

THE CRIMINAL LIABILITY OF MINORS IN THE CASE OF OFFENSES WITH A DURATION OF CONSUMMATION

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Abstract. *The paper is centered around the criminal liability of minors in the case of offenses that have a duration of consummation, when, after committing a criminal offense, the minor becomes of age and the offense has consequences that occur after the age of eighteen, as well as in the situation where the offense has been committed by a minor that is not criminally responsible, but the consequences of the offense occur after the minor becomes of criminal age; in these cases, the problem of establishing the way in which the minor will or will not be held accountable arises.*

Keywords: *minors, criminal liability, responsibility, offenses with a duration of consummation*

1. Introductory considerations

In the case of offenses that have a duration of consummation, the moment in regard to which the applicable law is chosen, is the moment of depletion, the moment in which the action or inaction is completed or when the last action is carried out¹.

In the case of continued offenses, the action that is the material element of the offense, and the process of producing the result, do not end at the time that all the constituent elements of the offense are joined together and when the criminal activity reaches its

¹ V. Papadopol, D. Pavel, *Forms of infractional unit in the Romanian Criminal Law 1992*, pp. 60-61

consummation point, which makes the consummation of the offense to have a length and a final moment, which is when the criminal activity is depleted.

2. Continued, continuous and habitual offenses

The offense is continuous when the same person, at different moments in time, but acting with the same criminal intent, carries out actions or inactions that, if taken individually, are each the same offense². Habitual offenses, or offenses of habit are those that require a person to repeat the action or inaction for a number of times that is big enough in order to determine that the person engages in such conduct out of habit, occupation or activity³.

That which is common to all those categories of offenses, is the fact that the duration in which they are carried out, is extended over a period of time, and that throughout this duration, the offense is unfolding until the perpetrator willingly brings it to a halt, or until it is discovered, this moment being its final moment, when the offense is depleted.

Because the duration of these offenses is extended over a period of time, when they are committed by minors, we are raised with the issue of establishing their criminal liability: the situation in which the minor engages in criminal activity before he obtains criminal capacity and ceases the activity after the legal capacity is obtained; as well as the situation in which the criminal activity carried out during the age of criminal minority and is discontinued when reaching the age of majority.

A first situation arises when a part of the action or inaction that make up the continued and the habitual offenses, or when some of the actions or inactions that constitute the continuous offense, have been carried out before the minor turned fourteen years of age, and others, after the minor turned fourteen, but before turning sixteen years old. In this situation, will the minor be held accountable for the

² T. Dascăl, *Romanian Criminal Law*, Concordia Publishing House, Arad, 2007, p. 186

³ V. Oancea, *Romanian Criminal Law, The general part*, Didactic and Pedagogical Publishing House, Bucharest, 1971, p. 231.

entire criminal conduct or only for the activity carried out after he became sixteen years of age, if proven that he acted with discern?

According to one opinion⁴ , expressed in regard to the continuous offense, it has been said that the entirety of the actions make up for the offense, regardless of the time that they were committed, arguing that criminal irresponsibility on account of age does not lead to inexistence of the offense and that the minor offender should be accountable for the entire criminal activity carried out.

The prevailing opinion⁵ , which we adhere to, regarding all the offenses that have a duration of consummation that is extended over time, the minor will only be accountable for that part of the illicit conduct that occurred after the minor becomes over fourteen years old, because up until this time, the minor is presumed to completely lack legal capacity. As a result, in the case of continuous offenses, the minor will only be held accountable for that part of the illicit activity that was carried out after the age of fourteen, and in the case of continued and habitual offenses, only for that part of criminal activity that unfolded after reaching the above mentioned age threshold, if that part of activity can make up for a fully developed offense. The Supreme Court ruled in favor of this opinion also , stating that "in case the minor, during the time when he could not be held criminally accountable, commits part of the successive acts that make up the continued and the habitual offenses, or when some of the actions or inactions that constitute the continuous offense, which he repeats when he can be held criminally accountable according to the law, he will be only held liable for the part of the misconduct carried out in this latter time".

A second situation arises when part of the action or inaction that make up the continued and the habitual offenses, or when some of the actions or inactions that constitute the continuous offense have been committed by a minor between the ages fourteen and sixteen, and others when the minor was sixteen to eighteen years old.

⁴ E. Boeriu, *Note fordec. pen. nr. 420/1965 of Sighișoara Tribunal*, în „Revista Română de Drept” magazine, no. 1/1967, p. 50.

⁵ V. Papadopol, Doru Pavel, *op. cit.*, p. 334.

Thus, if during the time when the minor was between fourteen and sixteen years old, acted without discern, the acts committed will not be part of the continued, continuous or habitual offenses along with the acts committed after the minor turned sixteen years of age, and until he turned eighteen, the latter being able to stand alone as individual offenses only if they sum up all the elements required by law for these offenses; which is why, if, after turning sixteen years old, the minor has not committed enough material acts that can indicate the habit or occupation of the perpetrator, the content of the habitual offense will not be considered completed, and the putting into execution of a single action or inaction provided by the criminal law will not lead to a continuous offense, but to a simple one. If however, the minor acted with discern between the ages of fourteen and sixteen, and the criminal conduct did not cease after the age of sixteen, all of the actions or inactions will be taken into account as to form one continued, continuous or habitual offense, depending on the case⁶.

