ASPECTS OF COMPARATIVE LAW IN THE MATTER OF JUVENILE PRE-DELINQUENCY AND DELINQUENCY WITH TRENDS TOWARDS SANCTIONS AND PREVENTION

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Abstract
This study aims to be an interdisciplinary, criminal-criminological approach of the minority institution in terms of criminal liability, with an evolutionary dynamic of the pre-offense and post-offense assumptions. The operative criterion is the notion of juvenile pre-delinquency (pre-deviance or potential deviance), because it refers to all the acts violating the norm of moral behaviour, which in certain circumstances may lead a teenager to appear before the court, and in other circumstances not.
The deviant conducts of minors do not necessarily have a criminal nature and not under all circumstances. If these different acts of them do not violate the criminal norms, representing only deviations from ethical rules of behaviour, they are not legally sanctioned, but only in moral forms. Thus, this approach is meant to be a criminological transition from the criminological plan to the criminal illegality.

Keywords*: criminal liability, sanction, deviance, behaviour, conflict*

Introduction

The behavioural deviations do not harm the normative-axiological system of society and at the same time act as a handicap for the perpetrator himself and the harmonious development of his personality. They cannot be classified as delinquent acts, because otherwise there is the risk to become equivalent to the worst crimes committed by an adult, thus harming relationships and the values of society as a whole. In order to go beyond the limits of the criminal norm criterion, one has to use other criteria as well in assessing the teen behaviour, not so much subjected to the moral or legal element, as to the social deviance in its widest sense. The finding that there are at least two kinds of rules - legal rules and non-juridical rules – makes it necessary to find a criterion to distinguish between delinquency and pre-delinquency, all the more so since sometimes identical behaviours are measured by different regulatory systems.

The study of juvenile pre-delinquency requires a change in the legal perspective and of the criminal or moral normative criterion with a multi and inter-disciplinary perspective of specific problems which the young person has to face, in his life environment and social existence. Such a study is useful as it suggests a multiple explanation of the "primary" causes that determine certain categories of pre-deviant teenagers to later commit acts of delinquency and of the conditions of development of the deviant minor's personality, while allowing at the same time a delineation between pre-delinquency and delinquency and between pre-delinquency and "normal" behaviour, as a sequence of acts that do not necessarily determine one another.

From this point of view, as already pointed out in other papers on the issue of juvenile delinquency, the pre-delinquent behaviours exhibited by some teenagers are not always a prelude to delinquent behaviour, as much as the latter does not represent the natural consequence of previous committing of pre-delinquent acts (*Anne-Marie*, 2012).

The relation between *pre-delinquency* and *juvenile delinquency* should not be treated solely based on the normative and sanctioning nature of rules imposed by the adult society. Many of the

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deviant acts committed by young people are actually their defending reactions in relation to adopting their new roles and social responsibilities and should not be interpreted as "symptoms" of an alteration of personality or as manifestations of psychopathological disorders.

Regardless of the perspective from which we approach and define juvenile delinquency, the statistics even if they cannot create a complete image, indicate that in Romania the measures of prevention and control do not have a huge impact, although at least theoretically the efforts have intensified in recent decades[1].

Juvenile law in Hungary

The Hungarian legal system is continental, which means that the guiding principles are not based on precedents, but on substantial and procedural provisions of law in jurisprudence. As for the age characteristic, the provisions of criminal investigation make a sole distinction between the authors of crimes. The convict, who at the time of the crime was already 14 years old, but did not yet reach the age of 18, is considered minor, and if he is already 18, is considered an adult. In the Hungarian system of penalties the concept of youth does not exist.

The Hungarian juvenile justice system meets the criteria prescribed in the international law in the field (the Beijing Rules, the New York Convention, and Riyadh Guidelines). These international acts define the guarantees of criminal law and criminal principles and establish the proof of criminal liability, qualifying prevention and social reintegration as a duty of the law enforcement organs involved in dealing with solving cases about participation of minors. The international agreements consider the legal consequences of the arrest as a decisive argument and specify – instead – to apply legal consequences that can replace imprisonment, the so-called alternative sanctions and the extralegal approach.

