# REGIME OF NON-CUSTODIAL EDUCATIONAL MEASURES

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ABSTRACT: THE NEW CRIMINAL CODE, UNLIKE THE CRIMINAL CODE OF 1968, HAS ESTABLISHED A UNIQUE PUNISHMENT SYSTEM OF JUVENILE OFFENDERS BY THE PROVISIONS OF ART. 114, WITH THE MARGINAL NAME "CONSEQUENCES OF CRIMINAL LIABILITY", CONSISTING OF EDUCATIVE MEASURES [1], WHICH DIVIDE INTO TWO CATEGORIES: NON-CUSTODIAL AND CUSTODIAL.

THUS, THE MINOR WHO AT THE TIME OF CRIME HAD THE AGE BETWEEN 14 AND 18, HE IS GOING TO BE SUBJECT TO NON-CUSTODIAL EDUCATIONAL MEASURE (ART. 114 PAR. 1 THE NEW CRIMINAL CODE).

A CUSTODIAL EDUCATIONAL MEASURE CAN BE TAKEN AGAINST THE ABOVE MENTIONED MINOR IN THE FOLLOWING CASES: IF HE HAS COMMITTED ANOTHER CRIME, FOR WHICH HE WAS SUBJECT TO AN EDUCATIONAL MEASURE THAT WAS ENFORCED OR THE EXECUTION OF WHICH STARTED BEFORE COMMITTING THE CRIME FOR WHICH HE IS BEING TRIED; IF THE PENALTY PROVIDED BY THE LAW FOR THE COMMITTED CRIME IS IMPRISONMENT FOR 7 YEARS OR MORE OR LIFE IMPRISONMENT (ART. 114 PAR. 2 NEW CRIMINAL CODE).

THE NON-CUSTODIAL EDUCATIONAL MEASURES (ART. 115 PAR. 1 SECTION 1 OF THE NEW CRIMINAL CODE) ARE: CIVIC INTERNMENT TRAINING, SUPERVISION, WEEKEND COMMITMENT, DAILY ASSISTANCE.

THE CUSTODIAL EDUCATIONAL MEASURES (ART. 115 PAR. 1 SECTION 2 OF THE NEW CRIMINAL CODE) ARE: INTERNMENT IN AN EDUCATIONAL CENTER, INTERNMENT IN A DETENTION CENTER.

EACH NON-CUSTODIAL EDUCATIONAL MEASURE IN PART, THE OBLIGATIONS THAT THE COURT MAY IMPOSE TO THE MINOR DURING THE EXECUTION OF THE NON-CUSTODIAL EDUCATIONAL MEASURES, CHANGE OR CESSATION OF THE OBLIGATIONS, AND ALSO THE PROLONGATION OR REPLACEMENT OF NON-CUSTODIAL EDUCATIONAL MEASURES ARE PRESENTED IN THIS PAPER, ACCORDING TO THE NEW CRIMINAL LAWS.

KEY WORDS: NEW CRIMINAL CODE, MINOR, CRIMINAL LIABILITY, NON-CUSTODIAL EDUCATIONAL MEASURES

The criminal sanction regime of juvenile offenders under the new Criminal Code [2] is a regime exclusively focused on educational measures [3].

Unlike the Criminal Code of 1968, which provided that an educational measure can be taken against the minor who is criminally liable or a penalty could be applied, the new Criminal Code provides as a result of minors' criminal liability taking only educational measures, either custodial or non-custodial [4].

# I. Minor's criminal liability regime

# 1. The limits of criminal liability

By the provisions of art. 113 of the new Criminal Code are regulated the limits of minors' criminal liability in relation to their age and discernment. According to these provisions, the minor under the age of 14 years is not criminally responsible; the minor who is aged between 14 and 16 years is criminally liable if it is proven that he committed the act with discernment; the minor who attained the age of 16 is criminal responsibility according to law.

The upper limit of age until which a person is considered minor is 18 years.

