

Ensure Children's Rights in the Field Criminal Proceedings in Vietnam

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Abstract

Children are special subjects that need to be protected to avoid harm and abuse caused by the legal process. On the basis of absorbing the content of the International Conventions on the Protection of Children's Rights, the 2015 Criminal Procedure Code has made many progressive amendments and supplements to better ensure children's rights in proceedings criminal. The article focuses on clarifying the provisions of the 2015 Criminal Procedure Code on ensuring children's human rights, pointing out inadequacies, limitations and proposing some recommendations.

Keywords

Children's Rights, Ensuring Children's Rights, Criminal Proceedings

1. Introduction

Children are in the process of developing strongly and perfecting their physical and cognitive abilities. The United Nations Declaration on the Rights of the Child in 1959 clearly stated that "children, because of their mental and physical immaturity, require special protection and care, including appropriate legal protection, before and after being born" (*United Nations Declaration on the Rights of the Child in 1959*). Article 3 of the 1989 Convention on the Rights of the Child stipulates that "in all actions with respect to children, whether by public or private social welfare agencies, courts, administrative authorities or legislative bodies, the best interests of children must be the primary concern" (*Ho Chi Minh National Academy of Politics, Human Rights Research Center, 2011*). During the proceedings, the priority rights of children must be guaranteed, which are rights such as

the right to be treated with dignity and love; the right to be heard; the right to participate effectively in the proceedings; receive legal aid and other appropriate forms of support; decisions can be made without delay and with the participation of parents; receive free help from interpreters; privacy must be fully respected (Hanoi National University, Faculty of Law, 2007). “Vietnam has signed the Convention on the Rights of the Child and has built a fairly complete legal system, creating an important legal basis for law enforcement agencies to protect children in general and minors youth in criminal cases in particular” (Supreme People’s Court, 2010).

The criminal proceedings for cases involving children as participants in the proceedings require certain special features appropriate to their age, cognitive level and psychological and physiological development to resolve criminal cases quickly and effectively, but at the same time must also protect the legitimate rights and interests of children. According to the provisions of Article 1 of the Law on Children 2016, a child is defined as a person under 16 years old; but according to Clause 1, Article 21 of the 2015 Civil Code, a minor is a person under eighteen years old (Article 21, Civil Code of the Socialist Republic of Vietnam, Congress, 2015a); according to Article 413 of the 2015 Criminal Procedure Code, subjects who need special protection in criminal proceedings are people under 18 years old. Thus, in the Vietnamese legal system, there is no consensus on the names between subjects who are children-minors-people under 18 years old; there is also disagreement between the Law on Children 2016 and the Criminal Procedure Code 2015 regarding the age of subjects whose rights are guaranteed by special regulations. Therefore, within the scope of the article’s research, the author uniformly uses the terms “children” and “people under 18 years old”, interchangeably, ensuring children’s rights means ensuring the rights of children as people under 18 years old in criminal proceedings. The children studied include suspects, defendants, victims and witnesses.

According to Article 30 of the Law on Children 2016, children have the right to be protected during proceedings and handling of administrative violations; ensure the right to defend and self-defend, to protect legal rights and interests; receive legal aid, express opinions, and not be illegally deprived of freedom; be free from torture, coercion, corporal punishment, insults to honor and dignity, physical abuse, psychological pressure and other forms of abuse (Article 30, Children’s Law of the Socialist Republic of Vietnam, Congress, 2016).

To protect the legitimate rights and interests of children in general and in the field of criminal proceedings in particular, Vietnam has built a relatively complete legal system, including specific documents such as: the 2013 Constitution, the 2016 Law on Children, the 2015 Civil Code, the 2015 Penal Code, the 2015 Criminal Procedure Law, and the 2024 Law on Juvenile Justice.

The 2015 Criminal Procedure Code has made very progressive amendments and supplements to promptly meet the requirements for resolving cases in which the accused, defendants, victims, and witnesses are children, ensuring compatibility with age psychology while still complying with the provisions of the law on

criminal procedure.

