

MINORITY IN CRIMINAL LAW. ADMINISTRATIVE MEASURES SPECIAL PROTECTION

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ABSTRACT: LAW ON MINORS HAS EVOLVED DYNAMICALLY OVER TIME, THE LEGISLATURE INTENDED TO CREATE A JUDICIARY PROTECTIVE ADAPT THE BIO-PSYCHOLOGICAL DEVELOPMENT OF EACH MINOR, IN ORDER TO IMPROVE JUSTICE.

KEY-WORDS: MINOR, MINORITY, IMPUTABILITY, PLACEMENT, THE SPECIALIZED SUPERVISORY

1. Introductory aspects

Minors are a social group subject to various bio-physical and cultural determinations, which are distinguished by a number of characteristics of age, thinking skills and behavior [1]. As a matter of social reality, the child has a system of values, goals, interests and aspirations different from those of adults. Some are positive, others negative or nonconforming, whose meaning and essence are not always notified of adult, sometimes even being ignored or labeled as undesirable or illegitimate. Furthermore, the company does not provide equal opportunities for all children, creating contrast, a number of obstructions or barriers related to power, wealth or social class. Faced with such differentiated opportunities, which allow quick access and equal to the values and social goods, some teenagers fail to overcome the demands imposed by social norms, sometimes deviating from them and trying to fill frustrations through illegitimate means.

The regulation of juvenile criminal responsibility according to Romanian Penal Code [2], it is necessary to make a distinction between minors who do not have criminal capacity and not criminally responsible for socially dangerous acts they would commit criminal minors who have capacity and can be held criminally liable for illegal acts committed by them.

2. Minors are not criminally liable

In relation to the degree of impairment of mental capacity, minors are divided in terms of criminal law in juvenile penal responsibility and juvenile criminal responsibility

This boundary established by the provisions of art. 113 Criminal Code, provides in paragraph (1) that “minor under the age of 14 years is not criminally responsible”. Therefore, the legal status of minors under the age of 14 years is characterized by the establishment of a conclusive presumption of incapacity criminal operating of law (*juris et*

de jure), can not be refuted by any evidence, regardless of the physical and minor mental [3], although it is clear that the person concerned, although under 14, is well developed physically, mentally and realizes the consequences of his actions. Juvenile offender is considered as totally lacking in discernment and incapable of understanding the gravity of an act that violated the law, excluding, however, absolutely, it can know the provisions of the criminal law [4].

Minors in this age group corresponding stage of the early childhood and adolescent period known as modeling stages of personality can not be active subjects of criminal law. Acts under criminal law offenses committed by them are not, they are attributed and therefore do not attract criminal liability of the offender's inability learned in childhood or adolescence resulting from its natural state, the person insufficiently developed to understand the psycho-physical requirements of criminal law and manifest conscious will for these requirements [5].

All criminal laws governing the age limit from which the criminal capacity. Legislature Criminal Code of 2009 is consistent in setting the age limit up to which the minor is considered that no discrimination [6] (as the regulation limit criminal liability Criminal Code of 1968), making a systematic correlation with the civil law relating to age limit up to which the child has no civil capacity of exercise, which justified all the lack of discernment [7].

The concept of discernment [8] expresses the idea of capacity of understanding and will, the essential criterion for determining liability representing delinquent minor who has not reached age 16. Presumption an understanding and will insufficiently developed in childhood and adolescence based exclusion minor under the age of 14 years under criminal law [9], the facts stipulated by the criminal law in these conditions, lacking one of elements of the offense, namely, imputability.

Romanian criminal code stipulates a much lower age limit up to which the minor is not criminally responsible [10], so the Criminal Code of 1864 provides that minors until the age of eight years is not criminally responsible, and the Criminal Code of 1936 stipulated that criminally responsible minors up to 12 years. Criminal Code 2009 legislature retained the Criminal Code of 1968 in terms of age to establishing an absolute presumption of criminal incapacity.

3. Conditions to remove imputability minors

From the analysis of the legal provisions of art. 27 Criminal Code., That, to retain the character of the act imputable determined minority status, it should be noted that the following cumulative conditions:

- To have committed an offense under the criminal law, regardless of the method of application, act or omission, as consumption [11] or attempted punishable [12], in any capacity, author, co-author, instigator or accomplice;

- Offense under the criminal law has been committed by a minor who does not meet the legal requirements of criminal responsibility (conditions relating to the age of 14, when there is an absolute presumption of lack of criminal capacity, or between 14 and 16, when proved that the act was not committed judgment);

- The child did not meet the legal requirements of criminal responsibility when committing the crime. Finding this condition is without difficulty if that takes the simple facts of the crime unit. If continuous forms, continuous, progressive and usually crime characteristic unit, required some clarification. Thus, when the minor committed the period

in which it is relieved of criminal responsibility, a component part of the successive acts of a continuing offense or of an offense or continued usual that repeats or prolongs their time and after becoming liable under the law, he criminally responsible [13] only for criminal activity committed in the latter period [14]. If committed during the not criminally responsible, an offense under the criminal law to track the progress made during the period when it became liable, he will not be held criminally liable as more serious consequence is the effect of the previous action committed under a condition characterized by lack of accountability [15].

4. The legal effects of the minority

Minority perpetrator is a personal cause for removal chargeability of crime, producing effects *in personam*, only to minors in this state. So legally established minority removes chargeability of the offense (Article 27 of the Criminal Code), without taking into account the nature and gravity or the existence of one or more concurrent offenses.

However, the act can be a serious indication that the juvenile offender is exposed to the danger of becoming the latest offender [16].

