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CHILD CRIME IN ROMANIA

Theoretical
article

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Abstract

In Romania, the issue of child offender, who is not criminally culpable because of age related reasons raises serious difficulties both in preventing and limiting this phenomenon, and in providing effective measures for rehabilitation and social integration for this target group.

By adopting the „Convention on the Rights of the Child”, Romania has aligned with the rest of the countries involved in respecting the international law regarding the protection of children’s rights. However, the interventions aiming at specific practices of these cases have failed to outline a strategic line that defines the type of approach: punitive or restorative?

In this context, this article describes the laws, principles, authorities, services and specific interventions for children who break the law, who are not criminally liable. For those who are interested in such community problems, this article would represent an excellent study on Romania's position both with regard to welfare policies (purely assistance) and in relation to workfare policies (involvement).

The Special Law-general characteristics, fundamental principles, responsibilities and forms of socio-legal liability.

Romania is one of the European states that ratified the Convention of the Rights of the Child adopted by the United Nations General Assembly in 1989, which became operative in 1990, the very year it appeared (Law 18/1990). As a result of this point, which represented an historic landmark in the Romanian social policy things have changed in respect to the approach to child issues, especially to the issue of the child in difficult situations. After almost 14 years of struggle with our own prejudices, value systems and national priorities, with many attempts to build a coherent legislative framework-the foundation of a system of social services of good quality, in 2004 the Romanian legislature adopted Law 272 on the protection and promotion of the rights of the child. With this law, our country reconfirms its adherence to the international principles and values of the human rights and its pro-active attitude in promoting welfare policies for groups of children at risk. The law is based on the following principles:

- principle of child's best interests,
- equality of chances,
- non-discrimination,
- eagerness to make any decisions regarding the child,
- prioritization of parents' responsibility (including their duties towards their children, their care and the observation of their rights),
- decentralization of child protection services,
- multiple intervention and partnership between public institutions and reliable private bodies,
- individualized care/customized for each child,
- respect for the child's dignity,
- listening to the child's opinion,
- assuring the stability and continuity of the care for the child, his or her upbringing and education, and respect for his or her ethnic origin and religious, cultural and linguistic diversity, and last but not least,
- the child's protection against abuse and exploitation. (Law 272/2004, art. 6).

This law defines the following two categories:

- the category of children in difficulties (Law 272/2004, art. 60) for whom the competent authorities become involved, and when necessary, establish one of the special protection measures, namely placement, emergency placement or specialized supervision (Law 272/2004, art. 59) and

- the category of authorities with the material and territorial competence, namely the Commission for Child Protection or the Court, from the child's domicile, to decide that special protection measure.

The main role in order to respect and guarantee the children's rights in Romania is given to the parents'. Alternatively, when parents cannot provide the basic needs and fundamental rights for their children, it is the local community that interferes, where the children and their family live. But when either the family or the local community through the local public authorities fail, the state intervenes complementarily through the specific activity performed by its public institutions and authorities with attributions in this field. The disclaimer of responsibilities under the law of the three socio-legal actors listed above attracts their legal liability according to the level of risk to which that child was exposed or ignored as well as the forms and ways of violation of rules, values and principles governing the matter. In the case of parents who intentionally or unintentionally violate the rights of their children, menacing their life, physical, mental or moral integrity, their legal liability may be:

- administrative (contraventions),
- civil (for forfeiture of parental rights, prohibition of maintaining direct relationship with the child, etc.), or
- penal (penal fines or custodial sentences for offenses such as: minor ill-treatment, family abandonment, sexual intercourse with a minor, rape, incest, children trafficking, etc.).

On the other hand, in the case of the public institutions responsible for promotion, observance and guarantee of children's rights, the forms of legal liability may be:

- civil (i.e. redressing the patrimonial or moral damage created),
- penal (for the employees of these institutions for offenses such as stretch of authority; breach of trust, negligence, fraud, etc.),
- administrative (i.e. declaration of invalidity, revocation or cessation of the legal effects of some administrative acts affecting the rights or obligations of recipients of social services or their families) and
- disciplinary (i.e. disciplinary research, modification or dissolution of the legal relationship of employment).

Minority- A Cause to Remove Penal Liability.

In Romania, children who commit penal offenses are subject to penal liability at the age of 14. This age limit was stipulated for the first time

in the Penal Code in 1968, art. 99, according to which penal liability limits were established as follows:

- the child before the age of 14 is not subject to penal liability;
- the child between 14 and 16 is subject to penal liability only if it is proved that he or she committed the penal act with *clair voyance*;
- the child between 16 and 18 is subject to penal liability;

Since these limits of penal liability have been taken and held in all the subsequent normative acts regulating penology, it is important to emphasize that in this context, for any offense stipulated and punished under the Penal Code, regardless of the seriousness of the offense or the degree of social danger, committed intentionally or recklessly by children under the age of 14, the child being minor removes the penal nature of the act. This leads to exemption of penal liability and orientation of the *casus* from the competence of the penal code to the field of the social and human sciences, namely the social assistance and the child protection.

