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Special conditions relating to preventive measures applied to minors

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Abstract. At national level but also European, The minor person is represented by those under the age of 18. For all of them, in case of necessity of criminal liability, a series of measures are applied that are classified as special. Thus to be criminally liable, the minor must be over the age of 14, and for the interval of 14 to 16 years, In order to decide on criminal liability, it is necessary to resort to a forensic expertise. At the same time, regardless of the acts committed by the minor , a He cannot be detained like an adult and cannot serve a sentence in a maximum security prison. The new Code of Criminal Procedure regulates these matters through Article 243, aspects that are of a special nature regarding the application of preventive measures to minors. Thus, It is expressly provided that preventive measures shall be ordered against the minor defendant in the same way as the legislation provided for adults however, with certain derogations and additions, they are intended to provide the defendant with additional protection due to age. In 1865, Upon the entry into force of the First Romanian Penal Code, We identify regulations on special treatment of minors, which are found in Title IV which was entitled "On Cases Defending Punishment or Reducing Punishment". The current foundations of criminal regulations regarding minors were laid with the criminal code of 1968, regulating for the first time criminal liability, educational measures and punishments. Although the foundations of this special legislation were laid decades ago, this topic continues to be topical and in continuous modification and legislation, due to the intervention of the European Union, which tries to continuously align the laws with the current situations.

Keywords. minors, code, minority, judicial bodies, legal regime

1. General

The emigration of Romanian citizens to European states has facilitated the enrichment of the criminal experience and, implicitly, the import of different and complex modes of operation with which state institutions and society have to face day by day. These have not remained without echo on children and young people, who try to be adults ahead of time and borrow from the behavior of grown-ups, knowing that the strongest survive. In conjunction with parents' departures to work abroad, with the increase in the number of single-parent families, with the dilution of the quality of education in the family and society, with the weakening of law enforcement forces, with the development of organized crime, with the lack of attitude from society, inevitably, the direction is towards a socially failed generation.

Currently, court sanctions on juvenile offenders require adaptation to the standards of new political guidelines at international level. In order to modernise the juvenile criminal justice system, it is necessary to improve the legal framework in this area. This process involves
regulations on the protection of minors, in accordance with European requirements, focusing on two directions: prevention of juvenile delinquency and recovery of minors from the criminal environment by methods as appropriate as possible to their age.

It is well known, but too little valued, that minors represent the future and human potential of today, and especially of tomorrow, of the society we live in. Like other states, in Romanian society, juvenile delinquency is a complex social problem that is tried to be solved by implementing new directives from the European Union, but also from political parties that are in government.

Action plans to reduce violence in schools, statistics of any kind and objectives set are unrealistic or irrelevant, In the context in which teachers and psycho-pedagogues, people who come into contact with students every day, do not have the necessary training and tools to prevent and combat bullying. Juvenile delinquency is a generalized disease, a gangrene of society, an anathema to the current generation and with disastrous implications for the future, and raising awareness of society, preventing and combating violence of any kind is a priority for everyone.

The factors that intertwine and act in favor of delinquent behavior are: lack of family support, malfunctioning of the school-family relationship and tense atmosphere in the family, some of them being single parents or with one or even both parents working abroad, being raised by grandparents who do not have sufficient control over them. Within child protection and education institutions, especially in the case of legal aid, lawyers have a special role in the reintegration of children in conflict with the law, who come to their aid by representing their interests and helping them become aware of the consequences of their own actions. In the end, the ultimate goal is not to put someone against the wall and point fingers at him, but through a collective effort, both institutional and social, minors receive the necessary help to continue a normal life governed by moral principle. In Romanian criminal law, punishments are important to the extent that those who establish and execute them understand their role in performing the preventive and educational functions. They form the basis of punitive criminal law measures and are complemented by educational and security measures which, together, form part of what are 'criminal law sanctions'.

These criminal sanctions are applied for committing acts prohibited by criminal law, against juvenile convicts, in order to restore the social and legal order that has been violated. As appreciated by the authors of the specialized literature, the effectiveness of a punishment achieves its immediate and mediated purpose provided that it is directed only at the guilty party, is proportionate to the act, by applying the punishment does not aim at causing suffering or violating dignity, but only for the correction and re-education of the minor offender. In full agreement with them, we consider that the act of justice is relevant for the community given that attempts are made to eliminate and correct social deficiencies in a "surgical" way, being achieved by the judge by individualizing the application of punishments according to art. 74-106 Penal Code. The purpose of applying a punishment can be achieved only under the condition of performing its functions.

One of the functions is that of repression or coercion, whereby the punishment, assessed by the legislature and decided by the court, is related to the act committed, without

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1 Vasile Alina Sandra, *Psychology of juvenile delinquency, Universul Juridic, Bucharest, 2010*
2 Anane Ivan, *Elements of criminal procedural law, Pro Universitaria Publishing House, Bucharest, 2015*
3 Buzescu Gheorghe, *Place and role of the civil servant in the state apparatus, Sitech Publishing House, Craiova, 2017*
causing him physical suffering or demeaning the juvenile convict. Another function is that of re-education of the convicted minor, through education and social reinsertion programs necessary after release. The exemplary function has a double role: one that affects the convict himself, in order to prevent further crimes from being committed for the future, and the second is that directed at other persons prone to committing acts provided for by criminal law, who, finding the repercussions of possible acts, will renounce committing them. A final function is to remove the offender from society for a limited period in order to make it impossible for him to commit other crimes and involves a custodial sentence, excluding life imprisonment.

1.1. Reflection of minority status in terms of criminal legislation

Preventing and combating criminal liability of minors has been and continues to be a matter of criminal policy for all modern states. The specificity of this criminal phenomenon raises such problems due to interaction with a multitude of factors such as: lack of social life experience, lack of ability to understand the social significance of conduct dangerous to social values, deficiencies in the educational and family system as well as the negative influence that some adults have in interacting with minors⁴.

Preventing and combating crimes committed by minors is all the more obvious as the phenomenon worsens the acts, which become particularly dangerous. The best example for Constanța County is represented by the minor who accidentally set fire to an apartment building in the city, an event that could have resulted in casualties, but fortunately, were registered only material damage. At the same time, this issue of criminal liability of the minor brought for analysis the issue of the age at which the minor should be criminally liable ⁴.

1.2. Considerations on the evolution of the concept of criminal minority

The criminal minority is a concept that has been known from the earliest moments, finding legal expression in written legislation and customary law since the organization of the first states.

Historical research shows that states such as Ancient Greece or the Roman Empire did not have such a guideline on special punishments for minors. However, the age criterion was an important factor in the composition of punishment under a legal system based on private justice and compensation for damage by redemption or by equating punishment with damage committed⁵.

The most important features of special procedures are found in history, in the law of the French state which, during the revolution of 1789, already presented a legislative framework on this issue⁵. Thus, in judicial practice there were reports of court solutions showing that a number of judges prolonged a man's minority status even up to the age of 25, solely on the basis of the defendant's capacity to exercise or on his mental state. Also during this period, there is a certain orientation towards personalizing the procedure regarding the investigation in the case of the minor, being essential to find out the age of the perpetrator for pronouncing the sentence. At the same time, during this period, the first spaces for the apprehension and incarceration of juvenile offenders are built.

⁴ Stănișor Emilian, Juvenile Delinquency, Oscar Print Publishing House, Bucharest, 2003
1.3. The regime of criminal liability of juvenile offenders in the New Criminal Code

The minor represents the natural person who has not reached the age of 18. If the minor is married before the age of 18, this does not entail the capacity to be criminally liable or to be subject to the sanctioning regime provided by law for adults. At the same time, a minor who has not reached the age of 14 cannot be criminally liable for his actions, and if the crime was committed on the day he reached this age, it is necessary to prove that he had deceitment at the time of committing the crime. This measure of proof of desperation applies until the age of 16, after which the minor is criminally liable\(^5\).

