

EXECUTION OF CUSTODIAL AND NON-CUSTODIAL EDUCATIONAL MEASURES IN LIGHT OF LAWS 253/2013 AND 254/2013

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Abstract

With the new education policy for juveniles committing criminal offenses, it is necessary to analyze the rules for implementing non-custodial and custodial measures, as well as changes in their replacement or extension. Analysis of transient situations. The regime of execution of the educational custodial and non-custodial measure in the case of a minor at the date of committing the criminal act, of age at the date of committing the crime.

Keywords: *principles, purpose, execution regime, educational centers, detention centers, probation services.*

1. Theoretical highlights

According to the new Criminal Code adopted by Law 286/2009¹, juveniles who commit crimes and are criminally liable are subject to non-custodial or custodial educational measures. There is a rethinking of the sanctioning treatment applicable to juvenile offenders, based on their social reintegration, as opposed to the old criminal law, according to which punishments could be applied to minors if it was considered that an educational measure is not sufficient to correct the minor's behavior.

The new criminal policy adopted by the Romanian legislator took into account the international regulations² on the sanctioning of minors who commit criminal acts, aiming, in particular, at their recovery, social reintegration, in order to prevent other criminal acts.

Thus, non-custodial or custodial educational measures are applied to juveniles who commit criminal acts and are criminally liable, depending on the provisions of the law. Thus, according to art. 114 para. 1 of the Criminal Code, a non-custodial educational measure shall be taken against the minor who, at the date of the crime, was between 14 and 18 years old. It is thus found that the rule regarding the sanctioning of minors who commit criminal acts is the application of a non-custodial educational measure.

Exceptionally, in accordance with the provisions of art. 114 para. 2 of the Criminal Code, juveniles who commit criminal acts may be applied custodial educational measures in the following cases:

a) if he has committed another crime, for which

an educational measure has been applied that has been executed or whose execution has started before the commission of the crime for which he is tried;

b) when the punishment provided by law for the crime committed is imprisonment of 7 years or more or life imprisonment.

Therefore, against the minor who commits a criminal act and is criminally liable, and previously he has not committed another crime for which another educational measure has been applied, and the punishment for the crime committed is less than 7 years, the court is obliged to take a non-custodial educational measure.

Compared to the express provisions of art. 114 para. 1 of the Criminal Code, it is found that custodial or non-custodial educational measures may also be ordered if, at the date of the judgment, the offender had turned the age of 18, as the date of the crime is important.

The non-custodial educational measures are, according to art. 115 para. 1 item 1 Criminal Code: civic training, supervision, weekend recording and daily assistance.

The custodial educational measures are, according to art. 115 para. 1 item 2 Criminal Code: hospitalization in an educational center and admission in a detention center.

The choice of the educational measure to be ordered against the minor who committed a crime and who is criminally liable³ is made under the conditions of art. 114, according to the criteria of judicial individualization provided by art. 74 Criminal Code. The court, in order to evaluate the minor according to these criteria, will request the probation service to draw

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² UN Convention on the Rights of the Child of November 20, 1989, ratified by Romania by Law 18 of 28 September 1990 (Official Journal 314 of 13 June 2001); Beijing Rules, adopted in Milan in 1995, on the Administration of Juvenile Justice; Ryad Principles of 1990 on the Prevention of Juvenile Delinquency; United Nations rules on the protection of minors deprived of liberty, adopted by the UN General Assembly by Resolution 45113 of 14 December 1990.

³ Article 113 para. 2 of the Criminal Code, stipulates that the minor who is between 14 and 16 years old is criminally liable only if it is proved that he committed the deed with discernment, and according to para. 3, the minor who has turned 16 is criminally liable according to the law.

up a report, which will include reasoned proposals regarding the nature and duration of the social reintegration programs that the minor should follow, as well as other obligations that may be imposed on him by the court⁴.

After the trial of the case, the non-custodial or custodial educational measure is executed in accordance with the provisions of art. 511, art. 514 and art. 515 Code of Criminal Procedure

2. Execution of non-custodial educational measures

The headquarters of the matter is Title IV of Law 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by the judiciary during criminal proceedings.

According to the provisions of art. 63 of Law 253/2013, the non-custodial educational measures are executed in the community, during their execution ensuring the maintenance and strengthening of the minor's ties with the family and the community, the free development of the minor's personality, as well as his involvement in the programs carried out for the purpose of his training in the spirit of responsibility and respect for the rights and freedoms of others. It is therefore established that it is intended that the minor to whom a non-custodial educational measure has been applied should not be removed from the family environment.

