



JUVENILE DELINQUENCY AND HUMAN RIGHTS. ASPECTS OF CONTRAVENTIONAL LAW IN THE REPUBLIC OF MOLDOVA

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Abstract: *The present research addresses legal aspects of contravention law concerning juvenile delinquency, the conditions for holding minors liable for contraventions, and the application of state coercive measures with an educational character as alternatives to contravention sanctions. Furthermore, the aspects of the "age of contravention liability" criterion were clarified, in relation to the minor's capacity to understand the illicit act he commits. A special section of the research was dedicated to ensuring the rights of children in conflict with the law through the prism of international regulations, the importance of recuperative measures, and the effectiveness of preventive acts against contraventions among minors.*

Keywords: *contravention, contravention liability, juvenile delinquency, sanction, educational measure, minor, child rights*

Introduction

The field of contraventional law presents itself as a young branch in the legal system of the Republic of Moldova, considering the new configuration that emerged into the Contraventional Code of the Republic of Moldova from October 24, 2008.

This legislative novelty brought with it a lot of characteristic valences to the field of contravention law, a specific terminology and related

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institutions in achieving the proposed goal. In this context, art. 2 from the Contraventional Code¹ establishes that: "The purpose of the contravention law consists in the defence of the legitimate rights and freedoms of the person, the defence of property, public order, other values protected by law, in the settlement of contraventional cases, as well as in the prevention of the commission of new contraventions". From the content of the norm highlighted above, we deduce the object of study and the method of regulating the contravention matter.

We have to accept the hypothesis that most of the illegalities in a state are precisely from the contraventions, i.e. the illegal acts that have a lower degree of danger than the crime, that attack the social values protected by the law and are liable to contraventional liability. According to official data published by the National Bureau of Statistics², in the previous year 685.2 thousand contraventions were registered, or with 55.9 thousand more compared to 2021. Of the total number of decisions taken on contravention cases, in most cases there were adopted decisions to apply the contraventional sanction (97.7% or in 665.2 thousand cases). In 2.7 thousand cases (0.4%) decisions were taken to submit to preliminary (criminal) investigation bodies, given the fact that the contraventional actions contained the sign of the crime, and in 13.0 thousand cases the contraventional process was terminated for other reasons (1.9%). On average, there were 255 decisions to apply the contraventional sanction on 1000 inhabitants. These are not gratifying statistical data, when every third person in a state has committed a contravention, and which raise questions about the effectiveness of coercive measures applied by the state, the effectiveness of the act of prevention and the quality of the operational processes carried out in this regard. Out of the total number of contraventions, about 1000 cases are drawn up regarding minors, those who are liable for contravention liability according to the legislation. Most reports are issued for minor hooliganism and damage to foreign property³.

¹ Contraventional Code of Republic of Moldova, adopted on 24.10.2008. Published in Official Gazette of Republic of Moldova Nr. 3-6 from 16.01.2009. Republished in Official Gazette Nr. 78-84 of 17.03.2017.

² National Bureau of Statistics, Republic of Moldova, https://statistica.gov.md/ro/contraventii-constatate-in-anul-2022-9478_60403.html (accessed on 12.03.2024)

³ Informative Note of the National Inspectorate for Public Security of General Police about the juvenile delinquency state and activities in the field of child security during year 2021,

In fact, it has become an "unwritten rule" that when discussing the phenomenon of juvenile delinquency one considers the responsibility of juveniles for committing crimes and the criminal status of juveniles.

Thus, in this work we will focus on the issue of minors' contraventional liability, which is an indispensable component of juvenile delinquency. Today's law violator can become tomorrow's criminal, therefore the primary role of the state lies in the prevention of illegal acts at an early stage and the eradication of contravention/criminality.

Results and Discussions

The necessary element for the existence of any contraventional component is the subject, i.e. the person who committed the illicit act, called contravention. In general, the contravention law does not provide for the notion of the subject of the contravention as it is revealed in the Criminal Code of the Republic of Moldova (the subject of the crime). Thus, in art. 16 of the Contravention Code of Republic of Moldova identifies the notion of "natural person", and art. (1) provides that, "The natural person responsible who, at the time of committing the contravention, has reached the age of 18 is liable for contraventional liability".

Paragraph (2) of the same article regulates the conditions for bringing minors to criminal liability, the subject of interest of our research. Thus, "The natural person between the ages of 16 and 18 is liable to contraventional liability for committing the acts provided for in art. 69 para. (1), art. 78, 85, 87, art. 88 para. (1), art. 89, art. 91 para. (1), art. 104, 105, art. 157 para. (1)–(4), (6), (7) and (9)–(12), art. 203, art. 204 para. (1), (2) and (3), art. 228–245, 336, 342, 352–357, 363, 365, art. 366 para. (1), art. 367, 368, 370, art. 372 para. (2)".

