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THE ABSTRACT OF PHD THESIS

MINORITIES IN ROMANIAN CRIMINAL LAW

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The thesis is divided into eight chapters in which were treated overall problems of crime among minors, with particular emphasis on positive law in our country, through detailed analysis of criminal sanctions applicable to minors and procedure in cases involving juveniles during the criminal investigation and trial stage.

Were also analyzed in the thesis and future legislation in this area, following the promulgation of the new Criminal Code and the new Criminal Procedure Code, laws not in force at the time of preparation of this thesis, controversial legal issues in the imposition of penalties to juveniles and criminal in connection with their execution and enforcement regime of the minor by a comparative analysis of existing law in other European countries.

In chapter 1, entitled “General Aspects”, the first section, is based on the premise that historical, crime, the alarming phenomenon of the contemporary world because of the intensity and extent to which manifests itself, is not just a phenomenon of contemporary society, but a part of it, crime is present in all historical ages.

Viewed from different perspectives, as a general concept, crime has seen a breakdown of its contents in two more operational areas for scientific research: juvenile crime or delinquency and adult criminality.

By designating all breaches to criminal sanctions, juvenile delinquency is a complex and serious social phenomenon by its negative consequences, not only to the community but also the subsequent fate of juvenile offenders, juvenile delinquency, the term is understood by all the irregularities and violations of social norms, legal sanctions, committed by juveniles under the 18 years.

In this research it shows that juvenile delinquency has increased in age group of the population age structure, and an upward trend of crime among minors, paralleled with the seriousness of the offenses committed.

Juvenile delinquency has become one of the major social problems that the most part of contemporary societies , both econimically developed and the developing , faced and continues to face. During this period, theoretical interpretations of delinquency regarded as a phenomenon of marginal interest, characteristic of many social groups and categories have been abandoned to make way for deeper and more realistic approach, according to which juvenile delinquency is interpreted as an important social problem caused, in turn, by other social problems closely related to how the society could manage its resources with education and socialization processes, how it works and organize various social structures and institutions.

Juvenile delinquency reflects a lack of adaptation to legal and moral system of society, the most important of deviance effects, which include breach of social life, integrity, rights and freedoms.

In studying this phenomenon must be taken into account the biological features and also the psychological ones of childhood and adolescence, juvenile deviance is driven by both biogenic factors (brain injury, obstetric trauma, childhood meningoencephalitis) and other factors, particularly emotional failure, resulting in the situation of a child unwanted or careless, leading to him being mentally disabled since birth.

In the second section of the first chapter, devoted to the protection of minors in international law is based on the finding that currently, there is a worldwide trend that states seek to ensure that their juvenile justice law systems are in agreement with international human rights across the globe taking into their own laws the international principles, as a result, juvenile justice legislation have been restored on these principles.

Increasingly, more staff, including social workers, child rights workers, staff of the detention system, judges, police, policy initiators and probation counselors are participating in the development of training programs in international application of these principles.

The United Nations has made considerable efforts to improve juvenile justice in general, particularly juvenile criminal justice, juvenile delinquency prevention and protection of juveniles deprived of their liberty.

Are analyzed in this section worldwide laws drawn on children's rights in general and the juvenile offender, in particular, namely: the Convention on the Rights of the Child, adopted by the United Nations General Assembly resolution no. 44 /25, United Nations Standard Minimal Rules of the Administration of Juvenile Justice (Beijing Rules adopted in 1985 by resolution no. 40/33), United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Principles, adopted in 1990 by General Assembly resolution no. 45/112), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted in 1990 by General Assembly resolution 45/113), Guidelines for Action on Children involved in the criminal justice system (adopted by the Economic and Social Council resolution no. 30/1997), United Nations Standard Minimum Rules for the development on non-custodial measures (rules of the Tokyo 1990), Declaration on Basic Principles of Justice for victims of crime and abuse of power (adopted by General Assembly resolution no. 40/34) and the UN Committee's recommendations Rights of the Child (2009).

In the following sections of the first chapter analyzes the provisions of Romania on child rights protection and other regulations developed internally in child rights matters, namely: Government Decision no. 539/2001, which was approved by the government's strategy for the protection of children in difficulty and operational plan for its implementation, no. 11/1990 Law, the approval of adoption, no. 53/1992 Law, special protection of handicapped persons, GEO no. 12/2001 which was established as a specialized body of central public administration, the National Authority for Child Protection and Adoption Act no. 47/1993, the judicial declaration of abandonment of children, repealed by Act no. 273/2004 which is primarily de-institutionalization of children in this category, alongside the creation of a protection system based on the

development of strategies, no. 678/2001 Law on preventing and combating trafficking in persons, no. 123/2001 Law on the regime Aliens in Romania by Law no. 683/2002, designed and accompanying minors victims of human trafficking victims, Law 143/200 on combating illicit trafficking and drug consumption, Law 217/2003, preventing and combating domestic violence and Law no. 196/2003 on preventing and combating pornography.

