

# THE SPECIFICITY OF THE MINOR'S LIABILITY IN COMPARATIVE CRIMINAL LAW

Ana-Maria ROTĂRESCU\*

## Abstract

*Criminal liability, offense and punishment are the three pillars of criminal law and therefore the core of criminal law. In the absence of certainty as to criminal liability, the system of legal rules governing social relations, in order to protect them, would be seriously undermined, making it impossible to re-establish the broken legal order.*

*Criminal liability is the most serious form of legal liability, since it occurs when the most important social values are harmed, social values that become legal values by virtue of the legislator's defense.*

*One category of active subjects of a conflict - seen as a criminal legal relationship - is minors. The increasing number of crimes committed by minors has led to a criminal phenomenon among minors.*

*The regulation of the criminal liability of minors is a constant in all legal systems, differing in terms of the age of criminal liability and the system of punishment applied by each State. Also, as we shall see, the criminal legislature in other countries has attached particular importance to the regulation of the criminal liability of minors by enacting special laws in this regard.*

*The objective of the present research is to analyse the institution of criminal liability of minors in comparative criminal law in order to identify a solution that best suits the prevention of juvenile crime.*

**Keywords:** *minors, criminal liability, comparative law, sanctions, age of criminal liability.*

## 1. Introductory considerations

The development of juvenile delinquency in the world, and the variety of forms in which it manifests itself, in relation to the seriousness of some of them, is a major problem, which has given rise to constant concerns at the level of each State regarding the legal regime applicable to juvenile offenders. In other words, this constant of the mutability over time of the minor's criminal liability cannot be dissociated from European civilization and legal culture, as is also noted in the literature<sup>1</sup>.

Combating juvenile delinquency is a concern of European countries, which have long been faced with an increase in the number of crimes committed by minors, recidivism among minors, an increase in the number of crimes committed by minors against other minors, points out M.A. Hotca<sup>2</sup>, Alexandru Boroi and G.Ş. Ungureanu<sup>3</sup>. We note that the phenomenon of juvenile delinquency has been and still is a concern of European countries, given the need for regulation to combat or reduce juvenile delinquency.

The specialist doctrine<sup>4</sup> points out that European law is based on the European legal tradition, explained by the common medieval origins of some provisions and by the evolution of divergent components until the modern era. In this context, the Continental or Romano-Germanic law system and the Common Law system stand out.

Following the analysis of the regulation of the criminal liability of minors in comparative law, objective differences in substance between the highly industrialised Western countries and other countries are highlighted, and a typology characterised by the way in which each country explains the existence of the phenomenon of criminality. Aspects also noted by the specialist practice since 1985<sup>5</sup>.

We thus note a variability in the regulation of the criminal liability of minors, both in terms of the nature and the content of this institution, determined *inter alia* by a diversity of age limits considered, as well as by the system of sanctions applicable to minors who commit offenses.

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\* PhD Candidate, Faculty of Law, „Nicolae Titulescu” University of Bucharest; Legal advisor (e-mail: rotarescu.ana\_maria@yahoo.com).

<sup>1</sup> O. Brezeanu, *Juvenile justice and European integration*, SDR no. 1-2/2004, pp. 223-233.

<sup>2</sup> M.A. Hotca, *Criminal Code. Comments and explanations*, Bucharest, C.H. Beck Publishing House, 2007, p. 1598.

<sup>3</sup> Al. Boroi, G.Ş. Ungureanu, *The sanctioning system for minors in a European vision*, in *Revista de drept penal*, year IX, no. 2 (April-June), Bucharest, 2002, pp. 30, 31.

<sup>4</sup> O. Brezeanu, *The minor and criminal law*, All Beck Publishing House, Bucharest, 1998, pp. 83-112.

<sup>5</sup> D. Szabo, *Some reflections on contemporary criminology*, SCJ no. 4/1985, pp. 342-349.

As regards the system of sanctions applicable to minors who commit offenses, criminal law systems follow two models: the traditional or penal model, according to which minors are punished from a certain age, and the more recent, non-criminal model, which gives priority to educational measures. Other legal systems provide for a mixed system based on both punishments and educational measures, for example Switzerland and Germany.

In carrying out this research, research methods appropriate to legal theory and doctrine were used, using the logical method, comparative analysis, systematic analysis, description and deduction.

## 2. Criminal liability of minors in comparative law

### 2.1. The criminal liability of minors in the legislation of some EU Member States

#### 2.1.1. Belgium

##### A. The seat of matter

Juvenile offenders under 18 years of age cannot be subject to the sanctions regulated by the Criminal Code, as they are subject to the provisions of the Youth Protection Act of 8 April 1965 and are tried by the youth courts. However, if juvenile offenders are over 16, they can in some cases be tried in ordinary courts.

Nota bene, according to the literature,<sup>6</sup> the principle that minors may not commit offenses has always been accepted in Belgian law, in relation to the specific case, with the Law of 8 April 1965 providing for the possibility that the public prosecutor always refers juvenile offenders to the youth court, mainly on the basis of the state of danger in which they find themselves and less in relation to the act qualified as an offense. This is why Belgian law has not explicitly provided for a minimum age threshold from which the minor is criminally liable for the act committed and qualified as a crime, there are concrete cases in case law where minors aged 8 and 9 have been prosecuted and sent to the youth court for committing an act by which they have suppressed the life of a person.

##### B. Limits of criminal liability

Looking at Belgian criminal law, we note that the age of criminal majority is set at 18, and minors under this age cannot be sentenced to a penalty. The principle of criminal irresponsibility and the presumption of lack of discernment are not expressly provided for in a legal text. Art. 36 para. (4) of the Youth Protection Act of 8 April 1965 stipulates that the Youth Court is competent to hear applications from the Public Prosecutor's Office concerning persons prosecuted for an offense committed before the age of 18. Art. 37 of the Youth Protection Act of 8 April 1965 also provides that the youth court may establish measures for the protection, preservation and education of the persons it judges.

In certain cases, the age of criminal liability may be lowered to 16 years, in view of the fact that art. 38 of the Act of 8 April 1965 states that, in view of the offense committed, if the juvenile court considers the measures provided for in art. 37 to be inappropriate, it may refer a minor who has reached the age of 16 and under the age of 18 to the ordinary courts.

Also, following the study carried out in this case, we note the existence of a draft law to amend the 1965 law to reduce the age of criminal liability to 12 years<sup>7</sup>. Thus, the Law of 13 June 2006 amending the legislation on the protection of juveniles and the treatment of minors who have committed offenses establishes that the court may impose certain obligations on minors under 12 years of age.

##### C. Penalty system

One of the particularities of the Belgian system concerning juvenile offenders is its pragmatism, based on the theory of social defense, with the criminal liability of minors only being an exception<sup>8</sup>.

The Law of 8 April 1965 regulates the possibility of the following **measures** for minors:

- placement in a foster family under the supervision of the youth protection committee;
- placement in a specialised center.

These measures cease automatically on reaching the age of 18.

<sup>6</sup> V. Brutaru, *Liability of minors in different European countries*, in *Revista Universul Juridic* no. 6/2015, p. 19.

<sup>7</sup> *Criminal liability of minors*, <https://www.senat.fr/lc/lc52/lc52.html>, last accessed on 17.02.2024.

<sup>8</sup> T. Dascăl, *Minority in Romanian Criminal Law*, C.H. Beck Publishing House, Bucharest, 2011, p. 87.

The same law also provides that the court may apply to minors, cumulatively, **certain measures**, as follows:

- reprimand, except for those who have reached the age of 18, and continue to leave them with foster families, reminding them to supervise them better in the future;
- order their supervision by the competent social service;
- order enrolment in an educational programme;
- require them to provide educational or general interest services, in relation to their age and abilities, for a maximum of 150 hours, organised by a specialised service or a specialised individual;
- oblige them to undergo medical treatment, in a psychological or psychiatric service or in a service specialising in alcoholism or drug addiction;
- entrust them to a legal person for the purpose of training or participation in an organised activity;
- place them in an institution for the purpose of treatment, education, training or vocational training;
- place them in the care of a public community institution for the protection of young people in a closed regime;
- place them in a hospital unit;
- place them in a center specialising in alcoholism, drug addiction or other addictions, if a medical report shows that the physical or mental integrity of the minor cannot be protected otherwise;
- place them in a specialised psychiatric center if there is a medical report showing that they suffer from a mental disorder that seriously affects their ability to control their actions.

