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VALERIU FÎRȚALĂ

**REGULATIONS
ON THE PARTICULARITIES
OF JUSTICE FOR MINORS**



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Valeriu Firțală

Regulations on the particularities of justice for minors

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values. The motivation-constraint mechanism must be kept in balance at all times, by virtue of the best and appropriate criminal regulations. Discouraging antisocial tendencies and preventing new crimes from being committed are also goals of criminal sanctions regulations.” Criminal law sanctions are generally repressive or retributive, because they involve a certain deprivation or affliction, and are aimed at preventing the commission of new illicit acts both by the one to whom they are applied and, by exemplarity, by other persons who would be inclined to follow his example” (Bulai, 1997, p.276).

In establishing the most adequate and effective criminal sanctioning mechanisms, it is very important to know more and more deeply the aetiology of crime and the bio-psycho-social peculiarities of those who commit criminal acts.

In particular, the sanctioning treatment of minors who have committed criminal acts is permanently matched to the specifics of the understanding and peculiarities of the minor’s evolution, to his bio-psycho-social limits, to his increased vulnerability to the factors of the socio-family environment, and educational deficiencies.

Both in the domestic legislation and in the international regulations on justice for minors, the educational measures have priority in the non-custodial context, these being considered to be the most appropriate and effective measures for educating and correcting the antisocial conduct of the minor who has committed criminal acts.

I. SANCTIONING TREATMENT OF THE DELINQUENT MINOR IN THE LIGHT OF INTERNAL REGULATIONS

With regard to the limits of criminal liability of the minor, Article 113 of the Criminal Code provides as follows:

- (1) A minor who has not reached the age of 14 is not criminally liable.
- (2) A minor who is between the ages of 14 and 16 is criminally liable only if it is proved that he committed the deed with discernment.
- (3) The minor who has reached the age of 16 is criminally liable according to the law.

For the minor who has committed a criminal act and is not criminally liable, the provisions of Law no. 272 of 2004, on the promotion and protection of the rights of the child, in Article 84, rule that for such minor, at the proposal of the General Directorate of Social Assistance and Child Protection in whose administrative-territorial unit the child is located, one of the measures provided for in Article 59, letters a and c, namely placement or specialized supervision, shall be taken.

In the second paragraph of Article 84, it is stated that in ordering such a measure, account will be taken of:

- a) the conditions which favoured the commission of the offence;
- b) the degree of social danger of the deed;
- c) the environment in which the child grew up and lived;
- d) the risk of the child committing again an act provided for by the criminal law;
- e) any other elements capable of characterising the child's situation.

In such situations, according to the third paragraph of Article 84, the parents of the child who commits criminal acts and is not criminally liable, have the obligation to participate in the counselling sessions held by the General Directorate of Social Assistance and Child Protection, based on a personalized psychological counselling program.

Article 85 provides that the measure of specialised supervision is to keep the child in his or her family, provided that he or she complies with obligations, such as:

- a) attending school courses;
- b) the use of day care services;
- c) following medical treatments, counselling or psychotherapy;
- d) prohibition to attend certain places or to have connections with certain persons.

Also, the same article lists the situations in which it is not possible to keep the child in the family or when the minor fails to fulfil his obligations established by the measure of specialized supervision, situations in which the minor's placement in the extended family or in the foster family may be ordered, as well as the minor's fulfilment of the obligations established.

For situations in which the act provided for by the criminal law, and committed by the minor who is not criminally liable, presents a high degree of social danger, or if the minor continues to commit criminal acts, the Article 86 provides that

the placement of the child in a specialised residential service may be ordered.

Also, the legislator provides for the obligation to protect the image of the minor who has committed criminal acts and is not criminally liable, prohibiting the disclosure of information about such deeds or the person of the minor, who is also guaranteed accompanying and assisting services by a psychologist or a social worker (Articles 87 and 88 of Law No. 272 of 2004).