Also in this chapter is considered probation, the probation service's role and the way in which probation has been implemented in Romania and Law no. 211/2004 regarding certain measures to protect victims of crime, which provides for some measure of information to victims about their rights, as well as psychological counseling, legal aid and financial compensation to victims of crime by the state, with reference special rights of minors, for their better care.

In Chapter 2, the development of the concept of minority and criminal liability in the first section, is considered the historical evolution of these institutions, with reference to Roman law and criminal lawful old during this period, is a qualitative difference between human infant and adult crime, juvenile delinquent is seen as an delinquent or another, even when the minority was a mitigating circumstance.

The purpose of sanctions was it crime suppression, punishment on the person of the offender and his influence with minor importance and therefore, prevent crime, especially juvenile and the juvenile offender rehabilitation were not concerns of the legislature, which led to a huge increase in crime minors.

Since the second half of the nineteenth century, parallel with the development of anthropological research, sociology, criminology and educational psychology, it was the view that teenagers in general, including adolescent offender, a personality in training, psycho containing moral self-dense and that the reaction of society against its dangerous behavior must take account of this specific aim, first rehabilitation of juvenile offenders, the rehabilitation process can be better achieved through educational measures than by punishment.

After 1990 he began to manifest more pronounced tendency for children to be removed from under the criminal law for adults, so that on the one hand, the age limit was raised absolute criminal incapacity, and on the other hand, was admitted existence of

a period of relative incapacity, subject to lack of discernment, varying in size from one law to another, lying between period and absolute inability full criminal capacity acquisition.

In the second section devoted to the old law were analyzed first Romanian laws that relate to minors, that the Book of Learning Romanian, Vasile Lupu in 1646 in Moldova, edited Trisfetitelor Monastery in Iasi and Correction Law of Matei Basarab in 1652 in Wallachia, published in Targoviste, writing that the minority is a question of removing or mitigating criminal liability.

Thus, up to age 7 child is not criminally liable, and from age 7 until puberty (14 years for boys and 12 girls) children were subject to lighter punishment, being mentioned in such a lawful third age group between 14 and 20 years for boys and between 12 and 25 years for girls, which benefited from improved system of sanctions, except in very serious facts.

It has also been analyzed Lawful Caragea, which entered into force in 1818 the Romanian Country, the registers Sandu Sturza of 1826, inspired by the Austrian Criminal Code of 1803, translated into Romanian and printed in 1807 in Czernowitz, which was applied to the Union principalities of Moldova and the Criminal Code of 1850 Stirbei applied in Moldova, which included treatment with more complex and more nuanced delinquent minors to lawful previous age limit of criminal responsibility is fixed at 7, or 8 years until age 14 or 15 children can be punished only if they committed the act with discretion and relaxed sanctions against majors over this age, young people up to 20 or 21 years, enjoying sanctioning a preferential regime.

Consecration by the principle of modern penal codes determining the penalty, the principle of attenuated responsibility or juvenile delinquents, creating a special jurisdiction for this category of offenders, separating juveniles from adults in prisons and establish a system for the first execution differently as and entry into the codes of safety measures or education, are all innovations that have influenced efforts to establish and foundation special legal system to punish juvenile delinquents in our country, the Criminal Code of 1864, entered into force on 1 May 1865 under the reign of Alexandru Ioan Cuza , inspired by the French Criminal Code of 1810 and the Prussian Penal Code of 1851, the first Romanian Criminal Code, this code replacing the 1826 Criminal Code

of Moldova (Conditions of Sandu Sturza) and in the 1850 in Wallachia (Penal Code Stirbei).

This code contains a provision similar to the principalities lawful they replaced the minority as both a criminal cause of disability and a case of mitigation of punishment in criminal law point of view there are three age periods regarding the minority: up to age 8, when the juvenile is not criminally liable, between 8 and 15, criminally liable if the child proved that he worked "with understanding", thus instituting a presumption of lack of discernment and those between 15 and 20 years who were always counted and criminally responsible, but a minority being able to mitigate the penalty, these categories of minors is punishable by a penalty, which could not be but never a criminal punishment, even if the minor has committed an act called "crime".

Taking many of the progressive ideas of the time and inspired the Romanian realities and the laws of other states, the Criminal Code of 1936 adopted a system of juvenile sanctioning which reproduces many of the institutions experienced over time.

Criminal majority was set at 19, two stages are distinguished by age of child: first, by the age of 14 years, called childhood when the child is not criminally responsible and, second, between 14 and 19, called time adolescence when the minor is criminally responsible if at the time of committing the crime proved that he acted with discernment. For the child who committed an offense under the criminal law were set in indiscriminate preventive measures, education, guardianship and protection that stopped when the child or young person reaches the age of 21 years.

Although regarded as a valuable legal work, as a manifestation of the prestigious Romanian criminal science, the Criminal Code of 1936 has altered the entry into force, by an Act of September 24, 1938 were brought important changes in minority matters. This was lowered from 14 years to 12 years never respond criminal, minors aged 12 years and 15 years of criminal responsibility if they acted with discernment, and those aged between 15 and 18 years of criminal responsibility, representing the minority issue but a mitigation of punishment.

