HISTORY AND EVOLUTION OF THE SANCTIONING REGIME APPLIED TO MINORS IN ROMANIA

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Abstract. This paper analyzes the history and evolution of the sanctioning regime applied to minors, with a particular presentation of the situation in Romania. With the entry into force of the new Criminal Code on February 1, 2014, the legislator adopted a sanctioning regime applicable to minors consisting exclusively of educational measures. This approach is in line with the European criminal policy and is intended to contribute to the re-education and social reintegration of juvenile offenders. Thus, through an in-depth research of custodial and non-custodial educational measures, as well as by analyzing the amendment of the criminal law applied to juvenile offenders, we set out to comprehensively expose the significant changes brought through the current Criminal Code, analyzing and interpreting its provisions.

Keywords: criminal liability, crime, minority, educational measures

Highlights in the evolution and development of the criminal liability of the minor

When As societies have evolved, the manner in which juvenile offenders are sanctioned has also undergone substantial changes. In ancient times, legislators have been concerned with adopting different sanctioning regimes for juvenile offenders, and they have established special regulations regarding the criminal prosecution, trial and enforcement of decisions concerning them. At the same time, the criminal liability of minors has found its normative expression both from the perspective of criminal law and criminal procedural law, the minor, as an active subject of the crime, was treated as a holder of certain special rights and obligations in criminal and procedural terms, requiring the application of a distinct procedure from that of common law.

Concerns about the adoption of a differentiated criminal sanctioning regime for juvenile offenders have arisen since antiquity. Thus, in Roman law, by the Law of the Twelve Tablets, minors were divided into two age categories with the limit of puberty, called impuberus and puberus. The age of puberty differs according to sex, being 14 years for boys and 12 years for girls.[1] Also by the Law of the Twelve Tables,

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there was introduced for the first time the principle of punishment forgiveness and acquittal regarding minors. In order for the principle to act, two conditions had to be met: the perpetrator did not understand the nature of the act committed and the act was not completed. The states that took over Roman law maintained their adherence to this principle for a long time. The Law of the Twelve Tables also distinguished between crimes committed with and without intent, the punishments being always applied for the commission of intentional crimes. The reduction of the sentence could be admitted for minors recognized as mentally immature.

In the fourteenth century, in Germany, through the Carolina Act, which contained the criminal-judicial regulations of King Charles V, there were also established regulations regarding minors. Also in this case, minors were considered to be deprived of thinking based on age. In the event that they were committing crimes, the law provided asking for expert advice on how to proceed, taking into account all the circumstances of the case, and to determine the extent to which a penalty should be imposed or not. Experts determined whether or not the minor should be punished. Article CL-XIV of the Caroline Law provided that if the person who stole was up to the age of 14, then, regardless of the evidence, he will be exempted from the death penalty, but will be subject to a corporal punishment assessed by the judge and he will have to swear forever. But if the thief was approaching the age of 14 and the abduction was significant, and there were aggravating circumstances, the judge had to assess whether the minor would be sentenced to a fine, corporal punishment or the death penalty. In this situation, the death penalty could be applied to minors as well, but it required special conditions that had to be assessed by the judge. This principle of ill-intention, which made up for the lack of age, was applied not only in Germany but also in England, where there are reports that two children aged 9 and 10 were sentenced to death following a judge's decision.

During the Middle Ages, there was perpetuated the disinterest regarding the special protection of juvenile delinquents, and Cesare Beccaria, in his paper "On Crimes and Punishments" (1764), emphasized the severity of the punishments and the disorder of the criminal procedure which had no specific provisions concerning minors.

In the 16th and 17th centuries, ideas such as the exclusion of minors from the application of punishment or criminal prosecution began to be promoted, and the penal codes of the 19th century promoted the principle of individualization of punishments and special provisions of material criminal law and procedural law for minors.

In the second half of the 18th century, there were recorded data on the lack of special protection granted to minors during the trial or in the case of sentencing. The English doctrine (1762-1782) highlighted the total lack of protection of juveniles in prisons.

Until the middle of the 19th century, in several European countries there was a lack of legislation on special protection for minors, which indicates a lack of awareness of the need to legally protect the rights of minors based on age. Ignoring this need led to the fact that both Roman and feudal law, as well as the laws of the

modern period, provided limited legal protection for minors. In the second half of the 19th century, changes occurred in the legal regime of juvenile delinquents.

