



THE 21ST EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Restorative Justice Architecture – Comparative Analysis between the “Messa Alla Prova” Procedure (Italy) and Non-Custodial Educational Measures (Romania)

Cătălina Mihaela Mistreanu¹

Abstract: The paper examines the valences of restorative justice in the Romanian and Italian criminal law systems, analyzing how both the Italian institution - *messa alla prova* - and the non-custodial educational measures - in Romanian criminal law aim at social reconciliation and rehabilitation of the minor individual outside the prison space. Both have as their philosophical foundation the idea of Cesare Beccaria, according to which improving education is the most efficient method of fighting against the criminal phenomenon. The comparison shows how contemporary justice reconfigures the relationship between authority, the individual and the primary social cell (the family). Distinctly, but convergently in purpose, Romanian criminal doctrine bases non-custodial educational measures on the concept of pedagogical coercion. This way of seeing the sanctioning of minors goes beyond the logic of the sanction in the classical sense, defining non-custodial educational measures as instruments through which the state intervenes not to punish the act but to correct the antisocial behavior of the minor. Non-custodial educational measures are seen as a pedagogical substitute for punishment, having the role of removing deviant causes through education, assistance and supervision. In the essence of the two methods, it is observed that justice in both states is evolving towards a mode of restorative justice according to EU Directive 29/2012/25.10.2012 and also in accordance with Resolution 2002/12 of the Economic and Social Council of the United Nations. Both states confirm that true prevention lies in society's ability to replace repression with a formative process, affirming the idea that legal responsibility becomes more effective when it is supported by moral and educational recognition.

Keywords: restorative justice; “*messa alla prova*”; non-custodial educational measures

1. Introduction

The safest, but at the same time the most difficult, means of preventing crime is improving education (Cesare Beccaria). Legally speaking, the systems of the two states are very similar, as they have as their foundation the “best interest of the minor”. Although the objective is the same, the way in which the act of justice is carried out towards the minor is different, the valences of restorative justice² in the Romanian and Italian criminal law systems, analyzing how both the Italian institution - *messa alla prova* - and the non-custodial educational measures - in Romanian criminal law aim at social reconciliation

¹ Student, Faculty of Law and International Governance, Danubius International University, Romania, Address: Blvd. Galați, nr.3, Galați, Romania, Corresponding author: cmistreanu@gmail.com.

² *Restorative justice* refers to a theoretical approach that prioritizes repairing the social fracture and reintegration of the offender, a principle that underlies the philosophy of criminal treatment applicable to minors.



Copyright: © 2026 by the authors.
Open access publication under the terms and conditions of the
Creative Commons Attribution-NonCommercial (CC BY NC) license
(<https://creativecommons.org/licenses/by-nc/4.0/>)

and rehabilitation of the minor individual outside the prison space. Romania excels through a very rigorous education that has an impact, especially on the minor in question, Italy in applying educational measures to the minor also includes his family, so the emotional and social impact of the crime committed by the minor is felt not only by the minor but also by his family. According to art. 2048 of the Italian civil code, parents are civilly liable for the damages caused by the minor towards third parties, the key concepts underlying this article are *culpa in educando* and *culpa in vigilando*. Starting from these two key concepts, the Italian legislator sees in parents a form of primary responsibility in the criminal behavior of the minor, for these reasons the Italian law also includes parents in this educational process or social recovery program

2. Literature Review

Both systems base criminal liability on the age of 14, the difference lies in the fact that Italy, in order to establish the criminal liability of a minor, requires, after reaching the age of 14 and up to 18, the establishment of the capacity to understand and will - our equivalent - the establishment of discernment. The Romanian legislator set this condition only in the age range of 14-16, considering discernment to exist between 16-18.

