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THE ENFORCEMENT OF EDUCATIONAL MEASURES WITHOUT DEPRIVATION OF LIBERTY. DIFFICULTIES ENCOUNTERED IN PRACTICE

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Abstract

Since its entry into force in February 2014, the new criminal legislation has brought many new institutions in the field of criminal procedure. One of the most important changes is found in the matter of sanctioning of minors, which, as of this date, cannot receive imprisonment, but only educational measure, custodial or non-custodial. This article focuses on the first category of educational measures applicable to minors that purport a crime, the ones that do not require a deprivation of personal freedoms under Art. 115 para. 1 pt. 1 of the Criminal Code, namely: civic training course, supervision, home arrest on weekends and daily assistance and everything needed in enforcing them. The study aims to highlight, on the one hand, how the procedural enforcement of non-custodial educational measures that are applied to minors is achieved, and on the other hand, the institutions involved in this activity, namely the judge and the Probation Service. We present the method of execution, and the modification of obligations which minors must comply during non-custodial educational measures, mainly aimed at forming a spirit of responsibility and respect for the rights and freedoms of others to juvenile offenders. In the last part, the study presents the difficulties that courts faced in the first year after the entry into force of these laws, in particular the situation in which the non-custodial educational measures could not be enforced by the court in cases in which the court was not liable. A special mention is given on the exact timing at which the execution of non-custodial educational measures commences, also presenting the disparities in legislation, which led to different solutions in the practice of courts. In light of these difficulties, the study tries to identify possible solutions, including the amendment of legislation, formulating proposals for new laws in this regard.

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THE ENFORCEMENT OF EDUCATIONAL MEASURES WITHOUT DEPRIVATION OF LIBERTY. DIFFICULTIES ENCOUNTERED IN PRACTICE

Gabriela-Nicoleta CHIHAIA*

Abstract

Since its entry into force in February 2014, the new criminal legislation has brought many new institutions in the field of criminal procedure. One of the most important changes is found in the matter of sanctioning of minors, which, as of this date, cannot receive imprisonment, but only educational measure, custodial or non-custodial.

This article focuses on the first category of educational measures applicable to minors that purport a crime, the ones that do not require a deprivation of personal freedoms under Art. 115 para. 1 pt. 1 of the Criminal Code, namely: civic training course, supervision, home arrest on weekends and daily assistance and everything needed in enforcing them.

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We present the method of execution, and the modification of obligations which minors must comply during non-custodial educational measures, mainly aimed at forming a spirit of responsibility and respect for the rights and freedoms of others to juvenile offenders.

In the last part, the study presents the difficulties that courts faced in the first year after the entry into force of these laws, in particular the situation in which the non-custodial educational measures could not be enforced by the court in cases in which the court was not liable. A special mention is given on the exact timing at which the execution of non-custodial educational measures commences, also presenting the disparities in legislation, which led to different solutions in the practice of courts. In light of these difficulties, the study tries to identify possible solutions, including the amendment of legislation, formulating proposals for new laws in this regard.

Keywords: *non-custodial educational measures, juvenile prosecution, enforcement, Judge, Probation Service.*

Introduction

This study aims to present in a comprehensive manner, without wishing to be exhaustive, the non-custodial educational measures, the penalties that can be applied to juveniles who commit crimes as governed by the New Code of Criminal Procedure, in accordance to the degree of limiting the rights and freedoms of the minor, namely: a civic training course, supervision, supervision on weekends and daily assistance. Moreover, after a presentation of these measures, the study focuses on how to enforce them, and the means of actual performance, presenting the institutions involved in this stage, based more on enforcement coordinator, the service probation before the Court within whose jurisdiction the minor resides.

In connection with the implementation of the non-custodial educational measures, the study seeks to bring to light certain issues that the courts, and bodies involved in this stage have experienced in the past year after the entry into force of these legal provisions. Since the time period starting from the educational measure imposed by the court and to the point of registration of minors by the probation service, certain legal provisions have raised questions among practitioners, which they had to respond to able to perform these steps.