In 1904, in Ireland, special sessions of joint courts have been set up, dedicated to the trial of minors. A year later, in England, the first juvenile court began operating, and in 1908 the first law was enacted to establish a juvenile justice system. In Germany, between 1907 and 1908, the functions of guardianship and juvenile criminal courts were combined. Autonomous juvenile justice systems have been set up in Europe as follows: France in 1914, Hungary in 1908, Transylvania in 1913, Poland in 1919, Austria in 1908, Spain in 1918, Italy in 1908, Portugal in 1911, Russia in 1913, Switzerland in 1913, Netherlands in 1901, Greece in 1924. In England, in 1909, a juvenile court system was established.

France has played an important role in the European system of juvenile justice, clearly regulating the judicial process, characterized by a rigidity of the structure of the judicial system. Juvenile courts were established in 1912, with France being one of the last European states to develop a juvenile justice system, but with a focus on juvenile courts and the use of social investigation in criminal proceedings against juvenile offenders.

Regarding the existing provisions in the Romanian Lands, in the XVI - XVII centuries, the idea of excluding the minor from the application of punishment begins to advance, and some of the 19th century codes, due to the promotion of the principle of individualization of punishments, established some special criminal provisions applicable to juvenile offenders.

The first Romanian regulations on the minority were included in Vasile Lupu's "Romanian Textbook" in 1646 in Moldavia and Matei Basarab's "Law Enforcement" in 1652, in Muntenia, and later, "Andronache Donici's Legal Handbook" in 1814, in Moldavia.

In 1818, "Caragea's Law" came into force in Wallachia, with regulations regarding the age from which the minor was criminally liable and a sanctioning system different from adults, and in 1852, Barbu Ştirbei's "Criminal Code" appears in Wallachia, which resembles to modern criminal codes. The First Romanian Criminal Code that entered into force on May 1, 1865 under the rule of Alexandru Ioan Cuza, removed the multitude of criminal acts, replacing the Criminal Code of Ioan Sandu Sturdza from Moldavia and the Criminal Code of Barbu Ştirbei from Muntenia. The Criminal Code of 1865 contains provisions applicable to juvenile offenders, in Title IV, "On Cases Defending or Reducing the Penalty", the Criminal and Criminal Procedure Code of 1936 established a new sanctioning treatment, as well as special rules for the investigation and trial of juvenile delinquents, outlining an increasing trend of the age from which the minor was considered liable, emphasizing the differentiation of punishments applied to the minor from the adult, with the application of some educational or preventive measures, an important role in establishing them having the social investigations. The Criminal Code of 1968 contains provisions on criminal liability, educational measures and punishments for minors, in Title V of the General Part, entitled "Minority", and the Criminal Procedure Code provides special procedures in cases of juvenile offenders. The new

criminal law is making progress, seeing the minority among the causes that remove the criminal character of the deed.

At the Fifth UN Congress in Geneva in 1975, it was intended to identify punitive measures to replace the prison sentence for juveniles who do not endanger public safety. Thus, Romania replaced the imprisonment punishment applicable to juvenile offenders until then, with the educational measure of the special school of work and education by Decree no. 218/1977.

Globally, a number of regulations have always guided the development of juvenile legislation. Of particular importance are the Convention on the Rights of the Child adopted by the United Nations General Assembly, the Beijing Rules of 1985, the Riyadh Principles of 1990, the United Nations Rules for the Protection of Minors Deprived of Liberty 1990, Guidelines for action on children involved in the criminal justice system 1997, United Nations Minimum Rules for the Elimination of Non-Custodial Measures in 1990.

To the development of the criminal law on minors and the administration of adequate and appropriate justice for minors contributed the UN VIIth Congress held in Milan in 1985, where the Beijing Rules were adopted, and the results of their implementation were presented at the UN Congress in Havana in 1995. The Beijing Rules established the socio-economic conditions considered favorable for the development of minors, which the Member States must strive for. There was established the significance of the juvenile offender, the status quo offenses, the age from which he is criminally liable, the assurance of confidentiality and other matters relating to criminal proceedings. These rules have initiated other international legal documents such as the Riyadh Principles adopted in 1990 by the Eighth UN Congress for Juvenile Justice and the UN Rules on the protection of young people deprived of liberty.

The development of rules on the protection of juvenile delinquents has shown interest raised to provide a special system for the protection of minors, which, although initiated in some states, has been nuanced by various rules of international law which have necessitated the development of different treatment for minors.

