

Legal Framework of Criminal Liability of Juvenile Criminals in Romania*

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Although the level of life in society has evolved, the Romanian society, as the Western civilization in general, still faces a significant number of cases of juvenile crimes, and certainly this number is much higher than is desired by the authorities. This article has as a goal to provide an overview of the criminal liability of minors in Romania (defined as persons under the age of 18). This article will also provide a broad view of the criminal sanctions that can be applicable to minors who committed crimes. Of course, the current legal framework has resolved some issues that were faced in the past, but in some cases has generated others, which will be underlined, and, when possible, also solutions will be provided. The procedure of work and the methods for this article included the analysis of the legal national provisions, the read of the main legal authors that commented the relevant legal provisions. We have also included several psychology studies that have analyzed the particularities of the juvenile criminals, which differ in many aspects from adult criminals, and their needs that should be taken into consideration by the legal system that must, especially in their case, not only punish, but also educate and transform.

KEYWORDS: juvenile criminals / minor offender / educative measures / justice for minors

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Introduction – About Juvenile Crime and the States (Criminal Law) Response(s)

The Romanian society has, in comparison with adults, juveniles tend to be overrepresented as the perpetrators of certain crimes (e.g. graffiti, minor thefts, minor violence crimes) and under-represented as the perpetrators of others (e.g. fraud, road traffic offences and crimes of serious violence). In addition, by comparison with adults, minors are at increased risk of victimization (by adults and other juveniles), stigmatization by the criminal justice system and peer contagion. It should be noted, however, that while juvenile offenders differ from adults in relation to a range of factors, juvenile offenders are a heterogeneous population themselves.

General Lines of the Policies Regarding Juvenile Criminals

When talking about justice for minors the same author states that always two concepts are put into balance: the education of the minor offender and sanctioning the minor.

Firstly, the lawmaker must draw an age limit for criminal liability of persons who committed crimes – an although this aspect could seem like a well-established one (since the evolution of psychology and neurosciences), and maybe common to all European countries. We would think that the specialists have, so far, established a general age limit from when the minor has discernment, and most of the lawmakers have listened to them. Secondly, the lawmaker must establish special rules for sanctioning and also special sanctions for the juveniles who had discernment at the moment of the commitment of the crime. The need for a public attorney, the need for a specialized judge, the judgement to be not in a public but private organization, all these and others should be a part of the set of procedural rules that are specially designed considering all the juvenile criminal's particularities.

Regarding juvenile crimes, it was appreciated in the literature that around the world there are variable and inadequate legal frameworks that are not age-appropriate, there is a lack of age-appropriate services and establishments, and a lack of a specialist workforce, leading to challenges around training and supervision to work with this vulnerable population (Young et al., 2017).

In the Romanian legal literature (Mitrache & Mitrache, 2014, p. 440), it has been argued that the juvenile crime phenomenon rises complex problems regarding the prevention part but also, and especially, in the part of fighting against it.

Given all of the above, of course every country struggles to find the best system to deal with juvenile crimes, at the same time trying to stay aligned with the international trend. This article will offer an overview of the Romanian perspective, given that ten years have passed since a significant change in the criminal law legislation happened: the new Criminal Code of Romania entered into force ten years ago (in the 1st of February 2014), introducing a different approach for juvenile criminals. Therefore, the analysis will focus on the substantial problems of criminal law regarding the age limit of criminal responsibility and the special criminal law sanctions applicable to minors who committed crimes.

Legal Framework of Criminal Liability of Juvenile Criminals in Romania – The Sensitive Problem of the Age Limit of Criminal Liability

It was stated out that, when analyzing the most efficient ways of preventing and fighting the crime phenomenon in persons underage, one of the issues of significant importance is the age limit for criminal liability, this being, theoretically, the age from which, according to the psychological research, it is appreciated that the minor understands how dangerous his conduct (Mitrache & Mitrache, 2014, p. 440) is to society. Of course, an important element in determining the criminal responsibility is identifying the age of the child (Mousavi et al., 2012) and to establish if he passes the age limit. The age limit is established in order set a boundary: it is generally accepted in the society that a child under the age of “X” years does not have discernment, meaning he does not understand completely the consequences of his actions/inactions, or he cannot control them, and, therefore, should not be held criminally relevant.

Before talking about the specific limitation in Romania, it must be said that it could be argued that an age limitation is not necessary in order to establish the criminal liability, because in every case, a psychiatric evaluation of the discernment could be made. Given that every person is different, it could be said that in some cases, a minor that is under the age of 13 or 14 could have discernment while other maybe does not.

