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**Criminal Responsibility of Minors in the New  
Criminal Code Offences (Law No. 286/2009)**

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**Abstract:** The elaboration and adoption of a new penal code represents a decisive moment in the evolution of any state laws. The decision to proceed in developing a new Criminal Code was not a simple demonstration of the political will, but represented a corollary matched of economic and social development, also to the doctrine and jurisprudence and it had as base a series of gaps existing in current regulation. Legislative changes concerning the minority represents one of the focal points of the reform proposed by the new Criminal Code (Law no. 286/2009). One of the major changes contemplated in this regard is the complete surrender to the punishment applicable to juveniles who are criminally responsible, in favor of educational measures. The model that inspired the current legislation is the Organic Law no. 5 / 2000 regarding the criminal liability of minors in Spain (as amended by Organic Law no. 8 / 2006), but have considered the provisions of French law (Order of 2 February 1945 with subsequent changes), German (Law juvenile courts in 1953 with subsequent amendments) and the Austrian law (Juvenile Justice Act 1988).

**Keywords:** minority; criminal; educational measures

1. For certain categories of offenders as juveniles, classical social reaction , the punishment, proves to be insufficient because it does not allow for any offender reintegration, or society protection. In the field of justice for minors, systems of law follows two models: the traditional one, where by from a young age are applied penalties, and most recently, giving priority to educational measures. In both models, minors under a certain age who have committed crimes only apply protective measures (Necula & Minzala). Regarding Romania, legislative changes concerning the infancy is one of the central points of the proposed reform of the Penal Code (Law no. 286/2009). One of the major changes stipulated in this regard is the complete surrender to the punishment applicable to juveniles who are criminally responsible, in favor of educational measures (Government Resolution approving the preliminary thesis project of the Criminal Code).

The model that inspired the current legislation is the Organic Law no. 5 / 2000 regulating the criminal liability of minors in Spain (as amended by Organic Law no. 8 / 2006), but have considered the provisions of French Law (Order of 2 February 1945, as amended), German Law (juvenile court law of 1953, as amended) and the Austrian Law (the Juvenile Justice Act 1988).

2. The legislation imposed criminal liability of minors to complete reform of the existing system. Although the general trend in the European plan is to reduce the age limit of criminal liability is possible the child until 13 or even 12 years, the proposal of the new draft Criminal Code was not retained by the Law no. 286/2009 on the Romanian Penal Code, the provisions of art. 113 are relevant in this respect, "minors under the age of 14 years is not criminally responsible (par. 1)." It should be noted, the limits of criminal liability of minors, the provisions contained in the legislation of other states. In French law, the seat material is contained in the Criminal Code, approved by Law no. 2002-1138 of 9 September 2002 and Ordinance. 45-174 of February 2, 1945 of juvenile offenders, as amended and supplemented through 2002 (Brutaru, 2009). Adulthood coincides with the age of criminal responsibility, that is 18, but in some cases can be lowered to 13 years. Article 122-8 of the French Criminal Code establishes the principle of absolute lack of criminal liability of minors under the age of 13

Relative lack of criminal responsibility of minors who have reached 13 years is provided by art. 2 of Ordinance no. 45-174 of 2 February 1945, which states that "juvenile courts may, however, when circumstances and require the offender's personality, to give a criminal conviction against the minor who has attained 13 years" - an express exemption, which may be used only the juvenile courts. In German law, minors are subject to the provisions of the Criminal Code, supplemented by the juvenile court Act of 1953, as amended and supplemented. Adulthood coincides with the age of criminal responsibility, 18 years, but can be lowered to 14 years in some cases. German Penal Code provides an absolute lack of criminal responsibility for minors who have not attained 14 years (art. 19). (Brutaru, 2009).

The legal framework applicable to juveniles in Belgian Law contains two special laws: the Law of 8 April 1965 on the protection of young people and the Law of 13 June 2006 amending legislation on youth protection and care of juveniles who have committed a crime. The age of criminal responsibility is fixed, in principle, to 18 years. In some cases, the age of criminal responsibility may be lowered to 16 years.