The criminal law addressed to minors was intertwined with the evolution of the norms regarding their general protection, the first international document that makes strict reference to the rights of the child can be considered the Declaration of the Rights of the Child of November 20, 1959. It established the principle of the best interests of the child. Subsequently, on the basis of the declaratory nature of the principles of the Declaration, on 20 November 1989, the United Nations General Assembly adopted the International Convention on the Rights of the Child. Member States are thus required to carry out child protection tasks, including those involving the criminal liability of children. According to art. 37 of the International Convention on the Rights of the Child, crimes committed by a person under the age of 18 may not be punishable by death or life imprisonment. The arrest, detention or imprisonment of a child shall be in accordance with the law and shall be used only as an extreme measure and for a short period of time. Any child deprived of his or her liberty shall be treated with indulgence and respect for the dignity of the human person, taking into account the needs of a person of his or her age[2]. Article 40 of the Convention

stipulates that States Parties recognize that any child suspected, accused or proven of having committed a violation of the criminal law, has the right to be treated in a manner conducive to his or her sense of dignity and worth and takes into account his or her age and the need to promote the child's reintegration and assumption of a constructive role in society [3].

Member States are required to comply with the UN Convention on the Rights of the Child, the Minimum Standard Rules for the Enforcement of Juvenile Justice (Beijing Rules), the UN Principles for the Prevention of Juvenile Justice (Riyadh Principles) and the United Nations Rules for Juveniles in Detention. The criminal liability of a minor in European law has several dimensions determined by a legal framework delimited by the relevant international provisions, documents of the Council of Europe, treaties and acts of the European Union and national regulations, being offered the possibility for Member States to establish its own regulations in juvenile criminal matters.

From the conventions and rules adopted by the international community, there are a number of fundamental principles that should guide juvenile justice systems: juvenile law should apply to all persons up to the age of 18; juvenile justice must be part of the development process of each state; the ultimate goal of juvenile justice must be in the best interests of the child; avoiding delays in making decisions regarding minors; treating every minor in a humane way, respecting the person's dignity and taking into account his or her age; treatment of minors so as to facilitate their reintegration into society and their assumption of a constructive role in society; the right of minors to freely express their views on justice; their right to seek, receive, impart information about the juvenile criminal justice system; the organization of justice so as to be compatible with the rights of minors to privacy, family, housing and correspondence; the right to special protection and assistance of minors deprived of their family environment; prohibition of torture or other cruel, inhuman or degrading treatment or punishment; not depriving of liberty of minors illegally or arbitrarily; taking custodial measures only as a last resort and for as short a time as possible; notifying parents about the arrest, detention, transfer, illness, injury or death of their child.[4]

In Europe, the age of criminal liability varies, with the lowest age of absolute criminal liability being 7 years in Switzerland, followed by England, Denmark and Wales 10 years, the Netherlands 12 years, Portugal and Spain 16 years, in France, Poland 13 years, Romania, Austria, Hungary, Germany, Latvia, Lithuania, Estonia, Italy, Moldova 14 years, Norway, Finland, Sweden, Slovakia, Northern Ireland, Iceland 15 years and Belgium 16 years.

The age of criminal liability, being a factor of appreciation of discernment, influences the different sanctioning regime. In order for those between the ages of 13 and 15 to be prosecuted in France, it is necessary that they acted with discernment, and from the age of 16 in Romania and at the age of 15 in France, the minor becomes criminally liable.

In other states, the delimitation of the criminal age of minors is established taking into account the seriousness of the acts committed (Latvia, Lithuania, Estonia, Moldova). In those states, for serious crimes such as murder or rape, criminal liability

arises for minors from the age of 14, and for the others from the age of 16. Also, in some states, minors are held criminally liable from a certain age, given both the seriousness of the crime and whether they acted with discernment.

Another aspect of the criminal liability of minors is the regime of educational measures and punishments applied to them. Educational measures may also be called differently: safety measures, disciplinary measures or educational measures, and although they impose some restrictions, they have a greater educational function.

