

PROTECTING CHILDREN'S RIGHTS THROUGH CRIMINAL LAW MEASURES

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Abstract. *In today's increasingly complex world, protecting children through criminal law has become a growing priority, especially as new forms of abuse and exploitation threaten their safety and development. This article explores how Romania addresses these challenges, focusing on how its legal system aligns with global standards such as the United Nations Convention on the Rights of the Child and the Lanzarote Convention. The best interests of the child are in the right of the child to normal physical and moral development, socio-affective balance and family life. The research employs a comparative legal approach and draws on both statutory analysis and academic commentary. The analysis identifies several weaknesses in practice, particularly in areas such as inter-institutional coordination, specialist training for justice professionals, and support services for young victims. While Romania's legal framework is comprehensive on paper, its implementation often falls short. To bridge this gap, the paper proposes a multidisciplinary strategy that integrates legal reform with educational and social support measures. Key recommendations include improving institutional collaboration, enhancing professional training. The considerations from the given paper, we think, can open the way for us to the problem of the correct solution of the use of legal concepts and theories before the courts.*

Key words: Criminal law, Children's rights, legal framework, extrajudicial measures

JEL: K10, K14

1. Introduction

In the Romanian literature, it is noted that the correct explanation of the meaning of the concept of a child is likely to help to exercise and defend its rights as best as possible, protection achieved including by criminalizing and punishing the facts that affect this value, and on the other hand it would be of major interest for the correct understanding of the content of the concept of the child in relation to another concept such as minor, with which it would often be confused or could be used as a synonym. Moreover, we also note that, both in Romanian legislation and in the legislation of the Republic of Moldova, for example, in the civil code, in the penal code, in the Law no. 123/2024 amending and completing the Law no. 272/2004 on the protection and promotion of the rights of the child [3], there is no unitary terminology. So, etymologically, the term child comes from the Latin *infans* meaning that does not speak. *Infans* was what we now call a small-aged child.

Examining the issue, we will continue to make some considerations regarding the notion of a child as regulated in national and international law, without exhausting the subject. The testimony of this is also a saying from the elderly: *until your parents pass away, you are a child*.

2. Basic Content

Taking this into account, we specify that the Declaration of the Rights of the Child & then in the International Convention on the Rights of the Child of 1989 defines the child as "any human being under the age of 18, except when the law applicable to the child sets the limit of majority under this age" [1]. Hence, we point out that until the adoption of the Convention there was no legal definition international documents in the matter making only general references by reporting the subject to the political or social environment. Evidence of this is clear from the fact that Romania was among the first states to ratify the UN Convention, in the year immediately following its adoption in the United Nations General Assembly, by Law no.18 of 28 September 1990[5]. In this respect, it can be stated without reservation that in the UN Secretary General's Report, three categories of children were

distinguished on the situation of children: a) those who depend totally on their family in meeting all needs and are not yet of school age (from conception to 6—8 years); b) those who depend for their physical and mental development both by the family and by the school within compulsory general education (age from 6—8 years to 12 – 13 years); and c) adolescents, the last stage before full integration into the adult world and whose environment is, accordingly extended to all other state institutions.

As such, the exact definition of the term child is of practical importance in the light of the fact that certain legal provisions regulating legal institutions with application in the field of child protection (minor) establish measures and age-related responsibilities.

Childhood is the first stage a person goes through, it is the period when it is formed, develops psychically, physically, acquires a logical thinking (*crescit enundo*). During this stage of child development, the child lacks the ability to understand and manifest his will according to the provisions of the criminal law. This incapacity is a normal one, because it is not the result of an anomaly or a pathological condition, but results from the natural course of human existence. Because of this, children cannot be subject to repressive measures (punishments), this incapacity being assumed as absolute (presumption *iuris et de iure*). This absolute legal presumption of criminal incapacity represents, according to Article 113 of the Criminal Code, the first stage in determining the limits of the criminal liability of minors [2].

Protection measures can be taken against children, education, when it is found that they have a negative conduct, but cannot resort to punishment, because the child does not have the ability to understand, to become aware of what he is doing, of the consequences of his actions and therefore cannot understand neither the meaning of the punishment, the product of its application. For the child, punishment would mean suffering designed to spoil his character, sometimes even change the positive educational basis he already has formed. The duration of this stage (childhood) cannot be defined, because it depends on strictly psycho-physiological conditions and criminal conditions. The limit of this stage of childhood can also be extended depending on the region, climate, education, race, living conditions.

