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MINORITY AS A CAUSE OF NON-IMPUTABILITY AND THE LIMITS OF CRIMINAL LIABILITY UNDER ROMANIAN CRIMINAL LAW

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Abstract: *This study examines minority as a cause of non-imputability in Romanian criminal law, reading Articles 27 and 113 of the Criminal Code together to separate the legal consequence — the absence of imputability — from the criteria that determine it. It sets out the graduated, age-based regime of liability and the pivotal role of mental capacity for the 14-to-16 bracket, where the forensic psychiatric examination becomes decisive and where law and forensic psychology meet. Against this framework, the paper weighs the recurring proposal to lower the minimum age of criminal responsibility in response to serious offending by very young children. Drawing on comparative European solutions and on recent empirical research from Denmark and Sweden, it argues that a lower threshold does not deliver the deterrence its supporters expect and harms the developmental prospects of the children concerned. The more coherent answer lies in strengthening child protection, enforcing educational measures effectively, and holding accountable the adults who recruit minors into crime.*

Keywords: *minority; non-imputability; mental capacity; minimum age of criminal responsibility; educational measures*

1. Minority as a Legal Institution: Terminological and Systematic Clarifications

To grasp the legal status of minority in Romanian criminal law, one must begin with the relationship between two distinct provisions of the Criminal Code (hereinafter CC): Article 27 and Article 113. The distinction between them is far from a matter of terminology; it rests on a deliberate choice of criminal policy.

Article 27 CC, placed in Title II ('The Offence'), Chapter III ('Causes of Non-Imputability'), treats minority as a cause of non-imputability: an act prescribed by criminal law is not imputable where it is committed by a minor who, at the moment of commission, did not meet the legal conditions for criminal liability. The provision functions as a referral norm, since its content can only be understood by reading it together with Article 113.

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Article 113 CC, located in Title V ('Minority'), Chapter I ('The Regime of Criminal Liability of the Minor'), sets out the limits of criminal liability, that is, the age thresholds and conditions on which a minor acquires criminal capacity. The two texts are complementary: Article 27 announces the legal consequence (the absence of imputability), while Article 113 supplies the criteria by which that consequence is established (Antoniu et al., 2015, p. 312).

In this respect the current criminal Code (Law no. 286/2009, in force since 1 February 2014) maintained the structure of the 1969 Criminal Code, under which minority featured as a cause removing the criminal character of the act (Article 50), supplemented by Article 99 on the limits of criminal liability. Much of the doctrine developed under the former code therefore maintains its value, because the foundation of the institution remains identical: the lack, on account of age, of the psychophysical capacity to understand one's own conduct (Streteanu and Nițu, 2014, p. 445). What the current Code altered in any substantial way is not the basis of non-imputability but the sanctioning regime, since the criminal penalties once available against minors gave way to a system of educational measures.

Reading Articles 27 and 113 CC together, minority can be defined as the legal state of a person who, at the moment of committing an act prescribed by criminal law, had not attained the minimum age required for criminal liability or had not displayed the requisite mental capacity, with the consequence that imputability, and hence criminal liability, is absent.

2. The Tripartite Regime of Liability According to Age: An Analysis of Article 113 CC

For describing the criminal capacity of a minor, the Code adopts a graduated, three stage scheme that refers to age and the presence of mental capacity. The underlying assumption is straightforward: becoming mature is a gradual process, and the ability to understand one's conduct and to control it does not appear on at a fixed day but builds up over time (Udroiu, 2023, p. 178).

A. Minors under 14 years of age: absolute presumption of lack of mental capacity

Under Article 113(1) CC, "a minor who has not reached the age of 14 shall not be subject to criminal liability." Here the law establishes an absolute presumption (iuris et de iure) of the lack of mental capacity, one that no evidence can overturn. Whatever the gravity of the deed, be it premeditated homicide or any other especially serious offence, a child under 14 cannot be held criminally liable. The presumption applies of itself, leaving no room for judicial individualization.

Two considerations support this choice. The first belongs to criminal policy: a child of that age is to be protected and educated rather than punished. The second is psychological: the capacity for moral abstraction and for grasping the legal consequences of one's acts is, at this stage, too underdeveloped to warrant a criminal reproach. None of this leaves the conduct without an institutional answer. The protective measures of Law no. 272/2004 republished on

the protection and promotion of children's rights continue to apply, among them **specialized** supervision carried out by social workers, psychologists and counsellors (Bodoroncea et al., 2020, p. 356).

