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THE EFFICACY OF SOCIO-EDUCATIONAL MEASURES FOR MINORS IN CONFLICT WITH THE LAW AND THEIR RESPECTIVE COMMITMENT IN THE BRAZILIAN LEGAL SYSTEM

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ABSTRACT

This article aims to conduct a targeted study of the issues surrounding juvenile offenders who protest against the system. It will discuss whether socio-educational measures are truly considered an important tool for the resocialization of minors in conflict with the law, as well as the importance of family and society as a whole in the socio-educational process. In 1990, the Child and Adolescent Statute (ECA) was published. This document is considered the strongest protector of minors' rights and is also responsible for the implementation of socio-educational measures. These measures are educational in nature and have as one of their main objectives the resocialization of alleged minors in conflict with the law. The article also aims to conduct a study in relation to the preparation and implementation of socio-educational measures, given that the minor, according to the biological criterion adopted by criminal doctrine, is considered an individual who is still in the process of developing his or her personality, making it possible for the support network, that is, the State, family and society together to help the juvenile offender not to become a criminal when he or she reaches adulthood.

Keywords: Child and Adolescent Statute. Juvenile Offenders. Socio-educational Measures. Criminal Law. Family.

INTRODUCTION

This work has as its primary objective to present the problems involving juvenile offenders, discuss the repercussions related to the socio-educational measures adopted, the use of knowledge of the law and its respective applicability, as well as the effects surrounding the resocialization of minors in conflict with the legislation.

Juvenile offenders are often trapped in a vicious cycle of crime, both external (social and economic, etc.) and internal (family-related) situations. It's common for young people in this situation to engage in the same illicit behavior practiced by adults in their daily lives, turning them into offenders.

The Child and Adolescent Statute, better known to the public as "ECA," was established by Law No. 8,069/90 and is the special normative instrument responsible for the socio-educational measures imposed on those who commit offenses analogous to crimes before they even turn 18 (eighteen). The Brazilian Penal Code (CPB) explains in its article 27: "Minors under eighteen years of age are not criminally accountable and are subject to the rules established in special legislation." The ECA was based on the repressive and pedagogical binomial, given that the ECA, depending on the specific case, aims to warn and punish minors after they have committed a criminal offense, and diametrically seeks to reeducate them so that they will not commit any further acts analogous to crimes.

Based on the lessons learned from the ECA, a kind of analysis will be conducted regarding the implementation of its precepts and their consequences, taking into account all measures, from the most lenient to the most severe. The approach to these measures is pertinent, given that children and adolescents are living beings still in the process of maturing, and special care must be taken with them, as they are, for the most part, easy targets for manipulation by those seeking to introduce them to the world of crime. Therefore, since minors are still growing, it is quite possible to mold them into individuals

who are not in conflict with the law.

Notwithstanding the provisions included in the ECA, there is a need to mention the importance of implementing a political approach, whose primary objective is to teach good manners, educate with good attitudes and seek to achieve the regeneration of juvenile offenders with a view to reintegration into social life, always having as a fundamental premise respect for the rights enshrined in the Magna Carta, in addition to having adequate proportionality for the application of socio-educational measures.

DEVELOPMENT

Law No. 8,069/90, the Statute of Children and Adolescents, also called

The ECA (Children's Statute), a special law aimed at protecting, safeguarding, and assisting minors, also protects minors under 18 (eighteen) years of age, and the Brazilian Penal Code (CPB) also includes those who are not criminally accountable.

On the other hand, article 3 of the ECA mentions the fundamental rights of young people, namely:

Art. 3. Children and adolescents enjoy all fundamental rights inherent to the human person, without prejudice to the full protection provided for in this Law, ensuring them, by law or other means, all opportunities and facilities to enable their physical, mental, moral, spiritual, and social development, in conditions of freedom and dignity. Sole Paragraph. The rights set forth in this Law apply to all children and adolescents, without discrimination based on birth, family status, age, sex, race, ethnicity or color, religion or belief, disability, personal development and learning conditions, economic status, social environment, region and place of residence, or any other condition that differentiates individuals, families, or the community in which they live. (BRAZIL, 1990)

Through the ECA, children and adolescents became individuals capable of being held accountable for their own actions. In other words, with the advent of the ECA, minors became capable of recognizing their

responsibility for their actions. For many, the ECA made it possible to place children and adolescents as subjects of rights, in addition to having responsibilities within society, especially within the social environment in which they live.

The Honorable Federal Supreme Court (STF) in a recent newsletter number 1,136 discusses the fundamental rights and guarantees aimed at adolescents:

In addition to the guidelines set out in SV 11, the need for the adolescent to use handcuffs must be assessed by the Public Prosecutor's Office and submitted to the Guardianship Council, which will issue a statement regarding the measures reported. (STF, 2024).