The legal basis for the criminal trial of minors in Italy is the Decree of the President of the Republic (DPR) 448/1988. This act contains 41 articles by which the Italian legislator explains how the trial of minors should be conducted, how the panel of judges is formed, the measures that can be used by the police are described and the institution of “*messa alla prova*” (art. 28 MAP) is created¹, this is applied to the minor before the start of the criminal trial and has a reparative and educational role. The positive result at the end of this educational process will have as a prize the non-start of the criminal trial, and in the alternative the non-conviction of the minor. The formation of the panel of judges in Italy is different from Romania in this way - it is made up of a judge and two lay members (a man and a woman) chosen from the professions of educational psychologist, social worker - people who have extensive experience with minors. The mixed form of the panel of judges is important in elaborating a sentence that is not only legally correct but also correct with the needs of the minor, thus explaining the MAP educational method as a psycho-pedagogical process made according to the demands of the minor. Italy, by using this educational program, removes the minor from the criminal circuit by leaving him in the community, thus delegating the obligation to supervise the minor to the family.

In art. 1 of the cited legislative text, the Italian legislator emphasizes the applicability of the provisions of the decree in an appropriate manner to the personality of the minor and his educational requirements².

¹ Suspension of the trial and probation art. 28 D.P.R. 448/1988

1. The judge, after hearing the parties, may order the suspension of the trial when he deems it necessary to evaluate the personality of the minor following the probation ordered pursuant to paragraph 2. The trial is suspended for a period not exceeding three years when the proceedings are for crimes carrying a maximum prison sentence of not less than twelve years; in other cases, for a period not exceeding one year. During this period, the statute of limitations is suspended.

2. With the suspension order, the judge shall assign the minor to the juvenile services of the Administration of Justice for the performance, also in collaboration with local services, of appropriate observation, treatment, and support activities. With the same order, the judge may issue instructions aimed at repairing the consequences of the crime and promoting reconciliation between the minor and the person injured by the crime.

² General Principles of Juvenile Proceedings art. 1 D.P.R.448/1988

1. In proceedings involving minors, the provisions of this decree and, to the extent not specifically provided for therein, those of the Code of Criminal Procedure shall be observed. These provisions shall be applied appropriately to the personality and educational needs of the minor.

2. The judge shall explain to the accused the significance of the procedural activities conducted in his presence as well as the content and ethical and social reasons for the decisions.

The concept of protecting and educating minors is clear from the cited legislative text. Establishing the capacity to understand and the will is a crucial element in establishing the educational measures that will be granted to the antisocial minor¹. The difference lies in the fact that the discernment for the Italian state is a mixture of intelligence (understood as intellectual coefficient), degree of emotional maturity, empathy, social context and possible medical dysfunctions, all these elements define the degree of maturity of the antisocial minor.

Romania, on the other hand, places a marginal emphasis on the psychosocial side of the antisocial minor, considering discernment to be more related to the intellectual side understood as intelligence quotient, although psychology and psychoanalysis studies from recent decades clearly show that the development of the adolescent's personality is the fruit of the family and social context in which the minor lives, so in the analysis of discernment, the family and social context as well as the degree of emotional maturity and empathy are fundamental. However, Romanian criminal law doctrine recognizes in the development of criminal activity - *iter criminis* - two periods: the internal period and the external period (C. Mitrache & C. Mitrache, 2023). Analyzing the internal period of *iter criminis*, we observe that it is composed of three elements: the first - the birth of the crime - the conception of the crime in the mind of the offender, the second element is the one in which the offender deliberates the criminal idea - the moment in which the offender weighs the pros and cons of the idea of committing the crime and finally the decision to commit the crime. Analyzing these three phases of the *iter criminis* we observe in the second phase the offender's discernment in weighing the pros and cons, this is the most delicate phase because it involves knowing and evaluating the need to commit the crime according to the offender's immediate needs without considering his long-term practical needs - the immediate usefulness of the criminal act compared to the usefulness of the criminal act in the future and consequently and the social implications that the crime has on the offender and the environment in which he commits the crime. This aspect is important in establishing the discernment of a minor because this process is based on several mechanisms that in an adolescent are still in the development phase, the adolescent being sensitive to the social and familiar environment that gravitates around him.

