

# THE MINOR LAW BREAKER, PREVENTIVE MEASURES AND ECHR PRACTICE

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## Abstract

*Once with modification of Criminal Procedure Code took place also the modification of conditions towards which against the minor defendants there can also be taken preventive measures. Preceding to an examination of legal disposals it is to be observed that the standards regarding the preventive measures applicable to the minors are mostly different. If to a main level, both Criminal laws state that regarding the preventive measures taken towards the minors must take into consideration their age, the non-prejudice of physical, psychical or moral development of them, in the new Criminal Procedure Code the legislator did not set different measures against the minors referencing to their age, the gravity of the committed infraction and the procedural stages covered by the causes where the minors are researched like in the previous Code. So, previously there was a clear distinction between the minors aged between 14 and 16 years and those aged between 16 and 18 years, establishing that the minors of the first category of age could not been preventively arrested only if the committed infractions were very severe, aspect described by mentioning the punishment previewed by the law that should be the life detention or jail on a 10 years or bigger period. At the same time, it was distinctively established for each of the two categories of minors the length of the preventive arrest measure and its extension during the criminal prosecution, the limits in time for checking the legality and reliability of the preventive arrest during the judgment. In default of such criteria and limitations that guided the judicial organs to an appropriate adaptation of the situation and personalities of the inculpated minors, it is controversial if the new provisions and preventive measures taken towards the minors are according to the stated demands of ECHR.*

Key Words: *juvenile suspect and offender, preventive measures, criteria, legal practice, legislative suggestions.*

JEL Classification: [K14]

## 1. Introduction

The current Criminal Proceedings Code (further CPC) presents also important changes as regarding the preventive measures which may be taken against the juvenile offender. In this respect, it is important to establish if the regulations governing the preventive measures taken against the juvenile offender respond to the current needs, that is, if they protect by means of their preventive character the public order, without harming juvenile's positive social – human evolution and if they comply with the European Court of Human Rights' (further ECHR) practice.

If reviewing, we find that in the previous CPC existed the Title IV named *Măsurile preventive și alte măsuri procesuale (Preventive and other procedural*

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measures) which included Chapter I with the title *Măsurile preventive (The preventive measures)*, the latter one comprising Section 4 under the name *Dispoziții speciale pentru minori (Special dispositions on juveniles)*. As other authors<sup>1</sup> we also observe that these special dispositions related to the juvenile accused and offenders were not in the previous CPC from its start but inserted by means of Act 281/2003<sup>2</sup>, and up to this date the preventive measures had been applied to the juvenile offenders under the same conditions as for the adult offenders, the only special condition referring to the fact that liberty deprivation had to be achieved as such the juveniles to not be incarcerated with the adults.

The article 160/e of the previous CPC was first referring to the common dispositions applicable to the adults, and then it emphasized the fact that for preventive detaining and arresting measure, the suspect or offender's age must be taken into consideration from the date the preventive measure was taken, extended, or preserved. In the article 160/f of the previous CPC, the lawmaker was referring to juveniles' additional rights and special detention regime, which had to be, as regarding juveniles' age, the liberty deprivation measures taken in view of undemanding progress of the criminal trial, preventing them to avoid criminal prosecution, the trial or punishment execution, harmless as considering their physical and moral development, the lawmaker detailing in the following paragraphs the right to legal advice, the persons who had them under custody to be notified, to separately detention places of the adults, ensuring that all these are complied with by visits paid by the judge, the prosecutor or other organisms in the detention facilities.

The lawmaker, on the basis of the preventive measures, was stipulating in the article 160/g of the previous CPC that the juvenile aged between 14 and 16 years with criminal liability, may be detained during 10 hours and only if he/she had committed a crime punished by the law with life detention or prison for 10 years or higher. It was possible to extend detention for utmost 10 hours if required so. Consequently, before holding him for a short period of time and only for very serious crimes, the existence of juvenile discernment aged between 14 and 16 years had to be established, while the juvenile aged between 16 and 18 could be held under the conditions provided for adult offenders.

Juveniles' preventive detention was different as their age was ranging between 14 and 16, 16 and 18 respectively. The juvenile offenders of the first category might be hold under custody only if the punishment provided by the law for the alleged offences was life detention or imprisonment for 10 years or higher, and another preventive measure was not enough. The time of arresting the juvenile offender aged between 14 and 16 years, along the criminal prosecution was of maximum 15 days. Extension of this measure might be made only under exceptional circumstances with 15 days, and the total length of preventive detention for a juvenile during the criminal prosecution had to be 60 days as a maximum.