As mentioned above, under the Act of 13 June 2006, in the case of minors who have reached the age of 12, the court may impose one or more of the following **obligations**:

- attend an educational establishment;
- perform an educational and general interest service of up to 150 hours under the supervision of a specialised service or an individual;
- perform paid work for a maximum of 150 hours for the purpose of compensating the victim, if the victim has reached the age of 16;
- follow the guidelines of an educational guidance or mental health center;
- attend training or awareness-raising modules on the consequences of the acts committed on the victims;
- participate in one or more sporting, social or cultural activities;
- not to frequent certain people or places that have a certain connection with the crime committed;
- not to carry out one or more specified activities;
- the ban on leaving;
- comply with other specified conditions or prohibitions.

Compliance with these measures may be entrusted by the court to a police service.

**A prison sentence** may be imposed if the minor has reached the age of 16 and the juvenile court considers that an educational measure is insufficient or if the minor is behaving in a socially dangerous manner; the prison sentence is to be served in a special regime.

### 2.1.2. France

#### A. The seat of matter

France regulates the criminal liability of minors through a normative deed different from the Criminal Code, namely by Ordinance no. 45-147/02.02.1945<sup>9</sup>.

Thus, art. 122-8 of the French Criminal Code<sup>10</sup> refers to the special provisions of Ordinance no. 45-147 to the effect that minors are criminally liable under the aforementioned special law. It also provides that the special law establishes the educational measures that may be imposed on minors between 10 and 18 years of age, as well as the penalties to which minors between 13 and 18 years of age may be sentenced, in relation to the mitigation of liability that they enjoy because of their age.

Ordinance no. 45-147/02.02.1945 is structured in six chapters as follows:

<sup>9</sup> <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000517521/2021-09-29/?isSuggest=true>, last accessed on 14.02.2024.

<sup>10</sup> <https://pdfcoffee.com/codul-penal-francez-pdf-free.html>, last accessed on 14.02.2024.

- I. General provisions (art. 1-6-2)
- II. Procedure (art. 7-12-3)
- III. Juvenile Court and Juvenile Welfare Court (art. 13-24)
- IV. Supervised freedom (art. 25-32)
- V. Other provisions (art. 33-43)
- VI. Provisions applicable in the Overseas Territories and in the Department of Mayotte (art. 44-49)

### **B. Limits of criminal liability**

Art. 122-8 of the French Criminal Code sets the limits of criminal liability, thus dividing minors into two categories, namely minors between 10 and 18 years old and minors between 13 and 18 years old, this division being determined by the sanctions that may be applicable to minors, namely educational sanctions and punishments.

These limits of criminal liability are also reiterated in Ordinance no. 45-147, as follows:

- educational sanctions may be applied to minors between 10 and 13 years of age;
- in the case of minors between 13 and 18 years of age, the court may impose a penalty or educational sanctions.

Furthermore, French law provides that protective measures may be applied to minors under 10 years of age and to minors between 10 and 18 years of age in all cases where the offenses are found to have been committed with discernment and the court considers this measure sufficient.

### **C. Penalty system**

According to Ordinance no. 45-147, the sanctioning system for minors who commit offenses is a mixed system based on educational measures, mediation-reparation measures and punishment.

Thus, according to art. 2 of the Ordinance, the court may order one or more of the following educational sanctions set out in art. 15-1, namely:

1. confiscation of property owned by or belonging to the minor and used in the commission of the offense or which is the proceeds of the offense;
2. prohibition to be present, for a period not exceeding one year, at the place(s) where the offense was committed and which are designated by the court, except for the places where the minor has his/her habitual residence;
3. prohibition, for a period not exceeding one year, from meeting, receiving or coming into contact with the victim(s) of the crime designated by the court;
4. prohibition, for a period not exceeding one year, from meeting or receiving co-offenders or accomplices designated by the court or from coming into contact with them;
5. the assistance or repair measure referred to in art. 12-1;
6. the obligation to attend a civic training course, not exceeding one month in duration, designed to remind the minor of the obligations arising from the law and the deadlines for the implementation of which are set by decree in the Council of State;
7. placement for a maximum period of three months, renewed once, not exceeding one month for minors aged between ten and thirteen years, in an educational institution or public or private institution authorised to provide psychological, educational and social assistance related to the acts committed and located outside the place of habitual residence;
8. execution of school work;
9. solemn warning;
10. placement in a boarding school for a period corresponding to one school year with permission for the minor to return to the family on weekends and school holidays;
11. prohibition for minors to enter and leave public roads between 11 p.m. and 6 a.m. without being accompanied by one of their parents or the holder of parental authority, for a maximum period of three months, renewable once.

Art. 15-1 of the Ordinance also stipulates that the children's court shall designate the youth judicial protection service or the authorised service responsible for ensuring the proper enforcement of the sanction. This service will report to the children's judge on the enforcement of the educational sanction.

Educational sanctions imposed under this article shall be enforced within a period not exceeding three months from the pronouncement.

In the event of non-compliance by the minor with the educational sanctions provided for in this article, the juvenile court may order the placement of the minor in one of the establishments referred to in art. 15 (parents, guardian, custodian or a trusted person, authorised public or private educational or vocational institution or training establishment, authorised medical or medical-pedagogical establishment, child welfare service).

In respect of a minor who has reached the age of 13, the court may order one of the following educational measures governed by art. 15:

1. surrender to his parents, his guardian, the person who had him in custody or a trusted person;
2. placement in an approved public or private educational or training institution or establishment;
3. placement in an approved medical or educational medical facility;
4. delivery to the child welfare service;
5. placement in an appropriate boarding school for delinquent school-age minors;
6. measurement of activity during the day under the conditions defined in art. 16.

The Ordinance provides for fines, imprisonment and life imprisonment **as punishments** for juvenile offenders.

With regard to imprisonment, art. 20-2 of the Ordinance states that a custodial sentence may not be imposed on minors who have reached the age of 13 if it is more than half the penalty prescribed by law for the offense.

Also, if the penalty imposed is life imprisonment or criminal detention, they may not impose a penalty of more than twenty years' imprisonment or criminal detention. However, where the minor is over sixteen years of age, the children's court and the juvenile court may, exceptionally and taking into account the circumstances of the case and the personality of the minor, as well as the minor's situation, decide that there is no reason to apply the first subparagraph. This decision can only be taken by the children's court in a special reasoned order. Where it is decided not to apply the first paragraph and the penalty imposed is life imprisonment or criminal detention, the maximum penalty that may be imposed shall be thirty years' imprisonment or criminal detention. Educational measures or sanctions imposed on a juvenile may not constitute the first term of recidivism. The prison sentence is served by juveniles either in a special section of a penitentiary institution or in a specialised penitentiary unit for juveniles, under the conditions defined by decree of the Council of State.

Also, according to art. 20-3 of the Ordinance, a fine could be imposed on a minor over 13 years of age, in a quantity that is reduced by half, but not exceeding 7,500 euros.

The following penalties cannot be imposed on the minor: a ban on being on French territory, a fine, a ban on civil and family rights and a ban on holding public office or exercising a professional activity (art. 20-4).

The provisions of the Criminal Code on community service, according to art. 20-5 of the Ordinance, are applicable to minors between 16 and 18 years of age, and must be adapted to the specific characteristics of the minor, with the aim of training the minor and reintegrating him/her into society.

According to art. 20-6 of the Ordinance, no prohibition, disqualification or incapacity may be pronounced against a minor.

With regard to the waiver of punishment and deferment of punishment regulated by the Criminal Code, the Ordinance also allows these institutions to be applied to minors aged between 13 and 18. Such orders may be made by the juvenile court when it considers that such measures are appropriate in relation to the personality of the minor, with the proviso that the postponement may be ordered for a maximum of 6 months.

