



## Criminal Liability of A Juvenile Offender

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**Abstract:** The extent of crime among minors, especially the criminal offenses they commit through the use of aggressive forms, has led to the correction, education and, last but not least, the application of coercive measures in relation to them, in order to stall the criminal phenomenon among the young generations. Criminal liability, an inevitable consequence of the violation of the rules of law, includes all provisions regarding the enforcement of Criminal Code. In the process of finding and committing criminal liability in the case of the minor offender, however, there are a number of peculiarities, which directly influence both the establishment of the criminal capacity and the completion of the sanctioning mode, appearances that differentiate the type of attitude to be applied to children who commit crimes in correlation with adults. Thus, the object of the paper is to establish the differences between the provisions of the criminal legislation of Romania and the Republic of Moldova, regarding the criminal liability of the minor in order to ensure a perfect normative framework. The inherent purpose of this study is to highlight the particularities of the criminal liability of the minor by analyzing the normative acts, identifying the methods and means to be applied to the juvenile offenders, as well as the submission of the assumptions of the Ferenda law.

**Keywords:** Crime; juvenile; criminal liability; coercive measures

### 1. Introduction

The realization of the law order usually takes place, as is found in the literature, by compliance or fear of punishment. One of the most current and important problems facing our society today is the search for ways to reduce the rise in crime among young people. The need to solve these situations as quickly as possible is conditioned not only by the fact that both in Romania and in the Republic of

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Moldova a complicated criminogenic situation is preserved, but also by the fact that among organized crime more and more juvenile people are attracted, criminal groups created by juvenile people commit serious crimes, and their numbers are constantly increasing. Crime is getting younger. Such criminalization of youth deprives society of the prospect of stable development in the future.

## **2. Criminal Liability of the Juvenile People According to the Romanian Legislation**

Juvenile age, is a cause of incapacity up to the age of 8, as is madness, coercion, etc. sometimes, however, age does not have the effect of defending from punishment, but only diminishes punishment; in this case, the juvenile age is a general mitigating excuse. Therefore, the idea of the legislator is that the juvenile person must always be punished correctionally, not criminally; even if he commits the greatest crime, because of the tenderness of age is the hope of correction, and therefore the juvenile person is punished only with correctional imprisonment.

Doctrinally it is considered that once crimes committed by juvenile people are always punished correctionally, they can only be crimes and therefore all the rules of crimes are applicable to them (Tanoviceanu, 1923).

In another well-known work examined from the perspective of this scientific research, the author indicates, the life of man can go through, in its decline, four stages:

1. Childhood;
2. adolescence;
3. maturity and
4. old age.

Each of these stages corresponds to a particular psycho-physical state, and therefore, the author notes, criminal law, which must be based on realities, must take into account in its discipline all these stages (Dongoroz, 1939).

In this course, it is mentioned that the mature man (the adult) is always presumed to have criminal capacity. In contrast to this age group, childhood is a period of formation, physical, physiological and mental development, in which the capacity to understand and the capacity to manifest his will according to the requirements of

the criminal law is missing.

According to Article 27 of the Criminal Code of Romania (the juvenile age of the perpetrator), it is considered that the act stipulated by the criminal law committed by a juvenile person is not imputable, which at the time of its Commission did not meet the legal conditions for criminal liability.

Imputability, must not be confused with the one of responsibility or guilt; imputability is a condition of guilt, implying the ability to understand and will, and guilt is a condition of criminal responsibility understood as the obligation of the person to be responsible for the consequences of his acts (Păvăleanu, 2012).

The Constitution of Romania, the fundamental law of the country, provides, in Article 16, that citizens are equal before the law and the public authorities, without privileges and without discrimination and that no one is above the law.

Free access to justice according to Article 21: (1) any person may apply to justice for the defense of his or her rights, freedoms and legitimate interests. (2) No law may restrict the exercise of this right. (3) the parties have the right to a fair trial and to settle cases within a reasonable time. The protection of children and young people is provided in Article 49 of the Constitution, where it is stipulated that they enjoy a special regime of protection and assistance in the realization of their rights.

