

Differential proceedings of criminals under 18 years old with a view to the Criminal Procedure Code 2013

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ABSTRACT

By the approval of Criminal Procedure Act in 2013 and its amendments in 2015, a new item was formed in the field of criminal proceedings, especially proceedings of children and adolescents. It has enacted detailed rules on defendants' rights and duties and powers of the judicial authorities and law enforcers, the conditions and how to choose judges among the qualified individuals, the presence of experienced consultants in the trial, the use of simple criminal security order in the preliminary investigation phase and personality record in the work unit with criminal proceedings and fast proceedings and if possible try to compensate the losses of the victim to the sentencing and making appropriate decision and a flexible view and free from any violence at the phase of execution and try to correct and reform children and adolescents. Criminal Procedure Code of children and adolescents is to avoid proceedings and compliance of legal guarantees of committed child and follow the integrated model (punishment, rehabilitation and restoration). Proceeding system of children and adolescents has a process with various phases and a person that as an accused enters the process of investigation, prosecution, trial, conviction and punishment according to age and lack of life experience and the inability to defend his rights, the possibility of violation of his rights will be doubled. Among the innovations of the Criminal Procedure Act in 2013 in the field of juvenile delinquency is the forecast of courts and courts specialized children and adolescents, granting preliminary investigations to court and non-interference of judicial officer, police of children, the requirement of the presence of lawyer in serious crimes and conditions of selecting judges special for children and so on.

Keyword:

children and adolescents,
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differential criminal
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INTRODUCTION

Among the most important issues of criminal law and criminology science is a contact that criminal system deals with criminal children because of the importance of childhood and adolescence age and the impact that the periods has in making the future character of child as well as considering that child and adolescent has differences with adults in terms of physical and mental health, criminal system's response to crime of this class is very important.

Children in certain age groups are subject to the rules of criminal law and hence against acts that do contrary to law have criminal responsibility and also the counter between puberty age of child and the age of complete criminal responsibility is the best time to provide corrective and training actions. On the other hand, intellectual and physical disability of children requires that legislator to have its own legal supports against them. The crystallization of this supports, particularly in the phase of proceedings can be seen, although currently enjoying defendants of fair hearing in law of some countries is accepted as a definite principle. But ensuring this principle about children and adolescents in conflict with the law is more considered in terms of features that exist. In this regard, the observance of fair hearing about children requires a differential and different policy compared to adult offenders and predicting certain entities with special procedures to deal with children victim in criminal law shows the recognizing justice system special for children. The current law of children proceedings in the domestic system has some deficiencies that express inefficiency of existing rules. The need to adopt a differential approach in the field of hearing children and adolescents in conflict with the law have prompted national legislators to seek to reform the existing rules for children, according to social realities and special laws with criminal law properly to be implemented. Code of Criminal Procedure adopted in 2013, with innovations related to judicial organizations proceedings to crimes of children and adolescents and also formalities of proceedings, could represent some criteria and practices of fair hearing of children and adolescents in conflict with the law.

The purpose of this paper is the differential proceedings of criminals under 18 years old with a view to the Criminal Procedure Code 2013.

2. Definition of basic concepts

2-1. Child

Literally, child means micro and small and about human, it is interpreted to young, so minor is the opposite point of great and means child (Moein, 1984, p. 2148). Ragheb says: child is told until his body is soft, Aghrab says: every little thing is called child and eventually child is called to the boy and girl and sum (Arjmand Danesh, 1999, p. 226).

In terms of law and jurisprudence, a person who has not reached puberty known as a child, while maturity is called to understand and reach to a certain stage of physical and mental growth. In terms of law scholars as well: child or minor is called to one that in terms of age not reached to the physical and mental development required for social life (Ebadi, 1996, p. 5).

Child or minor in legal term is called to someone who not reached the physical and mental development required for social life in terms of age, because real life starts with birth

so childhood begins with birth. "Qualification for the possession of rights is started with birth of human and ended with his death" (Civil Code Article 956).

2-2. Especiall proceedings of children and adolescents

Especiall proceedings of children and adolescents is said to a set of coherent rules that in the field of crime detection, prosecution, the preliminary investigations and the trial should be respected from the beginning of contact of children and adolescents with law enforcement and judicial arrangements in terms of committing acts against law, to terminate the investigation of his charges and sentence to serve the noble human goal, to preserve the supreme interests of children and adolescents.

