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Efficiency of consultative teams of court experts

1. INTRODUCTION

This article constitutes a summary of analyses carried out by the Institute of Justice under the project entitled 'The effectiveness of consultative teams of court experts'. The aim of the project was to compare the work of diagnostic teams (consultative teams of court experts and family diagnostic-consultative centres further referred to as: CTCE and FDCC) in the year 2016 with their work in the preceding years, in terms, among others, of the number of opinions made, the category of cases in which opinions were made as well as the time taken to prepare the opinions. A number of research methods were used: historic and theoretical analysis, analysis of provisions regulating the functioning of family diagnostic-consultative centres and consultative teams of court experts, statistical analysis, court files studies and discussion of the results of the qualitative studies.

2. IMPORTANCE OF DIAGNOSTIC EXAMINATIONS IN JUVENILES AND FAMILIES CASES

The importance of the diagnostic process as well as the opinion prepared on its basis for court cases and adjudications made has been repeatedly referred to in literature¹. What seems to be essential were the actions the implementation of which would affect a particular person, especially a juvenile. It has been emphasized that it is the educational needs of the juvenile to whom the measure is applied, along with educational and psycho-social considerations, that should be the sole determinant of the choice of an adequate educational measure. Consequently, particular attention has been given to the individualization of decisions in this regard². The diagnostic data of the juvenile, including mainly the opinion of the family diagnostic-consultative centre, have been deemed

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¹ Comp. in. al. A. Sokołowska, *Psychologiczna ekspertyza sądowa w sprawach dzieci i młodzieży*, Warszawa 1977, p. 16; S. Nieuciński, *Psychologiczna diagnoza a ekspertyza psychologiczna dla potrzeb sądu. Analiza makrostrukturalna* [in:] *Diagnoza psychologiczna rozpoznawana przez sądy rodzinne. Materiały na sympozjum*, Kraków 1985, p. 139; M. Kalinowski, *Europejskie systemy resocjalizacji nieletnich*, Warszawa, p. 11; Report of the Department of Juvenile Affairs of the Ministry of Justice entitled: *Kierunki działalności sądownictwa dla nieletnich* of April 1975, after: M. Lipka *Zjawiska patologii społecznej wśród młodzieży. Studium prawnokryminologiczne*, Warszawa 1977, p. 291.

² Comp. in. al. M.H. Veillard-Cybulsky, *Nieletni przestępcy w świecie*, Warszawa 1968, pp. 140-141; J.M. Stanik, *Współpraca psychiatryczno-psychologiczna w ekspertyzach sądowych* [in:] *Problemy psychologiczno-psychiatryczne w procesie karnym*, J.M. Stanik (ed.), Katowice 1985, p. 16.

of utmost significance to the court³. The psychological diagnosis prepared has been identified with both the knowledge and the explanation of the undertaken actions⁴. This diagnosis is still used in the preparation of a programme of measures to be undertaken, the aim of which is to change the behaviour of the individual⁵. It constitutes the basis for social rehabilitation, that is for further work with a given person⁶. It is thus right to underline the dependence between the validity of the diagnosis made and adequate adjustment of the impact model. This dependence is positive which means that the likelihood of formulating adequate behaviour-modifying recommendations is higher in the case of a valid diagnostic process⁷. However, this is a difficult and responsible task. The examining person refers to the adopted norm and thus to an ideal standard. It is, however, questionable whether the ideal standard adopted by the diagnostician equates the actual ideal standard⁸. What is indicated as a criterion allowing to ensure a correct course of the diagnostic process is observance of an organizing principle setting the goal which the prepared opinion should serve⁹. Literature provides a variety of classifications of the goal of the diagnosis¹⁰. Experience and length of work of the examining person certainly affect the course of the diagnostic process. It is pointed out that the education of an expert is a long-term process¹¹. In spite of the fact that diagnostic opinions have been used in juvenile cases much longer (since the 20s of the 20th century) than in family and care cases (1978)¹², the opinions prepared in the latter are also evaluated as helpful¹³, extensive, well-organized¹⁴ and reliable¹⁵. The conclusions they contain are considered essential for the decisions made by the court¹⁶.

3. DEVELOPMENT OF DIAGNOSTIC CENTRES IN POLAND

The beginnings of the development of diagnostic centres in Poland go back to the 20s and 30s of the 20th century¹⁷. At that time, biological-criminal examinations¹⁸ (prototypes

³ A. Rosiak, *Sprawy karne nieletnich* [in:] *Polskie sądy rodzinne w świetle badań empirycznych*, A. Strzembosz (ed.), Warszawa 1983, p. 113.

⁴ K. Ostrowska, E. Milewska, *Diagnozowanie psychologiczne w kryminologii. Przewodnik metodyczny*, Warszawa 1986, p. 10.

⁵ K. Ostrowska, E. Milewska, *Diagnozowanie...*, comp. also: S. Gerstmann, *Użyteczność badań psychologicznych dla kryminologii* [in:] *Studia kryminologiczne, kryminalistyczne i penitencjarne*, Warszawa 1978, Vol. 8, pp. 97–98.

⁶ K. Ostrowska, E. Milewska, *Diagnozowanie...*, p. 21.

⁷ K. Ostrowska, E. Milewska, *Diagnozowanie...*, p. 10.

⁸ K. Ostrowska, E. Milewska, *Diagnozowanie...*, p. 13.

⁹ K. Ostrowska, E. Milewska, *Diagnozowanie...*, pp. 13–14.

¹⁰ Comp. in. al. W. Sanocki, *Koncepcja normy psychologicznej w psychologii klinicznej*, Gdańsk 1978, pp. 84–85, after: K. Ostrowska, E. Milewska, *Diagnozowanie...*, p. 14.

¹¹ A. Sokółowska, *Psychologiczna ekspertyza sądowa w sprawach dzieci i młodzieży*, Warszawa 1977, p. 42.