The criminal legislation regarding the minor has become more and more complex, in Romanian law there are clear provisions that regulate these aspects from the criminal investigation phase, to the judicial phase, as a central element of the criminal process, and to the sanctions applicable to minors. The old Romanian Criminal Code, 1968, described the types of sanctions applicable to minors as well as the manner of application of educational measures and punishments. When choosing the sanction to be applied to the minor defendant, and which may be an educational measure or punishment, there must be taken into account the degree of social danger of the act committed, the physical condition of the defendant, intellectual and moral development, behavior, conditions in which he was raised and in which he lived and any other elements likely to characterize the person of the minor. The punishment could be applied only if it was considered that taking an educational measure is not sufficient to correct the minor, while protecting both the interest of the minor, as well as society.[5]

With respect to the minor considered liable to criminal proceedings, it was advisable to take an educational measure as a matter of priority, but if it was considered that the measure was not sufficient, or the minor had committed one or more serious acts, a penalty could be imposed on him. The educational measures that could be taken against the minor were: reprimand, probation, internment in a re-education center and internment in a medical-educational institute.[6] If an educational measure was no longer possible because the crime was committed shortly before the age of 18 or the trial took place close to or after the age of 18, a sentence was to be imposed. The punishments applicable to minors were imprisonment or a fine provided for the crime committed, with their limits reduced by half. The execution of the prison sentence was different from that of the adults, in special penitentiaries called penitentiaries for minors and young people (Craiova and Tichileşti).

The regime of criminal liability of the minor in the vision of the new Penal Code

Following the entry into force of the new Penal Code on the 1st of February 2014, the sanctions applicable to minors have undergone fundamental changes, the legislator abandoning the system of mixed sanctions, consisting of educational measures and punishments, choosing a sanctioning regime that contains exclusively educational measures.

In order to better understand the legal framework applicable to juvenile delinquency in Romania, we will present some basic elements from the perspective of the criminal liability regime, in the vision of the new Criminal Code. The inclusion of

this aspect is essential, given the new approach to criminal law, applicable to the minor, in which the educational measures represent the entire philosophy of sanctioning the juvenile delinquent. Thus, one of the central points of the reform produced by the new Criminal Code is reserved for the overall changes brought to the institution of "Minority". We will present the amendments to the "Regime of criminal liability of minors", emphasizing from this early stage that, according to the new criminal regulations, the penalties applicable to juveniles who are criminally liable have been completely waived in favor of educational measures, divided according to art. 115 of the Criminal Code in force, in non-custodial educational measures and custodial educational measures. We will first reproduce the content of the text of the law and then we will analyze these regulations.

Limits of criminal liability

The limits of criminal liability are provided by art. 113 of the Criminal Code, as follows:

1) A minor who has not reached the age of 14 is not criminally liable.

2) The minor who is between 14 and 16 years old is criminally liable only if it is proven that he committed the act with discernment.

3) The minor who has reached the age of 16 is criminally liable according to the law. [7]

As in the previous regulation, in the new Criminal Code "Minority" is treated in Title V and includes a number of 4 chapters with 22 incriminating texts, compared to the previous criminal law in which the investigated institution was not structured in chapters, having only 13 articles. From the examination of the entire content of the minority institution it can be seen that we are in the presence of a unitary system of norms in which, in a natural order, the limits of criminal liability, its consequences and the regime of non-custodial and custodial educational measures are regulated.

Starting from this first emphasis, we note the care that the new legislator gives to this institution, meaning that we will show that the central point of the reform in this case is the complete waiver of penalties applicable to minors who are criminally liable in favor of educational measures, which abandons the mixed system of the criminal liability consequences.

If initially, the draft of the Criminal Code provided for the reduction of the age limit from which the engagement of the criminal liability of the minor should be possible - from 14 to 13 years, justified by the amount of cases at the national level regarding criminal acts committed by minors under 14 years, as well as by the criminal regulations of some European states [8], by adopting the new Criminal Code this provision was waived, if we take into account that, on the one hand, not everything that is regulated in some European countries is correct and appropriate for our legislation, and on the other hand that, the existence of discernment before the age of 14 in some cases does not justify anyone and in no way to generalize the responsibility of the younger generation from an early age based on some isolated cases. The care for the upbringing and education of minors must be reflected not only in the concern to create the conditions necessary for their harmonious and balanced development,

but also in the way in which the rules of criminal law reflect in their content the protection of minors when they are victims of crime, or a distinct regulation and protection when they are active subjects of the facts provided by the criminal law.

From the analysis of the norm that regulates minority, it can be observed that, in both criminal legislations, the legislator did not consider the minority as a mitigating legal circumstance that could only constitute a reduction of the punishment, but gave this criminal law institution the place it deserves, since the criminal liability of minors, its specific consequences, the regime of non-custodial and custodial education measures must be a unitary system of rules governing this area of juvenile delinquency.

The criminality or criminality of minors, although it is a component part of criminality in general, has certain particularities determined by certain biological, psychological and social characteristics of the minors, which the legislator took into account when regulating their criminal liability.