2. Criminal Procedure Law Provisions Ensure Children' Rights

2.1. Principles of Conducting Proceedings

Principles of conducting proceedings are directions and guidelines that require those with authority to conduct proceedings to comply to ensure the quick and timely resolution of cases and the protection of legitimate rights and interests for relevant subjects. According to Article 414 of the 2015 Criminal Procedure Code, principles for conducting proceedings in cases involving children who participate in the proceedings include: (1) Ensuring friendly proceedings, in accordance with the law psychology, age, maturity level, cognitive ability of people under 18 years old; ensure the legal rights and interests of people under 18 years of age; ensure the best interests of people under 18 years of age; (2) Ensure personal confidentiality of people under 18 years old; (3) Ensure the right to participate in proceedings of representatives of people under 18 years old, schools, Youth Unions, people with experience and understanding of psychology, society, and other organizations where people under 18 years old study, labor and living; (4) Respect the right to participate and present opinions of people under 18 years old; (5) Ensure the right to defense and the right to legal aid of people under 18 years old; (6) Ensuring the principles of the Penal Code for handling crimes against people under 18 years of age (7) Ensuring quick and timely resolution of cases involving people under 18 years of age (Article 414 of the Criminal Procedure Code of the Socialist Republic of Vietnam, [Congress, 2015b](#)). The basis of the principle is the specification of international standards such as "Member States Recognize the right of every child suspected, accused or confirmed to have violated the criminal law to be treated in a manner consistent with promoting children's awareness of their inherent personality and dignity, in a manner that promotes children's respect for the fundamental rights and freedoms of others and that takes into account the age of the child as well as the desire to promote their reintegration and help them take on a constructive role in society" (Article 40 of the 1989 International Convention on the Rights of the Child). The requirement that the principle sets is that when conducting proceedings with people under 18 years of age, the agencies conducting the proceedings must comply with regulations specific to this subject to ensure friendly and appropriate proceedings with psychological and physiological characteristics of age. The recognition and regulation of these principles is a very basic innovation in legal proceedings for people under 18 years of age, expressing the State's humanitarian viewpoints and policies, creating maximum conditions to ensure the Protect the rights and interests of minors in criminal proceedings ([Binh, 2016](#)).

2.2. Person Conducting Proceedings

When resolving a case, the person conducting the proceedings is the person who

directly contacts the participants in the proceedings. Article 415 of the 2015 Criminal Procedure Code stipulates that the person conducting the proceedings for a case involving a person under 18 years of age must be a person who has been trained or has experience in investigating, prosecuting, and adjudicating cases related to crime people under 18 years old, with necessary understanding of psychology and educational science for people under 18 years old (Article 415 of the 2015 Criminal Procedure Code). Specifically, Investigators, Investigation Officers, Prosecutors, and Judges, when assigned to conduct proceedings for a case involving a person under 18 years old, must meet at least one of the following conditions: (i) Have experience in prosecuting, investigating, prosecuting, and adjudicating cases involving people under 18 years of age; (ii) Have been trained, trained and fostered in skills to resolve criminal cases involving participants in the proceedings who are under 18 years old; (iii) Have been trained, trained and fostered in psychology and educational science for people under 18 years old (Article 5 Joint Circular No. 06/2018/ [Supreme People's Procuracy—Ministry of Public Security, Ministry of Justice, Ministry of Labor, War Invalids and Social Affairs, 2018](#)).

Jurors participating in the first-instance trial of a case involving a person under 18 years old must be a teacher, an officer of the Ho Chi Minh Communist Youth Union, or someone with experience and understanding of psychology people under 18 years old.

2.3. Apply Preventive and Coercive Measures

Competent authorities conducting proceedings will only apply custody and temporary detention in cases where the accused person is under 18 years old and has been subject to other supervision and preventive measures such as bail or bond money as security but fled and was arrested according to the wanted notice, shows signs of absconding, continues to commit crimes, shows signs of continuing to commit crimes or commits other acts specified in Clause 2, Article 418 of the Prosecution Code criminal proceedings. The temporary detention period for an accused person under the age of 18 is equal to two-thirds of the temporary detention period for a person 18 years of age or older prescribed in the Criminal Procedure Code. Agencies competent to conduct proceedings and persons competent to conduct proceedings must regularly monitor, review and inspect the custody and temporary detention of people under 18 years of age who are detained or detained; if it is discovered that there is no longer a basis or that detention or temporary detention is not necessary, a decision must be made to promptly cancel it and replace it with other preventive measures.

People from full 14 years old to under 16 years old may be detained in an emergency, arrested, detained or detained for crimes specified in Clause 2, Article 12 of the Penal Code if there are grounds specified in the provisions of the Law. Articles 110, 111 and 112, Clause 2, Article 119 of the Criminal Procedure Code; people from 16 years old to under 18 years old can be detained in an emergency, arrested, temporarily detained, or temporarily detained for intentional serious

crimes, very serious crimes, and especially serious crimes if there are regulatory grounds defined in Articles 110, 111 and 112, Clause 2, Article 119 of the Criminal Procedure Code; for suspects and defendants from 16 years old to under 18 years old who are prosecuted, investigated, prosecuted, and tried for serious unintentional crimes or less serious crimes for which the Penal Code stipulates a prison sentence of up to after 02 years, they can be arrested, temporarily detained, or temporarily detained if they continue to commit crimes, escape and are arrested according to the wanted notice. Within 24 hours from the time of emergency detention, arrest, temporary detention, or temporary detention, the person who issued the detention order, order or decision to arrest, detain, or temporarily detain a person under 18 years of age must notify the representative their representatives know (Article 419 of the 2015 Criminal Procedure Code).