¹² Comp. in. al. A. Czerederecka, *Kompetencje biegłego psychologa w odniesieniu do spraw rodzinnych i opiekuńczych* [in:] *Standardy opiniowania psychologicznego w sprawach rodzinnych i opiekuńczych*, A. Czerederecka (ed.), Kraków 2016, p. 33.

¹³ Comp. in. al. literature quoted in this study.

¹⁴ W. Stojanowska, S. Nieciuński, *Analiza niektórych elementów psychologicznej ekspertyzy w sprawach rozwodowych* [in:] *Diagnoza...*, pp. 197–198; J. Słyk, *Opinia prawnicza dotycząca projektu ustawy o zmianie ustawy – Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw* (print No. 3058), pp. 3–4.

¹⁵ P. Ostaszewski, *Opinia rodzinnego ośrodka diagnostyczno-konsultacyjnego w sprawach o ustalenie kontaktów dziecka z innymi osobami niż rodzice*, „Prawo w działaniu. Sprawy cywilne” 2008, No. 4, pp. 196, 209–210.

¹⁶ P. Ostaszewski, *Opinie sporządzone przez rodzinne ośrodki diagnostyczno-konsultacyjne w sprawach opiekuńczych i rozwodowych*, „Prawo w działaniu. Sprawy cywilne” 2013, No. 14, pp. 20–21.

¹⁷ Comp. also: L. Tyszkiewicz, *Badania osobopoznawcze w procesie karnym*, Warszawa 1975; K. Ostrowska, *Teoretyczne przesłanki diagnozowania psychologicznego w kryminologii* [w:] *Diagnoza...*, p. 170.

¹⁸ The first individual examinations, performed within the framework of a sciences called ‘criminal biology’ (see: A. Sokółowska, *Psychologiczna...*, p. 18).

of later diagnostic examinations) were supposed to provide exhaustive data on the profile of the offender. The profile could not, however, be limited to merely pointing to features without attempting to determine their genesis. The features had to be studied in the context of the environment in which the offender was brought up. It can thus be said that apart from the psychological and medical aspect, biologic and criminal examinations were also supposed to include the sociological aspect¹⁹. The importance of the latter was recognized mainly in juvenile cases²⁰. The first institutions involved in conducting and interpreting observations included: 'detention centres' and therapeutic-pedagogical wards established in psychiatric clinics. The former constituted a prototype of later emergency youth centres as well as juvenile detention centres²¹. It can thus be said that the diagnostic facilities available to the court were rather poorly developed. A change in this area was dictated by the fact that the development of individual studies of children being subject to legal proceedings coincided with the evolution of opinions on the causes of delinquency. The opinions can be divided into two main groups: constitutional-pathological and socio-educational. The former sought the source of the delinquent behaviour in the disturbances of the psyche of the offender while the latter focused on the neglect found in the environment where the up-bringing process had place. With the development of research, new institutions came to be established to take up the task. They were service-rendering medical-pedagogical outpatient clinics which cooperated with courts. The first of them – the Friends of Children Association Clinic – began to operate in Poland in 1924²². The Clinic rendered also counselling services in the field of educational problems. The following, Pedagogical Clinic was established in Warsaw in 1932. This clinic rendered services solely to the court for juvenile delinquents²³. The outbreak of The Second World War had a clearly negative impact on the development of psychological research – in this context, the 40s are described as a period of stagnation. There is no doubt that the war conditions made it difficult to take up studies aimed at the development of general studies, modification of the method or the concept of service-oriented activities. The diagnostic work was limited to current educational and pedagogic actions. And though cooperation was still talked about, it should be said that it was continued whenever and wherever possible, only with some courts²⁴. The situation had changed in mid-20th century. The initiated development of the juvenile diagnostics concerned both the substantive and the organizational level²⁵. Due the high juvenile delinquency rate and threat of demoralization, the significance of psychological research for criminology became a subject of scientific discourse²⁶. In the 60s of the 20th century, the first institutions dealing with diagnostic studies began to appear by youth corrective centres and juvenile detention centres²⁷. In 1967, the first diagnostic-selection centres were

¹⁹ S. Batawia, *Kwestionariusz biologiczno-kryminalny (draft outline)*, „Archiwum Kryminologii” 1934, Vol. 1, p. 172.

²⁰ A. Sokołowska, *Psychologiczna...*, pp. 12, 19; S. Gerstmann, *Użyteczność...*, pp. 8–10; M.J. Stanik, *Asocjalność nieletnich przestępców jako przedmiot psychologicznej diagnozy klinicznej*, Warszawa 1980, pp. 3–5.

²¹ A. Sokołowska, *Psychologiczna...*, p. 22.

²² A. Sokołowska, *Psychologiczna...*, pp. 23–24.

²³ A. Sokołowska, *Psychologiczna...*, p. 24.

²⁴ A. Sokołowska, *Psychologiczna...*, p. 25.

²⁵ A. Sokołowska, *Psychologiczna...*, p. 26.

²⁶ S. Gerstmann, *Użyteczność...*, p. 7.

²⁷ Reasons of Judgment, Constitutional Tribunal, U 6/13, p. 5, comp. also: E. Holewińska-Lapińska, *Opinion on the need for a change to the legal state regulating Family Diagnostic-Consultative Centers*, Warszawa 2014, p. 2.