Minors between 12 and 15 who have committed the act with discretion and minors over the age of 15 years are two penalties could apply criminal law: safety measures and punishments.

In addition to these criminal penalties, the criminal court was entitled to take some care and to children aged up to 12 years if they committed an offense under the criminal law, and minors who have committed crimes but were in danger of committing such acts, these measures consist of special supervisory custody of the juvenile family, a close relative would receive the supervision of the juvenile or an honorable person, a society of patronage or a public or approved private state the purpose or moral re-education institute, where appropriate, and noticed school authorities, the minor to the reprimand and disciplinary measures under the school rules.

The last section of this chapter, the Criminal Code in force, which devotees an entire way of minority status, Title V of the "General" part called "Minority". Minority status is not seen as a "mitigating excuse" law, which is likely to reduce penalties provided for in the incriminating question but as a general differentiation and established the legal treatment for juvenile offenders differently from adult offenders, art. 99 – 100, Criminal Code there a uniform system of rules governing the conditions of criminal liability of minors and criminal penalties apply to them.

As regards the criminal liability of minors in art.99 shall establish criminal liability, as follows: until the age of 14 years is not criminally responsible minors between 14 and 16 juvenile criminal responsibility only if it is proved that the act committed by the criminal law with discretion, and between 16 and 18 years of criminal responsibility.

The treatment of criminal justice for juveniles was established a joint enforcement regime, consisting of educational measures and sanctions.

Educational measures (reprimand, supervised freedom, hospitalization in a rehabilitation center, hospitalization in a medical education institute), the criminal court can be applied only to juveniles who are criminally responsible, unlike the previous Criminal Code, the situation of minors who committed criminal acts under the law but not criminally responsible are regulated by special law.

Criminal Code in force provides for minors two main punishments, imprisonment and fine, whose special limits are reduced by half, and life imprisonment and additional penalties shall not apply to minors.

Compared to the original version, in the minority, the Criminal Code has undergone significant changes by decree no. 218/1977 on transitional measures for the punishment and reeducation through labor of persons who have committed criminal acts under the law by Law no. 104/1992 amending the Criminal Code, Criminal Procedure Code and other laws and the repeal of the Law no. 59/1968 and decree no. 218/1977, changes that were reviewed in this section, particularly in terms of its impact on the treatment of sanctioning offenders.

Chapter 3, which are considered criminal liability for juvenile offenders, the first section, is based on the finding that the crime or juvenile crime, even if it is a component of crime in general, it presents some features caused by biological, psychological and social their envisaged by the legislature at the time of settlement of juvenile crime responsibility for combating crime among juveniles under some form of prevention is different from adults and that is an extremely delicate legal doctrine is not a unitary concept with repercussions on how regulators, specifically, there are two models of approach: the liberal and the authoritarian model.

Or non-liberal model, assumes that minors will not be criminal sanctions in case of crimes by them will apply to other measures. The liberal out of the sphere of criminal law as juvenile crime, the juvenile will only apply safeguards, however if certain crimes committed by minors under the age close to the age of majority, they will be punished, that for example, in Belgium.

The authoritarian or criminal, means that minors who have committed crimes criminally liable for criminal penalties apply this model with several forms. The first form, the most repressive, means that a child close to the age of majority may be considered adult, and in the case committed by such a person of a crime must be able to apply the penalties provided by law for adults, as is, for example, in the Netherlands.

The second form is that which is subject to only minor punishment but with a shorter than the penalties that apply to adults, the regime of enforcement of penalties by minors are less severe than for adults, such as jail is running in special institutions for young offenders.

A third way is a joint enforcement regime, composed of sentences and measures educational system currently operating in Romania.

In the second section, the age of criminal capacity is analyzed category of minors who are not criminally liable, or minors who have not attained the age of 14 years and children aged 14 to 16 years who have committed crime indiscriminate and the category of minors who are criminally responsible, that those aged between 14 and 16 years if they committed the act with discretion and minors who have reached age 16, for example children with absolute criminal capacity, criminal law distinguishing between minors not criminally responsible and criminally responsible, the main criterion by which to make this distinction is age, and discernment, understanding the individual's ability to understand and willingness to consciously direct the concrete circumstances in not generalized to any manifestation of a person.

Discernment is therefore responsibility, but if this child is not full, because physical and mental development of minors is not perfect.

The importance of this criterion, namely age, resulting in art.40, point 3, the UN Convention on the Rights of the Child which provides that states parties should promote legislation that would establish the minimum age at which children are accused of committing a crime or were found guilty of committing an offense under criminal law, to can be held criminally liable.

Romanian Penal Code is in full compliance with the rule shown in the Convention, the Romanian legislator minority making a case that removes the criminal nature of the act, art. 50 of the Criminal Code stating that not a crime under the criminal law act, committed by a minor at the time of the commission does not meet the legal requirements for criminal responsibility, or, for minors, criminal responsibility enshrined in Article condition Criminal Code are age 99 and discernment.

