



KAPITEL 6 / CHAPTER 6⁶

CONSIDERATIONS REGARDING THE APPLICATION AND ENFORCEMENT OF PENALTIES IN CASES INVOLVING JUVENILE OFFENDERS

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Introduction

Education represents the central pillar in shaping the individual's personality, but formal education is what creates the premises for socio-professional integration. We are currently noticing a worrying increase in the number of delinquent minors under the age of criminal responsibility, as well as in crimes of increased gravity committed by delinquent minors. As a whole, education in the penitentiary system must aim to develop independent life skills and ensure the basic requirements for the social integration of the person who is released. In particular, the education of young offenders must be a priority. If in the case of a multi-recidivist adult, the chances of cognitive restructuring are low, in the case of a young person sanctioned for the first time criminally, we can have hope for „a new beginning”. Thus, it is necessary to form a partnership structure between the competent state bodies and NGOs, which will carry out training programs, educating minors in the context of the execution of the sentence of conviction or the coercive measure of an educational nature, transmitted by the competent bodies for execution. The child of today, including the delinquent, is the adult of tomorrow, an additional argument for the development of the society of a state, which wants a healthy future for its citizens, which must make maximum and unconditional efforts to protect children from any abuse or negative risks external.

Content

The rights of the child are an integral part of human rights, therefore the child must benefit from all the general rights, to which we are all entitled to claim from the moment of birth, as well as have certain rights of their own, which offer them increased protection, in the face of any abuses and limitations, which would prevent his balanced development towards maturity. Today's child, including the delinquent, is tomorrow's

⁶*Authors: Jorovlea Elvira Leon, Codreanu Alina*



adult. The society of a state, which wants a healthy future for its citizens, must make maximum and unconditional efforts to protect children from any abuse or negative external risks.

The status and protection of minors in the juvenile justice system in the Republic of Moldova are regulated both by international normative acts (the International Convention on the Rights of the Child, adopted by the United Nations General Assembly Resolution no. 44/25 of December 20, 1989, the Minimum Standard Rules of the United Nations in the Administration of Juvenile Justice, called the „Beijing Rules”, approved on November 29, 1985, the European Convention on Human Rights, etc.), as well as by national normative acts (the Constitution of the Republic of Moldova, the Law of the Republic of Moldova on the rights of the child, the Criminal Code and the of criminal procedure).[1, p.5]

As a social phenomenon, juvenile delinquency is a form of manifestation of deviant behavior and that is why it is extremely important to understand the phenomenon, in its complexity, in order to delimit deviance from normality and identify the factors involved in the production and maintenance of deviance. [2, p.75]

The minor is an individual, a personality in the process of formation, the educational process of which has not yet come to an end. By applying the punishment or the educational measure, he should be educated and not re-educated. The minor's rehabilitation can be achieved by involving him in a continuous educational process. Educational programs must be organized both during execution of the sentence and after its execution. A child who has committed a crime is responsible for his actions, but because of his state of dependence and immaturity, he requires guidance and assistance. [3, p. 19]

The law on the rights of the child provides that the detention or arrest of the child is applied as exceptional measures. However, mobile teams have found that children are often in detention for an unreasonably long period of time or should not have been detained at all. [4, art. 28]

Therefore, according to the opinions of some researchers, "minors who commit crimes represent a special social category, with a great behavioral diversity. Each



delinquent is a particular case that is characterized by a number of physiological, psychological and social traits, which are not exactly found in all criminals. In the complex context of the current socio-economic environment in the Republic of Moldova, the level of juvenile delinquency is increasing compared to the previous year, which is demonstrated by the above-mentioned statistical data. In the previous year, there was an unfavorable trend of increasing the social danger of crimes committed by minors and the number of crimes committed by minors together with adults." [13, p. 141]

According to data provided by the Ministry of Internal Affairs, in 2023, 24.0 thousand crimes were registered on the territory of the Republic of Moldova, down by 10.4% compared to 2022 and by 24.3% compared to 2019. The crime rate in 2023 was 96 crimes per 10 thousand inhabitants (at the level of the previous year), compared to 120 crimes in 2019.

The number of crimes committed by minors in 2023 is decreasing compared to the previous year, 2022. Thus, in 2023, 449 crimes committed by minors or with their participation were registered, which constituted 1.9% of the total registered crimes. Compared to 2022, there was a 36.3% decrease in crimes committed by minors, especially crimes against property. The most frequent minors were involved in committing thefts – 58.8%, followed by robberies – 7.1% and crimes related to kidnapping the means of transport – 6.2%. For every 100 thousand children aged 0-17 years, 83 crimes committed by minors were committed, compared to 116 crimes in 2019. [5]

According to the legal provisions, any person who has reached the age of 16 can be subject to criminal liability. Thus, a minor is considered "any natural person who, at the time of committing a crime or illegal act, was under „18 years of age”. [6, art. 21] The general rule, according to the Criminal Code of the Republic of Moldova, is that the minor bears responsibility from the age of 16. For some crimes, which have a higher degree of social danger, expressly indicated in art. 21 paragraph 2) of the Criminal Code, minors between the ages of 14 and 16 can bear responsibility for the crimes expressly indicated in the Criminal Code.