The child who has committed an offense under the penal law and who is not subject to penal liability enters the category of the children for whom the special law requires as **special protection measures**, specialized supervisor placement (Law 272/2004, art. 59 lit c, art. 60 lit e, art. 85 alin 2 i art 86). The competent authorities that can take special protection measures are: **The Commission for Child Protection** when the parents are in agreement with the proposed measure, **the Court** from the child's domicile, when parents refuse or are unable to agree to the proposed measure, or the President of the General Directorate of Social Assistance and Child Protection, when an action must be taken urgently and the person/family who takes care of the child is not reluctant to his or her take over.

Specialized supervision is a special protection measure that involves keeping the child in the family, a measure that has an impact on the improvement of the child's behaviour only if the family environment is a healthy one, both socially and psycho-educationally, and only if committing the antisocial deeds was an accident. However, people observed in practice that child's violation of the law occurred generally among children whose parents are unable, unwilling or do not know how to adequately fulfill parental authority and responsibilities. In such circumstances, it is hard to admit that family child supervision will be more "specialized" in that family after the establishment of the protection measure only through requiring parental attendance in some counseling sessions planned and provided by specialists from the main county supplier of social services, namely the Directorate of Social

Assistance and Child Protection (DGASPC) and requiring the child to attend school, under go medical treatment, counseling or psychotherapy, give up visiting certain places or having contact with certain people and access some day services (Law 272/2004, art. 85 alin 1) that the local authorities have no duty to establish.

The placement of a child in a specialized residential center, a child who has committed a penal offense, but who is not subject to penal liability for a determined period, is the measure that is established when, after an evaluation,

- the specialists find either that there is a family environment incapable of motivational and moral education, a place with no supportive and patient involvement in the child's behaviour correction or
- the specialists discover that there is a signification in the parents' attitude, an acceptance and an internalization of some deviant behaviour and a marginal position in the local community.

And in this case, too, it is as hard to admit that the results in correcting the child's behaviour in the specialised residential service will be continued at home after the child's returning in the family as long as the local authorities do not get involved in the family in this period, and the parents have no responsibility for their child's return under social security, knowing that such a measure is established for a fixed period!

In this context, **there is an increasing need to promote an active attitude from the part of the local authorities** to establish, develop or create a high degree of accessibility for the child and the family to services of educational and behavioral recovery and rehabilitation and adopt pro-active policies for prevention of such disorders/deviation.

It starts with the sociological theses, which claim that the socialization process involves a long way on the part of the individual to transform himself or herself into a social being, in an environment where the transmission of norms, values, rules, both traditionally and through innovation is provided by institutions such as the family, the company, the school, the church, the work environment, the media and others and where the individual adaptation is different: conformity, innovation, ritualism, evasion or revolt, on the basis of a crisis of morality more and more serious in the post-communist Romania (Durkheim, 1974; Weber, 1993; Remy & Voyle, 1992). The need to ensure a good social control requires the involvement of the local authorities, not only declaratively, but also by creating the necessary tools to know, internalize and respect the social values and norms.

The resignation attitude of the parents and local authorities and the lack of firm and constant strategies at the national level supported with human and material resources necessary for the drifting socio-political and economic climate in the recent years lead to community in security, crime among children and public in tolerance towards these behaviours, and after that to marginalization, labelling and exclusion from school, community and /or local community.

Juvenile delinquency-definition, causes and trends

Juvenile delinquency is a phenomenon that defines all behaviours in conflict with the values stipulated and protected by the penal law, being often mistaken for the concept of murder or crime, and characterized by the existence of some ambiguities in the use of the concepts of crime, offence, delinquency (R. Dulescu & Banciu, 1990).

In the field of juvenile delinquency the deviant acts, considered illegitimate or unlawful are rather seen as effects of a poor familial and educational background, as a **failure in the process of socialization** (Balahur, 2010). They are less seen as antisocial motivations of the person who made them, motivations for which the purpose of the competent authorities' intervention is to treat, protect and rehabilitate rather than punish. Thus, the literature emphasizes that crime among minors is **the effect of the lack of moral and educational values, of the lack of the intra and extra familial positive models, and the effect of a deficient parental style** that can range from excessive tolerance to exaggerated authority. It is practically the expression of the child's victimization by the social actors responsible for his or her upbringing, education and supervision. Affective deficiencies, the disorganized family environment and the lack of moral values in the area where the child was born and where he or she grows lead to bad company and the ratio of forces is unbalanced especially during the adolescence when the child feels the need for freedom and the acquisition of an identity rather lost. Specialized scientific thesis bring to the fore the existence of three factors that define **the sources of deviant behaviour in children**, namely:

- the environment in which the child's personality is formed;
- the individual's personality which is an indicator of the tendency towards an anomie personality when it manifests by impulsivity, affective-emotional insensitivity and inability;
- the situations/ the determinants encouraging the passage to the antisocial act (R. Dulescu & Banciu, 1990).