The novelty of the four non-custodial educational measures in our legislation have created difficulties in their practical application, being showed only the main directions of legal regulation, the new Code of Criminal Procedure governing only their purpose and making a definition for each of the measures. Content and manner of execution is regulated for each of the non-custodial educational measures by Law no. 253 of 2013 on the enforcement of sentences, educational measures and other non-custodial measures ordered by the court during the trial¹. Although therein laws should have a place to find the details of each and every of the four non-custodial educational measures, the legislature chose to present only within their overall activities without detail that which can be set for minors offenders. It is expected that there has to be a plan to determine the specific activities that convicted juveniles must follow during the execution of the non-custodial, and this plan is established by the educational adviser case worker within the probation service. In carrying out this plan, this counselor must consider the purpose of educational measures for the juvenile who committed the crimes and raise awareness of the consequences of his actions, and his or hers accountability for future behavior.

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¹ Law no. 253 of 19 July 2013 published in the Official Gazette no. 513 of August 14, 2013.

The lack of clear rules, at least an example of activities that minors may carry out during the execution of non-custodial educational measures already created various problems in practice, creating differences in the mode of execution.

Also in connection with the execution of these measures, an important issue is the practice linked to the duration of execution of non-custodial educational measures, taking into account the disparities between the New Code of Criminal Procedure and the Law. 253 of 2013 on these issues, there is currently no even practice in the courts, and probation services.

The issues that this study has identified are not only dependent but are also determined by the lack of legal regulations presented, and the lack of doctrinal works on issues related to non-custodial educational measures, especially in terms of implementation and enforcement thereof. Except of the analysis in the Chapters regulating the institution of educational measures intended for the criminal liability of minors in the work that presents new Criminal Code, there are no detailed analyses of these educational measures. And from this point of view, this study shows that a work that draws attention to the practical difficulties raised by the legal regulations in this field, with the desire to start a discussion doctrinal level to determine finally a unitary practice. And why not the complement of the legal provisions that best respond to the aspirations of the legislature when choosing the main sanctions applied to juveniles educational measures as a rule of the non-custodial, and, by way of exception, the deprivation of liberty.

1. General considerations regarding sanctions applied to minors

Preventing and combating juvenile delinquency has raised in criminal legislation, special problems, different from those on combating crime committed by adult individuals. For this reason, the legislature has established a special sanctioning for juvenile offenders, given on the one hand, that they did not have adequate time required to assimilate moral norms, civic and legal regulations, their behavior is in training, they can easily fall into error, and on the other hand, the fact that juvenile offenders can be easier retrained and set back in the family and society.

The doctrine has mentioned that specific crime among juveniles raises special problems to prevent and combat because its casuality interacts with a multitude of factors such as: lack of social life experience of the child, with the effect of misunderstanding to the full the dangerous social behavior and the social values, as well as the penalties they would receive, and the deficiencies in the educational process that took place in the family, school, exercised by some major negative influences that attracted minors on the path of crime etc².

The Criminal Code of 2009 (the current Criminal Code) has replaced the mixed sanction system, formed primarily out of educational measures, and the punishment, governed by the Criminal Code of 1969, with a system consisting only of educational measures. The explanatory memorandum to the new Criminal Code mention this as a major change, as a complete overhaul of penalties applicable to minors who are criminally responsible, for educational measures, showing that the model that inspired the current regulation is the Organic Law no. 5/2000 regulating the criminal liability of minors in Spain (as amended by Organic Law no. 8/2006), but there were considered the rules of French law (Order of February 2, 1945 as amended), German law (Law of juvenile courts since 1953 as amended) and Austrian law (Law on Juvenile Justice 1988).

The legislator had to consider the establishment of the sanctioning of minor offenders that satisfies their psychophysical features and to ensure their education and rehabilitation, not reiterate future criminal behavior, and to determine the most effective measures of social defense and meet these goals as educational measures.