Thus, minors under the age of 14 cannot be held criminally liable, considering that they do not have the full capacity to be aware of the seriousness of the committed act. For this reason, children in this category are considered to be children „in difficulty”, and the measures taken in their case should be exclusively the responsibility of social assistance.

Juveniles who have committed criminal acts may be punished according to the rules of the criminal law for each individual crime or replaced by educational coercive measures. However, criminal penalties should only be applied if it is considered that educational measures are not sufficient to correct the minor, therefore his behavior must be thoroughly analyzed by the judicial court.

It is obvious that deviance exists in all its forms. Starting from the most minor antisocial conduct, to murder and pathological deviance. At the same time, history has shown us that there is no medicine, or a definite formula for solving deviance. What matters for the safety of society is that the rate of deviation is kept within an acceptable limit.[2, p. 80]

The Criminal Code provides for the procedure and the right to be released from criminal liability for a person under the age of 18 (applied by the prosecutor during the criminal investigation phase) who has committed a minor or less serious crime for the first time, if it has been found that it is possible its correction without being subject to criminal liability[6, art. 54][7, art. 483]. The coercive measures of educational character listed in art. 104 CPP. According to the provisions of the legislation in force, with regard to the application of the prison sentence to the minor subject of criminal liability, who, at the time of the commission of the crime, was not 18 years old, the rule is that the term of detention is established from the maximum sentence provided by the criminal law for the crime done, halved. When determining the final punishment, in the case of multiple crimes, the prison sentence applied to the minor cannot exceed 12 years and 6 months, and in the case of cumulative sentences - 15 years. The application of life imprisonment to minors is prohibited by law. [6, art. 70, alin. 3, 4]

The commission of the crime by a minor is considered a mitigating circumstance (art. 76 para. (1) letter b) CC). Juveniles convicted of ”committing a light, less serious



or serious crime can be released from punishment by the court if it is found that the goals of the punishment can be achieved by applying coercive measures of an educational nature provided for in the domestic criminal legislation". [1, p. 8]

In accordance with art. 111 paragraph (1) letter a) of the Criminal Code, minors in respect of whom coercive measures of an educational nature were applied are considered to have no criminal history. Thus, the following coercive measures of an educational nature may be applied to persons released from criminal liability: the warning - the explanations given to the minor regarding the damage caused by his act and the consequences that will occur in the event of committing a new crime; *entrusting the minor for supervision to the parents, the persons who replace them or the specialized state bodies* - consists in entrusting the parents, the persons who replace them or the specialized state bodies with certain obligations regarding the education of the minor and the supervision of his behavior.

In the case of entrusting the minor to the supervision of the aforementioned persons, the court must establish that the respective persons will have a positive influence on the minor; *obliging the minor to repair the damage caused*. When applying this measure, the material condition of the minor is taken into account; *obliging the minor to follow a course of medical treatment for psychological rehabilitation; obliging the minor to follow the compulsory education course; forcing the minor to participate in a probationary program*. [6, art. 104, 111]

Thus, minors, convicted for committing a light, less serious or serious crime, are released from punishment by the court, if it is found that the goals of the punishment can be achieved by applying the coercive measures of an educational nature provided for in art. 104. Therefore, the court will take all the measures provided by law to apply a non-custodial sentence to the minor or to establish a milder sentence, or will apply the conditional suspension of the sentence. [6, art. 79, 90]

The penalties that can be applied to the minor are provided in the Criminal Code:

The fine. It is considered by specialists to be an ineffective measure, because, when the material situation is relatively good, as a rule, the fine is paid by the parents or the persons empowered as legal representatives, a fact that does not imply the minor's full



awareness of the assumed responsibility for the actions committed.[6, art. 62]

Unpaid work for the benefit of the community. It is applicable to minors from the age of 16 and is considered by specialists to be the most effective measure for correcting and re-educating the minor. However, this is not always accepted by minors and, therefore, enforcement is problematic.