Specifically, the manner of execution of non-custodial educational measures is established according to the age, personality, health condition, family and social status of the minor.

The central role in the organization, supervision and control of the execution of non-custodial educational measures belongs to the probation services.

In accordance with the provisions of art. 65 of Law 253/2013, after the finality of the decision by which a non-custodial educational measure was taken, the judge delegated with the execution sets a deadline, orders the bringing of the minor and the summoning of the legal representative, the representative of the probation services for the execution of the measure taken and the persons designated under their supervision.

2.1. Execution of the educational measure of the civic training stage

The execution of this educational measure provided by art. 117 Criminal Code aims to support the minor to understand the legal and social consequences

to which he is exposed in case of crimes and to make him responsible for his future behavior.

The civic training internship consists of a program organized in the form of continuous or regular sessions, conducted over a period of no more than 4 months, and includes one or more modules of a theoretical or applied nature, adapted to the age and personality of the minor and taking into account, as far as possible, of the nature of the crime committed, for 8 hours per month of civic training⁵, under the supervision of the probation counselor within the probation services in whose constituency the minor resides.

2.2. Execution of the educational measure of supervision

According to the provisions of art. 118 Criminal Code, the educational measure of supervision consists in controlling and guiding the minor in his daily program, for a period between two and six months, under the coordination of the probation services, to ensure participation in school or vocational training and prevention activities or getting in touch with certain people who could affect the process of correcting it.

The purpose of this educational measure is for the minor to participate in school activities, vocational training courses, prevention of activities and not to get in touch with certain people who could influence the process of correcting him⁶.

The main role in the execution of this educational measure belongs to the parents of the minor, to the adopters or to the guardian. If these persons are unable to provide for effective supervision, the court will order the entrustment of the supervision of the minor, for the same period of time, to a trusted person, preferably a close relative, at his request. If this person is no longer able to exercise supervision, the judge delegated with the execution, in consultation with the probation counselor, shall appoint another person to exercise supervision.

The probation counselor exercises control over the execution of the educational measure and the performance of the duties by the person exercising supervision.

The minor's parents, guardian or foster parent shall verify that he or she is complying with his or her obligations under his or her family, school or professional status.

If the court ordered in the content of the educational measure of supervision the participation of the minor in a school or vocational training course, and the minor is not enrolled in such a form of education, the probation counselor within the probation service in whose constituency resides the minor decides, on the

⁴ Article 113 para. 2 of the Criminal Code, stipulates that the minor who is between 14 and 16 years old is criminally liable only if it is proved that he committed the deed with discernment, and according to para. 3, the minor who turned 16 is criminally liable according to the law.

⁵ Law 253/2013, art. 66 para. 5.

⁶ Art. 67 para. 1 of Law 253/2013.

basis of the initial assessment, the course to be taken and the institution in the community where it is to take place. The supervision and control of this obligation is carried out by the competent probation service.

The enforcement of the educational measure of supervision is done by the judge delegated with execution, who will set a deadline for when it is ordered to bring the minor, call the legal representative, the representative of the probation service, as well as the persons designated with supervision⁷, and the exercise of the supervision starts within 30 days as of this time.

2.3. Execution of the educational measure of recording at the end of the week

The educational measure of recording at the end of the week is provided by art. 119 of the Criminal Code and consists in the obligation of the minor not to leave the home on Saturdays and Sundays, for a period between 4 and 12 weeks, unless, during this term, he has the obligation to participate in certain programs or carry out certain activities imposed by the court.

The purpose of this educational measure is to avoid the contact of the minor with certain persons or his presence in certain places that would predispose him to the manifestation of a criminal behavior.

Under this educational measure, the minor is forbidden to leave the home from 0.00 on Saturday until 12.00 p.m. on Sunday and is executed during consecutive weekends. As an exception, the court or the judge delegated with enforcement may establish another order, at the proposal of the probation counselor. Supervision of compliance with this obligation rests with the adult with whom the minor lives or with another adult designated by the court.

The probation counselor in the probation service in whose constituency the minor or the person designated by him or her in a community institution resides, exercises control over the execution of this educational measure and control over the performance of the duties by the person exercising supervision. To this end, the minor who lives alone or, as the case may be, the adult with whom he lives or appointed by the court has the obligation to allow the person designated with control of execution and supervision to make scheduled or unannounced visits to the minor's home, on days when the minor must be in that space according to the court decision.

