing the juvenile justice system included in the 1928 Code of Criminal Procedure and the 1932 Criminal Code were replaced with a separate Juvenile Act of 1982 (in force since May 1983). In comparison with the criminal codification of the 1920s and 1930s the 1982 JA introduced significantly more welfare, paternalistic and protective approaches. The paternalistic and protective features have been visible in the definition of a 'juvenile', the procedure applied in juvenile proceedings, the catalogue of measures provided for juveniles as well as the criteria used for the choice of the most adequate measure.

The minimum age of civil majority in Poland is set at 18 years. According to the civil law, persons below 18 are minors (*małoletni*) while those at least 18 are adults (*pełnoletni*). Exceptions refer to women who married with the consent of the guardianship court while being at least 16 years of age and are treated as adults under the civil law.⁵ Civil law provisions concerning the minimum age of majority are coherent with the Family and Guardianship Code. Pursuant to Article 92 of the latter Code, a child (*dziecko*) remains under parental responsibility until the age of civil majority (*aż do pełnoletności*).⁶ The minimum age of criminal majority, however, differs from the minimum age of civil majority. Since 1932 the former has been set at 17 years at the time of the offence.

According to Article 10 § 1 of the currently binding Criminal Code of 1997 rules on criminal

4 *Stańdo-Kawecka* 2007, p. 278-280.

5 See Article 10 of the 1964 Civil Code (*Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny*), Journal of Laws 1964/16, pos. 93 with subsequent amendments.

6 See Article 92 of the 1964 Family and Guardianship Code (*Ustawa z dnia 25 lutego 1964 r. - Kodeks rodzinny i opiekuńczy*), Journal of Laws 1964/9, pos. 59 with subsequent amendments.

responsibility determined by the Code apply to perpetrators who committed offences while being at least 17 years of age. Thus, 17 years old offenders are ‘adults’ (*dorośli*) in the meaning of the Polish criminal law. The 1997 Criminal Code generally does not apply to juveniles (*nieletni*), these are persons under 17 years old who committed an act prohibited by the criminal law; instead, provisions of the JA apply. Unlike the Criminal Code, the JA does not determine rules of criminal responsibility of juveniles but regulates the application of educational, medical and correctional measures.

However, the age limit of 17 years at the time of the offence is flexible, because some exceptions are provided for by the Criminal Code. Pursuant to Article 10 § 2 of the Code, a juvenile may be exceptionally criminally responsible on rules laid down for adults provided that he/she committed one of the most serious crimes enumerated in this Article while being 15 or 16 and the circumstances of the offence and the offender, the level of his/her maturity as well as the ineffectiveness of educational or correctional measures, justify directing the case to an adult criminal court. In cases in which 15 or 16 years old juveniles are exceptionally criminally responsible on a basis of Article 10 § 2 of the Criminal Code they are tried by a criminal court according to provisions of the criminal procedure. Penalties provided for by the Criminal Code apply to them with the exception of life imprisonment, although maximum penalties are lower than those which may be imposed on adult offenders. Adult offenders are perpetrators who are at least 17 years old at the time of the offence.

According to regulations on the minimum age of criminal majority mentioned above, perpetrators who committed an offence while 17 years old are ‘adults’ in the meaning of the Polish criminal law. They are dealt with by common criminal courts according to provisions of the criminal procedure even if they are still under 18 at the time of the trial. The minimum age of criminal majority set at 17 years raises concerns about compliance of the criminal law with the UN Convention on the Rights of the Child which states in Article 1 that a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. The Committee on the Rights of the Child in the General Comment No. 10 drew attention of the states parties that the upper age limit for the application of the rules of special juvenile justice – both in terms of special procedural rules and in terms of rules for diversion and special dispositions – should apply for all children who at the time of an offence had not reached the age of 18 years.⁷

As a result of the strengthening of the paternalistic and protective approach within the juvenile justice system in 1982, the legislator returned to the idea already discussed in the 1920s that such a system should cover not only juveniles who committed an act prohibited by the criminal law, but also children who were in danger of becoming offenders through the display of other problematic or immoral behaviours. As a result, ‘juveniles’ in the meaning of the 1982 JA are not only perpetrators of ‘punishable acts’

7 Committee on the Rights of the Child 2007, p. 11-12.

committed after having reached 13, but before 17 years of age, but also persons under 18 who show problematic behaviours not prohibited by the criminal law, referred to by the legislator as signs of ‘demoralisation’.

‘Punishable acts mean acts prohibited by the criminal law such as offences, fiscal offences⁸ and certain petty crimes (contraventions). As for ‘demoralisation’, the JA has not defined this notion. Article 4 of the Act only enumerates some examples of behaviour types or circumstances which are treated as signs of ‘demoralisation’: violation of the principles of community life, commission of a prohibited act, truancy, use of alcohol or drugs, running away from home, prostitution and association with criminal groups. It should be noted that there is no minimum age limit for juveniles showing signs of ‘demoralisation’. At least theoretically it is possible to institute proceedings due to signs of ‘demoralisation’ in cases concerning very young children who behave in an unacceptable way. ‘Punishable acts’ may be committed only by juveniles of at least 13 years of age at the time of infringing the criminal law. The commission of an act prohibited by the criminal law by a child less than 13 years of age is considered to be a sign of ‘demoralisation’ and it does not constitute a ‘punishable act’ under the JA. Provisions on juveniles showing signs of ‘demoralisation’ are in line with the protective and paternalistic ideology according to which judges dealing with juvenile cases should be provided with broad discretion in initiating state intervention in order to protect pre-delinquent children before they violate the criminal law.⁹

Another important change introduced by the 1982 JA consisted in the creation of family courts. The 1928 Code of Criminal Procedure provided for special juvenile courts dealing exclusively with children and youth who violated the criminal law. After World War II the jurisdiction of those special courts was gradually extended and cases concerning the deprivation of parents of their parental responsibility or limitation of that responsibility were transferred to them from civil courts. In 1982 the legislator decided to establish family courts as special departments of district courts and entrust them with a broad category of different cases concerning families, including interventions in parental responsibility and proceedings in juvenile cases due to ‘punishable acts’ and signs of ‘demoralisation’. The underlying assumption of the reform was that the same family court, and also the same family judge, should deal with cases related to different problems faced by the same family in order to give consistent judgements based on his/her extensive knowledge of this family.¹⁰

In practice, special family courts were established in almost all district courts soon after the JA¹¹ came into force. The situation changed in 2012 when an amendment to the law on the organisation of courts was adopted. Pursuant to Article 12 of the currently

8 In Poland, criminal responsibility for fiscal offences, such as for example tax offences, has been regulated by the separate Code on Fiscal Offences of 1999.

9 *Krajewski* 2006, p. 159.

10 *Patulski* 1985, p. 18.

11 *Grześkowiak, Krukowski, Patulski and Warzocha* 1991, p. 245-246.

binding law on the organisation of courts, district courts are divided into civil and criminal departments. Separate departments for family and juvenile cases could be established in district courts, however, since 2012 it has not been obligatory. In district courts in which no special department for family and juvenile cases exists juvenile cases concerning 'demoralisation' and 'punishable acts' are dealt with by civil departments. The JA still uses the term 'family court', but in practice since 2012 the tasks of family courts have been fulfilled not only by separate departments for family and juvenile cases but also by civil departments of district courts in which no such separate department was established. Appeals brought against decisions given by courts in the first instance in juvenile proceedings due to 'demoralisation' or 'punishable acts' are dealt with by civil departments of regional courts.¹²

In comparison with the 1928 Code of Criminal Procedure the 1982 JA introduced significant changes to procedural issues. Under the 1928 Code of Criminal Procedure the procedure in juvenile cases differed from adult criminal procedure,¹³ but as a matter of fact it was a modified criminal procedure. In 1982 the legislator introduced a 'hybrid' procedure in juvenile cases which combined procedural provisions contained in the JA with elements of both the civil and criminal procedure.¹⁴ The preparatory stage of proceedings in juvenile cases was governed as a rule by the civil procedure. The same procedure (with certain changes introduced by the JA) was applied at the court stage in cases concerning signs of 'demoralisation'. In juvenile cases due to 'punishable acts' the family judge after completion of the preparatory stage decided that the proceedings at the court stage would be conducted according to the civil or criminal procedure on a basis of his/her opinion on measures which should be applied to the juvenile. The civil procedure was used if in the opinion of the family judge educational or medical measures were sufficient. If the family judge was of an opinion that the placement of a juvenile in a correctional institution should be applied he/she chose 'correctional proceedings' (*postępowanie poprawcze*) which was governed mainly by the criminal procedure. As a result, the creation of a kind of conglomerate of civil procedure (non-litigious proceeding), criminal procedure and procedural provisions contained in the JA turned out to be difficult to apply in practice and resulted in serious problems.¹⁵

Among serious problems related to procedural issues in juvenile proceedings, the violation of the right of a juvenile to a fair hearing by an impartial tribunal provided for

12 See *Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych*. Journal of Laws 2001/98, pos. 1070 with subsequent amendments.

