

THE SPECIAL PROTECTION OF THE JUVENILE DELINQUENT. CASE PRESENTATION

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Abstract: *Informed by the specific characteristics of the phenomenon of juvenile delinquency, this paper aims to determine the social factors and mechanisms that lead to the development of antisocial behaviors among minors. It also aims to identify and present the protective measures for this category of minors, with an emphasis on the measures designed to protect youth who have committed criminal offences and are not held liable for such acts, and how these measures are applied in practice, in working directly with such cases. By presenting an example of youth offender casework, we aim to highlight the issues specialists in the General Directorate for Social Work and Child Protection, encounter in providing specialized services to young offenders and their family members.*

Key words: *juvenile delinquency, minors, criminal offence, specialized supervision*

Introduction

In order to define the phenomenon of juvenile delinquency, it is important to start by analyzing the general concepts of deviance and delinquency. In the scientific literature, deviance is defined as "nonconformity to a given set of norms, accepted by a significant number of people, within a community or a society". The notion of deviance applies both to individual behaviors, and at a group level, being more comprehensive than the notion of delinquency, which is practically included in this definition (Giddens, 2010, p. 748). Delinquency represents a complex social problem engendered by the interaction between the individual and their environment. When addressing the issue of delinquency, it is essential to consider social maturity, which is actually the defining element in regard to the individual's ability to maintain a balance between one's personal interests and those promoted by the society in which they live. Thus, the offender is perceived as an individual with insufficient social maturity, who has difficulties in social integration and in adjusting to existent norms (Pașca, 2005). In regard to offending minors, the phenomenon of juvenile delinquency implies a series of complex issues, such as: social inadaptation, behavior and personality disorders, which determines its positioning as an study interest at the intersection of various disciplines: psychology, psychiatry, sociology, pedagogy, criminology etc. The

theoretical objectives of studying the phenomenon concern the causes and the individual and social significances of the offending behavior, while the objectives of practical research focus on identifying the means of preventing and controlling the phenomenon of violating legal norms, with an emphasis on the involvement of educational stakeholders, social structures, the cultural environment, the rule of the law (Rădulescu și Banciu, 1990).

The research indicates that the phenomenon of juvenile delinquency does not reach alarming rates in our country, in comparison to other countries – the statistical data show that juvenile delinquency corresponds to "a percentage of about 8-10% on average, in aggregated delinquency rates in Romania" (Banciu, 2011, p. 19), but it represents nevertheless a problem that warrants attention. This issue is at the center of sociological, psychological, criminological etc. research, which calls for the need to identify coherent solutions in improving protective measures, with the aim of reducing antisocial behaviors among youth, with an emphasis on the adoption of educational solutions and effective specialized interventions, as well as on the involvement of all responsible stakeholders, especially local communities and institutions with responsibilities in child welfare: county school boards, the police, city halls, General Directorates for Social Work and Child Protection etc.

Drawing on the specific characteristics of the phenomenon of juvenile delinquency, this paper aims to determine the social factors and mechanisms that lead to the development of antisocial behaviors among minors, both as a group phenomenon, and as an individual phenomenon. It also aims to identify and present the protective measures for this category of minors, with an emphasis on the measures designed to protect youth who have committed a criminal offence and cannot be held liable for such acts, and how these measures are applied in practice, in working directly with cases.

Juvenile delinquency. Theoretical framework and protective measures for the minor who commits a criminal offence and is not held liable

Theoretical framework

For a better understanding of this phenomenon, as well as its implications for both the offending individual and their community, we begin by defining the phenomenon and by placing it in the scientific discourse, in order to determine the individual's conduct characteristics in regard to the offending behaviors they might engage in at a given moment.

Research in this field underlines the fact that judicial and psychosocial perspectives in addressing deviance and implicitly delinquency do not overlap (Preda, 1998; Pașca, 2005).