### 2.1.3. Germany

#### A. The seat of matter

Liability of minors is governed by the Criminal Code as well as by the Juvenile Court Act of 1953, with further amendments and completions - *Jugendgerichtsgesetz*.

Thus, the German Criminal Code<sup>11</sup> regulates the criminal liability of minors in art. 10 - Special provisions for minors and young adults and in art. 19 - Lack of criminal liability.

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<sup>11</sup> [https://www.gesetze-im-internet.de/englisch\\_stgb/](https://www.gesetze-im-internet.de/englisch_stgb/), last accessed on 17.02.2024.

The Juvenile Court Act 1953<sup>12</sup> is structured in 5 parts as follows: Part 1 - purpose of application (personal and factual scope, purpose of juvenile criminal law and application of general criminal law), Part 2 - juveniles (general regulations, educational measures, amelioration materials, juvenile punishment, suspension of juvenile punishment with probation, suspension of juvenile punishment, multiple crimes, constitution of the Youth Court, liability, juvenile criminal proceedings, enforcement), Part Three - juveniles (application of substantive criminal law, constitution and procedure of the Court, enforcement and removal of criminal sentence, juveniles in courts responsible for general criminal matters), Part Four - special regulations for Bundeswehr soldiers, Part Five - final and transitional provisions.

Germany has attached great importance to holding juveniles criminally responsible long before the Juvenile Court Act of 1953. Thus, special courts were set up in 1908 to deal with cases involving juvenile offenders<sup>13</sup>. Subsequently, the German criminal legislator adopted two special laws applicable to juvenile offenders, namely the Jugendwohlfahrtsgesetz of 1922, published in the RGBl, Part I, p. 633 on 09.07.1922, which entered into force on 01.04.1924, and the Jugendwohlfahrtsgesetz of 1923, published in the RGBl, Part I, p. 135, on 16.02.1923, which entered into force on 13.03.1923.

### B. Limits of criminal liability

According to art. 19 of the German Criminal Code, which regulates lack of criminal liability, minors under the age of 14 cannot be held criminally responsible, as there is an absolute lack of discernment.

Art. 10 of the Criminal Code also states that its provisions apply to offenses committed by adolescents and young people, unless the special law for minors provides otherwise.

Art. 3 of the Juvenile Court Act states that „*a young person is criminally responsible if at the time of the commission of the offense he is mature enough to discern the seriousness of the offense and to act accordingly*”. Thus, the criminal liability of minors who have reached the age of 14 is relative.

According to the conception of the German criminal legislator - art. 1 para. (2) of the Jugendgerichtsgesetz, a minor is a person who is 14 years of age but not yet 18 years of age at the time of the commission of the offense, and a juvenile is a person who is 18 years of age at the time of the commission of the offense but not yet 21 years of age.

According to art. 105 of the Jugendgerichtsgesetz Act, if a juvenile, *i.e.*, one who has reached the age of 18 but not yet 21, commits an offense punishable under the general regulations, the legislator shall apply the regulations applicable to the juvenile in Sections 4-8, 9 no. 1, Sections 10, 11 and 13-32 if:

a. from the general assessment of the adolescent's personality and taking into account his social environment, it appears that at the time of the offense his moral and psychological development is similar to that of a minor;

b. it is assessed, depending on the nature, circumstances or reasons for the offense, that the act committed is a juvenile offense.

We thus note that juvenile courts also have jurisdiction to try offenses committed by adolescents aged between 18 and 21.

Nota bene, the German doctrine of the field of psychiatry argues that from a practical point of view neither criminal law nor the field of psychiatry can identify objective criteria for the application of the above provisions<sup>14</sup>. However, in about 90% of cases, in relation to adolescents aged 18 to 21, the courts applied the provisions of the Jugendgerichtsgesetz Act<sup>15</sup>.

### C. Penalty system

According to the Jugendgerichtsgesetz Act of 1953, the punishment regime for minors consists of educational measures, disciplinary measures and imprisonment.

<sup>12</sup> <https://www.gesetze-im-internet.de/jgg/BJNR007510953.html>, last accessed on 17.02.2024.

<sup>13</sup> F. Dunhel, *Juvenile criminal law in Germany; between a system of protection and justice*, in *Journal of Deviance and Society* no. 3/2002, vol. 26, p. 297.

<sup>14</sup> S. Boyne, *Juvenile Justice in Germany*, Robert H. McKinney School of Law, Indiana University, Legal Studies Research Paper no. 2015-28, Indianapolis.

<sup>15</sup> F. Dunkel, *Sistemul justiției juvenile în Europa*, in *Kriminologijos studijos* no. 1/2014, p. 47.

#### D. Educational measures

Thus, Section 2 of the Jugendgerichtsgesetz Act regulates educational measures, *i.e.*, the issuing of instructions, which are obligations on juvenile offenders, and the order to receive educational assistance within the meaning of Section 12.

According to art. 10 para. (1) of the Jugendgerichtsgesetz Act, instructions are commands and prohibitions regulating the lifestyle of the young person and therefore intended to promote and ensure his or her upbringing; these instructions must not be unreasonable on the lifestyle of the young person. Thus, the judge can, in particular, impose on the young person:

- a. to follow the instructions concerning his place of residence;
- b. to live with a family or in a house;
- c. to accept an apprenticeship or a job;
- d. to provide labour services;
- e. to put oneself under the care and supervision of a certain person (care assistant);
- f. to participate in a social training course;
- g. to strive to reach an agreement with the injured party (perpetrator-victim resolution);
- h. to refrain from contact with certain people or from visiting certain public places;
- i. to attend a traffic course.

According to art. 10 para. (2) of the Jugendgerichtsgesetz, the judge may, with the consent of the legal guardian and the legal representative, order the young person to undergo medical treatment. If the young person has reached the age of 16, this obligation is only imposed with his or her consent.

#### E. Disciplinary measures

According to art. 13 para. (1) of the Jugendgerichtsgesetz Act, the judge applies disciplinary measures if it is not necessary to impose a juvenile punishment, but it is necessary to make the young person aware as a matter of urgency that he must answer for the injustice he has committed.

In the view of the German criminal legislator, the following are considered disciplinary measures:

- a. warning;
- b. issuing conditions or imposing obligations;
- c. juvenile detention.

**The purpose of the warning** is to make the young offender aware of the injustice of his or her offense (art. 14 of the Jugendgerichtsgesetz Act).

Section 15 of the Jugendgerichtsgesetz lists the **obligations that may be imposed on the young person**, as follows:

- make every effort to repair the damage caused by the act;
- apologise personally to the injured party;
- to do a job;
- pay an amount of money to a charity.

Payment of an amount of money is only ordered if two conditions are met: the young person has committed a crime and can be expected to pay the money from funds he or she is entitled to use independently or the young person is to be deprived of the profit from the crime or the remuneration he or she received for it.

**Juvenile detention** is carried out on a short-term or permanent basis [art. 15 para. (1) of the Jugendgerichtsgesetz Act]. Detention in free time is carried out during the young person's free time (weekend) and is limited to one or two free periods (one or two weekends) - para. (2). Short-term detention is instead of detention in lieu of time off, which is for a period of two to four days - para. (3). The final detention is for a minimum of one week and a maximum of four weeks - para. (4).

**The prison sentence** (*Jugendstrafe*) is governed by section four - *Youth Punishment*. Thus, the juvenile punishment, *i.e.*, the custodial sentence, is the deprivation of liberty in a facility intended for its execution [art. 17 para. (1) of Jugendgerichtsgesetz Act]. Imprisonment shall be imposed on juveniles if, due to their harmful tendencies, educational and disciplinary measures are not sufficient to rehabilitate the juvenile offender or if the punishment is necessary in view of the seriousness of the offense [art. 17 para. (2) of Jugendgerichtsgesetz Act]. The prison sentence is therefore ordered taking into account the seriousness of the offense committed and the behaviour of the offender.

