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The Role of Educational Measures for Juvenile Offenders in Forensic Psychiatry

Simona Irina DAMIAN[1,2], Diana BULGARU ILIESCU[1,2], Ancuța ROHOZNEANU[1], Alexandru GLODEANU[1], Mădălina DIAC[1,2], Sofia DAVID[1,2], Iuliana HUNEA[1,2]

Abstract: The New Penal Code (NPC) of Romania gave up on punishing minor offenders, in favor of educational measures. Thus, the minor following a final conviction, will not be subjected to the prohibitions, detentions or incapacity attributable to the penalties applicable to major offenders. Thus, the emphasis is moved from punishment, to prevention, re-education and social reinsertion. The New Penal Code delimits from the previous one, the institution of the educational measures depriving of liberty from that of non-custodial educational measures. Psychiatric forensic expertise of the minor plays a key role in the court decision, through its conclusions regarding the existence of discernment at the time of committing the act. In the case of determining the presence of discernment at the time of committing the act, the psychiatric forensic board will also make recommendations on the educational measure that should be instituted. In the recommendations made, the board considers both personality deficiencies and social etiology, dissociating the meaning of behavior from the social situation in which the subject of law is. Thus, the recommendations made by the board of psychiatric forensic expertise are the result of a thorough analysis of the minor's psychic state, the nature of the committed act, corroborated with the concrete circumstances of committing it, with the opportunity to appreciate critically the act because of the education received and with the influences of the environment. In addition, in recommending educational measures, the board also takes into consideration the family support that the minor benefits or not, essential support in his social reintegration.

Keywords: Psychiatric forensic expertise, minor, judicial files, educational measures.

Introduction

Along with alignment with the European acquis, NPC gave up on punishing minor offenders, in favor of educational measures. Thus, the minor following a final conviction, will not be subjected to the prohibitions, detentions or incapacity attributable to the penalties applicable to major

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offenders. Thus, the emphasis is moved from punishment, to prevention, re-education and social reinsertion. This legislative option was justified by the intention to capitalize on the experience and positive results achieved internationally in combating juvenile delinquency (Antoniu, 2012).

Based on the diagnosis made by the psychiatric specialists, the forensic doctor establishes the discernment from the moment of committing the act and makes recommendations to the court on the educational measures.

The Commission may recommend educational non -custodial or deprivation of liberty measures. The choice of these recommendations considers the degree of social danger of the act, the physical condition, the intellectual and moral development, the behavior of the minor, the conditions in which he was raised, and in which he lived and lives, by any other elements nature to characterize the minor as a person. The reforms brought by the New Penal Code in the minor sanctioned regime seem to combine the concepts of retributive justice with those of restorative justice, emphasizing not the punitive character of the criminal sanction, but the future responsibilities of the offender (Sandu, 2006).This is not a legislative innovation, being inspired by French and Belgian legislation.

The necessity of a special sanctioning regime for minors was felt by most states, which thus renounced the repressive system, considering that it was not able to achieve its educational purpose and social reintegration for the minor offender, given the particularities of the personality characterized by insufficient psycho-physical development and development (Dongoroz, 1973).

Legislative Framework

The New Penal Code of Romania,that entered into force on February 1, 2014, changed the institution of the offense to redefine it by renouncing the provisions of Article 17 of the old Penal Code of Romania, and at present stipulating that the crime is the act provided by the criminal law committed with guilt, unjustified and imputable to the person who committed it (Ciobanu, 2016). The legislator thus provides three features of the act: typicity, anti-judiciary and imputability. Failure to observe one of these features removes the criminal nature of the act, thus deductively removing the criminal responsibility because the act is the sole basis for it. The causes that remove the act are justifiable (legitimate defense, the state of necessity, the exercise of a right or the fulfillment of an obligation, the consent of the injured person) and those of non-imputability (physical and /

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or moral constraint, non-imputable excess, complete intoxication, error, the fortuitous case, irresponsibility and minority). To remark that the person has committed a crime, the judicial bodies must determine whether the typical and unjustified act is imputable to the perpetrator. If this is not typical or if it is typical is justified, the judicial bodies will no longer proceed with the imputability analysis. To be able to blame one's act, it is necessary for the person to be responsible, meaning to have the psycho-physical ability to understand the meaning of his actions or inactions, the consequences that derive from them and to master them. In everyday life, the facts provided by criminal law are not only committed by accountable persons but also by irresponsible persons. From the point of view of criminal liability, not every perpetrator becomes an active legal subject. Among the causes of irresponsibility, we will stop on the minor (Ciobanu, 2016; Udroiu, 2014).

