The Juvenile Justice System in Poland
Report prepared for the European Society of Criminology

1. A brief history of the Polish juvenile law

1.1. The Juvenile justice system under the 1932 Penal Code

It was not until 1918 that Poland became independent after a long period when the country had been divided between Austria, Germany and Russia. After having regained independence it was a matter of great urgency to unify both the penal and civil law. As far as the penal law is concerned, the legislative commission set up in order to prepare the draft of the Penal Code stressed continuously that children and youths who had broken the law should not be treated as “little adults”; as a result they should not receive the same penalties as adult offenders. Finally, the Penal Code of 1932 contained a separate chapter on juveniles which introduced a separate system of juvenile justice.

According to s. 69 (1) of the 1932 Penal Code a juvenile was a person who had committed an offence before having reached 17 years of age. Juveniles who had committed an offence prior to his or her 13th birthday could not be accountable for their illegal actions. As a result, only educational measures might be imposed on them that ranged from a reprimand through the supervision of parents, guardians or a probation officer to placement in an educational institution. The same measures were imposed on juveniles who had committed an offence after the 13th birthday, but prior to the 17th, provided that they were not competent to understand the nature of the act and direct their behaviour. Under s. 70 of the 1932 Penal Code, juveniles aged 13 to 17 who had committed an offence while having been able to understand the nature of the act and direct their behaviour should be sentenced to the placement in a house of correction. It was possible, however, to impose educational measures on such juveniles as well, if the court found placing them in a house of correction useless on a
basis of the circumstances of the offence, the juvenile’s character or conditions of his or her life and environment.

As in many other countries there was a shift at the beginning of the last century towards a discretionary welfare-oriented model of juvenile justice, in Poland juveniles placed in a house of correction under the Penal Code of 1932 could be institutionalized until the age of twenty-one. However, they might be granted conditional release earlier. Section 73 (1) of the Code gave courts the authority to suspend conditionally the execution of the placement of a juvenile in a house of correction provided that the crime committed was not punished by the death penalty or life imprisonment in cases of adult perpetrators.

The nature of the placement of a juvenile in a house of correction under the Penal Code of 1932 was a matter of a great controversy. According to some lawyers placing a juvenile in a house of correction constituted a special educational-preventive measure, different from other educational measures provided by the Code. In the opinion of others, however, placing a juvenile in a house of correction for an indeterminate term was a specific penalty or quasi-penalty that combined some retributive elements and a predominant rehabilitative goal (Stando-Kawecka 1993, p. 10-15).

It should be added that in Poland, immediately after having regained independence, separate juvenile courts were set up in some of the biggest cities. The Code of Penal Procedure enacted in 1928 introduced also separate proceedings in juvenile cases. In fact, however, there were only a few juvenile courts in Poland before World War II. It was only in the 1960s that the number of separate juvenile courts started to grow significantly (Marek 1988, p. 42-43).

### 1.2. The Juvenile Act of 1982

The Penal Code as well as the Code of Penal Procedure of 1969 did not contain any provisions on juveniles with one exception; the 1969 Penal Code introduced the possibility to transfer a juvenile aged 16 who had committed a very serious offences to an adult court. Generally, however, the provisions of the 1932 Penal Code and the 1928 Code of Penal Procedure concerning juveniles were still valid after the Codes of 1969 had come into force. It was only in May of 1983 that they were replaced with the Juvenile Act enacted in 1982. The Act of 1982 covers substantive legal questions and procedural matters as well as matters related to the execution of measures imposed on juveniles. It is worth emphasising, that although during the 1980s in many Western countries a shift could be observed from a
welfare model that promoted the “best interests” of juvenile offenders towards the more legalistic approach to juvenile crime that stressed personal accountability as well as legal rights of juveniles, that was not the case in Poland. On the contrary, the Polish Juvenile Act of 1982 as compared to the 1932 Penal Code strengthened the paternalistic welfare approach (Wojcik 1995, p. 73). Strong educational and social rehabilitation elements of the Act are evident not only from the Preamble, but also from its provisions concerning the notion of a juvenile, measures applied to juveniles and the central role of family judges and family courts in all stages of the proceedings in juvenile cases.

According to the Preamble to the Act, its main objectives are:

- to counteract the demoralization and delinquency of juveniles,
- to create conditions for those who have come into conflict with the law or with the rules of acceptable social behaviour, to return to normal life,
- to strengthen the care and educational functions of the family and its sense of responsibility for the development of children.

Under s. 1 (1) of the Act its provisions relate both to:

- juveniles aged 13-17 who committed offences and selected misdemeanours (the Juveniles Act of 1982 uses the notion „punishable acts”) and
- juveniles who are under 18 years of age and display signs of problem behaviour.

The Act does not define the notion of demoralization. In s. 4 of the Act only the signs of demoralization are enumerated: prostitution, use of alcohol or drugs, running away from home, association with criminal groups, systemic truancy of compulsory school or vocational training, and so forth. It should be noted, that there is no minimum age limit for juveniles displaying signs of demoralization. The commission of an offence by a minor less than 13 years of age is considered to be a sign of demoralization, not a punishable act. Punishable acts may be committed only by juveniles between the age of 13 and 17.

