

THE PSYCHOLOGY OF THE UNDERAGE OFFENDER AND THE PARTICULARITIES OF THE INTERVIEW DURING THE CRIMINAL INVESTIGATION

PhD lecturer **Elena Ana Mihuş**
AGORA University

Abstract:

Independent on the minor's quality within the trial, the preparation of his/her hearing must consist both in general activities valid for any hearing, independent on the person's age and also in specific activities requested by the age and the degree of his/her mental development.

The personality of the underage delinquent represents the result of permanent and multiple relations with mutual influence and interdependence, both between the main features of the underage personality belonging to someone who has committed an offence and between his/her personality. This is considered to be a biological, psychological, social and cultural evolving personality and distinctive environmental features that surround the underage individual.

The minor offender's hearing preparation is done by the criminal investigation authorities that must have all the information that characterise the psychology and the personality of the minor.

Like any other hearing, it will start with the identification of the minor and the preliminary discussions that establish the first psychological contact between the investigator and the minor.

During the free speech, the investigator must have a lot of patience; he/she must not intervene only if the minor is divagating form the subject of the conversation.

The most important phase of the minor's hearing¹ is the questions and answers phase that unfurl considering the rules applicable in the minor's hearing phase.

Key words: personality, minor, interview preparation

1. Generalities. The functioning of the society depends on the conformation of individuals and groups that compose it, in relation with the accepted normative, moral, social, juridical and general cultural model. The study of the deviance phenomenon and subsidiary, of the delinquency phenomenon involve researchers form different fields: medical, sociologic, physiologic and pathologic, psycho-pedagogic, criminology, justice etc.

A particular form within the delinquency it is represented by that, appearing at young ages denominated as juvenile by the penal doctrine.

¹ E. Stancu, *Tratat de criminalistică*, Ed. Actami, 2001, Bucharest, p.412-413.

The vulnerability factors that come from the environment combined with the incomplete formation of the personality, reflected including in the moral deficiencies do not let them distinguish between good and evil¹.

Independent on the minor's quality within the trial, the preparation of his/her hearing must consist both in general activities valid for any hearing, independent on the person's age and also in specific activities requested by the age and the degree of his/her mental development.

The personality of the underage delinquent represents the result of permanent and multiple relations with mutual influence and interdependence, both between the main features of the underage personality belonging to someone who has committed an offence and between his/her personality. This is considered to be a biological, psychological, social and cultural evolving personality and distinctive environmental features that surround the underage individual².

2. The underage criminal responsibility limits. According to the stipulations of art. 99 Criminal Code, general part, we have the following situations:

- the underage that hasn't reached the age of 14 do not criminally respond, the benefit of doubt being valid in their case³;

- the underage between 14 and 16 criminally respond, only if it is proven that he/she has committed the deed having judgement⁴;

- the minor that has reached the age of 16 does criminally respond.

The judgement is the bio-psycho capacity of the person to act consciously, being aware of his/her actions (non actions) that are socially dangerous in charge of his/her will in relation with the actual deed.

When choosing the punishment that will be applied to the minor, there must be taken under consideration the degree of the deed's social danger, the physical state, the intellectual, moral development, his/her conduct, the environmental conditions in which he/she lived, the elements that could characterise the minor's personality.

3. The minor's interview preparation. The minor offender's hearing preparation is done by the criminal investigation authorities that must have all the information that characterise the psychology and the personality of the minor⁵.

a) Bio - psycho – social features of the offender or the accused.

The age of the interviewed person indicates the degree of the physical and psychological evolution of the aptitudes and also his/her social position.

The genders, the somatic diseases, the physical deficiencies of the offender or accused, the ethnical and psychological particularities determine certain reactions towards the external impulses.

¹ H. Vaida, Elena-Ana Mihuț, M. Teșan, *Factori psihopatologici și de mediu implicați în apariția conduitelor dezadaptive la minori*, in Revista de criminalistică, Nr.4, July 2005, Year VIII, p.26-27.

² O. Breaza, *Minorul și legea penală*, Ed. All Beck, Bucharest, 1998, p.118.

³ The law institutes a lack of judgement legal presumption.

⁴ The law institutes a realtive legal presumption.

⁵ U. Șchiopu, E. Versa, *Psihologia vârștelor*, Ed. Didactică și Pedagogică, Bucharest, 1981, p.39.

The psychological structure of the minor depends also on the time spend within the family, school, or during certain activities. In this way, the fantasy, the imagination, the susceptibility of the minor, his/her fear of parents and teachers influence strongly the perception, the memories and the manner in which the event is described.

The lack of life and work experience, the complexity of the deeds, the succession of the activities could affect the possibility to retain and describe essential issues for the cause.

The excessive conformity without interior motivation, the interpretation of the failure as intolerable, the emotional insufficiency, the lack of a real support from the social environment, in association with the identification of violent behaviour models can conduct to a succession of wrong situations.

b) The study of the file

After the study of the file made by the judiciary authority, it can determine the nature of the offence, the date, the place, and the conditions that surrounded the deed, its nature and gravity.

The written exhibits and the material exhibits, help the authorities to establish the conditions of space and time, the actions that were committed by the offender and the accused and also the analysis of the first declarations taken during the investigations at the scene or the preliminary hearing.

c) Taking declarations from persons in the social micro-group frequented by the minor

Together with the declarations from the persons that know the offender or the accused, the judiciary authorities can obtain useful information regarding the offender. The habits, the vices, the entourage, the relations with the others (family, colleagues, friends), the use of alcohol or other substances are very useful for the judiciary authority, helping it understand and know better the persons that are to be heard.

d) The hearing plan must predict the preliminary questions regarding to the minor's preoccupations and aptitudes that led to the establishment of a link between the investigator and the minor.

e) The calling of persons that must be present at the hearing.