set up, in total 18 of them²⁸. The centres were to conduct, commissioned by a court or a prosecutor, psychological, pedagogic, medical and environmental studies. The aim of the that centres was to collect detailed information about not only the juvenile and the juvenile's family but also about their immediate environment. The information was to facilitate not solely correct adjudication but the organization of the social rehabilitation work²⁹. This was possible by examining the current situation and preparing a criminological prognosis. The last of them was deemed indispensable to the choice of appropriate measures of social rehabilitation³⁰. The functioning and the organization of diagnostic-selection centres was specified in the ordinance of the Minister of Justice of 10 September 1974³¹. In accordance with the ordinance, the centres constituted an organization unit of a juvenile facility by which it was established³². The centres were closed by virtue of the ordinance of the Minister of Justice in 1978. In the same year, family diagnostic-consultative centres were created to replace them³³. Apart from the change of the name, the competences of the centres were broadened. In addition to performing researches (which diagnostic-selection centres also dealt with) and preparing opinions on juvenile delinquents on their basis, they were entrusted with the task of preparing opinions in care and divorce cases, and thus cases which concerned not only juveniles but also their parents/legal guardians³⁴. The tasks of the diagnostic-consultative centres included also: 1) providing family counselling, ensuring specialist care of the minor; 2) rendering assistance in the field of psychological and pedagogic care to juvenile detention centres and juvenile centres; 3) cooperating with institutions as well as social organizations which dealt with the protection and strengthening of the family, prevention of children and youth demoralization³⁵. Only in 1978, 20 additional centres were established and thus at the end of 1978 there were already 40 family diagnostic-consultative centres operating in Poland³⁶. The need to expand the diagnostic background facilities can be explained by development of family courts in Poland³⁷. Since the moment of the establishment of family courts, family diagnostic-consultative centres were treated as subsidiary bodies³⁸. Till 2016, their functioning was governed by the ordinance of the Minister of Justice of 26 April 2001. In accordance with it, the task of the diagnostic centres was to specify in the prepared opinions: the causes and degree of demoralization, the proposed

²⁸ M. Lipka, *Zjawiska patologii społecznej wśród młodzieży. Studium prawnokryminologiczne*, Warszawa 1977, p. 288; A. Walczak-Zochowska, *Systemy postępowania z nieletnimi w państwach europejskich, Studium prawnoporównawcze*, Warszawa 1988, pp. 158–159.

²⁹ M. Lipka, *Zjawiska...*, p. 288; A. Walczak-Zochowska, *Systemy...*, pp. 158–159.

³⁰ A. Sokółowska, *Psychologiczna...*, p. 29.

³¹ Ordinance of the Minister of Justice of 10 September 1974 on the organization and scope of action of diagnostic centers for juveniles (Journal of the Ministry of Justice No. 8, Item 44).

³² E. Holewińska-Eapińska, *Opinia...*, p. 2.

³³ A. Walczak-Zochowska, *Systemy...*, p. 156; A. Strzembosz, *Wyniki analizy danych statystycznych* [in:] *Polskie sądy rodzinne w świetle badań empirycznych*, A. Strzembosz (ed.), Warszawa 1983, p. 17.

³⁴ P. Ostaszewski, *Opinia...*, p. 183.

³⁵ A. Walczak-Zochowska, *Systemy...*, pp. 158–159; comp. also: A. Grodzki, *Dwugłós w ośrodkach diagnostycznych*, „Gazeta Prawnicza” 1982, No. 4(430), p. 9, after: A. Walczak-Zochowska, *Systemy...*, p. 159.

³⁶ Introduction to: *Polskie sądy rodzinne w świetle badań empirycznych*, A. Strzembosz (ed.), Warszawa 1983, p. 5.

³⁷ H. Włodarczyk, M. Kościelniak, *Próba krytycznej analizy psychologicznych ekspertyz w sprawach opiekuńczych i karnych nieletnich* [in:] *Diagnoza...*, p. 215.

³⁸ E. Holewińska-Eapińska, *Opinia...*, p. 2.

measures to be applied and recommendations as to their implementation³⁹. Where a diagnostic team found it justified to place a juvenile in an educational institution or in a youth corrective centre, they specified its type⁴⁰.

4. ORGANIZATIONAL AND LEGAL CHANGES TO THE FUNCTIONING OF DIAGNOSTIC CENTRES

As of 1st January 2016, by virtue of the law of 5th August 2015, family diagnostic-consultative centres were transformed into consultative teams of court experts. The law introduced numerous changes to the ordinance hitherto in force. Apart from the new name, also the conditions and form of work rendered by the institution changed. Employees of the consultative teams were placed within the court structures ('in district courts' and not as until then 'by district courts'). This means that as court employees they were excluded from the law – Teacher's Charter⁴¹. This entailed a decrease in the vacation time from 35 to 26 days as well as a creation of an institution called 'an expert on a full-time contract'. Also, the law abolished steps of professional promotion producing an adverse effect on the financial aspects of employment as well as introduced a new system of staff recruitment. The time of waiting for an opinion in family and care cases was shortened from 30 to 14 days, with a simultaneous abolishment of the annual limit of opinions issued. In accordance with the new regulation, specialists from the CTCEs could be asked to conduct mediation and an environmental enquiry. The scope of duties of consultative teams of court experts was specified in Article 1⁴². Their tasks include: 1) preparing opinions on family and care as well as juvenile cases; 2) conducting mediations; 3) conducting environmental enquiries in juvenile cases; 4) providing specialist counselling for minors and juveniles as well as their families. These tasks are performed following an instruction given by a court or a prosecutor. The opinions are based on psychological, pedagogic or medical examinations conducted. Unlike before, the team members were more precisely specified. They include specialists in the field of psychology, pedagogy, paediatrics, family medicine, internal diseases, psychiatry as well as paediatric and juvenile psychiatry⁴³.

The executive act to the law is the ordinance of 1st January 2016 on determining standards of the opinion-preparation methodology in consultative teams of court experts issued by the Minister of Justice⁴⁴. The changes were justified in terms of a desire to ensure care for both the people covered by the examination (in a way which would ensure their more conscious participation) and the specialists responsible for their course⁴⁵. The ordinance specified: 1) rules of procedure

³⁹ H. Włodarczyk, M. Kościelniak, *Próba...*, p. 218; comp. also: Official Journal of the Ministry of Justice No. 43, Item 14.

⁴⁰ M. Kalinowski, *Europejskie...*, p. 160.

⁴¹ Law of 26 January 1982 Teacher's Charter (i.e. Journal of Laws of 2017, Item 1189 with amendments).

⁴² Law of 5 August 2015 on consultative teams of court specialists (Journal of Laws Item 1418).

⁴³ Article 2 of the Law of 5 August 2015 on consultative teams of court specialists.

⁴⁴ Ordinance of the Minister of Justice of 1st February 2016 on determining standards of the opinion-preparation methodology in consultative teams of court experts (Official Journal of the Ministry of Justice of 2016, Item 76).