The educational measure of recording at the end of the week is executed under the conditions of art. 511 Code of criminal procedure, within maximum 15 days as of presentation of the minor and of the person designated with supervision before the judge delegated with the execution.

2.4. Execution of the educational measure of daily assistance

Daily assistance is the non-custodial educational measure provided by art. 120 of the Criminal Code and

consists in the obligation of the minor to respect a program established by the probation service, which contains the schedule and conditions of deployment of activities, as well as the prohibitions imposed on the minor, for a period between 3 and 6 months. The supervision of the execution of this educational measure is done under the coordination of the probation service.

The execution of the educational measure of daily assistance is regulated by the provisions of art. 69 of Law 253/2013.

The supervision of the execution of this educational measure is carried out by the probation counselor or, as the case may be, by the person designated by his decision, within a community institution.

The parents, guardian or other person in whose care is the minor set together with the probation counselor the daily program that the minor shall observe and the activities that he must carry out. In case of disagreement, the program shall be established by the judge delegated with the execution, by reasoned decision, after hearing the concerned parties. The conclusion of the judge is not subject to any appeal.

The minor's program will include school training activities, vocational training, obligations and prohibitions imposed during the execution of the measure and will take into account his identified needs, his social and professional status. At the same time, the program aims at the harmonious development of the minor's personality, by involving him in activities that imply social relationships, organizing leisure and capitalizing on his skills.

The arrangement of the daily program is made within maximum 30 days from the time of the minor's presentation before the judge delegated with the execution, under the conditions of art. 511 Code of criminal procedure, and daily assistance begins no later than 5 days after the establishment of the program.

When the daily assistance measure replaced a custodial educational measure, the establishment of the daily program shall be made no later than 15 days after the release.

3. Execution of custodial educational measures

According to the principle of legality, the execution of custodial educational measures is carried out in accordance with the provisions of the Criminal Code, the Code of Criminal Procedure and Law 254/2013.

Custodial educational measures shall be enforced only on the basis of a final judgment.

The principle of respect for dignity, the prohibition of torture, inhuman or degrading treatment

⁷ Art. 511 Code of criminal procedure.

or the submission to ill-treatment shall also govern the enforcement of custodial educational measures.

The purpose of custodial educational measures is the reintegration into society of internees and their accountability, in order to take their own actions and prevent new crimes.

The essential difference between the purpose of punishment and the purpose of educational measures is represented by the multitude of activities established by the "Educational Project of the Center", which promotes through progressive accumulations and a regime with fewer constraints, the preparation of the minor for his return to the community from which he left, with a balanced physical and mental health, with a more developed sense of responsibility, with skills and competencies that will help him find a place in society and stop committing criminal acts⁸.

In the statement of reasons that accompanied the draft of the new Criminal Code, it is shown that the waiver of punishments in the case of minors and the execution - in most cases - of such educational measures of custody in specialized institutions, provides the premises for obtaining optimal results in education and the social reintegration of minors. The existence of specialized institutions allows the organization of educational and professional training programs appropriate to the age of these criminals, the contact of minors with major criminals during execution is avoided, etc.

The provisions of the Recommendation (2008) 11 of the Committee of Ministers state in principle that the deprivation of liberty of a juvenile delinquent shall be deemed as a last resort measure and shall be applied for a short period of time. In full agreement with the European provisions, the Romanian legislator establishes through the provisions of art. 114 of the Criminal Code, that the custodial educational measures have an exceptional character that can be applied only in compliance with special conditions. The seat of the matter of custodial educational measures is represented by Chapter III of Title IV of the Criminal Code, which regulates them in ascending order according to their severity, namely admission in an educational center and admission in a detention center.

By the provisions of art.124 Criminal Code a custodial educational measure is regulated with an educational-preventive effect that may be ordered against minors with deviant behavior who, through their actions or inactions, commit criminal acts of increased gravity. Also, as highlighted in the literature, admission in an educational center may be imposed on juvenile offenders when it is considered that non-custodial educational measures cannot lead to their re-education.

According to art. 124 of the Criminal Code, the educational measure consists in the admission of the minor in an institution specialized in the recovery of

minors, where he will follow a program of school training and professional training according to his skills, as well as social reintegration programs. The admission is ordered for a period between one and 3 years [art. 124 para. (2) Criminal Code]. The educational center is the institution specialized in the social recovery of the admitted persons, where they attend school training and professional training programs, according to their skills, as well as other activities and programs meant for social reintegration.

