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MINORITY, CAUSE OF GENERAL DIFFERENCES IN THE APPLICATION OF CRIMINAL TREATMENT

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Abstract

This article deals with the particular aspects regarding the criminal treatment that applies to a special category of offenders, namely the category of juvenile offenders.

Beyond any attempt by society to involve in educating man from the earliest age, his antisocial manifestation is a reality of contemporary society and society in general, since ancient times.

An unexpected violence on the part of a child, seemingly harmless, always produces a surprise effect, often associated with some form of misunderstanding on the part of the child of what he has manifested.

To the child, the adult associates an image of purity and innocence.

Unfortunately, at the level of objective reality, things are not always like that, so an important segment among children, minors, is drawn into a complex and extremely harmful phenomenon for society, the criminal phenomenon.

Although part of the general criminal phenomenon, the criminality of minors raises some special problems within the penal legislation, completely different from those concerning the criminality of adults. This aspect is determined by the special quality of the criminal, that of a child, a minor.

In this article, we will address the particular aspect of the quality of a minor in order to observe that minors benefit from a distinct criminal treatment compared to adults, when they intentionally or accidentally enter what is called the field of criminal law.

Key words: *juvenile offenders, crime, criminal sanction.*

INTRODUCTION

Society considers minority as the age of innocence.

But not infrequently, beneath the radiant and soothing figure of a child hides an aggressive dimension and a high level of brutality and destruction.

"In recent years, the incidence of juvenile delinquency has been increasing, posing a threat to the well-being" (*Musa A. Z., Rais H., 2003, p. 119*).

"It is known that children are capable of more heinous and violent crimes than even those committed by adults" (*Monestier, 2006, p. 11*).

Any man "in the making", aggressive by his nature, stands out as a possible worrisome figure of a juvenile delinquent.

Crimes committed by minors are not, contrary to popular belief, insignificant in number.

New valences appear daily that require a quick solution (*Dăgoi, Rath-Boșca, 2018, p. 3*).

In practice, there are a number of situations in which the competent institutions are called upon to investigate such criminal offences (*Cîrmaciu, 2020, p. 237*).

The figures that indicate over the years the continuous increase in the criminality of minors and the aggressiveness of the acts committed by them impose a disturbing question: is the minor violent by nature and carries within him the uncontrollable tendency to be a "criminal", or is this manifestation acquired and is there a way to suppress it in this case?

In order to understand the criminal phenomenon among minors, it is necessary to analyze the various existential and behavioral universes of minors who have "fallen adrift".

Some of them may be victims of repression or persecution, of the social or family environment in which they live, of the poor education they receive, of the negative environment they live in, of the influence of the media, the Internet, computer games, others are victims of their own criminal instincts.

"Many of these young people, after a dissocial or antisocial existential path, possess enough inner resources to return to a desirable behavior" (*Preda, 1998, p. 4*).

"On the other hand, other young people become real social wrecks, inserting themselves into the life of criminal groups" (*Preda, 1998, p. 4*).

The last decades have brought an impressive number of works dedicated to the study of juvenile delinquency, the causes and conditions that generate it, the method of sanctioning them, multidisciplinary works of particular importance in the field.

The permanent topicality of the phenomenon has led theorists to write continuously, also due to the fact that the recrudescence of crimes committed by minors is manifested both in urban and rural environments.

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More than ever, small communities and the European citizens need guidance towards a world of continuous changes (*Mirişan, 2021, p. 411*).

The idea was emphasized that the premises of a minor's negative development "reside in the difficulties of his socialization, in a series of contradictions, which educational factors do not always and sufficiently take into account" (*Preda, 1998, p. 6*).

The certainty is that minors present particularities compared to adults.

These particularities have required the adoption at the state level of special regulations regarding minors, both in terms of when their actions are considered to attract criminal liability, and in terms of the way in which criminal liability is actually carried out and what type of criminal sanctions apply to them.

I. THE SPECIAL PENAL REGIME OF JUVENILE DELINCVENTS

"The issue of the age of persons who can become subjects of criminal law has been the subject of discussions in the science of criminal law" (*Dongoroz and collective, 2003, p. 215*).

"Legislation in Europe knows a system based on the idea of dividing age into successive stages, the individual moving from total irresponsibility to total responsibility" (Pradel, 2002, p. 331).

