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THE JURIDICAL REGIME OF JUVENILE DELINQUENCY AND THE EVOLUTION TENDENCIES IN THE CONTEMPORARY SOCIETY

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BORDER CRIMINAL OFFENCES COMMITTED BY MINORS

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„ The understanding of a person`s behaviour in one or another way to know its reasons and purposes that preorientate the behaviour. By mediation of reasons and purposes is the human behaviour in a direct connexion with the conscience."

Abstract:

In the absence of the family life and of one or both parents, there may show up some alterations of the teenager's affective life and personality' development behaviour alterations characterized by antisocial manifestations, the refusal to obey to subordinate to any rules, the frustration feeling, the (disconfort) regarding a need or an aspiration with by some reasons never was satisfied.

Practice showed that the minors arked about what they intended to do in a foreign contry, if they would have knew it, the most frequent answer is that they would have worked to earn money, but they do not know what, where, on what conditions, where will they live; but out of the wish to accomplice themselves materially and socially they minimize or even accept the risks they are exposed at in a foreign contry, they just want to live.

Key words: behaviour alterations, border criminal offences

The prolongued transition of Romania from a totalitary system to a market economy generated big social-economic unbalances (disorders) with direct and immediat repercusions on the family and children.

The diminuition of de living level, the growing of the inequality between different families incomes, the job absence makes more and more Romanians work illegally in countries like Spain, Italy etc. leaving their children at home at their grandparents , relatives or even neighbours' care which are taking less or even at all care of their education.

In the absence of the family life and of one or both parents, there may show up some alterations of the teenager's affective life and personality' development behaviour alterations characterized by antisocial manifestations, the refusal to obey to subordinate to any rules, the frustration feeling, the (disconfort) regarding a need or an aspiration with by some reasons never was satisfied.

The insuccesses at school (giving up school, the studying in a high school), the missing of a material situation wich could cover the teenager's needs according to the position that he/she wants to have in the society, the reaction of the company

(his isolation in the social field) can establish through their traumatic character, behaviour troubles by the devaluation of social values, the incapacity of imagining acceptable solution, the refusal to subordinate to social rules (laws) , the frustation.

There are two tendencies in minors' motivation to illegally cross the border to get into a foreign country, on one side an economical one where the minor hopes to obtain material advantages and appears like an expression of an emotional straining state, social –economic insatisfaction, reflects the tendency of a willing evasion, a state of misfit to the minors' life environent, on the other the iresistible desire of the parents who are working legally in foreign contries to have their children near themselves in the desire to unify their families.

Practice showed that the minors arked about what they intended to do in a foreign contry, if they would have knew it, the most frequent answer is that they would have worked to earn money, but they do not know what, where, on what conditions, where will they live; but out of the wish to accomplice themselves materially and socially they minimize or even accept the risks they are exposed at in a foreign contry, they just want to live.

Because the actual legislation allows the minors to cross the border together with their parents, or in the absence of one or both parents, with their written concent (accord) expressed in front of the public notary, the juvenil delinquents detected while trying to illegaly cross the Romanian border use a large variety of ways and methods.

From the cazuistry of the Bihor Border Police Inspectorate, I'll present a few cases of juvenil delinquency and a few of the methods they used for the illegal crossing of the border.

Named V.Narcisa, age twelve from Gura Humorului presented at the border control her mothers identity card. This was living with her son in Italy for a while and lives with another man. The child received the identity card from her natural father who intended to take her with him to Italy where he could take care of her. The natural father is also living with another woman in Italy and has with her two children. Named V. Narcisa has never had an identity card of her own.

Named M.Marius, age seventeen from Constanta was detected when he entered Romania with a Romanian Ambassy from Bruxelles released travel title. Asked about the way he arrived in Belgium, he declares that he was returned by the Belgium authorities and he had interdiction to leave Romania, so he contacted a friend of his parents asking him to help him cross the border.

So, M. Marius together with his parents' friend D.Vasile presented themselves at the Passport Service Bacau where M.Marius was included in D.Vasile's passport as beeing his son , on the name of D.Cristinel, after they left to Belgium.

Named M.Camelia, age fourteen, sister of M.Marius was detected when she entered Romania presenting a Romanian Ambassy from Bruxelles released travel title. She declared that she was returned by the Belgium authorities and she was forbidden (had interdiction) to leave Romania but in a short time her mother contacted I.Marius and I.Laura who pretended at the Passport Service Constanta

that M.Camelia is their daughter, presenting in this sense the birth certificate of their real daughter and getting a passport.

M.Camelia crossed the border ilegally using somebody else's passport , because she didn't had in fact any identity documents , because she was born in Belgium where her parents lived illegaly.

Named S.Irina, age fifteen from Roman-Neamt was detected while trying to illegaly cross the border presenting at the border control somebody else's identity card. S . Irina declared that she wanted to get to her mother in Italy but she hadn't any authorization to legally leave Romania.

Named S.Fraga, a neighbour gave her little sister's identity card but the name of S.Zina, to present it at the border control, and obtained a notarial authorization by which her mother authorized her to accompany S.Zina at the border crossing.

Named S.Zoltan, age sixteen and P.Csaba-age seventeen-both from Odorheiul Secuiesc were detained on a field near the border while trying to illegaly cross it in Hungary using a touristic map. The minors left from home without their parents' concent and they intended to get to Budapest and look for jobs.

Named B.Anca, age seventeen from Bacau, was detained on a field near the border line while trying to illegaly cross it in the Hungary. She declared that she wanted to arrive in Italy together whith her boyfriend and look for work. She had not any passport or notarial authorization from any of her parents.

Named M.Csilla , age seventeen from Targu Mures was detained while trying to illegaly cross the border presenting for the border control her sister's M.Beata passport. She claimed the she did this because she has not a passport or money necessary for its release. She intended to reach Spain to some friends and look for work.

Named B.Ciprian Cosmin, age fifteen was detained at the border control presenting the personal passport and a notarial declaration in copy, given by his father.

During the morning his father B.Sorinel annonunced the Border Crossing Point that his son left home to Italy without his parents' agreement.

Named D.Alexandru, age fifteen and N.Sergiu age sixteen from Moldavia entered illegally Romania and after crossing the contry with occasional transporting vehicles they managed to cross illegaly the border one more time . They have been were caught, detained and returned by Hungarian authorities. They declared that they intented to reach Italy at some friends who promised them places to work.

From the analysis of the presented cases, the conclusion is that the minors that mostly commit criminal offences at the border come from disorganised families, without jobs or with low incomes from different regions of the country, being helped or guided-in most of the cases to break the law even by the persons who should educate them.

As a result, the minors whith ages between fourteen and seventeen try to reach the middle class's social and material status by their own ways , a target impossible to reach (accomplice) in they break the law for.

Considering the complexity of the minor criminal researches that suppose their hearing by special rules being assisted by a chosen or office defender, by his parents or the Tutelar Authority, the psychiatric experts establish if the minor, discerns or not, the participation of other institution that fight for kids protection , in the Bihor Border Police Inspectorate there are special offices who take care of the minor criminal research.

In cases of criminal offences commited by minors at the border , the officer in charge with the criminal research suggest to the prosecution by the criminal research ending refferate, the discharge of criminal pursue, because the crime that the minors committed is not a big public danger and it has not the social danger of a real crime, and to apply an administrative penalty.

A different situation when the minor is sent in front of the judge.

The law is specific though that a penalty will be applied just if an educational measure is considered not to be enough for the adjustment of the minor.

This very important fact is presented in the one hundred article, second paragraph from the Penal Code because the punishment of the minor criminal should be an exception. The jail punishment without enough reasons for it could lead a young man to permanent outlaw.

JUVENILE DELINQUENCY: CONCEPT; ABOUT JUVENILE DELINQUENCY IN THE EUROPEAN COMMUNITY

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Abstract:

The term juvenile delinquency involves two distinct notions which must be specified.

This is the concept of delinquency and of juvenile. Although both terms are common language and seem to have well-determined and univocal significations, they are often used with different meanings not only in current speaking, but also in scientific language. In some works concerning juvenile delinquency the term of predelinquency is also encountered. It designates in a same way either the minor's situation who, although commited a crime they are not charged due to the age, or the minor's situation who has an immoral behaviour, without being punished by the penal law.

The instruments used by the Juvenile Justice of the United Nations, for example: The Riyadh Directing Lines, The Beijing rules, offer the normative framework for the children's rights-using a specialized, separated and distinguished juvenile justice administration.

Key words: juvenile delinquency, scientific language, juvenile justice

The analysis of the specific conditions in the societies put an emphasis on the fact that in many countries the phenomena of deviance, marginalization, delinquence and criminality are aggravated and extended. The increased processes of change and transformation which accompany the evolution of any society have lead to the development of new serious social phenomena, these forcing alarming levels, especially in the countries recently libertated of the totalitarian system, Romania included. The rapid process of transition has generated a crisis, which affects especially teenagers and young people. An important source of this crisis is represented by a certain valorical confusion regarding the ways of social promotion in the new society and of the integration in the mature life or of preparing for such a life. As a result, the delinquency has risen very much, giving teenagers a frame with strong negative influences. Because of this, a special place in the area of deviance is reserved by the research regarding juvenile delinquency, a phenomenon with negative implications both for society and for the fate of young people.

The term of juvenile delinquency includes two abstract notions which have to be mentioned: the concept of "delinquency" and that of "juvenile". Although both terms have entered the common vocabulary and seem to have well-determined

meanings, they are used with different meanings not only in the common vocabulary, but also in the scientific language.

The term of "juvenile delinquency" is not mentioned in the penal legislation of our country and neither in the positive law of any other country. It is the creation of penal doctrine and of the criminologic or sociological theories in their attempts to group a series of offences in categories of age, being considered that penal offences have a series of features determined by the level of biological maturity and with mental priority of the active subject of the felony.

The concept of "juvenile delinquency" is synonymous in other languages, such as, Romanian, Italian, German and French with notions of juvenile criminality (criminalita giovenile, criminalité juveńile). But, in its origin, in Latin, these words have different meanings. The verb "delinquere" could be translated by "to make a mistake", "to slip", "to lack", and meanwhile "crimen" was translated by "crime at which the notions of "justification", "imputation" were associated.

We understand by delinquency a series of illicit facts, regardless if they have or don't have a penal feature (running away, repeated and long absence from school, as well as certain imoral facts which are not defined as felonies).

It is possible and plausible that the term "juvenile delinquency" was introduced and generalised with the intention of not associating the serious conotations of the term "criminality" with acts made by minors.

Because in the correct language from our country and other countries (for example, France and Italy) the word "crime" was associated with the severe regime of executing a sentence, by silent agreement, the concept of "delinquency" was introduced, which was generalised in the case of minors, without eliminating the concept of "criminality". Thus, they continue to be used with the same meaning. In France and Italy, the term of "juvenile criminality" is seen in the judicial literature, while "juvenile delinquency" was used more frequently in criminologic, sociological and psychological studies and research.

In some studies refering to juvenile delinquency, the term of "predelinquency" is seen. It denotes, in an undifferentiated mode, either the minor's situation who, although has committed a crime sanctioned by the penal law, isn't responsible for it because of its age, or the minor's situation who has an immoral behaviour, without the certain acts to be stipulated by the penal law. It is, thus, presumed that the certain minor is a potential delinquent. We believe though that the anticipated investigation of behaviour, being considerated premonitory for a future infractional behaviour is inappropriate and doesn't reflect a correct conceptual analysis.

This is why in some protective legislations, such as in our country or in France, the minors which are in the situation to be considered "children in danger" of committing penal actions because of the inappropriate conditions of social environment and the immoral ambiance which favour or can induce deviant behaviour. All these observations entitle us to situate in the concept of delinquency only the actions which have the constituent elements of a felony and to reject the

association of this term with any situation which doesn't correspond to such a situation.

The concept "delinquency" is not synonymous with the notion "deviance". The sphere of this concept is wider and comprises as a particular form, the notion of delinquency. In this sense, it has been shown that deviance is constituted of "any act, conduct or manifestation which violates the written or unwritten norms of society or a particular social group". It is a type of behaviour, which is opposite to the conventional one and it includes not only the breaking of law, but also any "deviation" in conduct, which has a pathological character medically certified and it represents a deviation of social norms, being defined or perceived as a state by the members of a social group.

From a penal point of view, penal deviance included all the actions stipulated by the penal law committed even if the circumstances in which they were committed or the certain characteristics of age or regarding the mental status of the authors or possible participants are legal causes of dismissing the penal character of the felony or the penal responsibilities of the perpetrators and it is divided in:

- criminality of the adults- of the persons who passed the age of civil minority and who have committed acts which have the constitutive elements of a felony, especially "criminals";

- juvenile delinquency- of the minors with the ages between 14 and 18 years old, who have committed, with discernement, an action that has the constitutive elements of a felony, especially "minor delinquents";

Although juvenile delinquency refers only to the age group of the minority, it is necessary to state this, because some researchers have included in this term also the category of so-called "young adults".

Extendind the meaning of the adjective "juvenile" at age groups who have passed the age of minority is excessive and unjustified. In the first place, a consensus hasn't been reached regarding the superior limit of the so-called age group of "young adults". Some researchers refer to the group between 19-27 years, others extend it to the age of 25 or 35 years old. The argument invoked for including actions committed by these young people in the concept of "juvenile delinquency" is no longer of a strict psychological or psychosocial nature.

Convention on the Rights of the Child has been adopted by the General Assembly in its resolution 44/25 from the 20th of November 1990; opened for signatures and ratification or accessing at the 26th of January 1990, come into effect at the 2nd of September 1990. Practically, it obtained international ratification. In a very short period of time, it has become the international instrument of human rights with the highest number of ratifications, demonstrating the special commitment of the international community in promoting and protecting children's rights.

The ratification of the Convention implies recognising the rights formulated in it. An ulterior ratification implies a commitment of the countries to adopt all the necessary measures to ensure and respect the rights recognised by the Convention. The countries are obligated to harmonize their laws, procedures and

their national policy with the Convention. The Convention includes the human rights recognised at a universal level and offers a framework accepted for promoting and protecting children's rights. All rights are indivisible and connected between one other, each of them being inherent to the human dignity and integrity. They are applied both in the normal situations and in difficult ones and they cover all the aspects from a child's life.

New- the discrimination, the "basic interests" and the child's participation are basic principles of the Convention. In its actions, these principles will be considered of a primary importance (article 3).

The Convention recognised children's rights to express their opinions and to be totally taken into consideration, to be informed and listened. In all the problems which affect the child, the child's opinions will be granted the proper importance (article 12), especially in the decisions which affect them and which allow them to enjoy and not be deprived of their fundamental rights.

The stipulations of the Convention specific to administrating juvenile justice are contained in articles 37, 39 and 40. The principles and measures stipulated by these Articles of the Convention, which refer to juvenile justice, exist and, in fact, derive from those of the instruments of juvenile justice. Children must not be subjects to torture, cruel treatment of punishment, this is stated in article 37 of the Convention.

Children should not be arrested in the name of the law and be confined. While they are in custody, children will be separated from the adults; they have the right to legal assistance or any other assistance: medical assitance, psychological services and assistance with interpreters, the right to contact their families. All children confined will be treated with humanity and respect in a manner which takes into account the special needs of their age.

Article 37 also stipulates that confinement of a child can be used only as a measure of final resort and for a short period of time. It forbides imposing the death penalty and the life sentence without possibility of parole of children.

Article 37 of the Convention obligates the Party Countries to take the proper measures to promote physical and psychic recovery and social reintegration of the children, victims of any form of neglect, exploitation or abuse, torture or any other form of cruelty, lack of humanity, degrading treatment or punishment. Such "recovery" and "reintegration" must be done in a healthy environment, with self-respect and dignity.

Children in conflict with the law have the right to a way of treatment which promotes a sense of dignity and values, taking into consideration the age and having as a purpose the reintegration in the society; this is specified in article 40, section 1 of the Convention. Children have the right to the basic guarantees for legal assistance of another kind of assistance for defending. Judicial procedures and institutional placings must be avoided. In article 40, section 2 of the Convention, children declared accused of breaking the law have the right to minimum guarantees of the law process. These include legal protection against: the presumption of innocence before proven guilty; prompt and direct informing with

all the accusations; providing legal assistance or any other assistance to prepare the defence; deciding the guilt, without delay by a compenent authority, in a fair hearing; not to be obligated to testify or confess as being guilty; the examination of opposite witnesses and obtaining the witnesses' participation in the name of the defence revised by a superior competent authority; to have complete privacy, respected in all the stages of the procedure. Furthermore, article 40, section 3 of the Convention stipulates that: "Party Countries will promote the establishment of laws, procedures of the authorities and applicable institutions, especially for the children considered, accused or admitted to having broken the penal law". Then, the Party Countries will establish: a minimum age at which children will be considered not to be responsible for crimes; measures by which judicial procedures will not be called upon, such as alternatives that exist in the diversion diagrams; respecting human rights and legal protections; a series of dispositions, such as: guiding, supervising, parole, professional education programs and other alternatives to institutional assistance which can assure children that they are treated in a manner proper to their welfare and in proportion to their circumstances, but also to the crime.

United Nations instruments of juvenile justice, such as: Riyadh Directing Lines, The Beijing Rules offers the normative frame for children rights protection – by "a juvenile justice administration" specialized, separated and distinct.

All these instruments form a complete set of universal standards and set adequate practice and objectives that need to be followed by the human comunity, servind as a model for the Member States, those who make decisions and politics, and a base from which the reform in the juvenile justice starts. These instruments are meant to protect the status, the rights, the interests and the social assistance of young people and to ensure the treatment and their right consideration by justice systems, in the entire world.

They sustain decriminalization, de- penalization, minimum formal intervention, the avoidance of labeling and stigmatization, a temperate reaction towards the behaviour of youth the prohibition of soullessness, cruelty, or of tough treatment, of discipline or correction (corporal or mental) of any kind.

The Riyadh Directing Lines set the standards to prevent the juvenile delinquency. They cover the pre-conflict standard, before young people having conflicts with the law. The Directing Lines concentrate on the avoidance of the conflict with the law and with its adverse effects, limiting the official intervention as well as the purpose and the definition of "delinquency" and the abolition of crime status.

They offer a clear conceptual frame, an approach and a vision which refer to the prevention of progressive delinquency policy and promote actions which are desired to be followed by the human community. Their purpose is to modernize the status and the quality of children's lives and to promote the respect for them.

The goals for delinquency prevention are non- coercive, non – stigmatizing, and non - vindicatory. The forbit rough behaviour, punishment, any form of correction at home, in school or in any other institution. The Directing

Lines use an orientation centered on the child, and a perspective of child development which evolves towards the prevention of delinquency as an integrating part of juvenile justice administration. A special attention is given to children with a high social risk, for example situations that compromise the development of the child, increase the vulnerability to become victims or to effect crimes. In this purpose, the complete interdisciplinary and zonal measures are outlined to ensure to the youth a life without crimes, victims and conflicts with the law, with an accent on the ways of non – disturbing protective and preventive intervention. Thus, the application of The Directing Lines require an effort to prevent the delinquency which includes participation and decision making role for young people themselves.In this purpose, they are role models who promote the active participation on the part of different socializing agencies and institutions, including family, the educational system and the community.

The Beijing Rules reflect the spirit and purpose of the juvenile justice. The set the basic perceptions and the premises and form the minimum standards for the leverage, processing and "treatment" of youth with law issues, within a system and administration of "juvenile justice. The peaks of the methods used promote an outstanding differentiation between the adults and youth, in law, in procedures and practice and their purpose is to avoid the negative effects of the processes and procedures that come in conflict with the law, especially in youth custody detention due to their age and vulnerability.

The central precepts of juvenile justice system as they are governed by The Beijing Rules include: the enactment of specific legislation, the increase of age limit for criminal responsibility, the conferment of legal trial rights comparable to those of adults, with protection based on age and considerations for young people, a strict limitation of confinement or enprisonment and of any kind of institutionalization, on a minimum necessary period of time, and only for the most serious crimes; separate courts of law for young people, separate open detention advantages, the recognition of specialized rehabilitation with an educational effect. The rules plea for the righteous treatment of females who, as research show, are treated tougher, more vulnerable to the sexual assalts in male custody and more probably they have special necessities and problems, adequate services and advantages. Futhermore, the modernization of personel professionalism is necessary, programs and services, inter zonal coordination and inter –agency; the use of scientific research as a basis of a development, evaluation, decision making and new methods program.

Bibliography :

1. *United Nations Manual of Juvenile Justice*, Edited by Ministry of Interior, Bucharest, 1999

2. Amza Tudor, *Theoretical Criminology*, Lumina Lex Publishing House, Bucharest, 2000

3. I. Pitulescu *Juvenile Delinquency,* Edited by Ministry of Interior, Bucharest, 1995

4. M. Mitrofan, V. Zdrenghea, *Judicial Psychology*, Şansa Publishing House, Bucharest, 1992

5. S.Z. Wrightsman, *Psychology and the Legal System*, Brook Cole Publishing, U.S.A, 2005

6. C. Flinterman, c. Hendelson, *Special Human Rights Treaties*, ed. R. Hanski, M.Suksi, 2006

SPECIAL ACTIONS FOR THE PROTECTION OF CHILDREN'S RIGHTS IN ROMANIA

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Abstract:

***The Convention on the Rights of the Child"**, adopted by the UNO General Assembly on November 20, 1989, constitutes a fundamental document by which the concern about the future generations becomes a legal instrument, and the idea of child protection becomes a principle of the domestic legislations of different states.*

In order to continue the process of adapting modern legislation to international conventions in the child protection field, to reconsider the impact of economic transition on children, and to take some adequate protection actions, to promote research in the field of child abuse and neglect, to continuously improve national legislations on adoption, to increase the role of local public authorities in the field of child and family protection, as well as to improve the justice system for minors, Romania ratified the Convention on the Rights of the Child by Law no.18/1990, published in the Official Journal no.109 of September 28, 1990.

Key words: children's rights, protection, authorities.

The protection of minors is guaranteed in Romania through laws that transpose the latest issues in international law into national legislation, and intensive efforts are made to concretely apply the regulations. As provided for by the Constitution of Romania at art.49 – Protection of children and young people - "children and young people shall enjoy special protection and assistance in the pursuit of their rights". Thus, according to specific legislation, special protection materializes in the following actions:

a).. Special protection of the minor, of the child temporarily or permanently deprived of parental care. – is a first action regulated by Law no.272/2004 in Chapter 3.

According to art.39 of Law no.272/2004, any child who is, temporarily or permanently, deprived of his/her parents' care, or who, for the protection of his/her interests, cannot be left in their care has the right to ***alternative protection.*** Alternative protection includes, besides instituting guardianship and adoption, **special protection actions** provided for by law. When choosing one of these solutions, the competent authority will consider the necessity to ensure continuity

of the child's education, as well as his/her ethnic, religious, cultural, and linguistic origin.[1]

As far as the special protection actions are concerned, we specify that special protection represents the "e*nsemble of actions, works, and services designed for the care and development of a child who is, temporarily or permanently, deprived of his/her parents' care, or who cannot be left in their care, if we are to protect his/her interests.*"[2]

According to Law no.272/2004, social protection will last until the child has acquired full capacity, with the following exceptions: art.51 paragraphs 2 and 3 specify that "at the young person's request, expressed after acquiring full capacity, if he/she continues his/her studies in a full-time educational form, special protection will be provided, under legal conditions, during the entire period while he/she continues his/her studies, but not exceeding the age of 26. A young person who has acquired full capacity and has benefited from a special protection action, but who does not continue his/her studies and cannot return to his/her own family, since he/she faces the risk of social exclusion, will benefit from special protection, on request, for a period of maximum 2 years, for the purpose of facilitating his/her social inclusion. In case it can be proven that the young person was offered a job and/or a place to live, and he/she successively refused them or lost them due to his/her own fault, these provisions are no longer applicable."

The special protection actions are set and applied to a child according to an individualized protection plan, and can be decided, according to the above-mentioned law, for the following minor categories:

● A child whose parents are deceased, unknown, have lost their parental rights, have been denied their parental rights, are under interdict, legally declared dead or missing, when guardianship could not be instituted;

● A child who cannot be left in his/her parents' care not due to their fault, if we are to protect his/her interests;

● A child who has been abused or neglected;

● A child who has been found or abandoned by his/her mother in medical facilities;

● A child who has committed a criminal offence and cannot be held liable according to criminal law.

The special protection actions for children provided for by valid Romanian laws are the following:

1) Placement

2) Emergency placement

3) Specialized supervision

1) Child placement **constitutes a temporary special protection action, which can be decided, under legal condition, as applicable, for:**

- A person or family
- A foster parent (maternal assistant)

[1] M. Tomescu – "Dreptul familiei. Protecţia copilului" ("Family Law. Child Protection"), Ed.All (All Publishing House), Bucharest, 2005, page 229

[2] M.Tomescu – op cit, page 230

- A residential service.

The parents' rights and obligations towards the child are maintained during the entire period of the placement decided by the child protection board. The parents who have lost their parental rights, as well as those who have been denied their parental rights keep the right to consent to their child's adoption.

2) Emergency placement is a temporary special protection action, which is established for an abused or neglected child, as well as for a child who has been found or abandoned in medical facilities. Emergency placement can be decided for:
-- A person or family
-- A foster parent
-- A residential service.

During the entire period of the emergency placement, the exercise of parental rights is legally suspended, until a court of law has decided either to maintain or replace this action, and on the exercise of the parental rights. During the suspension period, the parental rights and obligations towards the child are exercised or fulfilled by the person, family, foster parent, or the head of the residential service with whom the child was placed under emergency, and the rights regarding the child's assets are exercised by the president of the county council.

3) Specialized supervision is decided under the conditions of the above-mentioned law for a child who has committed a criminal offence and cannot be held liable according to criminal law. When the minor's parents or legal representative consent, this action will be decided by the child protection board, and when they do not, by the court of law.[3]

b)..Protection of the refugee children and child protection in case of armed conflict.- The Convention on the Rights of the Child provide for the right of the refugee children and the children who request asylum to protection, and adequate humanitarian assistance, including finding family members or the main person in whose care he/she has legally or customary previously been. Attention should be given in the future to the fact that refugee children who request asylum "need special protection and assistance".

"*The Refugee Convention"* (1951) gives the international definition of refugees. The defining conditions mainly refer to both children and adults, and are as follows:
--- The refugees should be outside the borders of their country of citizenship (or should have no citizenship) due to a well-founded fear that in their country they would be persecuted for reasons connected to religion, nationality, race, affiliation to a social group, or due to their political opinions, and
--- The refugees should not be able or wish to return to their country of origin.

The children and adults who have a refugee status cannot be obligated to return to their country of origin, and cannot be sent to another country that could obligate them to return.[4]

[3] idem, page 235
[4] idem, page 368

The refugee children are one of the most vulnerable groups in the world, because of the major possibility that they would become victims of sexual abuse, or be recruited for military purposes. Regardless of the pressure on the host state, the legal and moral obligation to protect these children is indisputable.

In Romania, according to valid laws, the children who request a refugee status, as well as those who have acquired such a status benefit from adequate protection and humanitarian assistance for the fulfillment of their rights. These children benefit from one of the protection forms provided for by Law no.122/2006 on asylum in Romania.

According to art.73 and the next of Law no.272/2004, in case a child who requests a refugee status is not accompanied by his/her parents or another legal representative, his/her interests during the procedure for the granting of the refugee status are defended by the social care and child protection general board that has administrative-territorial jurisdiction over the territorial body of the Ministry of Home Affairs and Administrative Reform with which the request has been submitted. Until a final and irrevocable solution to the request for a refugee status is given, the respective children will live in a residential service home. In case the request is denied, the court of law will decide the placement of the child with a special protection service. The placement action will last until the child has returned to his/her parents' country of residence, or to the country in which other family members who are willing to take care of the child have been identified.

The Convention on the Rights of the Child requests the states to comply with, and also fulfill the following obligations:

a)-To comply and ensure compliance with international humanitarian laws that are applicable in case of armed conflicts;

b)-To take all feasible actions to guarantee that people under 15 years of age do not participate directly in the hostilities;

c)-Not to recruit people under 15 in the armed forces;

d)-To give priority to the older people when recruiting any people between 15 and 18;

e)-To take all actions to ensure the protection and care of children affected by an armed conflict.[5]

The Child Protection Committee has underlined that states should take actions to ensure the fulfillment of the rights of all the children under their jurisdiction during armed conflicts.

In our country, the state institutions take the necessary actions to develop special mechanisms meant to ensure the monitoring of the actions implemented for the protection of the rights of the child in case of armed conflicts. State institutions have the obligation to initiate and implement strategies and programs, including at the family and community level, to ensure the demobilization of child soldiers and,

[5] "Manual pentru implementarea Convenţiei cu privire la Drepturile Copilului" ("A Handbook for the Implementation of the Convention on the Rights of the Child") – paper drawn up for UNICEF by Rachel Hodgkin and Peter Newell, Revised edition, Editura Vanemonde (Vanemonde Publishing House), Bucharest, 2004, page 679

also to remedy the physical and psychological effects of conflicts on the children, and to promote their social reinsertion.

c)..Protection of the child who has committed a criminal offence and cannot be held liable according to criminal law.- In all the actions that regard minors, either implemented by social care institutions, courts of law, administrative authorities, or legislative institutions, the child's higher interests should be given priority. The legal promotion and regulation of a distinct punishment regime, of some special rules on criminal prosecution and judgment were performed by considering the particularities of human development stages.[6]

The requirement of setting a minimal age at which a person can be held liable according to criminal law is also provided for by international documents. Thus, article 4 of the ***"Beijing Rules"*** (United Nations Resolution no.40/33 of November 29, 1985) specifies that in the legal systems that acknowledge the concept of the age of criminal liability of minors, the beginning of this age will not be set too low, taking into consideration emotional, mental, and intellectual maturity.

Art.99 of the Romanian Criminal Code provides for the limits of criminal liability, as follows:

a) The minor who is not 14 years old cannot be held liable according to criminal law
b) The minor between 14 and 16 years of age can be held liable according to criminal law if it is proven that he/she has discrimination
c) The minor who is 16 years old can be held liable according to criminal law, since his/her discrimination is presumed.

The legislator expressly set the age limit beginning with which the minor can be held liable according to criminal law. The intention was for the minor to be physically and psychologically developed enough to understand the consequences of his/her actions. Art.99 of the Criminal Code provides for three age categories, as follows:

---*Under 14 years of age* – when the minor cannot be held liable according to criminal law, an absolute presumption of the lack of discrimination that cannot be dismissed regardless of the minor's physical and psychological development stage;

---*The minors between 14 and 16* – when they cannot be held liable according to criminal law unless it is proven that they had discrimination when they committed the offence. Consequently, this category of minors benefit from a relative presumption of the lack of discrimination, a presumption that can be dismissed. In order to protect these two categories of minors, art.50 of the Criminal Code provides for minority as a reason for the removal of the criminal character of the offence.

---*The minors who are 16 years old*, for whom the legislator expressly mentioned that they can be held liable according to criminal law.

[6] M. Coca-Cozma, C. M.Crăciunescu, L. V.Lefterache (colab.) – "Justiţia pentru minori" ("Justice for Minors"), Ed.Uiversul Juridic (Universul Juridic Publishing House), Bucharest, 2003, page 60

According to art.80 paragraph 1 of Law no.272/2004, "in the case of a child who has committed a criminal offence and cannot be held liable according to criminal law, at the suggestion of the social care and child protection board that has administrative-territorial jurisdiction over the child, one of the actions provided for by art.55 letters a) and c) of the law will be taken" (i.e. placement and specialized supervision). When deciding on one of these actions, the Child Protection Board and the court will consider:

- The conditions that favored the committing of the offence
- The degree of social danger of the offence
- The environment in which the child has grown up and lived
- The risk that the child would commit another criminal offence
- Any other elements that characterize the child's situation.

We specify that the specialized supervision action consists of keeping the child in his/her family, provided that the child fulfills some obligations, such as:

► Attending school
► Using some day care services
► Receiving some medical treatment, counseling, or psychotherapy
► Forbidding access to some places, or contact with certain people.

In case the criminal offence committed by a child who cannot be held liable according to criminal law presents a high degree of social danger, as well as in the case in which a child for whom the actions provided for by art.81 continues to commit criminal offences, the child protection board or, as applicable, the court of law will decide the child's placement with a specialized residential service for a definite period of time.

During the implementation of the actions intended for the children who commit criminal offences and cannot be held liable according to criminal law, specialized services will be ensured to assist the children in the social reinsertion process.

d)..Child protection from exploitation. – Article 19 of the Convention requests the child's protection from all forms of physical or mental violence", as long as he/she is in the care of his/her parents or other people. The states have the obligation to take a wide range of (legislative, administrative, social, and educational) actions to protect children from all forms of violence. Paragraph 2 establishes possible protective actions[7], acknowledging the fact that social and educational actions, and especially the provision of adequate support to the children and their families, are relevant to the child's protection from violence, abuse, and exploitation.

Law no.272/2004 regulates the child's right to be protected from any forms of violence, abuse, maltreatment, and neglect. According to the provisions of art.85 paragraph 2, any natural person or legal entity, as well as the child may inform the authorities that are legally competent to take adequate actions to protect the child

[7] Developing some social programs that would offer the support necessary to the child and the people in whose care he/she is; teaching other forms of prevention, identification, reporting, investigation, treatment, and checking of the cases of child maltreatment.

from any forms of violence, including sexual violence, harm or physical or mental abuse, maltreatment or exploitation, abandonment or neglect. In such cases, public authorities and private institutions have the obligation to take all the adequate actions to facilitate physical and psychological readjustment, and the social reinsertion of any child who has been a victim of any form of neglect, exploitation or abuse, torture, or cruel, inhuman or degrading punishment or treatment.

e)..Child protection from economic exploitation. Article 32 of the UNO Convention on the Rights of the Child protects children from economic exploitation, and from work that could be dangerous or harmful to their physical, mental, spiritual, moral, or social health or development. This article requests states to adopt legislative, administrative, social, and educational actions to ensure its implementation, and especially to provide for:

- A minimal age, or minimal age limits for employment
- Adequate regulations regarding working time, and employment conditions
- Adequate punishments in order to ensure an actual application of the above-mentioned article.

According to the Bureau of Statistics of the International Labour Organization, at least 120 million children, between 5 and 14 years of age, work full time. ILO shows that many children still live in a slavery system in many regions of the world, and considers that priority should therefore be given to the resources used against the most intolerable of the children's work forms, such as slavery, coercion by debts, children's prostitution, and work in dangerous trades or sectors, as well as against work performed by very young children. ILO Convention no.138 provides that "all the necessary actions, including the setting of adequate punishments" should be taken by competent authorities to ensure the actual application of the provisions. The committee pointed out to the states that child protection from economic exploitation should be transposed in detail into the national legislation.

Within work legislation of our country, art.13 of the Work Code shows that a natural person acquires work capacity at the age of 16. He/she may also conclude a work agreement in the capacity as employee at 15 years of age, but only by his/her parents' or legal representatives' consent, and for activities that are adequate to his/her physical development, skills, and knowledge, if in this way his/her health, development, and professional training are not in danger. Art.13 paragraph 3 of the Work Code expressly forbids the employment of people under 15 years of age, while paragraph 5 of the same article specifies that employment on difficult, harmful, or dangerous positions can only take place after the age of 18.

Art.15 also forbids the conclusion of individual work agreements for the performance of illegal or immoral activities, since they will be null and void.

According to art.109 paragraph 2 of the Work Code, the employees under 18 will work 6 hours a day, and 30 hours a week.

Other bans provided for by the Work Code for young people under 18 years of age are specified by art.121 of the Work Code – "young people under 18 years

of age cannot perform overtime work"; art.125 of the Work Code – "young people under 18 years of age cannot perform night work".

Art.130 of the Work Code provides that "young people under 18 years of age benefit from a lunch break of at least 30 minutes, in case the daily working time exceeds 4 hours and a half.

As far as annual leave is concerned, art.142 of the Work Code shows that "the employees who work under difficult, dangerous, or harmful conditions, the blind, other disabled people, and young people under 18 benefit from an additional leave of at least 3 working days".

Besides this short presentation of the main provisions on the employment of minors, we specify that they enjoy all the rights and provisions of any employee, with the legal exceptions and restrictions.

By giving special attention to children and young people under 18 years of age, Law no.272/2004 – the general law on the matter – protects children from exploitation. They cannot be coerced to perform work that involves potential risk, or that may compromise their education, or do harm to their health, or physical, mental, spiritual, moral, or social development. Any practice by which a child is given away by one or both his/her parents, or his/her legal representative, for payment or not, for the purpose of the child's exploitation or work is forbidden. In the cases in which school-aged children skip school, while performing work and infringing legal provisions, schools have the obligation to inform the public social care service immediately. In such cases, the public social care service, together with the county school boards, and the other competent public institutions have the obligation to take actions with a view to the children's school reinsertion.

f)..Child protection from drug consumption. The states that ratify the Convention on the Rights of the Child have the obligation to take all the necessary actions to protect the children from illegal drug and psychotropic substance consumption, as they are defined by the relevant international instruments, as well as to prevent the utilization of children in drug production or trafficking. At present, the increasing levels of consumption with children and young people are alarming all over the world, while consumption threatens both their development, and economic prosperity and social order in all the countries. This problem currently constitutes a priority on most of the political agendas, requiring special attention.[8]

In Romania, the legislation on the matter provides that a number of institutions[9] should take adequate actions to:

[8] "Manual pentru implementarea Convenţiei cu privire la Drepturile Copilului" ("A Handbook for the Implementation of the Convention on the Rights of the Child") – paper drawn up for UNICEF by Rachel Hodgkin and Peter Newell, Revised edition, Editura Vanemonde (Vanemonde Publishing House), Bucharest, 2004, page 599

[9] The National Anti-Drug Agency in cooperation with the National Authority for the Protection of Children's Rights, and, as applicable, other specialized authorities or bodies of the central public administration.

-- Prevent the utilization of children in the illegal production or trafficking of such substances;
-- Make the public and especially children aware of these issues, including through the educational system, and, as applicable, by introducing this subject in the school curricula;
-- Support the children and their families, by counseling and guidance – confidential, if necessary, but also by drawing up policies and strategies that would guarantee the physical and psychological rehabilitation, and the social reinsertion of drug-addicted children, including by developing alternative intervention methods to the traditional psychiatric institutions for this purpose;
-- Additionally develop systems for the collection of some actual data on the occurrence of drug consumption by children, as well as on their involvement in illegal drug production and trafficking; permanently assess such cases, the made progress, the encountered difficulties, and the objectives suggested for the future, respectively;
-- Develop a public information system that would reduce tolerance regarding drug consumption, and help with the recognition of the first symptoms of drug consumption, especially by children.

The institutions provided for by law will ensure that the children's opinions are taken into consideration when drawing up anti-drug strategies.

g)..Child protection from abuse or neglect. According to Law no.272/2004 *"child abuse"* means any voluntary action of a person who is in a responsibility, trust, or authority relation with a child, action that endangers the child's life, physical, mental, spiritual, moral, or social development, body integrity, physical or psychological health.

"Child neglect" means the voluntary or involuntary omission by a person who is responsible for bringing up, caring for, or educating a child of taking any action within that responsibility, which endangers the child's life, physical, mental, spiritual, moral, or social development, body integrity, physical or psychological health.

Physical punishments in any form, as well as depriving the child of his/her rights, which endanger the child's life, physical, mental, spiritual, moral, or social development, body integrity, physical or psychological health, both within the family, and within any institution that provides child protection, care, and education services are forbidden.

In order to provide special protection to an abused or neglected child, the social care and child protection general board has the obligation to:

- Verify and resolve all the information regarding abuse and neglect cases, including those coming from foster parents;
- Ensure the provision of the services provided for by Law no.272/2004 – day care services, family services, and residential services – specialized for the needs of the children who have been victims of abuse or neglect, and their families.

In case the abuse or neglect was committed by people who, according to a legal work relation or other type of relation, were providing the child's protection, bringing up, care, or education, the employers have the obligation to inform the criminal prosecution authorities immediately, and to decide the separation of the respective person from the children in his/her care.

h)..Protection from kidnapping or any forms of trafficking. "The states will take all the necessary national, bilateral and multilateral actions to prevent child kidnapping, selling, and trafficking, for any purpose and in any form". Article 35 of the Convention provides for double protection for children: the main forms of child trafficking are discussed in different articles, but this article also provides for global actions regarding kidnapping, selling, or trafficking for "any purpose and in any form". Article 35 constitutes a safety instrument that guarantees child protection from kidnapping or buying for any purpose.

Romania ratified the Facultative Protocol to the Convention on the Rights of the Child, related to the sale of children, child prostitution, and the utilization of children in pornography, signed in New York on September 6, 2000, by Law no.470 of September 20, 2001. According to these international acts and documents, the states will forbid the sale of children, child prostitution, and the utilization of children in pornography by their national legislations, ensuring that such activities are always punished by the criminal law of each state, whether they are performed domestically or internationally, individually or in an organized manner, as well as by any extradition treaty between states.

The states will take all the actions necessary for international cooperation by multilateral, regional, and bilateral agreements, for the purpose of preventing, identifying, investigating, and punishing the people responsible for child kidnapping, selling, prostitution, pornography, and pedophile tourism.

In accordance with international provisions and recommendations, the Romanian Criminal Code provides for a series of offences whose victims are children, and whose punishment has been hardened by a series of subsequent amendments and additions to the Criminal Code. Thus, according to art.197 paragraph 3, rape of a minor under 15 years of age is punishable by imprisonment from 10 to 25 years, and the denial of some rights; if the victim has died or committed suicide, the punishment is imprisonment from 15 to 25 years, and the denial of some rights. Art.198 of the Criminal Code punishes sexual intercourse with a minor; art.199 punishes seduction (with the meaning it has in criminal law); art.201 provides for and punishes the offence of sexual perversion, and art.202 sexual corruption. Other offences provided for by criminal law on the matter are: maltreatment of minors, prostitution, procurement, forced transfer of children belonging to a community or group to another community or another group, etc.

In our country, Section 4 of Law no.272/2004 regulates child protection from kidnapping or any forms of trafficking. The Ministry of Home Affairs and Administrative Reform and the National Authority for the Protection of Children's Rights, in cooperation with the Ministry of Education, Research and Youth will take the necessary steps to adopt all the legislative, administrative, and educational

actions designed to ensure actual protection from any forms of domestic or international child trafficking, for any purpose or in any form, including by his/her own parents. For this purpose, the above-mentioned authorities have a responsibility to draw up a national strategy for the prevention and control of this phenomenon, including an internal mechanism for the coordination and monitoring of the performed activities.

i)..Child protection from other forms of exploitation. The Convention on the Rights of the Child specifies at article 36 that "states will protect the children from any other forms of exploitation that are harmful to any aspect of their welfare". This article has been introduced in order to ensure the acknowledgement of the children's "social" exploitation, as well as their sexual and economic exploitation.

The forms of exploitation that have not been approached by other articles include the exploitation of highly endowed children, child exploitation by mass-media, and child exploitation by researchers, or for medical purposes or scientific experiments.[10]

Art.99 of Law no.272/2004 regulates child protection from any forms of exploitation. Thus, public institutions and authorities, according to their responsibilities, adopt specific regulations, and apply adequate actions to prevent:

--Illegal child transfer and non-returning
--Conclusion of domestic or international adoptions, for other purposes than the child's higher interest
--Sexual exploitation and sexual violence
--Child kidnapping and trafficking for any purpose and in any form
--Child involvement in armed conflicts
--Forced development of the children's talents to the detriment of their harmonious physical and mental development
--Child exploitation by mass-media
--Child exploitation for scientific research, or experiments.

Minor or child protection represents a package of protective, assistance and support actions planned by the state, and applied by its specialized bodies with the help of social factors – such as NGOs, families, etc. – in order to ensure decent living for the human being before majority, which consists of harmonious development, safety, and normal physical and moral integrity.

The protection of children and young people is a permanent responsibility of national and local public authorities, ensuring their free participation in the country's political, social, economic, cultural, and sports life, regardless of race, sex, language, or religion.

Bibliography:

1. "Manual pentru implementarea Convenţiei cu privire la Drepturile Copilului" ("A Handbook for the Implementation of the Convention on the Rights

[10] "Manual..", page 643

of the Child"), revised edition, Ed.Vanemonde (Vanemonde Publishing House), Bucharest, 2004.

2. Coca-Cozma, M, Crăciunescu, C., Lefterache, L., *"Justiţia pentru minori" ("Justice for Minors"),* Ed.Universul Juridic (Universul Juridic Publishing House), Bucharest, 2003.

3. Tomescu, M., *"Dreptul familiei. Protecţia copilului" ("Family Law. Child Protection")*, Ed.All Beck (All Beck Publishing House), Bucharest, 2005.

4. Constitution of Romania

5. Family Code

6. Criminal Code

7. Work Code

8. Law no.18/1990 – by which Romania ratified the Convention on the Rights of the Child

9. Law no.47/2006 – regarding the national social care system

10. Government Decision no.12/2001 – regarding the establishment of the National Authority for Child Protection and Adoption

11.Government Decision no.26/1997 – for the ratification of the Facultative Protocol to the Convention on the Rights of the Child, related to the sale of children, child prostitution, and the utilization of children in pornography, signed in New York on September 6, 2000

12. Government Decision no.92/2000 – regarding the organization and operation of services of social reinsertion of offenders, and supervision of the serving of punishments that do not involve imprisonment

13. Law no.272/2004 – regarding the protection and promotion of the rights of the child.

14. www.europa.eu.int

CHILD'S RIGHTS PROTECTION IN ROMANIA'S LAW SISTEM

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Abstract:
In modern times the child stops being considered as a protection "object", becoming participant to the social, including the juridical life. The child holds the fundamental humans' rights as the adult does. This new concept related to child's protection was pointed at international level by adopting the Organization of the United Nations Convention related to child's rights – approved by Law no.18/1990.

Key words: child's rights, protection, Law no. 272/2004

Term of protection

The special situation of a child determined by vulnerabilities and his need of protection has always been in the center of juridical provisions. In the past, at the basis of the minorities legal regime was the conception according to which children have to be "submitted" to the protection exercised by their legal representatives. Traditionally, in the private law, this protection was legalized, mainly, under two main aspects: the minor's incapacity and the parental protection. [1]

In modern times the child stops being considered as a protection "object", becoming participant to the social, including the juridical life. The child holds the fundamental humans' rights as the adult does. This new concept related to child's protection was pointed at international level by adopting the Organization of the United Nations Convention related to child's rights – approved by Law no.18/1990. In the internal law it was transposed by adopting the Law no.272/2004 related to the protection and promotion of the child's rights. [1]

The Law no. 272/2004 represents a real *"Code of child's protection"* meant to assure the child's rights not only in the family, but as well as regards other rights and civil liberties, health and the child's wellbeing, education, recreational and cultural activities, the special protection of the child temporarily or definitely deprived of his parents' protection, protection of the refugees children and protection of children in case of armed conflict, protection of a child who committed a deed stipulated by the criminal law and is not penally responsible, protection of the exploited child etc. The Law no. 272/2004 represents a *frame-law*, that becomes general law in the child's protection, being accomplished by measures included in special laws, as example the Labor code, Family code, Education law etc.[1]

As a juridical term, the minor's or child's protection represents "a pack of protective, assistance and defense measures planned by the state and applied by its specialized institutions by means of social factors – the Organization of the United Nations, family etc. – in view of assuring a decent life for the human being before coming to the age, consisting in his harmonious development, in his security normal physical and moral integrity". [1] The protection of children and young men is a permanent duty of the central and local public authorities that assure their free participation to the political, social, economical, cultural and sportive life of the country, without race, sex, language or religion discriminations.

Child's protection character

The main general character of protection is pointed out by the provisions of the article 2 of the Convention related to the Child's Rights, according to which the states bind themselves to respect and to grant the children belonging to their jurisdiction the essential rights without any difference, no matter the race, color, sex, language, political opinion or other opinion of the child or his parents or representatives, their national, national or social origin, their financial state, their incapacity or other situation.

The convention intends the effective protection of the child against any discrimination form or sanctions. No matter of the authority that takes decisions regarding the minor, the superior interests of the child will always be taken into account with priority. [1]

In order to apply the rights recognized by the Convention, the states make sustained efforts and bind themselves to take the necessary legislative or administrative measures. As for the economical, social, and cultural rights, the states will take these measures in the maximum limits of the reserves they have, and according to the case, in international cooperation. [1]

The Romania's ratification of the Convention obliges our country to take the legislative and administrative measures in such a way that the internal legislation meets the assumed necessities. It can be stated that generally all the normative acts adopted after 1990 related to protection and child's rights correspond to the provisions of the Convention, and Law no. 272/2004 constitutes a real "Code".

Protection of civil rights and political liberties of the child in Romania

As we have already mentioned, Romania approved the Convention of Organization of the United Nations related to the Child's Rights by the Law no. 18/1990. By this approval, the Convention got juridical force in the internal law, the institutions of the state and the law courts having the obligation to observe and to apply it.

When there is a conflict between the provisions of the Convention and the internal legislation, according to art. 20 paragraph 2 of the Constitution of Romania, the international regulations in humans rights take priority. [1]

The child, in its quality of a human being, is the holder of the fundamental rights assured by the Romania's Constitution and by the international acts Romania

takes part. Thus, the Law no. 272/2004 related to the protection and promotion of the child's rights grants him the following rights:

1º) The right to identity. [1] In our country, the right to identity is regulated by the provisions of the art. 8 paragraph 1 of the Law no. 272/2004 that stipulates as follows: "the child has the right to establish and to keep his identity". By the identity of natural persons is understood his/her individualization in the juridical relations. The identification of a person is a complex institution, being of interest for all juridical relations where the person appears as holder of rights and obligations.

The article 8 paragraph 1 of the Convention underlines three elements of the identity of the child: the name, nationality and family relations, and the states are obliged to respect to the child "the right to keep his identity, including the nationality, the name and family relations as they are recognized by law, without any illegal interference". In paragraph 2 is shown that "in the case a child is illegally deprived of all or a part of the elements constituting his identity, the states will assure the proper assistance and protection so as to re establish the child's identity as soon as possible."

The Romanian law also stipulates the child's right to be registered soon after his birth. This thing is very important to a child, because, firs of all, it is the first recognition by the society of his existence, and secondly, starting with this moment, the authorities know about his existence, being recognized by the state and thus having a legal status. Until the registration the child does not exist, cannot hold rights in the society. By the registration, the child has access to medical assistance, education and other rights. The Law no. 272/2004 stipulates special obligations for certain institutions (sanitary institutions, police institutions, general directions of social assistance and child protection, social protection institutions etc.) that have to take the necessary measures to register him as soon as possible.

The right to identity presents a permanent necessity and that is way the right to keep one's identity is maintained. In the Romanian law keeping the identity is assured by a complex of institutions, principles and juridical norms regulated mainly by the constitutional, civil, family law, other normative acts, and it includes: the citizenship, nationality, juridical capacity, right to a surname, name and residence, marital status etc.[1]

2º) Right to personal relations with his family. The right to family relations may be considered one of the most important rights of the child. The European convention of the humans' rights assures the right to private and family life. From the jurisprudence of the European Court of the Humans' Rights results that this one also includes the right of a parent and of his child to maintain and develop personal relations, and that cannot be restricted unless serious reasons, if this restriction is necessary for the protection of the superior interests of the child.

According to the art. 14 of the Law no. 272/2004, the child has the rights to maintain personal relations with the following categories of persons:

a) parents

b) relatives that constitute their family by law (brothers, sisters, grandparents, uncles, aunts, etc)
c) family in fact.

The persons that constitute the family in fact, respectively those near whom the child enjoyed his family life, or the persons towards whom the child showed affection, have the right to maintain personal relations and direct contacts, as far as this thing does not contravene to the superior interest of the child. In the 14 paragraph 3 it is shown that "the parents or other legal representatives of the child cannot stop his personal relations with the grandparents, brothers, sisters, or other persons near whom the child enjoyed the family life, except for the case in which the law court decides this, considering that there are grounded reasons possible to endanger the physical, psychical, intellectual or moral development of the child".

From the provisions of art 15 of the Law no. 272/2004 it results that the personal relations may be:

a) direct personal relations – they suppose the personal presence, the direct contact and that can be realized by:
- meetings of the father with the child or of other person who, according to the law has the right to personal relations with the child;
- visiting the child to his residence;
- hosting the child during an established period agreed by the parent or by another person where the child does not usually live;

b) personal relations that may be realized by communication – correspondence or other form of communication, for example on the phone or electronic mail;
c) personal relations that suppose the transmission of information to the child related to the persons that have, according to the law, the rights to maintain personal relations with him and transmission of information related to the child.

3º) The right of the child to the protection of his public image, intimate, private and family life. According to the provisions of the article 16 of the Convention related to the Child's Rights "no child will be submitted to an arbitrary or illegal interference in his private life, in his family, in his residence or correspondence, as well as no kind of illegal attack to his honor and reputation". The article 16 has to apply for all the children, without discrimination. The private life of the child will be protected in all the situations, included in the family, in the alternative care and in every institution and service.

In our country the Constitution of Romania assures this right of the child, and not only, including it in the fundamental rights and stipulates in the provisions of art. 26 paragraph 1 that "the public authorities respect and protect the intimate, family and private life".

A special role in the protection of the public image, intimate, private and family life has the National Counsel of the Audiovisual, as regulating authority in the audiovisual, that has the obligation to adopt the necessary decisions, taking into account that the affection of the physical, mental or moral development of the minors is a public interest problem. [1]

4º) The right of the child to the freedom of expression. The freedom of expression is a fundamental right of the human being, being assured both by the Universal Declaration of the Humans' Rights, as well as by the Organization of the United Nations Convention regarding the civil and political rights, and not least, the Constitution of Romania (art.30). The Universal Declaration of the Humans' Rights by the article 19 assures: "every person has the right to the opinion and expression; this right includes the freedom to have the own opinions without the interference from the outside and to search, to receive and to give information and ideas, by any means, no matter of the boundary". According to article 13 of the Convention related to the Child's Rights, "the child has the freedom of expression; this right includes the freedom to search, to get and to give information and ideas of any type, no matter of the boundary, in oral, written, typed or artistic form or any other means", upon the choice of the child.

Exercising this right of the child may have some limitations or restrictions. These restrictions are especially stipulated by the law and are necessary for:

- observing others' rights and reputation, or
- protecting the national security, the public order, public health or good manners.

Being a fundamental right of civil nature the child has to benefit from this right, mentioning that its exercise is according to the degree of development of the child.

The Law no. 272/2004 stipulates expressly in the article 23 paragraph 3 in the assignment of certain persons, the obligation that permits that the promotion of the right to the freedom of expression be effective. Thus, the parents, the legal representatives of the child, the persons that by the nature of the position promote and assure the observance of the children's rights, have the obligation to assure information, explanations and advice according to the age and the degree of their comprehension, as well as to permit them to express their point of view, ideas and opinions.

The right to the freedom of expression is strictly bound to the child's right to express the opinions and to be taken into consideration.

5º) The right of the child able to judge and to express the opinion on any problem related to him. The article 12 of the Convention related to the Child's Rights mentions that "the states will assure the child able to formulate the own opinions the right to express them freely in every matter related to him and will grant these children the necessary importance, according to the age and maturity of the child. In this scope, the child will be especially given the possibility to be heard in a judicial procedure or administrative related to him, either direct either by a representative or a proper institution, according to the rules of procedure of the national legislation." This article, together with the right of the child to the freedom of expression (art.13) and other civil rights as are the freedom of thinking, consciousness and religion (art.14), as well as the freedom to free association (art.15) present the status of the children as individuals with individual fundamental rights, opinions and own feelings. [1]

In the Romanian legislation, granting this right is the result of the concept of the Law no. 272/2004 according to which the child is considered active subject of his rights. This does not mean that the minor decides all by himself, in the same conditions as the adult, but only the right not to be implied in any procedure that regards him. In this sens, the article 24 paragraph 2 of the above mentioned law stipulates that "in any judicial or administrative procedure that relates to him, the child has the right to be heard. It is compulsory ho hear the child of 10 years old. He may be heard even if he is not 10 yet, if the competent authority considers his hearing is necessary to solve the cause". "The right of hearing gives the child the possibility to ask and to receive any pertinent information, to be asked, to express his opinion and to be informed on the consequences his opinion might have, if it is respected, as well as on the consequences of any of the decisions regarding him.

Because the right to express the freedom of opinion belongs both to the disabled children, the authorities have to take the necessary measures for its exercise in the case of the child with judgment that cannot communicate.[1]

6º) The right of freedom of thinking, consciousness and religion. According to the provisions of the Convention "the states will respect the children-s rights of freedom of thinking, consciousness and religion. They will respect the rights and obligations of the parents, and according to the case, of the legal representatives, to offer the child guidance in exercising the above-mentioned rights, in a manner corresponding to the capacities in his evolution. The freedom to the own religion or the own beliefs cannot be submitted to anything except for the restrictions stipulated by the law and which are necessary in order to protect the public security, the public order, health and good manners or the fundamental rights and freedoms of other persons." (article 14 paragraph 1).

The fundamental right of the child to the freedom of thinking, consciousness and religion is granted to "each person" by the Universal Declaration of the Humans Rights and by the International Agreement regarding the Civil and Political Rights.

The concept of "freedom of thinking" is bound to the child's right to form and express his opinions. Putting in practice the freedom of thinking is related to the freedom of search, receiving and giving proper information, as well as the child's right to education.

Regarding the "freedom of consciousness", the Convention does not stipulate any restrictions, but allows the parents to guide the child. Related to the "freedom of religion" the Convention protects the child's right to have a religion and to practice it, with few restrictions and above mentioned.

The Law no. 272/2004 in the article 25 grants the freedom of thinking, consciousness and religion. The parents guide the child according to the own beliefs in choosing a religion, according to the law, taking into account the opinion, age and degree of maturity of the child, without obliging him to adhere to a certain religion or religious cult. The religion of the child who is 14 years old cannot be changed without his consent. The child who is 16 years old has the right to choose by himself the religion. In the case when the child benefits from special protection,

the persons who take care of him are forbidden any actions meant to influence the religious beliefs of the child.

7º) The freedom of association in formal and informal structures and freedom of peaceful assembly, in the limits stipulated by the law. The states recognize the child the right to the freedom of association and the freedom to peaceful assembly. Exercising these rights may be restricted only by the restrictions stipulated by the law and that are necessary in a democratic society, in the interest of the national security or public order or in order to protect the public health or the good manners or in order to protect the others' rights and freedoms.

The Law no. 272/2004 stipulates these rights in the article 26, at the same time pointing out the obligation of the authorities of the local public administration, education institutions and other public institutions or private competent to take the measures necessary to the proper exercise of the above mentioned rights. The National Counsel for Combating Discrimination assures and follows the exercise of these rights.

8º) The right to identity of a child belonging to a minority. The law regarding the protection and promotion of the child's rights mentions that the children belonging to the national, religious and linguistic minorities are recognized the right to the own cultural life, to declare their national, religious affiliation, to practice their own religions, as well as the right to use the own language in common with other members of the community they belong to.

The Constitution of Romania assures the right to identity in the provisions of the article 6 where is mentioned that "the state recognizes and assures the persons belonging to the national minorities, the right to keep, develop and express the national, cultural, linguistic and religious identity. The protection measures taken by the state for the keeping, for the development, for the expression of the identity of the persons belonging to the minorities have to be according to the equality and non discrimination principles".

The Convention of the Organization of the United Nations regarding the Child's Rights underlines the fact that in the states where there are national, religious or linguistic minorities or persons of native origin, they cannot be denied the right to enjoy the own culture, to declare the religious affiliation and to practice the own religion or to speak the own language, commonly with other members of his group. Mentioning these rights in a separate article is justified by the efforts to eliminate the continuous and serious discrimination against the minority people. [1]

9º) The right to respect the individuality and personality. According to the article 28 of the Law no. 272/2004, the child has the right to the respect of his personality and individuality and cannot be submitted to physical punishments pr other humiliating or degrading treatments. Thus, the disciplinary measures applicable to the child can be established only according to the dignity of the child, in no case being permitted the physical punishments or punishments that regards his physical, physical development, or that affects the emotional state of the child.

10º) The right to make complaints by himself regarding the violation of his fundamental rights. The provisions of the article 29 of the Law regarding the protection and promotion of the children's rights that establishes expressly this right represents an innovation in the exercise of the child's rights. According to the general rules, the minor who is not 14 years old does not have processional capacity; the minor between 14-18 years old has limited processional capacity. According to the provisions of the Code of civil procedure the persons who do not have the exercise of their rights can be in court only represented, assisted or authorized in the way shown in the laws or statues that stipulate their capacity or organization. The code of criminal procedure shows that the person deprived of the capacity of exercise, the complaint is made by his legal representative. The person having limited exercise capacity (that is the minor between 14 and 18 years) may make the complaint only with the consent of the persons mentioned in the civil law. But the Law no. 272/2004 imposes the following limitations:

a) the exception refers only to the complaints regarding the fundamental rights of the child;

b) the exception refers only to deposition of these complaints.

According to the paragraph 2 of the article 29, the child has to be informed on his rights and on the ways of their exercise.

11º) The right of the child to grow up near his parents. According to the Convention regarding the Child's Rights, the states are responsible to watch that no child is separated from his parents, against their will, except for the cases when the competent authorities decide, under the reserve of judicial revision and according to the applicable laws and procedures, that this separation is necessary in the superior interest of the child. According to these stipulations of the Convention, the Law no. 272/2004 devotes the right of the child to grow up near his parents. One of the fundamental duties of the parents is to assure to the child, in a proper manner corresponding to the capacities in continuous development of the child, the guidance and pieces of advice necessary to exercise the rights stipulate by the law. Both parents are responsible for the education of their child. The exercise and the fulfillment of the parental obligations has to always follow the superior interest of the child. The parents of the child have the right to receive information and specialty assistance necessary for the growth, care and education of the child.

Any separation of the child from his parents, as well as any limitation of exercising the parental rights has to be preceded by the systematical y granting of the conscriptions stipulated by the law in this sense.

12º) The right of the child to be raised in conditions that permit his physical, psychical, spiritual, moral and social development. In view to achieve the objectives proposed related to the improvement of the life standard, the Romanian state adopted a series of normative acts that follow among other things the improvement of the social – economic balance of the family by her sustaining in view of raising the child, in the scope of raising the natality and diminishing the phenomenon of children abandon. In this sense, the Organization of the United Nations no. 148/2005 regarding the support of the family in view of raising the

child stipulates in article 1 that starting with the 01 of January 2006, the persons that meet the requirements stipulated by the law benefit form holiday for raising the child until he is 2 years old, in the case of the child with handicap, until he is 3 years old, as well as from a monthly compensation in the amount stipulated by the ordinance.

By exercising this right the Law no 272/2004 stipulates in the care of the parents the following obligations:

- to watch the child;
- to cooperate with the child and to respect his intimate, private life and his dignity;0
- to inform the child on every act and deed that might affect him and to consider his opinion;
- to take every necessary measure to fulfill their children's rights;
- to cooperate with the natural and legal persons that exercise activities in the field of education, care and professional training of the child.

13º) The right to alternative protection of the child who is temporarily or definitively deprived of parental care. This right is stipulated in the provisions of the art. 39 and the following from the Law no. 272/2004, where it is shown that every child who temporarily or definitively, deprived of the parental care of his parents or who, in view of protecting his interests, cannot be left in their care has the right to alternative protection.

The alternative protection includes the guardianship, the measures of special protection stipulated by the Law no. 272/2004 and the adoption. When choosing one of these solutions, the competent authority will take into consideration in a proper way the necessity to assure a certain continuity in the education of the child, as well as his national, religious, cultural and linguistic origin.

14º) Right to health. Being one of the most important right recognized to a human being and to the child, the right to health was regulated in a series of international and internal documents of the states. The provisions of the Convention related to health result from the provisions of the Universal Declaration of the Humans Rights, form the provisions of the International Agreement regarding the Civil and Political Rights, of the International Agreement regarding the Economical, Social and Cultural Rights, all these being transposed in the national legislations of most of the states.

According to the Convention, every child has the right to health and to health services. In the article 24 is developed the right of the child to life, survival and development, as far as possible. "The states recognize the right of the child to enjoy the highest possible standard of health and to benefit from medical services and recovery. They will make efforts to assure that no child is deprived from his right to have access to such services of health care". In the paragraph 2 there are stipulated a series of proper measures that the states have to take into account for the complete implementation of this right. Also the states are required to adopt the proper and efficient measures in order to the abolishment of the traditional

practices damaging the children's health, because these traditional practices usually take place when the child is very little and cannot express his consent. The article 24 of the Convention also points out the importance of the international cooperation related to the complete fulfillment of the right to health and to medical assistance services [1].

According to the provisions of the Convention regarding the Child's Rights related the health right, Law no. 272/2004 stipulate sin the article 43 the child's right to enjoy the best health state that he can have and to benefit from medical services and recovery necessary to assure the effective fulfillment of this right.

The estate assures the access of the child to medical services and recovery, as well as the proper medication to his state of illness. The corresponding costs will be paid by the National unique fond of social health insurances and form the state budget. According to the article 43 paragraph 3 the authorities and public or private institutions with duties in the health field are obliged according to the law, to adopt every necessary measure for:

a) death reduction;
b) assurance and development of primary and communication medical services;
c) prevention of malnutrition and illnesses;
d) assuring medical services for pregnant women in the period pre and postnatal, no matter if these ones have or do not have the quality of assured person in the system of social health insurances;
e) informing the parents and the children on the health and nutrition of the child, including related to the advantages of suckling, hygiene and salubrity of the environment;
f) development of actions and programs for health protection and prevention from the disease, of assistance of parents and education, as well as family planning services;
g) periodical verification of the treatment of the children who were sent to get care, protection and treatment;
h) assuring the privacy of medical consultation granted upon the request of the child;
i) systematical training in schools of programs of life education, including sexual education for children, in view of preventing contact disease with sexual transmission and pregnancy of minors.

The parents are obliged to ask medical assistance in order to assure the child the best health state and development. In the situation in which the life of the child is in danger or there is the risk of major consequences regarding his health or integrity, the physician has thee right to make those strictly necessary medical operations in order to save the child's life, even without having the consent of the parents or of the legal representatives.

15º) The rights of the child to a decent life standard that permits his physical, psychical, mental, spiritual and social development. The Convention regarding the Child's Rights stipulates the right of the children to a proper life standard for their complete development. The parents of the child have the

responsibility to assure this right. When necessary, the state has to support the parents in this sense and in need, to provide financial helps: – food, clothes, and house. The states will also take every corresponding measure to assure the recovery of the allowance for the child from the parent or other persons who are responsible from the financial point of view of the child.

A succinct analysis of the provisions of the article 27 of the Convention points out the union of tho major principles: one refers to the right of every child to development and the second – the parents are the first persons responsible to assure this development (physical, psychical, mental, spiritual, moral and social).

The Romanian law has taken exactly the provisions of the Convention, thus the child has the right to a life standard that permits his physical, mental, spiritual, moral and social development. The paragraph 2 of the article 44 of the Law no. 272/2004 stipulates the responsabilites of the parents in order to assure as much as possible the best life conditions necessary to the raise and development of the child, being obliged to assure him a home, as well as the necessary conditions for raising, education, schooling and professional training.

16º) The right to benefit from social assistance and social insurances. According to the Law no. 272/2004, the child has the right to benefit from social assistance and social insurances, according to the resources and the situation in which he is, and the persons in the care he finds. In the situation in which the parents or the persons who according to the law have the obligation to take care will not be able to assure, of reasons independent of their will, the minimum needs of dwelling, food, clothes, and education of the child, the state, by the competent public authorities is obliged to assure them the proper support, in form of financial helps, support in nature, as well as in the form of services, according to the law.

The law also stipulates in the care of the parents the obligation to ask the competent authorities the granting of the allowances, compensations, services in cash or nature, and other facilities stipulated by the law for the children or for families with children. The local public authorities have the obligation to inform the parents and the children on the rights they have, as well as on the modalities of granting the rights of social assistance and social insurances.

According to the Law no. 47/2006 regarding the national system of social assistance, the social assistance is a component of the national system of social protection and includes the social services and helps given for the development of the individual or collective capacities to ensure the social needs, the raise of life quality and the promotion of the cohesion principles and social inclusion. The state creates the conditions necessary for the implementation of the social measures and actions for assuring the right to each person, and implicitly to the child, who is I situation of social need due to economical, physical, psychical or social reasons, to benefit from the social services and social helps.

The right to social assistance is assured to every citizen of the country without discrimination. The citizens of other states, the stateless persons, and any other person who obtained a protection form, according to the law have the right to

social assistance according to the Romanian legislation and the agreements and treaties to which Romania is part. [1]

17º) The special rights of handicapped children. According to the article 23 of the Convention, the disable child has to be assured life conditions that "promote the independence" and to facilitate "the active participation to the community life". In the paragraphs 2 and 3 is established the right of the disable child with "special care", underlying that the assistance has to be conceived in such a way to assure "the effective access" to different services, in a way that facilitates the possibility for a child to have the maximum level of social integration and individual development. Paragraph 4 promotes the international cooperation in view of improving the capacities and the competences of the state. [1]

In the introduction to the Standard Rules regarding the Equalization of the Opportunities for the Disabled persons the distinction between "disability" and "handicap" is made. Thus, "the term of **disability** resumes a great number of functional limitations, that can be met on every population and in every country across the world. The disabilities may be caused by a physical, intellectual or sensory deficiency, by a medical problem or a mental disease, temporary or permanent", and the "term of **handicap** means the loss or limitation of the possibilities to take part to the community life as the others do. This term describes the interaction between a disabled person and the environment. The scope of this term is to underline the deficiencies of the environment and of many activities organized by the society regarding the information, communication and education, that prevent the disabled person to participate in equality conditions". [1]

The comity for the Child's Rights underlined the idea that the insurance of the rights of the disabled children has to be perceived as a priority and appreciated the Governs that adopted such priorities.

In Romania, the situation of the handicapped children is regulated in a series of normative acts. The article 50 of the Constitutions shows that "the handicapped persons enjoy special protection. The state assures the realization of a national politics of opportunities equality, of prevention and treatment of the handicap, in view of the effective participation of the handicapped persons in the community life, respecting the rights and the duties that are in the responsibility of the parties and of the tutors"

The Law no. 272/2004 regulates the right of the handicapped child to special care adapted to his needs. The handicapped child has the right to education, recovery, compensation, rehabilitation and integration, adapted to the own possibilities, for the development of his personality. The special care has to assure the physical, mental, spiritual, moral and social development of the handicapped children and consists of help proper for the situation of the child and his parents, or according to the case, to the situation of those to whom the child was entrusted. It is granted freely whenever this is possible in order to facilitate the effective access and without discrimination of the handicapped children to education, professional training, medical services, recovery, preparation, so as to occupy a job.