In Spain, the provisions relating to minors are found in the Criminal Code and the Organic Law on the age of criminal responsibility on 12 January 200 015 (*Ley Orgánica reguladora de la responsabilidad penal de los menores del 12 de Enero de 2000*). (Necula & foal)

Age of criminal responsibility coincides with the age of majority. Article 19 of the Criminal Code, published on 24 November 1995 and entered into force six months later, states that "minors until the age of 18 are not criminally liable. If a minor commits a criminal offense will respond in accordance with the law on criminal liability of minors. " The organic law on criminal liability of minors of 12 January 2000 provides an absolute lack of criminal responsibility for minors who have not attained 14 years and the relative lack of criminal responsibility for juveniles aged between 14 and 18.

The seat material is found in Italian law in the Penal Code and Decree no. 48 of 22 September 1988 on the provisions relative to criminal proceedings for juveniles. The age of criminal responsibility coincides with the majority, 18 years, but in certain situations can be lowered to 14 years. Liability and treatment of juvenile criminal law are based in the Swiss Penal Code and the Federal Law on criminal procedure applicable to minors of 20 June 2003 (*Loi fédérale régissant la condition pénale des mineurs*). Title 4 of the Criminal Code deals with criminal liability conditions of children and adolescents.

Criminal Code provisions are not applicable to children who have not attained the age of seven years and established the principle of the absolute lack of criminal liability of minors who have not attained

seven years (Article 82 of Chapter 1, Children). The provisions of this chapter are applicable to children between 7 and 15 years who has committed a crime.

Criminal Code provisions are applicable to minors aged between 15 and 18 who committed a crime (Article 89 of Chapter 11, Adolescents). Title 5 of the Penal Code governing the enforcement regime applicable to young adults, aged between 18 and 25 years.

In the United Kingdom of Great Britain, the seat material is contained in the Act to prevent crime and disturbance of public peace (Crime and Disorder Act), adopted on 31 July 1998 and entered into force on September 30, 1998 Police and Criminal Evidence in the 1984 Act<sup>31</sup>.

Law to prevent crime and disorder public peace (Crime and Disorder Act) repealed the presumption of "unresponsability" minors aged 10 to 14 years. Before this law, a minor aged between 10 and 14 years benefit from the presumption of "unresponsability" because it was assumed that he had no ability to discern between good and evil. This presumption may be rebutted, when evidence that the minor was aware of the consequences of his acts. The age of criminal responsibility is 10 years, but the age of criminal majority is 18 years. Under Article 34 of the Crime and Disorder Act, which repealed the presumption of "unresponsability" minors criminally responsible from the age of 10 years. Police and Criminal Evidence Act 1984 determine the penalties applicable to young offenders. Young people who are applying these measures are children and adolescents between 10 and 18.

2. A significant change that brings new Romanian Penal Code (Law no. 286/2009) is the waiver of sanctions established the duality of the criminal code today - penalties and educational measures. It has been estimated that this system has created difficulties in legal practice, legal hierarchy established by Article 100 of Criminal Code was often ignored. Therefore, the legislature gave the Romanian criminal in this regard, the punishments for juvenile offenders and instituted a system of enforcement based solely on educational measures, educational measures are included deprivation of liberty. The new Criminal Code Title V regulations throughout the reservation minority (art. 113-134). Under art. 114 par. 1 of Law no. 286/2009, "Compared to the minor at the time of the offense, have between 14 and 18 years, take an educational non-custodial measure", which means that the rule will be the implementation of educational measures for minors deprivation of freedom, constituting a deprivation of liberty except and reserving assumptions serious crimes or juveniles who committed multiple offenses. Thus, under Art. 114 par. 2 of Law no. 286/2009

'Compared to the minor referred to in par.1 can take an educational measure involving deprivation of liberty in the following cases:

- a) if he committed a crime for which he was an educational measure has been executed or the execution of which began before the offense for which trial;
- b) when the penalty prescribed by law for the offense is imprisonment for 7 years or more or life imprisonment. "

Conditions for implementing these measures is designed and equipped as to provide wide opportunities for customization, allowing adaptation to each minor conduct during the execution.

