

JUVENILE DELINQUENCY: CONCEPT; ABOUT JUVENILE DELINQUENCY IN THE EUROPEAN COMMUNITY

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Abstract:

The term juvenile delinquency involves two distinct notions which must be specified.

This is the concept of delinquency and of juvenile. Although both terms are common language and seem to have well-determined and univocal significations, they are often used with different meanings not only in current speaking, but also in scientific language. In some works concerning juvenile delinquency the term of predelinquency is also encountered. It designates in a same way either the minor's situation who, although committed a crime they are not charged due to the age, or the minor's situation who has an immoral behaviour, without being punished by the penal law.

The instruments used by the Juvenile Justice of the United Nations, for example: The Riyadh Directing Lines, The Beijing rules, offer the normative framework for the children's rights-using a specialized, separated and distinguished juvenile justice administration.

Key words: juvenile delinquency, scientific language, juvenile justice

The analysis of the specific conditions in the societies put an emphasis on the fact that in many countries the phenomena of deviance, marginalization, delinquency and criminality are aggravated and extended. The increased processes of change and transformation which accompany the evolution of any society have lead to the development of new serious social phenomena, these forcing alarming levels, especially in the countries recently libertated of the totalitarian system, Romania included. The rapid process of transition has generated a crisis, which affects especially teenagers and young people. An important source of this crisis is represented by a certain valorical confusion regarding the ways of social promotion in the new society and of the integration in the mature life or of preparing for such a life. As a result, the delinquency has risen very much, giving teenagers a frame with strong negative influences. Because of this, a special place in the area of deviance is reserved by the research regarding juvenile delinquency, a phenomenon with negative implications both for society and for the fate of young people.

The term of juvenile delinquency includes two abstract notions which have to be mentioned: the concept of "delinquency" and that of "juvenile". Although both terms have entered the common vocabulary and seem to have well-determined

meanings, they are used with different meanings not only in the common vocabulary, but also in the scientific language.

The term of “juvenile delinquency” is not mentioned in the penal legislation of our country and neither in the positive law of any other country. It is the creation of penal doctrine and of the criminologic or sociological theories in their attempts to group a series of offences in categories of age, being considered that penal offences have a series of features determined by the level of biological maturity and with mental priority of the active subject of the felony.

The concept of “juvenile delinquency” is synonymous in other languages, such as, Romanian, Italian, German and French with notions of juvenile criminality (*criminalita giovenile*, *criminalité juvénile*). But, in its origin, in Latin, these words have different meanings. The verb “*delinquere*” could be translated by “to make a mistake”, “to slip”, “to lack”, and meanwhile “*crimen*” was translated by “crime at which the notions of “justification”, “imputation” were associated.

We understand by delinquency a series of illicit facts, regardless if they have or don't have a penal feature (running away, repeated and long absence from school, as well as certain imoral facts which are not defined as felonies).

It is possible and plausible that the term “juvenile delinquency” was introduced and generalised with the intention of not associating the serious connotations of the term “criminality” with acts made by minors.

Because in the correct language from our country and other countries (for example, France and Italy) the word “crime” was associated with the severe regime of executing a sentence, by silent agreement, the concept of “delinquency” was introduced, which was generalised in the case of minors, without eliminating the concept of “criminality”. Thus, they continue to be used with the same meaning. In France and Italy, the term of “juvenile criminality” is seen in the judicial literature, while “juvenile delinquency” was used more frequently in criminologic, sociological and psychological studies and research.

In some studies refering to juvenile delinquency, the term of “predelinquency” is seen. It denotes, in an undifferentiated mode, either the minor's situation who, although has committed a crime sanctioned by the penal law, isn't responsible for it because of its age, or the minor's situation who has an immoral behaviour, without the certain acts to be stipulated by the penal law. It is, thus, presumed that the certain minor is a potential delinquent. We believe though that the anticipated investigation of behaviour, being considered premonitory for a future infractional behaviour is inappropriate and doesn't reflect a correct conceptual analysis.

This is why in some protective legislations, such as in our country or in France, the minors which are in the situation to be considered “children in danger” of committing penal actions because of the inappropriate conditions of social environment and the immoral ambiance which favour or can induce deviant behaviour. All these observations entitle us to situate in the concept of delinquency only the actions which have the constituent elements of a felony and to reject the

association of this term with any situation which doesn't correspond to such a situation.