On the other hand, at least in Romania, such an approach would completely block the judicial system – given the fact that a psychiatric expertise requires a specialized trained doctor (with at least six years of medical school and another five of residency) which Romania does not have in a sufficient number, the trial would have such a long duration that, by the time the sanction would be applied, it would completely lose its purpose. This means than the lawmaker decided that if, in some cases, minors who committed the crime are under the age limit

although they had discernment, it is the risk that the state is willing to assume (considering the fact that these cases should be extremely rare).

In the present days, in Romania, after the age of 18, a person committing a crime is liable and a punishment with prison or a criminal law fine can be applied. If the offender is under the age of 14 at the moment of commitment of crime (not necessarily at the moment when the dangerous result of the crime is produced), he/she is absolutely presumed to have committed the crime without discernment. This is expressly regulated by article 113 of the Romanian Criminal Code, that states that the offence committed by the person under the age of 14 is not considered imputable.

More problematic is the age between 14 and 16 years old, when the Romanian law states a relative presumption of lack of discernment. In this case, an offender with the age between 14 and 16 at the moment of commitment of crime is presumed without discernment, but if, though a medical expertise, it is shown that, at that precise moment of the commitment of crime, discernment was present, meaning the minor knew and understood what he or she was doing, understood the consequences of his actions/inactions and controlled his actions/inactions, then he will be held criminally liable and a specific sanctions for minors will be applied.

A question that must be answered is whether the minor will commit the crime in the day where he turns 14 years old. Is he going to answer for its acts (if, of course, discernment is present, as established by article 113 of the Romanian Criminal Code)? Or, will he benefit from the absolute presumption of lack of discernment? The Supreme court of Justice already addressed this question since 1972 (decision nr. 569) concluding that he will be held liable if the crime is committed precisely the day the minor turns 14 years old.

Sanctions Applicable to Minors After 2014 – A Change in Paradigm

A shift in paradigm was brought by the new Criminal Code, that entered into force in Romania, in the 1st of February 2014. If the rules of criminal liability considering the age of the offender have not changed (the age limit remaining still 14 years old), not the same can be said about the types of sanctions that can be applicable in the case of juvenile crimes.

First of all, and considered a step ahead by the scholars and practitioners, no more criminal punishments could be applicable to minors anymore, no matter how serious the crime would be. In this innovative perspective, the lawmaker designed only educative measures that are the sanctions applicable if a minor is held criminally liable. The educative measures have, as a main goal, the education of the minor, making the offender understand that the criminal behavior is not a

socially accepted behavior, and trying to offer alternatives to the commitment of crimes.

Article 116 of the Romanian Criminal Code established that it is mandatory, during the course of the trial, if an educative measure is to be applied, for the Romanian authorities to file a report, called „evaluation report”. This report is not made by the judge, the prosecutor, or the lawyer, but by a specialized civil servant from the probation service, that, in the evaluation, must indicate all the social, family and educative background of the minor and the particular elements that probably made the minor commit the crime. This report is mandatory and its role is to help the judge in its process of evaluating all the circumstances of the case and to establish the proper educative measure. However, the judge can apply a different measure than the one proposed by the probation officer.

In the present days, the educative measures are divided into two main categories: the non-privative measures and the privative measures, and in the following lines, we will discuss them briefly. As a general perspective, it must be said that the non-privative educative measures have in the center the education and try to teach the minor the consequences of his acts and the rules of conduct in the society. Their regulations part from the supposition that the minor remains in the family, in his normal environment, but participates to some educational activities and programs that make him understand the consequences of his actions, why is it not desirable to commit crimes, and why and how should he act in the future. In the case of privative educative measures, the state, therefore, assumes, for a limited period of time, of course, the protection role that traditionally belongs to the family, and creates a mainly isolated system where the minor is held, protected, and again, thought about the consequences of committing crimes and about the society rules (Lefterache, 2016) that he should follow.

Firstly, it must be underlined that the general rule imposed by the Romanian Criminal Code is always try to apply a non-privative educative measure. This is an expression of the fact the minor can still be taught better inside his normal environment, together with his family and friends.

A privative educative measure is an exception, and can only be applied if one of the following conditions exists: the offender committed another crime for which an educative measure was applied and the execution of that measure was started and completed or only started (meaning a special form of recidivism), or if the law foresees for the offence committed for the adult prison time for 7 or more years (rules stated by article 114 of the Romanian Criminal Code).

The obligation to follow a course of civil education is a novelty if the Romanian legislation, regulated by article 117 of the Romanian Criminal Code. It is considered as the “softest” educative measure and, if the juvenile criminal is convicted to it, it supposes that he has the obligation to follow an educative program organized by the probation institutions with the duration of at most four

months. The surveillance is the following non-privative educational measure regulated by article 118 of the Romanian Criminal Code. A similar measure also existed in the Romanian legislation before 2014. It is the second most soft measure, and during its execution, the minor must participate in several educative and social reintegration programs that will be indicated by the probation officer. It is of a duration between two and six months, and its surveillance, contrary to the expected, is made by the parents of the minor or by another significant adult in his life.