The specialty organs of the central public administration and the authorities of the local public administration are obliged to initiate programs and to assure the resources necessary for the development of the services meant to satisfy the needs of the handicapped children and of their families under the conditions that assure them the dignity, that favor their independence and that facilitate the active participation to the community life. [1]

18º) The right to education. The article 28 of the Convention regarding the Child's Rights establishes the right of the child to education. The education is recognized as being essential for every one, on the basis of "equality if opportunities". Education is not limiteds to the knowledge acquired in school, but it implies the whole process of the social life by means of which the persons and social groups learn to develop in a conscious way the personal abilities, capacities and knowing within and in favor of the national and international communities. [1] The article 28 also establishes the minimal conditions: the free and compulsory primary education for all and the different forms of secondary education and professional orientation "available and accessible for every body". The higher education has to be accessible "according to the capacity". It is also mentioned the problem of granting the education if the state has to take measures in order to diminish the rate of the school abandon and to assure that the scholar discipline observes the children's rights. At the same time, the international cooperation is encouraged by education, being underlined the fact that education may constitute the engine of economic development. [1]

In our country the legislator also stipulated in the Constitution of Romania among the fundamental rights and freedoms of any child the right to education (art. 32), being assured by the compulsory primary education, by high school education and vocational school education, by higher education, as well as other forms of instruction and improvement. The constitutional provisions also stipulate the right of the persons of the national minorities to study in their mother tongue and the right to be teched in this language, these rights being granted. The state education is free, according to the law. The state grants social study scholarships to the children and young men coming from disadvantaged families and to those institutionalized according to the law.

According to the Law no. 272/2004, the child has the right to receive an education that permit him the development, in non discriminatory conditions, of his abilities and personality. The parents of the child have as a priority the right to choose the type of education that will be assured to their children and have the obligation to register the child at school and to assure his regular attendance of the course.

The child who is 14 years old may ask the permission to the judicial court to change the type of education and professional training. During the instructive-educative process, the child has the right to be treated with respect by the teacher staff, to be informed on his rights, as well as their way of exercise.

The provisions of the Frame-Law also stipulate the the right of the child to contest the ways and the results of the assessment and to address in this sense to the

direction on the institution of education, according to the law, either personally, either represented or assisted by his legal representative.

The teaching staff have the obligation to notify to the public service of social assistance or, according to the case, to the general direction of social assistance and child protection the cases of bad treatment, abuse or neglect of the children.

19º) The right to rest and to holiday. The Convention mentions in the article 31 the right of the child to rest, spare time, play and recreational activities, as well as the right to participate to the artistic and cultural life. The "*rest"* includes the fundamental necessity of physical and mental relax and of sleep. The *"spare time"* is a more extended notion that designates the fact to have the time and the freedom to do what he likes, and the "recreational activities" designate a wide range of activities that may be simultaneous considered as work, such as: sports, creative arts, shows, crafts, technical and scientific hobbies or agricultural activities. The *"play"* is undoubted the more interesting aspect of the childhood and it designates those activities that are not controlled by the adults and that are not submitted compulsorily to rules. [1]

The child has to benefit from sufficient time for rest and holiday, to freely participate to the recreational activities fit for his age, to cultural, artistic and sportive activities of the community. The law stipulates the obligation of the public authorities to contribute in a proper way to the duties assigned for, to the insurance of the prerogatives of exercise of this rights in conditions of equality. The public authorities have also the obligation to assure according to the tasks assigned, sufficient and proper places of play for the children, especially in the most populated areas.

20º) Other rights of the child. Although the Law no. 272/2004 does nor expressly mention them, the child, in his quality of human being, is the holder of the fundamental rights stipulated by the Constitution of Romania and by the international acts Romania is part of.

Bibliography:

1. Dascălu, R, *"Child protection in Romania"*, Ed. Arves, 2003.

2. "Manual for the implementation of the Convention regarding the Child's Rights, revised edition, Ed. Vanemonde, Bucharest, 2004.

3. Balahur, D., *"Protection of child's rights as a principle of social assistance",* Ed. All Beck, Bucharest, 2001.

4. Arcu, C., *"Minors protection in private international law",* Ed.Universităţii Suceava, 2003.

5. Tomescu, M., *"Family law. Child protection"*, Ed. All Beck, Bucharest, 2005.

6. Constitution of Romania

7. Law no. 18/1990 – by which Romania ratified the Convention regarding the Child's Rights

8. OUG no. 148/2005 – regarding the support of the family for raising the child

9. Law no. 47/2006 – regarding the national system of social assistance

10. OG no. 12/2001 – regarding the foundation of the National Authority for Child Protection and Adoption

11. OUG no. 26/1997 – for the ratification of the Facultative Protocol to the Convention regarding the Child's Rights, related to the sale of children, prostitution of children and infant pornography, signed at New York on the 6 of September 2000

12. OG no. 92/2000 – regarding the organization and functioning of the social reintegration services of the delinquents and the supervise of the execution of the sanctions that do not deprive the liberty

13. Law no. 272/2004 – regarding the protection and promotion of the child's rights.

14. www.europa.eu.int

ECONOMIC EFFECTS OF INTERVENTIONS TO REDUCE INTERPERSONAL VIOLENCE

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Abstract:

Violence is defined as: "The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation" [11]

This definition explicitly includes psychological harm and deprivation among the effects of violence, with corresponding implications for calculation of the economic effects of violence. While there is general agreement that psychological distress is an important component of the economic burden of violence, most studies have not quantified it in calculating the economic effects of violence. Among those that have, there is little agreement in the methodologies used.

This document defines interpersonal violence to include violence between family members and intimates, and violence between acquaintances and strangers that is not intended to further the aims of any formally defined group or cause. Within the broad category of interpersonal violence, family and partner violence includes child abuse, intimate partner violence and elder abuse. Acquaintance and stranger violence includes stranger rape or sexual assault, youth violence, violence occurring during property crimes and violence in institutional settings such as schools, workplaces and nursing homes. Self directed violence, war, state-sponsored violence and other collective violence are specifically excluded from these definitions.

To assess the economic dimensions of interpersonal violence, it is necessary to understand the causes and identify the factors that increase the likelihood of people becoming victims and perpetrators of such violence. No single factor can explain why one individual, community or society is more or less likely to experience interpersonal violence. Instead, the Report showed that interpersonal violence is a complex phenomenon rooted in the interaction of many factors ranging from the biological to the political. To capture this complexity, there was adopted an ecological model that organizes the risk factors for interpersonal violence into four interacting levels: the individual level, relationships, community contexts and societal factors.

[11] Ola W. Barnett, Cindy Miller-Perrin, *Violence in Family,* Harvey Publishing House, London 2002, p.34-36

Key worlds: economical violence, maldevelopment, society, economical dimensions, intrapersonal violence.

This document classifies subcategories of interpersonal violence, with corresponding definitions, as follows:

- Child abuse and neglect: "All forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power"[1]
- Intimate partner violence: Behavior within an intimate relationship that causes physical, sexual or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviors. The term covers violence by both current and former spouses and partners. Though women can be violent toward men in relationships, and violence exists in same-sex partnerships, the largest burden of intimate partner violence is inflicted by men against their female partners.
- Abuse of the elderly: "A single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person, including physical, psychological or sexual abuse, and neglect."
- Sexual violence: "Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim." This definition includes rape, defined as physically forced or otherwise coerced penetration of the vulva or anus, using a penis, other body parts or an object.
- Workplace violence: Violence committed in a place of employment.
- Youth violence: Violence committed by or against individuals between the ages of 10 and 29.
- Other violent crime.

1. An ecological framework for assessing the economic dimensions of interpersonal violence

To assess the economic dimensions of interpersonal violence, it is necessary to understand the causes and identify the factors that increase the likelihood of people becoming victims and perpetrators of such violence. No single factor can explain why one individual, community or society is more or less likely to experience interpersonal violence. Instead, the Report showed that interpersonal

[1] Donileen R. Loseke, Richard J. Gelles, Mary M. Cavanaugh, *Child Abuse and Drugs*, Paperback Publishing, New York, 2003, p.58

violence is a complex phenomenon rooted in the interaction of many factors ranging from the biological to the political. To capture this complexity, there were adopted an ecological model that organizes the risk factors for interpersonal violence into four interacting levels: the individual level, relationships, community contexts and societal factors.

1.1. Ecological model for understanding interpersonal violence

Individual-level risks include demographic factors such as age, income and education; psychological and personality disorders; alcohol and substance abuse; and a history of engaging in violent behavior or experiencing abuse. At the relationship level, factors such as poor parenting practices and family dysfunction, marital conflict around gender roles and resources, and associating with friends who engage in violent or delinquent behavior increase the risk for most types of interpersonal violence.

The community level refers to the contexts in which social relationships occur such as neighborhoods, schools, workplaces and other institutions. Poverty, high residential mobility and unemployment, social isolation, the existence of a local drug trade, and weak policies and programs within institutions increase the risk of interpersonal violence.

Societal-level risks are broad factors that create a climate in which interpersonal violence is encouraged, including economic, social, health and education polices that maintain or increase economic and social inequalities; social and cultural norms that support the use of violence; the availability of means (such as firearms) and weak criminal justice systems that leave perpetrators immune to prosecution.

1.2. Societal Community Relationship Individual

Interventions to prevent interpersonal violence are likewise usefully categorized

by the ecological model. Based on findings, interventions shown through scientific evaluation to be of proven or promising effectiveness in preventing interpersonal violence include the following: Approaches for changing individual behavior include pre-school enrichment and social development programs, as well as vocational training and incentives to complete secondary schooling. These are designed to ensure academic success, manage anger and build skills, and are effective in preventing youth violence. Similar life-skills and educational approaches around issues of gender, relationships and power have been used to address physical and sexual violence against women. Effective treatment and counseling can reduce the potential for further physical and psychosocial harm after interpersonal violence has been experienced. Relationship-level interventions include those delivered in early childhood, such as parenting programs, the provision of support and advice through home visitation in the first 3 years of a child's life, and family therapy for dysfunctional families. These types of approaches, for instance, have been associated with reductions in child abuse and with long-term reductions in violent and delinquent behavior among young people. Strong mentoring is another approach.

Community-level interventions include reducing the availability of alcohol; changing institutional settings - e.g. schools, workplaces, hospitals and long-term care institutions for the elderly - by means of appropriate policies, guidelines and protocols; providing training to better identify and refer people at-risk for interpersonal violence; and improving emergency care and access to health services.

At the societal level, promising interventions include providing accurate public information about the causes of interpersonal violence, its risks and its preventability; strengthening law enforcement and judicial systems; implementing policies and programs to reduce poverty and inequalities of all kinds; improving support for families; and reducing access to firearms and other means of violence.
Experiences demonstrating the economic effects of interventions directly intended to reduce interpersonal violence. The effects on interpersonal violence of economic factors at the community and societal levels, and of government policies to address them.

Economic theory predicts that criminal behavior will respond to incentives, including the threat of punishment. Becker (1993) initiated a line of research using a general cost-benefit framework to model criminal's responses to economic incentives.[1]

2. Types of costs

Studies documenting the economic effects of interpersonal violence have used a broad range of categories of costs. Much of the difference in terms of the overall estimates made by the studies reviewed in this report was due to the inclusion or exclusion of different categories of costs, rather than to different methodologies in tracking costs.

2.1 Costs and benefits of interpersonal violence

As shown in Figure 2, cost categories can be broadly grouped into direct costs and benefits - those resulting directly from acts of violence or attempts to prevent them - and indirect costs and benefits. The most commonly cited direct costs were medical care and the costs of the judicial and penal systems – policing and incarceration. Indirect costs included the long-term effects of acts of violence on perpetrators and victims, such as lost wages and psychological costs, also referred to as pain and suffering (Hornick, Paetsch & Bertrand, 2002)[2].The calculation of psychological costs was a common practice in legal cases seeking to assess the monetary value of reimbursement to victims of violence. Psychological costs were generally significantly greater than the direct economic losses incurred by victims (Miller, Cohen & Rossman, 1993)[3]. Some studies attempted to place a value on the negative affect of violence on housing values - a cost to society. For

[1] Javad H. Kashani, *A Framework on Economic incentives level*,Becker Publishing House, New York, 1998, p.114
[2] Nicholas Bala, Joseph P. Hornick, Howard N. Snyder and Joanne J. Paetsch, *The International Journal of Children's Rights*, Miller and Miller Publishing House, New York, 2003, p.67
[3] M. Cohen, T. Miller, and S. Rossman, *Victim costs of violent crime and resulting injuries*, Miller and Miller Publishing House, New York, 2000, p. 87-89

example, in the USA, a doubling in homicide rates was associated with a 12.5% decline in property values. Other indirect cost categories quantified the effects of violence beyond the immediate perpetrators and victims - for example, a negative impact on investment in countries with high rates of violence and higher insurance rates for all of society.

- **Interpersonal violence**
  - Child abuse and neglect
  - Intimate partner violence
  - Elder abuse
  - Sexual violence
  - Workplace violence
  - Youth violence
  - Other violent crime
- **Direct costs and benefits**
  - Costs of legal services
  - Direct medical costs
  - Direct perpetrator control costs
  - Costs of policing
  - Costs of incarceration
  - Costs of foster care
  - Private security contracts
  - Economic benefits to perpetrators
- **Indirect costs and benefits**
  - Lost earnings and lost time
  - Lost investments in human capital
  - Indirect protection costs
  - Life insurance costs
  - Benefits to law enforcement
  - Productivity
  - Domestic investment
  - External investment and tourism
  - Psychological costs
  - Other non-monetary costs

2.2 Economic evaluation of interventions

The economic evaluation of interventions is undertaken to guide decision making so that scarce resources can be allocated in the most effective way. Accordingly, one of the main principles of economic evaluation is that it should involve a comparison of the costs and benefits of multiple options (Gold, Siegel & Weinstein, 2001)[1]. An economic evaluation can be conducted from a variety of perspectives, such as societal, sectorial or organizational. Each perspective differs in the costs that are selected for evaluation. The selection of a perspective will

[1] Milton C. **Weinstein**, PhD, *Evaluation and costs,* Miller and Miller Publishing House, New York, 2004, p. 115

largely depend on the primary stakeholder; but when multiple major stakeholders are present, as often is the case, it is not uncommon to conduct an economic evaluation from multiple perspectives.

A range of economic analyses have commonly been used for comparing violence interventions, including cost-utility analysis, cost-benefit analysis and cost effectiveness analysis.

The type of evaluation conducted will depend on the outcome indicator used – for example, quality-adjusted life years, monetary units or cases averted. While intervention-specific indicators allow for more accurate assessments of particular interventions, they also limit the ability of making cross-intervention comparisons. For example, if intervention A has a ratio of $0.01 per rehabilitation session attended, and intervention B has a ratio of $10 per crime averted, it is difficult to determine which intervention is a better use of resources. Therefore, when choosing an outcome indicator, it is essential to consider all of the plausible comparisons so that the evaluation can be effectively used as a decision-making tool (Drummond & McGuire, 2001).

2.3 Intervention Costs

Programs costs arise from the development and implementation of interventions aimed at reducing the burden of interpersonal violence. This will include the costs of all inputs - both fixed capital investments and recurrent programs costs - necessary to provide the intervention. Common examples of such costs include operating costs, labor costs and capital costs. Programs costs are especially important when conducting economic evaluations to compare interventions, since these costs will likely vary between interventions and can greatly influence their relative cost-effectiveness.

Therefore, when reading the later sections in this report regarding the benefits of individual interventions, particular scrutiny should be given to their associated programs costs. From an economic perspective, the reduction of direct and indirect costs resulting from an intervention can be referred to as the benefits of that intervention. Programs costs, however, can be thought of as the investment necessary to achieve those benefits. Therefore, programs costs will most often be found in the numerator of a cost-effectiveness analysis (as costs), whereas the reduction of direct or indirect costs will be found in the denominator (as benefits).

2.4 Intervention Benefits

A wide variety of indicators can be used to measure the benefits of an intervention, and their selection will largely depend on the goals of that intervention. For example, a violence prevention intervention could be measured in terms of saved lives or violent acts averted, while an intervention targeting prior offenders could be measured by recidivism rates. Less straightforward, however, is the measurement of the benefits gained by interventions aimed at the victims of violent acts. An indicator for this type of intervention not only would have to take into account its impact on the quality of life of the victim, but should also be a metric that allows for comparison between interventions.

The basic concept is straightforward. Utility scores for particular health states are first elicited from members of the targeted population. Health utility scores can range between 0 and 1, where 0 is the equivalent of being dead and 1 represents perfect health, although some health states are regarded as being worse than death and have negative valuations. These scores can be elicited in a number of ways, but the most commonly used are the time-tradeoff, standard gamble, and visual analogue methods. The amount of time spent in a particular health state is then weighted by the utility score attributed to that health state. A perfect health (utility score 1) of 1 year would equal 1, but 1 year in a health state with half of that utility (utility score .5) would equal 5. Thus, an intervention that generates 4 additional years in a health state valued at 0.75 will generate 1 more than an intervention that generates 4 additional years in a health state valued at 0.5. The use of it as an outcome indicator for interventions aimed at victims of violence has so far been limited. Therefore, further research needs to be conducted to determine the feasibility as well as the appropriate methodology for collecting health utility scores from victims of violence. In addition, standardized utility scores - similar to the "EuroQol" survey for health states - for the different types and degrees of violence should also be developed. Evaluations expressed in other units, such as cost per case averted, could then be modeled to derive a cost per QALY ratio. The overall benefit of this research would be the establishment of a common metric to compare the effectiveness of a wide range of interventions, including violence prevention, offender rehabilitation and victim counseling.

2.5 Key methodological issues

In addition to differences in terms of the categories of costs and benefits included, there were several other methodological issues where there were significant disparities among the studies reviewed. There were important differences in how rates of interpersonal violence were estimated. Sources for estimates included crime reports, hospital records and household surveys. Substantial numbers of violent acts - particularly intimate partner violence – go unreported and untreated. As a result, all of these sources were likely to result in of the true incidence of violence. As with any attempt to quantify the costs of morbidity and mortality, a principal methodological difference was in the dollar values assigned to a human life lost productive time and psychological distress. Another important difference among the studies was the varied perspective from which costs were calculated.

The majority of the studies of the costs of violence used a societal perspective - in other words, in principle all costs were included whether they accrued to the victim, the perpetrator, a third party payer or society at large. Several studies, however, included only costs to the victims, without counting the social costs of prevention, law enforcement, incarceration and lost productivity.

A further key methodological difference among studies was the time frame used to calculate costs. Most of the cost estimates of the aggregate economic losses caused by violence were for a 1-year time period. But the time frame varied, making direct comparisons difficult. Studies undertaken from the individual

perspective often calculated direct and indirect costs for the lifetime of the individual.

Nearly all studies that calculated costs and benefits beyond a 1-year time frame used some kind of discount rate to estimate future costs and benefits - based on the principle that humans value consumption and quality of life in the present more than they do an equivalent amount of consumption in the future. This concept is rooted in uncertainty about the future - making it more desirable to consume or benefit from life in the short-run than to wait for the equivalent amount of consumption in the future. For economists, the concept of consumption is most often considered equivalent to and measurable by the level of expenditures for an individual or a household. However, the concept of quality of life itself was not consistently defined in the economic literature; generally it was equated with individuals' willingness to pay for improvements in their lives, whether such improvements were material or intangible.

3. The value of a human life

Among studies that quantify the value of lost human life, there is considerable variation in the monetary value assigned to one life. The value of life is most commonly calculated using estimates of the quality of life, wage premiums for risky jobs, willingness to pay for safety measures and individual behavior related to safety measures such as using seatbelts.

The values used among studies reviewed in this document ranged from $3.1 million to $6.8 million. These estimates are in line with those generally used in the literature. Miller (1989) reviewed 29 cost-benefit studies and found that the mean value given to a human life in these studies was $4.2 million. Fisher, Chestnut & Violette (1989) reviewed 21 studies and found a range of $2.6 million to $13.7 million. Walker (1997) used a figure of $602 000, but this did not include the costs of the judicial system or psychological costs.

Finally, Viscusi (1993) examined 24 studies using wage-risk trade-offs to estimate the value of life. Most of these studies placed the value of life between $4.0 million and $9.4 million. Viscusi also pointed out that risk was a less robust predictor of wage levels than other factors, particularly education.

The discount rates used in the studies reviewed here ranged from 2.0% to 10%. It should be noted, however, that only a small proportion of the studies reviewed actually gave the discount rates they used, further complicating comparison of the findings between them. The United States Panel on Cost-Effectiveness in Health and Medicine has recommended using a real rate of 3.0% for cost evaluations in health care. This rate reflects a wide range of studies documenting individuals' preferences for present consumption compared to future consumption and interest rates for private investment. In theory, both of these factors influence the discount rate for future costs and benefits in the context of financial and health-related gains and losses.

As stated above, monetary values in this document have been converted to 2001 US dollars to enable comparisons and to adjust for inflation and varying exchange rates. Values expressed in other currencies in original documents, and US

dollar values from previous years, have been converted to 2001 US dollars using the US consumer price index and applicable international exchange rates from the year of the original estimates. Costs expressed as a percentage of the gross domestic product were calculated using the gross domestic product from the year the costs were reported.

4. Violent behavior and related factors Economic variables

- Violence: interpersonal violence, family Costs: cost-effectiveness, cost-benefit
- Violence, partner violence, domestic violence
- Abuse: child abuse, domestic abuse, Economics: economic policy partner abuse, girl abuse
- Assault Benefits
- Homicide Investments
- Injury and intentional injury Human capital
- Firearms Expenses

After the review, a total of 119 studies were retained, of which 54 are from the peer reviewed literature and 65 are not peer reviewed. Of these studies, 79 pertain to the first theme of the review - i.e. the economic effects of interpersonal violence. There are 27 studies relevant to the second theme – the economic effects of interventions intended to reduce interpersonal violence - and 13 pertain to the third theme - the effects of economic conditions and policies on interpersonal violence. The contents of these studies were systematically abstracted using the information categories listed in Appendix 3.

5. Characteristics of included and excluded literature

While 119 studies were retained for analysis in this review, a total of 248 were considered based on the keywords described in the search strategy. As a relatively large proportion of all studies examined was excluded, it is important to describe in further detail the exclusion criteria and the characteristics of excluded studies so that, ideally, future research into the economic effects of interpersonal violence might follow more consistently the characteristics of the included studies.

A clearly measurable costing component was a key prerequisite for inclusion in the review. Whereas searches of the social science and policy literature yielded a bounty of research examining various aspects of violence - including strategies for prevention, social environments that foster violence, roles of various stakeholders in violence prevention, and the relationship between violence and social capital - these studies did not generally determine direct or indirect costs related to interpersonal violence. The strength of much of this social science literature is a testament to the importance of considering sociopolitical variables and their relationships with violence and violence prevention. However, the relative lack of economic data on actual monetary costs - direct or indirect - highlights an essential area for increased attention, given the importance of costing data in any accurate reflection of the burden of violence. A number of studies based on theoretical models predicting violence were likewise excluded if they did not have an empirical component. It is clear from the review that data on economic

dimensions of interpersonal violence from low- and middle-income countries are scarce. Much of the raw data from high-income countries have been extracted from central government sources, such as the United States Department of Justice and the Australian Institute of Criminology. A partial explanation for the lack of costing data from low- and middle-income countries is the absence of reliable data collection mechanisms from government sources, leaving little from which researchers can examine trends and draw conclusions. Furthermore, a significant portion of the costing data has been extracted from hospital-based accounting and recordkeeping systems - areas in which lower income countries are at a significant disadvantage.

We have presented here a range of costing data to accurately reflect the available literature and have pointed out where there are possible variations in the quality and rigor of the included studies. The discussion of the economic correlates of violence briefly reviews key sociological literature relevant to this field and only provides a glimpse into the extensive literature on the relationship between interpersonal violence and factors such as economic inequality, employment rates and welfare expenditure.

A total of 119 studies and documents discussing the costs of violence were retained for this review: 54 are from the peer reviewed literature and 65 are from other sources, including governments and international organizations.

Because no systematically documented studies of the economic effects of abuse of the elderly were found, this category has been dropped from the review.

Bibliography:

1. Donileen R. Loseke, Richard J. Gelles, Mary M. Cavanaugh, *Child Abuse and Drugs*, Paperback Publishing, New York, 2003
2. Javad H. Kashani, *A Framework on Economic incentives level,*Becker Publishing House, New York, 1998
3. M. Cohen, T. Miller, and S. Rossman, *Victim costs of violent crime and resulting injuries,* Miller and Miller Publishing House, New York, 2000
4. Milton C. Weinstein, PhD, *Evaluation and costs,* Miller and Miller Publishing House, New York, 2004
5. Nicholas Bala, Joseph P. Hornick, Howard N. Snyder and Joanne J. Paetsch, *The International Journal of Children's Rights,* Miller and Miller Publishing House, New York, 2003
6. Ola W. Barnett, Cindy Miller-Perrin, *Violence in Family,* Harvey Publishing House, London 2002

SAFETY MEASURES USED TO PREVENT FRAUD FOR ELECTRONIC PAYMENTS

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Abstract:
Information supremacy has become the main element of progress in all domains and it has determined a change of the traditional payment systems as well as a greater attention to banking security and fraud prevention. The global security system of a bank must comprise political, security, control, testing and technical elements.

Key words*:* environment, micro payments, electronic wallet, banking fraud, banking security.

The 20th century has defined itself by information supremacy which has become the main element of progress in all domains. In 1995 new notions appear in the USA such as: **new economy or informational economy or computerized (digital) economy or electronic economy**, terms which all defined a new type of society about to happen.

The technological support of the new society is carried out by the convergence between **information technology, communication technology and digital support output** which opens new perspectives in modernizing services, production of material goods, competition, management and efficiency, with beneficial effects for all social layers.

The model of the society of the future has determined new challenges for governments and their institutions, business and academic communities, society, citizens and consumers in order to understand adopt and comprehend the new dimensions of human relations. In 1999 the European Commission adopts the document **eEurope- a Informational Society for all,** which urges the speeding of the process of digital technology implementation in Europe and the electronic competence acquirement to ensure a wide use of these technologies. The initiative has a central role in the calendar of economic and social renewal which EU intends and it is also the key element to modernizing the European economy.

In the terms of such large scale changes, a change in the traditional payment systems has become a necessity. On one hand the old payment instruments have been modified and adapted and the credit card and the electronic checks are now used for internet operations.

A newer direction is represented by micro payments and the electronic wallet which take us in a completely different direction from the traditional system which involve banks in any payment operation.

The monetary innovations which allow the clients a long distance contact with their bank, company address and home are called **home banking.**

The new support is represented by human voice on the phone which communicated the payment instructions. The advent of computers has determined new progress by the use of prerecorded messages for each product/service, the use of key words for each type of service, the reception of messages from clients and even by affirmative or negative answers to requests.

Later developments have diminished the role of voice phone in favor of communication through the computer which has become more secure, allowed the transmission of precise instructions under electronic signature and access to all electronic banking products and services.

The new distance payment channels have conquered the market. They are represented by internet banking, videotex and mobile banking for the population market and by multicash and cash management for companies.

The development of card activities had emphasized certain imperfections in terms of operation security and usage methods by holders.

- **Security measures used for electronic payments**

Security measures such as holograms, PIN, specific signature have proved insufficient and new measures have been introduced such as the limitation of the authorized sum, of the number of daily transaction from a retailer, the confrontation of identifying elements with those in the data base and other parameters specific to each bank.

At the same time the technological improvement have lead to the replacement of paper base to the electronic base and to the extinction of the phone transmission, which, in some areas, are still prone to fraud.

The newer protection measures involve the codification of the messages sent by phone but this system is complicated, expensive and not completely invulnerable.

In case of more valuable transactions, the retailers have began to interrogate the emitting bank and the card holder about the reality of the transaction, measure which involves an extra answer and a delayed authorization, but the method has proved extremely efficient.

The card banking practice has shown that fraud is mostly produced by in the accepting stage and is determined by the card holders or by other people.

- **Fraud determined by card holders**

a) The holder's use of the card without the existence of necessary amount in the account for several operations which do not require authorization (under the authorization limit), speculating the fact that the operation will not be checked; the emitting bank refuses the operation and the accepting bank will face the retailer. The solution is the authorization for all situations in which risk may be involved.

b) The use of the card for transactions which the user does not admit later either intentionally or form other reasons (the use of the card by another family member without the knowledge or permission of the holder). In this case the

problem of the quality of the selection of bank clients rises as well as that of the preoccupation of implementing a banking culture.

c) The transmission of the card to other people who make transactions (usually abroad) without the holder's knowledge or realization. Another problem which occurs is that of the relation with clients, especially at the beginning of the period of card usage.

- **Fraud determined by other people**

d) When the card number is found out by another person in different ways and when the card is used for fraud. Example: when somebody uses the card in a shop, restaurant or in a hotel for transactions which are recognized and the number of the card is transmitted to people who use this information to commit fraud; or when the card number and its validity are transmitted by internet in order to access to a certain site or to pay for something and when this confidential information is found out by a hacker who misuses it. This is the reason why many emitting banks limit the access of card in internet transactions.

e) When people copy the magnetic band of a valid card whose attached account is fed by another card for commercial purpose, the operation is called skimming and it is very difficult to trace.

f) When stolen/lost or counterfeit card are used by means of retailers' ignorance or their complicity. For example in case of lost/stolen cards the retailer accepts operations below the authorization limit without consulting the list invalid cards. In the situation of counterfeit cards, when more valuable goods are purchased (jewelry, electronic goods, designer clothes etc.) the retailer may not check the card attentively and find out it is not authentic or they may not be careful enough to require the consultancy of the real holder. This type of fraud is recuperated when the real holder requests it first from the emitting bank which goes to the accepting bank which, in turn, requests the sum from the retailer. With a view to prevent this type of situations, the accepting banks either take out an insurance policy or they impose a collateral deposit on the retailer, which would guarantee possible future fraudulent transactions.

Generally the card with processors have proved much safer as fraud is insignificant is their case. Statistics have proved this and more viable security procedures are expected as a consequence to the use of these cards..

The bank must offer firm and quality services to consolidate the trust is their name and brand. As a result, they organize a sophisticated internal check to invigilate their electronic system and to prevent possible fraud and attack attempts, which has become a major preoccupation.

Study shows that electronic systems are more vulnerable to internal attack and less vulnerable to external attacks because internal users have an easier access to information. In the present stage of internet-banking development the highest risk is that of transaction (fraud) due to the fact that the system of telephonic transmission is vulnerable to interceptions.

Here are some recent types of attacks:

- sniffers- monitoring programmes which scan the users' names and passwords when they enter the bank internet site.
- Password finders- programmes which test the great number of possible combinations to get access to a network.
- Raw force- a technique which captures coded messages and then reads them by means of breaking programmes.
- Interception- the interception of transmissions and further use of information.

In order to protect systems, firewalls have been invented. They are a combination of hardware and software which are placed between two networks and through which data recording and wide range of security elements have to pass.

The market risk is more present in the area of stock exchange operations. The fast growth of this domain and the online transactions through the internet may lead to an increase volatilization of stock and consequently to necessity of high amounts of cash. The involvement of the bank in broking operations through the internet or an exposure to high risk must be analyzed with professionalism. As in the situation of cash risk, the effects of on line operations on the volatilization of the market must be monitored, both by banks and further authority.

The strategic risk occurs in the situation of incompatibility between the strategic objectives on one hand and the fulfillment possibilities on the other hand. This risk occurs at the introduction of new products on the market, which in the presence of the internet can lead to substantial changes for the competitors. Most of the times the banks are too willing to appear on the market as soon as possible and they do not test the product /service enough or its implementation is not adequate (especially staff training) and, as a consequence failure may happen which leads to unfortunate situations such as losing clients. That is the reason why we must analyze if we need an expertise to identify, monitor, control the risk and ensure that the objective may be accomplish according to other bank purposes and risks tolerance. Through its nature, the strategic risk is more general and widely spread than other types of risk because management decisions may have implications on all types of risk. An industry such as the internet may bring substantial advantages if the strategy and the manner of conception as well as the implementation of a product/service are adequate.

The reputational risk is determined by the negative impact of the bank's activity on the internet on the public opinion as a result of dubious activities, disrespecting clients' confidentiality, easy promotion of products/services and lack of response to clients' request.

The reputational risk may expose the bank to losing clients, reduction of income and even law sues due to disrespecting obligations for the facilities presented on the site.

The internet operations make the bank more dependant on the partners who supply the technological support and who may not keep the high standard of their services. That is why the bank must check, manage and monitor this risk and receive information about the suppliers' plans of ensuring the activity.

Another important aspect is the possible faults in the security system of the bank's site, which the client could notice by accessing the site. In order to protect itself from these threats, the bank must develop and maintain high standard performance, revise and periodically test solutions for further activity as well as continually improve the communication strategies.

The management of the internet banking operation risk is a new domain which requires a certain banking technology of identification, assessment, monitor and control of risk exposure. Currently, there is a dilemma about the elaboration of an internal technology or the choice of an external technology which should be implemented by a specialized company. Moreover, we are witnessing the outlining the idea that the entire banking operation on the internet should be left in the hands of a specialized company (out-sourcing), especially for the banks which do not have the necessary infrastructure.

In order to manage the internet banking risk, the Electronic Banking Group in Basel recommends a set of 14 principles, as follows:

1. The Direction Committee and the administrators must organize the effective invigilation of the on line associated risks, including the establishment of specific accountancy, politics and control elements. As a consequence, the strategy of the bank must be revised and a specialized department should be organized to invigilate the risks according to network vulnerability and information sensitivity.
2. The Direction Committee and the administrators must revise and adopt the key aspects information security control. This involves the establishment of the authorizing method, the physical and logical access control and an adequate security infrastructure. At the same time, management is required in the situation of external threat by means of several methods such as anti-virus programmes, programmes of detection of fraudulent network entry and the testing of the penetration degree of the internal and external network.
3. The Direction Committee and the administrators must establish a collaborating policy with their partners to offer internet services. Bank management must assess the partnership risks, must analyze the competence of their partners and must request internal and external audit.
4. The bank will have to take the necessary measures to authorize and identify clients who operate on the internet. The bank must use secure methods to identify (PIN, password, smart card, digital certificate) and authorize clients in order to reduce the risk of identity theft, fraudulent account operations and money laundry.
5. Banks must use transaction authentification methods which should promote non-repudiation. Non-repudiation requires the production of an evidence of the origin of the electronic information delivery to protect the sender against false negation form emitter. The best known way is

the granting of digital certificates, which along with the digital signature allow the unique identification of the emitter.

6. Banks must ensure the necessary measures to separate adequately the tasks of the internet banking, data base and application systems. The separation of the tasks is a usual measure which ensures security that the transactions are authorized, recorded and monitored correctly.
7. Banks must ensure the authorized control and the access conditions. In order to sustain the task separation, banks must strictly control authorization and access conditions.
8. Banks must ensure the integrity of the data. The integrity of the data refers to the fact that both stocked data and transit data cannot be modified without authorization.
9. Banks must ensure the existence of traces for audit. Since information is electronic, only some situations will undergo audit, such as: openings, modifications and closure of accounts, transactions with financial consequences, transactions over the limit, granting, modification or withdrawal of rights to access the system.
10. Banks must take the necessary measures to ensure the confidentiality of information. Banks must make sure that all recordings and information is available to authorized personnel only and that all the confidential data is protected from unauthorized access. The misuse of information or unauthorized exposure of data may pose a legal risk to the bank, as well as affect its reputation.
11. Banks must make sure that the information available on their web pages is adequate and allow potential clients to make an idea about the identity and the status of the bank.
12. Banks must take the necessary measures to ensure the compliance to confidentiality rules applied in the area where they offer internet services. Banks must make all efforts to adjust confidentiality measures to the existing laws and regulations, to present polices to its clients and to avoid the use of private information in unauthorized or forbidden purposes.
13. Long term continuation of activity. Banks must offer long time and foreseeable services for its clients. With this purpose, the current capacity and and predictions must be correlated with dynamics of the ecommerce market and with the future rate of acceptance of internet services by its clients.
14. Banks must develop adequate plans to handle incidents in order to limit and minimize problems which occur unpredictably, including internal or external attacks. These actions refer to mechanisms of identification of an incident or crises right away, communication strategies with mass-media in case of attack and safety links, the simple procedure of alerting the authorities and the procedure of informing clients and mass-media about possible problems in the system.

Electronic Banking Group mentions that these principles are not finite. They will be added and improved. They are not compulsory either. They take the form of recommendations meant to prevent unwanted events and to ensure confidence in internet banking.

Electronic security is defined by some as "the set of necessary policies, recommendations, processes and actions to minimize the risk resulting from electronic transactions, risk which refers to system intrusion or theft" and by other as " any means, technique or procedure used to protect the volume of information in a system." The value of information in based on its integrity and if the security system does not allow the fulfillment of this request, information loses its significance. In this context, the specialists of the World Bank consider security as a means of adding value, and it has become a major preoccupation of any institution.

The global security system of any bank should comprise policy, security, control, testing and technical components. The World bank recommends a security system to internet operations on 12 levels: the security responsible, autentification, firewalls, active filter of the content, intrusion detection system, anti-virus programmes, cripting, vulnerability testing, adequate administration of the system, management application of the policy of the bank and reaction to incident plan. The key aspects of the functioning of a security system are: access, authentification, trust, non-repudiation, confidentiality, availability.

Bibliography:

1. Dedu V. – *Gestiune şi audit bancar,* Editur Economica, Bucureşti, 2003
2. Gabriela Fiat, Oana Petrişor-Mateuţ - *Monedă şi credit. Aspecte teoretice şi aplicative*, Editura Eurobit, Timişoara, 2005,
3. Pavel Ungureanu– *Banking. Produse şi operaţiuni bancare*, Editura Dacia, Cluj Napoca 2001
4. www.carduri.ro
5. www.platielectronice.ro
6. www.bnr.ro

APPLICATION OF THE COMPARATIVE METHOD IN THE LAW STUDY

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Abstract:

Any social phenomenon that appeared spontaneously or was generated by other factors needs to be studied by various existent or recent sciences in our society.

By adopting the principle that nothing is lost, everything is transforming, from the physical sciences domain, the Law's general theory, is reserved the duty to elucidate the evolution of relationships and the social reality. In order to obtain this it uses a list of methods specific only to it as a juridical science.

Key words: comparative method , the science of law , the general theory of law

Any social phenomenon that appeared spontaneously or was generated by other factors needs to be studied by various existent or recent sciences in our society.

By adopting the principle that nothing is lost, everything is transforming, from the physical sciences domain, the Law's general theory, is reserved the duty to elucidate the evolution of relationships and the social reality. In order to obtain this it uses a list of methods specific only to it as a juridical science.

For the complete definition it is not necessary only to adopt traditional methods, but also those used by other boarder disciplines, which have, in a certain way, similar characteristics (history, political science, psychology, medicine, cybernetics, etc.).

The object of juridical science is characterized by the study of law, of the juridical phenomenon in all its complexity: law as a set of norms, subjective rights, and juridical relations and the right society order, juridical consciousness, law-state correlation.

Since the science of law is different from natural science by the fact that its object is not nature and the discovery of its laws of existence and manifestation, but an aspect of social life –law; then between social sciences law distinguishes itself (along with ethics) as a normative science, due to the fact that the fragment of society that it studies is represented by juridical norms.

The set of juridical norms constitutes a system of juridical sciences, in which we can distinguish, by the sphere and the way it addresses the study of law, three groups:

a) global theoretical juridical sciences;

b) branch juridical sciences;
c) historical juridical sciences.

In the first group we can place the General theory of law and state, which has as an object the general theoretical approach of law and state and its forms and functions of manifestation.

The general theory of law and state as a distinct branch of juridical sciences appears and is established in the 20-th century, in its first half and becomes more pronounced after the Second World War. This doesn't mean at all that the general theoretical approach of the study was neglected until the contemporary times.

Starting with the indissoluble connection between law and state, which makes scientists, as law theory specialists, deal also with state theory, theoretical papers with monographic character or university courses dedicated to common study of state and law had appeared, forming a distinct discipline of the general theory of state and law.

Basically, juridical science would be incomplete, and the jurist unilateral without the study of state, in such a way that the two phenomena – state and law, are related between each other.

Returning to the study and definition of the general state and law theory's object, we must remember that it studies law and state as a whole, in its generality and integrity and the juridical order as a whole.

It formulates the definition of law and state, the other concepts, characteristic categories of law, being valid for all juridical sciences, as the categories of juridical norm like source of law, system of law, order of law, juridical responsibility and subjective law, etc.

The general theory of state and law is, obviously, a science because it operates with concepts, theories, principles, but from another point of view under a different aspect, it can also be viewed as an art, according to the degree in which it asks from the jurist, among other knowledge, talent, skill and the capacity to observe, research juridical phenomenon, and understand its laws.

The general theory of law doesn't remain abstract, it also has a practical importance, unconditionally serving the elaboration and application process of law. For this reason, the juridical technique regarding the elaboration and realization of juridical acts is being studied.[1]

As a study discipline, the general theory of state and law also has an introductory character in the juridical study of subjects' area. It can also be a conclusive discipline, of synthesis, but for this reason it should be studied in the last year of studies after learning most of the other subjects.

Regarding branch juridical sciences, these have been formed along with the development and extension of the juridical norms in the most various domains of social life and with the constitution of the law branches and sub-branches.

To the study of the juridical phenomenon, interdisciplinary border sciences also contribute, which can be considered as auxiliary to juridical sciences, such as:

[1]I. Ceterchi, M. Luburici. General theory of state and law. Bucuresti, 1983, p. 8

criminology, forensic medicine, juridical psychiatry, juridical statistics, juridical informatics or cybernetics.

Using specific methods to other sciences - medicine, psychology, cybernetics etc. - these have an important role in the juridical activity in its various stages.

The juridical methodology may appear as a science about the science of law which reveals some of the most important and passionate aspects like: the way in which the scientist works, but also the law's artisan, the rules of the science of law, its character.

Mircea Manolescu considers that the juridical methodology would be the system which organizes the relations between deep waters – sometimes calm, sometimes tumultuous – from various juridical regna, situated at so many various levels and with big terrain accidents between them.

Despite other conceptions which consider that the juridical methodology is, in fact, the philosophy of autonomous juridical methodology, in the sense of independence from any philosophical conception (without subordinating to a certain world and life icon).

Like in every domain, the juridical scientific research is based on using a methodology, a set of methods and techniques which aid to the study of law in all its complexity.

The research methods in the area of social sciences have developed and improved in the general context of the impulse given to scientific knowledge by the new contemporary scientific revolution, emphasized by the use of the new conquest in informatics and computation.

If nature acts spontaneously, thought, especially the scientific one, acts methodically. So the method appears as an effective way of thought.

The problem of the research methods in the social sciences area is very complex in the conditions of contemporary development, of the interconnection between different sciences, including the appearance of the so-called border or crossing disciplines.

That is why, along with the specific methods of each social or natural sciences branch- the generalization and expansion of certain methods are resorted to today, other times specific to other sciences. From this point of view, we mention the expansion of the interdisciplinary research, with the obvious use of some complex methods.

Juridical sciences haven't been spared of this orientation, even though, unfortunately, little has been done in this area for the theoretical research of the new methodologies and as a natural consequence of this state of fact, neither the practical use of the new methods has made the necessary improvements.[1]

In the context of the current scientific and technological revolution deep transformations occur – structural, visional- which determine that the scientific research crosses through a fecund mutation. This mutation brings forward a

[1] N. Popa. General theory of law. Bucuresti, 1992, p. 19

privileged space – that of crossing sciences, of development of researches at the confluence, at the limit of sciences.

On a methodological plan we are assisting at important borrows, at a true methodological contamination. The phenomenon is also felt in law research area, in which the traditional methods are combined with modern ones.

Speaking of the research methods of the general theory of law we are taking into account the research methods of the juridical sciences, in general, and their theoretical approach, duty which is allocated to the general theory of law.

Comparison is the operation which follows the determination of some identical or divergent elements at two phenomena.

Various states law systems comparison of law branch characteristics, institutions and their norms is proved to be useful and effective in the juridical phenomenon analysis, especially for UE member states or aspirants , in a double purpose:- the institutional and procedural compatibility;- national existent law system opening assurance to the Euro-Atlantic normative.[1]

This procedure has determined the recognition in many juridical learning systems of a scientific branch- compared law science, especially as a consequence of the interdependent economic, cultural, institutional and military amplification between states.

The specific purposes of the comparison method are determined by the existing relations between objective properties of the compared categories. The comparison implies the use of logical instruments like: classification, definitions and analogies.

Comparison method has some rules.

The comparison implies the use of logical instruments like: classification, definitions and analogies.

1. To compare exclusively what is comparable**;** first the rule implies the determination regarding the belonging of compared systems to the same historical type of law. If the law systems, from which are part the compared institutions and procedures, are from opposed ideological point of view, the comparison process is not relevant only in the differences establishment way(e.g.: in the property institution comparison in totalitarian regime and in the state of law regime; the comparison of the same institution and its norm in Roman-German law- to which it also belongs the Romanian law system- and the Muslim law system it must be used the contrast analysis- contrasting comparison).

In this framework, in the totalitarian state, the property is not individualized, except in the case of a oligarchy; in the Muslim law the theocratic theory works according to which the entire world belongs to Allah and to his emissary Mahomed; the supreme owner of the Islamic world is the Calif representative and the prophet's continuator, the property is permanent, without the existence of the prescription institution and the ways of obtaining property are different from those Roman-Germanic law; or the marriage institution comparison

[1] V. Zlatescu, I. Zlatescu. Comparative method rules in the law study. 1, 1989. p.24

is another example of braking the rule" to exclusively compare what is comparable" because in the Muslim law it is taken out from the divine origin sphere and brought into the civil transactions- an agreement closed according to "the right to enjoy a woman", an evidently acknowledged right only to man, agreement based on some conditions which ensure its validity: the parents consent, the presence of two witnesses, the dowry constitution, engagement as a prelude for marriage, based on the man's declaration; the usages are specific regarding marriage cancellation, the wife's repudiation and polygamy). The contrasting comparison brings clues regarding the norms from various law systems. See V.D. Zlatescu, The comparison method rules in the law study, Romanian Law Study, I, 1989.

2. The compared terms must be analyzed in their real connections, in the social, political, cultural context from which they resulted. From here appears the necessity that in the comparison process to start from the law principles acknowledge and the regularity which commands the compared law systems. Taking into account the principles beside the institution and norms comparison- it is necessary in order to improve the scientific potential of the compared research and to in order to prevent an eventual empiric fragmentation; also it must be realized a law source research, which offers different position image of the law's expression forms (laws, traditions, judicial precedent) from a system to another.

3. In the evaluation of the compared term it must be taken into account not only the initial sense of the norm, but also its previous evolution in time, in the norm application process. In this process- especially when the text survives to various social-historical periods, the initial form of the behavior rule may evolve in such a way that the norm's sense appears completely different. The one who compares must appeal, in this case, to specialized literature, research of the customs' state and traditions' influence.

4. At the base of all comparisons must be the discovery of sufficient number of common coefficients**,** whose existence permits the discussion regarding an identity of phenomena.

As a conclusion, the comparison facilitates the construction of the juridical typologies and classifications; and in the legislation process, by this method, it is assured the information supply (for the legislator), regarding the norms covered by other law systems or in international juridical documents .Comparison essentially aids at the juridical typologies and classifications construction, in the legislation process, comparative method is also a major importance, by supplying precious information to the legislator regarding the norms covered in other law systems or in international juridical documents.

Bibliography:

1. I. Ceterchi, M. Luburici. Teoria generala a statului si dreptului. Bucuresti, 1983

2. M. Djuvara. Teoria generala a dreptului (enciclopedie juridica). Editura All, 1995

3. I. Ceterchi, M. Luburici. Teoria generala a statului si dreptului. Bucuresti, 1967

4. N. Popa. Teoria generala a dreptului. Bucuresti, 1992

5. V. Zlatescu, I. Zlatescu. Regulile metodei comparative in studiul dreptului. Studii de drept romanesc. 1, 1989

6. V. Hanga. Calculatorul in ajutorul deciziei. Studii de cercetari juridice, Nr.1, 1989

THE COMPARATIVE STUDY OF THE INSTITUTION OF THE PENAL PARTICIPATION IN THE ROMANIAN LEGISLATION AND THE ONE OF THE MOLDOVAN REPUBLIC

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Abstract:

The institution of the penal participation has and still arouses ample doctrinarian and jurisprudential discussions in Romania as well as in the Moldovan Republic.

It is characterized by ample theories of different authors from the two countries.

Thus it is emphasized the accessory theory of participation and the theory of the self sustaining character of participation.

Also, the two law systems dwell this matter similarly but not identically, there are many similarities and differences that I wish to state and emphasize in the present paper.

Key words: penal participation, organized crime, comparasion , Moldovan Republic, Romania.

The institution of the penal participation has and still arouses ample doctrinarian and jurisprudential discussions in Romania as well as in the Moldovan Republic.

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Also, the two law systems dwell this matter similarly but not identically, there are many similarities and differences that I wish to state and emphasize in the present paper.

Historically, the evolution of the notion is symmetric starting from the Roman Dacia, going to the Middle Ages and the modern period.

Nowadays the Penal Code of the Moldovan Republic refers to this matter in Chapter IV articles 41-49.

The Romanian Penal Code dedicates to this matter Chapter III articles 23-31.

This theme of scientific research was and is a present day issue starting with the theoretic importance, but especially the practice one of this notion in the two states.

The cooperation of many persons in achieving penal acts is labeled as a form of antisocial behavior because:

- the operation and distribution of the executing roles and tasks often ensures the success of the unfolded action;
- the participation of many persons at achieving the same act strengthens their will to achieve the proposed action, diminishing the possibility of giving up the punishable idea or of ceasing it during the unfolding of the action;
- the cooperation of many perpetrators at achieving a felony usually leads to more serious consequences for the general pubic, as well as for the victims, normal or judicial persons.

In order to emphasize the consequences, sometimes disastrous that may come out of the cooperation of many perpetrators when committing a penal act, lately at a global level it is noticed an increase of the threat of the organized crime, in this sense stand out the illegal narcotics and psychotropic substances traffic, money laundry, the illegal arms traffic, nuclear materials and explosive components, of luxurious automobiles and art works, the control over the labor power, of gambling and, non the least, terrorism.

In spite of the efforts to eradicate it, the continuous development of the organized crime phenomena, makes it to achieve a more serious character, by the multiple cooperation of some perpetrators networks, jeopardizing even the national security of some states.

The organized crime has a power and expansion that seriously threatens the legit interests of the states, because it triggers an uncommon violence, that intimidates the population, and by illegally attaining fortunes, concretized in money, real estates and values, it undermines the political equilibrium, the economical wealth and the psychological state of the nations and countries.

In its last stages, the organized crime attacks the legislative system and the legit power, creating a parallel economy, subterraneous and perverse, that leads to the people's loss of faith in the authorities.

The democratization process has implied a series of major transformations in Romania as well as in the Moldovan Republic, which is the opening of the borders and the creation of the free market, with benefic consequences, facilitating the movement of persons and goods, but also a negative impact by creating opportunities for the criminals.

Taking advantage of the economical situation in this part of Europe, where the inflation has registered extraordinary increases and the black market has spread its tentacles over the economical-social life, the criminals organized themselves in much more organized and endowed groups than the organisms for the public order.

Using huge financial resources, these criminal organizations have corrupted some government officials involving in subterranean activities people belonging to the forces of public order, administration, justice and even military.

Here is a brief description of the present criminal phenomena, whose recrudescence has become a problem that especially preoccupies the all the states of the world and the international organisms, a situation that is due to a complex of social and economical causes, of which the specialization and the professionalism of the criminal groups stand out, that is the plurality of the criminals.

The penal participation as a scientific research theme has drawn the attention of the penal law authors from the Moldovan Republic as well as from Romania.

Great Romanian penal law professors have broadly approached this theme in their papers.

Thus, professor university doctor Constantin Mitrache in his paper "Romanian penal law, the general part" broadly approaches the problem of the penal participation from the criminals' plurality perspective.

There are also Costica Bulai, Traian Pop, Vintila Dongorez, Traian Dima, Teodor Vasiliu, George Antoniu, V. Boroi, who, in their papers, have talked about the problem of the penal participation from a theoretic-practical perspective.

A special mention deserves the professor Traian Pop who in his paper "Compared penal law" from 1923 speaks about the matter of the participation from the perspective of the compared penal law.

On this subject many studies, articles, comments were also written.

Beyond Prut, the Moldovan authors have also discussed about this matter.

I have to mention the collective of authors Marin Gherman, Nicusor Maldea, Corina Titiana Aldea, Mona Mirela Costa, Viviana Stiuj lead by the professor Alexandru Borodac. In order to achieve the proposed objective, the authors have consulted a rich specialized judicial bibliography appeared in the Moldovan Republic, Romania and the Russian Federation.

Another collective of authors made of Stela Botnaru, Alina Savga, Vladimir Grosu and Mariana Grama have talked about in the paper "Penal law, the general part" the same problem of the penal participation.

The penal participation has many forms, in report to the nature of the contribution that different participants have when committing an act. So these ways correspond to the different ways of cooperation when committing a felony.

The forms of the participation have an absorbent character, which is the most serious, as the ones committed in collaboration, absorb the ones less serious (the ones of instigating and complicity).

So one person's participation at committing the same felony cannot be seen as both author and instigator, it is only collaboration, due to the unity of the felony, even if the coauthor has first determined the committing of the felony after participating with execution acts at its committing. Of course, the same felon cannot be coauthor and accomplice or instigator and accomplice to the same felony, because the first act absorbs the latter one.

When the instance establishes the punishment it will take into consideration this circumstance of the participation with multiple acts, susceptible of being qualified in a different way.

We propose that the instigator to be sanctioned according to the punishment foreseen for the currently committed felony (attempt) referring to a perfect instigation followed by execution. The felons participated in committing the same felony, one of the conditions for the existence of participation.

If the punishment for the crime committed by the author until the moment of ceasing or impeding the producing of the result is more shallow than the deed to which he instigated, reduced according to article 29, alignment 1, Penal code, the instigator will be punished for the currently instigation felony. Thus, if X has instigated to simple homicide, which is sanctioned with prison from 10 to 20 years, for which the prison from 15 days to 10 years punishment should be applied, but until the moment of ceasing the victim was caused body damages, foreseen in article 181 Penal code, which is sanctioned with prison from 6 months to 5 years, this punishment will be applied to the instigate as well as to the instigator.

For it to be sanctioned the instigation not followed by execution as well as the one followed by execution but it took place the ceasing or impeding of the producing of the result, the punishment foreseen by the law for the felony to which he was instigated must be greater than 2 years, otherwise the instigator will not be sanctioned. It was thought that the danger degree of the felony and of the instigator when the legal punishment of prison is of 2 years or less does not necessitate its sanctioning.

In the situation of the instigation followed by the stopping of the instigator, he will not be punished, but he will be sanctioned for attempt at the respective felony, but not for the currently committed felony until the moment of stopping the author. Thus, it is contravened to the dispositions of article 22 Penal code.

It is also possible that the instigation deeds which did not have an effect, without having their own penal character, to fall under the incidence of the penal law due to the circumstance that, in order to make the author to commit the deed foreseen by the penal law, there were used means that, by themselves, are felonies: threat, blackmail, etc.

After the comparative analysis it resulted that while the Penal code of the Moldovan Republic offers a concrete definition of the penal participation (article 41), the Romanian Penal code restricts to an indirect definition by the concrete definition of the notion of participants (article 23).

Thus I consider that it should be imposed “by a legislative law”, in a future regulation that also the Romania legislative will expressly define this notion in the penal code, maybe with the following expression “the penal participation represents the cooperation of two or more guilty persons at committing a deed foreseen by the penal law”.

The Romanian Penal code considers that the activity of the participants does not have a distinct judicial individuality, but it is integrated in the unique deed, which gives penal signification to all the participation deeds. I also think that this is the correct solution “absolute” and “in fact”.

We also bear in mind that in the penal doctrine from the two states the plurality of felons is known in three forms that are the natural, constituted and occasional plurality.

From the point of view of the penal participation’s conditions, the doctrine from the two states has each retained a number of four, which are more or less congruent.

Reading them I have come to the conclusion that the penal participation must fulfill the following conditions:

-to have committed a *deed foreseen by the penal law*, deed which can be consummated or remained in the punishable attempt phase;

-when committing the deed *more than one persons participated than it was necessary according to the nature of the deed*;

-*the subjective link between the participants* – it is necessary that all the participants be animated by the same common will to commit the penal deed;

-*qualifying the committed deed by the joint contribution as a felony*;

-*the plurality of subjects* implies the participation of two or more persons when committing the deed;

-*the joint activity of the participants at the felony*;

-*the unity of the intention* is a subjective condition of the penal participation, the presence of the intent being mandatory.

Unlike the Romanian Penal code, the Penal code of the Moldovan Republic foresees the condition of the participation at an intended deed, not recognizing the existence of the improper participation.

I consider that in the future some modifications must intervene in the regulations from the Moldovan Republic in order to adjust the legislation corresponding to the acknowledgement of the improper participation.

We have to keep in mind that in the matter of differentiating the categories of participants three theories were drafted: objective, subjective and mixed.

The doctrine and the practice from Romania as well as from the Moldovan Republic acknowledge two criteria in report to which the types of participants at the felony are established: the character of the participation, the participation degree.

The legislation from the Moldovan Republic (article 42 alignments 2-5 Penal code) emphasizes the following categories: the author, the organizer, the instigator and the accomplice.

The Romanian Penal code acknowledges as participants: the author (coauthor), the instigator, the accomplice.

We can thus observe that the Romanian legislation does not insert among the participants the organizer, who thus is not penal punishable.

But, for instance, in the Romanian Penal code in the Special Section there are felonies such as conspiracy (article 167) which penal sanctions the initiation or constitution of an association or group in order to commit certain felonies or the adhesion or support under any form of such an association or group.

Also considering, among other facts, that the Romanian penal legislation is inspired by the French one, I recommend that a future modification of the penal code will introduce the instigator among the other participants.

When approaching the matter of the “organizer” the penal legislation from the Moldovan Republic, it also regulates other notions such as the creation of an organized criminal group or a criminal organization as forms of the penal

participation considering the social-political current context from the country and the region.

Analyzing the law texts we notice that the instigation matter has similar regulations in the two law systems.

In the complicity matter, starting with the analysis of the legal regulations we have noticed pretty important differences, which imposed the differential approach of the matter.

The organized criminal group and the criminal organization have received direct legal regulations only in the Penal code from the Moldovan Republic.

In conclusion, in Romania this matter does not have a regulation in the penal code, but in special laws such as the Law no. 39/2003 regarding the prevention and combat against the organized crime.

If the modification, the completion of the penal code and the insert of these participation forms should be imposed or not is a matter opened for discussion. The Romanian doctrinarians of the penal law are divided in two groups, manifesting themselves pro or against these regulations. I think that nowadays, considering the social-political evolution of the country such a modification is not mandatory.

The grounds and limitations of the participants' responsibility in both law systems lays in the punishments parity system in accordance with which all the participants must be sanctioned with the same punishment, and it will be differentiated on a judicial individualizing path.

This system better corresponds to the concrete sanctioning necessities of the participants when committing a felony and that is why all of those who participated at its committing must be seen as perpetrators susceptible to be sanctioned with the punishment foreseen by the law for the author.

CERTAIN PARTICULARITIES REGARDING THE UNDERAGE JURIDICAL REGIME IN THE ROMANIAN CRIMINAL CODE

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Abstract :

The juvenile delinquency reflects a non adaptation to the juridical and moral system of the society, being the most important within the negative deviancies, that include the violation and the breaking of the social life norms, the integration of the individual, the rights and the liberties of the individual.

The juvenile delinquency represents a characteristic feature of the infraction phenomena, in the modern society, presenting not only a numerical increase, but also a continuous accentuation of the offences gravity. The criminology researches have led to the conclusion that the fight against this phenomenon must be done, mostly by prevention, protection measures, education and re-education.

The project of the new Criminal Code stipulates new institutions in relation with the juridical sanctioning system. Among these we enumerate: work in public service, elimination of the punishment applicable to the minor and the delay of the punishment.

The work in public service is meant to be a main punishment as an alternative to an educational measure. The work in public service is between 50-250 hours, or if the minor has reached majority from 25 up to 300 hours. The work in public service is applied only with the accept of the offender and only for offences punished with prison for no more than 3 years..

The new Criminal Code project stipulates the institution of punishment elimination that is applicable to the minor and suggests that in case of infractions sanctioned with prison for no more than 2 years, the instance has the possibility to renounce to the appliance of punishments for the minor that has had penal antecedents, covering the caused prejudice and has given solid proof that he/she can better without punishment.

Key words: Infraction phenomena, Criminal Code project, underage

I. Generalities

In the last four decades, the juvenile delinquency has become one of the social major problems, a problem to fight in the past and also in the present, inside most of the contemporary societies, both economically developed and in process of

development. The theoretical interpretations that considered the delinquency a phenomena presenting a marginal interest, characteristic only to certain groups or social categories, have been abandoned in order to make room for more profound and realistic approaches; according to them, the juvenile delinquency is interpreted to be a social issue determined by other social problems, closely related to the manner in which the community administrates its resources, to the education process and socialising, to the way in which different structures and social institutions function.

The juvenile delinquency reflects a non adaptation to the juridical and moral system of the society, being the most important within the negative deviancies, that include the violation and the breaking of the social life norms, the integration of the individual, the rights and the liberties of the individual.

II. The underage within the juridical regulations in Romania

At the moment, the Romanian legislation reflects the particular situation of the children and adolescents under their bio-psychic and physiologic state. In this way, there was established a particular status for minors, in relation with the reserved status of the adults, regarded from different points of view.

The juridical responsibility of the underage is based on the establishment of the inferior age limit of a minor considered to have the capacity to understand, distinguish and orient consciously its will and actions. The age considered to have this capacity, becomes also the limit where the minor will have also a juridical responsibility for his/her actions. These aspects are closely related with the capacity of exercise, as stipulated in Decree 31/1954.

The 1989 Revolution has produced serious changes in the Romanian society, including the criminal policies. As a consequence of the increasing criminality in Romania, the changes for a new sanctioning system for underage offenders have become imperative. These changes were done by Law 104/1992, that disposed the Decree 218/1977, returning to the mixed sanctioning system, materialised, at the moment, by the Criminal Code – 5th Title, also by Law 140/1996 for the completing and modification of the Criminal Code.

The sanction of the underage offenders imposes a careful analysis, from two points of view. On one side, it is necessary to establish the age of a minor when he/she can be sanctioned with criminal responsibility and the conditions in which this responsibility operates, and on the other side, it is necessary to determine the sanctioning regime adapted to the age and the personality of the minors.

The first issue implies the identification of the criminal capacity of the minors, related with the psychological and physical state of those minors, in different stages of their development, until the complete biological-psychological-physical development. The criminal capacity is reported at the moment when, the minors, having a psychical development adapted to their age, have the capacity to distinguish between an allowed conduct and a non-civic social conduct, meaning prohibited. Based on sociologic and psychological researches validated by practical observation, done by legal authorities, there was determined a moment having an

absolute general validity, to which the start of the criminal capacity of the minor begins, the age of 14.

Taking under consideration the progressive character of the psychic development of the minors and adolescents, three periods have been identified: the absolute and unconditioned non responsibility period, the doubting and relative responsibility period, in which the existence of the criminal responsibility is conditioned by the existence of the judgement and the certitude but attenuated responsibility period.

According to art. 50 Criminal Code, the minority of the offender, eliminates the penal character of the deed, if it is observed, that when the deed was committed, the minor did not accomplish the legal conditions in order to respond, these conditions being stipulated by art.99 actual Penal Code (art.113 alignment 2 of the new Penal Code).

In this last article, it is shown that the minors that have not reached the age of 14, and those between 14-16 years, criminally respond only if it is proven that they have committed the deed, having judgement. The minors over 16, criminally respond.

The minors that have reached the age of de 14, have absolutely no criminal responsibility, meaning that they do not respond for deeds that are stipulated in the criminal law, and the deeds that they have committed do not represent offences. The minors between 14-16, are considered to have no criminal capacity; this presumption can be changed if it is proven that the minor has acted with judgement. The underage that have reached the age of 16, criminally respond. In this category, the legal authority has instituted the absolute capacity presumption.

III. The juridical juvenile delinquency sanctioning regime

The juvenile delinquency represents a characteristic feature of the infraction phenomena, in the modern society, presenting not only a numerical increase, but also a continuous accentuation of the offences gravity. The criminology researches have led to the conclusion that the fight against this phenomenon must be done, mostly by prevention, protection measures, education and re-education.

The Romanian criminal law helps the underage infractions prevention by adopting certain regulations and a special system for minors, different than those regarding the fight against criminality among adults, because it includes sanctions and educational measures. Essential for this system is the priority of the educational measures towards sanctions: ”*the sanction is applied only if the educational measures are not sufficient for the rehabilitation of the minor.”* (art. 100, alignment 2 Criminal Code).

The educational measures stipulated in art. 101 Criminal Code, are: reprimand, the surveyed liberty, the integration in a re-educational center and the integration in a medical and educational institute. The legal authority has included in the sanctioning system applicable to minors also the punishments (art. 109 Criminal Code), with prison and bail.

When picking up sanctions, the judge must take under consideration, according to the Criminal Code, the gravity of the deed, the physical state of the

minor, the intellectual and moral state of mind, the environment in which he/she lived, her/his behaviour and any other element that could characterise his/her person.

The educational measures are mainly protective, comparing with punishments that are mainly coercive. As a consequence of the educational measures, the minor is not affected in any way by penal effects, the convictions not being considered penal antecedents.

The reprimand is the lightest educational measure, being defined in art. 102 Criminal Code as: "*the educational measure consist in reproofing the minor, pointing out to the social danger of the deed, counselling the minor to act in order to improve him/her self, underlining the fact that if he/she will commit another offence, will be severely punished*."

In order to be efficient, the measure must be executed in an official environment, in the presence of minors trustful friends or relatives. The measure also consists in a warning regarding his/her future conduct and also regarding the eventuality or the measure appliance, in case of bad behaviour, more severe educational measures even punishments.

The decision is pronounced and executed by the court of law.

The probation is an educational measure stipulated in art. 103 Criminal Code and it consists in the liberty of the minor, on a period of 1 year, especially surveyed by the persons and the institutions that are expressively named by the criminal law. According to art. 103 alignment 1 Criminal Code: " *the educational measure of probation consist in letting the minor free for a period of 1 year, ensuring special surveillance. The surveillance could be trusted, by the case, to the minor's parents or to the tutor. If these persons can not ensure the surveillance in satisfactory measures, on the same period of time, the surveillance is trusted to a person of confidence, preferable a close relative, at request, or to institutions that are legally charged with the surveillance of minors."*

The legal authority enumerates among the persons that could be trusted with minors as "trustful persons", mentioning only the close relatives. In the special literature it was considered that "trustful persons" could be those persons who have an uncontested conduct and morality, and prove a great interest for the re-education of the minor, having all the necessary qualities for it.

Depending on the content of the social investigation the court of law will order the person entrusted with the minor. The court of law could apply art. 103 of the Criminal Code if at the moment of the decision pronouncement, the minor hasn't reached the age of 17, because the educational measure is strictly on a period of 1 year, and the surveillance of the minor could not pass the date of the minor's majority.

The pronouncement of the probation and the execution of this measure are two different moments, that, if all the persons are present at the trial, are disposed within the same session. The court of law, must underline that the person entrusted with the surveillance has the duty to closely follow all the minor's actions, in order to align the minor's conduct and must inform the court of law urgently, if the minor

gets out of the surveillance, experiences bad conducts or committed again an offence by the Criminal Law. .

The surveillance stipulated in art. 103 Criminal Code must start form the detailed understanding of the minor's particularities and must unfurl using the best pedagogic methods.

Also, the court of law could impose the minor to respect certain conditions: not to frequent certain places, to not enter in relation with certain persons, to execute any unpaid activity in a named public institution, between 50 and 200 hours, of maximum 3 hours a day, after school program, in the free days of the week and in holidays.

The project of the new Criminal Code contains certain changes comparing with the actual code. In art. 117 the expression "has bad conduct", and the sentence "has committed again an offence stipulated by the criminal law" was replaced with "has committed a new offence". Also, to the obligations that can be imposed to the minor, the new Criminal Code ads the obligation to announce urgently if another person contacted the minor.

The measure of the probation must be set to execution at the definitive decision of the court of law. The revocation of this measure intervenes in three cases, according to the law: avoidance of the probation, bad conduct or offences according to the criminal law. If the deed of the minor is not an infraction, the solution of the court of law is usually the revocation of the probation and its replacement with the integration in a re-education centre. If the deed is an offence, the court of law, usually chooses the replacement of the probation with the integration in a re-education centre or the appliance of a punishment.

The project of the new Criminal Code has re-named the probation with the sentence of freedom under surveillance. Also the text regarding the revocation of probation was reformulated so that the court of law could dispose the revocation of the measure and its replacement either with the freedom under severe surveillance, either integration in a re-education centre or appliance of a punishment.

Another new thing brought by the new Criminal Code project is the severe probation that consist in the minor's freedom, including his/her integration in social adaptation programs, assistance and counselling on a period between 1 and 3 years.

The integration in a re-education centre is stipulated by art. 104 Penal Code, in which is disposed: *"The educational measure of integration in a re-education centre made for the re-education of the minor, having the possibility to receive the necessary knowledge and professional preparation according to his/her aptitudes. The measure is taken for the minor that proves all the other educational measures insufficient."*

Comparing with the educational measures that were above mentioned this one is a liberty privation measure. As the other measures, it can be taken against the minors, if till the pronunciation of the decision the minor has not reached 18 and if they do not present any physical anomalies, infirmities, serious illnesses, or abnormal psychic experiences.

This measure consists in certain advantages in the sense that is taken under an undetermined period and the re-education is made by a specialised institution, especially created for this purpose, that has special personnel.

The new Criminal Code project stipulates that in exceptional way, the educational measure can unfurl until reaching the age of 20, if the minor has committed the deed at a date close to the age of 18.

The execution of the measure is done by sending a copy of the police warrant.

The integration in a medical educational institution – according art.105,,*the measure of integration in a medical-educational institution is taken for the minor, that, due to his/her physical or psychological state, do need a medical treatment and a special education regime."*

The measure consists in the settlement of the minor on an undetermined period of time in a medical and educational institutions, in order to receive a medical treatment and a special education. The measure can be taken only towards a minor that has a penal capacity and an abnormal physical and physiological state that without determining the irresponsibility reclaims a medical care treatment and a special education. The court of law can take this measure only after a medical expertise and it can unfurl till reaching the age of 19. The measure must be lifted when the cause that generated it disappears and the minor is integrated in a re-education centre.

IV. The punishments

The punishment is a constraint and re-education measure and has as purpose the prevention against new offences. According to the stipulations of art. 109 Criminal Code, the limits of the conviction for the offence is reduced at half its size.

The penal sanctions or the punishments applicable to minors are the main punishments (prison and bail) with the additional punishment.