For example: 7 years in India and Switzerland, 10-12 years – in Ireland, 14 years – in Germany, Russia, Japan, Republic of Moldova, 15 years – in Sweden, Denmark, Finland and Poland, 16 years – in USA and Kazakhstan [6]. Age periods of mental development depend to some extent on the number of years lived and the degree of maturation of the child's organism, but they may not coincide with his chronological age. Therefore, age periods have at least four aspects: chronologically – from birth to the present; biological – is determined by the degree of maturation of the organism, by the state of the nervous system; psychological – is determined by qualitative changes in mental and sociological development – is characterized by social maturity, the roles that the individual has in society. Therefore, it has always been admitted and everywhere that the child in childhood, even if its upper limit was and is currently variable from one criminal law system to another, can never be subject to criminal liability.

The second stage that a man goes through in his normal development is adolescence, period of completion of training, of psycho-physical fixation. This period can also be considered transitional (perfecting), because the teenager has characteristics both from mature man and from the child, the component of maturity evolving as we approach the period when the teenager becomes mature. Adolescence is divided into two stages: adolescence proper, in which the component close to childhood prevails and the end of adolescence, in which the component of maturity prevails.

In the first phase, the psycho-physical ability is not complete, since the teenager does not have the full ability to understand the importance and consequences of the act, in certain circumstances or situations, compared to a mature man. Thus, in the first phase of adolescence, the psycho-physical capacity is unfinished, relative. The same teenager may be considered capable of understanding the

importance and consequences of the act in a particular situation and incapable of dealing with another situation in fact. Their understanding must be established on a case-by-case basis.

In the second phase of adolescence, the adolescent finds himself in full psycho-physical perfection; his capacity is close to that of a mature man in terms of his ability to understand and you. The education of the adolescent means, from a psychosociological point of view, its adaptation to the limitations and prohibitions of the social environment. Adaptation to the physical and social environment, emphasizes the author of Piaget, represents „a balance between two contradictory mechanisms, assimilation and accommodation, the acquisition of which lasts throughout childhood and adolescence and defines the proper ordering of these periods of existence”.

The protection of the minor is carried out first by extrajudicial means.

We specify that the range of extrajudicial means as well as legal ones is very wide. The detailed exposure of all would go beyond the framework of the present thesis; that is why we are limited only to the signaling of the most important guarantees and which, we believe, are useful to be succinctly rendered.

We ought to first evoke the rules of social coexistence which are nothing but moral rules signify the unity of right and morals. This unity is also expressed in the fact that many of the norms of morality, through legal regulation, become legal norms which, besides the force of public opinion, when appropriate, are ensured also by the force of constraining the criminal norms. Always, throughout its existence, mankind has felt the need to establish norms and rules of behavior, that is, to regulate the relations between them. These rules, along with other principles and customs, establish the behavior of people in society, in the family, in personal life and being generated by social existence, are attributed to various facts a certain appreciation and significance, are considered moral or immoral, good or bad, useful or harmful.

The appearance of the family, especially the monogamous family, has determined the establishment of rules of conduct „on relations between young and old, parents and children, wife and husband – rules that have long had a customary character. If from ancient times it was required that children (young people) respect the elderly, it is no less true that from the same times are known „customary rules” that oblige parents to take care of the growth of their children.

In ancient times the parents – father – were those who taught their child how „the craft of arms”, hunting or shepherding, agriculture or metal processing, this parental care was mainly aimed not only to provide an extra labor force, but especially the preparation for life of the young offspring.

Young people in a gint or tribe have always understood their purpose and the purpose of their education respecting the elders considered wise because of the school of life[4]. The decisions of the wise men's or elders' council were laws for the tribe's members, binding on all, and today there are still tribes in South America or Micronesia, which provide examples of exemplary disciplinary conduct among young people.

This atmosphere, long created, has allowed some customary rules to become rules of law, when due to the specific economic conditions of polarization of material wealth of class separation of people, state and law appear. Thus, it was imposed that an objective necessity of rules as rules of conduct, of the members of a family, of society, to be inscribed in laws.

Particularly useful, by their efficiency, are therefore also the legal means that exercise, by their norms, a significant action to protect the minor.

In the achievement of this legal protection, the various branches of our law are contributed by the specific regulations of each. Although different and complex in scope and content these multiple and various means constitute, together, a complex system of measures of law.