The agency competent to conduct proceedings and the person competent to conduct proceedings may apply escort measures for people under 18 years of age in cases when has a summons to appear a second time but is intentionally absent without reasons of force majeure or objective obstacles; people detained in an emergency, suspects, or defendants who are being detained from the place of detention or detention to the place where the investigation, prosecution, and trial of the case are conducted. In particular, force majeure reasons are things, situations, and events that occur objectively, are unpredictable, and cannot be overcome even though all necessary and allowable measures have been applied; objective obstacles are obstacles caused by objective circumstances that prevent people with rights and obligations from knowing that their rights and legitimate interests are being violated or from being able to exercise their rights and obligations (Clause 3, 4 Article 3 Joint Circular No. 06/2018/ [Supreme People's Procuracy—Ministry of Public Security, Ministry of Justice, Ministry of Labor, War Invalids and Social Affairs, 2018](#)).

2.4. Participation in Proceedings by Representatives, Schools and Organizations

The participation of defenders, representatives, families, schools, and social organizations in cases involving people under 18 years old plays a very important role in the case resolution process criminal sentence. According to Article 420 of the Criminal Procedure Code, representatives of people under 18 years old, teachers, representatives of schools, Youth Unions, and other organizations where people under 18 years old study, work and live. Active persons have the right and obligation to participate in proceedings according to the decisions of the Investigation Agency, Procuracy and Court.

After receiving notice from the agency competent to conduct proceedings that is accepting and resolving the case, the case involves a person under 18 years of age participating in the proceedings regarding their presence and participation in the proceedings to protect their rights. For legal benefits for people under 18 years old, representatives, teachers, school representatives, Ho Chi Minh Communist

Youth Union, other agencies and organizations where people under 18 years old study or work their activities and activities must have a written response to the agency competent to conduct proceedings and the person competent to conduct proceedings regarding the full name, information, and contact address of the person appointed to participate in the proceedings; if necessary, the information can be reported in person, by phone or by other electronic means, but must be sent in writing immediately afterward. Representatives, teachers, representatives of the school, Ho Chi Minh Communist Youth Union, other agencies and organizations must be present at the time and place stated in the notice. In case of absence for legitimate reasons or due to objective obstacles, the agency competent to conduct proceedings or the person competent to conduct proceedings may postpone the performance of proceedings or request a representative of the court. Schools, Ho Chi Minh Communist Youth Union, other agencies and organizations immediately appoint other people to participate in proceedings to protect the legal rights and interests of people under 18 years old (Article 9 Joint Circular No. 06/2018/Supreme People's Procuracy—Ministry of Public Security, Ministry of Justice, Ministry of Labor, War Invalids and Social Affairs, 2018).

The representative of a person under 18 years old may participate in taking statements and questioning people under 18 years old; present evidence, documents, objects, requests, complaints, denunciations; read, take notes, and copy documents related to the indictment of a person under 18 years old in the case file after the end of the investigation; when participating in the trial, you have the right to present evidence, documents, objects, request and request to change the person conducting the proceedings; express opinions and debate; complain about the procedural acts of those competent to conduct proceedings and the decisions of the Court.

Article 420, Article 422 of the 2015 Criminal Procedure Code also reveal limitations: regulations on participation in proceedings by representatives, schools, and organizations lack “compulsory” status, if regulations are still rights, there will still be the freedom to choose “to participate or not”.

2.5. Take Statements, Interrogate the Accused and Confront

According to the provisions of Article 421 of the Criminal Procedure Code, when taking statements of victims or witnesses, or questioning suspects who are under 18 years of age, the competent authority conducting the proceedings must notify the time in advance location for taking statements and questioning for defense counsel, representatives, and defenders of their legitimate rights and interests. The interrogation of the accused must be in the presence of their defense counsel or representative. Taking statements from victims and witnesses must be attended by a representative or a person protecting their legitimate rights and interests.

