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Review Paper

Legal Framework of Criminal Liability of Juvenile Criminals in Romania[1]

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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*

Introduction – about juvenile crime and the states (criminal law) response(s)

Although the Western society has evolved, crimes are still a reality, even if we talk about mostly about non-violent crimes, rather than 150 years ago. In all Western civilization probably, some of the more common

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juvenile offenses include: theft, larceny, alcohol offenses, disturbing the peace, drug offenses, vandalism, assault, robbery, criminal trespass, harassment, fraud, burglary, loitering, possession of stolen property, possession of weapons and crimes committed on behalf of gangs. Juvenile offenders differ from adult offenders in a variety of ways, and juveniles' offending profiles differ from adults' offending profiles. Juvenile delinquency has become a big concern all across the world in recent years. It is characterized as behavior of minors that has legal repercussions for engaging in such activities which are prohibited under statutory and criminal law. In general, criminal activities committed by juveniles are referred to as juvenile delinquency. Juvenile delinquency is an indicator of a country's overall morality and law and order, and so youth crime can be a source of' moral panics. However, there cannot be single solitary elements that can be attributed to the cause of this increasing global problems.

In the general image 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. Due to their immaturity, juveniles are also at increased risk of a range of psychosocial problems (such as mental health and alcohol and other drug problems) that can lead to and/or compound offending behavior. 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. Sex, age and Indigenous status, for example, play a part in shaping juveniles' offending behavior and criminogenic needs and these characteristics should be considered when responding to juvenile crime. Also, it must be pointed out that, in the Romanian literature, it was considered that juvenile crimes reflect the inability of the minor to adapt to the judicial and moral system of the society, constituting one of the major social problems the society is facing.

General lines of the policies regarding juvenile criminals

One of the most important aspects the criminal law field must answer to is the phenomenon of juvenile crimes – meaning crimes committed by young persons and children. This policy implies several lines of action. The justice for minors has represented, along the ages, through, a manner the evaluate the evolution of the society, taking into account the options of criminal policy and the criminal laws adopted by the lawmaker. 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. Actually, this is not the case, and we still face very different age limits for criminal liability in different countries, although these countries share the same social and historical background, and should be inclined, theoretically, impose the same limit.

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. This comes as no surprise, since we have already established that the minor has different needs and different characteristics from an adult offender, and, therefore, should be treated differently. Of course, besides from the punitive aspect of the sanctions, the educative goal is extremely important.

Thirdly, the lawmaker should take into consideration and should special rules of judgment for juvenile criminals. 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.

Last but not least, and seen as a more general perspective and policy, social and educational measures must be taken, at all levels of the society: in schools, in neighbourhoods, city halls, etc. These measures should have as a goal to prevent the commission of juvenile crimes, and to educate the minors regarding their criminal responsibility, the consequences of their actions, and the possibility to face a criminal record. The state should also try to identify the causes of commission of juvenile crimes and prevent them, as well as to offer alternative measures to criminal behavior. These measures should be a part of different governmental strategies, and will not be the object of this article.

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[3].
In the Romanian legal literature[4] 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. This is such a complex issue because, from a causality point of view, there are several factors involved in the commission of crimes by minors, such as: lack of experience in the social life of the minor (making the minor to not fully understand the consequences of his acts and of his dangerous social behavior), the lack of education regarding the sanctions that can become applicable, the family problems that perhaps the minor faces, school issues, negative influence of other persons – even adults etc.
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. This article will leave aside the other more general problems of prevention of juvenile crimes which, although very interesting, are not part of the criminal law; it will also leave aside the problems and regulations regarding the procedural aspects, given mostly to lack of space. The procedure of work and the methods used 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.

[3] Susan Young, Ben Greer, and Richard Church, *Juvenile delinquency, welfare, justice and therapeutic interventions: a global perspective*, available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5288089/, accessed at 04.10.2024.
[4] Constantin Mitrache, Cristian Mitrache, *Drept penal român. Partea generală,* editura Universul Juridic, București, 2019, P. 440.

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[5] is to society. Of course, an important element in determining the criminal responsibility is identifying the age of the child[6] 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. A general age limitation of criminal liability that draws a line under which, no matter the seriousness of the crime, the minor will not be held responsible, could be argued as having as a consequence that, in some cases, the minor that had the discernment at the moment of the commitment of crime, will not be punished. Given that every person is different, it could be said that in some cases, a minor that is under the age of 13 of 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. Therefore, the lawmaker in Romania opted to introduce a limit for criminal liability of juvenile crimes, with the risk of, in very rare cases, "let one escape". 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,

[5] Constantin Mitrache, Cristian Mitrache, *Drept penal român. Partea generală,* editura Universul Juridic, București, 2019, P. 440.

