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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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

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[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;

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[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.