

FROM PUNISHMENT TO EDUCATION – JUVENILE DELINQUENCY IN ROMANIAN CRIMINAL LAW

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FROM PUNISHMENT TO EDUCATION – JUVENILE DELINQUENCY IN ROMANIAN CRIMINAL LAW (Abstract): For centuries children were considered "mini-adults". Together with expressing the need to educate children and putting a stop to their integration in the work field from the earliest years the 19th century also displayed a new image of the child, which clearly separates him from the adults. In this paper the authors analyze the Romanian legislation addressing juvenile delinquency in criminal temporal evolution. On the one hand the minority age limits are sought and modulation of legislative provisions according to these, and on the other hand, types of penalties for minors are discussed. The authors conclude that the approach to juvenile delinquency in the current Romanian Criminal Code is the result of a long process of reflection of the legislators on adopting a different system of sanctions for juvenile offenders and on creating special regulations concerning the prosecution, trial and enforcement of the decisions regarding them. **Keywords:** MINORITY, DELINQUENCY, ROMANIAN CRIMINAL LAW.

A minor is a person before their coming of age, set at 18 in most countries, which legally confines the child's status of adulthood.

For centuries children were considered "mini-adults". Together with expressing the need to educate children and putting a stop to their integration in the work field from the earliest years the 19th century also displayed a new image of the child, which clearly separates him from the adult.

The idea of juvenile crime emerged in history from a sociological perspective, first being developed conceptually in the 19th century in Great Britain, and became a

well defined social phenomenon, with clear outline of specific criminal behavior in children (1).

Nowadays it is recognized that juvenile delinquency is a multi-factorial phenomenon that is imposed on a particular, fully evolving and changing, psychosomatic field. From a sociological perspective, the juvenile antisocial behavior may represent a normal part of growing up but it can also be a warning sign that predicts a pattern of criminal behavior, persistently evolving over time.

In the developing of the underage person, childhood is succeeded by adoles-

cence, with no clear chronological boundaries in between though. As a statistically-based convention, adolescence includes the age of puberty, ranging between 11 and 12 years old and 14 and 15 years old and adolescence itself, until the age of 18. By the age of 18 all the psycho-physiological and biological processes are produced, as well as the events that mark the transition to adulthood.

During adolescence there is acceleration of both the physical development from a somatic and morphological point of view and of the changes in social and psycho-emotional sphere. These changes are produced in an uneven manner, with individual variations that create new models of proper functioning.

The process of moral development, whose disturbances are directly involved in the dynamics of juvenile delinquency, was dividing into three levels, starting with preconvention and going through convention, in order to reach the post-conventional level. At a preconvention level, specific to children under 9 and to some teenagers, social norms are external to the self, so the individual appears to not understand or support the rules of society. The conventional level is characteristic to most teenagers and it is aimed at rational individuals that integrate social norms and act to achieve acceptance and admiration of others. The post-conventional level is reserved to a small number of individuals who distinguish the "Self" from the social rules and define their values in terms of principles (2).

Antisocial acts committed by juveniles show the outline of a model of deviant behavior compared to the accepted model within society. The deviant model is actually an expression of personality structures

organized in disharmony, with predominance of certain traits such as aggressiveness as a form of reactivity, intolerance to frustration, social and emotional immaturity. Due to such features, the minor cannot adapt to social life and he deviates from the accepted social norms, which may lead to a situation where he might commit antisocial acts (3).

Age and psycho-physical characteristics of minors justify a social response to antisocial acts committed by them, different from that adopted in the case of adult offenders, starting from the conditions of the judicial process and all the way to the sanctions (4). Also, the minimum age of criminal responsibility under which minors cannot be held liable for offenses should be set according to their level of emotional, mental and intellectual maturity (4, 5).

Minority is a period of formation and completing the profile of one's personality and psychosocial maturation, which means that exterior rehabilitation interventions are justified and effective. They are intended to restructure and rebalance personality by reorganizing its components in order to establish a connection between the behavior model of the minor and that accepted by society and to prevent reiteration of antisocial acts (3).

Imprisonment of juvenile offenders should be an extreme measure, the place of detention of minors being separated from that of adults (4, 6, 7). The application of alternative measures to imprisonment, which allows juveniles to maintain positive connection with their family, school and community and increase their chances of re-socialization, is important if we were to consider a decrease of recidivism, as the increased risk of recidivism of juveniles detained is well known.

In this paper the authors analyze the Romanian legislation addressing juvenile delinquency in criminal temporal evolution. On the one hand the minority age limits are sought and modulation of legislative provisions according to these, and on the other hand, types of penalties for minors are sought.

MINORITY IN ROMANIAN CRIMINAL LAW

Age was always a criterion for customization and reduction of sentences in Romanian legislation since the Middle Ages, when the first legal regulations on punishment of minors emerged. But the age of majority, the age limits of criminal liability and the age quantifying penalties underwent variations over time.