As a rule, only educational, medical and corrective measures may be imposed on juveniles. All educational and medical measures may be applied both to juveniles who have committed punishable acts (offences or selected misdemeanours) whilst between 13 and 17 years of age and to juveniles less than 18 years of age displaying serious problem behavior.

As far as corrective measures are concerned, they may be imposed only on juveniles who have committed offences between the age of 13 and 17 years provided that a high degree of the perpetrator’s demoralization and the circumstances and the nature of the act warrant that, and especially when educational measures have proved or are not likely to lead to
rehabilitation of the offender. Corrective measures in the meaning of the 1982 Act are the suspended and immediate placement of a juvenile in a house of correction. Similarly to the 1932 Penal Code, the placement in a house of correction under the 1982 Act is imposed on juveniles for an indeterminate term; they could be institutionalized until the age of twenty-one.

Undoubtedly, the next important feature of the welfare approach to juvenile crime in Poland is the central role of family judges and family courts in proceedings in juvenile cases. Family courts were set up in Poland at the end of the 1970s. Since that time they have acted as family and juvenile departments in district courts. The concept of family courts in Poland is based on the assumption that the same judge should deal with cases concerning different members of the family. As a result, the scope of family courts authority ranges from cases heard according to family and guardianship law (with the exception of divorce and separation cases which were transferred to civil regional courts in 2001), cases regarding enforcement of compulsory treatment of alcoholics and drug addicts, and juvenile cases related to prevention and reacting to problem behavior of persons under the age of 18, as well as punishable acts committed by those between the age of 13 and 17.

As far as juvenile cases are concerned, family court judges conduct and control all the stages of the proceedings, that is the preliminary inquiry, court proceedings and proceedings related to the execution of the measures imposed on juveniles. It is the family judge who institutes proceedings in the case that a juvenile commits a punishable act or displays signs of problem behavior. After having been notified of the circumstances justifying the institution of proceedings, however, the family judge may refuse to institute the proceedings or discontinue them at any time on the principle of expediency. During the preliminary inquiry the family judge assigns different actions to the police and to probation officers as well as decides - alone or in some cases with two laymen - on provisional measures to apply to a juvenile. The same judge alone or with two laymen decides on the imposition of educational, medical or corrective measures on a juvenile. What is more, he or she supervises the execution of the imposed measures which to a large extent might be changed during the stage of their execution.

Generally, family court judges in Poland have enormous power in juvenile cases. They have a great deal of discretion in deciding to drop the case or continue the proceedings, to apply provisional measures, to impose educational, medical or corrective measures as well as to revise or repeal those measures at the stage of their execution. No principle of proportionality is provided by the 1982 Act. According to s. 3 (1) of the Act in cases
involving juveniles the chief consideration should be their welfare, with an emphasis on
bringing about favorable changes in their personality and behavior and, when necessary, on
ensuring the proper discharge by parents or guardian of their obligations as well as the public
interest. Under s. 3(2) basic criteria that should be used to choose proper measures are the
personality of a juvenile, with particular reference to his age, health, mental and physical
development, character and behavior, as well as the causes and degree of demoralization, his
or her environment and the conditions of his or her upbringing. As far as the placement of a
juvenile in a house of correction is concerned, however, account is also to be taken of the
circumstances and nature of the offence.

1.3. Recent amendments to the Juvenile Act of 1982

In the last decade the juvenile justice issue received in Poland a great deal of attention.
On the one hand, efforts were made in the mid-1990s in order to introduce victim-offender
mediation as well as some other elements of the restorative approach in the juvenile law and
praxis. On the other hand, however, the public shared the opinion that there had been a
dramatic rise in juvenile crime. There is no doubt that, to a large extent, the media
contributed to this opinion. The media frequently raised the problem of young people
committing crimes. In their reports on juvenile crimes, the media frequently present juvenile
offenders as psychopathic monsters (Ministry of Justice 1998, p.3). As a result, demands for
more stringent punishment were often voiced in the media and the current juvenile law is
widely criticized for being “too soft” on young offenders. Such demands were supported by a
large number of politicians, who placed great emphasis on the need for radical changes,
making juveniles responsible for their acts and demaning more severe punishment. It should
be noted, that some Polish criminologists were of the same opinion. They stressed that the
sharp rise in the number of registered juvenile offences, particularly violent offences, in the
1990s was “a dangerous phenomenon” and stated that current legislation on the treatment of
juvenile offenders was out of date, by far too liberal and totally failing to meet the challenge
of the new profile of juvenile crime (Siemaszko 2000, p.18). At he same time, the welfare-
oriented paternalistic approach to juvenile offenders raised a great deal of doubts concerning
the legal status and legal rights of juveniles during the proceedings, particularly with respect
to the principles of proportionality and the presumption of innocence as well as the right of a
juvenile to be adjudicated by an impartial tribunal (Stando-Kawecka 1998, p. 40).
Despite the fact, that the Juvenile Act of 1982 was strongly attacked for many reasons, it is still in force. What is more, only relatively limited changes to the juvenile justice system were enacted in the last decade. One of the most important changes to the Juvenile Act was introduced in June 1995 in respect of the situation of persons who had been sentenced to imprisonment for a crime committed after having reached 17 – or exceptionally 16 - years of age, while having been placed in a house of correction. Previously, according to the s. 92 of the Juvenile Act the correctional order should be executed first and the prison sentence afterwards. The family court, however, had a great deal of discretion as regards the prison sentence; it might order the execution of a prison sentence including correctional treatment, conditionally suspend the prison sentence, or in exceptionally justified circumstances even remit the whole of the sentence. Section 92 of the Juvenile Act after the amendment f 1995 provides that in such a case the prison sentence is to be executed while the execution of correctional order has to be dropped.