The criminal law also gives to the word "minor" the meaning used by the civil law, respectively that person who has not reached the age of 18, regardless of his sex and status, married or not.

It is rightly pointed out in the literature that each person's life naturally has its own course, going through, as far as reality allows, four phases (stages), namely: childhood, adolescence, maturity and old age and that, the criminal law considered in the matter regarding the age of the person, that it would be more appropriate for the regulation of some institutions of criminal law to adopt the terminology used in private law that divides persons into minors and adults, so that by borrowing these terms to use the terminology of minority and majority.

Based on the above, it is necessary to show that, both nationally and internationally, regulations have been created through which the rights and freedoms of children can have an effective and clear protection. In the sense of the above we show that, according to art. 49 of the Romanian Constitution, children and young people enjoy a special regime of protection and assistance in the realization of their rights, and in accordance with Article 1 of the Convention on the Rights of the Child, "child" means any human being under the age of 18 years old, except in cases where the law applicable to the child sets the limit of adulthood below this limit. According to art.2 par. 1, 2 and 3 of the Convention, states undertake to respect and guarantee the rights set forth in the present Convention to all children under their jurisdiction, regardless of race, color, sex, language, religion, political opinion or otherwise; the contracting states shall take all measures to protect the child against any form of discrimination or sanction on the grounds of legal status, activity, opinions expressed or beliefs of the parents, legal guardians or the family members, and that in all actions regarding children, undertaken by the public or private social assistance institutions, by the courts, the administrative authorities, the legislative bodies, the interests of the child will prevail.[9]

The current criminal code, like the previous one, distinguishes in terms of the consequences of criminal liability between minors who are not criminally liable and those who are criminally liable.

It is rightly held in the doctrine that acts committed by minors are considered to present a lower degree of social danger than when committed by adults, which is why the minority status is a cause of differentiation of criminal liability and, therefore, of sanctioning regime, with an emphasis on prevention, both before and after the crime.

The issue regarding the age at which criminal liability for minors can begin is of particular importance and is regulated differently over time, from one piece of legislation to another. Establishing the lower limit to which a minor is not criminally liable, as well as setting the upper limit from which the juvenile is criminally liable were different provisions, based on various assessments related, first of all, the presence or lack of discernment at the time of committing the criminal act.

It is unanimously estimated that until the age of 14 the minor is presumed to have no discernment, this being an absolute presumption and as such he will not be criminally liable. The minor up to the age of 14 is presumed, in all cases, that he does not have the capacity to understand the social significance of his deeds (especially the antisocial character of a crime) nor to consciously manifest his will, a presumption that has - as we have shown –an absolute character (juris et de jure) in the sense that the contrary proof is not allowed to be done in any case. Between the ages of 14 and 16, the minor will be criminally liable only if it is proved that he/she committed the act with discernment, a stage that is characterized by the relative lack of criminal responsibility of the minor who committed a crime.

The existence or inexistence of discernment can be done only through a psychiatric examination, corroborated with other evidence. We appreciate that in the situation where the minor aged 14 to 16 commits several acts provided by the criminal law, for which he was not held criminally liable, this must be established in each case separately. After reaching the age of 16, the minor is presumed to have acted with discernment and is therefore criminally liable.

A minor who has reached the age of 16 is presumed in all cases to have the opportunity to understand the social value of his actions and to consciously direct his will and implicitly to direct his action or inaction which constitutes the material element of the crime, presumption which is also absolute (juris et de jure).

It is obvious that, in relation to the manner of committing the act, the minor's history regarding his health, etc., the existence or non-existence of discernment can be established in each case subject to investigation on the basis of forensic expertise. It is unanimously considered in the literature that the two states, age and discernment must be taken into account in relation to the date of the crime. Thus, it is rightly considered that when some of the actions (inactions) belonging to the continuing crime were committed during the minority, with discernment, and the rest of the actions (inactions) after becoming an adult, there is a single resolution that always accompanies the action (inaction) directed against the same passive subject (art. 35 para. 1 Criminal Code), and the crime is finished at the time of the last action (inactions), the offender will be liable as a major for the continued crime, in its entirety.

By regulating the limits of criminal liability, the legislator understood to specify the cases in which, in relation to the age and discernment of the minor, he is

liable or not, from a criminal point of view, as a result of committing an act provided by criminal law and for the establishing of its limits it requires that the stages that the minor goes through from birth to adulthood to be taken into account.

