



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Romania



Andrea Păroșanu

Romania

Andrea Păroșanu



A. Juvenile Justice

A.1. Legal framework and main characteristics of the juvenile justice system

In Romania, an independent juvenile justice system has not evolved.¹ Provisions regarding juvenile offending are included in the general penal law. They were introduced systematically into the Criminal Code and the Code of Criminal Procedure of 1936, which stipulated specific measures and sanctions as well as procedural regulations regarding young persons. The procedural law of 1936, inspired by other European countries, provided specialised juvenile courts for the first time.² Later on, the reform of the criminal law in socialist Romania in 1969 led to an extended catalogue of educational measures and improved procedural rules for juveniles. A significant shift in youth criminal policy can be found in the period from 1977 to 1992, when the penalty of imprisonment was abolished for juveniles and only educational measures were applicable. These were of both a liberty-depriving and a non-liberty-depriving nature. After the revolution in 1989 and the subsequent societal changes, the legislation has gradually aligned the provisions concerning juveniles with international documents.

Following long-lasting reform efforts, the new Criminal Code (hereinafter new CC) and the new Code of Criminal Procedure (hereinafter new CCP) entered into force on February 1st, 2014.³ They abrogated the continuously modified and amended laws dating

1 For an overview of the juvenile justice system in Romania, see *Păroșanu 2011*, p. 1.077 ff. On the development of juvenile justice and juvenile delinquency, see further *Balahur 2008*, p. 34 ff., *Banciu/Rădulescu 2002*, p. 238 ff.

2 These juvenile courts were composed of single judges, who were also responsible for investigations in cases involving minors.

3 New Criminal Code (Law no. 286/2009), published in the Official Gazette no. 510 of 24.07.2009, and new Code of Criminal Procedure (Law no. 135/2010), published in the official gazette no. 486 of

back from 1969. The new laws also provide, in separate chapters, specific regulations concerning juveniles, including the age of criminal responsibility, the sanctioning system and criminal proceedings involving minors. The new Criminal Code provides for reactions to youth criminal offences, but not for responses regarding anti-social behaviour. The legislator emphasized that all the measures imposed on juveniles are of an educational nature.

Regarding the age of criminal responsibility (Art. 113 new CC), the law differentiates between certain categories of age groups. First, the Criminal Code stipulates that children under the age of 14 years are in general not criminally responsible. They can only be issued protective measures. 14 and 15 year olds are considered to be criminally responsible if they commit an act with discernment.⁴ Juveniles aged 16 and 17 years are fully criminally responsible. Regarding all of these age groups, the Criminal Code refers to “minors” (*minori*). The Criminal Code does not include special provisions for young adult offenders, even though according young adults special treatment is recommended in international documents. However, young adults are mentioned in the Law on the Execution of Liberty Depriving Sanctions and Measures⁵. The law provides for special penitentiaries and educational and assistance programmes designed for young persons, with the latter being defined as persons under the age of 21 years (Art. 42 (1)).

Concerning criminal proceedings of juveniles, cases involving minors are tried by courts which are composed according to the general procedural provisions. Special judges shall be designated to juvenile matters. In recent years, judges – and to a lesser extent public prosecutors – have attended training courses on juvenile justice, organised regularly by the National Institute of Magistracy.⁶ Especially prior to EU accession in 2007, a comprehensive reform of the justice system was under way, which included reforming the juvenile justice system.⁷

The Law on Judicial Organisation⁸ provides that within the Courts of Appeal, the County Courts and the Local Courts, specialised panels or sections concerning minors and family

15.07.2010, in effect since 01.02.2014. At the same time, the new Law on the enforcement of liberty depriving penalties and measures, the Law on the enforcement of non-liberty depriving sanctions and measures as well as the Law on probation entered into force.

4 Whether or not a juvenile acted with discernment has to be proven by the court on the basis of a medical expertise.

5 Law no. 254 of 19.07.2013, published in the Official Gazette no. 514 of 14.08.2013.

6 Moreover, other institutions and organisations provide for special training in this field.

7 Within the PHARE Project RO 2003/IB/JH/09 „Support for improving juvenile justice in Romania“, carried out in partnership between the Romanian and the French Ministries of Justice from 2004-2006, 490 judges and public prosecutors attended trainings on juvenile justice. Furthermore, specialised units within the National Administration of Penitentiaries and the Probation Services within the Ministry of Justice were established in the course of the project. For further information, see http://www.just.ro/Sectiuni/PrimaPagina_MeniuDreapta/Justitiepentruminori/tabid/426/Default.aspx (accessed on 28.11.2013).

8 Law no. 304/2004 on Judicial Organisation, further amended and modified, published in the Official Gazette no. 576 of 29.06.2004, republished in the official Gazette no. 827 of 13.09.2005.

are operating (Art. 35 (2), 36 (3), 39 (2) Law on the Judicial Organisation). In setting up these panels or sections, the specialisation of the judges shall be taken into consideration (Art. 41 (2)), hence specialisation is not an explicit legal requirement for the judges. Beside the organisation of special section or panels, the legislator has provided the possibility to establish specialised Juvenile and Family Courts at the level of the County Courts (Art. 37). However, the emphasis is placed on specialised panels and sections within the different court levels. According to Art. 40 (1), the specialised panels, sections and Juvenile and Family Courts have the competence in penal matters concerning both minor offenders and victims. Until the establishment of Guardianship and Family Courts in Romania, the Local, County or Juvenile and Family Courts shall deal with family and guardianship matters.