Of course, they are not uniform in regulating the criminal liability of minors, the constant common to all European legislation being the division of minors into minors who are criminally liable and minors who are not criminally liable.

Regarding the first category of minors, those who are not criminally liable, the legal regulations of the European states provide for absolute irresponsibility.

The age up to which minors in the various European states are not criminally liable is established either in the Criminal Code in some states or in special criminal laws.

Astel, the age up to which minors are considered insufficiently old and physically and mentally developed to be able to commit a crime and be subject to the criminal law specific to each country varies in different European countries.

The absolute criminal irresponsibility and criminal liability of minors is manifested as follows:

In *Germany*, minors benefit from a special regulation in the field of criminal law: *Jugendgerichtsgesetz* (Juvenile Justice Act) (JGG) as published on 11 December 1974 and last amended by Article 21 of the law of 25 June 2021¹.

It is considered that this law is more suitable for preventing the future commission of crimes by minors and for the reintegration of young offenders.

¹ <https://www.gesetze-im-internet.de/jgg/JGG.pdf>

The JGG has its own regulations for the criminal justice system regarding offenses committed by minors who are at least 14 years of age at the time of the offense but have not yet turned 18.

Therefore, criminal responsibility under German law begins at 14 years of age.

The regulations relate in particular to the legal consequences, meaning the measures and sanctions that the youth court can impose, as well as the course of criminal proceedings against young defendants.

Adolescents who are at least 18 years old at the time of the crime, but who have not yet turned 21, mostly fall under the provisions of the JGG if the development of social values or their intellectual development was still at the level of a minor at the time of the crime or if the act is a typical juvenile misdemeanor (ex: shoplifting as a test of courage). Otherwise these young people will be sanctioned according to the general criminal law applicable to adults.

Minors are considered to be able to change their attitudes and behavior through appropriate measures provided for in the special law, different from those applicable to adults which are mainly limited to fines and prison sentences and are provided for in the German Penal Code, in the version published on 13 November 1998 (Federal Mo. I p. 3322) and last amended by the law of July 26, 2023 (Federal Mo. I p. 203) in force on October 1, 2023.

Penal measures applicable to minors are more about aspects of personality development and resocialization.

They include, first of all, the so-called educational measures that aim to reorganize the minor's lifestyle (for example, participation in a social training course), disciplinary measures, which are measures that are intended to educate but do not have the character of punishment (for example, doing work).

If necessary, a juvenile sentence, a form of imprisonment specially regulated and designed for young people and adolescents, of at least six months and up to ten years (or up to 15 years) can be imposed.

Although there have been claims that this law provides some general leniency with regard to the category of juvenile offenders, it should not be seen as fundamentally a softer law, but rather a law more suited to the criminal sanctioning of juveniles.

The applicable procedure in juvenile cases is also a special one, including the fundamentally planned involvement of youth legal aid (carried out by child and youth welfare providers and specifically regulated in section 38 JGG)².

In *France*, there has been a reform of the legislative system in the field of criminal responsibility of minors.

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Thus, a new criminal legislation was put into effect on September 30, 2021.

Until this date, the Ordinance of February 2, 1945 (Ordonnance no. 45-174 du 2 février 1945 relative à l'enfance délinquante) was applied in France.

Over time, in order to respond to developments in the field of juvenile delinquency, the Ordinance of February 2, 1945 was amended several times.

These changes came about because juvenile criminal justice was criticized for its lack of readability and consistency³.

Starting from this, the Juvenile Criminal Justice Code or CJPM came into force on 30 September 2021.

The goal of the juvenile penal reform in France was to speed up criminal proceedings and strengthen the care of juvenile offenders by establishing the so-called "judicial protection of youth" or PJJ. For this, all the provisions specific to minors have been compiled in a single Code⁴.

In its preliminary article, the CJPM establishes the principle of the best interests of the child.

This new code also recalls the general principles applicable to minors, namely: mitigation of the minor's criminal liability depending on his age and the age of criminal majority, currently set at 18, the specifics of the minor's criminal liability, the priority of applying educational measures over repressive ones.

First of all, through the criminal reform in France regarding the criminal liability of juvenile offenders, the acceleration of the criminal procedure was pursued, with a rapid procedure for the trial of the minor being implemented.

This judgment revolves around three essential points:

- a presumption of discernment existing from the age of 13;
- a legal decision to compensate the victim in the months following the act;
- a conviction in the presence of the juvenile offender's parents within three months.