Consequences of criminal liability

The consequences of criminal liability are presented in art. 114 of the Penal Code, stipulating that:

1) A non-custodial educational measure shall be taken against the minor who, at the date of committing the crime, was between 14 and 18 years of age.

2) Compared to the minor provided in par. 1, an educational measure of deprivation of liberty may be taken in the following cases:

a) if he has committed another crime, for which an educational measure has been applied to him which has been executed or whose execution began before the commission of the crime for which he is tried;

b) when the punishment provided by law for the committed crime is imprisonment of 7 years or more or life imprisonment.[10]

The institution presented is one of the substantial changes of the new criminal law because according to it, only educational measures can be taken against the minor who is criminally liable.

Before determining the consequences of a criminal liability, its existence must be established, the criminal liability must be established, ascertained by the perpetrator as it does not appear automatically with the commission of the act prohibited by the criminal law, but only as a result of its finding by judicial bodies.

If the provisions regarding the limits of criminal liability have been taken over from the previous criminal law without changes, those regarding the consequences of criminal liability are radically changed.

From the examination of the content of the provisions of art. 114 of the Criminal Code, we see that, in the current regulation, the mixed system of sanctioning minors who are criminally liable has been abandoned, establishing a single system of responsibility, but not by applying a punishment, but by taking one of the non-custodial or custodial measures.

From reading the norm provided in art. 114 of the Criminal Code, it can be observed that priority has been given to non-custodial educational measures, which by their purpose appear more appropriate, more natural in general and special prevention, necessary to correct the behavior and education of minors who have committed offenses provided by the criminal law through achieving the purpose of the law, that of rendering the minors to the society as its useful members.

For the purposes of paragraph 1, it shall be provided that a non-custodial measure shall be taken against a minor who was between 14 and 18 years of age at the time of the commission of the offense.

For taking one of the non-custodial educational measures provided in art. 114 para. 1, the cumulative fulfillment of the following conditions is necessary:

- the minor must have been between 14 and 18 years old.

It is observed from the analysis of this condition that the non-custodial educational measure can be taken within the two special limits of the criminal liability of the minor, 14 and 18 years old.

The examination of the provisions of art. 113 para. 2 shows that the minor who is between 14 and 16 years old is criminally liable only if it is proved that he committed the act with discernment, and the question that is asked is, if it is necessary in this situation, in order to take such a measure, to establish the existence of discernment at the time of the commission of the crime, given that we are not in the situation of taking an educational measure depriving of liberty. The answer to this question is yes, because in all situations where a minor commits a crime and is between the ages of 14 and 16, discernment is mandatory.

Therefore, the framework of the sanction of the non-custodial educational measure is common to all minors who are criminally liable.

- a crime has been committed.

This condition presupposes the fulfillment of the provisions of art. 15 of the Criminal Code in the sense of fulfilling the four features for an act to constitute a crime, respectively, to be provided by the criminal law, to be committed with guilt, to be unjustified and imputable to the person who committed it.

According to art. 174 of the Criminal Code, by committing a crime is meant committing any of the acts that the law punishes as a consummated crime or as an attempt, as well as participating in their commission as a co-perpetrator, instigator or accomplice.

Conditions for adopting educational measures

Regarding the necessary conditions for taking the educational measure of deprivation of liberty, from reading the provisions of art. 114 para. 2, it can be stated that in relation to the minor who at the date of committing the crime was between 14 and 18 years old, an educational measure of deprivation of liberty can be taken in the following cases[11]:

a) if he has committed another crime, for which an educational measure has been applied to him which has been executed or whose execution began before the commission of the crime for which he is tried;

From the analysis of this condition we deduce some requirements, without which the educational measure of deprivation of liberty cannot be disposed of.

First of all, it is necessary that an educational measure has previously been applied to the minor in question. We note that the text does not specify the nature of the educational measure taken, which means that whether it is a non-custodial educational measure or a custodial educational measure, as long as a crime has been committed and one of these educational measures has been taken against the minor, an educational measure of deprivation of liberty for the new crime will be provided.

Secondly, it is necessary that within the term of execution of the first crime, the minor has committed another crime. The text does not stipulate what kind of crime or degree of social danger the previous crime must have, nor the crime that attracts the educational measure of deprivation of liberty. For the application of the educational measure of deprivation of liberty, it is important the moment of

committing the crime that attracts the application of this measure and not the moment of discovering it.

b) when the punishment provided by law for the committed crime is imprisonment of 7 years or more or life imprisonment.

