

Reviewing the competence of authorities investigating children and adolescents crimes with a view to the Criminal Procedure Code 2013

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ABSTRACT

The juvenile court as the most important reference has the competence of investigating adolescents crimes, but the competence is different to circumstances governing crime such as the type of crime, the age of the criminal and the place of occurring crime. In fact, juvenile court in absolute not has the competence of investigating types of children crimes in each age group and in every place. Competence of children and adolescents' courts is an exclusive competence and in the division of courts, it is referred to children and adolescents' court as a part of the division of criminal courts. But in the topic of crimes in the competence 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 Criminal Procedure Code has accepted the discussion of specialty of children and adolescents court however, in Article 315 and the following amendment has stated the specialty of Criminal Court one especial for children and adolescents.

Keyword:

children and adolescents, delinquency, competence, investigating authorities, Criminal Procedure Code 2013

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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.

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. What in this article is intended is the competence of authorities investigating children and adolescents crimes with a view to the Criminal Procedure Act 2013. Competence is the ability, competence, responsibility and obligation that the law grants to a judicial authority to investigate the case. Rules and regulations related to competence are in relation to public order and has been imposed for the criminal justice and agreement contrary to it is the first thing that judge of court investigating the crimes of juvenile of court in the case assigned to be considered. The issue of competence or non-competence is for investigating the charges of debate. Court judge investigating juvenile crimes should first investigate the raised issue in terms of personal competence and inherent and local, if qualified to investigate the crime committed, he could initiate proceedings. So in this paper, the competence of authorities investigating children and adolescents crimes with a view to the Criminal Procedure Code 2013 will be reviewed.

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).

Competence of authorities investigating children and adolescents crimes

The juvenile court as the most important reference has the competence of investigating adolescents' crimes, but the competence is different to circumstances governing crime such as the type of crime, the age of the criminal and the place of occurring crime. In fact, juvenile court in absolute not has the competence of investigating types of children crimes in each age group and in every place.

Article 1 of the Convention on the Rights of the Child says about children "all people under 18 years old is called child, unless based on the national law applied, the legal age is determined less."

According to the CRC, juvenile courts have the personal competence for investigating crimes of persons under 18 years old. According to penal code adopted in 2013 also juvenile courts have competence for investigating crimes of persons under 18 years old.

Competence of children and adolescents' courts is an exclusive competence and in the division of courts, it is referred to children and adolescents' court as a part of the division of criminal courts. But in the topic of crimes in the competence 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 Criminal Procedure Code has accepted the discussion of specialty of children and adolescents court however, in Article 315 and the following amendment has stated the specialty of Criminal Court one especial for children and adolescents.

Considering the situation of children and adolescents and correcting and training role that must take place about them, the specificity of the courts caused to investigate children and adolescents crimes that court judge has role in the specific trend in achieving society to their goals in order to turning this part of offenders into the community and behavior modification of committed and the specialty of branches cannot contribute much to the education of the criminal children and adolescents. The judge of a court that solely investigates the files of adolescents is the judge who handled the files of adults and in this field cannot be familiar with their spirits and follow their corrective trend.

Since still in the cities and many major cities, the discussion of specialty of children and adolescents courts is not become operational and only just handle as branches, it cannot be hoped to educational process of this part of criminals because the judge of children and adolescents court at some hours of the day investigates juvenile crimes and in some other hours of the day investigates the adults crimes. Until the discussion of specialty of children and adolescents' courts across the country as well as in crimes related to Criminal competence one and Revolutionary Court not to be practiced, the process of investigating crimes of this class have merely punitive aspect rather than corrective.

Criminal court one special for investigating to children and adolescents crimes

Crimes punishable by competence of criminal court one as well as revolution in cases that is investigated with the plurality of judge if committed by mature individuals under eighteen years old, it is investigated in criminal court one special for investigating to children and adolescents crimes and accused will be benefitted of all privileges that applied in children and adolescents court.

Criminal court one special for investigating to children and adolescents crimes is the branch specialized of criminal courts one for investigating crimes within the jurisdiction of the court or revolution court by persons under 18 years so

that about all crimes, persons under 18 years old are disqualified from revolution court.

