

THE EVOLUTION OF THE JUVENILE DELINQUENCY AND THE SETTLEMENT OF A DIFFERENT PENAL TREATMENT

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Abstract:

The juvenile delinquency is one of the deviance forms, having great implications over both the individual and groups; the deviant behaviour refers to different conduct forms that are closely passing by the norms in a culture, that correspond to social roles and statuses, very well established in the given culture. It is a type of conduct that is opposite to the conventional and conformist one that consist not only in law breaking, but also in any "deviation" conduct without any pathologic character that was medically established and represents a digression from the social rules, being defined and resented like this by the social group members.

Key words: deviant behaviour, pathologic character, penal responsibility

The practice, also the study of the special papers, reveal the fact that the social phenomena, found within the concept of deviance, delinquency, infraction, criminality, preoccupy more and more not only the specialists in this field, but also the political, governmental factors, the public opinion, generally, both internal, regional level and international level¹.

An important part of these preoccupations consist in the juvenile delinquency or the infractions committed by underage, mostly because this one has become, in the last decades one of the major social problems that most of the contemporary societies had to confront and still do, both economically developed and less developed ones, at a global level, the juvenile delinquency reaching the ages between 19-29 years.

Starting from these concepts, due to the fact that the infantile delinquency has reached, in the last decades, very alarming levels, we can talk about a global phenomena of the juvenile delinquency.

Even though the juvenile delinquency concept is frequently used, it is not reflected in the special literature in our country.

In this way, the Criminal Code has adopted the concept of underage that establishes the Vth Title of the Criminal Code the juridical treatment of the underage that have a criminal responsibility.

¹ http://www.cnaa.acad.md/files/theses/2007/6001/oxana_rotaru_thesis.pdf

Still, the literature in this field, within the practice language and within the scientific one the juvenile delinquency concept is used, especially in order to refer to the complex phenomena determined by the fraction of criminality.

Regarded as a phenomena, the juvenile delinquency, reflect a non adaptation to the juridical and moral system of the society, being the most important between the negative deviancies, that include the violation of the social life norms, the person's integrity, the rights and the liberties of the individual¹.

The concept of "juvenile delinquency" has two different notions, meaning, the concept of „delinquency” and the concept of „juvenile”.

The concept of „delinquency” comes form the Latin verb "delinquere" that has the meaning of "to do wrong", "to loose form sight ”.

According to the Romanian language dictionary the term of „delinquency” refers to a social phenomena consisting in offences or the whole amount of offences done at a given moment within a certain environment or done by persons having the same age.

The term of “juvenile” comes from the Latin “juvenis” that represents something coming from youth, belonging to youth.

Coming form the Latin words delinquere and juvenis, the juvenile delinquency represents the whole amount of deviation and breaking of the social norms, juridical sanctioned, committed by minors up to 18 years old.

The problem is which is the superior limit of age that delimits a juvenile delinquency, due to the fact that constantly, there were theoreticians that have extended this concept regarding the young that overpass the age of majority: 18 years.

The life of each person has its own line.

Generally, the life of the most people follows, as reality permits it, four stages, meaning:

- childhood,
- adolescence,
- maturity and
- olden age.

In their evolution, certain transformation take place within the bio-psychic personality of each human².

Distinctively from the criminology, that has adopted the existence and the denomination of these stages in relation with the age of the individuals, in penal law, there has been adopted the simplest terminology from the private law, that divides the individual in underage and aged.

In this way, by using the terms of minor and minority (with criminal responsibility) for adolescents and aged for adults, a uniformity in terms has been created, regarding the age, between the private and criminal, penal law³.

¹ <http://www.legmed.ro/files/revista/2006-1/08-Delincventa%20juvenila.pdf>

² V. Dongoroz și colaboratorii, „Explicații teoretice ale Codului penal român”, Volumul II, Ediția a II-a, Editura Academiei Române, Editura All Beck, București, 2003, p. 216

³V. Dongoroz și colaboratorii, same reference p. 216

Starting from these aspects, we consider that the “juvenile delinquency” refers only to the age group of minority.