In practice, one Juvenile and Family Court is operating in the city of Braşov, dealing with both civil and penal matters involving minors. The court was established in 2004, with a specialised public prosecutor's office alongside. The designated judges who try criminal cases have participated in special training courses on juvenile justice.⁹ As a county court, it is competent in the first instance for serious offences such as homicide, murder, offences resulting in death, human trafficking, etc. In the year 2012, the caseload included 302 registered and 290 solved cases in penal matters.¹⁰

Before the establishment of the Juvenile and Family Court in Braşov, a pilot project on juvenile justice was started in the year 2000 in the city of Iaşi.¹¹ The project was initiated by non-governmental organisations and the Magistrates Association Iaşi and led to the development of the Juvenile Court Iaşi. The project focused on the promotion of an inter-institutional network involving courts, public prosecutor's offices, police, probation services and the child protection departments. A further aim was to improve hearing and trial conditions of cases involving minors and the rehabilitation of juvenile offenders. This project was extended to other cities in the following years.

More widespread in practice than specialised juvenile courts is the establishment of specialised sections or panels within the Local Courts, the County Courts and Courts of Appeal, which deal with penal and civil cases involving juveniles.

In trial proceedings with juveniles, the Probation Service is of particular importance when it comes to promoting the individualisation of the court decision.¹² The Probation

9 Currently, there are five judges working at the court, see http://portal.just.ro/1372/SitePages/organizare.aspx?id_inst=1372#conducere (accessed on 18.09.2014).

10 See Juvenile and Family Court Braşov, Report 2012, p. 14-15, http://portal.just.ro/1372/SitePages/instanta.aspx?id_inst=1372 (accessed on 28.11.2013).

11 See UNICEF 2004, p. 171 ff., Luca 2008, p. 94 ff.

12 The legal framework is provided by Law no. 252/2013 on the Organisation and Functioning of the Probation System, published in the Official Gazette no. 512 of 14.08.2013. The law came into effect on 01.02.2014. First pilot projects with probation services were set up in the year 1996. In 2000, the Direction of Probation was established within the Ministry of Justice and in 2002, across the country probation services were established in every county alongside the County Courts.

Service is responsible for preparing an evaluation report concerning the juvenile, which is mandatory in trials with young offenders (Art. 506 (2) new CCP). Beside the courts, the public prosecutors are also entitled to commission an evaluation report during the preliminary proceedings, whenever they consider it necessary. In addition to the juvenile's personal data, the evaluation report includes information on his/her family and social background, school or vocational performance, the general and criminal behaviour of the juvenile and his/her reintegration perspectives. It may also refer to his/her physical and emotional condition and intellectual and moral development.¹³ In order to receive all necessary information, the probation counsellor may work closely with representatives of other professions such as social workers, psychologists, teachers or physicians.

The Probation Service further contributes to the decision-making process by proposing suitable educational measures for juveniles (Art. 506 (4) new CCP). It hereby refers to the concrete educational measures and obligations to be imposed on the juvenile as well as the length of the social reintegration programmes (Art. 116 new CC). Further duties of the Probation Services include supervision of the court-ordered educational measures and obligations, psycho-social counselling and assistance, development and realization of programmes aiming at the protection, social and legal assistance of young offenders, and aftercare¹⁴.

Court sessions involving minors are not open to the public (Art. 509 (2) new CCP), nor are deliberations, but the announcement of verdict and sentence is made in public (Art. 405 (1) new CCP).¹⁵ Sessions are held separately from those with adults. Furthermore, mandatory legal assistance must be ensured for juveniles (Art. 90 a) new CCP). At trial proceedings, beside the Probation Services, the parents or legally responsible persons¹⁶ should be heard, according to Art. 508 new CCP.¹⁷ Their active involvement in the proceedings also includes proposals they can submit for the appropriate measure for the juvenile. For juveniles aged younger than 16, Art. 509 (3) new CCP provides that the court may order that the juvenile shall not attend the hearing if it considers that the hearing of evidence may negatively affect the juvenile. Regarding appeals of court decisions, the special dispositions concerning juveniles in proceedings of the first instance are to be applied, as stipulated by Art. 520 new CCP.

13 The content of the evaluation report is regulated by Art. 34 Law no. 252/2013.

14 Aftercare activities include assistance in finding employment as well as school and vocational courses in cooperation with public and private institutions and persons. Furthermore, Probation Services shall cooperate with governmental and non-governmental organisations and civil society representatives in order to initiate and conduct programmes of social reintegration.

15 In criminal proceedings involving adults, sessions are in principle held in public.

16 The law refers to tutors, curators or supervisors of the juvenile.

17 During preliminary proceedings, the criminal prosecution body has to summon the parents or legally responsible persons as well as the General Direction of Social Assistance and Child's Protection to the hearings, in case the juvenile is under the age of 16 years. Regarding juveniles older than 16 years, the police or public prosecutor can summon them in case they consider it necessary (Art. 505 Code of Criminal Procedure).

Children and juveniles who are not criminally responsible and who have behaved in a manner that would have constituted an offence had they been criminally responsible are dealt with by the Law on the Protection and Promotion of the Rights of the Child (see the description in detail below under point 3.).¹⁸ The law provides protective measures designed for children up to 14 years who are under the age of penal responsibility, and for 14 and 15 year olds who are considered not to be criminally responsible because they did not act with discernment.¹⁹ Furthermore, the law regulates various measures for children and juveniles in need of care. The competence for ordering protective measures lies within the sections at the County Courts, specialised on family and juvenile cases, or the Juvenile and Family Court. In principle, these measures are taken by the Commission for the Protection of the Child, if the parents or legally responsible persons have given their consent. Otherwise, the courts are entitled to order the appropriate measures (for a description of the procedures and legal basis concerning protective measures furthermore see point 3.).

