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# THE CHILD OFFENDER UNDER THE AGE OF CRIMINAL LIABILITY

Theoretical  
article

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## Abstract

*At European level crime among children represents a contemporary issue and in Romania, the philosophy of the new penal code approved by Law No 286/2009 is shaped around punishment. Prevention policy in Romania and juvenile justice objectives relative to age criteria outlines two different legal manners to address children's liability under the law. One is targeting the category of children between 0 and 14 years of age, which considers the absolute inability of criminal responsibility and one that provides criminal liability starting from the age of 14. The sensitivity of the issue of children involved in unlawfull acts and the inventory of responses to it brought me to the necessity of research the types of approach and diversity of social services built around this target group.*

### 1. Reasons for choosing topic

In Romania, lately, there is a growing trend of violation of the norm among both adults and children. Questions that come naturally as: What are the causes? What can be done to stop this phenomenon? What interventions have the desired impact? There are causal link between the family and the child's behavior model in society between adult attitude towards the system of values and education and financial difficulties which it presses? Violators do consciously, assume the consequences, they want rehabilitation? There are enough services for socio-behavioral and emotional rehabilitation for children in trouble with the law? What exactly is the position of the Romanian state to this type of problem compared with the positions taken by the European countries?

The profession of social worker in a public institution of intervention and coordination role of social care at the county level puts you face to face with some harsh realities, difficult to control. Even if you are a professional practitioner in the right place quite often realize that *the social field stability* depends on the dynamic forces that influence it and to whom remain uncovered, which forces you to look for solutions to social problems that cross the boundaries of your knowledge (Durkheim E., 1974).

Another reason for the choice of research topic is the growing interest of media for this type of cases, the coverage issue in flagrant violation of children's rights Image / dignity / privacy although the legislative framework governing the matter prohibits (Law 272/2004, art. 27, 87) and mass media pressure on average during the previous legislative approval when new penal code, by emphasizing the social danger of serious crimes committed by children at young ages (rape, murder, theft, destruction, etc.) attempted to lower the threshold for criminal responsibility at the age of 14 years to 13 years.

In practice, we can observe in the situation of the child offender a degree of non-involvement of stakeholders such as parents, representatives of school / church and local councils in preventing deviant act and / or child support in overcoming behavioral problems and socio-psychological and educational rehabilitation by adopting a position of remitting or reactive towards the child. This reaction creates conditions to increase the risk of criminal recidivism, stigmatization, marginalization and social exclusion of children and confirm in the same time, sociological theories of social reaction where currently we do not have service packs and social programs focused on correcting the attitude and approach such anti-social behavior, specialized social services only for criminal children are reduced in number and capacity and minimum quality standards for these social services and

policy / national strategy to limit this type of behavior are lacking.

Therefore, the sensitivity of children involved in criminal casework and the inventory of the forms of response (to take into account the purposes of analysis of the legal provisions related to interventions that are necessary compared to the real possibilities of intervention) to issues they raise, took me in front of a major challenge, achieving a qualitative study of how this target group is approached in Romania whilst assessing the response arrangements in some European countries.

The importance and timeliness of the problem

Special law governing the rights of children who have committed offenses under the criminal law and are not criminally responsible due to minority requires special protection measures, specialized surveillance in family or placement for a determined period in a specialized residential center for these children (Law 272/2004).

Setting specialized supervision measure in family is conditioned to the following: child belonging to a healthy family environment both in socially and psycho-educational terms, committing antisocial acts not to be repetitive (context which might result in recidivism, rehabilitation of child behavior being naturally accomplished through careful supervision from parents, without efforts by authorities), mandatory of the child during the measure of protection is active to: attend school, undergo medical treatment, counseling or psychotherapy, the prohibition of certain places or to have contact with certain persons and required access day services, and parents of children who commit criminal acts and are not criminally responsible have the responsibility to attend counseling sessions conducted by the Directorate General of Social Assistance and Child Protection, based on a customized program of psychological counseling. What happens when locally doesn't exist these day centers and parents, even if they offer moral guarantees doesn't have the financial resources needed to participate in counseling sessions? What are the objectives of these meetings and to what extent psychologists have the specialization to respond to the needs identified in these parents? (Law 272/2004, art. 84, 85).

