

# **NEW REGULATIONS ON THE SANCTIONS APPLICABLE TO MINORS IN THE NEW ROMANIAN CRIMINAL CODE**

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## **Abstract**

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This study aims to compare the system of sanctions applicable to juvenile offenders as provided in the current Romanian Criminal Code and the new Romanian Criminal Code adopted by Law no. 286/2009. The new regulations remove criminal penalties, a perspective that characterized the view of the Romanian legislature in 1968, the protection and rehabilitation of minors prevailing and requiring the application of non-custodial educational measures.

The new Romanian Criminal Code reflects, in the matter of sanctions applicable to juvenile offenders, a modern view focusing on educational measures. However, abandoning the educational measure of confinement in an educational medical centre is not a happy choice of the Romanian legislature, mainly because the new Criminal Code does not contain appropriate regulations. Thus, the legislature's concern for all juvenile offenders is not complete, since there is no protection for the minors suffering from physical or mental illness.

## **Key words**

educational measures, juvenile offender, criminal penalty

The phenomenon of juvenile delinquency as part of criminality has alarmingly increased, thus imposing the necessary measures under criminal law with a view to “curing” it, an objective pursued even before its “sanctioning”. Juvenile delinquency refers to those actions infringing criminal law norms and committed by minors. Generally, the criminal legislation provided a special regime applicable to juvenile offenders. The reasons behind the regulation of such a regime concern the insufficiently developed personality of juvenile offenders, and also the mark that a severe sanction may leave on the future evolution of their personality.

At international level, since 1980 the United Nations has tried to create the legal framework regarding the protection of children's rights. Thus, besides the Beijing rules for the administration of juvenile justice (1985) and the Riyadh guidelines for the prevention of juvenile delinquency (1990) which, as recommendation norms, are

not binding, the most important document in this respect is the Convention on the Rights of the Child. It was adopted by the UNO General Assembly on 20 November 1989, came into force in 1990 and was ratified by Romania by Law no. 18/1990 published in the Official Gazette no. 109 of 28 September 1990.

An important regulation under art. 40 in the Convention on the Rights of the Child requires the states to promote a special criminal justice for children, to set out a minimum age limit under which criminal liability is no longer possible and to provide, as sanctions, appropriate educational and therapeutic measures for each child, as well as measures proportional with the situation of each child and the offence he committed.

It thus results that the main objective of juvenile justice must be rehabilitation, which implies the adoption of a sanctioning system based on non-custodial educational measures.

#### 1. SANCTIONS APPLIED TO MINORS IN THE PRESENT CRIMINAL CODE.

Under Title V “The Minority”, the present Criminal Code particularly regulates the criminal liability and sanctioning of juvenile offenders. As for the criminal liability of minors, juvenile offenders are divided into two categories: minors who are criminally liable, and the minors who are not. In accordance with art. 99 par. 1 of the Criminal Code the minor who has not turned 14 yet is not criminally liable. This is the minimum age under which criminal liability is not possible. Minors between 14 and 16 are criminally liable only if it is proved that they were mentally competent when they committed the act. In the case of minors who have turned 16, the existence of a mental competence is presumed and they may become criminally liable if there is evidence that an offence was committed.

The sanctioning system provided by the current Criminal Code with regard to juvenile offenders is a mixed sanctioning system where either educational measures may be taken against criminally liable minors or punishments may be inflicted on them, and the punishment may be inflicted provided that an educational measure is considered to be insufficient for the minor’s rehabilitation.

The educational measures are: reprimand, liberty under supervision, confinement in a rehabilitation centre or in an educational medical centre.

Although the principle that the educational measure prevails over the punishment functions in the regulations of the present Criminal Code, courts tend to choose a punishment for the sanctioning of minors rather than an educational measure. Thus, statistics point out that in 1996, the imprisonment penalty inflicted on minors amounted to 50% of the total number of sanctions, since courts did not consider the

special situation of the juvenile offender who was treated like an adult, so juvenile offenders often turned into victims of the system.

The sanctioning of minors must be established after considering special criteria provided in the Criminal Code, criteria related to the degree of social danger of the offence, the physical condition, the intellectual and moral development of minors, their behaviour, the environment where they grew up and lived as well as other elements meant to characterize them. These criteria are expressly stipulated, so that they should be taken into account when establishing the sanction applicable to a minor, therefore these sanctions should not be too severe or similar to those applied to adults.

Although the criminal law also provides the possibility to inflict such punishments as the imprisonment or fine alternatively with educational measures, these sanctions do not come within the same limits as those regarding adults. As a precautionary measure for the purpose of avoiding an inappropriate and unjustified sanctioning treatment of juvenile offenders, the law stipulates that the limits of the punishments applicable to minors are reduced by half, and after this reduction, the minimum punishment will not exceed 5 years. The juvenile offender cannot be imprisoned for a life term which will be replaced by a sentence of 5 up to 20 years imprisonment.

Estimating that during the minority age the personality of the minor is not fully and maturely developed, the Romanian legislature considered that the sanctions disposed during this period would be excessive and they could have serious consequences in the subsequent evolution of the minor's personality, therefore it provided that there are no incapacities or loss of rights arising out of the convictions during the minority period. They are not taken into account either when establishing a repeated offence, as a proof of the legislature's concern for the protection of this category of offenders.

Sanctions applied to minors in the new Criminal Code adopted by Law no. 286/2009.

