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## EDUCATIONAL MEASURES IN THE MEANING OF ARTICLE 13 (1) OF THE ANTISOCIAL BEHAVIOUR OF MINORS PREVENTION ACT AS AN ALTERNATIVE TO CRIMINAL PENALTIES

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### ABSTRACT

The analysis of the topic offered to your kind attention is an attempt to present my views on two very important aspects: one is trying to consider the educational measure under the ASBMPA as an alternative to punitive sanctions under Chapter VI of the Penal Code, while the other is my try to present the same as read by a board of jurors on an educational case according to the ASBMPA, rather than a judge's board, i.e. an institution acting as a legal alternative to courts in the implementation of the Beijing Rules.

**Key words:** antisocial behaviour, minors, prevention, criminal penalties

Moreover, the analysis of this topic is a part of practical exercises for students whom I have the pleasure to teach within the specialty "Administrative AND legal regulation of social works" at the Department of "Social Work & Sport" with the Medical Faculty of the Thracian University in Stara Zagora.

The successful fight against antisocial behaviour and crimes committed by minors is a combination of the efforts of legislature, law enforcement and society as a whole. Parents share a high extent of authority and burden in this process and the author thinks that parents play a central role to the upbringing of children, since they are the most important and most significant people for a child. They are the primary behavioural model for children.

Present-day social and economic situation in Bulgaria exposes many children and families to the risk of committing antisocial behavior and crime.

State, society and specialized institutions alone are not able to build a better social and legal framework and comprehensive educational and pedagogical strategy to prevent the access of

children to the road of antisocial behaviour or to take concrete actions for their rehabilitation where children have already violated the legal rules, if the institutions are not aware of the factors that have contributed to the development and validation of children's deviated behavior.

The selection of tools and methods of teaching techniques and approaches to its practical application, on the one hand, are in direct relation to the incidence and impact of criminogenic factors and the other hand, to the availability of a current, clear and working legal environment. There is no dispute that work with minor offenders is a complex and lengthy process that inevitably goes beyond the school.

In terms of pedagogical science, although the system of measures and approaches applied to children with deviant behavior is no alternative, but they have their other dimension, and another complementing and no less successful approach, implemented within the existing legislation in this area. Thus, the legislature has arranged for the prevention and combating of child's antisocial behavior with a special law - the Antisocial Behaviour of Minors Prevention Act (ASBMPA). This act defines activities and functions of commissions for combat of antisocial behaviour in minors, children's educational rooms, educational and social-educational and boarding schools and homes for temporary accommodation of minors. The

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ASBMPA philosophy and overall activities to combat antisocial behaviour in minors is in fact an alternative to criminal penalties, as this law provides for education and imposing of corrective measures and educational measures, rather than the implementation of prosecution, penal repression and sanction.

The professional experience of the author as a lawyer working in a LC (Local Commission), formed the understanding that this Act is regarded as a legal opportunity to work with this type of children outside school, as according to its Article 6 (1) "Local commissions are set up in the municipalities to combat the antisocial behaviour of minors" and according to Article 6(2)"... Representatives of municipal authorities responsible for issues of education and health, representatives of the Social support directorates, police, and also teachers, psychologists, lawyers, doctors, public figures and others participate in the commissions. A representative of the regional prosecutor's office is present at the meetings of a LC". It is more than clear that there are new alternatives to teaching methods that expand the focus of the work of specialists. Now there is already a legal opportunity to go outside the range of teaching methods given by the Bulgarian school as an institution which provides a varying degree of success up to a certain level, without discontinuing cooperation with the school. By these provisions the ASBMPA gives the option for involvement of not only teachers in the work with children of antisocial behavior, but also a wide range of professionals listed under the above provisions, as an extension of in-school work, that is, there is an opportunity to apply other approaches in the combat against deviative behaviour of minors.

Not surprisingly, the legislature, giving priority to the process of educating children, has provided legal conditions to develop and extend it outside school and search for efficient skills and experiences of experts from other areas in the name of the positive development of minor offenders.

By viewing and analyzing the functions of the LC listed in Article 1 (1) it may be noticed that the ASBMPA enables the implementation of inter-institutional cooperation in the process of prevention and education of minor offenders in terms of complementing and extending the work started at school. The institution of the Bulgarian school and the institution of LC under the ASBMPA alternatively complement each other

in their desire and efforts along the challenging road of combat against antisocial behaviour of minor offenders.