As noted, the law establishes a division of minors, in terms of criminal liability in two categories: one, the minors with criminal capacity and are criminally responsible, and another, minors who lack the criminal capacity and are not criminally responsible. The category of minors who are not criminally liable comprises two subcategories namely: that of minors who have not reached age 14 and who have absolute legal presumption of criminal incapacity, and that of minors aged 14-16, receiving only a rebuttable presumption of criminal incapacity. If the absolute presumption of criminal incapacity may be rebutted by evidence to the contrary, however the rebuttable presumption allows evidence to the contrary, so it is still possible that a minor aged between 14 and 16 to be criminally liable, but "only if it is proven that the minor committed the act with discernment". The category of minors who are criminally liable, as well as the minors aged 16-18 years and the 14-16 years age minors to whom the rebuttable presumption of criminal incapacity was removed [5].

### 2. The consequences of criminal liability

The new Criminal Code, unlike the Criminal Code of 1968, has established a unique system of punishing juvenile offender by the provisions of art. 114, with marginal name "Consequences of criminal liability", consisting of educational measures [6].

Thus, the minor who, at the time of the crime, had the age between 14 and 18 years is being given a non-custodial educational measure (art. 114 par. 1 the new Criminal Code).

A custodial educational measure can be taken against the above mentioned minor in the following cases:

- a) if he has committed a crime for which he was applied an educational measure which was executed or whose execution began before committing the crime for which he is judged;
- b) when the punishment provided by law for the crime is imprisonment for 7 years or more or life imprisonment (art. 114 par. 2 the new Criminal Code).

Therefore, in the concept of the new Criminal Code, a juvenile offender is usually punished with a non-custodial educational measure, and exceptionally, when he relapses into crime or commits a serious or very serious crime for the first time, the measure taken against the minor shall be a custodial educational measure [7].

#### 3. Educational measures

As resulting from what has preceded, it distinguishes between two categories of educational measures: non-custodial educational measures and custodial educational measures (art. 115 the new Criminal Code) [8].

The non-custodial educational measures (art. 115 par. 1 section 1 of the new Criminal Code) are: civic internship training, supervision, weekend commitment, daily assistance.

The custodial educational measures (art. 115 par. 1 section 2 of the new Criminal Code) are: internment an educational center, internment in a detention center.

According to the provisions of par. 2 of art. 115 of the new Criminal Code, choosing educational measure to be taken against the minor is done in terms of art. 114 regarding the consequences of the criminal liability of minors, based on the general criteria for individually deciding on the punishment provided in art. 74 par. 1 letters a) - g) of the new Criminal Code [9]. These criteria should be first of all used to decide which of the two categories of educational measures is applicable in question and then for selecting and individualizing the applicable measure. Regarding the custodial educational measures, there are crucial are the conditions provided by art. 114 par. 2 of the new Criminal Code, both for the option in favour of this group of measures, as well as for choosing between the two measures provided by law, and following that the general criteria of individuation to be especially use for the individualization of chosen measure [10].

The execution of non-custodial educational measures is regulated by the Law no. 253/2013 on the enforcement of punishments, educational measures and other non-custodial measures ordered by the judicial bodies during the criminal trial [11].

The execution of custodial educational measures is regulated by the Law no. 254/2013 on the enforcement of punishments and custodial measures ordered by judicial bodies during the criminal trial [12].

# 4. The assessment report

In accordance with art. 116 par. 1 of the new Criminal Code, in assessing the minor according to the criteria provided in art. 74, the court will require to the probation service the elaboration of a report including the reasoned proposals regarding the nature and duration of social reintegration programs which the minor should follow, as well as other obligations that may be imposed on him by the court.

The assessment of the minor defendant is done by defendant probation officer in the probation service in whose territorial jurisdiction actually resides the defendant minor; assessment report is prepared and communicated within 21 days of receipt date of the request in the probation service [13].

The content of the assessment report is provided for in Law no. 252/2013 on the organization and operation of the probation system [14], the provisions of art. 116 par. 1 of the new Criminal Code establishing only that the assessment report must contain reasoned proposals regarding the nature and duration of social reintegration programs that minor should follow, as well as other duties that may be imposed on him by the court [15].

Thus, the Law no. 252/2013 in art. 34 par. 1, provides that the assessment report contains data on family and social environment of the juvenile, educational and professional situation, the general conduct of the juvenile, criminal behavior analysis, the risk of committing crimes and any other data relevant to the situation of the minor. In par. 2 of the same article it is provided that the assessment report may make reference to health, minor's developments in terms of physical, emotional, moral and intellectual point of view, to the extent that they have influenced or may influence the criminal behavior. According to par. 3 of art. 34 of the law, the assessment report contains reasoned proposals on the educational measure considered to be suitable for the minor, with reference to the

nature and duration of social reintegration programs, as well as other obligations that may be imposed on him, in order to reduce the risk of committing crimes.