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.

A. Personal competence

Personal competence is determined according to the characteristics of the accused and not the investigating authority. In the distant past, class affiliation and social situations of individuals in some crimes were effective in determining the competence of court investigating. At the present time, according to new achievements of criminal science and criminology, some considerations such as age or some special social responsibilities has led that some accused in specific references to be investigated and prosecuted in accordance with different procedures (Ashuri, 1999, Vol. I, p. 84). Personal competence of reference investigating is a competence that existed due to special circumstances of age of children and adolescents and related court is competent to handle.

B. Inherent competence

The inherent competence of the court means absolute competence in terms of limited to class, degree and type of court (Jafari Langroodi, 1997, p. 407).

The competence of the juvenile court is established based on the nature of the acts committed by children. The juvenile court competence according to the type of crime is divided into two parts:

- Competence of the court is divided based on children crimes, if law violation is serious with certain age conditions, adult court would be competent to handle and if the offense is not severe, the juvenile court will have jurisdiction.

- Competence of the court is determined based on special crimes of childhood. That means committed actions by children requires intensive care and if adults committed these crimes, it is not considered victim like school avoidance, defiance of parents and teachers and ...

C. Competence of judicial authority with regard to the place of occurring crime

The local competence is the authority of a certain court than other certain court that in terms of the type and grade are similar. For example, when it became clear that certain claims is in the jurisdiction of court of city, it must be seen that city court of which place has competence to investigate the file.

In general, crime detection is usually done by the police that immediately after the crime must take measures to preserve effects and symptoms of crime and prevention of concealment and evasion of accused and announce the stages to the prosecutor or the court. Since the first phase of dealing with children and adolescents with the criminal justice system is with police, only trained police will be able to properly perform his duties.

Properties of judge of children and adolescents court

After referral the file to the court, judge of the file acts to investigate file of accused and how to committed criminal

act. In this file, all the evidence of crime will be collected and recorded. If the petition or complaint received from the private plaintiff, it will be the appendix of the file. In most European countries, judge of children sends the file to court after the completion and orders social research around the criminal family, how to study, how to spend leisure time, moral and psychological records, and his friends and associates and so on. This type of research is often done by agencies and dependent people to juvenile court, such as social workers or people who voluntarily and honorably work with juvenile courts. Judge of children in the research stage can ask questions from witnesses and plaintiff to clarify the issues and complete file. It must be considered that the investigation in juvenile court is not under the provisions of the Code of Criminal Procedure and the judge is free to investigate and can solve more easily the issues. In some countries, the issue of interrogation of criminal juvenile is done by the police of children. Of course the police under the supervision of the judge will do the task in this case (Moazzemi, 2015, p. 98).

The stage of preliminary investigation is one of the most important steps to proceedings the file of minors. At this stage, in fact, the first base and cornerstone of child's criminal file 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.

As we know, the majority of children and adolescents who for the first time as "the accused" are being sent to juvenile court inherently are people who have the ability to correct from every direction (Moazzemi, 2015, p. 99).

Few of these accused have criminal records and so-called are placed in the criminal statics or "perpetrators of repeating crime".

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.

Judge of children and adolescents court has played a significant role about criminal person because the child or adolescent after arrival and in line with doing research faced with the judge and if any misconduct and away from the

spirit of children, this issue can have a great impact in future delinquent child.

According to the Code of Criminal Procedure, juvenile court will be held with the presence of a judge and four consultants that to formalize the meeting, the attendance of two consultants in meeting is required. A branch of General and Revolutionary Court, headed by a deputy prosecutor and, if necessary, one or more assistants and investigators to be held. Consultants are assigned from scientific characters, cultural, academic, and administrative and trustees of district, whether employed or retired that aware to children and adolescents matters. Consultants in courts have an advisory role and advise the judge about the file, but the judge alone adjudicates and they have no role in the sentence or change it. As a result, in the court, the main role is reserved for the judge to change the punishment of the defendants. For crimes that is considered amnesty and death or stoning punishments, file in criminal court with the presence of judge and qualified counselors is investigated and the presence of counselors in court is mandatory. As well as crimes that their punishments are less than three years or crimes against chastity for less than 15 years, directly are investigated from juvenile court and the court has no role in the investigation of those crimes.