Analyzing the sentences of juveniles in both states, it is evident that a common factor among convicted juveniles is their origin from disorganized families, hence the central role of the family in the educational process. In Italy, in cases where the minor's family is dysfunctional, the judge also includes this in the treatment of the minor, indicating periodic meetings with psychologists aimed not only at helping the minor but also at restoring the minor's relationship with the family, because it is argued that a minor who commits crimes is actually a minor who needs help, but is not able to ask for it consciously, this need for help is satisfied by the minor by committing crimes.

In concrete terms, the legislators of the two states have thought about the way to punish crimes committed by minors differently from adults, reserving as a last resort the punishment of deprivation of liberty, prioritizing educational measures, thus the Romanian Penal Code in art. 114 Romanian Penal Code² requires the taking of a non-custodial educational measure, and then listing them in art. 115 Romanian Penal Code³, as well as art. 74 letter g of the Romanian Penal Code requires the judge to take into account the level of education, age, health status, family and social situation when individualizing the punishment. The Romanian legislator's approach to the way to punish a minor is much more rigid, it indeed recognizes the need to evaluate the family and social context of the minor but does not

¹ *Treatment of minors subject to probation: A grid for psychosocial services*. Working Group of the Juvenile Court of Milan. (2012)

² Art 114 Romanian Penal Code – A non-custodial educational measure shall be taken against a minor who, at the time of the commission of the crime, was between the ages of 14 and 18.

³ Art 115 Romanian Penal Code: civic training, supervision, weekend recording, daily assistance.

emphasize the emotionality, the constantly changing personality of the minor, an essential aspect both in the commission of the criminal act by the minor and in the individualization of the punishment. In individualizing the punishment, the Romanian judge can apply only one of the non-custodial educational measures, depending on the severity of the crime.

For the Italian state, the legislator created the institution of *-messa alla prova* - this is the instrument that the Italian judge has in punishing the antisocial minor. The primary objective in the criminal trial of minors is to update the educational nuance in the application of the criminal norm. The defined educational criterion provided by the legislator has the role of refreshing the evolutionary potential of the minor's continuously evolving personality¹.

The objective of this institution is to induce the antisocial adolescent to a progressive civic maturation by developing emotional experiences in a positive sense, these becoming “food for the mind” rather than a conglomeration of negative thoughts destined to explode into antisocial behavior².

The role of the family in the MAP recovery program is fundamental in the vision of the Italian legislator, it represents the cell where social limits are born but also the resources necessary for the harmonious development of the antisocial minor. They argue that adolescence is by definition the meeting between generations. Art. 12 DPR448/1988³ invokes the presence of parents as emotional assistance, within the criminal process, indicating it not as optional but with an essential role of guarantee for the minor.

Table 1. MAP Structure⁴- Recovery Program

	SOCIAL SURVEY prior to issuing MAP	MAP EXECUTION	THE FINAL TERM OF JUDGMENT
MINORITY	All useful elements to delineate the personality of the minor accused, the level of maturity, the relationship with the family, the group and the social environment. The relationship that would exist between these relationships and their connection with the crime committed. The resources and availability of the family. Any discrepancies in the relationship with the family, the incidence of affective factors over cognitive ones, if the minor has had traumatic experiences. 2 The	The minor will be explained the content of the MAP activation order in the simplest possible terms and in his/her understanding, the need to be subjected to this measure as well as the fact that it aims at psycho-evolutionary recovery, the fact that it is necessary to repair social relationships. The minor will be constantly supported by social workers, if there are problems they will immediately notify TM. This support from social workers has the role not only of fulfilling the tasks	The minor will talk about the program he/she completed, explaining in terms specific to his/her age/capacity, his/her emotions, the awareness he/she had of the crime, and the behavioral change he/she experienced.

¹ Gasparini, *Adolescence Is a Crime: The Guardianship Interventions in the Challenge of Growth*; Working Group of the Juvenile Court of Milan, *Treatment of Minors Subject to Probation: A Grid for Psychosocial Services* (2012).

² *Treatment of Minors Subject to Probation: A Grid for Psychosocial Services*, by the Working Group of the Juvenile Court of Milan, May 2012.