If the lack of discernment of the minor is proved, possible by psychiatric expertise or by applying Article 99 paragraph 1 C. criminal, the existence of the cause that removes the criminal character of the act will be established, which is possible by applying Article 50 of the Criminal Code, or by applying Article 48 of the Criminal Code, referring to minors who are not 16 years old or who may be classified as irresponsible.

In the case of continued offences, if the criminal activity took place between the ages of 14 and 16, the act being committed indiscriminately, it is no longer of criminal relevance, being exhausted after this moment. The same applies to progressive offences, without criminal liability being retained if the minor was not criminally incapacitated, regardless of whether the more serious consequence occurs after reaching the age of 18, and the adult regime applies to him.

Regarding criminal liabilities, a number of measures can be applied to the minor, the prison sentence being the harshest. Among these punishments we mention:

- Rebuke;
- Supervised freedom;
- Admission to re-education centers;
- Admission to a medical and educational institute;
- Fine\(^5\).

In the case of both imprisonment and fine, the minor shall serve at least half of the provisions of the law for adults. If the minor's act amounts to life imprisonment, the maximum sentence he can receive is 20 years. If the minor cannot be criminally liable, fines or educational measures or punishments will not be administered \(^6\). Before receiving the execution sentence, judges must consider whether educational measures can be applied, these clarifications being made according to:

- the degree of social danger of the committed act;
- physical condition;
- intellectual and moral development;
- behavior;
- growing conditions.

Only if the court specifies that taking educational measures are not sufficient for the act committed and for its correction, then an arrest measure can be dictated. Convictions handed down during minority do not entail incapacity or disqualification and are not taken into account in determining the state of recidivism.

\(^5\) Buzescu Gheorghe, Particularities of contravention law, Sitech Publishing House, Craiova 2017

According to the New Criminal Code, the legislator establishes the appropriate criminal measure for minors based on Article 113, this being possible if the age of 14 has been reached, but only under certain conditions, while after reaching the age of 16 there will be no conditions. Therefore, a minor aged between 14 and 16 can be held criminally liable only if the act committed by him is done with discernment and thus benefits from the presumption of irresponsibility. This presumption of irresponsibility can only be rebutted by proof to the contrary and the opinion of the psychologist. With regard to discernment, by this we mean the capacity of the minor defendant to perform his concrete act and the willful manifestation in respect of it.

By adopting the New Criminal Code, the legislator gave up the old regulation on the special and mixed sanction system, which consisted of educational measures and punishments, applying exclusively the educational measure for offenders under 14 years of age, but this measure remained questionable in the situation of a possible increase in crime among this age category, but also in case of inefficiency of the education system in centers with this specific.

The legislative framework regarding all categories of minors is based exclusively on educational measures and may be deprived or not deprived of liberty, this fact being regulated by Article 115 of the New Criminal Code. According to Article 115 paragraph 1 point 1 of the New Code, educational measures that do not concern freedom are:

- Civic Internship;
- Supervision;
- Recording every weekend;
- Daily assistance.

From the point of view of educational measures depriving freedom, Article 115 paragraph 1 point 2 indicates the following measures:

- Admission to an educational centre;
- Internment in a detention centre.

Analyzing Article 114 of the Criminal Code, we identify that a minor aged between 14 and 18 years may institute non-custodial educational measures, but there are cases in which he may also receive the penalty of deprivation of liberty:

- repetition of an offence for which an educational measure was previously imposed or even if the minor is serving such a sentence;
- If the punishment for committing the act of the minor is imprisonment of 7 years or more, or in the case of life imprisonment, in this case the text of the law provides for the necessary punishment for each category.

In case of sanctions against juvenile offenders, its individualization is possible by following 3 steps. In the first stage, based on certain criteria, it is necessary to choose the category of educational measures, considering which one is more appropriate to the case. In the second stage, the type of sanction is chosen, establishing exactly what measure will be taken. In the third stage, the sanction and its concrete individualization in relation to the facts of the case are officially chosen7.

Applying the above to the legislation in force, we identify that Article 115 paragraph 2 contains the educational measures to be taken against the minor, this choice being made on the basis of Article 114, taking into account the criteria set out in Article 74.

Thus, in the first stage, the provisions of Article 114 are taken into account, the non-private or deprived of liberty educational measure being chosen. Then, the criteria for individualization of punishment are taken into account, which are provided in Article 744. If
the public prosecutor decides on an educational measure not involving deprivation of liberty, he or she must then determine which of these sentences is more appropriate, on the basis of general criteria of individualisation. This decision shall also take into account the causes of mitigation or aggravation, which are specified in Article 128.

Another important issue is detailed by Article 116, amended in 2012 by Law 187, in which we find indications regarding the assessment of the minor based on the criteria of Article 74. Thus, the court asks the probation service to draw up a report that will include proposals on the nature of social reintegration programs, but also on their duration, proposals that, if accepted, must be strictly observed by the defendant. This assessment report is drawn up by the probation service as long as the measure does not provide for deprivation of liberty. If the measure imposed is educational by deprivation of liberty, this report shall be drawn up by the educational centre or detention centre.

2. Procedure for judging and enforcing decisions concerning minors

The Code of Criminal Procedure indicates that minors are tried by courts that apply the usual procedure, which is supplemented by the provisions of the Special Criminal Procedure, which is between Articles 483 and 486. At the same time, Law 304 of 2004 on judicial organization supports the special provisions, supplementing them.

The juvenile defendant is tried according to ordinary jurisdiction, i.e. by judges appointed according to law. The trial itself takes place on the premises of juvenile and family courts or in any court, provided that a special section is established. Thus, depending on the offence committed, it may be tried by the specialised division of the district court, tribunal or court of appeal. If several defendants are tried, some of whom are minors and others of age, then this case falls solely within the jurisdiction of the specialized court for minors and families.

The court in which the trial of the minor was commenced shall remain competent to adjudicate even if during the trial the minor has reached the age of 18. Only if the defendant committed the act when he was not yet 18 years of age but the court was seized after reaching the age of majority, then that person will be tried according to the normal procedure of adults.

In solving cases involving minors, the participation of the prosecutor is mandatory, this law being regulated by art.315. His presence is mandatory at all court hearings and his role is to ensure that all legal provisions regarding the trial of minors are respected. In order to ensure these measures, the present prosecutor has procedural means to achieve this purpose, means determined by raising exceptions, asking questions to the defendant, may request the administration of new evidence, may speak during debates, etc.

2.1. Composition of the court and conduct of the trial of the minor

The legislation in force distinguishes between the composition of the court, meaning the composition of the bench of judges and the constitution of the court which signifies participation in the hearing, in addition to the panel composed of judges, the prosecutor and the registrar. The derogation regarding the composition of the bench is represented by the fact that crimes committed by minors are tried in specialized divisions or panels, which are organized in courts of appeal, tribunals or judges or in juvenile and family courts. According to the legislation contained in Law 304 of 2004, judges working in specialized sections or panels will be appointed by the governing colleges of that court. If judges work in the juvenile and family

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7 Ban Emilian, Social problems in Romania and juvenile delinquency, Pro Universitaria Publishing House, Bucharest, 2014
court, the appointment of prosecutors and judges is made by the Supreme Council of Magistracy, following an organized competition, as indicated by the law between Articles 43 and 47.

The provisions of Article 483, which stipulate that a minor must be tried by specially appointed judges, do not apply if the person being tried is of age and his act is on a minor. In this situation, the major defendant will be tried according to the law, without the benefit of any special procedure⁸.

Regarding the provisions composing the court, the legislation specifies that if a minor is tried by a panel that has not been appointed to the specialized sections, the act entails the abolition of the pronounced decision, which is mentioned in Article 197.

In Art. 484 para.1 C.pr.pen. It stipulates that the case concerning an offence committed by a minor shall be tried in his presence, unless the minor has absconded from trial. Based on his active role, the court must make every effort to ensure that the minor is present at the trial. By absconding from trial must be understood the refusal, failure of the minor defendant to appear in bad faith at trial, bad faith which, however, must be established with certainty, and not inferred from his mere absence.