So, we talk about a very distinguished category of the “juvenile delinquency”, meaning the minors that commit offences in the context of general criminality.

The penal law can not, certainly, turn back to this sad reality, and also can not regard from the same point of view the offences committed by underage and those committed by the aged individuals, both form the degree of social danger and from the juridical constraint means, that are needed for the sanction of the offenders.¹

For a long period of time, the underage were considered to be a juridical distinct category, having limited rights and limited responsibilities.

The investigation of the psychic features of the individuals, show that no person is able, just like that, at a short period of time from birth, to understand the deeds and to apply a sanction to a child is the same thing with returning to the previous practice, when things were punished².

The life experience of individuals, confirmed by the scientific researches, proves that the human mind becomes adult in stages, that his/her representations about good and evil, legal or illegal, are settled only in the conditions of the social life and within a long period of time³.

All the aspects that follow the specific of a certain age must be taken under consideration, till the complete development, considered to be reached during the age of majority.

Among these, the adolescence is considered to be a critical period, were a certain intensification of the negative deed was observed.

This is also because the adolescence is a period of social, physical and psychological transformations that can be very brutal, the emotions being developed in this period, with great dynamics.

On psychological level, we mention some features that mark adolescence: the search for self identity, the search for a certain set of values, the acquisition of the needed abilities for a good social interaction, earning emotional independence towards parents, the need to experiment a variety of conducts, attitudes and activities⁴.

In the same time, the underage can not be excluded form the criminal responsibility, because in certain cases, the gravity of the penal actions is very serious.

The establishment of a minimum age for the penal responsibility is very important, this must not be inferior to the age when the person gets certain knowledge,

¹ V. Dongoroz și colaboratorii, same reference, p. 217

² G. Antoniu, Ș. Daneș, M. Popa, „*Codul penal pe înțelesul tuturor*”, Ediția a VII-a, Editura Juridică, Bucharest, 2002, p. 131

³ Idem

⁴ http://www.apsi.ro/index.php?option=com_content&task=view&id=201

including law, life experience, reaches a level of maturity necessary in order to be aligned to the criminal law principles.

Taking under consideration the psychic and physic features specific to the age, in the criminal responsibility of the minors, the need to separate minors that have a penal capacity and respond over these actions and the minors that do not have a penal capacity, so they not respond for their criminal actions¹.

Also, taking under consideration all these particularities of the minor's development, in the criminal law, there were always special dispositions regarding this offenders category.

The criminal law in Romania, contains special dispositions regarding the underage, also regarding the age which start the penal responsibility (till 14, there is an absolute presumption of the lack of judgement, so there is no penal responsibility, and after the age of 14 we can talk about the existence of the penal responsibility) and also by the way to sanction these (educational measures being applied and only if these are not sufficient for the punishment of the minor, this will get a punishment).

There was established at international level, that the juvenile justice should promote the rights and the security of the children, to protect the physical and mental state of the minors and to take under consideration the necessity to rehabilitate them².

The juvenile justice must be based on the obligations of the state to ensure the superior interest of each child and to warranty that the sanctions taken by the minors correspond to the psychological and physical features of these children.

The criminology researches have led to the conclusion that the fight against this phenomena must be developed firstly by the prevention prior and after the deed³.

In the same time, there was a preoccupation for the diversification of the sanctions that are applied to minors, taking under consideration the particularities of the underage offenders that require measures to replace their insufficient education.⁴

There is also necessary to distinguish the penal treatment of the minors in relation with that predicted to the underage offenders, a penal treatment that, as previously mentioned present a series of particularities.

¹ A. Boroï, *Drept penal, partea generală*, Editura C. H. Beck, Bucharest 2006, p. 302

² http://www.cnaa.acad.md/files/theses/2007/6001/oxana_rotaru_thesis.pdf

³ A. Boroï, same referenc, p. 302

⁴ C. Mitrache, C. Mitrache, *Drept penal român, partea generală*, Editura Universul juridic, Bucharest, 2006, p. 364