13 As was mentioned above, the same juvenile judge served as an investigating and adjudicating judge. Additionally, court sittings were less formal than in cases concerning adult offenders and were closed to the public.

14 See also *Stańdo-Kawecka 2010*, p. 1008-1013.

15 As an example of the lack of synchronization of procedural rules it was indicated that the family judge applied provisions of the Code of Civil Procedure (non-litigious proceeding) during the explanatory (preparatory) proceeding in juvenile cases while the police acted pursuant to provisions of the Code of Criminal Procedure when collecting and preserving evidence. As a result, the rights of interrogated juveniles as well as witnesses were narrower or wider at different stages of the same case depending on whether the interrogation was conducted by a family judge or the police.

by Article 6 section 2 of the European Human Rights Convention should be mentioned. The juvenile justice system established in 1982 was based on the assumption that the same family judge should deal with a juvenile's case at its every stage in order to obtain extensive knowledge on the juvenile and his/her family and choose the most adequate measures that were applied as preliminary measures during the proceedings as well as final dispositions at the stage of adjudication. Combining various functions by the same family judge at both the preparatory and adjudicating stage was found by the European Court of Human Rights contrary to the right to impartial tribunal in the case *Adamkiewicz v. Poland*.¹⁶ The European Court of Human Rights stated that there was a violation of this right in a situation where the same family judge had at first conducted the evidence-gathering procedure, then decided to refer the case to the stage of adjudication and ruled in the same case as president of the trial bench.

In order to implement the judgment of the European Court of Human Rights in the case *Adamkiewicz v. Poland*, an amendment to the 1982 JA was adopted by Parliament on 30 August 2013.¹⁷ The amendment has been in force since 2 January 2014. Essentially, the legislator abandoned the division of juvenile proceedings into preparatory and court (adjudicating) stages. According to the amended JA, juvenile cases due to 'demoralisation' as well as 'punishable acts' are dealt with by a family court in a unified court proceeding which does not distinguish the preparatory stage. As a rule, proceedings in juvenile cases are regulated by the Code of Civil Procedure, but there are also exceptions when provisions of the Code of Criminal Procedure apply, for example in matters related to the collection and preservation of evidence by the police as well as the appointment and functions of a defense lawyer. The 2013 amendment did not alter the dominant role of the same family judge during the whole proceeding in juvenile cases. It is still possible that the same family judge who functions as a family court composed of one judge at first gathers and preserves evidence of a 'punishable act' and then, on a basis of evidence gathered by himself/herself, adjudicates the case. In such cases the impartiality of the family court may still be questioned.

Not only the right to an impartial tribunal but also some other procedural rights of juveniles in proceedings governed as a rule by provisions of civil procedure still raise concerns, although the amendment to the JA adopted in 2013 aimed at improving the legal protection of juveniles. The JA does not state clearly the presumption of innocence in juvenile proceedings. However, since January 2014 the amended JA requires the family court to instruct the juvenile about the right to refuse to give statements or explanations.¹⁸ Juveniles have the right to defense, including the right to choose a defense lawyer or be assisted by an *ex officio* defense lawyer during the court proceedings. In some cases specified by the JA the assistance of a defense lawyer is mandatory what means that the president of the court shall appoint an *ex officio* defense lawyer if the juvenile does

16 ECtHR 2 March 2010, *Adamkiewicz v. Poland*, no. 54729/00, par. 93 and 94.

17 See *Ustawa z dnia 30 sierpnia 2013 r. o zmianie ustawy o postępowaniu w sprawach nieletnich oraz niektórych innych ustaw*, Journal of Laws 2013, pos. 1165.

18 See Article 18a of the 1982 JA.

not have a lawyer chosen by him/her or his/her parents.¹⁹ The right to be assisted by an *ex officio* defense lawyer does not mean free legal aid, because the court rules on the costs of the mandatory defense while ruling also on other costs of the proceedings in the final verdict. Pursuant to Article 32c § 3 of the JA, in cases in which the assistance of a defense lawyer is not mandatory and the juvenile does not have a defense lawyer of his/her choice he/she may request to appoint an *ex officio* lawyer providing that he/she or his/her parents demonstrate that they are not able to cover the costs of defense without detriment to the necessary maintenance of themselves and the family. In such a situation the president of the court has a large discretionary power given by the legislator and appoints an *ex officio* lawyer only if he/she is of the opinion that the participation of a defense lawyer is needed.

As was emphasised earlier, the amendment to the JA which came into force in January 2014 did not change the dominant position of the family court in proceedings related to juvenile cases. The role of other authorities in juvenile cases has been very limited since the adoption of the 1982 JA. It is the family court who institutes the proceedings on a basis of information that a juvenile may show signs of ‘demoralisation’ or committed a ‘punishable act’. Such information may be received by the family court from anyone who found circumstances indicating that a juvenile showed signs of ‘demoralisation’ or committed a ‘punishable act’, including state institutions and social organisations which learned about such circumstances in connection with their activities.²⁰ In 1982 the legislator assumed that family courts should not be passively waiting for such information but should actively look for them through cooperation with state institutions and social organisations working with children and families.²¹ Results of recent empirical studies suggest, however, that there is a large discrepancy between these assumptions of the juvenile law and practice. In practice, in most cases concerning ‘punishable acts’ it is not the family court, but the police who are informed at first about juvenile offending.²²

Pursuant to the 1982 JA, the scope of activities of the police in juvenile cases has been very limited. In terms of Article 32e of the currently binding Juvenile Act, the police are able to collect and preserve evidence of signs of ‘demoralisation’ or ‘punishable acts’, including the interrogation of a juvenile suspect, only in urgent cases. ‘Urgent cases’ refer to cases in which it is necessary to collect and preserve traces and evidence of signs of ‘demoralisation’ or juvenile offences against loss or damage before the formal initiating of the proceedings by a family court. After performing urgent actions the police are obliged to report the case immediately to the family court. The police have no discretionary powers; on the contrary, they are obliged to report every juvenile case immediately to a family court after having collected and stored the necessary evidence in urgent cases. After the institution of juvenile proceedings by the family court the police perform

19 See Article 32c of the 1982 JA.

20 See Article 4 of the 1982 JA.

21 *Patulski* 1985, p. 21.

22 *Czarnecka-Działuk, Drapała and Więcek-Durańska* 2011, p. 86-87.

specific activities or actions in a certain scope exclusively if they were ordered by the court. Empirical research on police activities in juvenile cases revealed that in practice in some cases the police did not report juvenile offences to a family judge²³ immediately after having collected the evidence in urgent cases, but they did it after having made further investigations.²⁴

The role of the public prosecutor in juvenile proceedings has also been very limited. Unlike the criminal procedure, the proceedings in juvenile cases are based on the principle of inquisitorial procedure. The JA does not provide for separation of functions of the prosecution and adjudication. The same family court composed of one family judge conducts the whole unified proceedings in juvenile cases due to both signs of 'demoralisation' and 'punishable acts'. As a result, the same family court gathers and preserves evidence of signs of 'demoralisation' or 'punishable acts', gathers information on the juvenile concerned and his/her family, health and living conditions, orders the probation officer to conduct a social inquiry report and, if needs be, obtain a complex diagnosis of the juvenile's personality and/or the state of his/her mental health by asking the appropriate persons or institutions. Finally, on the basis of evidence, information and opinions gathered, the family court adjudicates the case. The proceedings, as was mentioned earlier, are generally governed by provisions of the civil procedure. A public prosecutor according to the JA is party to proceedings in juvenile cases and is entitled to submit requests for the performance of evidence, access files and make copies, attend the family court hearing as well as bring appeals, but in an inquisitorial procedure he/she does not bring an accusation. Essentially, the role of the public prosecutor in juvenile cases is not only limited, but also unclear.