In this context, the appropriate measures for the protection and education, not criminal law, but administratively by the General Directorate of Social Assistance and Child Protection territorial administrative unit in which the child resides [17].

According to legal provisions (Articles 84-88 of Law no. 272/2004 on the protection and promotion of children's rights, republished), the child who has committed an offense under the criminal law and not criminally responsible on a proposal from the General Directorate of Social Assistance and child protection in a territorial unit which the child will take one of the following: placement or specialized supervision. The layout of one of these measures, the commission for child protection, where there is parental consent or legal representative of the child or, if appropriate, the court, where the agreement is missing, will take into account:

- a) the conditions that favored the act;
- b) the seriousness of the offense;
- c) the environment in which the child grew up and lived;
- d) the risk of committing child again by an act under criminal law;
- e) any other elements characterize the nature of the child.

Specialized supervision measure is to keep the child in his family, provided that it meets certain requirements such as:

- a) attend school;
- b) the use of day care services;
- c) undergo medical treatment, counseling or psychotherapy;
- d) prohibition of certain places or have links to certain people.

Where are their parent or legal representative measure specialized supervision is ordered by the commission for child protection and, failing such agreement, by the court.

If keeping the family is not possible or when the child does not meet its obligations under specialized supervision measure, the commission for child protection or, where appropriate, the court may order placement of the child in the extended family or a substitute, and fulfillment of the obligations imposed by law child.

If the offense under the criminal law, committed by the child who is not criminally responsible, a high degree of social danger and where the child for which obligations have specialized surveillance period, committing further offenses commission

for child protection or, where appropriate, the court has, for temporary placement of the child in a specialized residential service.

Placement of the child is a special protection measure with temporary, which can be ordered in the law, where applicable, to:

- a) an individual or family;
- b) a foster parent;
- c) a residential service, licensed by law.

Person or family receives a child in foster care must be resident in Romania and be assessed by the Director General of Social Assistance and Child Protection on the guarantees moral and material conditions that must be met to receive a child in foster.

Residential services are services that provide protection, growth and childcare separately, temporarily or permanently, his parents, in response to the placement measure under the law. Residential services belonging to public administration is organized only in the general directorate for social assistance and child protection, fully functional components thereof without legal personality. Residential services are organized and have family model and specialized according to the needs of children placed.

During placement, the child's residence is located, if applicable, the individual, family, caregiver or residential service that is a dependent. The child has been taken to a special protection measure has the right to maintain relationships with other people, if they do not have a negative impact on physical, mental, spiritual, moral or social development.

Throughout the implementation of measures for the child who commits criminal acts and not criminally responsible will be provided specialized services to assist children in their reintegration into society.

General Directorate of Social Assistance and Child Protection is required to track how they are implemented special protection measures, development and child care during the measure, drawing, quarterly or whenever a situation arises that requires, reports on the evolution of the physical, mental, spiritual, moral or social development and how it is cared for. When it is determined, based on the report, the need to amend or, where appropriate, the termination of the measure, the general direction of social assistance and child protection is obliged to notify the Commission immediately to protect the child or, if appropriate, the court. Proposal for termination of protective measures and reintegration in the family is accompanied necessarily documents showing parental participation in counseling sessions so that reintegration take place in the best conditions.

At any stage of the criminal investigation, the child who has committed an offense under the criminal law and criminal responsibility will not be accompanied and assisted by a psychologist or social worker, designated by the general direction of social assistance and child protection.

Upon termination of special protection measures by reintegrating child in his family, the public welfare of the administrative-territorial unit in which the child resides, is required to follow the progress of child development and how parents exercise their rights and their fulfill their obligations towards the child, kept for that purpose, monthly for a period of minimum 6 months.

What is important to note is that the perpetrator does not exclude liability minority of people at the time of committing the crime, had the care and supervision of the minor [18], except for the situation in which it finds in favor of the minor, the supporting causes that removes civil liability.

Conclusions

A minor at the time of the offense under the criminal law does not meet the legal requirements of criminal responsibility can not be active subject of a criminal justice report, so no conflict with criminal law. Social reaction to this category of minors (phase specific childhood and adolescence), consistent with significant international documents [19], is not regulated by the Criminal Code, but before other law, namely Law no. 272/2004 on the protection and promotion of child rights.

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- [7]. Although *The explanatory memorandum to the draft law on the 2009 Penal Code* was proposed to reduce the age limit at which it is possible criminal liability of minors, ie from 14 to 13 years, finally given up on this opinion. The explanatory memorandum to the Project had an argument a few important elements: "the continued growth in recent years in the number of criminal offenses committed by minors under the age of 14 years, reaching quite often commit very serious offenses or be drawn into groups organized crime precisely in view of the impossibility of drawing their criminal responsibility, statistics on surveys conducted on the existence of discernment for minors aged between 14 and 16, show that over 90% of cases it was decided that the judgment, which means that generally there judgment before the age of 14. This is natural, technological and social environment favoring contemporary fastest maturing adolescents in relation to the period of four decades. At the same time, the change was part of a general trend in European law for minors, the age limit for minor criminal responsibility is 10 years in France (Article 2 of the Ordinance of February 2, 1945, amended in 2002), United Kingdom (Article 34 Crime and Disorder Act 1998) and Switzerland (article 3 of the Law of 20 June 2003, in force since 1 January 2007), 12 years in Greece (art. 126 of the Penal Code) and the Netherlands (Article 77b of the Penal Code) and in Spain the age is set at 14 years but a bill currently under parliamentary debate provides lowering the age to 12 years.
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