Furthermore, another extremely important point to be addressed is the fact that some prerogatives inherent to adults and those responsible for committing a typical, unlawful, and culpable act are also enjoyed by minors. An example of this is the fundamental constitutional right to due process, which guarantees the right to adversarial proceedings and a full defense, as well as the right to free legal aid, as stated in Article 141 and its paragraphs of the ECA:

Art. 141. Every child or adolescent is guaranteed access to the Public Defender's Office, the Public Prosecutor's Office and the Judiciary, through any of its bodies.
§ 1. Free legal assistance will be provided to those who need it, through a public defender or appointed lawyer.
§ 2 Legal actions under the jurisdiction of the Children and Youth Court are exempt from costs and fees, except in the case of bad faith litigation. (BRAZIL, 1990).

Still regarding the prerogatives inherent to adults and minors, the Statute provides other important guarantees within its articles 110 and 111.

Art. 110. No adolescent shall be deprived of his or her liberty without due process of law.

Art. 111. Adolescents are guaranteed, among others, the following guarantees:

I - full and formal knowledge of the attribution of an infraction, through citation or equivalent means;

II - equality in the procedural relationship, being able to confront victims and witnesses

and produce all the evidence necessary for their defense;

III - technical defense by lawyer;

IV - free and comprehensive legal assistance to those in need, in accordance with the law;

V - right to be heard personally by the competent authority;

VI - right to request the presence of parents or guardians at any stage of the procedure. (BRAZIL, 1990).

On the other hand, or rather, in the following article of the provision under discussion, socio-educational measures are listed for the purpose of disciplining minors in conflict with the law. Several measures are listed in Article 112, the most common being: the obligation to repair damages, supervised release, placement in a semi-liberty regime, and warnings, among others.

Art. 112. If an infraction is verified, the competent authority may apply the following measures to the adolescent:

I - warning;

II - obligation to repair the damage;

III - provision of services to the community;

IV - supervised freedom;

V - insertion into a semi-freedom regime;

VI - admission to an educational establishment;

VII - any of those provided for in art. 101, I to VI.

§1º The measure applied to the adolescent will take into account his/her ability to comply with it, the circumstances and the severity of the offense.

§ 2 Under no circumstances and under no pretext shall the provision of forced labor be permitted.

§3º Adolescents with mental illness or disability will receive individual and specialized treatment, in a place appropriate to their conditions. (BRAZIL, 1990).

Regarding the ECA, Judge Doctor Vera Lúcia Galvão gives the following explanation:

Under Brazilian law, minors under eighteen years of age are not criminally accountable. The law presumes that individuals under this age have not yet attained full capacity for understanding and self-determination, and therefore does not subject them to criminal penalties. Instead, the law establishes socio-educational measures for juvenile offenders,

aimed at their rehabilitation and reintegration into society. (Galvão, 1993, p. 33-36)

Depending on the unlawful act committed by the minor, internment may be permissible. This is similar to a form of deprivation of liberty, given that the constitutional right to freedom of movement is curtailed. For many, internment is considered the most severe socio-educational measure possible, being used only when absolutely necessary and, above all, for a maximum duration of three (3) years. Therefore, internment is considered a form of "ultima ratio," meaning it is only used when other measures are insufficient to resolve the issue at hand.

It is important to emphasize that the ECA was not created solely to correct or punish minors in conflict with the law; the statute in question goes much further, aiming to protect children and adolescents long before the "ius puniendi" in the form of socio-educational measures.

Criminal Non-Imputability and the Applicability of the ECA

Criminal non-imputability as gleaned from Article 27 of the Criminal Code: minors under 18 (eighteen) years of age are criminally non-imputable and are subject to the rules established in special legislation. Based on the provisions of Article 27 above, minors cannot be held criminally liable. However, non-imputability cannot be considered a safe conduct for committing unlawful acts, and thus, minors are not entirely exempt from liability.

Even if a minor is held accountable for committing an unlawful act, their non-imputability is considered absolute, and it can be stated that any question to the contrary, aiming to make a minor under 18 years of age accountable, is inadmissible. The legislator was guided by the strictly biological criterion, which considers that all minors under 18 years of age are non-imputable, regardless of their level of knowledge, discernment, experience, or economic status. In other words, according to the legislator, minors lack the capacity to

assimilate the illegality of their acts.

The doctrinaire Rogério Greco, with his unique way of teaching, explains the biological criterion:

Non-imputability due to natural immaturity occurs due to a legal presumption, in which, for reasons of criminal policy, the Brazilian legislator understood that minors under 18 years of age do not enjoy full capacity of understanding that allows them to impute the practice of a typical and illicit act. Therefore, the purely biological criterion was adopted (Greco, 2017, p. 533).

As consolidation of this criterion in Brazil, the Constitution states in its article 228: minors under eighteen years of age are not criminally liable, subject to the rules of special legislation.

The special legislation cited by the Magna Carta is the ECA:

Art. 2 For the purposes of this Law, a child is considered to be a person under twelve years of age, and an adolescent is considered to be a person between twelve and eighteen years of age. (BRAZIL, 1990).

The applicability of the ECA is not only punitive; it must also adhere to the law's protective and educational aspects. Therefore, the ECA and its guidelines encompass both preventive and punitive situations. Furthermore, the special legislation for minors applies to those between 12 and 18 years of age, with rare exceptions for those between 18 and 21.

Another institute that can be covered by those under 18 and over 16 years of age is civil emancipation, that is, they begin to respond civilly for their actions, but not criminally.

