

LEGAL FRAMEWORK OF EDUCATIONAL MEASURES INVOLVING NON-DEPRIVATION OF LIBERTY IN ROMANIAN CRIMINAL LAW

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Abstract

In case of minors with age between 14 and 18 year old, who have committed a criminal offense and are liable from the criminal point of view, Romanian Criminal Code establishes a specific system of criminal penalties entitled educational measures.

The following study aims to analyze the educational measures involving non-custodial of liberty.

Keywords: *educational measure; minors; Romanian Criminal Code; sanctions.*

1. Introduction

Due to the physical and intellectual stage development in which they find themselves, the juvenile offenders are not able to realize the seriousness of the crimes committed, as well as their socially dangerous consequences, thereof the adjustment of a differentiated sanctioning regime imposed itself, a regime which should guarantee children rights and support.

The current criminal provisions represent a real progress resulted from a long historical legislative process and their main goal is to prevent and combat the manifestations of minors who, through their actions or lack of them affect the social values protected by the criminal law.

The justification of the scientific approach has as a reason the idea that with the entry into force of the new Criminal Code on February 1, 2014, the provisions that regulated the juvenile criminal liability regime has undergone many changes which may raise serious difficulties in judicial practice.

Therefore, we consider that the present interest of the topic is obvious since the aim of the paper is the examination in a manner as detailed as the new criminal provisions in relation to the comparative criminal law.

2. General Considerations

With the in force entry of the current Penal Code, the Romanian legislature has given up the mixed enforcement regime which consisted of punishment and educational measures provided by the old penal settlement, in favor of a sanctioning regime exclusively consisting of educational measures.

Unlike penalties, educational measures are punitive sanctions which apply only to minor

offenders which have the ability to lead to their education and rehabilitation.

Besides this, educational measures are characterized by the fact that their application cannot attract disqualification, prohibition or incapacity which could affect the minor reintegration into society.

In order to sanction juvenile offenders, it is necessary to know whether, at the moment of the criminal offense completion or depletion, these ones had or not criminal capacity. Thus, the minor:

a) Under 14 years old benefits from presumption *iuris et de iure* as he presumably has no judgment capacity and therefore cannot be committed to criminal liability;

b) Aged 14 to 16 benefits from relative presumption of lack of criminal capacity, which means that he can be held criminally liable only if, based on a forensic psychiatric expert valuation, it has been proved that he was responsible for his actions;

c) Who is 16, can be held criminally responsible.

Consequently, it can be argued with full justification that, in order to hold a juvenile offender criminally responsible and implicitly, in order to apply an educational measure, it is necessary to meet the criteria regarding age and discernment. Therefore, the minor under 14, even if he has discernment, is not criminally responsible, those aged between 14 to 16 must meet the condition referring to the existence of discernment, and those who are already 16 are criminally responsible.

In addition to this, the minors who are not criminal responsible, benefit from the provisions of the art. 27 of the Penal Code, which settles minority as the cause of non- imputation.

From the perspective of criminal law, discernment has no legal definition but it appears to be the minor's capacity to realize the dangerous social character of his actions and to consciously manifest his will as referred to a real fact.¹

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¹ George Antoniu et. al., *Preliminary explanations of the New Penal Code*, (Ed. Universul Juridic, Bucharest, 2011), 332.

Art. 114. Para (1) of the Penal Code establishes the rule that non-custodial educational measures apply to minor offenders aged between 14 to 18.

The field of action of the above foresights is limited by the provisions of par (2) which adjusts the situations when custodial educational measures can be taken, namely:

a) If he has committed a crime for which an educational measure has been applied, this one being executed or whose execution began before the offense for which he is judged;

b) When the punishment provided for the offense is imprisonment for 7 years or more or life imprisonment

With regard to point a), we consider that the purpose of the provisions is to punish persistent juvenile offenders in criminal activity or those to whom the custodial or non- custodial educational measures had no effect.

Consequently, if a minor commits two or more crimes before a judgment of conviction for any of them, and, if the penalty prescribed by law does not exceed 7 years, the court is bound to apply a non-custodial educational measure.

For hypothesis from b), we would like to emphasize that through the punishment prescribed by law we mean special maximum established by the legislature which indicts the act committed in consumed form, without taking into account the causes of reduction or increase of penalty.

