

# SANCTIONING TREATMENT OF PLURALITY OF OFFENCES OF A JUVENILE CRIMINAL RESPONSIBILITY

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*ABSTRACT: SANCTIONS REGULATION OF JUVENILE OFFENDERS IS ONE OF THE MATERIALS THAT SUFFERED THE BIGGEST TRANSFORMATIONS IN THE CRIMINAL CODE OF 2009. THUS COMPLETELY ABANDON PUNISHMENT FOR MINORS AND ESTABLISH A SANCTIONING SYSTEM BASED SOLELY ON EDUCATIONAL MEASURES*

*KEY-WORDS: MINOR OFFENSE, EDUCATIONAL MEASURES, CONCURRENT OFFENSES, CRIMINAL LAW MORE FAVORABLE*

## 1. Introductory aspects

Specialized studies and practical reality demonstrates that social phenomena, concepts found in the content of deviance, delinquency, crime, crime continues to trouble specialists in various fields, but also policy makers, government, public opinion in general, both internally and internationally. Research on the phenomenon of juvenile delinquency have primarily aimed to highlight the causes and conditions that generate and promote youth criminal behavior, identification of objective and subjective factors that cause delinquency both as group phenomenon and as a specific manifestation of individual behavior, but also effective analysis of process resocialization and rehabilitation of juvenile offenders admitted to moral rehabilitation centers [1].

Treatment applicable sanctioning minor criminal charge was restructured Romanian legislature by adopting new criminal law framework [2], therefore, the regulation of sanctioning the minority is one of the subjects who underwent the biggest transformation in the Criminal Code 2009 Romanian legislator to harmonize Romanian legislation with the European and international [3].

According to article 113 of the Criminal Code, minor under the age of 14 years is not criminally responsible. A minor who is aged between 14 and 16 years of criminal responsibility only if it is proved that he committed the act with discretion, and the minor has reached the age of 16 years penal responsibility.

As is known, according to art. 100 Criminal Code of 1968, the minor criminal charge [4] take an educational measure [5] or be liable to a penalty [6].

Criminal Code of 2009 gives complete sentences for juveniles, establishing a sanctioning system based exclusively on educational measures.

According to art. 114 hp, the minor criminal charge is taken, usually a non-custodial educational measures [7]. The minor can take a custodial educational measures [8] in the following cases: a) if has committed a crime for which he was an educational measure that has been executed or the execution of which began before the offense it is judged b) where the penalty prescribed by law for the offense is imprisonment for seven years or more or life imprisonment.

Sanctioning system applicable to commit to a plurality of minor offenses, criminal law has no counterpart in the earlier, being shaped by the proper application of the general provisions, united in art. 34 of the Criminal Code of 1968. Since the current Penal Code provides only educational measures for juveniles in transitional situations its provisions appear, in principle, the more favorable the offender [9].

## **2. Plurality of offences committed during minority, to regulate the Criminal Code of 1968**

According to art. 34 para. 1 of the Criminal Code of 1968, in the case of offenses, the penalty for each offense is individualized basis, calculated in accordance with the special arrangements applicable to minor criminal charge, and of these applies, by merging their heaviest penalty, as follows:

a) when they set only punishment by imprisonment, apply the heaviest punishment, which could be increased up to the maximum of its special and when this maximum was not sufficient, you could add a bonus of up to five years;

b) when they established only fines, apply the greatest punishment that could be increased to its maximum specially, and if it was inadequate, it could add a bonus of up to half of that maximum;

c) when established imprisonment and punishment by fine, imprisonment apply to which fine may apply, in whole or in part; d) when they established several prison sentences and more punishment by fine, imprisonment applied according to letter a), to which fine may be added, according to the letter b).

Penalty life imprisonment established with one or more sentences of imprisonment or a fine would have been possible only when committing two or more concurrent offenses before and after reaching adulthood and life imprisonment was imposed for an offense committed after 18 years.

Increasing the penalty was a voluntary, so the increase granted resultant penalty could not exceed the penalties imposed by the court for concurrent offenses (art. 34 par. finally). When the minor is not guilty of crimes so serious in that it requires the application of penalties, the minor after taking educational measure [10] the hardest.

