

JUVENILE JUSTICE IN ROMANIA – REFORM TRENDS, LEGAL ASPECTS, SENTENCING PRACTICE AND IMPRISONMENT TRENDS

Justicia Juvenil en Rumania – Tendencias de las reformas, aspectos legales, ejecución de sentencias y prisiones

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Abstract: Romania has experienced major reform in the criminal justice system in recent years, which has impacted the way of dealing with juvenile offenders. This article highlights recent developments in the field of juvenile justice following the implementation of long-awaited reforms in the criminal justice system in 2014. The new criminal law provisions abolished prison sentences for juveniles and introduced a wider range of educational responses, including various community-based measures. This article will analyze trends in reported juvenile delinquency and sentencing practice, taking into account how these developed during the transitional period following the political turn. Influential factors on the dynamics of juvenile delinquency in this period will also be discussed. Finally, the article will outline trends in juvenile and adult imprisonment, and consider reforms that have been made to the prison system to improve conditions in custodial facilities.

Keywords: juvenile justice, juvenile delinquency, sentencing practice, imprisonment, reforms.

Resumen: En los últimos años Rumania ha experimentado grandes reformas en el sistema de justicia penal, lo que ha afectado la manera de tratar a los delincuentes juveniles. Este artículo destaca los recientes acontecimientos en el campo de la justicia de menores tras la implementación de las esperadas reformas del sistema de justicia penal en 2014. Las nuevas disposiciones penales abolieron las penas de prisión para menores e introdujeron una gama más amplia de respuestas educativas, incluyendo varias medidas basadas en la comunidad. Este artículo analizará las tendencias de la delincuencia juvenil reportada y la práctica de las sentencias, teniendo en cuenta cómo estas se desarrollaron durante el período de transición después del giro político. También se discutirán factores influyentes en la dinámica de la delincuencia juvenil en este período. Finalmente, el artículo describirá las tendencias en la reclusión de menores y adultos y considerará las reformas que se han hecho al sistema penitenciario para mejorar las condiciones en las instalaciones de custodia.

Palabras clave: justicia juvenil, delincuencia juvenil, ejecución de sentencia, encarcelamiento, reformas.

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1. Reform developments and legal framework of juvenile justice

Since the revolution in 1989 and the fall of the communist regime, a number of legal reforms have been carried out in Romania, including reforms in the field of juvenile justice.¹ During the transitional period in the 1990s and 2000s, criminal law reforms aimed at aligning with international and European standards. This is particularly apparent in light of Romania's EU-accession in the year 2007, which was a driving factor in profoundly reforming criminal legislation. Among the main objectives of criminal law amendments was expanding the range of diversionary measures and alternatives to imprisonment. The gradual establishment of probation services during the 2000s was important, allowing for a wider application of community-based sanctions and measures.² By implementing diversionary measures, the reforms also aimed to reduce the high caseload in courts.³ In addition to establishing the infrastructure to implement non-custodial measures, special emphasis was placed on the specialization of judicial professionals, such as judges and prosecutors, in youth matters.⁴

In 2014, a long-awaited major criminal law reform package came into effect. The reform included a new Criminal Code, Code of Criminal Procedure, Probation Law, Law on the Enforcement of Custodial Measures and Sanctions and Law on the Enforcement of Non-custodial Measures and Sanctions. Juvenile justice-related provisions are incorporated in special chapters in these laws. The new laws, and in particular the Law on Non-custodial Measures and Sanctions and the Probation Law, can be characterized as significant innovations that paved the way for enhanced implementation of alternative, community-based measures and sanctions.

The new Criminal Code brought fundamental changes to the treatment of young offenders. Provisions regarding criminal liability of juveniles are maintained in the new law.⁵ Children under the age of 14 years are not criminally liable; they are only subject to measures of care and protection.⁶ Juveniles are

¹ For an in-depth overview on juvenile justice in Romania after 1990 see for example Banciu/Rădulescu (2002); Giles (2002); Grecu/Rădulescu (2003).

² For a comprehensive overview on probation in Romania see Durnescu/Schiaucu (2013); Durnescu (2008).

³ The adoption of a Judicial Reform Strategy aimed, *inter alia*, at promoting the efficiency of the judicial system by curbing the high court caseload, see Judicial Reform Strategy (*Strategia de reformă a sistemului judiciar*) (2005-2007, 8 y ss.), online available at http://gov.ro/fisiere/programe_fisiere/050401-strategie-sistjud.pdf (10.06.2016). This strategy adjusted the Judicial Reform Strategy 2003-2007 (Government Decision No. 1052/20013, published in the Official Gazette No. 649 of 12.09.2003) in view of Romania's EU accession.

⁴ See *Ibid.*, p. 13.

⁵ Art. 113 Criminal Code.

⁶ These measures are provided by the Law on the Protection and Promotion of the Rights of the Child (Law No. 272/2004), published in the Official Gazette No. 557 of 23.06.2004, republished in the Official Gazette No. 159 of 05.03.2014.

principally criminally liable at the age of 14. The law differentiates between two age groups; juveniles aged 14 and 15 years, and juveniles aged 16 and 17 years. Juveniles aged 14 or 15 years are only criminally liable if it has been proven that they have committed an offence with discernment. In cases where they have not acted with discernment (relative legal presumption), they are only subject to measures of care and protection. Juveniles aged 16 and 17 years are fully criminally liable (absolute legal presumption), and juvenile justice-related provisions apply to them.