From the judicial standpoint, juvenile delinquency is labeled as a distinctive form of deviance, that is of a criminal nature, and is defined as "a set of conducts in conflict with the values protected by the legal norm" (Rădulescu și Banciu, 1990, p. 42), or "that sequence of delinquency found that is prosecuted and sanctioned by specialized courts of law..." (Pașca, 2005, p. 6).

The concept of deviant behavior in social psychology has a wider range of inclusion, compared to its conceptualization within the judicial field. Thus, from a

socio-psychological point of view, the common factor underlying delinquency is that "the subjects from this category give evidence of nonconformity to the social model, and display deviant behavior from social and moral norms, in the sense that they pursue some of their goals and aspirations through social unacceptable means" (Preda, 1998, p. 2).

Furthermore, the sources of offending behavior are represented by different categories of minors: abused minors, youth abandoned by their parents and living in the streets and forced to engage in such acts in order to survive, minors who have been institutionalized, deprived of an adequate social environment, youth with poor academic performance or dropout (Banciu, 2011).

Thus, it follows that juvenile delinquency should be conceived as "the consequence of the absence of moral support provided by the adult, the lack of protection and care in the family, the failure of the educational activity in school etc" (Chipea, 1996). Children, who for various reasons, such as: parental alcohol abuse, poverty, troubled family history, children subjected to different forms of violence in the family etc, are not provided with the minimal conditions for their development, might be at risk of becoming offenders (World Youth Report, 2004). Moreover, the research shows that most of the juvenile offenders prosecuted by courts of law display "deficiencies in family, social and school socialization, as evidenced by running away from home, truancy, alcohol and drug abuse, theft and physical violence..." (Banciu, 2011, p. 19).

The family is extremely important in this context because it exercises a considerable influence on the child's personality development and professional achievement. The research points to a direct relation between the educational environment in the family and social integration (Sandu, 2008). Thus, one can assume that offending youth might be simply victims – not to be found guilty, as they lack the criminal responsibility imputed on them.

In this regard, the judicial perspective needs to be harmonized with the socio-psychological standpoint toward a multifaceted understanding of delinquency, allowing for adequate interventions conducive to the social reintegration of this category, to the prevention of recidivism and the prophylaxis of social deviance through multidisciplinary and interdisciplinary actions. An approach which takes into account the psychological, sociological, pedagogical, judicial, medical perspectives in researching juvenile delinquency aims to study this phenomenon in all its complexity.

In the Bihor county, we encounter the issue of juvenile delinquency. Although the number of juvenile offenders is not very large, it still exists. According to data provided by DGASPC Bihor (2012, 2013), between January – September 2013, there were four cases registered and managed of minors who committed a criminal offence but were not held liable (compared to the 88 cases managed between January – December 2012), and 12 cases of minors aged 14 to 18, who committed criminal offences and were held criminally liable. Hence, there are minors who are engaged in criminal activity, and the General Directorate for Social Work and Child Protection is required to take measures of "a more thorough supervision" in relation to them.

Other countries are dealing with this issue. The research indicates that significant functional inefficiency in the home, at school and in the community often

determines that these children, young people and their families request support from different public and private agencies (MacKinnon-Lewis et al., 2002).

Protective measures for the minor who committed a criminal offence but is not held liable

Current legislative regulations concerning child protection address the issue of the offending juvenile, who cannot be held criminally liable, and ensure at the same time the alignment of internal norms to international standards regarding the protection of the child's rights (UNICEF, 2005). The judicial system is however not mandated to fulfill this role, and we identify the need for the social sector to collaborate with the juvenile justice system, otherwise the latter cannot realize sustainable changes in regard to children's behavior, their specific circumstances and environment (UNICEF, 2013).

Using as criteria for establishing criminal liability the child's age and mental capacity, art. 113 of the Criminal Code establishes three categories of minors: minors under the age of 14 who cannot be held liable based on the presumption of a lack of mental capacity; minors aged 14 to 16 who can be held liable if it is proven that they committed the act in discernment; and minors aged 16 who are held criminally liable.