⁴⁵ H. Domagała, M. Zamiela-Kamińska, *Standardy opiniowania w opiniodawczych zespołach sądowych specjalistów* [in:] *Standardy...*, p. 305.

to be followed by the head of the team and the specialists; 2) the procedure of the examination and the opinion-preparation methodology (as the guarantee of the correct execution of the instructions, in particular, the protection of minors and juveniles as well as the compliance of the applied examination methods and techniques with current knowledge in the field of psychology, pedagogy and medical sciences); 3) stages of the diagnostic process; 4) rules of procedure in special cases; 5) requirements concerning the diagnostic process; 6) the template of an opinion in family, guardianship and juvenile cases⁴⁶.

5. EFFECTS OF THE ORGANIZATIONAL AND LEGAL CHANGES. CONCLUSIONS FROM THE CONDUCTED RESEARCH

Several research methods needed to be used to analyse whether the implemented changes had an impact on the actual functioning of diagnostic centres. This article required the application of statistical analysis, court files studies and discussion of the results of the qualitative studies.

Statistical analysis

The analysis was performed on the basis of the statistical data of the Ministry of Justice concerning the functioning of diagnostic centres (FDCC and CTCE) in the years 2007–2016. The following variables were included: 1) number of opinions made, including the annual load per one employee; 2) number of people employed; 3) duration of opinion-preparation; 4) category of cases in which the opinions were made.

Consultative teams of court experts

In 2016, there were 67 consultative teams of court experts. The teams employed 714 people who issued in 2016 a total of 19 708 opinions (which constitutes 59% of the opinion instructions received). The limits of full-time jobs were: 542.69 for specialists (including 344.88 for psychologists, 167.0 for pedagogues, 28.06 for psychiatrists, 2.75 for others) as well as 102.38 for court employees. A diagnostic team consists of at least two specialists, as a rule, two psychologists or a psychologist and a pedagogue⁴⁷. Once the total number of opinions issued in 2016 and the full-time jobs limit for specialists in psychology and pedagogy were taken into account, it was possible to calculate the mean number of opinions issued per one full-time job. In 2016, it was 77. The centres provided a lot of information in writing, including: information addressed to commissioning-bodies or other units with respect to the results of the examination or the provided counselling (1 266), mediation (2 498) as well as supplementary opinions (303). In 1216 cases it was necessary to set more than one date for the examination (in 2015 this happened 719 times).

⁴⁶ Comp. para 2 of the ordinance of the Minister of Justice of 1st February 2016 on determining standards of opinion-making methodology in consultative teams of court experts.

⁴⁷ P. Ostaszewski, *Opinia...*, pp. 8–9.

The number of opinions issued varies between categories of cases. The highest, over 50% of the opinions, was issued in care cases. Opinions issued in juvenile cases accounted for 28.8% of the total while those in divorce cases – 19.7%. The teams issued 87 opinions in separation cases, 25 in other family (civil) cases and 6 in penal cases. In total, all the teams examined 59 938 people, adults accounting for 55% of them, minors for 35.5% and juveniles for 9.4%. A doctor participated in 3 612 examinations (i.e. 18.3% of opinions), 2 831 (14.3% of cases) of them being attended by a psychiatrist. The time which the commissioning body waited for an opinion, defined as the difference between the date of the receipt of a case by the centre and the date of the sending of the opinion, amounted, most frequently because for every third opinion, to over 120 days. In every fourth case, it oscillated between 31 and 60 days and in every fifth case: 61–90 days. 16.4% of the opinions were sent within 91 to 120 days counting from the moment of the receipt of the case by the centre. Entirely different conclusions can be drawn on the basis of the analysis of the time of waiting for the opinion by the commissioning body counted from the date of the termination of the examination to the date of dispatch of the opinion (definitely closer to the legal regulation). The majority of opinions (85.2%) were sent to the court within 14 days from the date of the termination of the examination while in 12% within 15 to 30 days. In total, the preparation of 448 opinions (i.e. 2.2%) exceeded the 30-day limit and only 69 (i.e. 0.3%) of them were sent more than 60 days from the termination of the examination. There were no cases in the ‘over 120 days’ category.

Family diagnostic-consultative centres

In 2007, family diagnostic-consultative centres employed 648 pedagogic staff. Already in the following year, there was a significant growth of them to 673. This level persisted, with slight changes, till 2014. In 2015, the number of employees dropped to 660. In 2015, the centres employed 60 psychiatrists. In the same year, the number of full-time positions amounted to 521.3 for pedagogic staff (pedagogues and psychologists) and doctors (psychiatrists and others). In the years 2007–2015 the number of cases lodged with family diagnostic-consultative centres increased (by 3 258, i.e. 12.5%). The growth remained steady till 2013. The two following years witnessed a decline by 888 cases in 2014 and 87 cases in 2015. In spite of a largely unchanged number of people employed the number of opinions issued increased by 1 446, i.e. by 6.6%, the growth in this respect concerning only guardianship and divorce cases (by 2 900 and 125 opinions, respectively). The number of opinions issued in the remaining categories of cases decreased (by 1 234 in juvenile cases, by 144 in separation cases, by 189 in other civil cases and by 12 in penal cases). The number of opinions issued per one full-time job remained practically steady: 95–97 in the years 2009–2013 and 92–93 in the years 2014–2015. Simultaneously, what increased over the analyzed 9 years was the number of cases examined (by 5 615, i.e. 6.6%), the increase concerning only minors and adults, not juveniles). Also, the number of doctors involved in preparing opinions went up by 2 824, i.e. almost 30%. In the years 2007–2015, the time of waiting for an opinion, defined as the difference between the date of receipt of a request

by a centre and the date of sending the opinion, usually exceeded 30 days. From 2009, an average of 65% of opinions were sent after more than 60 days. Only in rare cases were opinions prepared and sent within 14 days (2%) and 15 to 30 days (7.5%). The time of waiting for an opinion, calculated as the difference between the date of finishing an examination and the date of its being sent back to the ordering body, was definitely shorter. For almost 57% of cases it did not exceed 14 days while in 42% – 30 days. A waiting period of 30 to 60 days was recorded on average in 1.3% and of over 60 days in 0.1% of cases.

