

CRIMINAL LIABILITY OF MINORS IN THE NEW REGULATIONS

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Abstract: This article brings up the modifications to the new Criminal Code, regarding the liability of minors; it foresees a special education sanctioning consisting of non-custodial measures and educational measures involving deprivation of liberty. Entry into force of the new Criminal Code brought a major change in this respect by the complete surrender penalties applicable to minors' criminal liability in favor of educational measures. The new Criminal Code establishes that rules apply in the case of minors non-custodial measures; deprivation of liberty is the exception.

Keywords: liability of minors, juvenile delinquency, new criminal Code, non-custodial measures, deprivation of liberty.

The prevention and fighting of juvenile delinquency phenomenon has raised some special problems in regard to the criminal laws, especially when it comes to fighting crimes committed by adults. Juvenile delinquency is a component of crime which has its own identity and which refers to a certain category of people, but is also a deviant phenomenon manifested by the minor's inability to adjust to the proper social conduct because of some bio-psycho-social causes. Considering certain factors (abandoning school, coming from disorganized families, entourage, alcohol, hallucinogenic substances, social environment) which affect the social and mental development of minors, the fact that they didn't have the necessary time to adequately assimilate the moral and judicial regulations shows that they can easily make mistakes, but can, just as easily be reeducated and given back to their families and society. Thus, the legislator established a special sanctioning regime for minors, very different from that of adults. This aspect is pointed out by the fact that juvenile delinquency has different causes from that committed by adults.

The judicial treatment of minors who are held liable is stated in the fifth title "Minority" of the new Criminal Code articles 113-127 and in the previous Criminal Code articles 99-110. The fifth title of the new Criminal Code regulates minority using a much larger structure as opposed to the previous Criminal Code and is one of the central points of the criminal reform. The 22 articles which compose the fifth title of the general part of the new Criminal Code are grouped in 4 chapters regarding: the minor's criminal liability regime (articles 113-116), the regime of non custodial educational measures (articles 117-123), the regime of custodial educational measures (articles 124-127) and special regulations regarding the criminal liability of minors (128-134).

Both codes state a different sanctioning regime for minor criminals and this is their primary common element. In regard to the content, the regulations are significantly different. Thus, for example, while the previous Criminal Code stated some educational measures, some custodial some non custodial and a series of punishments applicable to minors, the new Criminal Code states just educational custodial and non custodial measures. The main element of novelty is the disregard of all punishments applicable to minors which are held criminally liable and creating a sanctioning regime consisting of educational measures. The minors' sanctioning regime of the new Criminal Code is directed completely at applying educational measures. The new Criminal Code establishes as a rule the non custodial educational measures, whereas the custodial educational measures are an exception and are to be applied only if the minor finds himself in one of the situations started in article 115 second alignment of the new Criminal Code. Thus, the minor who was between 14 and 18 years of

age when committing the crime will be punished by applying a non custodial educational measure (article 114 first alignment of the new Criminal Code)

The conditions of engaging the minor’s criminal liability

By regulating the criminal liability of minors and the limits of this liability, the legislator divided the age of minority in three distinctive times: **1.** by the age of 14 there is a complete presumption of innocence as the minor is considered to be without judgment and unable to understand the severity of a fact that violates the law; it is also assumed that is impossible for the minor to know the current legal regulations; **2.** in case the minor is between 14 and 16 years of age when committing the crime, there is a relative presumption of innocence based upon a psychic factor which is judgment, or the presence or absence of judgment at the moment the crime was committed. In such a situation, the court is forced to perform psychological and psychiatric expertise as well as a social investigation; based on the result of these the court will decide if the minor had judgment at the moment of committing the crime; **3.** In case the minor is over 16 years of age, he is held criminally liable. By analyzing the judicial regulations of the limits of criminal liability of minors, we can conclude that age and judgment are the criteria which help distinguish the minors who are held criminally liable from those who aren’t.

Judgment represents the ability to discern, the mental and psychic capacity of a person to understand the social significance of his actions, the character of his deeds and the consequences of those deeds as well as the ability to voluntarily manifest it’s will in report to the deed committed.

The minors who are under the age of 14 are not held criminally liable, but if they commit crimes, the regulations of Law no 272/2004 published in the Official Bulletin no 557 of June 23rd 2004 regarding the protection and promotion of children’s rights are to be applied. Article 84: alin.(1): The child who committed a crime regulated by the criminal law and who is not criminally liable, will be subject to one of the following measures stated by article 59 letter a) and c), at the proposal of the social assistance institution. Article 59: The special protection measures are: a) placement; c) specialized supervision

(2) When applying one of the measures stated in article 59 letters a) and c), the child protection commission will take into account the following, when there is a consent from the child’s parents or legal representative or the court:

- a) the conditions which favored the deed;
- b) the danger degree of the deed;
- c) the environment in which the child was born and raised;
- d) the risk of committing a crime again;
- e) any other elements which will be specific as to the child’s situation.

(3) The parents of the child who commits a crime and is not criminally liable have an obligation to participate in the counseling sessions performed by the social assistance and child protection institution, based on a personalized psychological counseling program.