The prison is the most severe sanction within the criminal law, this being used in cases in which the application of an educational measure is not sufficient in relation with the conditions in which the deed was committed, the consequences and the general behaviour of the minor. If the deed remained at the attempting stage, the limits of the applicable punishment according to the dispositions of art. 21 Criminal Code will be established in relation to the limits of the punishment, reduced at half, according to art. 109 Criminal Code.

The penal bail is a punishment applied to minors. As in the case of prison, its limits are established by reducing to half of the punishment limits, according to the law for the deed.

In the special part of the actual Criminal Code, there are not stipulated the special limits of the bail for each infraction sanctioned with this punishment, it is only mentioned, if the case, that the infraction is punished with bail. In order to find out the limits of the bail, according to the law, for that type of infraction, there must be made a connection with the stipulations of art. 63 Criminal Code. Any time the law stipulates that an offence is punished only with bail, without showing

its limits, the special minimum is 150 lei and the maximum 10.000 lei. When the law stipulates the bail alternatively with the prison punishment at maximum 1 year, the special minimum of the bail is 300 lei and maximum 15.000 lei, if the law stipulates the bail punishment alternatively with prison for more than 1 year, a special minimum of the bail is 500 lei and the maximum of 30.000 lei. According to art. 109 Criminal Code, in the case of offences committed by minors, all these limits are reduced to half.

V. The juridical sanctioning system evolution tendencies

The project of the new Criminal Code stipulates new institutions in relation with the juridical sanctioning system. Among these we enumerate: work in public service, elimination of the punishment applicable to the minor and the delay of the punishment.

The work in public service is meant to be a main punishment as an alternative to an educational measure. The work in public service is between 50-250 hours, or if the minor has reached majority from 25 up to 300 hours. The work in public service is applied only with the accept of the offender and only for offences punished with prison for no more than 3 years..

The new Criminal Code project stipulates the institution of punishment elimination that is applicable to the minor and suggests that in case of infractions sanctioned with prison for no more than 2 years, the instance has the possibility to renounce to the appliance of punishments for the minor that has had penal antecedents, covering the caused prejudice and has given solid proof that he/she can better without punishment.

Another new thing within the new Criminal Code project is the institution of delaying the punishment. This one consists in the delay of the punishment in cases of infractions sanctioned with penalty of prison for no more than 5 years, if the minor hasn’t had penal antecedents, has covered the caused prejudice and has given solid proof that he/she can better without punishment.

In the presented paper we have analysed briefly the minority matter as it is presented in the Criminal code, also mentioning the changes stipulated by the new Criminal Code.

CHRONIC ETHYLISM, MENTAL DISORDERS, HOMICIDE. STUDY PRESENTATION

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Abstract:

The study presents a recent homicidal case in which the forensic psychiatric examination made after the felony was committed, invalidated a pre-existing diagnosis which would have led to a lack of judgment. In fact, the murderer was a chronic alcohol addict with behavior disorders, all of these on a medium intellectual background. Anyway, he was not a schizophrenic, a diagnosis he was given years before, more probably for a sort of social protection in his favor, so he could be hospitalized in a psychiatric institution for chronicle mentally disordered patients. This leads, once again, to the extraordinary importance and value of the forensic psychiatric examination in the law field.

Key words: chronic ethylism, mental disorders, homicide

The following case proves once again 2 difficult aspects that are led to the field of forensic medicine: framing one of the safety medical measures prevailed by articles no. 113 and no. 114 Criminal Code and the alcohol consumption in correlation with an already existing psychiatric disorder.

B.I.M, 22 years old, has a fight with his father, both under the influence of alcohol consumption. During the fight, the son stabs the father with a knife several times in the stomach area. Due to the wounds given by the sharp object, the father dies. After the father's death, realizing his murder, B.I.M drags his father all around their courtyard and throws the dead body into a fountain in front of their house. The neighbors call the police. The policemen arrive at the crime investigation place and find the young man in his bad, sleeping. Just moments after he wakes up, the young man tell the policemen that he is a mentally disordered person. He admits that he was several times hospitalized in the Psychiatric Institution for Mental Disordered Patients from Oradea and also at the Hospital from Nucet, where he got the diagnosis of schizophrenia. More than that, he possesses a medical record that proves the fact that he is a handicapped person with a schizophrenia diagnosis. He is urgently taken and hospitalized in the Hospital from Stei and then, a week later, a forensic psychiatric examination is made at the Psychiatric Institution for Mental Disordered Persons from Oradea.

From the description of the lesions on the father's dead body, we can suppose the aggressor's way of manifestation. The body presented numerous bruises on the hairy areas of the head, on the face, arms, forearms and chest. The

most severe wounds were the 2 sharp stabs situated n the upper part of the chest and other bruises at the left forearm and right forearm. The wounds from the stomach area were penetrating and aimed the heart and lungs. The wounds from the forearms were specifically self-defense wounds. The victim raises the hands in order to protect himself from the knife. The bruises from the head area were specific from a hand punch and the wounds from the back were gained from the dragging of the body. From the description of the wounds, results the following: the aggressor punched his father repeatedly, then stabbed him several times. In the end, after the father was dead, the son dragged the dead body all over the courtyard and dumped him in the fountain.

After the forensic psychiatric evaluation of the murderer, we decided upon the following:

Personal records: he was hospitalized 11 times in the Psychiatric Institution for Mental Disordered Patients from Oradea, starting from 1997, when he received the following diagnosis: very low intellect. Behavior disorders. Chronic ethylism. In 2004 he was hospitalized in the Psychiatric Institution from Nucet and diagnosed with schizophrenia. The psychiatric examination shows: a relatively adequate conduct, his gesture and glance shows inner struggle, anxiety, he is friendly, perception without major disorders, coherent but not able to generalize or abstract, good mental reckoning, highly increase developed self-defense instinct, highly increased instinct for alcohol, social integration, very poor adaptability, elementary structured personality. The psychiatric evaluation shows an IQ = 71, with very poor developed cognitive functions, inhibition when he thinks, emotionally unstable, tendency of psycho-motrical instability; emotionally he is highly unstable, low resistance on frustration, very impulsive in emotional and conflictual situations, increased by alcohol consumption. The psychiatric diagnosis decided by the committee was mental debility with severe behavior disorders. Alcohol addict.

Given the diagnosis after the one-week hospitalization in the Clinical Psychiatric Institution from Oradea, we were able to decide for good that the murderer had a very low capacity of judgement related to his action. More than that, taking in consideration the entire history of the illness, we canceled the diagnosis of schizophrenia given by the Hospital from Nucet. We think that this diagnosis was wrongly established so the patient could get the so-called social protection, which is a handicapped payment.

The term “low self -judgement” from the legal point of view means that the person in fact has the responsibility, but the punishment is individualized in palliating circumstances.

The diagnosis of schizophrenia would have led to the loss of self-judgement, situation in which the murderer, according to article no. 114 Criminal Code, would be taken into a psychiatric institution. In reality, because of the diagnosis of mental debility with severe behavior disorders and alcohol dependence, the author of the homicide will obey the criminal laws taking in consideration the fact that he had a low self-judgement related to his action.

From the presentation of this case, it is once again confirmed the important value of the forensic psychiatric examination in the law field and also the difficulty to elaborate with a scientific accuracy, based on medical proofs, this kind of official medical reports.

THE LIMITS OF THE OFFICIAL MEDICAL REPORT ADDED TO THE DRAWING OF BIOLOGICAL INVESTIGATION IN ORDER TO DETERMINE THE DEGREE OF ETHYLIC INTOXICATION

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Abstract:

The new procedures of gathering the biological investigations for establishing the alcoholism are very clear and apparently very complicated and laborious. In fact, it is all about the use of standard medical kit for gathering blood, in order to establish one's alcoholism, or for gathering urine, in order to see whether one has used drugs or not. This medical kit also contains an official medical examination report of the subject. Its columns are rather formal and under no circumstance can be used as a legal proof in a law suit, because it contains collocations as: "it seems", it doesn't seem", "possible", etc. The authors suggest the adding to the official medical examination report of some more eloquent and revealing columns regarding the actual health condition of the patient.

Key words*:* biological investigation, ethylic intoxication, medical examination

From our practice, we realized that the only real proof taken in consideration in a lawsuit of a driver, pedestrian or other traffic participant is the alcohol test result.

The actual Road Code says that, together with the drawing of biological investigation in order to determine the degree of the ethyl intoxication, the person has to make a medical test examination this medical examination is made by the same doctor who takes the patient's blood for tests. The examination consists in interviewing the subject and filling the form's columns. In the first section of the form, the doctor writes the victim's personal information, the time when the car accident took place, and the time of when the first blood sample and the 2nd blood sample were taken. The time when the two blood samples were taken is crucial when a retroactive calculus is necessary. The retroactive calculus establishes the victim's alcohol test result at the time when the person was involved in the road accident. If more than 30 minutes pass from the time when the accident to the

drawing of the biological investigation, we cannot be sure of the real value of the alcohol test result anymore. This can be either bigger or smaller that the one at the moment where the road event took place.

Taking in consideration the importance of the facts mentioned before, we have to make a first observation. The victim's personal info, the time when the accident took place and the moment when the 1st and 2nd blood samples were taken must be filled in by the same person, which is the doctor, and not happened now. The alcohol consumption is made in the presence of a policeman so it is easy for the doctor to ask the policeman the exact time when the accident took place.

A new column must be set up. This column must contain the value of the alcohol vapors expired in the air established by the policeman at the place where the accident took place. The value is established by testing the subject with an alcohol-tester.

The following columns are at the moment speaking filled by the doctor. We think that the following modifications are welcomed:

- the part with the circumstances of alcohol consumption (the person's statement): to write the type of alcohol the person had drink and the specific order of the drinks.
- Elapsed time between the consumption: the moment of the day when the person drank alcohol and most of all the elapsed time between these moments (the time specified in hours)
- New column: the time when the patient had last consumed alcohol
- New column: if the patient suffers from any disease.
- Besides the weight, the built and height must be written.
- Besides the psychiatric evaluation, a new examination must be introduced: the patient should count increasingly and back from 2 to 2 or from 3 to 3.
- Regarding the psychiatric manifestations: to check the aspects about the way he thinks and his vocabulary.
- The actual conclusions (uses collocations as "it is – it isn't" and "it seems – it doesn't seem") rise confusions and misunderstandings. That's why it is more fair to keep only the collocation " it is" referring to the influence of alcohol consumption that can be referred to as moderate or severe alcohol consumption and heavily severe ethylic intoxication.

Moreover, the official medical report added to the drawing of biological investigation must be considered a very important and serious proof in a lawsuit.

It must be filled in by the doctors with a very attentive care and treated with a great responsibility. Only by doing so, the official medical report can be considered as an indubitable proof in a law suite.

STUDY ABOUT THE LEGISLATION FROM THE DOMAIN OF JUVENILE JUSTICE

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Abstract:

The society must always be conscious that the most important responsibility for an offence committed by a minor is carried by itself, so that it is necessary a continuous improvement of the treating methods of children who are in conflict with the law – the juvenile justice must adjust itself to all the possible changes of the social reality.

Often the sharp and generalized financial lacks, the social and familial problems are the most important aspects for the future of a child. The signs, from the point of view of the involvement of more and more minors in the commission of some offences hadn't remained over the years without an echo of the responsible authority.

The problem of the justice for minors is an open problem in our country and even more, because this shows in all law-systems a dynamic evolution and becomes a kind of justice which is close to those who it was created for, a more human and a more protective justice.

Key words: rights of the child, responsibility, minor, sanction

The extended transition period what Romania is crossing through from the moment of the Revolution from 1989 had left a great impression on the medium of infractions too, sometimes the juvenile delinquency had reached alarming levels too, more and more minors were being involved in different activities with delinquent character.

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The problem of the justice for minors is an open problem in our country and even more, because this shows in all law-systems a dynamic evolution and

becomes a kind of justice which is close to those who it was created for, a more human and a more protective justice.[1]

It is ascertained that unfortunately nowadays the justice-system for minors is concentrated upon the sanction and at a lower level upon the reeducation – a system that is created this way doesn't takes in consideration entirely the fact, that the underaged delinquents can be better considered victims than criminals. The causes of the juvenile delinquency are multiple and complex, but it is possible that the most important are the social causes, because the underaged delinquents are coming from unorganized families or even from families with an income beyond the average, but in which the parents are preoccupied with some economical activities which require too much time. These parents have no time for the education of their children and that's why these children, out of control, are confronting the temptation to commit offences.

We can treat the normative frame in matter of juvenile justice on two coordinates: the applicable normative frame in the case of a child who has penal liability and that applicable in the case of a child that has no penal liability, because of his age.

First of all we must refer to the "Minimal Standard Rules of the United Nations about the Administration of Justice in the Case of Minors" (The rules from Beijing – 1985), rules that establish that the meaning of the notion "penal ability" must be clearly defined and that for the age of the penal liability must not be fixed a too low limit, one must take into account the degree of the emotional, intellectual and psychical maturity of the child. So the establishment of the age of the penal liability must be done among some juridical frames which will take into account not only the ability, but the development of the child too and even his "experience" in the given surroundings.

An other normative document is "The Convention about the Rights of the Child" adopted from the General Meeting of the Organization of the United Nations at 20 November 1989, confirmed through the Law number 18/1990[2]. In the table of contents from article 40, paragraph 1 of this convention "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".

Also according to article 40, paragraph 3, latter (a) from "the Convention about the Rights of the Child" the state in case must establish a minimum age for

[1] M.C.Cozma, C.M. Crăciunescu, L.V. Lefterache – „Justice For Juveniles. Theoretical Studies And Jurisprudence. The Analyse of the Legislational Modifications of the Domain", Publishing House Universul Juridic, Bucureşti, 2003.

[2] Law no.18 from 27 September 1990, published in The Official Monitor of Romania number.109/28.Sept.1990; republished in the Official Monitor of Romania number.314/13 Iun.2001.

the penal responsibility, and under that limit the children can't be challenged for the presumed act of delinquency.

This request is respected by the penal legislation of our country too, because through the Penal Code[1] are established the legal limits of the penal liability. Thus, those minors who are under 14 have no penal liability, the minors between 14 and 16 have penal liability just in case when it is proven that they committed their deed conscious and those minors that are 16 years old have penal liability.

This way the limit of age at which the minors has penal liability was fixed.

The minor must be physical and psychical enough developed so that he could be conscious of the sequels of his deeds. The Romanian Penal Code establishes the three age-categories: the age up to 14, when the minor doesn't have penal liability (we are confronted with the presence of the absolute assumption of the lack of consciousness. This assumption can't be turned over irrespectively of the physical or psychical development of the minor.); the age between 14 and 16 when the minors have penal liability just in case when it is proven that they were conscious at the moment of the offence (the minors have the benefit of a relative assumption of the lack of consciousness); the minors that are 16 years old have penal liability. One can notice that for the protection of the first two categories of minors the law-giver consecrates in the Penal Code[2], among the causes which throw the penal character of the offence away, that cause that indicates the juvenility of the doer too.

When one wants to establish the penal liability of the minor between 14 and 16, first he must establish, whether the minor was conscious at the moment of the offence. The consciousness must be established by the institutions for legal medicine – through the special examinations of the different clinical examinations.

The establishment of the limits of the penal liability of the minors was a priority for the law-givers even in the past. So as a valuable example we can remind the Romanian Penal Code from 1865, which settled the idea of juvenility in the table content of the title IV "The causes which offer protection from the punishment or reduce the punishment" (the limits of the penal liability were: a. up to the age of 8, the minor has no penal liability, he has the benefit of an absolute penal incapacity; b. between 8 and 15 years, the minor has penal liability when "he had worked with understanding" – the relative assumption of the lack of understanding was stipulated. In case when this "understanding" was proved, the juvenility being a reducing factor of the punishment, the minor who had committed an offence, which was stipulated by the penal law, he was trusted to the parents for supervision, education, or he was sent to a monastery; c. between the age of 15 and 20 the minor had penal liability, but even in this case the juvenility was a reducing factor of the punishment.

[1] Penal Code, Title IV „Juvenility", art.113 „The limits of the penal liability".
[2] Penal Code, art.30 „The juvenility of the doer".

Another example of the support of this preoccupation comes from the French legislation[1], the French Penal Code from 1810[2], in which there were assigned some aspects of the influence of age upon the penal liability. The French law-giver admits that over the years the offences committed by minors – it is used the notion "child" and the notion "adolescent", can't be appreciated the same way, like in case of offences committed by an adult. Before adopting the Law from 12 April 1906, the age of maturity from the point of view of the penal liability was fixed at the age of 16, and in the case, when up to this age he committed an offence, and he could be considered guilty of breaking the law, an as sequel he had to support the afferent punishment or he could be considered a child who needs supervision and education. For the establishment of the applicable sanction (both in case of repressive measures and in case of simple educational measures) the only problem was the establishment of the consciousness of the minor, as a matter of fact, whether he had done his action conscious, entirely understanding the value and the consequences of his actions. This system was often criticized, because it reduced to juridical and psychical aspects everything that in fact was represented by a complex social problem (parents, the familial medium, education, etc.).

Indeed, the French Penal Law hadn't fixed at that time an age-limit under which it operates the absolute assumption of the lack of consciousness. Instead of establishing three human life-periods, the law had distinguished just two, although it was assumed that there is an age when the innocence of the doer of an offence is sure, this age being the age of childhood. Although the French Penal Code from 1810 hadn't fixed through reference to age, just a single limit, it doesn't result that all persons under the age of 16, who had committed an offence must be judged by the justice. The system was abandoned lately putting the accent on the assumption of innocence of a person under a certain age. There is a problem with the age-limit which separates the period of childhood with the period of adolescence, a limit which is hard to determine.

Also through normative documents are established the main institutions which have competence in the domain of the protection of minors (beginning with the authorities of the central public administration: the Government, ministers – the Public Minister, the Internal and Administrative Reform Minister, the Minister for Work, Family and Equality of Chances – elaborate different programs for the social and professional alignment of the children and the young from the protection system -, the Minister of Education, Research and Youth, the National Authority for the Protection of the Right of the Children and we can even get to the

[1] R.Garraud – „Précis de Droit Criminel- L'explication élémentaire de la partie générale du Code pénal, du Code d'instruction criminelle et des lois qui ont modifié ces deux codes", dixiéme édition, 1909.

[2] The French Penal Code from 1810 which had suffered many changings, one of these is the Law from 12 April 1906 „Loi du 12 avril 1906 – loi modifiant les articles 66 et 67 du Code pénal, 340 du Code d'instruction criminelle et fixant la majorité penal á dix-huit ans".

authorities of local public administration: the Local Council, the Mayor, the Tutelary Authority, the District Council, etc.).

The agreement about the right of the children adopted by the General Meeting of the Organization of the United Nations from 20 November 1989 mentioned in the table content from article 40, latter b, point (iii) that any causes in relation to the child must be examined, without any delay by a „competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians".

The same document determines that „In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

The international regulations assess the necessity of the special training of the personal from the juvenile justice – all these people being responsible for their own actions.

In our country, through the Law number 304/2004[1] about the judicial organizing, is established the organization of the court of appeal, of the *specialized law-courts* and of the judges, but even in this case to solve the causes with minors, in the quality of victims or in the quality of delinquents there are no clear forecasts for the necessity of the specialized judges in this aim.

By the Public Minister there is no effective specializing of the attorneys to deal with the causes of the minors, but even if this training doesn't exist, the attorneys are protecting the rights and the benefits of the minors through all the existing judicial methods (E.g. according to the Civil Procedure Code[2], the Public Minister can begin a civil action in every case when it is necessary to protect the legal rights and benefits of the minors).

An important aspect of the reform of justice in our country in the matter of an efficient protection for the children had represented the adoption of Law number 272/2004[3] about the protection and promotion of the rights of the children, a law which was conceived on the basis of existing European standards. This normative document establishes clearly the principles which create the basis of respect and guarantee of the children's rights, as follows:

a) The respect and promotion with priority of the superior benefit of the child;

b) Equality of chances and no discrimination;

c) The responsibility of the parents regarding to the exertion of rights and to the implementation of the parental obligations;

[1] Law number 304 from 28.06.2004 about the judicial organising*republished* in the Official Monitor Of Romania number 827 from 13.09.2005- art.35-40

[2] Civil Procedure Code, article 45, paraghrap 1

[3] Law number 272 from 21 June 2004,abaut the protection and promotion of the children's rights, published in the Official Monitor of Romania number.557 from 23.06.2004

d) The priority of the parent's responsibility regarding to the respect and guarantee of the children's rights;
e) Decentralizing of services regarding to the children's protection, the multi-divisional intervention and the partnership between the public institutions and the authorized private organizations;
f) The assurance of an individualized and personalized attendance for every child;
g) The respect of the child's dignity;
h) To listen to the child's opinion and to take it in consideration, taking into account his age and his degree of maturity;
i) The assurance of the stability and continuity of his attendance, the growing up and the education of the child, taking into account his ethnical, religious, cultural and linguistical origins in case of protective measures;
j) Rapidity of making decisions in case of children;
k) The assurance of protection from abuses and children's exploitation;
l) To interpret every juridical norm regarding to the children's rights in a relation with the totality of regulations from this domain.

Last but not least, in the juvenile justice a decisive role has the protector of that minor, who has broken the penal forecasts of the law; in this case the juridical assistance being obligatory. Concerning the lawyers, a special training for the causes which imply minors would be more than necessary.

In the matter of privative liberty measures, through the Convention regarding to the children's rights had been established that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action".[1]

With the Penal Procedure Code[2], in Romania had been established special measures regarding to the retain of minors by the instructions of the penal research unit or of the attorney and the preventive arrest of the minors – so that the minors, who are retained or who are in preventive arrest have, near the rights which are guaranteed by the law for those who are 18 years old, some proper rights and a special condition of preventive arrest, taking into account the characteristics of their age, so that the measures can't influence the physical, psychical or moral development of the underaged.

[1] Convention regarding to the children's rights, art.37 paragraph a, b, d
[2] Penal Procedure Code, section IV „Special arrangements for the minors".

In the direction of the applicable sanctions for minors, the Convention regarding to the children's rights states that it is better if the minors are not taking part of standard juridical procedures or of institutionalization and it is better to outline a kind of "dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence".The restriction of the appliance of the privative punishment of liberty is considered an efficient method to reduce the number of recidivists (otherwise, the studies revealing a high rate of recidivists in the case of arrested minors).

To accomplish the international requests regarding to juvenile justice, in our legislation had appeared a series of changes. Thus, the new things were represented by the introduction in the Penal Code of an educative measure, the measure of liberty under severe supervision (near the existent measures like: admonishment, liberty under supervision, internment to a reeducational center).

In this moment the Penal Code[1] institutes a unique sanctional condition for minors, the punishments being established through legal individualization.

Regarding to the accomplishment of the punishments and educative measures had been adopted Law number 294/2004[2] about the accomplishment of the punishments and measures ordered by judicial units during the penal lawsuit. Through this normative document are established a series of aspects regarding to the institutions of substantial and penal laws (E.g. work for the benefit of community[3], the detention conditions of the minors[4]).

Not at least we must mention the protection system for the child who had committed a penal action and has no penal liability. In this case are applicable the forecasts of Law number 272/2004 regarding to the protection and promotion of the children's rights – chapter V, article 80-84 presents the measures that can be used: the specialized placement and supervising, to order these measures is the competence of the judicial justice in the case when the consent of the parents, of the legal representatives or of the Board for the Protection of the Child can't be obtained, when this consent exists – and the forecast Governmental Decision number 1439/2004[5] regarding to the special services for children, who have committed penal actions and have no penal liability.

The Governmental Decision number 1439/2004 regarding to the special services for children, who have committed penal actions and have no penal liability

[1] Penal Code, art.123 „Punishments for minors".

[2] Law number 294 from 28 June 2004 regarding to the accomplishment of punishments and measures ordered by judicial units during the penal lawsuit, published in the Official Monitor of Romania number.591/1.07.2004

[3] Law number 294 /2004, art.41 paragraph 3

[4] Law number 294 /2004, art.44 paragraph 2

[5] Governamental Decision number1439 from 2 Septembrie 2004 regarding to the special services for children, who have committed penal actions and have no penal liability, published in the Official Monitor of Romania number 872 from 24.09.2004

are regulating the types of services for the underaged categories in case (E.g. special services of residential type – centers for orientation, supervision and support of the social reintegration of the children; daily special services, etc.).

We can draw the conclusion that the society must always be conscious that the most important responsibility for an offence committed by a minor is carried by itself, so that it is necessary a continuous improvement of the treating methods of children who are in conflict with the law – the juvenile justice must adjust itself to all the possible changes of the social reality.

THE PRE-SCHOOL EDUCATION AND THE JUVENILE DELINQUENCY

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Abstract:

This paper intend to be a guide for all teacher and parents who confront with the confused behavior at the pre-school children.

As experts say one of the most important period in such behaviors can be corrected in pre-school period.

In this context we presented:

-the ontogenetic development factors;

-confused behavior at pre school age children with concrete examples from the 30 years didactic activity ;

-methods of educational therapy;

We are sure we didn't present the subject under all aspects but we didn't surpass our professional knowledge.

We gave our best to make a very original synthesize with examples from our activity.

Key words: education, child personality, predispositions

The education end development of child personality constitute a complete and long process based on the conjugated and interdependent action of the three main factors: the heredity ,the environment and the education.

The human being does not receive by heredity organized qualities and psychical process, but only their predispositions, that means elements of environment sensibility and recommissiont.

Combining end by interaction these elements form the named behavior characteristics.

As a conclusion the heredity as a bringing up and maturity process builds the premises of some intervention moments the educational environment in the sensitive and critical moments.

Regarding the environment we can distinguish two components:

-the natural environment

-the social environment

The process of the child personality development starts in the familial environment and influences decisive in the first years of life the child psychical development.

The social environment allows the human being humanisation and socialisation.

Outside the social environment the human being remains at his primary biological condition end evolves at behavior line from the animalic word.

On these terms in which the heredity and the environment are obligatory elements and also have aleatory contribution in the ontogenetic development process ,the society developed and also improved a special mechanism for the unpredictable reduction and control growth over the psycho-individual development process.

This mechanism is education itself, that represents the connection between the development potentiality from heredity and the infinity of the social environment possibilities.

As a conclusion we can say that the development of the human being personality can not be explained with the help of one only element. In consequences no one of the development elements does have unlimited possibilities, the importance of each of them being dependent of the others.

We tried to specify that these introductive ideas ,based on ontogenetic development factors are very important for the establishment and diagnosticating of pre-school confused behavior.

The psychopedagogical approach of the confused behavior constitute itself as a content concern of all members of the teaching professions and it is recommendable to approach these from biological ,social, educational and psychological point of view.

We can not speck about juvenile delinquency at the pre-school age(of 3-6 years) but accordingly with the latin term translation "delinquere" that means "to mistake" we consider that we confront more "mistakes" that can generate confused behavior and more later the juvenile delinquency[1].

The symptomatological of confused behavior at this age has many expressions:lie,inpulsiveness,theft,aggressivenss,irascibilty,impatience, different cruelty acts, hyperactivity.

The lie or the tendency of true misrepresentation can be explained at pre-school age in many ways as: fiction, boosting, the wish for compassion and at the end of pre-school age we can confront also with the idea of cheating. The most frequent cases are those when the child blames his colleagues and does not recognise his facts .The most competent educational method in correcting this confused behavior is the method of example that can be used also in an indirect way, by using the art and especially the literature and also the pictures with positive themes.

We can enumerate a lot of stories used with success in this way:

"Ionica the lyer" -he found all the time his most wanted peasant`s shoes but using the lie all the time he remained with "the whistle for it ","Ciripel the

[1] Gheorghe Tomse(coordinator)-Pre-school and school psychopedagogy, MEN,Buc. 2005, p. 29, 30.

greedy", who lied his brothers that he can`t find any food although he eat daily one`s fill, but in the end he was saved just y his brothers and even more they have assured him that also the next time they will do the same gesture for him.

Acting in this way they made him feel guilty and shamed for his deed.

Another good example for the children in the grown up class are the proverbs because these can be very easy assimilated. Examples :"lie have short wings", the pitcher goes so often to the well, that it comes home broken at least.

The theft has very grave implications in the confused behavior. At the pre-school age the theft appears as an incipient manifestation such as the violent appropriation of his colegue toy, so that later he transforms this manifestation in the hidden misappropriation of the wanted object, in this way showing cowardice. Usually theft begins in the family and than even outside the family surronding from insignifiat objects till money.

We have a lot of example with children which confuse the personal with the common property or which appropriate deribelatelly toys from kindergarden.

Our point of view is that we can stop and also avoid these mistakes if we apply the right and adequate measures to prevent the apparition of juvenile delinquency.

The religions education constitute an efficient method of education for the children.

In our days we confront with the century illness-hiperactivity.

The hiperactive children have difficulties such as: stand instead of sit ,play all the time with something, turn on the chair, pendulate the legs excessively, does not concentrate the attention at the lesson, and also disturb(perturb) the class activity.

It is necessary a constant encouraging in such cases as words of praise, a kandy or only the approval "good" or "correct" after each fulfilled task.

The reward has to be promt just after the good (right)behavior ,because the child can loose his interest for the work and he will understand that he worked wrong.

The work is also very important the hiperactive child, he needs continuously a constant appreciation for his positive performances.

It is also important to avoid the altercation and also the punishments with the hiperactive child, learnig him this way the causes and effects of such on activity.

The behavior therapy is based on familial customs modification.

As it knows in a peaceful family with positive parental models, the child will have a good and positive behavior such as: the self-confidence and also the confidence in other peoples, independence, diligence discipline and good management.

In tensed family with negative parental models will be a child with another manifestations such as: fear, aggressiveness and lie. There are many cases when the children are not supervised by the family; they have full acces on : computer

agresive animated cartoons and participate emotionally at fights altecations between the parents.

There are also many cases when they want to follow the wrong examples of some negative characters. To prevent such a behavior both the family and the kindergarden staff have to use the following ways.

They have to :-support the child, estimating his performances and give him self confidence.

-not be very authoritative

-avoid phrases such as :"you are not able to do this", "stupid", "incapable"

-explain the difference between good and bad.

-reward each positive child behavior with favorite thing, or going in park etc.

-reward any negative behavior even if the child cries, he will be not rewarded.

-bring the children together in dynamic activities such as: sport, hobbies, to create a positive atmosphere.

-help the children to understand the meaning of the facts so that they have to make a difference between good and bad, we can say with other words to develop healthy moral point of view.

We specify that in reality all the examples up mentionate all can be combined in many ways depending on the specific pursued objective and also depending on the didactic-educative situations.

As a conclusion the teaching staff has to prevent and to correct the wrong behavior but must important to help the children in the correct understanding of these circumstances. The teaching staff has to be a behavior standard for these children.

"How many unhappiness, how many troubles could be avoid, if the edulcorate could each child discret warn on his ability in this way showing him the right way" (Binet A. "The modern ideas about children –CDP. Buc.1975-p55)

The permanent stimulation of the intellectual and also of the affective-motivational activity, the creation of a psychical confort in activity all this contribute at the removing of the confused behavior and in the same time helps the development of an harmonious personality. This will be a guarantee in the school and social life of the pre-school child.

Bibliography:

1. Abrudan.C- "Special psychopedagocical elements" Ed. Europrint,Oradea 2003

2. Apud Rascanu.R – "Behaviour psychology" Ed.University, Bucharest, 1994

3. Binet,Alfred – "Modern Ideeas about child", E.D.P , Bucharest, 1975

4. Coroi,V;Floresu,M; Ursache,M– "7 years from home-Ed.medicala,Bucharest,1968

5. Golu,P;Zlate,M ;Verzar ,E –"Child psychology"E.D.P,Bucharest,1955

6. Dr.Strachinaru,I –“ Children Confused Behaviour .Psychopedagogical”,E.D.P,Bucharest,1969

7. Ionescu,M;Chis,V – “Pedagogy”-Guide for teacher building- Press of Cluj University, 2001

8. Macavei,E – “Pedagogy.Educational Theory”Aramis, 2001

9. Pre –school education magazine nb.10. Tomsa,Gh.,- school and pre-school psychopedagogy“ - M.E.N.,Bucharest,2005

11. Tomsa,Gh.;Oprescu,N – “ The theoretical grounds of pre –school psychopedagogy “V8I Integral,Bucharest-2007

JUVENILE DELINQUENCY – AN ANTISOCIAL PHENOMENON

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Abstract:

In order to efficiently fight against the juvenile delinquency, an educational – coercive intervention is necessary, coming form certain specialised institution of the state, exercised by a strict social control, and in cases of exception, in closed institutions, especially created, profiled on a correspondent educational system, of professional preparation and moral, on a period that could be individualised by the courts of law, depending on the gravity of the deed and the individual particularities of the minor.

The educational institutions must co-operate in a great matter with the family, the community institutions and all the factors that are involved in the educational system of the society. The education must respond to the actual and future social professional units, so that all the young would be able to enter in the working field.

Within the general education there must be certain moral, juridical, educational activities and also programs that would prevent and fight the antisocial phenomena.

When we observe a negative change in the underage behaviour, we must motivate him/her in order to solve the problem that he or she confronts, and if the situation seems to get out of control, we must address to those who can be helpful (teachers, policemen, non governmental organisations etc.) that can counsel and support the solving of problems.

Key words: juvenile delinquency, family environment, social and juridical norms**.**

This phenomena, named in the specific literature as "juvenile delinquency", confronts a large debate in different fields like: psychology, sociology, law, medicine etc. This one has many denominations: the medical concept used: "children with deviation of conduct", the sociological term "non adapted young", the juridical term "infant delinquents", the psycho-educational term "problem children". The juvenile delinquency problem consists in all the social norms breaking, done by underage, which are sanctioned as crimes.

In the juridical Romanian system, the penal responsibility of the minors is different, according to the age, as: the underage that have reached the age of 14 do not criminally respond, for these there are certain measures like institutional re-education centres; the underage between the age of 14 and 16 criminally respond,

but in a limited way, only if the existence of the judgement is proved; the minors between 16 and 18 criminally respond, having a certain amount of judgement.

Starting form the specific characteristics of the underage delinquent personality, a psychological profile was contoured: the tendency to aggression based on a hostility over the social values; the emotional instability generated by the educational lack; the social lack of adaptation manifested by avoiding norms and social conduct, accepted by the society etc.

There are two categories of factors involved in determining the antisocial behavior of the minor, meaning: individual factors, that belong to the personality of the minor and external factors, social factors. In the first category of factors we mention: the psychological particular structure of the minor, the intellectual possibilities, the emotional-temperamental particularities etc. In the second category we mention factors that belong to the family, the social and emotional factors, educational factors, social and cultural factors, economic factors etc. [1]

1. Types of offences committed by underage

It is very hard to specify the moment in which the minor experiments an anti social conduct. This one makes sense in a certain family environment, educational, social environment, representing a deviance of the relations between the child and objects, persons, being always an answer to the conduct of the others. Before the age of school certain manifestations are relatively contoured, almost all in the family, manifested by hostility towards certain family members, a hostility manifested by rudeness, coursing, injuries, even battering sometimes etc. At the age of school, some conducts that start from the pre-infraction stage to the so called infraction. Even if the minors do not commit in each cases antisocial actions, their undesirable conduct, their attitudes against the school exigencies, allow or even fasten the possibility of committing this kind of antisocial actions. At this age, certain deviant conduct seem to appear: rudeness towards teachers, violence towards colleagues, absences at school, lies, wandering, theft etc.

The cases of theft from the public places, committed by minors, present certain particularities:

* The thefts committed by minors are distinguished, firstly by the small value of the stolen goods. They steal small and easy to sell objects (radio-audio players, audio and video cassettes, small computers etc.), manifesting a certain predilection for candies, fine cigarettes and fine alcoholic beverages;
* They manifest a lot of fantasy being very ingenious in thefts, entering in places that are pretty inaccessible for an adult offender;
* Usually, they do not use instruments or specific tools like those of professional burglars, but they improvise and do use random instruments;
* In very few situations, they become violent; in the conditions in which they are discovered or they run;

[1] Buş, I. & David, D. (2003). *Psihologie judiciară: Poligraf şi Hipnoză.* Bucureşti: Ed. Tritonic.

* Do not manifest very much care in order to protect their traces, that lead to their fast discovery;
* Minor offenders manifest hurry in order to get rid of the stolen goods, so that they can be easily found, at a short time after the deed, offering for sale the stolen goods, at small prices;
* Usually, the thefts are committed with the participation of many minors lead by professional offenders.

Another category of offences committed by underage is that that threatens life and human integrity (homicide, murder attempts, and injuries causing death). The majority of these infractions were done in group, having as mobile the robbery, theft, rape etc. usually, old people are targeted, having no defence, living in isolated homes.

Another category of violent infractions that have recorded a constant evolution is that of robbery. It was noticed that many infractions of this type are committed by minors, organised in groups, that, during night time or day time, in different situations, action with violence over other persons that are supposed to have money or other valuable objects. The robbery is committed especially in urban places, on the street, in country sides or in buildings, sometimes being accompanied by aged offenders.

The rapes committed by underage record also, alarming increases, gaining certain specific particularities:
* The number of offenders is usually greater than those of the offences, that reveal the existence of many participants during the rape;
* In major percentage of the cases, the offenders have not known the victims before the deed;
* The number of rapes committed in buildings belonging to offenders is smaller, comparing with that of the rapes committed in abandoned houses, in the field or in other places;
* In a small percentage, the rapes were followed by sexual perversion;
* The rapes were committed over victims both very young and very old.

2. The prophylactics of the juvenile delinquency

The prophylactics of the juvenile delinquency is made by the intervention over the causes, the condition and the circumstances that could generate offences, over underage and over the micro and macro social environment that they belong to. The prevention and the fight against the juvenile delinquency, require a scientific research of the phenomena, the perfecting of the legal frame of sanctioning the deviant behaviour of minors and the elaboration of a unitary and coherent prevention system.

The scientific research of underage delinquency implies complex studies, interdisciplinary studies that approach the aetiology of the delinquency conduct at individual level, in groups and at global and social level. There must be taken under consideration social control factors, social assistance factors and educational factors that lead to the prophylactic activity and the protection of the underage being in situations to commit offences. Depending on the complexity of the factors

that generate the delinquent behaviour of underage, the prevention measures must be orientated and shaped.

The efficient prevention of the juvenile delinquency can be realised by an educational and coercive intervention of a series of specialised institutions, exercised by a social strict control, and in cases of exception, in closed institutions, especially created profiled over an adequate educational system, of professional preparation and moral rehabilitation, on a period that could be individualised by the courts of law, depending on the gravity of the deed and the individual particularities of the minor.

The prevention of the juvenile delinquency requires the necessity to elaborate a new and unitary strategy, with focused actions coming from all the institutions, authorities and organisations that can contribute for the minimisation of the phenomena, considering:

* The establishment of national and local authorities, that should contribute to the exact information over the situation of families having many children, especially those having material problems and morally insufficiently consolidated;
* The information over the situation of the families that neglect their duties over the children, abandoning them, abusing them or exposing them to certain social risks;
* Considering the deficit of pedagogic experience at the moment, inside a family, especially the young ones, the specialised institutions will have to elaborate together with other educational factors, actions that are meant to teach the parents regarding the duties of children education and care, the relations that should characterise a family, the critical periods in the children lives, the methods that must be used in order to pass over the difficult moments etc.;
* The strict information over each town and territory unit of the minors that present conduct deviation, non adaptation tendencies, so that they could be able to take all the measures needed (medical, educational etc.);
* The information based on analysis of the delinquency state among the underage and the conception of strategies for its diminishing;
* The construction of a preparation system for specialists in prevention problems and fights against the juvenile delinquency;
* To ensure a right number of institutions, especially created for the protection of minors, that due to certain motivations have no shelter, living in street;
* The public authorities must organise actions to integrate within the educational system the children belonging to families of Rroma.

At the moment, more than ever, the educational institutions must co-operate more with the families, the community's organisations and all the factors that are involved in the educational system of the society. The education must respond to social-professional units, actual and for perspective, so that all the young would be able to be integrated in the work field.

The media has a great influence over the personality of the underage, which is a process of formation. For this reason, it is imperative even the interdiction of

some materials (scenes, cases) that emphasise theft, violence, immorality, abnormality and eccentricity in relation with normality, that degrades the image of the interpersonal relations, that contaminate in a very dangerous way the life and conduct of the minor.

Within the high schools and elementary schools, there must be activities of moral education, juridical and also programs that could prevent and combat the antisocial phenomena.

The police units must have distinctive, specialised units for the underage problems, that must have specialists in sociology, psychology, pedagogy, criminology etc., in order to be able to study this phenomena over all the aspects (aetiology, evolution and its tendencies) to start the most appropriate measures to prevent the juvenile delinquency.

In order to understand this very complex phenomena the notice of certain elements in the underage psychology is very important, in his/her quality of witness, injured person, accused or offender, and also the necessity to individualise the psychiatric medical and legal expertise of the minor depending on how he/she participated to the crime. We must mention that independently on the quality of the minor, during the examination, he/she has the tendency to lie or omit some details, a tendency that is more accentuated when the minor is the victim. For this reason, it is very important to be interviewed in the presence of a trustful person, obligatory at those under 14. As a defender or offender, the underage will have the tendency to diminish the gravity of the action, omitting certain aspects that incriminate him/her.[1]

Among the risk factors that determine the apparition of juvenile violence, we mention firstly, the adolescence period, with the numerous conduct deviations between 14-16 years, with the tendency to decrease until adult age, especially affecting the masculine gender, coming from bad social and economical areas.

Another group of determining factors in the juvenile violence, is represented by the family, friends, education level and culture, with a series of situational factors represented by the place where the violence started, drug and alcohol consumption that favours the action, the use of guns, and also the association with other persons or other offences (theft for example). The families intervene in the formation of an aggressive behaviour especially by the parental behaviour, meaning the maternal emotional lack, associated with the lack of the father behaviour or the abuse of authority of the latter. To this we can add the influences of the familiar environment (conflict within the family members), the lack of affection generating a violent behaviour. A familial unbalanced environment, with no affection, especially form the mother, will generate adaptation problems and communication problems of the child in the social environment, that could turn into depression, autism and aggressively.

[1] http://www.legmed.ro/files/revista/2006-1/08-Delincventa%20juvenila.pdf

The second factor that intervenes in the contouring of a deviant behaviour is represented by the individual's personality, meaning an abnormal conduct resulted by the combination of certain negative personality values, manifested mostly by the lack of affection, sensibility, impulses, egotism.

The last factor that determines the antisocial conduct of the minor is the situational factor that realises the pass from the antisocial act: the alcohol and drugs consumption, from intolerance to frustration, to uncontrolled impulses.

Bibliography:

1. Buş, I. (1997). *Psihologie judiciară*. Cluj-Napoca: Ed.Presa Universitară Clujeană.
2. Buş, I. & David, D. (2003). *Psihologie judiciară: Poligraf şi Hipnoză.* Bucureşti: Ed. Tritonic.
3. Mitrofan, N. & colab.(1992). *Psihologie judiciară*. Ed.Şansa, Bucureşti.
4. Oancea, I. (1998). *Probleme de criminologie.* Ed. All Educational, Bucureşti.
5. Preda, V. (1998). *Delincvenţa juvenilă.* Cluj-Napoca, Ed. Presa universitară clujeană.
6. http://www.preferatele.com/docs/psihologie/5/delincventa-juvenila14.php
7. http://www.legmed.ro/files/revista/2006-1/08-Delincventa%20juvenila.pdf
8. http://www.monitoruldevaslui.ro/news.php?id=2791&name=Delincventa+juvenila%2C+%EEn+usoara+scadere&PHPSESSID=b

THE DELINQUENCY AMONG THE YOUNGSTERS OR YOUNGSTERS AMONG DELINQUENCY

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Abstract:

The social groups as a shelter for the juvenile delinquency are influenced by the material, economical situation and by the social status of the society they belong to.

The outrageous behaviour refere to actions that pass beyond the normally accepted rules. What it is known as outrageous, deviency it can be changed sometimes and in some places; the normal conduct in a certain social frame can be considered as outrageous in another. Official and unofficial punishments are being apllied by the society throught judicial and social rules.

The juvenile delinquency is a pathological, psichopatological, conduct, familly problem and depends on the society and the atmosphere it grows in. The delinquency's spreaading in different societies is hard to evaluate, because not all the crimes are reported.

The delinquency varies from a society to another, from a period or a culture to another, and the same thing happens with the ways of punnishment.

Key words: social group, family, statistics, solutions, conduct.

The group, as a fundamental element of the society, since the beginning of the time, appears in different ways. In this one it is givven birth to and are founded the main elements of the civilisation. Family, the most important social group, of all times, forms for the next time/ the human being, as a social being. Here, in this frame, the first signs of personality occure, are being founded, the family being the one that forms the behaviours', thinkings' and a lot of other elements' basis.

Well, now, getting up graddualy, on the stairs of the society's pyramid, as we are getting up we can see bigger and bigger groups, but in which this main character, the human being, is the most important element of all these groups, founding institutions, organizations, powers.

Now, imagine our self traveling on these social stairs, we fiind all kind of groups, with different ages people, with different jobs. Lets stop at the nowadays youngsters group, the one that repreyent the basis of each and every society, belonging to each corner of this planet.

Each and eery one of us, we surrely have a child „inside", we have that tendency of the full of life young man, with wings that seem to be unbroken, at any age, mature or passed through all kinds of problems.

The youth is life's most beautiful part, like an unbroken spring, that we can always have, if we know and have, of course, the possibilities, the material ones

and even the economical ones, of creating them. Now that we've imagined an axe, passing graduatelly from the general to the individual part, many levels, we have in front of us the nowadays youngster.

Unfortunatelly, the problems that occured in the big groups, in our country, before the 1989 phenomenon, but especially the „storm" of information formed after 1990 influenced the young generation. The access to the information throughout mass-media, but especially the „syndrom" called PC, makes his name spelt correctly. All these not passed through a filter, with which's help good should be separated from the bad, are taking to a mass contamination of the youngsters with less orthodox willings and perpetrating more and more actions spelled by the Criminal Code.

This contamination perfectly linked with this tranzition poor period, for more than 17 years, a morbid situation from the demographic involution's point of view, but especially of the global money situation and in the small groups, leads to undescribed tragedies. One of the statistics say that, in the US at every 6 seconds, a crime is being committed, that in Western Europe are more and more found between youngsters, in Eastern part of the Old Continent sclavagism didn't disapear and it has a human face, and that Asia produces more and more terrorists.

This power, money and religion war take the civilisation to a frightening unknown place. EU, of which member we are, tries through creating that Constitution of a unique, comune front, base don the equity between the member states and through treaties with the other states. Peace is difficult thing to have nowadays, Pope John Paul the 2nd said in an interview hold after the events from 11th of September.

That's why I want to stop and see this phenomenon, that is more and more seen, on a crescendo rythm, in our country and in the whole world, called the juvenile delinquency. I thought it will be ery usefull, to explain these terms, step by step, to understand where they come from, but especially their meaning. So, **delinquency** represents the social phenomenon that means perpetrating crimes, but even all the crimes perpetrated, sometime, in some place; this word comes from the French word *délinquance*. The word **juvenile** is that something that belongs to youth; youthless and comes from the French word *juvénile* and Latin *juvenilise*. So, having cleared these two aspects, we continue evaluating this phenomenon.

An important role in evaluating the phenomenon of juvenile delinquency has the ethiologic analysis, that involves the detailed studies of the personality's elements in forming the minor, the motivation, needs and his aspiration studies, the relationship with the teacher, of the assembly of elements that can explain the individual particularities of the youngsters and the mediation of the rule transgesion act, the internal psychic conditions and the one depending on the external social-cultural structure atmosphere.

The psichological orientation it is getting concrete, more often, in an individual approach of the behaviours and the young delinquent pshychic properties, which tries to explain this criminal deviency, as a rezult of some

conduct and personality anxiety, created by the accomodation incapacity to the rules.

The first approach is the psycho-analytic one. This gives the minor delinquent a neurotic structure that come out as inside the person and between persons conflicts, caused by the solving of the Oedipus's family conflict failure. This failure, that occurred because either of an affective affinity to the mother or an maternal affective ness excess or the absence of the identification of the father's image, creates a trauma that comes out again when he is an teenager taking the face of an identity crisis, that generates impulsive and aggressive actions against the others.

The second approach direction, the psycho-teaching one, evaluates the causes of the juvenile delinquency from the teaching errors and moral socialization point of view, taking into consideration that the tendency to delinquency is the result of the assimilation and getting inside of the conduct rules failure by the teaching subjects. This failure happens because, in general, to a wrong-oriented education that ignores the youngsters' personal motivation and applies an wrong punishment system, plus the severe forbidden made by parents for some actions or preferences that hinders the communication an moral autonomy to develop.

The family is an research object for a vary number of sciences, such as Sociology, Law, Psychology, Medicine, History and a lot more, each and every one of it trying to observe from its point of view some typical aspects. Also, even the rules-maker gave different points of view for this term, without having a consist ness and severe ness in this way.

The family is a shape of social relationships, between people that are linked through marriage and kinship. In the judicial way, the family means the group of persons between there are rights and obligations that come from marriage, kinship, adoption or other relationships.

Studying the juvenile delinquency needs a complex evaluation of the interactions between all the family group members and the conflicts between them, especially in crisis situations. Organizing the family influences especially the youngsters' identities and motivations, disorganizing it creating a lot of conflicts and fights that will be put inside his personality structure, by the youngster. According to the statistics, over half of the delinquents teenagers belong to the disorganized families. The failure of the family unity creates a failure of the moral education. The researches made by the child's psychology and family sociology, show that disorganized families (divorce, abandon, decease, detention) have the highest percent of psycho-walking and sexual diseases children, like in those families where the fight between the parents are very often.

The society's well-going is depending on its persons' and groups' power of accommodation with the moral, social, judicial and cultural rules accepted by everybody. Studying this phenomenon, of deviancy and especially of the delinquency gets around researchers from different domains.

The vulnerability elements, that takes action from the atmosphere around us, combines with the personality incomplete forming, and that is reflected in the

moral deficiency, that hinders him to distinguish between good and bad, accepted and not accepted by the legislative rule system. Associating alcohol and the existence of an inadequate company can join together as perfect elements for the criminal behavior at youngsters.

There are bents for taking violent actions in the company of the youngsters with emotional problems. The company and school absences can make the conditions for taking bad behavior examples.

The reactivity can generate, itself, behavior problems. When we have neuroses, teenagers and youngsters can have some episodic behaviors, all because of the internal tension solving needs: destroying actions, cruelty against animals or persons from his company.

The deviancy can be defined as not accepting a package of rules, that are accepted by a big number of people, inside a community or a society. As it was underlined before, a society can not be simply divided in those who overpass the rules and those which respect them.

We all know who are the people that have this deviancy or at least we think we know. They are the ones that refuse to live by accepting the rules, rules that almost each one of us respect. These are delinquents, violent people, drug buyers or dealers or "people from the streets".

Facts and problems

How often do we see the delinquency, in real terms, and which are the most common shapes of the crimes? To answer these questions, we can study the official statistics about the delinquency. The USA Statistics Bureau has interviewed people from 60.000 families starting with the year 1973, to discover how many of some specific crimes were committed in the last 6 months. This study is called National Crime Survey, confirmed the fact that a large number of the severe crimes are not turned over. Turning over has the highest percent for store robberies (86%), and the lowest belongs to houses thefts, approximately 50$ (15%).

In Great Britain, the Government does a General Family Study, in all the country. The study included a question about robberies in 1972, 1973, 1979 and 1980. The families were asked to mention all the robberies that had taken place in the last 12 months, before the interview took place. The 1981 study underlined the conclusion that there isn't a change in the number of robberies between 1972-1980, even though the Police statistics show a rise with 50%.

Before 1920 there were less than 100.00 crimes registered per year in England and Wales. This number got to over 500.000 in 1950 and over 5.000.000 in 1991. Today, the Police statistics shows over 9 crimes per 100 inhabitants.

The unemployed youngsters between 16 and 29, are represented in both groups of crimes, against the person and against the property. The regional analysis brings a plus help for the main relationship, between unemployment and delinquency. The main unemployment regions from the country, such as Merseyside, Greater Manchester, West Midlands, South Wales and Greater London are delinquency regions (1995).

In our country, a study made in Bacau county, the juvenile delinquency has high alarming quotes. More and more minors are involved in crime actions, and this thing is proved by the Police statistics. The lack of money, that is a general and acute problem, social and family issues are main causes for a child's future.

Since the beginning of this year, inside and near the schools, we have a number of 34 crimes – 23 in high schools, 10 in schools and 1 in an art and job school. The volume of the criminality known, done by students is in an easy decreasing, from 36 crimes in the first semester of 2006, to 27 in the same period of this year, but we can see raising quotes from 17 to 23 crimes committed by students inside schools. In school company we can distinguish two kinds of violence: "objective", that are found in the criminal law, where special authorities may act and "subjective", that are easy types of violence, attitude ones (not answering at classes, humiliation, offenses, absences), some authors name this "against-school attitudes". The highest percent of crimes it has been shown in Bacau city – 21 crimes turned over, from which 16 inside the schools and 5 nearby.

Solutions and conclusions

Therefore, the problem of the juvenile delinquency is a major problem that influences the whole human being's future. Each and every one of us lost a child, a close friend, a pet, a thing that you could not stay away from it, maybe all have passed, but it is more difficult to see how the son, brother, cousin, friend is going on a road without rules and laws of good. Because of these and a lot more we ask for:

- developing by the right authorities and organizations of the family advising programs;
- financial and material support for the one in need;
- not allowing guns and other mass-destroying weapons ;
- improve and support by raising the GDP for health and education ;
- building rehabilitating centers and employing personnel with appropriate salaries ;
- stabile workplaces ;
- decent living and reducing the idea of the third world.

Through all these trying an accepted change of the way of thinking, linked with a healthy educational system, we have the duty to hope and dream for a better world!

Bibliography:

1. Bodea, Radu – *Drept Penal. Parte Specială*, Editura Universităţii Oradea, 1998;
2. Giddens, Anthony - *Sociologie*, Editura ALL, Bucureşti, 2000;
3. Mihuţ, Elena Ana – *Criminalistică. Tehnica şi tactica criminalistică*, Editura Universităţii din Oradea, 2006;
4. Moţiu, Dorel – *Dreptul familiei. Caiet de studiu*, Editura Universităţii AGORA, Oradea, 2003;
5. Ziarul *Gândul* – Nr. 23, ediţia a III-a, 2006.

CERTAIN CONSIDERATIONS REGARDING LAW NO. 678/2001 IN REFERENCE WITH THE PREVENTION AND FIGHT AGAINST THE HUMAN BEINGS TRADE. STUDY

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Abstract:

The disappearance of the internal frontiers emphasise the organised crime phenomena, the states must adopt fast and adapted strategies, as an efficient reaction against the phenomena.

The laws and the penal practice gives a great importance to the constitutional warranties and the procedure ones, for the offender and also on those needed for the justice given to the victim.

The interview of the human traffic victim is recommended to follow the next steps:

1. The construction of relations and the prior discussions.

2. The free narration of the event, the history of the trade or the free speech.

3. The questions and answers stage.

4. The end of the interview.

According to Law no.678/2001, the victims of human trade are given protection and special physical attention, juridical and social, private life; the identity of the human traffic are protected by this law, and the victims of this kind of deeds have the right to physical, psychological and social recovery.

Key words: Traffic victim, Law no.678/200, study

I. Generalities. Trade with human being has become a major problem, both at international and national level, involving a large number of persons, having implications at economic and social level in various countries, being favoured by general progress of the globalisation and the use of modern technologies.

The disappearance of the internal frontiers emphasise the organised crime phenomena, the states must adopt fast and adapted strategies, as an efficient reaction against the phenomena.

Law no.678/2001 defines this infraction as the recruit, transport, transfer, accommodation or receiving of a person, by threat, violence or other forms of constraint, abduction, fraud, forgery, abuse of authority or taking advantage by the impossibility of that person to defend his/her self or to express his/her will or by offering, giving, accepting or receiving money or other advantages in order to

obtain the consent of a person that have authority over another, with the purpose to exploit that person[1] .

The trade with human beings is done in one of the following conditions:

a) By two or more persons together;
b) When a serious prejudice was brought to the victim's body integrity and health;
c) By a public officer within his/her job attributions[2] represent serious forms of the infraction. In these cases, to the main conviction is added the complementary penalty regarding the interdiction of some rights.

Also, the recruit, transport, accommodation or receiving an underage with the purpose to exploit this person, represents an underage trade infraction[3].

The infraction of underage trade is separately treated. The aggravating forms are the same as those of the adult persons trade, but the penalties are grater and the complementary conviction regarding the interdiction of some rights is maintained.

The infraction of human trade is incriminated in art.12 alignment 1 of Law no.678/2001; the norms stipulated in the law must be applied using a lot of alternative means, by: threat, violence or other forms of constraint, kidnapping, fraud or forgery, authority abuse or taking advantage by the impossibility of that person to defend his/her self or to express his/her will or by offering, giving, accepting or receiving money or other advantages in order to obtain the consent of person that have authority over other person, with the purpose to exploit that person[4].

The exposition, selling, spreading, renting, distribution, production, transmission, offering or possession for distribution of objects, photographs, images, marks or visual supports that represent positions or sexual acts having pornographic character, that represent or involve underage that have not reached the age of 18, and also the import or transmission of objects like the mentioned ones, to a transport agent or distribution, the trade or distribution is incriminated in art.18 alignment 1 –infant pornography .

II. The victim's regime in relation with Law no. 678/2001. Regarding the factors that contribute to the transformation in victims of this kind of infraction, we refer to personal features (like mental retards or those having a smaller IQ, new immigrants, very old people, fragile individuals, women, underage etc), and

[1] Accoring to art.12 of Law no.678/2001 regarding the prevention and fight against human trade.
[2] Was introduced by O. U. G. no.79/2005 and a special quality of the active subject of the infraction.

[3] According to art.13 of Law no. 678/2001 regarding the prevention and fight against human trade.
[4] Gheorghiţă Mateuţ, Nicoleta Ştefăroi, Violeta E.Petrescu, Raluca A. Prună, Radu Tărniceriu, Sofia Luca, Georgeta L. Gafta, Aurel Dublea, Daniel Iovu, Elena Onu, Cătălin Luca, *Traficul de fiinţe umane. Infractor. Victimă. Infracţiune*, Asociaţia magistraţilor din Iaşi, Asociaţia Alternative Sociale Iaşi, 2005, pag.33.

conjuncture factors (environment, frequented places, alcoholic beverages consumption, adultery)[1].

The laws and the penal practice gives a great importance to the constitutional warranties and the procedure ones, for the offender and also on those needed for the justice given to the victim.

The main objectives of the investigations regarding the victimisation, are the following:

- The identification of the frequency and the distribution of the infractions in the most representative areas;
- The identification of the amount of infractions reported comparing with the unreported ones;
- The identification of a criminality tendency that could help the evaluation of the community programs in the field;
- The identification of the causes that led to the reporting or the lack of it[2].

III. The interview of the human traffic victim is recommended to follow the next steps:

1. The construction of relations and the prior discussions. The first encounter between the investigator and the victim is very important, the victim could gain trust in the investigator, this one must explain the victim all about the interview[3]. The stress and the fear of the victim must be reduced. As long as the victim is familiarised with the purpose of the interview and with his/her role, the victim will be more active in giving answers and helping the investigator to obtain a primary image over the emotional and cognitive state of the latter.

2. The free narration of the event, the history of the trade or the free speech. In this phase, at the request of the judicial authority, the victim presents all he/she knows about the deed, freely, in his/her own words. The investigator must not get involved during the free speech only if he/she observes that the investigated person has deviated form the subject[4] especially when, in these situations, the victim tries to remember the events that can be painful or events that happened a long time ago.

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[1] I. Buş, *Psihologie judiciară*, Cluj-Napoca, 1997, pag.87; N. Mitrofan, V. Zdrenghea, T. Butoi, same refference, pag.73.

[2] S. Rădulescu, *Dicţionar selectiv, 100 de termeni cheie în domeniul patologiei sociale, criminologiei şi sociologiei devianţei,* Ed."Lumina Lex", Bucharest, 2004, pag.229.

[3] The victim must be informed that he/she could say if a question is not clear, to ask for clarifications regarding each question, that he/she can ask for time to be able to answer questions, the victim and the investigator could have a non-verbal signal to indicate that the victim needs a break.

[4] *C. Suciu,Criminalistică*, Ed Didactică şi Pedagogică, Bucharest, 1972, pag.583, 585; I. Mircea, *same reference*., pag.270; V. Popa, I. Drăgan, L. Lăpădat, *Psiho - sociologie*, Ed."Lumina Lex", Bucharest, 1999, pag.65.

3. The questions and answers stage. The purpose of this stage is the listening of the victim and the clarification of some situations that relate to the investigated deed and it is the stage that can identify if the victim is not honest or if the free questions were not sufficiently open.

The actual content of the question depends on the nature of the deed, the consequences of the deed, the victim's personality and the health of the victim. The investigator must use the terms used by the victim for the description of the clients or the sexual activities, must not patronise the victim, to encourage this one to answer to the questions.

4. The end of the interview. The investigator must make a resume of the essential points in the victim's testimony and verify, together with the victim, if they are correct. Also, the investigator must explain the interview plan regarding the interview that will follow. The assistance team of the victim must be sure that the victim's protection and assistance measures are taken.

According to Law no.678/2001, the victims of human trade are given protection and special physical attention, juridical and social, private life; the identity of the human traffic are protected by this law, and the victims of this kind of deeds have the right to physical , psychological and social recovery.

IV. Study

The defendant AB and the accused CD knew each other since 2000. From the declaration of CD results that the defendant AB has asked the accused CD to search and introduce young girls that could practice prostitution in Italy, where as the defendant said he has friends - Albanian citizens, that control a certain street from the so-called " red lights area" of the town, friends that for a certain amount of money were willing to rent places in the street, for the prostitution of the young Romanian girls. The defendant said the "business" is very profitable, and on this basis, the accused, during December 2003, has picked victim TA and the underage girl, of 17, that has asked to do the interview under other identity.

The accused CD, even though he knew why the girls were taken to Italy, for prostitution, he promised that through a fried, he can offer them in Italy jobs as waitresses.

After they have arrived in Italy, they have rented a home for the girls. The accused went out, telling the girls that he needed their passports, because he was searching for jobs.

After several days, motivating that he has not found any job for the girls, he asked the girls to practice prostitution on a street in Brescia, just for a short period of time, and for instructing them in this "job", they had to work in a brothel in the same town for two days.

After the two days, they were taken to the rented house, and during night time the girls were sent on the street, controlled by an Albanian that 100 EURO so that they would be allowed to practice prostitution on that street.

The defender made them, by verbal abuse, to work until the morning, for no less than 350-400 EURO. Also, was sending them to depths, buying them second hand clothes, saying that they worth a fortune.

After almost a month, the Albanian asked the defender to sell the two young girls, he refused and the Albanian, did not allow them to work on his street no more.

Taking advance on this situation, the two girls, have pressed the defender to let them come home and give them their passports; the defender did so, because on the contrary, he had to support them.

Next, the defender, has searched in Romania, the underage witness and he gave her the same offer, but she refused. The victim TA was asked to go again to Italy, but she also refused. Then she was threat that her boyfriend would find out about the past and that her house will be set on fire.

After returning to Italy, she was accommodated by the accused AB and submitted to the same sexual abuse.

During the researches there was identified another victim, MN, that because she was threat by the offender, she asked for an interview on another identity.

MN was taken to Italy and exploited in the same way. Noticing that she tried to give a phone call to talk with her parents in the country, the offender has aggressed her, threatening her. He made her promise that she will practice prostitution, in order to pay for the transport, actually she wanted to gain the defender's trust, to try to run as soon as she could..

For this, she asked the offender to give her one hour of intimacy, to get ready, the offender has promised to return in one hour. Immediately after he left the room, she took the mobile phone of the defender and his passport, that he left there. Afterwards, she reached the central station in Milan, where she set to the train to Budapest, having no ticket, she gave the mobile phone and her watch, arriving in Budapest.

V. *Conclusions:*

- *The person that trades is at the beginning a good person, honest, altruist, having good intentions, in order to gain the victim's trust;*
- *Having their conciseness and logic annihilated, the victims enter in the trader's game, accepting forgery, giving their identity documents away, helping to get other girls involved;*
- *The victims begin to realise the truth only after they try to retire and see that they can't, they get no money, are physically and psychologically aggressed (by blackmail, threats, fighting, starvation);*
- *As long as they attract more victims, they gain more money, becoming more confident, loosing details of the first plan, loosing control over the victims in the network, these get to run away, reaching police, creating a fracture in the network;*
- *It is very important to know all the cases by a psychological point of view for the prevention activity. The manner to act, the apparition of new elements in the crime chain, indicates a great specialisation of the offenders in this field.*

THE CAUSALITY FOR MURDER ACTS COMMITTED BY UNDERAGE PERSONS

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Abstract:
This paper aims to emphasize the social causes that bring about the delinquent evolution of underage persons who have committed an act of murder and are imprisoned in Romanian penitentiaries. Our purpose is to highlight these causes through the corroboration of three research techniques: the case study, the semi-structured interview, and the analysis of documents. Once the causes that bring about the starting of the delinquent behaviour have been identified, the paper continues with our conclusions and suggestions concerning modalities of preventing the criminal acts committed by minors.

Key words: family, friends, school, alcohol.

1. Introduction

The criminal acts committed by underage persons represents a central preoccupation for society, with the declared aim of understanding and preventing them. In this respect, the prevention and the treatment of this kind of delinquency are considered priorities for the actions that are related to the penal and the social politics of the state.

The research theme aims to highlight the aspects that characterise the delinquent aetiology of underage persons that have committed a murder act and who serve their sentence in Romanian penitentiaries..

The reasons that urged us to start this research are the following: the absence of similar pieces of research concerning underage persons, the high incidence of this kind of delinquency, committed by underage persons; the severity

of such an action; the more difficult social recovery of such underage persons because of the way they are "labelled", as well as the quantum of punishment.

The level of common knowledge is insufficient for the approach to such a phenomenon, which brings about a severe disturbance in the social order. For this reason, a scientific, strict approach is highly necessary, especially from the methodological point of view, for a phenomenon such as this one, characterised by complexity, diversity and specificity.

2. The Objectives of the research

The aim of the research is two-fold: on the one hand, we try to disclose those malfunctions that can be identified at the level of the social background and of the delinquent's personality, which bring about the act of committing the crime; on the other hand, we aim to set up some conclusions and suggestions that might be used with the view of preventing such anti-social acts.

We have grouped our objectives in two categories: general and specific. The *general*, ones are broader in character and refer to the sketching of an image concerning the way in which underage persons act in the situations we analyse; the understanding of social mechanisms that contribute to the performance of such anti-social acts. The *specific* objectives aim to provide information that is more restricted in character, by which we mean: getting information concerning the situations in which the crimes have been committed; the description of the potential factors that brought about the crime: the situation in the criminal's family, the person's previous delinquent acts, his or her level of education, his or her qualification, professional or leisure activities, etc.

3. The Theoretical Underpinning

A large number of specialists and researchers, especially from the field of sociology, psychology, or criminology have approached the subject of causes for the delinquency of underage persons, without managing to formulate a unitary and consensual explicative theory. Some of them considered the psychological factors to be the crucial ones, while others insisted on factors of social nature. Each scientific discipline tried to explain the nature of deviance by means of its own theories, leaving aside the arguments of researchers from other fields. In the last decades, the theoretical discussions, known as theories of „multiple" causality, start from the premise that all factors (be they social, psychological or biological) have a higher or a lesser importance in bringing about criminal acts. They can provide a richer and more explicit etiological analysis of criminal delinquency in the case of underage persons.

In terms of risk factors that intervene in the initiation of underage delinquent behaviour, most specialists mention: „differences in terms of gender (boys are more prone than girls to commit criminal acts), age (the instances of aggressive behaviour can be identified towards the end of adolescence and the beginning of adult life; the delinquent tends to kill or attack victims of similar age, sex, and social background), family (the absence of supervision, or the single-parent family can create the circumstances for the appearance of anti-social acts), the group of friends, the gangs of delinquents (where the criminal techniques are

assimilated), the school, the drug consumption, the mass-media or the unemployment".[1] There are some opinions according to which „the main reasons that bring about the appearance of the underage delinquency are: the high level of poverty in the case of the great majority of families with many children; the absence of a social support system for the families with many children; the inability of the local community to develop its own social assistance services; the background and the absence of monitoring on the part of the parents; the coming of underage persons from disorganised families; the consumption of alcohol and gambling; the weak implication of the teaching staff and the phenomenon of school leaving; the absence of local community support with the purpose of reducing of such phenomena."[2]

As far as the aetiology of the delinquent act is concerned, some authors[3] make a distinction among three types of theories: predominantly non-psychological (biological, constitutional, sociological, economic), psychological (analytical, psycho-social), and others (motivational, attributive). Other authors emphasize two explicative models, the first one referring to the totality of internal factors, related to the individuality of the delinquent, and the second one, consisting of the sum of external factors that have a social connotation.

4. Statistical Data Concerning the Crimes Committed By Underage Persons

The paper entitled *Criminalitatea juvenilă(The underage delinquency)*[4], analyses the acts of murder, the murder attempts or the hits causing deaths performed during 1990 şi 1991, which indicates that these have been characterised by: „8% of the number of murders or hits causing deaths have been performed by groups; 36% of the criminals have consumed alcohol before performing the crime; in approximately 14% of the situations, where an underage person was involved in committing the crime, the main reason was the intention to steal; 7% of the situations were motivated by the attempt to rape; in 12% of the situations, the murder was committed upon members of the same family, especially upon the father; 25% of the criminals tried to hide their fingerprints in order to avoid being discovered; 6% of the murders had old, isolated and vulnerable people as victims, who lived in isolated houses; 70% of the underage persons that committed murders were not participating in the system of education, or other social activities; 7% of the total of minors that have committed crimes are girls; 55% of the murders have

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[1] Ion Vlăduţ, *Evaluarea fenomenului de delincvenţă juvenilă*, University course, Bucureşti, 2005, pp. 23-33.

2 Virgil Profeanu, Programe de ducaţie pentru minorii şi tinerii deţinuţi în Penitenciarul de Minori şi Tineri Craiova, Ed. Spirit Românesc, Craiova, 2002, pp. 10-11

[3] Petronel Dobrică, Cristian Lazăr, *Control social şi sancţiuni penale*, Curs universitar, Bucureşti, 2004, pp. 44.

[4] Ion Pitulescu, *Criminalitatea juvenilă*, Ed. Naţional, Bucureşti, 2000, pp.147-148

been committed in rural regions, the rest of 45% being committed in the urban area."

5. The universe of the research

The focus of our study is represented by underage persons that have been condemned or arrested preventively for murder and are imprisoned in the Romanian penitentiaries.

The analysis element of the research is the underage person imprisoned in the Romanian penitentiaries for having committed an act of murder.