Differences in the functioning of diagnostic teams in 2015 and 2016

The year 2015 (the last year of the functioning of the FDCCs) and the year 2016 (the first year of the functioning of the CTCEs) were chosen to analyse the impact of the change of the legal regulation on the actual, statistics-revealed, functioning of the CTCEs. The following differences were observed:

- 1) While the full-time jobs limits did not change significantly (a decline of 0.99), the actual level of employment decreased – the difference between the numbers of full-time jobs amounted to 78. In 2016, diagnostic teams employed 37 psychologists, 20 pedagogues and 18 psychiatrist less.
- 2) The number of incoming cases increased by 4 002. At the same time the percentage of cases settled declined. In 2016, 889 (i.e. 5%) more cases than in the previous year remained to be settled. This seems to indicate a decline in efficiency. The decline can result from the very process of change or from a systemic deterioration in the functioning of the CTCEs due to the changes implemented. If the decrease in efficiency is dictated by the process of change as such, it can be supposed that the efficiency of work of the teams will increase in subsequent years. If, on the other hand, the change contributed to a deterioration in the work of the teams, it seems reasonable to assume that their efficiency will increase only in case the number of people employed in the CTCEs goes up.
- 3) In 2016, the CTCEs issued 3 779 opinions less, including 1 310 opinions less in juvenile cases, 1 461 in care cases, 910 in divorce cases, 37 in separation cases, 6 in other cases and 55 in penal cases.
- 4) The number of opinions per one full-time job decreased by 15.
- 5) In 2016, diagnostic teams examined 10 453 people less, in particular, adults (a difference of 5 778).
- 6) The number of opinions issued with the participation of doctors declined – a drop of 3 017, i.e. almost 45%. In 2016, a psychiatrist participated in the issuance of 2 831 opinions, i.e. 2 238 less than in the year 2015 (44 p.p.), a paediatrician in 780, i.e. 653 less (almost 46 p.p.) than the year before.
- 7) A comparison of the time needed to prepare an opinion (calculated from the end of the examination to the moment of the sending of the opinion) and the waiting time for an opinion (defined as the difference between the date of the receipt of a case by a centre and the date of the sending of the opinion to court) should be compared with the total number of opinions issued both in 2015 and 2016. While in 2015 opinions were

Table				
Changes in the functioning of diagnostic teams in the years 2015–2016				
		2015	2016	2016/2015
Limits of full-time jobs		543.68	542.69	-0.99
Full-time jobs staffed	total	521.3	443.3	-78
	psychologists	327	290.31	-36.69
	pedagogues	165.3	145.31	-19.99
	psychiatry	24.75	6,75	-18
	others	4.25	0.93	-3.32
inflow of cases		29 394	33 396	4 002
cases waiting for the preparation of an opinion		6 050	8 161	-889
cases (%)		20.6	15.5	-5.1
opinions issued		23 487	19 708	-3 779
number of opinions per one full-time job		92	77	-15
people examined		70 391	59 938	-10 453
participation of doctors		6 629	3 612	-3 017
time of preparing an opinion (from the completion of examinations to the sending of the opinion)	up to 14 days	11 819 50.3%	16 875 85.6%	5 056 35.3 pp
	15 to 30 days	11 345 48.3%	2 385 12.1%	-8960 -36.2 pp
	31 to 60 days	313 1.3%	379 1.9%	66 0.6 pp
	over 60 days	10 0.1%	69 0.4%	59 0.3 pp
Time of waiting by the court for an opinion (from the receipt of the request by the centre to the sending of the opinion)	up to 14 days	367 1.6%	322 1.6%	-45 0.1 pp
	15 to 30 days	1 138 4.8%	1 310 6.6%	172 1.8 pp
	31 to 60 days	5 747 24.5%	4 720 23.9%	-1 027 -0.5 pp
	over 60 days	5 984 25.5%	4 049 20.5%	-1 935 -4.9 pp
	over 90 days	4 653 19.8%	3 244 16.5%	-1 409 -3.4 pp
	over 120 days	5 598 23.8%	6 063 30.8%	465 6.9 pp

Source: own study.

prepared mainly within two time intervals: 'up to 14 days' and '15 to 30 days' (50.3% and 48.3%, respectively), in 2016, the teams sent opinions within 14 days from the completion of the examination (i.e. 85.6%), which might result from the change of the legal regulation consisting in the shortening of the time of issuing opinions in family and care cases (from 30 to 14 days). In the two compared years there were instances

when opinions took more time to be prepared – over 30 or even over 60 days. In the category of ‘time of waiting for the preparation of an opinion’ it is worthwhile to point to two differences. Firstly, the percentage of opinions in which this time amounted to 31 to 120 days (a total of 8.8 p.p.) decreased and secondly, the time of waiting increased in the category of ‘over 120 days’ (6.9 p.p.). Given the above, it can be said that the diagnostic teams implement the provisions of the law on the CTCEs as regards the time of preparing an opinion. At the same time, the number of cases in which the time of waiting for an opinion was longer than 120 days (465 cases more, a difference of 6.9 p.p. in relation to 2015). This can mean that in these cases the time of waiting for the examination was longer which, in view of an increased number of cases coming to the CTCEs, can result from a lower number of people actually employed.

- 8) Improvement of the speed of preparing opinions coincided with a drop in the total number of opinions prepared and the number of opinions per one employee.