In Art. Article 484 paragraph 2 stipulates that the probation service of the minor's domicile, his/her parents or, as the case may be, the guardian, trustee, person in whose care or supervision the minor is, as well as other persons whose presence is deemed necessary by the court shall be summoned to the trial of the case.

Compared to the criminal investigation phase, where summons for these persons was optional and only if the minor offender had not reached the age of 16, at the trial stage the summons is mandatory, even if the minor had reached the age of 16. In addition to the prosecution, the court may summon persons other than those specified in the law, whose presence is considered necessary for the resolution of the case, as well as for a better choice of measures to be taken.

According to para.3 of art. 484 Code of Civil Procedure, the persons referred to in paragraph 2 have the right and duty to give clarifications, to formulate requests and to submit proposals regarding the measures to be taken, and it is up to the court, based on its active role, to inform these rights and duties.

In the event that the persons referred to in paragraph 2 of Article 484 of the Code of Civil Procedure. have been duly summoned and have not appeared, the case will be tried in their absence.

Failure to comply with the obligation to summon persons referred to in paragraph 2 of art. 484 Code of Civil Procedure. shall be punishable by the relative nullity provided for in Art. Article 197 paragraph 1 or paragraph 4, i.e. nullity may be invoked if an injury has been caused which could only be removed by annulment of the act or annulment would be necessary for finding out the truth and the just settlement of the case.

The procedural provisions on the trial of cases involving juvenile offenders include derogating rules on publicity of court hearings.

Thus, Art. Article 485(1) states that the hearing at which the juvenile offender is tried is held separately from the other hearings. In paragraph 2 of the same article, it is stated that the meeting is not public.

The logic of establishing these derogating rules was the concern to create the most favorable conditions for the minor, without being influenced by the presence of a large number of people who would cause him reservations in his statements. At the same time, the court is interested in creating a framework as close as possible to the one in which the minor manifested
himself daily, in order to really know him, to remember his normal behavior, and not one of conjuncture (therefore, the court session takes place separately, is not public and people from the minor's daily entourage are quoted)⁸.

The persons referred to in Article 484 of the Code of Civil Procedure, the defence counsel of the parties, and with the consent of the court, other persons may attend the proceedings. The logic of establishing these derogating rules was the concern that the minor should be given the most favorable conditions, without being influenced by the presence of a large number of people who would cause him reservations in his statements. At the same time, the court is interested in creating a framework as close as possible to the one in which the minor manifested himself daily, in order to really know him, to remember his normal behavior, and not one of conjuncture (therefore, the court session takes place separately, is not public and people from the minor's daily entourage are quoted)⁸.

The mention if the meeting was not public shall be made at the end of the session, as provided for in art. 305 para.1 lit.b C.pr.pen.

In judicial practice, solutions have been pronounced showing that non-compliance with the provisions of art. 484 and 485 Code of Civil Procedure. is not sanctioned, according to the provisions of art. 197 para.2 Code of Civil Procedure, with absolute nullity, but, in accordance with the provisions of art. Article 197(1) and (4) shall render the judgment null and void only if it causes an injury which can only be removed by setting aside the judgment.

According to art. 485 para. final C.pr.pen., when the juvenile defendant is under 16 years of age, the court, after hearing him, may order his removal from the hearing if it considers that the investigation and debates could have a negative influence on the minor.

In consideration of the amendments brought by O.U.G. 31/2008, the evaluation report is mandatory only during the trial phase. Thus, according to art. 482 para.2 C.pr.pen., in cases involving juvenile defendants, the court has the obligation to order the evaluation report to be carried out by the probation service attached to the court in whose district the minor resides, according to the law, unless the evaluation report was requested during the criminal investigation, according to the provisions of paragraph 1, situation in which the ordering of the report by the court is optional.

If the evaluation report made at the criminal investigation is not complete, its completion may be ordered by the court.

The evaluation report must contain the requested data, which contribute to establishing guilt and applying appropriate measures for the act brought to trial, and not data referring to another act, which concerns another period.

When there are several defendants in the same case, some of whom are minors and others of age, according to art. 486 Code of Civil Procedure, the court judges in the composition provided for in art. 483, and according to the usual procedure, but applying to juvenile defendants the provisions contained in this chapter.

As is clear from the provisions of Art. 171 para.2 Code of Civil Procedure, legal assistance of a minor defendant is mandatory. If there is no counsel chosen in the case, Article 171 of the Code of Civil Procedure. para.4 imposes the obligation to appoint an ex officio defence counsel⁹.

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⁸ Vasile Daniel, Dascălu Ionuț Ciprian, The rights of the minor and the responsibility for his actions, Lumen Publishing House, Bucharest,

The sanction of violation of the provisions regarding the assistance of the accused or juvenile defendant by the defense counsel consists in the absolute nullity of the decision pronounced, according to the provisions of art. 197 para.2 C.pr.pen. It was decided that failure to provide legal aid to the accused or juvenile defendant, the trial taking place also in his absence, constitutes grounds for quashing the judgment on appeal, pursuant to Art. 385 points 5 and 6 in relation to art. 484 para. 1 and art. 171 para.2 C.pr.pen.

In the practice of the courts, the question has been raised whether the defense counsel for the juvenile defendant can bring the conclusions before the court in his absence. Compared to the non-uniform manner in which the matter was resolved, the Plenum of the former Supreme Court gave guidance to the courts to the effect that, in cases where the law provides that the legal aid of the defendant is mandatory (and therefore also in the case of legal assistance of the minor defendant), the defence counsel chosen or appointed ex officio may make submissions before the court only in the presence of the defendant. The defence counsel may not draw conclusions in the absence of the defendant even in cases where the law requires that the trial be held in the presence of the defendant and the defendant absconds from the trial, because in both cases only the defendant's assistance is allowed, and not his representation.

Art. 493 Code of Civil Procedure provides that the special provisions on the trial of minors shall also apply to the trial on appeal and appeal. Therefore, the provisions relating to the composition of the court, the summoning of persons to trial of minors, the conduct of trial and the trial of juvenile defendants together with adult defendants also apply to the trial on appeal and appeal. The rule shall also apply to a retrial of the merits after the judgment appealed against on appeal or appeal has been set aside or quashed.

In these circumstances, in judicial practice it has been decided that, to the extent that the court of appeal heard the case at the first hearing of the case, given the absence of the minor defendant and the failure to prove his absconding from trial, the judgment rendered is null and void and subject to cassation.

The derogating provisions shall apply if, at the time when the case is brought before the court of appeal or appeal, the defendant is still a minor, even if he or she has reached majority in the course of proceedings in these appeals.

The participation of the prosecutor is mandatory in the trial of cases involving juvenile offenders in the first instance, on appeal and on appeal, according to art. Articles 315, 376 and 385 para.4 of the Code of Civil Procedure.

2.2. Enforcement of judgments

As provided in art.100 Code of Civil Procedure, for the minor found guilty after trial, the custodial or non-custodial educational measure shall be ordered. When deciding on the sanction, account shall be taken of the degree of social danger of the offence of which he is accused, his physical condition, intellectual and moral development, and the conditions in which he grew up. With regard to the punishment involving deprivation of liberty, it is instituted only if the prosecutor considers that educational measures are not sufficient to correct the minor. The educational measures that can be imputed to the minor are reprimand, supervised freedom, admission to a re-education center or admission to a medical-educational institute.

If the minor is punished by reprimand, it is executed immediately and consists in setting a deadline within which both the minor and his parents or dependants are obliged to

10 Anane Ivan, Investigation of criminal investigation bodies, Pro Universitaria Publishing House, Bucharest, 2014
11 Vasile Alina Sandra, Psychology of juvenile delinquency, Universul Juridic, Bucharest, 2010
appear before the court. Thus, the reprimand consists in reprimanding the minor, presenting
him with the deed and the social danger, advises him to show correction and is warned that if
his action is repeated, this reprimand will be replaced by a more severe measure.12

Regarding the enforcement of supervised freedom, it is legislated by art. 103 and
consists in leaving the minor for one year under strict and special supervision. This supervision
is entrusted to parents or carers, and in case of unsatisfactory outcome, this task may be
entrusted to a close relative or to an institution dealing with the supervision of minors. The court
notifies the supervisor that he is obliged to watch closely for the purpose of correcting
behaviour.