Offender and victim children and proceedings will be subject to special rules and actions. Including personality filing, specialty of courts, being an expert of judge, hearing flexibility, diversity of responses and measures that their clear featuring is foster, aid, support, and care and surveillance of them, being independent and specialized centers and institutions to implement the decision of the juvenile court and participating the people or groups of people in different stages of the process of dealing with juvenile delinquency is considered the important characteristics of especiall proceedings of children and adolescents.

3. Proceedings principles to juvenile delinquency in the preliminary investigation phase

General discussion on children and adolescents proceedings at the phase of preliminary investigations can be divided into two parts:

1. Procedure governing discovery prosecution phase
2. Procedure governing the trial phases

3-1. Criminal Procedure governing discovery and prosecution phase

Procedure of criminal children and adolescents according to psychological and personality characteristics of this group of people has distinct criteria to how to handle adult crimes. Code of Criminal Procedure refers to the pre-trial and in trial phases that in this topic, we discuss two parts. Criminal Procedure Code pre-trial is observer on the role of the police of children and adolescents and how to detect crime and police duties, especially children and adolescents, in this topic are examined.

Role of the Police of Children: Uncovering crime, including organizational tasks of judicial officers that immediately after being informed of the crime must do measures that is necessary to keep the signs of crime and prevent the escape or concealment of the accused, and report the matter to the competent judicial authority. Dealing with police or judicial officers in crime detection stage with defendants or suspects is very important. Because, police is the first institution that after the discovery of the crime encounters with child. Therefore, trained police intervention especially the use of female police officers in some cases, due to emotional connection with child is the first step to justice. Immediately after the discovery of the offense, the preliminary investigation, preservation of effects and the reasons for crime, preventing the accused from escaping and hiding and prevention of harm to the victim child is considered the main duties of police (Abachy, 2009, p. 406).

Since the understanding of children and adolescents prosecuted from the quality of communication between judicial decisions and practices in conformity with their personality with values of society is important and over time, in terms of intellectual, psychological, emotional, special social circumstances causes the rupture of the relationship (the United Nations Children's Fund "UNICEF", a set of international rules related to juvenile proceedings, p. 13), Article 2 of the set minimum standard rules and United Nations to juvenile proceedings as well as paragraphs 2 and 3 of Article 40 of the Convention on Rights of the Child, stresses in avoiding unnecessary delay in investigating to cases of children and adolescents.

According to the Criminal Procedure Code Act of 2013 regarding the police of children and adolescents referred that to the good performance of the duties of officers for children and adolescents, the police especial for children and adolescents in the Police Force of the Islamic Republic of Iran to be formed (Article 31 of the Criminal Procedure Code).

Now police of children and adolescents has started his work in police stations with a regulation that has been developed by the head of the judiciary and to the implementation of the Code of Criminal Procedure adopted in 2013 has taken a step forward and to protect the offenders under 18 years old has begun the required measures.

Different aspects between officers of children and adults

If the juvenile police in carrying out their duties against child or adolescent require investigation from him, it must be distinguished:

If the crime is evident, enforcers can only act to maintain the appliances, instruments, effects, symptoms and causes of crime and if necessary to arrest him, but they not let to investigate him and must deliver him to court of children and adolescents (persons under 15) or the juvenile court (persons of 15 to 18 years old).

If the crime is non-evident, about the persons under 15 years old, the special police not involved and the court does the tasks that is in responsible of officers and about the people 15 to 18 years old, the juvenile court has the jurisdiction, and the intervention of the police force for investigation is subject to refer it from prosecutor.

Police of children and adolescents after arresting the criminal must deliver him to court of children and adolescents and not have the right to conduct any necessary investigation, and only can collect and maintain works and instruments discovered and in non-office hours or public holidays also not have the right to custody or maintenance of children and adolescents and should deliver the children court.

This despite the fact that in evident crimes about the adults, criminal person can be arrested and detained for 24 hours and placed under surveillance.

4. Preliminary investigations

In new proceedings of children that observes the procedures of detection stages, prosecution, investigation, prosecution and execution of sentence. The concept of preliminary investigation as early stage of judicial intervention must be considered in relation to the objectives and special features of the system. Criminal Matters Act of 2013 in the definition of preliminary investigations provides that: "preliminary investigation is a set of measures that is done to discover the crime and the preservation of evidence of its

occurring and in the prosecution of accused since prosecution to surrender to the judicial authorities... "

One of the innovations of the new Law on Criminal Procedure is to forecast regulations about preliminary investigations of crimes of children and adolescents. The new law has assigned the preliminary investigations of crimes of people between 15 and 18 in responsibility of court of adolescents.