The minor is the individual who has not reached the age of 18 years, the age from which the person is assigned both exercise capacity in civil and criminal capacity. Thus, minors who have not reached 14 years of age are not criminally liable. They cannot be a general subject of the offense because they have not reached that degree of physical and mental development that will allow it to assess the danger resulting from its actions or inactions. They benefit from an absolute presumption of lack of discernment that cannot be subjected to the contrary and the degree of psycho-physical development of the minor not having importance regardless of the type of offense committed. Law 272/2004 on the Promotion of the Rights of the Child proposed to the General Direction of Social Welfare and Child Protection that it would be ordered in this aspect the taking of the measure of the placement or of the specialized supervision. The competent authority that may order such measures is the Child Protection Board if is consented by the parents or the legal representative of the child or the court if the agreement is missing (Ciobanu, 2016; Udroiu, 2014). Thus, a safety measure can be made available to them, which is to remove the state of social danger and to prevent the commission of new anti-social acts.

Minors aged between 14 and 16 enjoy the relative presumption of criminal incapacity, a presumption that can be overthrown by psychiatric forensic expertise (Article 184 paragraph 1 of the NCPP), which requires the presence of discernment at the time of committing the crime. Minors who are 16 years old at the time of the act are criminally liable, unlike the old code, instead of penalties to receive educational measures (Udroiu, 2014; Mitrache, 2014).

In the case where the lack of discernment is retained following the minor forensic expertise, it will be established the existence of the cause of

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non-imputability provided by art. 27 NPC (minority of the perpetrator) for all minors under the age of 16 and irresponsibility (Article 28 of the NPC) for minors aged 16 and over. In other words, discernment in the case of minors may be absent either due to inadequate psycho-physical development (doli incapax) or because of a mental illness that is a cause of non-imputability for the 16-year-old minor (Udroiu, 2014).

In view of these aspects of the criminal responsibility of minors, it is necessary to distinguish between minors who have criminal capacity and can be held criminally liable and minors without criminal capacity, who will not be criminally liable. In making this distinction, psychiatric forensic expertise plays an essential role.

In the case of minor responsible for criminal proceeding sat the time of the offense, the New Penal Code restructures the sanctioned minority system by renouncing punishments in favor of educational measures. Thus, the only criminal sanctions that can be applied in their case are educational measures, even though during the criminal trial the minor becomes major. So, the New Penal Code moves the emphasis from the punishment, to prevention and social reintegration of the minor offender. Thus art. 115 establishes the educational measures that can be disposed of, which result in non-custodial and deprivation of liberty measures (Mitrache, 2014).

Non-custodial educational measures are: civic training; surveillance, weekend registration, daily assistance. Educational measures depriving of liberty are concretized in: admission to an educational center and hospitalization in a detention center. As a matter of principle, art. 114 par. (Ciobanu, 2016) the NPC determines that a non-custodial educational measure will be available to the minor who was between the ages of 14 and 18 at the time of the crime. Thus, if the minor is at the first offense established by the criminal law, and the punishment for the offense committed is either a fine, alternately with imprisonment of up to 7 years or only imprisonment of up to 7 years, the court is bound by law to have a non-custodial educational measure (Ciobanu, 2016). Exceptions to these are found in par. 2 of the same article, when the court has the possibility to apply a measure of deprivation of liberty, while taking into account the perilousness of the offender(Article 74 of the NPC) and the seriousness of the offense in the following two situations: if the minor has reiterated his antisocial behavior , having a history of acts for which an educational measure has been applied and when the punishment provided by the law for the offense committed is 7 years or more imprisonment or life imprisonment (Ciobanu, 2016; Udroiu, 2014).