Secondly, this code promoted the conduct of the trial and the application of the criminal sanction to the minor according to his capacity and development.

The minor was given the chance to benefit from educational monitoring for 5 years, until the age of 21.

Thirdly, judges have the possibility to prioritize educational measures on young offenders.

The focus being on education, an individualized educational action was instituted that is based on the coherence of the minor's paths and the adaptability of educational responses. The specificity of this educational action concerns the fact that a unique educational measure is applied to a minor as a priority, which

³ <https://www.justifit.fr/b/guides/nouvelle-reforme-justice-penale-mineurs/>

⁴ <https://www.justifit.fr/b/guides/nouvelle-reforme-justice-penale-mineurs/>

includes modules on health, damage repair, placement and integration, as well as prohibitions and obligations, ensuring the same educator, the same lawyer and the same judge throughout the duration of the criminal proceedings, as well as a probationary period lasting between 6 and 9 months.

Through this criminal law for minors, the strengthening of the care of juvenile offenders was ensured in France by establishing the judicial protection of young people.

In *Spain*, the sanctioning regime for minors is regulated by a special law adopted, Law no. 5 of January 12, 2000, with subsequent amendments (Păvăleanu, 2012, p. 24).

The question arises as to whether minors in Spain can be sentenced to prison in the same way as adults.

The answer is also negative in the case of Spain.

A juvenile cannot go to jail like an adult would.

The Spanish Penal Code provides in Article 19: "Minors under the age of eighteen shall not be criminally liable under this Code".

When a minor commits a criminal act, he may be prosecuted in accordance with the provisions of the law governing the criminal liability of minors.

The commission of a criminal act by a minor entails a specific legal regime in which his age will play a determining role.

For this reason, it is said that the criminal liability of a minor who commits a crime is limited, as the measures aimed at these cases are aimed at re-education and reintegration into society.

Organic Law 5/2000, of January 12, regulating the liability of minors, establishes criminal liability and the legal regime corresponding to these cases.

In its first article it is indicated that this law shall apply to persons over fourteen years of age and under eighteen years of age for the commission of acts classified as crimes in the Penal Code or special criminal laws⁵.

In Spanish criminal law the age of criminal responsibility is set at 14 years.

From this first precept it is understood that minors under the age of 14 are not criminally liable for committing crimes, without prejudice to any civil liability that may be incurred.

The minimum age to be sentenced to prison in Spain is 18.

This does not mean that minors are not criminally liable, but rather that the penalties will be different.

Minors under the age of 14 are not criminally liable. However, their parents or guardians must face a financial penalty⁶.

⁵ <https://www.boe.es/buscar/act.php?id=BOE-A-2000-641>

⁶ <https://www.conceptosjuridicos.com/responsabilidad-penal-del-menor/>

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If the minor is under fourteen years of age, he will not be held responsible according to the organic law, but according to the provisions of the norms regarding the protection of minors provided by the Civil Code and other provisions in force.

The prosecutor's office must transmit to the public entity for the protection of minors the testimonies of the persons it deems necessary regarding the minor, in order to evaluate their situation, and the said entity must promote protective measures appropriate to the circumstances of the minor in accordance with those provided for in the Organic Law 1/ 1996, from January 15.

In turn, minors between the ages of 14 and 18 are responsible subjects who will be criminally liable for committing a criminal act depending on the type and severity of the crime.

The law regulating the responsibility of minors provides for measures ranging from economic measures to sending to a detention center, and their imposition will take into account the age of the minor, his personal circumstances and the seriousness of the crime committed.

Minors will be tried according to a special procedure.

Sanctions for the criminal liability of minors in Spain have a preventive and educational objective. For this reason, and depending on the gravity, custodial measures are applied or not.

In *Italy*, the Italian criminal system for minors is built around the concept of imputability, thus, in order to be held criminally liable, the minor had to have the capacity to be declared guilty of a crime and be subject to a punishment.

The age at which the criminal responsibility of minors begins is regulated in the Criminal Code in art. 97 and 98.

According to these articles of the law, the minor from the age of 14 to the age of 18 is criminally liable if he has the capacity to understand and will, but the punishment has been reduced.

Under the age of 14, minors are not imputable, that is, they cannot be subject to criminal proceedings.

The juvenile justice system was based on the establishment of the Juvenile Court, in response to the need to identify a specialized body that would protect the particularity of the minor.