Where, following separate judicial individualization of punishment for an offense competing educational measure has been taken, and for imposing a punishment other [11], the educational measure would be revoked, because the two are incompatible sanctions, punishment prison excluding educational measure.

Whereas, in accordance with art . 38 para 1 lit. a) of the Criminal Code of 1968, to determine the state of recidivism does not take into account the judgments of conviction of offenses committed during minority [12] criminal track record in these situations generate a plurality intermediate [13] covered in art. 40 Criminal Code, which provided also punishment of the offenses under the rules on when, after a final conviction, the convict is guilty of a new offense before the start of penalty during execution of the sentence or able to escape, being the legal conditions for retaining the state of relapse.

### **3. Plurality of offences committed during minority, to regulate the Criminal Code of 2009**

According to art. 129 para. 1 of the current Criminal Code, in case of offenses committed during minority establishing and take one educational measure all the facts, in terms of art. 114 Criminal Code, taking into account the general criteria for individualization of punishment [14]. In the process of individuation, by choice of educational measure, custodial or non-custodial, following the application of art. 114 of the Penal Code, The court will determine what actual educational measure imposed in the present case, according to the general criteria for individualization of punishment and specific range of time to execute.

When committing two offenses, one during and one after minorities increased in accordance with art. 129 para. 2 of the Criminal Code in force, the solution in this case will involve taking an educational measure for the offense committed during minority and establishing penalties for the offense committed by increased then:

a) if the educational measure is non-custodial penalty runs only;

b) if the educational measure is deprivation of liberty, and the punishment is imprisonment, the punishment of imprisonment, which shall be increased by a period equal to at least a quarter of the way through the rest of the educational measure or unserved at the time of the offense committed by increased;

In this case, the length of sentence which was executed minus the time of the offense committed by increased until trial. The penalty thus established may be subject to postponement or suspension of penalty under supervision (art. 129 par. 5 of the Penal Code) [15].

c) whether the penalty imposed for the offense is life imprisonment after increased runs only this punishment;

d) if the educational measure is deprivation of liberty, and the penalty is a fine, runs educational measure, the duration of which shall be increased by not more than six months, without exceeding the statutory maximum for that. Establish and implement penalties for committing increased by two or more competing crime takes place according to the rules on competition crime, then do the provisions of par. 2 of art. 129, as mentioned above.

So the first rule is to judge crimes court imposed concurrent , set the penalty for each of them separately and will apply a single penalty under Art. 39 main penalty case of offenses [16] and possibly art. 45 on additional penalties , penalties accessories and safety in case of multiple offenses, and later to do, in relation to the punishment of offenses resulting contest, on art. 129 para. 2 letter a)-d) of the Criminal Code of 2009 [17].

Another situation for Romanian legislator has foreseen the applicability of art. 129 para. 2-4, is one that meets art. 130 of the current Criminal Code, the discovery of a crime during the minority. Thus, if during the period of postponement surveillance penalty of suspension of parole supervision or it is discovered that the person committed an offense supervised major during the minority which has taken even after this period, an educational measure involving deprivation of freedom, postponement suspension or release is canceled, properly applying those provisions.

### Conclusions

Sanctioning treatment of plurality of offenses according to the new law applies when at least one of the offenses was committed plurality structure under the new law, even if the other offense the penalty was determined according to the old law, more favorable (Article 10 of Law No. 187/2012 [18]).

