

SOCIAL REINTEGRATION OF JUVENILE DELINQUENTS IN THE LIGHT OF THE RESTAURATIVE JUSTICE

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Abstract

In Romania, the role of the penitentiary and re-education centers is no longer seen as an essentially punitive and custodial one, with emphasis being placed on social integration issues, namely education and recovery. This has proven to reduce the risk of relapse and increase the chances of social integration and reintegration, especially on the juvenile delinquency area.

The article outlines the factors involved in delinquent behavior of minors, the national and institutional legislative framework in relation to the criteria of democratic justice, the role of the penitentiary system, the probationary and reeducation system by the principles promoted by the vision of restorative justice where the contribution of the community and individual empowerment should play a very important role.

Keywords: *juvenile delinquency, recuperative intervention, penitentiary system, probation, restorative justice*

JEL Classification: [K 14, K 33, O 15]

1. Factors that lead to delinquent behavior in minors

The causality of juvenile delinquency involves two categories of factors: internal or individual factors and external or social factors. Internal factors include the particularities and neuropsychic structure, the particularities of the person in training.

Of the external factors, the most important are: the socio-cultural, economic, socio-cultural factors and the educational factors of the human groups in which the child falls, starting with the family.

The relationship between the two categories of factors is a controversial issue, psychologists emphasizing the psychological factors, and sociologists the socio-cultural factors (Rosan, 2003).

The causes of juvenile delinquency are multiple, resulting from the interference of a large and varied number of factors. We have specific causes

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(school dropout, lack of parental supervision, dysfunctional school-family-community relationships, criminal subculture, drug and alcohol consumption etc.), structural causes (living standards, social, legal, social - inefficient, external influences, lack of prevention and awareness programs, etc.).

At the Seventh UN Congress (1990) devoted to the prevention of criminality and the treatment of offenders, 10 "delinquent factors" were outlined: poverty, unemployment, illiteracy, the absence of good and cheap housing, the education and training system misfit; increasing numbers of citizens without social inclusion prospects and widening social inequalities; dissociation of social and family ties compounded by inadequate parenting education, education that often makes living conditions difficult; the difficult conditions that people who migrate to the city or other countries know; the destruction of cultural identity of origin, racism and discrimination, which can create disadvantages in terms of social, health and employment; the degradation of the urban environment, especially the lack of collective equipment in certain neighborhoods; the difficulties created by modern society to correctly insert people into the community, family, work environment, school, and identify with a culture; alcohol abuse, drugs and other substances whose development is favored by the factors mentioned above; multiplying activities related to organized crime, in particular drug trafficking and stolen objects; the promotion and dissemination of ideas and attitudes that are sources of violence, inequality and intolerance (UN Congress, 1990).

An important role in the criminal act is the context in which the individual passes, so it is not only an automatic reaction to external factors but also an association with the personality of an individual that accumulates specific values, interests, habits, cultures and specific characteristics (personality, behaviors, vagabondage, psychological and somatic disorders, emotional deficiencies and family-social dysfunctions, lack of education, social inadequacy and non-integration, criminal group of friends, media influences etc.).

The above highlights the complex and complementary influences of juvenile delinquency when interpreting the individual case. Focusing on a single determinant of juvenile delinquency is inadequate and can lead to inappropriate conclusions, careful and detailed analysis of causes being a necessity in any study in this field.

A study co-ordinated by A. Miroiu (1998) (cited in Albu, 2002: 85) presents Romanian society as one still far from modern, where much of the work is pre-industrial, services are underdeveloped, agriculture is inefficient without state support, it is a society that is wasting its resources for a predominant consumption in view of subsistence.

At the dimension of inter-human relations, society is interested in forming only the "minimal citizen", only considered as a voter and tax payer. There are

many social areas where excluded or marginalized individuals appear (the poor, the unemployed, the ethnic and religious minorities, the children).

In this society, the trust in laws and institutions is limited and as a consequence, the lack of education generated by poverty, violence, lack of education and a qualification that allows them a constant income through employment led the adolescents to the appearance of some deviant behaviors.

The conservative line of institutional thinking also explains the inertia of the general education system, which is more oriented towards survival / self-preservation and less towards renewal, development and modernization. Young educated people can not imagine a way of life different from that of their parents, fearing by any change.

The social path and the whole psycho-social instrument discourage by their nature the changes and innovations in this regard. Hence, the high attractiveness of illicit conduct.