The 1982 the JA assigned important tasks in juvenile cases to the probation service. In the course of juvenile proceedings probation officers have been often asked to prepare a social inquiry report. The supervision by a probation officer could be ordered by the family court as a provisional (temporary) measure applied to the juvenile before the adjudication of the case. Additionally, the supervision by a probation officer has been listed by the JA among educational measures provided for juveniles who were found perpetrators of 'punishable acts' or persons showing signs of 'demoralisation'. In Poland, probation officers are divided into two groups. The first group works with adult offenders and the second one specialises in family and juvenile cases. In both groups there are professional probation officers as well as volunteers.

23 Before the 2013 amendment to the JA (in force since January 2014) the police were obliged to report every juvenile case immediately to a family judge; after the amendment they report cases to family courts.

24 *Korcyl-Wolska* 2001, p. 425-426; *Czarnecka-Działuk, Drapała and Więcek-Durańska* 2011, p. 87.

A.2. Please describe the sanctioning system regarding juvenile justice in your country.

A.2.1. Please give an overview on the sanctions/reactions on youth offending at the different levels of criminal proceedings.

A.2.2. Which possibilities exist to divert a juvenile from a trial? (diversion structures/schemes, alternative authorities like special community councils which can impose certain measures)?

A.2.3. What types of interventions can the competent court impose?

A.2.4. Which forms of liberty depriving sanctions are provided? What is the minimum and what is the maximum length for liberty depriving measures?

A.2.5. What types of residential and custodial institutions exist for juvenile criminal offenders?

A.2.6. What does in practice happen with most juvenile offenders? Are they regularly subject to diversion schemes or to court trials? Do you have any reliable data about the diversionary and sentencing practice?

As was mentioned earlier, with a few exceptions no penalties provided for adults can be imposed on juvenile lawbreakers. Juvenile offenders, i.e. perpetrators of offences committed under 17 years of age, may be punished with penalties provided for adults if they are exceptionally criminally responsible on the basis of Article 10 § 2 of the Criminal Code. Additionally, the JA enables the family court to impose a penalty in the course of juvenile proceedings if the juvenile was initially placed in a correctional institution but he/she turned 18 before this judgement started to be enforced and the execution of the correctional measure would be inadvisable in the opinion of the court.²⁵ In practice, the latter possibility has been used by family courts extremely rarely.

The catalogue of sanctions applied to juveniles contains a wide range of educational, medical and correctional measures. According to the JA, all educational and medical measures may be applied both to juveniles who have committed ‘punishable acts’ whilst between 13 and 16 years of age and to juveniles under 18 years of age displaying problematic behaviours (signs of ‘demoralisation’). Correctional measures - the

²⁵ See Article 94 of the 1982 JA.

suspended or unsuspended placement of a juvenile in a correctional institution - may be imposed only on juveniles who have committed 'punishable acts' prohibited by the criminal law such as offences or fiscal offences after their 13th birthday, but prior to their 17th.

In the Polish science of criminal procedural law, juvenile proceedings are not considered to be 'criminal' proceedings. Instead, they are treated mainly as proceedings *sui generis*.²⁶ Since 2 January 2014 when the amendment to the JA entered into force, the previous division of juvenile proceedings into the preparatory and adjudicating stage has been abandoned. As a result, there are currently only two stages of procedure in juvenile cases. The first one covers unified court proceedings which starts with the institution of the proceedings by the family court and ends with the court decision on discontinuation of the proceedings or application of measures. The second stage covers the enforcement of imposed measures. The course of proceedings in juvenile cases as a rule is governed by provisions of the civil procedure. As a result, the family court judgment on the application of measures to the juvenile is not a 'conviction' in the meaning of the criminal law. It may be said that the whole system of dealing with juvenile offenders in Poland is an alternative to the criminal process and aims at diverting them from criminal proceedings provided for adults.

According to Article 21 § 2 of the JA, juvenile proceedings shall be dropped by the family court if there is no evidence that the juvenile committed a 'punishable act' or showed sign of 'demoralisation'. Unlike criminal process in adult cases, which are based on the principle of legality, the family court may at any time unconditionally drop the juvenile case on the principle of opportunity if in the opinion of the court the imposition of educational or correctional measures serves no purpose, in particular when such measures had been imposed on the juvenile concerned in a previous case. Thus, the family court has been equipped by the legislator with a broad discretion to discontinue the proceedings. Further, the family court may at any time refer the case to a mediation program or to the school attended by the juvenile or a social organisation to which he/she belongs if the court is of the opinion that the educational measures available to the school or organisation are sufficient.²⁷

During the course of proceedings the family court may apply temporary (provisional) measures which are much the same as educational and medical measures imposed on juveniles after adjudication of their cases. The legislator prefers temporary measures which are not connected with the change of the place of residence of a juvenile, such as placement of a juvenile under supervision of a probation officer, a trustworthy person or organisation. Only if such measures are found insufficient the family court may place a juvenile temporarily in a professional foster family or a youth educational centre as well as provisionally apply medical measures. A distinct temporary measure consists in

²⁶ Światłowski 2009, p. 407-408.

²⁷ See Articles 3a and 32j of the JA.

the placement of a juvenile in a youth detention centre (*schronisko dla nieletnich*). The latter centres are the equivalent of pre-trial detention in adult cases. They are under the authority of the Ministry of Justice and are designed for juveniles if in the course of the proceedings circumstances emerge in favour of placement in a correctional institution and there is justified fear that the juvenile may escape or destroy evidence. As a rule, juveniles cannot be detained in remand prisons for adults suspected of committing offences.²⁸

Formal judgements issued by the family court in juvenile cases include the imposition of educational, medical or correctional measures. While choosing between different measures the family court should take into account the interest of the juvenile concerned, the need to achieve positive changes in his/her personality and behaviour as well as the need to encourage and support proper fulfilment of duties by the juvenile's parents or guardians. As regards correctional measures, some additional factors should be taken into account, such as a high degree of the perpetrator's 'demoralisation' and the circumstances and the nature of the act committed as well as ineffectiveness of educational measures which have proved not to or are not likely to lead to the rehabilitation of the offender. The JA does not require the establishment of the culpability of the juvenile in the meaning of his/her ability to act with discernment at the time of the 'punishable act', because the legislator considered this to be irrelevant for the choice of the most adequate measure. It also does not provide the principle of proportionality in reactions to the circumstances of the offence.

The catalogue of educational measures has changed since 1982 to a limited extent. Currently, Article 6 of the JA enumerates the following educational measures:

- A reprimand,
- Supervision by parents, a guardian, a youth or other social organization, a workplace, a trustworthy person or a probation officer,
- Applying special conditions, such as redressing the damage, making an apology to the victim, performing unpaid work for the benefit of the victim or local community, taking up school education or a job, taking part in educational or therapeutic training, avoiding specific locations, refraining from the use of alcohol and other intoxicants,
- A ban on driving,
- Forfeiture of objects gained through the commission of a punishable act,
- Placing a juvenile in a youth probation centre in which he/she spends a couple of hours daily,

²⁸ For more information on temporary measures see *Stańdo-Kawecka* 2013a, p. 309-310.

- Placing a juvenile in a professional foster family,
- Placing a juvenile in a suitable institution or organization providing education, therapy or vocational training,
- Placing a juvenile in a residential youth educational centre.

The vast majority of educational measures do not change the place of residence of the juvenile who stays in his/her family during the enforcement of imposed measures. Among measures resulting in the change of the former place of residence may be mentioned the placement of a juvenile in a professional foster family, in an organisation or institution functioning as a boarding school as well as in a youth educational centre. Unlike the original catalogue of educational measures introduced by the 1982 JA, currently binding provisions do not include the possibility to place a juvenile in a related or unprofessional foster family, family foster children's home as well as in a child care institution.

Medical measures may be applied to juveniles who are suffering from mental deficiency, mental disease, some kind of mental disorder or from alcohol and drug addiction. These measures imply placing juveniles in a psychiatric hospital, other suitable health care institutions, a social welfare institution or a suitable youth educational centre. Both educational and medical measures are applied to juveniles adjudicated due to signs of 'demoralisation' or 'punishable acts'. Also both categories of measures are applied for an indeterminate period of time. As a rule these measures terminate when a juvenile reaches the age of 18, but in some cases their duration is extended to his/her 21st birthday. The family court that executes the measures may change, revise or repeal them at any time if it is advisable for educational reasons.