Results of the examination of court files study

The examination of court files study covered 74 diagnostic opinions enclosed to 474 cases for establishing contacts between children and people other than their parents. The cases studied were initiated in the years 2012–2016 and completed before the court of the first instance in the years 2014–2017. The opinions were prepared only in 6.5%⁴⁸ of the cases studied, in only three of them there was more than one. The questions posed to the diagnostic team in the decision to admit this evidence emphasize the importance of this opinion to the court. The most frequently asked questions included a question about emotional ties between the applicant/applicants and minors (55 decisions, i.e. 74.3%) as well as a request for a suggestion what settlement might be best in a given case (46, i.e. 62.2%). Only in as few as 28 (37.8%) of decisions on admitting evidence from an opinion did the court appeal to the diagnostic team with a request to say whether contacts or their establishment would be advisable. 12 of them (i.e. 16%) contained a request for an evaluation of the educational capacity of the applicant/applicants, and 9 (12%) of the advisability of a specific (described) settlement. As rarely as in every tenth case, the adjudicating court was interested, among others, in the state of health (physical and mental) of the minor, evaluation of the educational capacity and characteristics of the family environment of the minor or the personality of the applicant/applicants.

An analysis of the elements comprised in the opinions made reveals a varying extent of the answers given by the diagnostic team to the questions posed by the court. What seemed to appear most frequently in the opinions were: information on the applied methods of examination (72 opinions, i.e. 97.3%), characteristic of the family environment of the minor (66, i.e. 89.2%), characteristic of the

⁴⁸ Comp. the findings of P. Ostaszewski, *Opinia...*, p. 180. In the studies carried out diagnostic opinions were prepared in 1/3 (i.e. 85) of cases.

personality of the minor (51, i.e. 68.9%), characteristic of the personality of the applicant/applicants (51, i.e. 68.9%). In spite of the fact that the interest of the court in the above was relatively low, the opinion template in force required that this information be included⁴⁹.

Nearly 80% of the opinions were found to provide complete answers to the court-posed questions (63% of them contained additional findings). 12 opinions (i.e. 16.3%) were incomplete, 11 of them containing additional information (extending beyond the court-asked questions). One opinion was deemed satisfactory given the imprecise questions asked by the court, one also as complete but not satisfying due to the limited set of examination tools used and more specific (instructive) court expectations⁵⁰. An 'incomplete' opinion also appeared in the examined sample. Due to the failure to present by the father and the child, the opinion was prepared on the basis of the examination of the grandmother (the applicant)⁵¹.

The opinions were prepared mainly with the use of two examination methods (83.8%). Five of them were based on one method (analysis of files⁵²) while seven on three methods. The most frequently used methods included: an analysis of files (in all cases) and a psychological or psychological-pedagogical examination (89.2%). Sporadically, a psychiatric examination (5.4%) and an examination by another doctor (2.7%) were performed. In five cases, a consultation was held with another institution or other documents were used.

Most frequently, the diagnostic teams used from three to six examination techniques (in total 91.9% of all, 60% of them applied four to five techniques)⁵³. In one opinion, the diagnostic team used only one technique – conversation/diagnostic conversation/clinical interview. This technique was applied in a total of 95.9% of the opinions. Observation was another technique most frequently found to constitute grounds for an opinion issued (87.8%)⁵⁴. In over 60% of cases the team made use of tests of family relations/interpersonal relations/emotional ties as well as personality tests/questionnaires while in almost every second of projection tests.

As a rule, the total number of the persons examined ranged from three to five (31.1%, 40.5%, 23.0%, respectively). The most frequently examined people were: a child/children (98.6%), a mother or a woman being the child's guardian – 81.1% and the applicant – 94.6%. In approximately every second case, the examination also included the child's father or the man being the child's guardian as well as the applicant. In the majority of cases (86.5%), the opinion was prepared on the basis of a single examination. In 10 cases, two examinations were performed.

⁴⁹ Template No. 2 to the ordinance of the Minister of Justice of 1st February 2016 on the determination of methodology standards for opinions in consultative teams of court experts (Official Journal of the Ministry of Justice of 2016, Item 76).

⁵⁰ The examination used: diagnostic interview/clinical interview, observation and personality tests/questionnaires.

⁵¹ Another opinion in the case was prepared on the basis of the examination of the father and the child (Opinion No. 66).

⁵² In one case, an 'information talk' was conducted with a child's mother, the mother was not indicated as a person to be examined (Opinion No. 9).

⁵³ In P. Ostaszewski's study, the opinion-preparing team made use of 2 to 12 techniques, the mean and median were 5. (see: P. Ostaszewski, *Opinia...*, p. 204).

⁵⁴ P. Ostaszewski, *Opinia...*, pp. 202–204. The author explains that the fact that an opinion does not contain information on an interview and observation carried out does not mean that they were not used. On the contrary, in the opinion of the author, this conversation and observation in its course must have had place if an examination was performed.

Almost 95% of the opinions issued contained recommendations with respect to contacts. The majority of them, i.e. 80% concerned their determination (in 44.6% the contacts were specified in more detail). In seven cases, the team recommended that contacts not be established.

The average time of waiting for the date of the examination was over three months (98 days). A half of the examinations were performed not later than on the 84th day from the moment a decision was made in this respect. Only 9 examinations (i.e. 12.2%) were carried out within 30 days from the date of the decision. Most frequently, in every third case, the examination had place between the 61st and the 90th day. Equally frequently, i.e. in 23% of cases, the time exceeded 120 days. The time of the preparation of an opinion from the moment of the completion of the examination averaged 21.7 days, with half of the opinions having been prepared within 14 days. In the examined sample, there was a case when the opinion was prepared within one day as well as a case when the team needed for its preparation as many as 315 days. At least a half of the opinions was prepared within the time specified in the law on the CTCEs. Every third opinion was made between the 15th and the 30th day from the completion of the examination. Only in sporadic cases, the opinion was delivered after a lapse of more than 30 days (in total, 10 cases, i.e. 13.6%). The mean real time of waiting for a diagnostic opinion amounted to 124.9 days (median – 108 days). This very high mean results no doubt from a fairly significant difference between the shortest (29 days) and the longest (500 days)⁵⁵ time of waiting for this piece of evidence. As a rule, the waiting time exceeds two (18.9%), three (24.3%) or even four (27.0%) months. In 10 cases, the court waited for the opinion-based evidence for over half a year while in one case – over a year.