There are so far no specific provisions that apply to young adults aged 18 to 21 years. In Romanian criminal doctrine the specific situations of young adults (18 to under 21 years old), and the possibility of applying juvenile law provisions on them, are rarely discussed. Various international and European rules and recommendations encourage the extension of juvenile law provisions to young adults, due to similarities in their development.⁷ Research findings in developmental psychology, sociology and criminology suggest that young adults, like juveniles, are still undergoing developmental change, and should therefore be treated differently than adults.⁸ Under current criminal law, young adults might only be subject to sentence mitigations due to their age.

The legislator has created a new sanctioning system for juvenile offenders, placing more emphasis on promoting individual education and social reintegration of young offenders.⁹ Penalties were formally abolished¹⁰ and a wider range of educational measures, with varying degrees of intervention, were introduced. These are divided into non-custodial and custodial educational measures.¹¹ Non-custodial measures, which are more varied, are given priority over custodial measures. In creating the new model, the legislator referred to

⁷ See in particular United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (the so-called Beijing-Rules), Council of Europe Recommendation (2003) 20 on new ways of dealing with juvenile delinquency and the role of juvenile justice, and Council of Europe Recommendation (2008) 11 on the European Rules for juvenile offenders subject to sanctions or measures (ERJOSM), see Dünkel/Pruin (2012); Dünkel/Pruin (2011), as well as for an overview on the treatment of young adults in European countries.

⁸ See more detailed Dünkel/Pruin (2012); Dünkel/Pruin (2011) w. f. r.

⁹ Previous to the reform in 2014, formal sanctions that could be applied to juveniles were educational measures or penalties. Educational measures included reprimand, supervised freedom, placement in a re-education centre or in a medical-educational centre. Penalties were divided into imprisonment and fines. Courts could furthermore order (supervised) conditional suspension of the penalty of imprisonment.

¹⁰ In 1977, a law reform had already abolished penalties for juvenile offenders and only provided for non-custodial and custodial education, implementing abolitionist concepts, which emerged during the 1970s. However, these provisions were abrogated in 1992, when the penalty of imprisonment was reintroduced for juvenile offenders.

¹¹ Art. 115 Criminal Code.

other European juvenile laws, in particular Spanish juvenile law, but also took into account French and Austrian models of juvenile justice.¹²

Non-custodial measures include participation in educational programs, called ‘civic traineeships’, which are the mildest measure, followed by supervision by a probation officer, juvenile curfew at weekends, and compulsory daily schedules under supervision of a probation officer.¹³ These educational measures may include obligations, for example a requirement to attend school or vocational training, or not to come into contact with certain persons. The duration of civic traineeships shall not exceed four months. Supervision can be ordered for between two and six months, weekend curfews for four to 12 weeks, and compulsory daily schedules for three to six months.

Liberty-depriving measures have been legally provided as measures of last resort. In cases of more serious offending, the court can order either detainment in an educational center for one to three years, or in a youth detention center for two to five years.¹⁴ The law requires that for custodial measures to be ordered, the juvenile must have committed an offence repeatedly,¹⁵ or have committed an offence for which the law provides imprisonment of seven years or more, or life imprisonment. If the juvenile commits an offence that comes with a sentence of life imprisonment or imprisonment of 20 years or more, placement in a youth detention center shall be ordered for a period of five to 15 years. Although the new Criminal Code lowered the maximum length of liberty-depriving measures from 20 to 15 years, the maximum length of the sentence is still significantly above the European average. In comparison, in most European countries the maximum length is considerably lower than 15 years.¹⁶ Furthermore, although called a custodial educational measure, placement in a youth detention center does not differ substantially from youth penalties in other countries, when comparing referral conditions or taking into account the existing organizational infrastructure for serving the sentence.¹⁷

Notwithstanding, overall the introduction of a wider catalogue of educational measures places more emphasis on the principle of individualization, as measures can be better adapted to the needs of juveniles. The selection of the measures must also be seen in light of the growing importance of probation services, who prepare the assessment reports and make recommendations to the

¹² See legislator’s reasoning on which the new criminal law is based, cited in Păroșanu (2016: 144 f.). The legislator’s reasoning is no longer available at the website of the Ministry of Justice.

¹³ Art. 117-120 Criminal Code.

¹⁴ Art. 124-125 Criminal Code.

¹⁵ The juvenile has committed another offence for which an educational measure was applied.

¹⁶ See on the maximum length of possible measures/sanctions for juveniles in European countries, Dünkel/Stańdo-Kawecka (2011: 1798 ff.).

¹⁷ Youth detention centres, as well as educational centres, function within the organizational structure of the National Prison Administration.

court about the most appropriate educational measures. Probation services are the agency most familiar with the personality and living conditions of the young person, therefore their active involvement is important.