The doctrine² includes some opinions which claim that in the case of an attempt committed by a minor, in order to take a custodial educational measure, we must take into account the punishment resulted from reducing to half the punishment of the consumed crime.

We assert that the attempt, as well as the mitigating or aggravating circumstances are causes of the reduction or increase of the punishment and, as a result,, according to art. 187 of the Penal Code, they don't produce effects on the special maximum foreseen by the norm of criminalizing an offense.

However, the above mentioned causes are taken into consideration in order to identify a proper educational measure and have no effect on the limits prescribed law for every educational measure in part³.

On the contrary⁴, some authors argue that in the case of mitigating or aggravating circumstances, the limits of the educational measures modify, more precisely, they are reduced by one third or, the duration of the measures established by the court can be increased up to the special maximum.

We have some reservations on this opinion because in the case of mitigating circumstances, according to art. 76 of the Penal Code, their effect is produced on the limits of the punishment and, in the

case of aggravating circumstances, art. 78 of the Penal Code establishes the possibility of applying the special maximum provided and, if this is insufficient, a bonus of up to 2 years can be applied.

Therefore, we affirm that, in the case of mitigating or aggravating circumstances, a reduction or an increase of the duration of the educational measures will be operated, within the limits established by the legislature.

Thus, for example, if the court establishes the educational measure consisting of daily assistance for a period of three months and finds the incidence of mitigating circumstances, the extension of the measure will consist of 3 months instead of 1. However, in the case of the given example, if the court finds only the existence of aggravating circumstances, we appreciate that the measure of assistance can be imposed to the minor for its maximum period prescribed by law, more precisely, for 6 months.

We also want to emphasize the fact that, if the juvenile offender is in any of the cases provided for in subparagraph a) and b) of paragraph (1) of art. 114 of the penal Code, the court may establish a non-custodial educational measure to the detriment of a custodial measure if it considers that the former one has the ability to lead to the education and social reintegration of the minor.

The provisions of article 115 of the Penal Code include the two types of educational measures which can be applied to infantile offenders who commit offenses, including the non-custodial ones (civic training, supervision, recording on week-ends and daily assistance) as well as the custodial measures (hospitalization in an educational center, internment in a detention center).

Non-custodial educational measures can be considered as genuine community measures, as they meet all three requirements set by the European definition provided by The Glossary Recommendation R 16/1992 of the European Commission, namely: the sentence must be served in society, it can be associated with a judicial control consisting of the obligations under art.121 paragraph (1) of the Penal Code and it is under the supervision and coordination of the Probation Service⁵.

To choose one of the educational measures, the court, in compliance with Art. 114 of the Penal Code, will consider art.74 of the Penal Code under which the establishment and duration of a sanction is commensurate with the gravity of the crime committed and the offender's dangerousness which is to be assessed on the following criteria:

- The circumstances and the way in which the crime was committed and the means used;
- The state of peril created for the protected value;
- The nature and severity of the result produced or

² Petre Dungan *The regime of criminal liability of minors in the new Criminal Code* („Journal of Criminal Law” nr. 4, Bucharest, 2011) , 55.

³ To the same effect Mihail Udroui, *Criminal Law records: general part*, (Ed. Universul Juridic, Bucharest, 2014) , 213.

⁴ George Antoniu et. al., 359.

⁵ Teodor Dascăl, *Romanian minority in Criminal Law*, (Ed. C.H. Beck, Bucharest, 2011), 301.

other consequences of the offense;

- The reason of the offense as well as the purpose;
- The nature and frequency of offenses that constitute criminal history of the offender;
- The conduct after committing the crime and during the criminal trial;

The Level of education, age, health, family and social situation. Besides, in accordance with Article 116 of the Penal Code, with a view to assess the minor, according to the criteria laid down in art.74, the court will ask the probation service to compile a report which will include reasons of the proposals regarding the nature and the duration of the social inclusion programs that minors should follow, as well as other obligations that may be imposed on him by the court.

The assessment report is designed to provide to the judicial body data on the minor from the psycho-behavioral perspective and may contain reasoned proposals on the educational measures which may be ordered.

3. The non-custodial educational measures regime

The place of the material regarding the non-custodial educational measures is represented by chapter II of Title IV of the Criminal Code, governing them in ascending order in relation to their gravity.