In the fundamental law of the Romanian state was inscribed as the basic principle in Article 49, according to which: *„Children and young people enjoy a special regime of protection and assistance in the realization of their rights. The State shall grant allowances for children and aid for the care of sick or disabled children. Other forms of social protection of children and young people shall be*

established by law. The exploitation of minors, their use in activities that would harm their health, morality or endanger their normal life or development are prohibited. Minors under the age of 15 cannot be employed as employees. Public authorities are obliged to contribute to ensuring conditions for the free participation of young people in the political, social, economic, cultural and sports life of the country" [5]. This fundamental law permeated by a profound humanism reflects the concern not only for marriage, the family, and the interests of the mother and child, but also, in general, for the care of man with his needs and interests.

On the basis of the fundamental right of children to be provided with the necessary conditions for the development of physical and intellectual skills enshrined in the Constitution, the child enjoys broad socio-economic and cultural rights and freedoms, which ensure their real and full participation in shaping their own future. Here, it is the place to specify that the fundamental law is not only limited to proclaiming these rights or freedoms of citizens, but also provides for the material and legal guarantees of the exercise and defense of human personality and fundamental rights of citizens. In such a context, the protection of minors becomes one of the fundamental principles of constitutional law.

The civil code adopted by Law no. 287/2009 of 25 June 2009 is the basic matter in which the principles and norms underlying family social relations are included. In this code are also inscribed the basic principles of the protection of minors. For example, in Article 488 of the Civil Code, it is stipulated that: *"parents have the right and the duty to raise the child, taking care of his physical, mental and intellectual health and development, his education, teaching and professional training, according to their own convictions, characteristics and needs of the child; they are obliged to give the child the necessary guidance and advice to properly exercise the rights that the law recognizes him/her"*[4].

In this respect, we specify that the family in general presents itself as a form of special social relations between persons who are bound by marriage or kinship, thus including in its composition spouses & parents, children, but also only single spouses constitute a family.

Having as purpose the analysis of the protection of the best interests of the child from all points of view; we find that the duties of the parents are numerous and varied. They originate not only from the civil code, but also from other national as well as international normative provisions. They refer both to the person and to the goods of the minor and create in the charge of the subjects as many responsibilities.

The need to protect the child and through the mediation of the criminal law is among the most important objectives of the criminal law; the person of the child being defended, both in terms of his physical personality (life, bodily integrity) and his moral personality (dignity, honor, freedom, etc.) values that define the personality of the child in any type of society.

In order to fulfil this obligation, our criminal law ensures the protection of minors by establishing a very broad and varied framework of criminal offences, on the basis of which it establishes criminal liability for unlawful acts that directly or indirectly affect the multiple rights and fundamental freedoms of the person. It is correctly emphasized that the criminal law must intervene, as the last ratio, (according to Professor George Antoniu) in the relations between parents and children because more serious custodial sanctions are provided, if the violation of parental obligations is criminal [1]. This protection of the minor is carried out on the one hand *post factum*, after the criminal act has been committed, and on the other hand, *ante factum*, preventive, creating an atmosphere that prevents, in the future, parents or other persons from committing such criminal acts.

Moving to the penal code, we find provisions that directly protect the minor, namely, in the rules on the causes of non-imputability, aggravating circumstances, and safety measures.

- Article 27 provides for the minority of the perpetrator;
- The code in force lists in Article 77 the circumstances that constitute aggravating circumstances
- the rape provided by art. 218 Criminal code or sexual assault (art. 219).
- trafficking in human beings in the form provided for in Article 210 of 1, letter b)
- the exploitation of begging provided for in Article 214 of 1.

3. Conclusion

Criminal law serves as one of the most vital instruments in the architecture of child protection, offering a structured and enforceable means of responding to serious violations of children's rights. However, the mere existence of laws, no matter how well drafted, is not sufficient.

To optimize the protection of children's rights through criminal law, several measures are necessary: continuous professional training for prosecutors, judges, and police officers specialized in children's rights; adoption of child-friendly procedures, such as hearing minors in specialized rooms with the assistance of a psychologist; strengthening preventive education in schools regarding children's rights; effective collaboration between social services and criminal prosecution bodies. Furthermore, Romania should intensify efforts to implement restorative justice measures for minors.

Only through such a multidisciplinary and proactive approach can the abstract ideals of child protection be translated into a sustainable and humane reality. As Romania continues to navigate the evolving landscape of child rights protection, it must prioritize not only legislative compliance, but also the cultural and institutional transformation necessary to uphold the dignity and well-being of every child in practice, not just in principle.

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