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The security right of juvenile delinquents

S u m m a r y

The present report raises the question of the security right of juvenile delinquents in determining the correctional measures “placement into a socio-pedagogical boarding school” and “placement into a correctional boarding school”. The security right is a right of guarantees against arbitrary deprivation of liberty within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms, but it is also a security right of a person relevant the environment in which he lives. When the family environment is stable, the best interest of the juvenile delinquent is to remain in this environment and to perform a specialized correctional influence not instead of it, but together with it. This is essential to avoid the unfavorable consequences from the institutionalization of the delinquents and their stigmatization.

Key words: security right, juvenile delinquents, stigmatization

Security right of juvenile delinquents^{1*} is the main right according to Art. 5 of The European Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 6 of the Charter of Fundamental Rights of the EU. It is unlimited and consists of a ban on arbitrary deprivation of liberty for which guarantees are provided in the Convention (Art. 5 §§ 2–5). The adherence to these guarantees is of great importance to obstruction of eventual negative consequences of institutional treatment of the juvenile delinquents and the risk of their stigmatization.

Explaining the issue of providing the security right of juvenile delinquents in Bulgaria, firstly we have to describe the legal regime related to imprisonment. The operative legislation foresees three sanctions of imprisonment according to the Convention. These sanctions are: the punishment “deprivation of liberty” of a juvenile (Art. 62, Section 1 Penal code) and correctional measures “placement into a socio-pedagogical boarding school” and “placement into a correctional boarding school” (Art. 13, paragraph 1, section 11 and 13 of Law for fight against the anti-social acts of the minors and juveniles.

Particularly, these correctional measures concerned with the placement into a correctional boarding school correspond to the limitation according to Art. 5 § 1(d) of the Convention and represent freedom deprivation in order to provide educational supervision. The European Court of Human Rights adopted that they are legal according to the Art. 5 of the Convention (Decision of the case *A. and other v. Bulgaria* (application no. 51776/08), 29 November 2011). In the case *D.L. v. Bulgaria* (application no. 7472/14), 19 May 2016, the Court referred to that judgment as a precedent. At the same time the Court accepts that in the appeal regime of those measures, there is an infringement according to Art. 5 § 4 of the Convention (*D.L. v. Bulgaria* (application no. 7472/14), 19 May 2016; §§ 89–93) as “the applicable legislation did not authorise minors who were placed in an educational centre to apply to the courts for a review of their detention”. Therefore, according to the European Court, the security right of juvenile delinquents is not fully guaranteed by the legislation.

The issue of the influence of this unconformity on the future criminal activity of juveniles is of great importance in clarifying the causes of juvenile’s crime. The results of the survey in 2016 made in Varna prison about “Stigmatization of the offenders and their criminal career” can give some insight into the consequences of this form of institutional treatment on the process of criminalization of the person. During the study are respected the requirements of anonymity and volunteering. 225 male people, who are serving prison sentences, are involved. By means of a standard interview is collected the information about the present and

¹ Juvenile delinquents in Bulgaria are the persons who haven’t attained 18: minors who have committed anti-social acts and juveniles who have committed anti-social acts and crimes.

previous criminality of the involved people, including their anti-social acts and crimes before the age of majority.

The data indicates that 45 people, who compose 20% of the interviewed, had been placed into correctional institutions (boarding school and/or correctional home – prison for juveniles) before they attain majority. For all these individuals, there is ongoing criminal activity, which tends to stability. The made one-factor disperse analysis ANOVA determines an important influence of the independent variable „placement into a boarding school/correctional home” on the dependent variable “sustainability on the criminal career” ($F = 11,970$, $p < 0,01$). From this it can be concluded that sanctions related to deprivation of liberty until the age of majority, have a definitely influence on the formation of the criminal career of the criminal.

The reasons that lead to the impossibility of these sanctions to realize their individual preventive effect on offenders date back in the separation of the child from his closest social environment. This experience, according to F. Tannenbaum “plays a greater role in making the criminal than perhaps any other experience” [6, p. 19.] The process can be illustrated by the case of the interviewed “S2”. His anti-social activity began at a very early age – nine years old, when he was the first systematic escape from school and home, and was taken into report by an inspector at a children`s pedagogical room². In clarifying the causes for the first deviation and the follow-up, still primary deviations, it has been established that they are connected with the friend`s environment in which, along with anti-social acts and crimes against property, the use of alcohol was also spread. The family was stable, the relationships were not deformed. Nonetheless, the many anti-social acts have exhausted the possibilities of applying lighter educational measures and have led to a determined institutional reaction of attitude. It is related to placing the delinquent into a socio-pedagogical boarding school, where the stay lasted two years, subsequently into a correctional boarding school with a stay for a new two-year period, until comes to the application of punishment – deprivation of liberty for more than one year in corrective home (prison for juveniles). From the data provided, it is established the self-assessment of the personality regarding the exemption from criminal responsibility with the placement in a correctional boarding school in the past. The interviewed reports that he has „accepted the situation“. In the assessment can`t be found neither the desire of correction of the wrongdoer, nor for giving meaning of the type and severity of the sanction. This reaction of the institutional impact shows that somewhere at the moment of placing into a correctional boarding school, the person has already accepted his social status as a violator and adjusted his behavior further according to this status. At a later stage, the interviewed declared that he has acquired his criminal

² Children`s pedagogical room is a state institution in which are taken into report minor and juvenile delinquents committing anti-social acts and crimes.

experience during his imprisonment in the correctional home, and the majority of his close friendly environment already got such an experience. In conclusion, the investigated person has over thirty years of criminal careers, including reported unsolicited crimes against property to which he has developed a professional attitude. The process of such inappropriate institutional treatment of juveniles and the subsequent formation of criminal careers has been investigated already in the beginning of the last century in USA [4, p. 9–11].

