Juvenile Justice System in Romania

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Abstract: Nowadays the family is less a space of interpersonal security or attachment bonds, and the adolescents are looking more and more for emotional exchange and sharing values in their peer group. Between school and family there is a hostility relation as related to responsibility to social learning and personality development of the children, beyond knowledge transmission.

Violence in schools and in public places becomes a more and more frequent topic in mass media and some trends are supported by statistical data: criminality age is decreasing, criminality in participation – minors only or minors included in groups of adults –, prostitution, girl violence and drug addiction are debating topics, and being a great part of the social concern. The juvenile delinquency is more and more present in TV emissions and print media, showing an increase of the public awareness.

Period of time after the revolution of 1989 opened the way for a democratic government, it has not been an easy transition for the Romanian people. The economic, social, and emotional consequences are still prevalent more than nineteen years after the revolution. For some people, there is a sense of loss of community, affliction, and lost identities. For others, there is a sense of fighting for illegal material prosperity, due mainly by lack of legislation or a clear legislation, social alliances and political positions. For most of Romanians, the lack of institutional strength and the corruption are main causes of the disharmony and lack of social cohesion.

To understand the Romania of today, one cannot underestimate the importance of the enduring and deeply entrenched patriarchal culture and the consequences of the communist ideology and praxis in gender relations. Committing themselves physically and emotionally to the home, women leave men room for participation and decision making in the social space, where they act as the interface between community and family.

However, some NGOs are going on with the concern for women emancipation, by promoting men-women equality of opportunities and gender issues on the political agenda. Mass media encourage either the traditional values – woman as a center and guarantor of the family wellness – or the new vision, relating the women to the social success, political power and business. When speaking of the gender relations, Romanian society is mostly preoccupied by the difficulty to balance the career and the family. The young persons are obviously interested in adopting modern values and the gap between generations shows a visible increasing, expressing by lack of communication and conflicts between value systems. The family is less a space of interpersonal security or attachment bonds, and the adolescents are looking more and more for emotional exchange and sharing values in
their peer group. Between school and family there is a hostility relation as related to responsibility to social learning and personality development of the children, beyond knowledge transmission.

As a romanian I can say that the violence in schools and in public places becomes a more and more frequent topic in mass media and some trends are supported by statistical data: criminality age is decreasing, criminality in participation – minors only or minors included in groups of adults -, prostitution, girl violence and drug addiction are debating topics, and being a great part of the social concern. The juvenile delinquency is more and more present in TV emissions and print media, showing an increase of the public awareness.

**Legal framework**

The Romanian judicial system is structured on four levels:

- First instance courts (189),
- Tribunals (41),
- Courts of appeal (15),
- The High Court of Cassation and Justice.

The prosecutors’ offices are attached to each of these courts. The first instance courts have a general competence.

At the level of superior courts, the specialized sections are in place.

Regarding the cases involving minors, the law on the judicial organization, in force since 27th of September 2004, provides that special tribunals and prosecutors' offices will be created in every county of the country (in Romania there are 41 counties). If the backlog of cases is not very important, the special sections within the tribunals will be created.

The first specialized tribunal for family and minors was created in November 2004. The personnel of this tribunal is formed by three judges and three clerks. The specialized prosecutors' office attached to this tribunal was also created.

The former law on the judicial organization provided that the specialized judges nominated by the courts' president must be in charge with all cases involving minors. If not, the decision will be null. So, since 1997, a certain specialization in this field was introduced.

**The minors’ penal responsibility**

According to the Romanian Criminal Code, the deed committed by a minor who at the date of fact did not fulfill the legal conditions to be responsible is not an offence. The penal responsibility of an individual starts at the age of 14 years. So:

- the minor under 14 years old is not responsible – in this case the absolute presumption of penal incapacity is applied;
- the minor between 14 and 16 years old is responsible only if it is proved that he/she committed the fact with discernment
- the minor of 16 years old is fully penal responsible.

After I have studied the law in special force, I can say regarding the minor less than 14 years old only special protection measures can be pronounced: the placement or the specialized surveillance. The placement is a temporary measure and can be:

1. The placement at a family member;
2. The placement at a maternal assistant;
3. The placement into a residential service.

The specialized surveillance means to keep the child in his family and in the same time, he must accomplish certain obligations us such:

- to follow the school courses;
- to frequent a or some care services;
- to follow some medical treatments/counseling or psychotherapy services;
- to not frequent certain places or persons.

These measures will be taken on by the local commission of Child Protection (administrative body) only if the parents or the legal representative of the minor agreed on. If not, the administrative authority will submit the case to the court.

The legislative framework for the minor under 14 years old is the law on the protection and promotion of the child rights, in force since 1st of January 2005.

Before this date, the protection of the minor less than 14 years had an administrative character exclusively. The court could verify only the decisions' legality.

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1Law no. 304 from 28/06/2004 republished in the Official Gazette, Part I no. 827 of 13/09/2005
Since 1st of January 2005, it is mandatory that the court intervenes in any case when the parents or the legal representative of the minors do not agree with the administrative measures proposed by the administrative services. In these cases, the administrative authority will submit the case to the court.