Placing a specified period in a specialized residential center for children who commit criminal acts and doesn't have criminal liability is a special protection measure established for a certain period when the offense committed represent a high degree of social danger or in the case when inside biological family / extended family or in community don't exist enough guarantees and resources for its behavioral rehabilitation and socio-educational integration, being exposed to a high risk of relapse, stigma and social exclusion. In

this context, we might ask ourselves how the child perceives this special protection measure, as a penalty related to his act or a form of aid for rehabilitation to social behavior (Law 272/2004, art. 86).

As a statistical picture, in Romania, in 2007 the number of crimes committed by children under 14 years were numbered 3361 and the number of crimes committed by children aged 14 and 18 were in number 2148 (Balahur, 2010). In 2013 there was recorded nationwide 3271 crimes committed by children under the age of 14 years and a no. of 2309 crimes committed by children aged between 14 and 18 years.

In 2014, the number of offenses committed by children only in the first three quarters (during January-September 2014) of the year is a no. of 2745 in which 1041 crimes were committed by children who are criminally responsible and 1704 crimes were committed by children who are not criminally liable (Source National Authority for Child Protection and Adoption).

In Iași County, reporting us to the same temporary landmarks, in 2007 the number of crimes committed by children under 14 years reached the attention of the General Directorate of Social Assistance and Child Protection were numbered 107 and the number of crimes committed by children aged between 14 and 18 years in the records IPJ Iași were numbered 862. In 2013, in the county was registered no. 79 offenses committed by children under the age of 14 years and a no. 209 offenses committed by children aged 14 and 18 (**Tabel No. 1**).

During 2013 for a total of 72 children who have committed criminal offenses but do not respond legally was established the measure of specialization in family supervision (**Tabel No. 2**).

The analysis of activity reports for the years 2010-2014, the General Directorate of Social Assistance and Child Protection Iași and quarterly monitoring forms we can see in the last five years, a growing number of children who have committed crimes and because of the minority didn't answered criminal. If in 2010 there were 61 instituted special protection measures for these children, in 2011 there were 45, in 2012 a total of 87, in 2013 a total of 79 measures and in 2014, a total of 80. For all these children should be noted that there are only two entire county social services: specialized residential care for the child who committed a criminal offense and is not criminally responsible with a capacity of 24 places, who ensures socio-psycho-educational support, care, recovery, supervision and rehabilitation, founded in February 2005 by a PHARE project and a day center with a capacity of 20 seats (**Tabel No. 3**).

Before asking: Who are these children? What is the age of antisocial behavior onset and what is their level of education? Institutional resources that we have guarantee relapse prevention and reintegration of the little offender into the community? Existing juvenile justice system in Romania and juvenile delinquency addressing fall within the types of existing approach in the Community?, is important to emphasize that social services for children who record criminality in Romania by the age of 14, have a capacity maximum of 120 seats available in nine residential centers and about 90 people in four day care centers.

## **2. Crime among children in Europe**

At European level crime theme among children is still a topical issue. Concerns European Group for Research on normativity (GERN - European Research Group on Normativity) started in 2002 with a socio-historical approach on juvenile criminal justice in 9 Western European countries (Bailleau and Cartuyvels, 2002), continued with research in 2007 about the neo-conservative paradigm influence on young justice paternalistic welfare model in most European countries (Bailleau and Cartuyvels, 2007) and in 2010, as a result of funding from the European Commission Research Directorate appear a new collection of theoretical science articles (Bailleau and Cartuyvels, 2010) on the Criminalization of Youth and conviction play in various European countries, including in addition to initial countries, other several Eastern European and Nordic countries.

a. The findings of this research and other recent research specialist reveals that in Europe, policies on crime among children is classified into two main currents:

- Type welfare policy or social welfare model in which the state assumes a supportive approach considering a child victim of socio-educational factors that the State is considered directly responsible.
- Punitive policies, which are divided into: neo-liberal policies where the state does not assume any responsibility on the causes of community security decreased by increasing crimes among children considering that the child and the family are directly responsible for this type of conduct, addressing exclusively punitive measures and neo-conservative policies in which the state transfers responsibility of responding to the community, family and entourage of the child, the child offender case law addressing local support measures and public safety policies

b. Increasing juvenile crime is directly proportional to increasing social and economic vulnerability of the original family and socio-cultural space in which the child lives, practically

poverty is an indicator of the risk of crime the child is posed to.