Correctional measures consist in suspended or unsuspended placement of a juvenile in a correctional institution. Such institutions are subordinated to the Ministry of Justice; however, they do not form any part of the prison system. Similar to other categories of measures, correctional measures are also applied for an indeterminate period of time. The juvenile placed in a correctional institution can not stay there past their 21st birthday, although he/she may be granted conditional release earlier. Provisions governing the enforcement of the placement of juveniles in correctional institutions emphasise the need to prepare an individual treatment plan for each juvenile and provide him/her with a broad range of therapeutic, educational and vocational activities in order to achieve the goal of rehabilitation. It should be added that in 2012 the Constitutional Court ruled that several provisions on correctional institutions issued by the Minister of Justice²⁹ were unconstitutional, because they regulated matters related to the limitation of personal liberty which required a statutory basis.³⁰ The Prosecutor General while outlining his position stated that the legislator provided adult offenders serving prison sentences with

²⁹ *Rozporządzenie Ministra Sprawiedliwości w sprawie zakładów poprawczych i schronisk dla nieletnich*, issued on 17.10.2001 with subsequent amendments.

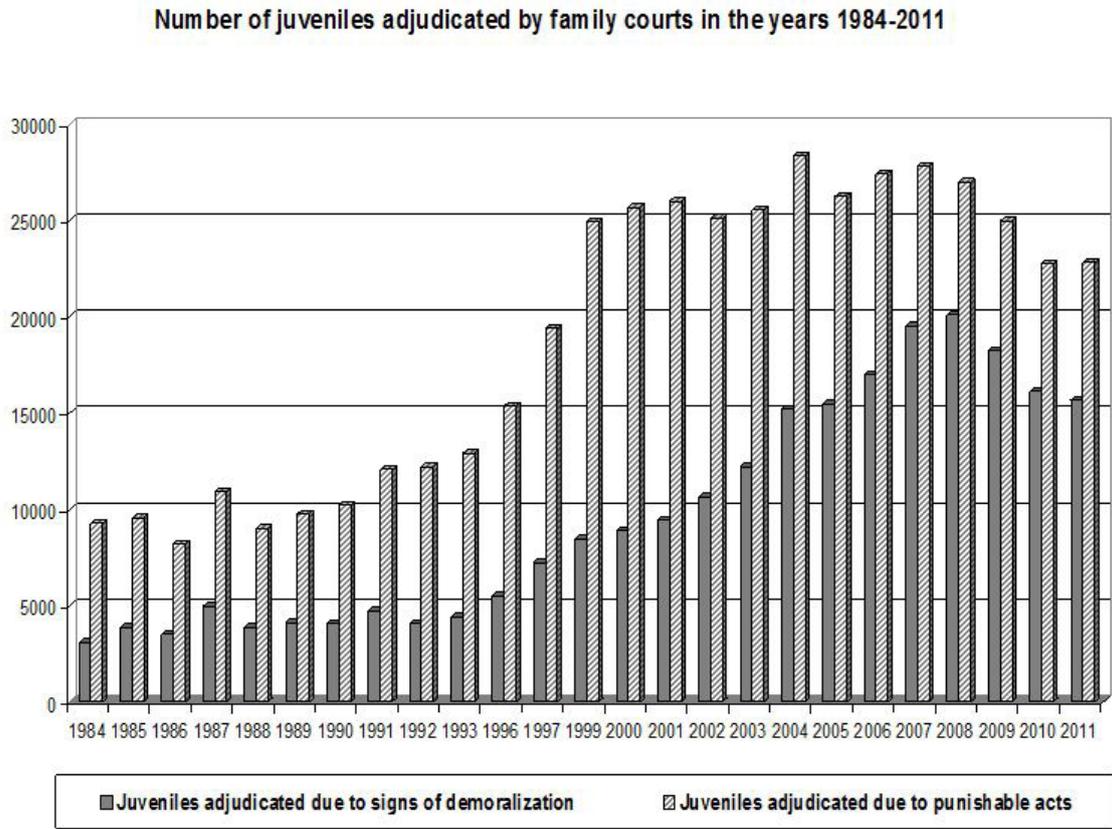
³⁰ Judgment of Constitutional Court U 1/12, issued on 02.10.2012.

a significantly higher standard of protection of their rights and freedoms than juveniles placed in correctional institutions.

As was mentioned earlier, pursuant to the 1982 JA juveniles may be dealt with by family courts in proceedings instituted due to signs of ‘demoralisation’ as well as ‘punishable acts’. *Figure 1* indicates that in the mid-1980s, this is shortly after JA came into force in May 1983, family courts adjudicated yearly about 3-4 thousand juveniles due to signs of ‘demoralisation’ and 8-9,5 thousand juveniles who committed ‘punishable acts’. In subsequent years until the end of the last century there was an increase in numbers of both categories of juveniles. However, in the period from 2000 to 2008 the number of juveniles on whom measures were imposed due to ‘punishable acts’ was more or less stable, but the number of juveniles found to show signs of ‘demoralisation’ grew from 8,878 in 2000 to 20,089 in 2008. Since 2008 there has been a decrease in numbers of juveniles adjudicated in proceedings due to signs of ‘demoralisation’ as well as ‘punishable acts’. Generally, under the 1982 JA which introduced proceedings in juvenile cases related to signs of ‘demoralisation’ the number of juveniles adjudicated in such proceedings has increased fivefold (from 3,072 in 1984 to 15,670 in 2011). At the same time the number of juvenile offenders, perpetrators of ‘punishable acts’, adjudicated by family courts, was growing at a much slower rate (from 9,260 in 1984 to 22,807 in 2011).³¹

31 Statistical data used in this report comes from the *Statistical Yearbook of the Republic of Poland (Rocznik Statystyczny Rzeczypospolitej Polskiej; before 1990: Rocznik Statystyczny)* that has been published by the Central Statistical Office of Poland (*Główny Urząd Statystyczny*). Statistical data on enforceable court decisions given in juvenile cases have been used consistently in this report. Data on family court decisions given in the first instance differ significantly from data on enforceable court decisions what is difficult to be explained without empirical research as it was stressed by *Czarnecka-Działuk and Wójcik* 2011, p. 873.

Figure 1. Juveniles adjudicated by family courts in the years 1984-2011

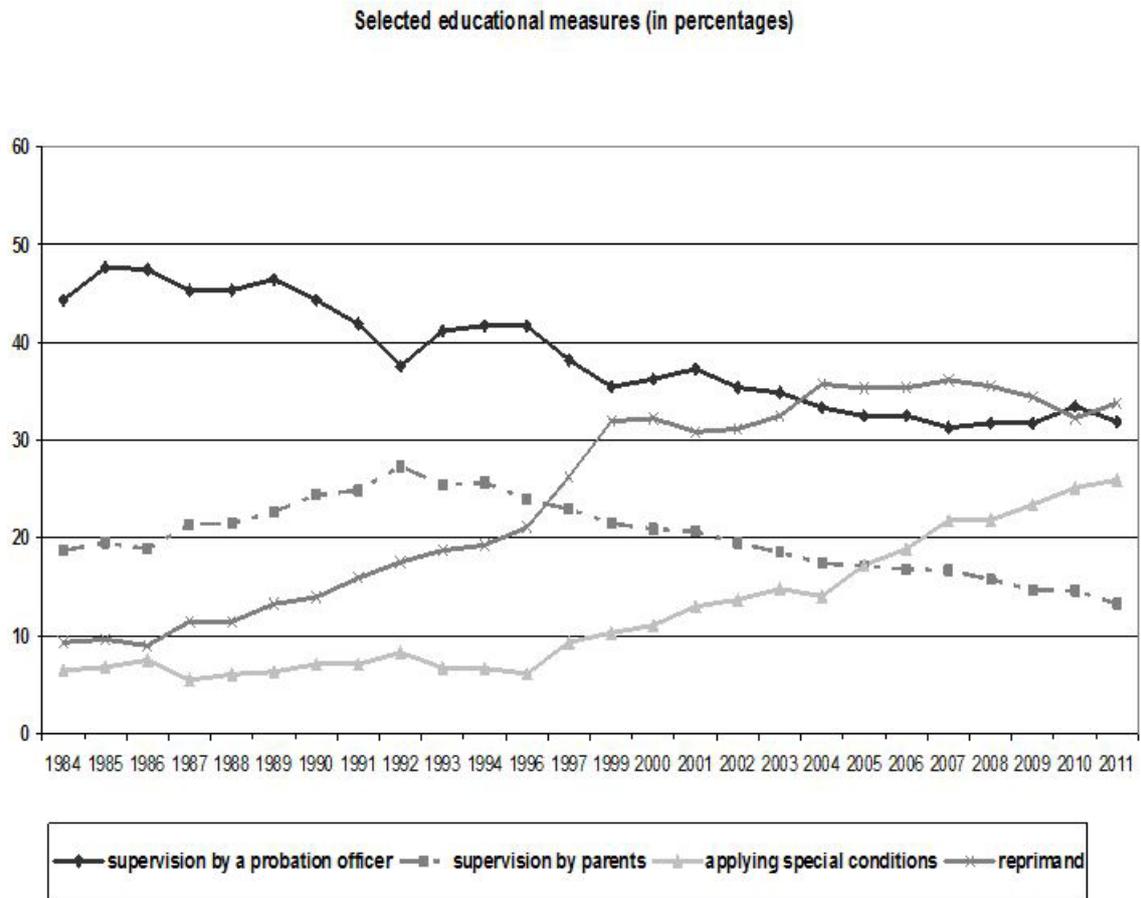


Data come from *Statistical Yearbooks*. Data for the years 1994, 1995 and 1998 are not available.