According to some authors, the problems and risks of socialization, defined more recently by the terms "social exclusion" and "precarious social space" (Neamțu and Stan, 1999: 129-158) are not only characteristic of the Romanian society, to varying degrees, all peoples and all states of the world at different stages and levels.

2. The legal statements of juvenile delinquency in Romania

At the moment, the National Penitentiary Administration is responsible for juveniles with distinct legal situations: *pre-trial detainees*, *minors admitted for the execution of an educational measure*, and *minors sentenced to imprisonment*.

The importance of keeping the minor in contact with the family justifies and explains the existence of minors' sections in most penitentiaries in the country.

Between the three categories of detention facilities for minors, there are substantial differences in terms of detention conditions.

As regards the application of the deprivation of liberty for minors, since the 1960s, international recommendations have been of major importance, such as the United Nations Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

Decree 545 of 1972 is the legal framework on which admission to psychosocial recovery of juvenile offenders and the operation of reeducation centers is carried out and the activity in juvenile and juvenile penitentiaries that provides custody of minors is regulated by law¹.

¹ Law 275/2006 on the enforcement of sentences and measures ordered by the judicial bodies during the criminal proceedings.

Despite obsolete legislation, significant changes have been made in re-education centers in terms of accommodation conditions, activities, but also the way in which social reintegration is structured, as well as in the specialization of staff carrying out activities minors.

Educational measures as specific sanctions applicable to minors have been given a distinct regulation from the other penalties of criminal law by the provisions of the 1969 Criminal Code. The taking of an educational measure or a punishment against a minor according to the offense committed was left to the court's decision.

Educational measures to be taken against juvenile offenders provided for in the Criminal Code are: reprimand, supervised freedom, admission to a re-education center, admission to a medical-educational institute. As educational measures, the Romanian Penal Code provides for four measures, grouped by two.

The first two, the *rebuke*² and the *supervised freedom*³ have the advantage that it does not affect the juvenile's condition, and the other two, *admission to a rehabilitation center*⁴ and *admission to an educational medical institute*⁵ involving the restriction of the minor's state of freedom.

Along with these educational measures, the law⁶ provides for measures that may be applied to the juvenile, imprisonment or fine, with the indication that their limits are reduced to half the amount of punishments (for the same type of crime) for adults.

Also, in this text of the law, the following paragraphs provide that complementary punishments do not apply to the minor, and convictions for deeds committed while minors do not attract incapacity or decay.

Given that the first two educational measures are still quite rarely applied, and their efficiency is questioned, it is necessary to analyze the deprivation measures, which require more attention. From the point of view of the sanctioning treatment applied to the minor, the new Criminal Code provides for a series of amendments, in connection with which a number of objections have been raised.

Thus, the new Penal Code provides that, during the exercise of the freedom under supervision, the court may impose on the minor, as an obligation, to perform unpaid activity in an institution of public interest for certain duration⁷. In relation to its content, this obligation is but a community service.

² Provided for in Art. 102 Civil Code.

³ Provided by Art. 103 Civil Code.

⁴ Art. 104 Civil Code.

⁵ Provided by Art. 105 Penal Code.

⁶ Art. 109 Penal Code.

⁷ The new Penal Code, art. 117 para. 3.

The regulation thus allows the juvenile to apply both an educational measure (supervised freedom) and a punishment (community work) for the same act, contrary to the principle prohibiting the application and execution of two sanctions for one deed (Criminal Procedure Code, 2008).

Also, the way of regulating the two forms of freedom under supervision, simple (for one year) and severe (from one year to three years), introduces in the individualization of this educational measure, elements alien to the deed and by the person of the minor, which is contrary to the personal character of the criminal liability.

In this respect, we note that there are no criteria on which to choose one or the other of the two forms of the educational measure analyzed, the only element of differentiation being that of the person entrusted with the supervision.

For all educational measures, the new Penal Code provides that if the minor became major at the time of the trial, instead of these measures, the fine or community work is ordered⁸.

The proposed solution runs counter to the principle of the legality of punishments, since it imposes the application of one of the two mentioned punishments, even if it is not provided for by the law for the offense committed, which could be sanctioned, for example, only with the punishment of imprisonment.

Regarding the admission to a medical-educational institute, the new Penal Code stipulates also the possibility that, in the case of a minor who became a major at the time of the trial, instead of the educational measure, he shall be ordered to be subjected to medical treatment, on next to the punishment of the fine or community work⁹.