c. There is a growing trend theme dramatization of juvenile delinquency and an increase in social intolerance pointing to hard policies and practices reminder of the social rules of liability and / or punishment (Goldson, 2008; Bailleau and Cartuyvels, 2007) juvenile delinquency is considered a "risk factor" and "programs developed as a priority objective <control risk> measures and strategies for prevention and early intervention, enter sometimes in conflict with the rights of the child" (Balahur , 2010).

d. Is observed a transfer of responsibility society and the rule of law to the young offender and his entourage family by local support policies and public safety policies, the differences between states being determined by socio-cultural and legal traditions of each state.

e. The principle of many actors government that have been delegated (under the downturn effects of the welfare model or the growing influence of neo-conservative approach) public management skills of juvenile deviance to other professionals recorded in addition to greater surveillance / control on young people and their families and a perverse effect, extending criminalization, practically extend to the list of behaviors that define juvenile delinquency, acts / behaviors that previously this type of government were simple deviations from the norm. (Goldson, 2008).

f. In central Europe international conventions led to create a criminal justice culture focused on discourses about human rights and in other states, these conventions have become tools to challenge welfare policies that do not focus enough on the rights of children, here is mentioned Norway. (Hydle, 2007).

g. Juvenile justice systems in Europe are struggling with some of the problems facing the US, namely: the over-representation of ethnic minorities in delinquent populations, the difficulty of developing effective prevention strategies and the tensions and contradictions between the two basic axes such systems: to punish the offenders and to treat and rehabilitate young people, a good example being Italy (Nelken, 2007) and other European countries affected by the phenomenon of interstate immigration juvenile justice system showing a tendency to focus on young foreigners or people of foreign origin.

h. Although it is based on eight major principles such as precise definition of minority age, the creation of specialized courts, the role of experts in ensuring procedures, decision making after proper evaluation of personality and living conditions of young people, dissociation of the nature of the offense and measures taken, the

establishment degree of individual and collective responsibility, the primacy of educational measures without fixed boundaries and refusing the measures to detention, welfare doctrine is heavily criticized in most European countries seeing a transition to workfare policies (of labor, involvement) policies to mobilize individuals and families and enhance social control (Giddens, 2002) sustained policy on the same wave as the Welfare State Assets (Dumont, 2008) Criminal Policy focused on the victim and its needs of recovery (Balahur, 2010).

g. At European level outlined concerns about dropping in the last three decades of social welfare policies and move towards an exaggerated punishment and crime control associated with a "new iron cage" context in which it is alleged "need to develop special programs for rehabilitation and integration of child offenders" (Balahur, 2010).

i. Except Denmark and Scotland, all Western European countries have specialized juvenile courts, but they differ in organization and authority. In Germany, England and Wales, there are different courts dealing with interventions for social assistance (welfare Interventions) and those for offenders (Mehlbye J., Walgrave, L., 1998).

j. Belgium, Scotland and Denmark do not have a criminal law specialist in juvenile delinquency and deals almost exclusively in terms of welfare (Mehlbye J., Walgrave, L., 1998).

k. Although the age of criminal responsibility varies somewhat from country to country, age 16 appears to be crucial line with prevailing welfare approach for children under this age and punitive approach prevailing over her children (Mehlbye J., Walgrave, L., 1998).

l. Scotland has the lowest age of criminal responsibility worldwide, 8 years old, and although it seems to be the biggest policy of punitive juvenile justice, juvenile offenders are treated more using the criminal justice until the age of fourteen years; anyone under that age is usually treated by the courts of welfare / protection (McAra, 2010).

m. In Belgium and Luxembourg, welfare can be seen as being strongly dominant handles all juvenile offenders under the age of criminal responsibility (18 years) through welfare system rather than the criminal justice system (Cook, 2012).

n. The age of criminal responsibility in some European countries is: 8 years Scotland, England and Wales 10 years, 12 years Netherlands, Northern Ireland, Turkey, France and Greece 13 years with the possibility of taking educational measures starting whit the age of 10 and 8 years old, 14 years old Italy, Hungary, Germany and Austria, 15 years Sweden, Norway, Iceland, Finland, Denmark and the Czech Republic, 16 years old Portugal, Luxembourg and Belgium 18 years.

o. Establishing the age of criminal responsibility has been a highly controversial topic, with opinions claiming that in establishing the threshold of liability were not considered scientific theories concerning developmental psychology and cognitive maturity stages defining development understanding and predictability capacity of the child and support the thesis of media pressure on juvenile justice policies and views which calls for rethinking the child and childhood, encouraging to the "replace mutual relations of the children with adults, and childhood to maturity" because " their expressed desires and needs of children are relevant to the design and implementation of policies and social practices "(Mayall, 2001).