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<sup>1</sup> Grigore Theodoru, *Tratat de Drept procesual penal*, second edition, Hamangiu Publishing House, Bucharest, 2008, p. 478.

<sup>2</sup> Published in Official Gazette number 468 on 1 July 2003.

Only under exceptional circumstances when the punishment provided by the law was life detention or imprisonment for 20 years or higher, juvenile offenders' preventive detention during the criminal prosecution could be extended up to 180 days. In case of juveniles aged between 14 and 16 years old, the legitimacy and validity of the measure had to be checked along the trail every 30 days.

The juveniles aged between 16 and 18 years old could be held preventively under custody during the criminal prosecution for utmost 20 days. Extending the measure during the criminal prosecution was possible for 20 days, but the total time of preventive detention at this stage of the criminal trial could not exceed a reasonable term or 90 days as a maximum.

The same as for the juveniles aged between 14 and 16 years, for this juvenile offenders' category was established that if the punishment provided by the law is life detention or imprisonment for 10 years or higher, the preventive detention may reach a maximum of 180 days. The preventive detention measure legitimacy and validity has to be checked periodically for the juvenile offenders aged between 16 and 18 years but not later than 40 days.

As considering the time of arresting the juvenile accused, the lawmaker established 3 days as maximum, with no difference between the juveniles aged between 14 and 16 years, 16 and 18 years respectively.

## 2. Current national legislation

Similarly to the previous dispositions, the current CPC includes Title V named *Măsurile preventive și alte măsuri procesuale (Preventive and other procedural measures)*, which comprises Chapter I named *Măsurile preventive (The preventive measures)*, where we may find the 8<sup>th</sup> Section referring to *Dispoziții speciale privind măsurile preventive aplicate minorilor (Special dispositions regarding the preventive measures applied to juveniles)*, made of two articles, 243 and 244 respectively, the first one including special conditions of applying the preventive measures for the juveniles, and the second one special conditions of carrying out preventive detention and arresting ordered against juveniles. Of the two articles, only the first one establishes the conditions the preventive measures may be taken against the juveniles, and the first paragraph refers to sections 1-7 of the previously mentioned chapter which applies also in juveniles' situation, adding the observation "*with the derogations and additions provided by this article*". Unlike other authors<sup>3</sup> we observe that the derogatory rules are 4 and comprised in paragraphs 2-4 of the same article.

First in paragraph 2 of article 243 of CPC, the lawmaker shows that preventive detention or arresting may be ordered against a juvenile *by exception*, meaning in those situations which are exceptions from the general rules, uncommon, unusual<sup>4</sup>, meaning that those two measures supposing liberty

<sup>3</sup> Ion Neagu, Mircea Damaschin, *Tratat de Procedură Penală, Partea Generală*, second edition, Universul Juridic Publishing House, Bucharest, 2015, p. 659.

<sup>4</sup> <https://dexonline.ro/definitie/excepțional>.

deprivation in detention premises may be taken only under special circumstances, and the other preventive measures, which do not have such a restrictive character, judicial supervision, judicial supervision on bail and house arrest are not submitted to the condition of exceptionality.

Then, the lawmaker establishes the second derogation referring to the effects the liberty deprivation would have upon juvenile's personality and development, which *shall not be disproportionate* as considering the aim of the taken measure. We have to mention here that any preventive measure leaves negative marks upon any person, especially upon juveniles who are developing as individuals and members of a community. Starting from this point, the lawmaker wants to ensure that the negative effects upon juvenile's personality and development due to preventive detention and arresting measure, shall not produce more serious consequences for the juvenile and society, other than those existing if the juvenile would have been submitted to these preventive measures, and a possible disproportion is examined by means of article 202 CPC referring to the general aim of the preventive measures, regulated by three means, respectively, ensuring a good progress of the criminal trial, preventing the suspect or juvenile offender to avoid the criminal prosecution or the trial, and preventing committing an offence. The good progress of the criminal trial is a general concept with very wide meanings, and the existence of the aim in this respect must be searched in the general principles comprised in CPC. The article 1 of CPC stipulates that the criminal proceedings regulate the criminal trial progress as relating to a criminal case, as they want to ensure efficient performance of duties of legal institutions, guaranteeing the rights of parties and of other participants to the criminal trial, in compliance with the constitutional, European and International regulations to which Romania partakes. At the same time, the article 5 of CPC regulates the principle of truth finding regarding the facts and circumstances of the case and regarding the suspect and offender's person, which in our opinion is the challenge of the entire criminal trial, because only finding the truth may lead to a legal and grounded solution, in compliance with the main requirements of article 1, CPC. Under such circumstances, we consider that each time the competent legal institutions take the preventive detention or arresting measure in consideration of the good progress of the criminal trial, finding the truth respectively, compliance with all proceedings in order to find it and with other participants' rights and all applicable regulations, may occur only if, in the case of liberty deprived juvenile suspect or offender, all legal conditions are complied with, in order to ground taking those two measures. If we look critically towards this condition, we may say that due to its general contents and lacking some precise criteria giving to it a more accurate form, the legal institutions may allege it is complied with in almost any situation, because there are few the situations when the good progress of the criminal trial is not assisted by juvenile suspect or offender's liberty deprivation. As for example, the lack of sincerity in juvenile's statements is a factor influencing the corresponding development of the criminal trial.