As is well known, the measure of the safety of the obligation to medical treatment has nothing to do with the educational measure of admission to a medical-educational institute, the substitution of these measures, which are of a completely different nature and purpose and are not possible.

The first (safety measure) is ordered in the case of a person who has only committed an act prescribed by the criminal law and not an offense when, due to a disease or chronic intoxication by alcohol, narcotics or other such substances, the person presents a danger to society¹⁰, the purpose of the measure of safety being to eliminate the state of danger and to prevent the commission of other criminal acts¹¹; while the second (educational measure) is ordered when the minor has committed an offense and, due to his or her

⁸ The new Penal Code, art. 116 para. 2, art. 117 para. 7, art. 118 para. 4, art. 119 para. 6 and art. 120, para. 5.

⁹ Art.120 para. 5.

¹⁰ Art. 130 para. 1.

¹¹ Art. 128 para. 1.

physical or mental condition, needs medical treatment and a special education regime so that the educational measure constitutes a sanction for the offense committed.

In 2006, the Romanian Parliament adopted a new Law on the Execution of Penalties and Measures ordered by the Judicial Bodies in the Criminal Proceeding, elaboration of which took into consideration the provisions of the relevant international documents, mainly the Minimum Standard Rules for the Treatment of Detainees, document adopted by the First UN Congress (1955), the European Prison Rules adopted by Recommendation R (87) of the Council of Ministers of the Council of Europe, the reports of the European Committee for the Prevention of Torture and the rulings of the European Court of Human Rights.

The function of justice is to protect individual freedoms, law being the instrument organized according to the utilitarian principle: as much happiness as possible for as many people as possible. The punishment would have the effect of causing fear of sanction.

The three rational principles of punishment, formulated by Beccaria, still stand at the basis of criminal law: *the certainty* of the crime, *the proportionality* of the punishment with the gravity of the offense, and *the legislative origin* of the penalty regime. Criminal liability is associated with the responsibility of the subject. *Responsibility* expresses the act of engaging the individual in the process of social interaction by assuming the consequences of his actions. *Liability* is the external obligation or sanction imposed.

Thus, the irresponsibility and minority of the perpetrator eliminates the criminal character of the act. If the age of civilian majority is, for most of the European legislative systems, fixed at 18, the age of the criminal penalty is significantly lower, ranging from 16 to 18 years, with some exceptions in the northern European countries (Banciu and Rădulescu, 2002: 78).

The Romanian Criminal Code establishes *three categories of minors*: *juveniles under the age of 14* who are not responsible for the antisocial deeds committed because there is an absolute presumption of lack of judgment in their favor; *minors who have reached 14 years but do not exceed 16 years*, who have criminal liability only if it is proved that they committed the act with discernment; *minors who have reached the age of 16* and are criminally liable.

The guilt is related to the notion of *discernment*, the presence or absence of which may lead to the exoneration or criminal sanction. Lack of discernment is established on the basis of psycho-legal forensic expertise in a specialized institute at the request of the judge, who is not obliged to accept the conclusions of the expertise; the burden of proving discernment lies with the prosecution.

It follows that the notion of discernment is exclusively a psychiatric and judicial concept, although, in our opinion, it is, in fact, psychological. In other

words, discernment is the ability of the person to become aware of the consequences of his actions in an axiological, moral and civic context that is, in relation to good and evil, to the permit and prohibition.

Educational measures are special sanctions for minors, enforced in order to correct their conduct through education and re-education. According to the Romanian legislation (Art. 101 Penal Code), this category includes: reprimand, supervised freedom, admission to a re-education center and admission to a medical-educational institute.

The punishment applies "only if it is judged that taking an educational measure is not sufficient to correct the minor"¹².

For juveniles, sentences, fines and imprisonment are halved compared to adult sanction, and the minimum penalty can not exceed 5 years, as is the case for the offense for which the law provides for life imprisonment, for juveniles serving imprisonment from 5 to 20 years. Minors can not be subject to complementary punishments, and acts committed during the juvenile years do not entail any loss of rights.

In addition to educational measures, the *sanctions* applicable to juveniles for their criminal behavior are: *fine* (especially in the case of minors who have not committed any acts of particular social danger, but taking an educational measure is considered late, being almost increased); *deprivation of liberty* applicable to juvenile offender (separate from major offenders - juvenile penitentiary) or re-education centers. The law¹³ stipulate that minors are provided the opportunity and under conditions of deprivation of liberty to continue their education and / or qualification to acquire professional training in accordance with their skills.