It is worthwhile to compare the findings of the present study with the findings of the study of the FDCCs opinions in cases concerning the establishment of the child's contacts with people other than the parents closed in the years 2000–2006⁵⁶. This will allow to compare the work of diagnostic teams in two periods: 2000–2006 (hereinafter referred to as Study I) and 2014–2017 (hereinafter referred to as Study II) with respect to: 1) the time of waiting for an opinion by the court; 2) the evidence theses of the court; 3) the form of the answer to the court posed questions; 4) the method of examination; 5) the type and number of examination techniques used.

The mean time of waiting for an opinion by the court, defined as the difference between the date of the decision to admit evidence from an opinion and the date of the receipt of the opinion by the court is identical for the two studies compared. In Study I, it ranged from 30 to 365 days, with a mean of 110 days and a median of 101 days while in Study II, from 29 to 500 days, with a mean of 124.9 days and a median of 108 days.

The questions most commonly addressed to the diagnostic team by the court included questions concerning emotional ties between the applicants and the children, a suggested settlement in the case as well as information whether the establishment of contacts is advisable/compliant with the child's good. While the first presents

⁵⁵ In a study carried out by P. Ostaszewski, the real time of waiting for an opinion ranged from 30 to 365 days, the average being 110 days (see: P. Ostaszewski, *Opinia...*, pp. 191–192).

⁵⁶ P. Ostaszewski, *Opinia...*, pp. 180–210.

much the same percentage in both studies (71.8% and 74.3%, respectively), the remaining two appeared much more frequently in the decisions issued by the court in the cases in the years 2000–2006 (a difference of 8.4 and 19.8 pp, respectively).

The majority of the opinions – 90% in Study I and 80% in Study II – gave complete answers to the court asked questions (in the latter, in spite of the fact that in 14.9% the team did not answer some of the questions but provided additional information in the opinion).

The most frequently used examination methods included the analysis of files and psychological-pedagogical examination while the techniques applied were, first of all, conversation/diagnostic conversation/clinical interview and observation (992.3% and 91% for Study I and 95.9% and 87.8% for Study II). In Study I the diagnostic teams availed themselves of 2 to 12 techniques while in Study II of 3 to 6 techniques.

Given the above it should be noted that in spite of significant similarities in the values obtained in individual categories for the two studies, the findings of Study I indicate more effective work on the part of the FDCC diagnostic teams. This is further confirmed by: 1) the shorter time of waiting for the preparation of an opinion (mean and median values); 2) the higher percentage of opinions containing a complete set of answers to the court posed questions (by 10 p.p.); 3) the higher number of examination techniques applied (maximum 12, i.e. 50% more than in Study II).

The author of Study I, P. Ostaszewski, emphasized that the time of waiting for the preparation of a diagnostic opinion was definitely too long. P. Ostaszewski made much the same conclusions as regards both the time of waiting for the date of the examination and the preparation of an opinion after its completion. The results of my own studies confirm the above findings to some extent. The time of waiting for the date of the examination, defined as the difference between the date of the issuance of the decision to admit evidence from an opinion and the date of the first examination, averaged 98.5 days (median 83.5). At the earliest, the examination was carried out six days from the issuance of the decision while the longest time of waiting for the examination amounted to 486 days (in 17 cases it was over 120 days). The analysis of the duration of the preparation of the opinion (as defined in the law) allows to state that the majority of the opinions are prepared in due time (55.4%) or infringes only slightly the provisions of the law on the CTCEs, i.e. they are prepared between the 15th and the 30th day (31.3%). The latter can be due to the fact that the sample studied contained cases in which the motion initiating the procedure was presented between 2012 and 2016, with cases instituted in the years 2012–2015 (in which opinions were made by the FDCCs) making up 47.3% of the total. This is important in so far that until 2016 the deadline for preparing an opinion was up to 30 days. Given the above, it should be concluded that the majority of the opinions issued in the cases referred to kept the law specified deadline. Moreover, summing up the comparison presented above, it can be seen that, in general, the change of the legal regulation for diagnostic teams did not affect the practice of admitting evidence from a diagnostic opinion (in particular, in the context of the questions posed) and the very process of its preparation (the examination methods and techniques applied, the form of answers given to the court as well as the time of waiting for the opinion).

Consequences of changes in the opinion of specialists

A question about the consequences of the entry into force of the law on the CTCs was also addressed to specialists working in these institutions. Their opinions were gathered at one of the stages of the study (individual in-depths interviews with experts conducted by the author in 2016 in the Department of Criminology of the Institute of Law Studies of the Polish Academy of Science for the project entitled: ‘Cooperation between the family court and other institutions in adjudicating educational and remedial means in relation to a juvenile’⁵⁷.

In the course of the study respondents emphasized that the real time of work (40 hours a week) is a very unfavourable factor. Yet, according to them, it was not so much the number of hours as the lack of elasticity that was a major source of inconvenience. The respondents also argued that every case, though apparently similar, is in fact different. The hitherto applicable 24-hour weekly time of work was a theoretical limit which was assumed to suffice for direct work with a client. In case of need it was extended. The FDCCs workers spent the additional time on court files as well as writing opinions. The shorter working hours did not translate into a lower number of opinions issued. However, it made it possible for them to do some things at home ‘round with an open mind’. The task-adjusted working hours also had a positive effect on reconciling the work for a given FDCC with other works. Respondents stressed that the regulation placed in the law in force is the regulation of the legal situation and not a regulation of their situation. In their opinion, the new law put them on the same level as the court administration workers, their work having been treated by the legislator as similar to the work of an office clerk. Some of the respondents said that the status given them by the legislator was immaterial. The crucial was the existence of a possibility of performing their duties. The change providing for the reduction of the annual length of vacation from 35 to 26 days also received very negative comments. Specialists from the CTCs considered their work burdening. The additional nine days of vacation allowed them, in their opinion, to fully regenerate and relax, thus contributing to more effective performance of work with maintenance of adequate distance.

