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THE EXEPMPTION OF MINORS FROM CRIMINAL LIABILITY AND RELEASE FROM PUNISHMENT UNDER THE CRIMINAL LEGISLATION OF THE REPUBLIC OF MOLDOVA: A COMPARATIVE ANALYSISWITH ROMANIAN CRIMINAL LAW

LIBERAREA DE RĂSPUNDERE PENALĂ ȘI LIBERAREA DE PEDEAPSĂ A MINORILOR ÎN LEGISLAȚIA PENALĂ A REPUBLICII MOLDOVA. ANALIZĂ COMPARATĂ CU DREPTUL PENAL AL ROMÂNIEI

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Abstract: *This article examines exemption from criminal liability under Article 54 of the Criminal Code of the Republic of Moldova and release from punishment of juveniles under Article 93 of the Criminal Code of the Republic of Moldova, in conjunction with the application of educational coercive measures prescribed by Article 104 of the same Code. Drawing upon the legislation in force, international standards, and a comparison*

with the Romanian Criminal Code, the study identifies several dysfunctions, including divergent assessment criteria, inconsistencies concerning the relevant age threshold, the limitation of educational measures until the age of majority, the absence of a statutory definition of systematic evasion, and insufficient official interpretation. Particular attention is devoted to persons who committed an offence as juveniles but attained the age of majority before the release decision was examined; for this category, the article proposes a methodology for application de lege lata. Drawing on the Romanian model, which provides for fixed durations of the measures, a graduated system of sanctions for non-compliance in bad faith, as stipulated in Article 123 of the Romanian Criminal Code, and the continued application of the juvenile regime after the attainment of the age of majority, as provided for in Article 134 of the same Code, proposals for de lege ferenda are formulated.

Keywords: *juveniles; exemption from criminal liability; release from punishment; educational measures; comparative criminal law*

Abstract: *Articolul analizează liberarea de răspundere penală reglementată la art. 54 CP RM și liberarea de pedeapsă a minorilor prevăzută la art. 93 CP RM, cu aplicarea măsurilor de constrângere cu caracter educativ stipulate la art. 104 CP RM. Pe baza legislației în vigoare, a standardelor internaționale și a comparației cu Codul penal al României, studiul identifică disfuncții privind criteriile de apreciere divergente, vârsta de referință, limitarea măsurilor educative până la majorat, lipsa definiției legale a eschivării sistematice și interpretarea oficială insuficientă. O atenție specială este acordată persoanei care a săvârșit infracțiunea ca minor, dar a devenit majoră până la examinarea liberării, pentru care este propusă o metodologie de aplicare de lege lata. Pornind de la modelul român (durate fixe ale măsurilor, sancționarea graduală a nerespectării cu rea credință, prevăzută la art. 123 CP RO, și menținerea regimului minorității după majorat, prevăzută la art. 134 CP RO), sunt formulate propuneri de lege ferenda.*

Cuvinte-cheie: *minor, liberare de răspundere penală, liberare de pedeapsă, măsuri educative, drept penal comparat*

1. Introduction

Relevance of the topic. The State's response to an offence committed by a minor cannot simply be a milder version of its response to an adult offender. The UN Convention on the Rights of the Child requires States to promote, whenever appropriate and desirable, measures for dealing with children who have infringed the criminal law without resorting to judicial proceedings (United Nations, 1989, Article 40(3)(b)), while the Beijing Rules enshrine the principle of diverting juvenile cases away from formal criminal proceedings (United Nations, 1985, Rule 11). The genesis of these standards reflects a compromise between States with different legal traditions, including post-Soviet ones (Omarova & Vlasenko, 2022). The rationale for this differentiat-

ed treatment lies in the particular vulnerability of the child, who, by reason of physical and mental immaturity, needs special safeguards and care (Jitariuc & Apărece, 2024, p. 161). The UN Committee on the Rights of the Child has stressed that measures not involving judicial proceedings should be the preferred response in the majority of cases and should not result in a criminal record (UN Committee on the Rights of the Child, 2019).

In the criminal law of the Republic of Moldova, these requirements are reflected mainly in the exemption of minors from criminal liability (Article 54 CC RM) and the release of minors from punishment (Article 93 CC RM). Both result in the application of the compulsory educational measures exhaustively listed in Article 104 CC RM and are complemented by special procedural rules (Articles 483, 485 and 486 CCP RM).

State of research. In the Moldovan literature, the two institutions have been analysed mainly in general criminal law textbooks and commentaries (Botnaru et al., 2005; Barbăneagră, 2009), which set out the classic conditions for exemption and release, and in studies devoted to the criminal liability of minors (Ostap, 2021). Their procedural and criminal policy dimensions have been addressed in practical guides on juvenile justice (Puica, 2014) and in system assessment reports, which point to the lack of disaggregated statistical data and the limited range of alternatives to detention (Rusanovschi, 2014; Peci, 2021).