3. The minors deprivation of freedom

The penitentiary, considered the main institution used to "resocialize" offenders, currently maintains numerous controversies from the dilemma of its essential purpose: to punish or correct.

Nowadays, in prisons, along with the big and little criminals, there are many of those that society has given up or can no longer protect them in it: we find an increasing number of alcoholics, drug addicts, people with disabilities psychics, victims of unemployment, etc.

Under these conditions, society forces the penitentiary to become a "large deposit" designed to isolate "worthless samples" alongside those the law punishes them for their crimes and crimes.

¹² Penal Code, Article 99, final paragraph.

¹³ Art. 59 of Penal Code.

Until recently, the penitentiary system was considered as an autosufficient institution, the "beyond the grace" being inaccessible to the community, generally to my surprise, unknown even to institutional factors directly involved in the management of crime (eg judges) (Brustur, 2009). In recent years, the penitentiary institution has undergone profound restructuring and reorientation by opening itself to the society it basically serves.

Under these circumstances, the penitentiary is increasingly beginning to transform itself from a self-sufficient and isolated community that has "no problems" into an open and mature institution that recognizes its problems and wishes to solve them, and contact with the information in foreign prison systems are defining in this respect.

For any minor, or adult, deprivation of liberty in the penitentiary environment is a special situation, with great resonances in his / her environment, both during detention and then at leisure.

As long as the individual is in prison, between people who have committed such antishocial deeds, the greatest difficulties are located in the relationships with those around him, but also with the adaptation to a way of life that involves multiple deprivations and renunciations.

Studies from that area (Gheorghe, 1996: 121) highlight the fact that the juveniles who enter the penitentiary for the first time suffer from multiple somatizations. In this case, the shock of depositing in a penitentiary is directly proportional to the emotional disturbances that are pre-existing in the penitentiary, the senses, the socially and emotionally immature ones, the sick generally suffer the most.

A negative thing found to minors serving the punishment in an adult penitentiary is the "habit" of detention, which makes minors no longer perceive the effects of deprivation of liberty as something bad and unbearable, and the adaptation to this way life is almost total.

On the other hand, the execution of juvenile punishment in adult penitentiaries has the disadvantage of a more severe life regime for a full-fledged person, such as minors, and the educational approach is ineffective for social reintegration when released from prison and the return in the community of origin.

In favor of the non-execution of punishments by minors in adult penitentiaries and the execution of these punishments in re-education centers as an alternative to prison life, the following arguments can be involved (Gheorghe, 1996: 164): psychosocial arguments created by the environment isolated and punitive prison created; psychological arguments due to the age of these people and the poor way of integrating into the penitentiary environment and the unfavorable premises that this environment has on the personality structure of minors.

The psychosocial arguments for the purpose of not serving the sentence in an adult prison are that, in the case of prisons, named by E. Gofmann (2003: 97) as "isolated and restricted total or average environments", a maximum constraint by formal and informal prohibitions to perform certain activities and to have some imposed behaviors, to have contact with the family (only on pre-established days), to personalize the living space and to have initiatives.

The overcrowding of penitentiaries was a reality, striking even more on the personality of minors, thus creating feelings of anomie, frustration and anxiety.

Besides the fact that prison is an isolated and restricted environment, the negative psychological effect of penitentiary entry is also added by the ways of adapting to this type of life, habituation to this environment and even its preference for it.

Over the last decade, overcrowding is no longer a factor that is so difficult to manage for the penitentiary system, and the proportion of punishment for juvenile prisoners has fallen in favor of educational and non-custodial measures.

The mechanisms for adaptation to detention conditions are costly psycho-functional for the juvenile serving a sentence in a penitentiary; these adjustment difficulties add to the effort to submit to a punitive regime that creates additional stress, leading to multiple somatizations and a decrease in mental parameters due to the inability to have effective educational support. Regarding the quality of psychological assistance (integration into counseling and therapy programs) it is frequently affected by the existence of disproportionality between the large number of detainees and the appropriate number of specialists and insufficient time resources, but necessary to use the techniques and methods specific to this category age.