Law no. 272/2004 concerning the protection and promotion of the child's rights, on chapter V, regulates the protection of the child who committed a criminal offence and is not held liable. Thus, according to art. 80, paragraph 1, at the proposal of the General Directorate for Social Work and Child Protection within the administrative-territorial unit where the child resides, either one of the following special protective measures will be taken in relation to the offending child who cannot be held criminally liable:

- specialized supervision
- placement

Art. 67, paragraph 1, stipulates that specialized supervision be enforced in relation to the offending minor who is not held criminally liable, while paragraph 2 of the same article requires that the competent agencies to enforce such a measure are the Child Protection Commission, if there is a parental agreement, or the court of law in the absence of such an agreement.

The measure of specialized supervision (art. 81, paragraph 1) consists in ensuring the child stays in the family home, provided they fulfill certain obligations, such as:

1. the requirement of attending school
2. the use of day care services
3. participation in medical treatment, counseling or psychotherapy
4. the prohibition to visit certain places or to maintain contact with certain individuals

These restrictive measures are established by representatives from the General Directorate for Social Work and Child Protection when the specialized supervision measure is decided upon by the Child Protection Commission.

According to art. 81 (2), "provided that maintaining the child in the family home is not possible or when the child does not fulfill the obligations set up through the specialized supervision measure, the Child Protection Commission or, as applicable,

the court of law, can order their placement in the extended or a substitutive family, as well as the fulfillment of the child's obligations stipulated in paragraph 1".

Art. 82 of the law no. 272/2004 stipulates that "if a legally-sanctioned offence, committed by the child who is not held liable, presents a high degree of social danger, as well as in the case of the child for whom protective measures were set out according to art. 81, presents re-offending behavior, the Child Protection Commission or, as applicable, the court of law, orders for a determined period, the child's placement in a specialized residential service".

For the duration corresponding to the measures applied to the young offender, specialized services are provided in order to assist the child in the process of social reintegration (art. 84, paragraph 1).

Government Resolution no. 1439/2004 regarding specialized services for the offending minor who is not held liable, requires in art. 5 that "specialized residential services for the offending minor who is not held criminally liable, are organized as centers providing direction, supervision and support for the child's social reintegration".

Intervention methods in working directly with cases

Drawing on the theoretical aspects previously mentioned, we shall present an example of intervention applied by professionals in specialized services, in their direct work with juvenile offenders and their family members.

In approaching such cases, specialists analyze the overall issues, using specific intervention methods and techniques adapted to each client system, working in multidisciplinary and inter-agency teams. Thus, the service user is perceived through their relationships with the other systems they relate to (Figure no. 1): the family, the peer group, the community they belong to, the organizational system they come into contact with, obviously considering their personality and other factors that might contribute to solving the issues they deal with.

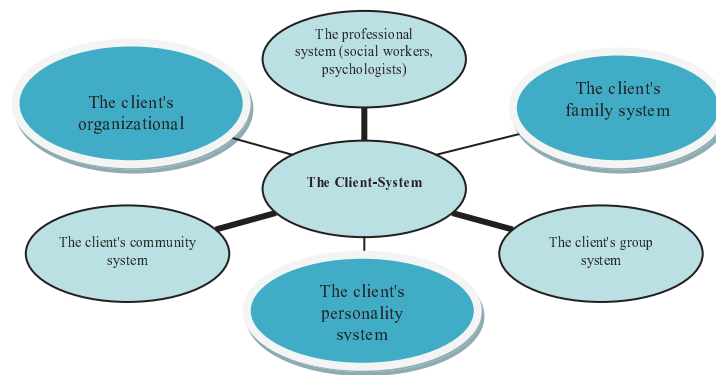


Figure no. 1 The helping relationship (adaptation from Poulin et. al., 2000 apud Roth și Rebeleanu, 2007)

Case presentation (*we specify that one of the authors of this paper was the case manager in the following example)

The court in one of the towns in Bihor county issued a communication addressed to the General Directorate for Social Work and Child Protection, requesting that the Child Protection Commission establish a special measure for minor M.D., aged 16, with the domicile in a commune in Bihor county, who was spotted by police officers shoplifting from one of the stores in the village, after breaking in. Arrived at the scene, the local police found only minor M.D., the other participants having managed to escape.