The next section is considered the age of criminal responsibility for certain forms of crime unit, whereas in respect of minors, were outlined specific elements only on some of these forms, simple questions on the instant offense, Consumer offenses duration (continuous, sustained and usually instant) and progressive crimes, if committed by minors by requiring such crimes to determine the time of the offense, according to this time proposing to establish law applicable, for example if the perpetrator's criminal liability will be trained as a minor or major, if the action or inaction occurs during both the perpetrator is a minor and the result occurs after the age of majority or when they

commit acts of performance during both minority and after reaching the age of majority by the minor.

Regarding the consequences of criminal responsibility for juveniles, their sanctioning system, unlike the major offenders, is a mix composed of sanctions and educational measures, the latter being more and criminal penalties, the choice of penalty that will apply the established rule being that the punishment is applied only if it is assessed that taking educational measures is not sufficient for straightening the child.

Although all criminal sanctions applicable to minors, penalties, security measures and educational measures, aiming ultimately, prevention of crime and protection of society against those who committed crimes (even if not guilty of taking safety measures).

Each of these sanctions has its own purpose and achievable through specific means. Educational measures are primarily to perform minor rehabilitation (as a measure of prevention), by appropriate means people psychological full maturity, the penalties are so constraining its own purpose (as a measure of repression) and offender rehabilitation (as preventive measure), while security measures are designed primarily for removing a state of danger caused by the person of the offender or criminal activities conducted by it.

This chapter has been reviewed and the consequences of criminal responsibility for minors in other legal systems, taking into account that in the juvenile justice system right are two models: the traditional or the criminal, that the minors were from age applicable penalties, and most recently, non-criminal, which gives priority to educational measures, in both models, minors under a certain age who have committed criminal acts under the law applying to them the only measures of protection.

Criminal traditional model remains dominant, so that recourse to sanctions and educational measures, such as for example in English law where minors are applicable, in principle, only punishment, but less severe in terms of duration and how performance than those major criminals.

Other legislation, provide for a mixed system of penalties and sanctions consist of educational measures, such as, for example, Switzerland, where the minor can apply either a punishment or an educational measure, or Germany, where the juvenile offender

is apply in parallel with the punishment and educational measures (some coercive and other disciplinary).

The non-criminal measures focus on education, such as Belgian law which was launched the concept of "minor in danger" concept that includes discipline, committing crimes and vagrancy.

Some laws are difficult to fit in any of these models, such as, for example, for Spain, where the organic law on criminal liability of minors in 2000 establishes the principle of criminal responsibility of minors, but the penalties provided by the law are regarded as measures criminal, although in fact they are educational in nature.

They were than analyzed regulation on minors in France, where the enforcement regime is governed by the Ordinance 45/174 of February, 2 , 1945 of juvenile offenders, supplementing the provisions of the ordinance by the rules of the Criminal Code, approved by Law no. 1138/2002 of September, 9, 2002, in Germany, according to the Youth Welfare Law (jungendwohlfahrtgesetz), which constitutes an act reference in the treatment and social measures to be taken to ensure normal living conditions of children and youth, juvenile criminal system and young adult (Herranwaschsende) being provided for young people in the law of the Court of April, 8,1953 in England and Wales here the material is contained in the law office to prevent crime and disturbance of public peace (Crime and Disorder Act) adopted on July, 31,1998 and entered into force on September, 30, 1998 Criminal Justice Act 1982 and Criminal Evidence in the 1984 Act in Belgium, with reference to the Law of April,8, 1965 on the protection of young people and the Law of June, 13, 2006 amending the law on youth protection and care of juveniles who have committed a crime in Poland, where the age of criminal responsibility is governed by the Criminal Code 1997, entered into force on September, 1, 1998, in Spain, where provisions for minors are listed in the Penal Code and Law on the age of criminal responsibility from January, 12, 2000 and in Portugal, where the system of enforcement of minors is governed by decree-law no. 314 of October, 27, 1978 on criminal procedure applicable to young adults no. 401/82 decree-law on criminal procedure and law applicable to young adults no. 166/99 the tutelary and educational measures to be applied to minors aged between 12 and 16 years who have committed criminal acts under the law.

In chapter 4, devoted to educational measures, reprimand, supervised freedom, hospitalization in a rehabilitation center and admitted to a medical-educational institute, it is envisaged that the punishment of minors through educational measures is a feature of the criminal liability of minors, measures Educational criminal sanctions being educational, is focused on carrying out their execution and completion of vocational training schools and juvenile offenders, with an open-ended (except reprimand and supervised freedom) and revocation, the court can return them if during measure the child has bad manners or commits an act referred to again by the criminal law.

They are jurisdiction sanctions because it is applied by the court, unlike the administrative protection measures being taken against juveniles who commit criminal acts under the law, but not criminally responsible.

In analyzing the reprimand, the first scale educational measures as the easiest of them and take to the minor whose referral is assessed that is possible without applying a more stringent educational measures, having in mind that the discipline is not only a simple reprimand, remonstrate, but when putting the child to realize that he has been guilty banned order to understand that they must have good conduct in the future, because, otherwise, will bear educational measure or a more severe punishment will be applied.