Finally, the third situation arises, one that asks the question of the kind of liability that will be involved : the criminal liability of minor, or the criminal liability of those that are of legal age. Such a discussion comes up when part of the action or inaction that make up the continued and the habitual offenses, or when some of the actions or inactions that constitute the continuous offense have been executed before the age of eighteen and others after this age.

In these kinds of situations, criminal liability can't be fragmented into two offenses, one committed as a minor and the other committed as an adult, because the unity of the offense, regardless of its type, cannot be separated based on the fact that the perpetrator acted as a minor or as an adult⁷.

In this hypothesis, all material actions or inactions committed, some before adulthood and others after adulthood, will constitute a single continued, continuous or habitual offense, depending on the

⁶ V. Papadopol, Doru Pavel, *op. cit.*, p. 335

⁷ Ludovic Biro, *Note for dec. pen. nr.59/1960 of the Regional Cluj Tribunal*, in „Legalitatea Populară” no. 9/1960, p. 67.

case, and the perpetrator will be charged as an adult, for a single offense for the entire criminal conduct, because, on one hand, the acts of criminal conduct during the age of minority have been committed with discern and the same criminal intent, and on the other hand, because the depletion of the offense occurs after the age of eighteen, the idea settles in, that the perpetrator committed the entire act as an adult⁸ .

Legal practice has come to the same conclusion⁹ , stating that “in case of continued offenses, the time that it is committed is equivalent to the time that the final action or inaction is discontinued, and in the case of continuous offenses, it is equivalent to the time when the final action or inaction is committed”¹⁰ , this being the time when the legal repercussions will be taken against the perpetrator, a minor or an adult, depending on the case.

If the continued, continuous or habitual offense has been carried out during minority, as well as after reaching adulthood, the perpetrator, from a criminal liability point of view, will be treated as an adult, the fact that he was a minor during the execution of the first criminal acts can only taken into consideration upon selecting the punishment, as a mitigating circumstance.

3. Progressive offences

In the case of the progressive offense, the law applicable is the one effective at the time the offense is committed, and not the one effective at the time that the result of the offense is produced .

This offense is characterized by the fact that after a certain criminally relevant result is produced, in the development of the causal liaison, in time, there is either an amplification of the result, either the occurrence of another consequence, which attracts another more serious legal qualification. If the minor, at the time that he was

⁸ V. Rămureanu, *The limits and consequences of the criminal liability of the minor*, „Revista Română de Drept” no.7/1970, p. 50, V. Papadopol, DoruPavel, *op. cit.*, p. 335.

⁹ Supreme Court, Criminal section, dec. nr. 459/1972, în *Culegere de decizii ale Tribunalului Suprem pe anul 1972*, Editura Științifică și Enciclopedică, București, 1973, p. 319.

¹⁰ Supreme Tribunal, Guiding decision no. 1/1987.

not criminally liable, has committed an offense with consequences that progressively evolved and became worse, consequences that unfolded by the time the minor became criminally liable, he will not be liable for punishment .

If the minor committed the offense when he was criminally liable, and the consequences progressively got worse, or other consequences developed as the minor became an adult, he will be treated as a minor . Therefore, when establishing the criminal liability of one who has committed an offense of common assault or one of bodily harm during the time when he was a minor, the rules of criminal liability of the minor will apply, even if, because of the nature of the lesions caused, the victim later deceased, after the perpetrator turned eighteen years of age. The offense, keeping in mind the much more serious consequence that occurred, is one of common assault that led to the victim's death (Criminal Code, article 195).

4. Conclusions

In the case of offenses that take time to consummate, meaning the ones that have a consummation moment (that happens when the action or inaction of the offender occurs) and a depletion moment (when the consequences of the action or inaction come to a halt), the criminal liability of minors is established in regard to the moment of depletion, excepting the case of progressive offenses, for which criminal liability is born at the moment of consummation, meaning the moment when the action or inaction takes place.

Finally, in the case of continuous, continued and habitual offenses, criminal liability will exist or not, depending on the case, keeping in mind the age of the offender at the time of depletion, and in the case of progressive offenses, there will or will not be the case of criminal liability as we keep in mind the moment that the offense is consummated.

Bibliography

1. Ludovic Biro, *Note for dec. pen. no .59/1960 of the Regional Cluj Tribunal*, in „Legalitatea Populară” no. 9/1960.
2. E. Boeriu, *Note for dec. pen. no. 420/1965 of Sighișoara Tribunal*, in „Revista Română de Drept” magazine, no. 1/1967
3. T. Dascăl, *Romanian Criminal Law*, Concordia Publishing House, Arad, 2007
4. V. Oancea, *Romanian Criminal Law, The general part*, Didactic and Pedagogical Publishing House, Bucharest, 1971
5. V. Papadopol, D. Pavel, *Forms of infractional unit in the Romanian Criminal Law 1992*
6. V. Rămureanu, *The limits and consequences of the criminal liability of the minor*, „Revista Română de Drept” no. 7/1970