Regarding the minors between 14 and 16 years old, the rules on their penal responsibility are contained in the Romanian Criminal Code.

**Educative measures and punishments**

With regard to the responsible minor offender, the judge can pronounce an educative measure or a punishment. The elements taken into consideration are:

1. the gravity of the deed,
2. the physical, intellectual and moral status,
3. the behavior of the minor,
4. the conditions in which he/she grown and lived,
5. any other element which can be important for the decision.

If the judge considers that an educative measure is not enough for the minors’ correction he will pronounce a punishment.

The provisions of the Criminal Code must be interpreted in the sense that the educative measures constitute the rule and the punishment, the exception.

The educative measures provided by the Criminal Code are:

a) The admonition,

b) The freedom under surveillance,

c) The placement in a re-education centre;

d) The placement in a medical educative centre

A. The admonition supposes:

- To reprimand the minor,
- To explain him the gravity of his fact,
- To advise him for improving his behavior and
- To remember him if he will commit another offence, it is possible that the judge pronounce a more severe educative measure or even a punishment. From the procedural point of view, this measure must be executed immediately, during the audience.

B. The freedom under surveillance suppose to live the minor free under the surveillance of his parents, of his adoptive parent, of his guardian, of a confidence person, at her demand, preferably one of those close to him, or of a institution in charge with the minors’ surveillance (usually the probation services organized nearby the county courts).

In the same time, the judge can impose to respect one or more of the following obligations:

a) Do not frequent certain places;

b) Do not contact certain persons and if these persons contact him, to announce immediately the judge;

c) To follow the school;

d) To execute a community service for a public institution, in amount of 50 to 100 hours, maximum 3 hours per day, after the school, during the week ends and during the holydays.

The court must inform the school, the employer or the public institution for which the minor accomplish the community service.

If the minor does not respect the conditions imposed by the court or if he commits a new offence, the measure will be replaced with a more severe measure or with a punishment.

C. The placement in a re-education centre is pronounced in the case of a minor who, taking into consideration the gravity of the deeds and his education needs, will have the possibility to improve his behavior in a re-education centre and not in a prison. During the placement, the minor will have the opportunity to receive appropriate education and professional training according to his aptitudes.

The measure’s duration is not determined by the judge, the minor can rest into the reeducational centre until the age of 18 years. The duration can be prolonged for maximum two years after the majority age.

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The minor can be released before his majority if he passed a minimum one year in the centre and if he proved that his behavior was improved.

There are three re-education centers in Romania, subordinated to the National Administration of Penitentiary\(^1\). All five are closed centers, the minors having the possibility to leave the centre only under survey, for participating to various activities in the community or during the holydays.

D. The placing in a medical-educative centre is pronounced for the minor who needs a medical treatment and special educational programmes, for an undetermined period, taking into consideration his physical or mental status. This measure cannot be prolonged after the age of 18 years.

The measure can be interrupted before 18 years if the reason is disappeared; in this case, the court can pronounce the placing into a re-education centre.

If the judge considers an educative measure as insufficient, he will pronounce a punishment taking into account the gravity of the deed and the personality of the minor. The punishments provided for the minors are the prison or the fine. The limits of the punishments are reduced to the half.

When the law provides the prison for life, the limits for a minor are between 5 and 20 years.

There are the substantial right rules. As regard to the procedural rules, the Criminal Procedure Code contains special rules applying to the judicial treatment of the minors’ cases.

The file must contain a rapport concerning the minor made by the administrative institutions in charge. If not, the judgment will be null. This rapport must contain the information about the minors’ everyday behavior, his physical and mental status, his antecedents, and the relation with his parents or his guardian, the manner in which the parents accomplished their parental duties and any other elements considered as useful for the case.

The judge or the prosecutor can ask such a rapport to the probation services. The experience showed that the rapports made by the probation services are very coherent and are very useful for the magistrate. Generally, the rapports made by the administrative authorities have many gaps and the judges prefer the probation services’ rapports.

The audiences with minors can be declared not public and this is an exception from the publicity of audience principle.

Regarding the police and prosecutor custody and the pre-trial custody, since July 2003, special procedural rules are in place. So:

- the minor can be placed under police or prosecutor survey for a maximum 10 hours; this measure can be extended one single time, for another period of 10 hours; this measure is pronounced only if it is proved that the minor committed a crime for which the Criminal Code provides minimum 10 years of prison;
- the perpetrator cannot be placed in the pre-trial custody for more that 3 days;
- the minor offender with the age between 14 and 16 years can be placed in the pre-trial custody for maximum 15 days; this period can be extended, but the total period cannot be longer than 60 days;
- the minor offender with the age above 16 years can be placed under pre-trial custody for 20 days; this period can be prolonged till the maximum 90 days.

The minors placed under custody must be assisted by a lawyer; in the same time, the official services must inform the parents, the guardian or a member of the family indicated by the minor, immediately, for the minors placed in the police or prosecutor custody and in a delay of 24 hours for the minors placed under pre-trial custody; in the last case, the probation service will be also informed\(^2\).