The educational measure of admission in a detention center, regulated by art. 125 of the Criminal Code, consists in the admission of the minor in an institution specialized in the recovery of minors, with guard and supervision, where he will attend intensive programs of social reintegration, as well as school training and vocational training programs according to his skills. This educational measure is ordered for a period between 2 and 5 years, unless the penalty provided by law is imprisonment for more than 20 years or life imprisonment, when admission is taken for a period between 5 and 15 years.

Thus, admission in a detention center is a measure with an educational-preventive effect that may be ordered as a last resort when it is deemed to commit acts of excessive gravity. The distinction between the educational center and the detention center lies in the surveillance and guard regime and the intensive social reintegration programs.

The execution of custodial educational measures is regulated by Title V of Law 254/2013.

Detention measures are carried out in educational centers or detention centers.

During the execution of the custodial educational measures, the maintenance and development of the inmate's ties with the family and the community is ensured, as well as the performance of some recovery measures adapted to his psychosomatic needs and personal development needs⁹.

The educational centers and the detention centers are institutions specialized in the social recovery of the admitted persons, which are established by a decision of the Government, have legal personality and are subordinated to the National Administration of Penitentiaries.

Every person admitted in an educational center or detention center has the right to education, according to his needs and skills, as well as to an adequate professional training.

During the execution of the educational measures, the person against whom the measure was applied is provided, in an institution specialized in the recovery of minors, with the possibility to attend both school and professional training programs, as well as social reintegration programs.

Educational and detention centers have adequate spaces for accommodation, food preparation and

⁸ Regulation for the application of Law 254/2013, art. 287.

⁹ Art. 137 of Law 254/2013.

serving, school training and vocational training activities, social and psychological assistance, educational, moral-religious, cultural, sports, recreational activities, for providing assistance and medical treatments and for receiving visits.

The educational and detention centers have specialized staff for educational, moral-religious, cultural, sports, recreational activities, specific psychological and social assistance, medical staff, security, supervision and accompanying.

The Ministry of National Education, through the county school inspectorates, provides specialized personnel for school training activities in educational and detention centers.

The activity of social recovery of the admitted person is organized and carried out based on **an educational project** and a **recovery intervention plan**.

The educational project structures the organization and development of educational, psychological assistance and social assistance to inmates, according to individual needs and pursues with priority the following objectives: ensuring a climate conducive to personal development, providing usefulness for admission, reducing psychological and social vulnerability and the assimilation of knowledge and the formation of skills necessary for social reintegration¹⁰.

Based on the Educational Project, for each admitted minor a "Recovery Intervention Plan" is made in which the educator responsible for the case is established, the customized activities to be carried out individually with each minor, the formulation of proposals for measures for the positive evolution of the person internally from an educational, psychological and social point of view¹¹.

The recovery intervention plan establishes the duration and the regime of execution of the educational measure, the activities and programs of school training and professional, educational, cultural, moral-religious, psychological and social assistance in which the inmate is included, after due consultation.

Regarding the **regime of execution**, it is distinct depending on the educational measure, respectively admission in an educational center or admission in a detention center.

In the educational centers, the regime of execution is common to all the admitted persons, individualizing themselves from the point of view of the recovery approaches meant for them, in order to respond to the needs of physical and mental development. Thus, the persons admitted in this regime are accommodated together, may move unaccompanied in spaces inside the center, carry out school training and vocational training, educational, cultural, moral-religious, specific social and psychological assistance and provide work, in groups,

both inside the center and outside the box, without supervision.

Instead, the regime of execution of the measurement of admission in a detention center is based on the progressive and regressive systems, the admitted persons being entitled to move from one regime to another, subject to the conditions provided by law and good conduct.

Within the educational center, the execution regime is established by the educational council, which is set up at the level of each center.

With regard to detention centers, the enforcement regime, which may be opened or closed, shall be established by the commission for the establishment, individualization and change of the enforcement regime set up at the level of each center.

The closed regime applies to the admitted person for a period longer than 3 years¹².

Persons admitted in this regime are usually accommodated together, carry out school training and vocational training, educational, cultural, moral-religious, specific social and psychological assistance and perform work, in groups, inside the center, under supervision.

The open regime applies to admitted persons for a period of less than 3 years. Within this regime, the admitted persons are accommodated jointly, they may move unaccompanied in areas inside the center established by the internal regulations, carry out specific school training and professional, educational, cultural, moral-religious, psychological and social assistance activities and performs work in spaces inside the center, which remain open during the day.