In this context, the explanation for this behaviour arises more from the deficient

educational model rather than from a deficit in the personality structure, having more of an extrinsic explanation, of social nature rather than of an intrinsic one, a reason why, from the social and legal perspective, the emphasis should be placed on highlighting the minor offender's degree of maturity in the perception of his attitude and motivations in front of the law, on the role that his or her legal representatives have in this equation, on the role of the local community and the government, rather than on the need to establish guilt and punishment for the juvenile defendant. Based on these arguments, I think that it is appropriate to point out that in Romania the philosophy around which the new penal code is built is **punishment** and the prevention policy and the objectives of the juvenile justice related to the age criterion **outline two different legal ways to address children's liability for penal law**, one that makes direct reference to the category of children aged between 0-14, considered to have absolute inability of penal liability and the other that requires the onset of penal liability from 14 years, for those aged 14-18 being divided into two stages: a limited capacity of penal liability, basically conditioned by the child's clairvoyance at the time of committing the penal offense in the case of children aged 14-16, and absolute capacity of penal liability from 16 (Balahur, 2010; Law no. 286/2009).

The Social Assistance System and the Protection of the Child's Rights in Romania

The public services in Romania for children offenders up to the age of 14 and who are not subject to penal liability because they are minors belong to the social assistance and protection field represented as follows:

a. at the central level:

- the Ministry of Labour, Family and Social Protection for the Elderly;
- the National Authority for the Protection of the Child's Rights and Adoption (ANPDC);

b. at the county level:

- the Commission for Child Protection (CPC);
- the General Directorate of Social Assistance and Child Protection (DGASPC);

c. at the local level:

- the Specialized Public Service of Social Assistance organized in the cities, towns and local councils (SPAS);
- the Community Advisory Structures (SCC).

If the role of social services at the central level is to ensure the coordination and supervision of national consistent methodology, the role of local services is to ensure the prevention of any kind of risk that could lead to the separation of children from their families, and at the county level, the role of the social services stated above is to provide the methodological coordination of the local public

services, promote, defend, intervene, propose and establish the special protection measures and the appropriate services to meet the needs of the children who are temporarily separated from their families.

The Services for the Children Who Commit Penal Offences and Who Are Not Subject to The Penal Liability

The specialized services for children who are in conflict with the law and who are not subject to penal liability are organized according to the law only by the General Directorates for Social Assistance and Child Protection either as a **Specialized Residential Centre** for children who commit penal offences and are not subject to penal liability or as a Day Centre for Juvenile Delinquent or Predelinquent Supervision.

The fundamental principle of all the approaches in the case of the children in a certain state of difficulty/ risk is the principle of eagerness and best interests of the child, and the standard working method used by all the social actors empowered by law to fulfill the specific interventions is the method of case management (Order no.288/2006).

The general objectives of the interventions provided in the specialized services mentioned above aim at:

- maintaining, restoring and developing the capacities of children and parents to overcome the situations that could lead to the separation of children from their families;
- protecting, bringing up and taking care of the child temporarily or permanently separated from his or her parents, in response to the placement measure under the law and **the specific objectives** followed while ensuring planned interventions aim at:
 - preventing and combating acts or deviant behaviour of children;
 - encouraging and supporting children in moving towards a responsible and fair life;
 - developing the respect for the law and the moral values, in the spirit of tolerance, dignity and solidarity;
 - developing the respect for the law and the moral values, in the spirit of tolerance, dignity and solidarity;
 - developing the child's responsibility and awareness to the factors that might endanger his or her physical and moral evolution;
 - reintegrating the child in school, family or social life;
 - training and strengthening the delinquent children's values, attitudes and pro-social skills;
 - integrating them socially through constructive leisure activities in the community based on the local community resources;
 - improving school performance and /or

reintegrating these children in the formal education system;

- improving parental skills for education, supervision and care in the case of delinquent children.