Authorities of judge of children and adolescents court

Judge is a central axis in juvenile court and responsibilities and authorities of judge is varied, the offer of arrest, investigation, interrogation before entering the investigating, as well as decisions about child custody before the trial, deciding on the sentencing of juveniles, review the evidence of file for proceedings the crime, the guidance of judge to the child on the rights of the child and investigating the children's crime with a "differential treatment" and also regardless of the official proceedings and sentencing with regard to the right to appeal for child and ...should be done by the judge.

One of the most important steps of diversion is avoiding the formal system of justice. To avoid the trial and proceedings, various tools and mechanisms are given to the criminal justice system that based them, it is tried to be resolved disputes with the intervention of formal or informal institutions and forces.

In order to meet the interest of the child, new authorities are granted to police and prosecutors in pre-trial stages in the institutional framework "appropriateness of pursue" or "The usefulness of pursuing" to stop or suspend generally the investigation in the case of appropriateness and interest of the child. Entrust the child to the parent, legal guardian or civic and social institutions, freedom under care, judicial oversight of filing criminal cases, warning or caution.

Competence of judge of children and adolescent court

In most countries, the trials that are composed of several members, usually one of them is judge of court and the rest of them are selected from competent people interested in children issues more among of the pensioners and ladies. In some countries, such as Britain and Poland, juvenile courts are handled mostly by women.

In most European countries, including Germany, Belgium, France, Italy and some centers of Switzerland, juvenile courts in addition to judges who are appointed to examine the case have a prosecutor or representative of court that do

tasks of prosecutor when required. These kinds of prosecutors investigate such complaints, collect information from the crime and directly resolve the small disputes. In these countries, prosecutors only sends major crimes to investigate and issue vote to judge. Juvenile courts often have a secretary that helps judge in the filing and hearing. In the United Kingdom among all members of the juvenile court are just secretaries who have specialized and legal studies about delinquency of children.

In some countries in the vicinity of juvenile court, a magistrate does duty, but in countries of Anglo-Saxon, the investigation and filing about crimes of children is done entirely by the judicial police. Of course, the police after gathering sufficient evidence send the file to court to investigate and sentence. In some other countries, all tasks including investigation, prosecution, filing and sentence is done by judge of child or head of children court, even if the court has also consulting members and advisers only participate at the time of voting. In Article 298 of the Criminal Procedure Code provided: in any jurisdiction of city, one or several branches of juvenile court is formed as needed until the court of children and adolescents has not been formed in a place, it is investigated to all children and adolescents crimes except for crimes punishable (Article 315) of the law in criminal court or tribunal that does it tasks.

Consultants in children and adolescents court

Due to the specific circumstances of children and adolescents and to decide properly to punish criminals and attention to the need for reform of criminal behaviors of children and adolescents in court, legislator has emphasized on the presence of consultants and on the basis, in Article 298 of the Code of Criminal Procedure 2013 is mentioned, the children and adolescents with the presence of a judge and two consultants will be formed.

Consultants of court should have special conditions that on this basis, consultants of children and adolescents court to be selected among the expert of education, psychology, criminology, social work, academics and educators familiar with psychological issues and education of children and adolescents, both employed and retired.

For selection of consultants of court, head of the jurisdiction of each location for each branch offers at least eight men and women who qualified stipulated in this article to Chief of Justice of the province. Chief of Justice of the province, among them appoints at least four people for two years. Also if the charge is female, at least one of the consultants should be woman (Article 410 of the Criminal Procedure Code 2013).