In the Criminal Code of Romania, a separate compartment is dedicated to a single cause of non-imputability – the juvenile age (Title V – Art. 113 – 134) which is described in terms of:

1. the regime of criminal liability of the juvenile person,
2. the regime of non-custodial educational measures;
3. the regime of educational measures involving deprivation of liberty;
4. common provisions.

According to Article 113 of the new Criminal Code of Romania, the legislator classified the juvenile age in three distinct periods:

1. until the age of 14, the absolute presumption of lack of criminal liability applies, the juvenile person being considered as totally indiscriminate and incapable of understanding the seriousness of an act by which he or she violated the law, while absolutely excluding the possibility for him or her to know the provisions of the criminal law;

2. with regard to the juvenile person who committed the offense between the ages of 14 and 16, the relative presumption of lack of criminal liability applies, this presumption being based on a psychological factor, namely the presence or absence of discernment at the time of the offense.

3. in respect of the juvenile person who has committed an act stipulated by the criminal law over the age of 16, he shall be criminally liable. But even if this person is relatively presumed to have discernment and has been able to realize the seriousness of the act he has committed and the socially dangerous consequences of it, yet the legislator considers that this capacity is not fully formed, which justifies the different sanctioning regime of criminal offenses committed by juvenile people.

These conditions set out in Article 113 of the Criminal Code of Romania establish an absolute presumption of criminal liability until the age of 14 (i.e. the period of absolute non-imputability) and a relative presumption between 14 and 16 years (which, in our view, the first two elements of the imputability period) (Păvăleanu, 2012).

This condition is not difficult in the case of acts that take the simple form of offense, such as those of theft, murder, forgery, etc. If the juvenile person has committed several acts, some of which before fulfilling the legal conditions and others - after, for the first acts will be invoked the cause of unimputability. If the juvenile person has committed, while not being criminally liable, part of the successive acts of a continuous or continued offense or of a crime usually repeated during the period in which he became liable under the law, he will only be held liable for criminal activity committed recently.

The choice of the educational measure to be taken against the juvenile person is made under certain conditions and according to fixed criteria.

According to Article 114 paragraph (1) of the Criminal Code of Romania, in relation to the juvenile person who, at the time of the offense, was aged between 14 and 18 years, an educational measure is taken that is not deprived of liberty, and in accordance with paragraph 2 of the same article in respect of the juvenile person referred to in paragraph 1, an educational measure involving deprivation of liberty may be taken in the following cases: if he has committed an offense for which he has been subject to an educational measure that has been executed or whose execution has begun before the commission of the offense for which he is being tried; where the penalty provided by law for the offense committed is

imprisonment of 7 years or more or life imprisonment.

In the provisions of Article 115, the general legal framework of educational measures that may be taken against criminal juvenile people is regulated.

Thus, **non-custodial educational measures are:**

1. civic training;
2. supervision;
3. weekend registration;
4. daily assistance.

**educational measures involving deprivation of liberty are:**

1. confinement in an educational center;
2. confinement in a detention center.

During the execution of educational measures not involving deprivation of liberty, the court may impose on the juvenile person one or more of the following obligations:

1. to take classes in school or a vocational training;
2. not to cross the territorial limit, without the approval of the Probation Service`s, the territorial limit established by the court;
3. not to be in certain places or at certain sporting, cultural or other public gatherings, established by the court;
4. not to approach or communicate with the victim or his family members, the participants in the offense or other persons established by the court;
5. to appear at the probation service on the dates fixed by it;
6. to undergo control measures, treatment or care measures.

The educational measure of internment in an educational center consists in the admission of the juvenile to an institution specialized in the recovery of juvenile, where he will follow a program of school training and professional training according to his skills, as well as social reintegration programs.

The educational measure of admission to a detention center is regulated by Article 125 of the Criminal Code of Romania and consists in the internment of the juvenile in an institution specialized in the recovery of juvenile person, with guard and

supervision regime, where he will follow intensive programs of social reintegration, as well as school training programs and professional training according to his skills.