Thus, art. 115 of the Criminal Code regulates the general legal framework of educational measures that can be taken against juveniles who commit crimes (noting that only criminally responsible minors aged between 14 and 18, according to Art. 114 para. 1 of the Criminal Code) providing educational measures that are non-custodial, in ascending order of their severity: civic training course, supervision, supervision on weekends and daily assistance and educational measures involving deprivation of liberty: internment in an educational center and internment in a detention center.

Educational measures can be applied to a defendant that committed a crime between minority and criminal responsibility (i.e. aged 14 to 18 years), even if at the moment of judgment he became an adult (aged 18 years).

According to the Criminal Code, rule, in case of juvenile offenders the implementation of non-custodial educational measures (Art. 116 para. 1), custodial measures are the exception and used for serious crimes or minors that committed multiple offenses (Art. 116 para. 2).

The interpretation of these laws, that non-custodial educational measures can be taken virtually against any minor that committed an offense. Instead, custodial educational measures may be taken only if the minor has committed a crime for which an educational measure has been executed or the execution of which began before committing the crime for which he or she is judged (similar to relapse) or when the punishment provided by law for the crime committed is 7 years or greater or life imprisonment. Even in these cases, the court is not required to take

² Mitrache Constantin, Mitrache Cristian, *Romanian Criminal Law. General part*, Universul Juridic Publishing House, Bucharest, 2014, p. 417.

the minor to an educational measure involving deprivation of liberty, as the legislature used the words "may", which means that the application of such measures is optional and not mandatory.

2. The non-custodial educational measures

The current Criminal Code regulates in art. 115 parag. 1 pt. 1, four non-custodial educational measures, in order of their severity, from easiest to hardest, namely: civic training course, supervision, supervision on weekends and daily assistance.

The doctrine shown, that the legislature should have maintained educational measures maintained in the Criminal Code of 1969, namely reprimand and supervised freedom, thus allowing it to diversify non-custodial educational measures that better fits the need for individualization thereof³. We agree with this point of view, as for example, the educational measure of reprimand, could be held to apply to minor offenses, in those instances where the Criminal Code of 1969 you had to acquit a defendant or give an administrative penalty, under art. 181, in reference to art. 91 and according to the current Criminal Code you are ordered to waive the penalty, under the provisions of art. 80 of Criminal Code, whenever the offence is not sever, given the nature and extent of the consequences produced, the means used, the manner and circumstances in which it was committed and purpose, according to the person of the criminal, previous conduct, efforts done by she or he to remove or mitigate the consequences of the offense and ones means of reformation.

The Institution of Cancellation penalty cannot be imposed to juvenile offenders since, as I mentioned, because they do not suffer penalties and it creates an unjustified distinction between the two categories of major and minor offenders. As long as in the case of minors we can waive penalty and implement a warning (previously mandatory 81 Criminal Code), which has the same role, warning of the defendant on his future conduct and the consequences if they will commit more crimes, as the old educational measure of reprimand, the impossibility of applying a measure to minor defendants will create a lower legal situation. This is because as we shall see, the non-custodial educational measures covered by the current Criminal Code require the execution of juvenile offenders obligations under the supervision of the Probation Service.

Not even the measure of supervised freedom was not mentioned from the old criminal code, the new measure of supervision being totally different, whereas in the old regulation, the supervision was done by parents or tutors, whilst in the new regulation, the supervision is done solely by the Probation Service functioning under the Tribunal in the area where the minor resides.

The easiest of the non-custodial educational measures in the Criminal Code, is regulated in art. 117, "civic training course" that requires the minor to participate in a program with a duration of 4 months. The program aims to help the minor to understand the legal and social consequences they expose themselves in the case of committing crimes and they can be held accountable for their future behavior. It is the only non-custodial educational measure that does not have a minimum and so the judge may sentence a period lasting between one day and four months.

