

## NATIONAL AND INTERNATIONAL REGULATIONS CONCERNING THE AGE OF CRIMINAL RESPONSIBILITY

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**ABSTRACT:** *The prevention and fight against juvenile delinquency constitutes a permanent preoccupation of the countries through their criminal policy. This issue is also supported by a series of factors such as the lack of social experience of the minor, deficiencies in the educational process developed in the family or at school, the negative influence of certain adults who encourage the minors to commit offences, etc.*

*In the combat against offences committed by minors, it is taken into consideration that during the period of forming and developing their character, the minors do not have the same discernment like majors and they are much more receptive to the influences exerted upon them.*

*Being closely connected to the age, the existence or the non-existence of discernment represent the main differentiation of the categories of minors who are or are not subject to criminal responsibility. That is why, the preoccupation of the legislators was directed towards the determination of the age when minors can understand and abide the consequences of the committed criminal offences.*

*Starting from the manner in which national legislation settled the age of criminal responsibility, we shall notice, comparatively, the different values of this age in the legislation of some European countries.*

**KEYWORDS:** *criminal law, minor, criminal responsibility, age of criminal responsibility*

**JEL CLASSIFICATION:** *K 14; K 42.*

As a general component of criminality, the juvenile delinquency presents certain particular features determined by the biological, psychological and social characteristics of this age. The legislator had to take into account these characteristics when he regulated the criminal responsibility of this special category of offenders. Starting from the fact that their physical and psychical development is in progress, the concern of legislators was directed first towards re-education and only afterwards towards conviction. Therefore,

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in case of enforcement, the main aspect connected to the criminal responsibility of minors was the settlement of the age when such responsibility can be applied.

At international level, such preoccupation constituted an opportunity for debates at the XVII-th Congress of the International Association of Criminal Law held in Beijing in September 2004. Finalized by the adoption of a resolution, the Congress of Beijing settled several aspects connected to the minor's person including the following:

- The settlement of criminal majority at the age of 18 years;
- The possibility of extending the enforcing treatment applicable to minors to young offenders aged between 18 and 25 years;
- The impossibility of applying criminal enforcements in case of minors under 14 years of age;
- The application of educational and protection measures by respecting the same guarantees as in case of enforcement.

In the following lines we shall analyze the way the stipulations of the resolution passed at the Congress of International Association of Criminal Law in Beijing were applied at the European level. After describing the legal background offered by internal regulations, we shall analyze the manner European countries settled the age of criminal responsibility.

In *Romania*, the limits of criminal responsibility are stipulated in art. 99 C. Code. Thus, the minor who is under the age of 14 cannot be subject to criminal responsibility. This legal disposition establishes the absolute assumption of the lack of discernment for minors under 14 years of age.

Referring to the minor aged between 14 and 16 years, the Criminal Code establishes the relative assumption of the lack of discernment. Thus, a minor who is aged between the two limits, will be subject to criminal responsibility only if a psychiatric expertise ascertains that he has discernment. Discernment appears as a particularized responsibility in relation to each concrete act. [Basarab M., Pașca V., Mateuț Ghe., Butiuc C-tin., 2007, p. 509]

Consequently, if a minor between 14 and 16 years, committed an offence which is ascertained to have been committed with discernment and afterwards commits a second offence, the assumption of the lack of discernment continues to exist with regard to this one as well, since the complexity of offences is different and discernment must be analyzed for each of them. Similarly, in case of multiple offences, discernment will be analyzed with regard to each of the respective offences.

From the age of 16 until the age of 18, minors are assumed to have discernment. Therefore, a 16 years old minor is subject to criminal responsibility. In fact, from the age of 16, one can prove that a minor lacks discernment, just as one can prove that a major lacks responsibility.

Both the age limit and discernment must be analyzed with regard to the date of committing the offence, even if in the course of the trial, the perpetrator would reach 18 years. As a consequence of this situation, for the continuous, continued and customary offences, the offences committed before reaching the age of criminal responsibility are not taken into consideration. Also, the criminal law will not be applied for the act committed during the period in which the minor is not subject to criminal responsibility, but whose

progressive consequences are produced in the period when the minor becomes responsible [Plenum of the Supreme Court, Romanian Law Review no.5/1973, p. 91].