3.1. The civic training stage

The civic training stage, taken from French Criminal Law, has no counterpart in the previous Criminal Code and may be considered as being a measure whose purpose is to remove some small gaps in educating juvenile offenders.

The causes of behavioral deviance are the most varied, starting from disorganized family environment and ending with dubious social relationships with other people who have committed crimes.

By civic training we understand a complementary process of the education of the juvenile delinquent which passed on his intellectual and volitional plan, by transmitting information and preparing civic projects in order to gain amplified ability to identify his position as a member of the society.

The provisions of Art. 117 of the Penal Code establish that, by applying the measure of civic training stage, the minor is required to participate in a program with a program of 4 months at the most, in order to help him realize the social consequences to which he exposes in the case of committing a criminal offense and to make him responsible regarding his behavior in the future.

We believe that the court may apply the measure under consideration, only for crimes whose immediate

consequence is to produce a result or create a state of danger which affects in a minimal way the legal object.

In this regard⁶, judicial practice considered sufficient to impose the measure of civic training on a maximum period for the juvenile defendant who committed two offenses of battery or other violence that caused injuries which required medical care for up to 20 days. Also, in another case⁷, the measure provided for in art. 117 of the Penal Code was applied for a period of one month for a criminal offense of theft.

The legislator has provided only the upper limit of the educational measure, namely, 4 months at the most leaving to the courts the freedom to assess the minimum period of application according to each situation.

The doctrine⁸ stated that, although the law doesn't provide a minimum of the training civic stage, this one may not be less than 15 days since, otherwise, it would violate the provisions referring to minimum penalties.

We appreciate as unfounded the opinion above as the lower threshold of 15 days is specific only to imprisonment, according to art. 60 of the Penal Code, and it cannot be extended to the educational measure of the civic training stage as it would be an *malam partem* analogy.

Therefore, we hold that the court may hypothetically order the measure even for one day if, after reviewing the assessment report, it believes that this will produce significant positive changes in the behavior of the minor.

The organization, the ensuring of the participation and the supervision of the juvenile delinquent during the civic training stage are made under the supervision of the probation service without affecting the minor's school or vocational program. During the internship set by the court a number of 8 hours per month of civic training are to be taken into consideration.

We manifest some reservations regarding the effectiveness of the measure foreseen by article 117 of the Penal Code, as we consider that 8 hours of training per month may prove insufficient to change into better a juvenile delinquent behavior that tends to oscillate between conformism and deviant manifestations.

We consider as being fully justified the legislature option to protect the educational and professional curricula which are ongoing because their role is to develop skills and competences which promote the education and rehabilitation of the infant offender and implicitly this leads to his reintegration into the community.

Within 60 days at the most after the execution of the judgment, the minor must be included in a civic

⁶ Maramureș Law Court, Criminal decision 26/ 2014 - http://portal.just.ro/100/SitePages/Dosar.aspx?id_dosar=3190000000007550&id_inst=100.

⁷ Moinești Courtroom, Judgment in criminal case 84/2014 - <http://portal.just.ro/260/Lists/Jurisprudenta/DispForm.aspx?ID=864>.

⁸ Costel Niculeanu, *The legal regime of non-custodial educational measures in the light of the Criminal Code*, (Journal „The law” no. 8/2012), 110.

training stage, the probation officer or, where applicable, the designated person from the institution in the community having the obligation to organize, ensure the participation as well as the supervision of the beneficiary during the civic training stage.

The educational measure of civic education is systematized in the form of continuous or periodic sessions and materializes into programs which contain elements of moral, civic and legal education as well as into community service projects.

Its content must be adapted on a case by case basis for each juvenile offender according to its specific peculiarities depending on the age and their degree of intellectual and affective development as well as in relation to the offense committed.

The synapses of the civic training educational measure created at the community level by interlocking the program adapted to the minor's needs and the criminal act committed, come to help the individual and allow a better rehabilitation by creating a network of support which acts on the assumption that the foundation of change of the juvenile delinquent involves a corrective action consisting of several plans such as: the beneficiary's internal moral principles, his relationship with the society, and his involvement in support programs.

Along with other authors⁹, we consider as unfortunate the legislature failure to establish the fact that the probation officer has the responsibility to assess the juvenile convict during and at the end of the educational activities in order to analyze the functionality of the educational programs and to optimize the results.