By its nature, is characterized in that the discipline is a measure of moral awareness is addressed to a minor extent. Besides the element of reprimand itself, also includes elements of warning about future conduct. For minors who commit the crime was more an accident, the discipline is a welcome step and effective, especially for those who are in the family moral support.

Practice has proved that a well-adjusted personality reprimand and made minor child in such a way to feel not only stimulating but also rebuke for good behavior in the future be granted by the trust, may have positive and sustainable, and therefore I found that the educational measured of reprimand, as specific criminal penalty for juveniles, has proved its effectiveness and should be maintained in the field of educational measures, in contradiction with the new Criminal Code, the legislature gave to this measure educational.

A second scale measures the educational, supervised freedom also applies if the minor correction is possible by applying lighter educational measure, that of reproof, for juvenile rehabilitation requires a certain length of time the child should be subjected to surveillance strict.

It consists in allowing the minor freedom, for one year under special surveillance of persons or institutions shown in a limited order of preference and the text it shown, and in the case where surveillance has not reached the required purpose, to take a minor to more severe educational measure or implement a sentence, supervised freedom is the only educational measure Community nature of the Romanian penal law.

What characterizes the extent of freedom that is monitored is a long-term action, embodied in strict supervision of the minor and exercised under the conditions of his physical liberty.

Also, supervised freedom is a measure revocable, if the aim pursued, minor correction, could be achieved by this measure, unlike the reprimand that does not involve a long-term action and is not revocable and admission to a rehabilitation center that although it involves a lengthy and action may be withdrawn, unlike supervised freedom, involves in addition a minor restriction of physical freedom.

In the section were analyzed individuals and institutions which may be entrusted with the supervision of the minor's obligations, as well as the obligation can be imposed during the execution of minors, with particular emphasis on the obligation to provide a community service activity, because the legal rule conflict with the constitutional norm and the ECHR requiring the consent of the person making such an obligation is imposed by conviction, concluding that this obligation should be imposed in a manner that does not demean the condemned does not give him a feeling that it hardcore and therefore, even if the law does not provide, we believe that the imposition of this obligation, courts should determine whether the convicted or not ready to meet such an obligation, without the consent of the prisoner, have all chances to impose this obligation to be devoid on purpose.

For those reasons, we believe that the law should expressly provide for the court to take a minor's consent to impose this obligation. We also examined conditions in which the court has revoked supervised freedom, with the consequence of taking the

measure of the educational hospitalization in a juvenile correctional center or application of penalties, with the assessment that if the child avoids the supervision that is exercised on him or has bad manners and if they commit an offense under the criminal law, revocation would not be mandatory but optional and is more productive than assessing the legislature to leave the court if necessary or revocation, depending on the severity and manifestations constitutes circumvention of the surveillance or bad manners, or the nature of the offense under criminal law, if in the latter case the conditions imposed by art. 18 of the Criminal Code, including the fact that he committed an offense under the criminal law, but clearly irrelevant, which would require that the revocation is not required, because of damage over the social value protected, admission to the center of rehabilitation can have devastating consequences for the child concerned, the situation is identical if the minor committed during the probation period, a new crime for which the court considers that criminal liability should be replaced, as all the conditions specified in Art. 90 Criminal Code, the act being committed offense, and they would abrogate freedom supervised and taken to the juvenile the educational measure of internment in a reeducation center provided by art. 104 Criminal Code, even if the crime was committed new trial and ordered the termination of criminal responsibility was ordered replacement.

The next section is the analyses of three educational measures that can be taken to the juvenile offender, the extent of hospitalization in a rehabilitation center, which is taken to the juvenile re-education which is the possibility to acquire the necessary teaching and training according to his skills.

Although called “educational”, this is really a measure of rehabilitation, more severe than the discipline and content-supervised freedom, because, unlike them, affecting the physical liberty of the minor, and therefore, the measure is taken only to hospital juveniles who are slender other educational measures aim of the measure, which is to re-educate the minor, is accomplished by a specialized state institutions, given the generic, but expressly and exhaustively laid down by law.

In the context of educational measures, hospitalization in a rehabilitation center aims moral possibilities of recovery of juvenile offenders in an organized environment by combining incentives with coercive elements.

In addition to moral rehabilitation, during hospitalization, which basically takes up the major, minor and to provide instruction and appropriate educational and skill training school of its considered for admission can be achieved only when the minor correction to achieve morally and when to conduct a thorough education and professional development of the minor.

Look at in terms of efficacy, hospitalization in a rehabilitation center, compared to other educational measures, the advantage of minor rehabilitation takes place in an institution that specializes in skilled work, during hospitalization child being able to acquire or continue teaching learn, or to obtain a professional qualification.

However, in principle, admission to rehabilitation center appears to be the most effective of educational measures, it should not be overstated, because in the logical choice for the most appropriate measure for juvenile rehabilitation starts from the premise not effective in abstract of these measures, but from the premises for the minor, the seriousness of the offense committed.