In *France*, the issue of the age of criminal responsibility is regulated by two normative acts: The Criminal Code as it was modified by the Law no. 2002-1138 from the 9-th of September 2002 published in the Official Gazette from the 10-th of September 2002, and the Ordinance no. 45-174 from the 2-nd of February 1945 as regards the juvenile delinquent, with the modifications and completions intervened until 2002.[[http://ledroitcriminel.free.fr/la\\_legislation\\_criminelle/lois\\_speciales/ordonnance\\_enfance\\_delinquante.htm](http://ledroitcriminel.free.fr/la_legislation_criminelle/lois_speciales/ordonnance_enfance_delinquante.htm) – accessed at 20.02.2009]

The age of criminal responsibility coincides with the age of criminal majority, namely 18 years. The Criminal Code establishes the principle of the absolute lack of criminal responsibility for the minor who is under 13 years of age, as it is shown in the following: „the minors who have discernment are subject to criminal responsibility for murders, offences or contraventions, under the conditions stipulated by a special law, which determines the protection, support, survey and education measures which can be applied to a minor. This law establishes the educative sanctions which can be given against minors between 10 and 18 years and the punishments which can be given to the minors between 13 and 18 years, taking into account the diminished responsibility they benefit in virtue of their age”. [French Criminal Code, Art. 122 - 8]

The lack of relative criminal responsibility of the minors who reached 13 years is stipulated by the Ordinance no. 45-174 from the 2-th of February 1945, which specifies: „When the circumstances and the minor’s personality requires it, an educative sanction can be entailed towards the minor aged between 10 and 18 years or a punishment towards the minor aged between 13 and 18 years, taking into account the diminished criminal responsibility”. [Ordinance no. 45-174 from the 2-nd of February 1945 with regard to juvenile delinquency, with the subsequent modifications and completions, Art.2]

Summing up, we may say that, unlike Romania, in France the age of criminal responsibility is at 13 years. The absolute lack of responsibility acts under this age and the relative lack of criminal responsibility acts between 13 and 18 years.

In *Germany*, the dispositions of the Criminal Code and the Juvenile Courts Law from 1953 are applied to the minors, with the subsequent modifications and completions. [<http://kinder-jugendhilfe.org> – accessed at 20.02.2010]

The age of criminal responsibility coincides with the age of criminal majority, that is 18 years, but it can be lowered until 14 years under certain circumstances. Under the marginal designation of „Lack of criminal responsibility of minors”, The German Criminal Code stipulates: „The person who is not 14 years of age at the moment of committing the act is absolved of criminal responsibility”. [German Criminal Code, Art.14] Thus, the absolute lack of criminal responsibility is established for the minors who are under 14 years.

We specify that the stipulations of the Criminal Code are applied in case of the acts committed by teenagers and young persons, if the special law for minors does not enforce otherwise. [The German Criminal Code, Art.10] Thus, German legislation takes into account two categories of offenders, teenagers and young persons, respectively. As it is defined by the Juvenile Courts Law, a young person is a person who is aged between 14 and 18

years at the moment of committing the offence. [The Juvenile Courts Law from 1953, Art. 1] The same normative document shows that in case they are criminally responsible, the Criminal Code is not applied for the respective young persons, but the criminal law for minors stipulated for the Juvenile Courts Law. Also, the Juvenile Courts Law establishes the relative lack of criminal responsibility for the minors who reached 14 years of age. Article 3 from this normative act stipulates: "A young person is criminally responsible if at the moment of committing the offence is sufficiently mature to discern the gravity of the offence and to act accordingly". Therefore, for young persons aged between 14 and 18 years, the presumption of lack of criminal responsibility is relative and can be overturned if their maturity justifies it.

We mention that German legislation stipulates the possibility to carry forward the age of criminal responsibility until 21 years. Thus, young persons aged between 18 and 21 years are criminally responsible and are tried as adults by the criminal jurisdiction of common law. [Jehle J.M., 2005, p. 35] However, the dispositions concerning minors can be applied to them, if after an overall appreciation of the author's personality, taking also into account the living conditions, it is clear that due to his moral and intellectual development, at the moment of committing the act, the respective person was similar to a young person.

In *Belgium*, the normative background applicable to minors includes two special laws: the Law from the 8-th of July 1965 with regard to the young people protection and the Law from the 13-th of June 2006, modifying the legislation regarding the protection of young persons and the treatment of minors who committed an offence.

As regards the term „minor”, the Belgian Criminal Code stipulates that in case this term is used, it denotes a person who hasn't reached 18 years yet.