The same approach can be deduced from art. 40 para. (3) letter a), the Convention on the rights of the child¹, in which "the State party to the

section minors safety. https://politia.md/sites/default/files/nota_informativa_privind_starea_delinventeii_juvenile_si_activitatea.pdf (accessed on 14.03.2024).

¹ Convention on the rights of the child, adopted by United Nations General Assembly on 20.11.1989. Republic of Moldova joined to the Convention in 1993. <https://www.unicef.org/moldova/media/1401/file/Conventia-cu-privire-la-drepturile-copilului.pdf> (accessed on 14.03.2024).

Convention must establish a minimum age of criminal responsibility (the provision also applies in the case of contraventional responsibility), below which children cannot be held responsible for the alleged commission of an illegality". The reason for this international norm is externalized by the presumption that they do not have the discernment to understand that they are violating the contravention law.

Then, the Beijing Rules establish that the meaning of the notion of criminal (criminal) capacity must be clearly defined and that the age of criminal (criminal) liability must not be set at too low limit, taking into account the degree of emotional, mental and intellectual maturity of the child. In the states of the European Union, there is no uniform standard regarding the minimum age of criminal/contraventional liability.

In our view, the minimum age of criminal/contraventional liability should be systematically reviewed following periodic assessments of juvenile crime or contravention rate. Among the determinative criteria we mention: the evaluation of the development capacities generated by digital novelties, the achievement of the degree of maturity necessary to understand the social-legal significance of illegal acts in relation to the requirements of the law.

For example, changing the age of criminal responsibility of children to the mental age of 12, through the lens of Kohlberg's stage theory of moral development¹, is based on an understanding of how children perceive social and legal norms and how they guide their moral behaviour. According to Kohlberg's theory, around the age of 12-13, most children are in the second phase of moral development, called the "Conventional Stage". At this stage, moral behaviour is guided by the desire to maintain norms and authority, recognizing the importance of conformity and social expectations. Children become more aware of society's rules and understand that they serve a common purpose, contributing to order and the collective good. At the mental age of 12, children begin to be able to assess the consequences of their actions on others, understanding the relationship between personal behaviour and the good of society. This

¹ L. A. Măgurianu, Moral Standards in education from the perspective of the theories developed by Lawrence Kohlberg and Jürgen Habermas. In: Quality of the training of the specialists in higher education institutions: strategies, forms, methods, 5-7 October 2005, Bălți: State University „Alecu Russo” from Bălți, 2005, Vol.1, p. 175-179. ISBN 9975-931-97-9.

ability increases individual responsibility and awareness of the impact of their behaviour on the community. Lowering the age of criminal responsibility to 12, in our case, could recognize and capitalize on the natural tendency of children of this age to conform to social and legal norms, encouraging them to develop a sense of responsibility for their actions. This could help strengthen understanding of the link between personal behaviour and societal rules, promoting the development of morally and legally responsible behaviour. Adapting the legal system to include younger children in its accountability framework could provide better opportunities for early intervention and legal and moral education. This could contribute to the prevention of delinquent behaviours by encouraging the development of positive social values and behaviours at a critical stage of development. Lowering the age of responsibility also takes into account the fact that 11-12 year olds have a growing capacity to understand abstract concepts, including notions of justice, fairness and equity. This enhanced understanding can support the argument that they are mature enough to be held responsible for contraventions in a framework suited to their needs and capacity of understanding.

So what is juvenile delinquency in contravention law? Juvenile delinquency is a component of contravention, which involves a phenomenon of deviance, manifested by the inability of some minors/adolescents to adapt to the rules of conduct in society. According to the information provided by the police, minors in our country are quite active in committing illegal acts: theft, hooliganism, not too serious. We will not develop the cases that determine the occurrence of these phenomena, because it is a topic of interest for further research, we will only list some of them:

- Lack of supervision from parents, guardianship bodies,
- The circle of people with whom they interact,
- Consumption of prohibited substances (alcohol, drugs),
- School dropout,
- Other causes.

Returning to the normative framework of contravention law, we note that the legislator establishes a limited number of material components for which the minor can be held liable. The reason for this grouping emerges from the nature of the contraventional act and the attitude of the minor

perpetrator towards the committed act and its consequences, the lack of adequate self-assessment capacity.