The third non-privative educative measure is the „stay at home on weekends”, a novelty in the Romanian legislation (it is of Spanish inspiration). It can be imposed for a period between four and twelve weeks and it consists in the obligation of the minor to stay inside his home in the days of Saturday and Sunday. As the days are expressly mentioned by the law, they cannot be changed to other week days. It begins on the 00.00 on of Saturday and it expires from at 24:00 Sunday. The role of this measure is to modify the conduct of the minor by restricting its liberty of movement, but also this measure implies the participation of the minor to educative and social programs.

Article 120 regulates the last and most severe non-privative educative measure, called daily assistance. It is a new measure, that did not exist in the Romanian legislation until 2014, and it is of Spanish inspiration. It must have a duration between three and six months. It implies that the minor must respect a strict daily program that is established by the probation officer.

It is important to mention that, if the minor does not respect the conditions of one of the non-privative educative measures, the court can prolong the duration of the measure until the maximum time possible, or can apply another educative measure, more severe (according to article 123 of the Romanian Criminal Code). If the measure applied was the daily assistance on the maximum duration (6 months), the court can apply the private measure of internment in an educative center. These two situations will happen if the minor, with bad-intention, does not follow the programs, the rules or the obligations imposed by the court.

The privative educative measures are regulated in articles 124 and 125 of the Criminal Code are two: internment in an educative center and internment in a detention center. The educative center is the specialized institution that has as a goal „the social recovery” of the admitted persons, in which those persons follow the social and educative programs and participate in activities that have as a goal the same „the social recovery”. The activities must be educative, moral – religious, cultural, sportive, psychological, etc. Both types of centers must have specialized personnel to develop these activities and also medical personnel, security personnel, and administrative personnel. Internment in an educative center can be taken for a period from one up to three years, while internment in a detention center can be taken for a period from two up to five years, or, exceptionally, in

case of committing a very serious offence (for which the law states the life imprisonment or prison higher than 20 years for the person over 18) for a period of five to 15 years. The difference between the two types of centers is that in the detention center there is a permanent security line and permanent guards, and theoretically, the programs the minor follows are more intensive.

On the other hand, if the behavior of the minor in the detention center is not proper, if he does not respect the rules and influences other colleagues' recovery and development, only if the minor has turned 18, the court can decide that he will execute the rest of the sentence in an adult prison (according to article 126 of the Romanian Criminal Code). Although a similar measure also exists in the Spanish legislation, for instance, it can be argued that such a measure goes against the idea that in the center of the system the well development of the minor should be of most importance. Only if a person has turned 18, it is not necessarily to be that it has the mind of an adult and could respect prison rules and take the good lessons from an adult prison (rather than the not so beneficial ones). By a bad behavior or a behavior that could influence negatively other persons we could understand not – participating to educative and social programs and also determining others not to participate, owing or possessing guns or forbidden materials or substances, neglecting the daily program or lack of a respectful attitude regarding the persons he comes in contact to (as defined by article 182 and 82 of Law nr. 254/2013).

Conclusions

As it has been showed in the literature (Bećirović-Alić, 2018), we also consider that excellence in punishing juveniles are reflected in the application of diversion and educational measures aimed at minimal restrictions to achieve the best results. In this regard, it was argued, and we could not agree more, that the punishment of juvenile represents the ultimate means of applying re-social active treatment affects their re-education and training for life in freedom. Rather of being punitive, law enforcement agencies should take a reformatory approach, based on educational programs. These programs must teach the juveniles to use their power and capabilities in a positive and helpful way in order to benefit society.

The major issue regarding criminal liability of minors from the substantial point of view of criminal law is the age limit that must be drawn for attracting criminal responsibility: of course, no limitation is perfect, and there will always be one case-law that contradicts the general rule. But, apart from this, a general rule is beneficial not only because of the savings in money and judicial time the states make, but mostly because it saves most minors from a traumatic experience of being at trial, being investigated, etc. Thus, we believe that instituting an age limit for criminal liability with an absolute presumption of lack of discernment is a desirable provision that all countries should adopt.

In what regards the criminal law sanctions imposed to minors that are held liable, many discussions can be made, and of course the Romanian system is far from being perfect. It is in the best interest of the minor to have as a rule the application of a non – privative educative system of sanctions, and to apply mainly a non-privative educative measure, because, as years of privation of liberty have proved, especially in the case of minors, privation liberty and prison time does not have as an effect lowering the number of juvenile crimes (but rather the opposite). The state should have strained specialists such as psychologists, social workers, probation officers etc. that can supervise the evolution of the minor who follows the educative measure, that can design educational programs with different varieties for different types of juvenile offender considering all their particularities.

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