[6] Shohreh Mousavi, Behnam Rastegari, Rohaida Nordin, *Legal Perspective of the Criminal Responsibility of Children: Contemporary Period*, avaible online at www. academia.com, accessed at 04.10.2024.

it is the rick 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 in 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. The lack of discernment before the age of 14 is an absolute presumption, and even if through psychological and/or psychiatric exams it could be proven that the offender knew exactly what he was doing, and controlled precisely his action/inactions that produced the dangerous result, criminal liability still could not be activated in Romania, and no criminal law specific sanctions for minor could be applied.
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 presents, 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.
In the 19th century, the Romanian legislation considered that any person eight years old can be held criminally liable. It must be said that this rather low age limit is now considered an expression of the society's conception regarding children (let us not forget that all over Europe children could work or get married from very young ages). Since the begging of the 20st century, and during the communist regime, this age limitation was 14 years old. It must be mentioned that the problem of the age limit arose some debates in Romania before the adoption of the new Criminal Code. At some point there was a proposal to lower the age of minor's responsibility from the age of 14 to the age of 13. The initiators of the proposal of lowering the age limit by one year argued that there has been an increase in the number of criminal acts committed by minors under the age of 13, this meaning that most of them know what they are doing and, probably, they have the discernment need to attract criminal responsibility. Another argument that was invoked was that the statics showed that, in what regards the existence of discernment in cases of minors with the age

between 14 and 16, in more than 90% of the cases, it was considered by the psychiatry specialists that it existed and was present at the moment of the commitment of the facts, and that the minor understood very well what he was doing. This would imply that, probably, even before the age of 14, such a discernment exists, which was appreciated as a normal situation given the technological and social progress that favors a faster development of the child[7]. Another argument invoked by the initiators of this proposal was the necessity to uniformize the Romanian law and bring it to the European level, aligning our regulation to the regulations of most European countries. In this context, it was mentioned that some European countries have lowered the age limit of criminal responsibility for minors (10 years in France, Great Britain and Switzerland, 12 years in Greece and Holland). However, in the end, such a proposal was abandoned, and the age limit for criminal liability of juvenile criminals remained the age of 14 years old.

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. As a consequence, if a crime is committed exactly the day when the person turns 18 years old, it will answer for that crime as an adult, meaning that a prison punishment or a criminal law fine could be applied.

Of course, if the offender is under 14 years old, other measures can be taken (established in Romania by Law 272/2004 regarding children rights, but also by other laws), but these measures are not criminal law sanctions, and do not imply the criminal law responsibility. On the contrary, those measures are protective measures that have as a goal to protect the minor, meaning the offender, from the environment that made him commit the crime. Of course, there are situations when a person is under the age of 14, but very close to it (say 13 and six months old) and they commit the crime by their one mind, meaning nobody influenced or determined them in a casuality meaning. In such a situation, not much can be done by the Romanian law, and, of course, nothing can be done from the perspective of the Romanian Criminal law of sanctions.

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[7] F.M. Vasile în V. Cioclei, *Codul penal. Comentariu pe articole*, C. H. Beck, București, 2016, p. 372.

Overview of the specific sanctions applicable to juvenile criminals before 2014

Of course, the sanctions applicable to minors that commit crimes must correspond and must respond to the particularities of the offender, especially those that derive from the young age of the criminal. On the other hand, from a modern perspective, it must be said that the sanctions must have in the center, or as a main goal, the education of the minor. We should have social measures of defense that would tend to reeducate the minor (who, theoretically, has a poor education since it committed crimes)[8] rather than to punish him for committing a crime.

In the 19th century, the Romanian legislation considered that any person eight years old can be held criminally liable and prison punishment could be applied (of course, at that time, there was no discussion about educative measures and the educative goal of the criminal sanctions, and the punitive aspect was the main aspect). The Romanian legislation began the 20st century by establishing prison time for minors who committed offences (even if not as harsh as for adults – this being translated in less prison time if we talked about a juvenile criminal).

A surprising change in perspective comes in the communist past of Romania. In 1977, by Law nr. 218/1977, the Criminal Code was modified, and only educative measures were established for the minors, no more prison punishment being possible. This was such an innovative aspect at the time, and seen retroactively, especially given the fact that we were talking about an authoritarian form of ruling. In order to institute only and educative measures system of sanctions for juvenile criminals, it was argued that it is not necessary for a juvenile offender to suffer a punishment in order to understand the wrongdoing that he committed, especially given the adverse effect a prison punishment could have (also, the fact the minor could be in contact to very dangerous offenders was argued as being against the minors' and the society's interest)[9]. It is very surprising that a regime that did not promote human rights and actually acted against these important European values, put into balance the educational needs of the minor offender, the need to sanctions him and also the dangers for the minor if the minor was sent into prison with adults.