The new Romanian Criminal Code provides a new sanctioning system for minors, proving the special concern for juvenile delinquency, an approach which should relate to the criminal legal frameworks of other member states of the European Union. Such an approach must start from the features characterizing this category of offenders. Minority represents a stage in the development of the personality, therefore the acts of infringing the law committed during such a period must be sanctioned in accordance with appropriate rules, distinct from those applicable to adult offenders. The new Criminal Code marks an evolution in the matter of the sanctioning of juvenile offenders as opposed to the current Criminal Code and attempts to ensure more protection for these persons when the punishment is imposed.

The new Criminal Code has changed nothing with regard to the scope of criminal liability, maintaining the age of 14 as the moment when

criminal liability may be raised on condition that mental competence is proved. The new Criminal Code should probably have reduced the age limit from which minors can become criminally liable, since the evolution of society and the multitude and diversity of information means that minors have access to, accelerate the growing-up process. The statistics also show that in most cases the minors between 14 and 16 are aware of their actions, which means that they are mentally competent even before the age of 14.

But the most important change brought about by the new Criminal Code is in the matter of the sanctioning treatment applicable to juvenile offenders. It is a change in the perspective of the legislature on the condition of minors committing acts under criminal law. By completely renouncing the infliction of punishments on this category of persons, the new Criminal Code followed the general trend of other European criminal regulatory frameworks, instituting a sanctioning regime specific to juvenile offenders based on the application of educational measures. The conclusion is that the aim of these provisions was to subordinate the sanctioning of juvenile offenders and to facilitate the protection and education of minors for the purpose of the full development of their personality.

Thus, the court may rule a non-custodial educational measure or a custodial educational measure concerning the minor who committed an offence. For the application of such a measure, it is necessary for the minor to be between 14 and 18 at the time of the commission of the offence. Therefore the provisions regarding the sanctioning regime applicable to minors are also maintained in case the offender turned 18 in the meanwhile, but at the time of the commission of the offence he was between 14 and 18.

Another principle that has been maintained is the principle of the primacy of non-custodial educational measures and there is clear enumeration of the situations when the court may take a custodial educational measure, namely:

- if he committed another offence for which an educational measure was taken, and he executed this measure or the execution of the measure started before the commission of the offence he is being tried for;
- when the punishment provided by law for the offence he committed is 7 years imprisonment or more, or life imprisonment.

The non-custodial educational measures in the new Criminal Code are:

- *civic training* consisting of the minor's duty to participate in a programme of up to 4 months in order to understand the legal and social consequences of offences and develop a responsible conduct;
- *supervision* which involves the controlling and guiding of the minor in his daily routine for a period of 2 up to 6 months, under the

supervision of the probation system, in order to ensure the participation in educational courses or professional training and prevention from performing certain activities or contacting certain persons who might affect the rehabilitation process;

- *confinement at the end of the week* consisting in the obligation of the minor to stay in his residence on Saturdays and Sundays, for a period of 4 up to 12 weeks, except the case when, during this period, he has the obligation to take part in certain programmes or to carry out certain activities imposed by the court of law, and the supervision takes place under the coordination of the probation service ;

- *assistance on a daily basis* referring to the minor's obligation to follow a programme established by the probation service, which contains the schedule and conditions for the performance of activities, as well as the interdictions imposed on the minor. This measure may be disposed for a period of 3 up to 6 months, and the supervision is carried out under the coordination of the probation service.

The custodial educational measures are :

- *confinement in an educational centre* consisting in the minor's confinement in an institution specialized in the rehabilitation of minors where he will complete an educational and professional training programme complying with his abilities as well as a programme of social reintegration. This measure may be disposed for a period of 1 up to 3 years;

- *confinement in a detention centre* consisting in the minor's confinement in an institution specialized in the rehabilitation of minors, under a security and supervision regime, where he will complete intensive social reintegration programmes, as well as educational and professional training programmes complying with his abilities. The confinement will be disposed for a period of 2 up to 5 years, except the case when the punishment provided by law for the offence is 20 years imprisonment or more, or life imprisonment, when the confinement is limited to 5 up to 15 years.

Unlike the educational measures provided in the present Criminal Code which could be disposed for an indefinite term, but which could not be extended beyond the age of 18, in the case of the custodial educational measures stipulated in the new Criminal Code, the law establishes fixed terms that may be disposed. Thus, it is possible that such a custodial educational measure may extend after the minor has turned 18. The reason resides in the fact that the new Criminal Code does not provide the possibility to sanction the minor with the imprisonment penalty and in the case of a serious offence, the minor's deprivation of liberty must be decided with a view to his rehabilitation, even if this custodial period exceeds the moment when the minor turns 18.

## 2. CONCLUSIONS

By completely renouncing the sanctioning of juvenile offenders by inflicting punishments, the new Criminal Code harmonizes with European regulatory frameworks which represented an inspiration source for the Romanian legislature (the Spanish Law no. 5/2000 on the regulation of criminal liability of minors, the French Ordinance of 2 February 1945, the Austrian Law on juvenile justice of 1988). The main idea arising out of these new regulations in the matter of minority is that unjustified severe sanctioning must be given up in the case of those persons infringing the law for the first time, since many times a hard treatment is not effective for the rehabilitation of minors, and it may have contrary effects.

As a whole, the regulatory framework on the situation of criminally liable minors proves the concern of the legislature for their rehabilitation, in order to ensure the guarantee that all the measures will contribute to rehabilitation and social reintegration, since it is the superior interest of the minor which prevails.

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