At the same time, the designated person is notified that he will have to report any
evasion from this supervision of the minor, or inappropriate behavior or committing another act
provided for in the criminal code. In addition to these measures, the court may oblige the minor
on matters such as: prohibition of frequenting established locations, prohibition of
communication with certain persons or performance of an unlisted activity within a public
institution, an institution that is chosen by the state, activity that can fluctuate between 50 and
200 hours, with a maximum of 3 hours per day.

The court also notifies the school where the minor carries out his/her learning process
as well as the unit where he/she will carry out his/her community service. If the court's orders
are violated by failure to appear at the place of community service or behavioural work, the
court may change the re-education measure by applying admission to a re-education centre.

According to art. 488, that measure may enter into force from the moment of its
pronouncement, provided that the person to whom supervision will be entrusted is also present.
If the measure can not be applied at the pronouncement, a deadline will be set within which
both the minor and the person designated for supervision will be present.13

2.3. Placement of the minor in the re-education center

The same article 104 also regulates the placement of the minor in a re-education center,
an action aimed at behavioral correction and the possibility to provide the necessary education
or professional training according to the abilities of that person. This measure of placement in
the re-education centre is taken when the prosecutor decides that other educational measures
are not sufficient. Compared to other measures that can be applied to minors, internment in the
reeducation center is considered to be the most severe, due to the fact that it is executed while
deprived of liberty. The duration of hospitalization is not defined by law, it can be applied at
the discretion of the competent bodies, but it cannot last longer than reaching the age of 18.

According to art. 490, the measure of placement in the re-education center can be
applied immediately, the application consisting in notifying the police body located within the
institution where the case is tried. According to the provisions of Law 356 of 2006, once
notified, the police officer may enter the domicile or residence or headquarters of a legal person
without consent and without the consent of parents or relatives.

The measure of placement in a medical-educational center is also possible, it is taken
by the court, if it is found that, due to his mental physical condition, the minor needs medical
treatment and a re-education regime. This measure can be taken only in the case of minors who

12 Ban Emilian, Social problems in Romania and juvenile delinquency, Pro Universitaria Publishing House,
Bucharest, 2014
are criminally responsible and not in the case of those declared irresponsible for committing the acts\textsuperscript{14}.

Regarding enforcement, the law does not provide for a special provision applying the provisions of Article 432. The measure is lifted when the cause that imposed the placement has disappeared.

3. Elements of comparative law. Preventive measures applied to minors in the countries of the European Union

It is well known that the European Union as an institution is trying to align all Member States to the same level of development and democracy. Thus, the fierce struggle they are waging makes the European legislative body constantly changing in order to achieve absolute democracy. Like the sensitive fight of deprivation of liberty, the European Union places emphasis on children, considering them the future of this formation and thus regulates rights that support them for harmonious development. Regarding preventive measures applied to minors, the European Union considers deprivation of liberty to be the last resort and tries to reduce it as much as possible. To make this possible, alternatives are being sought regarding the prosecution and sanctioning of this age group. The main supporting factor in this issue has been identified as social service because the most common causes of juvenile delinquency are caused by poverty, unemployment, migration and last but not least education. Thus, it is considered that the suppression of this phenomenon of juvenile delinquency can be mitigated by eliminating the aforementioned factors. Throughout this chapter I will analyze the legislation in force of the most important Member States of the European Union, states that have committed to fight for the elimination of this problem to be possible.

3.1. Preventive measures applied to minors in France

Before moving on to the French legal system, the vital point with which we must identify is that the French legal system has gradually evolved to consider minors as children to be protected. On this basis, court proceedings are also based, which change primarily in civil matters. Even for unabated juvenile crimes in France, the juvenile court judge refers to the Ordinance of February 2, 1945, thus giving priority to educational measures rather than criminal ones. This is why over the past 50 years a whole program of alternatives to incarceration and actions aimed at educating minors to good moral principles has been developed. France has a unique youth justice system.

The French Parliament recently adopted Law 2007-297 of 5 March 2007 on the prevention of delinquency, which mainly targets young offenders. The role of local authorities, especially mayors, in the fight against crime is emphasised. Security and Crime Prevention Councils have been created in cities with more than 10,000 inhabitants; Each is chaired by the mayor or his designated representative. In addition, the Councils for Family Rights and Duties, also headed by the mayor, are set up to give official warnings to minors for any disorder or to impose "parental supervision" on parents whom the Councils consider "not fulfilling their duties”. Mayors duly refer families and minors in difficult social and/or psychological situations to the juvenile court\textsuperscript{15}.


\textsuperscript{15} Grecu Florentina, Juvenile delinquency in contemporary society, Lumina Lex Publishing House, Bucharest, 2003
Penalties are generally customized according to the age of the child. The Criminal Code distinguishes four categories:

- **Children under ten with discernment:** the child can be found criminally responsible before a juvenile court. He/she cannot receive any criminal punishment or educational sanction. Education sanctions are a new tool introduced in 2002. They fall between educational measures and criminal sanctions. The judge may order only an educational, protective or assistance measure\(^\text{16}\).

- **Children from ten to thirteen years:** the judge may order the following educational sanctions: exclusion of the object used in committing the crime, prohibition of association with the victim or accomplices, prohibition of travel to the place where the crime took place, compensation of the victim and compulsory civic education. In case of non-compliance with these sanctions, the judge may order placement in an organization. The sanctions will appear on the child's criminal record.

- **Children between thirteen and sixteen:** the criminal penalties imposed are half of those prescribed for adult offenders. The juvenile court may combine criminal penalties with educational measures.

- **Children from sixteen to eighteen years:** can benefit from the same reduction of sentence as children from thirteen to sixteen years, but in their case, this reduction is optional.

The Order of 2/2/1945 granted the Juvenile Courts two primary interventions for young offenders: custodial sentences and educational measures, which involve the participation of young people in academic or professional activities. With the adoption of Law of 9/9/2002, the French Government added an intermediate sanction between educational measures and custodial sentences. Educational sanctions are available to young people between the ages of 10 and 18 and include reparations, participation in civic education, prohibition of association with victims or accomplices, or prohibition of visiting crime scenes\(^\text{17}\).

Judges may also order interventions such as supervision, remission (return to parental custody), fines, community service, electronic monitoring and suspended sentences. The law of 9/9/2002 provides for the construction of detention centres for young people, accommodating up to 60 minor ages. However, the Law strengthens the use of imprisonment as an exceptional measure to be used only when necessary.

If a minor does not agree to an educational penalty, the magistrate has the authority to place him in custody. French police are usually a young person's first point of contact with the legal system, but juvenile courts retain the authority to order arrest. The police may not detain a minor without the consent of the public prosecutor's office. Juvenile courts can impose custodial sentences, but legislation sets prison limits for young people to ensure custody is reserved for serious offenders who do not respond to alternative orders.

Judges can normally only impose custodial sentences for minors over the age of 16. Minors between the ages of 13 and 16 may not serve a custodial sentence unless the potential sentence is at least five years and they have served an educational measure, educational sanction or custodial sentence.

A recent law allows judges to charge any minor with no criminal record who commits a crime punishable by seven or more years. Juvenile courts use custodial sentences primarily for offenders at highest risk. Judges order arrest of about 95% of young people convicted of a

\(^{16}\) Lefterache Valeria, Criminal justice for minors, Hamangiu Publishing House, Bucharest, 2021

serious crime. The duration of arrest may not exceed half the length of the sentence faced by an adult for committing the same crime. Juvenile courts have reduced the average length of custodial sentences to minimize youth custody.