In proceedings concerning signs of ‘demoralisation’ only educational or medical measures may be applied to juveniles. In the years 1984-2011 mainly such measures were applied as supervision by a probation officer or parents, reprimand and applying special conditions. Educational measures depriving juveniles their liberty, this is placement in a youth educational centre or youth socio-therapeutic centre³² have been recently imposed on about 6 percent of those showing signs of ‘demoralisation’. Family court dispositions in proceedings concerning ‘punishable acts’ also referred mainly educational measures, including supervision by a probation officer or parents, reprimand and applying special conditions. As may be seen from *Figure 2*, since the mid-1990s there has been a significant increase in numbers and proportions of juvenile offenders to whom reprimand, as well as special conditions, were applied. In 2011 about one in three adjudicated juveniles was given reprimand while in 1984 – about one in ten. Special conditions were applied to about 6 % of juvenile offenders adjudicated in 1984; in 2011 the percentage amounted to 26 %. At the same time the proportion of supervision by a probation officer has been decreasing (from 44 % to 32 %). In recent years educational measures consisted in the placement in residential institutions have been applied to around 5 % of juveniles adjudicated due to ‘punishable acts’.

32 The possibility to place a juvenile in a youth socio-therapeutic centre was abandoned in 2011.

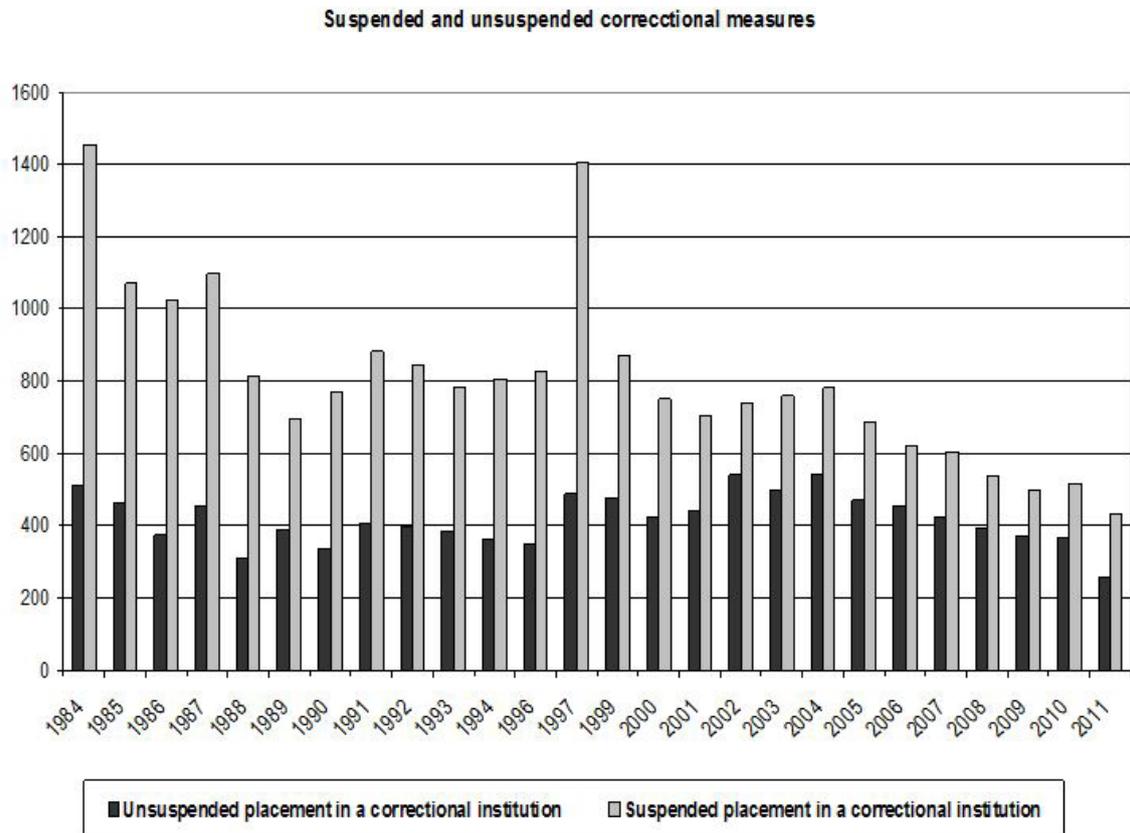
Figure 2. Selected educational measures imposed on juvenile offenders in the years 1984-2011



Data come from *Statistical Yearbooks*. Data for the years 1995 and 1998 are not available.

As regards correctional measures, these are the most severe measures provided by the JA for juvenile offenders; they have been used by family courts less and less frequently. In 1984 family courts decided to impose placement in a correctional institution (suspended and unsuspended) on about one in five of juveniles adjudicated due to ‘punishable acts’. As a result of a steady decline in the use of correctional measures in 2011 they were imposed on 3 % of juvenile offenders. As *Figure 3* indicates, the drop in the use of correctional measures since 1984 related both the suspended and unsuspended placement of a juvenile in a correctional institution. In 1984, 513 out of 9,260 juveniles adjudicated due to ‘punishable acts’ (5,5 %) received unsuspended placement in a correctional institution. In 2011, 259 juvenile perpetrators of ‘punishable acts’ were immediately placed in a correctional institution what meant 1,1% of all adjudicated juvenile offenders.

Figure 3. Number of suspended and unsuspended placements in a correctional institution imposed in the years 1984-2011



Data come from *Statistical Yearbooks*. Data for the years 1995 and 1998 are not available.

B. Restorative approach within juvenile justice

B.1. Where do you see a restorative approach within the juvenile justice system (this questionnaire follows a process based definition of restorative justice)?

B.2. What are the types of restorative justice measures provided for juveniles (e.g. victim-offender mediation, family conferencing, circles)? Please also refer to their legal basis.

B.3. Do these restorative measures play a role in juvenile justice (sentencing) practice?

B.4. What are the main actors involved in delivering restorative justice measures (public institutions, NGOs). Who bears for the costs of restorative justice measures?

The beginning of interest in the restorative justice approach took place in Poland in the early 1990s. In 1995, a Team for the Introduction of Mediation in Poland was set up. In 1996, the first experimental programme of victim-offender mediation was carried out in Poland within the juvenile justice system. The results of this programme were evaluated positively and were followed by a number of publications on the restorative justice approach in criminal matters which appeared in the Polish criminological literature in the late-1990s.³³ Unlike many other countries, in Poland, victim-offender mediation in criminal matters was regulated by law at first in the 1997 Code of Criminal Procedure and related to adult criminal cases. Legal regulations concerning victim-offender mediation in juvenile cases were issued in the year 2000 as an amendment to the 1982 JA. In 2001, the Minister of Justice, acting on the basis of authorisation contained in the amended JA, issued an ordinance on mediation in juvenile cases. In practice, victim-offender mediation is the only type of restorative justice measures used in juvenile proceedings.