The new legal framework for dealing with juvenile offenders reflects important principles, such as minimum intervention and deprivation of liberty as a last resort, which are highlighted in international and European standards and recommendations. For example, the Council of Europe Recommendation (2003) 20 on “New ways of dealing with juvenile offenders and the role of juvenile justice”, and the Council of Europe Recommendation (2008) 11 on the “European Rules for juvenile offender subject to sanctions or measures” (ERJOSM).¹⁸

Trends in reported juvenile delinquency and sentencing practice

Juvenile delinquency is a phenomenon that must be considered in light of the social, economic and political context. When analyzing youth crime, officially recorded delinquency serves as an indicator. Due to very limited self-report surveys,¹⁹ which take into account the perspectives of victims and perpetrators and offer further information on the extent of crime, this study will focus on officially recorded crime.²⁰

Looking at trends in recorded juvenile delinquency, a continuous growth in the absolute number of police-recorded offences committed by juveniles since 1992 can be observed (similar to other post-communist societies), peaking in the period from 1997 to 1998. The number of offences committed rose from 14,996 in 1992 to 33,159 in 1997, and again to 43,839 in 1998.²¹ In the following years, the number of crimes committed by juveniles declined almost continuously, to 11,323 in 2013.²² The increase in juvenile crime after 1992 is particularly apparent in the juvenile crime rate, which is more significant than absolute numbers, as it

¹⁸ Furthermore, the new laws widely align with international documents such as the United Nations International Convention on the Rights of the Child (1989), the Beijing Rules (1985), Havana Rules (1990) and Riyadh Guidelines (1990).

¹⁹ The International Crime Victims Surveys (ICVS) conducted during the 1990s and 2000s include data on victimization in Romania, however not specifically on juveniles. For further information on the ICVS, visit the website http://www.unicri.it/services/library_documentation/publications/icvs/ (15.06.2016).

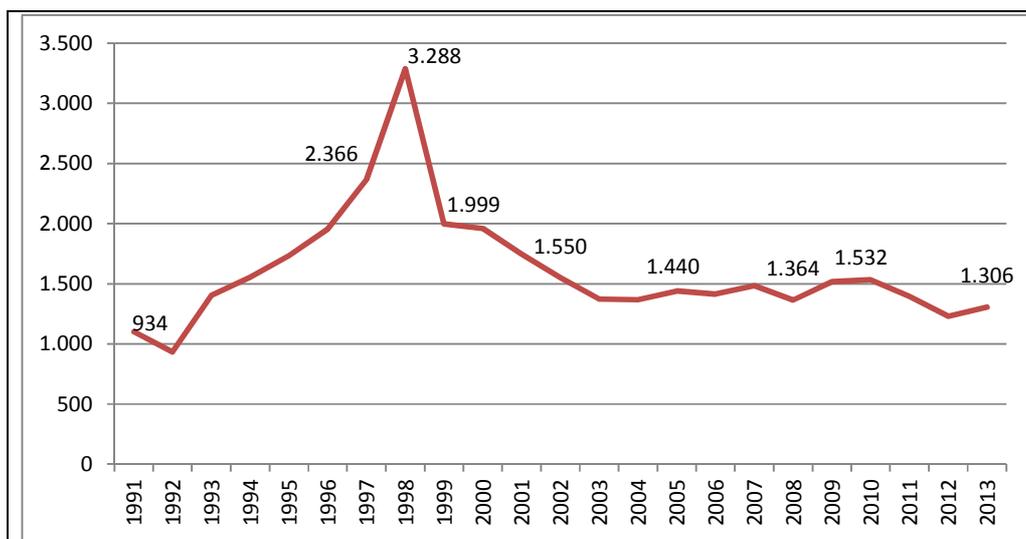
²⁰ Sources of official data on juvenile crime can be gathered by the Police, the Prosecutor’s Office attached to the High Court of Cassation and Justice (Public Ministry), and the Superior Council of Magistracy. The National Institute of Statistics publishes data collected by these institutions. Furthermore, the TransMonEE Database offers comprehensive data on juvenile crime, based on data provided by national institutions. It has to be noted, however, that these statistics are partially not coherent.

²¹ Please note that in 1998 offences “not to take action” were also included in the total number of offences.

²² See TransMonEE 2015 Database, 7.1.2.

is in relation to the demographic data. As can be seen in *Figure 1*, the registered juvenile crime rate (per 100,000 average population aged 14-17 years) rose drastically from 934 in 1992 to 3,288 in 1998. The juvenile crime rate significantly declined by 39.2% in 1999, to 1,999, and dropped in the following years with slight oscillations to 1,306 in 2013.²³

Figure 1: Registered juvenile crime rate (per 100,000 average population aged 14-17), 1991-2013



Source: Adapted from TransMonEE 2015 Database.

In 1998, the offences “not to take action” were also included in the total number of offences.