B. Minors between 14 and 16 years of age: relative presumption of lack of mental capacity

According to Article 113(2) CC, "a minor between 14 and 16 years of age shall be subject to criminal liability only if it is proven that he committed the act with mental capacity." What operates here is a relative presumption (iuris tantum) that mental capacity is lacking, a presumption that the prosecution may overturn by proving that mental capacity existed at the moment of the act.

Procedurally, that proof is to be compulsorily supplied by a forensic psychiatric examination ordered by the competent judicial authority. The examination is not an optional item of evidence among others; it is a sine qua non condition for engaging the criminal liability of a minor between 14 and 16 years. Statements, the probation service report or any other substitute will not meet the statutory requirement (Mitrache and Mitrache, 2023, p. 201).

Because the presumption is of absence of mental capacity, the burden of proving its presence rests, as a rule, with the prosecution or the court. The High Court of Cassation and Justice (HCCJ) has insisted, time and again, that mental capacity be assessed in concreto, by reference to the particular act rather than to the minor's general cognitive ability. The indicators the courts look to are familiar: premeditation, the choice of suitable means, the working-out of a criminal plan, the selection of the time and place of the offence. Taken together, such features may reveal the degree of cognitive and volitional maturity that the law treats as significant (Ioan, 2024, p. 89).

C. Minors between 16 and 18 years of age: relative presumption of the existence of mental capacity

Under Article 113(3) CC, "a minor who has reached the age of 16 shall be subject to criminal liability", and liability is no longer made to depend on proof of mental capacity. The presumption is now reversed: mental capacity is considered to be existing, though this too may in principle be rebutted by showing its absence, if case be a mental disorder has diminished or removed it according to the provisions of Articles 28 or 29 CC, on irresponsibility or intoxication. Even so, the sanctions reserved for this age group are not those of adults: in this case are to be imposed educational measures, not penalties.

3. Mental Capacity: The Meeting Point of Law and Forensic Psychology

For the 14-to-16 period, mental capacity is the decisive criterion of liability, and it therefore sits at the center of the whole construction. The Code, however, nowhere defines it, leaving doctrine and case law to mark out its content.

In the settled doctrinal formulation, mental capacity is the psychic ability of a person to understand the unlawful character of the act and to direct their conduct freely and consciously in the light of that understanding. (Law no. 487/2002 on mental health and the protection of persons with psychic disorders, republished). Two cumulative components emerge from this definition: an intellectual element, the ability to grasp the meaning and consequences of the act, and a volitional element, the ability to control and steer one's behavior. Should either be missing, the conclusion is that mental capacity was absent (Dongoroz, cited in Lefterache, 2023, p. 14).

A distinction too often overlooked in practice is the one between generic mental capacity and specific, or situational, mental capacity. A minor may be, in general psychological terms, adequately developed and yet lack mental capacity in respect of a given act, if that act was committed under extreme emotional pressure, under the sway of a criminal group, or in circumstances that for practical purposes destroyed any capacity for rational appraisal. It is this specific question, and not the broad one about the minor's overall maturity, that the forensic psychiatric examination is required to answer.

As a piece of evidence the examination is governed by Articles 172–185 of the Criminal Procedure Code. Its findings do not bind the court, which weighs them against the rest of the file. In practice, though, where no well-founded objection is raised, courts give the examination a leading role in deciding whether mental capacity was present or not (Udroiu, 2023, p. 184).

4. The Sanctioning Regime: The Primacy of Educational Measures

One of the boldest policy decisions of the current Criminal Code is its definitive break with criminal penalties for minors who are held liable, replacing them by educational measures. This signals a shift from a retributive model to a restorative and educative one, in accordance with the European tendencies and the relevant international instruments (Council of Europe, 2008).

Article 114 CC makes the non-custodial educational measure the default response where a minor has committed an offence. A custodial measure may be ordered only on the strict and exhaustive conditions of Article 114(2) CC: a particularly serious offence, or a record of prior offending coupled with the judgment that a non-custodial measure would not suffice.