In Romanian scholarship, the re-education of juvenile offenders was treated as a distinct institution of criminal law as early as the 1969 Criminal Code (Brezeanu, 1998), and the regime applicable to minors was re-examined in the context of the transition to the exclusively educational system of the new Criminal Code (Lefterache, 2011; Terec-Vlad, 2024). However, a systematic comparison between this model and the institutions of Articles 54 and 93 CC RM is lacking. The relationship between Articles 54 and 93 CC RM, the effects of limiting educational measures to the period before the age of majority, and the position of a person who reaches majority before exemption or release is ordered also remain insufficiently examined.

Research problem and objectives. The objectives of the study are: to analyse the conditions for applying Articles 54 and 93 CC RM; to identify shortcomings in the legislation and in its official interpretation; to identify the solution applicable de lege lata to persons who commit-

ted the offence as minors but reached the age of majority before exemption or release was ordered; to compare these solutions with those of Romanian criminal law; and to formulate proposals de lege ferenda.

The research hypothesis is that the current regime, although ostensibly geared towards the priority of educational measures, contains terminological inconsistencies and regulatory gaps that reduce the foreseeability of the criminal law and encourage inconsistent practice.

2. Materials and Methods

The research is predominantly doctrinal. We analysed the provisions of the CC RM and the CCP RM currently in force using literal, systematic and teleological interpretation.

Documentary analysis was applied to Supreme Court of Justice Plenary Ruling No. 39/2004 (Supreme Court of Justice, 2004) and its amendments (Supreme Court of Justice, 2015), while the comparative method was used to contrast national law with international standards and with Romanian law, namely Title V "Minority" of the Romanian Criminal Code (Law No. 286/2009) and Article 318 of the Romanian Code of Criminal Procedure (Law No. 135/2010). Romanian law was chosen because of the shared legal tradition and its adoption of an exclusively educational model; the value of the comparison lies in identifying gaps in national legislation and anticipating the effects of the proposed amendments (Apărece, 2021, p. 182). Logical reasoning was used to substantiate the solution proposed for persons who have reached the age of majority. The study does not include a statistical analysis of case law, as publicly available data are not disaggregated by the grounds of exemption or release applied to minors (Rusanovschi, 2014).

3. Results

3.1 Foundations of the special criminal law regime for minors

The criminal law of the Republic of Moldova does not devote a separate title to minors, but scatters the special rules throughout the General Part. The general age of criminal responsibility is 16; between the ages of 14 and 16, liability arises only for the offences exhaustively listed in Article 21(2) CC RM. The maximum term of imprisonment is halved (Article 70(3) CC RM), minority is a mitigating circumstance

(Article 76(1)(b) CC RM), and limitation periods are halved (Article 60(7) CC RM).

The key provision of principle for the present topic is Article 75(3) CC RM, under which "for a minor or less serious offence, a minor shall be sentenced to a penalty only if it is considered that an educational measure is not sufficient to reform the minor". This provision enshrines the principle that punishment of minors is subsidiary: for minor and less serious offences (Article 16(2) and (3) CC RM), the educational measure is the rule, while the imposition of a penalty is the exception and must be reasoned. Articles 54 and 93 CC RM are the instruments that give effect to this rule – Article 54 before conviction and Article 93 at sentencing.

This choice also has an empirical basis: longitudinal research shows that the deeper a young person penetrates the criminal justice system, the lower the chances that they will desist from offending (McAra & McVie, 2007).

The European Court of Human Rights has taken the same view, holding that proceedings against a minor must be conducted in a manner that takes full account of their age, level of maturity and intellectual and emotional capacities (V. v. the United Kingdom, 1999, § 86; Blokhin v. Russia, 2016, § 195) – a requirement that is equally relevant to the way in which educational measures are imposed and revoked.

3.2 Exemption of minors from criminal liability – Article 54 CC RM

Legal framework and legal nature. Under Article 54(1) CC RM, "a person under the age of 18 who has committed a minor or less serious offence for the first time may be exempted from criminal liability in accordance with the rules of criminal procedure if it is established that the person can be reformed without being held criminally liable", while paragraph (2) of the same Article provides that persons exempted on this ground are subject to the compulsory educational measures listed in Article 104 CC RM. Procedurally, exemption takes the form of the discontinuance of the criminal investigation (Articles 285(2) and 483(1) CCP RM) or of a judgment discontinuing the criminal proceedings (Articles 391(1)(7) and 483(5) CCP RM). This is a non-exonerating ground, since the act committed meets all the constituent elements

of an offence, but the State chooses to impose educational measures instead of holding the person criminally liable.