One study looked at court sentences in four juvenile courts and found that courts ordered custody in 16 percent of cases, observational methods and probation in 64 percent, compensation orders in nine percent, placement in care in five percent, and return to family in five percent. Courts ordered custodial sentences for 55 percent of repeat offenders.\(^ {18}\)

France has a variety of prevention programmes aimed at identifying young people at risk and addressing their criminogenic needs, but the French youth justice system does not use evidence-based programmes, nor does it have a system for evaluating the effectiveness of treatment programmes for young people. France has also recently adopted remedial measures to expand diversionary options, which include a program called school monitoring that helps minors who drop out of school.

3.2. Preventive measures applied to minors in Germany

The history of specific social control for minors in Germany, as in most countries, dates back to the 1920s. Worldwide that the idea of a specific juvenile legal system has taken place. The legislature opted for a "dualistic" policy with one intervention law for young people at risk and another for young offenders (Jugendgerichtsgesetz). A totally protectionist model was not retained because the German mentality demanded that the criminal option for the problems of juvenile delinquency be maintained. The result was a compromise between criminal and educational in juvenile criminal law (DPM).

The criminal law of minors did not create a new criminal law. The crimes and crimes punishable are the same as for adults. Juvenile criminal law simply includes a special system of sanctions and a special criminal procedure for young offenders.\(^ {19}\)

Compared to traditional criminal law, the legislature first opened the door to educational measures as alternatives to imprisonment. And it replaced the strict principle of mandatory prosecution with the principle of expediency. Thus, the possibility of classification without prosecution for minor offences was introduced. Thirdly, the age of criminal responsibility has been raised from 12 to 14 years, so that the Criminal Law of Minors applies to minors between the ages of 14 and 18. At this point, it should be noted that the Nazi system "recriminalized" the 12- and 13-year-old age group that some conservative party politicians are currently demanding.\(^ {20}\)

However, debates have arisen to implement reform in the wake of social changes and movements. Criticism of placement in closed housing and, in the field of juvenile criminal law, repressive measures, short-term detention as shock incarceration (Jugendarrest) pushed towards the unification of the penal system and the protection system, but this idea was abandoned. Subsequent reforms took place without calling into question this "dualistic" approach.

Eventually, the protection law was replaced by a modern law, inspired by the idea of Sozialstaat (welfare state). Social and family welfare authorities in municipalities act as support and no longer as an "interventionist" power. In theory, at least, repressive educational measures will be removed.

\(^ {19}\) Buzescu Gheorghe, Elements of Public Order, Pro Universitaria Publishing House, Bucharest, 2016
As regards delinquency, current interventions are characterised by the principle of subsidiarity (minimum intervention). This means that criminal proceedings are ordered only in cases where absolutely necessary. In addition, penalties should be limited in accordance with the principle of proportionality. The legislative reform of the criminal law of minors, adopted in the same year as that of the law for the protection of minors, underlines the principle that the criminal law of minors intervenes in the last instance (ultima ratio).

The main sanction in case of minor delinquency is dismissal. In this context, it should be noted that in Germany, due to the abuse of police power during the Nazi period, there is no possibility of "hijacking" at the police level (hijacking, classification). The police are subject to the strict principle of legality with the obligation to refer all acts of delinquency to the courts. This situation is different, for example, from that in England where the police play an important role. In German criminal proceedings for young people aged between 14 and 21, the prosecutor has the option of dismissal due to the insignificance of the crime or the insignificant negligence of the offender. There are no limitations to crimes, which is why a robbery can be classified and all the easier if the perpetrator has compensated the victim.21

Four levels of classification can be identified:

- Dismissal by the juvenile prosecutor due to insignificance of the crime and harm.
- The public prosecutor may also decide on dismissal if educational measures have been taken, e.g. by parents, school, etc.,
- Third: classification with intervention, the Juvenile Prosecutor's Office may propose that the juvenile judge impose one of the following measures: a warning, a measure of community service (regularly between 10 and 40 hours), an offender - mediation of the victim (Täter-Opfer-Ausgleich), a measure of participation in a road safety course (Verkehrsunterricht) or certain obligations, such as compensating the victim, apologizing to the victim, community service, or paying money to a general interest: nonprofit organization.
- If the minor has complied with these guidelines or has fulfilled these obligations, the juvenile prosecutor's office, in collaboration with the juvenile judge, may close the case. It happens frequently, once the prosecutor's office has submitted the accusation to the court, that the minor fulfills his educational obligations or goes to mediation.

Juvenile court sanctions are also structured according to the principle of least intervention. Imprisonment should be limited to cases where educational or disciplinary measures are not appropriate.

The educational measures taken by the juvenile judge are: community service, care for a social worker (Betreuungsweisung), social training, mediation, prohibitions or obligations regarding contact with certain people, staying in certain places, etc. Disciplinary measures are reprimand, obligations to compensate for damage, apology, community service, payment of money to a voluntary organisation and arrest (Jugendarrest) on weekends or for a period of one to four weeks.

The sentence of imprisonment without suspension shall be served in prisons reserved for minors. The penalty shall be applicable only in exceptional cases. It is perceived as the ultimate sanction (ultima ratio) under international rules, for example with reference to the United Nations minimum rules on the administration of juvenile justice.22

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22 https://sanquentinnews.com/germany-progressive-juvenile-justice/
Imprisonment in Germany for minors between 14 and 17 years of age has a minimum duration of 6 months and a maximum duration of 5 years. The maximum duration shall be increased to 10 years in the case of a particularly serious crime committed by a minor or a young adult between 18 and 20 years of age. This penalty is applicable when educational measures (non-custodial type) appear to be inadequate in relation to the 'dangerous tendencies' revealed by the criminal act or when the punishment is necessary in relation to the 'seriousness of fault'.

Current sentences in criminal policy are ambivalent. Right-wing parties are calling for a lowering of the age of criminal responsibility from 14 to 12 and a restriction of the application of juvenile criminal law to young adults. The application of criminal law to minors for minors should be an exception because in other areas of everyday life young adults are accountable before the law. These arguments totally neglect the psychological and pedagogical basis of juvenile criminal law. Personality development and integration into adult life today take place longer rather than shorter.

This is why the vast majority of criminologists and practitioners want to maintain the law as it is and expand the application of criminal law to minors rather than restrict it, and demand that juvenile criminal law be applied without exception in all cases involving young adults. In fact, the ages of criminal responsibility in Europe are not yet harmonised. As regards, on the one hand, the policy of lowering the minimum age to ten years in certain cases, such as in England and Wales and similar reflections in the Netherlands, and, on the other, a policy of moderation in Scandinavian countries, it is hard to believe in harmonisation of the rights of minors.

In addition to the fact that greater European harmonisation is unlikely (perhaps even undesirable in terms of English influence), one could find a majority of countries, especially in the Baltic and Eastern countries, that have found consensus on the 14, 18 and 21 age groups (see Table IV). So, in conclusion, it seems desirable, given the situation and prospects, that Germany retains these age groups that have proven their worth and even extends the scope of juvenile criminal law to all young adults without exception.

Other reforms under discussion concern restrictions on the application of prison sentences, including pre-trial detention, and the reconstruction of the system of non-custodial measures. It is thus likely that, in the area of pre-trial detention, there will be more restrictive enforcement rules. But it is not certain that liberal, moderate and reasonable politics can be affirmed at a time of growing sense of insecurity and in the face of a state bowing to populist and media demands.

Unfortunately, the criminal policy of the Social Democrats in Germany is increasingly aligned with the sometimes repressive tendencies of the Labour Party. Instead, the culture of educational reforms of the 1980s is still present among practitioners and is preserved through a system of permanent training linked to professional organisations of judges and social workers. It was the elder Franz von Liszt in the 1920s who saw that the best criminal policy would be a policy of social reform. That is why the idea of prevention is increasingly present in cities and towns and that we find regions where many prevention councils operate with some success.

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23 Anane Ivan, Elements of computerized evidence of the person, Pro Universitaria Publishing House, Bucharest, 2015
24 https://www.themarshallproject.org/2015/06/19/how-germany-treats-juveniles
3.3. Preventive measures applied to minors in Belgium

In comparative studies, the Belgian juvenile justice system has always been referred to as one of the most welfare-oriented in Europe. Over the past few decades, several Western European countries have abandoned welfare and taken a punitive turn. At first glance, Belgium is not heading in this direction: the age of criminal responsibility remains very high (18 years) and juvenile justice is still underpinned by a predominantly protective philosophy.