The law from the 17th century stipulated that the age of majority was 25 years. This category included the juvenile age groups that allowed various methods of punishment to be applied, and one of the criteria for determining criminal liability was sex. "*Cucon / cocoon*" was a minor under the age of seven years. *Young person* was a term booked for boys aged between twelve and a half and fourteen and girls aged between nine and twelve and a half (8, 9).

Minority limits remain unchanged until the early 1800s, when the child aged up to 7 years was not criminally liable. Penalties could be applied to minors aged 7 to 14 years and those aged 14 to 20 years, increasing the severity of penalties imposed as the minor got older. In *Legiuirea Caragea*, in 1818, a new age emerged for which exemptions to punishments were allowed, which is that of the "the not old" young (20-25 years old) who were entitled to ask the ruler for a sentence reduction (10).

In the 19th century the age of criminal re-

sponsibility was increased to 8 years old and the juvenile period was divided into age groups of 8-15 years old and 15-21 years old, juveniles of the latter category facing judicial situations unconditionally (10).

The first Romanian Penal Code (1865), provided that the minor is not criminally liable until the age of 8, and the juvenile period was divided into two groups: 8-15 years old and 15-20 years old (11).

In the Criminal Code of 1936 the coming of age was set at 19 years old, and was divided into two categories- child and adolescent- periods separated by the age of 14 (12).

In the Criminal Code of 1948, the terms child and adolescent were replaced by the term *minor*. The minor was the person who had not turned 18, and the age of criminal responsibility was lowered 14 to 12. A minor aged 12 to 15 was not held responsible for an act committed injudiciously (13).

The current limits for juvenile criminal liability were established in the Criminal Code of 1969. This stipulated that minors under the age of 14 were not criminally liable, those aged 14 to 16 were criminally liable if they did have discernment and those over 16 were criminally responsible (14).

THE SANCTIONING OF THE UNDERAGE OFFENDER-FROM PUNISHMENT TO EDUCATIONAL MEASURES

The Romanian law that provides criminal penalties for offenses committed by juveniles has evolved over time from punishing to coming up with educational measures and reintegration of offenders into the community. The overwhelming importance of the factors regarding family, education and society in the genesis of juvenile delinquency has gained increasing

relevance in modern criminal law.

In the 17th century, in case of crimes such as murder, robbery, sexual offenses or counterfeiting, committed by juveniles, the punishments were reduced compared to those applied in the case of adults even if the defendant was tried in adulthood. Lower punishment of juveniles was not, however, applicable in case of acts such as heresy or murder of a parent. 17th century legislation provided that young people aged 18 could be sentenced to prison. The 14 year-old ones who made a mistake for which adults were sentenced to death were publicly beaten and then sent to prison, and young people aged 14 to 25 who consciously committed criminal acts were beaten and sent to salt mines to do hard labor (8, 9).

In the early 1800s they separated the place for serving the sentence in the case of juvenile offenders and that of adult offenders, making it possible for juveniles aged 7-14 to be punished by imprisonment in the monastery. Imprisonment was possible for a maximum period of 10 years for minors aged 14 to 20 years for committing acts that attracted the death penalty for adults (10).

In the 19th century, in harmony with international law, beating was waived, juvenile prisons and those for adults were separated and a special jurisdiction for juvenile delinquents was created. Then there appear the first legal provisions allowing the sanctioning of minors aged 8-15 years who committed acts unwittingly, by measures of education within families. For acts committed with premeditation, however, juveniles of the same age were punished with solitary monastery confinement for 3 months up to 3 years (10).

In the second half of the 19th century, educational measures and penalties were

maintained. Minors aged 8-15 who lacked discernment were not punished, but were entrusted to the parents or were taken to the monastery for re-education until they turned 20. The discerning minors or those between 15 and 20 years old could be sentenced to 3-15 years in prison for a crime that drew sentences of hard labor for life for an adult. For other offenses, the minor could be sentenced to at least one third or to more than half of an adult's sentence. Minors were judged by special courts and the sentence was carried out in special places (11).

At the beginning of the 20th century the first institutions for the re-education of juvenile offenders appear, such as the disciplinary colony from Mălureni, Argeș, designed for beggars and homeless minors or the Romanian Reformatory Education Institute in Gherla, for non-criminal and criminal minors after serving their prison sentence. In this institute the sentences of beating with a rod and solitary confinement were kept (10).

The judicial reform after the World War I led to a system of modern approach of juvenile offenders. The *Law for defeating vagrancy and begging and for the protection of children* (1921) and the *Law on prisons and preventive institutes* (1929) allowed the establishment of schools for re-education and protection, of labor colonies and correctional institutions, in order to ensure the qualification in a trade and the social reintegration of juvenile offenders (15, 16).