To obtain the data needed to assess the minor defendant, the probation officer can collaborate with social workers, psychologists, school counselors, teachers, doctors or other professionals. At the request of probation officer, the institutions and organizations where the minor was or is in the record for care, treatment or welfare or education put at the disposal of the probation officer within 7 days, the relevant information to the assessment process (art. 35 of the Law no. 252/2013).

The assessment has personal character and is done based on one or more meetings between the probation officer and the minor defendant and the data obtained from other sources of information. Where the minor defendant does not cooperate in the assessment, probation officer shall prepare the assessment report and mention therein the collaboration refusal of the minor. The assessment report has attached the statement of the minor regarding the refusal to cooperate. If the minor defendant is not found and the assessment meeting cannot be made, the probation officer notifies the judicial body about the impossibility of drawing up the assessment report (art. 36 par. 1, 2 and 3 of the Law no. 252/2013).

In case of elaborating a report to a minor defendant who is at the same time executing an educational measure, the assessment report will also contain mentions relating to the compliance with the execution conditions of the measure and imposed obligations, where appropriate [16].

According to art. 116 par. 2 of the new Criminal Code, the assessment report on compliance with the execution conditions of the measure or imposed obligations shall be prepared by the probation service in all cases in which the court disposes on the educational measures or on the modification or cessation of the execution of imposed obligations, unless referred to in art. 126 (namely to change the execution regime of a custodial educational measure), when it is going to be made by educational or detention center.

#### II. Regime of non-custodial educational measures

#### 1. General rules

The non-custodial educational measures provided for in art. 115 par. 1 pt. 1 of the new Criminal Code are listed in an order that is not accidental, but they are a scale of measures increasingly harsher in content corresponding to the level of the real social danger of the crime committed and the degree of moral perverting of the minor [17].

The new Criminal Code leaves it to the court to establish the actual content of non-custodial educational measures; content of concrete ways to implement non-custodial educational measures follow to be determined taking into account the age, personality, health, family and social situation of the minor [18].

According to the principle no. 5 of the Council of Europe Recommendation no. 2008/11 on the European rules for juvenile offenders, the imposition and implementation of a sanction or non-custodial measure must respect the superior interest of the minor, limited to the gravity of the committed crime (principle of proportionality), take into account the age, mental and physical health, the development, the personal skills and circumstances (principle of individualization) and, whenever necessary, psychiatric, psychological or social reports; so, the principle no. 6 of the Recommendation states that in order to adapt the implementation of community sanctions and measures to the particular

circumstances of each case, the authorities responsible for their implementation must have a sufficient degree of freedom, without leading to serious inequalities of treatment [19].

The law no. 253/2013 on the execution of punishments and educational measures and other non-custodial measures ordered by the judicial bodies during the criminal trial, in art. 63 par. 1, provides that the non-custodial educational measures are executed in the community, during their execution ensuring the maintenance and strengthen of the minor's ties with the family and community, free development of the minor's personality and his involvement in the developed programs, in order to form his spirit of responsibility and respect for the rights and freedoms of others.

In par. 2 of the same article, it is provided that the juvenile serving a non-custodial educational measure shall be ensured, according to the principle of the best interests of the child, the compliance with the fundamental rights and freedoms under the Constitution, international conventions to which Romania is a party and special legislation, to the extent that their exercise is not incompatible with the nature and content of the measure.

According to art. 64 of the Law no. 253/2013, the organization, supervision and control of the execution of non-custodial educational measures are carried out under the coordination of the probation service. The probation service may entrust the supervision of the execution of non-custodial educational measures provided for in the new Criminal Code to certain community institutions of those included in the national database according to art. 20 par. 6 of the law.