However, it is important to take a closer look at this strong welfare picture of the Belgian juvenile justice system. The law in the books does not correspond (necessarily) to the law in action. In the same way, political discourse and politics rarely resemble the opinions of professionals in the field. Therefore, policy documents are not equal at street level or daily practices. Moreover, the recent reform of the juvenile justice system has introduced new elements (criminal and reparative) into the Belgian welfare model25.

Belgium is frequently cited as an example of a country with a strong welfare process, supported by a high minimum age of criminal responsibility of 18. Similarly, France built a strong reputation for well-being, placing education and rehabilitation at the heart of youth justice reforms of the 1940s. New Zealand in 1989 established the widely praised system of family group conferences as an integral part of youth justice, with an emphasis on restoring relationships and reducing incarceration, which would be considered part of a welfare approach. In contrast, the UK and US have traditionally been associated with a model of justice and a low age of criminal responsibility – 10 years in England and Wales and up to 6 years in several US states.

Under welfare or justice models, a young person may at some point be "deprived of liberty" – defined as any form of detention under official authority in a public or private location that the child is not allowed to leave. Locations where children may be deprived of liberty include police stations, detention centres, juvenile or adult prisons, pre-trial detention houses, work or training camps, penal colonies, closed specialised schools, educational or rehabilitation establishments, military camps and prisons, immigration detention centres, secure youth homes and hospitals26.

Thanks to a process of federalization in the 1970s and 1980s, Belgium was transformed into a federal state consisting of two large communities: the French-speaking Community and the Dutch (or Flemish) Community. This process has had consequences for the organisation of competences regarding the juvenile justice system and society's reaction to juvenile delinquency. The definition of judicial reactions to youth delinquency remained a federal matter, while the enforcement of educational measures imposed (by juvenile judge or court) became a community competence. Recently, following the sixth state reform of 2018-2019, it was decided that this definition of judicial reactions to young offenders should also become a Community competence and therefore communities have competence to draft new legislation. Meanwhile, the Federal (Belgian) Youth Protection Act 2006 remains in force.

Due to the structure of the Belgian state and the tension between theory and practice, it is rather difficult to present the Belgian juvenile justice system and its practice in all its complexity. This report therefore aims to highlight the main features of the Belgian juvenile justice system and should be read as an introductory but critical report on the Belgian juvenile justice system today. We start with a historical overview of major legal developments, as they help us understand both the fundamentals and complexities of Belgian juvenile justice.

26 https://ebrary.net/33138/law/belgium
A bill aimed at making it easier to punish juvenile offenders and adults who help and encourage them has sparked a wide-ranging debate among Belgian politicians, lawyers, child advocates and psychologists over how to deal fairly with young criminals.

While supporters of the movement say reform is long overdue, others worry it will deprive all young people of important civil rights. Other critics argue that stigmatizing young criminals will do more harm than good. Although the law, in one form or another, is scheduled to enter into force later this year, the fate of Belgium's longstanding youth protection law still hangs in the balance.

Over the past year, senior Belgian cabinet members approved a plan drafted by Justice Minister Marc Verwilghen that makes it possible for people aged 16 and older accused of committing serious crimes to be tried as adults and sent to federal youth prisons during and after trial if found guilty. It also calls for more severe prosecution and punishment of adults who force minors to commit crimes, even if adults do not commit any crimes themselves. The plan was given the green light despite opposition from the Green and Socialist parties.

"The purpose of this law is to give magistrates more equipment to prosecute and ultimately punish those who commit crimes," said Joannes Thuy, spokesman for Verwilghen, a member of the ruling Flemish liberal party (VLD). Thuy said the government believes the new measures will act as a deterrent for both minors and adults recruiting young people to participate in criminal acts. "It's a very clear sign that the Belgian government is business." But the reform also aims to give judges more tools to deal with offenders found guilty of less serious crimes. For example, it would allow judges to impose alternative sentences on those aged 12 and over, tailored to suit the personal circumstances of the accused person. These may include reparation of victims, community service or payment of a fine.

The plan aims to modernise Belgium's law on the protection of young people, which dates back to 1965. Although the philosophy behind the plan is essentially the same as the law currently in force, there is an important difference. Under the new system, judges will be allowed to hand down a sentence depending on the seriousness of the crime committed.

While reform advocates say they have no intention of abandoning the 1965 law, human rights and children's rights campaigners will be watching closely. Green Party officials have pledged to remain "vigilant" as the law is transposed. "It is a victory that we will not touch this law for now, but this reform represents a huge setback for the rights of young people," said Julien Pieret, legal adviser at the Ligue des droits de l'homme (League of Human Rights) for the French-speaking Community of Belgium.

Some psychologists also question whether prosecuting accused young offenders as adults does much good. In an interview with Belgian daily Le Soir, French psychiatrist Patrice Huerre points out that 95% of convicted young criminals still want to do something positive in the future. Huerre, who runs a teen clinic in Paris, said it was up to adults to reassure these "fragile" teens that violence was not appropriate.

Nationwide statistics on juvenile crime are hard to come by, but in 2018 there were 947,000 juvenile offenders in the French-speaking community. The most common crime was theft (68%), followed by drug use (23%) and assault (20%). In part, the government's new plan will make it easier to get oversight of the entire system, as the juvenile detention system will be changed from a regional system to a federal one. Thuy, a spokesman for the Ministry of Justice,
dismissed criticism from human rights groups, saying: "When people commit a crime, isn't that a violation of human rights?".

3.4. Preventive measures applied to minors in Spain

Spain's juvenile justice system has evolved differently than comparable European countries. The juvenile justice system in Spain emerged at the beginning of the twentieth century in line with the general movement of that time in the Western world. Spain missed out on educational reform and did not incorporate the accountability approach until the 1990s. However, things began to change in the mid-1980s. Spain's history of the last century could be divided into two different parts, separated by the Constitution in 1978, to explain why and how things began to change. In discussing the past, this article is divided into two parts, the first period (1912-1978) and the second period (1978-2001). With the entry into force of the 1978 Constitution, a period of debate and reflection began on the role of the state with regard to delinquent children. However, this debate has had no effect at legislative level.

The juvenile justice system remained unchanged until 1985. In 1985, an organic law (LO) created juvenile courts in the rest of the judicial system. Then, OL 4/1992 introduced a flexible and educational approach through the principle of the best interests of minors. The first law in Spain to compile all juvenile justice regulations into a single and complete system was OL 5/2000. According to OL 5/2000, juvenile justice is to be administered through a separate system within the general law system, with its own specific and specialised court. The future of Spain's juvenile justice system depends on how the law translates into practice. The system is now challenged to establish community interventions and, once implemented, experiment with other options.

Juvenile justice in Spain has evolved differently from its equivalents in other European countries. The idiosyncrasy of the Spanish system and the particular political situation that dominated Spain for much of the twentieth century produced in this area, as in many others, a particular development. Although the juvenile justice system in Spain emerged in the early twentieth century, in line with the general movement of that time in the Western world, the impact of the Franco dictatorship (1939-1975) maintained the tutelary approach while things changed in the rest of the Western world. However, the system began to change when Spain became a democratic country in 1978 (Rechea and Fernandez-Molina 2003).

The juvenile justice process in Spain has evolved considerably during this period, as a consequence of both pressure from legislation and legal practice shaped by the democratic rule of law and Spain's ratification of the United Nations Convention on the Rights of the Child in 1990. Such a development manifests itself in the legislative transition from OL 4/1992, the Juvenile Court Reform Act of 1992 to OL 5/2000 the Juvenile Criminal Act of 2000. The 1992 Act was the legal text that allowed for the first time the implementation of the "responsibility model" in Spain, a "dual" framework that fights for a balance between education and punishment in juvenile justice, as proposed by the United Nations and in line with the new concept of children as subjects of law and progressively responsible for their actions.