6. The Type of Research

Our research is characterised by: the case-study as method; it is based mainly on the study of official documents; it is aimed at the application of a semi-structured interview to underage delinquents; the qualitative analysis will be predominant; we intend to make a comparative analysis of the cases that have been presented; we have in view a predominantly descriptive research –type; we shall refer to isolated situations, not to general phenomena.

The case-study has been chosen as our study method for different methodological reasons. We intend to take into consideration „the contextual conditions, since they can be extremely pertinent for the phenomena under scrutiny "; and we rely on "multiple sources of evidence, so that the data might be convergent".[1]

7. Data Gathering

The gathering of data was made through: an analysis of the official documents, especially those at the disposal of the penitentiaries and the application of a semi-structured interview to underage delinquents.

The getting of data took into consideration especially the elements specific for the criminal and the objectives mentioned above. The aspects characterising the criminal are: age between 16 and 18, low level of life experience, reduced capacity to assume responsibilities, reticence to provide information concerning the criminal act as a result of the unpleasant moments lived during the penal inquiry (made by the police) and the trial stages (performed by the judiciary instance).

In presenting these cases we generally used information included in parquet indictments, social surveys made by local town or city halls, and the structured interview. This last method includes items that indicate some essential aspects that are not revealed in other types of official documents, but are important for our research. This items were aimed at getting extra-information related to the social and the family background, previous delinquent acts, the description of the criminal act, the attitude towards the criminal act and the victim, the level of education, the profession and ways of spending the leisure time.

[5] Robert K.Yin, Studiul de caz – *Designul, colectarea şi analiza datelor,* Ed. Polirom , Iaşi, 2005, pp. 30-31

8. The Presentation of the cases

The data obtained from different sources, concerning the cases of underage persons that have committed a murder, have been grouped in two categories: data about the social and the family background and data about the murder proper. We decided upon such a classification in order to facilitate the comparative analysis of the situations and to identify the similar and the particular aspects, that will help us in drawing the conclusions. We must acknowledge that some passages reproduce data from the Justice Courts indictments, in order to indicate with exactness the ways in which the crimes have been committed, and these are written in a characteristic juridical style.

The presentation of the cases can be found in Appendix 1.

9. The Interpretation of Results

We considered it natural that the first step to lead to the interpretation of results should be the analysis of each case in particular, which would be followed by a comparative analysis of the cases. Only then have we taken into consideration the interpretative aspect of the elements under scrutiny The comparative interpretation will take into consideration the limits inherent to the method we have chosen (the case study), concerning the inferences that can be made

The social and the familial background of the underage person usually presents a number of drawbacks. In all the cases that will be presented, the family is either de-structured, or has a number of non-functionalities on the social plan (material deprivation, educational shortcomings, etc.) The participation and the belonging to the institutional environment of the school is not preferred by the great majority of underage persons that have committed murders. Consequently, there are few chances that they might benefit from a qualification that might allow them to enter the job market. Their great majority is in a state of occupational incertitude: they are either unemployed, or take on unqualified, occasional jobs. They spend their free time in problematic entourages, in pubs where they meet friends and sometimes drink excessively. The "anti-social" past of the underage persons is not to be ignored, some of them having already been involved in acts of theft, for which they have been directed either to re-education centres, or in prisons.

The murders proper are performed in diverse circumstances. By analysing the cases we shall present, we can deduce that we cannot speak of a "pre-defined" circumstances for committing the murder. They are committed both in the urban and in the rural space (even in forests), irrespective of the moment (day or night) or of the age and the sex of the victim (although the victims seem to be weaker from a physical point of view than the aggressor); the aggressors can be drunk or not; have a history of previous delinquency; and have as aims the theft, the rape, or even lacking a plausible explanation.

10. Conclusions

The phenomenon we have analysed represents a real social danger, which negatively and severely influences the social order and can extend if certain measures are not taken. The conclusions are presented so that they shall help in the formulation of the established aims on the one hand, and facilitate the formulation

of some suggestions that might help in the prevention of such undesirable antisocial acts, such as the murder. At the same time, in order to avoid the conceptual confusions, we shall define the notions of social factor and social mechanism, from the perspective of their contribution to the commitment of the murder. Thus, by social factor, we shall refer to those social aspects that have a situational character| (consumption of alcohol, modalities of spending the leisure time, etc.), while by social mechanism we shall designate a larger sphere, a social system that has a character of generality (family, school, others).

As far as the *situations in which the murders have been committed* are concerned, these are extremely diverse. The cases presented below prove that the underage persons are capable of committing murder, without taking care of the place (be it the house of the victim or the public domain), the characteristic features of the victim, or the purpose they had in view before committing the crime (theft, robbery, rape, etc.). All these aspects denote the unforeseeable character of delinquent actions that end with murder; the immaturity and the infantile character of the act, these being corroborated with the absence of responsibility for the criminal acts. As a consequence, the data that result from the description of murder acts are not sufficient in order to allow us to draw pertinent conclusions concerning the motives that lead to the commitment of such reprehensible acts. They are also insufficient for the elaboration of strategies concerning the prevention of murders committed by underage persons.

The factors that contributed to the commitment of murders can be classified in accordance with many criteria. The most appropriate criterion seems to be the one presented in the referential theory, which groups the factors into internal ones (connected with the individuality of the person) and external ones (sources of influence that do not depend on the individual). Among the internal factors we can mention psychological characteristics (the absence of affection, low or medium level of intelligence), low instruction degree, the absence of some acquired and certified abilities, that might allow the individual to have a profession, the inclination towards minor delinquent acts; delinquent precedents; the tendency to spend leisure time in environments characterised by promiscuity (sometimes combined with alcohol consumption). As far as the consumption of alcohol by underage persons is concerned, we should say that such a practice is undesirable and involves many aspects: though the selling of alcohol to underage persons in forbidden, this law is often trespassed, the consumption being tolerated in pubs or discotheques (not to mention the shops); the environments where the underage persons spend their time is characterised by the consumption of alcohol (parties, discotheques): their families tolerate such a habit, being probably a characteristic of the entire family's way of life; underage persons associate the consumption of alcohol with an act of courage, that place them on the same level with the mature people, in contradiction with the position they should in fact occupy (that of underage persons). The *external* factors that stimulate crime are: the impossibility to earn money legally, in order to satisfy the necessities characteristic of the age; the social isolation (manifested by the family and by society at large); the

inappropriate influence of the group of friends. In the cases we have presented the negative influence of mass-media on the underage persons that have committed crimes cannot be confirmed, since most murders have been committed under the influence of moments of tension on the one hand, and the absence of material resources of the criminals' families, on the other (most of them do not have a TV set at home, or means for paying for other media of mass communication).

The modality of acting of the underage persons that committed murders is very diverse and depends on the concrete particularities of the crime: hitting, stabbing, strangling, etc. We cannot say that a certain patter emerges.

The social mechanisms that influence the committing of crimes to a certain extent are: the family life; the system of education and the belonging to a certain group of friends. *The family background* is strikingly similar in all the cases we have presented. The underage persons we referred to are either supported by a single parent, since the other one is either totally absent or lives, for a considerable period of time, very far from the family (Spain, Italy, Hungary). It is obvious that, in the absence of one parent, the functions of the family that are related to socialization are very problematic. In some situations, the father is absent, which implies the absence of the masculine authority within the family, that usually provides the material resources of the family, as well as the element that ensures the observance of rules. The absence of the mother also occurs and is associated with a lacking of affection and a factor that monitors the underage person almost permanently. *The schooling education* of the underage person that has committed a murder is characterised by serious deficiencies (illiteracy, school-leaving during the first stages of education, unjustified absences from school, etc.). The consequences of such a situation lead to an absence of assimilation of society's norms and values, to which the criminal belongs (enhancing the chances to overlook them); the time that should be dedicated to schooling is spent in other environments (that are usually inappropriate) and can push the underage person towards delinquent acts. In terms of education, it seems that the authorities often fail to implement the educational politics, according to which 8 years of schooling are compulsory. *The group of friends* often represents a negative influence in the great majority of the situations, for there are many cases when a friend has been killed. It is true that the quality of the group of friends influences the delinquent evolution of underage persons (of those who have committed murder, in particular). The ones who have committed murder usually spend their leisure time in a deviant way, since all the crimes have been perpetrated during the criminal's free time.

The social malfunctions present in the case of underage persons who have committed murders are those at the level of: the family's existence; the development of the educational act through the system of education; the group of friends; and the way of spending the leisure time.

The social and the psychological mechanisms and factors are, in fact, mainsprings that contribute to the committing of reprehensible acts. It is probably the co-operation of more of them, in different degrees, together with other situational contexts, that lead to the criminal act.

Starting from the presented situations and the conclusions, the hypothetical profile of the underage person capable of murder acts indicates that, as a rule, this one belongs to a family with multiple malfunctions, has several schooling problems, does not have a qualification or a stable workplace, belongs to a group of friends that spends its free time in promiscuous environments, often consumes alcohol, and reacts in an unexpected or irresponsible way in certain situations. All these negative social elements, which can be associated with underage persons, should be carefully "diagnosed", understood and dealt with, so that they might contribute to the reduction of the number of murders committed by underage persons. In order to achieve this aim, the corroborated action of many factors (family, school, the legal system) is necessary.

11. Suggestions

The following suggestions should fulfil, as much as possible, some conditions. These should result from the conclusions drawn after the analysis of the cases presented in this paper, be realistic, that is, to be achievable in a shorter or longer period of time, to be practical (they should be convergent with the aim of preventing anti-social acts), both at the level of the causes and conditions or the circumstances that might generate them. We shall make suggestions for different aspects of the social life (family, school, others), since a distinct approach is necessary in each situation.

As far as the *family life* is concerned, we start from the assumption that it represents the central factor of moral socialization and of the child's integration in society, so the following measures are highly necessary:

- the setting of some functional interdependences (involving the police, the social assistance services, the school units, law courts and others), by which an accurate evaluation of children inclined to commit anti-social acts can be achieved, irrespective of their family situation (family with many children, with material difficulties, different forms of handicap, which neglects the behavioural evolution of underage children, who might be abandoned, maltreated, forced to beg or exploited in different ways);
- the adoption of some economic support measures for the families with real financial problems, (especially in the form of writing or reading materials, clothes, food, rather than money) and the monitoring and conditioning of such forms of support only with the aim of protecting and helping in the development of underage persons, in accordance with the norms of the society;
- the setting of some family counselling structures, which might help families that have problems in raising and educating children;
- the counter-balancing of parents' lack of pedagogical experience, so that they might understand their role in the evolution of the child and become aware of strategies they might use in critical situations in the life of their children, so that they might act in accordance with the social norms, values and responsibilities.;
- the support for the governmental and non-governmental organizations that perform information, counselling, or support activities for families that encounter problems in the education of their children.

Concerning the development of a more efficient *schooling system* with the aim of preventing the acts of murder committed by teen-agers, we propose the following suggestions:

- the existence, in each schooling institution, of a psychological centre where some instruments of psychological testing should be applied, in order to identify, from early stages of development, the deviant, aggressive, maladapted types of personality, so that the development of deviant behaviour should be stopped;
- the instruction of teachers, irrespective of the discipline they teach, in the problem of school deviance and not only, through the understanding of some elements form the fields of child psychology, and ethics (since the acts of deviance and violence are current in some schools);
- the diversification and the multiplication of meetings between parents and teachers;
- the revision of the national educational curriculum, with an expansion of socio-human sciences among the disciplines that are being taught in schools, these being often ignored in favour of others;
- a more appropriate usage of sanctions and rewards for school children with the aim to facilitate the success at school and the prevention of deviance;
- the establishment of a more efficient scholar and professional orientation for pupils, in relation with their aptitudes, abilities, or talent, corroborated with the possibility of their families to support these inclinations, in order to facilitate the integration of young persons in the job market;
- the application of legal measures that indicate the obligation to attend 8 schooling years.

In terms of *alcohol consumption* by young people, a recurrent cause for real "human tragedies", the following measures would be necessary:

- the strict observance of laws concerning the selling of alcohol to underage persons, since the evidence indicates that this category of people manage rather easily to buy and consume alcoholic drinks (from shops, pubs or discotheques, etc.);
- the collaboration between schools and local sanitary authorities with the view of developing the "anti-alcohol" campaigns, aimed at helping underage people understand the risks associated with the consumption of alcohol..

In order to counteract the negative influences of the *group of friends* on the underage person, the following measures would be necessary:

- the support for institutions, such as the county organizations for sport and leisure, in order to encourage more attractive ways of spending the free time for teen-agers (theatre performances, movies, sport, exhibitions, etc.), which might contribute both to their socialization and keep them at a distance from groups with negative influences;
- the raising of awareness for the undesirable influence a group of friends might have upon underage persons.

Other complementary actions, with a social character, that might contribute to the prevention of the delinquent behaviour of underage persons are the following:

- the existence, within the system of social assistance, of some specialised departments in juvenile delinquency, that should co-ordinate their efforts with the other factors that have some influence in this respect;
- the corroboration of information and statistical data from different institutions regarding the evolution of delinquent phenomena among young persons, with the view of taking the appropriate measures;
-the organization of some activities at the national and the local level (meetings, presentations, etc.) in order to draw the authorities' and the population's attention upon the juvenile delinquency in general and upon the acts of murder committed by underage persons in particular;
- the constant instruction of those who work in fields directly related to juvenile delinquency, taking into consideration the evolving character of this phenomenon;
- the improvement and perfection of the legal system concerning the juvenile delinquency, with the aim of preventing the repetition of anti-social acts committed by underage persons;
- the involvement of mass-media in the process of preventing delinquent acts, especially those committed by young persons, by insisting on information and communication rather than on questionable quality entertainment (characterised by an abundance of violent scenes, that provide concrete examples of committing criminal acts).

12. Appendix 1

Case 1 – S.M.

Data about the social and the familial environment: the father, aged 35, has abandoned his family many years ago and lives in Hungary; the parents gave birth to 4 children: S.C. (born on 14.05.1986), S.M. (born on 03.05.1988), S.Z.(born on 07.12.1989) and S.T. (born on19.04.1992); the family has no financial support and does not benefit from social support; the state of health of the family members is good; the social behaviour is appreciated as good, in the case of the mother; the mother is helped by the maternal grandparents in the bringing up of children; the minor child was born on 03.05.1988; has delinquent precedents; is preventively arrested for murder (art. 174 penal code); nationality: Hungarian; religion: Roman-Catholic; schooling reduced to two years; no qualification or workplace at the moment of the crime; belongs to a disorganised family; he started to steal in the region of M. from the age of 11, managing to commit 30 delinquent acts; has been condemned for part of these delinquent acts (having been imprisoned 1 year and 10 months, with conditioned injunction for 2 years and 6 months; in 2002, the underage person has committed three thefts. Currently, the person is supervised in a state of freedom, after a period of remand at the county police department and in a penitentiary for adult persons.

After the semi-structured interview, we found out that: the parents of the underage person are still married, but have lived separately for 12 years; the father

is aged 34 and currently works in Spain; S.M. has visited him in Spain, while the latter has not visited Romania in the last 12 years; the mother is involved in insignificant frontier commerce, bringing goods from Hungary in order to re-sell them; in terms of his delinquent acts, he acknowledged to have committed a number of robberies, the first one at the age of 10, when he stole from a pub, not 11 years, as it appears in the social enquiry; the underage person has attended only two schooling years, although he went to school in a period of 3 or 4 years, but with constant interruptions; the underage person has no qualification, has not worked anywhere, but pretends to be adroit in each domain, especially in building; as far as the leisure time is concerned, he admits enjoying parties, discotheques, where he sometimes consumed alcohol. The underage person speaks openly about his delinquent acts, which are perceived as almost natural, for he considers that his family's state of poverty needed to be attenuated.

Data about the delinquency proper

On 30.01.2003, more children from village C, from M. district, B. county, saw a dog coming from the forest with a strange object in its mouth. The owner of the dog took that object and realised that it was the foot of a child. Consequently, he informed the police. The next day, the police and the gendarmes checked the region and discovered, at about 120 meters near the forest the corpse of a child whose foot was missing; the rest of the body was covered with leaves and snow.

The corpse has been taken to the hospital in M., for the autopsy, and the police discovered that the victim was B.V., aged 12, who was missing from home for more than one month. The parents have been summoned and the victim was immediately recognised by them, from the physical features (well preserved, due to the cold weather) and the clothes it was wearing.

After the investigations of the police, the underage person S.M. was arrested. During the preventive arrest, he described the way he acted to his cell mates, although he did not acknowledge anything in front of the investigators.

The criminal said to the witness that, during the last burglary, he had taken several pairs of shoes, clothes, oranges, and 8 million lei. He did not give anything to the victim, to whom he usually did not give money, for fear that he might be rounded on to the police. After the last burglary, the victim insisted to give him part of the stolen objects, and then he asked the victim to wait till the next day, when the goods would be sold and he would be able to give him some money. Being determined to get rid of the victim, he asked the victim to accompany him in the forest where the money were stolen. Once they have arrived there, the un-sentenced person started to hit the victim with the fists and the legs, and when the latter fell to the ground, put a plastic bag on his head and strangled him, until he observed that the victim no longer moved. Then he carried the victim next to the forest and, thinking that it was still alive, wanted to stab him into the heart with a screw driver, but eventually give it up, took some laces, bound the legs and the arms of the victim and threw him into a pit, covered it with dry leaves so as not to be discovered, hoping that he will be eaten by wild pigs or other animals. The

defendant used to bind children's hands with shoe laces, as it often happened to his brother, K.Z., a fact that he acknowledges.

After the examination with the polygraph, the following facts came out: significant psycho-physiological changes, characteristic of emotional reactivity, which leads to the conclusion of the simulated behaviour on the part of the subject.

During the interview, the defendant refused to comment the item referring to the description of his criminal act, pretending to be innocent. He declared regret for the victim, whom he presented as his best friend. The attitude towards the deed was one of regret, but obviously a pretended one.

Case 2 – S.L.

Data about the social and the familial environment: S.L. was born on 15.07.1987; parents: natural / M.; state of relapse: with previous delinquent acts; the criminal act: extremely violent murder (art.176 in the penal code); conviction: 9 years, 10 months, 77 days; nationality: Roma; religion: Roman-Catholic; schooling: 4 years; no qualification of workplace. The underage person pretends to belong to a Hungarian family, with 7 children (3 boys and 4 girls), he being the youngest; the mother is unemployed, while the father lives in Hungary for more than one year, and he attended 7 schooling years; as far as his delinquent acts are concerned, he says that he has first stolen at the age of 14, from a private house, act for which he was trailed and punished with 1 year and 10 months in prison, of which he has stayed in The Penitentiary for Underage and Young Persons in Craiova only 10 months; the schooling level is low: he has completed only 4 schooling years, finds it difficult to communicate in Romanian, his mother tongue being Hungarian; he has no qualification, has never worked officially, only occasionally, on the land of some co-villagers; his spare time is spent in pubs and discotheques, where he used to drink alcohol. Currently he is imprisoned in a penitentiary for adult persons.

Data about the delinquent act proper

In the afternoon of 29.04.2004, the underage person S.L. from din commune S., B county, drunk alcohol in the local pubs together with the victim P.E. Both of them consumed alcohol till late at night, the drinks being paid by the underage person S.L., from the money paid in advanced by two co-villagers, with the purpose of helping them with the housework. Both became inebriated, especially the underage person. The latter, wanting to drink more alcohol, asked his older friend, (P.E.), to pay some "turns" but this one, although he had money, refused to do so, leaving for home. Part of the way towards the house was the same for both persons, but P.E. advanced with 20 or 30 metres. At the crossroads between their homes, S.L. followed P.E., instead of going home and, on a connecting path between two streets, came next to the victim and hit him in the head, which caused the inebriated P.E. to fall to the ground, near a ditch. After that, S.L. took a piece of wood from a fence surrounding a garden, and started to hit the victim in the thorax and the head, till the stick broke in two pieces. While the victim was still alive and could breath, S.L. leaned over him, took him up from the

ground, took some banknotes from his pockets and left for his house, abandoning the victim face-down..

The next morning, S.L.'s mother, seeing the blood stains on her son's trousers, threw them into the stove and burned them, having been informed about the events that took place during the previous night. Counting the money taken from the victim, S.L. saw that it was only 30000 lei, respectively 3 banknotes of 10000 lei. In the morning of 30.09.2004, S.L., together with his mother, went to the commune's confectionery, where they drunk coffee and heard people saying that P.E. had been killed. For all that, neither the defender, nor his mother, went to the police to inform them about the murder, leaving for their house, where, after a short while, the police arrived, finding on S.L.'s pull-over and sport shoes stains of blood, which have been taken to be used as evidence. S.L. acknowledged he had committed the murder.

The conversations with the underage person indicate that the latter is unable to describe his criminal act, pretending to have only some vague idea, due to the fact that he has drunk alcohol that night. He accepts the description made by authorities, which indicates an attitude of resignation.

The attitude towards the victim and his criminal act is obviously one of regret, since he emphasizes the fact that "what I did is not good".

Case 3 – P. C.

Data about the social and the familial environment: last name and the first name: P.C.; date of birth: 18.11.1988; parents: C./ C.; delinquencies: no previous ones; criminal act: highly violent murder; sentence: preventively arrested; nationality: Romanian; religion: Orthodox; schooling situation: 9 years of school attendance; no qualification of workplace. The family background indicates that: the underage person lives together with the father and the paternal grandparents; the parents have separated in April 2001; the mother of the underage person lives in Italy, the child being raised by the father, in accordance with the civil sentence no.1293/2003; the father works at C.F.R.; the family lives in reasonable living conditions and benefits from a revenue of: 11.225.000/total, 2.806.205/for each member (in 2004); the behaviour of the family in society is considered good, no member having created problems in the village. Currently, the subject is imprisoned in a penitentiary for adult persons.

The conversation with the underage person revealed that: the parents divorced 5 years ago, the underage person being the only child; the mother works in Italy and communicates on the phone with the subject, but she has never visited the country since she left.

P.C. has never committed other anti-social acts or delinquencies, his deed creating shock among the members of the community he belongs to and at the school he was attending (pupils and teachers). None of his acquaintances would have considered him capable of such a reprehensible deed

In terms of schooling, he is above the average of underage delinquents (irrespective of the criminal act they have committed). At the moment when the murder was committed, he was in the tenth form, so he had attended 9 years a

professional school in the city O., specialisation: textiles and leather. The underage person did not manage to acquire any qualification, or to be hired by someone. In his spare time he preferred to participate in sports activities, swim, listen to music or go to the discotheque.

Data about the murder proper

P.C. acknowledged to have drunk alcohol, together with some other boys and girls, at the "Amnezia" pub on O, before committing the criminal act. He had paid for the drinks and, at about 14.30, knowing that the witness D.I.L. had a penknife upon him, asked him for it, without expressing his intention to get back the money he had spent, by doing a delinquent act. The defendant declares that, after parting from those young people, in the company of whom he had drunk alcohol, headed towards a bus station, where he knew that a ticket office could be found, with the intention to attack the woman selling tickets and get some money from her but, because many people were around, he went to a shop where he had been previously and knew that the shop assistant was alone. Initially, he bought two chewing gums, while a girl of 16 and one of 3 entered the shop. Consequently, the defendant got out of the shop and waited till the other two persons came out. He got in again and asked the victim if there was any chicken in the fridge, the moment when he took out the knife and asked the shop assistant to give him the money in the shop. The victim said that she had no money, so the defendant pushed her till she fell on the floor, after which he stabbed her several times in the back, the thorax and the throat, causing her severe wounds.

During the altercation, a woman wanted to enter the shop, so the defendant got scared and left the shop, running, without being able to take any money, and he pushed the woman to the ground, this one being the witness R.E., who was seen by the witnesses C.R.C. and N.C.F.

The defendant went in the village. G. C., by bus, many people having observed the stains of blood on his clothes. To his father he told that he was attacked by some gipsies, who stole his money, and showed his father a wound in the leg. He asked his father to take him to the hospital, which they have done, and the penknife was thrown near the rail crossing the village where they lived, and was been found later by the police.

The underage defendant was examined by coroners, who declared that he had wounds at the left leg, caused by a sharp object (knife). Those wounds had the appearance of having been self-provoked. The lesion on the right lip indicates the contact with a sharp object (probably the nails of the victim). The lesions on the fingers are caused by a sharp object (knife). The lesions need 7 days of medical supervision.

Eventually the defendant acknowledged that he had wounded himself, in order to convince his father that he was attacked by a group of gipsies.

During the interview, being asked to describe his actions, the underage person becomes emotive, bows his head and re-tells the situation in half a minute, as if he didn't want to remember those moments. What draws our attention during his re-telling is the fact that he tries to launch an incredible hypothesis, that does

not appear in the indictment, namely the fact that his mates might have put some drugs in his drink, without him being aware of that, and for that reason he could do such a reprehensible act. He acknowledges his crime and seems to be resigned.

He feels sorry for the victim, pretending that his act was determined by the consumption of alcohol.

Case 4 - D.I.A.

Data about the social and the familial environment: comes from the rural area, from a Roma family; the parents have been living together, without being married, for 20 years and have 11 children; no member of the family has stable revenues, most of them are beggars and have committed delinquent acts, especially for theft; the family lives in two rooms and an entrance hall, having no electric current or drinkable water; there are many conflicts in the family, due to the consumption of alcohol, and the parents did not take care of the schooling education of children; only three of them go to school; the defendant is illiterate and in aged 19, being condemned to be imprisoned for 20 years for having committed extremely severe murder act and robbery; currently, he is imprisoned in a penitentiary for underage and young persons.

Before the murder was committed, D.I.A., at that time being aged16 , had left his family home in order to live in the city C., together with other underage persons. He earned his living by means o begging and doing different occasional works, especially in the central market of the city. The discussions with the minor revealed that he had committed previous "minor" thefts, before committing the murder.

Data about the murdedr proper

In the central market in C, he met the victim G.C., aged 71, shop assistant in a shop within the market. A few days before the crime was committed, he sold the victim a quantity of lime tree flowers, when the victim invited him inside her house, gave him something to eat, and D.I.A. saw the objects in the victim's house and decided to kill her.

A few days later, passing by the victim's house, D.I.A. saw that a window pane was missing, being replaced by a mosquito net. In the same day, he took with him two friends (the underage persons P.L., aged 16 and N.A., aged 13), deciding to meet at midnight in order to break into G.C.'s house. The three decided that, if they were to be discovered by the victim, they would kill her, so that D.I.A. shouldn't be recognized and denounced to the police. They went as far as creating a story to be told to the police officers, in the case they might have been discovered: they entered the victim's house because they gave her a sum of money, which they didn't get back.

About midnight, D.I.A. tried to enter the victim's house through the absent window pane, while the others were watching out. Although he took off his shoes in order to avoid making noise, he was discovered by the victim, who went into the kitchen and took a knife, trying to hit him. The two fought till the victim was put to the floor and hit with the fists over the face, the head and the body. During the fight D.I.A. was wounded with the knife the victim managed to take from the kitchen.

Because the victim started to cry for help, D.I.A strangled her and stabbed her throat with two screwdrivers he found in the kitchen. D.I.A. and his two friends started to look for some money in the flat. Seeing that the victim was agonizing, D.I.A. strangled her with a rope, then undressed her, leaving on her just an undershirt and some underpants, drawn on the superior part of the tights, so that the anal and the genital regions were disclosed.

After they have found the money and took some goods from the flat, the three underage persons left the flat through the missing windowpane.

After committing the crime, they hid in a bush in the park part of the stolen goods and D.I.A.'s blood-stained T-shirt, after which he put on the shirt of one of the other two teenagers and went to the hospital, so that D.I.A could be bandaged at the hand he had been wounded by the victim (at the hospital, he declared he cut himself in a broken glass). With the money they have stolen, they bought food and clothes.

D.I.A was arrested two weeks later and acknowledged in totality his delinquent act. He was honest during the period of investigation, placing the accent on his underage at the moment of committing the crime.

After committing the murder, D.I.A declared that he acted in that way because he was afraid he could be denounced to the police for wanting to rob the house of the victim. Although he and his friends had planned everything in advance, D.I.A had no object he could attack the victim with, using only sharp objects and a rope he had found in the house of the victim. Neither D.I.A., nor the other two criminals took care to hide their traces in the victim's flat, their fingerprints being found in all the rooms of the flat. |The underage person says that he was not under the influence of the alcohol when he perpetrated the crime.

He regrets his actions only formally, especially because of the punishment he received. His empathy for the victim is weak, he has no regrets and does not seem to be aware of the seriousness of his delinquent act.

Case 5 - S.C.

Data about the social and the familial environment:

The underage person S.C. comes from the urban area (city B. M.), from a legally constituted family, but de-structured after the separation of the parents, immediately after his birth. He was raised by an aunt after the separation of the parents, S.C. having only isolated contacts with his parents afterwards. S.C.'s mother left Romania in 1991, and ever since lives in Hungary, and his father was imprisoned for 17 years, because he had committed a murder. S.C. was condemned to 10 years in prison for very severe murder, arrested in July 2001, and currently in imprisoned in a penitentiary for underage and young persons.

The aunt who took care of him strove to provide everything he needed, being preoccupied to rise and educate S.C. But, in the absence of the parental authority, he started to meet groups of adolescents with deviant behaviour, and at the age of 12, he started to use cheap drugs, made through the drying of a certain adhesive, together with teen-agers that lived in the same area.

When the crime was perpetrated, S.C. was 15 and was pupil in the ninth form at a local high-school in B. M., but his results were poor and he was often playing the truant. In his spare time, he liked to stay in Internet Cafes. He had no previous condemnations.

Data about the murder proper

In 25.06.2001, about 18 o'clock, S.C., together with other two teen-agers from his group of friends (G.A., aged 14 and T.G.A , aged 13), bought a bottle of adhesive from a shop in their city, after which they went on the banks of the river S., where, hidden in the bushes besides the river, they started to inhale the vapours of the adhesive.

T.G.A. went into an isolated place, where he became unconscious, after he had inhaled the vapours of the adhesive.

The other two teen-agers – S.C. and the victim G.A started to quarrel, for they accused one another of having inhaled too much. During the quarrel, , S.C. hit the victim in the chest, and the latter fell to the ground and lost consciousness..

S.C. took off the victim's clothes, then took a broken glass and cut the victim in the anal region, which caused the latter a strong haemorrhage. Then, using the same piece of broken glass, S.C. took off the victim's eyes and threw his body in the river. The coronary doctors demonstrated that the lesions were made while the victim was still alive.

Later on, S.C. told the other adolescent, T.G.A., and to other friends from their group, that G.A. fell into the river and drawn.

During the investigations of the police, S.C. proved to be honest and acknowledged his actions.

During the discussions with the subject, S.C. said that he cannot identify the reasons for his actions, the only explanation being that that he had lost control after inhaling hallucinogenic substances.

He declares that, up to the respective moment, he had no other altercation with the victim, who was one of his best friends ever since childhood. He demonstrates empathy for the victim and believes that he deserves the punishment he had received.

Case 6 - P.S.V.

Data about the social and the familial environment

The underage person comes from a rural environment and a legally-constituted family, being the eldest from the 6 children of the P. family. His parents are uneducated and none of them had any stable job recently, obtaining some money working occasionally in agriculture for other persons. The family lives in a house made up of 2 rooms and an entrance hall, without any foundation, placed directly on the ground, which belonged to a relative. They have no electric current or potable water. The family benefits from social support. The family atmosphere is marked by conflicts, due to the fact that both parents consume alcohol. P.S.V. attended 4 years of schooling and then, due to the material deprivation, he abandoned school. Before committing the murder, he was known as a good and diligent child, and for these reasons many villagers asked him for help in

agricultural works. He helped his family with the money he earned. He had no other delinquent antecedents.

Currently, the subject P.S.V. is aged 17 and will be imprisoned for 9 years because he had committed a murder. He has been arrested in 2004, and now is imprisoned in a penitentiary for underage and young people.

Data about the murder proper

In June 2004, P.S.V. had helped one of his co-villagers with the work in the household, for which he had received a sum of money. Meeting a group of friends, he was convinced by one of them to go into one of the local pubs, where he consumed alcohol. Near midnight, P.S.V. left his friends and headed for home. On his way, he passed by P.A.'s house, a woman aged 71, who lived alone

In an attempt to have a sexual intercourse with the woman, P.A. entered the woman's house through a broken window, which was replaced by a piece of cardboard. Because the victim woke up, he hit her and then raped her

After the sexual intercourse, although the victim was unconscious, thinking that he would be denounced to the police, P.S.V. hit her several times with a hammer, till P.A. died, due to the traumatisms in the skull.

After committing the murder, P.S.V. left the victim's house through the same broken window. At the place of the murder, the victim found the hammer used by the criminal and a lantern belonging to him, as well as traces from his shoes and fingerprints.

The next day, the underage person went to the local police office, where he admitted that he had committed the crime. He tried to motivate his action through his consumption of alcohol, which made him lose control. At the same time, he declares that he did not intend to kill the victim, but acted in that way for fear that he could have been denounced to the police

He believes that he deserves the punishment he has received.

13. Bibliography:

1. Adler F., Mueller G.O.W., Laufer W.S, *Criminology,* Mc Graw-Hill, Inc.,1995.
2. Anuarul Statistic al României, 1998, 2003.
3. Banciu D., *Crimă şi criminalitate*, Curs universitar, Bucureşti, 2004/2005.
4. Boudon R. (coord.), *Tratat de sociologie*, Editura Humanitas Bucureşti, 1998.
5. Branden N., *Cei şase stâlpi a respectului de sine,* Ed. Colosseum, Bucureşti, 1996.
6. Chipea F., *Ordine socială şi comportament deviant,* Editura Cogito, Oradea, 1996.
7. Dragomirescu V., *Psihosociologia comportamentului deviant,* Ed. Ştiinţifică şi Enciclopedică, Bucureşti, 1976.
8. Dobrică P., Lazăr C., *Control social şi sancţiuni penale*, University course, Bucureşti, 2004.

9. Ferreol G., Neculau A., *Violenţa- Aspecte psihosociale,* Ed. Polirom, Iaşi, 2003.
10. Florian Ghe., *Psihologie penitenciară*, Editura Oscar Print, Bucureşti, 2002.
11. Florian Ghe., *Fenomenologie penitenciară* ,Ed. Oscar Print, Bucureşti, 2003.
12. Mitrofan N., Zdrenghea V., Butoi T., *Psihologie judiciară,* Ed. Şansa, Bucureşti, 2000.
13. Ogien A., *Sociologia devianţei*, Editura Polirom, Iaşi, 2002.
14. Pitulescu I., *Criminalitatea juvenilă*, Ed. Naţional, Bucureşti, 2000.
15. Profeanu V., *Programe de educaţie pentru minorii şi tinerii deţinuţi în Penitenciarul de Minori şi Tineri Craiova,* Ed. Spirit Românesc, Craiova, 2002.
16. Rădulescu S.M., Banciu D., *Introducere în sociologia delincvenţei juvenile*, Ed. Medicală, Bucureşti, 1990.
17. Revista Româna de psihiatrie, nr.3-4/2003.
18. Sillamy N., *Dicţionar de psihologie,* Ed. Univers enciclopedic, Bucureşti, 1996.
19. Vlăduţ I., *Evaluarea fenomenului de delincvenţă juvenilă*, Curs universitar, Bucureşti, 2005.
20. Yin R.K., *Studiul de caz – Designul, colectarea şi analiza datelor*, Ed. Polirom , Iaşi, 2005
21. Zamfir C., Vlăsceanu L. (coord.), *Dicţionar de sociologie,* Ed. Babel, Bucureşti, 1998.
22. www.arhiva.informatia.ro (the site of "Agenţia Independenta de Presă Amos News" Romanian)
23. www.gardianul.ro (site-ul ziarului „Gardianul")
24. www.just.ro (the site of the Ministry of Justice) – The Penal Code of Romania from 16.04.1997
25. www.oado.ro (the site of The Organization For the Defence of the Human Rights)
26. www.politiaromana.ro (the official site of the Romanian Police)

THE JURIDICAL CAPACITY OF THE MINOR IN LABOUR LAW AND CRIMINAL LAW

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Abstract:

This paper refers to the juridical capacity of the minor in two branches of law: labour law and criminal law, making a comparison between the legal stipulations regarding the minor in these branches.

According to the Labour Code, the natural person obtains the work capacity when he/she attains the age of 16. By exception, the minor can conclude a work contract as an employee also at the age of 15, with the approval of his/her parents or legal representatives, in order to perform activities which are adequate to his/her physical development, aptitudes and knowledge, if by this his/her health, development and professional preparation are not jeopardized. Hiring a person under the age of 15 is prohibited.

In criminal law, penal liability begins at the age of 16. As an exception, the minor between 14 and 16 can be held liable for penal offence, but only if it is proved that he has committed the deed with discrimination. The minor under the age of 14 is not liable for penal offence.

Key words: juridical capacity, minor, labour law, criminal law.

1. Introduction

The juridical condition of the minor in society is a special one, if we take into account his/her age, his/her specific features, his growing personality, all of these being aspects which determine the particular attention that this category of people benefits by. The necessity to create a social and legal milieu in order to ensure an adequate development of the minor's personality is a topic which remains always current. The people who have not attained yet the age of majority

need an improved legislation which refers to them in order to ensure a better protection of their rights.

In common law, one obtains the full capacity of exercise when one attains the age of 18. Starting with this moment of majority, the person has the aptitude of becoming holder of all the rights and obligations stipulated by the law, of exerting them and of assuming them by concluding juridical acts. Exceptionally, in some branches, the law admits the minors' capacity of becoming subjects in juridical relations before turning 18. We will analyse two of these: the labour law and the criminal law to examine the minor's juridical capacity.

2. The minor – subject in work relations

In the art. 13, the Labour Code establishes the employee's juridical capacity, i.e. the aptitude of the natural person of becoming holder of rights and obligations by concluding an individual work contract. "*The natural person obtains the work capacity when he/she turns 16*" (paragraph 1). Therefore, attaining the age of 16 marks the initial moment of the full juridical capacity in labour law, of the acknowledged possibility that the underage becomes subject in work relations. Starting with the age of 16, the minor can start working by legally signing an individual work contract. This situation is different from what we can find in the common (civil) law, where one obtains the full capacity of exercise only when one attains the age of 18, except the woman who got married before this age[1].

The acknowledgement, in labour law, of the full capacity from the age of 16 is based on the conviction that starting with this age, man has the physical and mental maturity sufficiently shaped to engage himself in a work relation. The physical maturity allows him to perform an activity in exchange of a wage, whereas the mental maturity allows him, owing to a sufficiently developed discrimination, to be on his own from juridical point of view, to conclude alone an individual work contracts, assuming the rights and obligations issued from that contract[2].

It is also at the age of 16 that the minor can become a member of a union, without needing the preliminary approval of his legal representatives (art 3, Law 54/2003 – The Law of the Unions).

We have already mentioned that in labour law, the rule states that one obtains one's juridical capacity when one attains the age of 16. An exception is allowed, though, stipulated by the art. 13, paragraph 2 in Labour Code: *"The natural person may conclude a work contract as an employee also at the age of 15, with the approval of his/her parents or legal representatives, in order to perform activities which are adequate to his/her physical development, aptitudes and knowledge, if by this his/her health, development and professional preparation are not jeopardized."*

Between the age of 15 and 16, the law admits a "limited biological capacity of work"[3]. In this interval, one benefits by a partial capacity of concluding a work contract[1], provided that the following conditions are respected:

[1] Art. 8 din Decretul nr. 31/1954 privitor la persoanele fizice şi persoanele juridice.
[2] Al. Ţiclea, *Tratat de dreptul muncii*, Editura Rosetti, Bucureşti, 2006, p. 323.
[3] Idem.

a) the parents or the legal representatives have given their approval;
b) the activities for which this approval has been given are adequate with the physical development, aptitudes and knowledge of the underage;
c) his/her health, development and professional preparation are not jeopardized.

The parents' approval must be based on a preliminary analysis of the kind of work which will be performed by the minor, of the working conditions and of the possible consequences that work might have on the development of the minor. The parents' approval must not be considered a formal element, but it must constitute a responsible act on their behalf, based on a real concern about the youth's future and about the repercussions that work will have upon his/her physical appearance and personality.

It is necessary that both parents give their approval and that this happens *preliminary* (or at least simultaneously) with the conclusion of the work contract. Also, the approval must be *specific* (to refer to a certain work contract and to the performance of a certain activity) and *precise* (to have a clear, non-ambiguous form). Thus, a general approval, which allows the minor to conclude work contracts, is not valid[2]. The approval will be registered in the finding certificate of the individual work contract and the parents will sign the contract together with the minor[3]. If the parents do not give their approval, the Office of the Public Guardian and Trustee will decide[4].

The absence of the parents' approval makes the work contract absolutely null and void. This null and void fact has a particular character in labour law: it is remediable[5] i.e. it can be covered later and the contract becomes valid if the approval is given after the conclusion of the contract, while it is carried out by the minor.

If the minor's normal physical or mental development is jeopardized, the approval can be withdrawn any time during the contract execution (but only until the minor turns 16, because starting with this moment, the parents' approval is no longer necessary for concluding and executing a work contract). This represents a case of legal canceling of the work contract, according to the art. 56, letter k of the Labour Code.

It must be underlined that the underage concludes the individual work contract *in person*, on his behalf; his/her representation is not allowed, because of the intuitu personae character of the contract.

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[1] Al. Ţiclea (coordonator), *Codul muncii – adnotat şi comentat*, Editura Lumina Lex, Bucureşti, 2004, p. 92.
[2] Raluca Dimitriu, *Particularităţi ale contractului individual de muncă încheiat de către minori*, în Revista română de dreptul muncii, nr. 1/2005, p. 18.
[3] Al. Ţiclea, Andrei Popescu, Constantin Tufan, Marioara Ţichindelean, Ovidiu Ţinca, *Dreptul muncii*, Editura Rosetti, Bucureşti, 2004, p. 339.
[4] Ion Traian Ştefănescu, *Tratat de dreptul muncii*, vol. I, Editura Lumina Lex, Bucureşti, 2003, p. 300.
[5] Idem.

The 3rd paragraph of the 13th article mentions the absolute interdiction of hiring people who have not attained the age of 15: *"Hiring a person under the age of 15 is prohibited".* The Labour Code rephrases a principle stipulated in the Romanian Constitution, in art. 49, paragraph 4: *"The minors under the age of 15 cannot be hired as employees."* The age of 15 marks the bottom limit of the juridical capacity in labour law. This is because of the limited maturity level of the underage and of his/her physical and mental development, which are insufficient to make him able to obtain rights and obligations by concluding an individual work contract.

As we have already shown, in labour law, the minor does not have the capacity to conclude contracts until the age of 15, between 15 and 16 he/she has a limited capacity, and after the age of 16, he/she obtains the full capacity of concluding contracts[1].

A number of special laws regulate some incompatibilities[2] of concluding work contracts; these incompatibilities are based of various reasons, associated either to the individual interests of the person or to the general one. They constitute derogations from the rule concerning the capacity of the natural person to conclude an individual work contract, limitations or restrictions of the juridical capacity.

3. The minor's capacity in criminal law

In criminal law, the beginning of the juridical capacity of the natural person means the moment starting from which he/she can be liable for penal offence, in the case of committing an offence. In this field of law too it was necessary that a minimal age was established, starting from which the minor can be held liable for penal offence if by his/her conduct, he/she harms any of the values protected by the criminal law.

The establishment of the minimal age from which the criminal liability begins was based of scientific research in the social field, which approximated the moment when the minor's discrimination is formed, considering that there can be no criminal liability if there is no discrimination. One of the main conditions for a person to become active subject of the offence is that he/she has discrimination. The doctrine defines the discrimination as "the biopsyhical capacity of the natural person to realize the nature of the action (non/action) he/she is performing and of its consequences, which might be dangerous from social point of view".[3] In another definition, it represents "the person's capacity of realizing the socially dangerous character of the deed and to manifest in conscious manner his/her will, his/her capacity related to the concrete committed deed".[4] The state which is opposed to discrimination (responsibility) is irresponsibility, i.e. the minor's mental incapacity of realizing his/her actions or of controlling them, committing thus a deed

[1] Raluca Dimitriu, *Contractul individual de muncă – prezent şi perspective*, Editura Tribuna economică, Bucureşti, 2005, p. 67.
[2] A se vedea pe larg Al. Ţiclea,*Tratat...*, p. 326-332.
[3] Valentin Mirişan, *Drept penal – partea generală*, Editura Convex, Oradea, 2002, p. 74.
[4] V. Dongoroz apud Gheorghe Nistoreanu, Alexandru Boroi, *Drept penal. Partea generală*, Editura ALL Beck, Bucureşti, 2002, p. 99-101.

stipulated by the criminal law. The absence of discrimination at the underage is not an abnormal situation, but a normal one, owed to the insufficient physical and intellectual development.

The 99th art. of the Criminal Code stipulates: *"(1) The minor under the age of 14 is not liable for penal offence. (2) The minor between 14 and 16 is liable for penal offence, only if it is proved that he has committed the deed with discrimination. (3) The minor who has attained the age of 16 is liable for penal offence."*

The legislator established three presumptions in order to decide the criminal capacity: an absolute legal presumption of irresponsibility (the absence of criminal capacity) for the minors who have not attained the age of 14, a relative presumption of irresponsibility for the minors between 14 and 16 and a relative presumption of responsibility for the minors between 16 and 18[1].

For the minors under 14, a possible proof of the existence of discrimination would not have any value, as the law stipulates in an absolute manner that they have no discrimination and cannot be punished according to the criminal law. The contrary proof is not admitted in any circumstances.

The minors between 14 and 16 are presumed to be liable for penal offence, if it is proved that they acted with discrimination. As it is a fact, an individual attribute, the discrimination must be established in a concrete way, not in a general one. In each case it is necessary to establish if the minor *who committed a deed stipulated by the criminal law* had discrimination *the moment he/she committed it* (emphasis mine). The existence or the non-existence of the minor's discrimination must be estimated in relation to the moment when the deed was committed, not afterwards, because it is possible that the underage had acted without discrimination and that later is was established that he has it. Or, the criminal law refers precisely to the existence of discrimination at the moment when the deed was committed, not at another moment, subsequent, such as the date when the deed was discovered or at the beginning of the criminal trial.

The existence of the discrimination at the moment when the deed was committed is tested by means of a medico-legal psychiatric examination and of a social inquiry[2].

After the age of 16 the minor is liable for penal offence, on the condition that his irresponsibility is not proved, a cause which removes the criminal character of the deed, according to the art. 48 of the Criminal Code.

According to the criminal law and in relation to the existence or non-existence of the discrimination, the minors can be divided into two categories[3]: minors who are not liable for penal offence and minors who are liable for penal offence. The first category, which the art. 50 of the Criminal Code refers to (minority – a cause which removes the criminal character of the deed), includes the

[1] Gh. Nistoreanu, Al. Boroi, *op. cit*., p. 269; V. Mirişan, *op. cit*., p. 75.
[2] Gh. Nistoreanu, Al. Boroi, *op. cit*., p. 188; Matei Basarab, *Drept penal – partea generală*, vol. I, Ediţia a II-a, Editura Lumina Lex, Bucureşti, 1996, p. 155.
[3] V. Mirişan, *op. cit*., p. 179.

minors under 14 and those between 14 and 16, who lack discrimination (its existence was not proved at the moment the deed was committed).

Towards the minor who is liable for penal offence can be taken either an educational measure, either can be applied a punishment, in conformity with art. 100, paragraph 1 of the Criminal Code. The factors which must be taken into account when the penalty is chosen are: the degree of social danger of the committed deed, the physical state, the intellectual and moral development, the underage's conduct, the conditions in which he/she was raised and in which he has lived and other elements able to characterize his/her person. (art. 100, paragraph 1).

The punishment is applied only if it is estimated that an educational measure would not be enough to straighten the minor (art. 100, paragraph 2).

According to the Romanian criminal law, the minority lasts until the age of 18, even if the woman obtained, by marriage, the full capacity of exercise[1].

4. Conclusions

If we draw a comparison between what has been stated above, we can notice that both in labour law and in criminal law, one obtains juridical capacity before attaining the age of 18. On principle, the minor obtains the juridical capacity in labour law when he/she attains the age of 16 and, exceptionally, at the age of 15. Under this age, hiring a minor in a work relation with an individual work contract is prohibited. The Criminal Code contains the same principle that the juridical capacity begins at the age of 16, mentioning at the same time that the criminal liability can begin even before this age, starting with 14, but only if it is proved that the criminal deed was committed with discrimination. The minimal limit, under which there is no criminal liability is, therefore, the age of 14.

Thus, the criminal law allows the criminal liability and the punishment of the minor even before the age at which the labour law allows the conclusion of an individual work contract. In criminal law, the existence of discrimination can be established even before the minor is admitted the right to be employed. If, from the point of view of criminal law, the existence of discrimination can be proved at the minor under 14, and he is considered sufficiently mature to be responsible for his deeds, we opine it would rightful that he/she is allowed to conclude legally a work contract. Besides, The International Work Convention no. 138 from 1973 concerning the minimal age for being employed stipulates in art. 7, 2nd point that the national legislation can authorize people under 15 who have not finished their compulsory education to be hired for easy jobs[2], if some conditions are fulfilled. In other European states, the underage can become subjects in work relations even before they attain the age of 15. In Romania, the only legal possibility for the minors under 14 to perform any activities would be to conclude civil conventions (being represented by their parents) of performing services. After attaining the age of 14, they can conclude these conventions on their own, having the parents' preliminary approval[3].

[1] V. Mirişan, *op. cit.*, p. 203.
[2] Al Ţiclea, *op. cit.*, p. 324.
[3] I. T Ştefănescu, *op. cit.*, p. 303-304.

De lege ferenda, it would be advisable to lower the age at which the minors can conclude individual work contracts, especially as regards the artistic domain.

The employment must have as main goal that the minor acquires a sense of responsibility and a certain maturity and that he gets to appreciate the value of money. A particular concern must be given to the kind of activity, to the place where it is performed, to the work milieu, so that these will not have negative consequences upon the minor's personality and that they do not facilitate in any way the committing of offences. A proper education of the minor and the early inoculation of a socio-human set of values constitute essential factors for the harmonious development of the individual and for the decrease of the juvenile delinquency phenomenon.

COUNSELLING AND RELIGIOUS ATTENDANCE IN ORADEA PENITENTIARY

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Abstract:

In time, the church has demonstrated its active presence in all the segments of our political, social and cultural life, providing help, support, impulse and moral guidance and bringing its contribution, with its characteristic means, to the perpetuation of a stable spiritual and moral climate for the Romanian people.

Counselling is described in the Bible as the action of making those in need aware of their wrong deeds, drawing attention upon their mistakes, warning and presenting them with a viable alternative.

The religious attendance is a means whereby the detainees are helped to find a way out of their sinful life. Besides conversations of a pastoral nature, the chaplain priest should explain the detainees the implication of sins such as: murder, raping, theft, burglary, lying, etc. The sins that made most of them become prisoners, isolated from their families or communities should be counteracted by the Christian values: Belief, Hope and Love, together with their turning towards good deeds, whose value should be properly understood.

Key words: counselling, religious attendance, prisoners

The year 1990 marked the beginning of a period of profound changes in the Romanian society not only in the political field, but also at the social, cultural and spiritual level, marked by a recovery of the sense of normality, based on the principles perceived as good and valuable during the two-millennium history of our people.

In time, the church has demonstrated its active presence in all the segments of our political, social and cultural life, providing help, support, impulse and moral guidance and bringing its contribution, with its characteristic means, to the perpetuation of a stable spiritual and moral climate for the Romanian people.

The exclusion of the religious factor from the social and the political life of the country after World War Two, the elimination of religion as subject matter from the educational curricula, the army, health institutions, social assistance centres, penitentiaries and other institutions of national importance, its isolation from the political, social and cultural life of the country, could not eliminate it, in spite of the repressive means used for that purpose, from the soul of the Romanians, who preserved it as a latent and intimate power that, once unchained, can become again an extraordinary force of positive change in the human soul.

Starting from this fundamental assumption and being interested in the moral and the social recovery of those who, as a consequence of the delinquent acts they have committed, are currently imprisoned, we shall focus on those factors that, in the context of the above mentioned transformations in the Romanian society at large, have contributed to the moral rehabilitation of people completing their sentence in Romanian penitentiaries and to the continuation of the long-lasting tradition of religious attendance in the prisons of our country.

This activity has started with the putting into operation of the order of the General Department of Penitentiaries, with the number 65075/1990, which found its fulfilment with the agreement signed by the Romanian Patriarchy and the Ministry of Justice on 21.09.1993, regulating the presence of the penitentiary priesthood, hired by the Ministry of Justice and the General Department of Penitentiaries, together with the beginning of the action of building, or the arrangement of worship places within the detention place.

This agreement is in conformity with the European amendments regarding the functioning of penitentiaries, which at points 45 and 47 ratifies not only the right of the detainees to practice the elements imposed by their religion or to attend masses, in conformity with the religion they declared to belong to, and be allowed to possess religious books, but also to be able to get assistance from qualified priests, hired by the institutions mentioned above, and benefit form spaces where the pastoral-missionary activity can be conducted efficiently.

A priest in a penitentiary is the provider of religious attendance par excellence. He is not the administrator of a parish, since the detainees can never become a real Christian community.

In penitentiaries, the chaplain priest will receive the confession of prisoners and, depending on he situation, will provide expiation from sin and impose the required penance. However, the main duty is that of supporting the prisoners' hope for liberation, their determination to reform and wish to become part of a healthy society, having liberated from the "weaknesses" that caused their imprisonment.

Isolated from society and their families, men, women, young people or children often experience uneasy states of mind or become hopeless. Others are crippled by feelings of indifference, the absence of the moral sense, a lack of concern for their destiny as human beings, and anxiety in relation to the future, etc. There are situations when the isolation and the loneliness make them experience even more anger in relation to society; for each detainee, the chaplain priest should become a friend, a parent, who encourages them to make peace with God and tries to give them hope for their future life.

Our Saviour, Jesus Christ, while describing the last day of judgement, indicates that one of the conditions for salvation is the following: "I was in prison and you came to me" (Matthew, 25:36). The analysis of this fragment indicates that the ones tat are in prison should be visited and helped by those who live in freedom.

I. The religious counselling in penitentiaries

Counselling is described in the Bible as the action of making those in need aware of their wrong deeds, drawing attention upon their mistakes, warning and presenting them with a viable alternative.

The counsellor (the chaplain priest) and the person who receives assistance (the detainee) should establish a sense of harmony between them, from a pastoral point of view.

The counsellor will strive to create a special atmosphere, where the presence of the Holy Spirit can be experienced by the detainee, who should not forget his or her sense of responsibility for the wrongs that he/she has committed, so that he/she might become aware of the future "Judgement". He/she should understand that each person is responsible for good and wrong done while living in this world. Our deeds represent a measure of our faith. We are free to choose in this world, but we will not be able to receive absolution if we don't take part to the communion with God.

The person who receives assistance

1. Is marked by isolation and the public knowledge of the reasons for his/her imprisonment.
2. Is inclined to avoid accepting the culpability for the delinquent act and prefers to find culprits.
3. Should be approached after an analysis of the data included in the juridical file.
4. Is often unaware of God's message.
5. Should be regarded as potentially recoverable.
6. There is no situation that cannot be solved by the words included in the Holy Bible.

A. The fundamental principles of spiritual counselling

1. Life should have an inherent meaning. Besides the vital daily activities, necessary for the good functioning of this ephemeral existence, Saint Paul indicates that the purpose of our human existence is to search for and eventually find God, while the lack of such awareness can cause depression, anxiety and mal-functions.

2. We shall believe in the possibility to change for the better, trust God and His Word, never give up hope, all these aspect having been illustrated by Jesus Christ. The detainees should be listened to with patience and the good deeds should be appreciated.

3. The meaning of prayer and fasting should be rightly understood, starting from the biblical message.

4. The biblical dynamics of counselling brings about change through accustoming to good discipline.

B. The procedure of counselling and the process of change

1. The language that is being used is very important. What we say or repeat can bring about the acceptance of a certain attitude.

2. The language of emotion and action. The language used by the counselled person is often emotive and tear-exciting, but it should be corrected through the clarification of the biblical message and the necessity of redemption; the detainee should become more confident, starting from his/her trust in the power of God, for elements such as the absence of education during childhood, sexual abuses, raping or drugs leave their marks on the personality of the prisoner, bringing about severe psychical disturbances.

3. The attitude is a thinking pattern that has a strong influence upon behaviour.

4. The sin is the problem. Consequently the spiritual counselling is a complex activity.

5. Making decisions: the two types of lifestyle:

a. Making decisions taking into consideration God's will and Commandments: "Who are you, my Lord", "How can I act in accordance to your will?".

b. Making decisions in relation to the personal will: "What I want!"

The Holy Fathers used to say: "It is not the sinner who should be hated, but the sin that overcame him or her".

The sin dulls the mind and weakens the will, and makes many people do reprovable acts, which trigger their punishment and even imprisonment.

For the reasons mentioned above a special attention should be directed towards wrong-doers, so that they might be re-habilitated and start anew in life.

II. The religious attendance in penitentiaries

The religious attendance is a means whereby the detainees are helped to find a way out of their sinful life. Besides conversations of a pastoral nature, the chaplain priest should explain the detainees the implication of sins such as: murder, raping, theft, burglary, lying, etc. The sins that made most of them become prisoners, isolated from their families or communities should be counteracted by the Christian values: Belief, Hope and Love, together with their turning towards good deeds, whose value should be properly understood.

Prayer, singing and reciting religious poems are other means whereby the chaplain priest can make detainees understand that words, coming from a heart overcome by repentance, represent the easiest and the more sincere way to communicate with Our Holy Father. The prayer in the company of other believers will help the detainee to understand the value of loving other human beings.

The sermons uttered on Sundays or at the time of other religious celebrations, the periods of meditation, the conferences and community prayer represent elements of balance for those that are imprisoned and means whereby

they are helped to experience a closer community with God and their fellow human beings.

The bearings I took on a number of 40 detainees (underage persons, young people, men and women) indicates with clarity the fact that the chaplain priest is the person they trust most, who helps them overcome their periods of crisis characteristic to the period of adaptation to a life in prison and to anticipate their getting out of prison. The chaplain priest is the substitute for their family and friends, being an element of connection between them and the society outside.

In addition with the activity of the department responsible with the detainees' education, competitions, recitals, watching movies, round tables, meetings, learning to sing can help prisoners in their moral and spiritual evolution. Such activities make the detainees existence in prison more diverse and meaningful. The positive thoughts are transmitted to their families as well, whose members become more confident in relation to detainees' behaviour after the period of imprisonment.

Very often the cultural-educative activities interweave and supplement one another, opening new horizons in the process of recovery and re-socialization of he detainees.

The combined efforts of all those who strive to make delinquents aware of the consequences of their wrong deeds help the activity of the chaplain priest.

The sublime character of the latter's activity indicates the priceless treasure each human being carries in his/her soul and the possibility to associate all our actions to the words of God, to the eternal and unchangeable moral values of Love, Kindness, Forgiveness, Compassion, The Beauty of the Soul, Mutual Understanding, since all the virtues are rooted in the love of God and the words of His Holy Scriptures.

CONCLUSIONS

The guilt, the repentance and the paschal re-integration

Using the methodological means mentioned so far and the richness of pastoral supporting elements, he chaplain priest can assume, in his activity, an authentic Christian perspective, where the juridical acceptance of crime is constantly balanced by the evangelical commandment of forgiveness. Human guilt cannot be approached from the perspectives of a secular anthropology, since anthropology itself can be enlightened by the idea of Revelation, illustrated by the example of Jesus Christ.

Consequently, the concept of guilt should be approached and interpreted from the perspective of forgiveness, since human beings can only be revealed in the light of Jesus Christ. The true biblical and patristic anthropology is centred on Jesus Christ and circumscribed to the theme of the "figure" (tselem), that is the dynamic relationship between human beings and God. The Christian ethos, that

implies the attitude towards our fellow human being who was victimised by the forces of evil, cannot leave aside the evangelical kerygma. Without eluding the socio-juridical implications of the phenomenon, we are compelled, as followers of Jesus Christ, to relate constantly to the mission of "Helping the sinners improve" (dikaioun ton asebe / Zromans, 4,5).

The gravity of transgressions of all kinds, as well as the guilt of their author, is clearly revealed by the Gospels of Christ. However, the fiery delinquents often transgress the law without accepting their guilt. By avoiding the acceptance of guilt, they simply send it to the misty levels of the subconscious, wherefrom it will return, periodically troubling the even surface of consciousness, and the latter will become incapable to take into consideration the aetiology of morbid phenomena. From the perspective of the Gospels, the human guilt should be cured through a process that involves repentance, sincere confession of sins and the responsible commitment to improve.

Regarded from the perspective of forgiveness, the guilt appears, especially in the case of inveterate delinquents, to be defined by the following four complementary aspects: the difficulty to repent (the insensibility of the heart), the refusal of forgiveness (the refusal of the gift), the persistence in a state of sin (the persistence in passion) and the desperation subsequent to the commitment of the sin, associated with the absence of trust in the goodness of the All-Forgiving (sin against the Holy Spirit). All these aspects represent a proof concerning the nature of guilt, in its evangelical signification[1].

Human beings are creations endowed with awareness. Thus, they possess not only consciousness, but also the awareness of their own consciousness. The human being is aware of the ideas it puts forth, his or her aims, sufferance and the fact that he or she is mortal. In relation to other human beings, when good deeds are performed, the man or the woman are aware not only of his or her deeds, but also of the position of being a person "that does the right thing", or, when he or she is sinful, of his or her wrong-doing. When the inter-human relationships are defined as amiable, instead of internalising them simply through the concept of friendship, the human beings define themselves as "friendly".

The self-awareness objectifies and "breaks" the unity of the ego, which assumes a number of hypostases centred on a specific role. On the other hand, the human being identifies himself or herself with each ego projected by the consciousness, which brings about a sui-generis co-habitation between good and evil within the inner space of the person. Saint Paul acknowledges this fact when he says: "I see in my limbs a different law, fighting against the law of my mind and making me slave to the law of the sin, which lies in my limbs" (Rom. 7,24). As Paul Ramsey has pointed out, "instead of a number of simple faculties of the self, its real name is legion. For this reason, the self can actually identify simultaneously … with the love for the good and for the evil, at the same time"[2].

[1] Cf. Paul Ramsey, *God's Grace and Man's Guilt*, in *The Journal of Religion*, vol. XXXI, January, 1951, p.5.
[2] Ibidem, p.11

Due to such a multiplication of the self, an integral and authentic repentance is extremely difficult. Very often, we can find ourselves in front of an evident act of forgiveness, paradoxically searching both the sin and the forgiveness. As the great creator of *The Karamazov Brothers* indicates, the human soul is too "broad" - a human being animated by the counter-ideal of Sodom cannot give up the genuine ideal of Madona. This absence of cohesion and extreme contradiction, which has been emphasized form the time of the ancient Greeks, represents a serious obstacle in front of a complete ignorance of sin and the acceptance of a radical metanoia.

Sensing the danger of such an inner splitting, the great pastoral tradition of the Desert Fathers insists upon the unification of thoughts achieved by means of **prayer** and of gathering our thoughts from the confusion created by our passions. The difficulty of **penitence** can be understood only in the context of a conscious and the free separation of human beings from any relationship with God, of their alienation from their own selves and their fellow human beings.

The spiritual unbalancing of human beings, the centrifugal movement generated by sin breaks them apart, bringing them close to the border of non-existence, for, as Filaret of Moscow has pointed out, human beings rely on the word of God as on a bridge of diamond, crossing the abyss of the non-existence, wherefrom they were born. Refusing the support of the creative word of God, asserting their autonomy, human beings fall victim to the sin of pride that hinders their access to repentance and makes them succumb to the lethal burden of non-assumed guilt.

Emphasizing of the negative impact of the non-assumed guilt on the ontology of the face, Saint Gregory of Nysse speaks of a disharmony in the human being "for the words of man are addressed, through their nature, to his fellow human beings, and these can unite them all, or can make them enemies (without being able to set them apart), as its self is reflected, when in harmony with others, in virtues, or in conflict, due to their passions; thus the state of harmony in human beings is reflected in their progress through virtues, as the dissonance is indicated by the state of sin. Thus, in the words of passionate people, there is no musicality: it cannot be defined as harmony or symphony, but as an unpleasant noise, lacking any form of illumination"[1].

The return to the state of harmony, dissipated by the correlative guilt of the sin, cannot be achieved in the absence of a re-established communion, through the sacramental forgiveness, that places the sinner in the position of the spendthrift son.

It is worth mentioning that before returning to his father and confessing his sins, the spendthrift son goes through a state of inner crisis, that can be described through the following succession of events: he returned to himself, he remembered, he felt a deep-seated grief, made a decision, returned to his father, confessed and

[1] Apud Pr. Prof. Dr. Dumitru Staniloae, *Spiritualitate ;i comuniune in liturghia ortodoxa*, p.429.

eventually received the absolution. The elder brother is unable to grasp the deep signification of the paternal pedagogy.

According to the Church Fathers, the sin in not simply a transgression of a divine commandment: it represents the abandoning of the communion with the one who loved us in an unconditioned way, going as far as accepting the Sacrifice on Golgota, that is not circumscribed to an isolated historical moment (Jesus will agonise as long as the world will exist, said Pascal), illustrates the terrible drama of the Son of God. The breaking of the communion with Christ causes the deterioration of inter-human relationships, as the re-integration and the receptivity towards the divine grace of forgiveness (which is not natural, but, on the contrary, the most "supernatural" attitude), opens the way to the collaboration in the Holy Spirit and the re-integration in the community.

The path from guilt to redemption and ecclesial re-integration involves repentance, through the baptism of the tears or through what Robert Frost called "one-man revolution". This revolution, the only legitimate one, is not one that aims at the changing of the whole world and all the human beings (as it happened in the case of the Marxist-Leninist utopia), but the elimination of the evil hidden inside the self. Kallistos Ware defines this type of repentance as a positive revolution aimed to reveal the face of God in each one of us. He writes: "It (repentance) is not hopelessness, but uneasy waiting; it does not mean feeling that you are at crossroads, but to find the way out. It is not equivalent with the hating of your own self, but with the affirmation of the authentic self, created to reflect the face of God. To repent is not to look down on your own weaknesses, but upwards, to the love of God; not to look behind, in a self-reproaching manner, but forward, full of trust. It means to see not what you could not achieve, but what you can become through God's grace"[1].

The sin isolates and emphasizes the isolation of man, while repentance redeems him to community. The more isolated a person is, the stronger the power on sin over him or her for the darkness of non-communication poisons the whole being. On the other hand, the repentance helps the penitent perceive the light of the divine grace and dissipates the darkness. The sacramental confession closes the doors of self-justification (suggested by the devil) and opens the gates of Heavens through the recovery of the communion with God, the ecclesial re-integration and the openness of the heart towards the gifts of the Holy Spirit.

The penitence, as a prelude to re-integration, marks the beginning of a life of grace, which is equivalent with a return of our will towards God and the refusal of the insinuating and false discourse, characteristic of "this world" (Berdiaev). Helping human beings to overcome their weaknesses, the Holy Spirit can turn the human being with a repentant heart and a mind in the state of metanoia into a healthy part of the ecclesial community. In a liturgical context, "the awareness of the completeness of the Holy Spirit, given to each member of the Church, in relation to the spiritual elevation of each of them, dissipates the darkness of death,

[1] Kallistos Ware, *The Orthodox Experience of Repentance*, Sobornost, 2nd volume, no.1/1980, p.70

the fear of judgement, the depths of the Hell, while the attention is exclusively turned towards God, who comes in all His Glory. This joy of Resurrection and of the eternal life turns the Easter night into " a feast of belief", where each takes part, even if in a little way and only for a few moments, to the fulfilment of "the eight day", that shall never end"[1].

In the absence of the paschal light, the world appears as mutilated by sin. In this world, the divine paternity is replaced by the juridical authority, and the ecclesial event (which implies the communion) or the social relationships (whose motive force is the collision) are replaced by communities. In this context, the transgression of habits and juridical norms, aimed at the creation of a minimum level of social cohesion, represents at the same time an offence for the authorities, an ignorance of righteousness and a repression of love. Each phenomenon that can be described as a form of criminality is the expression of a certain choice, of a morbid preference that places the criminal in the situation of self-exclusion from the community. The reclusion is merely the institutionalised form of the agreement through which the repressive element tacitly offers to the individual that has opted for the emergence from the social group of those who accept the prescriptions of the law. The legal correctitude, as different from the moral rightness, often implies the use of force and of repressive methods in order to ensure a minimum level of order, in the absence of which the society becomes an entropy, being threatened by a "thermic death".

The coercive measures create a minimum of order through the isolation of delinquents from the rest of the society and the recovery of the juridical order, when the ethic discourse of a persuasive nature has not been successful. At the same time, they satisfy the feeling of justice, inherent to the human nature, discovering their double finality: the psychological and the sociological one.

The coercion imposed by law is a way of fighting against delinquent acts, without implying the metaphysical ambition of eliminating the evil. The elusion of rightness, its ignorance, is a way of complicity with the help of the evil. As professor Ilie Moldovan has pointed out, the imperative of righteousness is accompanied by a thirst of spiritual nature, deeply seated in our rationality. Any form of absent-mindedness is a form of guilt, any form of undeserved compassion is a form of cruelty, directed against others[2].

In this respect, Augustine indicates that there is a form of cruelty that ends with forgiveness, as well as a form of compassion that punishes ("sicut enim est aliquando, misericordia puniens, ita et crudelitas parcens"[3]).

In relation to the legal righteousness, which is aimed to have effects at the social level, the moral righteousness is targeted at the spiritual life of human beings. Regarded from this perspective, the delinquent, besides being a transgressor of a juridical code, represents a failure from the point of view of the human

[1] Vladimir Lossky, *Teologia mistica a Bisericii de Rasarit*, Anastasia, p.277.
[2] Pr. Prof. Ilie Moldovan, *Invatatura ortodoxa despre dreptate si rolul ei in realizarea ordinei morale*, Ortodoxia, 2/1989, p.80.
[3] Apud ibidem

existence, which should be a constant preoccupation for people conducting a pastoral mission.

The mission of the chaplain priest is not only a work of consolation. The presence of the church in penitentiaries is not simply formal. It is not intended to add some colour to a monochrome space, but to contribute to the real transformation of the detainees, from detained objects into ecclesial subjects. The success of such an anthropo-genetic attempt is conferred by the combination of righteousness and love in the communion of the moral order. In the absence of righteousness, love is blind and becomes tolerance, or even compliance. In the absence of love, the righteousness is just a mechanical "chain drive", and the human being looses its uniqueness and implicitly the possibility to have access to the eternal life.

The church accepts "the un-assumed sacrifice" of detention, being confident in its positive potential. The awareness resulted from the experience of living in a prison makes the human being confront all its possibilities and encourages confession. The lucid refection can help the detainee perceive the two existing alternatives: a life in the love of God or nothingness, life or death.