Once a decision has become final by which a non-custodial educational measure has been taken in relation to the minor, the judge delegated with the execution in applying the procedure foreseen in art. 511 of the Law no. 135/2010 regarding the Code of Criminal Procedure [20], sets a deadline, disposing to be brought the minor and cited his legal representative, the representative of the probation service for the implementation of the measure taken and the persons designated for his supervision. Along with the summons, the probation service shall receive a copy of the court decision. During the meeting, the delegated judge shall provide the purpose and content of the applied sanction and also the consequences of its non-compliance to the minor and the person appointed for his supervision (art. 65 of the Law no. 253/2013).

### 2. The civic training stage

According to art. 117 par. 1 of the new Criminal Code, an educational measure of civic training stage consists in the minor's obligation to participate in a program lasting four months duration, in order to help him understand the legal and social consequences that he exposes when committing an crime and to make him responsible in regard with his future behavior.

This program takes place outside the school or professional program of the minor and without affecting the program in any way [21].

According to art. 66 par. 1 of the Law no. 253/2013 regarding the execution of punishments, the educational measures and other non-custodial measures ordered by the judicial bodies during the criminal trial, the objective of educational measure of the civic training stage is to sustain the minor in becoming aware of the legal and social consequences that he exposes when committing crimes and his accountability on his behavior.

The civic training courses, provided in par. 2 of the same article, are elaborated under a framework curriculum approved by the common order of the Minister of Justice and Minister of National Education, to be published in the Official Gazette of Romania,

Part I, in accordance with the minimum working standards for the institutions in the community provided by art. 18 par. 6 of the law.

The probation officer or, where appropriate, the designated person within the institution of the community organizes, performs the necessary steps in order for the minor to participate and supervises the minor during the civic training stage (art. 66 par. 3 of the Law no. 253/2013).

The inclusion of the minor in a civic training course, specified in par. 4 of art. 66 of the Law no. 253/2013, is performed within 60 days of implementation of the decision according to art. 511 of the new Code of Criminal Procedure.

According to art. 66 par. 5 of the Law no. 253/2013, civic training stage is organized in the form of continuous or periodic sessions, conducted over a period of 4 months, and includes one or more modules with theoretical or applicative character, adapted to the age and personality of minors included in that stage and taking into account, where possible, the nature of the committed crime. A monthly number of 8 hours of civic training will be taken into account when developing the stage set by the court.

The probation officer in the probation service in whose district the child resides must attend the civic training course, provided in art. 66 par. 6 of the Law no. 253/2013, decides, based on the initial assessment of the minor, the institution of the community in which this is going to take place, communicating to this institution a copy of the enactment terms of the sentence, and his decision.

The institution of the community designated under par. 6 of art. 66 of the law or the probation service, if necessary, adjusts the concrete content of the stage, according to the framework curriculum, depending on the minor's particularities, with the approval of the probation officer (art. 66 par. 7 of the Law no. 253/2013).

The development of the civic training course is performed by a representative of the community institution established by the decision referred to in par. 6 of art. 66 of the law (art. 66 par. 7 of the Law no. 253/2013).

#### 3. Surveillance

According to art. 118 of the new Criminal Code, the educational measure of surveillance is to control and guide the minor in his daily program, lasting between two and 6 months, under the coordination of the probation service, to ensure participation in school or training courses and prevent the development of some activities or entry in connection with certain individuals that could affect his process of correction.

The surveillance and guidance of the minor in the execution of the educational measure of supervision, provided for in art. 67 par. 2 of the Law no. 253/2013, is achieved by the minor's parents, those who have adopted him or guardian. If they cannot provide satisfactory supervision, the court disposes to place the minor's surveillance to a trustworthy person, in the same period, preferably a close relative of the child, upon his request.

The execution control of the educational measure of surveillance and the control of the fulfillment of duties by the person exercising the surveillance is done by the probation officer, provided by art. 67 par. 4 of the Law no. 253/2013.

The surveillance and guidance of the minor in his daily program involves checking how he meets his obligations arising from his family, school or professional status (art. 67 par. 5 of the Law no. 253/2013).

The exercise of the supervision, provided in art. 67 par. 7 of the Law no. 253/2013, begins within 30 days since the presentation of the minor and the person appointed with

the surveillance in front of the judge assigned with the execution in terms of art. 511 of the new Code of Criminal Procedure.