This legislation also included the culture of rights and guarantees in juvenile justice, replacing the guardianship model, which considered these concepts useless and instead relied on good practice and goodwill of those working in the field of child intervention. Intervention with unprotected children (children in poverty, neglected or abused, or those who are
undisciplined or at risk of becoming criminals) was prior to the field of child protection institutions in each autonomous region. These regions were now to be responsible for adopting protective and educational measures with both children and families. This act was widely criticized because it was provisional and did not change the overall performance of the juvenile justice system in an organized manner. However, such a balance was ultimately achieved thanks to the efforts of those involved in the implementation of the act, mainly through the work that was carried out around two strands of action established by this act: 'decriminalisation' and 'deinstitutionalisation'.

Finally, a new law was passed in 2000. This act complements all regulations on juvenile justice as a single, complete and constitutional system. According to this law, juvenile justice is to be administered through a separate system within the general law system, with its own specific and specialised court. The jurisdiction of the juvenile court is determined by the age of the offender and his conduct. As regards this conduct, the system is exclusively a system of criminal liability. Juvenile justice deals only with those who commit acts that are defined as crimes under the Adult Criminal Act. In terms of age, the law applies to young people under the age of 18 and over 14. Art. Article 4 allowed minors between the ages of 18 and 21, under certain circumstances, to be tried by the Juvenile Court so that they could benefit from a more lenient system. However, this article was suspended by a new law, OL 8/2006, and was eventually repealed without ever entering into force.

A minor who commits a crime before reaching the age of 14 is referred by the Juvenile Court to social welfare institutions once his or her age has been verified. Their situation is assessed and, where appropriate, educational measures are proposed. While voices are periodically raised in favour of the need to reduce the legal minority to the age of 12, it is also true that these voices are usually silenced by the effective response of protection institutions. Indeed, most autonomous communities have created specific intervention teams and measures with minors who commit crimes, even for those who do not present the most traditional problems of unprotected children.

In this age group (14-18 years), two differentiated groups of young people have been established in terms of the consequences of their responsibility and the measures to be applied to each group; For minors aged 14 and 15 the measures would not last more than 2 years, while for those aged 16 and 17 any measure, even custody, could last 5 years. The Administrative Court of Appeals plans to give more criminal responsibility to older minors as a kind of transition to avoid suddenly becoming fully liable before an adult criminal court for crimes committed after the age of 18.

The legislation governing juvenile justice adapts to the proposals and principles of the Convention on the Rights of the Child (CRCh), in particular in its original version. Amendments to the Administrative Court of Appeal in 2000 (2002 and 2006 mainly) introduced stricter measures for older minors and those committing more serious crimes or repeat offenders, ignoring the rationale of juvenile justice as a specialized jurisdiction: that minors do not have adult maturity. (Bernuz 2005). Specifically, the Administrative Court of Appeal assimilated the principles of misappropriation, deinstitutionalization and respect for the rights and guarantees of individuals in criminal proceedings on behalf of institutions that intervene with minors. However, the Committee on the Rights of the Child considers it essential to link these principles with the rights also considered fundamental by the Convention. More

specifically, with the right to non-discrimination (Article 2), the best interests of the child (Article 3), the right to life and development (Article 6) and the right to be heard (Article 12).

Of these rights, the most consistent references in Spanish juvenile justice legislation and practice are those to the best interests of the child. Despite the vagueness of the term, this principle has a direct relationship to the idea that minors have limited culpability as a result of their incomplete physical and psychological development and special emotional and educational needs. To this end, the Committee on the Rights of the Child broadly believes that the best interests of the child will apply when the objectives of rehabilitation and restorative justice take precedence over those of repression and punishment more typical of adult justice. This is taken into account by Spanish legislators when minors commit minor or less serious crimes, but it is called into question when minors commit very serious crimes. In this case, the best interests of the child must be reconciled with the functions of general prevention of punishment more typical of adult justice.

In accordance with the Convention on the Rights of the Child, the Administrative Court of Appeal accepts that juvenile justice is a variant of criminal justice that must recognise and realise the rights and guarantees of criminal proceedings. These are formal and constitutional issues that are more easily assimilated into legislation and also by judicial operators. This may be because they believe that the security of a system of legal liability is more favourable to minors than that of a guardianship, protectionist system, and because respect for rights and guarantees is part of their professional training and is in line with traditional adult justice. For example, the importance of the presumption of innocence is clearly supported in the process of empowering minors and in their educational process.

However, the effective implementation of the right to be heard is more complex in the context of juvenile justice. According to the Committee on the Rights of the Child, in order to make a decision in the interests of a minor, depending on his or her maturity, the minor's own views must be taken into account. This, however, according to the Committee of Ministers of the Council of Europe, does not mean that the final decision necessarily coincides with the wishes of the minor.

This difficulty in implementing the right to be heard is probably due to the continued existence of the idea that the capacity to decide lies with the State or because of the consequences of the Convention which stipulates that the child must be heard as a subject of law.

It can be said that 25 years after the signing of the Convention on the Rights of the Child, the principles and philosophy of the Convention have gradually filtered into Spanish legislation and have also transformed the procedures inherited from previous models. International organizations, mainly the United Nations and the Council of Europe, are aware of the need to improve the processes of implementation and effective realization of rights.

To this end, it is fundamental to continue to reflect on what minors mean by rights. In this respect, it is particularly important to pay attention to the child's right to be heard, because this is what really involves minors in decisions affecting them, because they are treated as a real subject of law, because when institutions listen we have the impression that they are fairer and because, consequently, We tend to obey decisions from institutions we consider legitimate. It could be said that minors feel more responsible when faced with a justice system that is interested in them, that listens to them, and explains its decisions. It should be emphasized

33 https://www.researchgate.net/publication/258128028_Juvenile_Justice_in_Spain_Past_and_Present
that, in legitimizing juvenile justice, it is important not only to assess whether rights are realized, but also how they are realized.

### 3.5. Preventive measures applied to minors in Italy

Italy's juvenile justice system has its roots in the broad theoretical debate about social rules and social opportunities developed in the seventies, which led to important reforms in psychiatric health and prison law. In Italy, social problems have been seen as complex phenomena arising from interactions between real needs, perceptions of these needs in the particular sociopolitical and cultural situation, and definitions and choices of social control agencies. In the Italian case, therefore, there are many influential factors, linked to the conflict and negotiations between national and local levels of state and governance, as well as to the specific relationship established in the Italian context between the state and civil society; situation that can challenge the community.

Also, a large body of investigations, it has theories focused on punishment and penology, relations between criminal sciences and criminal policies, relations between psychiatry and the criminal justice system, preventive policies and actions (Curi & Palobarini, 2002), social representation of deviance, crimes. the justice system for juvenile offenders (Pavarini & Melossi, 1977), also deepening the social meanings of crime (De Leo and Patrizi, 1992) and the importance of educational treatment (Guetta, 2010; Meringolo, 2010).

The Italian juvenile justice system refers to boys and girls aged between 14 and 18 who have committed offences under the civil or criminal code. It is impossible to criminally charge a person under the age of 14, but it is still possible to charge young people between the ages of 14 and 18, noting that the person is not mentally ill, which must be assessed on a case-by-case basis. For juvenile offenders, life imprisonment cannot be sentenced by a rule of the Italian Constitutional Court, which fulfilled Art. 31 of the Italian Constitution, providing special protection for childhood and youth. Sentences are served in juvenile justice institutions for up to 21 years, and knowledge of juvenile court remains up to 25 years.

The new Code of Criminal Procedure for Minors has considerably reduced the number of minors in criminal institutions: from over 7000 registrations annually before 2000 until now. The main goal, if possible, is to avoid detention and to use alternative measures (probation, community service, etc.) and strategies for inclusion in social life (Articles 1, 21 and 22).

As a protection of minors and educational development, institutions deal primarily with personality assessment (Articles 8 and 9), for better planning of activities, try to prevent the risks of labeling minors — both with appropriate treatment and avoiding the dissemination of information about their deviant behavior. (Articles 13, 14 and 15) — and pay attention to the preservation of minors' intimate networks, if any and reliable.