Among the psychological aspects pursued in the penitentiary, we mention: *emotional instability instability; the inappropriateness of the minor to prison life; the constant need to seek new satisfactions; duplication of juvenile delinquents.*

Following the chances of social reintegration of juveniles in adult penitentiaries, several fundamental issues have been highlighted: the penitentiary is not a conducive environment in which the personality of the children develops harmoniously; even if minors benefit from educational and psychotherapeutic programs in the penitentiary, their possibilities for social reintegration are reduced; many of the juvenile offenders fall within the sphere of mental deficiency or mental psycho-inefficacy; the socio-educational programs that guided the formation of the juvenile personality in the penitentiary proved to be ineffective; many minors did not have positive human patterns; the fact that juveniles execute their sentence in prison can constitute a new trauma that adds to the others accumulated in life (Staier, 2006).

The *antisocial personality disorder* that has as a starting point the closure of juvenile offenders in penitentiary between adult criminals, the age at which minors are easily influenced and the learning of criminal behaviors is very easy, is a particularly important aspect.

The essential element of the anti-social personality disorder (consisting of aggression of people or animals, destruction of property, imposture or theft, or serious violation of social rules) is a pattern that allows for disregard and violation of others' rights that occurs in adolescence. The adult period is primarily due to a trauma suffered by the individual, and secondly it is caused by the penitentiary, affecting the personality of the minors, in their formation as adults (Wallon, 1964: 135-137).

Therefore, prison often becomes a "source of crime" for minors, and the penitentiary is increasingly viewed as a suboptimal solution for juvenile delinquents as the last one in the list of possibilities for their recovery.

4. Recuperatory intervention of minors from punitive and re-education institutions

Studies at both national and Community level have revealed that juvenile delinquency has evolved oscillating developments over the past two decades, so that the need to reform criminal policies to combat juvenile delinquency has been concluded.

Under these circumstances, the European countries have emphasized that the phenomenon of juvenile delinquency can be effectively countered only by adopting an integrated strategy at national and European level, which will include three guiding principles: prevention, judicial and extrajudicial measures and integration / reintegration social minority offenders.

The system of punishment, treatment and resocialization of juvenile delinquents must have as a goal the achievement of social protection and protection, the prevention of new crimes and the social reintegration of young people convicted of different punishments.

At present, educational measures such as: personalized education, psychotherapy, educational programs in re-education / penitentiary centers (staffed by teaching staff, school psychologists, educators, teaching aiders) are provided for children in conflict with the law, or in a medical-educational institute.

In this context, re-education and re-socialization is a way of reorienting and remodeling the juvenile offender, transforming its behavior in relation to the norms and values adopted by society.

At the individual level, the rehabilitation and re-socialization measures in the institutionalized environments (re-education / penitentiary centers, medical-educational institutions, minors' reception centers) and measures for the social integration of minors with deliberate potential become essential.

This process of social reinsertion of former delinquents is experiencing difficulties in psychological terms, the success not being ensured not only by the correct behavior of former offenders, but also by the society that receives them and which should have an integrative action. In order to make their way alive, it is not enough to be offered only a job, but also a chance to be successful at the socio-emotional level.

This, because the spectrum of social stigmatization frightens the former offender from the time of his detention and constitutes one of the major psychological barriers to his total reformation.

If we are talking about social reintegration, it is absolutely necessary to point out that previous steps in socialization, social adaptation or social integration of the adolescent were doomed to failure because one or more factors involved in the educational process (family, school and / or community) managed inefficiently or insufficiently the procedural levers and skills training required for the young person in social integration.

Social reintegration could be considered as the "reverse of social integration" (Pașca, 2005), since primary prevention (proactive strategies - related to universal scale actions aimed at preventing the occurrence of criminal and secondary behaviors (reactive interventions - which contain demarches applied to a selected population increased risk in the emergence of deviant behaviors) is complemented by tertiary prevention (curative - which addresses people who have already experienced deviant behavior / detriment by which they have caused harm) (adaptation after Roșan, 2006).

Together with the primary, secondary and tertiary prevention strategies (both at individual and at community level), the criminality prevention techniques were proven to be useful by changing the context (before the offense took place sooner than the criminals' rehabilitation attempts after committing acts) (Buș, 2006).

Along the way, the specialists tried to develop programs to be implemented both in the community and in the penitentiary environment. The goal of these programs is to help criminals avoid relapse by increasing their own personal effectiveness (ibid).

But the deprivation of liberty or the length of sentences without recuperative intervention does not have a deterrent effect in committing new crimes, so it is necessary to carry out systematic activities and those who have chosen a "criminal career" and not just prevention programs deviant behaviors.