³Article 12 Assistance to Minor Defendants

1. Emotional and psychological assistance to minor defendants is ensured, at every stage and level of the proceedings, by the presence of the parents or another suitable person indicated by the minor and admitted by the proceeding judicial authority.

⁴ *Treatment of Minors Subject to Probation: A Grid for Psychosocial Services*, by the Working Group of the Juvenile Court of Milan, May 2012.

	content of the psychological evaluation report and the need for psycho-evolutionary recovery, the duration and frequency of meetings with the psychologist in the rehabilitation treatment. 3 Guidance upon completion of the rehabilitation treatment. 4 Indication of the objectives. 5 Indication of the instruments through which the preset objectives are met. 6 The commitments that the minor is available to execute and those that need to be introduced gradually. (the minor being motivated to perform new tasks)	set out in the order but also of explaining to the minor the role of the measures necessary to change antisocial behavior. They have the obligation to observe if there are errors in the re-education plan, and to correct them. TM will have a supervisory role, taking into account the complexity of the project, its length in time and to avoid a judgment from the social workers, the judgment is reserved only for TM.	
MAP OBJECTIVES	Activating the process of making the minor responsible for the crime committed, understanding the educational process he is undergoing, activating psycho-cognitive mechanisms so that the minor is able to detach himself from criminal environments, where it is possible to activate reconciliation with the victim.	Progressive consolidation of the process of behavioral change and assuming responsibility for the crime committed, where it is possible to repair the damage caused to the victim.	Carrying out the process of behavioral change of the minor, distancing him from the hostile social environment, making him responsible for the crime and its consequences.
CRIME - seen at a psychological and social level, not a legal one	The investigation of the services must provide the Juvenile Court with all the elements that describe the minor's attitude towards the crime, whether he/she was aware of the seriousness of the crime, whether the crime committed by the minor is the result of a situation of family or social suffering.	Helping the minor understand the psychological reasons that pushed him to commit the crime, understanding their impact on him and on the social environment.	Agreeing with the minor on new behavioral strategies to replace those that led to antisocial behavior. Real distancing from the environment in which he was.
FAMILY	Social services are obliged to report TM 1 All elements to know the dynamics of family relationships and especially the relationship of the minor	Building an alliance between parents and social workers in order to recover family relationships and promote social ones. The family will be supported	Real assessment of the family's capabilities to support the minor even after the completion of the rehabilitation program; the family will be supported even after

	with the family. 2 If the parents are truly aware of the psycho-evolutionary conditions of the son, what a criminal trial means and the fact that it will be necessary to take educational measures. 3 The parents' resources, are they capable / or available to collaborate with the services.	in this process with appropriate means.	its completion to maintain the results obtained by the minor.
SCHOOL/WORK	1- the school the minor has completed or is attending 2- the work he/she does 3- the correspondence of the school attended with the aspirations and real potential of the minor 4- verification of the suitability of the school attended	It is monitored in the school/work evolution, if there are problems, they will be resolved as soon as possible.	Evaluation of the real effort made by the minor in completing studies or training courses.
REPAIR / SOCIALLY USEFUL ACTIVITIES	Correct individualization of the reparative activity taking into account the typology of the crime committed. The chosen activity must help create the minor's self-esteem and obtain social gratification.	Helping the minor understand the moral purpose of social activity – volunteering.	Evaluation of the ethical and moral meaning that the minor associates with volunteering.
SOCIALIZATION ACTIVITIES	If the minor has difficulty integrating into a group of his age, he will be supported in integrating.	Monitoring the minor in his social environment, paying attention to the groups he is a part of, his friends, and how he reacts when he is in his social circle.	Assessing the capabilities that the minor has in the way he chooses his friends or the social group he is part of.
SPORTS ACTIVITY	It is necessary when the minor has difficulty integrating into a group, it will help him be more responsible, relate to other minors, accept loss but also victory together with the group.	Supervision of the minor, the way in which the minor gets involved in sports activities.	Verifying that the sports activity was useful in the minor's reintegration process.
MEETINGS WITH THE PSYCHOLOGIST AND/OR SOCIAL WORKER	Given that psychological treatment has a much longer duration than MAP, it is recommended to continue treatment after the completion of the integrative process, as a form of support in the development of the minor.	The need for professional interaction between the psychologist and the social worker is fundamental, in this way the most effective measures will be taken in the specific case, taking into account the minor's psychological	The last evaluation of the minor a maximum of one week before the final session is essential.