The confiscation of property cannot be applied to minors, and the fine is advisable only if the minors have independent income from salaries or corresponding property. The community service measure can be applied to a minor if he has reached the age at which the respective punishment may be imposed. If the criminal minor did not hire a lawyer, the state has to provide a defence attorney for him. During the trial, the parents or legal representatives of the child have the right to participate as witnesses. In Hungary, parents are not liable for the deeds committed by their children.

Hungary's judicial system is unitary. There are no special military courts or for minors. However there are councils for minors and military personnel, which in some relevant cases have judicial powers. There are some differences between penalties that may be imposed on juvenile offenders. The minimal and maximal duration of detention of minors is shorter. Therefore a juvenile offender can be imprisoned for a period of 15 years (Paragraph 110 Law IV of 1978 - Criminal Code). A juvenile offender cannot be put in the same cell with adults.

There are two types of correctional institutions, 14 national and 17 regional. One should note that the 12 correctional institutions include their own factories. The minor can be sent to a reformatory. The court decides the term to stay in the reformatory, ranging from one to three years (para. 118, section 2 of the Criminal Code). After a year of being in reformatory, the minor may be temporarily released following a court decision. In this case it is mandatory the supervision of the minor by a probation officer[2]. The imprisonment measure is applied if the detention in the institution is more favourable for a proper education.

Juvenile detention homes and reformatory schools are part of the Ministry of Youth, Family, Social Affairs and Equal Opportunities. On 31 December 2001 there were two houses of detention, a correctional school for boys and a home detention and correctional school for girls. The Ministry of Youth, Family, Social Affairs and Equal Opportunities should provide the necessary conditions for

[1] Barnett, R. (2009). *Restitution: A New Paradigm of Criminal Justice.* Devon: Willan Publishing.
[2] Shearing, C. (2000). *Punishment and the Changing Face of Governance*.

educating young people in these institutions, to ensure their supervision, together with the Ministry of Justice.

Juvenile Law in Estonia

If the minor comes in conflict with the law and justice, he finds himself under the supervision of police, prosecutors, probation officers and the court. In Estonia, the minor can be held criminally accountable since the age of 14. According to the law, all the police procedures on a minor (aged up to 14) has to be done with the mandatory presence of a social worker or a worker for the child's welfare. In Estonia, the prosecutors handle the cases involving participation of minors, but officially there are no judges or courts specialized in children's cases.

After the criminal investigation, a court decides the penalty for the offenders: imprisonment, probation or educational measures. The maximum penalty imposed on a minor (aged up to 18) is ten years imprisonment.

It is possible to terminate the criminal case by the prosecutor or judge if there is no public interest in the matter or the offense was done by reckless behaviour. In such cases the minor is sent to the committee for minors or has to serve from 10 to 240 hours of unpaid community service.

In 2011, there were 4,464 adults and 77 minors detained in the Estonian prisons. The male prisoners, aged from 14 to 21, serve a prison sentence in Viljandi penitentiary. The largest groups of juvenile prisoners are made up of minors aged from 14 to 18, as these people are serving a sentence for the first time. Most prisoners committed crimes against property. Viljandi Prison is the only institution in Estonia for juvenile offenders. Work within a prison for juveniles is specific as the personality of the minor is not formed yet. A young inmate is impulsive and can be easily influenced, which facilitates his re-socialization. However, 80% of male juvenile offenders commit crimes again.

Criminal minors who are not yet 14 years old or commit an illegal deed, as sanctioned by the Criminal Code or other law, are referred to the juvenile committee, court which exists in every region. This committee should be made up of people with expertise in education, social science and health, a police officer, an employee of the local government and a secretary of the committee for minors. Minors may be applied one or more of the sanctions listed below:

1). warning;

2). sanctions regarding the organization of the child's education;

3). his referring to a psychologist, social worker or other specialists in examinations;

4) counselling;

5) obligation to reside with a parent, a foster parent, a guardian, a family offering care or in an orphanage;

6) community service;

7) participation in youth programs, social or medical treatment programs;

8) sending him to schools for people with special needs.