The non-exonerating nature of this ground explains why Article 483(4) CCP RM prohibits discontinuance of the proceedings "if the minor or their legal representative objects". Framed in negative terms, the consent requirement serves to protect the presumption of innocence: a minor who considers themselves innocent is entitled to a decision on the merits rather than an exemption that tacitly implies acknowledgement that the act was committed. The judicial authority is therefore obliged to inform the minor, in a manner appropriate to their age, of the consequences of exemption, and the minor's position must be expressed in the presence of defence counsel and expressly recorded.

Conditions for exemption. The Plenary of the Supreme Court of Justice has held that the institution may be applied only where three conditions are met cumulatively: the offence must have been committed for the first time; it must be a minor or less serious offence; and the competent authority must establish that the minor can be reformed without being held criminally liable, taking into account the recommendations in the social inquiry report (Supreme Court of Justice, 2004, para. 23). To these must be added, procedurally, the consent of both the minor and their legal representative.

Status as a minor. The provision refers to a person "under the age of 18" who has committed the offence, which indicates that age is assessed at the time the offence was committed. This interpretation is confirmed by Article 474(2) CCP RM, under which the provisions on exemption from criminal liability also apply after the person has reached the age of 18. It conflicts, however, with Article 104(5) CC RM, an issue to which we devote a separate analysis below.

Offence committed for the first time. The concept is not defined by law, and legal scholarship interprets it as meaning that the person has no unspent convictions; an offence is also regarded as committed for the first time where the limitation period for the previous act has expired or the previous conviction has been expunged or the person has been rehabilitated (Botnaru et al., 2005; Barbăneagră, 2009). The position of a minor previously exempted from criminal liability under Article 54 or Article 55 CC RM remains open to debate. In our view,

such an exemption, although it does not give rise to a criminal record, precludes the "first time" requirement, since the rationale of the institution is to offer a single chance of reform outside criminal liability; otherwise, the benefit could be granted repeatedly and without limit, contrary to the preventive purpose of the provision.

Category of offence. Exemption is available only for minor and less serious offences, that is, offences punishable by a maximum term of imprisonment of up to and including five years (Article 16(2) and (3) CC RM). The category is determined by reference to the statutory maximum laid down by law, not by reference to the maximum as halved under Article 70(3) CC RM.

Possibility of reform without criminal liability. This is the substantive condition, which requires the judicial authority to assess, on the basis of the minor's personality, whether the minor can be reformed. Article 475(1) CCP RM requires the judicial authorities to establish the minor's living and upbringing conditions, their level of intellectual, volitional and psychological development, their character and temperament, the influence of adults or other minors, and the causes and conditions that contributed to the commission of the offence, while paragraph (3) of the same Article provides for a pre-sentence psychosocial assessment report. This report is not binding on the judicial authority, but any decision departing from its conclusions must be properly reasoned.

The assessment focuses first and foremost on the minor's personality: what matters is less their past conduct than their potential for re-education, given that their personality is not yet fully formed and remains receptive to the influences of the social environment (Brezeanu, 1998, pp. 112–113).

The discretionary nature of the provision does not, however, remove the obligation to decide on the basis of objective criteria: read in conjunction with Article 75(3) CC RM, it requires the judicial authority to examine of its own motion the possibility of exemption whenever the statutory conditions are met, and to give reasons for any refusal.

Case law confirms that the possibility of reform is a separate condition that must be established and reasoned, rather than inferred automatically from the minor's age and the fact that it is a first offence. In case No. 1ra-1388/2021, the lower courts applied Article 54 CC RM

to a minor who was 15 at the time of the offence, even though he had not admitted guilt and had received negative character references. On the first appeal in cassation lodged in the case, the Supreme Court of Justice quashed that decision, holding that the court must establish that the minor can be reformed without being held criminally liable and that no such conditions had been established in the case (Supreme Court of Justice, 2022a, case No. 1ra-1388/2021). The criteria identified by the Supreme Court – sincere remorse, voluntary surrender, active assistance in solving the offence and voluntary compensation for the damage – are, however, taken from the general sentencing regime and do not capture the specific characteristics of minors that Article 475(1) CCP RM requires to be established, such as their living and upbringing conditions or the influence of adults, even though in that case the minor had been drawn into committing the offence by an adult, who was convicted under Article 208 CC RM. This approach confirms the need for interpretative guidelines specific to minors.

Child victims. Article 54(3) CC RM provides that a child who is a victim of the offences under Articles 208^1, 208^4 and 208^5 CC RM is exempted from criminal liability for offences committed in connection with that status. This provision transposes the principle of non-prosecution of child victims (European Parliament and Council of the European Union, 2011, Article 14). The exemption is mandatory and is not accompanied by educational measures, since Article 54(2) CC RM refers only to persons exempted under paragraph (1) of that Article.