A.2. Overview of the reactions to juvenile offending

Regarding diversion, Romanian penal law provides that, under certain conditions, a public prosecutor or a judge may divert a case. The police, charged with investigation under the supervision of the public prosecutor's office, are not entitled to apply diversionary measures. The new Code of Criminal Procedure introduced in Art. 318 the possibility that the public prosecutor may dispense with prosecution if the law provides for the offence a fine or a prison term of maximum seven years and there is no public interest in prosecution. The public prosecutor hereby takes into account aspects related to the person of the young offender, his/her behaviour prior to offending, the gravity of the offence, the circumstances and the consequences of the offence as well as the attempt to reduce or eliminate the consequences of the offence. The public prosecutor may apply one or several obligations, such as: 1) to eliminate the consequences of the offence or make reparations for the damage caused by the offence, 2) to apologize to the victim in public, 3) to perform community service for a period of between 30 and 60 days and 4) to attend a counselling programme delivered or supervised by the Probation Service.²⁰

Furthermore, the public prosecutor can discharge the juvenile offender (Art. 314, 315 new CCP) if any of the reasons stated in Art. 16 (1) is applicable. This includes aspects

18 Law no. 272/2004 on the Protection and Promotion of the Rights of the Child, published in the Official Gazette no. 557 of 23.06.2004, republished in the Official Gazette no. 159 of 05.03.2014.

19 The law defines all persons under the age of 18 as children, Art. 4a).

20 Under the previous Code of Criminal Procedure, in force until February 1st, 2014, a discharge was possible on the basis of Art. 10 (1) Code of Criminal Procedure. This included the possibility to divert a case if the committed act did not represent the social danger of an offence (Art 18¹ current Criminal Code), for instance the offence was too trivial to justify prosecution. In this case, administrative sanctions such as a reprimand or a fine could be applied.

such as reconciliation of the parties or a mediated agreement between the injured person and young offender.²¹

After the preliminary proceedings are completed, and there is no reason for diversion, the prosecutor submits the file to the court. The court decides upon the suitable sanction to be applied, based on the Criminal Code.

The new Criminal Code led to a significant shift in the sanctioning system concerning juveniles. The law abolished penalties for juveniles – for example in the year 1977 - and extended the range of educational measures and obligations.²² The active involvement of the – specialised – Probation Service in coordinating the measures is of pivotal importance, in order to foster the reintegration process of young persons.²³ The new laws aim at harmonizing Romania's national legislation with European and international standards.

As the report is also supposed to refer to the sentencing practice in recent years, the formal sanctioning system provided by the current Criminal Code (in force until February 1st 2014) will be briefly highlighted alongside the regulations of the new law. The provisions of the previous law concerning minors dated back largely to the regulations of the Criminal Code of 1969, which has been further modified and amended. Under the previous Criminal Code, young persons could be subjected either to *educational measures* or *penalties*. Educational measures were given priority over penalties, which were applicable if educational measures were deemed insufficient for correcting the behaviour of the juvenile.

The previous law provided four different *educational measures*: 1) reprimand, 2) placement under supervision, 3) placement in a re-education centre and 4) placement in a medical-educational institution (Art. 101 previous CC). Reprimand and placement under supervision were non-liberty-depriving measures, whereas admission to a re-education centre and medical-educational institution were liberty-depriving measures.

Placement under supervision implied keeping the juvenile principally in his/her familiar surroundings by placing the minor under special supervision. Supervision implied watching closely over the juvenile in order to correct his/her behaviour for the period of one year. The parents or legal guardians were primarily responsible for providing said supervision. The court could combine the measure of placement under supervision with certain obligations, such as to carry out an unremunerated activity for a duration between 50 and 200 hours.

21 Further reasons are for instance that there is no defined offence in the law that covers the exhibited behaviour, the preliminary complaint of the injured person is missing or has been withdrawn, or an amnesty or prescription have occurred.

22 Under the new Criminal Code, penalties are only applicable to adults.

23 For the development of the Probation Service, see *Durnescu* 2008, p. 8 ff.

The liberty-depriving educational measure of placement in a re-education centre meant involving juveniles in – mainly – closed-regime activities as well as in open-regime activities in the community. Placement in a re-education centre was ordered when it was not justified to impose a penalty. The measure was for an indeterminate period, but usually lasted until the juvenile turned 18. In case a juvenile was in need of medical treatment and special education, the court could order placement in a – generally closed – medical-educational institution.

The *penalties* applicable under the previous Criminal Code were divided into fines and imprisonment. For juveniles, the legally prescribed penalties provided for adults were reduced by half. After reduction of the penalty, the term of the penalty of imprisonment could not exceed five years. In case the law provided a sentence for life imprisonment for the offence committed, the penalty for juveniles was limited to five to 20 years of imprisonment. Prior to the coming into force of the new Law on the Execution of Penalties in 2014, juveniles served their prison sentences – either in separate juvenile and young adult prisons or in special prison units within regular adult prisons, where they were offered various educational programmes and psychosocial counselling.

The new Criminal Code provides for a graded catalogue of educational measures, divided into liberty-depriving and non-liberty-depriving measures (Art. 114, 115 new CC).²⁴ The legislator clearly emphasised the priority of non-liberty-depriving measures, in accordance with European and international standards. Liberty-depriving measures shall be applicable only in two cases: 1) the juvenile committed an offence for which an educational measure was applied, or 2) the law provides for an offence a penalty of imprisonment of at least seven years or life imprisonment.

When individualizing the measure, the court takes into account criteria such as the severity of the results of the offence (degree of harm), the behaviour of the young offender, his/her personal situation and circumstances, the restoration of the status quo ante, etc. (Art. 74 ff. new CC). In this regard, the evaluation report on the juvenile prepared by the Probation Service is of central importance.

²⁴ The enforcement of these measures is legally based on Law no. 254/2013 on the Enforcement of Liberty Depriving Penalties and Measures and Law no. 253/2013 on the Enforcement of Non-liberty Depriving Penalties and Measures.