The second non-custodial educational measure, regulated by art. 118 of the Criminal Code named "supervision", consists in controlling and guiding the minor in his daily program for a period of between two and six months, under the supervision of the probation service, so as to ensure the participation of minors to attend school or training, and at the same time preventing the carrying out of activities or in connection with certain individuals that may affect the education process.

"The supervision on weekend" is the third non-custodial educational measure, regulated by art. 119 of the Criminal Code, and requires minor not to leave the house on Saturday and Sunday, for a period ranging from four to twelve weeks, unless that, on these days, the minor is required to participate in certain programs or to carry out certain tasks imposed by the court. This measure aims to avoid contact with certain persons or other juveniles, or the ensure that he or she is not present in certain places that predispose to the manifestation of criminal behavior.

The last custodial educational measure, "daily assistance" is the worst of them being provided by art. 120 of the Criminal Code, and is the obligation to comply with a schedule set forth by the probation service for a period of three to six months. The program contains the schedule of activities and conditions set out to the minor and some prohibitions.

The individualization of educational deprivation measure that will take in account the defendant, the court will consider, according to art. 115 parag. 2 of the Criminal Code, the general criteria of individualization provided by art. 74 Penal Code, it will take into account the circumstances and manner of committing the offense and the means employed, the state that created danger to the protected value, the nature and seriousness of the result produced, the nature and frequency of offenses that constitute criminal history of the offender's conduct after committing the crime and the criminal trial, education level, age, health, family and social situation of the defendant. The Criminal Code gives the court, the power in determining the actual content of educational measures that do not restrict freedom, and the content of its execution in a concrete way by the possibility of establishing obligations for the minor they must follow during the action. And their establishment, the court

³ Voicu Corina, Uzlău Andreea, Morosanu Raluca, Ghigheci Cristinel, *New Criminal Code. Application guide for practitioners*, Hamangiu Publishing, Bucharest, 2014, p. 196.

must relate to age, personality, health of the minor, and the family situation and its social consequences.

Mentioned legal provisions are similar to those contained in Recommendation No. 2008/11 regarding European Rules for juvenile criminals that in principle no. 5⁴ provides for the imposition and implementation of a non-custodial sanctions or measures that must respect the interests of the minor, limited, on the one hand, by the severity of the crimes committed, and which is expressed by the principle of proportionality, and on the other hand, age, mental and physical health, development, abilities and personal circumstances, expressed by the principle of individualization, and, whenever necessary, reports psychiatric, psychological or social.

3. Execution of non-custodial educational measures, bodies and institutions involved

Non-custodial educational measures run under the supervision of the probation service functioning under the tribunal in whose jurisdiction the convicted minor lives. In this way the minor liaise with the community of origin, the developmental relations with it and with his family. The minor is involved in a number of activities, age-specific, but his skills, developed under the guidance of specialists: social workers, teachers, priests, psychologists.

Art. 63 of Law no. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by the court in criminal proceedings provides that non-custodial measures educational runs during their execution ensuring minor maintenance and strengthening links with family and community, free development of the child's personality and involvement in their programs, in order to form its spirit of responsibility and respect for the rights and freedoms of others. Thus, the juvenile to perform a non-custodial educational measures shall, according to the principle of the best interests of the child, develop respect for the fundamental rights and freedoms under the Constitution, international treaties to which Romania is a party and special legislation, to the extent that their exercise is not incompatible with the nature and content of the measure.

Organization, supervision and execution of carrying out of non-custodial measures are done by institutions in the community, under the supervision of the probation service. Probation Service supervision may entrust the execution of non-custodial educational measures provided for in Law no. 286/2009, as amended and supplemented, to community institutions

Law no. 253/2013 defines community institutions and public authorities, NGOs and other legal entities participating in the execution of sentences and non-custodial measures in the local community through collaboration with the authorities

directly responsible for ensuring the execution of such penalty or measure.