#### 4. Weekend commitment

In accordance with art. 119 par. 1 of the new Criminal Code, the educational measure of weekend commitment consists of the minor's obligation not to leave the house on Saturdays and Sundays, lasting between 4 and 12 weeks, unless, in this period, is required to participate in certain programs or to carry out certain activities imposed by the court.

The educational measure of weekend commitment, provided by the Law no. 253/2013, in art. 68 par. 1, aims to avoid the minor's contact with specific persons or the minor's presence in certain places which predisposes the minor to the manifestation of a criminal behavior.

The prohibition imposed to the minor to leave home, according to art. 68 par. 2 of the Law no. 253/2013 operates from 0.00 pm on Saturday and until 24.00 on Sunday.

The educational measure is executed during the length of consecutive weekends, unless the court or judge assigned with the execution, at the proposal of the probation officer, ordered otherwise, usually under the supervision of the adult that the child lives with or another major person appointed by the court (art. 68 par. 4 of the Law no. 253/2013).

If the adult to supervise the execution of the measure which is not appointed by court decision or the person appointed by the court cannot permanently or temporarily exercise the supervision, the judge assigned with the consultation of the probation officer appoints the person who is to exercise the surveillance (art. 68 par. 5 of the Law no. 253/2013).

The execution control of the educational measure of weekend commitment and the control to fulfill the duties of the person exercising the supervision is carried out by probation officer or, where appropriate, by the person appointed by this from an institution of the community (art. 68 par. 6 of the Law no. 253/2013).

According to art. 68 par. 7 thesis I of the Law no. 253/2013, in order to exercise the control, the minor who lives alone or, where appropriate, the person referred to in par. 4 of the law is required to allow the person appointed to control the execution and supervision of the measure execution to conduct the scheduled or unannounced home visits at the minor, in the days when the child needs to be in that space according to the court decision.

The weekend commitment is implemented, provided for in art. 68 par. 9 of the Law no. 253/2013, within 15 days since the presentation of minor and the person appointed with the surveillance in front of the judge assigned for the execution in terms of art. 511 of the new Code of Criminal Procedure.

#### 5. Daily assistance

According to art. 120 par. 1 of the new Criminal Code, the educational measure of daily assistance consists of the minor's obligation to comply with a schedule established by the probation service, which contains the timetable and development conditions the activities and bans imposed to the minor.

The educational measure of daily assistance, provided in par. 2 of the same article, is taken on a period between 3 and 6 months.

The supervision of execution of the educational measure in the daily assistance, provided for in art. 69 par. 1 of the Law no. 253/2013, is achieved by the probation officer

or, if appropriate, by the person assigned by his decision, from an institution in the community.

According to art. 69 par. 2 of the Law no. 253/2013, the daily schedule that the minor needs to respect and the activities that he must fulfill are established jointly by the probation officer and the parents, guardian or other person in whose care the minor is, by consulting him. In case of disagreement, the program is determined by the judge assigned with the execution, by a motivated conclusion, after hearing the concerned parties. The conclusion is not subject to any appeal.

The program established according to par. 2 of art. 69 of law will take into account the minor's identified needs, his social situation and, where appropriate, professional, and his obligations and prohibitions imposed to him during the execution of the measure. The program envisages the harmonious development of the minor's personality, through involvement in activities involving social relationship, organizing the leisure and harnessing his skills (art. 69 par. 3 of the Law no. 253/2013).

The establishment of the daily schedule is made within 30 days since the presentation of the minor in front of the judge assigned with the execution in terms of art. 511 of the new Code of Criminal Procedure, and the daily assistance begins no later than 5 days from the establishment of the program (art. 69 par. 5 of Law no. 253/2013).

If the daily assistance measure replaced a custodial educational measure, the establishment of the daily schedule is made within 15 days of the release of minor (art. 69 par. 6 of the Law no. 253/2013).

# 6. Obligations that may be imposed to the minor in case of a non-custodial educational measure

In the provisions of art. 121 par. 1 of the new Criminal Code it is provided that, during the execution of non-custodial educational measures, the court may impose to the minor one or more of the following obligations:

- a) to follow a school training or professional training course;
- b) not to exceed the territorial limit set by the court without the approval of the probation service;
- c) not to be in certain places or at certain sporting, cultural events or other public meeting set by court;
- d) to stay away and not to communicate with the victim or members of his family, with the participants in the crime or other persons set by the court;
- e) to present to the probation service on the data set by this;
- f) to be subject to control, treatment or medical care measures.