As for the length of the juvenile sentence, according to art. 18 of the Jugendgerichtsgesetz Act, the minimum sentence is six months and the maximum sentence is five years. If an offense is committed for which, under general criminal law, the maximum penalty is more than ten years' imprisonment, then the maximum penalty for juveniles is ten years. Penalty limits under general criminal law do not apply. In all cases, youth punishment must be aimed at the necessary educational influence. The sentence is carried out in juvenile prisons, specifically in specially designed holding places in adult prisons.

German case law shows that imprisonment is not imposed on young people under 16. If the length of imprisonment does not exceed 2 years, judges often grant dispensation from the sentence. If the prison sentence is more than one year, this measure is imposed in two thirds of cases<sup>16</sup>.

According to German criminal law, sanctions for juvenile offenders between 14 and 18 years of age and young people between 18 and 21 years of age are primarily aimed at their education. Priority is given to educational and disciplinary measures (for juveniles), and only as a subsidiary measure is imprisonment applied (for juveniles), with the possibility of conditional suspension of the execution of the sentence under the conditions of section five of the Jugendgerichtsgesetz Act - *suspension of the sentence for juveniles with probation, which* is also confirmed by the literature in the field<sup>17</sup>.

Thus, following the analysis carried out, we note that at the heart of juvenile justice lies the principle of subsidiarity or minimum intervention - *Subsidiaritätsgrundsatz*, a conclusion also highlighted by the doctrine<sup>18</sup>, a principle that cannot be separated from the principle of proportionality, whereby criminal sanctions are limited.

#### 2.1.4. Austria

##### A. The seat of matter

The specifics of criminal liability and criminal sanctions applicable to minors are regulated by the Juvenile Rights Act 1988 - *Jugendgerichtsgesetz*.

##### B. Limits of criminal liability

According to Section 1 - *Definitions* of the Juvenile Rights Act 1988 - *Jugendgerichtsgesetz*: a minor is any person who has not attained the age of 14 years [para. (1) item 1]; juvenile is a person who has reached the age of 14 but who has not reached the age of 18 [para. (1) para. (2)]; young adult is a person who has reached the age of 18 but who has not reached the age of 21 [para. (1) para. (5)]; juvenile offense is an act committed by a young person and punished by the court [para. (1) item 3], and juvenile criminal case is a criminal case involving a juvenile offense [para. (1) item 4]. Para. (2) of art. 1 of the Juvenile Rights Act 1988 - *Jugendgerichtsgesetz*, states that if it is doubtful whether a defendant was 18 years old at the time of the offense or at the time of the prosecution, the provisions of the juvenile procedure shall apply.

Section 4 of the Juvenile Rights Act 1988 - *Jugendgerichtsgesetz* regulates *impunity for minors and juveniles* in the sense that (1) Minors who commit a punishable offense shall not be punished, (2) A juvenile who commits a punishable offense shall not be liable to prosecution if:

- for some reason, he is not yet mature enough to recognize the injustice of the act or to act on this understanding, or,
- commits an offense before reaching the age of 16, is not guilty of any serious misconduct and there is no need to apply the juvenile criminal law for special reasons relating to deterring the young person from committing criminal offenses.

Case studies in Austria show an increase in crime among minors under the age of 14, which has prompted some state representatives to propose lowering the age of criminal liability from 14 to 12<sup>19</sup>. In the reasoning for this proposal it is argued that „*There is no reason to protect criminals, whether murderers, rapists or robbers, from punishment simply because they have not reached the age of 14. Gang crime of young foreigners is a daily*

<sup>16</sup> *Criminal liability of minors*, <https://www.senat.fr/lc/lc52/lc52.html>, last accessed on 17.02.2024.

<sup>17</sup> J.-M. Jehle, *Criminal Justice in Germany*, p. 35, published by the Federal Ministry of Justice, 4<sup>th</sup> ed., 2005, <http://www.bmj.bund.de/media/archive/961.pdf>, last accessed on 17.02.2024.

<sup>18</sup> F. Dunkel, *Juvenile Justice in Germany: Between Welfare and Justice*, [www.esc-eurocrim.org/files/juvjusticegermany\\_betw\\_welfar\\_justice.doc](http://www.esc-eurocrim.org/files/juvjusticegermany_betw_welfar_justice.doc), last accessed on 17.02.2024.

<sup>19</sup> The FPÖ leader in Vienna, Dominik Nepp, proposes reducing the age of criminal liability from 14 to 12. <https://ziarulromanesc.at/reducerea-varstei-de-rapundere-penala-in-austria/>, last accessed on 22.02.2024.



growing problem in Vienna and a legal basis is needed to solve this problem”<sup>20</sup>. Opponents of this proposal argue that it has little or no preventive effect, which is not supported by those who promote the proposal to reduce the age of criminal liability, pointing out that dangerous criminal offenders cannot move freely in society. A particularly tragic and unprecedented case in Germany, where two girls aged 12 and 13 killed another girl aged 12<sup>21</sup>, is a case in point; the representatives of the Austrian authorities thus cite a landmark case in Germany, where the age of criminal liability is also 14, as a reason for reducing the age of criminal liability. The two girls investigated for the crime, aged under 14, are not criminally responsible, which is why they have been handed over to child welfare services.

### C. Penalty system

Art. 5 of the Juvenile Rights Act 1988 - *Jugendgerichtsgesetz* provides that the general criminal laws apply to the punishment of juvenile offenses, unless otherwise stated therein.

Next, we point out that the Juvenile Rights Act of 1988 - *Jugendgerichtsgesetz* - provides in art. 51 that the general provisions on prison sentences apply to the enforcement of custodial sentences for juveniles, unless otherwise provided in the provisions of this Federal Act.

Thus, the minors are punished with imprisonment<sup>22</sup>, the limits of which are reduced, and this is enforced by the juvenile courts, first introduced on 5 January 1919.

Furthermore, Section 12 - *Guilty verdict without punishment of the Juvenile Rights Act 1988 - Jugendgerichtsgesetz*, states that where only a minor penalty is to be imposed for a minor offense, the court must refrain from imposing a penalty if it can be presumed that the guilty verdict alone is sufficient to deter the offender from committing further criminal offenses and the decision not to impose a penalty must be justified.

Section 13 of the Juvenile Rights Act 1988 - *Jugendgerichtsgesetz*, entitled *guilty verdict subject to punishment*, provides that the penalty to be imposed for a juvenile offense is reserved for a probationary period of 1 to 3 years if it is presumed that the guilty verdict and the threat of punishment, alone or together with other measures, will be sufficient to deter the offender from committing further criminal offenses. The probationary period starts from the moment the judgment becomes final. The judgment must include the penalty reserved, the term of probation and the reasons. The court is also obliged to inform the sentenced person of the meaning of the guilty verdict, which provides for the penalty, and as soon as the judgment becomes final to send him a written document which, in simple terms, sets out the content of the judgment, the obligations to be imposed and the reasons why the penalty may be applied retroactively.

We therefore note that juvenile courts, when imposing a sentence, must consider whether it is essential to prevent others from committing criminal offenses (art. 14 of the Juvenile Rights Act 1988 - *Jugendgerichtsgesetz*).

Further, art. 15 para. (1) of the Juvenile Rights Act 1988 - *Jugendgerichtsgesetz*, provides that if a person is reconvicted of an offense committed before the expiry of the probation period, the penalty must be imposed if, in view of the conviction, it is necessary to deter the offender from committing further criminal offenses. The penalty may also be imposed if a court instruction is not complied with during the probationary period or if the offender consistently evades supervision by the probation officer.

The Juvenile Rights Act of 1988 - *Jugendgerichtsgesetz*, provides in art. 17 for conditional release. Thus, for conditional release from a prison sentence, the provisions of Section 46 para. (1) to (5) of the StGB apply, but with the proviso that the minimum sentence to be served is one month and that no account is taken of whether the sentence is to be served in order to prevent criminal offenses being committed.

In juvenile prisons, prisoners are trained in a particular profession that corresponds to their previous knowledge, skills, activities and inclinations (art. 53 Juvenile Rights Act 1988 - *Jugendgerichtsgesetz*).

<sup>20</sup> <https://ziarulromanesc.at/reducerea-varstei-de-rapundere-penala-in-austria/>, last accessed on 22.02.2024.