The detention centre is the specialized institution that consists in the social recovery of the hospitalized persons, with guard and supervision regime, in which they intensively follow school training and professional training programs, according to their skills, as well as other activities and programs aimed at social reintegration.

In each detention centre, the social recovery activity of the hospitalized persons is organized and carried out on the basis of an educational project, Developed under the conditions of the Implementing Regulation of Law no. 254/2013 on the execution of punishments and custodial measures ordered by the judicial bodies during the criminal trial.

Admission is ordered for a period between 2 and 5 years, unless the penalty provided by law for the offense committed is imprisonment of 20 years or more or life imprisonment, When admission is taken for a period between 5 and 15 years.

The duration of the measure is in line with international regulations and practices (for example, the Congress resolution of the International Criminal Law Association adopted in Beijing in 2004 recommends that States do not provide for custodial sanctions for juvenile exceeding 15 years).

The regimes for the execution of the educational measures of admission to a detention centre are based on progressive and regressive systems, with the interned persons passing from a regime. The regimes for the execution of the educational measure of admission to a detention centre are the closed regime and the open regime.

**The educational measure of the civic training stage.** In accordance with the provisions of the Romanian criminal law, this measure consists in the obligation of the juvenile to participate in a program with a duration of no more than 4 months, To help them understand the legal and social consequences to which they are exposed in the case of committing crimes and to make them accountable for their future behavior.

The law decides only the maximum limit as the time for which the measure can be ordered, not a minimum duration, but the court can fix any period of time for civic training from one day to 4 months. The objective of the educational measure of the

civic training stage is to help the juvenile to be aware of the legal and social consequences to which he/she is exposed in the case of crimes and to make him/her responsible for his/her behavior.

Civic training courses are developed on the basis of framework programs approved through a joint order of the Minister of Justice and of the Minister of Education, Research, Youth and Sports, which are published in the Official Gazette of Romania. The activities of the juvenile are organized and closely supervised by the probation service, which ensures the participation of the juvenile in civic training. It is necessary that the organization of these activities should take place outside the school or professional program of the juvenile, in order not to disturb the child's intellectual and cultural development specific to his or her age.

The measure has a post-criminal preventive character, as it determines the awareness of the illegal actions committed by the juvenile and ensures the correction of his/her antisocial behavior after the crime has been committed.

According to Article 118 of the Criminal Code of Romania, the educational measure of supervision consists of controlling and guiding the juvenile throughout his daily program, for a time period between 2 and 6 months, under the supervision of the Probation Service, in order to ensure participation in school or vocational training courses and to prevent them from engaging in certain activities or from contacting certain persons that might affect their reformation process.

Supervision and guidance of the juvenile during the entire period of execution of the educational measure of supervision is carried out by the parents of the juvenile offender, guardian or adopter. If they cannot ensure supervision under satisfactory conditions, the court orders the supervision of the juvenile offender to be entrusted to a trusted person, usually to a close relative of the juvenile, at his or her request.

**Educational measure of the record.** According to Article 119 of the Criminal Code of Romania on weekends, the juvenile has the obligation not to leave the house on Saturdays and Sundays, for a period of between 4 and 12 weeks, unless, during this period, it is obliged to participate in certain programs or to carry out certain activities imposed by the court. Supervision shall be carried out under the coordination of the Probation Service.

This educational measure could be judiciously taken by a court, where, in the circumstances of the offense, the court finds that the way in which the juvenile spends his or her free time is such as to facilitate his or her access to places or entourage which might influence him or her in the sense of continuing his or her

antisocial behavior, and if he were to be banned from leaving the house on Saturdays and Sundays, his behavior would improve, by engaging in domestic activities, as well as adult supervision of the way in which the juvenile prepares for school courses, as well as of the juvenile's entourage, given that the persons with whom the juvenile comes in contact are obliged to visit him at home, the child cannot leave the home (Marin, 2017).

