

ABOUT SANCTIONS AND OTHER LEGAL MEASURES FEASIBLE TO THE JUVENILE OFFENDER

Assist. candidate to PhD **Dan Luțescu**
University of Pitești

Abstract:

This article presents the legal sanctions that can be taken as a consequence of establishing the penal accountability of the juvenile offender, but also the legal measures for the juvenile that cannot be held responsible for its offending actions due to his age. The author intends to underline certain aspects concerning the implementation of the legal provisions in this matter and also to make few comments on the subject of preventing juvenile delinquency.

Key words: legal measures, juvenile delinquency, rights

According to the international conventions that engage Romania and also to the internal legislative body, certain child's fundamental rights are stipulated and protected, such as: the right to an identity (which includes the right to a name, the right to be registered immediately after birth, the right to citizenship, the right to know his parents and to be properly looked after, raised and educated by them) from the moment of birth, the right to be protected and assisted in the full exercise of his rights, the right to an education, the right to an specialised and adapted care, the right to be consulted and to respect his opinion (depending on the age of the minor and his level of intellectual development), the right to proceed with maximum quickness in the judicial causes involving a child and his rights, the right to a specific protection against abuse and exploitation of any kind.

The promotion and full exercise of all these rights in the social life has great impact in the harmonious development of child's personality, in learning all the communication's tools, but also in learning to respect and to obey the legal, social and moral provisions and rules of the community.

Legally stated within the law 272/2004, among other fundamental principles in the domain of the promotion and protection of the child's rights, the main rule of prevalent interest of the child designates the absolute priority that should be given to the child's rights in all aspects of social life: *"this law, as well as any legal provisions adopted in the matter of protection and promotion of the child's rights, and any legal act emanated in this matter subdues primarily to the rule of prevalent interest of the child. The rule of prevalent interest of the child is imposed even in relation with the rights and obligations given by the law to the parents, or to any other person to which the child was given in legal custody. The rule of prevalent interest of the child will prevail in all legal actions and decisions taken by the public authorities and private empowered organizations concerning*

children, and also in the cases resolved in the court of law.” (article 2 of the law mentioned above).

In literal terms, educating means the action to educate and its outcome, and meanwhile education means systematic influence purposely exercised on the development of the intellectual, moral and physical attributes of the children and, generally speaking, the youth. Directly connecting with such concepts, re-education appears as being the sum of measures undertaken in order to redress, to correct the miseducation of oneself.

The concept of education is still doable if the juvenile shows tendencies towards deviance or even pre-delinquency, but only until he/she expresses delinquent behavior of any type. At the stage of turning delinquent, the juvenile's behavior can only be amended through a re-educational process.

The scientists that studied juvenile's deviance always agreed on the fact that, in terms of fighting this phenomenon prevention proves much more effective than repression. The reason for such quasi-unanimity among scientists can be found in the fact that the minor, as underdeveloped, physically and mentally, as he is, often responds well to a bare admonition, or to specific actions taken to avoid his misfitting and eventually his alienation, through the way of deviance, down to acting delinquently. The success of juvenile delinquency's prevention process can be achieved through social, technical or situational prevention.

Social prevention is a sum of measures taken on the minor's family, his living conditions, the state of his learning and training process, his health condition and even on his spare time, the immediate goal of this type of prevention being the improvement in the quality of his life and, by all means, aiming to achieve the ultimate goal of isolating the minor of the bad influence of different factors which can bring about deviance in his behaviour.

Situational and technical prevention aims to eliminate the concrete opportunities to commit offences, opportunities given to the juvenile by the general environment in which he/she evolves, by taken specific measures such as installing alarm or anti-theft systems, increasing patrol and guard supervision in schools or other public areas where juveniles are frequently spotted (including mounting supervision video cameras).

Repression, on the other hand, can be contra-productive in fighting juvenile deviance. The American sociologist Leslie Wilkins initiates, in his study called *Social Deviance*, the concept of amplified deviance as a delinquency generator. The author shows how a minor act of deviance may develop much greater echo because of the labelling and an improper social reaction, including the resort to repression.

The concept of social reaction means the sum of ways and types through which society responds to deviance.

The evolution of social reaction as a concept followed the evolution of different schools and theories related to deviance's etiology and the tactics to fight it.

Edwin Sutherland and Donald Cressy categorise different forms of social reaction against deviance based on where it is situated on a scale that starts with the sheer repressive reaction up to the therapeutical type of social reaction.