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In addition, the court disposes of optional non-custodial measures and mandatory for those deprived of their liberty and obligations to do or not to do (to attend a school course or professional qualification, to attend the probation of a specific date, to undergo control measures, treatment or medical care, to NOT exceed territorial limits without the consent of the probation service, to NOT be in certain places or at certain sports, cultural or public gatherings established by the court, NOT to approach and NOT communicate with the victim or his / her family members, the participants in the offense or other persons established by the court (Ciobanu, 2016; Udroiu, 2014; Mitrache, 2014)

The new Penal Code leaves the court the decision to establish non-custodial educational measures. The content will be determined by age, personality, health, family and social situation of the minor. Along with alignment with the European acquis, account should also be taken of the Council of Europe Recommendation no. 2008/11 on European rules for minor offenders, which, through Principle No. 5 stipulates that the imposition and enforcement of a non-custodial measure must respect the minor's best interest, limited by the seriousness of the offenses committed, considering age, physical and mental health, personal circumstances, intellectual capacity.

Non-custodial educational measures are run in the community, under the coordination of the probation service, during the execution ensuring of the child's ties with the family, as well as its involvement in various programs, to develop responsibility and implement respect for the rights and freedoms of others.

The civic training course is the least severe educational measure and consists of the minor's obligation to participate in a program established by the court for a maximum of 4 months, a program designed to help him understand the legal and social consequences of the crime. During the training set by the court, a monthly number of 8 hours of civic education will be considered, without affecting the child's school or professional program.

Surveillance is the non-custodial educational measure consisting in guiding the minor in his / her daily program, for a duration of between 2 and 6 months, under the coordination of the probation service, to ensure attendance at school or training courses and the return of some activities or contact with certain persons that could affect the offender's straightening process. Surveillance can be done by parents, adopters or guardians, under the control of the probation counselor. If they cannot be supervised, the court will order custody of a trusted person, preferably a close relative.

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The weekend record consists of the minor's obligation not to leave the home on Saturdays and Sundays for a period of between 4 and 12 weeks, except in cases where he has an obligation to participate in court activities (Ciobanu, 2016; Udroiu, 2014).

Daily assistance is the most severe of educational non-custodial measures and consists of the obligation of the minor to observe for a period of 3-6 months a program established by the probation service, which contains the timetable and the conditions for carrying out the activities, as well as the imposed prohibitions. The daily schedule is agreed upon by the probation counselor, parents, guardian or other person in charge of the care of the minor in consultation with him.

In the case of failure to comply in good faith of the conditions imposed by the non-custodial measure of initial freedom, it will be up to the court to extend the supervision up to its maximum duration or to replace it with another more severe non-custodial measure of freedom. If the suspected measures prove to be ineffective, and the minor's belief proves to be bad, the court will replace the more severe non-custodial measure with the least severe educational measure deprived of liberty (admission to an educational center).

The educational measures depriving of liberty are succeeded in art. 115 paragraph (Ciobanu, 2016) point 2 of the NCP in the order of severity: admission to an educational center and admission to a detention center.

Admission to an educational center consists of admitting the minor to a specialized institution for the recovery of minors, where a school and vocational training program is in place, in accordance with his / her skills and social rehabilitation program. This measure may be ordered in the following cases: the minor has committed an offense during an educational measure (deprivation of liberty or not) enforced following a final judgment, has committed an offense for which an educational measure has been applied by a final judgment deprivation of liberty or not) that has been enforced, has committed an offense for which the law provides for a minimum of 7 years' imprisonment or life imprisonment or the non-compliance with the conditions for the execution of a non-custodial educational measure or the obligations imposed by court, or the minor in the execution of a non-custodial educational measure committed a new offense (Mitrache, 2014; Udroiu, 2014).

If, during the admission to an educational center, the minor commits a new offense or is tried for a concurrent crime, the court will have the option, apart from extending the measure of admission to the educational

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center up to the maximum of 3 years admitted by law, to replace this measures with admission to a detention center.

Also, in cases provided by law, it is possible to order the placement of admission in an educational center, with the non-custodial sentence of daily assistance. This conversion can be ordered if during the admission to an educational center, the minor showed a sustained interest in acquiring school or professional knowledge and progressed in social reintegration. This replacement of the punishment is done after at least half of the duration of the educational measure, when the court will be able to order the educational measure of daily assistance, but not more than 6 months (the maximum prescribed by the law for this educational measure).

The most severe educational measure available to a minor is that of admitting to a detention center and consists of admitting the minor to an institution specialized in the rehabilitation of minors under guard and supervision, where it will go through intensive social reintegration programs, but also school and professional training programs according to their skills. The measure in question is ordered for a determined period of 2-5 years (if for the offense committed the law provides for imprisonment of less than 20 years), respectively 5-15 years if the punishment provided for the offense committed is 20 years imprisonment years or more or life imprisonment (Udroiu, 2014).