Rehabilitation programs (both at individual and group level) through various strategies of psychotherapy and counseling aim to reduce the rate of adoption of deviant and delinquent behaviors by minors, as long as it is applied in the long run and is associated with community-based prevention programs involving family and school.

For juveniles preparing to be released from re-education centers or prisons, the *Criminal Social Reintegration Service* provides assistance and counseling to track behavioral rehabilitation and reintegration into the community.

In this respect, juveniles are supported in resuming the schooling for those who have reached the age of majority - professional insertion with the support of County Agency for Workforce Employment, as well as solving family problems through counseling with parents, but also separately from the minor. As a rule, reintegration programs enjoy the financial support of NGOs.

In our country, the main function of the penitentiary and the reeducation centers for juveniles gradually moved their focus on the custody field (which was to isolate the society offender from the point of view of the social danger it represented) in the educational field (psychosocial and therapeutic) through the development of numerous educational programs and psychosocial assistance in order to reduce the risk of relapse and increase the chances of reinsertion and social reintegration.

Given that both penitentiaries (where juveniles carry a custodial sentence) and redress centers (where juveniles are punished with an educational measure) are subordinated to the National Penitentiary Administration, activities and programs carried out with minors for recuperative purposes, beyond the permissiveness differences in respecting the rules are similar in terms of the objectives and goals pursued.

The recuperative intervention is carried out on two scales: educational and therapeutic. In this respect, both in remedial centers for juveniles and in juvenile detention centers, in their daily program, a large share of educational-recreational-recuperative activities (literacy programs, health education, knowledge and cultural activities, occupational activities, personal autonomy and community adaptation activities, recreational and sports activities, hobby activities, moral and religious education, etc.).

On the therapeutic dimension, psychosocial assistance programs (aimed at attitudinal and behavioral restructuring through the development of communication and communication skills, development and valorisation of personal resources, aggressive and conflict management programs, moral support, personal development, self-knowledge and increased self-esteem as well as targeted counseling, etc.).

The activity of recovery of minors is individualized, starting from the assessment of the needs specific to each beneficiary (enumerated in the *Evaluation and Personal Development File* which are inventoried by Reeducation Centers and Juvenile Custodian Penitentiaries).

The multidisciplinary teams that prepare the dossier monitor the minor's evolution, mentioning the social reintegration prospects based on the

educational, socio-professional achievements and resources that the minor benefits from his / her family or social environment.

Unfortunately, these activities carried out by qualified staff and NGO volunteers have serious limitations once the minor has acquired new knowledge, skills and competences, will return to the environment from which he comes (often a criminal or dysfunctional environment from a perspective integration), where these structurally integrative attributes are considered non-adaptive models.

That is why social reintegration strategies must be elaborated, similar to the preventive strategies, at the level of state policies and established concrete tasks for each institution / organization that can contribute to the process of social reintegration of minors in order not to become a society that "afraid of her youth."

The first months of deprivation of liberty are critical for the detainee being the period of accommodation, followed by the habit, then the routine and the assumption of illicit techniques of survival in the criminal environment from the "old tenants" of the place of detention.

For this reason, it is necessary to emphasize the role of the forms and modalities of prevention, intervention and post-treatment, as well as their diversification.

5. Intervention by alternative systems in the case of juvenile delinquents

For minors in the position of perpetrators, taking into account the seriousness of the deed, they may either be transferred to re-education centers or in penitentiaries or be placed under the supervision of the probation service or in the care of the parents.

Despite the joint efforts of the Ministry of Justice, the Social Reintegration Service, and non-governmental organizations that carry out crime prevention and reintegration programs, the number of minors investigated remains high in Romania.

Under the common law system, *probation* defines a set of supervision and assistance measures for a person who has committed an offense and who agrees to be subject to the probation counselors' supervision for a period of 6 months to 3 years, in order to check whether during this time it will have a good behavior (Cole, 1989: 27)

The Probation Service is subordinated to the Ministry of Justice operating at national level, in addition to each tribunal.

Probation is the possibility for offenders convicted to execute community punishment under surveillance. It is used especially for minors, young people,

primary criminals (non-recidivists) and criminals convicted of minor violations of the law.

There are some basic restrictions that accompany the probation, namely: the ban on alcohol consumption, the possession of firearms and the leaving of the territory.

Probation officers are designed to help offenders reintegrate into society and supervise compliance with the conditions imposed on the offender.