According to Article 3a of the JA, as added in 2000, the family court, while acting on the initiative or with the consent of both the juvenile and the victim, may at any stage of the proceedings transfer the case to mediation by an institution or a trustworthy person. In

³³ For more information on the development of the restorative justice approach see *Czarnecka-Dzialuk* 1997, p. 70-80; *Stańdo-Kawecka* 2013b, p. 313.

the doctrine of the juvenile law it is emphasized that juvenile cases may be referred to mediation only if they are connected with the commission of an act prohibited by the criminal law as an offence, because only in these cases may be a personalized injured person. On the contrary, in juvenile cases due to signs of 'demoralisation', such as truancy, using alcohol or drugs, or running away from home, mediation is not possible, because of the lack of a victim.³⁴ In the light of the JA, mediation is voluntary and requires informed consent of the juvenile perpetrator and victim. The family court shall have such informed consent before deciding to refer the case to mediation. It has also a duty to inform the parties of the nature and meaning of mediation. The JA does not provide for legal restrictions on referring juvenile cases to mediation. In the doctrine of the juvenile law it has been noticed that mediation is excluded in cases of juveniles who require the application of medical measures, such as for example the placement in a psychiatric hospital.³⁵ It is also emphasised that juvenile cases should not be referred to mediation if there are many victims or perpetrators in the same case, the case is connected with the organised crime or the amount of damage caused to the victim as a result of the juvenile offence is significantly high.³⁶

While deciding on the referral of the case to mediation, the family court determines the date on which should receive a report on the results of the mediation, not longer than 6 weeks. Exceptionally, this period may be extended for a fixed term, not longer than 14 days. The results of the mediation reported to the family court by the mediator are taken into consideration when deciding the case. The family court may drop the proceedings unconditionally at an early stage as a result of successful mediation. However, the conditional discontinuation of the proceedings is excluded in juvenile cases. The positive results of mediation, and particularly the performance by the juvenile obligations arising from agreement reached in mediation, may be also taken into account by the family court while deciding on the most appropriate measure applied to the perpetrator.

Victim-offender mediation is confidential. The task of a mediator is to facilitate the parties to resolve the conflict between them. Conditions to be met by institutions and individuals in order to carry out mediations in juvenile cases have been regulated by the ordinances of the Minister of Justice on mediation in juvenile cases. Mediations in Poland are conducted out of courts in order to ensure its confidentiality and impartiality. Persons who are employed in an institution dealing with administration of justice may not be mediators. Specialised trainings for mediators are provided by the Polish Centre for Mediation and other institutions. Some universities also offer courses for mediators. Costs of mediation in juvenile cases are covered by the state.³⁷

34 *Bieñkowska* 2011, p. 5.

35 *Ibidem*.

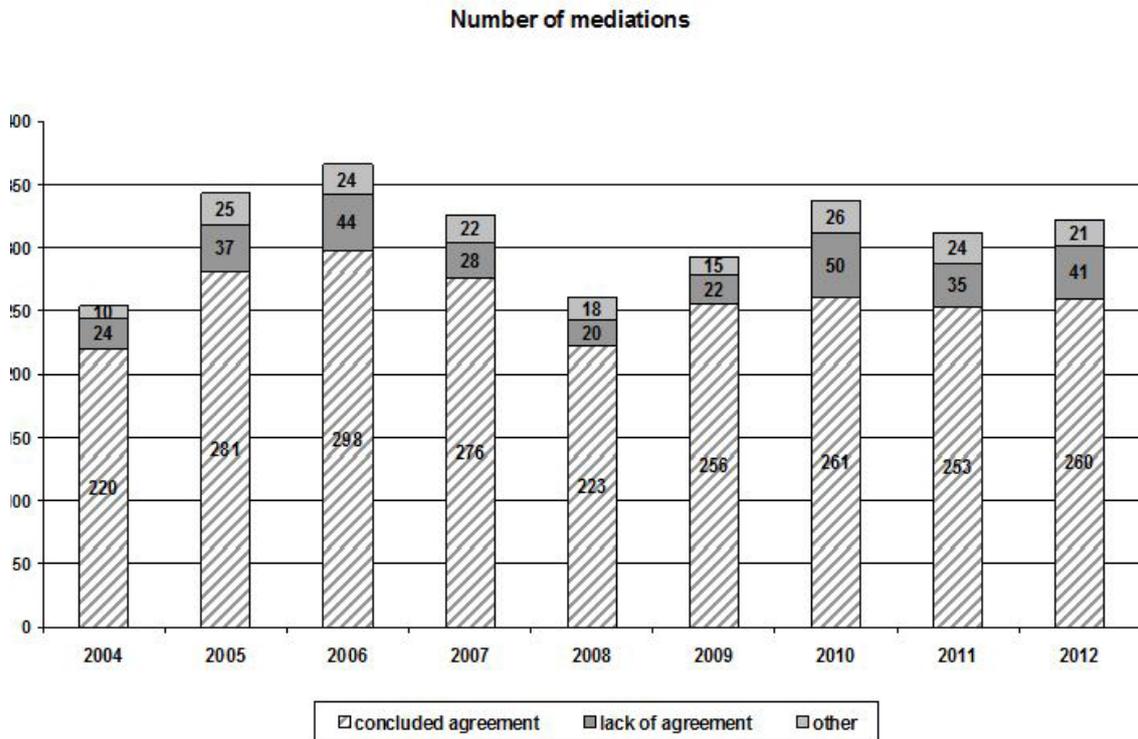
36 *Klaus* 2005, p. 177.

37 See Article 32 § 1 of the 1982 JA.

Since the late-1990s many different institutions and organisations have been making efforts aimed at the development of the restorative justice approach, and particularly victim-offender mediation. Among these institutions and organisations are parliamentary commissions, The Human Rights Defender (Ombudsman), the Ministry of Justice as well as the Polish Centre for Mediation. Since 2005, the Social Council of Alternative Methods of Resolution of Conflicts and Disputes has been operating under the Ministry of Justice. This Council is an advisory group for the Minister of Justice on issues concerning Alternative Dispute Resolution (ADR). In the last years the Ministry of Justice has conducted several wide-ranging information and education campaigns on mediation and other alternative ways of dispute resolution addressed to the society as well as to different professional groups within the criminal justice system. As part of these campaigns, courses on mediation were organised for judges, prosecutors and the police. Another entity strongly involved in the promotion of victim-offender mediation in Poland is the Polish Centre for Mediation, a non-governmental organisation created by transformation of the previous Team for the Introduction of Mediation in Poland. It has played an important role in training mediators, preparing standards of mediation and popularising the ideas of restorative justice.

Despite many efforts aimed at the promotion of the ideas of restorative justice, the number of victim-offender mediations conducted within both the adult criminal justice system and the juvenile justice system has been very limited. As far as juvenile offenders are concerned, in the period of from 2004 to 2011 family courts adjudicated yearly about 23-28 thousands of juveniles due to 'punishable acts', as was seen from the *Figure 1*. The number of mediations in juvenile cases in the years 2004-2012 oscillated between 254 and 366 (*Figure 4*). Thus, the ratio of juvenile offenders participating in mediation in comparison to the number of juvenile perpetrators of 'punishable acts' adjudicated by family courts amounted to 1-1,5 %.

Figure 4. Number of mediations in juvenile cases in the years 2004-2012



Source: Ministry of Justice (2013), *Postępowania w sprawach nieletnich (rodzinnych) w sądach powszechnych zakończone w wyniku postępowania mediacyjnego w latach 2004-2012*, available online: <http://ms.gov.pl/pl/dzialalnosc/mediacje>

Taking into account a growing number of professionals trained in mediation (family judges, probation officers and mediators) as well as the relatively high proportion of mediations completed with an agreement between the victim and the juvenile offender, the very limited scope of juvenile cases referred to mediation may be surprising and difficult to explain.³⁸

³⁸ Czarnecka-Działuk and Wójcik 2011, p. 915.

C. Foster care within the juvenile justice system

C. 1. Does foster care play any role in your juvenile justice system?

C. 2. Under which conditions can foster care be imposed within the juvenile justice system (at pre- or post-sentencing level or in case of diversion)? Can foster care be imposed as an alternative to custody or pre-trial/police detention? If so please describe the regulations for foster care (length, rights of the children/the foster carers etc.) If there are possibilities in law, how are they used in practice?

C. 3. Does your system know any other alternatives to custody like alternative care in case of pre-trial detention (e.g. in closed juvenile welfare institutions instead of prisons) or in case of juveniles sentenced to youth prison or comparable forms of custody? If there are possibilities in law, how are they used in practice?