The age of criminal responsibility is fixed in principle at 18 years, the age of criminal majority. The law concerning the protection of young persons stipulates that minors deferred to the juvenile courts can be submitted to prevention and reeducation measures, and no criminal sanction can be given against them. [The law concerning the protection of young persons from the 8-th of April 1965, Art.37]

Nevertheless, in certain cases, the age of criminal responsibility can be lowered at 16 years. Thus, according to the gravity of the offence, if the juvenile court considers that the previously mentioned measures are insufficient, the minor aged between 16 and 18 years can be tried by the common law jurisdiction [The law concerning the protection of young persons from the 8-th of April 1965, Art.38]

Summing up the dispositions as regards the age of criminal responsibility, we mention that in Belgian legislation, the age of criminal responsibility begins at 16 years. The absolute lack of criminal responsibility functions under this age and the relative lack of criminal responsibility functions between 16 and 18 years of age.

In *Spain* the dispositions concerning minors are stipulated in the Criminal Code and in Law no. 5 as regards the criminal responsibility of minors from the 12-th of January 2000.

The age of criminal responsibility coincides with the age of criminal majority. According to the Spanish Criminal Code, published at the 24-th of November 1995 and inured 6 months later, „the persons aged until 18 years are not criminally liable. When a

minor commits an offence, he will be legally liable, according to the dispositions which regulates the criminal responsibility of the minor.” [Spanish Criminal Code, Art. 19]

The Law no. 5 concerning the criminal responsibility of minors from the 12-th of January 2000 stipulates the absolute lack of criminal responsibility for the minors who are under 14 years and the relative lack of criminal responsibility for the minors aged between 14 and 18 years. The child who has not reached 14 years will be subject to stipulations concerning the protection of minors from the Criminal Code and the Law. 5 as regards the criminal responsibility of the minors.

In applying the law and establishing the consequences for the committed acts, there are two categories of minors: from 14 to 16 years and from 16 to 18 years. For the minors who reached 16 years, the law stipulates an aggravation in case of committing offences of violence, deterrence or jeopardizing a person.

The Law no. 5 concerning the criminal responsibility of minors from the 12-th of January 2000 is also applied to majors aged between 18 and 21 years, who committed offences, when the examining judge establishes the fulfillment of the following conditions:

- A less serious crime or offence has been committed, without the use of violence or deterrence on a person, without jeopardizing the life or physical integrity of persons.
- There is any conviction for offences committed after reaching 18 years; previous convictions for offences committed by negligence will not be taken into account.
- The personal circumstances of the delinquent and his degree of maturity recommend the application of this law.

In *Italy* the normative background on the age of criminal responsibility is contained in the Criminal Code [<http://www.studiocelentano.it/codici/cp/index.htm> – accessed at 20.02.2010] and the Decree no. 48 from the 22-th of September 1988, concerning the relative dispositions of the criminal trial for minors. [[http://www.giustizia.it/cassazione/leggi/dpr\\_448\\_88.html](http://www.giustizia.it/cassazione/leggi/dpr_448_88.html) – accessed at 20.02.2010]

The age of criminal responsibility coincides with that of criminal majority, which is 18 years, but in certain cases can be lowered to 14 years.

The Italian Criminal Code stipulates: „The person who is under 14 years at the moment of committing the act cannot be responsible”. [Italian Criminal Code, Art.97] Consequently, the principle of the absolute lack of criminal responsibility is established for the minors who have not reached 14 years.

As regards the relative lack of criminal responsibility of the minors between 14 and 18 years, the Italian Criminal Code shows: „The person aged between 14 and 18 years at the moment of committing the act is criminally liable if he had the intellectual and volitional capacity, though the limits of punishment will be reduced. When the person is given a prison sentence of less than 5 years or is fined, no accessory punishments can be applied”. [Italian Criminal code, Art.98] In this case, the minors aged between 14 and 18 years are subject to the common law system, but only attenuated punishments can be given to them.

Italian jurisprudence considers as capable the person who realizes the gravity of his acts, of their consequences and the fact that they are not in accordance with the social order. The volitional capacity implies the freedom of decision and the degree of resistance to other people’s requests.

In *Switzerland* the criminal responsibility and treatment of minors are contained in the Criminal Code and the Federal Law concerning the criminal regime applicable to minors from the 20-th of June 2003.

The age of criminal responsibility coincides with the age of criminal majority, which is 18 years.

As regards the criminal responsibility, the Swiss Criminal Code establishes several categories of age:

- Under 7 years; the principle of the absolute lack of criminal responsibility is set up for them;

- Between 7 and 15 years; in case of committing an offence, the dispositions of the first chapter of the Swiss Criminal Code, entitled „Children” can be applied;

- Between 15 and 18 years; in case of committing an offence, the dispositions of chapter 11 of the Swiss Criminal Code, entitled „Teenagers” are to be applied ; [Swiss Criminal Code, Art. 89 et seq]

- Between 18 and 25 years; at this ages, they are considered to be young adults and their punishing regime is regulated by the title 5 from the Swiss Criminal Code.