Violation of the probation conditions may lead to its revocation by the judge and the imposition of a sentence with the execution of the sentence in the penitentiary. Prosecution has also been criticized: the United States National Crime and Delinquency Council has judged that probation should be applied only to those who have committed the first offense and have a low degree of social danger (Cole, 1989: 27).

In the new approach to penalizing offenders, probation appears as a sanction and at the same time a process of assisting the offender for his social reintegration (Abraham 2001: 72-75).

Although it relies on the punitive principle, it is understood more clearly and is more fully developed in its content: it is not only the offender, but also the victim of the offense (a natural person or society itself) receiving compensation, restoration, counseling, etc. It is trying to restore the order existing before committing the crime.

Following previous pilot projects, the Romanian Government approved in 1999 the participation of the Ministry of Justice as a permanent member of the Permanent European Probation Conference, which promotes international cooperation on sanctions and community measures.

Among other things, the probation service is responsible for conducting community surveillance of how convicted persons respect their court measures and obligations and psychological counseling and the provision of various forms of assistance to victims of crime.¹⁴

Representatives of the probation services participate in the commissions for the individualisation of the execution of punishments, as well as in the commission for prison sentences.

Regarding the reform of the criminal system in Romania, it is worth mentioning the interest of the international organizations that aim at the protection of human rights, which, referring to the situation of the minor in our country from the perspective of its conflict with the criminal law, recommended the acceleration of the founding of courts for minors, while insisting on juvenile delinquency prevention activities organized by both state institutions and communities.

¹⁴ Under Law 211/2004.

Thus, a number of well-defined tasks have been explicitly provided for social reintegration and supervision services (Abraham, 2001).

6. Integrated system: restorative justice

Restorative justice is an alternative way to address the outstanding issues faced by both juvenile justice systems and criminal justice systems as a whole. Unlike the current system of criminal justice, restorative justice focuses on three categories of clients: crime victims, criminals and community members, giving all the same attention and equal chances.

In the concept of restorative justice, the performance of the act of justice must be beneficial for the offender - who learns to respect his peers, take responsibility for the actions and understand the severity of their consequences - and for the victim - who succeeds remove the feeling of victimization and its unpleasant feelings - and for the entire community as a whole - which, through active participation in this process, succeeds in re-establishing the links between its members, thus enhancing the sense of public security.

Restorative or reparatory justice, as it is called, seeks to strike a balance between the interests of the victim and the community on the one hand and the need to reintegrate the infringer into society on the other. It aims to assist the recovery of the victim and to support all parties involved to participate constructively in the process (Howard and Harry, 2004: 108).

The comparative analysis of the traditional justice system and restorative justice reveals a number of peculiarities specific to each system considered (Marshall, 1999: 5).

The differences between the traditional (traditional) justice (retributive and rehabilitative) paradigm and the modern paradigm (restorative justice) are the following: i) in the classic paradigm the emphasis is on punishing or treating the offender, the victims have a peripheral role in the process, by the state institutions and the parties are in adverse positions; ii)

In the modern paradigm (restorative justice) the emphasis is on the repair of damages caused by the victim / community offender, the members and the organizations of the community have an active role, the process is characterized by dialogue and negotiation between the parties and the victims have a central role in the process (ibid).

Consensual ways to resolve conflicts between victims and aggressors have seen various developments and names, such as *community justice*, *reparative justice*, *restorative justice*, and in practice are most commonly known as mediation (Graham, 2001).

Although this reparation is only carried out if there is *express consent* of the delinquent-victim involved, its coercive dimension is not to be ignored in the sense that it is not desired or required by the offender, but most often he has to accept it in order to avoid the consequences of a criminal judicial intervention (Trepanier, 1994: 30).

It is more clearly emphasized the role of victim and responsibility, reinsertion and recovery, in the face of repression (Walgave, 1999)

For certain categories of offenders and offenders (minors and youngsters), social reintegration is much closer to a positive outcome in the case of probation or their inclusion in a restorative process than when the individual is sent to detention when reintegration remains at the level of a desideratum that may eventually be reached with the release of the subject.

Humanizing and personalizing punishment are two goals constantly pursued in the application of sanctions for the minors who have committed certain criminal actions. Restorative justice is a generous way to achieve these goals, although only certain categories of criminals or crimes are suitable for applying this model. But the vision is relatively recent and has transformational implications in democratic criminal policies.

This trend focuses on the principle of accountability, according to which its effectiveness is directly proportional to the level of engagement of the offender as an active participant in the restorative process and signals a return to community justice, being a horizontal justice with many positive implications.