p. In Romania, the philosophy which is built around the new penal code ( Criminal Code approved by Law no 286/2009) is the punishment and prevention policy and objectives of juvenile justice in relation to age criteria outlined two different legal ways to address the criminal responsibility of children before the law, one that makes direct reference to the category of the children aged 0-14 years of age considered the absolute inability of criminal responsibility and one that provides onset of criminal responsibility from age 14, age range 14 to 18 years is broken into two phases: a limited capacity for criminal responsibility, basically conditioned by the presence of discernment child at the time of committing the offense provided for children aged between 14 and 16 unfulfilled years old and absolute capacity of criminal responsibility from the age of 16 years (Balahur, 2010 and the new Criminal Code).

### 3. Research Objectives

- ✓ Identify the profile of the child offender without criminal liability Romania
- ✓ Impact Assessment of residential protection measures for child offenders who are not criminally responsible in Romania
- ✓ Identify and define strategies in line with European standards of juvenile justice, strategy of prevention, intervention and rehabilitation of children in conflict with the criminal law and which are not criminally liable in Romania because of minority.

### 4. Type of research and methodology

Sociological study will be mixed qualitative and quantitative (mixed Research Methods) and will be achieved by:

- ✓ Documentation and qualitative analysis of national statistics on the number of children prosecuted under 14 years, the number and capacity of residential and day care social services for this category of children and number of service providers accredited public and private provision of such services.

- ✓ Application interviews to DGASPC directors and representatives of ANPDCA Romania to identify the degree of concern of this problem, the perception on the role of mass media and public opinion in the protection and rights of these children, creating currents of opinion and state policies, attitudes towards legal measures that can be taken and quality of services, strategic guidelines and national social policies that should be adopted.

- ✓ Application questionnaires to Iasi county community social workers to measure awareness of the number of cases in each local community (cases in research phase, active cases as special protection measures and cases monitored after termination of special protection measure), opinion to legal measures that can be applied / types of social services for this group of children in the community and their capacity, degree of involvement of parents / teachers / church, social policy vision characteristic of this social problem.

- ✓ Interviewing children now protected in the center in order to assess the level of knowledge and understanding of the causes that lead to protection measure and impact of the given interventions (children's expectations from professionals, family, society, prevision of their future and an ideal model of specialized services for them), the role of mass media and public opinion in determining criminal conduct and protection and compliance of their rights.

- ✓ interviewing former recipients to observe the evolution of socio-educational perspective of subjects and to identify in what measure their rights responded to their needs, if the services offered were according to their needs in that period, their vision as could be prevented and corrected deviant behaviors in children, the projection of the ideal model of a social service behavioral rehabilitation of children.

- ✓ Focus group with specialists: social workers, psychologists, teachers, priests, doctors, police officers, NGO representatives and Iasi CPC) for analysis awareness and respect for children's rights offenders, these specialists attitude towards the child and psycho-socio educational services existing and for correcting behavior and his rehabilitation.

- ✓ Focus group with specialists (head center, social worker, psychologist, educator, supervisor, case manager) from specialized residential centers and DGASPC specialists for an analysis of the need and the quality of this type of residential service.

### 5. Predominantly qualitative research: arguments concerning the choice of this method of research

Since it is known that qualitative research is "interpretive study of an aspect or a specified problems in within the researcher play a central

role to the meaning given to it" (Parker, 1994) research method different from quantitative one by the fact that "is not based on theory [...] and do not involve statistics" (McQueen, 2006), choosing this method of research starting with some statements made by leading researchers and scientists which in their science-theoretical work on sociology and its specific methods of research have pointed out that:

- "Qualitative approach reached maturity today and can arrogate to himself, without false modesty, the title of scientific approach" (Moscovici, Buschini, 2007).

- "Qualitative approach looks like an adventure (Willing, 2001) but this does not exclude rigor"

- "Unlike quantitative research, qualitative methods take communication researcher and respondents as part of its explicit knowledge production" (Agabrian, 2004) and "qualitative research product is a dense creation, complex that reflects interpretations of the researcher on social world custom on local situations "(works cited, p.10).

- The richness of qualitative research reports are "epistemologically in harmony with the reader experience" (Stake, 1978) what it can give him greater significance.