Although the text of the law does not stipulate that in this case the reference to the 7-year sentence is made with reference to the special maximum sentence, in the assessment of taking the educational measure of deprivation of liberty will be taken into account the maximum limit of the sentence provided by the law for the act committed and not the punishment applied in relation to the causes of mitigation or aggravation of the punishment. Starting from the provisions of art. 33 of the Criminal Code, according to which the attempt is sanctioned with the punishment provided by the law for the crime committed, the limits of which are reduced by half, we appreciate that if the crime committed by the minor remained in the attempt phase, for establishing a custodial educational measure there will be taken into account the thus resulting punishment.

When choosing one or another of the categories of educational measures, non-custodial or custodial, the provisions of art. 114 of the Criminal Code, and within these categories of measures, when concretely applying one or another of the measures, there will be taken into account the general criteria of individualization provided in art. 74 of the Criminal Code.

Thus, for the application of one of the educational measures of deprivation of liberty, in addition to the cumulative meeting of the two conditions mentioned above, there are necessary two other conditions expressly provided by the law, one related to the minor's background and another regarding the punishment provided by the law for the crime committed by the minor.

Educational measures

According to art. 115 of the Penal Code, educational measures are non-custodial and custodial.

1. Non-custodial educational measures are:

a) civic training course;

b) supervision;

c) weekend confinement;

d) daily assistance.

2. Deprivation of liberty measures are:

a) internment in an educational center;

b) internment in a detention center. [12]

The choice of the educational measure to be taken against a minor is made, under the conditions of art. 114, according to the criteria provided in art. 74. The provisions of art.115 of the new criminal regulations include the two categories of educational measures that may be applied to minors who are criminally liable. As it can be seen from reading the rule set out in paragraph 1, it presents in ascending order of their severity the non-custodial educational measures, and paragraph 2 lists the custodial educational measures.

We note, from the examination of the enunciated provisions, that the new regulation, renouncing the repressive measures (the punishments applied to minors who were criminally liable), paid special attention to those measures with educational content, which in relation to the provisions of art. 114 are divided into two categories, non-custodial and custodial educational measures.

Therefore, in order to meet the needs of combating the juvenile delinquency phenomenon, we appreciate that the new criminal law has organized, established a complete, unitary system, but also in accordance with the general trend of European law, educational measures, aimed at preventing and reducing juvenile delinquency. Within this system, in relation to the imperatives of the re-education of the juvenile offender, a set of non-custodial and custodial measures were provided, in a not at all random order, representing the steps of an increasingly harsh scale of measures in content and with increasingly pronounced effects on juvenile liberty.

In the literature, it is argued that educational measures are criminal sanctions restricting rights and freedoms, but with a pronounced educational character, their execution being focused on the development and completion of school and professional training of juvenile offenders. We add that this is the case, in principle, with the exception of the custodial educational measures which involve the internment of a minor in an institution specialized in his recovery where he will follow a program of school training and vocational training according to his skills and social reintegration programs, or the internment of the minor in an institution specialized in his recovery, with guard and supervision regime, where he will follow various programs of school training and professional training.The programs offered in the educational centers vary in effectiveness and none of them is completely effective. Interventions can fail because not all young people are immediately treated: lack of willpower, taking responsibility for their actions, or a poor motivation to change can make a big difference.[13]

Non-custodial and non-custodial educational measures are measures that can be replaced or modified. To a minor to whom a non-custodial educational measure was applied in the hypothesis in which he committed a new crime, being fulfilled the provisions of art. 114 para. 2, one of the two custodial educational measures will be applied. Regardless of the nature of the educational measure applied to the minor, it should be noted that these represent jurisdictional sanctions, which means that their application or replacement is the responsibility of the court.

During the execution of the educational measure, the minor is subject to a permanent evaluation which is carried out by certain specialized bodies. An important feature of the educative center is the weight change of actions in holding safety, education and psychosocial support.[14]

According to the provision of art. 1 of Ordinance no. 92 of August 29, 2000 on the organization and functioning of the social services of offenders and on the supervision of the execution of non-custodial sanctions, with modifications and completions, in order to socially reintegrate the perpetrators of crimes and to supervise the execution of obligations established by the court, the services of social reintegration of criminals and supervision of the execution of non-custodial sanctions were established. By the provision of art. 35 of Law no. 211/2004 on certain measures

to ensure the protection of victims of crime, the name "social reintegration services for offenders and the supervision of the execution of non-custodial sentences" or the name "social reintegration and supervision services" shall be replaced by "victim protection services and social reintegration of criminals", and according to art. 79 of Law no. 123/2006 on the status of probation staff, the name "victim protection services and social reintegration of offenders" is replaced by the name of "probation services".