3.3 Release of minors from punishment – Article 93 CC RM

Under Article 93 CC RM, "minors convicted of a minor, less serious or serious offence shall be released from punishment by the court if it is established that the purposes of punishment can be achieved by applying the compulsory educational measures provided for in Article 104". This institution is one of the forms of release from criminal punishment listed in Article 89(2)(d) CC RM. Article 485(1) CCP RM requires the court, when delivering judgment in proceedings against a minor, to examine whether the minor may be released from punishment or whether the execution of the sentence may be conditionally suspended. If the court finds that the conditions of Article 93 CC RM are met, it delivers a judgment of conviction, orders release from

punishment and imposes educational measures (Article 486 CCP RM). Under Article 389(4)(3) CCP RM, such a judgment is delivered "without imposing a penalty", a classification also reaffirmed by the Supreme Court of Justice (2022b, case No. 4-1ril-2/2021).

Unlike exemption from criminal liability, release from punishment therefore presupposes a conviction, that is, a final finding of guilt. Its consequences are, however, mitigated: under Article 111(1)(a) CC RM, persons released from punishment are deemed to have no criminal record, a point also emphasised by the Plenary of the Supreme Court of Justice (2004, para. 24).

This distinction is not always respected in practice. In case No. 1ra-1388/2021, the court of first instance delivered a judgment of conviction and ordered "release from punishment" under Article 54 CC RM, while the court of appeal classified the same outcome as exemption from criminal liability (Supreme Court of Justice, 2022a, case No. 1ra-1388/2021). If the court considered a conviction necessary, the correct legal basis was Article 93 CC RM, whereas applying Article 54 CC RM required the criminal proceedings to be discontinued.

Conditions and particular features of release. A comparison with Article 54 CC RM reveals three significant differences. The first concerns the scope of application: release from punishment is available not only for minor and less serious offences but also for serious offences, punishable by law with imprisonment of up to and including 12 years (Article 16(4) CC RM).

The second difference is the absence of the "first time" requirement. Release from punishment is also available to a minor who has previously been exempted from criminal liability or who has a criminal record.

The third difference, which is often overlooked, concerns the mandatory nature of release. Article 54 CC RM provides that a minor "may be exempted", whereas Article 93 CC RM provides that minors "shall be released" if the substantive condition is found to be met. Once the court finds that the purposes of punishment can be achieved through educational measures, it no longer has the option of imposing a penalty.

The recent case law of the Supreme Court confirms that, where minors are concerned, permissive statutory wording may acquire

mandatory force. Although Article 79(1) CC RM provides that the court "may" impose a penalty below the statutory minimum, the Supreme Court of Justice held, with reference to Plenary Ruling No. 8/2013, that where the defendant was a minor the court is obliged to apply this provision, and that failure to do so amounts to imposing a penalty outside the limits prescribed by law (Supreme Court of Justice, 2026, case No. 1ra-57/2024). The same reasoning applies with even greater force to Article 93 CC RM, whose mandatory wording ("shall be released") requires the court to order release whenever it finds that the substantive condition is met.

Article 485(1) CCP RM presents release from punishment and the conditional suspension of the execution of the sentence (Article 90 CC RM) as alternatives. Unlike suspension, release from punishment involves neither the imposition of a penalty nor a probation period. Release from punishment is therefore the more favourable outcome and must be examined first, as the very order of Article 485(1) CCP RM suggests.

3.4 Compulsory educational measures – Article 104 CC RM

Article 104(1) CC RM exhaustively lists the following measures: a warning; placing the minor under the supervision of their parents, the persons acting in their place or the specialised state authorities; an obligation to make good the damage caused; an obligation to attend a psychological rehabilitation course, to complete compulsory schooling, to follow a probation programme or to attend a vocational training course. Several measures may be imposed at the same time (Article 104(3) CC RM). The importance of placing minors under supervision is borne out by a study of young people in the Republic of Moldova who had come into contact with the justice system, which found that parental supervision was the only statistically significant protective factor, associated with lower rates of property offending (Lazăr et al., 2026). Under Article 98(2)(b) CC RM, educational measures are security measures, a position shared by the Plenary of the Supreme Court of Justice (2004, para. 25).

This classification is open to objection: security measures are aimed at "removing a danger and preventing the commission of acts provided for by the criminal law" (Article 98(1) CC RM), whereas educa-

tional measures are imposed on a person who is criminally responsible and culpable, and their main function is reintegration. In our view, they are criminal law sanctions sui generis, which must fully comply with the requirements of legality and foreseeability, including as regards their duration. Historical arguments support this conclusion: in Romanian law, the 1969 Criminal Code removed educational measures from the category of security measures, where the previous legislation had placed them, and recognised them as criminal law sanctions in their own right, alongside penalties and security measures (Brezeanu, 1998, pp. 36–37).