The perception of life as a gift of the Resurrection relieves the penitent of the angst associated with the life in a penitentiary, offering the chance of salvation. Taking into consideration both the laws and the holy Grace, the penitent embarks in a way towards the real freedom. The experience of imposed solitude causes the sensation of offered communion. In their grief, they discover the image of Christ. Such a discovery, and its concretisation into a real and radical metanoia for the detainee ("to return and be alive"), represent the support and the ideal of the entire activity of the chaplain priest.

THE CRIMINAL PROCEDURE IN THE CASES OF UNDER AGE – THE PREMISE OF FIGHTING CRIMINAL OFFENCES AMONG UNDER AGE.

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Abstract:

The special criminal procedure in the cases of under age is presented in summary, highlighting the role of special normative dispositions for the protection of under age who have committed misdemeanours. The author asks himself whether this derogatory procedure can contribute to reduce the rate of criminal offence among under age. It is noticeable that the system of procedure norms only creates a legal basis that is flexible enough to fight against criminal offence among under age, expressing only the possibility.

Key words: special criminal procedure, criminal offence, under age

1.Introductory observations

The protection of the under age, the evolution of criminal offence among the under age has represented a continuous preoccupation for the governments who have succeeded after 1989, at a declarative level as well as from an institutional or operative point of view. Romania has ratified the Convention concerning children's rights[1] and has adapted its internal legislation concerning children's rights according to the principles devoted in this convention. The internal legislation has been subject to numerous and important modifications in what concerns the special protection that is granted to children as well as the adoption system.

The entire Romanian legislation has in view the fact that the family, as a basic element of society and as natural environment destined to the growth and well being of all its members, and especially of the children, must benefit from the protection and assistance that it needs in order to fully assume the responsibilities within society and that every child must grow and develop in a family environment, with happiness, love and comprehension.

Adapting the internal legislation has represented a significant success recognized internationally; bringing the law into operation had brought a visible improvement in the administrative systems for the protection of children's rights and in assuring the efficient functionality of the legal instrument for protection and control.

[1] The Convention concerning children's rights has been ratified by Law nr. 18/2001 and published in the Official Gazette nr. 314/13.06.2001

However, the statistics and the daily events point out situations in which children live in difficult conditions and need a special care; also significant is the information pointing out the increase of criminal offence among the under age and the involvement of children in extremely serious actions of crime.

Such a reality, which may not be extremely alarming, needs special attention and care forcing us to ask ourselves whether the legal procedural instruments destined to contribute in a direct or indirect way to repressing the criminal offences and to represent a general or special prevention are adapted to the exigencies imposed by the UNO concerning children's rights and whether they can assure the adequate legal basis against this social calamity: under age criminal offence.

2.The procedure in the cases that invlove the under age

The current criminal law foresees a special procedure[1] in the cases involving under age criminals: dispositions that are applicable to the prosecution and charge as well as special dispositions concerning preventive measurements related to applying educational measurement o the under age; Furthermore, special courts have been created for the cases involving the under age and the family, as well as specialized judge panels or sections besides court houses or courts of appeal[2].

Thus, the procedural protection that is granted to under age criminals is manifested in two ways: on one hand a special jurisdiction for the under age is established, formed of specialized prosecutors who have the capacity to better understand the under age and their behaviour, the possibilities to correct themselves, and on the other hand, procedural dispositions are adopted in order to better defend their legitimate rights during the prosecution and the trial.

The specialized procedure in the case of the under age is applicable to all under age persons who are responsible from the legal point of view, namely the under age between 14 and 18 years old[3].

Accordingly, the procedure protects the under age, considering that he cannot fight for his interests and defend himself. However, the procedural protection extends after the under age turns 18, when at the date of notification of the court, the defendant was under age, even though meanwhile he has turned 18[4]. The special procedure in the cases involving under age defendants is compulsory[5], In the sense

[1] Art.480-493 criminal law

[2] Art. 36 of Law nr.304/2004 concerning judicial organization, republished in the O.G. . Nr 827/2005 of September 15th 2005; such specialized courts shall be established by order of the ministry of justice with the according agreement of the superior council of magistrates; until the establishment of the court the causes hall be judged by judicial panels consisting in specialized judges. Besides the courts for the under age and the family, specialized prosecution offices shall function as well (art. 89-90 of law nr. 304/2004).

[3] The under age who have committed criminal offences but have not turned 14 and therefore are not legally responsible are applied the dispositions of the art. 80-84 of law nr, 272/2004; the under age is liable to special protection measurements after an administrative procedure controlled by the judge.

[4] Art. 483 of the criminal law

[5] By the guiding decision nr. 6/1973 the former Supreme Court has statued the the decisions that have been pronounced with a severe infirngement of the special norms foreseen for the prosecution and trial of the under age defendants are rendered void.

that an under age cannot be prosecuted and judged according to the common procedure due to the fact that he would not be granted the special protection granted by the special procedure.

A.The prosecution of under age defendants.

There are two kinds of special dispositions: some are applicable only to the under age that have not turned 16, for whom operates the relative legal presumtion of lack of judgement, and other that are applicable to all the under age[1].

a.regulations that are particular to under age between 14 and 18 years old:

-at any hearing or confrontation the tutorial authority, by its delegate and/or the parents are subpoenaed or, if necessary, the legal representative; the subpeona is optional trying to create an intimmacy that is necessary in order for the under age not to feel isolated and to have faith during the hearing; when presenting the prosecution material, it is compulsory that these persons be subpeonaed; the unattendance of these persons does not prevent the procedure from taking its course;

-the under age of this age cannot be restrained for a period longer than 10 hours, except if he has committed severe crime (the restraining can be extended with other 10 hours); the custody cannot exceed 15 days. This measurement is limited to a reasonable term and not longer than 60 days, and each extension of time cannot exceed 15 days[2].

b.regulations that apply to all the under age thet are legally responsible

-for the under age tha is chearged, granting the legal assistance from a atorney is compulsory during the entire prosecution, in the condiions foreseen by the law.

- furthermore it is compulsory to draw up evaluation reports by the probation services[3] necessary in order to establish the sanctions that shall be applied to the under age.

-the under age with an age comprised between 16 and 18 can be arrested during the prosecution for a period of 20 days at most which can be periodically extended with 20 days but without surpassing a reasonable term (but no longer than 90 days)[4] .

B. The trial procedure of the under age defendants

The crimes committed by the under age or those committed against the under age are judged by specialized judge pannels and departments for the under age and the family and, as they are created, by specialized courts of law. The

[1] If the under age is 18 at the date when the prosecution organs are noticed or if during the prosecution the special procedure ceases to apply, with the exception of the evaluation report, necessary to establish the special legal basis.

[2] Exceptionally when the punishment foreseen by the law for the committed crime is life detention or 20 years in jail or more, the imprisonment before trial can be extended during the prosecution up to 180 days.

[3] By the G.O. nr 92/2000 services for the social integration of the under age have been created in which there are councelors for social integration and specialists in social assistance, psychology, sociology and pedagogy

[4] Exceptionally when the punishment foreseen by the law is life detention or imprisonment for 10 years or more, the arrest of the under age defendant can be extended to 180 days;

unobservance of the dispositions concerning the constitution of the court draws the complete voidness of the procedural acts carryed out differently. In this type of causes the presence of the prosecutor is compulsory.

As well as in the case of the prosecution, during the trial the tutorial authority, the parents or, according to the case, thelegal representatives of the under age are subpeonaed. The unattendance of the persons that are compulsory subpeonaed does not prevent the cause from being trialed.

The trial must take place in the presence of the under age except the case in which he eludes the trials. The presence of the under age must be assured at each term and during all the stages of the trial in which measurements that influence the solutionning of the cause are taken[1]. The legal assistance is compulsory during the procedures that take place in front of the judge.

The session in which an under age is trialed is not public. However, the persons who are subpeonaed for the trial are admitted in the court.

In the hypothesys in which the case invloves various defendants who are under are and in age, the cause is severed, separating the trial of the under age from that of the defendants in age. If the severing is not possible, the case is subject to trial on the whole, observing the special procedural regualtions: the the court is formed of judges from under age legal panels and for the under age defendants all the regulations that concern them are observed.

The trial of the cases in appeal takes place according to the special procedure applying the derogatory dispositions for the protection of the under age[2]. These dispositions apply in the case in which at the date of the notification of the court of appeal the defendant was under age[3].

3.Conclusions

The procedural system exposed in a synthetic way constitutes itself in a modern legal basis, flexible and adaptable enough to the social realities as to offer legal solutions and equally a pragmetic perspective in order to fight against under age criminality. The internal and international legislatiion the regulates children's rights can be observed and applyed even considering the unfavourable hypothesis in which the under age, forced by the circumstances, must go through the legal process of criminal procedures. Legal perspectives for the recuperation of the under age defendants from the degrading environment of crime are opened.

The specialization of the prosecutors, the establishement of special jurisdictions offer the possibility for the person who brings into force the criminal law to better understand the causes who have led to commiting the crime and to better penetrate the personality of the under age defendant in order to find the

[1] Dec.1039/2000, Supreme Court of Justice, stated in Law nr. 6/2001, p.154

[2] In the penal dec. 235/2000, Supreme Court of Justice the decision of the appeal court has been annuled in a cause involving under age defendants, trialed in absence wihtout prooving the they eluded criminal prosecution, cited by Grigore Teodoru, Treaty of criminal procedural law, Hamangiu publisher, Bucharest, 2007, p.961.

[3] Adrian Stefan Tulbure, Romanian criminal procedure, Constant publisher, Sibiu, 2005, p.447

educational or sanctioning measurement meant to recuperate the under age sooner or later.

The obligativity of going throught the specific procedures imposed by the norms of public order whose unobservance leads to the voidness of the procedural actions (subpeona of the tutorial authority, legal assistance from an attorney that is compulspory, drawing up the evalutation reports by the probation services, the mandatory participation of the prosecutor as a representative of the society in these cases, the mandatory participation of the under age defendant at the trial, the separation of the trial from other causes) grants a sufficient legal basis in order for the under age's interests to be protected during the prosecution and the trial itself. These procedural obligations protect the under age as well as the third parties in the omplex process of establishing the responsibilities for committing the crime. The legal system that regulates the beginning of the legal procedure and conducting the penal action as well as the one that encourages the means of attack have the role of avoiding the excess and abuse against under age irrespective of their source: authorities, parents, third parties and even the prosecutors.

However it must be mentionned that the system of procedural norms only creates the legal basis adaptable enough in order to fight against under age criminality. Only by itself, without initiative and coordinated actions from the prosecutors, the government authorities for social and economical order, of the parents as well as of the society, this system is expressed only at the level of possibility, without visible efects, as far as we are concerned.

The decrease of the rate of criminality among the under age can only be achieved by means of a complex activity of reforming the social and economical life where the initiatives of the government and of the civil society have a predominant role and where there space enough for action. This can be achieved in time and it will be fundamented only on a durable economical success.

However, the procedural legal basis exists from this moment. It offers the guarantee the the rights of the under age defendants are respected and that their legitimate rights are protected. At the same time it offers the possibility to those who have committed criminal offences to come back to a normal life in society.

ABOUT SANCTIONS AND OTHER LEGAL MEASURES FEASIBLE TO THE JUVENILE OFFENDER

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Abstract:
This article presents the legal sanctions that can be taken as a consequence of establishing the penal accountability of the juvenile offender, but also the legal measures for the juvenile that cannot be hold responsible for its offending actions due to his age. The author intends to underline certain aspects concerning the implementation of the legal provisions in this matter and also to make few comments on the subject of preventing juvenile delinquency.

Key words: legal measures, juvenile delinquency, rights

According to the international conventions that engage Romania and also to the internal legislative body, certain child's fundamental rights are stipulated and protected, such as: the right to an identity (which includes the right to a name, the right to be registered immediately after birth, the right to citizenship, the right to know his parents and to be properly looked after, raised and educated by them) from the moment of birth, the right to be protected and assisted in the full exercise of his rights, the right to an education, the right to an specialised and adapted care, the right to be consulted and to respect his opinion (depending on the age of the minor and his level of intelectual development), the right to proceed with maximum quickness in the judicial causes involving a child and his rights, the right to a specific protection against abuse and exploitation of any kind.

The promotion and full exercise of all these rights in the social life has great impact in the harmonious development of child's personality, in learning all the communication's tools, but also in learning to respect and to obey the legal, social and moral provisions and rules of the community.

Legaly stated within the law 272/2004, among other fundamental principles in the domain of the promotion and protection of the child's rights, the main rule of prevalent interest of the child designates the absolute priority that should be given to the child's rights in all aspects of social life: *"this law, aswell as any legal provisions adopted in the matter of protection and promotion of the child's rights, and any legal act emanated in this matter subdues primarily to the rule of prevalent interest of the child. The rule of prevalent interest of the child is imposed even in relation with the rights and obligations given by the law to the parents, or to any other person to which the child was given in legal custody. The rule of prevalent interest of the child will prevail in all legal actions and decisions taken by the public authorities and private empowered organizations concerning*

children, and also in the cases resolved in the court of law." (article 2 of the law mentioned above).

In literal terms, educating means the action to educate and its outcome, and meanwhile education means systematic influence purposely exercised on the development of the intelective, moral and physic atributes of the children and, generally speaking, the youth. Directly connecting with such concepts, re-education appears as being the sum of measures undertaken in order to redress, to correct the misseducation of oneself.

The concept of education is still doable if the juvenile shows tendencies towards deviance or even pre-delinquency, but only until he/she expresses delinquent behavior of any type. At the stage of turning delinquent, the juvenile's behavior can only be emended through a re-educational process.

The scientists that studied juvenile's deviance always agreed on the fact that, in terms of fighting this phenomenon prevention proves much more effective than repression. The reason for such quasi-unanimity among scientists can be found in the fact that the minor, as underdeveloped, physicaly and mentally, as he is, often responds well to a bare admonition, or to specific actions taken to avoid his misfiting and eventually his alienation, through the way of deviance, down to acting delinquently. The succes of juvenile delinquency's prevention process can be achieved through social, technical or situational prevention.

Social prevention is a sum of measures taken on the minor's family, his living conditions, the state of his learning and training process, his health condition and even on his spare time, the immediate goal of this type of prevention being the improvement in the quality of his life and, by all means, aiming to achieve the ultimate goal of isolating the minor of the bad influence of different factors which can bring about deviance in his behaviour.

Situational and technical prevention aims to eliminate the concrete opportunities to commit offences, opportunities given to the juvenile by the general environment in which he/she evolves, by taken specific measures such as installing alarm or anti-theft systems, increasing patrol and guard supervision in schools or other public areas where juveniles are frequently spoted (including mounting supervision video cameras).

Repression, on the other hand, can be contra-productive in fighting juvenile deviance. The american sociologist Leslie Wilkins initiates, in his study called Social Deviance, the concept of amplified deviance as a delinquency generator. The author shows how a minor act of deviance may develop much greater echo because of the labelling and an unproper social reaction, including the resort to repression.

The concept of social reaction means the sum of ways and types through which society responds to deviance.

The evolution of social reaction as a concept followed the evolution of different schools and theories related to deviance's etiology and the tactics to fight it.

Edwin Sutherland and Donald Cressy cathegorise different forms of social reaction against deviance based on where it is situated on a scale that starts with the sheer repressive reaction up to the therapeutical type of social reaction.

Although the repressive social reaction dominated the scientific theories in this matter up until the late XIX-th century, with the important exception of the utilitarians like Beccaria and Bentham (they saw in penalty an instrument of social utility), once the positivist school appeared, the idea of a more preventive social reaction, that through social measures aims to annihilate deviance's causes, prevailed.

After the year 1970 a new scientific current of social reaction, which focuses its study on social reaction's mechanisms towards deviance, imposed itself.

Even now the scientific controversy continues still, on one side being those that sustain the necessity of a distinct judicial system for the juveniles socialy specialised that can guarantee solidity and eficacity in the protection of their fundamental rights, and on the other side those who plead that, on the contrary, juvenile justice is futile, punishing a minor is definitely contra-productive and the social control over juvenile's deviance should be exclusively in the hands of the social care system, developed within the national administrative body.

The juvenile interacts with the penal law both as the author of an offence, and as the victim of the offending act. The conception which sustains the entire regulation on the relation between the penal law and the juvenile is that, no matter the side which the minor takes in an offending action, he's always a victim. Such conception is based on the very psycho-physical state that characterises the juvenile, particulary his insufficient intelectual and volitional development.

For the juvenile perpetrators the legal sanctions are much more clement than those appliable to the adult offenders, not to mention the specific penal sanctions for juveniles, called educational measures, sanctions that have the purpose to redress the deviant behavior of the minor, without any resort to infliction that otherwise characterises criminal sanctions.

The enforcement of the penal sanction on a minor doesn't necessarily mean retribution for the offending act, or punishing the minor, but protecting him/her in the future from the malefic social influences (through the application of the measure of supervised freedom or that of internment in a correctional unit) and eliminating certain bad tendencies in his/her behavior which, without such measures being taken, would create the potential criminal nature of the adult personality later on.

Criminal law system gets the leading role in the protection of human rights, by the provision of the various offences that endanger in one way or the other the social values, among such values being, first and foremost, the fundamental child's rights. *A fortiori*, when a minor is in danger, whether he/she suffers bad consequences from an offence, perpetrated by himself or by another, or is about to suffer such consequences, the regulation of the criminal law is the first claimed to enforce the legal protection that the minor requires.

Whether he commits or suffers an offending action, directly or not, the minor is a victim. Along with the entire legal body, the criminal law acknowledges the specific features of the infancy state of gradual psycho-physical development and distinctively regulates this special cathegory of subjects, appart from the adult victim or the adult perpetrator cathegories.

Even though the existence of the minor's discernment at the time of perpetration is proved, and he has reached the age limit to be hold criminaly accountable, this type of responsibility will be established differently, the Romanian Penal Code stating, in the second paragraph of the article 100, the rule of the application of specific sanctions for the juvenile offenders, namely educational measures, which are much mild in terms of infliction and retribution, but having the distinct feature of protection and correction of the minor to a behavior of conformity with the laws.

The Penal Code stipulates a number of four educational measures as sanctions feasible, only alternatively, for the juvenile offender, as follows: admonition, supervised freedom, internment in a correctional unit, internment in a medical-educational unit. This measures are stipulated in a gradual order, from the mildest to the most severe, permiting a proper adjustment and aiming to proportionate the legal response with the gravity and the specific of the offending act, aswell as with the special features of the minor offender's culpability.

In other words, when a minor offence is commited, and the juvenile is a first offender, also having a diminished discernment, it is recommended the appliance of the mildest educational measure stipulated in the Penal Code: admonition.

If the juvenile relapses, or he has a severe form of culpability (as the direct intention), in relation with the act commited, or he perpetrated a serious offence, than the most suitable measure to be applied would be the internment in a correctional unit, which allows the minor to achieve a scholar education and, further more, adequate professional skills, in the context of his isolation from the external factors that had badly influenced his behaviour, creating the premise for the re-education of the adult to be.

The measure of internment in a medical-educational unit has about the same content as the measure of internment in a correctional unit, with the significant difference that the application of this sanction imposes itself in situations when the subject has been certified with certain psycho-physical malfunctions, abnormal at his biological age, which impose specialised medical care.

Supervised freedom represents the medium level among the educational measures, in terms of its severeness, but, unfortunately, too often proved itself to be less effective in court's practice, due to its inadequate or unadjusted application.

Strictly legislative speaking, remains in suspension the becoming effective of the New Penal Code (that is law 301/2004, published in the Official Monitor of Romania, Part I, no. 575 of June 29, 2004). This new main penal regulation states, among the educational measures already stipulated in the penal code in force, the measure of strictly supervised freedom (art. 118 of the refered new code), which

ensures an important role in the upcoming penal regulation to the probation services, specialised in implementing programmes for the social reintegration of minor offenders. Once this New Penal Code will be in force, a new law for the execution of the penal sanctions will become effective too, that is law 299/2004. In the article 40 of this law is stipulated a special counselling, supervision and assistance programme, aimed to individualise the execution of the penal sanction for the juvenile inmate, taking under consideration "*each other's age and personality"*, programme developed by the social and educational department of the prison "*with the participation of the counsellors for the social reintegration and supervision, of the volunteers, of the associations and foundations, aswell as other representatives of the society* ". Further more, the article 69 states that any usage of a minor inmate for labor over the night, or in places that are potentially dangerous or malign to the minor's health and integrity is strictly prohibited.

The law 281/2003 for the modification and completion of the Code for the Penal Procedure inserted within the chapter I of title IV of the General Part of the Code, that is refering to preventive measures that can be applied during the criminal trial, a new section, entitled "Special provisions for minors" (modified later on through government's urgent ordinance no.109/2003) which introduces significant derogations from the main regulation in this matter. So, according to these provisions, minors detained or preventivly arrested are entitled to "*their own rights and a special regime of preventive detention, taken in consideration the specificity of their age, so that […] it doesn't prejudice their physical, psychological or moral state*."

The New Penal Code, as the entirely new legislative penal body also contains, as absolute premiere in our legal system, provisions concerning:

- the legal possibility of "renunciation to the penalty" appliable to the juvenile offender, if he/she commited a minor offence, for the first time, the established prejudice has been completely repaid and the court considers, judging by the prooves presented in the case, that the minor offender will redress his behavior without the actual application of the penalty;

- the suspension of the application of the penalty for a try-on period for the first offender juvenile that is able to repay the prejudice caused by the offending act, in order to give him the chance to emend his behavior himself, without the actual execution of the penalty;

- the legal consecration of a new educational measure (as an alternative penal sanction to penalty) which consists in giving custody and careful guidance of the minor offender to an institution specialised in the supervision and asssesment of the minors (other than the already existing probation service that we refered to in the above) that will include the minor in special programmes of social and psychological assistance, educational and vocational counselling, with the purpose to reintegrate the juvenile in the society. The probation in the U.S. or the U.K., where was first developed, as a legal possibility for convicted offenders to execute the penalty within the community, under supervision, is representing the main

instrument for the criminal correction, succesfully applied to both adult and minor convict;

- the extention of the legal possibilities for the application of the community service sanction, given the fact that it has beneficial impact, educatively speaking, on the developing personality of the adult to be;

- legal institution of the "judge for the juvenile", in other words a magistrate specialised in cases involving juveniles. There are countries in which these judges are organised in special juvenile courts. In some legal systems we even find public attorney or policeman exclusively specialised in dealing with the juveniles (such specializations existed in the former romanian judiciary system, before december '89, but, without any reasonable explanation, after the fall of the comunist regime in our country, those specializations were revoked);

- the implementation of certain public institutions to cover the entire spectre of issues of the juvenile being in difficulty. In this matter, we can mention, *exempli gratia*, that in advanced legal systems there are special compartments within the Justice Department dealing exclusively with all the juvenile-related cases (for instance in Italy).

As for the measure of specialised supervision, this measure, according to the article 67 of law 272/2004, may be applied on the minor who commited an offending act and cannot be hold criminally responsible , and it consists in maintaining the minor in his own family care, with the requirement of respecting the following obligations: to attend school courses, to use special day-care services, to follow medical prescriptions, counselling or psychotherapy, not to attend certain places, not to have connections with certain individuals (article 81 of the refered law).

With the adoption of the law 275/2006 concerning the execution of penal sanctions and of the measures taken by the judiciary authorities during the penal trial, which, abrogating the former legal framework in this matter, that was law 23/1969, includes new unprecedented provisions for the romanian executional penal system, concerning counselling and assistance for the convicts, especially the ones who are minors (this activities being given to the probation services – art. 8-10 and 28 of the law in question), another significant step has been taken in the effort to reach the desideratum of a modern, european legislative body in our country.

Bibliography:

1. Pavel Abraham, "Convenţii europene în materie penală", Ed. Naţional, 2001;
2. Pavel Abraham, Valeriu Fârţală, "Justiţie penală - norme juridice", Ed. Naţional, 2001;
3. Pavel Abraham, Adriana Crăciun, Lucica Rizon, "Legislaţie în asistenţa socială", vol. I, II - culegere de acte normative interne şi internaţionale în domeniu, Ed. Naţional, 2003;

4. Pavel Abraham, D. Nicolăescu, “Justiţia terapeutică”, Ed. Concordia, Arad, 2006;
5. M. Voinea, “Sociologia dreptului”, Ed. Actami, Bucureşti, 1994;
6. Banciu Dan, Rădulescu Sorin – Evoluţii ale delincvenţei juvenile în România. Cercetare şi prevenire socială, ed. Lumina Lex, Bucureşti, 2002;
7. Ion Mihăilescu, “Sociologie generală”, Ed. Polirom, Iaşi, 2003;
8. Giddens, Anthony, “Sociologie”, Ed. ALL, Bucureşti, 2000;
9. Marshall, Gordon şi colectivul, “Dicţionar de sociologie”, Ed. Univers Enciclopedic. Bucureşti, 2003;
10. Ion P. Filipescu, Andrei Filipescu, ”Adopţia. Protecţia şi promovarea drepturilor copilului”, Ed. Univers Juridic, 2005;
11. Ortansa Brezeanu, “Minorul şi legea penală”, Ed. All Beck, Bucureşti, 1998;
12. Crişu Anastasiu, “Tratamentul infractorului minor în dreptul penal şi dreptul procesual penal român. Aspecte de drept comparat”, Ed. Tipo-Atkis, 2000;
13. Coca-Cozma Maria şi colectivul, “Justiţia pentru minori”, Ed. Univers Juridic, Bucureşti, 2003;
14. Gheorghe Nistoreanu, Alexandru Boroi, “Drept penal. Partea Generală- conform Noului cod penal”, Ed. All Beck, 2004;
15. Romanian and foreign legislation in the matter.

CERTAIN ISSUES REGARDING THE REQUIREMENTS FOR THE JUVENILE'S CRIMINAL LIABILITY

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Abstract:

The following article debates some of the legal and social issues concerning penal accountability of the juvenile, in order to identify the most reliable solutions to work with this social cathegory.

Key words: penal law, legislative solutions, offending act.

Juveniles form a social cathegory with its own principles, having multiple and important characteristics compared with other age stages studied in the social sciences' field. The juvenile condition is also distinctly regarded in the law domain, being the object of study in many scientific handbooks and monographs. Nonetheless, in the judiciary practice often appear cases involving, more or less, directly or not, minors.

The juveniles form such a distinct cathegory in the legal analysis mainly for the psycho-phisical state that characterises this age segment, consisting in the insufficient development of their cognitive, emotional and intelectual structures. The lack of life experience and self control, as well as the imaturity and the unawareness of the importance of social values determine an psychological incapacity, both at the intelectual level (that is of conscience) and at the volitional level.

Being so, criminal liability of the minor cannot be applied, according to the Romanian penal law, unless, at the moment of the offending act, he had already reached the age of fourteen years, this legal solution being based on the absolute presumption that, up until this age, the juvenile doesn't reach a proper psychological, intelectual and volitional growth which would allow him/her to fully understand both the nature and the significance of his/her deeds or to control and engage his/her energies in the act. The refered presumption becomes relative when it comes to minors between fourteen and sixteen years of age, judicial authorities being obliged by the law to establish the presence of discernrment during the offending act, based on a psychiatric examination, and if the minor has reached sixteen years of age, the presumption's content changes in such way that the presence of discernment is presumed, rather than its absence (*juris tantum* presumption).

The legislative solution of establishing the age barrier for engaging penal responsibility of the juvenile at fourteen years was endeed adopted in the vast majority of european's legal systems. The main exceptions to this rule are France,

where the juvenile will be hold criminaly accountable whether he reached the age of thirteen years at the time of the perpetration – also according to the french law, the minor faces educational measures, *nota bene*, without engaging his penal liability -, and, further more, the U.K., where the legal system allows the engagement of the minor's penal responsibility at the age of just eight years (a solution of penal policy which, seen through the advanced level of development in the probation system from the true "inventors" of it, doesn't seem that exaggerated).

Should be mentioned here that in Romania were quite a few voices that sustained that the minimum age for a juvenile to be criminaly accountable must be lowered. To be more specific, during the elaboration of the pre-project for the New Penal Code it was proposed the age limit of twelve years. The main reasons for such legal initiative would be:

- conclusions of many social and psychological studies revealing that, these days, an ordinary child goes through the learning process much more intensive and accelerated comparing to what was happening a few decades ago, this change being caused by the constant multiplication and improvement of the sources of information, aswell as by the continuously accelerating scientific and technical progress, so that the average level of discernment reached by a fourteen years old child at the time when the present Romanian Penal Code was adopted (*recte* the year of 1969) now characterises an eleven years old child;

- the proliferation of juvenile delinquency to minors aged below fourteen years, a fact which imposes an immediate response from the society itself.

We believe, among many specialists in this matter, that this legal solution is still unappropriate to be adopted by our penal law for the time being, not to mention the insufficient implementation of our reformed legislative body. It worth to be mentioned here, *exempli gratia*, the insufficiency and precarity of the correctional and detention centres for juveniles in Romania, or the fact that the Romanian probation system (renamed at first, according to the law 211/2004, as *Service for Victims' Protection and Social Reintegration of the Offenders*, than *Probation Service*, according to the provision of law 123/2006) started to develop, at the national scale, only within the last three years, not to mention that the most relevant institution of the national public administration in the field, namely National Authority for the Protection of the Child's Rights, became fully effective just two years ago.

An essential requirement for the exoneration of criminal responsibility of the minor is that the minor didn't reach the age of fourteen years at the moment of his/her offending action. The specialists faced the problem of establishing penal responsibility of the minor in the following particular situation: the activity which may constitute the physical element of the offence prolongs itself, in time, after the moment when the perpetrator reaches the age limit of fourteen years. It's the case of the continuous offence, as type of single offence by nature, and also of the resumed offence and the habitual offence, as types of the legal unity of offence. The conclusion embraced by the most of scientists consists in dissociating the

criminal activity that has occured before its author turned fourteen years old, from the one that took place after this age limit, only the last part of the activity being penaly relevant. The main reason for this interpretation is found in the prevalence of the absolute legal presumption of the minor's lack of discernment until the age of fourteen years, so that any action of criminal nature done by the minor before this age limit cannot be legaly considered as an offending action, because the law forbiddens implicitly such consideration. I believe that such legal interpretation is wrong, on several reasons:

1. it disregards the objective criterion of *the actual moment of the offending act*, expressly and imperatively stated by the penal law, according to which the continuous, resumed and habitual offences are considered, through a legal abstraction, to be commited only when the criminal activity reaches its moment of final conclusion. So, the law obliges its interpreter, in this matter, to consider the entire criminal activity as being, *in abstracto*, instantaneous, no matter its duration in time, nor the moment in time when it began or reached the point of penal relevance, and so on;

2. it ignores the *"unity of penal illicit"* rule for legal interpretation, rule appliable to all types of the unity of the offence, including the continuous, resumed and habitual types. In other words, since the law expressly and limitative stated the types of the unity of the offence, the interpreter cannot extend or restrict its sense – *lex poenalis est strictissimae interpretationis*;

3. it doesn't follow the *a pari* logical argument for interpretation.Such is the case with the hypothesis in which a minor offender concludes his continuous, resumed or habitual offending action after he had reached the age of eighteen years, the unanimous interpretation, adopted in court's practice, being that of establishing the penal liability of the offender exclusively as an adult, considering his entire criminal activity as a single offence. That is how, in an identical situation, the penal law receives an opposite official interpretation, but *ubi eadem ratio est, ibi idem solutio esse debet;*

4. doesn't apply the subjective criterion, that is essential, in legal practice, for the process of identification of the cases of continuous and resumed types of unity of the offence. The unity of both the action or non-action that naturally prolongs in time, forming the physical element of the continuous offence, but also the sum of actions or non-actions which forms the physical element of the resumed offence, are reflecting, in the objective reality, one single form of psychological attitude, that is prior to the moment of taking criminal action (the *unity of criminal resolution* requirement). This criticised legal interpretation "creates" a false second criminal resolution in the minor's mind, taken in the very day of reaching the age limit legally required for the engagement of the penal responsibility, so that all the acts commited from this moment on wouldn't be to any penal relevance. It appears to me as correct the interpretation in the sense of exonerating the minor of the penal responsibility for his entire activity, based upon the argument of the non-existence of the pre-determined form of culpability, so that the presumtion *juris et de jure* for the lack of discernment is perfectly suitable here.

To conclude, I consider that the current penal regulation in the matter taken in the view here is insufficiently fundamented, lawfully speaking, disregarding basic principles of child's psychology, which gives way to false and inadequate interpretations. So being, even admiting that the juvenile should be penaly responsible under certain terms and only for rather serious offences by nature or gravity, receiving a milder penal treatement by comparison with the adult perpetrator, I believe that a legal reform is due, and for this to happen I suggest:

- the elimination, from the penal law, of all references to the age limit requirements for the minor;

- a regulation that obliges, *ope legis*, the legal authority to establish the penal liability of the minor exclusively based on the conclusions of a psychiatric medical examination in order to reveal the level of discernment that the minor had at the time of his offending action.

Bibliography:

1. Pavel Abraham, Valeriu Fârţală, "Justiţie penală - norme juridice", Ed. Naţional, 2001;
2. Pavel Abraham, V. Nicolăescu, B. Iaşnic, "Introducere în probaţiune", Edit. Naţional, Bucharest, 2001;
3. Maria Voinea, "Sociologia dreptului", Ed. Actami, Bucureşti, 1994;
4. Vintilă Dongoroz, O. Kahane, I. Oancea, I. Fodor, N. Iliescu, C. Bulai, R. M. Stănoiu, V. Roşca, "Explicaţii teoretice ale Codului Penal Român", Ed. Academiei, Bucureşti, 1971;
5. Constantin Mitrache, Cristian Mitrache, "Drept penal român. Partea Generală", Ed. Univers Juridic, 2003;
6. George Antoniu şi colectiv, "Noul Cod penal comentat", vol.I, Ed. C.H. Beck, Bucureşti, 2006;
7. Ortansa Brezeanu, "Minorul şi legea penală", Ed. All Beck, Bucureşti, 1998;
8. Crişu Anastasiu, "Tratamentul infractorului minor în dreptul penal şi dreptul procesual penal român. Aspecte de drept comparat", Ed. Tipo-Atkis, 2000;
9. Garapon Antoine, Salas Denis, "La justice des mineurs. Evolution d'un modele", editions Bruylant, 1995;
10. Rennuci Jean-Francois, Courtin Christine, "Le droit penal des mineurs", IV-eme edition, PUF, Paris, 2001;
11. Romanian and foreign legislation in the matter.

LEGISLATIVE AND ORGANIZATIONAL ASPECTS OF THE COMMODITY EXPERTISE ACTIVITY IN ROMANIA

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Abstract:

Ordinance No. 2 regarding the Organization of the Activity of the Technical Judicial and Extrajudicial Expertise" of Romania's Government was published in Monitorul Oficial no. 26 and came into force on January 25, 2000.

Due to the fact that the commodity expertise is assimilated to the technical one, this normative act will also govern the whole activity of organizing and executing commodity expertises

Key words: expertise, commodity, activity, technical

„The technical expertise made by experts or by specialists on the request of the bodies of penal investigation, of thelaw-courts or of other bodies with jurisdictional attributions, with a view toclearing up some facts or circumstances of the case constitutes ***a technical judicial expertise****"*

The technical extrajudicial expertise as being *"the technical expertise made on the request of the natural or legal persons with regard to situations which do not have a direct connection to the judicial activity".*

Within the Ministry of Justice, the ***Central Department for Technical Judicial Expertises*** has been set up in order to coordinate and run, administratively and methodologically, and also to control the expertise activity, while within Law-Courts there are also ***Local Departments for Technical and Accounting Judicial Expertises***.

Yet, this Ordinance does not state the conditions of appointing the experts and executing the expertises and because of this, its stipulations are completed, in the case of judicial expertises, by the provisions of the Penal Code, the Code of Criminal Procedure and the Code of Civil Procedure in this respect.

The ***Local Departments for Technical and Accounting Judicial Expertises*** have the following attributions:

 they keep record of the technical and accounting judicial experts on the basis of the lists published in Monitorul Oficial of Romania,part IV, and of the information received from the Central Department for Technical Judicial Expertises;

 they recommend to the bodies of penal investigation, to the law-courts or to other bodies with jurisdictional attributions experts or specialists who can make judicial expertises;

 they check on the judicial expertises ordered being made in time and inform the Central Department about the delays caused by the technical and accounting judicial experts;
 they ensure the receipt of the experts' reports and the list of expenses incurred for the expertises;
 they check and approve of the lists of expenses and the experts' reports and hand them in to the bodies which have ordered the expertise;
 they pay the fees owed to the technical and accounting judicial experts and specialists;
 they grant support to the Central Department of the Technical Judicial Expertises from the Ministry of Justice in organizing the exam for becoming a technical judicial experts and in selecting the specialists;
 they periodically draw up and send the Central Department of Technical Judicial Expertises statistical situations regarding the dynamics of making judicial expertises.

The ***Central Department for Technical Judicial Expertises*** has the following attributions:
 it coordinates, guides and controls the activity of technical judicial experts from an administrative point of view;
 it draws up and publishes in Monitorul Oficial of Romania the nominal list of technical judicial experts, with the identification data, per specialities, districts and the city of Bucharest, according
to their place of residence, as well as the modifications which have occurred;
 it draws up and informs the Local Departments about the nominal lists including the experts and specialists who can make the technical judicial expertises;
 it organizes the exam for granting the capacity of a technical judicial expert and the testing of specialists;
 it makes and gives the licence of a technical judicial expert;
 it studies the practice of making technical judicial expertises in order to generalize the most efficient methods of dealing with them;
 it organizes the activity of improving the training of technical judicial experts and of specialists;
 it gives methodological guidance and takes steps for improving the quality of expertises;
 it exerts the stipulated attributions regarding the pinpointing and penalizing of the errors committed by the technical judicial experts.

As it is known, technical expertises can be judicial or extrajudicial, so that the experts who make them can be called technical judicial and extrajudicial experts.

An expert *is the highly qualified natural person who has highly specialized knowledge in a certain field, capable of understanding and solving the most difficult and complete problems in his field, on the basis of his studies, training and experience.*

The judicial expert *is an expert in a certain field of specialization– technical, scientific, artistic etc. – who is appointed by a law-court to a certain case, the solving of which requires specialized knowledge.*

The expert can only be a natural person, even if the request is addressed to a specialized institution, respectively the Central Department for Technical Judicial Expertises.

The capacity of a judicial expert is acquired on the basis of an exam and of the following conditions:

 he is a Romanian citizen and knows the Romanian language;
 he has full capacity of exertion;
 he has a higher education degree in the specialty for which he signs up for the expert exam (the proof being his graduation diploma);
 he has worked for at least five years in the speciality in which he obtained his degree;
 he is medically apt to fulfill the activity of an expert;
 he does not have criminal antecedents and enjoys a good social and professional reputation;
 he has successfully passed the exam organized for this purpose.

The persons who meet the above conditions are included in a nominal list,per specialities and districts, according to their place of residence, with I.D. data,drawn up by the Central Department for Technical Judicial Expertises, which is published annually in Monitorul Oficial of Romania, part IV.

The quality of an expert is acquired by university professors and senior lecturers, by members of the Academy and by doctors in technical sciences,without the need of passing an exam as regards their speciality.

In the cases when, for a certain specialization, there are no technical judicial experts, the expertises can also be made by ***specialists*** who do not have the quality of experts, if they meet the demands required of experts, except for the last one (passing the exam). These specialists can be called by the law-courts to the Board Room or to a public hearing to express their points of view regarding their specialized problems in the litigation to be solved, the parties also having the right to ask questions. All these specialists, who are also included on the special lists,which are periodically transmitted to the Local Departments, will be tested in connection with their knowledge regarding:

 the normative acts in the respective field;
 the stipulations in the Civil and Penal Codes regarding the expertise;
 other norms which govern the technical judicial expertise;
 the rights and obligations of experts.

The technical judicial experts on the lists can only make expertises in the specialities for which they have been attested. It is compulsory to make expertises on the request of the law-court, it can only be turned down on serious grounds.

According to the law, the activity of a technical expertise can be performed by technical experts individually or by commercial companies which have the execution of expertises as an object of activity. At the same time, technical experts

can also join professional associations. At this moment, the technical experts are joined together in the ***Body of Technical Experts of Romania*** – **CET-R** and also in the ***General Society of Technical Experts – SAGET-SA. The capacity of a technical extrajudicial*** expert is acquired:

 also on the basis of an exam which checks on:

- the specialized training;
- knowledge of the norms in the field of specialization;

 and also in accordance with the provisions of Ordinance no.2/January 2000 regarding the organization of the activity of judicial and extrajudicial expertises.

Ministries and other institutions, each in its own field of specialization and in accordance with their own regulations of organization, organize this exam.

The conditions required of the judicial experts are also valid for extrajudicial experts, *the difference being that the minimum period of at least five years in the specialized field can be increased by the ministries' own regulations.*

On the request of natural or legal persons, *the technical judicial expert can also make extrajudicial expertises, while the technical extrajudicial expert can only make technical extrajudicial expertises, each in their own field of specialization.*

In the case of extrajudicial expertises, a service contract is concluded between the technical expert and the person requesting the expertise, both parties sign this contract.

In ports, there are *expert-captains* who give notifications of the damages which have occurred during the sea or river transport, these notifications being expressed by means of ***"damage expertises"("survey expertises")***.

If there exists official experts in a certain speciality, it is only possible to appoint another person, as an expert, in special circumstances.

The experts, whatever their speciality, must act on the basis of *the principle of independence* which is fundamental and which implies their carrying on *a fully impartial and intellectually honest activity*, with the exclusion of any material obligation or advantage from either party.

Technical judicial experts can request to be wiped off the experts' lists by an application addressed to the Central Department for Technical Judicial Expertises from the Ministry of Justice.

The technical judicial experts can also be wiped off the lists by the decision of the Central Department in case of demise, in the case when the experts have become medically unable to perform this activity, as well as in the case when they have received a definitive sentence for an intentional offence liable to damage the profession's prestige.

The capacity of an expert implies certain rights and obligations.

The ***main rights of the technical judicial experts*** are:

 to consult the materials existing in the file of the case in order to make the expertise;

 to request clarifications regarding certain facts or circumstances of the case;

 to receive from the parties a series of necessary explanations, with the approval of and under the conditions established by the court1;

 to receive an advance for traveling expenses or a provisional fee after handing in the expert's report. The fee for the expertise,established by the Court, cannot be decreased by the judges;
 to request the Court an increase of the fee, giving grounds for this request in accordance with the complexity of the expertise, with the work load and with the professional or scientific rank of the respective expert or specialist;
 to request and to receive damages in case they are asked to appear in Court for further clarifications;
 to request reimbursement of transport and accommodation expenses, as well as a daily allowance in the case when the expert has to leave his place of residence and go to some other place to make the expertise;
 to be given time off from their original places of work to be able to make the expertise;
 for the period of time in which the expert makes the expertise,during which he does not perform work at his original place of work, he will maintain all the rights conferred to him by his
capacity of an employee, except for his salary at his original place of work.

The ***main obligations of the technical judicial experts*** are:

 to personally perform the expertise, with maximum conscientiousness, without entrusting other persons with it;
 to make the expertise and to hand in the expert's report in due time;
 to make an appearance on the request of the body which appointed him in order to:
- offer further clarifications;
- answer to various objections to the expertise;
- make a supplement of the expertise;
- complete by or partially remake the expertise.
 to keep the professional secret;
1 Code of Penal Procedure;
 to inform the body which appointed him about other data or facts identified during the investigations.

Making an expertise without observing the legal provisions or not making it brings about the disciplinary, administrative, civil or penal responsibility of the judicial or extrajudicial technical experts.

The expert's responsibility is called upon in the following situations:

 when the expert doesn't make an appearance at the initial call of the judicial body;
 when there is an unjustified refusal to make the expertise;
 when not turning up to give further clarifications or to complete the expertise;
 when not handing in the expert's report in due time;
 when making inadequate expertises.

The experts found guilty of transgressions in performing their activity are penalized by the Central Department in the following way:

 they have *to pay a judicial fine* and, on the request of the interested party, they have to pay damages for the inconveniences caused by the postponing of the time of hearing because of:
- unjustified refusal to make the expertise;
- not handing in the expert's report in due time;
- not turning up to offer supplementary clarifications about the expertise made.
 written warning for the following transgressions:
- not informing about the case of challenge ;
- entrusting another person with the expertise.
 suspension of the rights of making technical judicial expertises for a period of three months to one year for:
- repeating the transgressions for which he has been penalized with written warning.
 the withdrawal of the capacity of a technical judicial expert for:
- repeating trespasses after the temporary suspension and for other very serious transgressions
 the applying of the penalties stipulated by the Penal or Civil Code for bribery.

The fact is worth mentioning that, while the expertise represents a special kind of evidence, the expert is an auxiliary of the Court, without being considered a witness.

Sometimes, in specialized texts, one may come across the idea according to which the expert is a witness and the judge is an expert, his conclusions having a scientific value. Thus, in Anglo-Saxon Law (Great Britain and the USA), the expert is considered to be a scientific witness, while the expertise is looked upon as a witness' testimony.

Also, there are certain opinions according to which the expert may be assimilated to the judge. In this case, this expert is considered to be a scientistjudge while the expertise has the value of a scientific piece of work, of a verdict.

The criticism, which this idea raised, refers to the following aspects:
 the judge solves the whole case, while the expert deals only with isolated data of the respective case;
 the expert is responsible for his activity only professionally, in connection with his specialization while the judge bears the moral and juridical responsibility.

Even if the judge may have specialized knowledge in the respective field,the expertise is absolutely necessary because the expert's report made by specialists confers a greater guarantee and has a higher scientific value, being elaborated on the basis of the latest scientific discoveries. Also, the expert's report can be analysed in advance by the parties, who may possibly request a supplementary expertise, may raise objections about it, may even request a counter-expertise,while the appreciations of the judge can only become known at the end of the trial,in the moment when the decision is pronounced, and these appreciations can no longer be discussed by the parties.

In the law system of other countries, including Romania, there is no identity between witnesses and experts, as the elements of resemblance and differences between these two categories are taken into consideration.

Elements of resemblance between witnesses and experts

1) Both the witness and the expert have the capacity of third parties in the trial activity, having the role of helping the Court;
2) Both the experts and the witnesses who have written materials connected to the respective expertise or to the deposition can read them in Court;
3) If listening to the witness or to the expert is no longer possible, the Court can decide on the reading of the depositions, both that of the witness and that of the expert;
4) The stipulations of the Code of Civil Procedure regarding the summoning of the witness to appear and the penalizing of the witnesses who are absent are equally applicable to the experts;
5) There are common law-suit rules referring to persons who cannot make an appearance in Court in their capacity of witness and experts;
6) The obligations of being a witness and that of an expert are citizenly obligations;
7) Both the deposition of the witness and the expertise are included in the category of evidence;
8) The power of both types of evidence - the expertise and the witness'deposition- is not absolute, but relative as the principle of the deep-seated conviction of the Court is at work.

Differences between witnesses and experts

1) The information given by witnesses is independent from any judicial activity. It is due to hazard and the witness speaks about what he has seen and heard and what is important for the case while the information given by the expert in a law-suit appears on the request of
the Court;
2) The witness gives an account of the facts, as he has perceived them through his sense organs. He can also draw a number of personal conclusions or associative representations less complex than those of the expert, while the expert carries on a complex activity in order to meet the objectives of the expertise and he expresses specialized conclusions;
3) The experts have rights which the witnesses do not have: they look into the file of the case, they may ask the Court and the parties for clarifications, they may attend the debates, they may consult with other specialists within the complex expertises;
4) The witness has a passive position in the trial while the expert has an active role. We should stress the fact that, if the expert knows some factual circumstances of the case, he may not be an expert, he has to be a witness, *the witness capacity prevailing2.*

In Romania, the capacity of an expert can be attributed, in principle, to any person who has specialized knowledge in the field required by the expertise, with

the observance of some conditions (subchapter 2.2), with the exception of the persons incapable of performing these attributions.

These exceptions are:

 incapacity;

 incompatibility.

Incapacity can be absolute or relative. Broadly speaking, a person in the situation of absolute incapacity is a person unable to carry out an expertise and, stricto senso, the expertise is invalid. According to the Code of Civil Procedure, one may not appoint as experts (absolute incapacity):

 minors and convicts under judicial disability;

 defaulters;

 persons sentenced for:

- murder;
- forgery;
- theft;
- fraud;
- misuse of trust;
- false testimony;
- misuse of power;
- illicit speculation;
- economic sabotage;
- giving or taking bribes;
- misappropriation of funds;
- misuse of influence;

2 Code of Penal Procedure;

- slander etc.

Relative incapacity refers to the cases when the expert is unable to make the expertise in question in a certain period of time: illness, going abroad etc.

Incompatibility represents the situation in which, though he has the capacity of an expert, a specialist cannot fulfill this function because of his personal position in the law-suit or because of his functional capacity (judge, prosecutor,defender or witness)3. Because of their position in the trial:

 the defendant;

 the plaintiff;

 any other interested person may not be experts.

Challenge (the replacement of experts) takes place only on serious grounds, stipulated by the law, the same as in the case of judges, being generated by the existence of some situations that create an alleged lack of objectivity of the expert.

Art. 202 in the Code of Civil Procedure allows the parties to assert their agreement to the person of the expert and if the parties do not agree, the expert will be appointed by the Court by drawing lots, in a public meeting, from the list made up by the Local Department4.

The challenge of the expert has to be done within five days from the appointing of the expert (if the reason existed at that date) or within five days from

the arising of the reason of replacement. The challenge is ruled in a public meeting to which the parties and the expert have been summoned.

The main reasons of challenge may be:

 when the expert, the husband (wife), the ascendants or descendants have an interest in the judgement of the case or when he is a spouse, a relative or an in-law up to the 4-th degree (included) of one of the parties;

 when the spouse, living and unestranged of the expert is a relative or an in-law up to the 4-th degree (included) of one of the parties or if, when deceased or estranged, there are children left;

 if the expert, the spouse or relatives up to the 4-th degree (included) have a similar case to the one under judgement or if they have a suit in the Court where one of the parties is being judged;

3 Code of Penal Procedure;

4 Updated Code of Civil Procedure, ALL BECK Publishing House, Bucharest 2003;

 if there was a penal cause judged between the same persons and one of the parties in the last five years before the challenge;

 if he is a guardian or a curator of one of the parties;

 if he has expressed his opinion regarding the case being judged;

 if he has received gifts or promises of gifts or other advantages from one of the parties;

 if there is enmity between the expert, the spouse or one of his relatives up to the 4-th degree (included) on the one hand and one of the parties, his spouse or relatives up to the 3-rd degree (included)on the other hand.

The challenge can be made both orally and in writing, before the beginning of any debate.

If the reasons of challenge arise after the beginning of the debates, the knowing party will have to propose the revocation as soon as they become aware of them; the revocation of the expert is decided by the respective Court.

When the expert has been appointed on the proposal of the parties, *the reasons of challenge may only be invoked if they arise after the appointment of the expert,* otherwise it is considered that the parties knew the situation of the expert and had no objections.

If the Court has proposed the expert, *the parties may invoke reasons of challenge based on facts which occurred both previous and subsequent to his appointment.*

The expert who was challenged may state that he abstains.

If the request of revocation was made in bad faith, the Court may sentence the claimant to paying a fine and paying damages to the injured party.

Should the challenge be admitted and mentioned in the *executory conclusion*, it is not subject to any kind of attack, the expert withdraws and is replaced.

2.6 The Organization of the Experts' Activity

After the making of an expertise is decided upon, the Court establishes:

 the object of the expertise;
 the questions which the expert has to answer;
 the time when the expertise has to be handed in;
 the fee the expert is owed;
 it appoints one or three experts, officially or on request of the parties (the experts are appointed by the Court only if the parties do not reach an agreement on the subject).

The document in which the expert is appointed as well as his fee is called *"conclusion of the hearing".*

Each of the parties has the right to request an expert they recommend to participate in the expertise.

If the expert does not make an appearance, the Court may order him to be replaced. The expert who, without serious grounds, refuses to make an expertise will be penalized with a fine and obliged to pay damages to the injured party.

Should the expertise be made by another instance by delegation (procedure named *"rogatory commission"*), appointing the experts and deciding on the fees can be done by this instance and the resulting expertise will be handed in to the Court that judges the case.

Generally, the activity of an expert begins after he has taken the oath.

In the case of simple expertises, when the expert is able to clear up the problem on the spot, the Court clerk records his opinion in minutes, in the form of a statement. The judge, the expert and the Court clerk sign the minutes. Such expertises are also called ***oral expertises***.

However, in most cases, the expert needs documentation, both bibliographic and on the premises, investigations at the respective place, laboratory tests, checking of documents, reconstructions etc.; in this case, the result of his activity becomes ***an expert's report***.

For all of these, the Court grants the expert a certain period of time, as well as procedure possibilities.

The expert is obliged to hand in his report five days before the hearing.

Bibliography:

1. Viorel Petrescu,Roxana Sarbu,Nora Tomosoiu- *Export-import Commodity Expertise*, Editura Economica, Bucuresti,2006 ;
2. Mircea Costin, Sergiu Deleanu-*Drept comercial international parteaI* - Editura Lumina Lex,Bucuresti,1994;
3. Mircea Costin, Sergiu Deleanu-*Drept comercial international parteaII* - Editura Lumina Lex,Bucuresti,1995;
4. I.L. Georgescu-*Drept comercial roman* –Editura Lumina Lex, Bucuresti,1994.

DIFFICULTIES IN FRAMING ARTICLES NO. 113 AND 114 CRIMINAL CODE (MEASURES OF MEDICAL SAFETY) OF THE MENTALLY DISORDERS AND CHRONICALLY ALCOHOL ADDICTED PARTIENTS

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Abstract:

Based on more than 2000 forensic psychiatric examinations made in the last 10 years, the authors gradually present the risks and difficulties of the proposal of administering the measures of medical safety prevailed by articles no. 113 and 114 Criminal Code. If in article no. 114 Criminal Code, the methodology of administration is clearer, in the way that it refers only to the patients lacking judgment because of their psychiatric condition, in article no. 113 Criminal Code, things are far more complicated. Here, mentally disordered persons who also consume alcohol, is often wrong diagnosed, action that has repercussions in the law field, due to the fact that, in a wrong way, the lack of judgment may be taken in consideration.

Key words*:* measures of medical safety, , mentally disordered persons, patient.

The measures of medical safety prevailed by the Criminal Code are most of all stipulated in articles no. 113 and 114. Article no. 113 stipulates for the duty of the psychiatric treatment and presents the following particularities:

- The treatment must be done under severe watch, periodically, in a mental institution belonging to the Ministry of Health, most frequently in the Laboratory of Mental Health. Here, the patient receives medication treatment in accordance with the opinion of a doctor (a daily, weekly or monthly treatment, etc) and all of these are supervised and signed in a register. Due to this fact, the patient can be easily tracked whether he or she is following the precise treatment or not.
- Article no. 113, which represents the obligation to a medical treatment, can be also used on persons (patients) that are imprisoned. In this circumstance, the treatment can be applied in a penitentiary hospital or in the nursery of the imprisonment's place.
- The application of the safety measure stipulated by article no. 113 can be done on mentally disordered patients lacking judgement.

The measure of medical safety stipulated by article no. 114 refers to the duty of hospitalization in a psychiatric institution with a special profile. The particularities of these special procedures are, as follows:

- The procedure is applied only if the patient has a severe psychiatric disease.
- The procedure refers to the specific situation when the patient lacks judgement at the time that the felony was made.
- The measures of medical safety – represented by article no. 114 – lasts until the complete recovery of the patient or until a considerable improvement can be noticed.

From the juridical point of view, the following are to be noticed:

- If the patient do not correspond with the stipulations in article no. 113, the law sentence can decide the application of article no. 114, if and only if was established, based on a forensic psychiatric examination, the fact that the patient did not have, nor still has the ability to judge for himself.
- It is possible to return to the stipulations in article no. 113 after the application of article no. 114. The action is possible only after a new forensic psychiatric examination is made and a new law sentence is given.

One of the 5 psychiatric institutions in the country dealing with mentally disordered patients hospitalized under article no. 114 is in Stei, a city from the area of Bihor. The law compels for a periodical examination of these patients by the doctors. More than that, if the patient, doctor in charge of the patient other relatives ascertain a considerable improvement of the patient's health, or if the psychiatric signs are gone, a new forensic psychiatric examination can be made. If everything turns well, the measures of medical safety can be changed, substituted for another or even suspended.

Starting from the theoretical considerations mentioned before and based on more than 300 forensic examinations made annually in the Psychiatric Institution from Stei, we are able to present the difficulties and errors faced when applying the measures of medical safety. These are, as follows:

- When a patient is hospitalized in the Psychiatric Institution from Stei, his medical record arrives together with him. This medical official report contains the forensic psychiatric examination, based on which the patient was included in the stipulations of article no. 114. The forensic psychiatric examination mentions the diagnosis of the mental disorder the patient suffers from. Sometimes, the diagnosis doesn't correspond with the symptomatology of the patient or the diagnosis doesn't justify the proposal of application of article no. 114. In this situation, the doctors in charge of the patient and the new forensic and psychiatric committee have the ungrateful duty to formulate a new and correct diagnosis and to suggest another measure of medical safety. This situation might and can "transfer the patient from the hospital directly to the penitentiary".

- The symptomatology of the psychopath is often wrong diagnosed because, starting from their capacity to simulate and dissimulate, the case is diagnosed as a psychosis and the conclusion is the appliance of article no. 114. Anyway, a psychopath's place is in the penitentiary, and not in a hospital. This situation puts in danger the entire crew of doctors working in a psychiatric institution because of the patient's behavior, he is impossible to manage, and he is unable to be kept in an institution of that kind. The psychosis has no treatment and cannot be cured.
- Very often, the psychiatric symptomatologies, which brought the patient into a psychiatric institution and oblige the stipulations of article no. 114, rely on alcohol consumption. Chronic ethylism at persons with mental sickness or psychoses of any kind makes the gravity of their behavior enormous; the psychic symptomatology is very impressive, of a great intensity. But, once stopped the alcohol consumption, everything vanishes with the following consequence: in the hospital, there is a patient without a symptomatology that can justify a diagnosis that led to the application of article no. 114. The Psychiatric Institution for Mental Disorders in Stei guarantee, due to the strict security, the certainty that those patients cannot bring in nor consume any alcohol. Because of this reason, numerous patients ask for their release from the hospital after a shorter or a longer period of time. Basically they are not in need of a medical treatment anymore, but, as we already said, the release from a mental institution can only be authorized by a law sentence that would replace article no. 114 with article no. 113.
- As we all know, the severe psychiatric disorder (first of all the psychoses and then the epilepsy and the Central Nervous System disorders of any kind) have no treatment and their evolution develops from bad to worse. From this point of view, article no. 114 is limited and doesn't picture the reality. It stipulates that the period of the application is until the entire recovery of the patient. In reality, we consider the disappearance of the psychotic symptomatology a consequence of the patient's response to the medical treatment. This is the situation of the mental disorder persons (a schizophrenic), which lack judgement in the acute moment of their disease, and then regain the power of self-judgement for months or even years. Basically, the patient doesn't how any symptomatology, but still has to follow the specific medical treatment. This is the ideal situation in which we can replace article no. 114 with article no. 113.
- Far more difficult is the replacement of article no. 114 with article no. 113 regarding mental debilities. No matter what a non compos mentis person treatment is, one cannot expect an improvement of his intellectual performance. But if the patient has a strong social support (parents, family, collectivity per general) and, most of all, doesn't consume any alcohol, a non compos mentis patient can easily integrate back into the community. His release from the mental institution and the replacement of the safety medical measure is justified.
- One of the most difficult situations we deal with are the patients whom evolution goes from bad to worse and then end up going mad. In this situation, the replacement of the safety medical measure is out of question, but still,

they cannot remain in the Psychiatric Institution from Stei for the rest of their lives. These kinds of patients belong to the Severe Mental Disordered Person Institution from Nucet, for example. Unfortunately, the actual legislation do not authorize the transfer of the patients subscribing article no. 114 to another clinical institution than one of the 5 psychiatric hospitals with special profile from the country, where special security measures are applied.

In conclusion, framing one of the safety medical measures prevailed by article no. 113 or no. 114 is an act of great medical responsibility. It cannot be fully sustained without a disciplinary activity. This means complaisance from the law court and help from the social services.

THE CORRELATION BETWEEN ALCOHOL CONSUMPTION AND THE CAR ACCIDENT. FORENSIC ASPECTS

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Abstract:

Forensic medicine has the privilege to pursue not only the medical consequences of a car accident – the victims' traumas – but alcohol blood level of the drivers, passengers and pedestrians.

The study refers, on one hand, to the drivers, their injuries and the level of their blood alcohol at the moment of the accident. \on the other hand, it speaks about the other victims involved in a car accident in accordance with their alcohol blood values.

The conclusions are dramatic and bring down the attention upon the fact that, on most cases, whether the driver was under the influence of alcohol at the time when the accident happened, or the pedestrian, but not only on one circumstance was found out that all the persons involved in the accident were under the influence of alcohol.

Another conclusion points out the fact that the drivers' alcohol tests results have the tendency to increase year by year.

Key words: accident, influence of alcohol, victim

Is it true that car accidents can be directly connected with the alcohol consumption of the driver or of the victim, the pedestrian? We are trying to answer this question by analyzing 2 aspects:

- how many drivers were caught under the influence of alcohol at the time when they were involved in a road event (accident, with or without any victims, routine check, etc) and

- if the pedestrians or the persons seated in a car were under the influence of alcohol when the accident happened?

The forensic doctors, because of the toxicological laboratories in the forensic institutions, can easily supervise these 2 aspects. Here, the alcohol test results, certificates and victims' examinations are analyzed and elaborated.

In our study we were interested in the following items:

- the gender and the age of the drivers and victims from the car accident
- the alcohol blood value established by the toxicological analyze
- the gravity of the lesions transcribed into days of medical care
- the consequences of the accident (death, invalidity, infirmity, etc)

The study was performed from January 2006 to January 2007. During this time, at our forensic laboratory, a number of 2400 alcohol blood tests were made, 1400 of them of the drivers or victims of a car accident. 70%of the drivers involved in a car accident were under the influence of alcohol at the time when the accident had happened. The alcohol test results were situated between 0,20 grams / 1000 grams and 3,15 grams / 1000grams. A very important situation is that a large number of car drivers involved in a car accident had an alcohol test result bigger than 0,80 grams / 1000 grams. This means, under the actual laws, that they have committed a felony. A large number of these drivers had the value of their alcohol test results bigger than 1,8 grams / 1000 grams, corresponding to a severe alcohol intoxication. These drivers were hardly able to maintain their body balance while standing. Regarding the gender of the drivers who provoked a car accident, 95% were men.

Following these results of the persons involved in car accidents, we realized a very interesting fact: a large number of drivers who did not provoke a car accident, but were pulled over for a simple routine check, were found under the influence of alcohol. There are also the paradoxical results in which, due to a simple failing to grant the way, the guilty driver was sober, while the victim was drunk. The study's conclusion is something to worry about: the drivers caught up by the police drinking and driving are just the tip of the iceberg represented by persons who drink alcohol and then sit behind the wheel. We can only make suppositions, but on certain moments of the day like the afternoon, evening and night, at least 25% of men driving a car are under the influence of alcohol.

Regarding the pedestrians, just a paradoxical number of 40% were found under the influence of alcohol. A reason for that 40% was that the majority of the pedestrians were women and children.

Regarding the gravity of the lesions, we have to mention the following: only 15% of the drivers that were found under the influence of alcohol died in the following period of time. More than 50% of them had suffered lesions that needed more than 20 days of medical care. 1/3 of them still has infirmities or invalidities. 25% of the pedestrians have lost their lives. 30% of the pedestrians who survived had suffered severe lesions, fractures, broke the internal organs and needed more than 20 days of medical care. Regarding other victims of car accidents, a number of 18% of the persons sited in the cars had passed away. Half of the persons who saved their lives had suffered severe lesions. The other half had suffered only minor lesions with no invalidity or infirmity.

From all the facts mentioned above, we could easily connect the alcohol consumption with the car accidents. The car accidents are very dangerous and have the tendency to increase their gravity, as the alcohol consumption increases as well. Because of this reason, it is the professional duty of every person working in these types of institution (forensic laboratory, law court, and hospital) to point out, by any means, the danger of alcohol consumption on daily road participants.

THE PSYCHOLOGY OF THE UNDERAGE OFFENDER AND THE PARTICULARITIES OF THE INTERVIEW DURING THE CRIMINAL INVESTIGATION

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Abstract:

Independent on the minor's quality within the trail, the preparation of his/her hearing must consist both in general activities valid for any hearing, independent on the person's age and also in specific activities requested by the age and the degree of his/her mental development.

The personality of the underage delinquent represents the result of permanent and multiple relations with mutual influence and interdependence, both between the main features of the underage personality belonging to someone who has committed an offence and between his/her personality. This is considered to be a biological, psychological, social and cultural evolving personality and distinctive environmental features that surround the underage individual.

The minor offender's hearing preparation is done by the criminal investigation authorities that must have all the information that characterise the psychology and the personality of the minor.

Like any other hearing, it will start with the identification of the minor and the preliminary discussions that establish the first psychological contact between the investigator and the minor.

During the free speech, the investigator must have a lot of patience; he/she must not intervene only if the minor is divagating form the subject of the conversation.

The most important phase of the minor's hearing[1] *is the questions and answers phase that unfurl considering the rules applicable in the minor's hearing phase.*

Key words*:* personality, minor, interview preparation

1. Generalities. The functioning of the society depends on the conformation of individuals and groups that compose it, in relation with the accepted normative, moral, social, juridical and general cultural model. The study of the deviance phenomenon and subsidiary, of the delinquency phenomenon involve researchers form different fields: medical, sociologic, physiologic and pathologic, psycho-pedagogic, criminology, justice etc.

A particular form within the delinquency it is represented by that, appearing at young ages denominated as juvenile by the penal doctrine.

[1] E. Stancu, *Tratat de criminalistică*, Ed. Actami, 2001, Bucharest, p.412-413.

The vulnerability factors that come from the environment combined with the incomplete formation of the personality, reflected including in the moral deficiencies do not let them distinguish between good and evil[1].

Independent on the minor's quality within the trail, the preparation of his/her hearing must consist both in general activities valid for any hearing, independent on the person's age and also in specific activities requested by the age and the degree of his/her mental development.

The personality of the underage delinquent represents the result of permanent and multiple relations with mutual influence and interdependence, both between the main features of the underage personality belonging to someone who has committed an offence and between his/her personality. This is considered to be a biological, psychological, social and cultural evolving personality and distinctive environmental features that surround the underage individual[2].

2. The underage criminal responsibility limits. According to the stipulations of art. 99 Criminal Code, general part, we have the following situations:

- the underage that hasn't reached the age of 14 do not criminally respond, the benefit of doubt being valid in their case[3];

- the underage between 14 and 16 criminally respond, only if it is proven that he/she has committed the deed having judgement[4];

- the minor that has reached the age of 16 does criminally respond.

The judgement is the bio-psychic capacity of the person to act consciously, being aware of his/her actions (non actions) that are socially dangerous in charge of his/her will in relation with the actual deed.

When choosing the punishment that will be applied to the minor, there must be taken under consideration the degree of the deed's social danger, the physical state, the intellectual, moral development, his/her conduct, the environmental conditions in which he/she lived, the elements that could characterise the minor's personality.

3. The minor's interview preparation. The minor offender's hearing preparation is done by the criminal investigation authorities that must have all the information that characterise the psychology and the personality of the minor[5].

a) Bio - psycho – social features of the offender or the accused.

The age of the interviewed person indicates the degree of the physical and psychological evolution of the aptitudes and also his/her social position.

The genders, the somatic diseases, the physical deficiencies of the offender or accused, the ethnical and psychological particularities determine certain reactions towards the external impulses.

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[1] H. Vaida, Elena-Ana Mihuţ, M. Teşan, *Factori psihopatologici şi de mediu implicaţi în apariţia conduitelor dezadaptive la minori*, in Revista de criminalistică, Nr.4, July 2005, Year VIII, p.26-27.
[2] O. Breaza, *Minorul şi legea penală*, Ed. All Beck, Bucharest, 1998, p.118.
[3] The law institutes a lack of judgement legal presumtion.
[4] The law institutes a realtive legal presumtion.
[5] U. Şchiopu, E. Versa, *Psihologia vârstelor*, Ed. Didactică şi Pedagogică, Bucharest, 1981, p.39.

The psychological structure of the minor depends also on the time spend within the family, school, or during certain activities. In this way, the fantasy, the imagination, the susceptibility of the minor, his/her fear of parents and teachers influence strongly the perception, the memories and the manner in which the event is described.

The lack of life and work experience, the complexity of the deeds, the succession of the activities could affect the possibility to retain and describe essential issues for the cause.

The excessive conformity without interior motivation, the interpretation of the failure as intolerable, the emotional insufficiency, the lack of a real support from the social environment, in association with the identification of violent behaviour models can conduct to a succession of wrong situations.

b) The study of the file

After the study of the file made by the judiciary authority, it can determine the nature of the offence, the date, the place, and the conditions that surrounded the deed, its nature and gravity.

The written exhibits and the material exhibits, help the authorities to establish the conditions of space and time, the actions that were committed by the offender and the accused and also the analysis of the first declarations taken during the investigations at the scene or the preliminary hearing.

c) Taking declarations form persons in the social micro-group frequented by the minor

Together with the declarations from the persons that know the offender or the accused, the judiciary authorities can obtain useful information regarding the offender. The habits, the vices, the entourage, the relations with the others (family, colleagues, friends), the use of alcohol or other substances are very useful for the judiciary authority, helping it understand and know better the persons that are to be heard.

d) The hearing plan must predict the preliminary questions regarding to the minor's preoccupations and aptitudes that led to the establishment of a link between the investigator and the minor.

e) The calling of persons that must be present at the hearing.

The persons that have authority over the minor and the close relatives that could assist the minor during the hearing must be identified.

Also, the criminal investigation authorities if necessary, for any hearing or confrontation between the offender or accused, that hasn't reached the age 16, can call the Victim Protection and Offenders Social Reintegration Service at the domicile of the minor, also the parents or the tutor, curator and the person that is in care of.

According to the dispositions of art. 481, alignment 3 din of the Criminal Procedure Code, the calling of the persons that were mentioned above is obligatory when presenting the criminal investigation material.

Until the 31st Of March 2007 in cases of minor offenders, the social investigations was made by persons especially named by the tutelary authority of

the local council within the domicile of the minor[1], and after this date, the criminal investigation or the court of law has the obligation to settle the evaluation report by the Victim Protection and Offenders Social Reintegration Service.

The evaluation report is a written report, having a consultative and orientation character[2] with role in furnishing data regarding the minor and the social reintegration perspective of this one, meaning:

a) The physical state and the psychological profile of the minor;
b) The intellectual and moral development of the minor;
c) The family and social environment in which the minor lived and evolved ;
d) The factors that influence the minor's conduct and that favoured his/her criminal behaviour;
e) The social reintegration perspectives;
f) The criminal file of the minor;
g) The minor's conduct before and after the deed.