Depending on the specifics of the problem, and specific opportunities available to municipalities and resource specialists, LCs may use different forms of preventive work - lectures, talks, seminars, training sessions to resolve conflicts and overcome problems in communication, advice to parents and children, assistance to children exposed to criminogenic risk, open classes on the problems of antisocial behaviour by minors, debates, lectures on civic education, sports activities and competitions.

In addition to the activity related to the organization and implementation of preventive work on the territory of the municipality, the ASBMPA assigns to LCs also the specific activity of hearing of cases involving antisocial behaviour of minors.

Under Article 11 (1) of the ASBMPA "The Local Commission is a competent authority for the territory where currently registered to hear or examine cases of antisocial behaviour committed by minors, and crimes committed by minors exempted from criminal liability under Article 61 of the Criminal Code".

According to the Juvenile Court Act, published in the State Gazette, 39 of 20. 02. 1943 (repealed), there was a possibility depending on the severity of the acts committed by juvenile offenders, i.e. minors, examined by the Children's Court, for imposing upon them "educational measures after serving punishment". Today, in the presence of the ASBMPA, this circumstance is excluded because the LC is capable to impose only educational measures, while the court shall impose educational measures as an alternative to punishment. A separate issue is the option under which there would be conditions for combining a punishment and educational measure.

A hypothetical implementation of such an idea would lead to significant changes in our legislation and the author holds the opinion that this will have no significantly positive result.

Today our legal doctrine regarding crimes and offences committed by minors is in close correspondence to the European legislation process and gives priority to the educational process for minor offenders. Only after exhausting those possibilities under the

ASBMPA, the commission which examined the educational case has the option to refer the matter to the court, however, this will not terminate the search for and implementation of educational approaches.

Moreover, for its part, the court also proceeds further with the process of educating the minor offenders, as it imposes educational measures according to the proposal of the particular LC, which is charged under Article 10 (1) (b) to examine the conduct of minors and impose appropriate educational measures or make a proposal to the court to impose educational measures under Article 13 (1) (11) and (13).

Article 12 (1) of the ASBMPA defines both the responsibility of minors under the age of 8 to 14 years who have committed antisocial behavior, and one of the main functions of a LC, namely to examine, discuss, analyze and decide on the antisocial behaviour committed. One of the important functions of a commission under Article 11 (2) of the ASBMPA to examine educational cases when offenders are minors and are released from criminal liability under Article 61 of the Penal Code. When examining such cases it should be pointed out that the recommended condition of the Beijing Rules is fully applicable for them. Accordingly, the court files of the antisocial perpetrators are referred from the penal system and by the court bodies for a decision by out of court institutions, that is, decisions in these cases are adjudged by alternative structures out of the law enforcement system, such as LCs under the ASBMPA. In this meaning, our current legislation fulfills all legal criteria and requirements concerning protection of minor offenders and the possibility the process of their education not to be interrupted, even after a sanction ordered by the court.

To achieve all this, it will be necessary to have an implementation of the efforts of many specialists of different professions and from different institutions who can "take the case", i.e. to become familiar with the child, the environment in which the child lives and grows, and with the child's psycho-physical profile of health and to continue working with the child in an environment outside school. Imposition, implementation and duration of application of educational measures are the result of precise analysis of the range of reasons and circumstances that led to the deviation in the behavior of minor offenders.

Taking child protection over all other elements of the child's upbringing, the ASBMPA provides in Article 19 (1) for mandatory "... presence of a parent or the person who replaced him/her", and paragraph 2 requires that representatives of the Child Protection Departments should be present at the sessions of the commissions in charge of the examination of educational cases, together with other professionals and members of the commission; and there is a further requirement to provide competent legal protection to the child during an educational case pursuant to Article 19 (3) admitting the presence of "... child's trusted agent or a lawyer", and also an opportunity to appeal against all measures in court.

