

THEORETICAL AND PRACTICAL ASPECTS REGARDING THE RIGHTS AND OBLIGATIONS OF THE MINOR DEFENDANT

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ABSTRACT: *This article is important because the procedure for prosecuting juvenile delinquency is special. The criminal act committed by a minor, in our legislation, presents a regime of different sanctions, which consist of educational measures depriving of liberty and educational measures not depriving of liberty. The evaluation report is mandatory and necessary, which has a role of recommendation and guidance, providing the judge with information on the person of the minor defendant, his conduct and behavior and the possibility of social reintegration in my opinion i believe that it can influence the judge's decisions. European states have sought to introduce in their legislation, prerogatives that emphasize the creation of courts specializing in juvenile delinquency and the provision of legal aid free of charge.*

KEY WORDS: *the rights and obligations, minor, defendant, sanctions, juvenile delinquency.*

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1. PRELIMINARY CONSIDERATIONS

The term "minor" in criminal law and criminal procedure, its mean, according to Article 1 of the United Nations Convention on the Rights of the Child, that he is "a person up to the age of 18". And yet, there is a difference between the term juvenile and juvenile delinquency. In terms of their definition, the minor is "a child or young person who, in relation to the legal system under consideration, maybe liable for a crime in ways other than those applied to an adult", and the juvenile delinquent "is a child or a young man accused or guilty of a felony."

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The provisions of art. 504 C.p.p. summarizes the general rule according to which the prosecution and trial of crimes committed by minors, as well as the enforcement of judgments concerning them are made according to the usual procedure, with the additions and derogations provided in this chapter and in section 8 of chap. I of Title V of the General Part.

However, because the active subject of the crime is a minor, special rules on criminal prosecution will apply.

Through the provisions of art. 506 para. (2) C.p regarding the evaluation report of the minor, reference is made to the fact that "in cases with juvenile defendants, the court has the obligation to order the performance of the evaluation report by the probation service attached to the court in whose district the minor has his residence. , according to the law. In the situation where the performance of the evaluation report was requested during the criminal investigation, according to the provisions of par. (1), the order of the report by the court is optional."

Over time, it has been shown that the preparation of the evaluation report is mandatory in both situations, both in the criminal investigation phase and in the trial phase.

The precise role of the juvenile assessment report is to provide certain information to both the prosecuting authority and the court regarding the juvenile and the possibility of reinstating him, which would mean that it is necessary to prepare the report for each situation, both for the criminal investigation phase as well as for the trial phase.

Thus, the judge may order to make a new report, although it was also prepared during the criminal investigation phase, the provisions of art. 116 of the Penal Code specifies: (1) In order to carry out the evaluation of the minor, according to the criteria provided in art. 74, the court will request the probation service to draw up a report which will also include reasoned proposals regarding the nature and duration of the social reintegration programs that the minor should follow, as well as other obligations that may be imposed on him by the court; (2) The evaluation report on the observance of the conditions for the execution of the educational measure or of the imposed obligations is drawn up by the probation service in all cases where the court decides on the educational measure or on the modification or termination of the imposed obligations, except for the situation provided in art. 126, when it will be drawn up by the educational center or detention center.

The analysis of the legal norms that regulate the limits of criminal liability of minors shows that age and discernment are the criteria for distinguishing between juveniles who are criminally liable and those who are not criminally liable, if they have committed acts provided by criminal law.

Minors who are not criminally liable, but commit acts provided by the criminal law, fall under the provisions of Law no. 272/2004 on the protection and promotion of children's rights, republished in the Official Gazette of Romania, Part I, no. 159 of March 5, 2014, which regulates the protection and promotion of children's rights. Chapter V, entitled "Protection of the child who has committed a criminal offense and is not criminally liable", sets out the measures that may be taken by the child protection commission, namely placement and specialized supervision.

With regard to the special procedure for minors, the new Code of Criminal Procedure, in Chapter III of Title IV of the Special Part, reproduced much of the provisions of the 1968 Code of Criminal Procedure, but the special procedure texts need to be corroborated and supplemented with those governing the institutions of the general part, as well as those regarding the criminal investigation and the trial of the special part. According to art. 504 of the Code of Criminal Procedure, the prosecution and trial of crimes committed by minors, as well as the enforcement of judgments concerning them are done according to the usual procedure, with the additions and derogations provided in this chapter and in section 8 of chap. I of Title V of the General Part.