In the situation of the minor who is criminally responsible, the provisions of the Romanian Criminal Code regarding the sanctioning treatment of the minor who has committed a criminal act and is criminally liable, take into account the peculiarities of the criminal liability of the minor and the need to educate him/her in the spirit of the values of the prosocial conduct, most of the times the educational deficiencies and the influence of the social environment being the most important factors in triggering the criminal code of the minor.

The criminal liability of the minor is directly related to his/her discernment. "Discernment means both the mental capacity (psychic and intellectual) of the person to understand the social significance of the deeds he/she commits (its consequences), as well as the ability to manifest his/her unconstrained will to commit them" (Pascu, et al., 2014, p. 635).

According to Article 114 para. (1) of the Criminal Code, *a non-custodial educational measure shall be taken against the minor who, at the time of committing the offence, was aged between 14 and 18 years.*

By this provision, the criminal legislator establishes the rule regarding the sanctioning treatment of the minor offender, who has criminal liability: **the application of a**

non-custodial educational measure. Thus, an attempt is made to avoid the main effects that would result from the specificities of criminal sanctions involving deprivation of liberty, marked mainly by repressiveness and harshness of deprivation.

The situations of exception to this rule are provided in the second paragraph of Article 114 of the Criminal Code:

Against the minor referred to in para. (1), a custodial educational measure may be taken in the following cases:

- a) if he/she has committed another offence, for which he/she has been subject to an educational measure which has been executed or the execution of which has begun before the commission of the offence for which he/she is being tried;*
- b) when the punishment provided by law for the committed offence is imprisonment of 7 years or more or life imprisonment.*

The description of the two situations of exception shows the need to apply a custodial educational measure only where the offence committed by the minor presents a high social danger or if, by his/her conduct, he/she shows that the educational measure previously applied to him/her was not sufficient to make him/her aware of the harm to legitimate social values and interests, the repetitive criminal conduct requiring the application of a custodial educational measure.

As for the content of the educational measures, according to art. 115 para. (1) of the Criminal Code:

(1) Educational measures shall be non-custodial or custodial.

1. Non-custodial educational measures are:

- a) the civic training period;*
- b) surveillance;*
- c) recording on weekends;*
- d) daily assistance.*

2. The custodial educational measures are:

- a) admission to an educational center;*
- b) admission to a detention centre.*

Non-custodial educational measures have a regulation close to the provisions of the French and Spanish legislation (Ciobanu, Bogdan, 2015).

The choice of the educational measure to be taken towards the minor shall be made according to the general criteria of individualization of the punishment, provided in art. 74 of the Criminal Code:

(1) The duration or the amount of the punishment shall be determined in relation to the seriousness of the committed offence and the dangerousness of the offender, which shall be evaluated according to the following criteria:

- a) the circumstances and manner in which the offence was committed, as well as the means employed;*
- b) the state of danger created for the protected value;*
- c) the nature and gravity of the result or other consequences of the crime;*
- d) the reason for committing the offence and the purpose pursued;*
- e) the nature and frequency of the offences that constitute a criminal record of the offender;*
- f) conduct after committing the crime and during the criminal proceedings;*
- g) the level of education, age, state of health, family and social situation.*

(2) When, for the committed offence, the law provides for alternative punishments, the criteria set out in para. (1) are also considered in the choice of one of them.

The general criteria for the individualization of the sentence contain elements that can be ascertained during

the criminal trial by the court or that can be brought to its attention by the criminal investigation bodies. However, there are also elements related to the specifics of the probation counsellor's professional competences (level of education, age, state of health, family and social situation, specificity of the conduct and personality of the offender minor), who has a very important procedural role, essentially contributing, by assessing the minor offender, to the presentation of the elements that the court needs in order to choose the most appropriate and efficient educational measures for the delinquent minor.

There are several relevant elements regarding the assessment of the main causes that determined the antisocial conduct of the minor, elements that are important both for the content of the evaluation report drawn up by the probation officer and for the assessment of the risks related to the subsequent antisocial conduct. The relevant elements related to the influence of the entourage or of the addictions in the life and conduct of the minor are very important in choosing the most appropriate educational measure, in the context of certain peculiarities that can also determine the establishment of measures or obligations for him/ her, the phenomenon of the addictive context being constantly increasing, more and more minors being exposed to the temptation of drug use. "The scourge of drugs is one of the most complex, profound and tragic phenomena of the contemporary world. Drugs are harmful substances for humans, and the phenomenon of addiction increases the risk of these negative effects, whether it is physical, mental illness or social exclusion, as a result of hardly acceptable behaviours" (Alexandru, 2019, p. 85).