After the collapse of the communist state in 1989, the foster care system - a system provided for children with a lack of parental care - has undergone significant reforms. The foster care system established in Poland shortly after World War II was based mainly on institutional care. At the same time tasks related to foster care were concentrated in the hands of the state. Activities of associations and social organisations involved in the provision of substitute care for children were severely curtailed by the state. The shaping of 'correct' ideological attitudes of children was stressed as an important task of state care facilities. This model of foster care was characterised by a lack of work with the natural family of the child in order to enable the child to return to its family.³⁹

In the 1960s efforts were made in order to develop different forms of assistance to the family, including counseling for parents. In the following years the need to develop family substitute care and replace institutional care with foster families (*rodziny zastępcze*) and family foster homes (*rodzinne domy dziecka*) was stressed by researchers and practitioners.⁴⁰ In the 1990s, basic assumptions of a comprehensive reform of foster care system were prepared within the Ministry of Education. The reform carried out in

³⁹ Kozdrowicz 1988, p. 15-16.

⁴⁰ Ibidem, p. 20-24.

1999 aimed to:

- Develop social work with natural families in local communities,
- Reduce both the number and size of children care institutions,
- Increase the number of unrelated foster families, including specialized foster families able to provide care to children in need of special support, and
- Increase the number of children returning from foster families as well as care institutions to their natural families.⁴¹

As a result of this reform, tasks related to providing foster care became the responsibility of the ministry for social welfare which continued work on improving the foster care system. Currently, foster care is regulated by the 2011 Act on Family Support and Foster Care.⁴² The Act aims to improve methods of working with natural families which experience problems in fulfilling their care and educative functions. It also regulates family forms of substitute child care, such as foster families and family foster homes. Further reduction in both the number of children in institutional care as well as the size of such institutions is another objective clearly articulated in the Act.

According to Article 34 of the 2011 Act on Family Support and Foster Care there are two forms of foster (substitute) care: family care and institutional care. Foster family care may be provided in a foster family (*rodzina zastępcza*) or a family foster home (*rodzinny dom dziecka*). Foster families are divided into:

- Related foster families composed of close relatives of the child.
- Non-professional foster families.
- Professional foster families.

The latter include emergency foster families and specialised foster families. Emergency foster families (*rodzina zastępcza zawodowa pełniąca funkcję pogotowia opiekuńczego*) provide substitute care for children until the settlement of their situation, in principle no longer than 4 months. Specialised foster families (*rodzina zastępcza zawodowa specjalistyczna*) provide care for disabled children, under-aged mothers with children as well as juveniles in the meaning of the 1982 Juvenile Act. In a family foster home (*rodzinny dom dziecka*) no more than 8 children can stay at the same time, although

⁴¹ Raclaw-Markowska and Rymsza 2005, p. 3-4.

⁴² See *Ustawa z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej*, Journal of Laws 2011/149, pos. 887 with subsequent amendments.

exceptions are possible if siblings need to be placed together.⁴³ Such foster homes provide child care in an environment similar to the family home.

Decisions on the placement of a child in institutional or family foster care as a rule have been taken by guardianship courts.⁴⁴ The guardianship court decides to place the child in foster care if, in the opinion of the court, the child's welfare is endangered, regardless of whether natural parents consent to such placement. Only in exceptional circumstances is it possible to place the child temporarily in a foster family or a family foster home without the decision of the guardianship court at the request of the parents or with their consent if there is an urgent need to do so. Temporary placement of a child in an emergency foster family without the court's decision is also possible if there is a need to provide care for the child immediately.⁴⁵

Undoubtedly, as a result of the reforms of the foster care system that were carried out in the last two decades the number of children placed in institutional foster care diminished while the number of children in foster family care increased.⁴⁶ In the last few years the number of children placed in foster families has been much higher than the number of children in care institutions (*Figure 5*). Additionally, in the same period there were about 1500 - 2500 children placed in family foster homes that functioned similar to large foster families and each of them provided care for 4-12 children.⁴⁷

43 See Article 61 of the 2011 Act on Family Support and Foster Care.

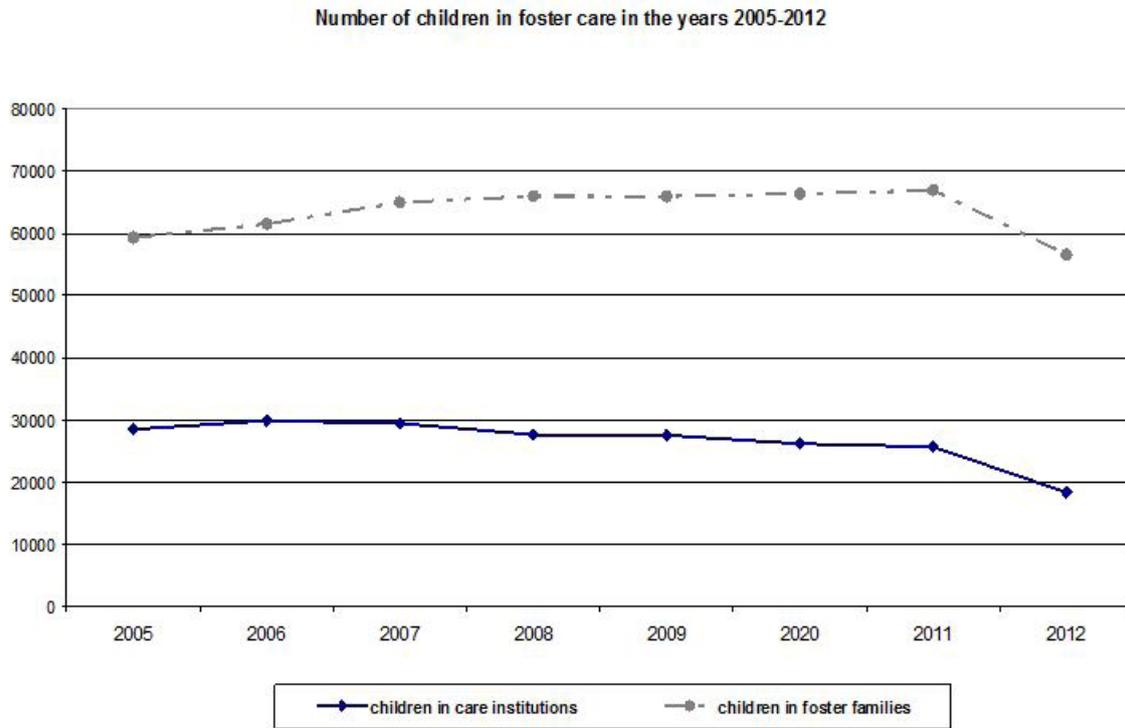
44 See Article 35 § 1 of the 2011 Act on Family Support and Foster Care.

45 See Article 35 § 2 of the 2011 Act on Family Support and Foster Care.

46 *Kolankiewicz 2009*, p. 139.

47 Provisions concerning the organization of family foster homes as well as the number of children in such homes were changing in the period of 2005-2012.

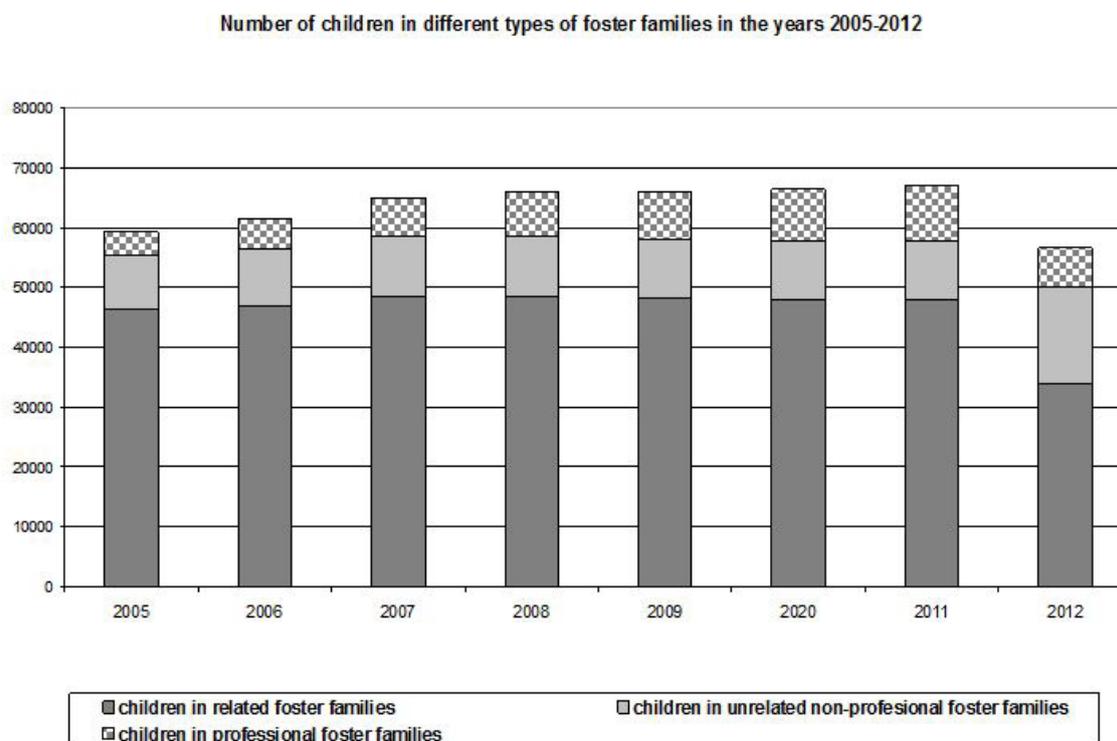
Figure 5. Number of children in care institutions and foster families in the years 2005-2012