The probation officer shall be responsible for the enforcement of the measure.

**The educational measure of daily assistance** consists in the obligation of the juvenile to observe a program established by the probation service, which contains the schedule and conditions for carrying out the activities, as well as the prohibitions imposed on the juvenile people. The duration of application of the measure is between 3 and 6 months and the surveillance is carried out under the coordination of the Probation Service.

The supervision of the enforcement of the obligations imposed by the court is carried out under the coordination of the probation service. During the execution of the non-custodial educational measure, the probation service has the obligation to refer the matter to the court, if:

1. if there have been reasons justifying either the modification of the obligations imposed by the court or the termination of the performance of some of them;
2. the supervised person does not comply with the conditions for the execution of the educational measure or does not perform, under the established conditions, the obligations incumbent on him.

If, during the course of the surveillance, justified reasons have arisen

1. imposing new obligations,
2. increasing the conditions for the execution of existing ones,
3. reducing the conditions for execution of existing ones,

the court orders that the obligations be amended accordingly to ensure that the person under supervision has a better chance of reformation. The court orders the termination of the performance of some of the obligations it has imposed, when it considers that their maintenance is no longer necessary.

In the case of daily assistance, which is the most severe of non-custodial educational measures, the probation service is involved in a more prominent manner than other educational measures, with the obligation to impose both the



schedule of the juvenile's activities and the conditions for its conduct, monitoring the child's schedule and significantly restricting the possibility of the juvenile and his or her parents setting the daily schedule.

Any program desired by the juvenile's parents will have to be proposed to the probation service, being integrated into the schedule of the juvenile offender only if agreed by the probation service, to the extent that the latter considers that it is compatible with the purpose of daily assistance and that it could help to correct the behavior of the juvenile in accordance with his or her best interests (Marin, 2017).

### **3. Criminal Liability of the Juvenile According to the Legislation of the Republic of Moldova**

Being a vulnerable person, the child obviously needs special protection, therefore their protection must intervene promptly and without delay.

Doctrinally, it is recorded that the present Republic of Moldova is faced with the problem of combating juvenile delinquency, which contributes to the revision of the methods of application of the criminal penalty and of the methods of coercion with an educational character, which, certainly, preventively, it requires a thorough study and then removing the factors that predispose the juvenile offender to committing crimes. The age of criminal liability varies from one state to another, notes, for example, criminal liability can intervene from the age of 7, 8, 9 or 10.

As is claimed, the human being, during his existence, goes through four stages with the aspect of psycho-physical evolution: childhood, adolescence, maturity, old age. In this regard, it is mentioned that only the focus on the age criterion determines the classification of human personality into the category of juvenile people and the category of majors. Age of 14 to 18 is considered the most critical, because at this point the full formation of self-awareness takes place, namely the homogenization of behavioral habits and the foundation of moral values become the basic principles of life.

Thus, according to Art. 21 par. (1) C.pen. Of the Republic of Moldova, responsible natural persons who, at the time of committing the offense, have reached the age of 16 are liable to criminal liability Consistent with Article 21 paragraph (2) C.pen. Of the Republic of Moldova indicates that individuals aged 14 to 16 are liable to criminal liability only for committing certain crimes (Opalco, 2012).

In the Republic of Moldova, children who perform crimes are subject to the

regulations stipulated in the Criminal Code and the Criminal procedure Code. The Criminal Code of the Republic of Moldova of 2002, provides the age of criminal liability of the juvenile offender, identifies the facts qualified as criminal offenses and provides the rules and instructions for the application of the criminal penalty in respect of children who have committed crimes. The Code of Criminal procedure of the Republic of Moldova States the competence and structure of the judiciary, the parties and participants in the criminal proceedings, detention, prosecution and preventive detention, the trial, the execution of the sentence and alternatives to confinement. The legislature established special rules of procedure applicable to suspected, accused, victims and witnesses, as well as to children who are criminally liable.

