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SANCTIONED REGIME OF MINOR OFFENDERS. EDUCATIONAL MEASURES

Abstract

Compared with children who are responsible can be criminal, according to the criminal law, some of the educational expressly provided for in the Criminal Code or a penalty within the limits set by law. In selecting the penalty will take into account the degree of social danger of the crime committed, the physical, the intellectual and moral development of his behavior, the conditions under which they grew up and lived and any other features likely to characterize person child.

In the article there are presented some aspects of the application by the competent educational measures against juvenile offenders guilty of committing offenses.

In criminal law the word "minor" is used in the sense that it is awarded and the civil law as such "minor" in terms of criminal law, and of the civilian is a person below the age of 18 years, This results not only implicitly art.99 of the Criminal Code, which provides another older age for criminal but also the other texts, such as art.106 al.1 that the measures set out in art education. 104 and 105 can not last only until the age of 18 years, and this provision related to the. 3 of the same article, that, at the time when the child "become major" the court may extend the duration of internship no more than 2 years.

Regarding the age of 18 years, when the minor becomes major, and find art.110 / 1 which relates to the suspension of punishment under the supervision or control, and art. 60 al. 2 Criminal Code, which refers to the liberation of the subject condemned during the minority when I get to the age of 16 years.

Even if the woman who gets married before the age of 18 years acquire full capability to exercise his rights, being treated as in the civil majority, in terms of criminal law it is still considered a minor until the age , the age at which it is considered that complete growing bio-psycho-physical a person.[1]

With regard to the age of majority expressed the view that this involvement should be considered after the expiry day corresponding to that in which the person concerned was born [2].

In this case the defendant was born on 17 November 1955 and committed the crime on 17 November 1973, around 23.00 hours, the court considering that he was still a minor, since it expired that day, becoming the only major the first hour of the day 18 November 1975.

This solution has been criticized since then (see note which accompanies), considering it in our view correctly, that the defendant became major after expiry of the last days of the past 18 years from the date of birth, on 16 November 1973 at 24.00, opinion accordance with the provisions of article 8. 2 of Decree 1954 of nr.31 A on individuals and legal persons and art.154 of the Criminal Code relating to the calculation of time [3].

The same solution should be found when considering the time of fulfillment age 14 years, from which the criminal liability of minors and the 16 years, which is assumption that minor criminal liability.

The limits of criminal liability of minors, from the stages through which the child normally after birth until maturation to bio-psycho-physical, are covered by art.99 Criminal Code, under which "the child below the age of 14 years does not respond Criminal child who is aged 14 years and 16 years only if criminal liability is proven to have committed the deed with discernment ; child who has reached the age of criminal responsibility 16 years.

The first stage of the minority-that the child has not reached the age of 14 years is characterized by absolute lack of criminal responsibility of it, he is presumed in all cases that it has the ability to understand the significance of social facts, or his manifest to the conscious will, with a presumption of absolute ("juris et de jure"), so not allowed to be probation contrary.

A second phase, between 14 -16 years, is characterized by relative lack of criminal responsibility of minors, and now works in principle, the presumption that it has no ability to understand the nature of antisocial criminal, and to manifest the conscious wish only that this time the presumption is a relative (" juris tentum "), can be shattered almost immediately upon evidence of the prosecution the burden resting, which usually use the sample management with medical expertise legal psychiatric although can be given any evidence to prove the existence or Discernment-existence.

The third phase, between 16-18 years are characterized by existing tempt criminal liability. The minor is presumed in all cases that can

understand the social facts of his and to tend will be aware, with a presumption therefore not be completely removed by proof that the child would be deprived of discretion (this does not mean, however, that the child will not be able to prove-as-anything major that has committed the act without fault or that there are other causes that removes the criminal of the crime).

If the minor has committed during the criminal can not answer (so until 14 years or 14 -16 years if not proved the existence of Discernment), part of the successive acts of a criminal offense or continue or continued a crime usually, which repeats the period in which he became liable under the law, he could be held criminally liable not committed in May to work in the latter period.

If, while no criminal responsibility, the child has committed an act provided for criminal law to pursue progressive during the period in which he became liable, he will not be held liable penal.

Also, if a party acts of copyright of a crime were committed to continue during the minority (obviously discerning) and the remaining acts after coming to the offender age, it is the criminal liability as a major in. for continued-fraction as a whole same resolution and the retrieval in case of crimes or continue obicei.[4]

Referring us to the regime sanctioned implementation minor offenders, show that, according to art. 100 Criminal Code, against which criminal child can take a step or learning can be applied to a penalty at the penalty will take into account the degree of social danger of the crime committed, the physical, the intellectual and moral development of his behavior, the conditions in which they lived and any other items likely to characterize the child.