Similar, although specific from the point of view of life circumstances is the case of the offender with a profile “P”. Up to three years old he was placed in a home for children deprived of parental care, after which he was adopted and raised by a single parent – his mother. Despite the mother’s efforts to educate him, the boy has fallen into a drug-addicted youth environment, which determined his future crimes related to drugs. He was placed into a boarding school at the age of ten, for the first time, where he stayed for two months and consequently he returned there 2 years later, when he stayed two years and six months. The aim of the educational measure was to complete basic education due to multiple escapes, including exclusion from school due to its behavior. The paradox in this case is that although the efforts of the state institutions to provide a family environment for raising the child, later it was the state which was forced to separate the child from this environment for a long period of time. Moreover, this separation from the family environment and institutional supervising did not in any way result separation from the negative friend’s environment. Namely, this was the main purpose of the correctional measures.

In such cases and in similar cases, the security right of juvenile delinquents can be examined not only as a right of guarantees against arbitrary deprivation of liberty, but also in a wider context – such as the security right of the person according to the environment in which he lives. When the family environment is stable, the best interest of the juvenile offender is to remain in this environment and to perform a specialized educational influence must be with, but not instead of it.

Next, it may be indicated the impossibility in accordance with the effective legislation of juvenile offenders to initiate proceedings under Art. 31 of Law for fight against the anti-social acts of the minors and juveniles, reviewing of the measure related to placing into a boarding school, after the start of its implementation. In practice, however, there is no obstacle to the delinquent’s family to make approaches to the local commission for fight against the anti-social acts of the minors and juveniles, as it can refer to the court and bring an action. However, the lack of such exclusive statutory rule creates a certain element of legal insecurity. This may have a certain traumatic effect on the personality of the young offender. This effect may be expressed in the forming self-assessment in the person that he is labeled and has no legal opportunity to change its unfavorable social status. When as a result of all this is unlocked “a secondary deviation” [1, p. 76.] the justice sys-

tem would face the consequences of the recidivism. An example for such is the person with profile "F1". His family environment was divorced parents, his father was an alcoholic, and his mother was a prostitute. The child made his first escape from home when he was eleven and he was placed consecutively into a socio-pedagogical boarding school, where he stayed for three years, and into a correctional boarding school with a stay of one year and six months. During his stay in the correctional boarding school, the juvenile thought that the attitude to him was severe that is why he had escaped several times from the boarding school. During the last escape, he has committed a theft and has been sentenced to imprisonment for two years and two months, which he has served in a correctional home. At the age of nineteen, the interviewed has committed ten crimes against property and numerous anti-social acts when he was minor and juvenile. For his early years, he has not developed any other self-assessment of his behavior, except this one that his social status of the offender has been finally confirmed.

Another group of causes are connected with the risky environment in which live the children in respect of which the remedial measures in question are imposed. It is about children who commit anti-social acts without any features of crimes such as wandering, begging, prostitution, systematic escape from home or school, alcohol and drug use [5, p. 34]. The empirical analysis of Sv. Margaritova related to the legal action for imposing correctional measures "placing into a socio-pedagogical boarding school" and "placing into a correctional boarding school", shows a vicious practice using such institutions instead of taking measures for protection of children living in a risky environment [2, p. 136–137]. This data is also supported by the results of the Varna prison study, according to which the predominant part of the persons in the boarding schools lived in a risky family environment. Here are included the cases of: parents exercising violence (profiles "Q2", "N4", etc.); parents putting their children in a state of insanity (profiles B1, F4, V6, etc.); parents with mental diseases (profile "H3") or alcohol and drug abusers (profiles "O1", "A7", etc.), parents committing crimes (profile "S3"). This way the juvenile delinquent is sanctioned for his behavior directly linked to unstable family environment.

Especially, the case of „M“ is more significant considering that the institutional reaction is not aimed at eliminating family inconsistencies, but in a practically unconscious child. The interviewed was in a family of divorced parents with a step-brother and step-father. From the age of nine he began to run systematically from home and school and wander. The mother has turned to an inspector at a children`s pedagogical room for placement into a socio-pedagogical boarding school. The minor was placed into the boarding school where he stayed for a year and six months, and later as a juvenile was accused of imprisonment with suspense of execution of the custodial sentence. At age twenty-two, the interviewed has three sentences, the last of which is for non-fulfillment of probation measures.

The court assesses the risk of relapse as high. A question may be asked why the sanction was directed against the child instead of taking measures to improve his security in the family environment, including the possibility of taking cares by other people.

In these and other cases, law enforcement difficulties are related to the identification of factors that determine behavioral deviations, rather than the type of sanctions. Properly assessing the causes that led to the commission of anti-social act and crimes by juvenile delinquents would greatly guarantee the security right of the offenders. This may lead to application of the deprivation of liberty in the form of a punishment or educational measure only as an exception.

In conclusion, there are preconditions for treating children with behavioral deviations in the context of the so-called „self – fulfilling prophecy“, defined as “false definition of the situation evoking a new behavior which makes the originally false conception come true”. [3, p. 195.]. They raise the issue of the security right of the young person in the circumstances of a disorganized society and strengthened institutional control. In this sense, it is necessary to take into account the recommendations of Section IV of the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990), which put the stress on the socialization and integration of children and young people in the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations.

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