The non-custodial measures (Articles 117–123 CC) are four: the civic training course (up to four months), supervision (two to six months), weekend confinement (between four and twelve weekends) and daily assistance (three to six months). The custodial measures (Articles 124–127 CC) are two: placement in an educational center (one to three years, extendable to five) and placement in a detention center (two to five years, rising to between five and fifteen years for serious offences) (Bodoroncea et al., 2020, pp. 412–418).

A key tool of individualization is the evaluation report drafted by the probation service. Setting out the minor's personality, conduct, family environment, social setting and prospects of reintegration, it becomes one of the central documents on which the choice of the appropriate measure is made.

5. Comparative Law and International Instruments

The Romanian legislator's choices belong to a wider European and international setting, one that everywhere accepts that the minor has the right to a differentiated treatment in criminal matters then the adults. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985) call on states to fix a minimum age of criminal responsibility that is not unduly low and that reflects the emotional, mental and intellectual maturity of young people. The Convention on the Rights of the Child (1989), which Romania has ratified, obliges states both to set such an age and to provide procedures suited to the age of the accused. For its part, General Comment No. 24 of the Committee on the Rights of the Child now recommends a floor of at least 14 years.

Looked at comparatively, European solutions diverge a good deal. France draws the line at 13, with a relative presumption that mental capacity is lacking, yet keeps criminal sentences, imprisonment included, available for serious offences committed between 13 and 18. Germany holds to 14, but conditions liability on a case-by-case finding of "maturity" (Reife) under Section 3 of the Juvenile Courts Act (Jugendgerichtsgesetz). The Netherlands sets the age at 12; Belgium and Hungary do likewise for certain offences. At the other extreme, Portugal and Luxembourg acknowledges criminal responsibility only from 16. England and Wales, at 10, stand out as the European outlier. With its 14-year threshold and its tier of graduated presumptions, Romania sits comfortably within the European mainstream (Ioan, 2024, p. 45; Gašparić, 2024, p. 52).

Recommendation CM/Rec (2008)11 of the Committee of Ministers, on European Rules for Juvenile Offenders Subject to Sanctions or Measures, stresses that any intervention aimed at a minor must be individualized, must put rehabilitation and reintegration first, and must treat deprivation of liberty as a last resort. That philosophy is carried over in full into Article 114 CC.

6. Should the Minimum Age Be Lowered? The Debate on Serious Offences and Alternative Responses

Whether the minimum age of criminal responsibility ought to be lowered, as an answer to serious offences committed by children below the age of 14, is a question that has sparked a lot of debates across Europe and in Romanian public life alike. It comes up each time a young

offender is behind a high-profile crime, and with it comes political pressure to modify the criminal legislation.

A. Arguments in favor of lowering the minimum age

Those in favor of a lower threshold for criminal liability usually rely on three main arguments.

The first concerns the protection of victims. When a child under 14 commits murder or some other serous act of violence, the absolute presumption of non-imputability makes criminal liability legally impossible, an outcome that many consider disproportionate and unjust set against the harm done. On this view, the law's solicitude for the child-perpetrator can be considered as coming at the expense of the child-victim (Bajović, 2024, p. 95).

The second points to a dynamic of exploitation. Organized networks recruit children below the age of criminal liability precisely because their immunity from prosecution makes them useful instruments for serious crimes. Sweden is the textbook case. Swedish authorities recorded that criminal networks were making systematic use of under-15s, in the knowledge that they could not be charged, to carry out contract killings, bombings and armed robberies. In response, the center-right government announced in late 2025 and early 2026 its intention to lower the minimum age of criminal responsibility from 15 to 13 for offences carrying a minimum sentence of four years' imprisonment, among them murder, aggravated rape, kidnapping and aggravated explosives offences, and drafted a bill to that effect in April 2026. The proposal drew sustained criticism from the Council on Legislation (Lagrådet) and child-rights bodies, and by mid-2026 the government had retreated to a threshold of 14; a separate reform, replacing secure youth care with custodial units for serious offenders aged 15 to 17 within the prison service, is meanwhile due to take effect from July 2026 (Swedish Ministry of Justice, 2026).

The third argument is that the present threshold was set when juvenile delinquency meant, for the most part, offences against property, and that it no longer fits a landscape of violent and organized youth crime (Bajović, 2024, p. 98).