	Meetings with the social worker for both the minor and the parents aim not only to verify the progress made by the minor but also to intervene early in the event of difficulties on the part of both the minor and the parents.	development, social and family reintegration. TM will verify in real time the progress made by the minor, if changes to the ordinance are necessary, they will be applied promptly.	
VICTIM	Inducing the minor to reflect on the damage caused to the victim, creating empathy towards them, trying, where possible, to create reparative strategies.	Awareness of the act committed and the impact it has created on the victim and on society.	Evaluation of the degree of understanding that the minor has, the empathy that he has developed towards the victim. The way in which the minor sees the legality

The MAP institution as it appears is a perfect combination between the solemnity of the act of justice and the educational need of the minor.

The MAP contains practically all the non-custodial measures in the Romanian Penal Code - the civic training stage - where the minor will have to understand the legal and social consequences of the crime he committed, supervision - he will be controlled and guided daily, weekend detention - the minor's obligation not to leave home, daily assistance - carrying out daily activities established by the probation service, art. 120 of the Penal Code¹.

The probation service in Romania has a fundamental role, it was established in 1996 experimentally and was later taken over by the Ministry of Justice as its institution under the name of the National Probation Directorate established under Law 252/2013 and Government Decree 1079/2013. It prepares a report describing the real situation of the minor, and presents a professional opinion on the non-custodial educational method appropriate to the situation and the minor. This report is used by the judge as a guide in applying the educational measure to the minor.

Compared to Italy, Romania has opted for a fragmented application of non-custodial educational measures, although the most logical way and in accordance with European Directive 800/2016 would impose a circular approach to the minor, given that the punishment must have an educational and restorative character. This circular approach is possible by combining non-custodial measures in a single program tailored to the psychological and social typology as well as the degree of maturation that the minor has at the time of committing the crime.

Justice regarding minors is experiencing, in all legal systems, a particularly dynamic evolution; it is becoming, from a solemn, rigid, imposing institution, a justice much closer to those to whom it is addressed, more humane and more protective. (Cozma et al., 2003)

As a final conclusion, we could say that the reintegration of the minor succeeds where society - the state - does not withdraw after issuing the sentence. Italy excels through the social network that supports the minor throughout this process, while Romania excels through the legislative rigor of educational measures.

¹ The obligation of the minor to respect a program established by the probation service, which contains the schedule and conditions for carrying out activities, as well as the prohibitions imposed on the minor.

References

- Mitrache, C., & Mitrache, C. (2023). *Romanian criminal law - General part*, Universul Juridic.
- Coca-Cozma, M., (coord.), Craciunescu, C, -M, & Lefterache, L. V. (Eds.), *Juvenile justice – Introduction*, The Legal Universe.
- Beccaria, C. (2007). *Dei delitti e delle pene – Education*. Humanitas Publishing House.
- Law No. 272 of 21 June 2004 on the protection and promotion of children's rights. (2004). *Official Gazette of Romania, Part I*, No. 557.
- European Parliament & Council of the European Union. (2016). *Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. Official Journal of the European Union, L 132*, 1–20.
- Carcano, D. (Ed.). (2012, May). *Cassazione penale*, LII (5).
https://www.ubimino.org/images/Il_trattamento_dei_minori_sottoposti_a_messa_alla_prova.pdf
- Gruppo di lavoro del Tribunale dei minori Milano. (2012, May). *Il trattamento dei minori sottoposti a messa alla prova: Griglia per i servizi psico-sociali [Treatment of minors subject to probation: A grid for psychosocial services]*. *Cassazione penale*, LII (5). https://www.ubimino.org/images/Il_trattamento_dei_minori_sottoposti_a_messa_alla_prova.pdf