**Main aspects regarding the jurisprudence regarding the minors**

The main problem encountered by the courts is the maximal age of minors who can be placed into a re-education centre.

The high courts, including the Supreme Court, considered that if the minors age is over 17, a punishment must be pronounced and not an educative measure. As rational, the courts reminded the provisions of the Criminal Code which provides that the minimal period to spend in a re-education centre is one year. So, if the minor is over 17 years old, the goal of placing him into a re-education centre can not longer be reached.

Another problem encountered is related to the duration of the placement in a re-education centre. The law provides that the judge does not limit the duration of the measure. It can last up to the age of 18 years old. As a consequence of this fact, the minors appealed the decisions asking to replace this measure with the imprisonment. Generally, the high courts will reject such kind of request.

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\(^1\) [http://www.anp-just.ro/](http://www.anp-just.ro/)

\(^2\) *Romanian* Criminal Procedure Code, Best Publishing, Bucharest, 2009
considering that it is impossible to impose, in the appeal, a harder situation for the person who attacked the decision.

Statistical data

I can say that the public perception of young persons is quite alarmist, postulating that there is no aspect of community life which is exempt from infiltration by violence of minors: their mode of speech, music, dancing, sport etc; the argument is that all the forms of expression have been contaminated by a lack of self-control, des-inhibition and visible rupture between adults - regardless of their status as parents, teachers, social workers - and children.

Negative circumstances, which came into existence as a result of economic situation, worsening of social of people, loss of moral orientations, alcoholism, migration as well as natural disasters, outline a structure of criminality hard to investigate due to the complexity of determining factors.

Juvenile criminality is a type of criminality which as the any type of criminality is greatly influenced by social and economic factors.

With the general tendency of the growth of criminality the share of juvenile criminality dropped, but in absolute figures the number of crimes committed by minors increased; a great number of minors were released from amenability, because their cases were transferred to the committee of investigation of crimes committed by minors for alternative punishment.

Alternative measures of punishment were effective after 2002, but these measures have quite a formal character or a limited effectiveness, due to lack of professionals and well-organized institutional structures.

All our statistical data regarding juvenile delinquency refer to three types of information sources:

Judiciary statistics Direction from the Ministry of Justice, National Administration of the Penitentiaries and Direction of social reintegration and surveillance (probation).

Crimes against property prevail among the crimes committed by teenagers between 2000-2005. Both for girls and boys, thefts increase constantly as well robbery and brigandage.

In my opinion the structure of girls’ criminality shows the following order for the most frequent crimes: theft, body-damages/serious body damages and robbery/brigandage. The share of crimes against personal immunity in the whole number of crimes committed by girls is significant as compared to other criminality forms.

The number of crimes committed in groups increases constantly regardless of gender factor.

The number of minors in penitentiaries and re-education centers declines between 2000-2005, whether this is linked to boys or girls. The number of minors in such institutions in 2005 is about half of the number of minors in 2000 (864 versus 1521); 824 versus 1449 for boys, and 40 versus 72 for girls.

On the whole, the types of crimes committed by boys and girls between 2000-2005 show a diversification both in terms of the number of category crimes and in terms of some categories themselves. So, new categories of crimes committed by boys and girls do appear in statistical records: weapon possession, traffic offences, vandalism, and drug abuse violation, trafficking in children, forgery. But, at the same time, some subcategories do appear in sexual offences, others than rape and prostitution: instigation to pornography, person’s sequestration, for sexual exploitation- or in forgery (official documents, forged coins, fraud, and intellectual fraud).

The cumulative criminal offences are recorded and an elevated rate of antisocial behavior in girls is visible in information delivered by mass media.

Concluding the above there is an alarming incidence of juvenile crimes and offenders are increasingly younger, but the lack of age-related statistics for minors does not allow comparative data. Traditional statistics on juvenile delinquents did not include the gender differentiation as well as the age factor. Young persons who are in schools or opt out of the school system, more and more associated with acts of vandalism, commit robbery and incivilities. Schools are facing problems such as verbal and physical violence, vandalism, drug use and robbery, and more and more girls had offended.

Only 20% of the recorded thefts have only a minor perpetrator; usually, thefts being committed in-group. The common solitary deviance committed by minors is decreasing, minors showing the preference for participative crime. The minors prove to be more imaginative than the adults when committing crimes such as thefts (in the cases of infraction, using creative, unusual solutions, deceiving strategies, and dangerous methods without thinking of consequences.). Concerning the

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1 www.just.ro
robberies and brigandage, over 50% of these crimes are committed in-groups, either in participation with minors or with adult recidivists, friends or relatives.

The murders, serious body damages and murder attempts show no spectacular evolution (maximum 5%), but it is easy to observe the decline in age of perpetrators and the rise of their cruelty.

The number of rapes nearly doubled from 2000 to 2002, and in 50% of cases the minors were under alcohol influence.

The Romanian Penal Code states, for the minors the educative measures have priority, the punishment being applied only if the court considers that an educative measure is not sufficient to reform the minor.

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