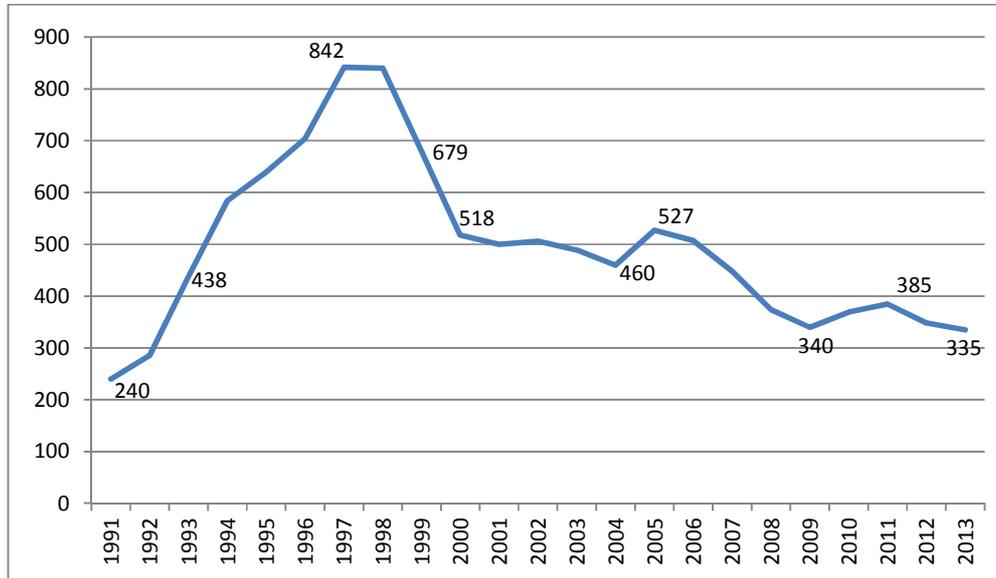
A similar trend can be observed when looking at the sentencing rate of juveniles (per 100,000 average population juveniles aged 14-17 years), see *Figure 2*. There was a substantial rise in these rates from 240 in 1991 to 842 in 1997, and then significant decline in the following years. Between 1997 and 2013, the sentencing rate significantly declined by 60%, from 842 to 335. The sentencing rate of 335 in 2013 was below the average of other Central and Eastern European and CIS (Commonwealth of Independent States)²⁴ countries.²⁵

²³ In comparison, the total crime rate has increased from 635 in 1992 to a peak of 1,773 in 1998, falling to 977 in 2005 and rising again in the following years with oscillations, reaching 1,556 in 2013, see TransMonEE 2015 Database, 7.1.1.

²⁴ The Commonwealth of Independent States is an association of eleven former Soviet Republics.

²⁵ See for a comparison of sentencing rates in other Central and Eastern European and CIS countries TransMonEE 2015 Database, 7.8.2.

Figure 2: Juvenile sentencing rate (per 100,000 population aged 14-17), 1991-2013



Source: Adapted from TransMonEE 2015 Database.

Looking to the types of offences, the majority of young offenders were convicted for property-related offences. In 2013, of 2,905 offenders, 2,354 (81%) were convicted for property-related offences, whereas 274 (9.4%) young offenders were convicted for violent crime.²⁶ The number of juveniles convicted for property-related crime has significantly declined in recent years. In 2005, 5,697 juveniles were convicted for property-related offences, the number dropped to 4,098 in 2007, to 2,910 in 2008 and finally, with oscillations, to 2,354 in 2013.²⁷ Between 2005 and 2013, the absolute number of juveniles being sentenced for property crimes dropped by 58.7%.

Furthermore, recent data of the Public Ministry²⁸ reveals information on the types of offences committed by charged juveniles. In 2015, out of a total of 3,548 charged juveniles, 2,488 (70.1%) were charged for property-related offences and 572 (16.1%) for offences against the person. The most common type of property-related offending in 2015 was theft (69.4%), followed by robbery, which made up 28% of property-related offences.²⁹ In recent years, a decline in the number of charged juvenile offenders can be observed, as the overall number dropped by 23% between 2007 and 2015. This decline can also be observed in relation to demographic factors, as the number of juveniles aged

²⁶ See TransMonEE 2015 Database, 7.8.6, 7.8.5.

²⁷ See TransMonEE 2015 Database, 7.8.6.

²⁸ Public Ministry, Prosecutor's Office attached to the High Court of Cassation and Justice.

²⁹ Public Ministry, Prosecutor's Office attached to the High Court of Cassation and Justice, Activity Report 2015, p. 16, 20, 25 f.

14-17 years in the population also declined by 23.3% between 2007 and 2015.³⁰ The absolute number of juveniles charged for property-related offences declined by almost one third (31.5%) between 2007 and 2015. Most notably, the number of juveniles charged with theft dropped by 43.3% between 2007 and 2015. In terms of gender, the vast majority of juveniles that come in contact with the juvenile justice system are male. In 2013, of 2,905 convicted juveniles, 2,730 were male (94%) and 175 (6%) female.³¹

Next, informal and formal sanctioning practice will be analyzed in order to reveal the types of sanctions applied to juveniles since the 1990s.

Similar to the way juvenile justice systems have developed in other post-communist countries, there has been an increasing tendency to deal with juvenile cases informally in Romania. Since the late 1990s, an increase in suspension of criminal proceedings by prosecutors can be observed. In particular, the proportion of criminal proceedings in cases of petty crime that were suspended rose significantly during the 2000s.³² In 1991, almost one quarter of suspensions of juveniles were in cases of petty crime (23.2%). The proportion rose continuously to 69.2% in 2003 and 85.2% in 2012. The prosecutorial diversion rate (total percentage of suspensions of criminal proceedings) of juveniles doubled, from 30% in 1991 to 62% in 2012.³³

In this context of informal responses to (juvenile) delinquency, restorative justice measures have received greater attention over the years. In numerous European countries, restorative justice measures such as victim-offender mediation are being used, particularly in the context of diversion.³⁴ In Romania, particularly in the context of EU-accession, justice reforms have aimed to extend the use of alternative dispute resolution measures and diversionary measures. Evaluations of early restorative justice pilot projects with young offenders between 2002 and 2004 showed encouraging results and confirmed the potential that victim-offender mediation has to enhance the quality of juvenile justice.³⁵ In 2006, the Law on Mediation³⁶ was enacted to align with European

³⁰ Adapted from the National Institute of Statistics (population data), online available at <http://statistici.insse.ro/shop/index.jsp?page=tempo2&lang=en&context=10> (16.06.2016).