Prison. Life imprisonment cannot be applied to minors. When determining the custodial sentence for the person who, on the date of the crime, did not reach the age of 18, the term of detention is determined from the maximum sentence provided by the criminal law for the crime committed, reduced by half. Persons who have not reached the age of 18 serve their prison sentence in juvenile prisons, taking into account the personality of the convicted person, the criminal record and the prejudicial degree of the crime committed. Detention is applied only in exceptional cases and that, in fact, the problem of minors must be solved in society, but not by applying criminal penalties, which are not always effective.

The imprisonment of a minor must be the court's last resort and only if another sentence does not achieve its purpose. When adopting the sentence in respect of the minor, the court is obliged, as mentioned above, to examine the possibility of releasing his sentence in accordance with the provisions of Article 93 of the Criminal Code of the Republic of Moldova or of the conditional suspension of the execution of the sentence, according to the provisions of Article 90 of the Criminal Code.

Stemming from the principle of reasoning of court decisions, we mention that when judging cases, the courts should adequately state the reasons on which they are based, and the reasons provided for the decisions pronounced by the courts should not be automatic or stereotypical. The exceptional nature of the imprisonment sentence is to be argued by the court, in the sense that the purposes of the sentence can be achieved by applying the imprisonment. Thus, one of the most important guarantees for individualization and consistency in the pronouncement of sentences can be ensured. [10, p. 89]

We reiterate, in context, that minors who have reached the age of 16 can exercise their rights and assume obligations in the enforcement procedure if they have acquired



full exercise capacity. The rights and interests protected by law of minors in the enforcement procedure are defended by their parents, guardians, guardians and guardians. [8, art.46]

In another order of ideas, the researcher Mihailov V., in her works, emphasizes the conclusion resulting from a series of opinions, such as that „the punishments applied to minors, for the most part, are fair, but, nevertheless, the reeducation effect is below the limit of expectations”. [1, p. 68]

Thus, the rule, established for minors of reducing the punishment by $\frac{1}{2}$ of the maximum, is too great a benefit for juvenile offenders, in the case of serious crimes committed in a group, with violence, this in the context where, according to the law, the punishment can often be too mild and affects the rights of the injured party to restore social equity. The punishments for minors should be more lenient than the general rule, but in different proportions than is currently the case.

In another view, there should be a distinct category of criminal punishments applicable to minors. This would allow a better individualization of the punishment, taking into account the special subject of the minor, his limited capacity to be aware and to appreciate the punishment in relation to his psychological fragility, so that he is not traumatized and isolated from society. Juvenile penalties should be a separate criminal category, with separate liability and with exceptions specific to the minor; with alternatives corresponding to the immature level of development, so that the status of a minor is not treated as a mitigating exception, otherwise, it would not be correct for the purpose of the criminal law and the principle of the best interests of the child.

It should be noted that the Probation Service, as a specialized body, also has the mission of supervising the execution of coercive measures of an educational nature, applied by the prosecutor or the court of law [6, art. 104]. The statistical data of the Probation Service demonstrate that the number of minors on record corresponds in principle to the number of criminal cases filed and the respective penalties applied, which involve probation intervention. Thus, it can be concluded that the number of criminal cases, with the involvement of minors, decreased, being the active involvement of the Probation Service, as a body specialized in the execution of



punishments or educational measures applied to minors.

According to the Report on the activity of the penitentiary administration system for 2022, prepared by the National Administration of Penitentiaries of the Republic of Moldova, "on January 1, 2023, 6084 persons were detained in the penitentiary system, compared to 6396 in 2021. Thus, there is a decrease in the number of detainees by 312 people, which is a decrease of 4.88%. The total number of persons deprived of liberty during the reporting period consists of: minors (boys/girls) – 34/1 (in 2021 – 58/1), which is a decrease of 40.68%. [11]

When discussing the problems of implementing penal policy with regard to juvenile offenders, it should be emphasized that the number of minors in detention cannot be considered an indicator of humanity. Thus, it is not the number of minors deprived of liberty that is more important, but their conditions of detention and education. It is true that the situation in which every third or fourth juvenile offender who is in educational detention does not inspire optimism.

We believe that the reduction in the volume of criminal repression against minors can take place, if different modes of repression were to be carried out, such as: by increasing the proportion of conditionally convicted persons, by applying alternative punishments to deprivation of liberty or by applying forms of liability that do not involve deprivation of liberty. However, from the study of the criminal law and the practice of applying legal norms, it follows that in the conditions in which it is effectively impossible to apply other criminal penalties to minors, such as fines, community service, deprivation of the right to practice certain activities, in the conditions of the acute lack of special education and rehabilitation institutions, the only criminal punishment available to minors will continue to be deprivation of liberty.