Legislator in this law has predicted rules and principles for proceedings crimes of children and the limits of their criminal responsibility that all with a corrective view want to provide a favorable conditions for the re-socialization of children and adolescents that this work represents a special attention of legislator to crimes of children and adolescents.

In the preliminary investigation phase in accordance with Article 285 Criminal Procedure Code, in the court of Children and adolescents and in its place, a branch of the General and Revolutionary Court as court special for adolescents, headed by a deputy prosecutor and with the presence of one or more investigators will be formed. Preliminary investigations of the crimes of individuals 15 and 18 except crimes of articles 306 and 340 of the Act are acted in this court that directly by the court is done.

4-1. Personality record of children and adolescents criminals

One of the approaches to reform the Criminal Procedure Code adopted in 2013 is attention to the principles of educational and psychology in trial and punishment and reform of guilty child.

In accordance with Article 286 of the law, in addition to the cases mentioned in Article (302) of this law, in the sentenced crimes Grade 5 and 6, the personality record about children and adolescents is required by the court of children and adolescents.

And in Article 286 of the law is emphasized that in addition to serious crimes that their punishments are death, murder, mutilation or life imprisonment, in sentenced crimes on grade five and six, the personality record about children and adolescents is required by the court of children and adolescents.

In Article 203 of the Criminal Code, in offenses that their punishment is the deprivation of life, amputation, life imprisonment or punishment grade four and above as well as in intentional crimes against the physical integrity that their blood money is one-third of the complete blood money or more than it, the magistrate shall order to issue the personality record of accused to social worker unit during the investigation this record that is formed separately from record of criminal act.

According to Article 203 of the Act, personality record contains the following concepts:

A - Social worker report regarding material conditions, family and social of accused

B - Medical and psychiatric report

Personality record of criminal children inspired by the medical knowledge in five phases studies and examines delinquent children, identifies their problems, recognizes treatment methods of criminal children, implements these procedures and follows them to cause their re-socialization of them. That's why the International Criminal policymakers in light of a number of binding documents and guidance by accepting reform – health approach have guided governments to adopt measures. In the Iranian criminal law,

personality record expressly and as a central approach in the criminal proceedings is unforeseen and only at the phase of imprisonment to classify prisons, its forming is announced mandatory. Criminal Justice to issue ruling or justice decision to the criminal implicitly is required to set personality record as one of the necessities of righteous judgment (Danesh, 2007).

In Penal Code 2013 with regard to the characteristics of personality record and its effect on the process of proceedings particularly for children and adolescents, it was better to legislator explicitly mentioned forming it in the law.

5. Proceedings in the trial phase

How to proceedings children and adolescents crimes in court should be in the interest of the child that this involves proceedings and just and fair trial that their rights are provided and turn back them to the society from correct path.

Reaction is effective in court that we discuss some of them, including conditions and selection of the judge of children and the presence of consultants in trial:

5-1. competent of proceedings authorities to children and adolescents crimes

Competence of children and adolescents' courts is an exclusive competence and in the division of the courts, it is referred to children and adolescents' court as a part of divisions of criminal courts. But in the topic of crimes in the competent of criminal court one and revolutionary court, legislator has expressed its specialty that investigating these crimes is done in special criminal court one of proceeding children and adolescents crimes. These branches not prevent the referral of other files to them. Article 294 of the Code of Criminal Procedure has accepted the discussion of specialty of children and adolescents court however, in Article 315 and the following amendment has stated the specialty of Penal Court one especial for children and adolescents.

5-2. Criminal court special for proceedings children and adolescents crimes

Criminal court special for proceedings children and adolescents' crimes is specialized branch of criminal courts one for proceedings crimes within the jurisdiction of the court or by persons under 18 years. So about all crime persons under 18 years of court is disqualified. The purpose of qualifications that are applied in children and adolescent court is the qualifications such as the cases stipulated in Article 298 or articles 409 to 415.

In cases that criminal court one has the regulations of jurisdiction over offenses in the provisions of the competent of children and adolescents' court, compliance provisions related to proceedings children and adolescents' crimes is required.