³¹ See TransMonEE 2015 Database, 7.8.1, 7.8.3, 7.8.4.

³² In the previous Criminal Code, until enactment of the New Criminal Code in 2014, in cases of offences in which the committed act did not represent the social danger of an offence (Art. 18¹ previous Criminal Code), the penal responsibility was removed and an administrative measure like reprimand or a small fine was imposed (Art. 91 previous Criminal Code).

³³ Păroșanu (2016: 103 f.). Data are adapted from the Public Ministry, Prosecutor's Office attached to the High Court of Cassation and Justice.

³⁴ For a comparative overview on the use of restorative justice measures in European countries' criminal justice systems, see Dünkel/Grzywa-Holten/Horsfield (2015); Miers/Aertsen (2012).

³⁵ See evaluation studies by Rădulescu/Banciu (2004); Rădulescu / Banciu / Dâmboeanu / Balica (2004).

recommendations and directives in this field. The law contains special dispositions on victim-offender mediation, which are, however, restricted to certain categories of offences. Criminal law reforms in recent years introduced provisions to allow for a wider use of mediation when diverting cases.³⁷

In practice, however, the use of victim-offender mediation is rather low.³⁸ Mediation services are organized privately, and there are no countrywide programs on victim-offender mediation. Activities by key-stakeholders in the field of mediation in recent years have contributed to enhance the awareness of mediation among society and (justice) professionals. A nationwide survey of the perceptions of public prosecutors and judges revealed that the majority of respondents had a positive view on victim-offender mediation as a means of criminal conflict resolution.³⁹ It remains to be seen how restorative justice measures such as victim-offender mediation can be more widely applied, and how legislative amendments may impact the practice.

Regarding formal sanctions applied on juveniles, a harsher sentencing practice can be observed during the period of transition. After 1994 in particular, more juveniles were sentenced to imprisonment. As shown in *Figure 3*, between 1994 and 2001 imprisonment made up almost half of all court-ordered sanctions (between 44% and 48%). In the following years, the proportion declined to 25% in 2008, and 28% in 2013. This harsh sentencing practice could also be attributed to a lack of understanding among many judges for the particularities of juvenile delinquency and the causes of juvenile offending (Banciu/Rădulescu, 2002: 255). Since the establishment of probation services in the 2000s, court-ordered alternatives to imprisonment have showed a rising trend. The proportion of conditional suspensions of imprisonment doubled, from 23% in 2001 to 46% in 2008, when it made up almost half of all court sanctions. Since 2004, the supervised conditional suspension of imprisonment has been applied, and the

³⁶ Law on Mediation and the Organization of the Mediator Profession (Law No. 192/2006).

³⁷ For example, the new Criminal Code provides that, for offences which are punishable by a fine or imprisonment for up to seven years, the public prosecutor may dispense with prosecution if there is no public interest in prosecution and the offender has fulfilled the obligations stemming from the mediation agreement (Art. 318 Code of Criminal Procedure).

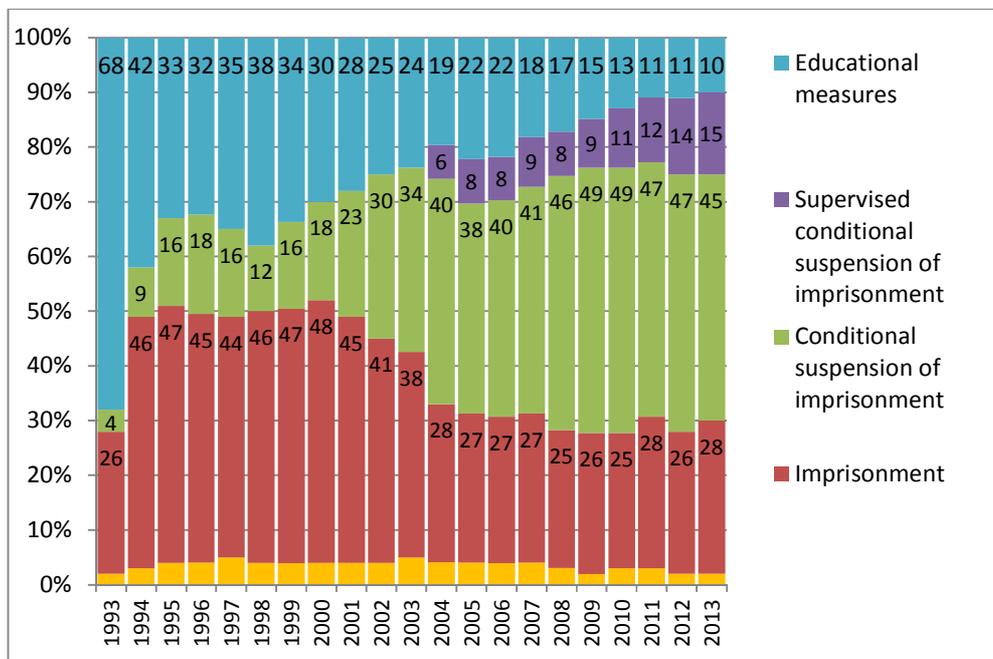
³⁸ According to statistical data of the Public Ministry, Prosecutor's Office attached to the High Court of Cassation and Justice, in 2015, a total of 103 mediation agreements were reached in the course of criminal proceedings. In 62 cases (60.2%) criminal proceedings were suspended on the basis of the mediation agreements. Data refers to all age groups, without specification of juvenile offenders. The data is available at the website of the Mediation Council, <http://www.cmediere.ro/page/1501/centralizarea-datelor-statistice-privind-activitatea-parchetelor-in-anul-2015> (21.06.2016).