The problems of juvenile delinquency, the rights of the child in conflict with the law are highlighted in other national and international regulations, such as: Law of the Republic of Moldova no. 299 of 2018 regarding measures and services for children with deviant behavior, the Havana Rules of 1990, etc.

From the general to the particular, the contraventional liability regime of minors is based on the following legislative particularities (art. 16 para. (2), in conjunction with the provisions of para. (1) and para. (3) Contravention Code):

- The minor who has not reached the age of 16 will not be liable for contravention,
- The minor who has reached the age of 16 will only be held liable if it is proven that he committed the act with discretion (responsibility),
- The minor will only be held guilty if he had the freedom of action,
- At the request of the investigating officer, the court may apply to the minor the following coercive measures of an educational nature provided for in art. 104 of the Criminal Code of the Republic of Moldova¹:
 - a) the warning - consists in warning the minor that in case of committing new contraventions, measures with a high degree of severity will be taken;
 - b) entrusting the minor for supervision to the parents, the persons who replace them or the specialized state bodies - i.e. the impact of changing the minor's behaviour through third-party assistance;
 - c) obliging the minor to repair the damage caused - consists in recovering the damage caused to the victim or other persons by committing the contravention. When applying this measure, the material condition of the minor is taken into account;

¹ Criminal Code of Republic of Moldova, adopted on 18.04.2022. Published in Official Gazette of Republic of Moldova Nr. 128-129 of 13.09.2002. Republished in Official Gazette Nr. 72-74 of 14.04.2009.

- d) obliging the minor to follow a course of psychological rehabilitation - establishes advanced psychological assistance from specialists through the use of psychotherapy methods and techniques, cognitive-behavioural etc.;
- e) obliging the minor to follow the compulsory education course - resides in the obligation to attend compulsory education until the age of 18;
- f) obliging the minor to participate in a probationary program - implies the minor's participation in behaviour correction programs (modification of behaviour, views and abilities that led to the commission of the contravention) and social reintegration programs (regaining the abilities to solve the problems of everyday social life) (art. 29, Law of the Republic of Moldova no. 8 of 14.02.2008 regarding probation). The list of coercive educational measures is exhaustive. At the same time, several coercive measures of an educational nature may be applied to the minor at the same time.

Coercive measures of an educational nature are, in fact, alternatives to contraventional sanctions and differ significantly from them. We have in mind the prevention and elimination of possible risks of committing contraventions, by identifying, neutralizing and removing socio-human, subjective and objective sources, which can determine or favour the commission of anti-social acts, measures designed to contribute essentially to the permanent education of all young members of society, in the spirit of respect for the law and law order. More than that, coercive measures of an educational nature are fixed as recommendations in the minimum standards of the UN regarding the administration of justice for minors (p.18, 27 of the UN Beijing Resolution no. 40/33 of 29.11. 1995)². According to the Convention on the Rights of the Child, the authorities will take measures, whenever possible and desirable, to treat children, without recourse to judicial procedure, provided that human rights and legal guarantees are fully respected.

With reference to the recipients of these educational measures, we note that in fact they apply exclusively to persons who have reached the age of

² United Nations Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). United Nations – Resolution no. 40/33 of 29.11.1985. <https://www.probatuine.gov.md/files/getfile/156> (accessed on 13.03.2024).

16 and have committed contraventions, i.e. those who are liable for contraventional liability. However, the social-legal divide faced by the community is related to the (non-existent) solutions in the case of children who commit illicit acts of a contraventional nature under the age of contraventional liability. Here the contraventional law is powerless, and the mission of resocialization/behavioural change of minor delinquents falls to specialists in the field of social protection. For the most part, the activity of law enforcement bodies is limited to the identification of the delinquent child and the transmission of the information further to the authority in the field of social protection of the child.

However, since 2013, the police is part of the intersectoral cooperation mechanism for the identification, evaluation, assistance and monitoring of children at risk, where the representatives of the Ministry of Labour and Social Protection, the Ministry of Health, the Ministry of Education and Research also participate. The normative act that regulates the intersectoral cooperation and the tutelary authorities is the Law of the Republic of Moldova no. 140 of 14.06.2013 regarding the special protection of children at risk and children separated from their parents³, which establishes the powers of the guardianship authorities in the field of child protection, the method of identification, recording and assistance of children at risk, the protection of separated children from parents, but also the responsibility of the authorities, institutions or persons responsible for the protection of children.

Analysing the issue of juvenile delinquency in contraventional matters through the prism of art. 16 and art. 32 Contravention Code, the following contraventional sanctions can be applied to minors who have committed contraventions: warning, fine, deprivation of the right to carry out a certain activity and unpaid work for the benefit of the community.