The relative lack of criminal responsibility functions for those aged between 7 and 18 years.

In *England and Wales*, the normative background concerning the age of criminal responsibility is contained in The Law for Preventing Delinquency and the Disturbance of Public Order adopted at the 31-st of July 1998 and inured at the 30-th of September 1998 and in Police and Criminal Evidence Act from 1984.

The law for preventing delinquency and the disturbance of the public order abrogated the presumption of non-responsibility of minors aged between 10 and 14 years. Before this law, the minor aged between 10 and 14 years, benefited the presumption of non-responsibility, as it was presumed that he had no capacity of discerning between the good and the bad. This presumption could be averted if it had been proved that the minor was aware of the consequences of his acts.

Presently, the age of criminal responsibility can start at 10 years but the age of criminal majority is at 18 years. [The Law for Preventing Delinquency and the Disturbance of the Public Order adopted at the 31-th of July 1998, Art. 34] The absolute lack of criminal responsibility functions under 10 years and the relative lack of criminal responsibility functions between 10 and 18 years.

In *Finland* the matter on the subject is found in the Criminal Code and in the Law concerning young delinquents 262/1940 and the Law of the protection of the child 683/1983. The latter defines the notions minor and young person, respectively, a minor is that person who hasn't reached 18 years, while a young person has not reached 21 years. [the Law for the protection of the child, Art. 3] According to Chapter 3 from the Finnish Criminal Code, chapter entitled „General Conditions of Criminal Responsibility”, „The author of an offence is criminally liable if he has reached 15 years at the moment of committing the offence and is responsible from the criminal point of view”. [Finnish Criminal Code, Chapter 3, Section 4] The absolute lack of criminal responsibility functions under this age, and the relative lack of criminal responsibility functions between 15 and

18 years. In Finland, the age of 18 years represents the age of criminal majority. [Joutsen M., Lahti R., Pölönen P., 2001, pp.6-23]

### CONCLUSIONS

It can be seen that in all European countries, there are special laws as regarding minors and young persons, laws which complete and even derogate from the dispositions of the criminal code. As for criminal responsibility, although the age of criminal responsibility varies, the distinction between the absolute lack and the relative lack of criminal responsibility can be found in the majority of the presented countries.

The general characteristics of European legislations lie in the fact that there is a specific criminal law for minors, contained in the Criminal Code and particularly in special laws, which lay emphasis on education and not on repression. At the European level, we cannot talk about an unique model of the age of criminal responsibility or an unique applicable punishing treatment. Nevertheless, due to the imminent legislative modifications in the criminal law and procedural criminal law matter, it is necessary that a special law of the minor should be adopted in Romania too, which would integrate the dispositions of the Criminal Code and the Criminal Procedure Code with respect to minors and would create a jurisdictional system specific for this special category of offenders.

Taking into account the present situation, the new Criminal Code<sup>1</sup> does not contain any modification as regards the age of criminal responsibility. Practically, the current article 99 from the Criminal Code in force had been taken over completely by the article 113 from the new normative act. Thus, the minor who has not reached 14 years is not criminally liable and the minor aged between 14 and 16 years is responsible only if it can be proved that he committed the act in full awareness. A person is criminally responsible after the age of 16 years.

We appreciate that a future special law of the minor, necessary to be adopted in our country too, will develop and modify the dispositions of the Criminal Code as regards the criminal responsibility of the minor. To this effect, according to the model offered by French legislation, the inferior limit of criminal responsibility could be lowered from 14 to 13 years, the principle of the absolute lack of criminal responsibility of the minor functioning for those who have not reached 13 years. As for the superior limit of criminal responsibility, we appreciate that this one must be maintained, the principle of the relative lack of criminal responsibility functioning for the minors aged between 13 and 16 years.

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<sup>1</sup> Although adopted at the 25-th of June 2009, following the engagement of the Government before the Chamber of Deputies and the Senate, and published subsequently in the Official Gazette no. 510 from the 24-th of July 2009, the new Criminal Code has not entered into force yet. According to the art. 446 par.3, the Government will propound the blueprint law to the Parliament, in order to apply the Criminal Code, within 12 months from its publication in the Official Gazette, an aspect which is likely to happen in the following period of time.

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