This will be ordered according to the seriousness of the act and the criteria of individualization according to art. 74 NPC, when: the minor committed a new offense during an educational measure enforced by a final judgment (by analogy with the sanctioned regime of the major is a post conditional recidivism); the minor has committed an offense for which an educational measure has been enforced by definitive judgment (in comparison with the sanctioned regime of the major is a form of post-enforceable recidivism); committed an offense for which the law provides for a minimum of 7 years' imprisonment or life imprisonment. The detention center may be closed (for admissions longer than 3 years) or open (when admission is up to 3 years).

The offense is a disease of society, which requires the taking of measures to defend and correct the consequences of crime. Measures can be taken if the criminal phenomenon is known as a whole, but also in its particularity by case study. This cannot be done without knowing the perpetrator, being necessary both theoretically and practically to determine whether there is and to what extent there is a causal relationship between delinquency and personal and environmental factors, and thus take the most appropriate measures (Cioclei, 2011).

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Criminological Theories

The factors behind the occurrence of the criminal phenomenon, in a criminological sense, have prompted the interest of many criminologists who have always sought the answer to the motivation of the criminal act.

From the Italian positivism represented by Cesare Lombrosso, Raffaele Garofalo, Enrico Ferri, to the current dynamic criminology, one can conclude that the explanation of the criminal phenomenon resides in a cumulus of factors.

Nowadays, the theory of passing on to act by general or particular models and dynamic theories - of retention and strategic - acceptance is accepted.

The general model of transition to the act (the tree model) belongs to the American sociologist Albert Cohen. It focuses on the influence of social factors on deviance, forming a theory of delinquent subcultures. Cohen conceives the deviant act as a succession of events in which the individual has always the choice of direction according to external factors and their own states and experiences. The graphical transposition resides in a main path, from which non-deviant and deviant secondary routes are dichotomized like the branches of a tree (Cioclei, 2011; Stanoiu, 2011).

The particular mode of passing the act was developed by Etienne de Greeff who claims that the road to crime goes through three stages: the ineffective assent, when the criminal pulses spontaneously penetrate the conscious area, the stage of the assent that is contradictory to hesitations and the stage of the crisis, which decision was taken, leaving only the details of passing the act. The road to crime can be stopped at any stage by the action of internal inhibition and censorship mechanisms, which may eventually be stimulated by external circumstances. For Pinatel, the transition to the act is explained by the concurrent action of the four essential features that make up the core of the criminal personality - egocentrism, lability, aggression, indifference (Cioclei, 2011).

The dynamic theory of retention was proposed by Walter Reckless. This resides in the existence of an external social retention structure, as well as an internal buffer. Both have the role of ensuring compliance with legal and social standards.

Maurice Cusson's dynamic strategic theory builds on four elements: behavior, results, rationality, conflicts. He appreciates that the offender is a rational type that calculates with lucidity the advantages and risks involved in the criminal act. He denies the past or the causal explanations, focusing on purpose in the sense of the proposed outcome (Cioclei, 2011; Stanoiu, 2011).

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Based on these, delinquency in general and minor delinquency are especially multifactorial phenomena, which in a minor strike on a special psychosomatic ground, which is in a permanent dynamic. The minor's antisocial behavior may be a component of normal maturation, resulting from age-specific pulses and conflicts, but may also be the premises of a possible criminal behavior. The deviant pattern is born as an expression of a disorganized personality structure, resulting from features such as aggression as a form of reactivity, intolerance to frustration, social immaturity, emotional affection. It will become inappropriate, in breach of the accepted social norms, the deviance of a wide range of facts, which may or may not be subject to the law.

The age and psychophysical characteristics of minors justify a social response to the antisocial acts committed by them, different from those adopted in the case of adult offenders, from the conditions of the judicial process to the sanctions applied. Also, the minimum age of criminal liability, under which minors cannot be held responsible for committing offenses under criminal law, should be determined by their degree of emotional, psychological and intellectual maturity. In recent years, due to an increased influx of information, resulting from technological advances (Hnatiuc, 2014; Iov, 2016), the false belief in a mature adolescence has been outlined over previous decades. But this forced development does not identify with their maturation, because despite the knowledge they acquire, they do not acquire a rich life experience that can give them a balanced way of judging and managing everyday situations. (Brown, 2005; Bulgaru-Iliescu et al., 2013).