These procedures are regulated by special provisions of the Code of Criminal procedure (Title III, Chapter I, Articles 474 to 487).

Art. 6, item 47) Code of Criminal procedure establishes the notion of a juvenile person, as a person who has not reached the age of 18 years.

At the same time, when assessing the possibility of criminal liability of a juvenile, the provisions of the Criminal Code shall be taken into account as it establishes that responsible natural persons who, at the time of committing the offense, have reached the age of 16 are liable to criminal liability.

As we can see, the Code of Criminal procedure sets only the age limits within which the person considers himself a juvenile, but not the minimum age limit of the subject of the offense.

Despite legislative changes, the management and examination of cases involving children remains problematic for the time being. Along with the lack of specialized courts, the random distribution of cases in the procedure of judges makes it impossible to set up specialized panels of courts. Thus, cases involving children are managed according to the general procedure, with the application of special conditions provided by the criminal law: mandatory state-guaranteed legal assistance, the participation of the legal representative and of the teacher/psychologist in the child's hearing, etc.

The hearing of the suspect, accused person, the juvenile defendant is carried out under the general conditions provided by the Criminal procedure Code of the Republic of Moldova (Article 479 CPP) and can not last more than 2 hours without interruption, and in total can not exceed 4 hours a day, and the assistance of the defender is mandatory.

In the event of the need for preventive measures to be applied in respect of the juvenile, in each case the possibility of his/her transmission under supervision shall be discussed.

The confinement of the juvenile as well as his or her preventive arrest may be applied only in exceptional cases where serious crimes involving the application of violence, particularly serious or exceptionally serious, have been committed. The prosecutor and his parents or other legal representatives shall be immediately notified of the detention or preventive arrest of the juvenile, which shall be recorded in the minutes of detention (Article 477 CPP of the Republic of Moldova). The period of detention of the juvenile may not exceed 24 hours. The confined juvenile, until the expiry of 24 hours, must be brought as soon as possible from the moment of confinement before the investigating judge, in order to examine the question of his arrest or release (Article 166 CPP of the Republic of Moldova).

A number of safeguards are also contained in the Criminal Code of the Republic of Moldova (Articles 54, 89, 93), which provides for the release from criminal liability of the juvenile who first committed a juvenile offense that is light or less serious, if it is established that the purposes of the punishment can be achieved by the admission of juvenile offenders to a special educational and re-education institution or to a curative and re-education institution.

Thus, juvenile people under the age of 14 cannot be held criminally liable, considering that they do not have the full capacity to be aware of the seriousness of the crime committed. For this reason, children in this category are considered to be children in difficulty and the measures taken in their case should be exclusively within the competence of social assistance.

If the juvenile is of age prescribed by law, but there are doubts as to his or her ability to answer criminally, that is, the biological and psychological development of the juvenile does not correspond to his or her biological age or, possibly, his or her apparent behavior attests to mental retardation, or certain pathological conditions, or behavioral disorders, the court, At the request of the parties, on the basis of Art. 143, 144, 475 para.(2) CPP of the Republic of Moldova, it is entitled to order the conduct of complex psychological, psychiatric or psychological-psychiatric expertise in order to clarify the issue regarding his mental state and the ability to correctly understand the circumstances that are important for the criminal case. At the same time, the experts will be asked the question about the influence of the mental state of the juvenile.

According to paragraph 1, Article 21 CP of the Republic of Moldova, responsible natural persons are liable to criminal liability, who, at the time of committing the offense, have reached the age of 16 years. However, the following paragraph stipulates that individuals aged between 14 and 16 years are liable to criminal liability only for the Commission of certain crimes.

A juvenile who has committed an offense, while not being of age for criminal liability (14 or 16 years), part of the successive acts which are part of a continuous or prolonged offense and which he has continued or extended during the period in which he became the subject of the offense, According to Article 21 of the Criminal Code, he will be held criminally liable only for his activity, after reaching the age set by Article 21 of the RM.