Were analyzed in this section all issues related to the measure according to his or her age at the time of delivery of the sentence, with the assessment that the measure can be ordered from the minor who has attained the age of 17 years from the date of delivery of the sentence, about the possibility of taking such action and to a minor who has previously executed sentence of imprisonment and who has committed a new crime after release from prison if the offense is committed again have a low social risk and those related to the duration this measure, the minor release before becoming a major extension of hospitalization for a period not exceeding two years, those relating to the revocation of the minor release before becoming serious and the revocation of admission to a rehabilitation center for committing a crime and the enforcement regime of the extent of the educational hospitalization in a rehabilitation center.

In the analysis of hospitalization in a medical-educational institute, as the child is hospitalized in a medical-educational institute due to physical or mental condition in which is located, in order to undergo a medical treatment and a special education although it is envisaged that the scale of educational measures, hospitalization in a medical-educational institute is located in last place, it is more severe than hospitalization

in a rehabilitation center, because if both measures is a restriction of minor physical freedom, with its re-education purposes.

The difference is that the measure of admission to rehabilitation center for minors can be taken to a state of normal mental and physical health, while hospitalized in a medical-educational institute to take only children of physically impaired or psychological and medical treatment they need and a special education.

Although it is a part of the educational measures, the measure is a component of medical circumstances resulting from even her name. Bivalent nature of the measure and the specific institute determines the minor to be admitted, because the child will be subjected to special medical treatment, adequate physical or mental condition, and process re-education through professionals in both fields of medicine and education.

As with hospitalization in a rehabilitation center, are analyzed in subsection any matters related to the conditions and time making this measure, revocation and waiter of the measure, with specificity determined physical or mental health the minor.

In the last section of this chapter analyses the controversial legal issues common to several educational measures, that revocation of supervised freedom, the admission in a rehabilitation center or hospital in a medical educational institution for committing an offense punishable by effects pardon punishment for the revocation of educational measures by the juvenile committing more criminal offenses in the way competition and the term is derived from the hospital for a minor penalty imposed concurrent offense.

In connection with revocation of supervised freedom, the admission in a rehabilitation center or hospital in a medical educational institution for committing an offense punishable by a Decision no reason 30/2007 pronounced by the High Court of Cassation and Justice on points of law on appeal, the sentences has been proposed another way to punish such offense plurality created by the court could give better efficiency to all applicable legal institutions in such a case.

In Chapter 5, are considered a minor punishments, starting from the premise that correction of minors can obtain not only educational but also through actions and enforcement of fines or prison sentences of less than those provided major law, the law expressly providing that the sentencing limits set by law for crimes committed by minors

are those prescribed by law for adults, but reduced by half, and that life imprisonment and additional penalties shall not apply to minors.

In light of the Penal Code in force, unlike the previous legislation, the offender was just an excuse minority attenuating minority status differentiations is a general question of punishment for minors there are specific provisions on the legal establishment and individualization of imprisonment and fine regulation in the context of minor criminal liability, resulting in the will of the legislature to punish the minor offense, criminal differentiated treatment applied to the same offender committing serious crimes in an attenuated sense, so that both the minimum and maximum for each offense committed by a minor is reduced by half, to differentiate criminal offender treatment and there is major on the application of the conditional suspension of the sentence and suspended sentence under supervision.

Imprisonment is the most serious penalties can be imposed on juvenile offenders, and after carrying out specific operations to have the limits of punishment in any particular case the minimum prison sentence could not be more than 5 years, whereas minors are not covered by life imprisonment, if committed by minors, an offense for which the law provides for such punishment, the juvenile will be subject to imprisonment of 5-20 years.

If it finds that amending the penalty cases, it will establish within results after application of the modifying effects of these causes. That is, even if the court should not set specific sentences within each specific application of each successive amending the penalty provisions will need to consider and determine the limits within which it can be penalty for each phase modifying a rule to be applied, because in this mode can be set between the end limits the penalty to be fixed, limited to the determination of which each of these cases has helped its effect modifier.

Are analyzed, then all cases of judicial individualization of imprisonment for juveniles, the presence of such cases, namely when there are extenuating circumstances, aggravating circumstances, competition between aggravating and mitigating circumstances, cumulative crimes, several interim, both plurality crime term and competition, contest plurality interim mitigating circumstances, several intermediate and aggravating circumstances, competition between aggravating circumstances, mitigating

circumstances and the plurality of intermediate competition between aggravating circumstances, mitigating circumstances and the plurality of intermediate-term plurality, aggravating circumstances and competition offenses, several interim mitigating circumstances and aggravating circumstances cumulative crimes, crime continued.

Also in this section is analyzed the establishment of imprisonment in cases of incitement not followed by appropriate enforcement and escape, and the rules of imprisonment, distinguished from punishment by execution of major offenders, the law providing for specifically that juveniles sentenced to prison serving a sentence separate from adult detainees in places of detention or special, giving them the opportunity to continue the compulsory general education and acquire vocational training according to their skills, with reference to specific provisions for no. 275/2006 minors contained in the law on execution of punishments.

The main penalty fine is assessed on the setting of the limits to minors, with reference to special cases and judicial individualization of the penalty if aggravating or mitigating circumstances, the competition between these cases and the replacement punishment of imprisonment with fine.

