

A COMPARATIVE STUDY OF THE LEGAL STATUS OF THE MINOR IN ROMANIAN AND HUNGARIAN CRIMINAL LEGISLATIONS

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Abstract

The article presents the legal status of minors as provided in the Romanian Criminal Code in Title V, Chapter I, entitled “The Regime of Criminal Liability of Minors” in comparison with the legal rules provided by the Hungarian Criminal Code relating to the legal status of minors as regulated in Chapter XI entitled “Provisions Relating to Young People” in sections 105-113.

Keywords: *minors, criminal liability, educational measures*

Introduction

The problem of juvenile delinquency is an issue of global importance given the intensification of this phenomenon and the alarming levels it has reached, both in terms of frequency and variety of its ways of expression. Human society, the international and national authorities of countries, all has joined their forces in an attempt to adopt strategies in order to reduce this scourge. Adolescence crisis intensifies the need for self-discovery, identification and self-assertion. Adolescents show an increasing interest in the social phenomenon. Being aware of their lack of experience in this respect, they engage with excessive curiosity in the perception and evaluation of their environment. Although specialized practice and theory in this field have argued that the crimes committed by juveniles pose a lesser danger given their insufficient mental development, antisocial manifestations of minors are a reality that cannot be neglected or ignored.

It is natural that a person, be it a minor or an adult, once they have infringed the criminal law rules by committing criminal offences, should be held criminally liable. Through the penalties that may be applied, minors benefit from a special regime because those measures can only be taken with regard to them. The essential feature of the legal regime applied towards juvenile offenders is the renouncement to all penalties applicable to minors who are criminally liable, in favour of educational measures.

I. The limits of criminal liability stipulated by the Romanian Criminal Code as compared to those regulated by the Hungarian Criminal Code

The significance of any criminal policy consists of a single characteristic: measures intended to punish and intimidate criminals¹. Criminal sanctions arise from the necessity of coercion through the rule of law, which is a categorical imperative of the law. According to the

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Tănăsescu I., (1994), *Licit și illicit (Licit and Illicit)*, Bucharest, Editura INS (INS Publishing House), p. 171

criminal code currently in force sanctions are the effect of criminal liability, which in turn is the legal consequence of committing the criminal offence. Criminal sanctions are the exclusive creation of the law, derived from the law of the state, as the legitimate representative of society in punishing the person who committed the offence and compelling them to execute the punishment².

The criminal rule contains not only a description of the prohibited conduct, its incrimination, but also a specific and precise indication of the coercive consequences that the person who infringes on the criminal rule has to bear. These consequences mainly consist of privations and sufferings the offender has to undergo and must at the same time determine those who would be tempted to violate the criminal rule to refrain from such conduct.

For a person to be held criminally liable under the terms of the Romanian Criminal Code, he/she must be at least 14 years old. The minor between 14 and 16 years is criminally liable according to Article 113 para. (2) of the Criminal Code, only if it is proved that the offender committed the act with discernment. Minors under the age of 14 years and those between 14 and 16 years without discernment are considered as characterized by a high degree of insufficiency in terms of their mental capacity, so that they do not realize that socially dangerous nature of their actions and are not responsive to the threat of sanctions in criminal law. These minors are not held criminally liable when they commit criminal offences, a hypothesis provided by the Criminal Code, according to which minority is cause for the removal of the criminal nature of the act.

The first stage of minority – that of the minor who has not reached the age of 14 years – is characterized by the absolute lack of criminal liability of the minor who has committed an illicit act. Minors under the age of 14 years benefit from an absolute presumption of criminal incapacity that cannot be removed by evidence to the contrary even if a minor of this subcategory happens to be endowed with exceptional qualities and present an obvious precocity for his age.

The second stage of minority is that of the minor aged between 14 and 16 years. The minor who is aged between 14 and 16 is held criminally liable only if it is proved that he/she committed the act with discernment. It is found that the presumption of lack of discernment continues to exist after reaching the age of 14 years, with the mention that it acquires, through the legislator's will, a relative character, so it may be overturned as a result of proving the existence of discernment at the time of committing the act. This is done by means of a forensic psychiatric expertise intended to determine if the minor has the ability to discern, to realize the social significance of his/her conduct. The expertise meant to determine the discernment of the minor aged between 14 and 16 years who has committed an act provided by the criminal law is carried out promptly, at the request of the judicial authorities, the National Institute of Legal Medicine "Mina Minovici" Bucharest, forensic (legal) medicine institutes, forensic medicine services or, where appropriate, forensic medicine offices³.

The conclusions of specialized experts will always be in relation to the actual fact, it is because it is possible that, if a minor commits several acts stipulated by the criminal law, in relation to some of them it may be found that he/she had discernment, and in relation to others, the absence of discernment may be established.

Article 113 (3) of the Criminal Code provides that the minor who turned 16 years is criminally liable under the law, the existence of discernment being presumed. Just as with adults, the presumption of the existence of discernment has a relative character, so it may be removed by performing a forensic psychiatric expertise.

² Bulai C., (1997), *Manual de drept penal. Partea generală (Criminal Law Handbook. The General Part)*, Bucharest, Editura All (All Publishing House), p. 7

³ See Order no. 1976/c/909/2003 to establish measures for the expedient performance of the expertise determining the discernment of the minor aged between 14 and 16 years who has committed an offence under the criminal law, published in the "Official Journal of Romania", Part I, no. 522 of 21st July 2003

*A COMPARATIVE STUDY OF THE LEGAL STATUS OF THE MINOR IN ROMANIAN
AND HUNGARIAN CRIMINAL LEGISLATIONS*

Assuming that the capacity to discern between good and evil grows with age and the accumulation of social experience, the legislator has established varying degrees of intensity of the presumption of lack of discernment in relation to age, for juveniles who have not reached 16 years, respectively the presumption of the existence of discernment for the minor who has reached 16 years.