Criminal cases concerning juvenile offenders, according to the decision of the plenum of the Supreme Court of Justice of the Republic of Moldova no. 39 of 22.11.2004, on judicial practice in criminal cases concerning juvenile people are judged by a panel of judges with rich experience, specialized in this field and appointed to adjudicate such cases by order of the president of the court. It is also mentioned that it is preferable for these panels to also judge cases regarding offenses committed by juvenile people.

Although there are no specialized judges in the Republic of Moldova to examine exclusively the criminal/contravention cases in which the juvenile people are the subjects of the crime, special conditions are created to guarantee the respect of their fundamental rights and freedoms and the special procedures that apply to them.

The criminal law of the Republic of Moldova stipulates that, in case of a crime, the actions of juvenile who bear criminal responsibility shall be examined in the light of the criminal legislation. Juvenile people who have committed crimes may be subject to educational measures and punishments. The latter shall apply only if it is considered that educational measures are not sufficient to correct the deviant behavior of the offender. The court determines the penalties to be applied depending on the age and severity of the offense, at which, for the individualization of the penalty, a number of factors must be taken into account: the degree of social danger of the act, the physical state and the intellectual development of the offender, if he has committed other acts, his family situation and any other data concerning the offender and his possibilities of correction.

Regarding the accused and the juvenile defendants, the term of 8 months of confinement in a state of preventive arrest shall apply, which shall not be exceeded.

The prosecutor's request to extend the term of preventive arrest shall be approved in writing by:

1. Superior hierarchical prosecutor – when the extension of the preventive arrest is requested for a term of more than 3 months and, respectively, for a term of more than 2 months, in the case of juvenile offenders;
2. The General Attorney or by a deputy based on the order of the Prosecutor General – if the extension of the preventive arrest is requested for a period exceeding 6 months and, respectively, for a period of more than 4 months, in the case of juvenile offenders.

Juvenile who have not reached the age of 14 years may not be subjected to forced entry.

Legal expenses in the case of juvenile people convicts shall be borne by the parents or guardians of the convicted juvenile if it is found that they have neglected their obligations to the juvenile.

The preventive arrest of the juvenile offender during the criminal investigation phase is recommended to be avoided. In accordance with the provisions of Article 477 CPP of the Republic of Moldova, the juvenile offender may be detained in custody only in exceptional cases when serious crimes have been committed with the application of violence, particularly serious or exceptionally serious. In such cases, the maximum duration of preventive arrest of the accused may not exceed 8 months. The arrested offender must be given a rapid trial, in strict compliance with the principles and norms of the criminal process. They are separated from adults in detention, and those who have already been convicted must be separated from those who are under prosecution and tried for the first time to protect the juvenile offender from negative influence.

Alternative measures to pre-trial confinement are provisional release under judicial control and provisional release on bail.

Where a preventive measure is required in respect of juvenile, the admissibility of its transmission under supervision shall first be examined.

The transmission under supervision of the offender implies the obligation in writing by one of the parents, guardian, curator or other trustworthy person, as well as by the head of the special educational institution where the offender learns, to ensure his/her presentation, when he will be summoned to the criminal investigation body or to the court, as well as to counter actions related to:

1. hiding from the criminal investigation body or the court;
2. preventing the establishment of truth in criminal proceedings;
3. commit another offense;
4. ensure the execution of the sentence.

In the case of applying a preventive measure other than the supervised transmission of the child, the prosecutor must state in the respective ordinance the impossibility of its application.

The supervised transmission of the child to one of the parents, a guardian, curator or another trustworthy person requires:

1. The request from the guardianship authority information about the persons who will ensure the supervision of the child;
2. The explanation from persons who can provide supervision of the child about the importance, timeliness and necessity of applying this measure to the suspected or accused person;
3. A written statement from the trusted person who assumes the obligation to supervise the child.

If preventive action is taken in respect of the child, the prosecutor adopts an order and the court concludes, for its application. the transmission under supervision of the child is carried out at the written request of the persons to whom the child is entrusted under supervision and at the same time the substance of the case is brought to the attention, the obligations they have, which is recorded in a report.