The limit "until the age of majority". Article 104(5) CC RM does not set a specific duration for compulsory educational measures, but limits them to the period remaining until the minor reaches the age of majority. Read together with the age thresholds in Article 21 CC RM, this rule means that the maximum possible duration of an educational measure is determined solely by the minor's age, rather than by the seriousness of the offence or the minor's need for reform.

Under the general rule in Article 21(1) CC RM, criminal liability arises from the age of 16. For this category, the maximum period during which an educational measure can be enforced is two years, namely the period between the minor's 16th birthday and the age of majority. By way of exception, Article 21(2) CC RM provides for criminal liability from the age of 14 for the offences exhaustively listed therein; in such cases, the maximum period extends to four years. Accordingly, de lege lata, the theoretical maximum duration of an educational measure is four years, and it can be reached only by a minor who, at the age of 14, committed one of the offences listed in Article 21(2) CC RM.

This mechanism has three questionable consequences. First, for the same offence, a 14-year-old may be subject to a measure for four years, whereas a minor aged 17 years and 10 months may be subject to it for only two months, even though the act is equally harmful. Second, the actual duration of the measure is not determined by the judicial authority but follows automatically from the minor's date of birth, which contradicts the very criterion laid down in Article 104(5) CC RM ("the nature and degree of harmfulness of the offence committed"). Third, the person cannot tell from the decision imposing the measure exactly how long they will be subject to the obligations, which under-

mines the foreseeability of the sanction.

The literature also warns that loosely defined diversion measures risk becoming excessive individualised interventions in the lives of minors (Richards, 2014).

Romanian criminal law deals with this issue more coherently, setting separate time limits for each educational measure – a solution to which we return in the comparative analysis below.

Systematic evasion. Article 104(4) CC RM provides that, in the event of systematic evasion, the prosecutor, on a proposal from the specialised state authority, revokes the measures imposed and refers the case to court; where the measures were imposed by the court, the court revokes them and refers the case back to the prosecutor or, as the case may be, imposes a penalty. The law does not define systematic evasion, and the Plenary interprets it as a breach of the measure imposed "three or more times" (Supreme Court of Justice, 2004, para. 26). A purely quantitative criterion is insufficient: revocation significantly worsens the minor's position and should be made conditional *on the culpable nature of the failure to comply, a prior warning, and a hearing of the minor, their legal representative and defence counsel.*

3.5 Comparative aspects: the regime for minors in Romanian criminal law

The sanctioning model. Comparative law broadly distinguishes between a traditional criminal model, which combines educational measures with penalties, a non-criminal model, which gives priority to educational measures, and mixed formulas (Terec-Vlad, 2024, pp. 92–93). The Republic of Moldova follows the mixed model, very close to that of the 1969 Romanian Criminal Code, which already gave priority to educational measures and allowed a penalty to be imposed only where they were insufficient to reform the minor (Brezeanu, 1998, pp. 52–53) – a solution virtually identical to that in Article 75(3) CC RM. The current Romanian Criminal Code (Law No. 286/2009) devotes a separate title to minors (Title V, Articles 113 to 134) and adopts an exclusively educational system: a minor who was between 14 and 18 years of age at the time of the offence "shall be subject to a non-custodial educational measure" (Article 114(1) CC RO), and a custodial measure may be imposed only if the minor has previously committed an offence for which an educational measure was imposed, or if the penalty pre-

scribed by law is imprisonment of seven years or more or life imprisonment (Article 114(2) CC RO). Penalties are not imposed on minors. Consequently, Romanian law has no institution equivalent to the release of minors from punishment under Article 93 CC RM: what in the Republic of Moldova is an exception, conditional on a judicial finding that the minor can be reformed, is in Romania the statutory rule.

The non-custodial measures are the civic training course, supervision, weekend confinement and daily supervision, while the custodial measures are committal to an educational centre and committal to a detention centre (Article 115(1) CC RO). The measure is chosen in accordance with the general sentencing criteria (Article 115(2) CC RO), on the basis of an assessment report that must be prepared by the probation service (Article 116 CC RO). There is also a difference of principle regarding the threshold of liability: between the ages of 14 and 16, Romanian law makes liability conditional on proof of discernment (Article 113(2) CC RO), minority being treated as a ground of non-imputability (Article 27 CC RO), with an irrebuttable presumption of lack of discernment below the age of 14, a rebuttable presumption of lack of discernment between 14 and 16, and a rebuttable presumption of discernment from the age of 16 (Terec-Vlad, 2024, pp. 75–79). For the same age group, Moldovan law uses a closed list of offences (Article 21(2) CC RM), without any case-by-case assessment of discernment. The minimum age of 14, common to both States, has a rational basis in developmental psychology.