Article 85: (1) The specialized supervision measure implies maintaining the child within its family under the condition of respecting some obligations such as:

- a) following school classes;
- b) using day care services;
- c) following medical treatments, counseling sessions and psychotherapy;
- d) prohibition to attend certain places or to come into contact with certain people.

By the regulations of article 115 of the Criminal Code, the legislator states the general judicial frame of the educational measures which can be applied to minors who commit crimes. The new regulations don’t have a correspondent in the previous regulation. The previous Criminal Code stated a mixed sanctioning regime composed of educational measures and punishments. The new Criminal Code disregards the punishments for minor criminals and

states only educational measures. According to the new Criminal Code, the non custodial educational measures are in the ascending order of their severity: the civic formation probation, the supervision, the consignment at the end of the week and the daily assistance; the custodial educational measures are: the admittance in an educational facility and the admittance in a detention facility.

The non custodial educational measures:

The civic formation probation: an educational measure which has no correspondent in the previous law. It represents the education and training of a person in order to become aware and assimilate the moral and social regulations. The solution of the legislator regulated by article 117 of the Criminal Code aims to socially readjust the minor who committed a crime by measures of moral and civic education, educational programs, performed by specialized institutions as is the service of probation. It is also aimed at making the minor more responsible regarding his attitude and behavior in the future. The execution of this measure must be scheduled so it will not interfere with the school or professional training programs of the minor and it can last for up to 4 months. The minor is obliged to participate.

This measure does not necessarily mean the probation service must be involved in the activities of the minor's program, the role of this institution being merely to supervise the way the minor goes about his usual schedule.

The supervision: educational measure regulated by article 118 of the Criminal Code; it implies controlling the delinquent minor throughout his daily program for 2 to 6 months. The control and supervision must ensure that the minor participates in school classes or professional training classes; it must prevent the minor from any illegal activities or coming into contact with people who might interfere with the readjustment process.

The probation service must coordinate and make periodical contact with the minor and his supervisor and teachers.

The consignment at the end of the week: According to the provision of article 119 of the Criminal Code, the educational measure of consignment at the end of the week consists of the minor's obligation to not leave his home on Saturdays and Sundays, except for special situations when the minor must undertake activities established by the court of law. This educational measure makes the minor avoid contact with people who might influence the minor in a negative way. The supervision of the minor is the duty of the probation service where the minor lives and this measure can last for a period of time from 1 to 3 months.

The daily assistance: this educational measure represents the obligation of the minor to respect a schedule established by the probation service, which contains his daily time table and the conditions for undertaking certain activities as well as some interdictions. The minor's daily time table must consider the normal development of the minor's personality by making him part of certain activities of social integration, adjustment, respect. The time table is created in agreement by the minor's parents and the responsible counselor from the probation service. Along with the non custodial educational measures, the court can hold the minor to certain obligations which will be adjusted according to the crime he committed and the minor's conduct.

The regime of custodial educational measures

Custodial educational measures can be applied to the minor criminal in the following cases:

a) If he committed another crime and was applied an educational measure which the minor is currently undertaking or has undertaken before committing the current crime [article 114 second alignment letter a of the new Criminal Code];

b) When the punishment for the crime committed is imprisonment of 7 years or more or life imprisonment [article 114 second alignment letter b of the new Criminal Code].

Thus, the new Criminal Code sanctions a minor criminal with a non custodial educational measure and, as an exception, when the criminal relapses or commits a very serious crime for the first time, the minor can be punished by applying a custodial educational measure.

According to the provisions of the second alignment of article 115 of the new Criminal Code, choosing an educational measure for the minor must respect the conditions of article 114 regarding the consequences of the criminal liability of the minor, based on the general criteria for individualizing the punishment, stated in article 74 first alignment letters a to g of the new Criminal Code. These criteria must be used to in order to decide which of the two categories of educational measures is to be applied and afterwards for choosing and customizing the measure. In regard to the custodial educational measures, the provisions of article 114 second alignment of the new Penal Code are significant for choosing one of the measures and customizing it in accordance with the law.

The new Criminal Code provides two custodial educational measures: the admittance in an educational facility and the admittance in a detention facility.

Admittance in an educational facility (article 124 of the Criminal Code)

The educational measure of admitting the minor in an educational facility consists of the admittance of the minor in a specialized institution where he will be schooled and trained professionally according to his skills, he will be socially reintegrated in society after having committed a crime (article 124 the first alignment). This educational measure aims to give the minor the necessary education by making him part of certain educational programs which will help him relate and reintegrate. The duration of this measure is established by the court based on the general criteria for individualizing punishments stated in article 74 of the new Criminal Code and it can vary between 1 and 3 years. It is not influenced by the fact that the minor turned 18, as it was stated in the previous law.

The lawmaker considered multiple possibilities regarding the minor's behavior and has clearly stated the decisions the court can make. Thus, if while admitted, the minor commits another crime or is on trial for a crime committed before, the court can maintain the measure of admittance in an educational facility by lengthening the duration of this measure within the legal maximum or it can replace this measure with the educational measure of admittance in a detention facility (article 124 third alignment).