Evaluation of the minor according to the general criteria of individualization of the educational measure

According to art. 116 para. 1, in order to carry out the evaluation of the minor and in order to establish the nature and duration of the social reintegration programs that the minor should follow, the court will request the probation service to draw up an evaluation report that includes reasoned proposals on the nature and duration of these programs. Among the multiple attributions that the probation services have, is also the one provided in art. 11, para. 1, lit. d, in the sense of drawing up, at the request of the criminal investigation bodies or of the courts, the evaluation reports of the minors who have committed crimes, because in relation to them and based on the general individualization criteria provided in art. 74, the court will be able to assess the educational measure that applies to the minor. It is true that the provisions of art. 74 of the Criminal Code refers to the general criteria for individualizing the punishment and that the sanction applied to the minor is no longer a punishment - according to the new criminal law - but to establish the nature of the educational measure and then its duration, it is necessary that in addition to the evidence, the evaluation report to also be used in such a way that the most appropriate educational measure and the most appropriate social reintegration program are available to the minor who has committed a crime.

From the disposition of art. 116 para. 1, it is also clear that, through the same report, the probation counselor within the probation service may insert also other obligations that the court may have establish for the minor, obligations that would be likely to influence the general conduct and prospects for reintegration into the society.

Probation counselors have the obligation to draw up evaluation reports on the manner in which the minor complies with the conditions for the execution of the educational measure or the obligations set by the court.

From the wording of par. 2, we conclude that evaluation reports specific to this type of evaluation refer to two distinct situations:

a) when there is verified the compliance with the conditions for the execution of educational measure.

In relation to this situation, the probation counselor must include in the evaluation report of the minor against whom one of the non-custodial educational measures was applied, whether or not he/she complies with the conditions of execution of the applied educational measure, if this non-compliance is due to bad faith or not, proposing to the court the extension or replacement of the measure taken

with another non-custodial educational measure or even with a custodial educational measure, in compliance with the legal requirements.

b) when it is verified whether the obligations imposed to the minor during the execution of the non-custodial educational measure are respected, executed or not.

In hypothesis of the verification of compliance with the imposed obligations, the evaluation report will specify if during the supervision there were reasons justifying the imposition of new obligations, increase, decrease or cessation of the execution of some of them.

According to art. 12 of the cited ordinance, the evaluation report requested by the probation service has a consultative and guidance character, when it can be drafted, it can collaborate with psychologists, teachers, sociologists, doctors or other specialists.

In accordance with the procedural provisions in cases with juvenile defendants, the evaluation report is mandatory or not to be requested in relation to the investigation phase in which the case is. If the case with the juvenile defendant is in the phase of criminal investigation, the criminal investigation body may request, when it deems it necessary, the evaluation report to be carried out by the probation service in whose territorial district the minor resides.

The evaluation report, regardless of the research phase in which it was carried out, has the role of providing the judicial body with data on the person of the minor and his/her prospects for social reintegration.

The evaluation report requested from the probation service will contain data on the minor's person, the level of school education, the behavior, the factors that influence or may influence his/her general conduct, as well as the prospects of reintegration into the society. Through the evaluation report, the probation service can make reasoned proposals regarding the educational measures that can be taken against the minor. or their extension or replacement, but also the modification or termination of the execution of the imposed obligations.

Conclusions

In view of the above, we can say that the legislator of the current criminal provisions applied to minors has opted for a modern approach in full accordance with the jurisprudence of the European Court of Human Rights, international conventions and European treaties, abandoning the mixed sanctioning regime, in favor of a system composed of non-custodial and custodial measures. The reason for adopting this type of sanctioning system is to reconsider the status of the juvenile delinquent from that of offender to the actual victim of their own social environment that requires mainly protection and education measures. Through this, we express the need to provide effective psycho-social content to educational measures, in order to focus on the harmonious development of the minor, in his transition to adulthood.We believe that re-education, resocialization and social reintegration must continue to the extent that we can talk about measures that reflect the authentic, autonomous, real life, a universe built on the resources and potential of every young person released from an educational center.[15]

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[7] Criminal Code, 17.07.2009, "MONITORUL OFICIAL nr. 510 din 24 iulie 2009."
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