**3.** Article 115 of Law no. 286/2009 governing the categories and types of educational measures.

According to art. 115 par.1 pt.1, educational non-custodial measures are: length of civic education, monitoring, recording at weekends and daily assistance, and section 2.1 provides that educational measures are custodial detention in a school and internment in a detention center.

Educational non-custodial measures of supervision, weekends consemnation and assist daily close to the known rules of art once. 7 letters. g) and h) of Spanish Law. 5 / 2000. In terms of content, the educational measure of supervision does not imply a direct involvement of probation service in carrying out the minor program, the role of this service is only to monitor how the minor meet their normal routine (attendance, sport, leisure, etc. ). According to art. 118 of Law no. 286/2009, "educational measure of supervision and guidance of the minor is under the control of its daily program for a period of between two and six months under the supervision of the probation service to ensure participation in educational or training courses and conducting prevention activities or entry in connection with certain people who could affect the process of correcting it".

Unlike surveillance, daily assisting requires active intervention by the probation service, making the child's daily schedule, this program is included in the common elements in relation to age and situation of the minor or professional school (eg: school attendance) and any activity necessary for attaining the educational measure (eg: participation in social and educational activities designed to facilitate the social integration of the minor).

The imminent entry into force of new Penal Code will call into question the application of criminal law more favorable (*mitior lex*), the situation is somewhat similar to the entry into force of Decree no. 218/1977. (Dascal, 2010).

Examining successive provisions of law, criminal law is more favorable as the new law, because, on the one hand, minors under the new law will not be able to impose penalties, and on the other hand, the possibility of sanctions through educational measures are much broader.

In connection with the educational measure of supervised freedom in the legal literature (Dascal, 2010) appreciated that under certain conditions, the measure will be applied is more favorable than the non-custodial measures provided for educational new law, even if the duration for which ordering measures is greater than the duration of the new law.

In all cases, though until the final settlement of the case, the minor has attained 18 years because, unless the educational measure of reprimand, to a minor will not be able to take any of the measures provided for educational old law, the court will required to take to become a minor defendant in a major educational measures under the new law, which will not use punishment for minors, criminal law is more favorable.

**4.** As mentioned above, the new Criminal Code provides for two custodial educational measures: hospitalization in a educational center for a period of one to three years and internment in a detention center for a period of 2 to 5 years or, in exceptional cases, from 5 to 15 years.

Educational measure of internment in a educational center is hospitalized in a specialized minor in child recovery, which will follow a training program and training school according to his abilities, and a program of social reintegration (art. 124 par. 1).

Internment in a detention (art. 125 par. 1) the child is hospitalized in an institution specializing in child recovery, security and surveillance regime, which will follow intensive programs of social reintegration and school readiness programs and training according to his abilities.

Measure of internment in a detention center to have a period of 5 to 15 years only in the event of committing serious crimes for which the law provides for life imprisonment or imprisonment of at least 20 years. Duration measure is compatible with international regulations and practices (eg International Association of Congress resolution Criminal Law adopted in Beijing in 2004 States should not provide for minors custodial penalties which exceed 15 years).

5. Educational measures exist in other countries under different laws (protection measures, corrective measures, etc.). And I know many forms: the obligation to obey certain rules of conduct relating to residence, training, the prohibition of certain persons to attend and places, reprimand, put under the supervision of specialized bodies, placement in a family of receipt or in a specialized center, hospitalization, medical treatment, assistance in a day care center, permanent home on weekends, to carry out tasks social and educational, personal performance, the obligation to assist and support victims. (Necula & foal)

It is noted that, unlike current regulations, the Romanian legislature has opted for a system of sanctions for juvenile offenders more diversified, as there are in the legislation of other states, because the general feature is the existence of a specific juvenile criminal law, which places focus on the one hand, on education, not repression, and on the other hand, the broader possibilities of individualization of responsibility juvenile, focused not only on the gravity of the offense but also his personality.

Thus, the new regulation reflects the purpose of educational measures - to ensure the reintegration to society and the assimilation of social values and principles.

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