<sup>21</sup> <https://ziarulromanesc.de/stiri/ucigasele-luisei-si-au-recunoscut-fapta-cazul-socheaza-germania/>, last accessed on 22.02.2024.

<sup>22</sup> <https://www.gesetze-im-internet.de/stgb/>, last accessed on 22.02.2024.

### 2.1.5. Croatia

#### A. The seat of matter

Criminal liability of minors and court proceedings against juvenile offenders are regulated by the Juvenile Courts Act - *Zakon o sudovima za mladez*. Cases involving juvenile offenders shall be tried as a matter of urgency and must be initiated, conducted and concluded without undue delay (art. 4)<sup>23</sup>.

The Juvenile Courts Act - *Zakon o sudovima za mladez* is structured in 5 parts as follows:

- part I - Introductory provisions;
- part II - Other minors: I. Criminal law provisions - general criminal law provisions, educational measures, juvenile imprisonment, security measures, special provisions on the limitation period of criminal proceedings and substantive legal expediency, publication of the judgment; II. Court provisions and criminal procedure provisions - juvenile courts, proceedings against juveniles; III. Provisions on enforcement of sanctions (educational measures, juvenile imprisonment);
  - part III - Younger adults: I. Application of criminal law regulations; II. Provisions on criminal procedure;
- III. Application of penalties;
  - part IV - Criminal protection of children;
  - part V - Transitional and final provisions.

Art. 1 of the Juvenile Courts Act - *Zakon o sudovima za mladez* regulates its content. Thus, the law provides for provisions applicable to juvenile offenders, *i.e.*, minors and younger adults, in substantive criminal law, provisions on courts, criminal procedure, as well as the enforcement of penalty and provisions on the criminal protection of children.

The provisions of the Juvenile Courts Act - *Zakon o sudovima za mladez* are supplemented by the provisions of the Criminal Code, the Courts Act, the Act on the Protection of Persons with Mental Disorders, the Act on the Execution of Sanctions for Criminal offenses and other general regulations, unless they are contrary to it (art. 3 of the Juvenile Courts Act - *Zakon o sudovima za mladez*).

#### B. Limits of criminal liability

According to art. 2 of the Juvenile Courts Act - *Zakon o sudovima za mladez*, a minor is a person who has reached the age of 14 but has not reached the age of 18, and a younger adult is a person who has reached the age of 18 at the time of the offense but has not reached the age of 21.

#### C. Penalty system

The Juvenile Courts Act - *Zakon o sudovima za mladez*, regulates the mixed sanctioning system, based on educational measures and imprisonment.

Minors who commit offenses are subject to educational measures and juvenile imprisonment, as well as security measures in addition to the conditions laid down in this law [art. 5 para. (1)].

Educational and security measures may be applied to a minor who at the time of the offense was 14 years old but not 16 years old (younger minor) [art. 5 para. (2)].

A minor who has reached the age of 16 at the time of the offense and has not yet reached the age of 18 (older minor) may be sentenced to educational and security measures as well as to imprisonment for minors [art. 5 para. (3)].

Thus, we note that art. 6 of the Juvenile Courts Act - *Zakon o sudovima za mladez* regulates the purpose of juvenile sanctions, *i.e.*, influencing the education of minors, developing their personalities and preventing them from committing new crimes. *Nota bene*, this purpose is taken into account both in the application of educational measures and in the application of the prison sentence. With this regulation, we believe that the Croatian criminal legislator, on the one hand, gives priority to the need for education/education of minors by regulating educational measures, thus transposing into national law the provisions issued by the European Parliament and the Council, and, on the other hand, warns minors that if they commit more serious offenses, they will be sentenced to imprisonment, as educational measures are not justified in relation to the nature and seriousness of the offense and the degree of guilt.

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<sup>23</sup> <https://www-zakon-hr/z/180/Zakon-o-sudovima-za-mladez>, last accessed on 24.02.2024

#### D. Educational measures

Art. 7 para. (1) of the Juvenile Courts Act - *Zakon o sudovima za mladez* regulates 7 educational measures that can be applied to minors, as follows: judicial reprimand, special obligations, increased care and supervision, increased care and supervision with day care in an educational institution, referral to a disciplinary center, referral to an educational institution, referral to a special educational institution.

In the process of choosing the educational measure, the court must take into account the age of the juvenile, his development and psychophysical characteristics, the seriousness and nature of the offense committed, the reasons and circumstances in which he committed the offense, his behavior after the offense, the fact that he has tried to prevent the occurrence of harmful consequences or has tried to repair the damage caused, his behavior towards the injured person, his personal and family circumstances, the commission of other criminal penalties, another juvenile sentence, circumstances influencing the choice of such educational measures as best correspond to the purpose of the educational measures.

**Judicial caution** is applied if it is judged that it alone will achieve the purpose of the educational measure; the assessment is made in relation to the attitude of the juvenile offender to the offense committed and his agreement not to commit further offenses. At the time of sentencing, the court will warn the juvenile that a more severe measure may be imposed if he commits another offense.

The court may impose certain **special obligations on** the minor as follows:

- to apologise to the injured party;
- to make good the damage committed by the offense to the best of its ability;
- to go to school regularly;
- not to miss work;
- to train for a profession that corresponds to their skills and inclinations;
- to take a job;
- to undertake income-generating activities with the supervision and advice of the educational measures' coordinator;
- get involved in the activities of humanitarian organizations or in activities of community or environmental importance;
- not to go to certain public places and not to come into contact with certain people who may negatively influence their behavior;
- with the consent of the legal representative, to undergo medical treatment for the use of drugs or other substances;
- to attend individual or group psychosocial treatment in a youth counselling center;
- to attend vocational training courses;
- not to leave the place of residence or stay without the special permission of the social welfare center;
- to be directed to the competent institution for driver training to check knowledge of traffic rules;
- not to communicate with the victim;
- other obligations necessary in relation to the offense committed, the personal and family circumstances of the minor.

The obligations listed above are for a period of up to one year and may be modified or suspended by the court.

**Increased care and supervision** are required when the court considers that the parents' education of the minor's behavior and personality development is not sufficient to achieve the purpose of the educational measures, but it is necessary for the minor to undertake more permanent educational measures under the supervision of the competent service (art. 11 of the Juvenile Courts Act - *Zakon o sudovima za mladez*). This measure is ordered for a period of between 6 months and 2 years.

**Enhanced care and supervision with day care in an educational institution** is regulated by art. 12 of the Juvenile Courts Act - *Zakon o sudovima za mladez*. This is ordered when the court considers that it is necessary to separate the minor from his/her environment for one day, and the measure is carried out by educators and other experts for a period of between 6 months and 2 years.

**Referral to the disciplinary center** is ordered when the court considers that a short-term separation of the minor from his or her environment, during which time appropriate intensive measures will be carried out, is necessary to achieve the purpose of the educational measures provided for by law (art. 13).

**A referral to an educational institution** is ordered when the court considers it necessary for the care and supervision of the minor to be carried out by educators and experts, usually in a social welfare institution, for a period of between 6 months and 2 years (art. 15).

A juvenile with psychophysical deficiencies is **sent to a special educational institution** for as long as necessary, but not more than three years (art. 17 of the Juvenile Courts Act - *Zakon o sudovima za mladez*).

#### **E. Security measures**

These are regulated by art. 31 of the Juvenile Courts Act - *Zakon o sudovima za mladez*. Security measures are executed in addition to the educational measure or the prison sentence and are imposed in compliance with the provisions of the Criminal Code. Security measures are: psychosocial treatment, prohibition to drive a motor vehicle, prohibition to carry out certain activities, psychiatric treatment.

**Imprisonment of minors** is regulated by art. 24-30 of the Juvenile Courts Act - *Zakon o sudovima za mladez*. This custodial penalty is characterised by its specific features in terms of its conditions of application, duration, purpose and content. Thus, the prison sentence for juveniles may not be less than 6 months and not more than 5 years, but the court may not impose a prison sentence for a period longer than that prescribed for the offense committed, being bound to the minimum measure prescribed for that sentence.