The preamble of the new Penal Code states that the adjustment of the measure provided by Article 117 of the Penal Code is inspired by the Ordinance no. 45-174 of 2 February 1945 on juvenile delinquency¹⁰ in French law.

According to the above mentioned law, the criminally liable minors are subject to a mixed sanction regime consisting of educational measures, educational sanctions and punishments.

Unlike the Romanian Penal Code which states that the civic training course is an educational measure, the French provisions settles the civic training course as being an educational penalty.

Educational penalties¹¹ are an intermediate category between punishment and educational measures and are considered as tools to combat juvenile delinquency which distinguishes itself by educational and coercive character. Thus, they become incidents if the court, at the time of deliberation, considers that an educational measure is insufficient to

the minor's correction, whereas imposing a penalty would be too severe a sanction.

According to art. 15-1 of the Ordinance, to a minor aged between 10 to 18, the court may, by reasoned decision, apply the civic training stage as a single sanction or with other educational sanctions, with a view to reintegrate him into society.

By art. 1 of Decree no. 2004-31 of January 2004¹², the civic training stage is defined as the training activity which helps the juvenile offenders become aware of both criminal and civil liability effects and their duties towards the society.

The duration of the civic education course cannot exceed one month and both the Juvenile Court or The Juvenile Assize Court must take into account the academic obligations of the minor and the social situation of his family.

Also, the French legislature establishes that judicial protection services of the young organizes continual or periodic internship sessions of collective work of no more than 6 hours per day, consisting of training modules that are tailored according to the age and personality of the juvenile delinquent.

Thus, for example, the court may impose to the minor offender to attend civic training courses for a period of 30 days, and the youth protection services can create a program of work of 6 hours per day, unless this affects his academic obligations or the social situation of his family.

Therefore, we hold that the social impact of the civic training courses on deviant behavior of the juvenile delinquents, provided by the French Law, may produce visible results in terms its intellectual and moral plan.

The service of judicial protection of the youth is under an obligation to inform the minor and his parents or, where applicable, the tutor or the head of the institution having the custody of the minor, about the objectives of the civic training course before its enforcement.

Also, they are reminded that, in case of non-compliance to the enforcement conditions, the juvenile delinquent may be applied the educational measure required by art 15 of the Ordinance, i.e. the placement into an empowered institution of education and professional training, be it public or private.

We consider that the provisions relating to the civic training stage of the French Law provides sufficient similarities with the Romanian Law, but they are better structured and have a higher ability to remove any impulses of juvenile criminal behavior.

⁹ Vasile Dobrinou et al., *The new Criminal Law –annotated*, (Ed. Universul Juridic, Bucharest, 2012), 668.

¹⁰ http://www.legifrance.gouv.fr/affichTexte.do?jsessionid=522FDC5B1C9D8B598B9C8692B15DE00F.tpdjo13v_2?cidTexte=JORFTEXT000000517521&dateTexte=20110811 .

¹¹ The educational sanctions were introduced in Ordinance no.45-174 of 2 February 1945 - article 13, no. 2002 -1138 , Law of September 9, 2002 - <http://www.legifrance.gouv.fr/eli/loi/2002/9/9/2002-1138/jo/texte> .

¹² Decree no. 2004-31 of 5 January 2004 on the application of the Ordinance art 15-1 . 45-174 of 2 February 1945 on educational sanction of civic training stage <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000431473&dateTexte=> .

3.2. Supervision

Supervision represents a new measure introduced by The Romanian criminal law with an educational – preventive effect which can be taken against juveniles who have committed criminal acts with a view to improve their behavior and inclusion in society.

Although at first glance, the supervision measure has as a correspondent in the previous Penal Code the educational measure of supervised freedom, provided by art. 103, the two regulations have some fundamental differences. Thus, for example, the new provisions establish that the duration of the measure is shorter, the obligations which may be imposed to the minor are different and the responsibility to coordinate the educational measure lies with the Probation Service.

According to art 118 of the Penal Code, the surveillance activity results in a control and guidance activity of the juvenile delinquent in his daily program lasting between two and six months.

The control and guidance of the infantile offender in the execution of the educational measure is fulfilled by the parents, tutor¹³ or the one who adopted him, and if these ones cannot provide satisfactory supervision the court will order the child custody to be taken by a trustworthy person, preferably a close relative¹⁴.