Although the repressive social reaction dominated the scientific theories in this matter up until the late XIX-th century, with the important exception of the utilitarians like Beccaria and Bentham (they saw in penalty an instrument of social utility), once the positivist school appeared, the idea of a more preventive social reaction, that through social measures aims to annihilate deviance's causes, prevailed.

After the year 1970 a new scientific current of social reaction, which focuses its study on social reaction's mechanisms towards deviance, imposed itself.

Even now the scientific controversy continues still, on one side being those that sustain the necessity of a distinct judicial system for the juveniles socially specialised that can guarantee solidity and efficacy in the protection of their fundamental rights, and on the other side those who plead that, on the contrary, juvenile justice is futile, punishing a minor is definitely contra-productive and the social control over juvenile's deviance should be exclusively in the hands of the social care system, developed within the national administrative body.

The juvenile interacts with the penal law both as the author of an offence, and as the victim of the offending act. The conception which sustains the entire regulation on the relation between the penal law and the juvenile is that, no matter the side which the minor takes in an offending action, he's always a victim. Such conception is based on the very psycho-physical state that characterises the juvenile, particularly his insufficient intellectual and volitional development.

For the juvenile perpetrators the legal sanctions are much more clement than those applicable to the adult offenders, not to mention the specific penal sanctions for juveniles, called educational measures, sanctions that have the purpose to redress the deviant behavior of the minor, without any resort to infliction that otherwise characterises criminal sanctions.

The enforcement of the penal sanction on a minor doesn't necessarily mean retribution for the offending act, or punishing the minor, but protecting him/her in the future from the malefic social influences (through the application of the measure of supervised freedom or that of internment in a correctional unit) and eliminating certain bad tendencies in his/her behavior which, without such measures being taken, would create the potential criminal nature of the adult personality later on.

Criminal law system gets the leading role in the protection of human rights, by the provision of the various offences that endanger in one way or the other the social values, among such values being, first and foremost, the fundamental child's rights. *A fortiori*, when a minor is in danger, whether he/she suffers bad consequences from an offence, perpetrated by himself or by another, or is about to suffer such consequences, the regulation of the criminal law is the first claimed to enforce the legal protection that the minor requires.

Whether he commits or suffers an offending action, directly or not, the minor is a victim. Along with the entire legal body, the criminal law acknowledges the specific features of the infancy state of gradual psycho-physical development and distinctively regulates this special category of subjects, apart from the adult victim or the adult perpetrator categories.

Even though the existence of the minor's discernment at the time of perpetration is proved, and he has reached the age limit to be held criminally accountable, this type of responsibility will be established differently, the Romanian Penal Code stating, in the second paragraph of the article 100, the rule of the application of specific sanctions for the juvenile offenders, namely educational measures, which are much mild in terms of infliction and retribution, but having the distinct feature of protection and correction of the minor to a behavior of conformity with the laws.

The Penal Code stipulates a number of four educational measures as sanctions feasible, only alternatively, for the juvenile offender, as follows: admonition, supervised freedom, internment in a correctional unit, internment in a medical-educational unit. These measures are stipulated in a gradual order, from the mildest to the most severe, permitting a proper adjustment and aiming to proportionate the legal response with the gravity and the specific of the offending act, as well as with the special features of the minor offender's culpability.

In other words, when a minor offence is committed, and the juvenile is a first offender, also having a diminished discernment, it is recommended the application of the mildest educational measure stipulated in the Penal Code: admonition.

If the juvenile relapses, or he has a severe form of culpability (as the direct intention), in relation with the act committed, or he perpetrated a serious offence, then the most suitable measure to be applied would be the internment in a correctional unit, which allows the minor to achieve a scholar education and, further more, adequate professional skills, in the context of his isolation from the external factors that had badly influenced his behaviour, creating the premise for the re-education of the adult to be.

The measure of internment in a medical-educational unit has about the same content as the measure of internment in a correctional unit, with the significant difference that the application of this sanction imposes itself in situations when the subject has been certified with certain psycho-physical malfunctions, abnormal at his biological age, which impose specialised medical care.

Supervised freedom represents the medium level among the educational measures, in terms of its severeness, but, unfortunately, too often proved itself to be less effective in court's practice, due to its inadequate or unadjusted application.