In order to obtain these information the Victim Protection and Offenders Social Reintegration Service can collaborate with psychiatrists, teachers, and sociologists, doctors and other specialists named by the competent authorities.

The evaluation report is given to the court of law in a term of 14 days starting form the receiving of the request[3].

4. The minor's hearing.

Like any other hearing, it will start with the identification of the minor and the *preliminary discussions* that establish the first psychological contact between the investigator and the minor. Also, the discussions on themes in which the minor is interested in, other than those that are the subject of the hearing, help the elimination of the emotional states and the establishment of an appropriate climate for the unfurl of the hearing.

During the free speech, the investigator must have a lot of patience; he/she must not intervene only if the minor is divagating form the subject of the conversation.

Due to the influence of subjective and objective factors that affect perception, memory and description of the event, the particularities of the age, the investigator could expect less information at this stage.

The most important phase of the minor's hearing[4] is the *questions and answers phase* that unfurl considering the rules applicable in the minor's hearing phase.

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[1] The Social Coomunitary Administration , Children Protection Department.

[2] According to art 6 *Government Decree no. 1239 of the 29th of November 2000 regarding the approval of the Regulations regarding the applicability of the stipulations of the Governmental Decree. 92/2000* published in Monitorul Oficial no. 651 of the 13th of December 2000.

[3] According to the *stipulations of art 12 Decree No. 92 of the 29th of August 2000 regarding the administration and functioning of offenders social reintegration and liberty privation convictions surveillance*, published in Monitorul Oficial no. 423 form the 1st of September 2000.

[4] E. Stancu, *Tratat de criminalistică*, Ed. Actami, 2001, Bucharest, p.412-413.

The questions must be clear, using an accessible language for the minor, according to the minor's age and the way he/she understands the events without leaving any impression and inhibitions over the minor, things that could make him/her adopt a refractory conduct during the hearing.

The persons that assist at the hearing could have a positive or negative effect over the minor, and the results could be closely related with the applied tactics.

Consequently, as they will be able to receive more information related to the minor's personality, closely linked to a better understanding based on psychology notions, the hearing will present better results.

5. The psychiatric medical and legal expertise. A psychiatric expertise is obligatory in cases of murder and murder in the first degree, also when the criminal investigator and the court of law have doubts about the psychical state of the offender or the accused.

In the interdisciplinary methodology of the psychiatric expertise, three concepts became fundamental, in accordance with one another: personality, causality and responsibility[1], and on the other hand, the relations within the biological, psychological and social domains and the criminal law, on the other hand. These things are imperative, because the lack of judgement, stipulated in art 48 Criminal Law, general part, eliminates the criminal character of the deed.

In this way, the judiciary authorities that order the expertise, will establish, based on this expertise, if the person submitted to the expertise has general judgement, mostly when he/she committed the deed, that must be reconstructed by a biological, psychological and pathological point of view[2].

The medical and legal psychiatric expertise must take under consideration the following aspects: educational, prevention, recuperation and social reintegration of the individuals suffering of mental illnesses.

In order to make the expertise, the criminal investigation authority, with the approval of the prosecutor or the court of law disposes the institutionalisation of the offender or accused, in specialised places, in the case of the minor, in a medical service having an infant neurological and psychological profile.

During the institutionalisation it is imperative to make psychological tests that help the contouring the subject's personality, among the other examinations depending on the particularities of the case.

The commission for medical, legal and psychiatric expertise for minors is composed of the forensic, two doctors specialised in neurology and paediatric psychiatry and a psychiatrist with experience in paediatric field.

This one will receive the file of the case that must contain:

- The social investigation in cause;

[1] V. Beliş*, Tratat de medicină legală*, Vol. II, Ed. Medicală, Bucharest, 1995, p.736.
[2] V. Beliş, same reference, p.745.

- The educational particularities that must come out from the minor's behaviour towards the colleagues and the teachers, the school situation, missing classes, the minor's habits after school, his/her vices;
- Any other documents and medical examination, that could be in possession of the minor's family. It is recommended to use also the medical files from the family doctor.

Based on all the data, the commission settles the conclusions of the medical, legal and psychiatric expertise that must contain: the diagnosis of the psychical disabilities during examination, the degree of intellectual development and the diagnosis of the psychological disabilities when the deed was committed, the psychical capacity of the minor's judgement[1].

[1] F. Ştefan, *Ghidul medico-legal al juristului*, Ed. Napoca Star, Cluj-Napoca, 2005, pag. 112 - 128.

GENERALITIES REGARDING THE UNDERAGE PERSONS REGULATIONS, BY LAW NO. 122/2006 IN REFERENCE WITH THE RIGHT FOR ASYLUM

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Abstract:

The dispositions of the Children Rights Convention regard the rights of the refugee children and of those who ask for asylum, protection, humanitarian assistance, including finding family members or the main person that was taken care prior, on legal or common basis.

In Law no. 122/2006, regarding the asylum in Romania, the underage unattended person represents:

- the underage, foreign or stateless, that has arrived in Romania, unattended by parents or any legal representative or that is not under the care of other person, according to the law;

- the underage that is let unattended after entering the Romanian territory.

The foreigners that request a form of protection must be photographed and finger printed. In the case of underage that have not reached the age of 14 the finger printing is not needed.

The collected finger prints will be transmitted and stocked on paper in the Romanian Immigration Bureau archives and also in electronic format in the AFIS national data base. Also, the finger prints of all the asylum requestors are transmitted and stocked in the European data base EURODAC[1].

The interview for determining the kind of protection consists in an audience of the asylum requestor, made by a Romanian Immigration Bureau official .

If the requestor is underage, the interview takes place in the presence of the legal representatives, that must inform them in reference with the purpose, the possible consequences of the personal interview and must prepare them for it.

Key words: Right, Asylum, Children, EURODAC

I. Generalities. The legal authorities provide the access to the asylum procedure for each foreign citizen found on the Romanian territory or at the frontier asking for the protection of the Romanian state[2], starting with the expression of the will, written or spoken, excepting the situations stipulated in the laws.

[1] A system inside the Commission. It is formed by a Central Unit that operates a computerised central data base for fingerprints stocking and comparison, and also electronic means that ensure the transmission of data between member states and central data base.

[2] Regarding art. 2 letter a of Law no. 122/2006 rin refference with the asylum in Romania as form of protection regard: the refugee status, the subsidiary protection, the temporary and humanitarian protection

The dispositions of the Children Rights Convention regard the rights of the refugee children and of those who ask for asylum, protection, humanitarian assistance, including finding family members or the main person that was taken care prior, on legal or common basis.

In Law no. 122/2006, regarding the asylum in Romania, the underage unattended person represents:

- the underage, foreign or stateless, that has arrived in Romania, unattended by parents or any legal representative or that is not under the care of other person, according to the law;
- the underage that is let unattended after entering the Romanian territory.

If the asylum requestor is an unattended underage, the Romanian Immigration Bureau:

- Analyses with priority its request;
- Takes measures for the naming of a legal representative in order to assist him or her, during the asylum procedure. The naming of a legal representative is not necessary if the underage will reach the age of 18 in period of 15 days after the date of the request;
- informs[1] the legal representative and the asylum underage requestor, unattended, in a known language, regarding the possibility of a medical expertise in order to determine his age. Regarding this matter, we have the following situations:

1. When the asylum requestor declares that he or she is underage and there are no doubts regarding that, he or she will be considered underage;
2. When the unattended underage can not prove his/her age and there are serious doubts regarding the age, the Romanian Immigration Bureau requests a legal and medical expertise in order to evaluate the age of the requestor, with the prior consent of the underage person and his/her legal representative;
3. If the legal and medical expertise is refuted and no conclusive evidence are brought regarding the age, the person will be considered to be of age[2]. There is one exception: the situation in which after the evaluation made by a psychologist of the Romanian Immigration Bureau, it is proved that the refute was caused by strong reasons.

There are situations in practice, in which the child that requests the refugee status is attended by parents or a legal representative, case in which his/her interests are ensured by the General Department of Social Assistance and Child Protection, in the region of the specialised authority where the request will be made[3].

For this purpose, a person having legal high preparation or social assistance, within the personnel of the department, a private authority in right to support the rights of the child will participate at the whole procedure.

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[1] The informing must contain also stipulations regarding the medical examination methods, the possible consequences of the results of the examination, the effects of a possible refute to be examined.

[2] It will be considered that the person has reached the age of 18 at the date the request was made.

[3] According to art 73 of Law no.272/2004 regarding the protection and promotion of the children rights.

The accommodation of the unattended children is made by a residential service, while the underage that have reached the age of 16 can be hosted in the Romanian Immigration Bureau centres.

"The Refugee Status Convention *"* (1951) stipulates the international definition of the refugees. In general, the main conditions in this matter regard both children and adults and they are the following:

- The refugees must be outside the country of origin (or they can have no citizenship) due to the real threat of persecution for religious, race, adhesion to a social group or political opinion reasons and
- The refugees must not be able or must not wish to return to their country of origin.

The children and the adults that have the status of refugee can not be forced to return to their country of origin and can not be send in other country that could force them to return[1].

The refugee children represent one of the most vulnerable groups in the world, because it is very likely to become victims of sexual abuse or to be recruited in military purposes. Independent on the pressure on the host country, the legal and moral obligation to protect these children is imperative.

In Romania, according to the legislation, the children that ask to obtain the refugee status, and also those who have obtained it, benefit of protection and humanitarian adequate assistance in order to ensure their rights. These children benefit over one of the protection forms stipulated by the Governmental Directive no.102/2000 regarding the status and the regime of the refugees in Romania, with the following changes:

II. EURODAC - the system of asylum policy assistance. The foreigners that request a form of protection must be photographed and finger printed. In the case of underage that have not reached the age of 14 the finger printing is not needed.

The collected finger prints will be transmitted and stocked on paper in the Romanian Immigration Bureau archives and also in electronic format in the AFIS national data base. Also, the finger prints of all the asylum requestors are transmitted and stocked in the European data base EURODAC[2].

The elimination of the internal frontiers control, have brought into attention two important phenomena: internal migration and asylum request. Inside the European Union it is necessary the establishment of the asylum requestors identity or of the retained persons for illegal trespassing of the external frontiers of the Community. This way, each state must have a system that could allow them to verify if a foreigner living on its territory has requested for asylum in another state member[3].

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[1] Milena Tomescu – "*Dreptul familiei. Protecţia copilului*", Ed. All, Bucuresti, 1993, pag.368.

[2] A system inside the Commission. It is formed by a Central Unit that operates a computerised central data base for fingerprints stocking and comparison, and also electronic means that ensure the transmission of data between member states and central data base.

[3] According to article 1 of the Ist Chapter of the Council Regulation (CE) no. 2725/2000 of the 11th of December 2000 regarding the establishment of „Eurodac" for the comparison of fingerprints to

The finger prints are digitally processed and send in an efficient form in order to allow an optimal operation of The Central Unit and also to allow the transmission of data from the member states to the Central Unit or backwards [1].

In the central data base, the following data are stocked: the origin member state, the place and the date of the asylum request, the prints, the sex, the reference number used by the origin member state[2], the date of the printing, the date of the data transmission to the Central Unit., when the data was introduced in the central data base, details regarding the receiver/receivers of the transmitted data and when these were transmitted [3].

III. The unfurl of the interview for the determination of the requested form of underage person protection, according to Law no. 122/2006. The interview for determining the kind of protection consists in an audience of the asylum requestor, made by a Romanian Immigration Bureau official .

If the requestor is underage, the interview takes place in the presence of the legal representatives, that must inform them in reference with the purpose, the possible consequences of the personal interview and must prepare them for it.

During the interview with an underage, it must be taken under consideration the psychic, intellectual development and his/her maturity, things that must also be taken under consideration in cases of asylum requests made by underage.

The family unification, in case of unattended underage, that benefit over a form of protection is made according to the good interest of the child. Actually, this thing is available in any kind of procedure regarding a decision in which underage are involved, started by public authorities and by the private authorities, and also in causes solved by the courts of law.

The good interest of the child is imposed especially in relation with the rights and obligations that belong to the child's parents, to other legal representatives of the child.

The Romanian Immigration Bureau will start a family unification procedure, situation in which the permission of the legal representative or of the unattended underage is asked. During the whole procedure the opinion of the underage person is considered.

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obtain an efficient application of the Dublin Convention (Council Regulation CE no.343/2003 of the 18th of February 2003).

[1] According to art 2 of the Council Regulation (CE) no. 407/2002 of the 28th of February 2002 for the establishment of the implementation rules of the Regulation (CE) no. 2725/2000 regarding the establishment of „Eurodac" for the comparison of the fingerprints to obtain an efficient implementation of the Dublin Convention (The Council Regulation CE no.343/2003of the 18th of February 2003).

[2] The reference number of art. 5 align. 1 letter d of the Eurodac Regulation makes possible the certain relation between data and a person and the member state that transmits the data. Also, it makes possible to see if these data refer to an asylum requestor or a person that is stipulated art. 8 or art. 11 of the Eurodac Regulation.

[3] Reference to N. Iancu, Elena-Ana Mihuţ *„EURODAC- Sistem de asistare a implementării politicii de azil în Comunitatea Europeană"* in Revista de Criminalistică, Nr.3/2007, year IX, pag.5-6.

If the family of the underage was found the possibility and the conditions in which the reunification can be made is analysed.

According to the stipulations of art.75 align.1 of Law 272/2004 if the request to obtain a refugee status is definitively refuted, the General Department for Social Assistance and Child Protection informs the Romanian Immigration Bureau and requests the court of law for the establishment of the child in a special protection service.

The settlement procedure unfurls till the return of the child to the parents residence or to the country where other members of the family ready to take the child, are identified.

The interview for the identification of a protection form is recorded in writing on an interview note. After the reading, this note is signed on each page by the asylum requestor or if the case, by the legal representative and also by the translator, the defender or the official that were present during the interview[1].

Also, in case of military conflicts, the states institution take the necessary measures for the development of special mechanisms meant to ensure the investigation of the measures taken for the protection of the child's rights.

The convention regarding the Children Rights stipulates that all the states must respect and also accomplish the following obligations:

- to respect and ensure the international rights normative that are applicable in cases of military conflicts;
- to take all the measures in order to ensure that persons under 15 do not participate at the hostilities;
- to not recruit persons under 15 in the military forces;
- to give priority to the elder ones at the recruit of persons between 15-18 years;
- to take all the measures in order to ensure the protection and the care of the children affected by a military conflict[2].

The Children Rights Committee has underlined that the states must take measures to respect the rights of all the children found under their jurisdiction during the military conflicts.

The Romanian institutions have taken the necessary measures for the development of special mechanisms meant to ensure the observation of the measures that are adopted for the protection of the children rights in case of military conflicts. The public institutions must initiate and implement strategies and programmes, including at community and family level in order to ensure the retreat of the soldier children and to remedy the physical and psychical effects of the conflicts over the child and to promote his/her social reintegration.

In order to facilitate the access to the Romanian educational system, the member states give underage children as asylum requestors access to this system,

[1] According to art 23 of the Methodologic Normative for the application of Law no.122/2006 regarding the asylum in Romania, published in Monitorul Oficial, Ist Part , no.805 of 25/09/2006.
[2] M. Tomescu, same refference, pag.679.

similarly with that given to the residents of the host state, as long as measures for their expulsion are not taken.

The access to the educational system can not be adjourned more than three months after the presentation of the asylum request made by the underage or his/her parents. The period can be prolonged with one year when a specific education is given, for the access to the educational system[1].

In this way, the underage asylum requestors will benefit over a training for the integration in the Romanian educational system. At the end of it they will be evaluated and signed for the appropriate school level.

The methodology, the teachers, the manuals and the didactic materials needed for the training is ensured by the Education and Research Ministry.

The application forms are done by the parents or the legal representatives at the educational inspector-ships in each county or at the Educational Inspector-ship In Bucharest. Their education can be done also in the accommodation centres for asylum requestors[2].

[1] According to art 10 of the 2003/9/CE directive of the Council of the 27th of January 2003 for the establishment of the minimal standards for the receiving of the asylum requestors in the member states.

[2] According to art 6 of the Methodological Norm for the application of Law no.122/2006 regarding the asylum in Romania, published in Monitorul Oficial, Ist Part , no.805 of 25/09/2006.

THE REFLECTION OF THE INTERNATIONAL LEGISLATION CONCERNING THE JUVENILE DELINQUENCE IN THE DOMESTIC LAW

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Abstract:

The problem of juvenile delinquency has constituted an object of reflection in the Romanian and foreign penal literature but few studies were written on the subject tackled in this article.

In the motivation of this approach I started from a truth, namely from the fact that criminality takes proportion and the statistics prove the frequence of cases where children are victims but criminal offenders as well. The second category has constituted the object of analysis for this article.

In this context, to operate with the notions of juvenile delinquency and of the legal liability constitutes a demand of the doctrine and of the legal practice.

The notion of juvenile delinquency is a creation of the legal theory and we can find it again and again with different senses in the penal legislations of the states of the world.

Taking into account the peculiarities and the problems that must face the regulations and the application of the rules for the triggering of legal liabilitv of the minors, I treated the conditions of this liability and the system of juvenile delinquency putting the stress on the necessity of the intervention of the legislator on this segment in order to approximate the national regulations with the international ones.

Tackling the subject of the methods of prevention and of the penal sanctions applicable to the minors I proceeded to an examination of the national and international legislation underlying the necessity of the legislator's intervention in problems concerning the juvenile legislation and the implication of the Ministry of Justice in what concerns the development of partnerships, the request for specialized services including the importance of assuring the transparence of the trial court in the administration of the decisions for this category of offenders.

Key words: delinquency, penal sanctions, international legislation.

1. The concept of juvenile delinquency

This type of criminal offence comprises the totality of manners and behaviours having a high level of social peril since these manners transgress or violate the legal standards through which the most important values of society are protected.

The doctrine frequently uses the notion of delinquency to define the behaviours which transgress or violate the penal standards and if the offender is a minor, it is defined as juvenile delinquency.

The syntagm “Juvenile delinquency" in the criminal legislation of other states has different senses. Thus the American authors include in the sphere of delinquency also the civil and disciplinary penalties, the violation of moral rules and that of the good manners. In the European criminal legislations, the juvenile delinquency includes only criminal offenses.

To establish a common definition of the syntagm constituted and still constitutes an object of concern for many countries.This problem was made the object. of the first Congress of the United Nations for the prevention of crime and the treatment of criminal offenders (Geneva, 1995), then it was discussed again at the second congress (London, 1960) and since there wasn't found any unitary agreement, it was adopted a recommendation so that the term 'Juvenile delinquency should be used only with offenders provided in the criminal legislation.

2. Conditions which trigger lega1 1iability

In accordance with the provisions of art. 40, paragraph 3 letter a) from the Convention concerning the legal rights of children,the signatory states must establish a minimal age for the triggering of legal liability, age"under which the children could be considered as not having the power of discernment to infringe the criminal laws".

The legal standards from Beijing provide that the meaning of the term of criminal ability must be defined clearly and that the age limit for the triggering of legal liability must not be too small, keeping in mind the degree of emotional and psychical maturity of the child (rule 4.1). The establishment of the age limit is made in a legal framework which takes into consideration the capacities,the abilities for development and the contextual experience of the child. .

Romania adjusted its criminal legislation to the requests of the above mentioned principles and rules, establishing in the Penal Code the limits of the triggering of legaJ liability, stipulating that a minor under the age of 14 musn't be held liable while the minor between the age of 14 and 16 can be held liable if it is proved that he/she committed the offence in full discernment. In accordance with the provisions of the art. 99, parag. 3 Penal Code, the minor who reached the age of 16 can be held liable.

The minors who reached the age of 14, but didn't reach that of 16 are considered as having criminal ability but this presumption is a re1ative one, working only if there is no proof that they committed the criminal offence with discernment.The existence of discernment is established by institutions of forensic science, special expertises being made on the basis of a clinical examination and other complementary examinations.

According to the legal provisions in force,the minors will be examined in the presence of one of the parents or of the tutors, and if they cannot be reached in the presence of an adult member of the family having the same sex as the minor. Those who are hospitalized will be examined in the presence of their doctor.

3.The system of juvenile justice

From art. 40, parag. 2 letter iii) of the Convention regarding the rights of children results that every child suspected or accused of having committed an

offense has the right to have his/her case to be exmnined without delay by an authority or a competent trial court which is independent or impartial after an equitable judicial proceeding,in the presence of his/her Iawyer, parents or legal representatives. These provisions are completed with the provisions of art. 3, paragr. 1 of the same regulation, according to which"in every decision concerning the children, no matter if they are taken by public institutions or private institutions for social protection, trial courts, administrative authorities or other legal bodies, the superior interests of the child must be considered as a priority.

The regulations from Beijing lay down the necessity of a special instruction for the personnel from the juvenile court and according to the Directives for Proceedings against Children in the System of Penal Justice,it devolves upon the states the obligation to create special courts and special proceedings for children.

In the domestic legislation in force the hearing of cases implying minors are regulated by specialized courts, where the judges are designated by the presidents of the court or the presidents of the local department who decide upon the members of the judge panel,usually at the beginning of the year having the approval of the board of judges,trying to assure the continuity of the panel.

With all the measures undertaken by the Romanian legislator, it is to underline that at present, there are no legal provisions to prescribe the necessity of the magistrates to be specialized in this field, according to the directive no. 16. For instance, although one of the attributions of the Department of Public Prosecution is that of defending the rights of the minors, as it results from the special dispositions prescribed in the Penal and the Civil Code as well as in other governmental decrees, the prosecutors are not designated to document only cases with minors, so a specialization in this sense is practically non-existent.

An important part in the system of juvenile justice is played by the lawyer of the defendant or of the minor where the social assistance is compulsory,but the legal provisions which regulate the organization and the practising of this profession do not make reference to a specialization of the lawyers in legal assistance and in legal representation of the minors, the lawyers being designated ex officio by the court or being chosen by the parents. We think that it would be for the benefit of the children who came into conflict with the penal law to have a category of lawyers specialized just for such cases. Keeping in account t.he bio-psychic frailty of the minors, if the minor enters in direct contact with a lawyer who has a full schedule, he/she will have the impression that the lawyer doesn't care for him/her and that he will not represent him with all his conviction, an aspect which will have negative consequences on the preparation of the defense but also on the personality of the minor and with repercussions on the defendant's post infractional attitude.

In the system of juvenile justice there are included also the Services ihr the protection of victims and social reintegration of the offenders which elaborate reports of evaluation for the penal bodies in order to estimate the risk that these people represent for public safety, the measures of prevention and the

individualization of the punishment with the view to apply a sentence which could be adequate to the needs of the social reintegration of the minors.

Another institution included in the system of juvenile justice is the Service of Tutorial Body and Social Assistance of the mayoralty which at the request of the criminal bodies performs investigations for the cases where minors are implied.

4. Measures of prevention taken against the minors

The Convention for the Rights of Children, the Regulations of the United Nations for the Protection of Children Deprived of Liberty and the African Chart for the Protection and the Rights of Children are the main international instruments which regulate the depriving of the liberty of minors.

According to the provisions of the art.37, paragr. 1, letter b from the above mentioned Convention regarding the rights of children,the minors cannot be deprived of their liberty illegally or arbitrarily. Arresting, retaining or imprisoning a child must be pursuant to the law. If they are under arrest they must be separated from the adults with the exception of the cases where it is in the interest of the minor not to be separated. Every child who is deprived of his/her liberty must be treated in a humane way and with respect, looking for the special needs he might have. Such a treatment includes the right to legal assistance or the right to receive medical or psychological assistance.

The article mentioned above and the Regulations from Tokyo lay down the fact that, in the case of minors, the deprivation of liberty has to be taken only as an extreme measure and for a shortest time possible.

According to the dispositions of the Convention,every child deprived of liberty has the right to challenge the lawfulness of the measure taken against him in a court and to get a quick adjudication of the case. The Documents of the United Nations recommend the exclusion of the preventive custody for the minors, excepting the cases when they commit very serious offenses and even in such cases it is recommended the limitation of the period of preventive custody, the minorsors being separated from the adults and as a rule the decisions must be taken after previous consultations with a social service in order to take altemative measures. So, we can see that these international regulations do not exclude the depriving of liberty for children in some cases, but do not contain clear provisions concerning the conditions for the application of the preventive custody.

The Regulations of the· United Nations for the Protection of Children Deprived of

Liberty define the depriving of liberty as being: "a kind of detention or imprisonment, or placing at a publicly safe place that a person under the age of 18 cannot leave when he/she desires, by virtue of an order issued by any penal, administrative or public body" (regulation no. 11, letter b). The regulations are to be applied to any form of deprivation of liberty at any kind of framework

In what concerns the preventive custody, The Convention for the rights of individuals and fundamental freedom mentions in art. 5, patagr. 1 that "any person has the right to liberty and safety and nobody can be deprived of his liberty, with the exception of cases where this is provided clearly by legal standards and

pursuant to legal ways of action. " Any person under arrest must be informed in the shortest time and in a language that he understands upon the reasons of his arresting and upon any accusation brought to him. In paragraph 3 of art. 5 from the Convention it is mentioned that "any person arrested or retained ... must be immediately brought before a judge or another magistrate authorized by the law to exercise his penal attributions, and has the right to be judged within a resonable time or to be released in the course of the trial, this release being subordinated to a warranty which will assure his presence at the hearing.

In the domestic legislation, the art. 136 from the Penal procedure code regulates the reasons and the categories of the preventive measures, showing that in the cases which refer to offenses punished by detention, it can be taken the measure of retention or preventive custody compelling the defendant not to leaye the town or the country.In section IV entitled "Special dispositions for minors" the Penal procedure code instituted a special condition regarding the retention and the preventive custody of the minors. According to the provisions of the art. 160 index f) from the Penal procedure code, the minors are assured besides the rights provided by the law for the persons who reached the age of 18, special rights and conditions of preventive custody with regard to the peculiarities of their age, additional conditions being taken for the preventive measures in the case of the defendants under age.

The minor between 14 and 16, who is held liable can be retained at the order of the prosecutor or of the criminal investigation bodies, for a time that must not exceed 10 hours if there is certain evidence that the minor committed an offense punished by the law with life detention or detention for 10 years or more.For the minors from this age category the prolongation of the measure of retention can be made by the prosecutor, if necessary, for a time up to 10 hours. The preventive custody can be disposed during the penal pursuit or at the first instance and must not exceed 15 days and only by way of exception. The total length of the preventive custody during the penal action cannot exceed 60 days for the minors who reached the age of 16. For the second category, that of the minors between 16 and 18 it was prescribed that the length of the preventive custody must not exceed 20 days during the penal action or at the first instance, with the possibility to be extended every time it is necessary. For the minors of this age category the preventive custody during the penal action cannot exceed 90 days, by way of exception, when they committed offenses punished by detention from 10 years up or life detention, the prolongation of the preventive custody in the same phase of the penal action being allowed to reach a year. The defendants under age can be held in preventive custody for a period that cannot exceed 3 days.

The legal provisions mentioned above limit the length in time of the depriving measures in the case of minors, restricting the category of ofenses for which this measure can be disposed.

The Romanian Penal procedure code provides the compulsoriness of legal assistance and the possibility of communication between the lawyer and the defendant under age,the parents and the tutors being immediately informed in case

of retention and in 24 hours in case of arrest. There will be informed also the services for the protection of victims and those for the social integration of the minors most near to the court where the minor will be judged in the first instance.

The decision of the court by which the preventive custody was disposed is submitted to appeal. According to art. 160 index f, paragr. 4 and 5 from the Penal procedure code, during the retention or the preventive custody the minors are kept separately from the adults, in places specially destinated for them. The observance of the rights and of the special conditions provided by the law for the minors who are in preventive custody is assured by a judge designated on purpose by the president of the court who will visit the places where the children are held. Such visits can be taken also by other legal bodies.

5. Penal sanctions appliable to the minors.

In art. 40 paragr. 4 from the Convention for the rights of children it is inserted the fact that it is preferable that the minors should not be submitted to the standard penal procedures or to be institutionalized, stipulating a whole range of dispositions concerning the caretaking, orientation, placement, general and professional educational programs and alternative solutions to assure to the children a treatment which will be good for their present situation and in accordance with the offense committed.

The Regulations from Tokyo state a series of fundamental principles with a view to favour non-custodial measures as well as minimal warranties for the persons submitted to measures which substitute imprisonment.

The European regulation regarding the sanctions and community measures underlines the fact that the execution of the penitences in prisons has the purpose to develop the sense of responsibility of the defendant under age towards the community.

The measures imposed by the international regulations have the purpose to counteract the negative effects of the classical penal actions. In case the minor sustains that he is unguilty, it cannot be made any pressure upon him to convince him to agree with the measures inserted in the Regulations of Tokyo. These measures have the purpose of reducing the relapse into a crime , since the recent studies show that the defendants under age present a substantial ratio of relapsing. Through the community services, the minors have the possibility to keep in touch with the family, school and society, which increases the possibility of their resocialized.

The measures that need supervision and control are: probation, stay of execution or release on parole under supervision, work in the favour of community, the contracts concluded with the minors, group hostels, training in a new environment, confinement to an open place, home confinement, committing the minors to some organisations that do not need supervision (stay of execution or the deferral of the sentence).

In the case of probation, stay of execution, release on parole under supervision, the child is found guilty of committing the offense but he is given the possibility not to execute the penitence if he observes certain clear conditions (for

instance, not to commit another offense in the probation period). The supervision of the minor in this period is minimal, moderated or intensive, according to the chances of the minor to commit other offenses.

The work in the favour of community supposes a certain number of unpaid working hours for the benefit of the community. This sanction must not affect the child's education and it is performed after classes. The way of performing this work is decided by the judge, i. e. the type of work to be done, the schedule, ecc., after the minor has agreed that he will perform this work. The execution of this sanction may be suspended for medical, family, professional or social reasons.

The contracts concluded with the minors represent another way by which they can be supervised in order to be reintegrated in society. Following the negotiations with the minor and his family, the employees from the social services make up a contract keeping in mind the situation and the wishes of the child. The first form of the contract includes a description of the conditions , duration, and arrangements regarding the supervision and the consequences of any deviation during the term of the contract. The project of the contract is sent to the police in order to give their agreement. and after this the contract is signed by the minor, the parrents, the social services and the police department . The contract is presented to the trial court which fixes a day for the hearing, after which the court gives its approval for the contract. When one opts tor the group pf hostels, the children are accomodated together with other minors in small residential hostels which are placed in the community .The penal notices including reprimands, admonitions, unconditioned and conditioned aquittals, are used for minor offenses while other measures like punishment by imprisonment, pecuniary sanctions, severance payment, personal compensations or confiscation are used for major offenses or crimes.

In the domestic legislation such non-deprivative sanctions which are recommended with insistance in the international documents are not established. The sanctioning system of the minors instituted by the Penal code is a mixed special one, including the educational methods enumerated in art 101 Penal code such as reprimands, supervised 1iberty, placement to a centre of reeducation or internment to a medical educational institute which have a priority in sanctioning the defendants under age, punishments, fines, and imprisonments-reduced to half of the limits, which are applied only if the court appreciates that an educational method is not sufficient for the reeducation of the minor.

When sanctioning the minor on the basis of the criteria quoted in art. 100 penal code, i.e. physical condition, intellectual maturity, behaviour, the conditions in which he was brought up but also the degree of social peril of the offense it will be chosen a sanction, an educational measure or punishment and then it will be chosen a certain educational measure or the quantum of the punishment, the way of execution either in prison or applying a stay of execution or a supervised execution of the penitence.

To make possible a harmonization of the domestic legislation with the international one on all the segments which regard the juvenile delinquency it is

necessary an intervention from the part of the Romanian legislator, a specialization of the magistrates in problems regarding juvenile justice and a development of local partnerships for contacting specialized services. At the same time the transparency of the trial courts in administrating the decisions regarding the defendants under age will have an important role in what concerns the consolidation of the public image.

The elaboration of a procedure of collaboration and of support at a local level of certain partnerships to solve problem of juvenile delinquency is a task that devolves upon the Ministry of Justice which has to get actively involved in this field.

Bibliography:

1. A. Mihu, The sociology of right, Cluj, 1994, second edition, The Christioan University „Dimitrie Cantemir", Van Bueren, Geraldine, International Law on the Rights of the Child, Hague, Kluwer Ed, 1998
2. G. Heuyer, Juvenile delinquency, PUF, Paris, 1969, R. Gassini, Criminologique, second edition,Dalloz Ed. 1990
4. R. Stanoiu~ Crimlinology, vol I, Oscar Print ed. Bucharert, 1995, C. Turianu, Legal liability for the criminal offensez committed by defendants under ag,e, Continent Ed. XXI, Bucharest, 1995
5. The Convention was ratified by Romania by the law no. 18 of 27.09.1990, pub!. in the Official Gazette no. 109 of 28.09.1990
6. RegIes de Beijing • Ensemble de reg1es minima. des Nations Unies, concernant I'administration de la justice pour mineurs, Nations Unies, Dep. de l'information, New York, 1986
7. Art. 99 Penal Code
8. G. R. no. 744 of. 07.09.2000 for the approval of the regulation for appyng the dispositions of the no. 1/2000 regarding the functioning forensing institutes, publ. in the Ofiicial Gazette no. 459 of 19. 09. 2000
9. Art. 40 of G. R. no. 744/2000
10. Regulation no. 12 from Beijing
11, 'The directive lines of action regarding the children implied in the system of juvenile justice were sketched on the occasion of a meeting of experts in 1997 at Viena to suport the states in the implementation of the provision elaborated by the Corvention concerning the rights of children ~ of the regulations of Beijing, of the regulations of the United Nations for the protection of minors deprived of liberty and of the Direetives of Rijadh. From the 14, 12, 1990
12. C, Hamilton,. R. Harvey the roil of pubfic opinion in the implementation of international juvenile justice standards, The intemational joumal of children rights, Martinus Nijhoff Publisher 2004, vot II
13, Art. 41 of Law no. 304 from 28.06.2004 concerning judicial organiZation, published In the Offidal Gazette Part I, no 576 of29.06. 2004 provides that the trail Courts for minors and family may judge in the first instance the following category of cases

14. Art. 171, parag. 2 thesis 1 from the Penal procedure code and art. 40 parag. 2 letter ii) o the: Law no. 18/1990
15. Art. 11 parag. 1 letter d, GO no. 92/2000 publishe din the Official Gazette no. 423 of 0 1.09.2000 and Law. no. 129/2002, publ. in the Ofiicial gazette no 190 of 20.03. 2002
16. The Regulationt: of Tokyo called "Minimal regulations of the United Nations for the elaboration of certain non-deprivative measures"
17, Art. 37, parag. 11etter d
18. Th.e Convention was ratified by Romania by the Law no 30/1994 published in the Official Gazette no. 135 of [31.05.1994
19 Art 160 index g, Penal procedure code
20 Art 160 index h, Penal procedure code
21 Art 160 index f, Penal procedure code
22 Ph. Conte, P. Maistre Du Chambon, Droit penal general Ed. Dalloz Paris, 2002
23. L. A Beaulieu, C. Cesaroni, 'The changing role of the youth cuourt judge, European journal on crimmal policy and research, Kluwer Ed.1999

TOWARDS A MODEL OF JUSTICE FOR PEOPLE UNDER THE LEGAL AGE

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Abstract:

In a world in which all institutions and social relations change rapidly, the family also undergoes certain transformations. Thus, we witness the adaptation of individual behaviour and lifestyles to demographic, economic and social changes, which affect contemporary societies; we also become aware of the multiplication and diversity of family patterns, the new models co-existing with the so-called classical one.

As far as our society is concerned, the family pattern has moved from an extended structure (within which the rapports between generations used to be governed by stable traditions and moral, spiritual, educational and material values through "unwritten laws"), either towards a small family of the classical type or towards atypical forms, such as single-parent families.

Because of these changes, the responsibilities of the family, as a social institution, have been lost. Especially its educational role has been affected. Taking into account that family education, which begins early in a person's life, determines the development of one's personality, it is a fact that the consequences are worth worrying about.

The usefulness of this project is related to the assumptions that the flaws in family education play an essential role in the crimes committed by people under age.

Moreover, we have highlighted the negative results of the decrease of family education on the social integration of people under age, with a view to adapt the prevention system to this form of social reality.

We consider that this brief study could serve as guidelines for complex research on the etiological approach of criminal behaviour, as individual or group manifestation, and of under age criminality as a global phenomenon.

Staring from the fact that the elimination of causes must gain field in parallel with the minimization of effects, we have pinpointed the importance of the creation of a project of juvenile crime prevention, whose main objective should be the recuperation of the family educational role, besides other objectives, so that the entire problematic of the concern for the people under age and the crime prevention among this category should become part of unitary and rigorous action.

Key words: education, crime, rehabilitation, mediation

Punishment is deficient as regards people under age, consisting in institutionalizing of this category, as a rule, and, exceptionally, in the application of certain restrictions, which may trigger limited possibilities of social reintegration. Therefore, a unitary judicial system, featuring coherent activities meant to diminish juvenile crime, is vital.

The key component of a system which cold be considered a real justice for people under age, is represented by the *judge for people under age*, i.e. a particular magistrate, whose role is to work in legal institutions designed especially for this category: law courts, courts of justice and courts of appeal. This judge for people under age should be active in and supported by other institutions, such as, the prosecutor for people under age, the policeman for people under age, the probationary services, the legal guardianship and social assistance services, etc.

Law 304/ 2004 states the gradual organization of courts of justice for people under age and family up to 2008. By next year, these institutions, as the main courts, will deal with civil, family or criminal cases involving people under age. Regarding the ways of attacking the decisions taken within these courts, our laws lack details. Up to 2008, the law only states the gradual establishment of these courts, which would act in this period only for cases of common law courts. The law does not make provisions for the formation of specialized juries at law courts, but only for courts of justice and courts of appeal. As a result, until 2008, most cases will be judged by non-specialist judges (in law courts, where the majority of trials take place), whereas only the courts of justice and courts of appeal will benefit from specialized juries.

On the other hand, the organization of courts of justice for people under age and family implies the existence of separate buildings, logistics, the corresponding staff, etc.[1] Actually, more important than the formal existence of specialized courts of law is the training of the staff to deal with cases involving people under age at the level of the entire legal system.

The social reintegration of the people under age is another problem to be focused by a unitary judicial system. It has often been the case that although the right measure have been taken against the young person, the premises being favourable, they could not integrate socially afterwards, committing the same crimes.

Restorative justice – an alternative to classical means of punishment

In the attempt to fight criminality and persistence in criminal acts, a series of criminal law methods have been used, from forms of punishment not including the lack of liberty to imprisonment. The manner in which punishment is used in a society corresponds to the level of culture and civilization and to the way in which it approaches people and their acts.

The system of justice in Romania should clarify its position regarding both victims and criminals, which should not be considered a product of society but its

[1] May 3, 2006 – a division for young people and people under age at the Court of Justice of Dolj, where a court of justice for people under age could not be established because of lack of space and money.

members. Irrespective of the acts one may have committed and of the form of punishment, they come back to society; the manner in which the return takes place, the way in which they are reintegrated lies in our hands. On the other hand, the victims need protection and support to overcome the trauma provoked by the crime and by its consequences.

In this context, the system of justice should reconsider its position towards the triangle formed by the criminal, the victim and society; it should develop its contacts with the community it serves through the implication of the latter in the "healing" of conduct regarded as anti-social. This is what restorative justice suggests, offering the possibility of everybody affected by criminal acts – victims, criminal, their families and the community – to become active part of the solving of the conflict, of the problems which have caused the crime and of its consequences.

What is restorative justice?

"Restorative justice is a process trough which all the parties involved in a certain crime get together to make a collective decision about how to solve the consequences of a crime and future implications", according to the British criminologist, Tony Marshall.

Restorative justice suggests a change of approach with regard to the classical system of justice, taking as a starting point a **participative perspective** towards conflict solving and damage repair. From this perspective, the crime is not regarded as law breaking and a crime against the state but as damage or wrong done to someone. In this context, the act of justice cannot only be concerned with guilt and punishment but with **an act of moral repair, of emotional and material restoration of the triad victim- criminal – community.** Restorative justice requires participation and agreement, focusing on **the complete undertaking of the responsibility from the part of the criminal.** This is equivalent to more than mere acknowledgement of law: the criminal has to face the one they have hurt, to see the extent to which they have been affected by the crime and to admit their obligation to repair the wrong.

One of the characteristics of restorative justice consists precisely in the fact that the criminal and the victim are encouraged towards a direct involvement for the solving of the conflict through dialogue and negotiation, in the presence of the criminal's family, the victim's family and of other people, who could offer active support in this reconciliation process.

Although there are different practices in different countries, corresponding to various laws, all the actions within restorative justice are based on the **mediation between victim and criminal**.

Whether called *conferences, meetings, mediations or reconciliations,* whether imposed or not to the criminal and concluded through a *deal* or a *contract* between the parties involved, restorative justice actions establish an exchange of opinions, emotions, feelings and thoughts between those involved. The mediator stimulates the dialogue and the exchange in an atmosphere guaranteeing security.

Perspectives of restorative justice in Romania

One of the concerns of the European Council after the instauration of democratic regimes in Central and Eastern Europe has been the adjustment of the laws in these counties to the principles of the Universal Declaration of human rights of 1984, of the European Declaration of Human Rights of 1958, as well as to other similar documents, along a few directions of evolution for the law systems the central and east-European states.

From the perspective of European integration, a major concern of our country has been towards the adjustment of our laws to European requirements. In this context, restorative justice as a new phenomenon in most of the European countries needs social approval as well as consent from the part of the criminal law system with a view to improve it. It is worth highlighting the positive elements brought about by restorative justice, complementary to criminal justice practices, with best results if undertaken by professionals. In these sense, regular meetings and exchanges between the staff dealing with mediation practices in restorative justice and those belonging to criminal law system (police, prosecution, magistrates' courts) should be encouraged.

Community justice has the role to direct the community members and institutions towards the understanding of the role of justice and to raise awareness of the manner in which criminality affects the lives of community members.

This approach to criminality, especially to the juvenile one, has benefited from the results of restorative justice actions in the states in which this has been applied, ensuring the corruption of the young and of people under age in prison and also, the keeping of the democratic rights and liberties of the individual. For any individual, imprisonment has a powerful physical and psychological impact during and after punishment. The educational action in prisons is often hindered by factors which are difficult to counterattack. For certain categories of criminals (under age and young), social reintegration is more easily achieved through probation and restorative justice actions than trough imprisonment, taking into account the reintegration occurs once the individual is free again.

Conclusion

Crimes represent one of the major problems that have to be faced by our society. According to statistics, a large number of anti-social acts are committed by people under age.

There are two serious aspects: the first one is represented by the fact that crimes interfere with general human interests, endangering fundamental and widely acknowledged values; secondly, since anti-social acts are committed by the young generation, the morality and future development of the society are questioned.

Consequently, the young generation being one of the main chances offered to our society to achieve the human and cultural ability necessary to a real modernity, characterized by social and civilization progress, we could rightfully consider that juvenile crime is a risk we cannot afford.

Which are the solutions? Knowing and describing the cause and conditions favouring juvenile crime would be a first step in strategy designing. We must deal with causes. Thus, individual therapy, supplemented by group and community

therapy, has to focus not only on the effect of this social pathology but mainly on its causes.

To point the cause of juvenile crime we would like to focus on one particular aspect of the educational process, namely the family. Bearing in mind the vital role of primary experiences for an individual's development, we cannot discuss juvenile crime overlooking the rapports between a person and the primary smaller or larger social structure they belong to.

In other words, are parents the only responsible or the guilty ones for the evolution of their children, of their success or failures, including crimes? The question is worth asking especially when families avoid communication or lack the means to cope with their responsibilities.

Free education is not equivalent to the school of the street, where children are abandoned to themselves in a world that is too tough for them, the rules are those of rivalries and despise and the relationships are marked by aggression and violence. Living only among your kind, in gangs or groups confronted with the same problems fighting for material and moral survival – whether this includes private schools or rich people leisure facilities or the public space with all its difficulties – leads to results familiar to all.

Under the circumstances, we should be concerned with the role played by the family in the educational process. The family is neither a mere hiding place nor the "protecting bubble" some may dream at. Yet, through the sensitive nature of the connection between its members, it could make it act as a secure space for a slow maturing.

Due to its permanence, even if certain links are broken, the family teaches the young to appreciate durability and the lessons learnt inside and outside home. Due to ordinary life needs, it could show how each could contribute to a common project.

Obviously, not all families are ready to play these difficult roles, that being one of the causes triggering the so called "*inequality of chances*" among children:

- firstly, though the differences between their material means, their abilities and means of social insertion in a confusing world;
- secondly, some families can ensure this warm and protective space, whereas other are divided by inner conflicts or the reciprocal despise of its members.

This brings us again to *the necessity of any society to cooperate with families, to help children* protecting them, if the case, from domestic violence. Society must be cured of its passive state and act regarding the problems mentioned above, being aware of the difficulty of later attempts to put right what has been wrong.

In the case of juvenile criminality, prevention and regular processes value more than urgent action.

Starting from the premise that *the deficiencies of the family's educational system are the major cause of juvenile crime*, we reach the necessity of *a*

prevention strategy. Its main objectives should be the recuperation of the family values and of the family educational and social control functions.

Thus, any socio-educational intervention and the action undertaken by society with a view to correct and support parents' educational role are vital. This would give access for the people under age to a family background, which stimulates normal development and moral shaping.

Consequently, the problematic of the concern for people under age and of prevention of criminality among them would be part of unitary and rigorous action.

Taking into account the present rigidity of trials and punishment system for people under age, we should not overlook the social reinsertion methods for those who have committed crimes. In the general context of the reform of the judicial system, we should aim at finding solutions for criminality decrease, a possible answer consisting in *restorative justice* and *mediation*[1], as alternative methods for conflict solving.

[1] As regards mediation, as an alternative to conflict solving, it has been included in our legislation in law no. 192/ May 16, 2006 regarding mediation and the organizing of the profession of mediator.

THE JUVENILE DELINQUENCY JURIDICAL SANCTIONING REGIME AND ITS EVOLUTION TENDENCIES IN THE CONTEMPORARY SOCIETY

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Abstract:

The concept of "juvenile delinquency" is not found in the criminal law in our country either in other countries legal systems. It is a creation of the criminal doctrines, sociologic or criminal theories, in their attempts to group a series of infractions according to the age; it is considered that the criminal deed present a series of particularities determined by the biological maturity and mostly mental of the offence active subject.

The factors of risk for the deviant behaviour of the minor: The influence of pre-natal factors, Hyperactivity and impulsive attitude, The influence of intelligence and performances, The role of parents in developing discipline and juvenile attitude, The influence of dismembered families and separation over the inappropriate conduct of the child.

Key words: juvenile delinquency, deviant behaviour, factors of risk

I. The concept of juvenile delinquency

The concept of "juvenile delinquency" consists in two different notions that must be identified, meaning the concept of "delinquency" and that of "juvenile". Even though both concepts have entered in the common language and seem to have very well determined and unique signification, they are often used with different meanings, not only in the common language but also in the scientific language. The lack of a sole and unilaterally accepted definition represents the source of confusion that can affect the result of criminal investigations.

The concept of "juvenile delinquency" is not found in the criminal law in our country either in other countries legal systems. It is a creation of the criminal doctrines, sociologic or criminal theories, in their attempts to group a series of infractions according to the age; it is considered that the criminal deed present a series of particularities determined by the biological maturity and mostly mental of the offence active subject.

The concept is synonym in certain languages like Italian, German and French, with the concept of "juvenile criminality": criminalita giovanile, criminalité juvénile, jugendkriminalitat. Still, at the origin, in Italian, these words had different meanings. The verb „delinquere" has the meaning of "to do wrong",

“to loose sight”, “to miss”; in the mean time „crimen“ meant “the crime” with “accusation”, “imputation”, “ cause of a bad thing”. By delinquency we understand a series of illicit deeds, no matter if they have or not a criminal character (running from home, missing school, leaving school with no reason and certain immoral deeds that represent offences).

II. The factors of risk for the deviant behaviour of the minor

1. The influence of pre-natal factors

It is hard to think that you can meet children or adolescents that have never committed at least an undesirable action, an action that regard an anti-social conduct or anything closely related to this kind of actions. It is proven that the children belonging to adolescent mothers are very likely to become delinquents. These mothers have the tendency to use inappropriate and insufficient educational methods, and their children, miss school for long periods of time committing certain actions against the law. Also, it seems that the biological presence of the father has, generally, an effect of protection , decreasing the number of this kind of actions.

Certain studies have proven that the women that were married in adolescence are having a double risk to give birth to children that, at the age of 32 could become offenders, the percent being of 49%. The same studies show that drugs, alcohol and cigarettes during pregnancy have negative influence over the future development of the child.

2. Hyperactivity and impulsive attitude

Among the scientific circles the opinion about the personality factors that in the future can lead to delinquency, talk about hyperactivity and impulsive attitude. It was also proven that hyperactivity starts, usually, before the age of 5, and certain specialists consider that even before 2, and will affect, progressively childhood and even adolescence. This is associated with states of restlessness, impulsive conduct and difficult focusing; these symptoms belong to the hyperactivity-impulsive attitude-and difficult focusing syndrome (HIA).

The HIA syndrome, according to the specialists affect persons that in the future can have behaviours that could link to criminal law, even if there are certain opinions that delimit hyperactivity or impulsive attitude and criminal actions.

3. The influence of intelligence and performances

The theories that consider that the low level of intelligence is a very important factor leading to crimes, which can be identified very early in life, gains more and more specialists. A study done by the specialists in Stockholm has established that, the low level of intelligence at the age of 3 could reflect the disposition for crimes around the age of 30. The verbal low intelligence is associated with low school performances, all contouring a deviant behaviour of the minor.

The low non-verbal intelligence characterises, usually the recidivists that have committed criminal actions since the age of 10-13.

4. The role of parents in developing discipline and juvenile attitude

The role of the family in the education of young was often subject of discussions; in the Romanian society the term of "the seven years at home" has become a general accepted criterion, when the behaviour of certain individuals manifested serious lack of education.

Studies say that there is a close relation between the parental protection, discipline, attitude and juvenile delinquency. In this way, a research made in London on a group of 120 boys and their families has observed that the most important relation of boys with conviction was the lack of parental surveillance at the age of 10. Another study, made on minors between 14-15 and their mothers has discovered that the lack of parental surveillance was the main cause of the crimes committed by the young girls, and for boys this was the second.

Even more recent researches have proven that the inappropriate severity of parents and the large tolerance towards the problems of minors could expose children to violence and repeated offences around the age of 32.

In Romania, the preoccupation for the identification of mechanisms that could prevent abandon of families and school, seem to start only now, at the begging of the 21st Century. The main issue that must be understand by the Romanian authorities is to no longer wait until the community experiences serious problems and the children go into the streets, but to do all possible to lead them to school. Unfortunately, in Romania these issues experience numerous difficulties, with many questions regarding the professionalism and the good will of those involved in the child protection system.

5. The influence of dismembered families and separation over the inappropriate conduct of the child

The majority of studies related to the influence of dismembered families and separation over the conduct of the minors were focused mostly on the loss of the father, because, the loss of the father is happening most of the time.

The role of mono-parental families (with both parents), having conflicts in predisposition to violence is underlined by the data brought from the researches of the British National Institute, done over 500 children, born in a sole week in 1990. From these researches the illegitimate children were excluded, so all the children submitted to the tests were born in a family with married couple. It was established that the children belonging to families split up by divorce or separated have very high predisposition to commit infractions at the age of 21, comparing with those belonging to unite families. Also, it was shown that these children were predisposed to delinquency comparing with the children belonging to families that were separated when they had 0-4 years, these were more likely to be exposed to delinquency comparing with those that had 11-15 years. The remarriage (that is usually happening after divorce than death), was also associated to a high risk of delinquency, that could suggest a possible negative effect from the step parent. The mono-parental families are more exposed to delinquency, due to separation or divorce, than death.

6. The economic and social constraints

A lot of criminology theories consider that the delinquents belong to the low classes of the society. Albert Cohen, with more than 40 years ago, considered that the underage belonging to the lower classes (poor) hardly reach the middle standards, because their parents teach them to renounce to immediate satisfactions in the favour of the long term ones. The children from the lower classes live their under-culture, because the standards of the middle classes are unreachable. Consequently, it is considered that for these children to reach the social and material level of the middle class, by their own and in legal conditions is an impossible goal and they break the law. Generally specking, the social classes and the socio-economic status of the families, in the American culture, is measured by the professional prestige of the families with low income. The persons with good jobs are belonging to the superior classes and jobs that require manual abilities are considered to be specific to the lower classes.

7. The influence of education on delinquency

The voices inside the criminology researches that sustain the idea that the offences depend on the education of the child are increasing. There are schools that present a high rate of delinquency and where, from the start, it is installed a high level of susceptibility between teachers and students. Certainly, these cases, rise a series of problems: which percent of the differences between schools must be attributed to the educational management, the climate and the internal practices and which percent to the personal differences of the students? „The Cambridge Study" has investigated children that entered in primary schools and followed school until they reached secondary school and the effects of school over offences. At children 8-10 years, the teachers have observed a tendency to continue the anti-social behaviours before school, within families or other environment where the children lived until the age of 8.

IV. The sanctioning treatment applicable to minors

The 40th article in the Children Rights Convention, underline the fact that is preferable not to submit the minors to the standard juridical procedures and institutionalisation or a series of stipulations, like those regarding care, orientation and surveillance, counselling in the test period within general and professional education programs, solutions regarding institutionalisation, in order to ensure a special treatment for the children wealth, according to their situations and the crimes that were committed.

The elimination of the prison conviction is an important method to reduce the repeatability, because the studies prove that the convicted minors present a high rate of repeatability. By the elimination of the prison conviction, these will be able to maintain positive relations with the family, school and community. These positive relations help the child in the attempt to socially reintegrate.

The conversion of the prison penalty is realised by measures that require surveillance and control (probation and suspension of penalty; work in public service, the contracts; the entrance in a new environment; institutionalisation; trusting minor and young adults to certain authorities) and measures that do not

require this kind of surveillance (the conditioned suspension of the penalty, conditioned acquitting, the delay of the conviction).

The penal warnings, including reprimands, unconditioned acquitting and conditioned acquitting are used for minor crimes; the other elimination measures of the prison conviction are: material sanctions (bails); compensatory payments (that can be imposed as one of the conditioned suspension terms); personal compensation (frequently used in the common legal systems); confiscation.

The actual legislation does not stipulate these kinds of measures and sanctions, recommended insistently in all the international documents.

The minor's sanctioning regime instituted by the Criminal Code is a special one, mixed, including educational measures, enumerated in art. 101 Criminal Code (reprimand, surveyed liberty, institutionalisation in a re-education centre or an medical educational centre) that have priority in the sanctioning of minors and punishments (bail and prison), reduced at the half of their limits applied only if the instance considers that an educational measure is not sufficient for the minor.

At the minor's sanctioning, in a fist stage, based on the enumerated in art. 100 Criminal Code, meaning the physical state, the intellectual evolution, the conduct, the life condition, the social danger of the deed, the type of sanction or the educational measure or punishment is chosen, also certain educational measure or the kind and quantity of the punishment, including the detention, its conditioned suspension or surveillance.

As a conclusion in the present, after the analysis made in the fields of juvenile delinquency, there were identified a series of solutions considered as priority for the improvement of the situation in the legal system for underage offenders, as follows:

1) the specialisation of the institutions in the legal system that deal with underage offenders;

2) the reconstruction of the sanctioning system for the criminal deeds committed by underage;

3) the establishment of certain mechanisms and community institutions that could offer surveillance services, assistance and counselling for the underage that break the law;

4) the development of strategies regarding the prevention of juvenile delinquency and sustained programs in this matter.

THE EVOLUTION OF THE JUVENILE DELINQUENCY AND THE SETTLEMENT OF A DIFFERENT PENAL TREATMENT

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Abstract:

The juvenile delinquency is one of the deviance forms, having great implications over both the individual and groups; the deviant behaviour refers to different conduct forms that are closely passing by the norms in a culture, that correspond to social roles and statuses, very well established in the given culture.
It is a type of conduct that is opposite to the conventional and conformist one that consist not only in law breaking, but also in any "deviation" conduct without any pathologic character that was medically established and represents a digression from the social rules, being defined and resented like this by the social group members.

Key words: deviant behaviour, pathologic character, penal responsibility

The practice, also the study of the special papers, reveal the fact that the social phenomena, found within the concept of deviance, delinquency, infraction, criminality, preoccupy more and more not only the specialists in this field, but also the political, governmental factors, the public opinion, generally, both internal, regional level and international level[1].

An important part of these preoccupations consist in the juvenile delinquency or the infractions committed by underage, mostly because this one has become, in the last decades one of the major social problems that most of the contemporary societies had to confront and still do, both economically developed and less developed ones, at a global level, the juvenile delinquency reaching the ages between 19-29 years.

Starting form these concepts, due to the fact that the infantile delinquency has reached, in the last decades, very alarming levels, we can talk about a global phenomena of the juvenile delinquency.

Even though the juvenile delinquency concept is frequently used, it is not reflected in the special literature in our country.

In this way, the Criminal Code has adopted the concept of underage that establishes the Vth Title of the Criminal Code the juridical treatment of the underage that have a criminal responsibility.

[1] http://www.cnaa.acad.md/files/theses/2007/6001/oxana_rotaru_thesis.pdf

Still, the literature in this field, within the practice language and within the scientific one the juvenile delinquency concept is used, especially in order to refer to the complex phenomena determined by the fraction of criminality.

Regarded as a phenomena, the juvenile delinquency, reflect a non adaptation to the juridical and moral system of the society, being the most important between the negative deviancies, that include the violation of the social life norms, the person's integrity, the rights and the liberties of the individual[1].

The concept of "juvenile delinquency" has two different notions, meaning, the concept of „delinquency" and the concept of „juvenile".

The concept of „delinquency" comes form the Latin verb "delinquere" that has the meaning of "to do wrong", "to loose form sight ".

According to the Romanian language dictionary the term of „delinquency" refers to a social phenomena consisting in offences or the whole amount of offences done at a given moment within a certain environment or done by persons having the same age.

The term of "juvenile" comes from the Latin "juvenis" that represents something coming from youth, belonging to youth.

Coming form the Latin words delinquere and juvenis, the juvenile delinquency represents the whole amount of deviation and breaking of the social norms, juridical sanctioned, committed by minors up to 18 years old.

The problem is which is the superior limit of age that delimits a juvenile delinquency, due to the fact that constantly, there were theoreticians that have extended this concept regarding the young that overpass the age of majority: 18 years.

The life of each person has its own line.

Generally, the life of the most people follows, as reality permits it, four stages, meaning:

- childhood,
- adolescence,
- maturity and
- olden age.

In their evolution, certain transformation take place within the bio-psychic personality of each human[2].

Distinctively from the criminology, that has adopted the existence and the denomination of these stages in relation with the age of the individuals, in penal law, there has been adopted the simplest terminology from the private law, that divides the individual in underage and aged.

In this way, by using the terms of minor and minority (with criminal responsibility) for adolescents and aged for adults, a uniformity in terms has been created, regarding the age, between the private and criminal, penal law[3].

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[1] http://www.legmed.ro/files/revista/2006-1/08-Delincventa%20juvenila.pdf

[2] V. Dongoroz şi colaboratorii, „*Explicaţii teoretice ale Codului penal român"*, Volumul II, Ediţia a II-a, Editura Academiei Române, Editura All Beck, Bucureşti, 2003, p. 216

[3] V. Dongoroz şi colaboratorii, same reference p. 216

Starting from these aspects, we consider that the "juvenile delinquency" refers only to the age group of minority.

So, we talk about a very distinguished category of the "juvenile delinquency", meaning the minors that commit offences in the context of general criminality.

The penal law can not, certainly, turn back to this sad reality, and also can not regard from the same point of view the offences committed by underage and those committed by the aged individuals, both form the degree of social danger and from the juridical constraint means, that are needed for the sanction of the offenders.[1]

For a long period of time, the underage were considered to be a juridical distinct category, having limited rights and limited responsibilities.

The investigation of the psychic features of the individuals, show that no person is able, just like that, at a short period of time from birth, to understand the deeds and to apply a sanction to a child is the same thing with returning to the previous practice, when things were punished [2].

The life experience of individuals, confirmed by the scientific researches, proves that the human mind becomes adult in stages, that his/her representations about good and evil, legal or illegal, are settled only in the conditions of the social life and within a long period of time[3].

All the aspects that follow the specific of a certain age must be taken under consideration, till the complete development, considered to be reached during the age of majority.

Among these, the adolescence is considered to be a critical period, were a certain intensification of the negative deed was observed.

This is also because the adolescence is a period of social, physical and psychological transformations that can be very brutal, the emotions being developed in this period, with great dynamics.

On psychological level, we mention some features that mark adolescence: the search for self identity, the search for a certain set of values, the acquisition of the needed abilities for a good social interaction, earning emotional independence towards parents, the need to experiment a variety of conducts, attitudes and activities[4].

In the same time, the underage can not be excluded form the criminal responsibility, because in certain cases, the gravity of the penal actions is very serious.

The establishment of a minimum age for the penal responsibility is very important , this must not be inferior to the age when the person gets certain knowledge,

[1] V. Dongoroz şi colaboratorii, same reference, p. 217

[2] G. Antoniu, Ş. Daneş, M. Popa, *„Codul penal pe înţelesul tuturor"*, Ediția a VII-a, Editura Juridică, Bucharest, 2002, p. 131

[3] Idem

[4] http://www.apsi.ro/index.php?option=com_content&task=view&id=201

including law, life experience, reaches a level of maturity necessary in order to be aligned to the criminal law principles.

Taking under consideration the psychic and physic features specific to the age, in the criminal responsibility of the minors, the need to separate minors that have a penal capacity and respond over these actions and the minors that do not have a penal capacity, so they not respond for their criminal actions[1].

Also, taking under consideration all these particularities of the minor's development, in the criminal law, there were always special dispositions regarding this offenders category.

The criminal law in Romania, contains special dispositions regarding the underage, also regarding the age which start the penal responsibility (till 14, there is an absolute presumption of the lack of judgement, so there is no penal responsibility, and after the age of 14 we can talk about the existence of the penal responsibility) and also by the way to sanction these (educational measures being applied and only if these are not sufficient for the punishment of the minor, this will get a punishment).

There was established at international level, that the juvenile justice should promote the rights and the security of the children, to protect the physical and mental state of the minors and to take under consideration the necessity to rehabilitate them[2].

The juvenile justice must be based on the obligations of the state to ensure the superior interest of each child and to warranty that the sanctions taken by the minors correspond to the psychological and physical features of these children.

The criminology researches have led to the conclusion that the fight against this phenomena must be developed firstly by the prevention prior and after the deed[3].

In the same time, there was a preoccupation for the diversification of the sanctions that are applied to minors, taking under consideration the particularities of the underage offenders that require measures to replace their insufficient education.[4].

There is also necessary to distinguish the penal treatment of the minors in relation with that predicted to the underage offenders, a penal treatment that, as previously mentioned present a series of particularities.

[1] A. Boroi, *Drept penal, partea generală*, Editura C. H. Beck, Bucharest 2006, p. 302
[2] http://www.cnaa.acad.md/files/theses/2007/6001/oxana_rotaru_thesis.pdf
[3] A. Boroi, same referenc, p. 302
[4] C. Mitrache, C. Mitrache, *Drept penal român, partea generală*, Editura Universul juridic, Bucharest, 2006, p. 364

CERTAIN PARTICULARITIES REGARDING THE RIGHTS OF THE UNDERAGE OFFENDERS

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Abstract:

The underage offenders have certain particularities that derive form that fact that they are considered to have a reduced gravity of the aged, their penal responsibility being conditioned by their psychological and physical state of the minor at different stages of the underage.

In the conjuncture in which the juvenile delinquency represent a complex and serious social phenomena, that within its negative consequences affects both infants and the society as a whole, the underage offenders problem and their rights ought to be taken under consideration, mainly because many times they are confronted with serious breaking of their rights.

As a matter of fact, the children rights are established by a series of international documents that give a very important role to the protection of families and children, the Romanian legislation being aligned to these requests by a reform in justice, after Romania's adhesion to the European Union.

Key words: underage offenders, children rights, reform justice

The penal legislation of all times have special regulations regarding underage.

This category of offenders present particularities derived form the fact that it is considered to be a reduced gravity of the aged people, their penal responsibility being conditioned by the psychic and physical state of the minors at different stages of underage, that is the normal psychic and physic state, belonging to each stage, excepting the cases of anomalies and or illnesses that could affect the normal state.

The theoreticians and practitioners preoccupations, the involvement of politics in the fight against juvenile infractions was imposed mostly because at the moment, we talk of a global phenomena.

The infractions that are committed by underage have increased as incidence and have experienced a great diversity on their form, new types of infractions have appeared, like the electronic [1], infractions, also experiencing a continuous accent over the gravity of these infractions.

The penal law can not turn against this sad reality, it must intervene and sanction this deviant behaviour, by calling to bear the penal responsibility for these actions.

[1] http://www.salvaticopiii.ro/romania/copiii_romania/delincventa_juvenila.html

Still, the criminality researches have led to the conclusion that the fight against this phenomena must be unfurled firstly at prior and after prevention stage[1]. During the process of Romanian legislation harmonisation to the legislation of the European Union, there was given a great attention to the protection and promotion of the children rights. Actually, the children rights are established by a series of international legislation that give a very important role to the family and children protection.

Among these, the most representative is the Children Rights Convention, adopted on the 20th of November 1989 By the UN, according to this convention, the children, also adults have rights that result form the social security and protection, civil rights, the right for education, political rights, cultural and economic rights.

To this Convention have given their adhesion a number of 192 countries, being ratified also by Romania at the 28th of September 1990 by Law no. 18/1990. After this ratification, of the UN Convention for Children Rights, Romania committed to promote the children rights according to the principles and the norms stipulated by the Convention.

The superior interest of the child principle [2] principle represents the fundamental message of the Convention, its implementation being an obligation for the member states that must ensure the protection and the care in order to ensure a good wealth of the child. [3].

The superior interest of the child principle is promoted also in Law 272/2004; according to this law, „ to abide and promote with priority the superior interest of the child is the principle that will undertake all the approaches and decisions that regard children, followed by the public authorities and the private authorised institutions, and also the causes solved by the courts of law "[4].

The penal responsibility of the underage has a certain specific character in relation with the penal responsibility of the aged people, the latter containing a regulation and a structure that could be considered a general frame from which this one departs from. To the penal regulation of the infancy corresponds a regulation on penal prosecution level, by the institution of a special prosecution and jury of the infant offenders[5].

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[1] A. Boroi, „*Drept penal român. Partea generală"*, Editura C. H. Beck, Bucureşti, 2006, p. 302

[2] According to art 3 point 1 dform the Convention regardig the Children Rights, addopted by the UN, all the actions that regard children, started by the public or private social assistance institutions, by the courts of law, the administrative authorities or the legal authorities, the interest of the child will come first.

[3] See art. 3 point 2 of the Convention Regarding the Children Rights, addopted by the UN

[4] See art. 2 alignement. 3 of Law 272/2004

[5] C. Butiuc „*Unele situaţii speciale privind răspunderea penală a minorilor"*, in Dreptul nr. 3/2003, p. 123

The legal authority, by instituting this procedure, wished to ensure, in the matter of underage, a plus of procedural warranties that should prove its efficiency by combining the repressive side with the education side of the penal processnal[1].

The first penal disposition referred to the detention and preventive arrest of the underage that were stipulated in art. 160(e) – 160(h) Code of criminal procedure.

This way, to the underage that are retained or preventively arrested, they are given their own rights and a special regime of preventive detention, according to the particularities of their age, in order to prevent to affect their physical, psychological and moral integrity:

- the underage convicted and preventively arrested, receive juridical obligatory assistance and the possibility to contact directly the attorney;
- when an underage offender or accused is retained or arrested, the judiciary authority must announce his/her parents, tutor, or the person that takes care of her/him or another person named by the underage, and in case of arrest, the social reintegration service over the legal court that is in charge to jury;
- during the preventive arrest or retention, the underage are kept separately by the aged in places specially destined to minors.

The law stipulates that the rights of these retained minors or preventively arrested must be repeated by the control of a specially named judge by the president of the court; the legal prosecutor visits the preventive detention places and also other authorities that are allowed by law to visit the preventive detained.

The detention of the minor between 14 and 16 years can take place only in exceptional condition, if the legal prosecutor is announced for no more than 10 hours if there are certain information that the infraction was committed, punished by the law with life sentence or with prison for 10 or more years, detention that can be prolonged for no more than 10 hours.

For the same infractions, the minor between 14 and 16 years can be arrested during the criminal prosecution no more than 15 days, that can be prolonged with 15 days, but must not overpass, totally, 60 days.

The minors older than 16 years can be arrested for no more than 20 days, than can be prolonged with 20 days, but must not overpass, totally, 90 days.

Other special dispositions regarding the rights of the minor offenders led to criminal prosecution and refer to persons that will be called by the criminal prosecution authority during the interview of the minor.

In this way, according to art. 481 alignment 1 Code of Criminal Procedure, when the invited is a minor that hasn't reached the age of 16, at any hearing or confrontation of the minor, if the criminal procedure considers necessary, the Victim Protection and Social Reintegration of the Offenders Service is called at the

[1] A. L. Lorinz, *„Drept procesual penal, partea specială"*, Editura PRO Universitaria,Bucharest, 2006, p. 350

minor's residence and also the parents, curator or the person that are in charge with the surveillance of the minor are called.[1].

In the juridical literature, it was considered that the presence of these persons at the minor's hearing is necessary in order to avoid the difficulties that could appear during the hearing, due to excessive emotions or tendencies specific to this age, to exaggerate and affect the reality[2].

The call of the previous enumerated persons is obligatory when the criminal prosecution's material is presented, because, as some authors say, the minor, during this presentation can form new requests, make supplementary observations, and in the obligatory presence of the called authorities, these procedural rights will be used as efficiently as possible.[3].

The obligation of the evaluation report is another special disposition during the special prosecution of the minor proceedings.

According to art. 482 alignment 1 Criminal Prosecution Code, the legal authority has the obligation to order the finalisation of the evaluation report by the Victim Protection and Social Reintegration Service at the residence of the minor, according to the law. [4].

The evaluation report must deliver to the judiciary authority data, regarding the person of the minor and the social reintegration perspectives of this one.

The data regarding the minor refer to: the physical and mental state of this one, the intellectual and moral development, the social and familial environment in which he/she has grown up, the factors that influence the conduct of the underage and that have favoured his/her infraction conduct, the previous and afterwards conduct of the minor, before and after the deed (art. 482 alignment. 3 C. criminal proceedings).

For the evaluation report, Victim Protection and Social Reintegration Service of the Offenders can consult the family doctor of the minor, his/her teachers, and also other persons that can furnish data regarding the minor; this report establishes the causes and conditions that have favoured this anti social behaviour and the environment in which this one lives, in order to apply the best measures and sanctions.