Data available online: Ministry of Labour and Social Policy (2013), *Dane statystyczne dotyczące rodzin zastępczych i placówek opiekuńczo – wychowawczych*, <http://www.mpips.gov.pl/wsparcie-dla-rodzin-z-dziecmi/opieka-zastepcza-nad-dzieckiem/dane-statystyczne/>

In the last years some changes concerning types of foster families may also be observed. As can be seen from *Figure 6*, the number of children placed in related foster families has been decreasing in the last years. At the same time the number of children in unrelated unprofessional foster families as well as professional foster families is on the rise.

Figure 6. Number of children in different types of foster families in the years 2005-2012



Data available online: Ministry of Labour and Social Policy (2013), *Dane statystyczne dotyczące rodzin zastępczych i placówek opiekuńczo – wychowawczych*, <http://www.mpips.gov.pl/wsparcie-dla-rodzin-z-dziecmi/opieka-zastepcza-nad-dzieckiem/dane-statystyczne/>

According to statistical data of the Ministry of Labour and Social Policy, in 2012 there were 25,836 related foster families in Poland (composed of close relatives), 12,162 unrelated non-professional foster families and 1,843 professional foster families. The number of children placed in these families amounted to 33,769 in related foster families, 16,383 in unrelated non-professional foster families and 6,454 in professional foster families⁴⁸ respectively.

The foster care system provides substitute family and institutional care for children in need within the child welfare system. According to provisions of the 1982 JA, it is also possible to place a juvenile who committed a ‘punishable act’ or showed ‘signs of demoralisation’ in a foster family, but this has not been actually used in practice. The JA enacted in 1982 enumerated the placement of a juvenile in a foster family among educational measures applied by the family court after adjudication of the case. Data on the number of juveniles placed in foster families after adjudication by courts of the first instance in the years shortly after the JA entered into force indicates that this educational measure hardly was used by family courts (*Table 1*).

⁴⁸ Ministry of Labour and Social Policy 2013, data available online.

Table 1. Number of juveniles placed in foster families in the year 1984-1989

	1984	1985	1986	1987	1988	1989
Number of educational measures imposed due to signs of 'demoralization'	4,030	4,581	4,801	5,116	4,976	5,050
Number of juveniles placed in foster families due to signs of 'demoralization'	14	6	9	10	10	7
Number of educational measures imposed due to 'punishable acts'	10,771	12,446	12,695	14,261	14,053	14,745
Number of juveniles placed in foster families due to 'punishable acts'	4	7	6	10	4	7
Number of juveniles on whom suspended placement in a correctional institution was imposed	1,484	1,363	1,375	1,412	1,132	1,036
Number of juveniles placed in foster families during the period of suspension	0	2	3	4	1	2

Data come from: Szumski, J., (1990), *Struktura i dynamika środków stosowanych wobec nieletnich w latach 1984-1989*, in: Bojarski, T. (ed.), *Orzekanie środków wychowawczych i poprawczych w praktyce sądów rodzinnych*, Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, p. 153-159.

Since 2012, the educational measure involving the placement of a juvenile in a foster family was limited to specially trained professional foster families. Placement in a specially trained professional foster family belongs to educational measures which may be applied by the family court to both juveniles showing signs of 'demoralisation' as well as perpetrators of 'punishable acts'.⁴⁹ According to the current wording of the JA, a juvenile may be also temporary placed by the family court in a specially trained professional foster family before adjudication.⁵⁰ The latest data on the structure of measures applied by family courts to juveniles⁵¹ generally confirm tendencies which might be observed earlier (*Table 2*).

49 See Art. 6 of the 1982 JA.

50 See Article 26 of the 1982 JA.

51 Data for the years 2001-2008 refer enforceable court judgments.

Table 2. Number of juveniles placed in foster families in the years 2001-2008

	2001	2002	2003	2004	2005	2006	2007	2008
Number of juveniles on whom educational or medical measures were imposed due to signs of 'demoralization'	9,441	10,633	12,206	15,193	15,454	16,978	19,503	20,089
Number of juveniles placed in foster families due to signs of 'demoralization'	2	6	8	10	11	3	3	7
Number of juveniles on whom measures or penalties* were imposed due to 'punishable acts'	25,976	25,111	25,521	28,342	26,228	27,419	27,790	26,957
Number of juveniles placed in foster families due to 'punishable acts'	2	4	1	2	3	2	3	3

* In some years no penalty was imposed by family courts, in other years the number of penalties oscillated between 1 and 7.

Data come from: Czarnecka-Działuk, B., and Wójcik, D., (2011), *Reagowanie na czyny karalne i demoralizację nieletnich – koncepcje teoretyczne, statystyki i opinie sędziów rodzinnych*, in: Siemaszko, A. (ed.), *Stosowanie prawa. Księga jubileuszowa z okazji XX-lecia Instytutu Wymiaru Sprawiedliwości*, Warsaw: Wolters Kluwer, p. 884-889.

Data included in *Table 1* and *2* clearly indicate that the placement of a juvenile in a foster family has not played any significant role in the juvenile justice system since the 1980s when the JA entered into force. One possible explanation may be connected with the fact that family courts, and previously family judges⁵², have had large discretionary power under the 1982 JA. They are authorized not to institute or at any time drop juvenile proceedings if they are of the opinion that the application of educational or correctional measures would be inadvisable.⁵³ Using their discretionary power family courts can institute care proceedings instead of juvenile proceedings regulated by the JA in cases whereby juveniles are suspected of committing a 'punishable act' or show signs of 'demoralisation', but at the same time they grow up in families in which their welfare has been endangered. Unfortunately, there is a lack of research concerning the use of discretion by family courts in juvenile cases.

⁵² Since January 2014 family court institutes proceedings in juvenile cases; before the amendment to the JA family judges instituted and conducted explanatory (preparatory) proceedings.

⁵³ Article 21 § 2 of the JA.

Conclusions

The beginnings of creation of a separate juvenile justice system took place in Poland in the 1920s and 1930s. Since the 1980s the juvenile justice system has been regulated by the Juvenile Act (*ustawa o postępowaniu w sprawach nieletnich*) which was adopted by Parliament in October 1982 and entered into force in May 1983. In comparison with provisions on dealing with juveniles which were included in the criminal codification of the 1920s and 1930s, the 1982 JA introduced significantly more welfare, paternalistic and protective approaches.

‘Juveniles’ in the meaning of the 1982 JA are not only perpetrators of ‘punishable acts’ committed between 13 – 17 years of age, but also persons under 18 who show problematic behaviours not prohibited by the criminal law, referred to by the legislator as signs of ‘demoralisation’. Under the 1982 JA, neither category of juveniles is punished, but should be protected, supported and educated by the family court dealing with juvenile cases. The procedure in such cases as a rule is civil procedure which raises some concerns about providing juveniles with basic procedural rights.

In proceedings concerning signs of ‘demoralisation’ only educational or medical measures may be applied to juveniles. In proceedings due to ‘punishable acts’, apart from educational and medical measures, correctional measures may also be applied - this is the suspended or unsuspended placement of a juvenile in a correctional institution. In practice, the vast majority of measures imposed on juveniles showing signs of ‘demoralisation’ as well as perpetrators of ‘punishable acts’ are educational measures enforced in their former place of their residence.

Despite the broad legal basis for referring juvenile cases to victim-offender mediation this possibility has been used in practice to a very limited extent. The placement of a juvenile in a foster family has been possible since the 1982 JA entered into force. However, it has been recently restricted to professional foster families only. In practice it is also used very exceptionally. Generally, there is a lack of empirical research concerning the effectiveness of measures imposed on juveniles by family courts, including measures such as the placement of a juvenile in a professional foster family.

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