Both the Probation Service that performs specific activities to supervisory and other authorities responsible for the enforcement of educational measures and community institutions act under the direction and control of the execution judge of the court of enforcement.

Law no. 253/2013 stipulates in detail how to execute each of the four non-custodial educational measures.

Thus, if the educational measure "of training civic" provided that it is organized in the form of continuous or periodic sessions, conducted over a period of 4 months, and one or more modules include theoretical or applied, adapted to the age and personality of minors included in that stage and taking into account as far as possible, the nature of the offense committed. In the internship set by the court there will consider a number of 8 hours per month of civic training.

Choosing where classes will be held is up to the probation officer responsible for the case (case manager) who decide, based on the initial assessment of the juvenile, the institution in the community in which it is to take place, communicating this institution a copy of the judgment and decision. This should adapt the actual content of the internship, according to the framework program approved by order of the Minister of Justice and the Minister of Education in accordance with the minimum standards for institutions working in the community probation, depending on the particular juvenile counselor approval. Conducting civic training course is conducted by a representative of the institution in the community.

According to art. 66 para. 4 of Law no. 253/2013, including the minor in a civic training course is carried out within 60 days after the putting into execution of the judgment, according to art. 511 of Law no. 135/2010.

Observing the legal regulation we note that it does not detail the types of activities the minor must conduct during civic training that must help him understand the legal consequences, but also social, they are exposed to when committing crimes.

In literature⁵, it was shown that these activities must be more than just civic education classes, purely theoretical, proposing practical activities to persuade a minor to realize the seriousness of his criminal behavior, such as visits to prisons, educational or detention centers, involvement in programs to assist persons, assisted institutional involvement in cultural programs etc.

In the second execution of non-custodial educational measures, "supervision", the legislature intended to involve parents of the convicted juvenile

⁴ Cited by Udriou Mihail, Criminal Law. *The general part. The new Criminal Code*, CH Beck, Bucharest, 2014, p. 334.

⁵ Voicu Corina, Uzlău Andreea, Morosanu Raluca, Ghigheci Cristinel, *New Criminal Code. Application guide for practitioners*, Hamangiu Publishing, Bucharest, 2014, p. 118

stipulating that supervision and guidance of the minor shall be performed by his parents, who have adopted or legal guardian, and in the situation where they cannot provide satisfactory supervision, the court may order surveillance in the custody to someone that can be trusted, preferably a close relative of the minor upon request.

In this situation, the probation officer has a role to control the execution of the execution of educational supervision and perform the duties of the person exercising supervision.

In particular, this measure is achieved through daily supervision and guidance of the minor in its program or by checking how it meets its obligations arising from its family status, school or work (if attending school, no absences, falls on persons who might influence him negatively, minimizing his or hers criminal sphere not going to places or premises where drugs or other similar substances are consumed, etc.).

The role of the probation service, the implementation of the measure does not involve a direct intervention in the minors program or activities, but monitoring of how the minor respects the program or attends school, other educational, cultural or sporting activities.

Non-custodial educational measure of "supervisions on the weekends" starting at 00:00 hours on Saturday and until 2400 on Sunday (times on other days of rest if the minor belong to other religious denominations have legal rest days other than Saturday and Sunday). Typically, weekends are consecutive, unless the court or the execution judge or the proposed probation officer, orders otherwise. Supervision of compliance with the measures imposed by the court is a major responsibility of the person who lives with minor or other person designated by the court, under the control of the probation officer or, where applicable, the person designated by him in an institution of the community.

To verify the compliance of the measure recording the weekends, the minor who lives alone or person exercising supervision, shall give the person designated the control of execution and supervision of the execution of scheduled or unscheduled visits to the home of the minor, in the days when the child must be in that space according to the court ruling. Failure to respect by the minors can extend the maximum duration of such measures or replacement with another worse measure. If the fault is with the person appointed to supervise minors, the court will fine them.