Romanian law does not provide for an exemption from criminal liability specific to minors. The diversion function is performed by the general institution of waiver of prosecution (Article 318 CCP RO), which applies to offences punishable by a fine or by imprisonment of up to seven years where the prosecutor finds that there is no public interest in prosecution, subject to review by the preliminary chamber judge. Article 54 CC RM is narrower in scope but is designed specifically for minors.

Duration of and non-compliance with measures. The difference most relevant to the shortcomings identified in Moldovan law concerns the duration of the measures. In Romanian law, each measure has precise statutory limits: the civic training course lasts no more than four months (Article 117 CC RO), supervision between two and

six months (Article 118 CC RO), weekend confinement between four and twelve weeks (Article 119 CC RO), daily supervision between three and six months (Article 120 CC RO), and committal to an educational centre between one and three years (Article 124(2) CC RO). The duration depends on the offence and the minor's personality, not on the minor's age. In addition, Article 123 CC RO provides for a graduated response to non-compliance with non-custodial measures, expressly conditional on the minor's bad faith: extension of the measure up to the statutory maximum, replacement with a more severe measure and, only as a last resort, committal to an educational centre. By contrast, Article 104(4) CC RM sanctions systematic evasion directly, by revoking the measures and reopening the proceedings or imposing a penalty, with no intermediate step and no culpability requirement.

Article 134(1) CC RO provides that the provisions of the title on minors "shall also apply to adults who, at the time of the offence, were between 14 and 18 years of age", while paragraph (2) of the same Article allows the court, where a custodial measure is imposed after the person has turned 18, to order that it be served in prison, having regard to the prospects of reform and the person's age. The Romanian legislature has thus resolved, by an express provision, precisely the problem that Moldovan law leaves unregulated: the relevant age is that at the time of the offence, and educational measures remain applicable and enforceable after the age of majority.

The comparison does not lead to the conclusion that the Romanian model should be adopted wholesale. An exclusively educational system requires an institutional infrastructure (educational centres, specialised probation services) that the Republic of Moldova would first need to develop, and the existence of an exemption from criminal liability specific to minors is an advantage of Moldovan law. At the same time, the historical experience of Romanian law shows that giving educational measures priority in the legislation is not enough in itself: although the 1969 Criminal Code enshrined this priority, in 1972 approximately 63% of the sanctions imposed on minors were custodial, which required the supreme court to intervene through guidance decisions (Brezeanu, 1998, pp. 38–39). The excessive use of custodial sanctions is all the more problematic given that deprivation of liberty creates difficulties in adapting to the prison regime and increases

the person's vulnerability (Jitariuc & Apărece, 2023, p. 138). The current Romanian model nevertheless offers three specific solutions that could easily be transposed: fixed time limits for educational measures; making sanctions for non-compliance conditional on bad faith, with a graduated response; and an express rule applying the regime for minors to persons who have reached the age of majority.

3.6 Persons who committed the offence as minors but had reached the age of majority when the institution was applied

In practice, this situation arises mainly where the offence is discovered late or where criminal proceedings are protracted. In the absence of uniform regulation, the solution we propose *de lege lata* is based on a systematic interpretation of the provisions in force.

Premise: age is assessed at the time of the offence. Article 8 CC RM links the criminal nature of the act and the penalty to the law in force "at the time the act was committed"; Articles 70(3) and 60(7) CC RM refer expressly to the person's age at the time of the offence; and Article 54(1) CC RM refers to a person under the age of 18 "who has committed" the offence. Procedurally, Article 474(2) CCP RM provides that the provisions of the chapter on minors apply to persons who have not reached the age of 18 at the time of the procedural act, but introduces an express exception: the provisions on exemption from criminal liability "also apply after the person has reached the age of 18" (Supreme Court of Justice, 2004, para. 2). The exception is continuing and continued offences that began during minority and continued after the age of majority, for which the Plenary requires the adult regime to apply (Supreme Court of Justice, 2004, para. 14), so that Articles 54 and 93 CC RM do not apply.

Admissibility of exemption from criminal liability. Under Article 474(2) CCP RM, the prosecutor and the court may apply Article 54 CC RM to a person who has reached the age of majority, provided that the person was a minor at the time of the offence and the other conditions are met. The possibility of reform is assessed at the time the case is decided, and the person's conduct after the offence, including after reaching majority, is particularly relevant to that assessment. Since the legal representative ceases to take part after the person turns 18 (Supreme Court of Justice, 2004, para. 10), only the person's own po-

sition is relevant (Article 483(4) CCP RM).