The above measure shall apply until the criminal case is finally settled. If during the criminal trial the accused (defendant) reaches the age of 18 years, the respective preventive measure can be continued, unless grounds for revocation or replacement of preventive measures appear (Lupu, 2016).

As a rule, juvenile offenders are subject to educational restraint measures, which have the ultimate aim of reeducating the individual. Thus, according to the provisions of Article 54 of the Criminal Code of the Republic of Moldova, which regulates the release of juvenile from criminal liability, the legislator States that: A person under the age of 18 who first committed a mild or less serious offense may be released from criminal liability in accordance with the provisions of the criminal procedure if it has been found that its correction is possible without being subject to criminal liability (Șavga, 2020).

Persons released from criminal liability, according to the criminal legislation of the Republic of Moldova, are subject to enforcement measures with an educational character.

Therefore, the enforcement measures of an educational nature are: warning, custody of the offender for supervision of parents, persons who replace them or specialized state bodies, obligation of the offender to repair the damage caused, obligation of the offender to follow a psychological rehabilitation course, obligation of the offender to follow the compulsory education course, obligation of the offender to participate in a probationary program.

At the same time, several measures of coercion of an educational nature may be applied to the offender. The enforcement measures with an educational character are applied to juvenile until they reach the age of 18, depending on the character and degree of harm committed.

The warning shall be made in written form, shall be signed for receipt, within 5 days, at the premises of the probation body in whose territorial area the residence of the offender is located. Subsequently, the task of the probation body is to inform about the execution of the judgment of the court and about the execution of the prosecutor's order.

If the child shows a delay in mental development, the warning is brought to his attention in the presence of a psychologist.

The custody of the juvenile offender for supervision of parents, persons who replace them or specialized state bodies consists in the assignment of parents, persons who replace them or specialized state bodies with certain obligations, regarding the education of the juvenile and the supervision of his behavior. In the case of the custody of the offender for supervision of the above-named persons, the court must establish that the persons concerned will have a positive influence on the juvenile offender.

Acting as a means of re-education, the measure aims to correct the offender by means of behavioral assistance, designed as education that can occur without the application of deprivation of liberty. For the purpose of supervision, the sanction does not delimit freedom or constrain freedom, and unlike other measures, it is not a deprivation of liberty. The essence of the measure is to impose behavioral control with the possibility of being revoked. For these reasons, it also possesses a revocable character which is manifested by the possibility of further application of the penalty.

From the very name of this measure is designated the circle of subjects to whom the obligation to supervise:

1. Parents – according to the family Code of the Republic of Moldova are those persons who have equal rights and obligations toward the child until the age of 18 or the capacity to exercise. Having the right and obligation to educate in relation to their own convictions, parents are responsible for the physical, intellectual and moral development of the individual.
2. People who replace parents - most often, in most cases, parents are replaced by grandparents or relatives of an advanced age, who can intervene with a limited spectrum of educational and organizational skills. So how the supervision will manifest in terms of quality and competence remains at the discretion of the judge
3. Special state bodies. In carrying out this measure, the court is responsible for elevating the persons previously specified for supervision, communicating the immediate obligations, the manner in which they must be executed, the purpose and the final result. At the same time, the judge specifies the actions to be applied in case of inefficiency of supervision that can be externalized by the negative behavior of the offender. The effectiveness of the custody of the offender for supervision of parents, persons who replace him or special state bodies as an educational constraint measure (Opalco, 2012).

**Forcing the juvenile offender to repair the damage caused.** When applying this measure, the material condition of the juvenile offender shall be taken into account.

**Forcing the juvenile offender to take a course in psychological rehabilitation.** The term “rehabilitation” can be viewed in two ways: biological and psychological. If we refer to rehabilitation we can list various types: Physical, social, socio-professional, neurological, psychological, psychiatric, psychosocial, medical. The Encyclopedia defines rehabilitation in medicine as a set of medical, pedagogical, professional and legal measures aimed at restoring (or compensating) the functions of the body and the working capacities of the sick or the invalid.