Educational measures are of priority, as according to art. 100. 2 Criminal Code, the penalties apply only if it considers that the learning is not sufficient for referral child.

According to art. 101 Criminal Code, which educational measures may be taken against the minor are:

a) reprimand;
b) freedom of supervised
c) internment in a reeducation center
d) internment in a medical-educational institute.

The order of the education is not going-manner, but the scale is a measure increasingly harsh in content nut corresponding degree of social danger of crime and specifically the degree of corruption of minor, if such a reprimand simple reprimand a child, and internment in a center of re-education also includes a minor restriction of freedom. For choosing the most appropriate action case under consideration, should take account of criticisms provided in the. 1 of art. 100, mention above.

Not consider it necessary to reproduce the contents of each of the four measures education, referring to the provisions covered in art. 102-105 Criminal Code, but mention that the specific penalties as children means that they can not only be taken against perpetrators which have remained minor and the date of delivery to measure education, too, once taken, they can not take - in principle -only until age child and the only exception (n a case of internship) the measure may be extended after age.

May point out, also that when a child do it more crimes before being tried for any of them, competent to judge - if it considers that for each one taken in isolation is necessary to measure learning - be applied to what, given the incompatibility of simultaneous application of two or more special measures, the most severe on the scale as-educated, of course that, if it considers that for each offense up to par should be equally educational It is applied once, as a nonsense simultaneous application of several measures with same [5].

Can complicate the situation, but when the minor has committed more crimes competitors who are tried separately or by different courts and they have taken steps towards this educational identity same or different nature.

In the first case, when for example, it was far internship in a reeducation through several outstanding judgments-defined as the courts were being asked to re-education center, or defendant minor requests of their merger, and the courts, although it had no legal basis, have accepted the requests and willing merger measures into one, negating the forms of execution and to dispose issuance of a single form.

Do not think this is correct, in the absence of legal provisions which allow this (art.34 Criminal Code and respective art. 449 proc code. Pen. relates only to punishment) and on the other hand, neither believe that would be required whereas, however, not least our problem enforcement and separate in time of each educational measures ordered by different judgments.

More over, in art. Code 490 proc. pen. provides that the enforcement of the measure internship child is by sending a copies of the decision by the police to take in-ternary its teaching center reeducation copy decision, the latter communicating court making internship.

If it is subsequently sent to other judgments and internment, the police or reeducation center will notify the court that the child is already on another decision. On the other hand, in these cases not be issued mandates exe -so to feel the need and the cancellation of one single issue.

In case of further education measures by different decision different final remaining, it is obvious that, given the incompatibility of them (for example, is incompatible with the freedom supervised the internship reeducation in the center) they can not be executed simultaneously and no turns, normally to succeed to be enforced only so far the most difficult.

The law does not provide but how we should proceed in this case, so basically it follows the rules specific merger of penalize , although it can not be measures fusion between a obvious incompatibility.

In connection with the education in literature and legal practice were raised many issues of interest to gem to refer to the most frequently encountered.

Thus, in connection with the extent of educational admonition , located on the first rung on the educational ladder was raised whether it can be applied in the situation when the defendant became major on taking them.

Starting from the definition of the measure, contained in art. 102 Criminal Code, which consists of "rebuke of minor " and characterization of the general educational measures as sanctions specific children were rightly reprimand that will be taken if the offender became major [6] time, advantageous take into account that according to art. 487 Cod Penal Procedure.

Performance admonition is immediately on hearing the decision was taken in the presence of the minor, or by setting a deadline for when bringing dispose child, quotation and the parents.

However, by decision of 13 guidance 1 February 1971 a former Supreme Tribunal [7], decided that "measure educative of admonition to be applied minor offender who exceeded the age of 18 years on judgment" .

Although capable of serious criticism in this decision of guidance , retains the guidance and required for instance.

As for the freedom of supervised learning, since, according to art. 103 Criminal Code, it lies in leaving the child free for a period of 1 year, under special supervision, and term runs from the date of its execution (which is made by the court when making them, when the minor is present or at a later time when you have to bring it) can conclude, logically, that it may be taken only from the minor below the age of 17 years on date of delivery so that the decisions which it took me far beyond the child after the age of 17 years should be considered illegitimate [8].

According to art. 103 al. 6 Criminal Code, if during the term of one year the child is exempt from supervision that is exercised on his or bad behavior, or commits an act required by the penal law , the court revoked supervised freedom and the minor measures of internship in a reeducation center, and according to art. 489 Code procedure penal court is the one who pronounced the measure .