It is noteworthy that by the above provisions, the legislature has complied with the Council of Europe Recommendation no. 2008/11¹⁵ which requires the involvement of parents and legal guardians in the enforcement of sanctions and measures imposed, except the case in which this is not in the minor's advantage.

According to art. 79 of law no. 252/2013¹⁶ the person who is responsible with the minor's supervision is required to submit to the probation officer a plan of the daily program of the juvenile offender for approval or revision where appropriate.

The achievement of acceptable conditions of insuring supervision can be verified by the court upon the receiving of the assessment report of the juvenile delinquent as this one must contain data on family and social environment of the child.

Thus, if the probation officer's assessment report emphasizes that the family environment is disorganized or discovers that there is lack of parental authority, we consider that the court may not grant the supervision of parents or guardian of the juvenile delinquent.

Besides, if the minor at the time of committing the offense which led to taking the measure provided by Article 118 of the Penal Code was or should have been under the supervision of the parents, of the tutor or the adopter, we consider that the court should dispose that the supervision of the infant offender be made by another trustworthy person.

If the above mentioned persons say they cannot provide the supervision of the minor, although the court finds that the conditions are satisfactory, we believe that they will dispose to have the minor supervised by another person.

During the execution of the educational measure of supervision, the probation officer has control on the supervising process both on the minor's performance measure as well as on the performance of duties of the person exercising supervision.

By taking non – custodial supervising educational measures, the aim is to ensure participation of the juvenile delinquent at school or vocational training courses and to prevent carrying out activities or getting in touch with certain individuals that might affect the correction procedure.

We consider that the effective supervision of the minor can be extended to various professional activities carried out routinely, with or without remuneration. In these circumstances, I propose *de lege ferenda* to reformulate and extend the provisions of article 118 of The Penal Code in the following way. "The educational measure of supervision consists in controlling and guiding the minor during his daily program for a period between 2 to 6 months, under the supervision of the probation officer, to ensure participation in school courses, training or *professional activities* and preventing the carrying out of activities or the contact with certain persons that could affect the correction process."

If the juvenile offender is not enrolled in school or training activities we consider that the court must impose him to follow one of these activities under article 121 paragraph (1) letter a). The probation officer, based on the assessment report and after consulting the minor will decide the course to be followed and the institution in which it is to take place.

Also, we argue that for the effective prevention of conduct of illicit activities by the juvenile and to prevent its contact with persons that could affect its correction procedure, it is necessary during the execution of the educational measure, that the court may order enforcement of obligations provided by Article 121 paragraph (1) b) –d).

¹³ According to article 110 of The Civil Law „Guardianship of minors is set when both parents are, where appropriate, deceased, unknown or deprived of the exercise of parental rights, or criminal penalty of nanning parental rights was imposed, placed under judicial interdiction, legally declared dead or missing and if at the end of the adoption the court decides that it is in the minor's interest to be provided with guardianship.”

¹⁴ Art. 67 para. (2) of Law no. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by the court in criminal proceedings published in the Gazette no. 513 of August 14, 2013.

¹⁵ <http://anp.gov.ro/documents/12412/136658/REC%282008%2911.pdf/e2bc76f6-9e39-4ffa-85ff-3178c61f8217>.

¹⁶ Law no. 252/2013 on the organization and operation of probation, published in the official Gazette, Part 1, no.512 of 14 August 2013.

Unlike the civic training course, the educational measure of supervision may be imposed if the crime severity increases. Thus, judicial practice¹⁷ found to be sufficient for the education of the infantile delinquent and taking into consideration the seriousness of the offense, the application of the six-month period measure covered by article 118 of the Penal Code, against juvenile defendants who committed the offence of aggravated robbery under Article 234, paragraph (1) c) “a masqued, disguised or transvestite person.”

The preamble of the Criminal Code states that non-custodial educational measure governed by article 118 is inspired by the Spanish Organic¹⁷ Law no. 5 of 12 January 2000 on the criminal liability of minors.

The Spanish legislator, unlike the Romanian one, considered necessary to regulate the criminal liability of minors in a distinct *corpus iuris* containing rules of material and procedural criminal law derogating from the common law.

In this respect, the provisions of article 19 of the Spanish¹⁸ Penal Code emphasize that criminal liability of offenders under the age of 18 is subject to regulatory Organic Law.