5-3. Properties of judge of children and adolescents court

The stage of preliminary investigation is one of the most important steps to proceedings the case of minors. At this point, in fact, the first base and cornerstone of child's criminal case is established because the incompatible child or adolescent deals with justice system or police for the first time. Perhaps as a result of fear and terror that in such cases exists for children, they could not describe the event and adequately defend their innocence.

So psychologically, this preliminary step has a particular importance that needs to be paid sufficient attention. Because of this principle in most countries of the world, an organization called "organization of police of children" is formed that its members with a modern scientific principles engage such a preliminary investigation.

Judge of children or officials of research institutes and all those who for the first time deal with such special children or adolescents should treat them with the utmost kindness and seek to obtain their trust.

In this case, it is necessary to judge of minors with optimism and goodwill to be acted and tried to detect the cause the fall of child to corruption. Of course, in such case, the judge more easily can order to reform and re-education of the child and save him from the abyss of corruption. For these young offenders that still not far from dignified life and not too far, a reprimand and censure, coupled with compassionate advice will be so effective which may a decree of "prison sentence" about the criminal recorded does not have this effect (Shambyati, 2011, p. 168).

Children and adolescents court judges shall be eligible to in terms of behavioral not to be affected by inappropriate education of children and adolescent in the proceedings, so it is emphasized in Article 409 of the new Criminal Procedure Code among the judges who have at least five years of judicial service and their competence to do this issue in compliance with age and other aspects such as marital status, educational courses and preferably having child to be selected.

5-4. Consultants in the children and adolescents court

With regard to the specific circumstances of children and adolescents and to decide properly in punishment of criminals and considering the need for criminal behaviors reform of children and adolescents, legislators has emphasized on the presence of consultant in court and accordingly in Article 298 of the Criminal Procedure Code 2013, the juvenile court will be held with the presence of consultant.

5-5. The role of children and adolescents lawyer

Time of proceedings children and adolescents court in the case of existing lawyer to be notified him. When the accused or legal guardian or lawyer to be presented and appeal to investigate and also the causes of investigation to be provided, the court may decide without appointment of proceedings (Clause 2, Article 412 of the Criminal Procedure Code).

In criminal court one special for children and adolescents and sentenced crimes one to six, obtaining a lawyer to defend children and adolescents is required. And in the absence of lawyer or non-determination of lawyer without reasonable excuse, the lawyer is determined in the court for the accused. In sentenced crimes of grade seven and eight, parent or legal guardian of the child or adolescent can appoint a lawyer to defend him. Adolescent can also defend himself (Article 415 of the Criminal Procedure Code adopted in 2013).

6. Appeal and protest to votes of court

Appeal of court decisions proceedings charge of children has been stipulated equal to related regulations. Meanwhile, the court proceedings by reports that get from the condition of the child and his education from the Correction and

Rehabilitation Center can appeal once in their previous decisions. In this way that reduce the duration of keeping to one-third.

Investigating authority to appeal the decisions and judgments of children and adolescents court is a branch of the Court of Appeal of province that in accordance with the conditions set forth in this Law and by notifying the head of the judiciary will be determined. Reference of appeals from judgments and decisions of special criminal court one proceedings to children and adolescents crimes is Supreme Court (Article 444 of the Criminal Procedure Code adopted in 2013).

Qualification criteria of appeal authority, contrary to what prevailed before the entry into force of this law, "legal punishment" is a crime that the primitive court has ruled about it. The above article has disrupted the evidence about persons under 18 years old and again considered sentencing thus to determine the reference of appeal to provisions of courts to crimes of persons under 18 years old, it should be considered to sentencing court (regardless of the sentence and punishment that is stipulated in law). Accordingly votes of special court of children and adolescents in the Court of Appeal and votes of special criminal courts one proceeding to children and adolescents crimes in the Supreme Court is dealt with appeal (Khaleghi, 2015). Children and adolescents court votes in all cases can be appealed.

7. Enforcement

7-1. Punishment of criminal children and adolescents

A) Children and adolescents of 9 to 15 years old in sentenced crimes

1- Surrender to the parents or legal guardian by obtaining a commitment to discipline and moral upbringing and care of the child or adolescent.

2- Surrender to other natural or legal persons.