³⁹ The survey found that 73.3% of public prosecutors and 70.6% of judges stated they regarded victim-offender mediation a "useful" or "very useful" process of conflict resolution in criminal matters, Păroșanu/Balica/Bălan (2013: 72, 100). However, the study also revealed deficiencies in the knowledge related to the mediation procedure, mediation providers, and the practice of victim-offender mediation.

proportion of these has risen significantly, from 6% in 2004 to 15% in 2013. On the other hand, measures of an educational nature have declined, from 68% 1993 to 10% in 2013. The proportion of fines imposed was not significant and below 5% in the analyzed period.

Looking at the types of educational measures imposed, placement in an educational center made up 43.9% of all educational measures in 2013, whereas reprimands and supervised freedom made up 27.6%.⁴⁰ Placement in a re-education center accounted for 4.4% of all court ordered sanctions in 2013, compared to 32.3% in 1993. This decrease of formal sanctions must be seen in connection with an increasing use of diversionary measures. Furthermore, this development reflects the tendency of the courts to increasingly apply conditional suspension of imprisonment, rather than measures of an educational nature.

Figure 3: Court-ordered measures for juveniles, 1993-2013



Source: Adapted from the National Institute of Statistics. The data published by the National Institute of Statistics are based on data provided by Ministry of Justice until 2004 and the Superior Council of Magistracy since 2005.

Context of juvenile offending

The reasons for the increase in general and juvenile crime after the fall of the communist regime are manifold. The increasing amount of registered juvenile

⁴⁰ See National Institute of Statistics, online available at <http://statistici.insse.ro/shop/index.jsp?page=tempo3&lang=ro&ind=JUS104B> (17.06.2016).

crime up until the end of the 1990s has to be seen in the light of societal, economic and political transformation processes. Furthermore, when identifying reasons for rising crime rates, factors related to the criminal justice system must be considered, such as legislative changes, sentencing practice, or the infrastructure to implement sanctions and measures.

The revolution in 1989 led to tremendous socio-economic change in Romania, characterized by rising rates of unemployment, increased social disparity, growing levels of corruption and redistribution of state property.⁴¹ Furthermore, a lower level of social protection and increased poverty, particularly among children, could be observed in the transitional period.⁴² The transition created a state of anomie, revealing discrepancies between individual needs and the possibilities provided by society.⁴³ Young people in particular were affected by the drastic changes within society, leading to feelings such as frustration, social pessimism, discouragement and non-conformance.⁴⁴ Socio-economic changes led to social decay, such as family breakdowns.

Throughout the period of transition, an increasing number of children and juveniles lived on the street. This phenomenon of so-called ‘street children’ was due to the high number of abandoned and institutionalized children and youth during communist times.⁴⁵ The rate of children in residential care (per 100,000 children aged 0-17) rose significantly throughout the 1990s, from 725 in 1990 to 1,166 in 2000. The rate halved again between 2000 and 2013, to a total of 595 in 2013.⁴⁶ This illustrates that the child protection system has shifted gradually from an institutionalized to a family-based system.

In addition to deficient family and social policies in the 1990s, increased poverty and family breakdown and violence, violence in child care institutions and poor living conditions further influenced the increasing number of street children. It was estimated that about 60% of street children were in conflict with the law (Grecu/Rădulescu, 2003: 377). Furthermore, the declining influence of social control institutions such as family and schools had an impact on the dynamics of juvenile crime rates after the revolution. Deficits in education,

⁴¹ See Zamfir (2004: 35); Zamfir (1995: 9 ff.); PASII (2000: 11 ff).

⁴² See Zamfir (1995: 72). It should however be emphasized that neither the dimension of poverty nor unemployment are in a direct causal link associated with crime.

⁴³ See Banciu (1992: 101 f.); Banciu/Rădulescu (2002: 259).

⁴⁴ See Săucan/Liiceanu/Micle (2009: 12); Banciu/Rădulescu (2002: 127).

⁴⁵ Pro-natality politics under the Communist regime influenced the number of abandoned and institutionalized children. In 1966, abortion was forbidden, and the rising birth rates led to a higher number of undesired and abandoned children. A system of systematic institutionalization has been created, characterized by poor material conditions and a lack of qualified human resources. See more detailed about the phenomenon of child abandonment in Romania UNICEF (2005).

⁴⁶ TransMonEE 2015 Database, 6.2.2.

changes in family structures, and family breakdowns were factors that contributed to increasing juvenile delinquency.⁴⁷

Since the financial crisis at the end of the 2000s, social instability has been on the rise again. Seeking better working opportunities, a considerable number of parents have left the country, leaving their children in the care of family members or custodial care. The number of these so called 'home alone children' has risen, increasing the risk of vulnerability in those children. According to a study carried out in 2007, there were about 350,000 children under the age of 18 (7% of this age group) who had one or both parents working abroad. 16% of the children lived for more than one year without their parents, and 3% for more than four years without their parents (UNICEF, 2008: III, 8, 19).