The communication was analyzed and a case manager was assigned to investigate the case and present it before the Child Protection Commission.

During their investigation, the case manager (a social worker) worked in partnership with colleagues across different services: services specialized in child protection for offending minors, but also with colleagues in a specific counseling service for parents and children, all of these services being provided under the authority of the General Directorate for Social Work and Child Protection. The case manager also worked together with the person with social service responsibilities in the local council and with staff from the school attended by the child.

Thus, the case manager began by assessing the case and discussing all of the aspects with: the minor, his family members, local council and school staff etc. Taking into account the complexity of the case, an intervention was considered necessary in this case, as a result of the assessment. In this regard, the intervention took place at the individual and family level.

Following the assessment, the team's proposal submitted to the Child Protection Commission established the need for specialized supervision (art. 81, Law no. 272/2004), which consisted of the child remaining in the family home under the condition that he fulfill certain requirements such as:

1. attending school
2. using day care services
3. submitting to medical treatment
4. psychological counseling
5. the prohibition to visit certain places or to maintain contact with certain individuals

However in practice, these requirements were difficult to fulfill. The child's family explained that they could not assume personal responsibility for their child's school attendance, on the basis of his frequent truancy. In their area of residence, there aren't any special educational establishments for children with disabilities, thus such a possibility had to be ruled out. Furthermore, the parents explained that they could not supervise the child on an ongoing basis in order to prevent him from going to certain places and connect to the persons who caused him to engage in offending behavior. The child was registered with a psychiatrist, but he did not take his prescription medications regularly; the parents stated they could not monitor the child during school hours, and could not take responsibility for that.

For a better understanding of the case, we selected certain relevant aspects for further analysis.

A. Description of the client system

The minor M.D. attended at that time one of the Arts and Crafts Schools in Oradea, living in the boarding school during the semester. The child was known as one of the students who often played truant (in spite of the gatekeeper in the institution), and he was repeatedly found at the train station by the police, planning on going home (he often did arrive home).

He was a child who had been institutionalized in a residential center in the county, a center for children with disabilities between the ages 3 to 14, where he also received his education. The child had been institutionalized due to family issues. He was reintegrated in his biological family after the intra-family problems were resolved.

The child was registered with the General Directorate for Social Work and Child Protection, having been certified with a marked disability – mental, psychiatric characteristics – a diagnosis of medium intellectual disability and behavioral problems.

B. Family assessment

The minor's family lives in a commune in the county, at 50 km from Oradea. In the past, there were problems within the family, such as alcohol abuse and domestic violence; hence the child was placed in a residential institution under the authority of the General Directorate for Social Work and Child Protection. The child has three elder siblings (a sister and two brothers), who were raised by their grandparents when their parents were going through difficult times. The child's siblings live in another county, with their own families. The parents managed to overcome their issues, after converting to a neo-protestant religion. They stopped consuming alcohol and accepted M.D. to be reintegrated in the family. In addition to the support provided by the church, before and after the child's reintegration, the family received material and moral support from a non-governmental organization in Oradea (with building materials, food etc).

The child's reintegration in the family raised serious concerns. The parents lacked the parenting knowledge and skills necessary in raising a child with disabilities, hence the relationship conflict between the parents and the child.

The child repeatedly ran away from home, the family after being notified looked for him every time. Also, when he was at home, he was easily influenced by anyone and in exchange for small amounts of money and other promises, he would obey their requests (e.g. breaking the neighbors' windows). He was not at his first misdemeanor. After the incident that led to the investigation by the court, the child's mother, since her first meetings with the case manager, stated: *"I can't handle it anymore... do whatever you want with him... I don't know how to deal with it any longer... he's all yours, I'm sick of having to pay fines or the neighbors' broken windows, I'm ashamed, we've lived there for a long time... I have other children, but I didn't have any of the problems that I have with him"*.