The law also deprived workers of the possibility of getting incentive allowances or being promoted which additionally had an adverse impact on the financial conditions of their employment. The increase of the working hours from 24 to 40 was not linked to any financial benefits. The shortening of the time of the preparation of opinions in cases concerning family and minors from 30 to 14 days also generated additional difficulties for the functioning of diagnostic teams. The change referred to imposes that all organizational questions be taken into account, including vacations. The system of hiring workers was also changed. At present, they must be sought by means of a competition which does not seem to work well in the case of CTCs. The requirements to be satisfied by candidates are very high and the competition procedure significantly lengthens the process. A positive change is

⁵⁷ The study sample included eight women and two men (including two pedagogues and eight psychologists), mean age 51.9 years, with a mean length of work of 20.7 years. A full description of the methodology of the study can be found in: J. Włodarczyk-Madejska, *Współpraca sądu dla nieletnich z instytucjami pomocniczymi w procesie orzekania*, „Archiwum kryminologii” 2018, No. XL (in print).

the abolishment of the annual limit of opinions issued. In spite of the fact that the requirement in this respect is no longer in force, the informal expectation as regards the number of opinions issued still persists according to the respondents. Simultaneously, the respondents have neither the authority nor competences to conduct mediations or environmental interview in cases concerning juveniles. The respondents emphasized the importance of maintaining adequate borderlines between diagnostics, opinion-making and mediation, simultaneously pointing out that they themselves are not prepared to keep these borderlines. The obvious consequence of the influence of the law on the functioning of the CTCEs were staff-related problems caused by understaffing as well as decline in the effectiveness of the work of the teams. The task-dependent working hours were thus a guarantee of the performance of the task (irrespective of the place and time of the preparation of an opinion). What should be emphasized is that in spite of difficulties in their work resulting from the changes referred to above, CTCE specialists strive to maintain the same care as regards the opinions they issue. This is confirmed by the findings of the court files study which did not reveal significant changes between the work of the diagnostic teams in the years 2000–2006 and 2012–2016.

6. SUMMARY

The most important conclusion arising from the study is a confirmation of the thesis that the work done by diagnostic teams is of essential importance for the administration of justice as a whole. Its justification can be found in the history of the development of diagnostic examinations in Poland and, as stressed by numerous authors, the importance of these examinations as well as opinions issued on their basis for the process of the adjudication and the undertaking of actions concerning the minor/the juvenile as well as their educational environment.

The changes to the legal regulation exerted a significant impact on the structure of employment in the CTCEs as well as the effectiveness of the work they perform. The real employment in 2016 declined. Meanwhile the inflow of cases to the teams increased with a simultaneous rise in the cases which remained to be issued an opinion on. This is evidence of a decline in the effectiveness of the teams' work which can be due to two causes: the very process of the change or a systemic deterioration in the functioning of the CTCEs following the changes made. As it has already been mentioned, the first of them should result in growth of the effectiveness of the work of the teams in subsequent years which justifies the need to conduct further analyses. As for the second cause, it should be assumed that growth of effectiveness will depend solely on an increase in real employment.

In 2016, the number of opinions issued decreased. Also, a medical doctor participated in their preparation less frequently. The diagnostic teams examined fewer people.

In the category of the 'time of waiting for an opinion by the court' no significant changes were observed. Differences can be seen with respect to the real time of the preparation of an opinion counted from the date of the completion of an examination to the date of the preparation of an opinion. Whereas in 2015 the majority of opinions took 14 or 15 to 30 days to be prepared, in 2016 the time

needed for the preparation of almost 90% of opinions was 14 days. This can be explained in terms of the change to the legal regulation which shortened the time for the preparation of an opinion in family and care cases from 30 to 14 days.

What should be pointed out is that the aim of the entry into force of the law was not to deteriorate the conditions of work of specialists employed in the CTCs but only to increase their effectiveness, among others, by shortening the time of the vacation as well as extending the working hours. The changes referred to met with negative assessment. Quality studies reveal that it is not the working hours as such that constitute a problem but the absence of flexibility in this respect. This is of crucial importance when seen against the statements made by the respondents themselves that the work of the CTCs requires an individualized approach to every case.

Abstract

Justyna Włodarczyk-Madejska, *Efficiency of consultative teams of court experts*

The article contains a comparison of the work of diagnostic teams providing opinions for the need of courts in cases concerning juveniles as well as in family and care cases in connection with changes with respect to the legal status concerning the professional status and organization of their work ('Consultative teams of court experts replaced 'family diagnostic-consulting centres'). The studies, the findings of which are presented, are based on a historic-theoretical analysis, analysis of the provisions regulating the functioning of the family diagnostic-consulting centres and consultative teams of court experts, statistical analysis, court files analysis and discussion of a qualitative study.

Keywords: expert, issuance of psychological opinions, minor, juvenile, family case, care case, proceedings in juvenile cases, educational measures, family diagnostic-consultative centres, consultative team of court specialists

Streszczenie

Justyna Włodarczyk-Madejska, *Efektywność opiniodawczych zespołów sądowych specjalistów*

Artykuł zawiera porównanie pracy zespołów diagnostycznych opiniujących na potrzeby sądów w sprawach nieletnich oraz w sprawach rodzinnych i opiekuńczych w związku ze zmianami w zakresie stanu prawnego dotyczącego statusu zawodowego i organizacji ich pracy („Opiniodawcze zespoły sądowych specjalistów” zastąpiły „rodzinne ośrodki diagnostyczno-konsultacyjne”). W badaniach, których wyniki są prezentowane wykorzystano analizę historyczno-teoretyczną, analizę przepisów regulujących funkcjonowanie rodzinnych ośrodków diagnostyczno-konsultacyjnych i opiniodawczych zespołów sądowych specjalistów, analizę statystyczną, badanie aktowe oraz omówiono wyniki badania jakościowego.

Słowa kluczowe: biegły, opiniowane psychologiczne, nieletni, małoletni, sprawa rodzinna, sprawa opiekuńcza, postępowanie w sprawach nieletnich, środki wychowawcze, rodzinny ośrodek diagnostyczno-konsultacyjny, opiniodawczy zespół sądowych specjalistów