Imprisonment and juveniles in residential care

Currently, out of a total of 45 prisons, youth detention and educational facilities, there are two educational centres and two youth detention facilities in Romania.⁴⁸ Following the legal reforms in 2014, pre-existing re-education centres were transformed into educational centres, and the prisons for juveniles and young adults into youth detention centres. In addition to the youth-specific facilities, a smaller proportion of young offenders are placed separately in special units for juvenile offenders within the adult prisons. Due to the low number of educational and youth detention facilities it is of concern that juveniles might be placed far away from their hometowns, which is contradictory to the principle enshrined in international and European standards that institutions shall be easily accessible from their homes.⁴⁹

Regarding the number of juveniles in youth prisons, in 2014 (31.12.2014) out of a total of 30,156 there were 601 (2%) juveniles in youth detention centres, and 148 (0.5%) juveniles placed in educational centres.⁵⁰

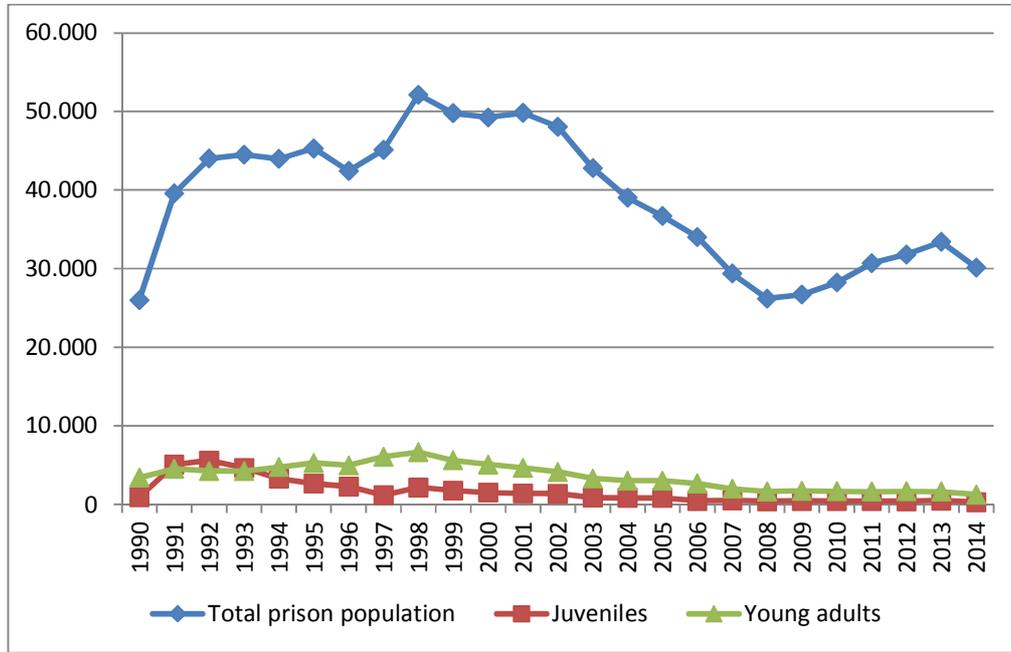
⁴⁷ See more in-depth Banciu/Rădulescu (2002); Grecu/Rădulescu (2003); UNICEF (2004).

⁴⁸ See website of the National Prison Administration, online available at <http://www.anp.gov.ro/web/anp/dinamica-efectivelor> (17.07.2016).

⁴⁹ See for example Rules 53.5 and 55 ERJOSM.

⁵⁰ National Prison Administration, Annual Activity Report 2014, p. 4. Out of the total number, there were 26,893 persons (89.2%) ultimately convicted, and 2,514 pre-trial detainees convicted in the first instance (8.3%).

Figure 4: Total number of prisoners in penal and educational institutions, by age groups (incl. pre-trial detainees), 1990-2014



Source: Adapted from the National Prison Administration
 The category of young adults refers to 18 to under 21 year olds.

Figure 4 shows the trends in the absolute numbers of the prison population from 1990 to 2014. The total prison population increased from the early 1990s until 1998, peaking at more than 52,000 persons. In the following years, the numbers declined, with a slight rise again after 2008. From 2013 to 2014, there was a decline in numbers again. The total prison population declined significantly from about 52,000 in 1998 to about 30,000 in 2014; a decline of 42%.

There was a growing number of juvenile offenders from 1990 until 1992. It has to be noted that 1990 was an exceptional year as, following the political turn in 1989, it was marked by drastic political, social and economic change. Furthermore, in 1990 there were collective amnesties, with large numbers released from prison. The total number of juveniles significantly declined by 94% between 1992 and 2014, from its peak of 5,625 in 1992, to 316 in 2014. A rising tendency could be observed in the number of young adults offending up until 1998, followed by a continuous decline until 2014. From 1998 to 2014, there was a decline of 81% in absolute numbers of young adult offenders. In 2014, the proportion of young adults was 4.2% of the total number of those incarcerated.