C. Problems identified following the complex evaluation

- the child's behavioral problems;
- a strain on the relationship between the child and his parents;
- conflicts between family members, actually a major conflict;

- poor parenting skills (the parents cannot control their son's behavior).

D. General objectives established through consensus with all the parties involved:

- changing the child's undesirable behaviors into desirable behaviors;
- improving intra-family relationships;
- developing parental skills.

E. The intervention

The intervention at the individual level focused on changing the child's undesirable behaviors. Because it was possible, at the parents' request and with the child's agreement, he was placed for a month at an emergency care center in Oradea. The child attended school, without living on campus. During that time, he was provided with support from the professionals of the center (psychologist and social worker). The counseling sessions aimed to change his undesirable behaviors and improve his relationship with his parents. During this period, there were no problems in terms of the child's behavior in the center, at school, or in meetings with his parents.

The intervention at the family level focused on developing parental skills. A series of issues were identified. Given the considerable distance between the parental home and the service where the meetings with the professionals took place, and the family's financial difficulties, the mother was the only one who could participate in two sessions with the psychologist. In only two sessions, such objectives cannot possibly be achieved; consequently the intervention was limited to providing specific information that might help in solving these issues. It was practically impossible to engage the whole family in the intervention.

F. Discussions:

The intervention plan focused on the whole family, did not reach its objectives because for each type of intervention, a compromise solution had to be identified, due to the general lack of social services in rural communities. Generally, such problems are highly complex and require a long term specialized intervention. Issues at the psycho-individual level, where we identify an insufficient development of moral judgment, of attitudes and values, affective and personality disorders, low frustration tolerance etc, are difficult to address in short periods of time. Moreover, the intervention at the individual level is not enough. It is important in this regard that the intervention at the individual level be completed by an intervention at the family level, since many of the problems are caused and/or maintained by problems within the family.

Conclusions

According to the data presented in this paper, the phenomenon of juvenile delinquency does not reach alarming rates in our country; however this issue does exist and should be the center of attention for all stakeholders. It is a known fact that adolescence is considered a troublesome time. Given the age-specific biological changes and teenagers' wish for autonomy, independence from parental control, "it isn't

surprising that the teenage years are a time of rebelliousness and conflict with authority at home, at school, and in the community" (Siegel and Welsh, 2009, p. 4). This period of one's life may be associated with a certain vulnerability to the action of negative factors of socialization. Running away from home and truancy, misbehavior, nonconformity, are only some of the characteristics of teenagers. These characteristics can be corrected or eliminated through positive education and socialization of at-risk youth (Banciu, 2011).

According to Law no. 272/2004 concerning the protection and promotion of child's rights, the General Directorates for Social Work and Child Protection fulfill an extremely important role in assigning and establishing the special protective measures for the offending minor who is not held criminally liable. Given the complexity of the issue, the case selected for this paper illustrates a possible intervention method, with an emphasis on the problems encountered in case management, determined mainly by difficulties in accessing specialized services, rather insufficient in regard to the needs of rural communities, or specific educational programs for inadequate parental skills, by intra-family conflicts, a lack of parental responsibility etc.

In practice, the system does not have the specialized services required to fulfill all of these needs, and the measures that can be taken – such as specialized supervision, for which the responsibility falls back on the parents, who ought to be supported by their local community – are rather unhelpful, since the parents are often out of their depth or completely uninterested. If one does not intervene through specialized integrated services of psychosocial, educational and socialization assistance, there is a risk of enforcing the antisocial behavior, a risk of recidivism through committing more serious offences. Furthermore, as social marginalization and non-acceptance increase, the minors' rehabilitation becomes more difficult as they age. Another essential aspect in this regard is the risk of re-offending. Professionals specialized in working with such cases estimate that, in 30-40% of these cases, there is a high risk of re-offending, which declines if the intervention is sustained (Văduva et al, 2009). All parties involved carry the responsibility for the case.

Further discussions are necessary in order to determine viable solutions for these problems, such as developing new specialized services, developing preventative programs in regard to this issue etc.

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