### REFERENCES

- [1]. E. G. Simionescu *Disfuncții ale socializării minorului acuzat de infracțiuni grave*, Scientific Session with International Participation, Tenth Edition, Faculty of Economics, University “Constantin Brancusi” of Târgu-Jiu, 24-25.05. 2002, vol. 2, Humanities, section 5, p. 314.
- [2]. Law no. 286/2009 on the Criminal Code, published in the Monitorul Oficial of Romania, Part. I, no. 510, 24 July 2009, with subsequent amendments, effective from 1 February 2014.
- [3]. See L. M. Trocan, Guaranteeing the right to defense in light of the provisions of international treaties specialized in human rights and ECHR jurisprudence, *Annals of the „Constantin Brâncuși” University of Târgu Jiu, Juridical Sciences Series, Issue 4/2010*, p. 111-127.
- [4]. When choosing penalty shall take into account the seriousness of the offense, the physical, intellectual and moral development of his behavior, the conditions in which he was raised and where he lived and any other evidence which characterize minors. The penalty applies only if you appreciate that taking an educational measure is not sufficient to rehabilitate the minor.
- [5]. For details see E. G. Simionescu, *Măsurile educative*, II International Scientific Conference “Economy and Globalisation”, ECO-TREND 2005, the University „Constantin Brâncuși” of Târgu-Jiu, 3-4.06.2005, conference proceedings, pp. 499-502.
- [6]. For details see, E. G. Simionescu, *Pedepsele aplicabile infractorilor minori*, II International Scientific Conference “Economy and Globalisation”, ECO-TREND 2005, the University „Constantin Brâncuși” of Târgu-Jiu, 3-4.06.2005, conference proceedings, pp. 603-606.
- [7]. According to art. 115 para. 1 Criminal Code. (2009) are non-custodial educational measures: civic training course, supervision, recording of weekends, daily assistance.
- [8]. According to art. 115 para. 2 of the Criminal Code. (2009) are custodial educational measures: hospitalization in an educational center and internment in a detention center.
- [9]. C. Bulai, *Dispoziții comune*, in G. Antoniu (coordonator), *Explicații preliminare ale noului Cod penal*, vol. II, Legal Publishing House, Bucharest, 2011, p. 360.
- [10]. Potrivit art. 101 C.p. (1968), sunt măsuri educative: mustarea, libertatea supravegheată, internarea într-un centru de reeducare și internarea într-un institut medical-educativ.
- [11]. According to art. 101 Criminal Code. (1968) are educational measures: mustard, supervised freedom, hospitalization in a rehabilitation center and hospitalization in a medical-educational institute.
- [12]. For details see, E. G. Simionescu, *Recidivismul și recidiva legală*, Legal Publishing House, Bucharest, 2012, p. 147.
- [13]. For details see, E. G. Simionescu, *Reflections regarding the Intermediary Offence Plurality*, proceedings of the 2-nd International Conference on Economics, Political and Law Science (EPLS 2013, Braşov, Romania, June 1-3, 2013, secțiunea: Advances in Fiscal, Political and Law Science), pp. 253-256.
- [14]. General criteria for a penalty provided for by art. 74 C. P. (2009) is applied properly and educational measures in relation to the seriousness of the offense committed and the offender's dangerousness, which is evaluated by the following criteria: a) the circumstances and manner of commission of the offense and the means used, b) the state of danger created protected value, c) the nature and severity of the outcome product or other consequences of the offense, d) the reason and purpose offense e) the nature and frequency of offenses that constitute criminal history of the offender, f) conduct by committing the offense and the trial; g) level of education, age, health, family and social situation.
- [15]. I. Pascu (coordinator), T. Dima, C. Păun, M. Gorunescu, V. dobrinoiu, M. A. Hotca, I. Chiş, M. Dibrinioiu, *Noul Cod penal comentat*, vol. I, the general Legal Publishing House, Bucharest, 2012, p. 685.

- [16]. Rules for determining the principal penalty applicable to competition offenses are similar to the previous Criminal Code, except that bonuses added for cases where not establish the same penalties are optional but have a fixed value, a third of all the other penalties set, and when they established both a prison sentence and a fine penalty, to imprisonment plus full penalty of fine (art. 39 par. 1 of the Criminal Code). When you have established several prison sentences if the sentence by adding the highest growth of one third of all the other established imprisonment would exceed 10 years, or more generally the maximum prison sentence, and for at least one of the offenses concurrent punishment provided is imprisonment for 20 years or more, may apply to life imprisonment (art. 39 par. 2 of the Criminal Code).
- [17]. C. Bulai, *op. cit.*, pp. 361-362.
- [18]. Law no. 187/2012 for the implementation of Law no. 286/2009 - Codul penal, published in the Monitorul Oficial of Romania, Part. I, no. [757 din 12 noiembrie 2012](#).