2. THE RIGHTS AND OBLIGATIONS OF THE MINOR DEFENDANT

The general provisions on procedural rights and obligations will apply to the minor defendant. We will briefly review the legislative provisions in force regarding this situation.

According to art. 83 C.p. during the criminal proceedings, the defendant has many rights. The provisions of art. 90 lit. a C.p.p emphasizes the situations in which legal aid becomes mandatory, when the suspect or defendant is a minor, interned in a detention center or in an educational center, when he is detained or arrested, even in another case, when he was ordered the safety measure of medical hospitalization, even in another case, as well as in other cases provided by law.

In art. 108 C.p.p are mentioned the communications of rights and obligations. Thus: (1) The judicial body communicates to the suspect or defendant the quality in which he is heard, the deed provided by the criminal law for the commission of which he is suspected or for which the criminal action was initiated and its legal classification. (2) The suspect or defendant shall be informed of the rights provided in art. 83, as well as the following obligations: a) the obligation to appear at the summons of the judicial bodies, drawing his attention that, in case of non-fulfillment of this obligation, an arrest warrant may be issued against him, and in case of abduction, the judge may order his pre-trial detention; b) the obligation to communicate in writing, within 3 days, any change of address, drawing attention to the fact that, in case of non-fulfillment of this obligation, the summonses and any other documents communicated at the first address remain valid and are considered -he took note. (3) During the criminal investigation, before the first hearing of the suspect or defendant, the rights and obligations provided in par. (2) and a written form containing these rights shall be handed to him, under his signature, and in case he cannot or refuses to sign, a report shall be concluded.

The proof of the discernment in committing the concrete deed belongs to the accusation, in favor of the minor there being the relative presumption of the lack of discernment.

We will focus on the amendments brought by Law no. 284 of December 8, 2020 for the amendment and completion of Law no. 135/2010 on the Code of Criminal Procedure in connection with the rights and obligations of the minor defendant.

The legislator considered it necessary to introduce in the criminal matter, some essential elements regarding the information and the procedural rights applied to the accused minor.

Art. 505 ^ 1 C.p.p states that before the first hearing of the minor suspects and defendants, they are brought to their attention, in addition to those provided in art. 108, others rights.

As a novelty brought to these regulations, it is correctly mentioned in par. (2) that "all communications to the minor suspect or defendant shall be in plain, language-appropriate language appropriate to his or her age." And in par. (3) "the information provided in art. 108, as well as those provided in par. (1) shall also be communicated to the parents or, as the case may be, to the guardian, curator or person in whose care or supervision the minor is temporarily. "

The introduction of these paragraphs is justified by the fact that a legal regulation was really a priority in which it should be mentioned that any communication addressed to the minor who has a legal language, totally unknown to him, should be made according to his age, in order to understand the situation. find out.

Communications of the rights and obligations of suspects and juvenile defendants are also made to the persons they care for, supervise, guardianship, and according to par. (4) „in case the persons provided in par. (3) could not be found or the communication to them would be contrary to the best interests of the minor or would affect the conduct of the criminal proceedings, the communication of the information provided in art. 108, as well as those provided in par. (1) is made to another adult designated by the minor and accepted by the judicial body. "

The legislator also thought about the situation in which the communication of information cannot be made to the persons directly related to the minor and then as a safe way will proceed to appoint another adult person designated by the minor and who can be accepted by the judicial body, the person with credibility. But when according to "para. (5) If the minor does not designate another adult according to par. (4) or the designated adult is not accepted by the judicial body, the communication of the information will be made to another person chosen by the judicial body, taking into account the best interests of the minor .; para. (6) If the circumstances provided in par. (4) ceases, the communication will be made to the parents, guardian, guardian or the person in whose care or supervision the minor is temporarily.

Another point of interest that was given importance is the evaluation report, thus according to art. 506 para. (1 ^ 1), "if the minor is sent to court, the request for the evaluation report is mandatory, unless this would be contrary to the best interests of the minor." And para. (2) of the same article stipulates that "during the trial, the court may request that the assessment report be carried out by the probation service attached to the court in whose district the minor resides, according to the law. In the situation where the performance of the evaluation report was not requested during the criminal investigation, according to the provisions of par. (1) or (1 ^ 1), the order for the court to make the report is mandatory."