Two years later the Penal Code of 1997 lowered the age limit of criminal responsibility of juveniles in exceptionally serious cases by one year (from 16 to 15 years of age) and slightly broadened the scope of offences for which juveniles could be sentenced by an ordinary penal court under s. 10(2) of the Code. At the same time, however, the maximum penalty for juveniles exceptionally tried by an ordinary penal court was limited to two-thirds of the maximum penalty provided for adult offenders; while instead of life imprisonment a maximum penalty of 25 years of imprisonment might be imposed on juveniles.

In September 2000 a further amendment to the Juvenile Act was issued by Parliament. The main goal of the amendment, which came into force in January 2001, was to adjust the juvenile law to international standards and to harmonize it with other legal instruments, particularly with the 1997 Penal Code and the Constitution, to strengthen victim rights, and to provide a more effective procedure for juvenile cases. As a result, s. 3a was added to the Juvenile Act which enables family judges and family courts to send juveniles, on request or with the agreement of both victim and offender, to an institution or trustworthy person in order to carry out mediation. At the same time, a number of changes were introduced with regard to the rights of juveniles placed in educational institutions and houses of correction.

Other provisions of the 2000 amendment aimed at a more restrictive treatment of juveniles who have committed serious crimes (for example homicide, serious bodily injury, taking hostages or robbery) subsequent to being given a suspended order to a house of correction, after being granted parole from such a house or during their stay in it. In terms of the amended s. 11(3) of the Juvenile Act the family court has to place a juvenile in a house of
correction if he or she has committed a serious crime during the period of a suspended order of placement in such a house, provided that there were no grounds for referring the case to an ordinary penal court.

According to s. 91 (2) after the amendment of 2000 a juvenile with serious problem behavior who has committed a serious crime during his stay in a normal house of correction but provided that there are no grounds for directing his case to an ordinary penal court, may be sent to a treatment institution with restrictive educational supervision, to a psychiatric hospital or to another appropriate health-care institution Earlier conditional release from the house of correction for juveniles who require restrictive educational supervision is possible in such a case after at least a one-year stay in the house. Under s. 87(3a) the family court has to revoke the earlier release if the juvenile committed a serious crime while on parole, and provided that there were no grounds to direct the case to an ordinary penal court. In such a case the juvenile could be granted a renewed conditional release, but not before he has spent no less than one year in a house of correction.

Despite these changes, however, the welfare-orientated principles of the 1982 Juvenile Act have remained to a large extent unchanged. In 2003 the Ministry of Justice set up a commission in order to prepare the draft of a new juvenile law. By now, however, no draft of the new law has been issued nor have basic principles of the suggested reform been published.

2. Crime trends in Poland after 1989

2.1. Overall crime trends

Like other central and eastern European countries Poland experienced a very rapid increase in the number of registered offences after the totalitarian state had collapsed. As can be seen from Figure 1, the most dramatic growth of the number of registered offences was observed between 1989 and 1990; in that period the number of registered offences had grown by 61 %, and the official crime rate in Poland - by about 63 % (Siemaszko 2003, p. 16; Krajewski 2003, p. 12-13).
The number of offences registered by the police does not include misdemeanours (wykroczenia). According to the Polish penal law, misdemeanours are petty offences, such as for example petty traffic offences and petty thefts, penalised under the Code of Misdemeanours with fine, liberty limitation of up to one month or arrest of from 5 up to 28 days.