The persons that have authority over the minor and the close relatives that could assist the minor during the hearing must be identified.

Also, the criminal investigation authorities if necessary, for any hearing or confrontation between the offender or accused, that hasn't reached the age 16, can call the Victim Protection and Offenders Social Reintegration Service at the domicile of the minor, also the parents or the tutor, curator and the person that is in care of.

According to the dispositions of art. 481, alignment 3 din of the Criminal Procedure Code, the calling of the persons that were mentioned above is obligatory when presenting the criminal investigation material.

Until the 31st Of March 2007 in cases of minor offenders, the social investigations was made by persons especially named by the tutelary authority of

the local council within the domicile of the minor¹, and after this date, the criminal investigation or the court of law has the obligation to settle the evaluation report by the Victim Protection and Offenders Social Reintegration Service.

The evaluation report is a written report, having a consultative and orientation character² with role in furnishing data regarding the minor and the social reintegration perspective of this one, meaning:

- a) The physical state and the psychological profile of the minor;
- b) The intellectual and moral development of the minor;
- c) The family and social environment in which the minor lived and evolved ;
- d) The factors that influence the minor's conduct and that favoured his/her criminal behaviour;
- e) The social reintegration perspectives;
- f) The criminal file of the minor;
- g) The minor's conduct before and after the deed.

In order to obtain these information the Victim Protection and Offenders Social Reintegration Service can collaborate with psychiatrists, teachers, and sociologists, doctors and other specialists named by the competent authorities.

The evaluation report is given to the court of law in a term of 14 days starting from the receiving of the request³.

4. The minor's hearing.

Like any other hearing, it will start with the identification of the minor and the *preliminary discussions* that establish the first psychological contact between the investigator and the minor. Also, the discussions on themes in which the minor is interested in, other than those that are the subject of the hearing, help the elimination of the emotional states and the establishment of an appropriate climate for the unfurl of the hearing.

During the free speech, the investigator must have a lot of patience; he/she must not intervene only if the minor is divagating from the subject of the conversation.

Due to the influence of subjective and objective factors that affect perception, memory and description of the event, the particularities of the age, the investigator could expect less information at this stage.

The most important phase of the minor's hearing⁴ is the *questions and answers phase* that unfurl considering the rules applicable in the minor's hearing phase.

¹ The Social Coomunitary Administration , Children Protection Department.

² According to art 6 *Government Decree no. 1239 of the 29th of November 2000 regarding the approval of the Regulations regarding the applicability of the stipulations of the Governmental Decree. 92/2000* published in Monitorul Oficial no. 651 of the 13th of December 2000.

³ According to the *stipulations of art 12 Decree No. 92 of the 29th of August 2000 regarding the administration and functioning of offenders social reintegration and liberty privation convictions surveillance*, published in Monitorul Oficial no. 423 form the 1st of September 2000.

⁴ E. Stancu, *Tratat de criminalistică*, Ed. Actami, 2001, Bucharest, p.412-413.

The questions must be clear, using an accessible language for the minor, according to the minor's age and the way he/she understands the events without leaving any impression and inhibitions over the minor, things that could make him/her adopt a refractory conduct during the hearing.

The persons that assist at the hearing could have a positive or negative effect over the minor, and the results could be closely related with the applied tactics.

Consequently, as they will be able to receive more information related to the minor's personality, closely linked to a better understanding based on psychology notions, the hearing will present better results.

5. The psychiatric medical and legal expertise. A psychiatric expertise is obligatory in cases of murder and murder in the first degree, also when the criminal investigator and the court of law have doubts about the psychical state of the offender or the accused.

In the interdisciplinary methodology of the psychiatric expertise, three concepts became fundamental, in accordance with one another: personality, causality and responsibility¹, and on the other hand, the relations within the biological, psychological and social domains and the criminal law, on the other hand. These things are imperative, because the lack of judgement, stipulated in art 48 Criminal Law, general part, eliminates the criminal character of the deed.

In this way, the judiciary authorities that order the expertise, will establish, based on this expertise, if the person submitted to the expertise has general judgement, mostly when he/she committed the deed, that must be reconstructed by a biological, psychological and pathological point of view².

The medical and legal psychiatric expertise must take under consideration the following aspects: educational, prevention, recuperation and social reintegration of the individuals suffering of mental illnesses.

In order to make the expertise, the criminal investigation authority, with the approval of the prosecutor or the court of law disposes the institutionalisation of the offender or accused, in specialised places, in the case of the minor, in a medical service having an infant neurological and psychological profile.

During the institutionalisation it is imperative to make psychological tests that help the contouring the subject's personality, among the other examinations depending on the particularities of the case.

The commission for medical, legal and psychiatric expertise for minors is composed of the forensic, two doctors specialised in neurology and paediatric psychiatry and a psychiatrist with experience in paediatric field.

This one will receive the file of the case that must contain:

- The social investigation in cause;

¹ V. Beliș, *Tratat de medicină legală*, Vol. II, Ed. Medicală, Bucharest, 1995, p.736.

² V. Beliș, same reference, p.745.

- The educational particularities that must come out from the minor's behaviour towards the colleagues and the teachers, the school situation, missing classes, the minor's habits after school, his/her vices;

- Any other documents and medical examination, that could be in possession of the minor's family. It is recommended to use also the medical files from the family doctor.

Based on all the data, the commission settles the conclusions of the medical, legal and psychiatric expertise that must contain: the diagnosis of the psychical disabilities during examination, the degree of intellectual development and the diagnosis of the psychological disabilities when the deed was committed, the psychical capacity of the minor's judgement¹.

¹ F. Ștefan, *Ghidul medico-legal al juristului*, Ed. Napoca Star, Cluj-Napoca, 2005, pag. 112 - 128.