The institution of the evaluation report was introduced by Law no. 356/2006, when he took the place of his successor, respectively the social investigation. The specified law was completed in 2020, as a result of the transposition of Directive no.

2016/800. Thus, according to the special legislation governing the activity of probation services, "the evaluation report contains data on the family and social environment of the minor, educational and professional situation, general conduct of the minor, analysis of criminal behavior, risk of crime, and any other data relevant to the situation of the minor. (...) The evaluation report also includes reasoned proposals regarding the educational measure considered appropriate for the minor, regarding the nature and duration of the social reintegration programs, as well as other obligations that may be imposed on him, in order to reduce the risk of committing the crime."

3. JUDICIAL PRACTICE

The evaluation of the juvenile offender, carried out through the evaluation report, thus helps to understand his personality, to identify the factors that favored the commission of the crime, and, subsequently, helps the court to individualize the punishment.

The report is a written document, for advisory and guidance purposes, with the role of providing the court with data on the person of the defendant or, as the case may be, the persons under supervision of probation services, the level of school instruction, behavior, factors that influence or may influence general conduct, as well as the prospects for social reintegration. The sources of information that were used in the preparation of the report refer to the persons with whom the meetings took place and any documents consulted. It shall also specify the number of meetings held and, where appropriate, the refusal to cooperate or any doubts as to the accuracy of the information, provided with reasons, as well as the sources of information to which access was not possible. When he deems it necessary, the probation counselor includes in the evaluation report data on the physical and mental condition, as well as the intellectual and moral development of the person, data provided by specialists designated for this purpose.

In the judicial practice in the matter of the criminal procedural law of the special trial regarding the minor defendant, emphasis is placed on the elaboration of his evaluation report. The evaluation report which, in his opinion, influences the judge's decision.

By a court sentence, in the report, it was recommended that the minor defendant follow an individual program regarding the application of a preventive measure. Thus, by criminal sentence no. 141 given by the Turnu Măgurele Court, it is shown that the 15-year-old minor defendant, together with the 13-year-old minor perpetrator, stole a lady's bag from the back seat of a parked car. By the same indictment, it was ordered to close the case regarding the 13-year-old minor because there is a cause of immutability, respectively the minority. Analyzing the evidence administered during the criminal investigation, the court notes the same factual situation set out in the indictment and the same legal classification of the deed for which the defendant was sent to trial. In this case, the Probation Service prepared the Evaluation Report for the defendant, in the conclusions and proposals of the report stating that he does not benefit from internal and family resources to help him reintegrate into society, recommending to follow an individual program with for at

least 3 months and considering that the court may also impose compliance with certain obligations, respectively for the minor defendant to attend a school training course. It was also concluded that the permanent supervision of the defendant and the occupation of time with age-specific constructive activities would provide prospects for reintegration into society for the minor.

In another sentence, with an almost similar legal classification, it is shown in the Evaluation Report that there is no recommendation in the sense of applying an educational measure. As such, by the criminal sentence no. 2640 given by the Baia Mare Court, the major defendants together with the minor defendants based on a prior agreement, went to the building with no. 5 where the injured party S.C. A P S.R.L. it has a space, they climbed the fence of the enclosure, and after drilling a hole in the grille of the access door in a hall, they penetrated inside and stole several metal profiles.

Proceeding in the same manner, based on the same criminal resolution, the defendants stole from the same hall about five to seven times metal profiles, which they later capitalized at the same collection center. Finally, with regard to juvenile defendants, the court takes into account the conclusions of the Psychosocial Assessment Reports prepared and which do not show the existence of a recommendation, in the sense of the necessity and effectiveness of the application of an educational measure. An educational measure would have been possible, given the age of the defendant at the time of the judgment, but also regarding it, the court finds that the measure of probation, applied by another criminal decision, was requested to be revoked, so that this defendant considered it appropriate to apply a punishment.