The notion of discernment

The primary reason that minor delinquency is reaching alarming rates is the lack or low level of education received both within the family and in educational institutions. In recent years, there has been a steady increase in offenses under the law committed by minors under the age of 14. One explanation would be their coercion by the organized crime groups precisely because they have no criminal capacity, and thus cannot answer before the law. The statistical data on expertise on the existence of discernment among minors aged between 14 and 16 shows that in over 90% of cases the existence of this discernment has been established, which means that, as a rule, discernment was prior to the age of 14 years. (Brown, 2005; Bulgaru-Iliescu et al., 2013). Aspects that verify this are the age limits from which the minor is criminally responsible in the rest of the European countries; as an example, they are 10 years old in France (Article 2 of the Order of February

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2, 1945, amended in 2002), the United Kingdom (Article 34 of the Crime and Disorder Act 1998) and Switzerland (Article 3 of the Law of 20 June 2003, in force since 1 January 2007), for 12 years in Greece (Article 126 of the Penal Code) and the Netherlands (Article 77b of the Penal Code), and in Spain there is a window of law proposing the lowering of this age from 14 to 12 years old.

For criminal law to be enforced, two conditions are required: responsibility and guilt, or guilt exists where discernment exists (or existed at the time of committing the act). In doctrine there is no agreement on the notion of discernment.

Thus, in theory some understand by discernment the ability to distinguish good from evil; others see the power to understand the crime and the illegality of the act and consequently the power to achieve criminal responsibility and its consequences; others regard discernment as a moral and legal responsibility.

Vintilă Dongoroz argues that if some authors report this concept to an attitude of understanding, others to the ability to discern good from evil, others to the possibility of knowing what is lawful and what is illicit, are useless because while discernment is a cause of criminal capacity, where it is presumed to be missing (minors of 14-16 years), and discernment can only be explicit from the notion of criminal capacity.

Due to the relative character of discernment, its existence will be determined on a case-by-case basis in relation to the minor act.

From another point of view, criminal responsibility means the totality of the individual's psychic peculiarities that make him / her able to understand the freedom and necessity of his actions in unity with the objective laws of society development and to appreciate the consequences of his actions when he / she act contrary to this unit.

In this sense, discernment is also conceived in judicial practice. In principle, it can be said that an act was committed with discernment when at the time of committing the minor was able to realize the antisocial nature and injurious to others of the act, the risk of being punished for committing it by the degree of development of psychic faculties, of the received education, of the influences from the social environment.

The role of the Psychiatric forensic expertise in recommending educational measures

Psychiatric forensic expertise of the minor is important not only because of immediate therapeutic measures. This is primarily an instrument that establishes discernment and therefore criminal liability. Through

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criminal attribution it can thus, in the future, control the eventual delinquent behavior of the future adult. According to art. 28, paragraph 1 of the Order for the Approval of the Procedural Norms on the Examination, Findings and Other Forensic Practice no. 1.134 / C / 25.05.2000 of the Ministry of Justice and no. 255 / 04.04.2000 of the Ministry of Health and Family "the Psychiatric forensic expertise is done only by the direct examination of the person, within a committee made up of a forensic physician, who is the chair of the committee, and 2 psychiatrists. "

Thus, based on the diagnosis made by the psychiatric specialists, the forensic doctor establishes the discernment from the moment of committing the act and makes recommendations to the court on the educational measures.

The Commission may recommend, without replacing the magistrates, educational non -custodial or deprivation of liberty measures. The choice of these recommendations considers the degree of social danger of the act, the physical condition, the intellectual and moral development, the behavior of the minor, the conditions in which he was raised, and in which he lived and lives, by any other elements nature to characterize the minor as a person. Of course, the solutions of acquittal or conviction are the decision of the court, but in the case file, forensic expertise through diagnostics, assessments of discernment at the time of committing the act and recommendations made, has an essential role. In the recommendations made, the board considers both personality deficiencies and social etiology, not dissociating the meaning of behavior from the social situation in which the subject is. Thus, the recommendations made by the board of psychiatric forensic expertise are the result of the thorough analysis of the minor's mental state, the nature of the committed act, corroborated with the concrete circumstances of committing it, with the opportunity to appreciate because of the education received and the influences of the environment ambient. In addition, in recommending of educational measures, the board also takes into consideration the family support that the minor benefits or not, essential support in his social reintegration. The conclusions of the expert report will necessarily include the medical-psycho-pedagogical measures to be taken to ensure the proper development of the minor's personality. In all this the interest of the minor will come first.