A.3. Non-liberty-depriving educational measures

The new Criminal Code provides for the following non-liberty-depriving educational measures, graded according to the intensity of the intervention:

- Civic training course (Art. 117 CC)
- Supervision (Art. 118 CC)
- Weekend curfew (Art. 119 CC)
- Daily assistance (Art. 120 CC)

The civic training course implies that the juvenile shall attend a specially designed programme in order to understand the legal and social consequences of offending. Moreover, the programme aims at promoting a young person's understanding of his/her responsibility for his/her future behaviour in order to prevent re-offending. The training programme is offered by public institutions or non-governmental organisations. The court can order the training course for a period of a maximum of four months. The Probation Service is responsible for coordinating course organisation, ensuring participation and supervising the juvenile. In doing so, it takes in consideration that the school or vocational programme of the young person is not affected by the measure. This measure is the mildest reaction applicable to juveniles.

Supervision consists of supervising and assisting the juvenile in his/her everyday life. The measure is coordinated by the Probation Service and aims at ensuring that young persons attend their school or vocational programme. At the same time, the educational measure intends to prevent juveniles coming into contact with certain persons or partaking in activities that would negatively affect the reintegration process. The court orders supervision for a period between two and six months.

“Weekend curfew” means that juveniles are not allowed to leave their home on Saturdays and Sundays. Hereby, they are supervised by a designated person. The measure can last for a period of between four and 12 weeks. Coordination of the weekend curfew is in the hands of the Probation Service, which elaborates, together with the supervisor, a plan on the implementation of the curfew. In doing so, the perspective of the juvenile is taken into consideration.

Daily assistance is the most intensive non-liberty-depriving educational measure, consisting of the obligation of the young person to follow a programme determined by the Probation Service. The programme provides scheduled activities with an educational focus as well as obligations which aim at the social reintegration of the young offender. When preparing the programme, the probation officer involves the parents of the juvenile and takes into account the juvenile's perspective. The court imposes daily assistance for a period of between three and six months.

Moreover, the law provides for the possibility to combine these educational measures with specified obligations, as provided by Art. 121 new Criminal Code. Thus, in addition to an educational measure, the court can order one or several of the following obligations: 1) to attend a school or vocational programme, 2) not to leave a court-specified area without permission of the Probation Service, 3) to avoid frequenting court-specified places or cultural, sports or other public events, 4) to avoid contact with certain persons, 5) to present to the Probation Service at specified dates and 6) to undergo medical control or treatment measures. When imposing an obligation alongside an educational measure, the court has to individualise the obligation while taking into account the circumstances of the offence.

In order to promote the chances for social reintegration, the court can modify, prolong or terminate the obligations, as stipulated by Art. 122 new Criminal Code. In case the juvenile does not respect the conditions of the educational measures or obligations, or commits another offence, the court may order a prolongation or that the measure be replaced with another non-liberty-depriving or even liberty-depriving measure (Art. 123 new CC).

As mentioned above, the non-liberty-depriving measures are carried out under the coordination of the Probation Service. In fulfilling its tasks, the Probation Service cooperates with governmental or non-governmental organisations or institutions.

A.4. Liberty-depriving educational measures

The liberty-depriving educational measures are divided into placement in an education centre (*centru educativ*) and placement in a youth detention centre (*centru de detenție*). According to Art. 124 new Criminal Code, juveniles are placed in an education centre, which is a specialised institution, in order to attend a school or vocational programme, taking into account his/her skills, as well as social reintegration programmes. The measure can be ordered for a period of between one and three years. In case the juvenile commits a new offence, the court may extend the period of the measure or replace it by placement in a detention centre.

Admission to a closed detention centre, regulated by Art. 125 new Criminal Code, is the most severe educational measure, as juveniles are held under a “surveillance and guarding regime”. Courts impose this measure in order to ensure that juveniles attend intensive social reintegration programmes, as well as school and vocational courses. The custodial measure is ordered in principle for a period of between two and five years. In case the law provides a prison term of at least 20 years or life imprisonment for the committed offence, the educational measure is ordered for a period of between five and 15 years. The court may prolong the measure if the young person commits a new offence.

In case juveniles have made considerable progress regarding social reintegration while being placed in an educational or detention centre, and at least half of the ordered duration of the measure has been completed, the court may replace the custodial measure with the measure of daily assistance or, if the juvenile has reached the age of 18, may order their release. In doing so, the court applies one or several of the obligations mentioned above.

Furthermore, the law provides for transfers to adult prisons under certain conditions, regulated by Art. 126 new Criminal Code. The young person must have already turned 18 and his/her behaviour must have a negative impact on the reintegration process of other juveniles in the centre.

Diversory and sentencing practice

Regarding registered juvenile crime, a decline of crime rates in recent years can be seen. The registered juvenile crime rate (per 100.000 average population aged 14-17 years) decreased from 1,470 in 2010 to 1,367 in 2011 and finally to 1,211 in 2012.²⁵

When one looks at the sentencing practice, it can be observed that diversion has gained increased importance in recent years. The number of juveniles discharged by public prosecutors has increased significantly. During the 1990s, the number of charges was higher than – sometimes more than double – the number of discharged cases concerning minors. Since the year 2000, discharged cases involving juveniles have outnumbered charged juveniles. In the year 2012, the number of juveniles diverted (6,676) was significantly higher than the number of charged juveniles (4,035). The share of discharged cases by prosecutors doubled from 30% in 1991 to 62% in 2012. The majority of the cases were diverted on the basis of Art. 18¹ current Criminal Code, when the committed act does not represent the social danger of an offence, e.g. if the offence is too trivial.²⁶