The good running of the criminal trial is sometimes taken for and intermingles at the same time with the second aim, namely, preventing the suspect or offender to avoid the criminal prosecution or the trial, because precisely suspect or offender's being present within the criminal proceedings, in all phases of the criminal trial is the first necessary condition for the good running of the criminal trial.

Preventing perpetration of some other crimes is the third aim as needed to take the preventive measures, considering that situation when suspect or offender's behaviour is anti-social, criminal preponderantly, meaning that the offender commits crimes as those would be its occupation, requiring juvenile suspect or offender's temporary stopping from his/her activity, having immediate effect the damages caused to other members of the community to which he/she belongs to, their rights and legitimate interests harming.

As such, when examining the need of taking juvenile suspect or offender's preventive detention or arresting measure, there shall submitted to a comparative analysis, on one hand, the aim of the measure and on the other hand the negative impact upon the juvenile, and if achieving the aim is more important for the society than juvenile's personality and development, then taking the preventive measure is legal and grounded, on contrary it is not.

The third derogation considered by the lawmaker refers to the *time* the preventive measure is taken, being stipulated that the offender's age is also considered when the measure is ordered, extended or maintained. As a result, this derogation involves only the preventive arresting measure, not the other ones, and by its means the length of the measure, the juvenile's age respectively are considered, whenever examined measure ordering, extending or maintaining. Juvenile's age is important because it is well-known the fact that a teenager having 14 years old for example, is not enough developed as from mentally, intellectually, socially point of view and he/she has not full responsibility of his/he facts and the consequences upon other individuals, when a person aged 17 years is closer to the lower limit of his/her maturity, under the conditions a person is adult at 18 years, understanding the good or bad of his/her facts, as well as the consequences of his/her facts upon the members of the community he/she belongs to. In lawmaker's opinion, and relating to these coordinates, the length of the preventive measure should be lower in young criminal liable juveniles' case then for those ones closer to adulthood. One should not overlook the fact that may be situations when a juvenile aged 14 years is better developed intellectually and socially then a juvenile closer to 18 years, but the life conditions, the access to the current data corresponding to the stage the society reached, have not allowed a constant and positive evolution under the aspect of his/her growing.

As considering the forth derogation, as may be observed, it does not refer to the essence of the preventive measures, although here are mentioned the preventive detention and arrest, but to its structure, meaning that after ordering a preventive measure a person, a legal representative in charge of the juvenile shall be notified in this respect.

At the same time, neither the dispositions of article 244 of CPC refer to the essence of the conditions, grounding or not the preventive measures taken against the juvenile suspect or offender, but to the conditions under which these measures must be performed, meaning practically a starting point for what the Act 254/2013 upon punishments execution and liberty deprivation measures ordered by the legal institutions along the criminal trial, develops in article 117.

In order to have a better image about lawmaker's will concerning the preventive measures which may be taken against the juvenile suspect and offender, we conducted an analysis of the statement of reasons for adopting new regulations<sup>5</sup>, where it is mentioned only the fact that *“As a general rule, it is proposed for the juveniles the possibility of liberty preventive deprivation only if the effects of such measure upon their personality and development would not be disproportionate in relation to the legitimate aim followed through measure taking”*, aspects which bring nothing more than the previously mentioned aspects.