Regarding the preventive and educational purpose of the punishment enshrined in art. 52 of the Criminal Code, the court considers that this goal can be achieved without the need for execution in detention, being sufficient the simple conviction of the defendants, as this time they drew attention to the seriousness and the harmful consequences of his act, warning to defendants. Beyond this role of conviction, the court considers that the actual execution of the sentence is not justified, as it would have a decisive impact on the personal and professional aspects of this time, or the role of the conviction is precisely to draw attention to the importance of respecting relationships in society. relationship with peers, a role that would not be fully realized in the case of execution of the sentence in detention.

4. INTERNATIONAL LAW ON JUVENILE OFFENDERS - GENERAL ASPECTS

In international matters, European countries have in their criminal law approximately the minimum age for incurring criminal liability, which is around the age of 14-15. There are judicial systems that have in common the creation of courts specializing in juvenile delinquency and the provision of free legal aid, and the differentiation is that the best interests of minors are not defined in all European legislation but exemptions are applied from hearing children with disabilities. special. We will briefly review the most important criminal provisions of European countries.

For example, in **Denmark**, the legal system considers unaccompanied minors to be a particularly vulnerable group, so guidelines have been developed for processing applications for minors. In criminal proceedings in which a crime is reported to the police, the police have a general obligation to provide advice and information to the victim on, inter alia, the right to legal aid. Enforcement cannot be carried out if the child's mental and physical health is in serious danger.

Estonia. The commissions for juveniles are taken by children under the age of minimum for criminal responsibility (14 years) who have committed crimes. The decisions of these commissions are first examined by the district governor, and subsequent appeals in administrative judicial proceedings are examined by the administrative courts. Appropriate action may be required in cases where the case has been in court for at least nine months and the court has not yet initiated the necessary proceedings, on reasonable grounds. Also, if the hearing is postponed for more than three months without the consent of the parties, they may challenge the decision. There are specific rules on interim measures, which may be ordered by the court to protect the child from harm and to guarantee legal action, and the law provides for a waiver from hearing children with special needs.

Greece. In Greece, the age from which criminal liability exists is 15 years. A child between the ages of 12 and 15 who has committed a crime has the right to lodge a complaint against an administrative decision. Once he turns 17, this right belongs to him exclusively. In Greece, there is a juvenile criminal judge, a juvenile court judge and a juvenile prosecutor in every court of first instance and in every court of appeal, who specialize in criminal cases involving minors. The juvenile court, consisting of juvenile criminal judges, judges' cases involving juvenile offenders. In addition, minors are protected by "juvenile protection societies", which are set up in each court of first instance and consist of judges, prosecutors, sociologists, teachers, etc.

Spain. In Spain, the minimum age for criminal liability is 14 years according to the Law on Criminal Liability for Minors. The measures applied in the case of children who have not reached the minimum age for the training of criminal liability (under 14 years) are voluntary or involve the placement of the child in a placement center. Juvenile Court: the specialized courts, called "Juzgados de menores", are competent to try crimes and misdemeanors committed by persons aged between 14 and 18 in accordance with Organic Law no. 5/2000 of 12 January 2000 regulating the criminal liability of minors. Specialized magistrates / prosecutors deal with criminal proceedings against juvenile offenders. The prosecutor's office has the responsibility to protect the legal rights of minors. The measures that can be taken against juvenile offenders between the ages of 14 and 18 are set out in a specific law (Organic Law no. 5/2000 of 12 January 2000 regulating the criminal liability of minors). If the author of a crime has not reached the age of 14, the above-mentioned organic law does not apply, but the specific articles of the Civil Code and other regulations in force.

France. There are specialized staff who are responsible for cases involving minors, especially specialized magistrates from children's courts. The Directorate Judicial Protection de la jeunesse within the Ministry of Justice and authorized associations may intervene in proceedings involving minors.

In criminal matters, the minor has the right to consult a lawyer without the permission of his or her parents. Minors are provided with legal assistance free of charge. The lawyer is considered to be the first point of access to information and has a role of accompanying and protecting minors. He may request that the proceedings be held behind closed doors, that the minor be installed so that he does not see the accused, that any further medical examination be replaced by a re-examination of the medical record, as certain acts of investigation (e.g. confrontation) not to take place. If a minor is accused or a party to the proceedings and his or her rights are not respected, the proceedings and detention may be revoked. A minor (over the age of 10) may be detained in places reserved for minors, under the supervision of professionals who have previously received special training. In criminal matters, the parents and the minor's lawyer are directly involved in the execution of the measures. A number of measures may be ordered by the juvenile court or by the investigating judge in the investigation phase (for minors aged 10 to 18: placement measures, parole, reparation and day-to-day activities; for minors aged between 13 and 18: pre-trial detention, judicial supervision, home surveillance with electronic monitoring systems).

