

CRIMINAL PUNISHMENT OF JUVENILE OFFENDERS

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***Abstract:** Both prevention and combating the domain of juvenile delinquency are considered special problems, because among the conditions of criminal responsibility is also the age of the perpetrator. Taking into account that minors can make more mistakes, but also the fact that they can be re-educated more easily, the legislator established a special program for sanctioning minor criminals. The punishments applied to minors who are criminally responsible were completely abandoned, they being replaced by a regime made up exclusively of educational measures, the process of their elaboration being generally inspired by Spanish, French and German law. There was a need for a special regulation of the criminal liability of minors because they do not have a complete psychophysical development, they do not have enough social experience, they have a personality that is extremely easy to influence, these being sometimes also due to the deficiencies recorded on the educational level.*

***Keywords:** discernment, freedom, minor, educational measures*

1. Limits of criminal liability

Within the criminality phenomenon in general, an important segment is occupied by the criminality of minors (Popoviciu, 2014:439). Taking into account the fact that the intervention of the criminal liability of minors is necessary only when they can understand the consequences of their actions, being masters of their own will, the Romanian criminal legislator established the limits of the criminal responsibility of minor offenders, these can be found in art. 113 of the Criminal Code presented in three stages:

The first stage, up to the age of 14, in which the minor has an absolute presumption of innocence, because he is unable to understand the gravity of the acts committed in violation of the law, being considered indiscriminate. Therefore, up to this age, the minor is not criminally liable, the minority constituting a cause of attributable, under the conditions of art. 27 Criminal Code. (Toader, 2014:214)

Also, it is absolutely excluded that he knows the provisions of the criminal law. The Child Protection Commission can take measures regarding them, namely: keeping the child in his own family, specialized supervision, placement of the child in the extended or substitute family, placement of the child in a specialized residential centre.

The second stage is between the ages of 14 and 16, where there is considered to be a relative presumption of guilt. This presumption is based on the presence or absence of discernment, evaluated following psychiatric and psychological expertise ordered by the court, as well as the social investigation. Discernment represents both the mental capacity of a person to realize whether the deed has a socially dangerous character, and the capacity to manifest his will in committing it.

The third stage, between 16 and 18 years, in which the minor is criminally responsible according to the law, because he is actually presumed to have discernment, being able to understand the seriousness of the committed act. However, it is considered that this capacity is not fully formed, justifying the sanctioning regime applied, different from that of adults.

In art. 114 para. (1) The Penal Code states that minors aged between 14 and 18 shall be subject to a non-custodial measure. These measures have an action and a finality that are more effective for physical, mental or moral development.

The choice of the measure is made on the basis of an evaluation report and according to the general criteria for individualization provided for in art. 74 of the Penal Code, represented by: the seriousness of the crime, the dangerousness of the criminal, the circumstances and the way in which the crime was committed, the means used, the state of danger created, the nature and seriousness of the result produced, the reason, the purpose, the nature and frequency of the crimes, the conduct after the commission the crime, the level of education, the age, the state of health and the family and social situation of the minor.

2. Regime of non-custodial educational measures

Non-custodial educational measures are criminal law sanctions that are applied independently, when crimes are committed by minor offenders and it is desired as a result to educate or re-educate them through supervision, school or professional training (Neagu, 2019:628-629). Although the minor performs an educational measure, which is predominantly instructive in nature, this must not interfere with the principle of the child's best interest, as well as with respect for the fundamental rights and freedoms provided for in the Constitution. These are called "non-derivative" because they are carried out in freedom, more precisely in the community of which the minor is a part, wanting to strengthen his bond with the family and his involvement in the ongoing programs, activities that have the role of forming the concept of responsibility and respect for what surrounds him.

The non-custodial educational measures are, in the ascending order of their severity: civic training course, supervision, recording at weekends and daily assistance.

2.1. Civic training courses

The concept of civic training represents training and education aimed at raising awareness and assimilating positive and dominant moral and social norms in society. Mainly, the child's civic training is handled by the family and the school, being the objective of primary socialization.

Among the main causes that lead to the social maladjustment of adolescents and the adherence to anti-norms and non-values are the negative socialization groups and the educational incapacity of the parents or family disorganization. The result of these situations is reflected in the personality of teenagers, who have a negative, even antisocial orientation. They adopt a behaviour that is in contradiction with moral and civic norms, even breaking the criminal law. As an organization, the internship is divided into sessions that can be periodic or continuous, and which cannot exceed periods of 4 months. The training revolves around the crime committed, so the modules that the minor goes through are adapted according to its seriousness, while also taking into account the age and personality of the minor enrolled in the respective internship.

2.2. Oversight

The measure of supervision is suitable for minors who commit crimes during the time they were supposed to participate in school or vocational training courses, but also for those who are frequently and repeatedly absent or in the case of school dropouts. Parents, guardians, trusted persons or relatives are the persons who can take care of the implementation of the measure, without the direct involvement of the Probation Service, its role being only monitoring. Supervision is ensured both directly and indirectly, by contacting the teaching staff. Thus, although it is not necessary for the student to have certain learning results, the permanent control will motivate him in this sense, because all deviations, including absences, are reported to the Probation Service.

The measure consists in guiding and controlling the minor, for a variable period of between two and six months, being coordinated by the Probation Service, wanting to ensure that the minor participates in school courses and does not come into contact with people who can negatively influence their development.

2.3. Check-in at the end of the week

It is represented by the minor's obligation to stay at home on Saturdays and Sundays, measures that are taken over a period of between 4 and 12 weeks. The ban takes place during consecutive weekends, starting from Saturday 00:00 until Sunday 24:00, under the supervision of the adult with whom the minor lives. However, there is an exception to this measure, namely the fact that he can leave the home in case of an obligation to participate in certain programs or activities imposed by the court.