When examining and resolving contravention cases regarding minors, the state must guarantee the perpetrator at least the following rights: (the provisions of art. 40 paragraph (2) of the Convention on the Rights of the Child refer to minors investigated for committing crimes, they are also valid for cases of examination of contraventions):

³ Law of the Republic of Moldova no. 140 of 14.06.2013 regarding the special protection of children at risk and children separated from their parents. Published in Official Gazette of Republic of Moldova Nr. 167-172 of 02.08.2013.

- to be presumed innocent until proven guilty according to the law;
- to be informed as soon as possible and directly about the accusations brought against him or, if necessary, through his parents or legal representatives and to benefit from legal assistance or any other appropriate assistance, in order to formulate and supporting his defence;
- the right to the examination, without delay, of his case by a competent, independent, impartial authority or court, through a fair hearing procedure and in accordance with the provisions of the law, in the presence of those who provide him with legal or other assistance;
- the right not to be compelled to testify or confess that he is guilty;
- the right to interrogate or request the interrogation of prosecution witnesses, to obtain the bringing and interrogation of defence witnesses, under equal conditions;
- if it is proven that he has violated the contravention law, the right to appeal the decision and any measure taken as a consequence, before a competent, independent and impartial authority or higher judicial court according to the law;
- the right to be assisted free of charge by an interpreter, if he does not understand or speak the language used;
- the right to full respect for his life, the right to be treated in a manner likely to promote his sense of dignity and personal worth, to strengthen his respect for the human rights and fundamental freedoms of others and to take into account his age as also the need to promote the reintegration of the child and his assumption of a constructive role in society, in all phases of the procedure.

When resolving cases regarding contraventions, the competent state authorities will adopt decisions in the best interest of the child. Children are different from adults in their psychological development, physical, emotional development as well as in terms of their educational needs. These differences constitute the foundation for a reduced culpability of the delinquent child and the opting for a justice for minors distinct from that of adults, primarily because a differentiated approach to them is needed. These social-legal valences, which are based on the best interest of the child, constitute the basis for the adoption of a restorative justice in

the case of minors, from sanctions to social and psycho-social rehabilitation - for the protection of minors' personality.

A specific characteristic of juvenile delinquency in contraventional cases is its "sleeping mode state", which can break out at any time. In our country, not all contraventions of this age category are discovered and registered, especially the acts of minors under 16 years old. From the statistical reports of the authorities, viewed on the official pages, we only identify contraventions committed by natural persons who have reached the age of 16, but even here we are not sure that the data are correct. The lack of functional governance mechanisms, social order factors (emigration) make this real assessment of delinquency among minors impossible. For this reason, specialists in the matter estimate that the real level of minors' delinquency is 5-6 times higher than the registered one, which is a fairly important indicator when evaluating minors' delinquency, recidivism.

Juvenile delinquency is a phenomenon that leaves its mark more and more, both on society as a whole and on the individual. Through its effects, it can bring serious damage to value systems protected by law and to harmonious coexistence between people. For this reason, juvenile delinquency must be an object of permanent concern on the part of the state, by establishing an effective control over the phenomenon, which allows the prevention of contraventions and the narrowing of the scope of expansion, making extensive use of educational mechanisms. Oprah Winfrey was right when she said, "Education is the key that can unlock the world, a passport to freedom."

Conclusions and Recommendations

- The increase in the number of minor contraventional offenders, as well as the diversification of the acts committed by them, determines the need for a complex legal and social research, to establish the legal features of the contraventions committed by minors, the factors that orient minors towards deviant behaviour and measures to prevent minors' delinquency. The hypothesis we started from is "to stop a law violator today who may become a criminal tomorrow".

- The legislation of the Republic of Moldova establishes the possibility of applying coercive measures of an educational nature to delinquent minors instead of contraventional sanctions. This valence derives from the international principles and rules regarding children's rights ratified by our country, where the application of alternative (educational) measures to sanctions have a primary role in preventing contravention.
- The contraventional liability regime of minors is based on the following mandatory legislative features: minimum age, responsibility and freedom of action.
- When investigating cases regarding contraventions, the competent authorities will ensure the minor's compliance with all legal and social rights and guarantees.
- The state must assume an active role in ensuring the well-being of the child and his family, as a basic element in ensuring the prevention of the separation of the child from his family even in the case of the child with illicit behaviour from a contravention point of view, there should be specialized residential services for the child in conflict with the law, where their rights and rehabilitation needs can be ensured.
- When resolving cases regarding minors' contraventions, the state authorities will adopt decisions in the best interest of the child, using functional and efficient governance mechanisms to rehabilitate offenders and prevent illegal acts.

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