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[8] Constantin Mitrache, Cristian Mitrache, *Drept penal român. Partea generală,* editura Universul Juridic, București, 2019, P. 440.

[9] Viorel Pașca, *Drept penal. Partea generală,* editura Universul Juridic, București, 2015, p. 488.

A shift in the paradigm happened after the fall of the communist regime in 1989, and this perspective was abandoned in 1992. By Law nr. 104/1992 a mixed system of both prison time (applicable in case of severe crimes) and educative measures (applicable in case of minor crimes) was established.
The educative measures were regulated by article 101 of the former Romanian Criminal Code, and the „softest" one was the reprimand. Reprimand meant that the minor was basically given a lecture by the judge regarding the gravity of his conduct, the importance of respecting the laws and rules of the society he lives in, and he was advised that he should correct his behavior, otherwise a more severe educative measure or a punishment with prison could be applies (if another offence was committed).
In contradiction, the most severe sanction was prison time. This punishment could be applied, according to article 109 of the former Romanian Criminal Code, only if the court decided that an educative measure was not sufficient in order to obtain the correction of the minor's behavior (condition regulated in article 100 of the former Romanian Criminal Code). However, in order to apply a more indulgent regime of criminal liability, article 109 stated that the special limits of punishment will be reduced, in case of a minor offender, by half, and, if the case was for a life imprisonment, this should be replaced with a punishment with limits between 5 to 20 years.

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 1th 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. This change in legislature was introduced because the lawmaker realized that minors are fragile and prison time could affect them in a significant manner. As

opposed to punishments, where the coercive force is on the main level, the educative measures have a strong, important and main educative layer.
A very important aspect to be mentioned is that in the Romanian legislation, the educative measure does not represent habitual criminality (recidivism), meaning that they do not appear in the criminal record of the offender and do not imply such serious consequences as do criminal punishments for adults. This measure comes again to protect the minor for the consequences of his acts: even if it is proved that the minor had the discernment and understood the consequences of his actions/inactions, given its young age and the particularities already mentioned, the law stated that these consequences should not follow him on the criminal record and should not prevent him from exercising his civil rights. It is, again, a form of protection of the minor against the consequences that the crime he committed may have in his future.
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. Another important part of the report consists in the proposal that the probation officer must make regarding the educative measure that should be applied, together with the educative and social programs that the minor should follow, and other obligations that the court should impose to the minor. 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. This provision comes as an expression of the modern concept that when dealing with a minor offender, knowing the personality and the general background of the offender is of high importance for establishing a proper sanction that would help the minor the most in understating the consequences of his conduct and in teaching him to respect the rules of the society he lives in.
In the present days, the educative measures and 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. The privative educative measures put into center the protection of the minor, meaning that the minor must be taken outside his environment that made him commit the crime, and be reeducated in a more intensive manner, regarding the same aspects mentioned above. In the acse 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[10] 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. The non-privative measures must be executed inside the community, and during their execution the minor's connection to its family and its community, the free development of the minor, and its involvement in the educative programs, have all as a goal his formation of character in a spirit responsibility and respect for the civil rights and liberties (as it is stated in article 63 of Law nr. 253/2013).

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). So, if a minor offender is at its first offence and the offence is not very serious (the law states for that particular offence prison under 7 years), then only a non-privative educative measure will be applied.

In what regards the non-privative educative measures, these are regulated in a number of four: the obligation to follow a course of civic education, the supervision, the „stay at home on weekends", and the daily assistance.

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

[10] Lavinia Valeria Lefterache, *Drept penal. Partea generală*, editura Hamangiu, București, 2016, p. 492.

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 educative program has as a goal to help understand the minor the legal and social consequences he is exposing himself into in the case that he will commit other crimes. The course must also have as a goal to make the minor understand its responsibility regarding its future behavior.

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 probation officer must supervise the manner in which the parent has exercised the surveillance.

The third non-privative educative measure is the „stay at home on weekends", a novelty in the Romanian legislation (it is of Spanish inspiration). Although in the category of the non-privative measures, this measure actually implies that the minor must stay at home and to not leave his home during the weekends, thus being a restrictive measure (from the perspective of the liberty of movement of the person). It can be imposed for a period between four and twelve weeks and it consists in the obligation of the minor to say 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. However, the program must be made in order to respect the minor s daily scholar activities or any other permitted activities that are beneficial for the minor. The probation officer will control if the minor will respect the program.