The Estonian probation system was established on 1 May 1998. The average juvenile probation period is of up to 18 months. During this time, the probation officers have to make counselling sessions with the minors and their parents, visits to their places of residence, reports (ordinary and extraordinary), and also to conduct and develop programs of probation. For a better quality of work, the probation officers collaborate with various institutions: the police, the local municipality, work committee, school, orphanages, NGOs etc. The officer is the person that minors can trust and rely on, that will help them organize their lives so as to avoid further committing other crimes.

If the penalty of imprisonment is substituted with community service, the probation officers have to find work for the minor (usually in NGOs or local government institutions), to check on him at work and instruct the supervisor. The court may substitute community service with a penalty of up to two years imprisonment. A day of detention is considered equivalent to two hours of community service and usually takes twenty-four months before it is executed. The community service measure

can replace the imprisonment of the offender only with the offender's consent. Usually minors are applied a volume of 20 to 100 hours of unpaid community service.

Minors who are applied the probation are those with the suspended sentence (with a period of probation for 18 to 36 months); or released from prison on parole (with a probation period starting from one year); who perform community service (people whose prison term of up to two years was replaced by community service for up to 24 months) or minors who are freed from punishment. The court may exempt a person from punishment, applying probation for up to one year, period which may be extended).

Juvenile Law in Ukraine

In Ukraine there is a separate juvenile law system and specialized for the needs of minors; there are no specially appointed courts and no judges specialized in juvenile cases. The number of lawyers, social workers, social activists and officials working in the field of juvenile law in Ukraine is extremely low. There is no pedagogical approach in the juvenile court system; there are many gaps in the Ukrainian law on cases of juveniles breaking the law[3].

In Ukraine, the administration of juvenile justice is divided between various administrative and judicial bodies, which do not cooperate among themselves. Juveniles breaking the law are in conflict with society, and apparently, society is in conflict with them. State policy gives much more attention to minors who are victims of exploitation, violence, poverty and diseases. But most children in prisons are also victims: victims of exploitation, violence, poverty and disease. According to statistical data provided by the State Department of Ukraine for Execution of Sentences, in 2012 there were about 3,000 juvenile inmates in 11 institutions. More than 50% of them are convicted for theft, 25% for burglary and robbery and 10% for serious injuries. More than 13% of convicted juveniles are aged from 14 to 16, 28% are aged from 16 to 17 and 39% are of about 17-18 years. Almost every third child is sentenced to imprisonment for a term of 1-3 years, half of them - for a period of 3-5 years and about 18% - to more than 5 years.

Despite of the legal provisions in Ukraine, there were no specialized juvenile courts set up and there are no judges trained specifically for such cases. The number of lawyers, social workers, social activists and officials working in this field is very low. The long period of time from the detention to inform the detainee's family, the period from detention until hearing by the judge (72 hours) and the duration of the preliminary investigation period (18 months) are not justified. It is necessary to emphasize that responsible officials - law enforcement officials - are not yet ready to improve the situation, because of the gaps in the Ukrainian law.

Juvenile Law in Poland

In conformity with the Polish law, a minor is:

- a person from 13 to 17 years old, who commits reprehensible actions or certain law violations (illegal deeds).
- children and young people up to 18 years old who show symptoms of demoralization.
- a person up to 21 years old whom the correctional and administrative measures are applicable to.

There are criminally liable, the people who reached the age of 17. In exceptional cases, the minors aged from 15 to 16, who committed serious crimes, can be held criminally accountable as adults, according to the Criminal Code, if other conditions are also met considering the offender and offense[4].

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[3] Yevgeniya, P. (2012). *Justiția juvenilă: analiza situației în Ucraina - Justiția juvenilă în Estul şi Sud-Estul Europei.* Chișinău: Institutul de Reforme Penale.

[4] Wójcik, D. (2004). *O scrisoare din Polonia: Medierea în cauzele penale şi legislația juvenilă: Prevenirea infracționalității şi securitatea comunitară* . Jurnalul Internațional.

Usually, the minor does not commit a crime. The children above 13 years old may commit a "punishable offense", and when their age is under 13, they commit a "prohibited act" which is treated as a form of demoralization.