By decision, the children's court may order: the handing over of the minor aged between 10 and 18 to the family, the repair of the damage caused, the conditional suspension, day-to-day activities, placement, judicial protection. In the case of minors between the ages of 13 and 18, a reprimand or warning may be issued, a mediation procedure may be ordered, reparation for the damage caused, day-to-day activities (which may consist of those aged 16 to 18 years, in work of public interest), probation or judicial protection. A penalty may be applied to minors between the ages of 10 and 18: a ban on traveling to certain places or meeting certain persons, placement and, ultimately, for minors over the age of 13, incarceration (in the juvenile section of a prison or in a specialized juvenile penitentiary, where there are specialized educators).

Cyprus. In Cyprus, the minimum age for incurring criminal liability is 14 years. In all cases, the minimum age at which a claimant may bring an action in his own name is 18 years. In general, children do not have procedural capacity and therefore can only sue through their parents / guardians. Currently, criminal cases in which the victim is a child are being tried by ordinary criminal courts. However, there are specific laws that provide for specialized child-friendly provisions on the protection of child victims / witnesses.

Luxembourg. In Luxembourg, a specialized judicial system deals with offenses committed by children who have not reached the minimum age for criminal liability, namely 18 years. This means that a child under the age of 18 does not commit "offenses" under the Luxembourg legal system, but "offenses qualified as offenses", in respect of which a court with specialized jurisdiction, namely the Juvenile Court (Tribunal de la jeunesse) is responsible for the application of custody, protection and / or education measures. The meaning of the term "best interests" is not defined in the relevant legislation.

Malta. In Malta, the minimum age at which criminal liability can be incurred is 14 years. The minimum age at which a person may bring an action in his or her own name as a claimant in any matter is 18 years. With regard to juvenile offenders, there is

a court that specializes in dealing with criminal cases involving minors, namely the Juvenile Court.

Finland. In Finland, the minimum age for incurring criminal liability is 15 years. The prosecutor's office has a system of special prosecutors who provide expertise in a field of specialization and maintain and develop the professional skills of prosecutors. A group of special prosecutors has been set up to specialize in investigating acts of violence against children and women. They train other prosecutors in their field of expertise. Investigations involving children shall, as far as possible, be assigned to officers who have the necessary training or experience to carry out this activity.

The Ombudsman for Children promotes the interests of children and the exercise of children's rights in general, but does not address individual cases.

Sweden. In Sweden, the minimum age for criminal liability is 15 years. There are no special courts for juvenile offenders in this country. Children under the age of 15 cannot be prosecuted, but are taken over by social services, and those between the ages of 15 and 18 are tried in general courts. In Sweden, there are courts with general jurisdiction and administrative courts.

If a child is suspected of having committed a crime, the parents or other person responsible for the care of the child should be informed as soon as possible about the crime and the hearing of the child. Parents should be present at the hearing. If the offense is serious, social services should also be notified of the offense as soon as possible and should be present at the hearing. The investigation and court proceedings are tailored to the young suspects. Judicial proceedings should be completed within a reasonable time. Children under the age of 15 cannot be criminally liable for crimes committed. The basic principle is that young offenders should first be subject to measures applied by social services, not by the penitentiary and probation service. There are special sanctions that apply only to young offenders between the ages of 15 and 21. Criminals of children between the ages of 18 and 21 are often sentenced to the same sentences as adults. If the offender committed the offense before the age of 21, his or her immaturity should be taken into account when determining the sentence.

5. THE CIRCUIT OF THE JUVENILE OFFENDER IN THE CRIMINAL PROCESS FOR ECONOMIC CRIMES

A. Prosecution

1. Beginning of the criminal investigation: by the minutes of 29.07.1998, by the X Police Department, for the commission of the crime of qualified theft, 208-209 lit.g,i, with a damage value of 29,242,800 lei. In fact, the minor stole a number of 7 mobile phones from the headquarters of a commercial company.