Strictly legislative speaking, remains in suspension the becoming effective of the New Penal Code (that is law 301/2004, published in the Official Monitor of Romania, Part I, no. 575 of June 29, 2004). This new main penal regulation states, among the educational measures already stipulated in the penal code in force, the measure of strictly supervised freedom (art. 118 of the referred new code), which

ensures an important role in the upcoming penal regulation to the probation services, specialised in implementing programmes for the social reintegration of minor offenders. Once this New Penal Code will be in force, a new law for the execution of the penal sanctions will become effective too, that is law 299/2004. In the article 40 of this law is stipulated a special counselling, supervision and assistance programme, aimed to individualise the execution of the penal sanction for the juvenile inmate, taking under consideration “*each other’s age and personality*”, programme developed by the social and educational department of the prison “*with the participation of the counsellors for the social reintegration and supervision, of the volunteers, of the associations and foundations, aswell as other representatives of the society*”. Further more, the article 69 states that any usage of a minor inmate for labor over the night, or in places that are potentially dangerous or malign to the minor’s health and integrity is strictly prohibited.

The law 281/2003 for the modification and completion of the Code for the Penal Procedure inserted within the chapter I of title IV of the General Part of the Code, that is referring to preventive measures that can be applied during the criminal trial, a new section, entitled “Special provisions for minors” (modified later on through government’s urgent ordinance no.109/2003) which introduces significant derogations from the main regulation in this matter. So, according to these provisions, minors detained or preventivly arrested are entitled to “*their own rights and a special regime of preventive detention, taken in consideration the specificity of their age, so that [...] it doesn’t prejudice their physical, psychological or moral state.*”

The New Penal Code, as the entirely new legislative penal body also contains, as absolute premiere in our legal system, provisions concerning:

- the legal possibility of “renunciation to the penalty” applicable to the juvenile offender, if he/she committed a minor offence, for the first time, the established prejudice has been completely repaid and the court considers, judging by the proves presented in the case, that the minor offender will redress his behavior without the actual application of the penalty;

- the suspension of the application of the penalty for a try-on period for the first offender juvenile that is able to repay the prejudice caused by the offending act, in order to give him the chance to emend his behavior himself, without the actual execution of the penalty;

- the legal consecration of a new educational measure (as an alternative penal sanction to penalty) which consists in giving custody and careful guidance of the minor offender to an institution specialised in the supervision and assesment of the minors (other than the already existing probation service that we refered to in the above) that will include the minor in special programmes of social and psychological assistance, educational and vocational counselling, with the purpose to reintegrate the juvenile in the society. The probation in the U.S. or the U.K., where was first developed, as a legal possibility for convicted offenders to execute the penalty within the community, under supervision, is representing the main

instrument for the criminal correction, successfully applied to both adult and minor convict;

- the extension of the legal possibilities for the application of the community service sanction, given the fact that it has beneficial impact, educatively speaking, on the developing personality of the adult to be;

- legal institution of the “judge for the juvenile”, in other words a magistrate specialised in cases involving juveniles. There are countries in which these judges are organised in special juvenile courts. In some legal systems we even find public attorney or policeman exclusively specialised in dealing with the juveniles (such specializations existed in the former romanian judiciary system, before december '89, but, without any reasonable explanation, after the fall of the comunist regime in our country, those specializations were revoked);

- the implementation of certain public institutions to cover the entire spectre of issues of the juvenile being in difficulty. In this matter, we can mention, *exempli gratia*, that in advanced legal systems there are special compartments within the Justice Department dealing exclusively with all the juvenile-related cases (for instance in Italy).

As for the measure of specialised supervision, this measure, according to the article 67 of law 272/2004, may be applied on the minor who committed an offending act and cannot be hold criminally responsible , and it consists in maintaining the minor in his own family care, with the requirement of respecting the following obligations: to attend school courses, to use special day-care services, to follow medical prescriptions, counselling or psychotherapy, not to attend certain places, not to have connections with certain individuals (article 81 of the refered law).

With the adoption of the law 275/2006 concerning the execution of penal sanctions and of the measures taken by the judiciary authorities during the penal trial, which, abrogating the former legal framework in this matter, that was law 23/1969, includes new unprecedented provisions for the romanian executorial penal system, concerning counselling and assistance for the convicts, especially the ones who are minors (this activities being given to the probation services – art. 8-10 and 28 of the law in question), another significant step has been taken in the effort to reach the desideratum of a modern, european legislative body in our country.

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