Reviewing the Constitution of Romania (further CR), we may observe that the article 49, paragraph 1, in relation to Children and Youth Protection establishes that *“The children and youth benefit from a special detention and support regime in the exercise of their rights”*, without additional notes and the article 23 of CR regarding the Individual Liberty has general contents and does not include no reference to juvenile offenders.

### 3. Case-law of the European Court of Human Rights

In the Convention on the Rights of the Child<sup>6</sup>, the article 37, letter “b”, “c” provides that *“... b) no child shall be deprived of liberty illegally or arbitrary. Arresting, holding in custody and imprisoning a child shall be accordingly to the law and it shall be an extreme measure, and as shortly as possible; c) any liberty deprived child shall be treated humanely and with the due respect to the human dignity and in a manner which shall take into consideration the needs of the persons of his/her age...”*, observing that the criminal proceedings are in full compliance with them, establishing the exceptionality of the measure, relating the preventive measures to juvenile's personality and development, ensuring a proportion between the measures and their aim, correlating the length of the measure with juvenile's age.

The European Convention on Human Rights<sup>7</sup> (further the Convention), regulates the institution of liberty depriving measures in article 5, paragraph 1, letter “c” on the occasion of approaching the right to liberty and safety, establishing that a person may be deprived of his/her liberty if *“arrested or hold under custody for bringing him to the competent legal authorities, when plausible reasons presume that he/she has committed a crime or when the need to prevent*

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<sup>5</sup> <https://www.juridice.ro/.../Expunere-de-motive-Proiectul-Legii-privind-Codul-de-procedura-penala-forma-transmisa-Parlamentului>, p. 14.

<sup>6</sup> Republished in Official Gazette no. 314 on 13.06.2001.

<sup>7</sup> Republished in Official Gazette no. 135 on 31 May 1994.

him/her to commit a crime or to escape after committing it is grounded”, observing again the criminal proceedings legislation conformity with the European one.

As referring to ECHR’s practice in the matter of juveniles preventive arresting, fortunately is not substantial, making us believe that the number of cases juveniles arresting was ordered is relatively low and therefore, the situations the article 5 of the Convention was broken are also very few.

As such, in *Bouamar vs. Belgium*<sup>8</sup>, the European Court mentions that the first hypothesis of paragraph d) of article 5 § 1, involves monitoring the compliance with the “regularity”, “the legal ways” included, as regarding detention suffered Nai’m Bouamar, and the “regularity” involves not only compliance with the national legislation but also the conformity of the liberty depriving measure with the aim provided in article 5: protecting the individual against arbitrary.

In other case, *Nart vs. Turkey*<sup>9</sup>, the juvenile aged 17 years was arrested under suspicion of armed robbery in a grocery shop and hold in a detention centre for adults during 48 days. Here, the Court established that juveniles’ provisional arrest must be ordered only as last measure and as shortly as possible – the provisional arrest during 48 days was excessive, that the juveniles must be hold separately of the adults, observing also that the authorities did not take into consideration the complainant’s age, and the “evidence condition” could not ground by themselves the length of detention.

#### 4. National case-law

In the more recent legal practice of Cluj-Napoca Court a few cases existed, where was taken the preventive arrest measure, reason why we shall briefly present some of them in order to emphasize the arguments this study is dealing with.

As such, in the first case<sup>10</sup>, a 17 years old juvenile offender, together with another two adult persons and a minor person, committed the robbery crime in a residence against an elder person. The preventive arresting measure was dismissed, the Judge taking into consideration her age, the sincere attitude, the lack of criminal records, the fact that she did not assault the victim and considered enough to punish the juvenile with the preventive measure of judicial supervision. The solution is final.

A juvenile aged 17 years was accused with another two persons who were ensuring for him moral support, of robbing a purse from inside a vehicle. The proposal was dismissed and the grounds presented<sup>11</sup> pointed out that the offender had no criminal records, that he performed activities bringing him illegal incomes

<sup>8</sup> <http://jurisprudencedo.com/BOUAMAR-c.-BELGIEI>.

<sup>9</sup> <http://jurisprudencedo.com/NART-c.-Turciei>.

<sup>10</sup> See Criminal Decision 129/C/A on 23.12.2015, file no. 23689/211/2015 of Cluj-Napoca Court, unpublished.