Minor offenders who are not subject to penal liability for acts they are accused of are offered specialized services for a specific period, practically considered the necessary period for the behavioral socio-educational recovery and rehabilitation. While the children are part of such services, it does not mean that they lose their rights to health, education and socialization in the community. Depending on their learning needs, these children can attend schools in the local community where the specialized service works or they can attend special education schools. With in these social services children get care, informal education, and psycho-emotional support for the development of those skills necessary for independent living and their reintegration in family, school community. These services also provide primary medical care, each child getting the medical assistance from a GP or a specialist in the community, according to his or her medical need, benefitting from the required medication, intervention or prescription. If during this period specialists in these services develop specific intervention programs focused on socio-psycho-educational needs identified through the assessment stages completed until the child gets accommodated, the interventions in the family system in which the child is to return, are more formal than real, with virtually no impact. Even if the modification and the additions to the law 272/2004 in 2013 attempted to repair a legal vacuum on this issue by introducing in the law, for the first time, the requirement for parents to attend counseling sessions provided free of charge by specialists employed by the DGASPC, the compliance with these requirements is difficult in terms of both the DGASPC – the institutions in charge of providing this service facing a huge short age of staff due to budget restrictions on staff expenses ordered by sector legislation since 2009, and the parents on the other hand, invoking many obstacles and the lack of financial resources to move from their rural home to the towns of the county where they can get such psycho-social services in the providers' head quarters.

Regarding the possibility of maintaining direct relationships with the family, the legal framework encourages and supports this right the children have in the welfare system, but most of the times, these relationships between the children and their family members are rather uncertain, getting worse and worse in time. In most cases, the deterioration of these relationships between the child and his family after the establishment of some special protection measures proved to be the effect of the

parental migration abroad, the insecure emotional relationship marked by neglect or poor upbringing of the child in an abusive environment, the great distance between the care service headquarters and the child's native town corroborated with the lack of financial resources needed to go to this distance and the lack of support provided for this purpose by the local authorities which have so little interest in the children's return home.

Observations and personal opinions

- The specialized supervision in family is the measure with an impact on the child behavior correction only if the family environment is a healthy one, both socially and psycho-educationally, and only if committing that antisocial act was an accident.
- It is obvious that the violation of the law occurred generally among children whose parents are unable, unwilling or do not know how to adequately fulfill their parental authority and responsibilities.
- The local authorities do not have the minimum package of services to support the child and the family, coordinate and conduct appropriate supervision and ensure success in their community integration.
- In Romania there are no compulsory minimum standards for the prevention and monitoring and the day care centers necessary to ensure "specialized supervision in family", services that the local councils should have and develop.
- The preventive and supportive role of the local authorities is more and more diffuse, being transferred to the responsibility of the state, while the local public services of social assistance (SPAS) focus their entire business on offering benefits while neglecting (most often due to objective reasons) planning, offering and monitoring of social services;
- Overcharging the staff in the protection and social assistance system, neglecting proper responsibility by some of the social actors and non-punishing the lack of involvement lead to decreased motivation of the specialists in providing a high quality service;
- Having a child with conduct disorder creates an unbalance both in the family system and in the extra-familial relational one, **the sanction** most often being the labelling, **the marginalization, the discrimination and last but not least the social exclusion.**
- All these methods of unconventional "punishment" accompanied by "unsupported interventions, non-standardized and unfolded on the child's needs most often lead to deep emotional changes in children and their relapse.
- The psycho-emotional pressure accumulated both before committing the antisocial act and the one gathered during the research and then after having

raised awareness of the consequences can leave "**fingerprints**" on the future adult's personality.

- It is important that family, school, church and civil society be prepared to react correctly, complementarily and inclusively, adopting programs appropriate to the formal, informal and non-formal education.

Instead of conclusions...

It might be important to wonder whether parents need parental education, whether students require the development of the civic responsibility, the selfless attitude and the imitation of the positive models, whether the church and the other authorities have been able to identify ways in which the authors and their victims can understand and overcome emotional barriers created by undesirable behaviour?! ...

Maybe the introduction of the notions of "code of good manners" in the curricula of primary school, of the topics related to "rights, obligations and penalties for children" in middle school, and the Constitution of Romania and optional elements of "civic, disciplinary, civil and penal responsibility" at high school would create a chance for the development of a desirable behaviour in children and young people...

Maybe to develop civic responsibility and a selfless individual personality, the role of the church in the community would be more visible if they developed programs of non-formal education focused on a system of beliefs and values accepted by children, and the role of the school would increase by adopting an inclusive attitude and developing programs of informal education including spare time activities, programs that could be decisive and measurable in time while increasing the degree of Community safety awareness and diminishing juvenile delinquency.

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Abbreviations

ANPDC – Autoritatea Națională pentru Protecția Drepturilor Copilului și Adopție [The National Authority for the Protection of the Child's Rights and Adoption].

DGASPC – Direcția Generală de Asistență Socială și Protecția Copilului [The General Directorate of Social Assistance and Child Protection].

CPC – Comisia de Protecție a Copilului [The Commission for Child Protection].

SCC - Structurile Comunitare Consultative [The Community Advisory Structures].

SPAS - Serviciul Public Specializat de Asistență Socială organizat la nivelul municipiilor, orașelor și consiliilor locale [The Specialized Public Service of Social Assistance organized in the cities, towns and local councils].