It is interesting to consider that the legislator did not foresee the duration of the course. We consider the normative provision being laconic, because psychological rehabilitation involves sessions with a psychologist and in this case it was necessary to stipulate a time period, or a term, for example “until the rehabilitation is established”.



**Obliging the juvenile offender to attend the compulsory education course.** The measure was introduced by Law no.123 of 02.06.2016, it must be read in conjunction with the prescriptions of the Education Code which, according to Article 13, establishes that “the obligation to attend compulsory education ceases at the age of 18 years”, the responsibility for compulsory schooling of children up to 16 years of age rests with parents or other legal representatives and local public administration authorities of first and second levels.

**Forcing the juvenile offender to participate in a probationary program**

The program is intended for juvenile offenders with deviant behavior, who have been released from criminal liability / punishment, being applied one of the coercive measures with an educational character. The program is divided into modules: Civic moral education and vocational training. Both areas are detailed on several thematic units that deepen aspects such as personal development, moral reasoning, Community involvement, vocational identity, career plan. The duration of the program is 6 months.

The application of probation programs as an alternative to confinement represents a real opportunity to ensure the re-education and re-socialization of children who have committed less serious criminal offenses, excluding their interaction with the criminal justice system.

The national probation Inspectorate implemented 11 probation programs during 2021, at the level of the Republic of Moldova, by categories of convicts, based on their needs for reintegration and prevention of the risk of relapse:

1. The drug abuse reduction program – 4 juvenile offenders.
2. Probationary program of reducing aggressiveness – 70 juvenile offenders.
3. Program for reducing pre-delinquency and criminal behavior of children and adolescents at risk – 4 juvenile offenders.
4. Individual counseling program “one at one” – 10 juvenile offenders.
5. The probation Program for CV – 25 juvenile offenders .

Thus, 113 juvenile offenders participated in the programs mentioned above.

Also, in accordance with the Criminal Code of the Republic of Moldova, juvenile offenders can be criminally liable by applying the following punishments:

Unpaid Community service (Article 67 of the Criminal Code of the Republic of

Moldova) – which consists in involving the juvenile, outside the time of the basic or study service, at work which is established by the local public administration authorities. Unpaid Community service cannot be applied to persons who have not reached the age of 16.

The fine (Article 64 of the Criminal Code of the Republic of Moldova) is a financial/monetary penalty that can be applied to juvenile offenders by the court. Therefore, the fine is a limitation of the property rights of the juvenile offender convict, which is manifested in the reduction of his or her patrimony. The fine, however, remains of limited applicability, due to the limited possibilities for persons under the age of 18 to be employed, to have a satisfactory material situation, to have another independent source of income.

Imprisonment is the only custodial sentence that can be imposed on juvenile offenders.

Prison consists of the deprivation of liberty of the person guilty of committing a crime by isolating him/her imposed by the normal living environment and placing him/her, based on the judgment of the court, for a certain term in a penitentiary. When establishing the prison sentence for the person who, at the time of the offense, has not reached the age of 18 years, the term of imprisonment shall be established from the maximum of the penalty, provided by the criminal law for the committed offense, reduced by half.

According to the data presented by the national Bureau of Statistics of the Republic of Moldova, for 2020, compared to previous years there is a decrease in the criminal penalties applied against juvenile offenders.

#### **4. Conclusion**

The issue of crime among juvenile offenders is of particular importance, being determined by the alarming frequency of juvenile crimes and then by the role that the young generation should play in the development of society. It is therefore necessary for the courts examining cases to have qualified staff in this area and also to systematically study and generalize the judicial practice in cases concerning juvenile offenders in order to achieve greater efficiency and quality of justice in those processes. Last but not least, it is necessary to insist on the re-education of juvenile offenders and their reintegration into society, thus also fulfilling the preventive role of legal regulations. In the Republic of Moldova, there is already a

considerable decrease in the crime with respect to offenses committed while underage.

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