Regarding formal sanctions, there has been an observable shift in the sentencing practice since the early 2000s.²⁷ From 1994 to 2001, prison sentences accounted for almost half of all sanctions imposed on juveniles. Court practice in this period was punitive, even though the legal framework provided that prison sentences should only be imposed if educational measures were considered insufficient. In the following years, the share of prison sentences decreased and represented about one quarter of all sanctions in 2012 (26%). Simultaneously, the application of conditionally suspended prison sentences has been on the rise: in 2003, its proportion was about one third (34%), climbing to almost half (47%) in 2012. The share of conditional suspension under supervision has been increasing in recent years; however, it has remained rather low (14% in 2012). The share of educational measures has been decreasing and accounted for only 11% in 2012, whereas

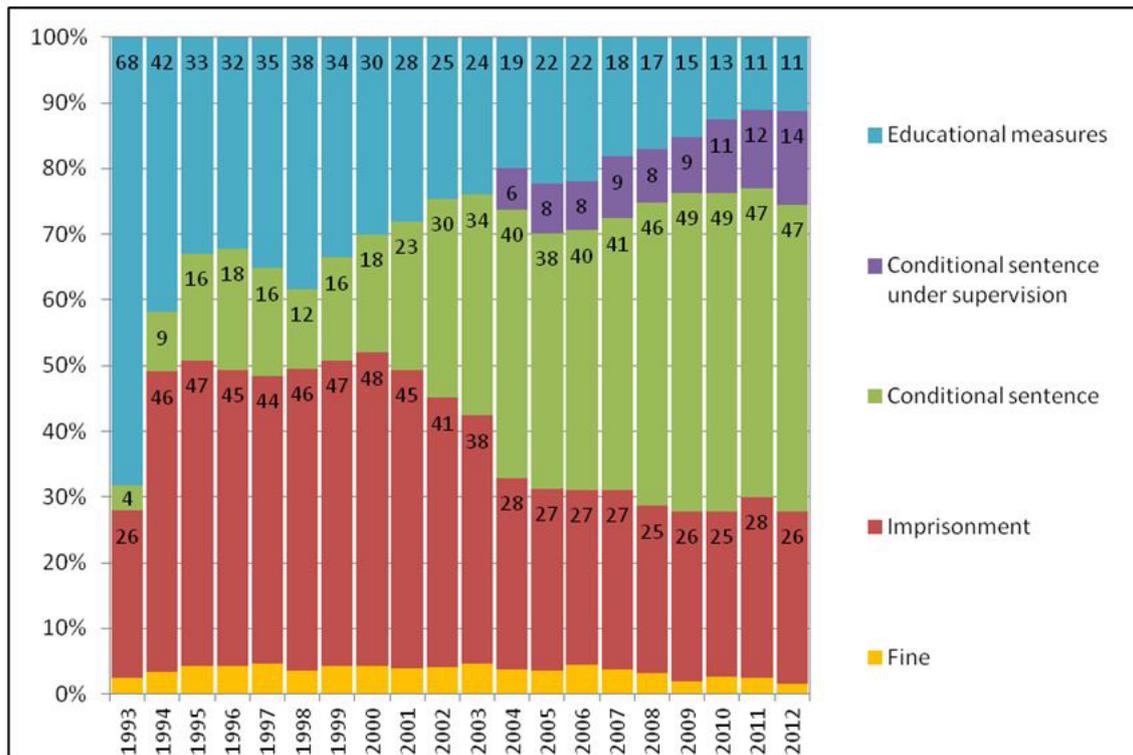
²⁵ TransMonEE database 2014, Juvenile Justice & Crime.

²⁶ Source: Ministry of Public, Prosecutor's Office attached to the High Court of Cassation and Justice, and Romanian Statistic Yearbook 2008-2013.

²⁷ See for the development of juvenile delinquency and sentencing practice from 1990 to 2000 *Banciu/Rădulescu* 2002, p. 244 ff.

during the 1990s it played a more important role.²⁸ The use of fines was not important in the whole period from 1993 to 2012 and accounted for less than 5%. It can be observed that measures or sanctions with an educational character do not play an important role in practice. Some of the reasons for the reluctance of courts to apply educational measures like placement under supervision, community service, or conditional suspension under supervision, can be seen in the lack of infrastructure and of human resources in the field of the Probation Service in order to implement these measures.

Figure 1: Sentencing practice of the courts, 1993-2012, in %



Source: Romanian Statistical Yearbook 1994-2013.

The majority of juveniles were charged with and convicted for property-related offences. In 2012, About 37%.The number of juveniles placed in re-education centres decreased significantly from 359 in 2000 to 165 in 2012.²⁹ The decline of the number of juveniles in custody can be traced back to the growing importance of diversionary practices and the increasing application of suspended sentences to imprisonment.

Currently, two education centres and three youth detention centres are functioning in the country.³⁰ They are coordinated by the National Administration of Penitentiaries within the Ministry of Justice.

²⁸ Source: Romanian Statistical Yearbook 1994-2013.

²⁹ Source: National Administration of Penitentiaries.

³⁰ After entry into effect of the criminal law reforms in early 2014, the re-education centres were renamed education centres. The education centres are based in Buziaş and Târgu Ocna, the youth detention centres in Craiova, Târgu Mureş and Tichileşti. As of 31.08.2014, 196 juveniles were placed in detention centres and 98 juveniles in education centres, data available at www.anp.gov.ro (accessed on 18.09.2014).

B. Restorative approach within juvenile justice

The first projects with a restorative approach were implemented in the mid to late 1990s in Romania, carried out sporadically by non-governmental organisations.³¹ In 1999, the Ministry of Justice initiated a project in order to introduce the concept of mediation in court and prepare the drafting of a mediation law. The pilot project was based at a Local Court in Bucharest and carried out by the Foundation for Democratic Change.³² As one of the results of the project, a draft law on mediation was submitted to the Parliament in the year 2000.