Imposing the mentioned obligations is optional for the court, and when it deems necessary to conduct minor correction, it may establish one or more of these obligations, but it may not order compliance with all obligations under the law [22].

The law no. 253/2013, in art. 70 par. 1, provides that if the court established in the minor's task the obligation provided for in art. 121 par. 1 letter a) of the new Criminal Code, the provisions of art. 50 par. 1 and 2 of the law shall apply accordingly.

Therefore, the probation officer of the probation service in whose area resides the person that must follow a training course or professional qualification, receiving a copy of the judgment, decides the course to be followed and the community institution in which follows to take place based on the initial assessment of the person, communicating to the institution a copy of the enactment terms of judgment and his decision (art. 50 par. 1 of the Law no. 253/2013).

The surveillance and control complying with the obligation to follow a school training or professional qualification course, both on the supervised person and on the established institution, is carried out by the competent probation service (article. 50 par. 2 of the Law no. 253/2013).

If the court has established the minor's obligations provided for in art. 121 par. 1 letter c) or d) of the new Criminal Code, is provided for by par. 2 of art. 70 of the Law no. 253/2013, the judge assigned with the execution shall send a copy of the enactment terms of judgment, if appropriate, also to the persons or institutions referred to in art. 29 par. 1 letter m) or n) of the law, empowered to supervise the fulfillment of these obligations. If it was established the obligation provided in art. 121 par. 1 letter b) of the new Criminal Code, the communication is made the County Police Inspectorate in whose district the minor resides.

As shown in art. 29 par. 1 letter m) of the Law no. 253/2013, for the duty not to be in certain places or at certain sporting, cultural events or other public meetings set by the court, the communication is made to the County Police Inspectorate in whose jurisdiction he resides and, if appropriate, to the one with which the minor resides, and for cases where it was ordered the ban for places, events or meetings outside this district, to the General Inspectorate of the Romanian Police.

As shown in art. 29 par. 1 letter n) of the Law no. 253/2013, for the obligation not to get close and not to communicate with the victim or members of his family, with the participants in the crime or other persons established by the court, the communication is made to the persons that the minor is not entitled to get in touch or to whom he is not entitled to approach, to the county police inspectorate in whose district resides, and, where appropriate, to the one where the minor resides, and for cases when the victim or the persons set by the court do not reside in the same district, to the county police inspectorates from their homes.

In case of disposal of the obligation provided in art. 121 par. 1 letter f) of the new Criminal Code, a copy of the enactment terms of judgment shall be communicated by the probation officer to the institution which is going to take place the control, treatment or medical care referred to in the sentence. If the institution is not mentioned in the judgment, the probation officer sets, by decision, the institution which is going to take place the control, treatment or medical care and communicates this, the copy of the enactment terms of judgment and also his decision. The costs of control, treatment or medical care are covered by the state budget. (art. 70 par. 3 and 4 of the Law no. 253/2013).

According to the Law no. 253/2013 the execution of the obligation provided in art. 121 par. 1 of the new Criminal Code, begins as follows:

- a) on the date of the final judgment by which they have been established, for the obligations provided for in the letters b) d);
- b) on the date of informing minor about the concrete content of the obligation set by the probation officer, in case of the obligations provided to the letters a), e) and f) (art. 70 par. 5).

The execution of the obligation provided for in art. 121 par. 1 of the new Criminal Code ceases at the date of execution or when considered as executed the educational measure that they accompany it (art. 70 par. 6 of the Law no. 253/2013).

According to art. 121 par. 4 of the new Criminal Code, during the execution of the non-custodial educational measure, the probation service must notify the court if:

- a) there appeared grounds justifying either the modification of the obligations imposed by the court or cessation of the execution of some of these;
- b) the supervised person does not comply with the conditions of execution of the educational measure or does not perform his obligations under the established conditions.

## 7. Modification or cessation of the obligations

Art. 122 of the new Criminal Code provides that if, during the surveillance occurred grounds justifying the imposition of new obligations or increase or decrease of the existing execution conditions, the court properly disposes the modification of the obligations, to ensure greater chance of correcting to the supervised person (par. 1). Court orders the cessation of some of the execution of obligations that it imposed, when it considers that their maintenance is no longer required (par. 2).