The procedural tool through which the court is informed of these elements by the probation officer is the evaluation report.

According to art. 116 of the Criminal Code, (1) *In order to carry out the evaluation of the minor, according to the criteria stipulated in art. 74, the court shall request the probation service to draw up a report that will also include reasoned proposals regarding the nature and duration of the social reintegration programs that the minor should follow, as well as other obligations that may be imposed on him/her by the court.*

(2) *The evaluation report on the observance of the conditions for the execution of the educational measure or of the imposed obligations shall be drawn up by the probation service in all cases where the court decides on the educational measure or on the modification or termination of the execution of the imposed obligations, except for the situation provided for in article 126, when it will be drawn up by the educational or detention center.*

Its structure is provided in art. 14⁹ para. (3) of the Government Decision no. 1079/2013 for the approval of the Regulation for the application of the provisions of Law no. 252/2013 on the organization and functioning of the probation system:

The evaluation report for the minor defendant includes the following sections:

- a) *introduction;*
- b) *sources of information;*
- c) *data on the minor's person;*
- d) *the risk of committing offences;*
- e) *conclusions and proposals.*

The probation officer analyses and selects information relevant to the court, mainly related to the conditions under which the minor has developed, the persons to whom he or she is dependent (or whom he/she has dependants) and how they have performed their duties relating to the upbringing, education, supervision and guidance of the minor, the existing

relationships within the family, the income statement and how it covers the needs of the family, the attitude of the family members towards the minor's behaviour, the promoted values, the social network and the link between the relational system of the minor and the crime, the type of addictions (if applicable), the medical history of the minor defendant and of the family members, the school or professional situation, the history of training, the opportunities or restrictions related to the education and training process, the criminal past, the attitude towards the victim and towards the criminal behaviour (art. 14^A12 of H.G. 1079/2013).

All those elements determine an appropriate individualisation of the sanction, the effectiveness of which determines the correction of the minor's social conduct and a significant reduction in the risk of reoffending.

1. Civic training course

According to the provisions of art. 117 of the Criminal Code, (1) *The educational measure of the civic training period consists in the obligation of the minor to participate in a program with a duration of no more than 4 months, in order to help him/her understand the legal and social consequences to which he/she exposes himself/herself in case of committing crimes and to make him responsible for his/her future behaviour.*

(2) *The organization, ensuring of the participation and the supervision of the minor, during the civic training course, shall be made under the coordination of the probation service, without affecting the school or professional program of the minor.*

The choice of the educational measure of the civic training stage starts from the premise that the social value system of the minor who committed a criminal act is different from

the system of social values accepted by the majority of the members of the society as the desirable model of conduct, enshrined and protected by legal norms.

“Subordination to the standard conduct provided for in the legal norm represents an important way of achieving the socialization of the individual, of learning the social model of existence” (Popa, 2008, p. 120).

The background, the faulty education received in the family (explicitly or indirectly, by imitating the models of conduct of the family members), the influence of the delinquent behaviour of the members of the group of friends or the addictive behaviour are the main factors that contribute to the negative shaping of the social conduct of the minor, who proves a behaviour lacking respect and responsibility towards the social values protected by legal norms and towards the consequences of non-compliance with these values.

The civic training period aims to reshape the social conduct of the minor, based on the respect for social values and the formation of a responsible prosocial conduct of the minor. Understanding, learning and observing legal norms allow the formation of a prosocial conduct, thus fulfilling the role of the law to form and discipline social conduct, to maintain social order and social control. “The role of the law as the main instrument of the control exercised in society over its members, in order to determine them to comply with the models of behaviour that it has associated with different positions or social statuses, is materialized by the functions it performs” (Vlăduț, 2000, pp.162–163).