From 2002 to 2004, a restorative justice programme including victim-offender mediation was carried out at an experimental level in two Romanian cities, focusing on young persons.³³ The pilot projects included victim-offender mediation services as well as counselling programmes for juveniles and young offenders, aged 14 to 21 years.³⁴ The goal of the project was to promote and implement principles of restorative justice and to provide legislative recommendations concerning juvenile justice and victim protection. The projects were carried out in partnership with the Direction of Probation Services within the Ministry of Justice, the Center for Legal Resources and the Foundation “Child and Family Protection”.

Beside the delivery of mediation services and counselling concerning young persons through multidisciplinary teams, the project aimed at strengthening cooperation with practitioners in the field of justice. Evaluation of the restorative justice programmes has shown overall positive results.³⁵ The studies revealed especially that satisfaction among participants regarding the mediation procedure, the outcome of mediation and the mediators was high. However, on the other hand a lack of acceptance by justice officials, a lack of inter-institutional cooperation and a restrictive legal framework negatively impacted the project activities.

31 On the development of victim-offender mediation, see *Păroşanu/Balica/Bălan* 2013; *Balahur* 2012; *Szabo* 2010.

32 For further information on the project see <http://fdc.org.ro/en> (accessed on 29.11.2013). The Foundation for Democratic Change started in the mid-1990s to develop and implement mediation and conflict resolution models in Romania, as well as training and networking activities.

33 For further information on the project, see *Rădulescu/Banciu* 2004 and *Rădulescu/Banciu/Dâmboeanu* 2006.

34 The projects were carried out within the programmes “Restorative justice – a possible answer to juvenile delinquency?” from 2002-2003 and “enhancement of the juvenile justice system and victim protection” in 2004.

35 Two evaluation studies were conducted by researchers of the Institute of Sociology at the Romanian Academy, see *Rădulescu/Banciu* 2004 and *Rădulescu/Banciu/Dâmboeanu/Balica* 2004.

Restorative justice activities were furthermore implemented in the city of Iași by the Community Safety and Mediation Center, founded in 2000, and the Association for Dialogue and Dispute Resolution, established in 2005. The NGOs focused on programmes with a restorative approach, which included victim-offender mediation and counselling and assistance for injured persons and offenders. Moreover, project activities aimed at deepening inter-institutional cooperation and raising awareness among the public and professionals in the area of restorative justice and conflict resolution.

Restorative schemes are mainly applied as victim-offender mediation. The legal framework is provided by the Law on Mediation and the Mediator Profession (hereinafter Law on Mediation), which came into effect in 2006.³⁶ The law, which is applicable both to juveniles and adults, includes specific regulations on victim-offender mediation in a separate chapter (Art. 67-70 Law on Mediation). Concerning juveniles, procedural rights like in the criminal procedure need to be safeguarded (Art. 68 (2) Law on Mediation).

Art. 67 (1) Law on Mediation stipulates that the legal provisions refer to penal as well as civil aspects of criminal cases. Regarding the penal aspects, mediation is applicable only to offences where criminal action is initiated upon prior complaint of the injured person, or reconciliation of the parties removes criminal liability according to criminal law regulations. The legal framework therefore is restricted to certain offences such as bodily harm, hitting, rape, breaking and entering, theft, harassment, violation of trust, embezzlement, property damage and other offences. With the enactment of the new Criminal Code, the range of eligible offences has been widened slightly. Civil aspects of offences can always be subject to mediation.

In principle, mediation is possible at all levels of the criminal proceedings. In case a mediation agreement was reached prior to the initiation of criminal proceedings, the offender is no longer considered to be criminally liable for the offence (Art. 69 (1) Law on Mediation). After commencement of criminal proceedings, the process may be suspended for a period of up to three months while mediation takes place (Art. 70 Law on Mediation).

Furthermore, according to the new Code of Criminal Procedure, criminal proceedings at pre-court and court level have to be dropped if the parties have reached a mediation agreement (Art. 16 (1.g) new CCP). In case of offences punishable by a fine or imprisonment of up to seven years, the public prosecutor may dispense with prosecution if there is no public interest in prosecution and the obligations arising from the mediation agreement are fulfilled (Art. 318 new CCP, see above under point A.)

³⁶ Law no. 192/2006 on Mediation and the Profession of the Mediator, published in the Official Gazette 441 of 22.05.2006, further amended and modified.

The Mediation law provides that judicial³⁷ and arbitrary authorities have to inform the parties about the possibility and advantages of mediation and work towards mediation (Art. 6 Law on Mediation).³⁸

Until now, no nationwide victim-offender mediation services or programmes have been established. Statistical data on the use of victim-offender mediation are not yet published, but the Mediation Council has recently started to collect data on the use of mediation. In practice, victim-offender mediation plays a rather limited role. A nationwide survey on judges and public prosecutors nonetheless found that victim-offender mediation is widely considered a useful procedure for conflict resolution in penal matters.³⁹

Concerning organisational aspects, mediation is delivered either by mediator's offices, professional mediation bodies or non-governmental organisations. Mediators need to be authorized by the Mediation Council in order to carry out the profession.⁴⁰ The parties have to bear the costs for mediation services themselves, which can be seen as an obstacle for the wider use of mediation.

37 Judicial authorities include judges, public prosecutors and investigative authorities such as the police.

38 Law no. 370/2009 modifying and amending Law no. 192/2006, published in the Official Gazette no. 831 of 3.12.2009.

39 See more in detail *Păroșanu/Balica/Bălan* 2013, p. 72, 100.

40 Currently, there are about 7.000 mediators authorized by the Mediation Council and enrolled in the official list of mediators, see <http://www.cmediere.ro/mediatori/?page=155> (accessed on 30.11.2013).