When the act provided for criminal law, committed by a minor during supervised freedom, the offense, the court can take far internship or apply a penalty in this case competence Square court being called upon to judge the offense (art. 492 Code penal. proc.).

In legal literature and practice were made different away views and have adopted different solutions to the situation during the period of 1 year the child has committed a contravention [9].

We share the view expressed in that, after revocation of supervised freedom, the court will not apply accused me nor a punishment for the offense that resulted in making educational measure, which then merge to the punishment imposed for the new offense, but you will need to apply one penalty for no-fail offense committed, the individual to be re-seen in the fact that the defendant ignored the confidence that enjoy before, when he took the measure of freedom supervised.

In connection with internment in a reeducation center, re - memory bad that it takes time but can not take in the main-principle -only until the age of 18 years in this connection is considered unlawful decision by the decision internment during the 2 years that expire before the expiration of 18 years (will be given, for example, nr.59/1996 a decision of the Supreme Court, penal section) [10].

To corroborate the art. 106 Criminal Code, that the extent of educational internship will be given unlimited time and that can only last until the age of 18 years, with the art. 107 Criminal Code, under which, if passed at least 1 year from the date of the child and gave evidence of

thorough referral may have his liberation before becoming major may conclude that such a measure educational freedom monitored and internment in a reeducation center can not be ordered unless the minor has not reached the age of 17 years, providing that the legislature itself, in order to take into question possible liberation before becoming major, the minor must be at least 1 state year reeducation center.

However, by deciding nr.1/1971 guidance of former Supreme Court, cited above, it was decided that the measure of internal-reeducation in the center can be taken against the minor who has reached 17 years, solution for considerations above, it seems controversial [11] .

However, this does not mean that internship measure could be taken against a child who is approaching 18 years of age, being non-legal solution given by the court Brăila that had this measure against a minor who at the time of delivery sentence have only 5 days until the age of 18 years, becoming major remaining until the final decision [12].

According art.106 Al. 2 Criminal Code at the time when the minor becomes major, the court (which was first tried in court on minor under art.491 Code proc. Criminal) internship may extend for a period not exceeding 2 years, if it is necessary for the purpose internship .

In this respect, was criticized a solution to long-Court Câmpulung Moldovenesc that dispose internal extension measure minor on the maximum duration of 2 years, that does not justify in relation to the date of completion of the course for qualification in being a hairdresser [13].

Basically, those measures must be always ready for a determined period of time, so as to appreciate that it is necessary for completing and completing re-education , without being able to overcome the over 2 years increased.

Finally, internment in a medical-educational institute can be taken, according to art. 105 Criminal Code against the child who, because of his mental state or physical needs medical treatment and for special education.

And it takes time but can not last only until the age of 18 years, with the difference that it should get your once disappeared due to the required adoption thereof. With the lifting of the measure (the one who first tried in court on minor) may, if necessary, to take over minor extent internship in a reeducation center.

In connection with this mention that it may be the only instance where an expert medical specialist and confirm the necessity of subjecting

the child medical treatment and a special education being understood that the measure may be taken only criminal liability if the minor.

References

1. Penal Code annotated and commented, the general-in Scientific Publishing, Bucharest 1972, p. 523-524

2. Timiş County Court Criminal No-decision. 899/1974, the Romanian **Journal of Law** no. 11/1975, p. 85

3. the same effect see Bulletin **PRO LEGE** "nr.1/1999, pag.128

4. see, for example, the **Criminal Code commented and annotated**, the broad, Th. Vasiliu, etc. - Ed Scientific, Bucharest 1972, pag.525-526 and 528.

5. See among others, Bulletin **PRO LEGE** "nr.1/1996, pag.23-25.

6. see example. Th. Vasiliu, etc. "**Penal Code annotated and commented, the general**", Scientific Ed Bucharest 1972, pag.537.

7. Review of the Romanian Law no. 4 / 1971, pag.85.

8. See in this regard the decision cited guidance, the decision no. 1369/1999 of the Supreme Court of Justice, Criminal Section, in the "**Right**" nr.7/2001, pag.165 etc..

9. See, example., Lupaşcu Radu, "**Revocation of supervised freedom measure** taken against the minor in nr.3/1999 right, pag.146-149 and Dumitru Ghe. " The revocation of supervised freedom where the term 1 year minor commits a contravention . Controversy practice outlined in the "**Right**" nr.11/1999, pag.145-148.

10. the "**Righ**t" no. 7 / 1997, p. 108.

11. see and theoretical explanations of the **Romanian Penal Code**, 1970 Ed Academy, vol II, pag.251.

12. see decision no. 875/1999 of the SCJ, the criminal law section nr.5/2000,pag.160.

13. see the "**Righ**t" no. 8 / 1998, pag.105.