Along with one of measures, the court may choose to impose to the minor one or more of the following duties: to follow courses for training, not to

leave a certain territorial limit established by the court without the probation officer's approval, to not go at certain places, certain sports manifestation, other cultural activities or any other places established by the court, to not get close to the victim or its family members and to not try to make contact to them in any way, to be at the probation officer at the dates established by this one, to accept the medical or treatment measures imposed by the court, to attend, alone, of, if the case, with his parents to special psychological counseling programs, organized by the Romanian authorities. The probation officer must make sure that the minor respects the duties imposed by the court. If changes occur in the minor's life or schedule, the probation officer must notify the court that some of the duties are no longer necessary. At the same time, if the minor does not respect the duties imposed by the court, the probation officer must again notify the court which, in this case, can prolong the educative measure that was imposed on the minor until its maximum duration, or can apply a new educative measure, more severe.

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. If there is an event that prevents him from following the rules (such as a disease etc.), then the court cannot prolong or replace the measures (as he has not acted in bad-faith or with bad-intention). At the same time, it must be underlined that only the judge can replace a measure with another measure or prolong the duration of a measure, and, of course, only after hearing of the minor and all the things that he wants to state in his defense.

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.

There are also provisions for good behavior: if, during the execution of the sentence, the minor has a good behavior, the internment measure can be replaced with the daily assistance, if the person is still under 18 years old, or it can be liberated from the execution of the sentence (measure similar with the conditional release from a prison sentence). This legislative option was taken given the fact that it is well known that immediately after being released from a privative measure, there is a higher risk that person will commit another crime. Therefore, by replacing one of the internment measures with the daily assistance or with conditional parole, the person is still under the surveillance of the state.

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). As it can be seen, while some of these acts are clearly defined (such as „possessing a gun"), others are very vague and give enough space for interpretation (such as „lack of a respectful attitude"). In the end, if the judge decides to transfer the person in a prison for adults, this decision should take into account all the aspects involving the development of that person.

Conclusions

As it was showen in this article, juvenile crime is a complex phenomenon, that involves so mush more than criminal law. A young person who commits a crime has different reasons than an adult most of the times. At the same time, the sanctions that should be considered to be applied should be different, given that a young offender has other changed of regulating his conducts with the help of special programs. As it has been showed in the literature[11], 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 reformative 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. Added to the main educational program, substance abuse education and treatment, family counseling, youth mentorship, parenting education, educational support, and youth sheltering are all examples of prevention program that should exist and be accessible.

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. Regarding the age that this should be, it is, indeed, difficult to establish one. On the other hand, considering the evolvement of the society, of technology and in general of modern life, we consider that maybe 14 years old it is too much, and 13 years old would be a limit that is more aligned with the Western standards of civilization.

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

[11] MsM MKTHK B. AlTć, *Juvenile Sanctions In Comparative Criminal Law*, available online at www. academia.com, accessed at 04.10.2024.

is far from being perfect. However, it is, without argument, in the best interest of the minor to institute a system of educative measures specially designed for the minor, having in center educative and social programs that teach the juvenile criminal the consequences of his acts and what the rule of living in the society. 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 application of a privative educative measure should be the exception, for serious crimes or repeated criminal behavior, and the duration should be established as law as possible, in order to serve, again, the educational interest of the minor. Different types of non-privative educative measures should be available, so that the judge could have a broad edge of appreciation in individualizing a criminal sanction for a juvenile offender. 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. The judge should have a possibility to imposed specific duties and obligations to the minor, that have the same goal the educate him and keep him outside the place where is was influenced in committing the crime. The judge should have the option to modify these duties if the minor proves a good behavior, or to impose dome more if it is that case, as it should have the option to prolong the duration of an educative measure, of to apply another, more severe, educative measure, in case of bad-behavior of the minor.

In the end, it can be underlined that the focus of the juvenile justice system is to rehabilitate the minor so that he or she can be a functioning and law-abiding adult. Juvenile judges often stress education and rehabilitative programs as being the most important part of the sanctions applicable to minors, and it can be said that responding to juvenile offending is a unique policy and practice challenge. While a substantial proportion of crime is perpetuated by juveniles, most juveniles will 'grow out' of offending and adopt law-abiding lifestyles as they mature. It can be said, however, that minors have a unique capacity to be rehabilitated, but this may probably require intensive and often expensive interventions by the juvenile justice system. It is a cost, however, that the justice system should pay without hesitation. The juvenile criminals are still part of the future of the country and, when designing and applying a justice system for the juvenile

criminals, we must not forget that we are actually designing the future or our society.

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