2.4. Daily assistance

Unlike the other measures, in the case of daily assistance the Probation Service is more involved, as it establishes and supervises the program that the minor must follow for a period of 3 to 6 months, which includes the schedule and conditions for carrying out activities. The daily schedule is established by mutual agreement between the minor's family and the Counsellor responsible for the case, within the Probation Service competent to exercise supervision. Although it significantly restricts the possibility of the minor and his parents to establish a daily schedule, the family can propose activities that they would like to do, but they will only be introduced if they are compatible with the purpose of the measure and can contribute to correcting the behaviour of the young person. The program is designed based on a schedule that takes into account the needs of the minor, but also the prohibitions and obligations imposed by the court. In case of disagreement, the schedule is established by the judge delegated with the execution. (Pascu, 2016:688)

The purpose of the program is the harmonious development of the minor; thus, he will focus on activities that involve social relations, organizing how to spend free time and capitalizing on his skills. (Pascu, 2016:688)

3. Regime of custodial educational measures

Custodial educational measures are applied in situations where non-custodial educational measures are not sufficient to correct the minor. They are considered measures of last resort and must be applied for a short period of time.

There are two situations in which this can be appreciated. A first situation is when the minor commits a serious crime, when the penalty for the crime committed is imprisonment of 7 years or more times life imprisonment (for example, rape, murder, robbery). The second situation, in which these measures can be applied, is when the minor committed a crime, for which an educational measure was applied to him that was executed or the execution of which began before the commission of the crime for which he is judged.

The measures can be executed before he turns 18, after he turns 18, but also before and after he turns 18, a situation in which it must be specified that, if the minor has turned 18 on the date of the sentence, the court can order the execution of the measure in the penitentiary.

Thus, these educational measures are an exception, because they remove the minor from the family environment, this procedure being justified by the seriousness of the crime he committed or the repetition of the criminal behaviour. Although he is taken from his natural environment, he is permanently maintained in contact with his family and community, also benefiting from protection and assistance from specialized staff.

The custodial educational measures, in ascending order of their severity, are:

- Internment in an educational centre, for a duration of one to 3 years
- Internment in a detention centre, for a period of 2 to 5 years, exceptionally, from 5 to 15 years, in the case of committing very serious crimes.

The purpose pursued by the execution of these measures is to reintegrate into society the person who was interned, at the same time wanting to make them responsible, in order to prevent the commission of new crimes.

3.1. Admission to an educational centre

Internment in an educational centre is considered to be the mildest custodial educational measure. (Toader, 2014:225) This measure is carried out by interning the minor in a special institute, which aims at his recovery, for a period between one and 3 years.

Educational centres are specialized institutions subordinate to the National Administration of Penitentiaries whose role is to reintegrate minors and young people who have committed criminal acts. Intended for special educational measures and with the main purpose of supporting the person in terms of appropriate physical and mental development, they benefit from minimum safety measures. The internment measure is executed in an open regime, in which minors can move unaccompanied and carry out recreational activities, along with performing work inside or outside the centre, without supervision.

A two-pronged defence strategy is applied, as each society appears against the danger of the proliferation of antisocial acts, and the minor's protection against factors that would jeopardize the proper development of his personality.

Although the execution regime is common to all interned persons, each minor has a specially designed program, individualized according to his own conduct, comprising distinct components, specifically adapted to each interned person, for a balanced psychosocial and physical development, thus responding as best as possible to his own needs. The minor is also helped by the family, involved in educational and therapeutic activities, whose role is to restructure the parent-child relationship, thus preserving and developing relationships with the external environment.

3.2. Admission to a detention centre

The detention centre can be defined as a specialized institution that deals with people admitted through social rehabilitation, more precisely with minors who have committed criminal acts. Since the centres have a guard and supervision regime, the minors are carefully monitored by staff with appropriate professional qualifications, following intensive programs of school instruction and vocational training, individualized according to each one's abilities. The centres have a specialized staff that deals with the activities of psychological and social, medical, religious and cultural assistance, but also for sports and recreational activities. They are assisted by staff with security, surveillance and escort duties. Specialized equipment is used in the centres to ensure the fulfilment of the main purpose. The difference between the educational centre and the detention centre is given by the supervision regime and intensive programs.

Two categories of fixed limits are established for determining the duration of the punishment to be applied. The court decides how much time is necessary for the minor to reintegrate socially by being admitted to a detention centre, depending on the general criteria for individualization: between 2 and 5 years, as a general rule, and between 5 and 15 years, if the punishment provided by law for the crime committed is imprisonment for 20 years or more times life imprisonment. (Pascu, 2016:701)

CONCLUSIONS

Educational measures are special criminal law sanctions, regulated to be ordered only in relation to criminally responsible minors and whose purpose is to educate or re-educate them through school and professional training and by cultivating in their consciousness respect for social values. Thus, we can say that educational measures can only be ordered in the situation where the minor has committed a crime, due to the fact that in Romanian criminal law they are regulated as consequences of criminal liability. These aim at reintegration into society, by respecting social values, with the aim of achieving a change in the conscience of the juvenile offender.

Unlike combating crime among adults, preventing and combating the phenomenon of juvenile delinquency raises special problems, determined by the characteristics of the minority status. The psychological development of the person is indicated by his age. The meaning and consequences of acts are better understood when the person has the ability to appreciate the danger that the committed act presents to social values.

In conclusion, Romanian criminal law provides for a series of punitive and recovery measures for minors who have committed criminal acts, the legislator taking into account both the vitiated judgment of young age and the need to be criminally liable, where appropriate, and the appropriate sanction.

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