On the one hand, the imposition of educational measures and in general the course of the entire legal process within the activity of the LC corresponds to Chapter VI "Special rules for minors" of the Penal Code of the Republic of Bulgaria. On the other hand, the wording in the Chapter "Special rules for minors" in the Penal Code are in full compliance with those of Article 40 of the UN Convention on the Rights of the Child and Rule 11 of the Criminal Justice Diversion" of the Beijing Rules that redirect and refer cases of underage offenders to the provisions of the ASBMPA for an alternative punishment. Thus the stigma of "sentenced" and "suspended" pending on children is avoided as a legal practice to implement the alternative educational measure. Several documents of various institutions govern the process of protection of children, among them the most significant legal contributions are: - Framework decisions of the Council of Ministers of 7.19.2002 on combating human trafficking / 2002/629/JHA /, of 22.12.2003 on combating sexual exploitation and child pornography / 2004/68/JHA /, of 15.03.2001 on the protection of victims in criminal cases / 2001/220/JHA /, Resolution of the Council of Ministers 12/20/1996 on drug trafficking / 97 / C 10/02 /, decision of the Council of Ministers of 28.05.2001 on the establishment of a European network for the prevention of crime / 2001/427/JHA /, the Convention on Europe on Action against Trafficking in 2005.

There are several preconditions that must be actually available so that the prosecution can issue a statement that the entire file of the pre-trial proceedings shall be referred for decision to the LC.

The first precondition lies in the requirement that the act "does not constitute a great public danger." Of course, such an assessment is made according to the particular severity of the offense itself, its effects on the actual perpetrator, victims and society.

The second precondition for the release of a minor from criminal liability under Article 6 (1), of the Penal Code requires that the act has been committed "... because of passion or frivolity ...". These characteristics of the carry marked features of psychological and mental characteristics relative to the stage of underage which have stimulated the commitment of the offense.

The third precondition for the release of a minor from criminal liability has an effect and is of importance in presence of the first two. In practice, the implementation of this prerequisite by the authority granting the decision is its evaluation to determine whether educational measures can be successfully implemented for minors under the ASBMPA. The complexity of this evaluation is entirely the prerogative of the competent decision-making body, after a full analysis of all characteristics of the offender based on available psychological analysis of the minor's characteristics, health status, family and living conditions and personal details.

It should be noted that the exemption under Article 61 of the Penal Code can be implemented in all phases and stages of the process: by the prosecutor - before and during pre-trial proceedings and by the court during the trial stage.

In legal-historical perspective it can be noted that earlier under Article 5 of the Juvenile Court Act, published in the State Gazette, No 39, 20. 02. 1943, the legislator has created the legal possibility of applying an alternative to criminal penalty as follows: "The court is free not to impose a punishment to a minor who committed a criminal act, if it finds a sufficient educational measure".

As early as in these years the legislature tried and looked for various options of law enforcement involving deviated behaviour of minors. Today, by the actions implemented towards alternative measure to criminal sanctions, in practice our legislature implemented the wording of Article 18 (1) of the Beijing Rules, which states: "The competent body should have many different measures to

allow maximum flexibility in order to avoid confining in a public place". One of these measures, namely the possibility of implementing alternative institutional examination of the acts of children with deviant behavior, is examining the case and the imposition of educational measures to be undertaken by particular Local Commission responsible for that function.

The existence of the institution of penalties under Article 55 (1)(2)(b) of the Penal Code - where the lowest limit of imprisonment is not provided, it is replaced by probation or public censure, should also be considered as an implementation of an alternative measure against antisocial behaviour of minors.

Non penal repression, and the alternative of punishment carried out by measures with an educational and social impact on antisocial behavior of children, influences to a greater extent a positive change in the behavior of minor offenders. The idea of seeking alternative educational effect and preventive approaches in antisocial behavior of children really is at the basis of the legal framework regulating this type of legislation. Not surprisingly, the Bulgarian legislative approach is in line with these international legal instruments. This Act evolves and gives priority to the idea to seek and implement alternative justice to prevent injury to the child's mentality.

In all cases where there are offences crimes committed by minors such as: consistently running away from home or school, drug addiction, prostitution, etc., they qualify as antisocial behaviour because they are committed by persons exempt from criminal liability under Article 61 of the Penal Code and in all these cases an "educational measure" is imposed as a sanction alternative to the criminal one, which once again reminds us that we must accept the imposition of educational measures as an alternative correction model. In Article 49 (a)(1) Additional provisions of the ASBMPA gives a definition of antisocial behaviour: " An antisocial behaviour is an act which is harmful and illegal or contrary to public decency and morality", and clause 2 gives a definition of the concept of educational measure: "Educational measure" is an alternative measure to penalty for an educational impact to a minor, who committed antisocial behaviour, and to a minor exempt from criminal liability under Article 61 of the Penal Code and is imposed to overcome

deviations in behavior to prevent future violations and fulfillment of integration into society".