3- advised by judge

4- warning and notification or obtaining a written commitment to not recidivism

5- keeping in correction and education center from three months to one year in prison grade one to three (for children and adolescents between the ages 12 to 15)

B) Adolescents 15 to 18 lunar years old in prison crimes

1. Keeping in correction and education center from two to five years in prison grade one to three

2- Keeping in correction and education center from one to three months in prison crimes grade four

3- Keeping in correction and education center from three months to one year in prison crimes grade five or fine of ten million to forty million Riyals, or 180 to 720 hours of unpaid public services

The court may rule instead of penalties in paragraphs a, b and c in home detention or keeping in correction and education center in the two-day weekend for three months to five years.

4. Fine of one million to ten million Riyals in prison crimes grade 6 or 60 to 180 hours of unpaid public services

1. Fine of one million Riyals in prison crimes grade seven and eight

C) Minor less than 12 lunar years old in hudud and retaliation crimes

1- Surrender to the parents or legal guardian

2- Surrender to other natural or legal persons.

3- advised by judge

4- warning and notification or obtaining a written commitment to not recidivism

5- keeping in correction and education center from three months to one year

D) Adolescent under 18 lunar years old in Hudud and retaliation crimes

If they not understand the nature of the crime or its prohibition or there is doubt in the maturity and their wisdom, as the case depending on their age, they are condemned to penalties foreseen in Articles 88 and 95 of the Penal Code adopted in 2013.

E) Crimes punishable by blood money

1- If the committed is immature, kinsman would guarantee to pay blood money.

2. If the committed is mature, payment of blood money will be in his responsibility.

Conclusion

In Iranian criminal proceedings system, some features of the criminal proceedings of children, such as the necessity of being private and privacy in handling charges, necessity of notify time of proceedings to parent or legal guardian and attending him in hearings in the case of interest of the child or adolescent and appeal of decisions relating to charges of children and adolescents in higher authorities of appeal and court issuing the verdict is predicted. Given that children follow the principles of specific reforms and training and have spirits and understanding and sensitivity and specific attitude and behavior and reaction and not have defense power and detection and determination and stable will and solid reasoning and their deviations more than the effect of the internal intention is due to stimulus and external factors and social and family. The purpose of investigating deviations is his correction and training and discipline not punishment means criminal, thus practices and special procedures in the investigation of his deviation is binding that total of it is concentrated in juvenile court. That means the necessity of delinquent juvenile court with all the features mentioned in the text.

It should be avoided of using the word of the accused, convicted, and imprisoned and offenders as much as possible about children and non-punitive actions that not led to the labeling of children to be placed in priority. In fact, about prison punishments, it should be given the priority to alternative punishments to return of the child to the community to be easier.

Criminal Procedure Code 2013 has a variety of innovations in the form of proceedings and institutions related to proceedings children and adolescents that help to determining what measures can be effective in objective guarantee and so fair hearings concerning criminals of children and adolescents. In terms of judicial organization of Criminal Procedure Code 2013, children and adolescents proceedings and special court of children and adolescents and criminal court one special for children and adolescents is considered that organization of juvenile court, although in the law related to the criminal juvenile court approved in 1959 has been precedent, but what has been predicted in the Criminal Procedure Act in 2013 has significant differences with precedent law that is considered. Both in terms of scope of competent and in terms of the people involved in the proceedings, such as expert advisors, is a new issue that in amendment of the Public and Revolutionary Courts in 2002 were entered Iranian law and forecast criminal court

one special for children and adolescents in the law is a new issue.

Other innovations of Criminal Procedure Code Act of 2013 in proceedings can be considered the requirement of the presence of lawyer in court in proceedings to serious crimes and non-interference of Enforcement Officials and the assignment of preliminary investigation to court.

Differential approach of Criminal Procedure Code in proceedings criminal children and adolescents is a necessary and important issue that's according to the criminal's age and how to commit crime by child or adolescent is important. The need for separation of proceedings and investigating based on age of child to reform him and the use of judges and trained enforcement, strategies to achieve a just and fair judicial system to be provided.

Differential hearing of children and adolescents in our country as a great development and a fundamental step in strengthening fair trial has a significant impact that this law in line with respect for human and his rights will be taken step. Criminal Procedure Act, in order to promote proceedings for children and adolescents, has eliminated many of the shortcomings of the past. This rule can be considered a basic measure to implement with the principles of criminal justice and international documentations of children's rights and standards of Islamic law.

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