The injured party constitutes a civil party, without providing accounting proof of the damage caused;

Civilly responsible party: the minor's parent. The situation of the minor on 29.07.1998

Accused in another file, for the commission of 4 other crimes of qualified theft (under arrest since 27.05.1998), committed before the crime for which the criminal

prosecution was ordered to start on 29.07.1998, as well as after it date, at very small time intervals. The crime committed on 28/29/04/1998 was discovered by extending the investigations from the previous file, the file thus containing 5 crimes of qualified theft.

In the case of 4 of the crimes that are the subject of the previous criminal investigation file, the minor defendant is in association with the same 2 major perpetrators. The medico-legal expert report was carried out on 11.06.1998, at the request of the X Police Department. From its content it appears that the minor had discernment at the time of committing the acts in the initial criminal investigation file; for the deed committed on 28/29/04/1998, there is no forensic report on this date, the minor was accompanied to the Institute of Forensic Medicine by an employee of the Police Department; the parents or an adult from the defendant's family did not participate; At the request of the criminal investigation body, the social investigation was carried out by the Guardianship Authority; the report is extremely terse, not offering a complex picture of the actual situation of the minor. By report, the Authority proposes that, if it is found that the minor defendant needs medical treatment, he should be hospitalized in a medical-educational institute; the non-existence of such institutions, but only their simple mention of this educational measure provided by art. 101 letter d) and art. 105 Criminal Code indicate the excessive formality of these social investigation reports.

With regard to the deed committed on 28/29/04/2004, in the evidentiary material there is a report of the on-site investigation, statement of the injured party, statements of the accused, statements of the accused (the 2 majors), report of reconstitution, witness statements. Through the report on the termination of the criminal investigation drawn up by the X Police Department, it is proposed to issue the indictment and report to the court for the 5 offenses of qualified theft; it is also proposed to remove the 2 major defendants from criminal prosecution (art. 10, letter d) of the Criminal Code - the deed lacks one of the constitutive elements of the crime).

The public defender and the minor's parent participated in the presentation of the criminal investigation material. The Guardianship Authority, although legally summoned, did not appear. By ordinance, the Public Prosecutor's Office attached to the court of the X sector declines its competence for one of the crimes of qualified theft. For 3 of them, on 19.08.1998, he orders, by indictment, to be sent to court, and for the deed committed on 28/29.04.1998, to be dismissed, the creation of a separate file and its sending to the X Police Department. The reason for the disjunction consists in the lack of evidentiary material, namely the need to carry out a dactyloscopic examination to establish whether or not the fingerprints picked up on the spot belong to the defendant. There was no medico-legal expertise on the deed committed on 04/28/29/1998 at the time of the completion of the criminal investigation report nor at the time of issuing the indictment.

The penalty applied by Decision no. X/2000 of the Bucharest Court of Appeal, for the 3 crimes of theft, is 3 years in prison. Section X Police requests the Institute of Forensic Medicine on 14.02.2001 to communicate whether, vis a vis the medico-legal expertise carried out for other acts, which took place at intervals close to the act of 28/29.04.1998, the discernment of the minor accused could undergo changes. Without

the actual experience of the minor, IML answers that he kept his discernment in relation to the committed deed. At the request of the X Police Section, the General Police Inspectorate communicates, on 13.02.2004, the criminal record that shows a series of 5 convictions for crimes of qualified theft.

2. Termination of criminal prosecution. The criminal investigation material was presented by the prosecutor, in the presence of the ex officio defense attorney, on 20.02.2004. At this time, the accused was arrested in another case, being in the Jilava Penitentiary. The criminal action is initiated and sent to court, by indictment, for committing the crime of qualified theft provided for by art. 208 par. 1-209 par. 1, letter g,i of the Criminal Code, on 20.05.2004, noting that the crime was committed by a minor. In fact, the Prosecutor's Office holds the accused responsible for the theft of several mobile phones, worth 28,242,000 lei. From the statements of a witness, an employee of the damaged commercial company, the theft of 9 mobile phones results. From the statements of the accused, the theft of 7-9 mobile phones results.