Unlike the Romanian Criminal Code, the Hungarian legislator enlarges the range of minors who may be criminally liable, setting as a limit for their criminal liability, the age of 12 years (section 105 para. 1). A juvenile offender is any person who is aged between 12 and 18 years at the time of committing the criminal offence. The provisions of this act shall apply to all minor offenders, with the exceptions provided in this chapter (section 105, para. 2).

We find that in legal practice, both the Romanian and the Hungarian legislators primarily aim to correct and educate juvenile offenders and the educational measures applied are meant to recover minors for society. Section 106 of the Hungarian Criminal Code, para.1. provides: the principle objective of any penalty or measure imposed upon a juvenile is to positively influence the juvenile's development to become a useful member of society, and such penalty or measure should therefore have as a primary consideration the juvenile's guidance, education and protection. A penalty shall be imposed upon a juvenile when the application of a measure appears to be impractical.

II. The sanctioning regime

The Romanian Criminal Code provides in Article 114 that, in relation to juveniles between 14 and 18 years both non-custodial educational measures and custodial educational measures may be enforced. We should mention that custodial educational measures are secondary to non-custodial one and are only applied in two situations:

a. If he/she has committed another criminal offence for which an educational measure was enforced on him/her that has been executed or the execution of which began before the committing of the crime for which he/she is being tried (Article 114 para. (2) letter a)).

b. When the penalty provided by law for the criminal offence committed is imprisonment for 7 years or more or life imprisonment (Article 114 para. (2) letter b)).

The non-custodial educational measures provided for in Article 115 para. 1 point 1 of the Criminal Code are listed in an order that is not accidental, but follows a scale of increasingly harsh measures, according to the degree of concrete social danger of the crime committed and the degree of moral perversion of the minor⁴:

- a. civic training course
- b. supervision
- c. confinement on weekends
- d. daily assistance.

Custodial educational measures are provided for in Art. 115 para. 1 point 2 of the Criminal Code:

- a. placement in an educational centre and
- b. internment in a detention facility.

Custodial educational measures may be taken only on condition that the juvenile has committed another criminal offence for which an educational measure was enforced on him/her that has been executed or the execution of which began before the committing of the crime for which he/she is being tried or when the penalty provided by law for the criminal offence committed is imprisonment for 7 years or more or life imprisonment.

⁴ Paşca V., (2012) *Curs de drept penal. Partea generală (Criminal Law Course. The General Part)*, Ediția a II-a actualizată cu modificările noului Cod penal (2nd edition updated with the amendments to the new Criminal Code), Bucharest, Editura Universul Juridic (Universul Juridic Publishing House), p. 465

Custodial educational measures are in fact an exception from the enforcement of educational measures without removing the minor from the family, justified either by the repetition of the criminal behaviour or the seriousness of the offence committed.

Unlike the Romanian Criminal Code, the Hungarian Criminal Code provides for harsher penalties in order to correct juvenile delinquents, the following sanctions being applicable:

Internment in a correctional facility

Community service work that may only be imposed against juvenile offenders over the age of 16 years at the time of committing the criminal act.

Imprisonment. The Criminal Code provides that the minimum term of imprisonment to be imposed upon juvenile offenders shall be one month and, as regards the maximum term, the following specifications are necessary: according to para. (2) and (3) of subsection 109, a juvenile offender over the age of sixteen years is punishable by imprisonment for 10 years for a crime that carries a maximum sentence of life imprisonment; 5 years for a crime that carries a prison term of more than 5 years; 15 years for a crime that carries a maximum sentence of life imprisonment; 10 years for a crime that carries a prison term of more than 10 years and 5 years for a crime that carries a prison term of more than 5 years.

Imprisonment in a juvenile detention facility. This measure is only taken in the following 3 cases: the juvenile is sentenced to imprisonment of 2 years or more for a felony; the juvenile is a recidivist and was sentenced to imprisonment of 1 year or more, and the case of the juvenile sentenced to imprisonment of 1 year or more who, within a period of 3 years, has committed an intentional criminal offence for which he/she was sentenced to confinement in a reformatory institution.

Custodial arrest for 3 to 30 days, at the most.

A fine may be imposed on a juvenile offender only if he/she has independent earnings, income or sufficient assets.

Probation with supervision

We note that in the Hungarian Criminal Code, as well as in the Romanian Criminal Code, the maximum imprisonment penalty is 15 years, but unlike the Hungarian legislator, who provided as the imprisonment penalty a 5 year-term, the Romanian criminal law is milder, setting the minimum limit of 2 years of imprisonment.

The Hungarian criminal law also provides much more severe sanctions to punish juvenile offenders than the Romanian criminal law which gives priority to non-custodial educational measures that are much lighter, milder than custodial ones.

Conclusions

There is the presumption that minors are in the danger of becoming criminals if no measures are taken to ensure their education, but, given their age and intellectual development, it is considered that the criminal acts committed by them pose a lesser degree of social danger than the acts committed by adults, so that in terms of the means of legal coercion, it is necessary to enforce lighter sanctions on these criminals than in the case of adult offenders. The topicality of this issue is maintained by the reality of the crime phenomenon among juveniles, adolescents and young adults, sometimes with a troubling resurgence, and the drama of this is determined by the nature of juvenile crime in which the lack of the full capacity of understanding the social significance of the penalties and the general lack of experience combine and often push teenagers barely out of childhood to committing reckless acts.

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*A COMPARATIVE STUDY OF THE LEGAL STATUS OF THE MINOR IN ROMANIAN
AND HUNGARIAN CRIMINAL LEGISLATIONS*

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5. Romanian Criminal Code
6. Hungarian Criminal Code