Regarding the trial of the minors, according to the Criminal Procedure Code, this is made by the courts of law with the application of the usual procedure, that is completed with the dispositions within art. 483-486.

The trail of the minor is made by especially named juries, according to the law, so that the members of the court correspond to certain preparation and experience criteria in order to correctly appreciate the conditions in which the minor has evolved, to be able to take the best decision.

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[1] I. Neagu, „*Drept procesual penal. Practică judiciară*", Ed. Universul Juridic, Bucureşti, 2003., p. 388

[2] A. L. Lorioncz, same reference p. 351

[3] Gh. Nistoreanu, „*Drept procesual penal",* Ed. Europa Nova, Bucureşti, 2002, p. 309

[4] A. L. Lorincz, same reference., p. 352

The law stipulates that the participation of the prosecutor at the trial of the infraction made by underage is obligatory at all the trial terms, not only at the one that debates the cause.
According to art. 484 alignment. 1 Criminal Procedure Code, the trial of the cause regarding an infraction made by a minor and in his/her presence, excepting the case when the minor has retired from the trial.
The meeting in which the trial of the underage offender is developed separately from the other meetings and is not public.
At the trial can also assist legally called persons (according to art. 484), the attorneys of the parts and also other persons if the court allows it.
When the defender is a minor under 16, the court, after the hearing, can order its alienation form the meeting if considers that the prosecution and the hearings could have a negative influence over the minor.
Among the rights of the minor offenders we can also mention the juridical assistance that is obligatory during the penal prosecution and also during the trial.

The infant delinquency is considered to be a complex and serious social phenomena, by its negative influence over the minors and also over the society as a whole, the problem of the minor offenders and their rights must be taken under consideration, especially if they are confronted with very serious braking of their rights.[1].

[1] G. Salontai, A. Salontai, *„Unele aspecte teoretice privind drepturile infractorilor minori”*, Dreptul, no. 2/2005, p. 146

THE CRIMINAL RESPONSIBILITY – THE MOST SEVERE FORM OR THE JURIDICAL RESPONSIBILITY

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Abstract:

The routine life confronts us with numerous conduct deviations (homicide, theft, non-compliance of a contract, braking the discipline at work), deviations that are not equal as gravity and interrupt in a way or other what is considered to be the natural pattern of things.

The social responsibility establishing mechanism starts when the individual chooses a certain conduct (form all the possible ones).

Between the different types there can be certain interference, without eliminating the particularity of each one, so a deed that comes against a social norm could attract simultaneously the politic responsibility and juridical responsibility, each form being manifested in its specific shapes.

The juridical responsibility is a complexity of rights and obligations, that start when an illicit act is committed, representing the situation in which the public constraint is applied by juridical sanctions in order to establish stability in the social relations and to lead all the society members to the rightful pattern.

At its turn, the criminal responsibility is the most severe type of juridical responsibility because in intervenes when the most important social values are broken.

Key words: criminal responsibility, law, offences

The routine life confronts us with numerous conduct deviations (homicide, theft, non-compliance of a contract, braking the discipline at work), deviations that are not equal as gravity and interrupt in a way or other what is considered to be the natural pattern of things.

No matter what the deviancies form of expression, the reaction is identical: when a conduct is deviated form its normal pattern, it generates a sanction; when the rules that are generally valid, we talk about a responsibility for this inappropriate conduct.

The normal social conduct of the individual is the compliance with the law; still, life proves that there is a significant number of situations when the individual brakes the law, his/her actions getting out from normality[1].

The conduct of the individual is permanently submitted to certain opinions and reactions from the organised society, that are institutionalised using the social norms that shape the human behaviour, conducting his/her activity in the right social order[2].

Within the social relations, by the above-mentioned juridical norms, the state reserves its absolute right to decide over juridical acts and documents using responsibility. The social responsibility implies the social sanctioning of the conduct chosen by the individual in case of non-conformities between this conduct and the social norms that were instituted.

The social responsibility establishing mechanism starts when the individual chooses a certain conduct (form all the possible ones).

Between the different types there can be certain interference, without eliminating the particularity of each one, so a deed that comes against a social norm could attract simultaneously the politic responsibility and juridical responsibility, each form being manifested in its specific shapes.

Among all the social responsibilities, the juridical responsibility is the most severe because it causes law breaking. The juridical responsibility has as essential characteristic, the possibility to apply, in certain cases, the public constraint.

Not any type of human conduct is revealing from a juridical point of view, only that that is settled under the incidence of the juridical norms[3]; the human conduct could enter into the juridical norms, in this case being legal or on the contrary, illicit or illegal.

The juridical responsibility is a complexity of rights and obligations, that start when an illicit act is committed, representing the situation in which the public constraint is applied by juridical sanctions in order to establish stability in the social relations and to lead all the society members to the rightful pattern[4].

At its turn, *the criminal responsibility* is the most severe type of juridical responsibility because in intervenes when the most important social values are broken.

The criminal responsibility consists in the offender's obligation to hold a penal sanction as a consequence of the offence. The juridical relation of conflict, of constraint establishes specific rights and obligations for the participant subjects (the state – as owner of the right to ask for criminal responsibility and the offender that must be sanctioned for the committed offence that must be constrained to execute the punishment)[5].

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[1] I. Romosan, „Vinovatia în dreptul civil român" , Ed. All Beck, p. 2
[2] Gh. Bobos, *„Teoria generala a dreptului",* Ed. Dacia, Cluj Napoca, 1994, p. 256
[3] I. Ceterchi, I. Craiovan, same refference., p. 105
[4] D. Motiu, „Teoria generala a dreptului", Cluj Napoca, 1996, p. 152
[5] V. Mirisan, „*Drept penal. Partea generala*", Ed. Convex, Oradea, 2002, p. .248

The only source of the criminal responsibility is the offence; that means that within the juridical relation of constraint must establish the existence of the offence, the sanction must be applied to the offender who must execute punishments.

The criminal responsibility is a fundamental institution of the criminal law, being a form of the juridical responsibility.

The criminal responsibility is stipulated in the norms of the criminal law. .

The criminal responsibilityy is not equally established for all the offenders, because the individuals that break the law are also different, and the acts they commit are not identical; for this reason it is necessary to individualize the criminal responsibility and establish the sanctions according to general and obligatory criteria:

- the dispositions of the Penal Code – general part, if there are no other derogation by special norms;

- the limits of the penalty settled by the special part; in relation to this one, the court of law establishes the exact penalty; these limits won't be able to be passed only in cases expressively stipulated in the law ;

- the degree of the social danger of the deed, it will be considered the content of the offence and also the situations, the conjunctures out of the legal content of the offence, giving an exact social danger to the offence;

- the offender, his/her physical and psychological evolution, the behaviour within the family and society, the way he/she acted, the perseverance of their crimes;

- the surroundings that diminish or increase the gravity of the criminal responsibility: the circumstances that increase or diminish the gravity of the offence, if we talk about a recidivist, the infraction contest, the intermediary plurality and the continuous offence.

*The criminal responsibility i*s an offence that is specific to the criminal law, consisting in the offender's obligation to resent a penal sanction, a sanction as a consequence of the offences he/she has committed [1].

In other words, the criminal responsibility is the juridical conflict relation of constraint that requires rights and obligations that are specific to the participating subjects: the state, as owner of the right to require criminal responsibility and the offender that must be sanctioned for the criminal deed and constrained to execute the penalty)[2].

The criminal law sanctions are the penalties, the educational measures (that are applied to the minors) and the safety measures.

The sanction specific to the criminal law is the penalty.

Concerning the physical forms, the penalties have a strictly personal character, representing a re-education measure and a measure of constraint that interdicts certain things.

[1] V. Mirisan, same refference, p. 248
[2] idem

Due to this strictly personal character, the penalties have as consequence the fact that their application and execution can be made only as long as the offender is alive[1]. We talk about the penalties having a patrimonial character, like bails.

During the tribal communities period, the sanctions have a character of revenge of the victim against the person that did wrong; all family members of the victim participated to this revenge, until receiving a full satisfaction[2].

Later, at the apparition of the state, the duty to punish was taken by it, the first rules of punishment application have been established; these still remained a revenge instrument against the offender, the gravity of the offence being limited, leading to the so-called "lex taliounus".

During time, using punishment as revenge, appeared the idea that considered that the punishment must not regard only revenge but also an example for the others[3].

The penal responsibility accomplishes the specific function of the general law, meaning the educational and preventive function that is revealed from the fact that no illicit deed remains without sanction. In the mean time, the penal responsibility accomplishes a constraint function for the person that has committed the infraction.

The criminal responsibility is established on the principle of legal incrimination; according to it, this responsibility is taken only for those deeds that are expressively stipulated as infractions, the punishments and the measures that are to be applied must be expressively stipulated in the law.[4]

In the penal responsibility the principle of legality says that the apparition, the unfurl and solving the criminal relation is based on the law and strictly related to this one[5].

If the penal law does not consider it an offence or does not gather its constitutive elements, there will be no criminal responsibility, and the penal action will not start and if it started it will not continue.

In these situations, the criminal investigator will order the exit from the criminal investigation and the court of law will pronounce the acquitting.

The criminal responsibility enters in action as a consequence of an illicit deed that affects a social value, protected by the law; an action or a non action that contravenes the juridical norms and is committed by a person that has the capacity to respond for his/her actions.

The criminal responsibility is settled on the idea of punishing the person that has committed the offence[6].

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[1] C. Statescu, C. Bârsan, „*Teoria generala a obligatiilor"*, Editura All Educational, Bucuresti, 1998, p. 123

[2] G. Antoniu, S. Danes, M. Popa, „*Codul penal pe întelesul tuturor*", Editia a VII-a, Editura Juridica, Bucuresti, 2002, p. 95

[3] G. Antoniu, S. Danes, M. Popa, same refference p. 95, 96

[4] C. Statescu, C. Bârsan, same refference, p. 127

[5] A. Boroi, „*Drept penal, partea generala"*, Editura C. H. Beck, Bucuresti, 2006 p. 258

[6] C. Statescu, C. Bârsan, same refference, p. 126

Each criminal punishment represents not only a constraint measure but also a repair of the social prejudice suffered by the order of law, because of the offence[1].

The criminal responsibility intervenes as a consequence of the results of the illicit conduct that affects the society, an individual, an action that has a socially dangerous consequence.

The dangerous consequence is the negative modification of the surrounding reality produced by the offence or that could be produced, expressed in the endanger, harming or threatening social values protected by the criminal law[2].

The socially dangerous consequence could be a state of danger, in this case the social value that was threat is harmed by its existence, and the social relations created around and due to this value could not normally unfurl.

It is the situations of infractions that threat the state's security, outrage, false deposition, where the law doesn't require the deed to produce a material result, considering that the threat to the social relations is sufficient for the dangerous action or offence.[3].

For the criminal responsibility a very important thing is represented by the type and degree of guilt, both for the quality of the infraction of the illicit deed and for the effective application of the conviction[4].

In this way, an intentional illicit deed will be characterised in a different manner comparing with an illicit deed committed by negligence or imprudence, like the homicide comparing with murder in the first degree.

Regarding the requirement for the criminal responsibility, an offence in the first degree is expressively stipulated in art 17 Criminal Code that must be related with art. 19 that stipulates the types of guilt

Art. 19 alignment 1 Criminal Code, does not define the notion of quilt, but from its content results that the deed is committed with guilt when is committed with intention..

The quilt is defined in the criminal doctrine as "the psychical attitude of the person that commits a deed on his/her own will, representing a social danger and the person had, at the moment of the crime and consequences, the real, subjective possibility of this representation[5].

As an essential character of the infraction, the quilt has two main types: intention and guilt, having also a mixed form: the praetor-intention or the exceeded intention.

Regarding the capacity of the persons called to respond for their illicit actions, in both cases, the responsibility is required only in case if the person that has committed the illicit deed, has acted with judgement[6].

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[1] C. Statescu, C. Bârsan, same refference., p. 126, 127
[2] Gh. Nistoreanu, A. Boroi, „*Drept penal si procesual penal*", Editia a III- a, Ed. All Beck, p. 18
[3] ibidem
[4] idem
[5] A. Boroi, same refference, p. 107
[6] I. Romosan, same refference., p. 31

Form a juridical point of view, by judgement we understand the capacity of the person to realise the dangerous character of the deed and to consciously manifest his/her will, capacity related with the conscious deed[1].

Considering the biological and psychological particularities of the underage, the Criminal Code stipulates that the minor that has reached the age of 14 does not criminally respond; it is considered that there is an absolute benefit of lack of judgement.

The underage between 14-16 does not criminally respond if it proves that he/she has committed the deed with judgement, having a relative benefit of lack of judgement; the minor that has reached the age of 16 criminally respond, his/her judgement being presumed.

The proof of judgement must be done for each case by the juridical authorities.

The authorities establish using the medical and social investigation and also complex investigations in order to understand the conduct of the underage inside the family, school, work, entourage, things that could give information about weather he/she could realise or not the harmful character of the deed he/she committed [2].

The criminal responsibility is established by the decision of the court of law.

Excepting the cases stipulated by the law, when the penal action can be started only at the prior complaint of the victim, the fundamental principle in the criminal responsibility matter is to accomplish all the documents necessary for the unfurl of the trial[3].

In all the situations, the state is present at the establishment of the criminal responsibility even if the criminal action is started by the prior complaint of the harmed person.

The criminal responsibility is prescribed in certain terms, starting from the moment when the deed was committed that differ, for minors the terms are reduced to half [4].

[1] A. Boroi, same refference, p. 123
[2] A. Boroi, same refference, p. 123
[3] C. Statescu, C. Bârsan, same refference, p. 128
[4] C. Statescu, C. Bârsan, same refference, p. 131

DELINQUENCY IN GYMNASIUM

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Abstract:

The gymnasium years can be the most innocent ones, but they can remain marked for ever by sad memories because of the fragility of this age. Whether the delinquent acts that happened to you personally or you only witnessed them, you may never forget them.

*In my writing I included fragments about **sanctions** from the Regulation of Rules and Management for Secondary Schools, because many times parents or other persons who don't know the rules, propose unacceptable solutions.*

*Using real facts, accumulated from a long teaching experience, I presented some **causes** of delinquency.*

*The final of writing presents a possible solution for diminution of juvenile delinquency: the emphasis of **Education for Responsibility**, as a logical acceptance of consequences which follow a decision, a behavior, an attitude, without obstructing free choice.*

Key words: gymnasium, solutions, free choice

Gymnasium age sometimes remains as a confused period of life.
This age lacks of substance and do not fit our further fulfillment.

When we recall our primary school mates we remember them all as being cute, friendly etc. But the secondary school time is not one's pride, not even in photos.…The one who used to be plump runs a Top Modeling Company, the floppy ears kid leads a successful business in electronics, that popular boy killed himself while in army, the girl next to him was broadcasted while being charged as a peculator etc.

Rarely a picture from gymnasium shows the real potential of future adults. Contrary, many times ex-mates surprise us with their achievements and their changed looks. But the saddest moment is when we remembered about the disappearance of one of us, or about the troubles we got involved in.

The age of gymnasium - 10/11 till 14/15 years coincides with puberty.
The latest generation just demonstrates an earlier debut in puberty: the children are taller and more physically developed. They are still very sensitive, even if they are hiding behind a rough attitude. This is the reason why this period is full of conflicts. The teen-ager is not a child, nor an adult, and makes him feel uncertain. He is dependent on his parents, who consider it is too early to give him freedom for own decisions, but mature enough to talk about responsibilities which are awaiting him. The teen-ager feels it should be the other way round From his point of view everything is up side down and nobody understands him!

Even with the obedient children these signs are more visible today. Some of the lines given today by the ”obedient” kids to their parents were unacceptable only few decades ago…But the world has changed!

Generally, parents and teachers accept them today if their typical teenage manifestations, remain in some normal limits. The adults should not worry as long as the teenager's behaviour does not lead to unaccomodations and rebellios prolonged too much in time.

At this age the manifest can be in less grave forms under juridic or penal aspects, like: lying, inconsequential behavior, verbal violence, denial to greet, smoking, harshness, unconformist wear etc. But they can manifest grave aberrations of moral rules and penal legislation, such as: theft, vagrancy, prostitution, burglary, robbery, current consuming of alcohol, drugs etc.

The factors which can provoke the appearance of offensive behavior can be classified in two big categories determined by: internal factors and external factors. The internal factors are reporting to the hereditary inheritance which predispose the child to violent manifestations and delinquency. As the world that surround the teen-ager is moving is mainly, the family and the school, the external factors are connected with family and school.

Generally, in gymnasium the behavior is less grave. It is not really offensive. But, in last few years there also appeared some situations of delinquency too.

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According to the Regulation of Rules and Management for Secondary Schools-2005(R.O.F.U.I.P.) the 4th section, article 112, it is forbidden for the pupils:

a) to destroy the school documents, like catalogues, pupil's notebooks registration papers etc.
b) to deteriorate the patrimony of school
c) to bring and to spread in school materials which can make an attempt to independence, sovereignty and national integrity or materials which promote violence and intolerance.
d) To organize and participate to protest actions which affect the running of school activities or the pupils frequency and class attending
e) To block the access ways to or in school
f) To posess or consume drugs, alcohol or cigarettes and to participate at gambles inside or outside school
g) To introduce in the perimeter of school any types of guns or other instruments like ammunition, petards, crackers etc., which can affect the physical and psychical integrity of pupils or school staff
h) To posess or spread obscene or pornographic materials
i) To use cell telephones during the classes, exams or competitions
j) To rumour false announcement about the position of explosive materials in the perimeter of school
k) To have hostile and instigator wear and attitude

l) To provoke offences and to have aggressiveness in language or in behavior against mates or against the school staff

Some pupils can easily accommodate themselves without problems in the school requirements. Others oppose them due to personal reasons connected with internal or external factors. These pupils are punished according to the gravity of their penalty faults.

The 6th section, Art. 118 (2), lists the penalties which can be applied to the students:

a) individual observation
b) reprimand in front of the class/and/or in front of the Council of the Class/The School Council
c) written reprimand
d) temporary or definitely recession of the grant /scoolarship
e) elimination from courses for 3-5 days
f) the moving in another class in the same school
g) the moving in other school, with the new school Council approval
h) notice for expulsion
i) expulsion (with right to join next year in the same school; without this right; the expulsion from all schools without right to join for a while)

Art 125 specifies that the notice for expulsion and the expulsion itself are applied only to high school students.

I emphasized this fact because there are situations when parents, or other persons who don't know the rules, ask why a student who is a real danger for kids and violate the moral and ethical rules is not expelled.

The reason is that the Regulation does not permit the expulsion in gymnasium. The most drastic measure which can be applied is the disciplinary movement to another school, but only with their accept.

It is very difficult to find a school that is open to accept an unorderly student or even a delinquent. And, neither the parents are interested in moving the child to another school. In this type of families parents have often contributed a lot to the critical situation of their child. And so, minor children are staying further in the school where they started to be delinquent until they are 16 years…

The law is made to protect the teen-ager. His place is in school and his expulsion from scholar background system can hurry his destiny to even worse delinquency. But it's very difficult to keep a proper education climate in class, however a good teacher you are, when the behavior of a single child harms the majority.

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Such a student was F.

His parents divorced, but it was not a harmonious separation. It was an "ugly" divorce. After that none of the patents found a balance. F. remained in mother's care. But she wanted to remake her life, she wanted to live free and in her plan wasn't place for F. Under a mask of care, in fact she was collecting proves to institutionalize him.

The conditions for institutionalization were not sufficient according to regulations. Mother had lodging and a job. Father without a loging and constant job, could not obtain the custody. Maybe he did not want it very much. eighter. F. was living for a while together with his father in a single-room flat with other 3 men who were working "by day".

For mother, the single chance to get rid of her boy was to prove that F. is an extremely bad child, who was a danger and had to be institutionalized.

When F. came to our school, he was behaving as his mother wanted him to behave, as a "bad" boy. He had already been in 5 schools. He had left all these schools with low grades both in learning and behavior.

When F. was in classroom, teachers could not develop a normal activity because all the time he interrupted the explanations: he used to ask for different things, didn't take notes, teased his mates, listened music cell phone, threw with different things, use to walk around the classroom, everything to interrupt the lesson. But everything was OK if we started to talk about…life: so he could express himself share his experience, be listened to. Unfortunately, this thing was not possible all the time. The children became uneasy and angry, even sometimes they were glad that somebody stopped the lesson. Their parents became uneasy too. They understood that this boy had problems, but they were asking for this situation to be solved.

Usual sanctions remained without effects. He had got them in other schools too. He loved the long talks with the school psychologist. It was clear for anyone that F. missed love which he hadn't receive in early childhood.

He destroyed his desk and the furniture in the classroom. But he was also the one who bought a hammer to fix it. All his actions let us see that he wanted to be in the center of attention and to be loved.

For his acts, Police took course and punished him. Generally, the attendance and discussions with policemen prove to be efficient. But in this case they didn't work. He was fined for violent behavior and language. The penalty had to be payed by his parents. It was another scandal.

Finally, after a discussion with his father, he accepted to move F . to another school. After a lot of insistences, he was accepted in a school in Oradea.

F. left us, but I didn't fill the joy of a solved case. The classroom is quiet now, the children aren't stressed and restless. It isn't perfect, but we have only normal teen-age problems to deal with.

Only the desk in the back, crippled with crooked nails, stays there like a proof of his passage through our classroom. Sometimes I am looking to his desk and I can see his soul: crippled, with slashes made by people who should have loved him unconditionally…I know that I nailed some pins in his soul, myself. But I considered that it is the only way I could protect the other children. I hope , from all my heart, that the school where is F. now is better for him. If the majority of the pupils have such problems, the teacher can stop from teaching and talk with them until their soul is discharged by its sadness.

In such a school the teacher shouldn't be reprimanded if their student didn't promote the exam, or they get law marks in tests.

In Oradea function a lot of Primary and Secondary Schools, some High Schools with gymnasium classes and 3 Special Schools , for learning difficulties, or with different disabilities, up to 14 years old or maxim 16. At these schools, together with children from normal families, are learning children from Orphanages Centers. This measure was taken in last years for a better socializing. They are accepted at Special Schools after a decision of a special committee.

In case of F. it was not about the impossibility to rationalize or concentrate etc.He was not a student recommended for the Special School. He could promote the committee's tests. This fact was confirmed by the school psychologist. The bad results in learning and the non-promotion were caused by lack of interest, of elementary knowledges, school attendance, and other causes connected with his family's problems. In case of F. the most critical problem was his behavior, not his learning results .

Therefore, besides normal schools and help schools, I am thinking that there must exist schools, or classes where the most important objective should be that children are provided with trust, responsibility, joy etc. Some of the children who lack these qualities are not from Orphanages Centers. They came from troubled families. Their place is neither in Orphanages Centers, nor in Special Schools, not even in normal schools because they become aggressive and indifferent toward learning, not in Disciplinary Schools(a single school in Romania) because they didn't commit grave delinquencies (yet!).

In such classes or schools, all matters should be taught by teachers with a very good training in psychology (the graduation of some training is not a certainty!), and the school curriculum more permissive. I consider that is more important for us, to have healthy children –emotionally and mentally balanced.

After graduating eight classes they should go to a vocational school, to learn a profession, not to be ignored or be thrown up and down in a school system unadapted to their requirements. After the vocational school, for those who will want to continue the studies, should be provided.

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Many times in teaching profession we ask ourselves if our reaction was the most suitable. if it wasn't exaggerated, if we found the adequate words and methods. The puberty is a natural state which must be dealt with patience, gentleness and wisdom.

An inadequate "treatment" can do a lot of harm, even the intention was good.

The exaggeration, the disproportional punishment toward the teenagers act, can estrange them from us, can block communication and lost their trust – in themselves and in the people who should care for them. It is possible that in such conditions the teen-ager looks for understanding in unadequate company and preoccupations.

I think is very important that teachers and parents to make a difference between simple unpleasant happening and real tragedies, before reacting. In Romanian language we have the expression " to do **from mosquito – stallion,** for these situations.

The aggressiveness manifested by kids in school is unfortunately sometimes a model copied from their family. The courses who deal with our aggressive tendencies, anger control, conflict solving, are recommended for kids and adults too. The students answer positively to such lessons given as discussions, plays, movies etc.

Not the same thing we can say about adults. The parents with "problem kids" don't come to such meetings. Only a few of the present parents are really interested to learn new methods for better communication and relationship with their children. Unfortunately, the same thing can be said about some of the teachers.

The psychology and pedagogic trainings are graduated by a lot of teachers, but only a part of them apply new methods. Adults, teachers or parents sometimes consider that they know everything in education, even if the failure is obvious. Lamentations like " it was different in my time…", " he's missing those 7 years from home", " this is what they learn at school…" don't fix the problem. The victim is the child, caught in the middle, between two worlds .

F. was not the only child whom I know that had changed a lot of schools.

In case of a girl, same age, the reasons were different. By the time she graduated gymnasium she had changed 3 school teachers in primary school and 3 school masters in secondary school. Even in kindergarten she had changed two educators. Her mother considered that nowhere his daughter was treatied how she deserved. She was not "the first"…She was a good child, pretty, healthy, sensible, with talents in some domains, and less in others. Of course the faults was in educators, teachers, principals, all those who, in a way or another, didn't recognize a genius in her girl.

Because at that moment she was not a genius. She was only a perfect child. Yet. But nobody knows for how long. Only her soul knows that how much humiliation, pain, anger she repressed. She didn't have any friends.The children were afraid of her mother…

Some children carry their suffering, their blights in silence. Some of them, the majority in fact, contrive to get over. Only one of them flare up. Some of them we see at the news. Some of them we know from neighbors, or we met them in schools. Or in own family.

Behind each delinquency case is a drama. A pained soul. **The delinquency in minors is a scream!** The people often say: she missed nothing, she had everything,…Some of children became delinquencies because they missed food, others because they missed love…For all something is missing. The same thing, in fact: Happiness, inner peace.

The facultative classes in schools, could be allocated to the study of some themes very interesting for teen-agers: " How to solve the conflicts", "How to get

to understanding with difficult people", "Learn to smile"' "Learn to forget" etc. These themes exist in Educational Class Curriculum, but class masters are teachers have different specialties. They g have all graduated psychology courses. But these courses prove to be really efficient if they are taught by psychologists or teachers with real competences.

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The responsibility for minors actions is attributed to adults who, in a way or another are playing the most important role in the life of the teenager: first of all the parents, and after that the educators. These are the first places where, in the case of a delinquency the investigations start: **the house and the school.**

To assume the responsibility does not mean attitudes like: " You are in my responsibility, so you will do what I say!", " I am giving you everything, I am asking only to listen me", "These are the rules, you must accepted these" and others.

I am thinking besides the responsibility, the adults can dicrease the juvenile delinquency through the Education for Responsibility. **Through Education for Resposability of adults and kids I understand the logical acceptance of consequences which follows a decision, a behavior, an attitude, without obstructing free choice.**

After a regretable action , both kids and adults, show sometimes an discordant attitude, toward something that was, in fact, a predictable situation. Uncalled, but predictable. For example, some parents, even if they knew that their son didn't learn at all during the entire school year, they show amazement when he failed the exam. If their son didn't learn and his family knew this, the failed of the exam is a predictable consequence. Or, if the parents accept that their daughter , 12 ears old (or less!) dress "sexy", has a provocative behavior, they must to accept even the reality from street, where exist persons who can be aggressors. In mathematical terms, the probability to provoke an event is bigger in case of the persons who gives the possible aggressors signs through their attitude, behavior, language, clothes.

Police and School deliver this message often, using warnings and interdictions. Beyond these messages , the choice is free for anyone.

The absence of responsibility for own decisions make us to look somewhere elese for it. Neither is a good attitude to blame ourselves. The responsibility makes one accept a failure easier and have another choice.

In some cases parents oppose brutally to the choices made by their kids, because they consider them dangerous. Therefore, it is not surprising when a parent forbids his 14 years daughter to go to night clubs. But simple interdiction doesn't change the decision of the eenager. If she is not responsabilised properly, frienly, open way, with calm, about the possible consequences, she will stay determined to go there . If adults forbid something to a rebel teenager, he will want it more. Another reason to want it so much is because he hadn't discovered anything else to give him a bigger satisfaction. The teenager is looking for self-

discovery “Who am I”. He will look for it in minds and models which are stronger . Sometimes these models are from own family, friends, or movies,…

The responsibilisation made with finesse gives the teenager the possibility to change own mind, to give up, without the feeling of a defeat. It is very important for the teenager to know that the family is close to him after any deception or suffering in life. Nothing is unforgivable. Especially to a teenager. The unhappy events can be transformed in new conveniences. Even a failure is a gain in experience. The proverb says: “When a door is closed, a window is opened.”

To prevent or to correct some infractional behavior , we don’t have to forget that teenager is not a passive hospitable host of of the requirements. Even if some of the children are more obedient , they can accumulate frustration which can prejudice them in development, communication, relationship.

One of these can be the decision about the future profession or high school, choice without the teenager opinion. Pupils who not let by their parents to follow the profession they want became apathetics.

They are forced to stay at uninteresting courses for them, courses they don’t understand, so they look for other preoccupations, sometimes apart from school.This is not the only aspect. Another aspect is that they became “dangerous” persons for all of us: incompetent physicians, an incompetent mechanics, airily teachers etc.

Both teachers and parents are sometimes indifferents to the real “calling” of the children. The first, to report a good procentage in promovability, the others from pride.”If we are physicians, you can not be a manicurist, if your cousins graduated computer studies, you can not be just a cook,…” Unfortunately, in these cases when the parents decide instead of the children, the psychologist and school master opinion is ignored as well.

The school and professional orientation is efficient if it starts from the child abilities and needs. The educational offer must be according to the society economical demands, the practical abilities required at a certain moment by the society, not in the least by the intellectual capacity of the students.

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Juvenile delinquency is a reality of our days, in different forms of manifestations. It ignorance and treating with unefficient methods, can lead to a dangerous situation – similar to what has happened with our atmosphere due to pollution.

To acuse only the teenagers for their manifestations is like saying that only us, peoples who live at this moment, are guilty for ecologyc disasters. We, the present generation as well as the previous and maybe the future ones (if they will ignore the obvious signs of distroing), are together responsible for the ecological desaters.

The responsibility belongs to all of us.

Bibliography:

1. ● Cosmorovici Andrei (1999), *School psychology*, Editura Polirom
2. ● Hauck Paul (1997), *Be calm!*, Editura Polimark
3. ● *Regulation of Rules and Management for Secondary Schools*(2005)
4. ● Virgiliu Gheorghe (2005*), The effects of television on human mind*, Editura Evanghelismos
5. ● Walsch Neale (2001*), Conversation with God for teenagers and parents*, Editura For You

SOME CONSIDERATIONS REGARDING THE FACTORS THAT INFLUENCE THE UNDERAGE PERSONALITY

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Abstract:

The science has always tried to discover the causes of different phenomena, to find the nature, the manifestation, the frequency, the application, the laws, the regularities, in order to establish in good conditions the penal policy, to be able to determine the symptoms and to fight against the infractions.

During time, certain tries were made that led to the shaping of some concepts and theories that give to the criminal act an external determination of the criminal: environment, family, society, education, religion, and a bio-psychological internal determination.

The study of the file will help the legal investigation authorities to understand better the conditions in which the deed was done, and the bio-psycho-social co-ordinates of the offender are very important in the preparation of the offender's interrogation.

The problem of the behaviour during the scientifical investigation of the crime scene, regards the investigation team, the criminology specialist especially and also the offender, this being solved only by reaching the purpose of the physiological phenomena, meaning: the understanding, the prediction, the control of the human nature. In this way, I present a study analysing the psycho - pathologic factors and environmental factors involved in the un-adaptation behaviours at underage individuals.

The victim protection and social integration of the offenders services, can ask the competent authorities to name specialists (philologists, sociologists, teachers, priests, doctors or other specialists that could have an necessary opinion).

The Church, during some period of time, has been present in all life sections: political, social, cultural, helping, giving impulses, moralising, contributing with its specific methods to maintain the Romanian people in a spiritual and moral stabile environment.

In order to socially re-educate and reintegrate the offenders it is imperious to focus all the representatives of the religious cults to an educational constant programme, having as main purpose to change the mentalities of the prisoners towards working and increasing their implication in productive activities, presenting in a detailed way the material advantages, the educational and mostly the group socialising on which they can benefit, and also the advantage to work in an external environment, out of the prison.

The whole society is preoccupied by the moral and social recuperation of those who by their deeds that were considered to be anti-social, and were convicted to liberty prohibitive punishments.

The stipulations of the European Regulations for prisons, recommend not only the permission of the prisoners to satisfy inside the prisons the needs imposed by their religion, but to participate to religious services, specific to their religion, to posses religious books, to benefit over religious services given by specialised personnel, as employee of the system and also to have special places where they can unfurl the religious activities.

Key words: personality, delinquency, investigation

I. Generalities. The science has always searched to discover the causes of different phenomena, to establish their nature, their manifestation, their frequency, their development, their laws and rules, for a better argumentation of the penal policy, to be able to determine the ways to prevent and fight the infraction phenomena.

During periods of time, many attempts were made that lead to the contouring of some conception and theories that contribute to the criminal act, an exterior determination of the criminal individual: environment, family, society, education, religion, or an external determination like the bio-psychological one.

The causes of delinquency must not be searched only among the intellectual or moral features of the person but also among the social factors that, for some individuals, belong to certain specific groups of the population, lead to some actions that come against the law.

When it will happen, who will act, in which conditions, which will be the directly affected value, all these questions are random and can be examined only at individual level.

Any kind of action, that comes against the conventional actions and include a lot of actions starting with different type of breaking law actions to bizarre behaviours, incompatible with the cultural "codes" or "codes" belonging to a social group or to the society as a whole, represent a deviation[1].

The criminality is a social phenomena composed by a series of penal actions. The incrimination and the penal sanction of the criminal acts was done after objective criteria, meaning the object of different infractions, of social values that are affected[2].

The evolution and its distribution depending on different social variables are emphasised in the criminal statistics[3] made in different countries that show an alarming development of this " scourge".

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[1] S. M. Rădulescu*, Dicţionar selectiv. 100 de termeni cheie în domeniul patologiei sociale, criminologiei şi sociologiei devianţei*, Ed. Lumina Lex, Bucharest, 2004, p.82.

[2] In the penal law, it could be incriminated only by organic law, in contravention matter, infractions can be established and sanctioned by a series of administrative normative documents, specially stipulated in the frame law.

[3] There are three types of criminality: 1. Identified by the Police, apparent or referred to a court because some penal deeds, only apparently are considered infractions or only apparently are submitted to the penal prosecutor.; 2. Judged by the legal authorities for which there was established

According to the penal law, any infraction is regarded not like a prejudice to private persons, as per the civil code, where the accent is set on the compensation but as an offence brought to the whole group, for this reason the accent is focused on the penalty of the offender[1].

The attempts to shape certain profiles are affected by the great variability of the behaviours involved in infractions. For example, the psycho-behavioural features are involved in different ways, like pocket thefts, rapes, document forgery, homicide.

Also, there are large differences of behaviour in committing some infractions that belong to some category like: homicide, imprudence homicide, qualified homicide, serious cases of homicide.

The study of the file will help the penal prosecutor to understand better the conditions that surrounded the deed, the biological, psychological and social features of the offender being very important in the preparation of the offender audience. In this way,

- the age of the offender indicates the development degree of the physical features and psychological ones and also the social position. Also, the dynamics and the structure of the infraction it is very important[2];

- The gender of the offender, the somatic illnesses and the physical deficiencies of the offender, the ethnical and racial particularities of the offenders and certain reactions to the external impulses[3];

- the identification of the basic elements of the personality: temperament, the aptitudes and the character constantly expressed in the behaviour[4].

The offender-victim relation is very complex and for its understanding a psychological and psycho-social analysis[5] is necessary. In the specific papers, there are certain preoccupations regarding finding a method to calculate the

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a final; 3. Real or done in objective manner, that have remained unknown and unrecorded by the legal authorities.

[1] Sorin M. Rădulescu, same reference., p.64-65.

[2] According to the age, the infractions present particularities that led the juridical authority to a certain group of offenders. There are some specific infractions like those of adolescence and youth that require more physical force, boldness and even foolishness, and those belonging to adults and old people, infractions that require ration, calculation, prudence and life experience.

[3] The physiologists can not ignore the main feature of the individual, that is the different reaction to the same impulse.

[4] The *temperament* consists in a series of psychological features determined and conditioned by the type of superior mental activity of the individual. There are four types of temperament: choleric, sanguine, phlegmatic and melancholic.

The aptitudes represent those features of the individual that condition his/her success or could explain the failure of some physical or intellectual activities..

The character represents all those psychological and moral features expressed in his/her behaviour and actions, in the attitude and position with his/her self, the society or all its recognised values, A. Atanasiu, *Tratat de grafologie*, pag.32-36; Gh. Mateuț, *Criminologie,* pag.136-137.

[5] T. Butoi, Ioana Teodora Butoi, *Psihologie judiciară, Tratat universitar*, Vol. I, Ed."Fundației România de mâine", Bucharest, 2001, p.103.

„vulnerability index”, that can be established on the basis of two categories of factors [1].

Within the research activity at the crime scene, a very important fact is the period till the end of the criminal deed, when the offender, after calming and relaxing, makes mistakes leaving traces able to lead to his/her identification, and for this reason it is very important to establish the places where the crime started and where it ended, the latter being very conclusive.

The problem of the behaviour during the scientific investigation at the crime scene regards both the investigation team, the criminality specialist, but also the offender, this one being solved only by reaching the purpose of the psychological phenomena investigation that consist in understanding, prediction[2], post evaluation[3] and the control of the human behaviour[4].

By a juridical point of view, the infraction is the result of the negative behaviour of the human being, responsible in relation with the requests of the positive penal norms. The judicial psychology can not deal, as simple as that, with the juridical concept of the infraction, either the modern justice can judge and solve the penal causes in this field. For this reason, the justice asks for the services of the judicial psychology regarding the criminal deed, its author, his/her personality understood as a whole of elements that conduct to the mental conformation of a subject, having his own specific profile.

By the *biological components* of the personality that cover all the native legacy of the individual, even if some characteristics are found or not at his/her ancestors, we can structure the following:

- The major qualities and deficiencies of the human body, the visible and less visible ones, have a serious mark over the personality;
- The temperament consists in those formal characteristics that refer to the manner in which the psychical life of the individual is present;
- The aptitudes of the personality refers to the natural ability to get knowledge, general aptitudes or special ones.

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[1] See N. Mitrofan, V. Zdrenghea, T. Butoi, *Psihologie judiciară*, Casa de Editură şi Presă „Şansa” S.R.L, Bucureşti, 1992, p.71.

[2] Using the *prediction* the investigation team can establish, with probability the post-infraction behaviour of the offender, regarding the protection measures taken by this one, where and how will value the infraction's product, if he/she will commit another crime.

[3] The *post evaluation* is a very important instrument for solving the penal cases, used by the criminality specialist during the scientific investigation at the crime scene, based on the traces, the material changes resulted after the interaction between the offender, the used means and the components of the environment, the specialist could establish the existence of the deed, the conditions in which the deed was committed and finally, to reach the purpose of the penal process - the identification and the penalty given to the offender.

[4] See Elena-Ana Mihuţ*, De la devianţă la criminalitate. Importanţa factorilor bio - psihologici - studiu de caz,* a paper presented at the International Symposium, entitled ”Religia si Dreptul şi impactul lor asupra societăţii umane” organised by the Centre for Religious and Juridical Canonical Studies of the three monotheist religions (Mosaic, Christian, Islamic) inside the Ovidius University of Constanţa, affiliated to the Theology Faculty, the 30th of May, Constanţa.

The social components refer to the effects of the actions of social and cultural nature (social environment, the learning as a basis and a mechanism of spontaneous learning) translated in the received structures (character[1], attitudes) that, during their consolidation, become forces, even reasons that shape the behaviour.

The special situation of the child created by vulnerabilities and the need for protection was always considered by the juridical norms. In the past, at the bottom of the legal regime of underage was settled the concept that the children must be "submitted" to the protection of their legal representatives. Traditionally, in the private law, this protection was regulated, mainly, on two directions: the underage person incapacity and the parental protection.[2]

In the modern times, the child is no longer considered to be " an object" of protection, participating to the social life, including the juridical one. The child is the owner of the fundamental human rights as the adult person. This new conception regarding the child protection was shaped at international level by the UN Convention regarding the children rights - ratified by Law no.272/2004 regarding the protection and promotion of the children rights.[3]

Law no.272/2004 is an actual *"Code of the children protection"* meant to warranty the children rights not only inside the family, but also regarding other rights and civil liberties, the health and wealth of the child, his/her education, the recreation and cultural activities, the special protection of the child temporary or permanently missing the parental protection, the protection of the refugee children, in case of military conflict, the protection of the child that has committed an offence stipulated by the penal law and does not respond for it, the protection of the exploited child etc. Law no.272/2004 represent a frame- law, that becomes a general norm in the field of child protection, which will be completed by special laws, like the Work Code, The Family Code, educational laws etc.[4]

The main general character of the protection is contoured by the stipulations of art 2 Of the Children Rights Convention; according to this, the states commit themselves to respect and warranty the rights of children that belong to their jurisdiction, their essential rights without no exception by race, colour, gender, language, political opinion or other opinion of the child or his/her parents or legal representatives, independent on their nationality, ethnic or social group, their material situation, their incapacity or other situation.

The Convention ensures the effective protection of the child, against any form of discrimination or penalty. Independently on the authority that takes decisions regarding the underage, the superior interests of the child are prior.[5]

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[1] By character we understood a whole of essential and specific features that are expressed in the human activity in relatively stabile and permanent conditions.
[2] Milena Tomescu – "*Dreptul familiei. Protecţia copilului*", Ed. All, Bucharest, 1993, pag.209.
[3] Idem.
[4] idem, pag.210.
[5] Constantin Arcu – "*Protecţia minorilor în dreptul internaţional privat*", Ed. Universitatii Suceava, 2003, pag.7.

For the application of the rights that are recognised by the Convention the states lay strong efforts and commit themselves to take all the legal or administrative measures. In the case of economic, cultural, social rights the states will take these measures within the maximum limits of their reserves, and when is needed, within the international co-operation.[1]

Ratifying this Convention, Romania must take all the legal and administration measures to adjust the internal legislation to these imperatives. Generally, all the norms adopted after 1990 in the field of child protection and children rights, are adjusted to the stipulations of the Convention, and Law nr.272/2004 is considered to be an actual "Code" in this matter.

As underlined, Romania has ratified the UN Convention regarding the Children Rights by Law no.18/1990. By its ratification, the Convention has gained a juridical force within the internal allow, the public authorities and the courts of law, having the obligation to respect and apply its stipulations.

[1] "*Manual pentru implementarea Convenţiei cu privire la Drepturile Copilului*" – a paper for UNICEF by Rachel Hodgkin and Peter Newell, Reviewed edition, Editura Vanemode, Bucharest, 2004, pag.63.

JUDICIAL ASPECTS REGARDING THE JUVENILE DELIQUENCY. MODERN INCLINATIONS IN POLICE ACTIVITY

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Abstract:

The adoption of certain legislative, social and pedagogical measurements of prevention and diminuation of the juvenile delinquency phenomenon requires an interdisciplinary approach as well as a close cooperation between the institutions with legal duties in this field

Considering that the police service always represents the first point of contact of the underaged with the juvenile judicial system, it is extremely important that the policemen are well informed and prepared in judicial and psychological matters in order to take action in accordance with the national and international stipulations referring to the underaged

The policeman is obliged to intervene for the maintainance of public order, independently from the person who is involved, but when it comes to underaged involved in a deed stipulated by the criminal law and who doesn't have criminal responsibility, the policeman needs to take into account the stipulations of the laws regarding child protection, and cooperate with institutions which have responsibilities in this area. Additionally, the preventive action of the police is important, since it contributes to the diminuation of the causes which determine the amplification of the juvenile delinquency phenomenon.

„The Resolution of the European Parliament from 21st of June 2007 regarding juvenile deliquency: women's role, family's role, society's role" stresses the fact that the juvenile deliquency phenomenon can be faught against efficiently only by adopting a strategy integrated at national and European level, which would include three directive principles: prevention, judicial and extra- judicial measures and social integration of the underaged delinquents. Police's activity has implications in all the three segments mentioned above.

Key words: juvenile delinquency, legislative stipulations, The Resolution of the European Parliament, Police activity

Citizens are equal in front of the law and of the public authority, disregarding any discrimination and priviledges. Nobody is above the law"(Art 16 line (1) and (2) of the Romanian Constitution)

In conformity with the stipulations of this constitutional article which states that nobody is above the law, we can state that the legal stipulations are applied to all social cathegories. The underaged are not an exception to this rule; they are a special social cathegory due to the nature of implications that it produces in the social environment as well as in other environments.

Juvenile deliquency raises three essential problems. First of all it is important that we avoid any ambiguities in defining this phenomenon; not any residence abandonment is a deliquency, even though, in general, it is followed by behavioral disorders. Secondly, the scientific explanation of infant-juvenile behavioral disfunctions represents the scientific support for behavioral recovery and for avoiding the risk for these disfunctions to become permanent. Thirdly, adopting the most adequate legislative, social and pedagogical measures of prevention and diminuation of this phenomenon supposes (needs) an interdisciplinary approach.

Also, the European vision, on the basis of The Resolution of the European Parliament from the 21st of June 2007 regarding juvenile deliquency: women's, society's and family's role[1], reiterates the importance of outlining three directions of action, since the juvenile deliquency supposes much higher risks than the delinquent behavior of adults, and affects one of the extremely vulnerable segments of the population, which is still in the process of personality formation, having exposed very early the underaged to the risk of social exclusion and stigmatization

The resolution underlines the fact that the juvenile deliquency phenomenon can be faught against efficiently only by adopting a strategy integrated at national and European level, which would include three directive principles: prevention, judicial and extra- judicial measures and social integration of the underaged delinquents. Police's activity has implications in all the three segments mentioned above. Indeplinirea of the job tasks by the policeman supposes being aware of the specifical reglementations regarding the underaged.

The underaged receive a special reglementation in our legislation. The Romanian Constitution states in article 49 that youngsters and children are the beneficiaries of special protection and assistance conditions regarding their rights. These conditions are conferred by the special reglementations stated in the valid and operative regulations regarding the underaged.

The situation of the underaged is reglemented according to the criminal responsibility in the criminal code, where we find a title called „The Underaged".

[1] The Resolution of the European Parliament from the 21st of June 2007 regarding juvenile deliquency: women's, society's and family's role, (2007/2011(INI), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0283+0+DOC+XML+V0//RO

Within this article there are stated the limits and consequences of the criminal responsibility of the underaged, educative measures which are to be applied, and reglementations[1]. There have also been formulated special reglementations regarding the contraventional responsibility of the underaged[2]. Additionally we should also take into account Chapter V belonging to Law no. 272/2004 regarding the protection and promotion of children's rights[3], which reglements the protection of children who have committed a criminal deed and does not have criminal responsibility.

From the point of view of civil responsibility, the legislation makes a distinction between the responsibility that belongs to the underaged, and the one that belongs to the adult. Adults' responsibility for the underaged's deeds is reglemented in the Romanian Civil Code, where we find a form of indirect responsibility, the parents being responsible for the prejudices caused by their underaged children[4]. The parents are thus responsible for the damages produced by their children, not only as a consequence of their surveillance, but also for the damages that are consecutive to the incomplete and defficient education provided, resulted from parents' indifference towards this aspect of the family life and of society.

Regarding the criminal responsibility of the underaged, title IV „Special procedures" belonging to the The Code of Criminal Procedure of Romania underlines in article 480 the procedure of interrogating the underaged in case he/she has committed a criminal deed[5]. The underaged, if being under 14, cannot be interrogated or confrunted by the authorities of criminal investigation, unless his/her parents or the higher authority are witnessing.

In causes which involve underaged offenders, the authority of criminal pursuit or the court of law has the obligation to order a social inquiry[6] which should consist of information regarding the social environment of the underaged.

The procedure in the court of law has an exceptional character, it is judged in court sessions which are not public, and the causes in which the defendant is underaged are judged, according to the regular competence rules, by judges specially nominated, according to the Law[7]. The judicial assistance and the presence of the prosecutor is mandatory at any appearance in the court of law[8], and the execution of any measures applied to the underaged is done immediately

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[1] Title V, Law no. 15/1968, Criminal Code republished in the Official Monitor no. 65 from 16 of April 1997, part I

[2] art.11 from O.G. no.2 from 12 July 2001

[3] Law no. 272/2004 regarding the protection and promotion of children's rights published in the Official Monitor no. 557 from 23 June 2004

[4] Art. 1000 alin. 2 ,Romanian Civil Code

[5] The Code of Criminal Procedure of Romania, Chapter II, art.480-493

[6] The Code of Criminal Procedure of Romania, art.482

[7] The Code of Criminal Procedure of Romania, art.483

[8] art.18 The Code of Criminal Procedure of Romania and art.44 alin.(4) şi 45 The Code of Civil Procedure

The measures that are taken against the underaged in conformity with the Code of Criminal Procedure are reproof, surveillance or hospitalization in a center of readjustement.

Law no. 272/2004 regarding child protection and the promotion of children's rights settles the legal frame regarding the honouring, promovation and guarantee of children's rights, the public authorities, the private authorized authorities, the natural persons and legal entities responsible for child protection[1].

The policeman is obliged to intervene for the maintenance of public order, independently from the person who is disturbing it, but if the person is underaged and has committed a criminal deed, he/she needs to take into account the stipulations regarding child protection and the necessity of cooperation with the institutions designated by the law with responsibilities in this area. In addition to that, the importance of preventive actions is extremely high can contribute to the diminuation of the causes which determine the amplification of the juvenile deliqency phenomenon, by using a series of measures stipulated by the law.

Considering that most of the times the Police represents the first point of contact of the underaged with the system of juvenile justice, it is very important that the members of this institution are well informed and trained in the filed of juvenile deliquency and that they are ready to action according to their responsibilities.

In this respect, the Rules of Beijing[2] stipulate that the police officers who have been confrunted with underaged issues frquently or even exclusively, as well as those who are at the beginning of their activity in the juvenile deliquency prevention field, need to receive a special training in this sense.

It is necessary that the policeman knows these legal stipulations in order to successfully apply these special procedures to an underaged offender.

When applying his job responsibilities, the agent of public security has as main responsibility the maintenance of public order in the area where he activates. It is worth mentioning that the police agent carries on his professional activity exclusively based on the law, respecting the principles of human defense and protection, impartiality, undiscrimination, proportionality and graduality.

The occupational standards for the agent of public security describe the units of competence to be formed through the educational system of the Ministry of reform and administration. These competencies and the criteria of realization are reference elements in policeman's activity, but in concrete cases and actions it is materialized the pursuit of the principles above mentioned. These concrete and specific actions raise special issues when the policeman interracts with the

[1] Actions of protection and promotion of children's rights established by Constitution and law

[2] Rules of Beijing – United Nation organization rules cocerning The administration of juvenile (The Rezolution of United Nation organization 40/33 from 29 of November 1985),
http://www.cjcluj.ro/UserUploadedFiles/File/SITE%20OJDC/legislatie/Regulile%20de%20la%20Beijing.DOC

underaged. In these cases, it is necessary to know the personality characteristics of the underaged offender, as well as to follow the valid legislation regarding child protection. Thus, even if the underaged has committed a crime stipulated in the criminal law, his rights according to the law are to be respected. In this respect, the policeman needs to have a complex understanding of this phenomenon

Furthermore, after Romania's adheration to The European Union, the European legislation in this field integrates in our legislative system. In this respect, the police agent needs to know and respect the CONVENTION regarding child's rights[1].

The convention above mentioned stipulates in art. 37 that no child should be subject to torture, punishes and cruel, inhuman or degradant treatments, illegally or arbitrary prived of his liberty, that any child prived of his liberty should be treated humanly and with the respect proper to human dignity, and that the children prived of their liberty should have the right to quick access to judicial assistance or any other adequate assistance.

Art. 40 of the same convention stipulates the necessity of respecting the presumtion of innocence regarding the underaged's deeds, informing the underaged in shortest notice of the accusations that are brought against him, his rights to attack them, his rights to full compliance of his private life.

Another authoritative act with international applicability is the Rules of Beijing, which stipulate general social politics that improve underaged's situation, the impartial and non-discriminative appliance of the Rules[2], the age of criminal responsibility[3], the resort to extra-judicial means, the underaged rights (the presumtion of innocence, information and the right to defence).

Rule no 10 belonging to Beijing Rules refers to the first contact that is established between police authorities and the underaged offender[4] and analyses fundamental aspects which refer to the procedures and police agents' conduct or of other agents, part of the services of repression, in juvenile deliquency cases. The expression „avoid producing any injuries" is pretty vague and it covers several aspects of possible interraction (words, phisical violence, risks produced by the environment). The first contact of the underaged with the justice can be extremely noxious for the youngsters; the expression „avoid producing any injuries" should be interpreted as harming as little as possible the underaged, and trying to avoid any supplimentary or unproper (against the rules) prejudice. The first contact with the authorities of repression is extremely important, since it can deeply influence the underaged's attitude towards the State and society. On the other hand, the

[1] Adopted by the General Gathering of the United Nations organization in 20th of November 1989, ratified by Law 18/1990 published in the Official Gazzette no. 314 from 13th June 2001

[2] art. 2.1 , Rules of Beijing

[3] Internal laws stipulate different minimum ages of criminal reaponsability (for example, 21 years in Indonezia)

[4] Art 10.3, Rules of Beijing

excess of any other intervention depends mainly on these first contacts. In this kind of issues, firmness and good will are essential.

The Police, the Prosecutor's Office or other authorities which have duties in the juvenile deliquency field have the power to solve these cases as they consider appropriate, without involving the official criminal procedure, according to principles existing in the document previously named. Any recourse to extra-judicial means, involving the referral to communitary services or to other competent services reqests the approval of the concerned, of the parents or of the tutor, being naturally understandable that this decision/verdict can be subordinated ro a reexamination by the competent authority, if needed[1].

The internal settlements also establish rules of interraction of the policeman with vulnerable groups, a part of them being represented by the underaged.

Art. 1, part of Law no. 218/2002 regarding the organization and operation of the Romanian Police[2] mentions that the Romanian Police Department is part of the Ministry of Interns (presently Ministry of Interns and Administrative Reform) and is the specialized institution of the State, which exerts attributions regarding the protection of people's fundamental rights and liberties, of the private and public property, the prevention and revealing of offences, the observance of public order, according to the law.

The policeman's intervention must take into account the stipulations regarding child protection and the necessity of cooperation with the institutions stipulated by the law, with responsibilities in this matter.

The policemen need to show solicitude and respect for any person, especially for the vulnerable groups, they must direct their professional activity towards conscientiously fulfilling their specific service duties with competence, integrity and honesty[3]. The police agent is obliged to act for the maintenance of public order, regardless of the person who is troubling it.

As a recommendation, the Rules of Beijing, stipulate the necessity of a special instruction of the police officers who deal with underaged frequently or exclusively. In this sense, it is mandatory the set up of some special police services in the larger cities[4].

As the Police is always the first intermmediate with the judicial system for the underaged, its workers need to action judiciously and gradually. Even if the report between the urban environment and criminality is very complex, the raise of juvenile deliquency is often associated with the development of the big cities, especially if the latter is rapid and anarchical. Thus, the police special services would be needed not only to apply the principles announced by the Rules of Beijing, (for example art 1.6.), but also to improve the prevention efficiency and

[1] Art.11.2 , art.11.3, Rules of Beijing
[2] published in the Official Monitor no. 305 from 9 May 2002
[3] Art.41 lit.b) from Law no.360/2002 – Police Status , published in the Official Monitor no. 440 from 24 June 2002
[4] art.12.1, Rules of Beijing

the diminuation of juvenile deliquency, as well as the treatment applied to deliquent youngsters.

Under the aspect of juvenile deliquency prevention, there are being remarked the programs applied in the police of proximity field, whose goal is directed towards the education and formation of a respectable behavior within the youngsters. The proximity is accomplished based on the partnership made between police and citizens, education institutions, church, business environments, non-governamental organizations, public local authorities, with the purpose of solving the problems that have direct impact on life, of creating a climate of civic safety and to improve the quality of life. Policemen's preventive action is really important, since, by using some legal measures, it can diminish the causes which determine the amplification of the phenomenon of juvenile deliquency.

The specialised services for underaged represent an important service, to which it is given special attention within all the police structures of the world. There are pretty recent institutions in the repertoire of services offered by the systems of juvenile justice from many developped countries.

The literature of speciality describes the way of organisation of these institutions in the world. For instance, in USA, there are expert officers involved in working with the underaged offenders, and special units within the police department. In Austria, there is an innovator project for the prevention of juvenile deliquency which requests a special training of the police in order to deal with the gangs. Canada has made up special units which deal with the gangs, and in Japan, at the police stations (Koban) , in the urban areas and at the police stations in the rural areas (Chuzaisho) have special specialy trained officers who deal with the juvenile deliquency. Concomitantly, in Japan there is an additional voluntary system set up by the Police, which helps police in fighting against juvenile deliquency.

The illicit deeds committed by underaged are in general group deliquencies. These appear under the form of „spontaneous gangs" or „organized gangs" where, in general, the leader is over 18. Between the crimes committed by the underaged, the most frequent are: crimes against goods, (thefts from houses and stores), thefts (theft of engine-vehicles – the only crime that overrules in statistics the crimes committed by adults), robberies, deliquency related to drugs and alcohol.

Other crimes: crimes committed with violence, crimes against people (murder and attempted murder; injuries causing death and other types of intentional injuries, deprivation of liberty, threat, other intentional violence acts), crimes against good virtues (rape; procurement, prostitution, beggary, vagrancy, incest-manifested especially between sister and brother).

According to statistics run by responsible institutions, juvenile deliquency is growing quantitatively (as frequency) , as well as qualitatively (as types of crimes), within the whole world.. The infantile- juvenile delinquency represents 1% of the high criminality (for instance, murder by using guns), 6% of the middle criminality (for instance, corporal injuries) and 31% of minor criminality (for instance, thefts.

In 28% of the cases, crimes are followed by phisical violence. Underaged deliquency is maximum between 13 and 14 years old (42%), following ages between 14 and 15 (30%). Youngsters commit 27% of the rapes, 23% of the corporal injuries and in 27% of the cases they are illegaly carying arms. Boys deliquency represents 72% and girls deliquency only 5%, frequently consuming in groups. The child totally abandoned, half-abandoned by divorce or cryptically abandoned in disorganized families explains 50% of the deviation and deliquency. The hyper-permissive families or hyper-autoritative are also subject to these procents.

A meaningful procent, respectively 62% of the children and underaged who have committed thefts and robberies are in the same situation as a result of the fact that they have not been supervised or they have abandoned school.

The traditional tendency is to counteract juvenile deliquency by punitive and repressive sollutions, against those of protection, social and judicial assistance of the underaged that have committed crimes. After 2002, when the services of reeintegration and social surveillance of the underaged have started to function, there has been produced a small imporvement of the justice for underaged, meaning that the educative measures have risen.

The European Parliament, according to the Resolution from the 21st of June 2007 regarding juvenile deliquency[1], considers that the objective of an approach at European level should be that of elaborating models of intervention for solving and administrating juvenile deliquency, while the recourse to liberty privative measures and to criminal sanctions should be the last choice and applicable only when it is absolutely necessary (po.23). Also, it invites the Commission and the local and national authorities of the member states to get inspired from the best practices applied in the member states, which rally the whole society and include positive actions and interventions coming from associates and parents, non-governamental organisations, district associations, and to evaluate the results of the experiments undertaken in the member states regarding the cooperation agreements between police authorities, education institutions, local authorities and youth organizations, and the social services at local level by respecting the rule of extended confidentiality and of national strategies and youth programs. As a concrete measure, the Parliament reqests the Commission to promote the launching of a green european number for the children and teenagers with difficulties, consodering that these green numbers can contribute at a large extent to the prevention of juvenile deliquency.

Also, it is recommended the organization of a coordinated program of continuous formation for national mediators, police force and members of the judicial system, national competent systems and the authorities for control and the set up of a network between the competent services of the local and regional authorities, youth organizations and educational community.

[1] The Resolution of the European Parliament from the 21st of June 2007 regarding juvenile deliquency: women's, society's and family's role (2007/2011(INI)

Juvenile deliquency involves a series of complex problems which cannot be underlined and resolved from one institution's or one science's point of view only. This is why the scientific investigation in this field has an inter and multi disciplinary character, since it supposes a complex approach, -from psychological, psichiatrical, sociological, judicial, pedagogical and criminological, etc point of view- of the motivations and causes of juvenile deliquent behavior. At institutional level, The European Parliament, according to the resolution above mentioned, considers that the prevention of juvenile deliquency imposes the adoption of public politics in other fields as well, including those referring to establishments, working collectives, professional formation, free time and interractions between youngsters.

AGE LIMITS OF PENAL LIABILITY OF THE MINORS

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Abstract:

The penal national legislation understood the necessity of raising the age limit when the minor child can answer for the penal nature of the crime he had commited, in order to protect and correct him by social educational means.

Only if the court considers that the educative measure is not enogh for correcting and reforming the minor, a fine or imprisonment punishment is applied, with the mention that the minimum and maximum limits are reduced to half.

In all the cases of penal inquiry or action of minor deliquents, the legislation in the matter provides the obligatory character of social inquiry performed by the Tutorial Authority, which will investigate the circumstances and causes of the crime and will provide the necessary data to the court.

Key words: legislation, penal responsibility, educative measure, imprisonment punishment

The criminological and educational psychology researches led to the conclusion that it is necessary to raise the age limit at which the minor can answer, aspect reflected in all international legislations, in order to and remove from the severe coercion field of the penal law, a later intervention following in order to reform them by educational means. The 1864 Penal Code provided that the minors under the age of 8, are protected from punishment those between 8 and 15 could be penalized if it was proved that they had acted with judgment, and the minors with ages between 15 and 20 answered penal, if they were at least 15 years old.

In the 1937 Penal Code, the penal liability of the minors was established at the age of 15 years turned, and between the ages of 13 and 15 the minor only answered if if it was proved that they had acted with judgment. As a consequence, the age from which the minors are penal liable was raised from 8 to 13, which seems to us as a progress compared to the 1864 Penal Code.

The 1968 penal Code, which is still in force today, has raised the age limit from which the minor is penal liable.

The period of the minor's formation until his full maturity, reported to his age was divided into three stages:

1) before the age of 14;
2) between the age of 14 and 16;
3) between the age of 16 and 18[5].

[5] Maria Zolyneak, *PenalLaw – general part*, „Chemarea" Foundation Publishing, Iaşi, 1995, p.853;

Thus, according to article 99 Penal Code, the minor who has not turned 14 is presumed that has the ability of neither understanding the social meaning of his deeds, especially the antisocial character of an offense nor of manifesting his will consciously. It a presumption with absolute character (jurist et de jure), in the way that it is not allowed to prove it in any way different. This is an absolute legal presumption of penal incapacity, which does not allow to be proved contrary[1]. The minor's deed, is just a deed provided by penal law and not an offense, and cannot represent a reason for penal liability, in absence of guilt.

Between the age of 14 and 16 this stage is characterized by a relative lack of penal liability of the minor who committed a deed stated in the penal law. The minor answers only if it is proved that he acted with judgment. One can notice the existence of a conditioned penal capacity of establishing the judgment, which is defined in the specialized literature as the biopsychic capacity of a person to act in complete awareness, in the way that he is aware of the action (inaction) and its dangerous repercussions and he can control his will towards the actual action (inaction)[6]. In this stage basically works the presumption that the minor does not have the capacity of understanding antisocial character of his penal acts and of consciously manifesting his will. If at the first age the presumption is absolute, this time it has a relative character (jurist tantum), in the way that the presumption can be removed if the contrary is proved. Paragraph 2 from art.99 Penal Code provides that the minor aged between 14 and 16 answers penal, only if it is proved that he acted with judgment". In jurisprudence and legal practice, the judgment was given different meanings. The judgment must be proved, and its existence brings the minor's penal liability, this word meaning only that the minor had the capacity to understand the antisocial character of his deed and to consciously manifest his will.

The third stage, ages between 16 and 18, is characterized by the existence of the penal liability of the minor who has committed a deed comprised in the Penal Code. It is presumed that the minor with the age between 16 and 18 has the possibility of understanding the social value of things. If the minor with the age between 16 and 18 cannot prove the lack of judgment, he can prove his innocence demonstrating the court, just like the full age delinquent, that the deed was not committed with intention or guilt.

The minor having the age of 16 answers penal, from this age existing the legal presumption of penal capacity. The presumption is relative, because the contrary can be established, the inexistence of responsibility, art.48 Penal Code. In the new Penal Code, art.113 provides the limits of the minor's penal liability, the age from which the penal liability operates remaining unchanged, art.113 from the new Penal Code being an almost identical transposing of art.99 New Penal Code.

In order to apply the penal law with all its consequences, the age limit that the minor had when he did the deed is of interest, and not the age he reached when the offense was discovered and taken to trial. In the case of repeated offenses, the

[6] Matei Basarab, *PenalLaw – general part*, „Chemarea" Foundation Publishing, Iaşi, 1995, p.97;

minor's legal system is applied only if the moment when these deeds were finished took place in the period when he was still a minor, if not, the punishing system will be that applying to full aged delinquents. Nowadays, some authors [7] argue that the age from which the minor answers penal must be lowered from 14 to 12, due to the fact that the juvenile delinquency phenomenon has developed much in our country after December 1989, and people's lifestyle and way of expressing as well as the development of the society impose another standard of appreciation of individuals' behavior and, of the society's reaction to antisocial manifestations.

We consider that the lowering of the age from which minors should answer penal is not needed since the minor must be by the law and the measures taken against him must be focused on the minor's reeducation and reintegration in the society. By Law no.272/2004 regarding the protection and promotion of the child's rights a set of child's special protection measures such as placement, emergency placement and specialized survey were regulated. By chapter 5 of this law, protection measures were instituted for the child who has committed a penal deed and does not answer penal so there are measures for the minor under the age of 14 too focused mostly on reeducation and reintegration in the society.

1.1 The legal nature of nonage

The insufficient psycho-physical development of the minors, the lack of experience, the easier attraction to committing offenses due to the lack of maturity and of the incompletely formed personality, but also the increased reeducation possibility imposed a special regulation of the penal liability of the minors and their punishment, with the purpose to protect this category of people even in the hypothesis of offense committing and total recovery.

From the entire regulation of the punishing system introduced, as well as from other provisions of the penal code regarding minors' penal liability, included in other chapters of the penal law, it can be considered that nonage represents a cause for differentiation of penal liability of the minors reported to full age delinquents, legal nature which has positive effects on all penal regulations, which gives this category of criminals a special legal having as purpose their protection and reeducation in the best conditions and their re-adaptation to normal social life.

Law no.272/2004 initiates the best interest of the child principle, which will prevail in all steps and decisions regarding children taken by the public authorities and private authorized bodies, as well as in the cases solved by courts.

According to this principle and sue to the minor delinquent special punishing system, different from the full aged one, consisting of special protection measures, educational measures that are applied with priority in punishing offenses committed by them and punishments that have secondary applicability, interfering only when the educative measures do not provide a punishment corresponding to the severity of the deed committed and do not correspond to the reforming of the minor delinquent, the courts must take into account the best interest of the minor when applying the educative measure, the special protection or a punishment.

[7] Iulian Poenaru, *Problems of penal legislation*, Lumina Lex Publishing, Bucharest, 1990, p.30;

If it is considered that the educative measure is not enough for the minor's reforming, an imprisonment of fine penalty is applied but the special minimum and maximum limits are reduced to half, these becoming the legal limits of penalizing of the minors.

The minors' special status is also distinguished regarding the system of execution of the imprisonment penalty applied to the minor, which is executed separately from the full aged criminals, in special conditions, appropriate for the specific needs of education of this category of delinquents.

Institutions like conditioned suspension of penalty execution and liberation on license mention conditions more favorable if they are applied in the case of minors than in the case of the full aged, in the way that in the case of conditioned liberation, the duration of the penalty that must be executed, from the period established by the court, is shorter in the case of minors than it is in the case of the full aged delinquents (art.60, alin 4 Cod Penal). In the case of conditioned suspension, the term of imprisonment provided by law is shorter, being comprised between 6 months and 2 years, the duration being left to the court's estimation (art.110 Penal Code), and in the case of fine, the duration of the imprisonment term is 6 months.

In the case of other penal law institutions too, the legislator instituted a special system favorable for the minors. Thus, art.38 letter a of the Penal Code, provides that an imprisonment punishment longer than 6 months, for an offense committed during the nonage does not attract the status of relapse into the situation of committing a new offense with intention in the future. There are also other favorable conditions provided in other matters/subjects such as prescription, in the way that the terms of penal liability prescription and of penalty execution are reduced to half for those who were minors at the time they committed an offense (art.129 Penal Code).

1.2 Peculiarities of the penalizing system for minor delinquents

In penal law science, the nonage is part of the larger sphere of the problem of age of persons subject of judicial reports of penal law. The insufficient psycho-physical development of the minors, their lack of experience, the easier attraction to commit crimes, due to lack of maturity and incompletely formed personality, but also the increased possibility of reeducation, the compulsory protection of this category of people even in the hypothesis of committing offenses and their total recovery has imposed a special regulation of minors' liability and their penalization.

The regulation of the judicial system of minor delinquents is comprised in the work V- Cod Penal in force, called "Nonage'' art. 99-110. The limits of the minors' penal liability, art.99, regulates the limit of penal liability, the legislator understanding to mention the cases in which, reported to the minor's age and judgment, he answers from penal point of view or not which means he is obliged or not to bear a penal penalty as a result of committing a deed mentioned in the penal law.

The concept of nonage is presented by the bio-physiological condition of the individual under the age of 18 as well as by the socio-judicial status of the individual, comprising three periods: until the age of 14 (when the minor does not answer penal no matter the severity of his deed), the period between the ages of 14-16 (when the minors answer penal if they have judgment of the committed deeds)[8] and the period comprised between the ages of 16-18 (when the minors do not answer unless they don't have judgment for the committed deeds). The upper age limit until which the individual is considered a minor is the age of 18, regardless of if the full exercise capacity was obtained by marriage ,, because the minor in Penal Law is considered the person under the age of 18" [9].

The minors' liability thus appears as a specialization of penal liability, a peculiarity aiming mostly at the reduction of penalty and increase of the efficiency of the educative measures for the individual's social reforming. A permanent concern of penal policy of the modern states is represented by the prevention and fighting juvenile delinquency. This prevention of juvenile delinquency is accomplished also by the special penalizing system for the underage delinquents, which is different of the penalizing system for the adults. The Romanian Penal Code focuses on educative measures – penal law punishments applicable only to minor delinquents, not to adults too and only subsidiarily on punishments, but even in the case of application of these punishments they have a smaller total value and a special execution system.

To this special penalty system for minor delinquents corresponds a special proceeding (in the penal proceeding law field) comprising specific aspects regarding penal inquiry and trial as well as regarding the execution of the penal decision.