The concept "delinquency" is not synonymous with the notion "deviance". The sphere of this concept is wider and comprises as a particular form, the notion of delinquency. In this sense, it has been shown that deviance is constituted of "any act, conduct or manifestation which violates the written or unwritten norms of society or a particular social group". It is a type of behaviour, which is opposite to the conventional one and it includes not only the breaking of law, but also any "deviation" in conduct, which has a pathological character medically certified and it represents a deviation of social norms, being defined or perceived as a state by the members of a social group.

From a penal point of view, penal deviance included all the actions stipulated by the penal law committed even if the circumstances in which they were committed or the certain characteristics of age or regarding the mental status of the authors or possible participants are legal causes of dismissing the penal character of the felony or the penal responsibilities of the perpetrators and it is divided in:

- criminality of the adults- of the persons who passed the age of civil minority and who have committed acts which have the constitutive elements of a felony, especially "criminals";

- juvenile delinquency- of the minors with the ages between 14 and 18 years old, who have committed, with discernment, an action that has the constitutive elements of a felony, especially "minor delinquents";

Although juvenile delinquency refers only to the age group of the minority, it is necessary to state this, because some researchers have included in this term also the category of so-called "young adults".

Extending the meaning of the adjective "juvenile" at age groups who have passed the age of minority is excessive and unjustified. In the first place, a consensus hasn't been reached regarding the superior limit of the so-called age group of "young adults". Some researchers refer to the group between 19-27 years, others extend it to the age of 25 or 35 years old. The argument invoked for including actions committed by these young people in the concept of "juvenile delinquency" is no longer of a strict psychological or psychosocial nature.

Convention on the Rights of the Child has been adopted by the General Assembly in its resolution 44/25 from the 20th of November 1990; opened for signatures and ratification or accession at the 26th of January 1990, come into effect at the 2nd of September 1990. Practically, it obtained international ratification. In a very short period of time, it has become the international instrument of human rights with the highest number of ratifications, demonstrating the special commitment of the international community in promoting and protecting children's rights.

The ratification of the Convention implies recognising the rights formulated in it. An ulterior ratification implies a commitment of the countries to adopt all the necessary measures to ensure and respect the rights recognised by the Convention. The countries are obligated to harmonize their laws, procedures and

their national policy with the Convention. The Convention includes the human rights recognised at a universal level and offers a framework accepted for promoting and protecting children's rights. All rights are indivisible and connected between one other, each of them being inherent to the human dignity and integrity. They are applied both in the normal situations and in difficult ones and they cover all the aspects from a child's life.

New- the discrimination, the "basic interests" and the child's participation are basic principles of the Convention. In its actions, these principles will be considered of a primary importance (article 3).

The Convention recognised children's rights to express their opinions and to be totally taken into consideration, to be informed and listened. In all the problems which affect the child, the child's opinions will be granted the proper importance (article 12), especially in the decisions which affect them and which allow them to enjoy and not be deprived of their fundamental rights.

The stipulations of the Convention specific to administrating juvenile justice are contained in articles 37, 39 and 40. The principles and measures stipulated by these Articles of the Convention, which refer to juvenile justice, exist and, in fact, derive from those of the instruments of juvenile justice. Children must not be subjects to torture, cruel treatment or punishment, this is stated in article 37 of the Convention.

Children should not be arrested in the name of the law and be confined. While they are in custody, children will be separated from the adults; they have the right to legal assistance or any other assistance: medical assistance, psychological services and assistance with interpreters, the right to contact their families. All children confined will be treated with humanity and respect in a manner which takes into account the special needs of their age.

Article 37 also stipulates that confinement of a child can be used only as a measure of final resort and for a short period of time. It forbids imposing the death penalty and the life sentence without possibility of parole of children.

Article 37 of the Convention obligates the Party Countries to take the proper measures to promote physical and psychic recovery and social reintegration of the children, victims of any form of neglect, exploitation or abuse, torture or any other form of cruelty, lack of humanity, degrading treatment or punishment. Such "recovery" and "reintegration" must be done in a healthy environment, with self-respect and dignity.