The problem of educational measures. Article 54(2) CC RM requires the measures in Article 104 CC RM to be imposed, but Article 104(5) CC RM limits them to minors. In such a case, we consider that three solutions are possible. The first – refusing exemption – must be rejected: it would in effect nullify the exception in Article 474(2) CCP RM and make the statutory benefit dependent on the length of the proceedings. The second – imposing measures "compatible" with adulthood – is contrary to the wording of Article 104(5) CC RM and would amount to an extensive interpretation to the detriment of the person and to the application of the criminal law by analogy, both prohibited by Article 3(2) CC RM. The third, which we consider correct de lege lata, is exemption from criminal liability without educational measures: the exception in Article 474(2) CCP RM must be given practical effect; the measures are a consequence of exemption, not a condition for it; and the legal impossibility of the consequence cannot become a reason for refusing the benefit. Alternatively, if the person has admitted guilt and made good the damage, Article 55 CC RM may be considered.

Release from punishment. The situation here is more complicated, since Article 93 CC RM refers to "minors convicted", and Article 474(2) CCP RM does not mention release from punishment. A literal interpretation would rule out the application of Article 93 CC RM. We consider, however, that the term "minors" denotes the person's status at the time of the offence, as in Article 70(3) CC RM, and that the omission in Article 474(2) CCP RM is explained by the fact that the provision lists procedural institutions, not substantive law institutions, whose application is determined, under Article 8 CC RM, by reference to the time of the offence. Even in this situation, educational measures cannot be imposed, so the court would deliver a conviction without imposing a penalty or any measures, stating expressly why the measures cannot be applied.

Case law shows that this is not merely a theoretical problem. In case No. 1ra-1388/2021, the proceedings lasted almost five years, and by the time of the appeal retrial the defendant, a minor at the time of the offence, had turned 19. The court imposed a sentence of imprisonment, determined under Articles 70(3) and 79 CC RM and condi-

tionally suspended, without examining whether the defendant could be released from punishment under Article 93 CC RM. The limitation period, halved under Article 60(7) CC RM, had already expired in August 2019, before the first appellate decision. This was not established until the Supreme Court of Justice, hearing the defence's appeal in cassation, ordered release from punishment on that ground (Supreme Court of Justice, 2022a, case No. 1ra-1388/2021).

A similar situation, with more severe consequences, arose in case No. 1ra-57/2024. The defendant committed robbery at the age of 17, and the criminal investigation lasted two and a half years, so that he reached the age of majority before the case was sent for trial. Although the offence, being serious, fell within the scope of Article 93 CC RM, none of the courts examined whether this institution applied; the debate focused solely on the length of the sentence and whether to suspend it. The Supreme Court of Justice held that the court of appeal should have noted of its own motion that the defendant had been a minor at the time and applied Article 79 CC RM, since Articles 70(3) and 79 CC RM serve distinct legal functions; it ultimately imposed a custodial sentence of three years' imprisonment, almost seven years after the offence (Supreme Court of Justice, 2026, case No. 1ra-57/2024). Both cases show that, once the person has reached the age of majority, their minority at the time of the offence affects only the length of the sentence, not the nature of the sanction, and the educational component of the criminal justice response disappears entirely.

Reaching the age of majority during enforcement. If the person turns 18 before the measures have been completed, the measures lapse by operation of law (Article 104(5) CC RM), and they can no longer be revoked, unless revocation proceedings were initiated before the person reached the age of majority.

4. Discussion

The results confirm the research hypothesis. The inconsistencies identified are not merely terminological; they have practical effects: different assessment criteria for institutions with the same purpose, an unclear reference age for Article 93 CC RM, a duration of educational measures that does not depend on the offence, and a direct conflict between Article 474(2) CCP RM and Article 104(5) CC RM.

These shortcomings are compounded by inadequate official in-

terpretation. Plenary Ruling No. 39/2004, although amended in 2015 (Supreme Court of Justice, 2015), still refers in paragraph 24 to placing minors in special educational and re-education institutions, even though this option no longer appears in Articles 93 and 104 CC RM, and states in paragraph 25 that educational measures are imposed "only" by the court, whereas Article 483(1) CCP RM and Article 104(4) CC RM expressly recognise the prosecutor's competence to do so.

Recent case law confirms these findings. In case No. 1ra-1388/2021, the courts confused the two institutions and applied Article 54 CC RM without giving reasons as to the possibility of reform, and after almost five years of proceedings the person, by then an adult, was released from punishment solely on the ground of limitation (Supreme Court of Justice, 2022a, case No. 1ra-1388/2021).

In case No. 1ra-57/2024, Article 93 CC RM was not examined at any stage, and the defendant's minority at the time of the offence affected only the length of the sentence (Supreme Court of Justice, 2026, case No. 1ra-57/2024).

In both cases, the length of the proceedings – incompatible with the requirement that cases involving children be decided without delay, enshrined in Article 40 of the Convention on the Rights of the Child (United Nations, 1989) – meant that the educational institutions were no longer even considered.