Unlike civil law which divides the natural persons into two major categories: minor persons (comprising childhood and adolescence) and full aged persons (comprising adulthood and old age), penal law divided minors into two major categories, each of them with two subgroups, namely[10]:

- Minors that are penal liable;
- Minors that are not penal liable.

Minors that are not penal liable comprise two subgroups too:

- Minors under the age of 14;
- Minors with age between 14 and 16 for which it was not proved that they had committed with judgment the deed provided by penal law.

One of the conditions necessary so that a person can be active subject the crime is that that person must have the capacity to realize the social significance and character of his actions and inactions and to freely guide his will regarding these actions or inactions. The features characterizing the mental capacity,

[8] Constantin Bulai, *Penal Law – general part*, vol..- II, C.H.Beck Publishing, Bucharest, 2006,p.138;
[9] Constantin Mitrache, *Romanian Penal Law – general part*, 4th edition reviewed and completed, ,,Şansa'' Press house and publishing, Bucharest, 2000, p.161;
[10] Alexandru Boroi, *Drept Penal – partea generală*, Editura C.H.Beck, Bucureşti, 2006, p.302;

inexistent in the first years of life, are gradually formed and developed, as the person grows older, until the moment when the adolescent achieves full knowledge abilities and free manifestation of will. Along the mental-physical development of the individual, there is a period in which he, lacking the mental capacity of understanding the social meaning of his actions and in order to control them, cannot be an active crime subject.

Thus, the nonage constitutes a cause which annuls the penal character of the deed so that the deeds provided by the penal law committed by minors who do not answer penal do not constitute delinquencies because in the absence of the capacity of understanding and will, they are not committed with guilt, and guilt represents an essential feature of. In this way, art.50 Penal Code provides that "the deed provided by penal law committed by a minor who, at the tome did not meet the legal conditions to answer penal, does not constitute a delinquency"[11].

There is judgment when, in the moment when the actual action is performed, the minor had the capacity to realize the dangerous of its consequences, effects that he followed or accepted and could control his action. Judgment means responsibility, but not full responsibility like in the case of adults, because the physical and mental development of the minor is in process.

The stipulations of art.99 Penal Code establish the age of minors' penal liability, so, the minor under the age of 14 does not answer penal (art.99 paragraph 1). In this case, the legislator considers that until this age the minor lacks judgment and regulates a presumption of penal incapacity that cannot be removed by contrary evidence.

The minor aged between 14 and 16 answers penal, only if it is proved that he had committed the deed with judgment (art.99 paragraph 2). IN the case of this category of minors, the legislator institutes a relative presumption of penal incapacity, which can be removed by contrary evidence, i.e. by proving the judgment in the moment of committing the socially dangerous behavior. Thus, it is possible that a minor aged between 14 and 16 to answer penal, but "only if it is proved that he had committed the deed with judgment".

The 16 years old minor can answer penal without any condition (art.99 paragraph 3 New Penal Code). The upper age limit until when a person is considered a minor is 18, regardless of the achievement of full capacity of exercise by marriage.

The category of penal liable minors comprises minors aged between 16 and 18, as well as minors aged between 14 and 16 for which the relative presumption of penal incapacity was removed. The penal capacity age must exist at the time when the delinquency is committed. In the cases of repeated delinquency, started before the age of penal capacity, the minors will only answer for the criminal activity performed after reaching the penal liability age. In the case of relative incapacity, the judgment must be established in connection with every actual deed done, at the time they were committed, but not commonly. When there are doubts regarding the

[11] Vasile Dobrinoiu, *PenalLaw –general part*, Europa Nova Publishing, Bucharest, 1997, p.323;

minor's age and his judgment, the situation is interpreted in the minor's advantage, according to the Latin adage ",in dubio proren" (i.e. the doubt favors the defendant).

When establishing the existence of minor's judgment, the court must take into account the nature and type of delinquency committed as well as the circumstance, if the minor took the criminal decision by himself or was he allured, encouraged, instigated by a person with full penal capacity, in which case the minor only served as a means for committing the delinquency by the fully responsible person.

The age limits and judgment are established are established according to the Romanian penal law only for the minors that are Romanian citizens or those without citizenship having the domicile in the country or abroad, for whom, according to art.5 New Penal Code, the Romanian legislation is applied exclusively.

Penalty of minors committing delinquencies must correspond to their psycho-physical peculiarities, ensure their education and reeducation. The special penalty system applicable for minor delinquents is based on psychological reasoning, since the mental capacity, the judgment develop during nonage, life knowledge is gathered, including those regarding social coexistence rules, but also based on an analysis of the factors that influence and determine juvenile delinquency.

The Romanian Penal Code in force stipulates a special penalizing penal system for the penal liable minors, system consisting of educational measures and punishments (the educational measures were stipulated by the 1937 Penal Code too, but under the name of "educational safety measures''), both categories being penal law punishments. This mixed system corresponds to the specific minors who are in an objective process of continuous and intense transformation from physical point of view, social experience and knowledge acquiring but also in the most proper period for their general training and for their initiation in professional training. Only by taking into account these specific situations in which minors answer penal, the penalties provided for them will be able to lead to the achievement of the penalty goal and in the end, of the penal law. The penal penalty represents the final stage in the action of social reforming of the minor factor, in the sense of his thinking and will determination only in the sense of respecting the penal law. The penal punishment ios adopted against the minor only when there is a certainty that it represents the only way of punishment of the severity of the illegal deed and reeducation of the person who did it. Since the object of educative measures is constituted by the activity of fining, punishing a practiced antisocial behavior, it results that, in concrete cases, although the deed was committed during nonage, its discovery, trial or execution may prolong objectively, and in the period when the author reached full age, moment implying adaptation of some solutions having special content, and different levels of judicial consequences. In this sense it can be seen that, if the reformation of the minor's behavior failed after the application of an educative measure, which should have influenced his sensibility, affectivity, the application of a penal punishment will follow, in the characteristic

limits of minors' punishing, which will have a reformative influence appropriate to the general rules and principles of behavior characteristic for the penal law.

1.3 The national legislation regarding the minor with delinquent behavior.

The provisions of the Romanian Constitution in this matter

In the provisions of the Romanian Constitution, adopted by national referendum in October 2003, an important place is occupied by the child as a person. So, in the article 16 the equality in rights in front of the law of all citizens of Romania is provided.

In chapter II „Fundamental rights and liberties" of the Constitution the fundamental rights and liberties of the Romanian citizens so of the minors too, are regulated.

The Constitution regulates the following fundamental rights and liberties:

1. the right to life, mental and physical integrity – art.22 paragraph 1;
2. the citizen's individual freedom – art.23;
3. the right to defense all along the trial – art.24 paragraph 2;
4. the right to education - art. 32;
5. the right to health protection – art.33;
6. the right to a family – art.44;
7. the protection of children and young people – art.45 (the most important article in the matter);
8. the right of a person injured by a public authority – art. 48;
9. the restraint of some rights exercise or liberties – art.49.

1.4 Aspects regarding the minor with delinquent behavior provided by the Romanian Penal Proceedings Code

The penal trial is carried on in the case of minor delinquents, according to art.480 Penal Proceedings Code, se according to the usual procedure with the completions and derogations regulated by art.480-493 Penal Proceedings Code. Along with the usual proceeding regulating the penal action stage, the legislator stipulated two more additional dispositions:

a) – summoning of some people to hear the minors
b) – the mandatorycharacter of social investigation.

According to art.481 paragraph 1 Penal Proceedings Code, when the accused or the defendant is a minor under the age of 16, at any hearing or confrontation of him, if the penal action authority considers it necessary, it summons the tutorial authority deputy as well as the parents, and when the case, the tutor, curator or the person in whose care or supervision minor is.

As results from the content of this regulation, summoning the listed persons is not mandatory, but remains at the consideration of the penal action authority.

When hearing the minor, in the presence of the above mentioned persons, the penal action authority or the prosecutor tries to avoid some difficulties, determined by the young age of the minor that could manifest by excessive emotiveness or exaggerated tendency to distort reality.

According to art.481 paragraph 2 Penal Proceedings Code, summoning the tutorial authority deputy as well as the parents and when the case, the tutor, curator or the person in whose care or supervision minor is, is mandatory when presenting the penal action material.

If the persons legally summoned at the hearing or presentation of the penal action material fail to come, this does not prevent these acts from executing (art.481 paragraph 3 Penal Proceedings Code).

In causes involving minor delinquents, the penal action authority or the court have the obligation to order the social inquiry (art.482 paragraph 1. Penal Proceedings Code). The penal action authority always has the obligation to ask for a social investigation.

The court has the obligation to ask for a social investigation only if the minor has committed a delinquency for which the penal action is started at the previous petition of the injured person and this can address directly to the court (art.279 paragraph 2 letter 1 Penal Proceedings Code). In such a case, the penal action stage is missing, being an atypical trial.

The social investigation is performed by the Tutorial Authority of the Local Council in the jurisdiction of which the minor's address is. It consists of gathering data regarding the usual behavior of the minor, his mental and physical condition, his antecedents, the conditions he was raised and lived in, the way his parents, tutor or the person in whose care or supervision minor is fulfill their duties towards him, in general, regarding any elements that can help to take a measure or apply a penalty to the minor (art. 482 paragraph 2 Penal Proceedings Code).

If the minor is also in the records of a specialized public service, it is requested for drafting a mental-social report on the minor.

JUVENILE DELINQUENCY - A SOCIAL-ECONOMICAL PROBLEM

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Abstract:

The determinant causes of the juvenile delinquecy can not be entered in a magic formula, but the main element, which influences and determines the outcome of these conducts it's represented, in this moment, by the extinguish of the social, economical, professional and cultural inequity. The subtile or evident forms of the social expelation seezes for a lot of aspects: restricting the acces or even the abscence of some means or opportunities, the inequity of chances in the educational and professional domain, the discrimination that some social groups are obliged to take, especiialy because of the economic criteeria. All of these elements are in an tight relationship and determines the minors to conducts of social risk: runnig from home, educational abandon, the option for suburbs groups as life adapting or succeeding „solutions". From this point of view there isn't an obligatory and direct corelationship between poorness and criminality gennerally speaking and among the juvenile delinquency, especially, but the effects of an economically and cultural poor situation are the hidden substract of the illegal conducts.

Key words: juvenile delinquency, minors, poor economical situation, social problem, prevents.

In some cultural zones and in some time periods, the juvenile delinquency wasn't and it isn't yet considered a social problem. In almost all cases, this was the base of the educational system and was hidden by it. What makes an decent to become a social problem is the context. In the context of Romania being integrated in EU, and between the exigences we can find what it is seezed to repect the children rights, this can be a determinant element when a social problem occures. It is not properly said „occures", because a social problem does not occures together with taking into consideration by the authorities. Ussually, the authorities are being called or they call themselves, not when there are enough prevention means, but when fight against means are being needed. It is symptomathic Romania's case in the transition period, since in the child protection domain, such in other domains the laws are confuse, living space for interpreting and overpassing the judicial laws, encourages the ignorancy, being pasive and the derogation of responsability.

The juvenile delinquency is the term that means all the wanders and overpassing of the social rules, judicial punished, done by the minors. The juvenile delinquency phenomenon it is known such as: uneasiness of conduct children (medical term), indaapted youngsters (sociological term), problem child

(psichological-educational term), delinquent children (judicial term). These terms regard to minors that, in a way or another, got involved in a conflict with the moral and judicial rules that are valid for the community they live in. The moral conduct it's represented by the socially accepted conducts, that are compatible with the cultural examples of the society he is taking part.[1]

From the social point of view, Romanian people do not consider the juvenile delinquency as being a severe phenomenon in our country. Living in bad conditions, almost all the time hostile, daily problems that do not allow you to enlarge your seeing horizont, passing the next day, that makes you fight all the time for your vital resurses, some of the children are choosing a wrong way.

A social problem occures influenced by: a certain cultural zone, a certain cultural time, a certan context. For the Romanian society, the juvenile delinquency problem it wasn't allways considered to be a social problem. After 1990, in every type of questionare from Romania, among the most important worries of the people, the juvenile delinquency never came on the first line.

The alarming situation regarding the juvenile criminality stays a major problem for the police. Analyzing the crimes between the lines of youngsters prooves us that the number of crimes done by minors and the numer of crimes with participation has a low rate in comparizon with 2006But these are only statistics, but the fac tis that the teenagers are getting more actively involved in different antisocial and illegal actions. From N number of minors, that do crimes, only 20% are employees or students. Juvenile criminality it's a global social problem and a main element in the structure of the quality of life. She expresses, first of all, the social situation and secondly, the economic development.

Lately the juvenile delinquency established higher and higher quotes; more and more minors are being involved in crime activities. The economic acute and generalized lacks, social and familly problems are the main elements for the future of a child that is all the time hitting of his parents answer: „we can't afford it". The signals regarding calling for more and more under 18 young people to do crimes of all types didn't stand without an echo among the authorities, though the results are not much better than the other years. For the minors that have done a crime, taking into consideration the sever side of the crime, it can be ordered for them to be taken in special reabilitation centeres, in prisons or taken under Ministry of Justice supervision or in parents care.

Despite the Ministry of Justice efforts, through the Victims Protection and Criminals Social Reintegration Service and the NGO-s have prevention and reintegration programs for the criminals, the number of under-charged minors is still high. Many of the crimes done by the minors are regarding to money, such as thefts and robberies. For those minors that have done crimes, even in the phase when they are put under charge, it is called for transfering the minor in the detention system. For the accused minors or that are getting ready to be left aut from the reabilitation centers, the Criminals Reintegration Service gives assistance

[1] STĂNIȘOR Emilian. *Delicvența juvenilă.* -București, 2003, p.47.

and advising supervising the behaviour reabilitation and their community reintegration. In this way the minors get support in reattenting the courses of the schools, for those that are over 18, employement with the help of regional authorities, and solving the familly problems by discussing with the parents, but with the minors alone, too. Usually, these programs for reintegration have the financial support of the NGO-s. Through these programs is being tried to minimalize the occurence of new crimes risk. For solving the criminal law cases in which minors are involved, it has been made the Court for minors, and inside the DA will take birth the section for minors, so that the institutional domain for charging the minors will be complete.[1]

In these rare cases, not intented, accidental murder is more often. The theft has the highest influence between this juvenile behaviur, conduct. In the earlier ontogenesis, like later, in time, the theft has a begining form, through taking using the force or brutally the parteners' toy, and getting, after a while, in taking the wanted object, without being seen, with cowerdness. The studies from the juvenile delinquency psichology domain show the fact that the frustration with high quotes of anxiety takes to thefts. The gang theft is severe and has high quotes of terribilism, especially to youngsters. In comparison with the theft, the robbery is a severe conduct way and takes place under menace or as a violent act.

Also, there are being discovered more and more robberies that are being made by youngsters, formed in groups that, during the night or the day, in different places take violent actions , attacking persons that could own money or expensive objects. Oftenly, robberies are being commited in the urban zone and on the streets, rather than in rural zone or in houses. Sometimes they act together with over 18 people. Usually, the minor criminals from the urbans know each other and they get together in groups, with the particpation of the youngsters that run from the reintegration schools, hosting centers or shelters. Regarding to the delinquency, there are two types of delinquent teenagers: first type is the one of the youngsters that commits crimes living intensly on the interior subjective plan the fear and horror to be identified, in the end, with the real delinquents. They live with the idea that their crimes are the consequence of some special situations in which they had got into before their life got started; the second type is the one of the delinquents that have an aristrocratic attitude that monopolize their entire conduct.

The meters concerning the delinquency way of the children are: being oftenly absent at school classes; not interested in school; improper attitude regarding the school and order authorities; unproportioned conducts regarding some situations and regarding the classmates; the tendance to get involved with reprobate elements; using a dirty and violent language from teir youth; often lies and thefts even before they get 9; precocious sexual tendances; „users" of pornografic literature; watching movies with an unproper educational content.

Some possible solutions regarding the taking of the delinquency: teachers to get involved in reabilitating the students that are having the problems, above

[1] http://ms.politiaromana.ro/prevenire/delicventa_juvenila/ce_este_delincventa.html

mentioned, through special programes; teaching the persons that want to become parents and obliging them to attend preborn courses of baby psichology; the Goverment to get involved by financial help and facilities for those who are taking care of these cases; an informational and involving for the society campaign regarding the delinquency.

An efficient preventing of the juvenile delinquency can be made just through an involvement of the specialized authorities.

Almost all of the persons that where questioned, know what is delinquency and considers that it is a problem that should concern the society. 80% of the questioned persons consider that this problem can be solved if the necessary attention is given.

Only involving everybody and teaching children and youngsters, it could get better this crime situation that exists between the minors.

Lots of theories that come from Criminology say that the delinquents come from the lower classes of the society. 40 years ago, Albert Cohen, said that minors from the poor groups, hardly manage to get to the middle standards, because their parents don't teach them to eliminate the imediate satisfaction for those on longer period.

The medium classes of the society children live the underculture of this delinquency, because for them the standards of the midle class are untouchable. In conclusion, it is sustained that for these children getting to the social and economical standard of the middle class of the society, using their own and legal means, it is becomming an imposible goal, that is why they break the law. Generally speaking, the social cathegorries and the scial-economical standard of the families, in the American culture, it is measured according to the familly prestige of those with low salaries. So, the persons with profesional or managerial jobs are to be found in the superior classes, in time the jobs that need manual skills are being considerated qwning to the lower classes. More, the facts are referring to some years ago, when it was accepted that the father was the head of the familly and the mother, housekeeper. This fact can measure in a realistic way, the social-economical standard of the one-parent familly or with both working.

In many of the Criminoloy studies, the delinquents or the non-delinquents are equal in front of the social-economical status. Moreover, about the relationship between the social-economical status and commiting crimes there is an impresive literature quantity that contains a lot of contradictions, although many other oppinions say that between the social-economical status and commiting crimes, there isn't a relationship.

In the US it is affirmed by some theory makers that these low social classes can be put together with crimes cimmiting, but not with the own-telling of their own mistakes. Through this, it is suggested that accusing the delinquents through police and Courts, it is a restrictive measure against the youth poor social classes. Although, some British studies identified or reported that they've found the relationship between low social classes and crime commiting. So, for example, in a study made in 1990, the researches shown that the juvenile delinquency is more

often depending on the work and educational prestige of the parents. Regarding to the Romanian society, where the poverty is almost everywhere, the juvenile delinquency is not depending on the work and educational prestige of the parents. Here the problem seems to be a lot more complicated because, the parents, alot of them with higher studies; they have a way of raising them, supervising and teaching them away from the lines of crime. The problem, if it exists, it is more subtile and involves more elements, not just the work prestige and the parents' salaries.

Other studies measured more indicators of the social-economical status, starting with the original families, including the family's income, the work prestige, the instability of employing. Many of the measures that have been made to the work prestige weren't taking the researchers to committing crimes, and obtaining a low income per family leads to crimes involving minors and adults.

Also, trying to fiind out if a low social-economical status of the parents influences children's crime, it has been established that many of the measures of the work prestige did not lead to crimes, even if, sometimes, a low income of the family can help in breaking the law, both by the minors and the adults.

The lack of a proper social-economical status at parents, it is oftenly combined with a larger posibility for children to commite crimes.

It is said that, after the child grows-up, it can be seen in his behaviour that is a normal one, usually one, the social-economical lack that he had in his childhood.

The same studies, say that one part of the children observed, between 15-18, have been condammed when they weren't employed and less more when they were. This fact, sustains that, in a way, not getting the youngsters employed in an usefull activity for the society can b eone of the causes of commiting crimes and that, they having a job can be protected, not to commit other crimes.

In the countries where the market economy works, the social-economical deprieving is a main risk element for giving birth to the crime, generally speaking ,for breaking the law, and the children that come from poor families have a high rate of becoming a criminal, than the children that come from families with low work prestige, but with financial posibilities.

The raising number of the families that have many children and family abandon tendances, has a direct influence on this process and on raising the quotes of juvenile delinquency. This process doesn't seeze only getting abandoned children in the special institutions of protection, but seezes punishing these young delinquents, by getting them into behaviour revisual institutions. An element, that explains, in large lines, the growth of criminal conducts of the minors is the decrease of the families and schools social role, and increasing the influences of the outskirts and marginal informal groups, under the growth of the large element called the „gang" phenomenon and plus, the encouragement for the juvenile subculture and of their values. This influence i sone of the causes that leads to violence, delinquency and vandalism. In Romania, in the last decade, beside the fact that some generous social protection programes, for helping inneed families were being planned, the helping and protection measures for the vulnerable

population and persons were two little and without practice, because of the lack of resources, but even because of bad using of the ones that existed, it was the interes of having some external quotes to get ready, than to optimize and improve the ones inside.[1] The obvious causes and conditions that can be relationed with the youngster's delinquency are:

• unorganized, disfunctional, sociopathics and with a criminal history families;
• the rise of the school abandon;
• the lack of leading and permanently supervising by the parents and teachers;
• stopping and interrupting the educational process and excesive formalizing of the teaching process;
• passing over, through mass-medias' help, of some „false models" and subcultures;
• the rising influence of „the negative socialize groups";
• the lack of an efficient link/communication between familly and school;
• the influence of some accidental elements but that are considered to be semnificant being next to the minors;
• taking ocasionally or oftenly drugs;
• a poor material and economical situation;
• decreasing the traditional way of social control;
• multiplying the oportunities of delinquency (games, bars, outskirt-legal activities).

According to what it has been written in this paperwork we can make some opinions or even conclusions, so:

- the opinion regarding the delinquency conducts teaching during the individual life it is confirmed, the person is not borned as a delinquent, this conduct is being received as a result of some personal and group experiences;
- the opinion regarding the disfunctional family role underlines the fact that the family atmosphere has a capital role in the normal growth of the persons personality, as much as the family group is less working, as much as the criminal risk for the minors in that family;
- talking about one-parent families, the researches didn't observed a higher risk than in the nuclear families;
- speaking of getting the minors in special institutions, we can see the rise of the repeating crimes risk for the minors that are punishe with getting in this special centers; the school group deficiencies are linked directly with the delinquency risk, so the minors that have different kinds of school failures can socialize in a negative way in groups of persons.

Bibliography:

1.BANCIU, D. (1992). *Control social şi sancţiuni sociale*. Ed. Hyperion XXI, Bucureşti.

[1] BANCIU, D. (1992). *Control social şi sancţiuni sociale*. Ed. Hyperion XXI, Bucureşti.

2. BANCIU, Dan, RĂDULESCU, Sorin M., *Evoluţii ale delincvenţei juvenile în România., Cercetare şi prevenire socială*, Editura Lumina Lex, Bucureşti, 2002.
3. PETCU M. *Delincvenţa. Repere psihosociale.* –Cluj-Napoca, 1999.
4. PITULESCU, I. (1995). *Delincvenţa juvenilă*. Ed. Ministerului de Interne, Bucureşti.
5. RADULESCU S.M., Banciu D. *Introducere în sociologia delincvenţei juvenile. Adolescenţa între normalitate şi devianţă.* -Bucureşti, 1990
6. RĂDULESCU S.M. *Teorii sociologice în domeniul devianţei şi al problemelor sociale*. -Bucureşti, 1994.
7. STĂNIŞOR. Emilian *Delicvenţa juvenilă*. -Bucureşti, 2003, p.47.
http://www.imaginelife.ro/diverse/delicventa_juvenila.

RELAPSE PREDICTION IN DELINQUENT BEHAVIOR

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General objectives

- Study of delinquent behavior at adolescents
- Study of delinquent behavior at young age
- Relapse incidence and cauzality

Specific objectives

- Analyze relapse particularities in delinquent behavior
- Identify the factors involved in relapse delinquent behavior at young age, with theoretical and practical considerations and romanian experience in this area

Subjects

- 75 subjects
- Age between 15 and 18 (average 16,23, standard deviation 1,12)
- Gender report 4:1 (male: female)

All the subjects present an certain delinquent behavior, convicted for burglary, rape or homicide. We excluse cases with an medical diagnosis establish before delinquent acts happened, or with an chronic medical pathology. Delinquent relapse appear in all cases in time of study

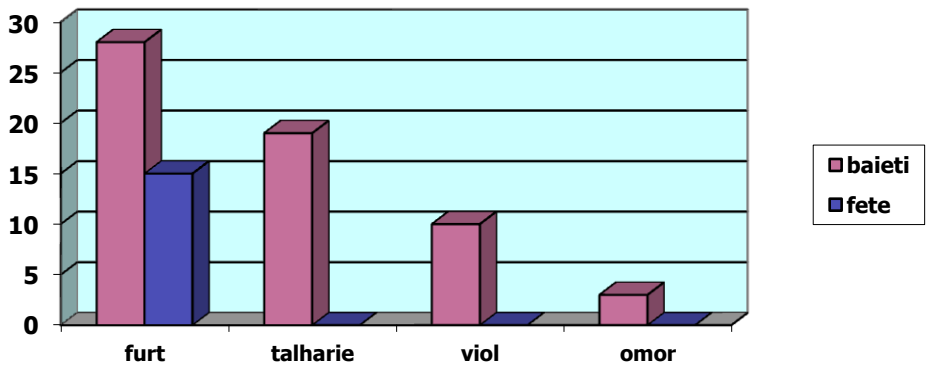

Figure 1 Subject repartition from nature of delinquency

METHOD

Time estimated: 10 years; study development between september 1997-august 2007

Type of study: longitudinal research

Place: Forensic Institutes from Cluj, Oradea, Police Department from Bihor County and Clinical Hospital of Psychiatry and Neurology, Oradea

- We used: information from police files, socialinvestigation, school results, peer observations and family/neighborhood information, results from the interview of forensic commision and psychological investigations
- Infromations are organized in 7 dimensions: biography)age, education, profesion, religion, marital status); delinquency and law status: nature of delinquency, age at first criminal act, nature of relapse, attitude and evolution, behavior in prisonment time), family structure, educational antecedents, work activity, free time, psyhological particularities)

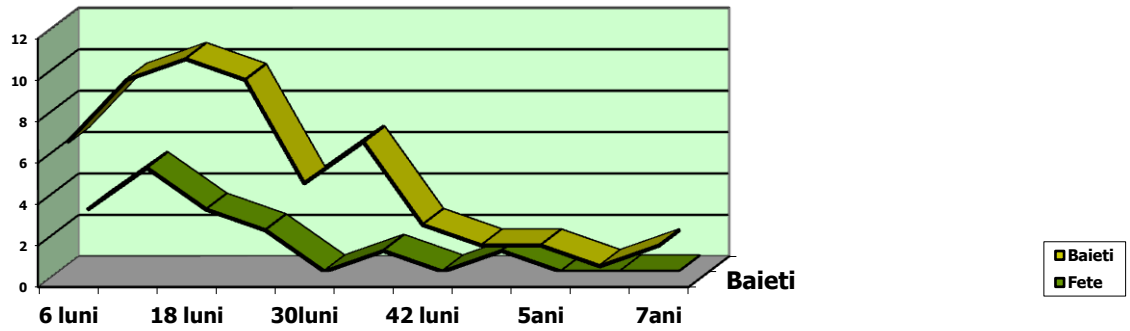

Figure2 Repartition of subject from time of relapse

SKILLS

- Intellignece test: (Raven, Bonnardel, Domino, Wechsler) and personality questionnaire (California Personality Inventory, Minnesota Multiphasic Personality Inventory II, Eysenck Personality Inventory, Eysenck Personality Inventory Questionnaire, Woodworth-Mathews Test, 16 Personality Factors şi Freiburg Personality Inventory and results at

projective test: Koch-Storra, Luscher, Szondi, Thematic Apperceptioin Test and Rosenzweig Picture-Frustration Test).

RESULTS

- Propension to delinquency and relapse appear under multifactorial circumstances
- We used statistical methods (Thurstone centroid method). We identified three factors involved in relapse. They covered 54,73% from variance (first factor), 34,14% from variance (second factor) and 11,13% from variance (third factor).
- Significance of this factors are:
- First factor include vulnerable personalities, characterized by: emotional lability, low tolerance at frustration, inadequate coping, aggressive-hostile behavior, affective disturbances and inferiority complex.
- Second factor include environmen relations particularities: social inadaptation, rules negation, low stages in moral development (after Kohlberg, Mira Y Lopez)
- Third stage include: school abandon, low income and economical problems in family, delinquent pattern (conviction in 3/4 from all cases at someone from family) and in 75% this was father.
- Analized fig.1& 2 we observed a propensity for burglary. This sustain in relapsed (evidence are quite identical), confirmed the hypothesis of „specialization" in one delinquent are. Personality factors are strongly involved (aggresive behavior, instability, low tolerance level at frustration for violent delinquency).
- Relapse distribution, for all sexes is important in first 36 months (more than 75%).
- Interesting results observed in prisonment adaptation (arrest, jill, recovery programms)

CONCLUSIONS

- Longitudinal perspectives is one of the most important way in juvenile delinquency comprehension and understanding
- Is important to use an complex evaluation (psychological, sociological, medical and legal) to be able to analize exhaustive juvenile delinquency
- Special programms obtained encouraging results in young age delinquency

FUTURE CONSIDERATIONS

- We proposed to continue and extend time of surveillance for more than 15 years (like in classical longitudinal studies (Feldman, 1983, Henggeller, 1989,)
- Develop another centers (multicentric evaluation) to facilitate longitudinal studies

BIBLIOGRAPHY:

1. Ageton, S. S. The dynamics of female delinquency, 1976-1980, *Criminology*, 21, 1983
2. Banciu, P.D., Rădulescu, M.S. & Voicu, M. *Introducere în sociologia devianţei*, Ed. Ştiinţifică şi Enciclopedică, Bucureşti, 1985
3. Barnett, A., Blumstein, A., & Farrington, D. P. Probabilistic models of youthful criminal careers. *Criminology*, 25, 1987
4. Fagan, J., Hansen, K. V., & Jang, M. Profiles of chronically violent delinquents: Empirical test of an integrated theory, in J. Kleugel (ed.) *Evaluating juvenile justice*, Beverly Hills, CA: Sage, 1983
5. Gibbs, J. C. Social processes in delinquency: The need to facilitate empathy as well as sociomoral reasoning, in W. M. Kurtines & J. L. Gewirtz (eds.) *Moral development through social interaction*, New York: John Wiley, 1997
6. Grenier, C. E., & Roundtree, G. A. Predicting recidivism among adjudicated delinquents: A model to identify high risk offenders, *Journal of Offender Counseling, Services & Rehabilitation*, 12, 2000
7. Henggeler, S. W., & Borduin, C. M. *Family therapy and beyond: A multisystemic approach to treating the behavior problems of children and adolescents*, Pacific Grove, CA: Brooks/Cole, 1989
8. Henggeler, S. W. (ed.) *Delinquency and adolescent psychopathology: A family-ecological systems approach*, Littleton, MA: Wright-PSG, 1992
9. Quay, H. C. Patterns of delinquent behavior, in H. C. Quay (ed.) *Handbook of juvenile delinquency*, New York: John Wiley, 1987
10. Quay, H. C. Personality patterns in preadolescent delinquent boys, *Educational and Psychological Measurements*, 16, 1993
11. Wright W E & Dixon, M. C. Community prevention and treatment of juvenile delinquency: A review of evaluation studies, *Journal of Research in Crime and Delinquency*, 14, 1997

A FIATALKORÚAKRA VONATKOZÓ MAGYAR ANYAGI JOGI SZABÁLYOZÁS VÁZLATA

PhD **Madai Sándor**[1]

A világ országaiban az elkövető életkorának különböző jelentősége van, értve ezalatt a büntethetőség alsó korhatárát, illetve a fiatal elkövetőkre vonatkozó speciális szabályok alkalmazhatóságának korhatárait is. A magyar büntetőjogban az elkövetői oldalról alapvetően három életkornak van jelentősége: a gyermekkornak, a fiatalkornak és a felnőttkornak. Gyermekkorú az a személy, aki az elkövetéskor a 14. életévét nem töltötte be.[2] A Büntető Törvénykönyvről szóló 1978. évi IV. törvény (Btk.) 107. § (1) bekezdése értelmében fiatalkorú az, aki a bűncselekmény elkövetésekor tizennegyedik életévét betöltötte, de a tizennyolcadikat még nem, míg az elkövetéskor a 18. életévét betöltött személy felnőttkorú.

A magyar Btk. szem előtt tartva azt, hogy a fiatalkorúak olyan sajátos életszakaszban vannak, amely sajátos büntetőjogi megítélést igényel, önálló – a VII. – fejezetben tartalmaz speciális szabályokat rájuk nézve.[3]

A fiatalkorúval szemben alkalmazott büntetés vagy intézkedés célja elsősorban az, hogy a fiatalkorú helyes irányba fejlődjék, és a társadalom hasznos tagjává váljék. Büntetést akkor kell kiszabni a fiatalkorúval szemben, ha intézkedés alkalmazása nem célravezető. Tovább konkretizálva a szabályokat rögzíti a Btk. azt, hogy szabadságelvonással járó intézkedést alkalmazni vagy büntetést kiszabni csak akkor lehet, ha az intézkedés vagy a büntetés célja más módon nem érhető el.[4]

Ahhoz, hogy érthetővé váljon ezen alapelvek szükségessége, röviden vázolnunk kell a magyar büntetőjog szankciórendszerét. Magyarországon a Btk. a büntetőjogi szankciókat két csoportra osztja: büntetésekre és intézkedésekre, a büntetéseken belül ismer fő- és mellékbüntetéseket.

A Btk. főszabályként a felnőttkorúakra vonatkozóan szabályozza az egyes büntetések és intézkedések kérdéseit, és előírja, hogy a felnőtteknél rögzített rendelkezéseket kell alkalmazni a fiatalkorúakra is, a VII. fejezetben – tehát a fiatalkorúakról szóló fejezetben – foglalt eltérésekkel. Ez azt jelenti tehát, hogy ha

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[1] Egyetemi tanársegéd, Debreceni Egyetem Állam- és Jogtudományi Kar, Büntetőjogi és Kriminológiai Tanszék

[2] Btk. 23. §.

[3] Vókó György: Fiatalkorúak büntetése a jogszabályok tükrében, Börtönügyi Szemle 3/2001.

[4] Részletesebb magyarázatként lásd: Blaskó Béla: Magyar büntetőjog - Általános Rész, Budapest, 2003, 535-548. old. és Nagy Ferenc: A magyar büntetőjog általános része, Budapest, 2001, 501-522. old.

nincs eltérő rendelkezés a fiatalkorúak vonatkozásában, akkor a felnőttekre vonatkozó szabályokat kell rájuk is alkalmazni.[1]

Büntetések		*Intézkedések*
Főbüntetések	***Mellékbüntetések***	
○ a szabadságvesztés ○ a közérdekű munka ○ a pénzbüntetés	○ a közügyektől eltiltás ○ a foglalkozástól eltiltás ○ a járművezetéstől eltiltás ○ a kitiltás ○ a kiutasítás ○ a pénzmellékbüntetés	○ a megrovás ○ a próbára bocsátás ○ a kényszergyógykezelés ○ az alkoholisták kényszergyógyítása ○ az elkobzás ○ vagyonelkobzás ○ a pártfogó felügyelet ○ a jogi személlyel szemben alkalmazható intézkedések

A **szabadságvesztés** vonatkozásában a tartam, illetve a végrehajtási fokozat vonatkozásában van alapvetően különbség. A legrövidebb tartam egy hónap, míg a leghosszabb eltérő mértékben van megállapítva aszerint, hogy milyen büntetéssel fenyegetett cselekményt követett el a fiatalkorú, és aszerint, hogy az elkövetéskor betöltötte-e a 16. életévét avagy sem. A végrehajtási fokozatok tekintetében is eltérés van – szemben a felnőtteknél rögzített három (fegyház, börtön, fogház) végrehajtási fokozattal – itt a fiatalkorúak börtöne és fiatalkorúak fogháza a végrehajtási fokozat.

A **közérdekű munka** vonatkozásában csupán annyi az eltérés a felnőttekhez képest, hogy fiatalkorúval szemben közérdekű munkát akkor lehet kiszabni, ha az ítélet meghozatalakor tizennyolcadik életévét betöltötte.

A **pénzfőbüntetés** tekintetében alkalmazási feltételként előírja a Btk., hogy csak akkor lehet kiszabni, ha a fiatalkorúnak önálló keresete (jövedelme) vagy megfelelő vagyona van. Abban az esetben, ha a fiatalkorú nem fizetné meg a pénzbüntetést (akár fő- akár mellékbüntetésként került kiszabásra), csak abban az esetben lehet szabadságvesztésre átváltoztatni, ha behajthatatlan.

A **közügyektől eltiltás** alkalmazása esetén – a felnőtteknél szabályozott feltételeken túl – akkor lehet ezt a mellékbüntetést alkalmazni, ha egy évet meghaladó szabadságvesztésre ítélik a fiatalkorút.

A **kitiltás** vonatkozásában eltérő szabály, hogy – összhangban a korábban ismertetett szankcióalkalmazási elvekkel – a megfelelő családi környezetben élő fiatalkorú nem tiltható ki abból a helységből, amelyben családja él.

[1] A szemléletbeli különbségekre vonatkozóan lásd egyebek mellett: Ligeti Katalin: A fiatalkorúak büntetőigazságszolgáltatási törvényének koncepciója., Büntetőjogi Kodifikáció, 2/2006.

Próbára bocsátásnak – tehát amikor a bíróság a büntetés kiszabását próbaidőre elhalasztja – bármely bűncselekmény esetén helye van. Szintén eltérő szabály a fiatalkorúaknál, hogy a próbaidő tartama egy évtől két évig terjedhet; a tartamot években és hónapokban kell meghatározni.

A **pártfogó felügyelet** kapcsán a Btk. a fiatalkorúak esetében szélesebb körben húzza meg a kötelezően pártfogó felügyelet alatt álló elkövetők körét.

Említenünk kell egy olyan intézkedést még, amely kizárólag a fiatalkorúakkal szemben alkalmazható, ez pedig a **javítóintézeti nevelés**. Ezt akkor kell elrendelni, ha az eredményes nevelés érdekében az intézeti elhelyezés szükséges, és a tartama egy évtől három évig terjedhet.

A Btk.-n kívül a büntetőeljárásról szóló 1998. évi XIX. törvényben is megjelenik az a szemlélet, hogy a fiatalkorúakkal szemben a felnőttekétől eltérő jogi lehetőségeket kell biztosítani a hatóságok számára. E körbe tartozik egy sajátos – bár nem csak a fiatalkorúaknál érvényesülő – diverziós lehetőség: a vádemelés elhalasztása. Ennek keretében az ügyész a vádemelés feltételeinek fennállása esetén ötévi szabadságvesztésnél nem súlyosabb büntetéssel büntetendő bűncselekmény miatt – a fiatalkorú helyes irányú fejlődése érdekében - a vádemelést elhalaszthatja. Hangsúlyozandó, hogy ez csupán jog és nem kötelezettség az ügyész számára, tehát a konkrét esetben kell mérlegelnie azt, hogy él-e ezzel a lehetőséggel. E megoldással biztosítani kívánja a jogalkotó azt, hogy viszonylag szélesebb körben érvényesülhessen a gyakorlatban a büntetőjogi útról való elterelés gondolata, mivel így elkerülhetőek a büntetőeljárással egyébként együtt járó stigmatizációs hatások.

Végül említsük meg a fiatalkorúakra vonatkozó anyagi jogi szabályozás legutóbbi módosítását, amely a közvetítői eljárás, a mediáció bevezetését jelentette. E jogintézmény a magyar büntetőjogban nem kizárólag a fiatalkorúak privilégiuma, hiszen a felnőttekkel szemben is alkalmazható meghatározott körben ez a lehetőség, azonban a fiatalkorúakra vonatkozó szabályok – megfelelően a fent kifejtett alapelveknek – kedvezőbbek. A Btk. *Tevékeny megbánás* címmel a 107/A. §-ben szabályozza e kérdést.[1] Eszerint nem büntethető a fiatalkorú ha:

- a személy elleni (XII. fejezet I. és III. cím)
- közlekedési (XIII. fejezet)
- vagyon elleni (XVIII. fejezet)

olyan bűncselekményt követett el, amely ötévi szabadságvesztésnél nem súlyosabban büntetendő és a bűncselekménnyel okozott kárt a sértettnek közvetítői eljárás keretében megtérítette vagy a bűncselekmény káros következményeit egyéb módon jóvátette.

[1] Ehhez kapcsolódóan lásd: Dr. Görgényi Ilona: A büntetőügyekben történő mediáció távlatai, In.: Bizalom-Társadalom-Bűnözés, Miskolc, 2006, 223-243. old.

FIATALKORÚAK A MAGYAR BÜNTETŐELJÁRÁSBAN

PhD **Pápai-Tarr Ágnes***

Több mint egy évszázada, 1899-ben lépett hatályba az első fiatalkorúak bíróságáról és büntetés-végrehajtásáról szóló törvény az Egyesült Államokban.[1] Az USA büntetőpolitikája volt az, amely először felismerte a fiatalkori bűnözés speciális vonásait és igyekezett ezeknek a sajátosságoknak megfelelő büntetőjog kialakítására. Az 1920-as években Európa majd minden országában megalkotják azt a törvényt, amely különválasztja a fiatalkorúak feletti bíráskodást a felnőtt bíráskodástól.[2] Hazánkban először az egységes anyagi jogi szabályozás született meg, a Csemegi kódex[3]első büntető novellájaként 1908-ban,[4]mely már figyelemmel volt a fiatalkorúak életkori sajátosságaira és ennek megfelelően a szankció rendszer tekintetében előtérbe helyezte a nevelés és reszocializáció gondolatát. Majd hamarosan a bíróval és az eljárással szemben megfogalmazódott elvárásoknak tett eleget az 1913. évi VII. törvény, mely felállította a fiatalkorúak bíróságát.

A jelenleg hatályos magyar szabályozás is természetesen figyelemmel van a fiatalkorú életkori sajátosságaira, mind anyagi jogi, mind eljárásjogi szempontból. A Btk. általános részén belül külön fejezet foglalkozik a fiatalkorúakkal, a Büntető eljárásjogi törvény pedig az ún. külön eljárások között szabályozza a fiatalkorúak eljárását. Jelen tanulmányban most dióhéjban a fiatalkorúak eljárását mutatom be, a rendes eljáráshoz képest a specialitásokra koncentrálva.

I. A fiatalkorúakkal szembeni eljárás helye és célja a magyar büntetőeljárásban.

A Büntetőeljárásról szóló törvény[5]a szabályozásnak azt a formáját választotta, hogy külön eljárást vezetett be a fiatalkorúak vonatkozásában, amely csak a rendes eljárástól való eltérésekkel foglalkozik. A magyar büntetőjog szerint fiatalkorúnak tekinthető az a személy, aki a bűncselekmény elkövetése idején a 14. életévét betöltötte, de a 18. életévét még nem.

Az eljárásnak speciális feladatokat kell megvalósítani, ugyanis az eljárást a fiatalkorú életkori sajátosságainak figyelembe vételével, és úgy kell lefolytatni, hogy elősegítse a fiatalkorúak törvények iránti tiszteletét. Ez azt a kötelezettséget is

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[1] Ld. LŐRINCZ József, *Útkeresés a fiatalkorúak büntető igazságszolgáltatásában az ezredfordulón.* In. Wiener A. Imre Ünnepi Kötet, Az ELTE Állam-és Jogtudományi Karának tudományos kiadványai, LIBRI AMICORUM 16. KJK KERSZÖV. 2005. p. 531.

[2] A fiatalkorúak bíróságának történeti kialakulásáról ld. részletesen. FÜZESI Mónika, *A fiatalkorúak bíróságáról (1908-1930)*. In. Viski Emlékkönyv, Közgazdasági és Jogi Könyvkiadó MTA Állam és- Jogtudományi Intézet, Bp. 1994. p. 123.

[3] Az első magyar kodifikált büntető törvénykönyv, az 1878. évi V.tv.

[4] 1908. évi XXXVI. Tc.

[5] 1998. évi XIX. Törvény a továbbiakban: Be.

magában foglalja, hogy a fiatalkorúval meg kell értetni, hogy mások jogainak a megsértése következményekkel jár, jogsértés esetén pedig vele szemben szankciót fognak alkalmazni. Ezt az eljárás valamennyi szakaszában és az eljáró valamennyi hatóságnak figyelembe kell venni.[1]A büntetőeljárásban eljáró hatóságoknak, ezen kívül-szükség esetén- kezdeményezniük kell a fiatalkorú érdekében védő-óvó intézkedés elrendelését. Ez tartalmilag a védelembe vételt jelenti, mely tartós családgondozással együtt járó hatósági intézkedések összessége, amikor a gyámhatóság tartós ellenőrzés alá vonja a gyermek gondozását. A hatóságoknak intézkedést kell továbbá kezdeményezniük a fiatalkorú gondozását, nevelését, felügyeletét elmulasztó személlyel szemben. Ez az ügy körülményeire tekintettel jelentheti a szülői felügyeleti jog megszüntetése iránti gyámhivatali intézkedést, de akár bűncselekmény miatti feljelentést is tartalmazhat.[2]

II. Az eljárás sajátosságai

A fiatalkorúak eljárásában érvényesülő eltérő szabályoknak öt nagy területe van.

1.) Az alanyok.
2.) A bizonyítékok.
3.) A kényszerintézkedések.
4.) Az eljárás egyes különös szabályai.
5.) A fiatalkorúakkal szemben alkalmazható speciális szankciókkal kapcsolatos szabályok.

1.) Az alanyok köre.

A fiatalkorúak bírósága

Magyarországon szervezetileg különálló fiatalkorúak bírósága nincs. A rendes bírósági szervezeten belül, van azonban speciálisan a fiatalkorúak ügyeivel foglalkozó bírósági tanács, amit a köznyelvben és a hivatali zsargonban is fiatalkorúak bíróságának neveznek. Fiatalkorúak ügyében első fokon, kizárólagos illetékességgel, a megyei bíróságok székhelyén működő helyi bíróság az ún. székhelyi bíróság jár el, a Fővárosi bíróság területén pedig, a Pesti Központi Kerületi Bíróság. A fiatalkorúak bíróságának összetétele is speciálisan alakul, első fokon ugyanis, az egyesbíró, vagy amennyiben a bíróság tanácsban jár el a tanács elnöke az OIT (Országos Igazságszolgáltatási Tanács) által kijelölt bíró, továbbá az egyik ülnök pedagógus kell, hogy legyen. Másod és harmadfokon a három hivatásos bíró közül egynek az OIT által kijelölt bírónak kell lenni.

Az ügyészre vonatkozó speciális szabályok

Az ügyész jogkörében a felettes ügyész által kijelölt ügyész jár el. Fiatalkorúak eljárásában csak közvádnak van helye, ezért az ügyész képviseli a vádat akkor is, ha egyébként a bűncselekmény magánvádas. Az ügyész részvétele a tárgyaláson kötelező.

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[1] BOGÁR Péter, MARGITÁN Éva, VASKUTI András, *Kiskorúak a büntető igazságszolgáltatásban*, KJK KERSZÖV, Budapest. 2005. p. 118.

[2] CSÉKA Ervin, FANTOLY Zsanett, KOVÁCS Judit, LÖRINCZY György, VIDA Mihály, *A büntető eljárási jog alapvonalai II.* Szeged, Bába Kiadó 2004. p.298.

Fiatalkorúak eljárásában kötelező a védő részvétele

A fiatalkorúak elleni valamennyi eljárásban, kivételt nem tűrően kötelező a védő részvétele. Ha a fiatalkorúnak nincs védője a hatóság már a gyanúsítás közlésével egy időben köteles védőt kirendelni. A fiatalkorúak véleménye is az, hogy szükségük van védőre, hiszen a tárgyalásra való felkészülésben csak egy védő tud nekik segíteni, mivel ők a jogban és a bírósági eljárásban járatlanok, és nem ismerik a mellettük szóló mentő, enyhítő körülményeket sem. A védelemmel kapcsolatos problémák azonban Magyarországon a fiatalkorúakat is érintik. Orell Ferenc János egy cikkében[1]arra hívja fel a figyelmet, hogy a kirendelt védők a vizsgált esetek nagy részében nem kerestek kapcsolatot a letartóztatott fiatalkorúakkal.[2]

A büntető ügyek tapasztalata, hogy, akinek van pénze, képviseletének ellátására védőt tud megbízni, így a fogvatartott számíthat a segítségre, akinek pedig nincs pénze, csak „reménykedhet" a hivatalból kirendelt védő közreműködésében.[3]

A törvényes képviselőre vonatkozó speciális szabályok

Fiatalkorúak eljárásában egy új szereplőként jelentkezik a fiatalkorú törvényes képviselője, aki lehet a szülő, gyám, gondnok stb. A törvényes képviselő jelenléti, észrevételezési, felvilágosítás kérési, indítványtételi valamint jogorvoslati jogára a védő jogai irányadóak. Míg az eljárási jogosultságok tekintetében csekély eltéréssel a védő jogai az irányadóak, addig a védő eljárási kötelezettségei (pl. megjelenési kötelezettség) a törvényes képviselőt nem terhelik.[4] Bizonyos körülmények szükségessé tehetik, hogy a fiatalkorú részére a törvényes képviselő jogainak gyakorlására eseti gondnokot kell a gyámhatóságnak kirendelni.

A gyámhatóság a vádirat benyújtásáig az ügyész, azt követően a bíróság indítványára eseti gondnokot rendel ki ha:

a) A törvényes képviselő a bűncselekményt a fiatalkorúval együtt követte el.
b) A törvényes képviselő érdekei a fiatalkorú érdekeivel ellentétesek.
c) A törvényes képviselő jogainak gyakorlásában akadályozva van.
d) A fiatalkorúnak nincs törvényes képviselője, vagy annak személye nem állapítható meg.

2.) A bizonyítási eszközök

A magyar büntetőeljárás bizonyítási rendszere az ún. vegyes bizonyítási rendszert követi, mely azt jelenti, hogy a bizonyítási rendszerben mind a szabad, mind a kötött bizonyítás elemei fellelhetők. A magyar bizonyítási rendszer egyik

[1] ORELL Ferenc János, *A fiatalkorúak védelemhez való joga.* Belügyi Szemle, 1998/12. p. 97-99.

[2] A Be. 50. §. (1) a.)-d.) pontjaiban rögzíti a védő kötelezettségeit, melyben szerepel többek között a védencével való kapcsolat késedelem nélküli felvétele, továbbá a törvényes védekezési eszközökről való tájékoztatás kötelezettsége. A törvény nem ír azonban elő egy folyamatos kapcsolattartási kötelezettséget, ami azt is jelenti, hogy ha az egyszeri kapcsolat felvétel megtörtént, a védő jogszabályból fakadó kötelezettségének már eleget tett.

[3] ORELL Ferenc János, *i.m.* 97-99.

[4] FENYVESI Csaba, HERKE Csongor, TREMMEL Flórián, *Új magyar büntetőeljárás*, Dialóg Campus Kiadó, Budapest-Pécs, 2004. p.598.

kötöttsége éppen a fiatalkorúak eljárásában jelentkezik, amikor a jogalkotó előír néhány kötelezően betartandó szabályt.

Többek között a fiatalkorú életkorát közokirattal kell bizonyítani, ami lehet személyi igazolvány vagy pl. születési anyakönyvi kivonat. Ezen kívül fiatalkorú terhelt vallomása poligráf alkalmazásával nem vizsgálható, még abban az esetben, ha ebbe egyébként a fiatalkorú beleegyezne. Be kell továbbá szerezni egy környezettanulmányt, melyet a pártfogó felügyelő készít el, és amely tartalmazza a fiatalkorúról, a közoktatásról szóló törvény felhatalmazása alapján az intézmény által nyilvántartott és kezelt adatokat, vagy a munkahely által adott tájékoztatást. A környezettanulmány teremti meg leginkább annak a lehetőségét, hogy átfogó szociális képet kapjunk a fiatalkorúról, és ez lehet a későbbi egyéniesítés alapja is.[1]

3.) A kényszerintézkedések

A kényszerintézkedések tekintetében lényegében az *előzetes letartóztatás* az, amely eltér a felnőtt korúakéhoz képest. Fiatalkorúval szemben csak legvégső esetben alkalmazható előzetes letartóztatás, akkor, ha ezt az elkövetett bűncselekmény *különös tárgyi súlya* indokolja. Önmagában a szökés, összejátszás, a bűnismétlés veszélye az előzetes letartóztatás elrendelésének nem elegendő feltétele, amennyiben a bűncselekmény súlya csak közepes, vagy csekély súlyú.[2]Különös tárgyi súlyúnak tekintendők elsősorban azok a bűncselekmények, amelyeknek büntetési tétele kiemelkedően magas (pl. emberölés, emberrablás), de a gyakorlat szerint a bűnszövetségben, szervezetten, sorozatban, üzletszerűen elkövetett bűncselekmények is minősülhetnek különös tárgyi súlyúnak.[3]

Az előzetes letartóztatást fiatalkorú esetén *javítóintézetben is* lehet foganatosítani. A fiatalkorú ellen elrendelt előzetes letartóztatás *maximális időtartama két év* (felnőtt korúak esetén maximum 3 év). Az előzetes letartóztatás elrendelésére kizárólag bíróság jogosult (felnőtt korúak esetén is!), ez egy ülés keretében történik, melyen kötelező a védő részvétele, valamint jelen lehet a fiatalkorú törvényes képviselője is.

4.) Az eljárás egyes különös szabályai

A közvetítői eljárás

A büntetőeljárásban való új utak keresése vezetett el a helyreállító igazságszolgáltatás eszméjéhez. Mind a büntetés-orientált (retributív) mind kezelés-orientált (rehabilitív) modellek a bűncselekmény elkövetőjének egy passzív

[1] Korábban kötelező bizonyítási eszközként szerepelt a fiatalkorú gondozójának a tanúként történő kihallgatása, melyet hozzátartozói minőségre hivatkozva sem tagadhatott meg. Ez szintén a fiatalkorú értelmi, érzelmi, családi körülményeinek a feltárására adott lehetőséget, ezt a kötelezően beszerzendő bizonyítási eszközt a jogalkotó 2006. július 1-jei hatállyal eltörölte.

[2] KIRÁLY Tibor, *Büntető eljárási jog*, Osiris Kiadó, Bp. 2003. p. 536.

[3] A jogalkotó célja a különös tárgyi súly, mint plusz feltétel meghatározása, hogy a fiatalkorúakkal szemben az előzetes letartóztatás alkalmazásának a lehetőségét kivételessé tegye. Róth Erika és Váradi Erika azonban egy tanulmányukban markánsan mutatnak rá, hogy ezek a törvényi feltételek nem sugallják már azt a kivételességet, ami a korábbi jogszabályokban az előzetes letartóztatás elrendelését jellemezte. Ld. RÓTH Erika-VÁRADI Erika*, A fiatalkorúak elleni büntetőeljárásról,* In. Viski Emlékkönyv, Közgazdasági és Jogi Könyvkiadó MTA Állam és- Jogtudományi Intézet, Bp. 1994. p. 135-165.

szerepet szánnak és teljesen megfeledkeznek a sértettről. A resztoratív igazságszolgáltatás a sértettet helyezi az igazságszolgáltatás középpontjába, hiszen elsősorban az áldozat szenvedi el a bűncselekménnyel okozott kárt, vagy egyéb sérelmeket, ezért az igazságszolgáltatás feladata a sértett kártalanítása, illetve a bűncselekményt megelőző állapot helyreállítása.[1] A resztoratív igazságszolgáltatás kialakulásában nagy szerepe volt a norvég kriminológusnak, Nils Chritienek, aki szerint a bűncselekményből adódó konfliktust az állam elvette a felektől, és már az elkövetőt nem azért bünteti, mert a sértettnek fájdalmat vagy kárt okozott, hanem mert az elkövető tettével megsértette az állami jogrendet. Így mindkét fél az eljárás áldozatává válik, hiszen a terheltnek el kell viselnie a hagyományos eljárással együtt járó stigmatizáló hatásokat, a sértettnek pedig, el kell viselnie, hogy egy egyszerű tanúvá degradálódott, és ugyan polgári jogi igényét érvényesítheti a büntetőperben, de ez még nem jelenti annak feltétlen elbírálását. Nils Christie szerint azonban, vissza kell adni az áldozatnak és az elkövetőnek a konfliktusukat, hogy társadalmi közösségi bíráskodás útján állítódjék vissza az eredeti állapot.[2]

A fiatalkorúak büntető igazságszolgáltatását kutató szakemberek egy csoportja szerint a XX. és XXI. század fordulóján megértek a feltételek, hogy a fiatalkorúak büntető igazságszolgáltatását is a resztoratív eszmék mellett alakítsák át. Különösen Ausztráliában, Észak- Amerikában és Európában kísérletezteknek a tettes-áldozat kiegyezés, a mediáció különféle formáinak a bevezetésével.[3]

Magyarország számára is az utóbbi években égető fontosságúvá vált a büntetőjogi mediáció bevezetése, mivel az Európai Unió Tanácsának 2001/220/IB. sz. kerethatározatának 10. cikke, tagállami kötelezettségként előírta a közvetítés bevezetését, 2006. március 22-i hatállyal. Hazánk tehát kénytelen volt a tettek mezejére lépni, és elkészíteni a mediáció bevezetéséről szóló törvényt, mely némileg a kötelezettségekhez képest megkésve, csak 2007. január 1-jén lépett hatályba, megteremtve a közvetítés lehetőségét mind felnőtt, mind fiatalkorúak vonatkozásában.

A jogalkotó mind büntető anyagi, mind eljárási jogszabály módosításokat eszközölt, a közvetítői eljárás bevezetése érdekében, és magát a közvetítői eljárást egy külön törvény szabályozza.

Jelenleg lehetőség van ötévi szabadságvesztésnél nem súlyosabban büntetendő, személy elleni (Btk. XII. fejezet I. és III. cím), közlekedési (Btk. XIII. fejezet), illetőleg vagyon elleni (Btk. XVIII. Fejezet) bűncselekmények esetén a mediálásra, amennyiben az ügyész az eljárást felfüggeszti és közvetítő elé utalja a feleket. A jogintézmény kulcsszereplője tehát az ügyész, hiszen ő indítványozhatja az eljárás lefolytatását, amennyiben az alábbi feltételek fennállnak:

a.) a Btk. 36.§-a alapján (tevékeny megbánás) az eljárás megszüntetésének vagy a büntetés korlátlan enyhítésének van lehetősége,

[1] VÍGH József, *A kárhelyreállító (restoratív) igazságszolgáltatás*, Magyar Jog, 1998/6. 328.
[2] VÍGH *i.m.* 329.
[3] Ld. erről részletesen: LŐRINCZ József, *i.m.* 537-539.

b.) a gyanúsított a nyomozás során beismerő vallomást tett, vállalja, és képes a sértett kárát megtéríteni vagy a bűncselekmény káros következményeit más módon jóvátenni,
c.) a gyanúsított és a sértett egyaránt hozzájárult a közvetítői eljárás lefolytatásához,
d.) a bűncselekmény jellegére, az elkövetés módjára és a gyanúsított személyére tekintettel a bírósági eljárás lefolytatása mellőzhető, vagy megalapozottan feltételezhető, hogy a bíróság a tevékeny megbánást a büntetés kiszabása körében értékeli.

Amennyiben a felek között létrejött a terhelt tevékeny megbánásán alapuló megállapodás, ha a cselekmény ötévi szabadságvesztésnél nem súlyosabban büntetendő, akkor a büntetés korlátlan enyhítésére van lehetőség, ha három évi szabadság vesztésnél nem súlyosabban büntetendő, akkor az eljárás megszüntetésére kerül sor. Ebben az eljárásban az egyéniesítés és a fiatalkorú megjavításának, helyes irányba történő terelésének a gondolata hangsúlyozottan szerephez jut. Hiszen a fiatalkorú személyes kontaktusba kerül az áldozattal, aki személyesen elmondja neki az őt ért sérelem nagyságát és komolyságát, megbeszélhetik a köztük kialakult konfliktust, és a fiatalkorúnak lehetősége van, hogy jóvátegye a kárt. Nem egy esetben fiatalkorúak elleni eljárásban, elsősorban nem anyagi jellegű vagy pénzbeli kártérítési kötelezettséggel találkozunk, hanem például a kár egyéb módon, mondjuk munkával történő helyreállításával.

A vádemelés elhalasztása

A vádemelés elhalasztásának lehetősége először fiatalkorúak vonatkozásában került bevezetésre jogrendszerünkbe 1995-ben. Azóta némi eltéréssel felnőtt korúakkal szemben is alkalmazható ez az opportunitás jegyében született eljárás. Amennyiben a vádemelés feltételei fennállnak és a cselekmény öt évi szabadságvesztésnél nem súlyosabban büntetendő, az ügyész egytől két évig tartó időre elhalaszthatja a vádemelést, amennyiben ettől a fiatalkorú helyes irányú fejlődése várható. Az esetek kiválasztásánál figyelemmel kell lenni a cselekmény súlyára és a rendkívüli enyhítő körülményekre, ezt leszámítva, az ügyész diszkrecionális jogköre annak eldöntése, hogy mely esetben és mely terheltet részesíti előzetes bizalomban.

Az ügyész kezében egy fontos lehetőség, hogy egyéni magatartási szabályokat, illetve kötelezettségeket írhat elő erre az időszakra, melynek betartását majd a pártfogó felügyelő fogja ellenőrízni.[1] A jogintézmény egy nagy előnye, hogy megteremti az ügyész számára az egyéniesítés lehetőségét. Ehhez segítséget

[1] Az előírható kötelezettségek nem taxatív felsorolását adja a törvény. Ezzel szemben egyfajta kritikaként fogalmazhatjuk meg, hogy ezek a magatartási szabályok az ügyész által kerülnek alkalmazásra, ez felveti az „ügyészbíráskodás problémáját". Ha ettől el is tekintünk aggályosnak tekinthető, hogy az ügyész gyakorlatilag bármilyen magatartási szabályt kreálhat. Hogyan felel ez meg a nulla poena sine lege elvének? Amennyiben a pártfogó felügyelő a véleményében javasol magatartási szabály előírását, nem vette-e máris át az ügyész feladatait? Ezekről a kérdésekről ld. részletesebben. FÜLÖP Ágnes, NAGY Emese, *Új törekvések a fiatalkorúak büntetőjogában*, Kriminológiai Tanulmányok. 42. Budapest. 2005. p. 302-326.

nyújt számára, hogy be kell szereznie fiatalkorúak eljárásában a pártfogó felügyelői véleményt, melyben nagyon sok minden kiderül a fiatalkorú életvezetéséről, szokásairól stb. Ez alapján az ügyésznek is könnyebb magatartási szabályokat kreálni.

A jogintézmény eredeti célja, a bírósági út elkerülése, az egyéniesítés lehetőségének megteremtése, és az, hogy a fiatalkorú gyanúsítottat a társadalom hasznos tagjává „neveljük". A jogintézmény nem feledkezik azonban meg a sértettről sem. Amennyiben a sértettnek kára keletkezik a bűncselekményből, az ügyész kötelezettségként előírhatja a gyanúsított számára a kár megtérítését vagy egyéb jóvátétel adását. Ehhez azonban mindkét fél beleegyezése szükséges. Látjuk, hogy a sértett és a terhelt egy sajátos alku pozícióba kerülhetnek egymással, lehetőség van arra, hogy a sértettnek a kára anélkül, hogy polgári perbe bocsátkozna, megtérüljön, de ugyanakkor a jogalkotó tiszteletben tartja az önkéntesség elvét is, és a feleket nem fosztja meg rendelkezési joguktól.

A vádelhalasztás gyakorlati alkalmazásával kapcsolatosan, bár a jogintézmény már több mint tíz éve létezik jogrendszerünkben, mai napig problémák vannak. Mivel opportunus jogintézményről van szó, a szigorúan legalitás elvéhez szokott ügyészség kezdetben idegenkedett az alkalmazásától. Amennyiben az ügyészek mára meg is barátkoztak a vádelhalasztás gondolatával, akkor sem céljának megfelelően alkalmazzák. Ma a vádelhalasztás a gyakorlatban nem több mint a megrovás alternatívája.[1] Ennek oka, hogy az ügyészek nem élnek a törvény adta lehetőséggel és nem alkalmaznak egyéni magatartási szabályokat, mégha teljesen egyértelmű is a kár összege, gyakran akkor sem írnak elő kártérítési kötelezettséget. Ennek oka, hogy amennyiben az ügyész magatartási szabályt vagy kötelezettséget kíván előírni, pártfogó felügyelői véleményt kell beszereznie, és tartania kell egy meghallgatást, melyen tisztáznia kell a gyanúsítottal, hogy az hajlandó-e az előírt kötelezettségeket teljesíteni. Ezek a rendelkezések az eljárás elhúzódását illetve plusz munkaterhet jelentenek mind az ügyészségnek, mind a pártfogó felügyeleteknek. Erre tekintettel minden hatóság számára előnyösebb, ha az ügyész egyszerűen nem alkalmaz egyéni magatartási szabályokat. Ennek következtében viszont a vádelhalasztás nem tud hatékony lenni már csak azért sem, mert az ügyészek ezáltal teljesen megfeledkeznek a sértettről és a neki okozott kárról és sérelemről, és a sértett továbbra is csak az áldozat marad.

A fiatalkorúakkal kapcsolatban azonban biztatóbb a helyzet, hiszen itt kötelező a pártfogó felügyelői vélemény beszerzése, mely egy jó kiindulási alap az ügyész kezében a magatartási szabályok előírása tekintetében. Az általános magatartási szabályok közül kettő van, amelyet jogszabálynál fogva nem írhat elő az ügyész a fiatalkorú számára, nevezetesen a meghatározott célra anyagi juttatás, és a köz javára végzett munka.

A tárgyalásra vonatkozó speciális szabályok

[1] Ez iránti félelmeit fejezi ki Kerezsi Klára, *Az alternatív szankciók helye és szerepe a büntetőjog szankció rendszerében* című cikkében (Büntetőjogi Kodifikáció 2001/2), de sajnos félelmei többé-kevésbé beigazolódni látszanak.

- A tárgyalásról a nyilvánosság a fiatalkorú érdekében bármikor kizárható.
- A tárgyaláson kötelező az ügyész részvétele.
- A tárgyaláson a tanú és a vádlott kihallgatását a tanács elnöke (bíró) végzi, nincs tehát lehetőség a felek (ügyész, védő) általi kihallgatásra, az arra jogosultak a bíró általi kihallgatást követően kérdést intézhetnek.
- A környezettanulmányt a tárgyaláson ismertetni kell.

5.) A speciális szankciókkal kapcsolatos szabályok

A fiatalkorúval szemben kiszabott pénzbüntetésnek, illetve pénzmellékbüntetésnek szabadságvesztésre való átváltoztatásáról a (a kiszabott pénzbüntetés meg nem fizetése esetén kell átváltoztatni szabadságvesztésre) bíróság hivatalból vagy az ügyész indítványára, csak abban az esetben határozhat, a fiatalkorú nem fizette meg a pénzbüntetést, és az behajthatatlan (fiatalkorúnál meg kell kísérelni először a pénzbüntetés behajtását, és csak aztán lehet átváltoztatni, felnőtt korúnál nem).

A fiatalkorúval szemben alkalmazható javító intézeti nevelés speciális szankcióként, amennyiben több ítélettel szabtak ki javítóintézeti nevelést, egységes intézkedésre kerülhet sor (meghatározott technikával egy egységes intézkedést alkalmaznak, a legsúlyosabb intézkedést alapul véve. A terhelt így jobban jár, mert kevesebb időt kell javítóintézetben töltenie, mintha egymás után ülné le az alkalmazott intézkedéseket).

Összegzés

Összességében megállapíthatjuk, hogy a fiatalkorúak eljárásjogi szabályai megfelelnek a nemzetközi elvárásoknak.[1] Hiszen megteremtik a fiatalkorú életkori sajátosságaira figyelemmel az egyéniesítés követelményeit. A jogszabályi keretek egyre inkább adottak ahhoz, hogy a fiatalkorút megkíméljük a hagyományos büntető eljárási gépezet stigmatizáló hatásától, és hogy az eljárást egy viszonylag korai szakaszában a büntető útról eltereljük. Gondolok itt elsősorban a közvetítői eljárásban és a vádemelés elhalasztásában rejlő lehetőségekre. Ezek még viszonylag fiatal jogintézményei a magyar büntetőeljárásnak, és mivel az opportunitás elvét követik, a szigorúan a legalitás talaján berendezkedett magyar büntetőeljárásban nem zökkenő mentes ezeknek a jogintézményeknek az elfogadása. Mindenesetre a törvény szerint a lehetőség adott és már csak a jogalkalmazón múlik, hogy mennyire produktívan él az adott lehetőségekkel.

Felhasznált irodalom:

1) BOGÁR Péter, MARGITÁN Éva, VASKUTI András, *Kiskorúak a büntető igazságszolgáltatásban*, KJK KERSZÖV, Budapest. 2005.
2) CSÉKA Ervin, FANTOLY Zsanett, KOVÁCS Judit, LÖRINCZY György, VIDA Mihály, *A büntető eljárási jog alapvonalai II.* Szeged, Bába Kiadó 2004.
3) FENYVESI Csaba, HERKE Csongor, TREMMEL Flórián, *Új magyar büntetőeljárás*, Dialóg Campus Kiadó, Budapest-Pécs, 2004.

[1] ENSZ égisze alatt elfogadott ún. Pekingi szabályok, a Gyermekek jogairól szóló 1989-es New York-i egyezmény stb.

4) FÜLÖP Ágnes, NAGY Emese, *Új törekvések a fiatalkorúak büntetőjogában*, Kriminológiai Tanulmányok. 42. Budapest. 2005
5) FÜZESI Mónika, *A fiatalkorúak bíróságáról (1908-1930).* In. Viski Emlékkönyv, Közgazdasági és Jogi Könyvkiadó MTA Állam és-Jogtudományi Intézet, Bp. 1994.
6) KEREZSI Klára, *Az alternatív szankciók helye és szerepe a büntetőjog szankció rendszerében,* Büntetőjogi Kodifikáció 2001/2
7) KIRÁLY Tibor, *Büntető eljárási jog*, Osiris Kiadó, Bp. 2003
8) LŐRINCZ József, *Útkeresés a fiatalkorúak büntető igazságszolgáltatásában az ezredfordulón.* In. Wiener A. Imre Ünnepi Kötet, Az ELTE Állam-és Jogtudományi Karának tudományos kiadványai, LIBRI AMICORUM 16. KJK KERSZÖV. 2005.
9) ORELL Ferenc János, *A fiatalkorúak védelemhez való joga.* Belügyi Szemle, 1998/12.
10) RÓTH Erika-VÁRADI Erika*, A fiatalkorúak elleni büntetőeljárásról,* In. Viski Emlékkönyv, Közgazdasági és Jogi Könyvkiadó MTA Állam és-Jogtudományi Intézet, Bp. 1994.
11) VÍGH József, *A kárhelyreállító (restoratív) igazságszolgáltatás*, Magyar Jog, 1998/6