Consideration of alternative implementation of the complex of educational measures instead of punishment is provided by law and the legislature defined the overall system of educational measures in Article 13 of the ASBMPA in ascending order from warning to accommodation in educational boarding schools. When looking at educational measures within the meaning of Article 13 (1) of the ASBMPA as an alternative to criminal sanction, it appears that they are imposed in the event of antisocial behaviour committed. The rule that punishment is a form of state coercion imposed on a person, while also the expression of public reaction against the offense, is notoriously known. Even though in practice the ASBMPA has a penal philosophy, as early as Article 1 it is provided that it regulates the activity of prevention and fight against the antisocial behaviour of minors and ensures the normal development and education of the perpetrators. In this sense, it can be considered as an Act, carrying preventive and alternative measures imposed for antisocial behaviour of minors, applied without government intervention and prosecution, which functions are inherent to the prosecutor's office.

The main and leading role in this process lies with the SBMPA commissions, entrusted with the immediate preventive and educational works and with procedures on enforcement of educational measures. Actually, LCs under the ASBMPA undertake alternatives instead of imposing penalties and due to the imperative provisions of regulations 18.2. of the UN Rules on minimum standards concerning juvenile delinquency / Beijing Rules / which state: "No minor person may be totally or partially deprived of parental supervision, unless the circumstances of the certain case so require.

According to Art. 40, para (4) of the Convention on the Rights of the Child "Other measures, such as care, guidance and supervision, counseling, conditional sentencing, submitted to be given cares, education programs, and other alternatives to placement into institutions are presented in order to ensure that children are treated in a manner suitable for their welfare and consistent with both the situation and the relevant disturbance." In this regard, the UN Beijing Rules on minimum standards related to juvenile delinquency, offer a variety of specific measures

as an alternative to imprisonment listed under Chapter 18 – "Various punitive measures". Pursuant to Rule 18. 1. "The competent authority should have different measures to allow a flexible handling (of each specific case), aiming at maximum avoidance of placement into a public unit.

Educational measures differ from punishment because they pursue different objectives which can be viewed in at least two aspects:

The first includes the legal formal point of view and contains several elements, as follows:

- Correction and reeducation of perpetrators of nuisance acc. to Article 1 of the ASBMPA limited to: "... ensuring normal development and education of offenders";
- Unlike punishments, enforcement is not an inevitable element of the measure;
- Perhaps the most important feature of educational measures that distinguishes them from punishment is the difference in authorities enforcing them. It is this circumstance I assess as one of the main elements confirming it's an alternative to most penalties since the sanctioning body is neither the prosecutor's office, nor courts; it's rather a structure established under a special law and acting under different legal regulations.

The second aspect is no less important and is limited to applicability of imposing enforcements on minors: - "Placing into socio-pedagogical boarding units" and "Placing into socio-pedagogical boarding schools", since isolation measures are actually the worst form of coercion against child offenders.

In this regards, there are risks of negative impacts of that type of schools, leading to a final educational effect and correction results, intended to promote the process of education of minors.

The main idea of alternative steps and implementation of educational measures rather than punitive sanctions is being defended because it does not violate the process of education of offenders neither in aspects of education, nor in psycho-physical aspect.

Educational measures may not be viewed as state enforcement measures; their aim is rather to influence minor offenders urging them towards abiding by laws and public regulations. Applicable legal, pedagogical and psychological standards and methods of combating nuisance of

minors, educational measures imposed under the ASBMPA suggest the idea that alternative ways should be sought not only in legal mechanisms.

In this respect, our national legislation needs to undertake the changes imposed by our times and positive practices and initiatives of developed democracies, aligned with those of the EU countries, to provide opportunities to implement to a much higher degree and significantly wider range to implement alternative measures applicable by legislation on minor offenders. Imposing a variety of methods and approaches by professional pedagogues, psychologists and doctors, as well as professionals working with the DSS and juvenile offenders need to reach as soon as possible the certain time when children themselves become the active side in the fight against acts of their peers – something that society has not reached to yet.

Durable and successful prevention measures and undertaking alternative solutions to combat anti-social nuisance of minors in the strategic plan may be reached only when those are applied as an integrated approach combining socio-economic, individual and educational, cultural, historical, early preventive and legal measures and timely and efficient legislative initiatives.

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