According to some Polish criminologists such an explosion of offences limited to one year only is hardly imaginable (Krajewski 2003, s. 13). At the same time they stress that it is difficult to assess, to what extent the rapid increase in the number of registered offences between 1989-1990 was compatible with the increase in the number of offences in reality and to what extent it was caused by several other factors, such as the increasing willingness of citizens to report crimes to the police or some radical changes in patterns of registering offences by the police (Blachut, Gaberle and Krajewski 1999, p. 205-207; Krajewski 2003, p.12). Unfortunately, it is impossible to verify official data with the help of victimization data, because victim surveys were completely unknown in Poland before 1989 and even after that date they have not been routinely used as a way of collecting data on crime. As a result they provide only very limited data on the development of crime trends during the last decade.
In the early-1990s the number of offences registered by the police stabilised or even dropped a little. Since 1994 it had started to grow again, with a small interval in 1996, when it dropped. However, the dimensions of this growth were not comparable with the dramatic increase in the years 1989-1990. More recently it should be noted, that the number of offences registered in the years 2001-2003 were strongly influenced by changes in the penal law. Since December of 2000 drunken driving, that previously constituted a misdemeanour and was not included in statistics of offences, has been penalised as an offence under the Penal Code. As a result, about 120 -140 thousand cases of drunken driving per a year have been registered by the police as traffic offences ([Siemaszko] 2003, p. 16, [Statistical Yearbook of the Republic of Poland] 2003, p. 64). Having these changes in criminalisation in mind, it is easy to observe that in fact since 2000 the amount of registered offences in Poland has increased.

As far as absolute numbers of the most serious offences are concerned, these are offences against life and health and robbery, that did not stabilise in the early-1990s but continued to grow steadily. For selected offences against life and health (homicide, bodily injury, assault and battery) the trend persisted up to 1997 and for robbery up to 2000 (more information in: [Siemaszko] 2003, p. 20-24; [Krajewski] 2003, p. 14). On the other hand, however, the percentage of offences against life and health during the whole period was relatively small and amounted from 1,7 % in 1990 up to 3,6 % in the late-1990s. Figure 2 illustrates that for robbery the situation was much the same; the share of robberies amounted from 1,7 % in 1989 up to 4,2 % at its peak level of 2000. At the same time, however, quite different patterns could be observed for property offences. The percentage of burglaries rose significantly between 1989 and 1990, but after 1990 it started to drop constantly with small intervals in 1996 and 1998. As for theft, its percentage has been fluctuating strongly and without any clear pattern.
Category of offences against health and life covers homicide, bodily injury, brawl and battery.


2.2. Juvenile offences according to police statistics

Police statistical data on juvenile offences relate to offences committed by persons who at the time of the offence are at least 13 years old but younger than 17 years. Unfortunately, no statistical data are available as far as the number of registered juvenile offences in 1989 is concerned; police statistics as well as the Statistical Yearbook of Poland provide only the number of juvenile suspects in that year. For this reason it is impossible to say, whether there was a similar dramatic increase in the official number of juvenile offences between 1989 and 1990 as was the case of adult crime.

Figure 3 shows that juvenile offences developed between 1990 and 2003 in a substantially different way from overall registered offences. Total number of juvenile offences did not stabilise in the early-1990 as was the case of all registered offences but grew continuously between 1990 and 1995. In 1996, however, a sharp decrease in juvenile offences
could be observed followed by a rise during the next two years. Since 2000 juvenile offences
have been dropping steadily while the number of all registered offences has continued to grow
mainly due to the criminalization of drunken driving.

![Figure 3: Registered juvenile offences in the years 1990-2003 (absolute numbers)](image)

<table>
<thead>
<tr>
<th>Year</th>
<th>Juvenile Offences</th>
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<tbody>
<tr>
<td>1990</td>
<td>60525</td>
</tr>
<tr>
<td>1991</td>
<td>62834</td>
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<tr>
<td>1992</td>
<td>66220</td>
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<td>1993</td>
<td>72152</td>
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<td>1994</td>
<td>75882</td>
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<td>1995</td>
<td>82551</td>
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<td>1996</td>
<td>70073</td>
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<td>1997</td>
<td>72989</td>
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<td>1998</td>
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<td>1999</td>
<td>70245</td>
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<td>2000</td>
<td>76442</td>
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<tr>
<td>2002</td>
<td>63317</td>
</tr>
<tr>
<td>2003</td>
<td>63239</td>
</tr>
</tbody>
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*Source: Police statistics available on line (www.kgp.gov.pl).*

Generally, trends in juvenile offences compared to trends in overall crime level seem
to point out that the former did not contribute significantly to the overall growth of registered
offences in Poland after 1989. Data concerning the proportion of juvenile offences to all
registered offences, as illustrates Figure 4, lead to much the same conclusion. It should be
mentioned, however, that in Poland the overall figures in police statistics refer to the category
“confirmed offence”, that is incidents reported to the police that are confirmed after the
investigation following the report as having constituted a criminal offence. “Confirmed
offences” are thus registered independently of whether the perpetrators are known or not. As
regards juvenile offences, it is only possible to classify an offence as that committed by a
juvenile if the perpetrator is known. In fact, the number of juvenile offences registered by
police statistics may be strongly influenced by a variety of additional factors, such as different clearance rate for different offences and for different age groups of offenders (Krajewski 2003, s. 20). Having in mind these reservations, it could be observed that the proportion of juvenile offences to all registered “confirmed” offences grew between 1990 and 1993. In 1990 juvenile offences constituted 6.9% of all offences registered by the police, while in 1993 they amounted to 8.5%. In next years, however, no further increase of this proportion took place. On the contrary, since 1995 the proportion of juvenile offences has been falling continuously and in 2003 it amounted 4.3%, that is, the percentage much more lower as at the beginning of the 1990s.