C. Foster care within the juvenile justice system

In Romania, foster care is provided within the youth protection system. Foster family care has been developed especially since the 1990s, when the child care system was undergoing a shift from institutionalisation to a family based system. Prior to the revolution in 1989, the state had established special residential care institutions in order to accommodate children whose parents could not afford to raise them.⁴¹ Conditions in these large institutions were poor due to a lack of material resources as well as – qualified – staff. In 1990, about 100,000 children were living in such institutions.⁴² From 1990, an infrastructure for decentralisation was continuously set up and a national strategy was elaborated, focusing on non-residential placements for children and juveniles in need of care. Furthermore, new forms of residential care were created. In 2000, the share of children living in institutions out of all children living in public or private care represented was 65%, and dropped to 36.6% by 2006. In total, almost 78,000 children lived in public or private care in 2006 in Romania.⁴³ Since the early 2000s, the number of children living in residential care more than halved.⁴⁴ In 2012, about 23,000 children were placed in residential institutions, whereas about 39,000 children lived in family-type care.⁴⁵

Foster care does not play a role as an alternative to custody for juveniles. Foster care can be imposed on minors who committed an offence but are not criminally liable and to whom criminal law provisions are thus not applicable.⁴⁶ These are children under the age of 14 years, who are generally not criminally responsible. Furthermore, foster care can be applied to juveniles aged 14 and 15 years who committed an offence but are not criminally responsible due to a lack of discernment. In this case, they do not fall within the sphere of the criminal justice system and special youth protection measures can be taken instead. The competent authority in the field of child protection is the Direction of the Protection of the Child within the Ministry of Labour, Family, Social Protection and Elderly. Among its tasks are the development of programmes in the field of child

41 One of the reasons for the high rate of institutionalisation in Romania can be seen in the pro-natality politics of the communist regime beginning in the 1960s, which led to a growing number of children in general as well as an increased number of abandoned children in need of care.

42 See http://www.copii.ro/prot_prezentare.html (accessed on 30.11.2013).

43 See UNICEF Romania 2006, p.21.

44 See UNICEF Romania 2012, p.3. However, in 2011 a slight increase in the number of children living in public care could be seen, which was also due to a rising number of families falling into extreme poverty.

45 See Direction for the Protection of the Child, Statistics 2012, http://www.copii.ro/alte_categorii.html (accessed 30.11.2013).

46 For a comprehensive overview on the treatment of delinquent minors who are not criminally liable, see *Văduva et al.* 2009.

protection and the coordination of the activities of the local authorities.

The legal framework for foster care is provided by the Law on the Protection and Promotion of the Rights of the Child (Law no. 272/2004).⁴⁷ Principally, in case a child is deprived of parental care, or cannot be left in their care in order to protect his/her interests, the child has the right to alternative protection. This encompasses special protection measures, among others. When choosing protection measures, the authority has to aim at ensuring continuity in the education of the juvenile. It furthermore takes into consideration the individual background of the child regarding ethnic, linguistic, religious and cultural aspects (Art. 44 Law no. 272/2004).

The law stipulates that special protection measures can be imposed on children who committed an offence and are not criminally responsible (Art. 84 (1), 59 a), c) Law no. 272/2004). These measures include placement and specialised supervision. Juveniles aged 14 and above have to give their consent to the special protection measure. In case they refuse to give consent, the court may order the measure without the acceptance of the youth (Art. 57 (3) Law no. 272/2004).

The measure of placement is divided into foster care by a person or family, and care by a maternal assistant who is a professional foster carer (Art. 62 (1) a), b) Law no. 272/2004). Regarding professional foster carers, they need to attend a specific vocational training in the field of child protection in order to be certified as professional maternal assistants. Professional foster carers are employed by the General Direction of Social Assistance and Child Protection or by non-governmental organisations.⁴⁸

Beside the family-based measures, residential care is provided as another form of placement (Art. 62 (1) c) Law no. 272/2004). Placement measures are applicable if juveniles are not able to be parented by their own family. Priority should be given to placing juveniles within their extended family or substitute family, e.g. foster carers. The law emphasizes the temporary character of placement measures, aiming at reintegrating the juvenile into their own families.

Specialised supervision (Art. 85 Law no. 272/2004) means that the juvenile remains in his/her own family and has to respect certain orders. These obligations imposed on the juvenile include the following: attending school; using day care service; seeking medical treatment, counselling or psychotherapy; not contacting certain persons or not visiting certain places. In case a minor cannot remain in his/her own family, he/she may be placed within the extended family or with foster carers. In practice, whenever specialized supervision within the own family is not possible, placement is imposed. Placement

⁴⁷ The law has recently been amended and modified by Law no. 257/2013, also referring to a few provisions regarding foster care, and was republished on 05.03.2014.

⁴⁸ The professional status as well as certification conditions and procedures are regulated by Government Decision no. 679/2003, published in the Official Gazette no. 443 of 23.06.2003. The provision that professional foster carers are not allowed to pursue other jobs is seen critically, taking into consideration that salaries as foster carers are very low, see *Romanian Association of Health Psychology* (s. a.), p. 4.

within the extended family is more frequently applied than placement with non-related, professional foster carers.

In case the parents agree to the child being placed with a person or family or a maternal assistant (foster care), the measure will be applied by the Commission for the Protection of the Child.⁴⁹ Otherwise, if the parents do not give their consent regarding foster care, the special section on juvenile and family matters at the competent County Court orders the measure upon the request of the General Direction of Social Assistance and Child Protection⁵⁰. When imposing the measure, the court takes into account the circumstances that contributed to the offence, the seriousness of the offence, the circumstances in which the juvenile grew up, the risk of reoffending and other aspects that characterise the situation of the juvenile (Art. 84 (2) Law no. 272/2004).

The court furthermore imposes the measure of specialized supervision if the parents refuse to consent to the measure and associated obligations. In case the youth does not respect the obligations ordered by the court or may not remain within his/her own family, the court may order that the youth be placed in foster care with his/her extended family or other carers, and may impose certain obligations, as mentioned above. As stipulated by Art. 86 Law no. 272/2004, if the offence committed by the juvenile is a serious offence, or the juvenile repeatedly commits offences, placement in residential care for a fixed period will be imposed on the minor. Regarding assistance for minors, the legislator introduced the provision of Art. 88 (3) Law no. 272/2004, which states that, during criminal proceedings, a psychologist or social worker shall assist the juvenile.⁵¹ Furthermore, during placement, the juvenile, the family and foster carers receive special assistance in order to support the reintegration of the minor.