The regulation contained in art. 122 of the new Criminal Code exclusively refers to the obligations provided for in art. 121 par. 1 letter a) - f), and not to the obligations of the content of non-custodial educational measure (for example, "the minor's obligation to participate in a program" that constitutes the substance of educational measure of the civic training stage or "the minor's obligation not to leave home on Saturdays and Sundays" from the content of the educational measure of weekend commitment or "the minor's obligation to comply with the schedule set by the probation service" which is the substance of educational measure of daily assistance) [23].

Changing the obligations, provided for by art. 122 par. 1 of the new Criminal Code, can be achieved either by imposing new obligations, or by increasing or decreasing the execution conditions of the imposed obligations, to ensure greater chances of correction to the minor as a supervised person [24].

Changing the obligations shall be ordered by the court, at the request of the probation service, which has this obligation under art. 121 par. 4 letter a) of the new Criminal Code [25].

According to art. 73 par. 2 of the Law no. 253/2013, the court notification may also be made by the judge assigned with the execution, at the request of the minor, parents, guardian or other person in whose care the minor is or the injured person, after consulting the assessment report prepared by the probation officer.

The court orders, according to art. 122 par. 2 of the new Criminal Code, the cessation of the execution of some of the obligations that it imposed, when considering that their maintenance is no longer required.

The cessation of the execution of some of the obligations shall be ordered by the court, at the request of the probation service, which has this obligation under art. 121 par. 4 letter a) of the new Criminal Code [26].

Court notification can also be made by the judge assigned with the execution, at the request of the minor, parents, guardian or other person in whose care the minor is or the person injured, after consulting the assessment report prepared by the probation officer (art. 73 par. 2 of the Law no. 253/2013).

# 8. Extension or replacement of non-custodial educational measures

There are two situations when it comes to extending or replacing non-custodial educational measures: in case of non-compliance, bad faith, conditions to execute the educational measure or the obligations imposed for committing a crime again or the trial for a concurrent crime committed before [27].

According to art. 123 par. 1 of the new Criminal Code, if the minor does not comply, in bad faith, with the conditions to execute the educational measure or the imposed obligations, the court disposes:

- a) the extension of the educational measure, without exceeding the maximum provided by law for this;
- b) the replacement of the measure taken with another more severe non-custodial educational measure;
- c) the replacement measure taken with internment in an educational center, where, initially, the most severe non-custodial educational measure was taken during its maximum period.

In the cases mentioned above in the letters a) and b), if this time also the conditions to execute to educational measure or the imposed obligations are not complied with, the court replaces the non-custodial educational measure with the measure of the internment in an educational center (art. 123 par. 2 the new Criminal Code).

In accordance with art. 123 par. 3 of the new Criminal Code, if the minor encountered in the execution of a non-custodial educational measure commits a new crime or is tried for a concurrent crime committed before, the court disposes:

- a) the extension of the educational measure taken initially, without exceeding the maximum foreseen by the law for this;
- b) the replacement of the initially taken measure with another more severe non-custodial educational measure;
- c) the replacement of the initially taken measure with a custodial educational measure.

During the execution of the educational measure that was extended or the execution of the more severe non-custodial educational measure which replaced the initial taken measure, the court may impose to the minor new obligations or increase the execution conditions of those already ordered [28].

Art. 74 of the Law no. 253/2013 provides in par. 1 that if the minor does not comply with the conditions to execute the educational measure or the imposed obligations, the notification of the court to extend or replace the non-custodial educational measure under art. 123 par. 1 and 2 of the new Criminal Code is made by the probation officer, according to art. 121 par. 4 letter b) of the new Criminal Code.

In par. 2 of the same article it is provided that the notification of the court may be made by the prosecutor in case of committing a new crime during the educational measure and by the judge assigned with the execution, at the request of the parents, guardian or other person in whose care the minor is or the injured person or other interested person, after consulting the assessment report prepared by the probation officer. The assessment report accompanies the notification made by the assigned judge.

When replacing the non-custodial educational measures, the court will take into account the severity of these measures in the order provided for in art. 115 par. 1 pt. 1 of the new Criminal Code (art. 74 par. 3 of the Law no. 253/2013).

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