As regards the proportion of juvenile suspects to all suspects registered by the police, Figure 5 shows relative stabilisation in the early-1990s followed by an increase in the years 1993 to 1995 when it was at its peak and amounted to 16.1%. After 1995, however, the proportion started to drop and in the late-1990s it remained relative stable, while at the same time the share of juvenile offences among all registered offences was decreasing significantly.

Source: Police statistics available on line (www.kgp.gov.pl)
This may suggest some changes to social and particularly the police attitudes towards juveniles committing offences in the late 1990s, for example growing readiness of victims to report such offences or paying more attention by the police to juvenile delinquents. A sharp decrease in the share of juvenile suspects observed in 2001 seems to be connected with the sudden growth in the number of adults suspected of drunken driving that started to be penalised as an offence under the Penal Code.

![Figure 5: Proportions of juvenile suspects among all suspects in the years 1990-2001](image)


Juvenile suspects’ rates computed for 100,000 of the population aged 13 to 16 reveal during the 1990s much the same trends as percentages of juvenile suspects among all suspects registered by the police (see Figure 6). After a relative stabilisation in the early 1990s the biggest rise in juvenile suspects’ rate took place in 1994 when it grew by about 41% in comparison with 1993. This increase continued in 1995 when the juvenile suspects’ rate was at its peak. In 1996, however, it dropped sharply and during next years it stabilised again. It should be noticed, however, that in 2001 the juvenile suspects’ rate per 100,000 youth did not
decrease as the proportion of juvenile suspect to all suspects did. Undoubtedly, this justify the conclusion that the sudden drop in the percentage of juveniles offenders to all suspected of committing offences in that year was mainly due to changes in the number of adult suspects.

A matter of a great concern in Poland during the 1990s, however, was the changing structure of juvenile delinquency. The percentage of juvenile violent offences, such as offences against life and health as well as robbery, was continuously on the rise in the 1990s. It was only in 2000, as is evident from Figure 7, that some stabilisation appeared in this respect. Offences against life and health constituted 1.6 % of all offences committed by juveniles in 1990, while in the late-1990s the proportion was about 4 times the 1990 rate. As for robbery, there was a similar substantial growth in the percentage of that offence; in 2000 over 6 times the 1990 rate. At the same time the proportion of burglaries committed by juveniles has dropped steadily with some intervals in 1994 and 1996.

Data on the proportion of juveniles suspected of selected violent offences, such as homicide, bodily injury, brawl and battery and robbery, to all persons suspected of such offences confirm to a large extent the conclusion concerning changes to the structure of juvenile crime. The proportion of juveniles suspected of committing homicide, as can be seen from Figure 8, was after 1989 relatively stable. As regards juveniles suspected of bodily injury as well as brawl and battery, a substantial increase in the percentage of juvenile suspects took place during the 1990s. In 1999 the proportion of juveniles suspected of bodily injury amounted to 22.6% in comparison with 8.3% in 1989; the proportions for brawl and battery were respectively 3.9% in 1989 and 19.8% ten years later. The proportion of juveniles suspected of robbery was on the sharp rise between 1989 and 1995 followed by a steady decrease during the next years. In 2001, however, this proportion was much higher as the 1989 rate. On the other hand, the percentage of juveniles suspected of property offences,
this is burglary and theft, was significantly lower in 2001 than was the case in 1989 (more information on trends in juvenile property offences in: Krajewski 2003, s. 31).

Figure 8: Proportions of juveniles among persons suspected of selected violent offences in the years 1989-2001


Generally, the evaluation of changes in juvenile delinquency in the 1990s has been subject of a great deal of controversy. Some Polish criminologists and educators emphasize that the rise in juvenile crime was very steep. At the same time they lay particular emphasis on the fact that the changes in juvenile delinquency were not merely quantitative, but also qualitative, since juvenile crime was becoming increasingly violent. Finally, they consider this trend in juvenile crime a dangerous phenomenon (Siemaszko 2000, p. 18; Urban 2000, p. 194).

In the opinion of others, however, the situation had not been so dramatic, because the increase in juvenile delinquency in the 1990s was no greater than that in adult crime, and more importantly violent crimes still constitute only a small part of juvenile crime. Additionally, they point to the fact that in the 1990s the number of juvenile suspects was
growing significantly faster than the number of juvenile crimes. The reason for this was probably the changing criminal policy towards juveniles. As a result, a rise in the number of recorded juvenile crimes could be explained, to a certain extent, by the growing readiness of the police to react to juveniles committing offences (Blachut, Gaberle and Krajewski 1999, p. 374-375; Czarnecka-Dzialuk 2000, p. 137, Krajewski 2003, p. 32).