Also, the scope of the instruments mentioned above can be extended to persons aged between 18 and 21 years old who committed offenses under article 69 of the Spanish Penal Code¹⁹.

Just like the Romanian penal settlement, the system of penalties applicable to juvenile delinquents is unique, consisting of custodial and non-custodial educational measures.

To choose an educational measure, the juvenile judge will consider the personal circumstances and the maturity of the offender as well as the nature and severity of the minor's actions. In exceptional cases the court may require the execution of two educational measures.

As opposed to Romanian provisions, the Spanish Organic Law establishes that the juvenile offender is assisted throughout the criminal trial by a technical team which consists of a social worker, a psychologist and an educator.

According to Article 7, paragraph (1) of the Organic Law, by requiring the release under supervision of the juvenile delinquents, the activity of the minor offender is monitored, as well as his participation in school, training center or workplace, as appropriate, in order to help him overcome the factors that led to the offense.

However, the minor must follow the socio-educational models established by the responsible public entity or by the designated professional regarding the juvenile delinquent's development and approved by the judge. The person subject to this

measure will also be obliged to report to meetings and interviews established by professionals and to respect one or more obligations imposed by the judge, namely:

a) The obligation to attend regularly the appropriate educational course, if the juvenile delinquent is in the period of compulsory schooling and prove to the judge that he meets this requirement and to explain any absence by reason;

b) The obligation to undergo cultural, educational, professional, lucrative, sex education, self education training or other.

c) Prohibition of going to certain places, businesses or performances;

d) The prohibition of leaving home without a prior legal authorization;

e) The requirement to reside in a particular place;

f) The obligation to appear in person before a judge for minors or the professional designated by him, to bring information about activities and to justify them;

g) Any other duties that the ex officio judge or at the request of The Public Ministry considers necessary for social reintegration of the condemned, respecting dignity.

The public entity, after the judgment of conviction, has to indicate immediately or within 5 days to the professional responsible for the execution of the measure covered by Article 7 paragraph (1) letter h) of the Organic Law and to inform the court about appointment made.

Unlike Romanian provisions, the Spanish ones established that during the execution of the supervised freedom measure established by the court, the juvenile delinquent is monitored by qualified personnel in order to acquire skills and capacities necessary for the personal and social development.

In this regard, the professional designated with supervision will meet the child in order to draw up an immediate plan for the implementation of the measure which will consist of:

1. An overview of the situation;
2. An analysis of the personal, family, social, educational, training or employment in order to identify the causes which determined the offense.
3. Socio-educational model established by public entity to be followed.

Besides, the professional will propose minimum frequency of interviews with the child through which monitoring and control of the supervised freedom method will be achieved.

The measure can be ordered against juvenile offenders who commit fault (*faltas*) for a period of 6 months. For offenses committed by juveniles, the Spanish legislature sets the duration of the method for

¹⁷ Arad Courtroom, Criminal sentence no. 1929/2014 -http://portal.just.ro/55/SitePages/Dosar.aspx?id_dosar=550000000164208&id_inst=55.

¹⁸ http://noticias.juridicas.com/base_datos/Penal/lo5-2000.html.

¹⁹ <http://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>.

those aged between 14 to 16 years which will be 3 years and 6 years for those aged between 16 and 18 years old.

If the minor commits an offense for which the law prescribes imprisonment of 15 years or more, we may apply:

a) The measure of the closed regime for a period of 1 to 5 years of supervised release and measure up to 3 years if the juvenile offender is aged 14 or 15 years.

b) The measure of the closed regime for a period of 1 to 8 years of supervised release and measure up to 5 years if the offender is aged 16 or 17 years.

The juvenile judge is able to interrupt the execution of the measure, reduces its duration or replaces it with another if it considers the change is in the interest of the infant offender.

After analyzing the Spanish provisions we claim that the measure of supervised release presents a high severity degree giving a tighter control than the surveillance measure program of the Romanian law.

We also appreciate that the provisions of Article 7, paragraph (1) letter h) of the Organic Law were the source of inspiration for the Romanian legislature in the regulation of the daily non –custodial educational measure.

3.3. Weekends consignment

Weekends consignment is a non-custodial educational measure with no correspondent in previous criminal law which can be imposed to minor offenders with an antisocial behavior.