In the absence of female consultant in the judicial jurisdiction should take the female consultant from the nearest jurisdiction to attend the meeting and in the case of non- access to female consultant for female accused should take male consultant considering conditions of accused and in compliance with all the conditions stipulated in the law and reform and corrective view to return the adolescent criminal to the community and family should offer its advisory opinion to respected judge of court. With regard to special spirits of accused and how they have been affected by the crimes committed, the role of consultant can be

effective in reconstruction and upbringing of children and adolescents.

Children and adolescents court is formed with the presence of a judge and a counselor and the view of consultant in this respect is advisory and therefore his opinion is not binding for the judge. Yet without his presence, the court is not recognized.

To investigate adolescents' crimes in the Special Criminal Court for their crimes, the consultants' presence is required.

How to investigate and sentencing in children and adolescents court

Criminal courts are divided to Criminal Court one, Criminal Court two, revolution court of children and adolescent and military courts.

Children and adolescents court is formed with the presence of a judge and two consultants. The view of consultants is advisory (Khaleghi, 2015, p. 159).

Note - in any jurisdiction of city, one or several branches of juvenile court is formed as needed until the court of children and adolescents has not been formed in a place, it is investigated to all children and adolescents crimes except for crimes punishable (Article 315) of the law in criminal court or tribunal that does it tasks.

The court consultant is a person other than counselor. Counselor has legal base and voting equal to head and other counselors of court, while the consultant not has the legal basis and not have the right to vote, but offers only an advisory opinion and cannot directly have a role in the determination of the file.

If the offenses inserted in this article is committed by a person under 18 years old, according to Article 315 of the law, it must be said that in terms of age and regardless of the type of crime, it is disqualified from the Revolutionary Court and investigated to his charge in a special criminal court one investigating children and adolescents crimes.

It is investigated to all crimes of children and people less than 18 years old in children and adolescents court. In any case, convicts over the age of 18 years old of this article maintained in the part of keeping adults that is created in reform center.

If during the proceedings, the accused's age exceeds of 18 years, handling his charge according to the law continues in children and adolescents court. If before start to proceedings, the age of accused exceeds of 18 years, his charge is done in the competent criminal court. In this case the accused is benefitted of all the concessions that apply in children and adolescents court (Article 304 of the Criminal Procedure Code 2013).

"Children and adolescents court" is an exclusive court as the Revolutionary Court with jurisdiction over crimes of people under 18 years old. The criterion of competence of this court is age of committed and to determine its competence, the age of the committed at the time of committing crime is condition.

Competence of children and adolescents court has two exceptions:

1. In terms of crime
2. In terms of age of committing crime

Note 2 contains an exception on the jurisdiction of the children and adolescents court in terms of age of committed that based on it, accused must be under 18 years old at the time of the offense and at the time to deal with crime.

If "before the start of the proceedings," in the court, the age of accused passed of 18 years, the court will not have the competence to investigate his crime. "Start to investigate" should be a date that head of the Court by receipt the file to the branch establishes its jurisdiction and orders appointment and summon the parties.

So, it can be said that from this date, investigation starts and appointment, summon, notification and return the papers are all part of the proceedings. This interpretation prevents if passing the age from 18 years in time of summon to investigate, court once issues lack of jurisdiction and after long waiting will lead the parties to another court.

When a person is accused of committing numerous crimes that investigating some of them is in competence of criminal court one and investigating to some other in competence of criminal court two or children and adolescents, it is investigated to all his crimes in criminal court one.

If a crime is raised by the validity of one of the paragraphs of Article 302 of the Law on Penal Court one and court after the proceedings and adequate research and termination of proceedings identified the committed act has another criminal title that its proceedings is in the competence of criminal court two, the Criminal Court one investigates this crime and issues a warrant.

In Note one, the reason of investigating Criminal Court one for crime within the competence of criminal court two is an inherent competence between them. The reason of investigating Criminal Court one for crime within the competence of children and adolescents court by presenting their inherent competence differences, it is the exceptional sentence of Article 315 of the Code of Criminal Procedure, which given the specialty competence to investigate serious crimes of children and adolescents to special branches of the Criminal Court one.

Conclusion

Criminal Procedure Code 2013 has a variety of innovations in the form of proceedings and institutions related to investigating 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 consultants, 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.

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