In determining the sentence of imprisonment for juveniles, the court must take into account the factors affecting the amount of the sentence provided for in the Criminal Code, the degree of maturity of the juvenile, the time required for his or her upbringing, education and vocational training.

The Croatian criminal law provides for the possibility of conditional release of a minor serving a prison sentence if he has served at least one third of the sentence imposed. Probation will be revoked if the offender commits one or more offenses for which a six-month prison sentence was imposed while on probation.

Criminal cases involving juveniles are tried by the juvenile courts and the jurisdiction of the juvenile court ceases when the offender reaches the age of 23 (art. 35 and 36 of the Juvenile Courts Act - *Zakon o sudovima za mladez*).

### **2.1.6. Spain**

#### **A. The seat of matter**

As in the case of the French and German criminal legislator, the Spanish legislator has regulated the criminal liability of minors by a special law, which contains provisions derogating from ordinary law, more specifically by Organic Law no. 5/12.01.2000 on the criminal liability of minors.

The provisions of the Spanish Criminal Code are the common law on the matter, and the provisions of art. 19 state that offenders who have not reached the age of 18 will be held liable in accordance with the provisions of Organic Law no. 5/12.01.2000.

#### **B. Limits of criminal liability**

According to the Organic Law on the Criminal Liability of Minors of 12 January 2000, for minors who have not reached the age of 14, absolute lack of criminal liability is established, and for minors between 14 and 18, relative lack of discernment is established.

It should be noted that Spanish criminal law defines two categories of minors, namely those aged 14 to 16 and those aged 16 to 18.

The law regulates an aggravating circumstance for minors who have reached the age of 16 if they commit offenses involving violence, intimidation or endangering a person.

Furthermore, the Organic Law on the Criminal Liability of Minors also applies to adults aged between 18 and 21 who have committed offenses, when certain conditions are met, as follows:

- a crime or offense of a less serious nature has been committed without violence or intimidation of a person and without serious danger to life or physical integrity;
- the person has no previous convictions for offenses committed after the age of 18; previous convictions for crimes committed with negligence are not taken into account;
- the offender's personal circumstances and degree of maturity, recommends the application of the juvenile law.

Nor does the age of majority mean that the measure is no longer enforceable.

The execution of the measure is accomplished when its purposes are achieved. When confinement is ordered until the age of 21, it will be served mainly in prison. The same provisions also apply if the sentenced person has reached the age of 18 years in prison and his or her conduct is not in conformity with the purpose of the sentence or if, prior to the commencement of enforcement, the sentenced person has served all or part of another sentence of imprisonment under enforcement or detention in a prison (art. 14).

Priority will be given to the sentence in cases where, during the execution of the measure, a person who has reached the age of 18 is sentenced under the Criminal Code and the simultaneous execution of the sentence and the measure are not possible; thus, the execution of the sentence shall absorb the measures ordered, with the exception of internment and imprisonment measures, where, if the juvenile court orders the execution of the measure, it shall be carried out in prison, accompanied by the sentence of execution of imprisonment.

As regards minors under 14 years of age, the provisions on the protection of minors in the Criminal Code and the Organic Law will apply. According to art. 3 of the Organic Law, the prosecutor sends the prosecution material to the competent authority for the protection of minors, so that this authority can promote the adoption of protective measures that are in the minor's interest.

### C. Penalty system

By Law no. 8/2006 new regulations were introduced, in the sense:

- ensuring proportionality between the penalties imposed and the degree of social danger of the offense committed by executing the educational measure of internment in a closed re-education center, similar to custodial sentences, in the case of highly dangerous offenses and transferring minors to a penitentiary when they reach the age of 18;
- the introduction of additional measures, *e.g.*, a ban on contact with the victim, the victim's relatives or other persons;
- recognizing and guaranteeing victims' rights.

Most of the amendments were implemented by Law no. 5/2000, which regulates both substantive and procedural criminal law elements.

Thus, we note that the sanctioning system applicable to minors is a mixed one, based on educational measures and punishments.

According to the law on the criminal liability of minors, the **educational measures** that can be applied to the minor, based on the best interests of the minor, are:

- *confinement*, which involves educational, training and work activities in a center;
- *semi-open admission*, which means that minors are admitted to a center, but their educational, work and leisure activities are carried out outside the center;
- *open admission*;
- *therapeutic detention* involves the provision of special and individualised education for juvenile offenders suffering from certain abnormalities, mental changes, who are dependent on alcohol, drugs, psychotropic substances or changes in their perception of reality; the measure may also be applied in addition to other measures provided for by law; the juvenile will be given another measure appropriate to his/her circumstances by the juvenile court if he/she refuses the measure of therapeutic detention;
- *out-patient treatment*, requires that the persons concerned undergo special and appropriate treatment for alcohol or psychoactive substance dependence in a designated center within the time limits set;
- *day center care* - minors will live at home and go to a fully integrated community center where they will carry out support, educational, work and leisure activities;
- *weekend attendance* - minors will remain in the center from Friday evening until Sunday night for a maximum of 36 hours, except for hours, designated by the judge, that they must devote to homework;
- *supervised liberty* - this measure monitors the activity of the juvenile offender and his or her attendance at school, vocational training center or workplace, as appropriate, thus helping to eliminate the factors that led to the commission of the offense. The juvenile must follow the socio-educational models established by the public entity in charge or the specialist appointed to supervise the juvenile offender, in accordance with the provisions of the juvenile judge. The person is obliged to attend the meetings set by the specialists and to comply with the rules of conduct imposed by the judge:

- a. the obligation to report regularly to the appropriate educational center if the person concerned is in compulsory education and to explain any absences to the judge;
  - b. the obligation to follow certain cultural, educational, vocational, work, sex education, life education, etc. training programmes;
  - c. prohibition from attending certain places, establishments or performances;
  - d. prohibition to leave the home without a permission from the judge;
  - e. obligation to live in a certain place;
  - f. the obligation to appear in person before the juvenile judge or the specialist designated by the juvenile judge to inform about the activities carried out;
  - g. any other obligations that the judge or the court of the Fiscal Ministry deems necessary for the social reintegration of the accused, provided that these obligations do not violate his dignity as a person.
- *living with another person, family or educational group* - the minor must live with another person, family or educational group, carefully selected, for a period of time determined by the judge;
  - *community benefits* - the minor must consent to this; only benefits that cover the harm caused by the offense will be made;
  - *carrying out socio-educational themes* - the person must carry out, without confinement or supervised liberty, specific activities with educational content, designed to facilitate the development of his/her social skills;
  - *admonition* - this measure consists of a reprimand of the minor by the judge in order to make the minor understand the seriousness of the acts committed and their consequences or the consequences they could have had, warning the minor not to commit such acts in the future;
  - *the revocation of the driving license of mopeds or vehicles or the right to obtain their administrative licenses for hunting or for the use of any weapon* - this measure will be ordered when the offense is committed using a moped, a vehicle or a weapon;
  - *absolute disqualification* - this measure entails the permanent deprivation of all public honors, offices and duties to which he or she has had recourse, even though they were elective; and the inability to obtain such public honors, offices or duties in the future or to be elected to public office during the measure. The hospitalisation measures will be carried out in two stages: in the first stage they will be carried out in the corresponding center, and in the second stage they will be carried out under supervised release depending on the period and method chosen by the judge. The duration of each stage will be specified by the court.

As for the **prison sentence**, it applies to young people aged between 18 and 21 who commit a crime by violence, intimidation.

## 2.2. The criminal liability of minors in England and Wales

### 2.2.1. The seat of matter

The criminal liability of minors is regulated by the *Crime and Disorder Act*, adopted on 31.07.1998. It removed the presumption of criminal irresponsibility for minors aged between 10 and 14. Until the adoption and entry into force of the above-mentioned Act (30 September 1998), minors between 10 and 14 years of age who committed an offense were presumed to be irresponsible. The presumption was relative, given that it could be overturned by proving that the minor knew the consequences of his act.

The punishments that may be applicable to young offenders are set out in the *Police and Criminal Evidence Act 1984*.