This measure aims at facilitating the contribution of parents or other adults with whom the child lives, improving their behavior, the involvement in housework, exercise by adults to a selection of people in contact with the minor, as they are forced to come "visit"⁶.

Execution of non - custodial educational measure of "assisting daily" is achieved by setting a daily

schedule for the minor with which he must comply and the activities that he or she has to do jointly decided by the probation counselor and parents, guardian or other person in whose care the minor is,. If they do not reach an agreement, the program is determined by the execution judge, by means of a motivated decision, after hearing those interested.

In establishing the program, art. 69 para. 3 of Law no. 253/2013 provides that there have to be taken into account the identified needs of the minor, the social situation and, where appropriate, professional and its obligations and prohibitions imposed in the execution. It should be pursued harmonious development of the child's personality through its involvement in activities involving social networking, organizing leisure mode and its capitalization skills.

In this last non-custodial measure, the role of the probation service is the most prominent, he determines the daily schedule, the program and activities he or she must carry out, certain prohibitions to what the minor must comply. Undoubtedly the service should work with parents or other persons to whom the minor is entrusted to, to integrate these activities into the program desired by the minor.

In all four non-custodial educational measures, if the court orders the juvenile to participate in a school or training course, and the minor is enrolled in such a form of education, the probation officer decides on the evaluation minor initial course to be followed and the institution of the community to take place, communicating to this institution a copy of the judgment and decision.

Law no. 253/2013 provides that the child should begin no later than 6 months from the date of the first meeting with the probation officer, and if they follow a school preparation, it will be within the next school year.

From the analysis of the performance of non-custodial educational measures, that supervision is realized by the probation service, but collaborating with both public institutions and NGOs, as if the measure of training civic and national police or local police, as if the measure of supervision.

4. The enforcement of non-custodial educational measures

The new Code of Criminal Procedure provides in Chapter III entitled "Procedure in cases involving juvenile offenders" from Title IV - Special Procedures, in a marginal one paragraph article titled "The enforcement of non-custodial educational measures" (art. 511), the rules on which when against a minor there is to be take such action, after the judgment becomes final, setting a deadline for bringing the minor when ordered, calling his legal representative, a representative of the probation service in order to enforce the measure taken and the persons designated for supervision.

⁶ Voicu Corina, Uzlău Andreea, Morosanu Raluca, Ghigheci Cristinel, *New Criminal Code. Application guide for practitioners*, Hamangiu Publishing, Bucharest, 2014, p. 119

The provisions of art. 511 of the Criminal Procedure Code is supported by Art. 65 of Law no. 253/2013 according to which, after a final decision has been taken against a minor to execute a non-custodial educational measure, the court hearing the execution of the procedure provided for in art. 511 of Law no. 135/2010, has to set a deadline, having brought the minor and legally subpoenaed the representative, a representative of the probation service for the enforcement of the measure and the persons designated for supervision. Together with the summons, they shall notify the probation service with a copy of the court's decision. During the meeting, the probation officer will set a date for the child and the parent, guardian or person designated by the juvenile court for supervision or an enforcement judge, as appropriate, and to report to the probation service.

We believe that the doctrine rightly appreciated that although the legal text refers to "bringing minor", the judge shall summon him and his parents, guardian or person in whose care he is, for the deadline, and may issue even a mandatory bringing summons, according to art. 265 Criminal Procedure Code⁷.

At this meeting, the judge shall provide the person designated to the juvenile and supervision of the purpose and content of the penalty and consequences of failure or improper observance of it. All these issues are recorded in a document will be registered in the enforcement of criminal judgments by the judge. This act shall be in duplicate (one to be attached to the case file, and the second attached to the register of enforcement of criminal judgments – jurisprudence, a folder set up for this purpose) and will be signed by the judge, delegated to the office of the clerk of criminal enforcement, the minor, the legal representative and the probation service.