The psychiatric forensic expertise of the minor is carried out with due respect for the individual rights of the person, in accordance with the internal legal norms or the international ones derived from the Conventions to which Romania is a party. Any minor which was subject to expertise has the right to healthcare, defense, privacy, personal data protection. The

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psychiatric forensic expertise is primarily a scientific work drawn up by rigorously observing the scientific standards in accordance with the internal and international norms of classification of diseases and methods of expert analysis and evaluation.

According to art. 28, paragraph 4 of the Order for the Approval of the Procedural Norms on the Examination of Expertise, Findings and Other Forensic Papers no. 1.134 / C / 25.05.2000 of the Ministry of Justice and no. 255 / 04.04.2000 of the Ministry of Health and Family "act, the psychiatric forensic expertise is performed only for a certain act or circumstance, having as main objectives determining the psychic capacity at the moment of committing an act provided by criminal law or the exercise of a right, mental capacity at the time of examination, and appreciation of the social danger and the need to establish medical safety measures. "

According to art. 22, paragraph 3 of the same normative act "in the case of psychiatric expertise and the opinions requested by the superior board or the boards for the approval and control of the forensic acts, the material of the dossier required for the expertise must be submitted", a provision which is also found in art. 24 paragraph 1 and 2 of the same norm, as well as in art. 47 from HGR no. 774 of 07.09.2000 for the approval of the Regulation for the application of the provisions of GO no. 1/2000 regarding the organization of the activity and the functioning of the legal medicine institutions, as subsequently amended by GD 1204/2002 and Law 271/2004.

According to Art. 29 of the Order for the Approval of Procedural Norms on the Examination of Expertise, Findings and Other Forensic Papers no. 1.134 / C / 25.05.2000 of the Ministry of Justice and no. 255 / 04.04.2000 of the Ministry of Health and Family, "if the expertise concerns minor persons, the file will contain the social investigation, as well as the data on the school performance".

The minor and the legal representative are informed about the necessity of the collaboration with the psychiatric forensic commission, explaining the objectives of the expertise; motivation and eventual admissions or investigations. The person submitted for investigation may refuse the investigation, the admission or even the conduct of the expertise, which will cause the commission to notify the judicial body and the expertise will not be carried out (the refusal is recorded under the signature of the person and submitted as a copy to the judicial body).

Psychiatric forensic expertise must establish discernment at the time of the act, which implies the reconstitution of the moment from a bio-socio-psychological point of view. The motivation of the antisocial act is socio-

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psychological, psychopathological, complex and is determined by the biological, psychological and pathological circumstances that influence the moment of consciousness.

In determining the motivation for the anti-social act of a minor is important psychological conditions such as panic, threats, fear, isolation as well as the family and social group of which it is a part. The purpose of committing the antisocial act (the mobile) and the cause that led to the passing of the act must be scrutinized to recommend specific measures to prevent the reiteration of the act.

The analysis of the 3 M (motivation, mobile, motive) is indissolubly linked to the assessment of discernment. (Gheorghiu, 2002)

Discernment should not be formally reported at chronological age or disease diagnosis, but in the nature and circumstances of the act, the consecutive elements of the antisocial act.

It is mandatory to analyze the judiciary file for performing the expertise because the only objective way of confronting their reports in the psychological examination is the solidity and complexity of the evidence material, which is necessary to be made available to the expert.

It thus appears, as an objective necessity, to provide as complete and complex inquiry data as possible when requesting expertise, particularly regarding evidentiary material, since the discernment must be determined in relation to the time at which anact was committed or the exercise of a right at a certain moment. It is necessary for the disposal of any psychiatric forensic expertise to be accompanied by a complete synthesis of the entire evidence in the case file (e.g. the indictment), prepared by the competent judicial body, to highlight the evidence of the guilt. When this is not possible, it is more than obvious that it is useful to have the case file available to the expert.