On the basis of these findings, we put forward the following proposals de lege ferenda.

The first proposal concerns clarifying the reference age and harmonising the assessment criterion. Article 93 CC RM could be worded as follows: "A person who had not reached the age of 18 at the time of the offence and who is convicted of a minor, less serious or serious offence shall be released from punishment by the court if it is established that the person's reform and social reintegration can be achieved by applying the compulsory educational measures provided for in Article 104 CC RM." Correspondingly, Article 474(2) CCP RM should also refer to release from punishment. This wording replaces the reference to "the purposes of punishment" with a reference to the reform and social reintegration of the minor, in line with Articles 54(1) and 75(3) CC RM.

The second proposal concerns the duration of educational mea-

sures. Article 104(5) CC RM could be replaced by the following text: "The measures provided for in paragraph (1)(b), (d), (e), (f) and (g) shall be imposed for a period of between three months and four years, set in the decision imposing them according to the nature and degree of harmfulness of the offence, the minor's personality and the recommendations of the pre-sentence report. The measures shall continue to be enforced after the person reaches the age of 18 if they were imposed for an offence committed during minority, but not beyond the person's 21st birthday." This amendment, inspired by the fixed limits in Articles 117 to 120 CC RO and by the rule in Article 134 CC RO, would also ensure consistency with Article 474(2) CCP RM, making it possible to apply an effective educational intervention to persons who have reached the age of majority.

The third proposal concerns defining systematic evasion in Article 104(4) CC RM, for example as "culpable failure, on at least three occasions, to comply with the obligations imposed, after the minor has been warned in writing by the probation authority of the consequences of non-compliance", and establishing a revocation procedure that includes a hearing of the minor and defence counsel. Following the model of Article 123 CC RO, sanctions should be graduated: extension of the measure up to the statutory maximum, replacement with a more severe measure and, only as a last resort, revocation of the exemption or release.

The fourth proposal is to add to Article 54(1) CC RM a clarification that the institution does not apply to a person who has previously been exempted from criminal liability under Article 54 CC RM.

The fifth proposal concerns Article 70(3) CC RM, which halves only the maximum term of imprisonment. For serious offences with a high statutory minimum, particularly where Article 80^1 CC RM is applied at the same time, the minimum may end up coinciding with the maximum applicable to a minor, as happened in practice in case No. 1ra-57/2024 (Supreme Court of Justice, 2026, case No. 1ra-57/2024). For these reasons, both the minimum and the maximum term of imprisonment should be halved for persons who committed the offence while they were minors.

5. Conclusions

Exemption of minors from criminal liability and release of minors from punishment are the instruments through which Moldovan criminal law gives effect to the principle that punishment is subsidiary, as enshrined in Article 75(3) CC RM.

Exemption of minors from criminal liability (Article 54 CC RM) operates before conviction, so that the minor avoids a finding of guilt by a court altogether. It may be ordered both by the prosecutor during the criminal investigation (Article 483 CCP RM) and by the court. However, its scope is limited to minor and less serious offences committed for the first time, and its application remains discretionary, since the law uses the wording "may be exempted". Release of minors from punishment (Article 93 CC RM), by contrast, presupposes a judgment of conviction and falls exclusively within the jurisdiction of the court. It also extends to serious offences and is not conditional on the offence being a first offence. Once it is established that the purposes of punishment can be achieved through educational measures, release becomes mandatory, since the law provides that minors "shall be released". Article 93 CC RM thus operates as a second tier of protection, applicable where the conditions of Article 54 CC RM are not met or where diversion has not been ordered.

The effectiveness of these institutions is undermined by divergent assessment criteria, uncertainty as to the reference age, the limitation of educational measures to the period before the age of majority, and the lack of rules on systematic evasion. For a person who committed the offence as a minor but reached the age of majority before the institution was applied, the solution de lege lata is exemption or release without educational measures, with express reasons; the solution de lege ferenda is to provide expressly that age is assessed at the time of the offence and to allow educational measures to be enforced after the age of majority, up to the age of 21. The comparison with Romanian law shows that these problems have tried and tested legislative solutions: fixed time limits for each educational measure, graduated sanctions for non-compliance only in cases of bad faith, and an express provision, along the lines of Article 134 CC RO, maintaining the regime for minors in respect of persons who have reached the age of majority. Selectively adopting these solutions, while retaining the

exemption from criminal liability specific to minors, would allow the educational measure to become genuinely the rule and punishment the reasoned exception. The case law analysed confirms that, in the absence of such solutions, it is in practice the length of the proceedings that determines whether a person benefits from the educational regime for minors.

Conflicts of Interest: The authors declare no conflict of interest.

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