B. Arguments against lowering the minimum age: the empirical evidence

The case on the other side draws on both empirical research and international human-rights standards. Criminological, the evidence simply does not bear out the deterrence hypothesis on which proposals to lower the age rest. The cleanest natural experiment we have is the Danish reform of 2010, when the threshold was cut from 15 to 14 for twenty months (July 2010 to February 2012) before a new parliamentary majority reversed it. Drawing on population-wide administrative registers covering 162,959 individuals, a study published in the Journal of Quantitative Criminology in 2025 found no evidence that the lower age reduced the likelihood of offending among 14-year-olds. Worse, it traced a connection between early entry into the justice system and higher reoffending, alongside poorer educational outcomes for the cohort concerned (Damm et al., 2025, pp. 14–18). A parallel study by the Danish Centre for Social Science Research (VIVE, 2025) reached the same conclusion: over the two years of the

reform youth crime did not fall, and children were instead labelled as offenders sooner, making their reintegration harder.

Legally, General Comment No. 24 (2019) is explicit that a minimum age below 14 is internationally unacceptable, and that any state dropping below that line falls short of its obligations under the Convention on the Rights of the Child. The Committee adds that criminal-law responses to youth offending achieve less than early prevention, family intervention and social support (United Nations Committee on the Rights of the Child, 2019, para. 22).

A further, structural objection is the labelling effect. Early contact with the justice system tends to harden a deviant self-image in adolescents, throws them together with criminal peers in detention, and lowers their chances of educational attainment and reintegration, that is, the very results the system is meant to secure (Gašparić, 2024, p. 58). The United States experience with the transfer of juveniles to adult courts points the same way: Illinois, which embraced harsh "tough on crime" transfer laws in the 1980s and 1990s, has since rolled them back, on the recognition that prosecuting children as adults disserved rather than advanced their rehabilitation (Pijon, 2021).

C. Alternative responses within the existing Romanian legal framework

The more coherent response, and the one the evidence supports, is not to move the threshold but to make better use of the mechanisms Romanian law already provides for minors who cannot be held liable, while tackling the systemic drivers of youth offending at the same time.

Law no. 272/2004 on the protection and promotion of children's rights already offers a range of measures for under-14s who commit acts prescribed by criminal law. Specialised supervision, referral to social assistance services, placement in residential care and compulsory psychological counselling are proportionate, evidence-based responses that spare the child the stigma of a conviction. What they require is prompt, consistent application backed by adequate resources. It is the failures of implementation, far more than the threshold itself, that usually account for the sense of impunity in the high-profile cases involving very young children (Ioan, 2024, p. 112).

For 14-to-18-year-olds who are held liable, the reform of the educational-measures system under the current Code has already widened the range of available responses considerably. The custodial measures, placement in an educational centre and placement in a detention centre, allow deprivation of liberty for substantial periods where the gravity of the offence or a pattern of reoffending calls for it. What is still wanting is to make these measures real on the ground: adequate premises, qualified teaching and psychological staff, and effective reintegration programmes upon release.

A further question worth the legislator's attention is parental or supervisory liability. Romanian civil law already imposes parental civil liability for the acts of minor children (Article 1372 of the Civil Code), and the criminal law is not wholly silent on parental conduct

either: Article 380 CC, for instance, punishes the parent or guardian who abusively withdraws a minor from compulsory education or prevents the child from attending it (Hegheș, 2021). What the criminal law still lacks, however, is any provision aimed at the parent whose negligence or active assistance has directly contributed to a minor's own offending. Some comparative models, prominent in the Belgian and Serbian literature, have proposed a form of "parental criminal responsibility" to sit alongside the existing framework (Bajović, 2024, p. 101). The idea deserves close study as a de lege ferenda option in the Romanian setting.

At bottom, the argument over the minimum age is an argument between a retributive and a rehabilitative idea of justice. The evidence points one way: lowering the age does not deliver the deterrence its supporters promise, and it inflicts measurable harm on the developmental prospects of the children caught up in it. The right answer to serious juvenile crime, the exploitation of children by organized networks included, is not to extend criminal liability to ever younger children. It lies in a combination of strong child-protection measures, better enforcement of the educational measures, well-targeted prevention and, where it is warranted, the criminal accountability of the adults who recruit and use minors for their own ends.

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