Looking at the general prison rate per 100,000 of national population, there was a significant decrease from 222 in 2002 to 128 in 2008. Between 2008

and 2014, the rate increased again to 152.⁵¹ The rate of juveniles in prisons and re-education centres (per 100,000 population aged 14-17 years) declined significantly after 1992. From 1992 to 2002, the rate fell from about 348 to about 101, and dropped again by half between 2002 and 2012. Over recent years, the rate of juveniles in closed institutions has remained mostly steady, and was 50 in 2012 (Păroşanu, 2016: 285). The decline in the number and rate of juveniles in closed institutions is largely due to the higher use of diversionary measures (suspension of criminal proceedings) and the increase in conditional suspensions of imprisonment.

The growing total prison population until 1998 has to be seen in connection with the impact of the political, social and economic transition period, as previously explained. Furthermore, criminal law related factors should be taken into account, such as legal reforms and changes in sentencing practice. In this context, the rising prison rates are also due to factors such as a lack of alternatives to imprisonment, lack of infrastructure for the social reintegration of prisoners, harsher sentencing practices, restricted requirements for conditional release, legal amendments leading to an increase in the number of pre-trial detainees and the shortfall of collective amnesties.⁵² The decline in the following years was influenced by factors such as legal reforms that led to a wider range of alternatives to imprisonment, a reduction in the number of pre-trial detainees, the establishment of probation services and the higher use of diversionary measures among prosecutors and judges.

The rising trend after 2008 is largely based on higher conviction rates. In particular, the number of people convicted for property-related offences and corruption was on the rise. Furthermore, the growth has to be seen in light of the aftermath of the economic crisis in 2008, which led to increasing social inequality and unemployment.⁵³ The recent decrease in the total prison population from 2013 to 2014 is also linked to the increase in the number of conditionally released persons. From 2010 to 2014, the number of conditionally released persons has increased by 31.6%, from 8,420 to 11,084 (National Prison Administration, Annual Activity Report, 2014: 8).

Following substantial prison reform strategies over recent decades that aimed to reduce prison overcrowding, improved conditions in prisons and (re-)education centres can be observed. Reforms also focused on increasing the number of prison staff, promoting professionalism, making improvements in the health sector, and expanding the range of educational, psychosocial and leisure

⁵¹ See International Centre for Prison Studies, World Prison Brief, online available at <http://www.prisonstudies.org/country/romania>. (14.06.2016).

⁵² See National Prison Administration (2011); Păroşanu (2016: 286 f.) w. f. r.

⁵³ The total unemployment rate has grown from 4.4% in 2008 to 7.8% in 2009, and in 2014 it was 5.4%, see National Institute of Statistics, online available at <http://statistici.insse.ro/shop/index.jsp?page=tempo2&lang=en&context=15> (20.06.2016).

activities as well as reintegration programs. Further emphasis has been laid on promoting interagency cooperation.⁵⁴ Subsequently, a variety of programs have been implemented to promote education and to better respond to the needs of juveniles in closed institutions, but also in general. For example, the proportion of juveniles enrolled in school activities has increased from 56% in 2010 to 77% in 2014 (National Prison Administration, Annual Activity Report, 2014: 22). Furthermore, the recent legal reforms allowed for a more individualized treatment as well as better placement conditions of juveniles in closed institutions. Despite the significant progress that has been made, overcrowding in a number of prisons (including for juveniles and young adults) has remained a matter of concern over recent years.

Summary and outlook

Over the last decade, reforms in Romania have aimed to align the (juvenile) criminal justice system with European and international standards, in order to enhance the quality and efficiency of the justice system. Besides the specialization of professionals in the juvenile justice system, reforms intended to promote the use of informal, diversionary measures. The recent legal reforms in juvenile justice paved the way for a wider use of community-based measures, while introducing a variety of non-custodial educational measures. The legal framework in the field of juvenile justice largely aligns with European and international standards with regards to the treatment of juveniles in the justice system. However, at a legislative level, including young adults in the juvenile justice system should be considered, as suggested by European and international standards.

Concerning sanctioning practice, punitive tendencies when dealing with juvenile offenders could be observed throughout the latter half of the 1990s, with a high proportion of imprisonments. Following in-depth criminal law reforms in the 2000's, informal measures such as prosecutorial suspension of criminal proceedings as well as conditional suspension of imprisonment were increasingly used. A further shift in sentencing practice has been initiated, as the recent legal reforms focused on broadening the range of alternative educational measures.

In order to implement the non-custodial measures, emphasis has been placed on the establishment of probation services. However, a challenge remains in the lack of professionals in the area of probation services. As the recent

⁵⁴ As laid down in the Action Plan for The Implementation of the Judicial Reform Strategy 2005-2007, see website of the Superior Council of Magistracy, <http://www.csm1909.ro/csm/index.php?cmd=0901> (14.06.2016), as well as Action Plans of the National Prison Administration since the latter half of the 2000s, see the website of the National Prison Administration for the latest action plans, <http://89.32.46.17/programe-si-strategii-proprii> (15.06.2016).

reforms prioritize the use of community-based measures, sufficient resources are needed to implement these measures and to allow for interagency cooperation.

Finally, justice reforms in recent years also aimed at promoting alternative conflict resolution measures, including (victim-offender) mediation. Evaluations of first pilot projects on restorative justice in the field of juvenile justice, have been encouraging with regard to wider implementation. However, in practice the potential of using restorative justice measures is far from being exhausted. A further emphasis on restorative justice measures should be encouraged, with a focus on stronger community involvement.

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