According to Article 119 of the Penal Code, the weekends consignment measure consists in the juvenile delinquent obligation not to leave the house on Saturdays and Sundays during 4 and 12 weeks, unless, in this period he has an obligation to participate in certain programs or carry out certain tasks imposed by the court.

The minor's interdiction to leave home operates in the time between 0:00 to Saturday and until 12pm on Sunday.

By "home" we mean any building freely chosen by a person to effectively carry out privacy. We consider that it is irrelevant whether it is the same or not with the domicile or the residence of the minor or whether it is permanent or temporary.

Thus, the housing may be a juvenile delinquent room, for example the room of an apartment or of a house, the tent in a resort, a room in a hostel or a hotel.

Therefore we hold that the child can spend every weekend in different houses insofar as it benefits from the probation officer surveillance and the person designated as such.

To overcome such situations, we propose *de lege ferenda* supplementing the provisions of article 68 of Law 253/2013²⁰ with the following provisions: "The court or judge in consultation with the probation

officer must individualize the house in which the minor serves the educational measure provided for in article 119 of the Penal Code."

By imposing the measure of weekend consignment a dual purpose is achieved, satisfying the preventive effect of educational measures, so as the minor should avoid contact with certain persons or his presence in certain places which could predispose to the manifestation of criminal behavior.

Unlike other educational measures examined above, the weekends consignment affects the constitutional right to free circulation²¹ regulated in article 25 thus influencing the minor's behavior through both physical and moral constraint.

According to Article 68 paragraph (4) of Law no. 253/2013, the execution of the measure provided by Article 119 of the Penal Code usually takes place under the supervision of the adult living with the child or of another adult designated by the court during some weekends in a row, except the case in which the court or the mandatory judge, under the proposal of the probation officer, disposes otherwise.

We manifest some reservations about the provisions above because we argue that familiar environment can contribute a greater share in the education and training of minors having in view their inclusion in society.

Also, the Council of Europe Recommendation no. 2008/11 on the European rules for juvenile offenders requires to include parents or a tutor in procedures for the execution of sanctions or educational measures.

Therefore, we propose *de lege ferenda* that the supervision of law enforcement should primarily be the responsibility of parents, adopter or guardian of the juvenile delinquent and where this cannot be done by them, the supervision should be done by an adult designated by the court.

Similar to the educational measure provided for in Article 118 of the Penal Code, and in the case of the weekend consignment, the supervisory control is the responsibility of the probation officer both on the execution of the measure by the minor, as well as the performance of duties by the person exercising supervision.

During the execution of the educational measure regulated in Article 119 of the Penal Code, the juvenile delinquent may follow a program of social reintegration, whether as a result of the disposition by the court of this obligation in the content of the educational measure, or as a result of the establishment of this activity by the probation counselor as part of the weekend consignment. The probation officer will establish the type of program or course, according to the particularities of the minor.

It is important to emphasize that the measure of weekends consignment is considered more severe than

²⁰ Law no. 253/2013 on the enforcement of sentences, of educational measures and other non-custodial measures ordered by the court in criminal proceedings published in the Official no. 513 of 14 August 2013.

²¹ Romanian Constitution, published in the Official no. 767 of October 31, 2003.

other analyzed educational measures and may be imposed on juvenile delinquents that commit more severe offenses.

Thus, in judicial practice²² the court held as sufficient the measure provided by Article 119 of the Penal Code which is to be applied for a period of 5 respectively 10 weeks to minor defendants who committed the crime of robbery provided by Article 229, paragraph (1), letter b) concurrent with the destruction incriminated in Article 253 paragraph (1) of the Penal Code.

The preamble of the Criminal Code states that the non-custodial educational measure regulated by article 119 of the Penal Code has as a correspondent the educational measure of permanence at weekends from the Spanish Organic Law no 5 of January 2000 on the criminal liability of minors.

According to Article 7 paragraph (1), letter g) of the Organic Law, the minors subject to such a measure must remain at home or in a special center from Friday afternoon or evening to Sunday evening for a maximum period of 36 hours, except for the time they need to devote to socio-educational tasks imposed by the judge, tasks which are to take place outside the place of detention.

Measure can be ordered against juvenile offenders who commit fault (faltas) for a period of 4 weeks.

For offenses committed by juveniles, the Spanish legislature provides that the duration of the measure for those aged between 14 and 16 years old will be 12 weeks or 16 weeks for those aged between 16 and 18 years old.