### 2.2.2. Limits of criminal liability

According to Section 34 of the *Crime and Disorder Act*, passed on 31.07.1998, the age of criminal liability is 10 years and the age of criminal majority is 18 years.

### 2.2.3. Penalty system

Young people and adolescents aged 10-17 are subject to educational and disciplinary measures as well as imprisonment.

### 2.2.4. Educational and disciplinary measures

If it's a first offense and it's a minor one, police officers will give young offenders a warning.

When the seriousness of the offense is greater, the court imposes certain measures as follows:

- *probation*, for a maximum period of 3 years;
- *community service* for a period of 3 months;
- *combined punishment*, which involves probation and community service;
- *compliance with a certain limit*, monitored by an electronic bracelet;
- *supervision order*, for a period of 1-3 years;
- *the obligation to take part in activities organised, in principle in schools*, for a period of 2-3 hours every Saturday; the measure applies to young people aged 10-21;

Thus, if the minors are first offenders, they will receive a warning/reminder, and the next or more serious offense they will receive a warning.

- *compensation order* for the benefit of the victim, if the victim consents, or the community.

### 2.2.5. Prison sentence

The prison sentence is only applicable if the offenses committed by minors over the age of 12 are so serious that, if committed by a person aged 21 or over, a prison sentence would be justified and the release of the offender is a danger to public order.

Minors over the age of 15 serve their sentences in juvenile institutions or in separate units of adult prisons. Minors under 15 are placed in specialised institutions.

## 3. Conclusions on the regulation of the criminal liability of minors in comparative law

### 3.1. How the criminal liability of the minor is regulated

Based on the principles of independence and sovereignty, but also in view of the tradition and evolution of juvenile crime, each state has introduced special legal provisions for juvenile offenders in its legislation. As outlined above, some countries have included these provisions in their Criminal Codes and codes of criminal procedure, while others have considered it appropriate to draw up special legislation to regulate the liability of minors who commit offenses, complementing the provisions of the Criminal Code and the Code of Criminal Procedure.

Thus, like Romania, countries such as Bulgaria, Algeria, Croatia, Czech Republic, Denmark, Finland, Italy, Greece, Iran, Latvia, Lithuania, Poland, Netherlands, Russia, Republic of Moldova, Sweden, Slovenia, Scotland, Hungary, Ukraine, have regulated the liability of minors who commit offenses in the Criminal Code and the Code of Criminal Procedure. By contrast, other countries such as France, Germany, Austria, Belgium, Brazil, the United Kingdom, China, Colombia, Japan and Luxembourg have attached particular importance to the regulation of the criminal liability of minors, by drawing up special laws or regulations on the subject.

Thus, at European level, there is no single model in the area of criminal liability of minors, but on the contrary, this area enjoys a diversity in its approach to the phenomenon of crime among minors. This diversity is characterised by the way in which criminal liability is regulated, the limits of criminal liability, and the treatment of minors as offenders.

Compared to the juvenile justice system in the studied countries, we believe that the adoption of a special law dedicated to the criminal liability of minors in our country is a good omen and in line with European standards.

### 3.2. Age of criminal liability

According to art. 100 of the Belgian Criminal Code: „Where the term minor is used in the provisions of Book II of the present Code, this term shall mean a person who has not yet reached the age of eighteen years”.

According to art. 122-8 of the French Criminal Code: „Minors capable of discernment are criminally liable for crimes, offenses or misdemeanours of which they have been found guilty, under the conditions laid down by a special law which provides for the measures of protection, assistance, supervision and education to which they may be subject. This law also sets out the educational sanctions that may be imposed on minors between the ages of 10 and 18, as well as the penalties to which minors between the ages of 13 and 18 may be sentenced, taking into account the mitigation of liability they enjoy because of their age.”

In accordance with art. 74 para. (1) item 1 of the Austrian Criminal Code, a person who has not reached the age of 14 is considered to be an irresponsible minor. Item 2 of art. 74 para. (1) states that a minor is a person who has not reached the age of 18.

Also, Chapter III of the Bulgarian Criminal Code regulates who is criminally liable. Thus, according to art. 31 para. (1), a person who has reached the age of 18 years and has committed the act with discernment is considered criminally liable. Para. (2) states that a minor who has reached the age of 14 and who has not reached the age of 18 is only criminally liable if he or she has been able to understand the nature and significance of his or her act and is able to control his or her own actions. Further Bulgarian criminal legislation, in art. 32 para. (1) that a person who has not attained the age of 14 is not criminally liable.

Section 25 of the Criminal Code of the Czech Republic regulates the minority of the offender, stating that a person who has not reached the age of fifteen at the time of committing the crime is not criminally liable. Section 109 further establishes that the criminal liability of juveniles and the penalties imposed on them are governed by the Juvenile Justice Act, except where the Juvenile Justice Act provides otherwise, when they will be dealt with under the Criminal Code. Section 125 defines a minor as a person who has not attained the age of 18 years, unless the Criminal Code provides otherwise.

The Criminal Code of the Republic of Cyprus states in art. 14 that no person who has not attained the age of fourteen years is criminally liable for any act or omission.

Art. 7 of the Criminal Code of Croatia regulates the application of criminal law to minors. Thus, it provides in para. (1) that the criminal law shall not apply to a child who was under 14 years of age at the time of the offense. And in para. (2) states that in the case of a person who has reached the age of 14 years at the time of the commission of the offense but has not reached the age of 21 years, the Criminal Code shall apply unless otherwise provided by a special law.

Art. 15 of the Danish Criminal Code states that offenses committed by a minor under the age of 15 are not punishable. Art. 33 para. (3) provides that if the offender was under 18 years of age at the time of the offense, he or she may not be sentenced to life imprisonment.

Next we point out that art. 87 of the Estonian Criminal Code regulates the penalties applicable to minors. From the content of this text of the law, we note that persons who have not reached the age of 18 are considered minors, and in the case of persons aged between 14 and 18 years, according to certain criteria, the court has the possibility to release the person from the obligation to execute the sentence and can apply certain sanctions.

Section 4 of the Criminal Code of Finland regulates the age of criminal liability and criminal responsibility. Thus in para. (1) states that the perpetrator must have reached the age of 15 years at the time of the offense and be criminally liable in order to incur criminal liability. The criminal legislation of Finland provides in Chapter 6, Section 1 para. (2) that in the case of persons who have not reached the age of 18 years, they are subject to a special penalty, *i.e.*, the juvenile punishment.

The Criminal Code of Greece defines a minor as a person between 8 and 18 years of age at the time of the offense. Art. 126 of the Criminal Code sets the lower limit of criminal liability for minors at 14 years of age.

The Italian Criminal Code regulates the age of criminal liability of minors in art. 97 and 98. Thus, according to art. 97, if at the time of the offense, the person was under 14 years of age, he or she cannot be held criminally liable. Art. 98 states that a person may be held criminally liable if, at the time of committing the offense, he was 14 years of age but not yet 18 years of age and if he was of sound mind.

The Criminal Code of Lithuania regulates in Chapter XI the peculiarities of criminal liability of minors. Art. 81 para. (1) states that the provisions of this chapter apply to persons who have not reached the age of 18 at the time of the offense.

The criminal legislation of Malta is slightly different from that of other EU countries. Thus, according to art. 37 of the Criminal Code, a minor under the age of 16 is not criminally liable if he or she committed the act without intent. However, if the minor aged between 14 and 16 committed the offense with intent or if he is aged between 16 and 18, he is criminally liable.

According to Section 77a of the Dutch Criminal Code, a person who has reached the age of twelve years and who has not yet reached the age of eighteen years at the time of the offense cannot be punished. It goes on to state in Section 77b para. (1) that in the case of a person who has attained the age of sixteen years but who has not attained the age of eighteen years at the time of the commission of the criminal offense, the court may try the person under subsections 77g to 77gg inclusive (*i.e.*, may impose penalties on the juvenile other than life imprisonment) if it is satisfied that such penalties are necessary having regard to the seriousness of the offense



committed, the character of the offender or the consequences of the offense committed. Section 77c provides that a person who has attained the age of eighteen years but who has not yet attained the age of twenty-one years at the time of the commission of the offense may be judged under the provisions of subsections 77g to 77gg inclusive, if it is deemed necessary in view of the person of the offender or the consequences of the offense committed.