3. The basic philosophy underlying the Juvenile Act of 1982

Generally, the philosophy underlying the Juvenile Act of 1982 is not quite clear. On the one hand, if a juvenile commits a delinquent act this is considered to be a symptom that the welfare of the child is endangered. As a result the same educational and (mental) health measures aiming at protection, education and re-socialization of the child may be applied to both juveniles committing offenses or to those being in danger by their own behavior, such as drinking alcohol, taking drugs, running away from home, etc. On the other hand, however, the possibility of more restrictive reactions is provided by the law with respect to serious offences committed by juveniles after having reached 13 years of age.

Firstly, only juveniles who committed offences after their 13th birthday may be placed in houses of correction. When choosing between educational, medical and corrective measures, the family court should take into account the welfare of the perpetrator, with an emphasis on bringing about favorable changes in his or her personality (s. 3 of the 1982 Act, as well as the nature and circumstances of the offence (s. 10 of the Act). As regards juveniles with behavioral problems other than committing an offense, their placement of such juveniles in a house of correction is excluded by the Act. Secondly, only juveniles who committed one of the most serious offences enumerated in s. 10 (2) of the 1997 Penal Code after their 15th birthday may be exceptionally tried by the criminal court and sentenced to penalties provided for adults. According to s. 3 of the Juvenile Act, a family judge who transfers the case of a juvenile to the public prosecutor in order to bring a charge to the ordinary penal court should take into account first of all the welfare of the juvenile offender. Such provisions, however, seem to be not only unclear but even contradictory.

Efforts aiming at the protection, education and re-socialization of children and youth both those who commit offences and those who are in danger included extremely sophisticated provisions concerning proceedings in juvenile cases, while ensuring at the same time more restrictive reactions to juveniles who commit more serious offences.
4. The proceedings in juvenile cases

4.1. Limited activity of the police and prosecutors

As a result of the principle that family judges and family courts are competent at all stages of the proceedings in juvenile cases it is the family judge who institutes the preliminary inquiry after having been informed that a juvenile has serious behavioral problems or has committed an offense. The activity of the police and public prosecutors in juvenile cases is very limited.

In terms of ss. 37 and 40 of the Juvenile Act the police are competent to collect and preserve evidence of punishable acts in urgent cases and, if necessary, to detain a juvenile suspected of a punishable act in the police station for a period not exceeding 72 hours. Juveniles under the age of 13 cannot be held in police custody. Detention of a juvenile in the police institution for juveniles should be immediately notified to parents or guardian as well as to the family court. If within 72 hours of the detention of the juvenile no decision concerning provisional measures has been issued by the family judge, the juvenile should be immediately released and transmitted in the custody of his or her parents or guardian. Additionally, the police have also the authority to take actions ordered by family judges or family courts after the preliminary inquiry has been instituted.

According to the Juvenile Act of 1982, the police have no discretionary powers; on the contrary, they are obliged to report every juvenile case immediately to a family judge after having collected and stored the necessary evidence in urgent penal cases. There are some reasons for assuming that in fact the police do not report all juvenile cases to a family judge, but make an informal selection, however, no research related to this police selection has been carried out. Some research on police activities in juvenile cases revealed that in practice in many cases the police do not report juvenile offences to a family judge immediately after having collected the in urgent cases, but they do it after having made further investigations (Korcyl-Wolska 2001, p. 420). Another problem is the time juveniles spend in the police station. Because of lack of place in the youth educational centers and detention facilities where they have been placed by family judges as a provisional measures, juveniles suspected of an offence tend to remain in the police station for a period exceeding 72 hours (Korcyl-Wolska 2001, p.199-200).
As far as public prosecutors are concerned, they institute and conduct an investigation only exceptionally in juvenile cases, that is if:

- a juvenile has committed an offence acting in association with an adult, the offence of the juvenile being strictly connected to the offence of the adult and if the welfare of the minor does not preclude the investigation. When the investigation is completed the prosecutor refers the case to a family court or – provided that a joint trial of the case is essential – submits the indictment to a criminal court which should follow the provisions of the Juvenile Act in adjudicating the juvenile suspect,

- the proceedings relate a perpetrator of an offence committed between 13 and 17 years of age, but they have been instituted after the offender’s 18th birthday.

4.2. Preliminary inquiries

Under s. 33 of the Juvenile Act the main object of the preliminary inquiry is to determine whether there is evidence of problem behavior or of a punishable act, as well as to determine whether there is a need to apply to the juvenile measures provided by the Act. During the preliminary inquiry and apart from the collection of evidence, the family judge should also gather information concerning the juvenile and his or her educational, health and welfare situation. In terms of s. 37 of the Juvenile Act, the family judge may order specific measures by a probation officer or the police. If necessary a juvenile may be referred by the family court to a family diagnostic-consultative centre in order to be diagnosed or put under psychiatric observation in a public health institution for a period not exceeding 6 weeks (ss. 25 and 25a of the Act).

Generally, the preliminary inquiry in juvenile cases is based on the provisions of the Code of Civil Procedure. As regards the collection and storage of evidence by the police as well as the appointment and functions of a lawyer, however, the provisions of the Code of Penal Procedure modified the Juvenile Act. The family judge conducting the preliminary inquiry may at any time drop the proceedings. Further, during the preliminary inquiry the family judge may refer the case to a mediation project. This is obviously on a voluntary basis and depends on the victim’s and offender’s motivation and agreement.