It then examined how the individualization of judicial enforcement of sentences imposed of juveniles, respectively conditional suspension of sentence and suspended sentence supervision by analyzing the conditions of application of these institutions, the probation period, dismissal, suspension, cancellation and execution of the sentence workplace.

In Chapter 6 are considered institutions of criminal law, with particular application in relation to the minority, that amnesty and pardon, prescription, lack of prior complaint, the complaint prior withdrawal and reconciliation.

In Chapter 7, the prospects for the legislation on sanctioning treatment of minors, are considered two new codes under development in our country, the Law and Law no. 301/2004, 286/2009, both laws to develop a new Criminal Code Act 2004 was repealed by Act of 2009, so trying to reform the criminal justice system in Romania.

It was considered that the need for a new Criminal Code is required by law no. 301/2004 shortcomings that have been raised by the doctrine following the publication no. 301/2004 Law, the drafting committee of the Criminal Code offenses view that

differentiation the murders and crimes, although scientifically correct was a badly governed, with problems that have not found the solution in the Code, such as for example with regard to qualification as attempted murder or murder offense.

He also appreciated that the present concepts of crime and crime have no legal significance for specialists nor for any opinions, their reintroduction could be a source of confusion. He also appreciated that requires replacing the normal treatment of sanctioning the practice of showing that rising the limits excessive punishment is not a viable solution to combat crime and that a state law, scope and intensity of criminal repression must remain within a limit determined primarily by reference to the importance of social value for those who break the injured first criminal law, which increase progressively for those who commit more crimes before being finally convicted and more so for those the state of relapse, reason for reducing the penalty limits provided for in the Special Criminal Code and the correlation with the general part, which will allow a proportional worsening of the system of enforcement provided for the plurality of offenses.

Significant changes are made by the new Criminal Code and the regulations concerning the minority, these regulations are one of the focal points of the reform proposed by the new Criminal Code, which differ from criminal law in force and the law by removing the system no. 301/2004 joint sanctioning of juveniles (through sanctions and educational measures) and to establish a system of measures of enforcement-only education, some custodial and other non-custodial.

It tends thus to waive application of sanctions for minors who are criminally responsible, the initiators of the new Penal Code inspired by the Organic Law regulating no. 5/2000 criminal liability of minors in Spain (as amended by Organic Law no. 8/2006), taking into account the rules of French law (Order of February, 2, 1945, with subsequent amendments), German (juvenile court law of 1953 as amended) and the Austrian law (Juvenile Justice Act 1988).

Unlike the current Penal Code, which states that to the juvenile criminal charge can take an educational measure or a penalty may be applied, the new Criminal Code provides for criminal liability as a result of taking minors only educational measures or deprivation (stage civic training, supervision, record the weekends and daily assistance),

or deprivation of liberty (hospitalization in a school and internment in a detention center), the rule established by the new law is that offenders against minors have committed a crime is taken as a non-custodial, custodial educational measures and could take only if the minor has committed an offense for which he was an educational measure has been executed or the execution of which began before committing who is on trial for the crime, and when the penalty provided by law for the offense is imprisonment for 7 years or more, or life imprisonment.

Persons on the crime are aged between 14 and 18 were only educational measures may be applied even if the process until a final decision on the minor reaches the age of 18 years, and if the date when the decision by decided to take action educational custodial minor reaches the age of 18 years, the court could order the educational measure to run a prison, depending on the possibilities of correcting the child, his age and other criteria individualization.

In this chapter have been analyzed from the perspective of the new Criminal Code, every educational measure in hand, the obligations of supervision, modification and termination of these obligations, extension or replacement of educational non-custodial measures and how to fix the plurality of crime, namely case series of offenses committed during minority, when committed two crimes, one during and one after increased minority and where there are several intermediate.

There have also been analyzed, the rules by which the criminal law to be applied more favorable both to final settlement of the case and after issuing a final decision, as the imminent entry into force of new Penal Code will call into question the application of criminal law more favorable situation is somewhat similar to the entry into force of decree no. 218/1977, Penal Code providing for the possibility of sanctions for minors only educational measures, while the law stands, minors is punishable by sanctions and educational measures.

The last chapter, for the analysis procedure in cases involving juvenile offenders, based on the premise that the criminal procedure law is substantive criminal law in action, which means that criminal law principles must be reflected and respected in criminal law.

In addition to general rules governing criminal proceedings in relation to the existence of special circumstances, the code of Criminal Procedure includes rules that are exceptions to the rules of common law, containing a systematic own, known as special procedures.

The special characteristics and peculiarities of juvenile crime, to crime among adults, resulted in substantive criminal law plan, a special penal system consists of rules and measures to prevent and combat this kind of crime, this system is characterized by a special responsibility and penalty system, the juvenile crime prevention, protection and care measures, the penalty depending on physiotherapy, rehabilitation and the idea of raising the child in the corrupt environment is through protection and assistance to juvenile delinquents, by placing, in the foreground in all measures applicable to minors and his salvation.