The Criminal Code of 1936 (12) mentioned that discerning juvenile offenders could be entrusted with their family, a close relative or "*an honorable person, a society of patronage or a public or private institution authorized by the State.*" The minor

may also be placed under supervised release or admitted to an educational institute. Minors with psychiatric disorders could be admitted to a medical facility (hospice or nursing home) with the surveillance of a specialist, until "complete recovery".

For the discerning teenager, the court could apply educational measures (corrective education, supervised release) or punishment (reprimand, correctional prison, simple imprisonment).

In this period juvenile courts were established and correctional punishment or detention were executed in institutes for corrective education, where children were separated from teenagers and boys were separated from girls. Minors who could not adapt to joint treatment were subjected to a type of treatment which allowed them to be assigned individually or in a group of hospitalized inadapted. Depending on the seriousness of the offense, imprisonment was also individualized to solitary confinement- night time and day time.

In the Criminal Code of 1948 the term *corrective education* was replaced with that of *moral rehabilitation* (13).

Since 1951 (18) educational colonies for minors with social adjustment problems were created by the Ministry of Internal Affairs, as well as regional and interregional reception points for children aged 3-18 (19).

The Criminal Code of 1969 (14) maintained educational measures and punishment, sanctions that could be imposed on juvenile delinquents, depending on the seriousness of the offense committed and on their physical, intellectual and moral development. The educational measures were: reprimand, supervised freedom, hospitalization in a rehabilitation centre or in a medical-educational institute. The minor could also be admitted to these institutions

after the age of 18, up to 2 years.

Punishment, applied when educational measures failed, was imprisonment or a fine. Imprisonment limits were reduced by one third, without this exceeding a period of 5 years. For offenses punishable by death in adults, juvenile imprisonment would be applied from 5 to 20 years without the possibility of complementary sanctions as well, with the possibility of parole.

Compulsory social inquiry appears (called the *evaluation report* from 2006) meant to provide the judicial body with data concerning the minor and the prospects for social reintegration, based on the information about behavior and his personal pathological history and his family and social environment (20, 22).

The 2004 Criminal Code sanctions maintained punishment and educational measures, supplementing the latter with freedom under strict supervision. Also, the duration changed: 5-15 years for a crime punishable by life imprisonment in adults, 3-12 years for severe crimes, or halving the sentence but not more than 3 years. The minor could perform community service and could waive the penalty for offenses punished with imprisonment for not more than 2 years, in the case of minors without criminal records, who covered the damage they had caused and proved they could change without the necessity of a sentence (21).

The new Criminal Code, effective since 1 February 2014 (23), radically changes the consequences of criminal liability with respect to minors, leaving out penalties and keeping only educational measures. Educational measures may mean non-custodial (civic training course, supervision, weekend confinement and daily assistance) or deprivation of liberty (placement in an educational centre or in a detention centre),

depending on the seriousness of the offense and on the minor's peculiarities, their implementation being coordinated by the probation service.

The civic training course consists of the minor's commitment to participate in a four-month program in order to understand the legal and social consequences he is exposed to in case of criminal offenses and to be more aware of his behavior in the future. Supervision consists of controlling and guiding the minor in his daily program for a period of 2-6 months. For the weekend confinement, the minor is not allowed to leave the house on Saturday and Sunday, for a period 4-12 weeks. Daily assistance may be ordered for a period of 3- 6 months and it requires the minor to follow a schedule set by the probation service. In addition, obligations may be imposed, such as enrolling in training courses, submission to control measures, medical treatment and care. Disrespecting all of the above may prolong or worsen the educational measure or may lead to admission to an educational centre.

Admission to an educational centre requires the minor's hospitalization for a period of 1- 3 years in a specialized institution where he will attend a training program for school, vocational training and social reintegration. Relapse leads to prolonging the hospitalization period or to a more severe measure, and good behavior can motivate a non-custodial measure or educational release from the centre if the

person is 18.

In the detention centre, a specialized institution with security and surveillance regime, the minors attend an intensive program of re-education. Admission is disposed over a period of 2-5 years or 5 -14 years when the offense committed is punishable by imprisonment for more than 20 years or life imprisonment in adults. Relapse attracts an extended hospitalization and good behavior can lead to a non-custodial measure or release from detention centre if the person is 18 years old. If anti-social behavior is maintained at the age of 18, the court may order the continuation of the educational measure in a prison.

CONCLUSIONS

Our study shows that the approach to juvenile delinquency in the current Romanian Criminal Code is the result of a long process of reflection of the legislators on adopting a different system of punishments for juvenile offenders and on creating special regulations concerning the prosecution, trial and enforcement of the decisions regarding them.

By eliminating the punishment from the penalties in the case of juvenile offenders and by focusing on educational measures, the current criminal code adheres to the international approach of juvenile delinquency, emphasizing the education and reintegration into the community at the expense of custodial sentences.

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