The professional responsible for coordinating the execution of the measure, after receiving the decision of the court by which the number of weeks and appropriate hours is established, will meet to draw up a plan²³ for individual implementing. In this regard, it will be established:

- a) each weekend day during which the measure will be implemented as well as the place of detention;
- b) the socio-educational tasks that can be imposed on juvenile offenders, the place where these will take place and the time required for them.

It can be seen that the Spanish penal provisions qualifies the permanence measures on weekends as a gravity lighter than the extent required by Article 119 of the Romanian Penal Code, which led to the easing of the application.

3.4. Daily assistance

Daily assistance, taken from the Spanish criminal law, has no counterpart in the previous Criminal Code and is considered the most severe non-

custodial educational measure that can be imposed on juvenile offenders.

According to Article 120 of the Penal Code, daily assistance consists in the obligation imposed on juvenile to comply with a schedule set by the probation service, which contains the schedule of activities and their conditions as well as the restrictions imposed on the minor. The duration of the measure is between 3 and 6 months, and the supervision is coordinated by the probation service.

It is important to emphasize that the Romanian legislator, like the Spanish, states that the program must be the result of a consensus between the probation counselor and parents, guardian or other person in whose care the minor is, in consultation with this one.

In case of disagreement, the appointed judge has the obligation to fix the program content, through a motivated and final agreement, after hearing those interested.

By including parents or guardian in procedures for the execution of sanctions and educational measures, it is made a transposition into national law of the provisions of Council of Europe Recommendation no. 2008/11 on the European rules for juvenile offenders.

If the court decides against the minor the measure required by Article 120 of the Penal Code, without imposing obligations under Article 121 of the Penal Code, we consider that their absence may be supplemented by restrictions imposed in the schedule by the probation officer.

Finding long-term strategy to restore a new socio-educational trajectory to rehabilitate the juvenile delinquent is based on the need to have a constant at all levels: family, community, education.

By conducting an educational program we follow the harmonious development of the child's personality, through his involvement in activities which suppose social networking, organizing leisure mode and enhancement of his skills.

According to Article 90, paragraph (1) of Law 253/2013, the minor for whom the daily assistance measure was imposed, may follow a social reintegration program or a school or training course, as a result of the disposition by the court of this obligation as part of the educational measure, or as a result of the establishment of this activity by the probation officer assisting the daily plan.

The daily assistance measure can be applied only if the court considers that other non-custodial educational measures are insufficient for the education and reintegration into society of the minor. Thus, for example, in judicial practice²⁴ it was ordered the

²² Suceava Courtroom, Penal Decree no. 486/2014- http://portal.just.ro/39/SitePages/Dosar.aspx?id_dosar=2170000000013354&id_inst=39.

²³ Art. 28 of Decree 1774/2004 approving the Organic Law Regulation 5/2000 - <http://www.boe.es/buscar/act.php?id=BOE-A-2004-15601&tn=1&p=20040830&vd=#s2>.

²⁴ Bucharest, Courtroom, sector 6, Penal sentence no. 18/2015 http://portal.just.ro/303/SitePages/Dosar.aspx?id_dosar=30300000000207251&id_inst=303

educational measure regulated by article 120 of the Penal Code, for a period of 6 months against the minor who committed two offenses of robbery indicted in article 233 of the Penal Code in formal competition.

As stated in the subsection dedicated to the surveillance measure, the provisions of Article 7, paragraph (1) h) of the Organic Law, referring to the measure of supervised release, were the source of inspiration for the Romanian legislature in the regulation of the non-custodial educational measure of daily assistance.

After examining the above provisions, we conclude that daily assistance made by the probation service meets all the needs of the juvenile offender, giving it the much needed transition in the context of an offense, to a higher level where it will receive specialized support in an organized way.

4. Conclusions

In our opinion, we consider that the new Code of Criminal legislature manages to provide the court a large variety of criminal sanctions that have the ability to lead to the education and rehabilitation of the minor.

In this paper, we consider that we were able to analyze in detail the new non-custodial educational measures in relation to international criminal provisions applicable and to highlight their role and importance.

We conclude by saying that the examination of such issues of interest for both legal, sociological and psychological domain due to the specific characteristics of the juvenile delinquent.

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