In addition to these important results, however, there are some negative aspects that will be presented below, as recourse to juvenile imprisonment does not seem to decrease, especially for young people who lack social support, or who come from abroad.

**Juvenile justice procedures in Italy**

**Arrest:** It can be done both in the crime act and under investigation, with certain rules to protect minors during legal proceedings, e.g. Information about the measures taken, emotional and psychological support, the presence of specialized professionals interacting with them, proper application of the law and privacy policy.

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Preliminary prosecution: The investigating magistrate decides whether the minor may be released or taken to a Community for juvenile offenders pending the decision of the judicial authority. Minors with trivial charges can be led to a community or even home.

First reception centers and communities: They shelter minors who cannot drive home alone or with relatives. The centers do not have the characteristic of a prison (there are no bars, even if there are guards), and their purpose is to detain minors for up to four days. During their stay, these children are supervised by a specialized team (psychologist, educator, youth worker), which draws up a first report for the Juvenile Judge. These centers can also be organized as small custodial communities with a "family" structure and predominant educational value. After the four days, the Judge decides the measure for the minor, based on the following criteria: Non-interruption of his/her educational process, reduction of the prejudice caused by the procedure.

Communities: There are public communities (depending on the Juvenile Justice Administration, or private communities, associations or cooperatives working with adolescents), recognized by the Regional Authority. It must comply with requirements such as family organisation, the presence of other young people who are not responsible for justice, a maximum of ten people per group and the employment of professional workers.

Detention: the minor is taken to a juvenile prison (Istituto Penal Minorle, IPM). This measure is provided for crimes with sentences of more than 9 years and must be justified for the risk of manipulation of evidence, or of fleeing, or repeating the crime.

In LMI there are minors subject to a criminal measure, as well as young adults who committed a crime when they were minors and – according to Italian law – can remain in juvenile prison until the age of 21. LMIIs throughout Italy are sixteen in total and are located in most Italian regions.

Alternative measures that may be decided by the Judge

House arrest: The court requires that the minor be able to stay at the family home, sometimes with removal limitations, and may allow moving from home to school (or other educational activities).

Probation: The judge may postpone the trial and initiate probation proceedings, asking the Social Services to plan an intervention, after which the minor will be assessed and if the result of the assessments is positive, the crime can be absolved. Social services for juvenile offenders cooperate in promoting and protecting the rights of young people with other juvenile justice services and community social services.

Inappropriate judgment: During preliminary investigations, the judge, at the request of the prosecutor, may decide on an inappropriate decision if the crime is trivial and the criminal behaviour appears occasional36.

Pardon for juvenile offenders: It is a release decided by the Judge for a junior juvenile offender, related to an expected sentence of less than 2 years.

Substitute measures: Instead of detention for the sentence of less than 2 years, part-time detention or parole may apply.

Now, the most common choice in alternative measures for the criminal minor is probation on parole.

The number of crimes charged with minors in Italy is less than 40,000 per year. However, the number of minors involved is certainly less, as some of them are charged more than once. About 6,500 of them cannot be taxed because they are not yet fourteen years old.

The data is fairly stable; maybe it might drop slightly. Of these, foreigners are 25% and less than 20% are women. Half of the crimes are against property, about 25% against individuals and about 13% are drug-related offences.

The number of juvenile offenders in Italy is lower than the European one: 2.6% of crimes committed: 23.9% in the UK, 21% in France, 12.9% in Germany and 5% in Spain. The data is difficult to compare with other countries due to differences in legal systems and age definitions of delinquent children.

As we have said before, registrations in LMI are down from about 1,900 at the beginning of 2018 to about 1,200 in 2019. Of these, it was the number of women that decreased the most, and foreign minors, which prevailed in recent years, with a peak in 2014 with 60% of attendances, are now 43%, thanks to local communities' policy on their social inclusion. LMI in Italy are now 16, located in almost all regions. Four of them have girls' divisions. Most LMIs are located in the south and islands, due to the marginality and poverty of these places, and especially the involvement of minors in organized crime, such as the mafia (in Sicily), the camorra (in Campania) and the ndrangheta (in Calabria), which provide a kind of training in professional crimes. These organizations are spread across many other regions, with the same — albeit smaller — effects for young people.

Foreign minors in LMI are 65% in northwestern Italy, 71.2% in the northeast, 70% in central Italy, 15.5% in the south and 11.9% in the islands. Their number is higher in the northern regions, as migration goes to more industrialised regions, such as those in the north of the country.

The number of minors at present is about 450-500. It is important to note that this is their actual number, as it is independent of re-entries. In LMI young people aged 18-21 is about 40-45%, and even more. In 2019 they were 57%, and in the same year it increased to 61% of attendances. The longer stay of young people in institutions allows better care of their educational, work or rehabilitation process, but can cause some strained relations between guests.

The staff employed in IPM in 2019 consisted of 1,390 units, both office and youth workers, and 800 prison officers. Young people and social workers, however, are a minority and often work outside the institution: their number also includes those involved in the "external criminal zone", such as local communities.

Juvenile detention, as I said before, doesn't seem to be decreasing. Alternative punishments generally do not apply to minors who do not have social networks to support them (family, school, job), especially those coming from abroad or Italian minors living in the south.

Boys and girls coming from abroad are often subject to pre-trial detention. In such cases, juvenile imprisonment becomes a way to limit and limit their marginalization and poverty.

In southern Italy there are many young Italians with a final sentence who are imprisoned for up to 21 years, when they are moved to adult prison. For them, juvenile justice does not foresee real recovery efforts, but rather emphasizes criminalization, preparing them for a future life marked by continuous prison entries.

Italy has been the homeland of many migrants over the past two centuries. In the 90s, due to wars in the Balkans, the crisis in Eastern Europe and poverty in North Africa, Italy

38 https://www.jstor.org/stable/3053465
quickly became a host country for migrants, both adults and children. A large number of them did not have a real migration plan, so if young people did not find an opportunity to study or work, they were most likely on their way to becoming a deviant group in society.\footnote{https://dirittoopenaleuomo.org/en/contributi_dpu/a-future-beyond-prison-walls-the-role-of-juvenile-detention-alternatives-in-italian-and-american-juvenile-justice-system/}

In IPM, foreign minors represent a very heterogeneous group, including those who came for family reunification, or were born in the country of migrant parents, or arrived here alone, escaping war and poverty. They are vulnerable in two ways (Abbiati, 2010): being minors who are unable to meet their needs on their own, and because of the migration status that makes them "strangers" and "other" in the eyes of others. Other citizens. Moreover, those who are unaccompanied, without a legally responsible adult, face difficulties alone, especially when their behavior is inappropriate and needs limits. Most of them can become deviants and undertake a criminal career. Sometimes they cannot solve their migrants' situation because they cannot get the right information and do not know the legal procedures.

Forced to grow quickly, they are often distrustful. It is quite difficult for them to have important Italian adults, sometimes perceived as the reason for their detention. Cultural mediation emerges as an indispensable means not only to translate procedures, but also to truly understand cultural needs. However, the most serious problems arise externally, and sometimes foreign minors may have more opportunities during their stay in IPM than after release.\footnote{https://data.europa.eu/euodp/repository/ec/dg-justi/criminal-justice/contextual-overviews/Italy.pdf}

With the juvenile trial reform law, detention would be "residual" treatment, and we can see that the number of young prisoners is decreasing. "Less prison" does not produce more deviance. We know that it is rather the prison that can cause more crime: minors with longer stays "in" are perpetrators of more serious and repeated crimes, are larger than other children or come from abroad (and then with fewer possibilities for inclusion).

In LMI there are usually no minors for whom it is possible to plan educational interventions. For most of them their stay is short. For foreigners or Roma minors, detention is often "justified" by social control.\footnote{https://www.liberties.eu/en/stories/minors-and-prisons-antigone-report-on-italian-youth-detention-centres/6067}

References
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