In special proceedings, a special place the procedure in cases involving juvenile offenders, which, besides the fact that establishes additional procedural safeguards, provide as thorough an examination of this kind of case, given the particular situation of the child and its development psychophysical.

The current regulation procedure in cases involving juvenile offenders is accomplished through the provisions of art. 480-493 Criminal Procedure Code, containing provisions relating to the prosecution and trial in the first instance, appeal and enforcement of penalties imposed on juveniles.

Criminal Procedure Code contains special provisions for juvenile offenders in relation to preventive measures (art. 160 E – 160 H Criminal Procedure Code), mandatory legal aid (art. 171, paragraph 2 Code of Criminal Procedure) and presentation material for prosecution (art. 481, paragraph 2 Code of Criminal Procedure), start and exercise civil action automatically when the injured part is a minor (art. 17 Criminal Procedure Code) supporting civil action by the prosecutor in the same situation (art. 18 Criminal Procedure Code), taking necessarily the precautionary measures to repair the damage when the injured is a minor (art. 163, paragraph 6, b, Code of Criminal Procedure), the wording complaint for referral to legal authorities when the injured person is a minor (art. 222, paragraph 6, Criminal Procedure Code), the period for the complaint prior to minors (art. 284, paragraph 2 Code of Criminal Procedure), declare the

appeal for minors (art., 362, paragraph 2 respectively art. 3852 Criminal Procedure Code), withdrawal of appeal or appeal (art. 369, respectively art. 3854 Criminal Procedure Code), the examination by the court, ex officio, a civil action for flagrant crime which was injured a minor (art. 476 Criminal Procedure Code, paragraph 2).

Also, special provisions has been kept separate from adults on the accused or the accused juvenile detention or remand prisoners (art. 142, Criminal Procedure Code), to take measures to ensure protection for minors if the minor who cares detained or taken into custody (art. 161, Criminal Procedure Code), the sanctioning of non-absolute nullity of laws on issuing the assessment report (art. 197, paragraph 2, Code of Criminal Procedure), the mandatory participation of the prosecutor in cases that are tried defendants (art. 315, Criminal Procedure Code), non-special procedure provided for flagrant crimes committed by minors (art. 479, paragraph 1, Criminal Procedure Code).

This legal framework is a transportation of the provisions of art. 49, paragraph 1 of the Constitution: "The children and young people enjoy a special protection and assistance in carrying out their duties." and a reflection of the requirements enshrined in various international instruments aimed at establishing a juvenile justice system consistent with the status of minors, to avoid negative consequences that might follow court proceedings against them.

Internally, the treatment of juvenile delinquency has been achieved through constant improvement of the criminal procedure law, criminal procedure code amendments by Law no.356/2006 and Government Emergency Ordinance no.60/2006 pursuing particular on improving the efficiency and enhance its action in accordance with the principles of judicial reform strategy.

These actions were preceded by the Law no. 304/2004 on judicial organization, which has provided the need to establish specialized courts and the specialized sections and panels for juvenile and family cases in addition to judges, courts and appeals courts, with jurisdiction over the offenses committed by juveniles or the minors.

Under new regulations, in addition to specialized courts for cases involving juveniles and family operated a flooring specialist has no legal personality and the offices attached to courts of appeal have the structure and a section for children and family.

Undoubtedly, the new provisions ensure an improvement in the institutional framework, appropriate European legal framework in terms of specialization of judges and investigating how this kind of case, but do not eliminate a series of controversies arising under the old rules and some problems continue receiving different solutions in doctrine, as in the practice of justice.

In analyzing the specific causes of procedural rules with minor offenders, was treated separately during the prosecution procedure and trial stage, with reference to any special regulations in this area, namely: those called to the prosecution and trial of juveniles presentation of the prosecution material, the assessment report and legal assistance in both phases of the process, arrest and detention, and specifically only for the trial phase, the participation of members of the court and prosecutor in cases involving minors, the minor's presence as trial, trial conduct, the court there with the major defendants, checking arrest during the trial and the appeals court.

In the last section of this chapter has examined how decisions are put into effect on juvenile offenders, that the enforcement of educational measures and removal of these measures, and delay or interruption of the execution of the educational hospitalization in a rehabilitation center.

Also, controversial legal issues were analyzed in relation to performance common to many educational measures, enforcement immediately that the reprimand, supervised freedom and hospitalization in a rehabilitation center and the effect of appeal and appeal, and the relaxed execution of educational measures and their enforcement limitation.

Finally, the analysis of all institutions specific cases involving minors, have been highlighted changes that will occur with the entry into force of Law no. 13572010 , the new Criminal Procedure Code in separate subsections each of the institutions examined.

Keywords : minors, minority, criminal sanctions applicable to minors, educational measures, reprimand, supervised freedom, internment in an reeducation center, internment into an education medical center, penalties, prison, fine, infraction, concurrence of infractions, attenuating circumstances, aggravating circumstances, intermediate plurality, new Penal Code, new Penal Procedure Code, execution of education measures, the procedure in cases involving juvenile delinquents.