The judicial file is the main source of documentation in the methodology of psychiatric forensic expertise, which is to be analyzed by the board before the examination of the person and the investigation with evidence and specialized tests.

In criminal cases the psychiatric forensic examinations are carried out with priority, and among them the cases with minors have absolute priority, strictly observing the working methodology.

In the case of a minor, the examination is carried out only in the presence of a parent or his / her legal representative.

When the expert board deems necessary, the person may be admitted to a psychiatric hospital / clinic to establish a diagnosis by clinical and paraclinical investigations and possibly a therapeutic plan under clinical

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supervision. The admission stage is recommended for violent crimes and for minors aged 14-16. The hospitalization is made by a written request (referral note) of the forensic institution, with the name of the hospital in which the person is to be admitted. At the same time, both the person and his / her legal representative are told that if they do not comply with this provision within 3 months, the expertise will not be accomplished.

The time to conduct a forensic psychiatric expertise depends essentially on the good collaboration between the judicial institutions and the forensic institutions. Strong knowledge of forensic psychiatric issues by the judicial bodies is the fundamental factor in shortening the deadlines for conducting psychiatric forensic expertise and increasing the quality of the forensic act. The requesting judicial body shall be informed periodically (monthly or whenever necessary) of the status of the work.

The social investigation is mandatory, contributing to the correct assessment of the behavioral pattern, being indispensable for the appreciation of the volitional function, in the sense of delimitation of influence, suggestiveness and manipulation. The social survey for minors should include: data about the origin of family (family type of family members, housing situation, socio - economic - cultural situation, quality of interfamilial relationships as well as family with memberships environments, behavioral and / or criminal history of family members; aspects related to interfamilial violence, consumption of substances), data on minor (fraternity, schooling, medical history, behavioral and / or criminal history, possible income from own activities, relationships and behavior within the family and within the family group, in the sense that they are perceived / characterized by them, the personal membership group and the place within the group - including the way it is perceived by the affiliated group; absence of integration within a group, beneficial or detrimental, should be mentioned, how to spend free time), other aspects considered significant for the behavior of the minor.

Apart from the correct assessment of the behavioral pattern, the social investigation is indispensable to the appreciation of the volitional function in the sense of delimitation of influence, susceptibility and manipulation.

The "fresh" statements of the interviewees, when they exist, provide us with more possibilities for correct analysis (cross-analysis with phenomenological reduction) and the removal of subjective and / or bad faith statements.

In general, the social investigation should be an argument for identifying the motivational system of the person subjected to expertise to

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delimit possible pathological motivation and / or voluntary changes. (Bulgaru-Iliescu et al., 2013)

The specification of the temperament / personality structure (including personality disorders) is performed correctly only by analyzing the person's existential race (called "premorbid personality") - that is why the required information is also included in the classification of diseases (OMS and all psychiatric diagnostic tools) to the additional codes (mentioned in the grounding note).

Documentary analysis of the case is made only by studying the whole file, the primary medical documents being strictly mandatory; for a more documented report, it is preferable that if additional information emerges at the requesting institution, they must be forwarded to the minor forensic psychiatric expertise board. Failure to study the case leads to the impossibility of sketching a targeted semi-structured psychiatric interview, which leads to timing until the dossier is received and even other information to resume screening and / or the supplementation of complementary investigations.

The expert report is always detailed and complex, and it is amply argued, requiring in some cases additional chapters about the minor victims. The analysis of the case requires scientific documentation, detailed analysis of all the data available and the psychopathological processing of all information, finalizing with the establishment of the conclusions in the plenum of the board (Gheorghiu, 2002).

The drafting of the minor forensic psychiatric expertise report is based on reasoned answers to the objections, the detailed motivation of the conclusions, the dated exposure of the available data, the time of the expertise and the manner in which the legal regulations in force , international instruments on health care, psychiatric and forensic care, the rights of the person etc. (to which Romania is a signatory); the detailed drafting of the report takes into account (in the case of expertise on persons) that this board is a high level expert, where the expertise is carried out by direct examination (Bulgaru-Iliescu et al., 2013).

Conclusions

In conclusion, forensic psychiatric expertise on minors has a rehabilitative and educational role, being less restrictive. It remains an excellent medical expertise with a well-defined framework that ultimately aims to provide the judiciary with objective medical-legal criteria based on which the minor can be held criminally liable.

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