Placements of juveniles other than in foster care can be made to family-type houses.⁵² They provide so-called social apartments, which accommodate up to 12 young persons and constitute smaller units than regular residential care institutions. Juveniles are placed in social apartments in order for them to learn to live independently. Although no specialised staff work in the houses, juveniles are supervised by “social” parents, who are professionals and employed by the General Child Protection Direction.⁵³

49 The Commission for the Protection of the Child is a specialised body under the county councils or the local commissions of the districts in Bucharest, Art. 115 (1) Law no. 272/2004. Its field of activity includes the imposition of special protection measures.

50 The General Direction of Social Assistance and Child Protection is a public institution under the county councils or the local commissions of the districts in Bucharest (Art. 116 Law no 272/2004). The Direction is responsible for coordinating social assistance and child protection activities at county level and has further supervising tasks. Moreover, the Direction provides the court with a psycho-social report on the child or juvenile, including data on his/her personality, educational and socio-medical antecedents, living conditions, etc. (Art.139 Law no. 272/2004).

51 The provision was introduced by Law no. 257/2013 and entered into effect on 03.10.2013.

52 Art. 110 (5) Law no. 272/2004 provides that residential care shall be organized on a family-type model and might be adapted to the special needs of the minors.

53 See *Romanian Association of Health Psychology* (s. a.), p. 9.

In summary, there is no alternative care to custody provided for juveniles. As mentioned above (see point A.), according to the criminal law juveniles can be placed in an education centre or in a youth detention centre as liberty-depriving educational measures.

References

- Balahur, D. (2012): Restorative justice and victim-offender mediation in Romania. In: Miers, D., Aertsen, I. (Eds.): *Regulating Restorative Justice. A comparative study of legislative provision in European countries*. Frankfurt am Main: Verlag für Polizeiwissenschaft, p. 299-320.
- Balahur, D. (2008): Competing models of Juvenile Justice: social-legal perspectives and applied research of social work. In: Balahur, D., Padovani, A., Brutto, S. (Eds.): *Probation and Restorative Justice in Romania and Italy*. Bucharest: Editura Universității “Al. I. Cuza”, p. 23-50.
- Banciu, D., Rădulescu, S.M. (2002): *Evoluții ale delincvenței juvenile în România. Cercetare și prevenire socială*. Bucharest: Lumina Lex.
- Durnescu, I. (2008): O istorie a probațiunii în România. In: Schiaucu, V., Canton, R. (Eds.): *Manual de probațiune*. Bucharest: Euro Standard, p. 8-25.
- Luca, S. (2008): The Juvenile Court. In: Balahur, D., Padovani, A., Brutto, S. (Eds.): *Probation and Restorative Justice in Romania and Italy*. Bucharest: Editura Universității “Al. I. Cuza”, p. 89-113.
- Păroșanu, A. (2011): Romania. Country Report. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (Eds.): *Juvenile Justice Systems in Europe. Current Situation and Reform Development*. Vol. 3, Mönchengladbach: Forum Verlag Godesberg, p. 1077-1114.
- Păroșanu, A., Balica, E., Bălan, A. (2013): *Mediation in Penal Matters in Romania. Evaluation Study and Perspectives*. Bucharest: C. H. Beck.
- Rădulescu, S.M., Banciu, D. (2004): Studiu evaluativ asupra programului experimental de justiție restaurativă din România. In: *Evaluarea sistemului de justiție restaurativă din România*. Bucharest: Oscar Print.
- Rădulescu, S.M., Banciu, D., Dâmboeanu, C. (2006): *Justiția restaurativă: tendințe și perspective in lumea contemporană*. Bucharest: Lumina Lex.
- Rădulescu, S.M., Banciu, D., Dâmboeanu, C., Balica, E. (2004): *Evaluarea proiectului de justiție restaurativă derulat in București și Craiova*. Unpublished.
- Romanian Association of Health Psychology (s. a.): The Child Right to a Family: Foster Care under the Lens. Research Report – Romania. <http://www.synergia-net.it/en/european-projects/the-child-right-to-a-family-foster-care-under-the-lens-pre118-pe35.html>.

- Romanian Statistical Yearbook (1994-2013): National Institute of Statistics, Bucharest.
- Szabo, A. (2010): From Restorative Justice to Restorative Practices: Applicability in the Field of Social Work. *Revista de Asistență Socială*, 9, Bucharest, p. 125-147.
- UNICEF (2004): *Practices and Standards in the System of Juvenile Justice in Romania*. Bucharest.
- UNICEF Romania (2006): Annual Report 2006, http://www.unicef.org/romania/ROM_Annual_Report_2006.pdf.
- UNICEF Romania (2012): Annual Report 2012. Executive Summary, http://www.unicef.org/romania/Public_version_Annual_Report_UNICEF_Romania_2012_final_for_web.pdf.
- Văduva, D., Nedelcu, I., Petrescu, M., Dumitru, S., Duță, T. (2009): *Promovarea drepturilor copiilor care au săvârșit fapte penale și nu răspund penal. Raport de evaluare*. Fundația Reforma Justiției Penale, Bucharest, http://www.penalreform.ro/fileadmin/template/promovarea_drepturilor_copiilor_cu_fapte_penale.html.

**European Project ‘Alternatives
to Custody for Young Offenders -
Developing Intensive and Remand
Fostering Programmes’**

JUST/2011-2012/DAP/AG/3054



With financial support from the Daphne III Programme of the European Union