The court will also maintain and extend the duration of the admittance in an educational facility when it feels that the general conduct of the minor in regard to the crime he committed can be amended within the facility by extending the duration of the admittance within the legal maximum of 3 years.

On the contrary, if the prolonging of the admittance is no longer possible, the court will replace this measure with that of admittance in a detention facility, as stated by the law.

In case the minor, while admitted, has shown constant interest for school and professional trainings and has made significant progress for his social readjustment and after executing at least half of his punishment, the court can either: a) replace the admittance with the educational measure of daily assistance for a time equal to the duration of the unexecuted measure, but no more than 6 months, if the minor has not yet become of age or b) release the minor from the educational facility if he turned 18 years of age.

In regard to the execution of custodial educational measures, Law no 253/2013 regarding the execution of punishments and custodial educational measures applied during the criminal trial states that educational centers and detention centers must be created, as they are institutions specialized in recuperating sentenced minors. Within these institutions they should be trained according to their skills, schooled and socially reintegrated.

The educational measure of admittance in an educational facility is executed in an open regime according to Law 187/2012.

Article 19: (1) The educational measure of admission in an educational facility applied under the provisions of the 1969 Criminal Code is replaced with the educational measure of admission in an educational facility for a time equal with the amount of time left between the time of when the sentence was definitive and until the persona becomes of age, but no more than 3 years.

Article 21: (1) The punishment of imprisonment, applied based on the 1969 Criminal Code for crimes committed while still a minor is replaced with the educational measure of admission in a detention facility for a time equal with the duration of the imprisonment.

(2) The punishment of imprisonment for over 20 years, applied for crimes committed while still a minor will be replaced with the admission in a detention facility for 15 years.

Admittance in a detention facility (article 125 of the Criminal Code):

The educational measure of admittance in a detention facility represents the admittance of the minor in an institution specialized in recuperating minors, with security and supervision where the minor will undertake intensive social reintegration programs as well as schooling programs and professional training programs according to his skills. (article 125 first alignment).

The distinction between the educational facility and the detention facility is that inside the detention facility the process of recuperating the minor will take care with guards and supervisors and the social reintegration programs will be intensive whereas in the educational facility, the reintegration process will take care without guards and supervision.

The detention facility has specialized personnel for the activities it undertakes: psychological assistance, sports, religion, medical care, guards, supervision.

The admittance can last between 2 to 5 years; in case the punishment for the crime committed is imprisonment of 20 years or more or life imprisonment, the admittance can last between 5 to 15 years (article 125 second alignment).

The executing regimes of these measures are the closed regime and the open regime and, according to Law 253/2013, the closed regime is applied to a person who is admitted for more than 3 years, whereas the open regime is applied to the person who is admitted for less than 3 years.

Law no 253/2013 for the execution of punishments, educational measures and other non custodial measures applied during the criminal trial was published in the Official Bulletin no 513 of August 14th, 2013. Article 3: The purpose of the law: (1) The regulation of the execution of punishments, educational measures and other measures stated in article 1 are aimed at ensuring the balance between the protection of society by maintaining the rightful order, the prevention of new crimes and the maintaining within the community of the person who committed one or more crimes.

(2) The purpose of the procedural measures stated in article 1 letter g) is the ensuring of the good development of the criminal trial, preventing the criminal from eluding prosecution and trial and the prevention of crimes as an alternate measure to arrest are promoted.

Also the article 4: The legality of the execution of the punishments

The execution of punishments, the non custodial educational measures and other measures stated in article 1, as applied by the judicial institutions during trial is accomplished according to the provisions of Law no 286/2009 regarding the Criminal Code, modified and completed, Law no 135/2010 regarding the Criminal Procedure Code, the present law and other regulations in this area.

Article 21: (1) The punishment of imprisonment, applied under the provisions of the 1969 Criminal Code for crimes committed while still a minor is replaced with the educational measure of admission in a detention center for a time equal with the time of the imprisonment punishment.

(2) The punishment of imprisonment of over 20 years applied for crimes committed while still a minor will be replaced with admission in a detention facility for 15 years.

Article 288 of the Criminal Code: Not executing the criminal sanctions : alignment (2) eluding the execution of a custodial educational measure by wrongfully leaving the detention or educational facility or by failing to show up after the freedom time expired, is punished with imprisonment from 3 months to 1 year or with a fine.

The time during which the minor is free after applying legal measures is stated in article 124, fourth alignment and article 125 fourth alignment of the Criminal Code. If the minor fails to respect the execution conditions or obligations, the court can replace educational measures with the execution of the rest of the punishment in which case if the minor doesn't return to the educational or detention facility, he commits the crime of not executing criminal punishments. This crime occurs only if the person was convicted to execute a custodial educational measure, not in case the sanction of admittance in an educational facility is not final (according to the provisions of article 242 of the Criminal Procedure Code, the minor criminal can be held or arrested in exceptional cases).

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