A generous definition of the modern concept of restorative justice was made by M.S. Umbreit (2002), which emphasizes the direct involvement of all elements (victim, offender, community) in the repair process in order *to strengthen public safety through community construction*.

The imposition of programs at Community level is essential because by informing and involving the community, these programs carry out, even indirectly through the correct perception of the phenomenon, the promotion of delinquency prevention.

In Romania it is possible to apply restorative justice in two forms: *mediation* and *restorative justice post-sentence* (Abraham and Tomita, 2007).

A significant number of European states reach restorative justice through the *community service* aimed at minors and young offenders. Thus, restorative justice is integrated differently according to each criminal law system, being flexible and adjustable according to the specific system of norms of each democratic state (ibid.: 10).

Analysts also identified a number of restraints in the restoration process: the results so far do not confirm the effectiveness of restorative work in the case of serious crimes and of adult criminals; there are often some barriers to the

proceedings, related to the refusal to participate in the restorative process, both on the part of the victims and the offenders.

To this end, the Council of Europe has set out a number of recommendations regarding the regime applicable to delinquent minors: to avoid, where necessary, the contact of the juvenile with the judiciary, in order not to expose it to social stigma that may have unfavorable psychological behaviors; to establish certain benchmarks for the work of criminal authorities, so that decisions on juvenile offenders are in line with their individual interests; to build a criminal justice system for minors, more focused on non-custodial measures.

Consequently, although restorative justice addresses criminals in general, we can expect this model of criminality to be considered more appropriate for juvenile delinquents than for adults. This raises the issue of the success of resocialization as a way of reorienting and remodeling the personality of the offender in order to recalibrate his personality to the norms and values accepted by society.

As a multifactorial complex process, re-socialization takes place not only in the post-detention period, but long before, starting with the criminal investigation phase, continuing with the period of deprivation of liberty and having a chance of success / not after release according to the community that is / is not prepared to repress him.

We could say that all the activities that surround social reintegration revolve around two coordinates: the first is the person of the offender and the second is the public opinion, ie the external conditions to which the minor has to readjust, understood by the environment to which he belongs person and community at its general level.

And if society stigmatizes and discriminates against the rehabilitated offender, there is no real and effective social reintegration, because efforts to prepare them for change within the institutional framework (prisons and re-education centers) will be canceled when they arrive in society community that rejects them.

Thus, society, contrary to appearances, plays an important and active role in the complex process of social reinsertion, through the social reaction of its members to what is considered deviant. Young people learn to relate correctly in the community, and the informed, motivated and educated community will have the tools to support young people.

A well-informed population on the issue, with a clear and true perception of juvenile delinquency (in terms of causes, modalities of prevention, and modalities of intervention), is of great help, while a worried population with tendencies to label and isolate target individuals may hinder or even stop the intervention process to reintegrate delinquent minors.

By increasing the number of services at Community level, the population can become an ally in the recovery of young people and not a risk factor.

The process of interference with the delinquent juvenile in a closed system (prisons / re-education centers) will not have a goal if the society for which the young person is ready will not receive it.

And here comes another modern vision, therapeutic justice, which is described as "using social sciences to study the extent to which a normative act or criminal practice promotes the psychological and physical well-being of people who are affected by involvement in criminal proceedings." (Slobogin, 1995: 193), thus paving the way for a new perspective: the therapeutic jurisprudence, ie an approach that promotes the well-being of all, the social optimum (Rottman and Casey, 2000).

Conclusions

In order to make the approaches to juvenile delinquency more effective through the provision of real chances of integrating delinquent minors into society, it is necessary to orientate, reorient and reallocate resources that target the main directions of action:

i) multiplication of special courts for cases with juveniles and in general, organizing a justice for juvenile delinquents in line with standards across other European and American countries;

ii) diversifying the current system of legal measures applied to juvenile offenders by increasing the proportion of non-custodial sentences;

iii) the functioning and extension of the probation system in cases involving juveniles, following the model existing under other criminal legislation;

iv) to increase the role of the community in the process of social support and reintegration of juvenile offenders in order to protect them from criminal law and deprivation of liberty; v) running social and legal assistance programs for minors during adolescence, as at this age they are most exposed to deviant behavior due to the high degree of criminogenic vulnerability specific to this period of life; vi)

Any of the alternatives or models are proposed by restorative justice, community involvement through social support networks is a successful way in countries that have developed social reintegration services for delinquent minors.

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