Educational, psychological and social assistance enables the admitted person the opportunity to acquire skills that lead to the adoption of a constructive, autonomous and responsible behavior in the community, with the aim of reintegration and social responsibility.

The reception of the convicted person in an educational and detention center is made based on the final court decision. Within 3 days from the reception in the center, the family or the legal representative are informed in writing about the possibilities of visiting and about the ways to support the social reintegration process carried out in the center. After being admitted to the center, the admitted person is kept in quarantine and under observation for 21 days.

In addition to the rights that a convicted adult has in the penitentiary, in the case of the juvenile detainee, special emphasis is placed on ensuring education, according to his needs and abilities.

The admitted person is obliged to complete his / her compulsory general education. Minors should be provided with 8 hours of sleep a day. The right to an intimate visit is granted only to the married person or who has the legal right to marry.

¹⁰ Law 254/2013, art. 142.

¹¹ Ioan Chiş, *Execution of criminal sanctions*, Bucharest, Universul Juridic Publishing House, 2015, page 605.

¹² Law 254/2013, art. 149.

During the execution of the educational measure, the admitted person can work only with the approval of the doctor from the center, but work is not allowed during the night.

The money obtained from the work performed is distributed as follows: 50% belongs to the inmate who can use 90% of them during the execution and 10% are recorded in his name at the State Treasury, to be collected at the time of release. The remaining 50% goes to the center's administration.

Unlike the convicted adult, the minor can conclude an insurance contract regarding the contribution to the state social insurance budget for the income from the work performed, the contribution being covered from the 90% obtained during the execution of the measure.

The admitted person can also obtain income from the capitalization of the works carried out within the occupational workshops. The income thus obtained reverts entirely to the admitted person, after deducting the expenses necessary to carry out the works.

Regarding the rewards, the admitted person benefits from them if they show interest in the educational process, for the active participation in the organizational activities in the center and if they have an adequate behavior towards the other people in the center.

For admitted minors there is a number of specific rewards, such as: sending to camps or trips organized by the center or in collaboration with other institutions; agreeing for a maximum of 24 hours in the locality where the center is located; agreeing at the weekend for a maximum of 48 hours in the place of residence, family appointments, during school holidays, for 15 days, but not more than 45 days per year; consent for humanitarian reasons for a maximum of 10 days.

The humanitarian reasons for which consent can be given are: the death of a close relative or a person with whom the minor has strong emotional ties, solving social and medical problems, supporting the family or in case of disaster.

The obligations and interdictions, the disciplinary violations of the admitted minors are the same as for the convicted adults.

For admitted minors, in addition to the first 4 disciplinary sanctions applicable to the convicted person of age¹³ the sanction of separation from the team can be applied for 4 hours a day, but not more than 5 consecutive days.

The execution of the educational measure of hospitalization in an educational center is done in accordance with the provisions of art. 514 Code of criminal procedure, and the execution of the measure of admission in a detention center is done according to art. 515 of the same code.

4. Conclusions

As mentioned in the preamble to this paper, the system of sanctioning juveniles who commit criminal acts was rethought by the national legislature, which eliminated the penalties, based on international regulations, pursuing the new criminal policy, in particular, their recovery, their social reintegration, in order to prevent the commission of other criminal acts.

However, I deem that the non-custodial educational measures as regulated by the legislator have not taken into account minors who commit criminal acts and who do not have parents, do not have a home, are not institutionalized ("street children") and against whom these measures have no practical effectiveness.

This conclusion follows from the economy of the provisions of art. 63 of Law 253/2013, according to which the non-custodial educational measures are executed in the community, during their execution ensuring the maintenance and strengthening of the minor's ties with the family and the community, the free development of the minor's personality, as well as his involvement in programs for training in a spirit of responsibility and respect for the rights and freedoms of others.

De lege ferenda, non-custodial educational measures should be rethought so as to take into account the situation of no family, homeless and uninstitutionalized minors.

References

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- Law no. 286/2009 regarding the Criminal Code;
- Law no. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by the judicial bodies during the criminal process;
- Law no. 254/2013 on the execution of sentences and custodial measures ordered by the judicial bodies during the criminal proceedings;
- Regulation for the application of Law no. 254/2013.

¹³ Law no. 254/2013, art. 174 para. 1: a) the warning; b) suspension of the right to participate in cultural, artistic and sports activities, for a period not exceeding one month; c) suspension of the right to participate in work, for a period of maximum one month; d) suspension of the right to receive and buy goods, except for those necessary for individual hygiene and exercise of the right to defense, petition, correspondence and medical care, for a period not exceeding two months.