According to a research, "the humanization of the legislation has led to the fact that the release of minors from criminal liability for minor crimes has become mandatory, with the application of rehabilitation and social assistance measures, but except for cases of recidivism and some cases of violent crimes. The application of educational coercion measures does not now depend on whether the minor or less serious offence was committed for the first time or repeatedly; In addition, the law now



allows minors who have committed not only less serious crimes, but also serious ones, to be placed in a special education placement center. Some centers have social pedagogues, who provide assistance and monitor the situation of children at risk or involved in criminal actions". [12, p. 38]

Researcher Şavga A. believes that, as a result of the analysis of all the punishments applied to minors, we can note that the application of a differentiated sanctioning regime is beneficial, ultimately achieving the goal of correcting them and re-educating them in the spirit of the law. The individualization of punishments has a primary purpose of re-educating the individual who commits the crime, in this sense it is not necessary to apply a harsh sanctioning regime for their re-education. Thus, all the levers established by the legislator have a final beneficial purpose for the correction of criminals, due to the fair punishment compared to the criminal act committed and his personality. [9]

A minor who has reached the age of 16 is liable for criminal liability. Minors who have committed criminal acts may be subject to educational coercive measures and criminal penalties. Penalties are applied only if it is considered that educational measures are not sufficient to correct the minor. Sanctions are established by court decision, in relation to the age and seriousness of the act, where, in order to individualize the punishment, a series of factors must also be taken into account: the degree of social danger of the act, the physical condition and intellectual development of the minor, if has committed other similar acts, his family situation and any other data regarding the minor and the possibilities of his re-education.

Taking into account the psycho-physiological particularities of the age that minors represent and the different ways of influencing minors by way of sanctions, which may have very varied re-education requirements, the legislator established as a basic rule the application of educational measures towards minors, to the detriment of classic criminal penalties, such as prison, conditional suspension, fine. The educational measures provided for by the Criminal Code and the Code of Criminal Procedure are criminal law sanctions, established for juvenile offenders with the aim of ensuring, under the conditions of a criminal constraint, their education/re-education through



supervision, school or professional training and by cultivating their conscience of values and behaviors that involve respect for the criminal law order. In contrast to punishments, where the coercive-emotional character is predominant, educational measures are practically devoid of coercive content, do not carry criminal consequences in the future and do not lead to criminal antecedents. [1, p. 63-64]

Comparatively, in some foreign legislation (such as the french one), educational measures can be taken even without establishing criminal liability, in the Republic of Moldova they can only be consequences of a specific criminal liability and can only be taken against the minor who committed a crime.

The implementation of more humane or alternative forms of criminal liability is stopped for several reasons, including: the lack of funding for the system for combating juvenile crimes, the theoretical fundamental insufficiency of their applicability, the insufficiency of the criminal legislation, the errors in the system for the prevention of juvenile crimes, the continuous attitude of the legal justice system to give priority to coercive measures in the fight against crime, etc.

Juvenile crime is an original indicator of the social situation in the country. This criminal type is very sensitive to the state of society. The increase in the level of juvenile crime, as a rule, testifies to the unfavorable social processes taking place in society. The analysis of juvenile crime is, on the one hand, a tool for identifying criminogenic factors in society, and on the other - a basis for predicting crime as a whole. [14, p. 31]

We believe that the most promising of them at present are: the wider application in practice of the aspect of crime prevention; the introduction of the concept of restorative justice; the rapid creation of a juvenile justice system or juvenile courts; the formation in each subject of a complete infrastructure for the prevention of neglect and crimes of minors and for the execution of sentences in their case; sufficient funding of the system for the prevention and enforcement of sentences by minors; the involvement of civil society institutions, etc., in solving the problems of rehabilitation and resocialization of juvenile offenders.



Conclusion

As a result of the research of this study, we reiterate that the system of punishments applied to minors should be revised, so that the custodial sentence can be applied only in exceptional cases. It is necessary to diversify the punishments applied to minors, it is necessary to create educational centers specialized in the recovery of minors, with a guard and supervision regime, within which to implement intensive social reintegration programs, as well as educational and professional training programs. We agree with the views of the researchers mentioned in this study and believe that, for juvenile offenders, criminal law should provide for a distinct category of punishment, including a special category of mitigating and aggravating circumstances. This would ensure greater efficiency in achieving the goal of correcting, re-educating and reintegrating delinquent children into society.

Therefore, the criminal minor should be one of the basic priorities of the state criminal policy. The effective prevention and combating of juvenile delinquency is even more necessary given that, according to statistical data, there is a worrying increase in the number of juvenile delinquents under the age of criminal responsibility, as well as in crimes of increased gravity, committed by juvenile delinquents. Thus, when applying punishments and measures of coercion against delinquent minors, the fact of their being in a negative environment, where there is violence, lack of supervision and healthy activities, such phenomena as begging, vagrancy, smuggling with narcotics and currency etc.