Art. 10 of the Polish Criminal Code states that the rules of the Criminal Code apply to persons who commit a crime after the age of 17. Furthermore, minors over 15 years of age who commit an offense under art. 134, art. 148 art. 1, 2 or 3, art. 156 art. 1 or 3, art. 163 art. 1 or 3, art. 166, art. 173 art. 1 or 3, art. 197 art. 3 or 4, art. 223 art. 2, art. 252 art. 1 or 2 and art. 280, may be criminally liable if the circumstances of the offense and the offender's level of development, personal qualities and conditions justify it, but especially if educational or coercive measures have not been successful. With regard to a minor who committed the offense after reaching the age of 17 but before reaching the age of 18, the court shall not impose punishment but educational, treatment or correctional measures if the circumstances of the case and the offender's development, personal characteristics and personal circumstances justify it.

As for the criminal law of Portugal, it states that minors under 16 are not criminally liable.

The Criminal Code of the Slovak Republic states that a person cannot be criminally liable for sexual abuse if he or she was under the age of 15 at the time of the offense. Also, a person who has not reached the age of 14 at the time of the offense cannot be held criminally liable.

In the criminal law of Slovenia, the criminal liability of minors is regulated by special law. Art. 5 para. (3) of the Slovenian Criminal Code provides that a special law defining the criminal liability of minors may provide that persons who were already adults at the time of the commission of the offense but who have not reached the age of 21 (young adults) may be treated criminally as minors, on the grounds of ensuring their development.

Art. 69 of the Spanish Criminal Code provides that the provisions governing criminal liability may be applied to offenders who are over 18 and under 21.

As we can see, in most countries of the European Union the age of majority has been set at 18 years, from which the perpetrator of an offense is criminally liable as an adult, but the difference is the age from which a person can be criminally liable, of course applying the specific rules on the criminal liability of minors.

In the light of the above, we note the lack of uniformity in European juvenile law on the age of criminal liability. This shows a tendency to reduce this limit: 8 years in Greece, 10 years in France, 12 years in the Netherlands.

Moreover, although the age of criminal liability of minors varies, the distinction between absolute and relative lack of discernment is found in most of the countries studied.

Given this trend of reducing the age limit from which minors can be held criminally responsible, in view of the increase in the phenomenon of crime among minors and in conjunction with the maturation of minors from a younger age, we believe that it is appropriate to reduce the age from which minors can be held criminally responsible in Romanian law, namely reducing the age from 14 years to 12 years.

### 3.3. Penalty systems

Following the analysis of the sanctioning system in different systems of comparative criminal law, we note that the traditional criminal model has been and remains dominant, resorting both to punishments and to educational measures (*e.g.*, in English law, as a rule, only punishments are applicable to minors, albeit less severe in terms of duration and method of execution).

Thus, most of the countries listed apply a mixed system to minors, mainly characterised by educational measures, but it is not excluded that, as a subsidiary measure, punishments may also be applied, in the cases and under the conditions laid down by law.

We have noted that there are some differences in the system of sanctioning the minor, but a common trend in European countries is highlighted, namely to give priority to restorative measures in favor of the victim, educational measures, the application of custodial sentences intervening only in serious cases of juvenile delinquency, as mentioned by Al. Boroj and Ș.A. Ungureanu<sup>24</sup>.

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<sup>24</sup> Al. Boroj, G.Ș. Ungureanu, *The sanctioning system for minors in a European vision*, in *Revista de drept penal*, year IX, no. 2 (April-June), Bucharest, 2002, pp. 30, 31.

It can be seen that educational measures can be found in all the legislation studied, but with different names and forms: the obligation to obey rules of conduct relating to residence, schooling, prohibition to frequent certain persons and places, reprimand, supervision, placement in a foster family or in a specialised center, hospitalisation, medical treatment, assistance, presence at home at weekends, carrying out certain social-educational activities, etc.; the purpose of these measures is to ensure the minor's reintegration into society.

Also, as far as the prison sentence is concerned, we note that it is carried out exceptionally, with suspension under supervision being the rule.

We believe that the reintroduction in Romania of the mixed system of sanctioning minors, based on educational measures and punishments, is one that corresponds to the purpose of criminal sanctions.

## References

### Primary bibliography (treatises, courses, monographs)

- Brutaru, V., *Criminal treatment of minors*, Hamangiu Publishing House, Bucharest, 2013;
- Dascăl, T., *Minority in Romanian Criminal Law*, C.H. Beck Publishing House, Bucharest, 2011.

### Secondary bibliography (articles, studies, conferences)

- Boroi, Al., Ungureanu, G.Ș., *The sanctioning system for minors in an European vision*, in Revista de drept penal, year IX, no. 2 (April-June), Bucharest, 2002.
- Boyne, S., *Juvenile Justice in Germany*, Robert H. McKinney School of Law, Indiana University, Legal Studies Research Paper nr. 2015-28, Indianapolis;
- Brezeanu, O., *Juvenile justice and European integration*, SDR no. 1-2/2004;
- Brutaru, V., *The liability of minors in different European countries*, in the Magazine Universul Juridic, no. 6/2015;
- Dunhel, F., *Juvenile criminal law in Germany; between a system of protection and justice*, in Journal of Deviance and Society no. 3/2002, vol. 26;
- Dunkel, F., *Juvenile Justice in Germany: Between Welfare and Justice*;
- Dunkel, F., *Juvenile justice system in Europe*, in the Magazine Kriminologijos studijos, no. 1, 2014;
- Jehle, J.-M., *Criminal Justice in Germany*, published by the Federal Ministry of Justice, 4<sup>th</sup> ed., 2005;

### Online bibliography

- <http://www.bmj.bund.de/media/archive/961.pdf>;
- <https://pdfcoffee.com/codul-penal-francez-pdf-free.html>;
- [https://www.gesetze-im-internet.de/englisch\\_stgb/](https://www.gesetze-im-internet.de/englisch_stgb/);
- <https://www.gesetze-im-internet.de/jgg/BJNR007510953.html>;
- <https://www.gesetze-im-internet.de/stgb/>;
- <https://www.senat.fr/lc/lc52/lc52.html>;
- <https://www.zakon-hr/z/180/Zakon-o-sudovima-za-mladez>;
- <https://ziarulromanesc.at/reducerea-varstei-de-rapundere-penala-in-austria/>;
- <https://ziarulromanesc.de/stiri/ucigasele-luisei-si-au-recunoscut-fapta-cazul-socheaza-germania/>;
- [www.esc-eurocrim.org/files/juvjusticegermany\\_betw\\_welfar\\_justice.doc](http://www.esc-eurocrim.org/files/juvjusticegermany_betw_welfar_justice.doc).

### International legislation

- Criminal Code of France;
- Criminal Code of Italy;
- Criminal Code of Spain;
- Criminal Code of Belgium;
- Criminal Code of Austria;
- Criminal Code of Bulgaria;
- Criminal Code of Czech Republic;
- Criminal Code of the Republic of Cyprus;
- Criminal Code of Croatia;
- Criminal Code of Denmark;

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- Criminal Code of Estonia;
  - Criminal Code of Finland;
  - Criminal Code of Greece;
  - Criminal Code of Lithuania;
  - Criminal Code of Malta;
  - Criminal Code of the Netherlands;
  - Criminal Code of Poland;
  - Portuguese Criminal Code;
  - Criminal Code of the Slovak Republic;
  - Youth Protection Act of 8 April 1965 - Belgium;
  - Ordinance no. 45-147/02.02.1945 - France;
  - Juvenile Court Act 1953, with further amendments and completions - Jugendgerichtsgesetz - Germany;
  - Juvenile Rights Act 1988 - Jugendgerichtsgesetz - Austria;
  - Juvenile Courts Act - Zakon o sudovima za mladez - Croatia;
  - Organic Law no. 5/12.01.2000 on the criminal liability of minors - Spain;
  - Crime and Disorder Act, adopted on 31.07.1998 - England and Wales.