Professor Cléber Masson gives the following explanation:

Anyone under 18 years of age who is civilly emancipated, in accordance with art. 5 of the Brazilian Civil Code (CCB), continues to be unaccountable under criminal law, as civil capacity should not be confused with criminal capacity. (Masson, 2010, p. 436).

Minors, Socio-educational Measures and Criminal Law

The previous topic of this article showed the biological criterion adopted by Brazil, taking

into account whether the agent has the discernment to understand the illicit nature through his maturity (understood in mental development and experience) and biopsychic health (focused on the real capacity to understand the criminal act + mental health).

Thus, the State has the duty to manage, through norms and even impositions, actions to ensure a harmonious society. This duty creates for the State the prerogative to punish anyone who violates the imposed norms, thus rebelling against the State itself and, by extension, against society.

Professor Melo explains about legal offenses:

We cannot speak of society without the existence of a system of control over the conduct of its individuals. Indeed, there would be no conditions for coexistence without a system of rules of conduct that must be observed by its members. They are, therefore, mechanisms for limiting human freedom, essential to maintaining order within society. (Melo, 2003, p. 80).

In the same vein, the doctrinaire Damásio says:

Criminal law is generally responsible for protecting the highest or most precious values, or, if you prefer, it only acts where there is a violation of the most important or fundamental values for society. It is also a finalistic science because it acts in defense of society by protecting fundamental legal interests, such as human life, the bodily integrity of citizens, honor, property, etc. Social conscience elevates these interests, given their value, to the category of legal interests that require protection by criminal law for the survival of the legal order. (Jesus, 1999, p. 6).

It is clear that Criminal Law has as its scope the defense of society aiming at the protection of legal assets, above all, life.

Criminal law's primary function is to protect essential legal interests necessary for social coexistence, according to values enshrined, expressly or tacitly, in the constitutional text. To fulfill this objective, criminal law must prohibit human actions aimed at and capable of harming or exposing fundamental legal interests to the risk of harm, or even prohibit omissions by requiring "possible actions that must be taken by everyone precisely to prevent the realization of such harm, or by those who,

given their personal stance, have a duty to prevent such an outcome" through the threat of punishment, "for the purposes assigned to it (retribution, general prevention, and special prevention)" (C astro, 2003, pp. 71-72).

Socio-educational measures have the primary objective of effectively reintegrating the youth into their family and society, as well as preventing further unlawful acts. The effectiveness of these measures is undeniably linked to appropriate and effective care, which considers each minor's unique characteristics to promote the best educational and educational program for them. For socio-educational measures to be truly effective, it is crucial that there be family, social, and state involvement to constantly support and monitor the behavior of juvenile offenders.

In this sense, it is interesting to bring to light the teachings enshrined in Article 4 of the Child and Adolescent Statute, which states the following:

Art. 4º It is the duty of the family, the community, society in general and the public authorities to ensure, with absolute priority, the realization of rights relating to life, health, food, education, sport, leisure, professional training, culture, dignity, respect, freedom and family and community life.

Sole paragraph. The guarantee of priority includes:

- a) priority to receive protection and assistance in any circumstances;
- b) precedence of service in public services or services of public relevance;
- c) preference in the formulation and implementation of public social policies;
- d) privileged allocation of public resources in areas related to the protection of children and youth. (BRAZIL, 1990).

Regarding the State's responsibility, the public prosecutor and coordinator of the children and youth prosecutor's office in the Federal District, Dr. Renato Barão Varalda, explains:

[...] countless children and adolescents live outside the most basic public policies, such as education, health, leisure, culture, security, etc. The lack of respect begins precisely with the lack of political will of the country's leaders not only to prioritize sufficient budgetary

resources to guarantee these fundamental rights, but also to execute them correctly.

Therefore, it is everyone's duty (family, State and society) to assist juvenile offenders in their resocialization, with the aim that they do not commit any further infractions analogous to crime.

FINAL CONSIDERATIONS

At the end of this scientific article, it is possible to observe that there are a myriad of situations surrounding minors in conflict with the law, the vast majority of which foster the minor's behavior. Certainly, even though they are not yet biologically developed, they can discern right from wrong—that is, know whether their behavior is criminal or not.

In this context, parental authority plays a significant role in the lives of minors, providing them, to the extent possible, with a good education and good principles. On the other hand, society plays an important role in welcoming minors with educational projects, as well as ensuring they feel part of society, etc.

The State, in turn, is responsible for implementing socio-educational measures and they do not have the sole and exclusive character of punishment. On the contrary, the State, through socio-educational measures, aims, above all, to reintegrate the young person into their family and society, in addition to ensuring that the young person no longer commits illegal acts analogous to crime.

It's also clear that, for many, impunity for juvenile offenders is reflected in the lack of enforcement, as is the case with adult offenders. Inexorably, no crime or infraction should go unpunished; however, when it comes to minors, everyone knows that a complete comparison cannot be made with adults. Responsibility must be given to minors, yes, but it's important that the State first restructure itself both as a public body and in its educational capacity, so that children and adolescents are no longer easy targets for criminals.

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