During this stage of the proceedings provisional measures may be applied by family judges. These range from the supervision of a youth by a social organization, at the workplace, by a probation officer or other trustworthy person, to the placement of a juvenile in a youth educational centre or in a public health institution. These provisional measures are
thus similar to educational and medical measures imposed on juveniles by family courts after adjudicating the cases. In some cases the placement of a juvenile in a youth detention centre (the Juvenile Act uses the notion *shelter for juveniles*) may be ordered as a provisional measure, that is if circumstances have come to light that recommend placement in a house of correction or if there are grounds for fearing that he or she may go into hiding or destroy evidence, or if it is impossible to establish his or her identity. In contrast to youth educational centers that are under the authority of the Ministry of Education, youth detention centers are under the authority of the Ministry of Justice. As a rule, juveniles cannot be detained in remand prisons designed for adult offenders. Under s. 18 (1) of the Juvenile Act and in exceptional cases a juvenile may be temporary placed in a remand prison provided that there are grounds for sentencing him or her to a penalty provided for adults under s. 10(2) of the Penal Code and placement in a youth detention center would not be acceptable.

On completion of the preliminary inquiry the family judge may drop the proceedings unconditionally if there is no evidence that the juvenile committed a punishable act or showed problem behavior. Additionally, the family judge may drop the proceedings on the principle of expediency if the imposition of educational or corrective measures serves no purpose, in particular when such measures had been imposed on the juvenile in a previous case. Apart from discontinuing of the proceedings the family judge may also take one of the following decisions:

- to refer the case to the school attended by the juvenile or a social organization to which he or she belongs if the judge is of the opinion that the educational measures available to the school or organization are adequate. In practice, however, such referrals are very rarely: for example, in 2002 213 penal cases and 58 cases of problem behavior were transferred to schools and social organizations (*Statistical Yearbook of the Republic Poland* 2003, p. 81),

- In order to refer the case to tutelary and educational proceeding, the judge must be convinced, on the basis of the gathered evidence, the that educational or medical measures should be applied to the juvenile.

- If there are grounds for placing the juvenile in a house of correction, the case will be referred to correctional proceedings.

- If in the course of the preliminary inquiry circumstances come to light which warrant sentencing the juvenile by the criminal court to a penalty provided for adults, the case will be referred to the public prosecutor. In fact this happens in only in very
exceptionally cases: for example, in 2000-2001 there were respectively 4 and 1 juvenile sentenced to imprisonment by the criminal court (Statistical Yearbook of the Republic Poland 2003, p. 85).

4.3. Proceedings before the family court

According to the decision taken by a family judge on completion of the preliminary inquiry, juveniles cases may be dealt with by family courts in one of the following proceedings:

- the tutelary and educational proceedings; or
- Correctional proceeding.

The latter proceedings may be used only in cases of juveniles suspected of having committed a delinquent act, after having reached 13 years of age and only if there are grounds for placing them in a house of correction. Furthermore, tutelary and educational proceeding is used in cases of juveniles in danger as well as in penal cases if there are no grounds for applying to them corrective measures.

The main difference between these two proceedings relates to the provisions governing procedural issues. Tutelary and educational proceedings are governed by the provisions of the Code of Civil Procedure. There are, however, some legislative modifications added to the Juvenile Act. In tutelary and educational proceeding a family judge deals with the case alone and in a rather informal way. In the correctional proceeding the case is dealt with by a family judge who presides and two laymen. In both proceedings the judge usually conducted the preliminary inquiry in the case.

A juvenile offender has to have a lawyer in correctional proceedings. In cases concerning serious offences the public prosecutor has to attend the hearing. According to ss. 45 and 53 of the 1982 Act, in juvenile cases hearings are not public, unless public hearings are justified on educational grounds (more information on the proceeding in juvenile cases in: Stando-Kawecka 1997, p. 424-425; Stando-Kawecka and Dünkel 1999, p. 412).

5. Family courts’ decisions in juvenile cases

5.1. The number of juvenile cases brought to family courts
Figure 9 illustrates the number of juvenile cases in family courts during the years 1989 to 2002. According to the accompanying statistical data, the proportion of cases of juveniles in danger amounted to 16—22 %, while the proportion of cases of juveniles committing offenses was 78-84 %. The number of both these categories increased significantly in the period between 1993 and 1995 and then remained relatively stable with some increase in the period between 1999 and 2001.