This is the body competent to decide on the criminal liability of a minor (https://www.giustizia.it/giustizia/it/mg_1_12_1.wp?facetNode_1=0_6&facetNode_2=0_6_2&previousPage=mg_1_12&contentId=SPS973590).

Jurisprudence considers minors who understand and realize the gravity of their actions, their consequences and the fact that they have committed acts that are not in accordance with the social order to be responsible.

The applicable procedure is a special one, and the sanctions aim at the re-education and reintegration of minors into society.

In *Romania*, the criminal liability of minors is regulated by Title V of the general part of the Criminal Code in force, which represents a unitary system of rules regarding the age and discernment that the minor must have and the sanctions that apply to them.

These sanctions are specific, can only be applied to minors and form the legal framework of educational measures.

And in the specific legislation in Romania, minors are divided into minors who are not criminally liable and those who are criminally liable, the age up to which the presumption of absolute irresponsibility exists being 14.

From the age of 14, the minor is criminally liable if it is proven that he committed the act with discretion.

Regarding the minor, special sanctions are applied in Romania, following a special procedure, different from those applicable to the major.

The special quality of the minor that determines the regulation of a criminal legal situation different from that of the adult is his discernment, the impossibility of the natural person up to a certain age, considered the age of majority, 18 years, to be fully master of his acts and to understand their meaning social and dangerous consequences.

It must be taken into account that during the formation of a person, the stages he goes through are different, the minority stage presenting age-specific characteristics, the most representative being the fact that minors do not possess the same discernment as adults.

Although they can more easily and quickly end up committing antisocial acts, including crimes, than adults, it is no less true that they can be reeducated more easily than them (Vasiliu and collective, 1972, p. 522).

The regulation in Title V of the general part of the Criminal Code, intended for the criminal liability of minors, expresses the legislator's intention to regard minority as a general cause of differentiation that leads to an independent legal treatment, specific to minor offenders (Vasiliu and collective, 1972, p. 522).

The differentiation of the criminal legal regime of juvenile offenders from major offenders is configured by some specific features that concern: first of all, the existence of a special regulation within the general criminal regulation that is dedicated exclusively to juvenile offenders, then, the existence of a category of juveniles regarding which nor can criminal liability be engaged, namely minors under the age of 14 who benefit from an absolute presumption of lack of discernment, proof of the existence of discernment regarding the other category of juvenile offenders, those over 14 years of age, for to be able to engage their responsibility.

Last but not least, specific sanctions are applied to minors, different from those applicable to major criminals, in which priority is given to sanctions that do not affect the freedom of minors.

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Romanian criminal law also provides for a special procedure for judging juvenile offenders.

CONCLUSIONS

The European criminal legislations present, with regard to juvenile offenders, special regulations that ensure a different criminal legal regime compared to the one applicable to adults.

All European criminal legislation divides minors into two categories: minors who are not criminally liable and minors who are criminally liable.

The purpose of a special, differentiated system of employment of criminal liability for minors is to represent an instrument of increased education and not of punishment of the minor who "made a mistake".

In fact, the minor is a subject who has a whole life ahead of him, for this reason we will always try not to definitively endanger the rest of his life because of that "mistake".

It has already been said that the process of judging the minor is based on a proven need for intervention on the personality and identity of the still unformed minor.

Since he is not yet considered fully "developed" from a psycho-physical point of view, the objective is to recover the minor, to return him to society as a future adult responsible for his actions.

The execution of the sanctions applied to juvenile offenders must be centered on the education of the minor, aiming at an adequate response to the deviant behavior taking into account both his personality and his context of origin, what led him to have the deviant behavior.

It must be ensured through the application of criminal sanctions and the emotional assistance of the minor, therefore the emphasis is on education and not punishment.

"Criminal sanctions against subject who committed a crime should be implemented by respecting the principles of justice without distinction of view. This is because there is a deep enough impact resulting from a criminal act" (Siregar R., Saragih F., Panjaitan P. I. Manalu Y. A., 2023, p. 142).

A specific legislative intervention also exists in terms of enforcement, so the legislators in European countries have sought through the regulations intended for minors to ensure the education and psycho-physical development of the minor in order to prepare him for a free life.

The sanctions applied to minors must prevent the commission of new crimes, so minors are engaged in education and vocational training courses.

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