<sup>11</sup> See Criminal decision no. 2/C/A on 12.01.2016, file no. 290/211/2016 of Cluj-Napoca Court, unpublished.

as sporadically worker in constructions, field where he may work again, and since the preventive measure of judicial supervision has been taken against him in another criminal case for a fact committed before the present one, he had complied with the obligations included in the judicial supervision and he had no more violations of the criminal law, the Judge believing for the moment that this procedural measure is enough as to prevent repeating the criminal behaviour, that he committed the two facts during his juvenile period influencing to a certain extent the judgment and that the elements of the factual conditions alleged by the attorney in support of the idea of high social danger as regarding the juvenile offender are still not proven. The solution was not final because against the decision a motion was submitted by the Public Prosecutor's Office and it was admitted. After notifying the Court by indictment it was maintained and then replaced with the measure of judicial supervision.

Other two juveniles aged 17 years were accused for having committed qualified robbery by threatening a female with the knife in order to take her the scarf and coat. Their preventive arresting was ordered, the Judge reasoning in the delivered decision<sup>12</sup> that the crime was premeditated, the offenders followed the victim and taking advantage of the night and of the fact that the victim was on a less crowded street and vulnerable as comparing to them, the two benefiting from a superior power and number and surprising the victim, approaching the victim from behind, the offenders had an insincere attitude, trying to hide the truth or to diminish their guiltiness by comparison with the other one. It was also considered that one of the offenders was on trial and found guilty for having committed another robberies and he is prosecuted for another similar crime, but these circumstances did not made him aware of the seriousness of their facts and their consequences, and the other one seems to be an aggressive, remorseless person, having no empathy for the victim.

Two 15 and 16 years juveniles were arrested preventively for having committed in different formulae, the first 10 qualified robberies, and 5 such crimes respectively, the goods being inside of the staircases of blocks or vehicles. The Judge sustained the decision<sup>13</sup> by the fact that the large number of crimes signifies that the offenders adopted a criminal behaviour as almost daily lifestyle, being criminal experts, their carefree attitude when insisting in committing different crimes, the existence of other file pending for ruling for having committed robbery, and the measure of judicial supervision was taken against them.

The facts of other case<sup>14</sup> showed that a juvenile offender of 17 years, after a preliminary agreement with other four adults and with the complicity of other two adults, entered illegally and repeatedly, in various formulae, during the night,

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<sup>12</sup> See Criminal decision no. 8/C/A on 29.01.2016, file no. 1391/211/2016 of Cluj-Napoca Court, unpublished.

<sup>13</sup> See Criminal decision no. 77/C/A on 05.08.2016, file no. 15356/211/2016 of Cluj-Napoca Court, unpublished.

<sup>14</sup> See Criminal decision no. 106/C/A on 28.10.2016, file no. 21524/211/2016 of Cluj-Napoca Court, unpublished.

inside a company where had cut and robbed copper cables, causing significant damages. The judge, by taking the preventive measure, observed that the real circumstances prove that liberty deprivation is needed in order to remove a dangerous situation for the public order because the crime was committed by various persons during the night, by effraction, causing substantial damages, and the offenders did not take in consideration the property right of the injured persons and the public order. The juvenile offender is also prosecuted in a criminal case for qualified robbery crimes. The decision delivered is final.

After notifying the Court by indictment, the arrest measure was maintained during the preliminary ruling as consequence of offenders' insincere conduct, being then replaced at the first date of the trial with the measure of house arrest.

As considering other 17 years juvenile, was observed that along a few months he committed two crimes of qualified robbery from the appendages of houses. The measure of preventive arrest taken in this case<sup>15</sup> by the Judge was grounded on the following reasons: the crimes were committed while the juvenile was prosecuting by more police departments for similar facts, after previously being convicted for more crimes against patrimony, being institutionalized for re-education, resulting that the measures applied by the Court did not reached their aim of re-education and social reintegration, the defendant disregarding the property right of the injured persons, having committed the facts with another 13 years old juvenile.

Another case<sup>16</sup> requiring analysis has as object committing robbery crimes during the night by three juveniles, all aged 16, according to a previous agreement assaulting the injured victim by use of a pepper spray as to diminish the chances of fighting back and hold him using violence, robbing from him the mobile telephone and an amount of money. The defendants were preventively arrested as the Judge considered following fact seriousness analysis, the method and the circumstances of committing it, the company and defendants' environment and other circumstances related to them, that it is necessary to deprive them of liberty as to remove a dangerous situation for the public order. As to reach to this conclusion, the Judge observed the defendants came from other place to rob goods as they are not at first confrontation with the criminal law, because two of them are prosecuted in other criminal case for having committed another qualified robbery crime, the case being now under preliminary ruling. Moreover, the defendants premeditated the action as they have with them the pepper spray, choosing carefully the place and hour, taking into account also the criminal persistence the defendants show in committing violent actions for the purpose of stealing from honest people their valuable things. The solution is final and the measure of preventive arrest was maintained against all defendants when it was verified under the preliminary ruling proceedings.