![Figure 9: The number of juvenile cases brought to family courts in the years 1989-2002](image)


5.2. Measures applied to juveniles by family courts

As was mentioned earlier, only educational and medical measures may be imposed on juveniles in need of protection. The Juvenile Act of 1982 provides for a wide range of educational measures, most of which are not connected with changes to the living place of a juvenile. In terms of s. 6 of the Act the educational measures include:

- a reprimand,
• supervision by parents, 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, doing unpaid work for the benefit of the victim or local community, taking up
  school education or a job, taking part in educational or therapeutic trainings, avoiding
  specific places, 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 center,
• placing a juvenile in a foster family,
• placing a juvenile in a youth educational center or another suitable institution
  providing vocational training.
  Traditionally, under the Juvenile Act of 1982 juvenile offenders and juveniles in
danger have been placed in the same tutelary and educational institutions as children and
youth in need of care. This situation changed in January 2004. According to the new
provisions of the 1982 Act so called youth educational centres are designed only for juveniles
placed in them on the basis of the Act. These centres are under the authority of the Ministry of
Education, and separate from tutelary institutions, such as for example orphanages, designed
for children deprived of parental care and who have not committed any offence nor any
problem behavior. As far as the latter institutions are concerned, they are under the authority
of the Ministry of Labour and Welfare.

As for medical measures, they may be applied to juveniles suffering from mental
deficiency, mental disease, some kind of mental disorder or from alcohol and drug addiction.
These measures consist in placing juveniles in a psychiatric hospital or other suitable health
care institution. According to s. 12 of the 1982 Act, if there is a need to ensure only care and
protection, the juvenile may be placed in a social welfare institution or in a suitable
educational center. In practice, however, the possibility to place a juvenile in a health care or
social welfare institution is used only in very exceptional cases.

Educational and medical measures are applied to juveniles for an indeterminate period
of time. As a rule these measures terminates on the 18th birthday of a juvenile and in some
rare cases of some of them on his/her 21st birthday (s. 73 of the 1982 Act). The family court
that execute the measures, may revise or repeal them at any time if that is advisable on
educational grounds.
All educational and medical measures may also be applied to juveniles who have committed offences whilst aged 13 to 17. Additionally, in such cases corrective measures may be used, such as placing them in a house of correction for an indeterminate period. However, in terms of s. 73(1) of the Juveniles Act, a juvenile placed in a house of correction cannot stay there not longer than up to 21 years of age, although he may be granted conditional release earlier. Section 11 of the Act states that placement of a juvenile in a house of correction may be conditionally suspended if the personal and environmental circumstances and the nature of the act give grounds for supposing that, despite the waiving of custodial treatment, educative aims will be achieved. Conditional suspension of placing a juvenile in a house of correction may be applied for a period of probation of from one to three years; while the court imposes educational measures during the period of probation.

Houses of correction are administered by the Ministry of Justice. The Minister of Justice Ordinance of 2000 provides for separate houses of correction for juveniles with mental disorders and personality disorders, for alcohol and drug addicted juveniles, and for those that are HIV-positive. Juveniles without such problems are referred to common houses of correction, which are divided into open, semi-open and closed establishments. Juveniles who had previously escaped from an open and semi-open house of correction will be placed in the closed establishments. The Ordinance provides for a further type of house of correction designed for juveniles with serious problem behavior demanding restrictive educational supervision.

5.3. Measures imposed on juveniles due to punishable acts

In the 1990s the proportion of corrective measures, which are suspended and unsuspended orders placing juveniles in a house of correction, amounted from 4 % up to 9 % of all measures imposed on juvenile offenders (Stando-Kawecka 2003a, p. 200-201; Stando-Kawecka 2003b, p. 505-507). Thus, in practice, educational measures imposed by the family court form the a vast majority of dispositions for juvenile offenders. Figure 10 shows that this tendency has not changed in the years 2000-2001.
As far as the types of educational measures imposed on juvenile offenders are concerned, Figure 11 indicates that the most common measure that was applied to juveniles in the last years was placement of the juvenile under supervision of a probation officer. Of all educational measures, the reprimand and supervision of parents were also frequently imposed on juveniles. Special measures, such as repair the damages, apologize to the victim, take up school education or a job, as well as placement in an educational institutions, do not seem to play a significant role in practice.

Figure 11: Types of educational measures imposed on juveniles due to punishable acts in the years 2000-2001

<table>
<thead>
<tr>
<th>Category</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Others</td>
<td>709</td>
<td>599</td>
</tr>
<tr>
<td>Placement in educational institutions</td>
<td>983</td>
<td>814</td>
</tr>
<tr>
<td>Specific conduct orders</td>
<td>2837</td>
<td>3380</td>
</tr>
<tr>
<td>Reprimand</td>
<td>8270</td>
<td>8010</td>
</tr>
<tr>
<td>Supervision of parents</td>
<td>5368</td>
<td>5361</td>
</tr>
<tr>
<td>Supervision of a probation officer</td>
<td>9296</td>
<td>9676</td>
</tr>
</tbody>
</table>

Category *others* contain such measures as placement in a foster family or in a day centre for juveniles run by a probation officer, a ban on driving, forfeiture of goods.


**Literature:**


Stando-Kawecka B. 1993. Charakter prawny zakładu poprawczego w Kodeksie karnym z 1932 r. (*Legal charakter of the house of correction under the 1932 Penal Code*). *Przeglad Wieziennictwa Polskiego (Review of the Polish Prison System)* 4-5, p. 3-16.