The first issue raised in practice is the participation of the representative of the probation service is mandatory or not. Some courts holding that it is not mandatory, as long as there is a notice thereof. We appreciate that participation is mandatory, the more that the signing of the document of enforcement of non-custodial educational measures. On this occasion, the counselor on juvenile probation may communicate in writing, the date on which the juvenile must be present at the probation service to start surveillance activities.

Also, according to Law no. 253/2013, in carrying out the guidance and control of non-custodial educational measures, the judge ensures the enforcement execution by communicating, to the probation service and other institutions provided for by law, subject to the execution of non-custodial measures, the copies of the judgment or, as appropriate, its device by which these measures were ordered.

Thus, art. 15 para. 1 letter b) of Law no. 253/2013 provides that the judge ensures the

enforcement of non-custodial educational measures, exercising jurisdiction under this law.

In practice, the question that must enforce the non-custodial educational measures exactly has given birth to two views. In a first opinion it is appreciated that the judge who must carry out the execution is the judge in criminal enforcement office (a single arbitrator appointed by Order no. 1 of the President of the court, at the beginning of each year or if there more judges appointed, to one which is on duty on the final decision). In the second opinion⁸, the competent judge is the one who delivered the judgment to be enforced. The doctrine has considered that there is a difference between criminal enforcement of judgments judge and the court which delivered the judgment, the first being the one to enforce the measure applied.

We consider that the second opinion may be allowed only if the court judges are all tied to criminal enforcement office, making sense in the term of Judge mentioned in the Criminal Procedure Code. We believe, however, that the best thing would be for the judge who delivered the judgment to be the one who puts it into execution, which is best able to explain to the convicted minor the obligations that have been set, and the consequences to which him or her is exposed by their infringement.

Law no. 253/2013 provides the maximum period we should start exercising each of the four non-custodial preventive measures, by reference to the time of enforcement provided by art. 511 Criminal Procedure Code. The inclusion of the minor in a civic training course must be done within 60 days, supervision must begin within 30 days, weekends supervision within 15 days, and setting daily program must be implemented within not more than 30 days, all these terms are calculated at the time of the minor and the person designated by the judge supervising the execution, as provided by art. 511 of Law no. 135/2010. When daily assist measure changes another educational measure involving deprivation of liberty, establishing daily schedule must be made within 15 days of the release of the minor.

In connection with the date on which it calculates the non-custodial educational measure in practice, met different solutions. Thus, some courts have held that the measure begins to run from the date the judgment becomes final, while others felt that the start date is the date of execution of non-custodial educational measures, according to art. 511 Criminal Procedure Code.

We consider that the second opinion expressed is closest to the current legal texts, and forms the time of execution and the time at which to calculate the term educational measure.

Also regarding this aspect, the doctrine held that, where the judgment is not the date from which execution of non-custodial educational measure commences, the judge must determine such term or starting with the day of presentation to enforce the

⁷ Volonciu Nicholas coordinator., *The new Code of Criminal Procedure commented*, Hamangiu, Bucharest, 2014, p. 1255.

⁸ Volonciu Nicholas coordinator., *The new Code of Criminal Procedure commented*, Hamangiu, Bucharest, 2014, p. 1255.

measure, or a later date to be recorded in the court document.

We believe that the execution of non-custodial educational measures can even start on the date in which the putting into execution of the measure in the presence of the minor, accompanied by his legal representative, the judge delegate, and in the presence of the probation service without the need to establish another data from which to begin the flow of execution.

Another issue raised in practice, also related to the enforcement of non-custodial educational measure refers to the situation where the child is not present at the deadline set by the judge, according to art. 511 Criminal Procedure Code. Neither the Criminal Procedure Code and Law no. 253/2013 on the execution of penalties, educational measures and other non-custodial measures does not cover such a situation. The only reference to the situation where the child is not present at the convocation of the probation counselor and case manager as is required by Law. 252/2013 on the organization and operation of probation⁹. This law provides that if the child is absent from the conference, the probation officer will reiterate convening and can call the police for help in identifying and contacting minors and persons in whose care he is. If the person is found or resides in another state and an assessment meeting cannot be achieved, the probation officer is obliged to inform the enforcement court about the impossibility of enforcing the judgment. No mention, however, about the measures an execution judge can order.