Children in conflict with the law have the right to a way of treatment which promotes a sense of dignity and values, taking into consideration the age and having as a purpose the reintegration in the society; this is specified in article 40, section 1 of the Convention. Children have the right to the basic guarantees for legal assistance of another kind of assistance for defending. Judicial procedures and institutional placings must be avoided. In article 40, section 2 of the Convention, children declared accused of breaking the law have the right to minimum guarantees of the law process. These include legal protection against: the presumption of innocence before proven guilty; prompt and direct informing with

all the accusations; providing legal assistance or any other assistance to prepare the defence; deciding the guilt, without delay by a competent authority, in a fair hearing; not to be obligated to testify or confess as being guilty; the examination of opposite witnesses and obtaining the witnesses' participation in the name of the defence revised by a superior competent authority; to have complete privacy, respected in all the stages of the procedure. Furthermore, article 40, section 3 of the Convention stipulates that: "Party Countries will promote the establishment of laws, procedures of the authorities and applicable institutions, especially for the children considered, accused or admitted to having broken the penal law". Then, the Party Countries will establish: a minimum age at which children will be considered not to be responsible for crimes; measures by which judicial procedures will not be called upon, such as alternatives that exist in the diversion diagrams; respecting human rights and legal protections; a series of dispositions, such as: guiding, supervising, parole, professional education programs and other alternatives to institutional assistance which can assure children that they are treated in a manner proper to their welfare and in proportion to their circumstances, but also to the crime.

United Nations instruments of juvenile justice, such as: Riyadh Directing Lines, The Beijing Rules offers the normative frame for children rights protection – by "a juvenile justice administration" specialized, separated and distinct.

All these instruments form a complete set of universal standards and set adequate practice and objectives that need to be followed by the human community, serving as a model for the Member States, those who make decisions and politics, and a base from which the reform in the juvenile justice starts. These instruments are meant to protect the status, the rights, the interests and the social assistance of young people and to ensure the treatment and their right consideration by justice systems, in the entire world.

They sustain decriminalization, de-penalization, minimum formal intervention, the avoidance of labeling and stigmatization, a temperate reaction towards the behaviour of youth the prohibition of soullessness, cruelty, or of tough treatment, of discipline or correction (corporal or mental) of any kind.

The Riyadh Directing Lines set the standards to prevent the juvenile delinquency. They cover the pre-conflict standard, before young people having conflicts with the law. The Directing Lines concentrate on the avoidance of the conflict with the law and with its adverse effects, limiting the official intervention as well as the purpose and the definition of "delinquency" and the abolition of crime status.

They offer a clear conceptual frame, an approach and a vision which refer to the prevention of progressive delinquency policy and promote actions which are desired to be followed by the human community. Their purpose is to modernize the status and the quality of children's lives and to promote the respect for them.

The goals for delinquency prevention are non-coercive, non-stigmatizing, and non-vindictive. They forbid rough behaviour, punishment, any form of correction at home, in school or in any other institution. The Directing

Lines use an orientation centered on the child, and a perspective of child development which evolves towards the prevention of delinquency as an integrating part of juvenile justice administration. A special attention is given to children with a high social risk, for example situations that compromise the development of the child, increase the vulnerability to become victims or to effect crimes. In this purpose, the complete interdisciplinary and zonal measures are outlined to ensure to the youth a life without crimes, victims and conflicts with the law, with an accent on the ways of non – disturbing protective and preventive intervention. Thus, the application of The Directing Lines require an effort to prevent the delinquency which includes participation and decision making role for young people themselves. In this purpose, they are role models who promote the active participation on the part of different socializing agencies and institutions, including family, the educational system and the community.

The Beijing Rules reflect the spirit and purpose of the juvenile justice. The set the basic perceptions and the premises and form the minimum standards for the leverage, processing and “treatment” of youth with law issues, within a system and administration of “juvenile justice. The peaks of the methods used promote an outstanding differentiation between the adults and youth, in law, in procedures and practice and their purpose is to avoid the negative effects of the processes and procedures that come in conflict with the law, especially in youth custody detention due to their age and vulnerability.

The central precepts of juvenile justice system as they are governed by The Beijing Rules include: the enactment of specific legislation, the increase of age limit for criminal responsibility, the conferment of legal trial rights comparable to those of adults, with protection based on age and considerations for young people, a strict limitation of confinement or imprisonment and of any kind of institutionalization, on a minimum necessary period of time, and only for the most serious crimes; separate courts of law for young people, separate open detention advantages, the recognition of specialized rehabilitation with an educational effect. The rules plea for the righteous treatment of females who, as research show, are treated tougher, more vulnerable to the sexual assaults in male custody and more probably they have special necessities and problems, adequate services and advantages. Futhermore, the modernization of personel professionalism is necessary, programs and services, inter zonal coordination and inter –agency; the use of scientific research as a basis of a development, evaluation, decision making and new methods program.

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