B. Judgment

The court decides to impose a prison sentence of 1 year, and oblige, jointly with the civilly responsible party, to pay civil damages of 29,242,800 lei as well as the legal expenses advanced by the state, in the amount of 2,000,000 lei. The sentence is appealable within 10 days.

C. Execution of the court decision

The sentence remains final through non-appeal. By merging several criminal sentences, in 2004, the convict has to serve 6 years in prison at the Jilava Penitentiary. Making a request for conditional release and finding that the convict has served 2/3 of the sentence (525 days in prison and 1462 days served in preventive detention), meeting the other conditions regarding behavior, the court accepts the request for conditional release.

6. CONCLUSIONS

The criminal act committed by a minor, in our legislation, presents a regime of different sanctions, which consist of educational measures depriving of liberty and educational measures not depriving of liberty. Cases involving crimes committed by minors are tried by specialized panels, composed of designated judges. European states have sought to introduce in their legislation, prerogatives that emphasize the creation of courts specializing in juvenile delinquency and the provision of legal aid free of charge.

Of interest for this article are the amendments brought by Law no. 284 of December 8, 2020 for the amendment and completion of Law no. 135/2010 on the Code of Criminal Procedure in connection with the rights and obligations of the minor defendant.

The institution of the evaluation report is of overwhelming importance. Although the evaluation report apparently has a role of recommendation and guidance, providing the judge with information on the person of the minor defendant, his conduct and behavior and the possibility of social reintegration, in my opinion, I think it may influence the judge's decision. The pertinent question that might arise is whether the

judge's opinion on the assessment report on the juvenile defendant's deed is really a factor in the final decision, in the possibility of reintegrating the juvenile into society and changing the criminal behavior? It seems that judicial practice can answer this question in one way or another. By a court sentence given by the Turnu Măgurele Court, the report recommended the pursuit by the minor defendant of an individual program regarding the application of a preventive measure, and in another sentence given by the Baia Mare Court with a legal classification almost similar to the first, it is shown in the evaluation report that there is no recommendation in the sense of applying an educational measure.

REFERENCES:

- [1]. Călin, A.; Stanciu, S.; Iorga, E.R. (2008) *Beijing Rules on the evaluation by the probation service of minors who have committed criminal acts*, Danubius University Press, vol 3, Galați
- [2]. Mitrache, C-tin; Mitrache, C. (2007) *Romanian criminal law. General part, 6th edition revised and added*, Universul Juridic, Bucharest
- [3]. Udroi, M. (2010) *Criminal Procedure. The Special Part*, CH Beck Publishing House, Bucharest
- [4]. Decision no. 102 of March 6/2018 regarding the exception of unconstitutionality of the provisions of art. 505 para. (2) of the Code of Criminal Procedure, as well as the phrase "who has not reached 16 years of age" from the provisions of art. 505 para. (1) of the Code of Criminal Procedure published in the Official Gazette no. 400 of May 10, 2018
- [5]. Juvenile Rights in Judicial Proceedings - European, <https://beta.e-justice.europa.eu/printContentPdf.do?printPdfAll=1&plang=en&idTaxonomy=35998&action=printContentPdf&initExpCourtRes=1&useContId=188209>
- [6]. Law no. 135/2010 on the Code of Criminal Procedure published in the Official Gazette of Romania, Part I, no. 486 of July 15, 2015, republished, with subsequent amendments and completions
- [7]. Law no. 286/2009 on the Criminal Code published in the Official Gazette of Romania, Part I, no. 510 of July 24, 2009, republished, with subsequent amendments and completions
- [8]. <https://www.juridice.ro/740701/procuctura-penala-speciala-privind-suspectul-sau-inculpatul-minor.html>
- [9]. <https://www.juridice.ro/740701/procuctura-penala-speciala-privind-suspectul-sau-inculpatul-minor.html>
- [10]. Criminal sentence no. 141/2014 pronounced by the Turnu Măgurele Court available on <http://rolii.ro/hotarari/58a35ddde490097c20000087>
- [11]. Criminal sentence no. 2640/2012 pronounced by the Baia Mare Court available on <http://rolii.ro/hotarari/589bae6de490092819002502>
- [12]. https://criminologie.org.ro/wpcontent/uploads/2015/08/justitie_juvenila_romana.pdf