We consider that this lack of legal provisions is a gap in the law to be covered with the utmost emergency. In practice, the judge has brought the minor and his legal representative for a new term, making efforts to identify the calling in this regard the police or gendarme (issuing a summons for the actual execution). If there were no minor at the second summons, the judge can not only find the impossibility of enforcing the non-custodial educational measures. You cannot have any increase of the extent to which it was ordered to be executed or replace it with another measure hardest, since we are not in the situation provided by art. 123 of the Criminal Code, when the child does not comply or with the bad faith performance conditions or obligations imposed as educational measure, whereas the non-custodial educational measure has not been enforced. These issues lead in fact to a lack of legal effects of the judgment.

Another impediment related to enforcement, this time to the measure of civic education training

sessions, which were are confronted in the probation services, with the absence of this type of program in the community or in institutions.

It was estimated at the Department of Probation, that until the adoption of minimum standards in probation work and empowerment of community institutions will be concerned as to develop a specific program within the probation service, civic traineeships can be carried out by the probation service by probation counselors specializing in teaching or pedagogy or those with experience in this field¹⁰. Another way to achieve this has been identified in collaboration with school inspectorates through civic education classes, or the Palace of children or other community institutions, such as churches.

Conclusions

This study aimed to present first non-custodial educational measures, and on the other hand, their enforcement and practical difficulties in this regard.

Educational measures are the main non-custodial penalties that can be applied from the 1st of February 2014, minors who commit crimes, as per the current Penal Code that expressed states that these minors can not suffer penalties, only educational measures and the rule being the non-custodial: civic training course, supervision, recording on weekends and daily assistance, exceptional and educational measures to be imposed with deprivation of liberty: confinement in an educational center and internment in a detention center.

The novelty of this legislation has created an uneven practice in the courts, determined by the absence of a comprehensive legislative framework, the current practice not covering all the situations that may occur during the execution and enforcement of custodial educational measures.

The work presented was intended to bring to the attention of practitioners and theorists, some of the problems already identified regarding these issues, and in the future, after detailed consideration of the non-custodial institution educational measures to stabilize a unitary practice in the courts. We are also convinced that the work can open a wide range of debates, points achieved in this study, is only part of the problems that may arise so that they can certainly be extended to other aspects of non-custodial educational measures freedom and their execution.

References

- Mitrache Constantin, Mitrache Cristian, Romanian Criminal Law. General part, Universul Juridic Publishing House, Bucharest, 2014.

⁹ Published in the Official Gazette no. 512 of 14 August 2013 in force on February 1, 2014

¹⁰ Under the " Strengthening the capacity of the Romanian probation system for Delivering effective alternative to prison interventions" , approved by the Norwegian Financial Mechanism 2009-2014 grant aimed at working of such a program.

- Ilie Pascu, Dobrinou Basil, Traian Dima, Hotca Mihai Adrian, Costică Paun, Ioan Chis, Gorunescu Mirela, Dobrinou Maxim, New penal code commented. Vol. I. General Part, Universul Juridic Publishing House, Bucharest, 2012.
- Udrou Mihail, Criminal Law. The general part. The new Criminal Code, CH Beck, Bucharest, 2014.
- Udrou Mihail, Criminal Procedure Law. The special part. The new Code of Criminal Procedure, CH Beck Publishing House, Bucharest, 2014.
- Voicu Corina, Uzlaşu Andreea, Morosanu Raluca, Ghigheci Cristinel, New Criminal Code. Application guide for practitioners, Hamangiu Publishing, Bucharest, 2014.
- Volonciu Nicholas coordinator, The new Code of Criminal Procedure commented, Hamangiu, Bucharest, 2014

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