The basic rule of the juvenile justice system in Poland is usually the rule of the minor's best interest[5]Everything that happens during the procedure must obey this rule. So, every decision of the court has to be taken in the minor's best interest. The rule of the inquisition procedure provides that the proceedings in cases of minors cannot separate the role of the trial from the prosecution. In this case, both positions are held by the judge, as a person who conducts the prosecution procedure, and then the trial procedure. The next rule is that usually the case takes place in private session. Sometimes, if justified on educational grounds, the case can be examined in public session, but this occurs only in exceptional cases. Another rule is the competence of the juvenile court. The case may be examined under the Criminal Code only in two cases: if the minor, older than 15, committed a serious offense, as mentioned above, and committed an offense together with an adult. Please note that it is necessary to examine this issue without separating it, which is not contrary to the child's interests.

A minor who is older than 13 has full trial rights. According to the Polish law, a person, older than 13, has limited capacity of exercise, but he can appear in his own legal procedure. If under the age of 13, the child is represented by the parent. Sometimes this solution is inapplicable, because in fact parents are responsible for the crime committed by the child. As part of the process, the child is entitled to examine the case file, to give evidence and, at any stage of the proceedings may appeal against the sentence and court decisions. Theoretically, the minor has the right to participate in the trial, but here the situation is a bit complicated: according to the law, the presence of the minor is required throughout the process, but an article of the Law on treatment of minors provides that, after hearing the child, the minor can remain present in the courtroom only when it is advantageous to him, for educational reasons. In practice, after the hearing, the child is asked to leave the courtroom. The minor is entitled to one legal assistant, but in most cases parents have to pay him for services rendered. The presence of counsel is mandatory only if the minor's interests are in conflict with his parents, when the court decides how the correctional proceedings should take place or if the child is placed in a nursing home.

The parents of a minor (or his guardians) are parties in the trial. They have to be informed of the beginning of prosecution, to be present during the completion of the criminal investigation done by the police and be heard in court during case examination on trial, but their absence does not interrupt the procedure. Parents have the right to appeal against the court sentence.

The court may apply some measures to parents also. For example, a judge may force the parents to cooperate with the school or other institutions or to repair the damage caused by their child. In Poland, the cases of minor offenders are examined by courts on family cases. Judges in these structures solve each family case (custody, alimony, divorce, etc) and juvenile cases. In these courts, professional judges must have by all means psychological and pedagogical studies.

In accordance with the Law on the treatment of minors, family courts have a very broad competence. They decide all cases of vital importance for minors. After the judge is informed of the committing of an offense, he decides whether: the case is to be heard in court, is to be terminated, sent back to the school attended by the minor or to a social organization. The family judges coordinate all the procedural functions of family courts, perform the criminal investigation and examination of the case, coordinate different actions of the police and of the probation officers appointed by court, rule for the diagnosis examination, for educational, medical and correctional measures and supervise their implementation and if necessary rule for their change during execution. The family judge benefits of significant discrete capacities.

[5]Klaus, W. (2011). *Postępowanie w sprawach nieletnich – wybrane zagadnienia.* Warsaw.

The examination of the case begins with hearing procedures in order to determine whether the minor is demoralized, if indeed a crime was committed and what kind of measures should be implemented: guardianship or correctional. That stage of proceedings is also carried out by a judge. At this stage, probation officers make probation reports and the child can be examined by a psychologist. Later, the judge may decide to terminate the case, submitting it to a school or other institution, sending the case to the prosecutor, or starting the guardianship or correctional procedures.

Therefore, during the hearing procedure, the judge decides what measures shall apply to the minor: guardianship, educational or correctional. The judge may rule for the same penalties as part of the guardianship ones, or in addition, send the child to a juvenile correction centre.

Conclusions

Whether it is about a state law in criminal matters, or about criminological, pre-crime studies, one has to establish the effect-cause relationship and respectively the cause-effect one, in the sense of being necessary to set up a criminal-social-criminological committee especially in the analysis of illicit minority status. The role of the committee would be to determine the factors leading to the criminal status, in order to apply a correctional treatment, first of all as preventive and then for social reintegration.

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