In conclusion, qualitative research requires a high degree of involvement of the researcher and data collection is performed by at least one of the following techniques: interviews, focus groups, observation, study of documents and other techniques appreciated and recognized in academia.

## 6. Conclusions

It is known that the existence of a child with conduct disorder creates an imbalance both in the family system and in the relational extrafamilial, most often sanction is the labeling, marginalization, discrimination and social exclusion not least. All these ways of "sanction" unconventional "accompanied" unsupported interventions, standardized and unfolded on the child's needs often lead to profound changes in child emotional and relapse. Psycho-emotional pressure accumulated by the child both before committing antisocial acts and the one accumulated during investigations and then after awareness the consequences can leave "fingerprints" on the personality of the future adult. It is important that family, school, church and civil society be prepared to react correctly, complementary and inclusive. These reactions should be the result of state policy aimed social welfare policies such as welfare services / support given in the context of a solid prevention system in which the role of formal, informal and non-formal education is supported and defined. It is desirable that the research findings will be made on this issue to increase the interest to stop / discourage juvenile delinquency by creating a well thought out and implemented national strategy, through concrete actions

undertaken both by local authorities (school, church, municipality, etc.) as well as civil society and non-governmental organizations.

I think that it is not enough to observe, ask yourself several questions on this issue and to criticize the social assistance system, legal and administrative system, the individual, education, family, society and the general mentality! As a responsible citizen, a state in which social policies are in constant search and fail to provide community security by the state responsible for the quality of life of its citizens, I believe that the necessary scientific theoretical studies that may influence decision makers in the purpose of supplementing, modifying and improving public systems to increase supervision, education, child protection and assistance for achieving progress in child behavior and attitude towards rules, rules and regulations!

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## Appendices

### Appendix A

#### Tabel No. 1

*Number of children who have committed criminal offenses and are not criminally liable in Ia i County 2013*

Committed act	Number of children who have committed criminal offenses and are not criminally liable	
		In which with history
Theft	34	3
Qualified theft	17	4
Repeated qualified theft	2	1
Robbery	1	1
Attempted robbery	0	
Attempted robbery and destruction	0	
Destruction	7	
Percussion and other violents	2	
Breaking and entering	2	
Bodily injury	3	
Rape	1	
Leading car without license	1	
False identify	1	
Vagrancy Behavior predelincent	1	
others	7	
<b>Total</b>	<b>79</b>	<b>9</b>

*Source: DGASPC Iasi - Quarterly monitoring file of child rights protection and promotion for quarter I, II, III, IV 2013.*

### Appendix B

#### Tabel No. 2

*Child offenders and criminal liability in Ia i County 2013*

The gender distribution of children who have committed crimes and are not criminally liable		The age distribution groups of children who have committed crimes and are not criminally liable	
Male	Female	7-9 years	10-13 years
62	17	4	75

*Source: DGASPC Iasi -Quarterly monitoring file of child rights protection and promotion for quarter I, II, III, IV 2013.*



**Appendix C**

**Tabel No. 3**

*Children who commit criminal offenses and have criminal liability*

Committed act	Number of children who have committed the crime		Number of children for the court decided sanctioning / rehabilitation	
		In the history	Prison	Rehabilitation centers
Theft	127	0		
Robbery	36	0		
Injury	12	0		
Prostitution	0	0		
Rape	13	0		
Murder	4	0		
Other (specify) infanticide, trespassing, sexual intercourse with a minor, driving without a license	17	0		
<b>Total*</b>	209	0		

*Source: Probation Service from Ia i Court, institution who it have shown that beneficiaries entering the track Probation Service Ia i Court are sanctioned by the educational measure of supervised release and sentenced to a suspended prison sentence under supervision.*

<i>The gender distribution of child offenders and have criminal liability</i>	
Male	Female
200	9

**Abbreviations**

**ANPDC** – Autoritatea Na ional pentru Protec ia Drepturilor Copilului i Adop ie [ The National Authority for the Protection of the Child’s Rights and Adoption].

**DGASPC** – Direc ia General de Asisten Social i Prptec ie a Copilului [The General Directorate of Social Assistance and Child Protection].

**CPC** – Comisia de Protec ie a Copilului [The Commission for Child Protection].

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

**SPAS** - Serviciul Public Specializat de Asisten Social organizat la nivelul municipiilor, ora elor i consiliilor locale [The Specialized Public Service of Social Assistance organized in the cities, towns and local councils].