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<sup>15</sup> See Criminal decision no. 107/C/A on 29.10.2016, file no. 21525/211/2016 of Cluj-Napoca Court, unpublished.

<sup>16</sup> See Criminal decision no. 12/C/A on 04.02.2017, file no. 2161/211/2017 of Cluj-Napoca Court, unpublished.

## 5. Conclusions

As a first conclusion in relation with the relevant aspects up now, we mention that although the previous provisions were correctly considered by some authors<sup>17</sup> as inaccurate and discrepant to some extent, they had a more accurate character, diminishing the arbitrary of the legal institutions in interpreting the dispositions relating to the preventive measures taken against the juveniles, by enforcing some limits. Despite all these, would be unfair to not observe that, viewed by means of the international and European regulations, the current provisions of criminal proceedings referring to the preventive measures which may be taken against juvenile suspects and defendants, comply with their requirements, some of them being an exact copy of the concepts which they comprise. Moreover, Court's practice may be considered as compliant with these regulations. Of the few case studies presented when the extreme measure of preventive arrest was taken the juveniles' age was more oriented towards 18 years, being fewer the cases when the juvenile's age was oriented towards 14 years. It may also be observed that the Courts did not immediately decide upon taking the preventive arrest measure, but the juveniles committed more crimes or were already punished or convicted for other crimes, and if such criteria did not exist, the crime the juvenile was charged off was a serious one, most often robbery or qualified robbery, aspects emphasizing without doubt the exceptional character of the measure. When the Judges took the measure of preventive arrest against the juveniles, sustained their decision by examining the reasons of the measure at two levels: the first represents the fact, its gravity, the consequences caused, the circumstances it was committed; the second related to juvenile's person, examined by means of age, the level of physical and mental development, his/her conduct and attitude, the level of training, family relationship, the company etc.

The legal practice presented has also a great deficiency, that is, the Judges in charge to decide upon the most restrictive preventive measures tried to extract from the information of the case, those elements supporting one or other ordered rulings, being possible for some aspects to be inaccurately perceived, their mental training being supported by self-training or the expertise gained by ruling in similar cases along the time. Our and other authors'<sup>18</sup> opinion is that an extremely important instrument which would cover this deficiency would be the assessment report drawn up by the Evidence Department which might, by means of the professional method of drawing it up, to offer the Judge the best choice as for the public danger be removed and juvenile's development to not be impeded. Unfortunately, drawing up an assessment report in each criminal case where taking the preventive measures is analyzed, encounters two obstacles. The first one is the promptness of drawing up of such report, hard to achieve in a short time without diminishing its quality, the second one having legal character, consisting

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<sup>17</sup> Gheorghe Radu, *Măsurile preventive în procesul penal român*, Hamangiu Publishing House, Bucharest 2007, p. 255 and next.

<sup>18</sup> Gheorghiu Mateuț, *Tratat de procedură penală, Partea generală*, C. H. Beck Publishing House, Bucharest, 2012, vol. II, p. 689.

in the lack of legal provisions compelling to the drawing up of such report, while even the dispositions of article 506 of the current CPC set up in charge of criminal prosecution authorities only the duty of requiring during the criminal prosecution the drawing up of the assessment report, the great majority of the cases having as object crimes in juveniles' charge reaching to the Judges and in Cluj County Courts' without such a document.

Naturally, the assessment report must also comprise, besides the educational measures which may be applied to the juveniles, pursuant article 115 of the current CC, an analysis of the preventive measures to be taken.

If pursuant the current legislation, when taking a preventive measure, drafting an assessment report is not provided under any circumstance, we believe that a first positive and relatively easy step to be made is changing the provisions of article 506 CPC, that is, establishing in charge of criminal prosecution authorities the obligation of asking for the assessment report drafting at this stage, which shall include also a part referring to the preventive measures to be taken.

This provision would allow, even if a uneven preventive measure has been taken against the juvenile offender during the criminal prosecution, while checking the preventive measures in preliminary ruling proceedings and then during the trial, the Judge, the Court respectively, to readjust the measure depending on fact and author's features.

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