Taking statements from victims and witnesses under 18 years old can be done at that person's place of study, work and living or the place where the investigation is conducted. Interrogation of a suspect under 18 years of age can be carried out

at that person's place of residence or the place where the investigation is conducted. In case of taking statements and interrogations at the place where the investigation is conducted, the room for taking statements and interrogations must be arranged to be friendly and suitable for the psychology of people under 18 years old. In case of taking testimony of a victim under 18 years old who was sexually assaulted, abused or trafficked, priority must be given to the location of taking the testimony at that person's place of residence; if not have a place of residence, it must be done at a child care facility according to the provisions of law. Testimony and interrogation must follow the correct order, procedures, and time, ensuring the participation of representatives and defense counsel, and Joint Circular No. 03/2018 of the Ministry of Public Security-Procuracy Supreme People's Court-Supreme People's Court-Ministry of National Defense dated January 1, 2018, instructions on procedures for making audio or video recordings with sound; use, preserve, and store audio or video recording results during the investigation, prosecution, or trial process. In case the case involves a victim under the age of 18 who has been sexually assaulted, abused or trafficked, their testimony must be taken immediately after receiving information about the crime. When conducting testimony and interrogation, the person with authority to conduct proceedings must have a friendly and gentle attitude, use language that is easy to understand, appropriate to their age, gender, and cognitive ability; consider applying appropriate measures to minimize the time and number of testimony and interrogations, and immediately stop the testimony and interrogation when people under 18 years old show signs of fatigue affects the ability to declare accurately and completely (Article 14 Joint Circular No. 06/2018 of the [Supreme People's Procuracy—Ministry of Public Security, Ministry of Justice, Ministry of Labor, War Invalids and Social Affairs, 2018](#)).

In addition, the criminal procedure law also clearly stipulates the time for interrogation and taking statements to avoid the situation of interrogating and taking testimonies continuously, continuously or starving people under 18 years old, specifically (Article 421 of the 2015 Criminal Procedure Code): Time interrogate suspects under 18 years of age no more than twice in a day and each time must not exceed 2 hours, except in cases of organized crime; to arrest other fleeing criminals; prevent others from committing crimes; to search for tools, means of crime or other evidence of the case; the case has many complicated details. The time for taking statements from people under 18 years old is not more than twice in one day and each time is not more than two hours, except in cases where the case has many complicated details. The person with authority to conduct proceedings only conducts confrontation between the victim who is under 18 years old and the defendant to clarify the details of the case in cases where without confrontation the case cannot be resolved.

Article 421 of the 2015 Criminal Procedure Code more clearly stipulates procedural measures to be taken in the process of resolving criminal cases. However, some investigation activities such as: searching, examining traces on the body, ap-

praisal... do not have separate regulations. Therefore, appropriate adjustments are needed to create the best protection mechanism for the comprehensive development of people under 18 years old, including in cases where they commit crimes.

2.6. Justify

According to Article 422 of the Criminal Procedure Code, an accused person under the age of 18 has the right to defend himself or ask someone else to defend him. The representative of a person under 18 years old charged with a crime has the right to choose a defense attorney or personally defend the person under 18 years old charged with a crime.

In case the accused person is under 18 years old and does not have a defense attorney or their representative does not choose a defense attorney, the Investigation Agency, Procuracy, or Court must appoint a defense attorney according to the provisions of Article 76 of the Criminal Procedure Code.

The agency competent to conduct proceedings and the person competent to conduct proceedings must notify the accused, their representatives or relatives of the invitation of a defense attorney to protect their rights and legitimate interests law for them when participating in proceedings. If these people are not invited, depending on each case, the competent authority to conduct the proceedings will appoint a defense attorney if they fall into the case specified in Article 76 of the Criminal Procedure Code; request the State Legal Aid Center to appoint people to provide legal aid according to the provisions of Point c, Clause 1, Article 8 of Circular 06/2018.

The defense counsel for an accused person under 18 years of age must participate in the investigation phase of the case, except in the following cases: the accused person, their representative or relatives refuse or request to change the person. cure; the competent authority conducting proceedings cancels the defense registration according to the provisions of Clause 7, Article 78 of the Criminal Procedure Code; the defense has an indefensible reason for force majeure or objective obstacle.

In addition to the participation of representatives, defenders of legitimate rights and interests, the agency competent to conduct proceedings, the person competent to conduct proceedings may request the Agency of Labor, War Invalids and Social Affairs to Association, Women's Union, Ho Chi Minh Communist Youth Union, Children's Rights Protection Association, Legal Aid Center, other agencies and organizations where proceedings are conducted appoint people to participate in the proceedings to assist Support and protection for accused persons under 18 years of age who have no family or stable place of residence at the request of the accused person or representative or when competent authorities conduct proceedings, the accused person has the authority to conduct proceedings when deemed necessary.

2.7. Judge

When resolving a criminal case involving a person under 18 years of age, the judge

must have experience in adjudicating cases involving people under 18 years of age or have been trained, trained, and fostered on skills to resolve criminal cases involving people under 18 years of age or who have been trained in psychology or educational science for people under 18 years of age. According to Article 423 of the Criminal Procedure Code, the composition of the First Instance Trial Council must include one juror who is a teacher, an officer of the Ho Chi Minh Communist Youth Union or an experienced person know about the psychology of people under 18 years old.

The courtroom must be arranged in a friendly manner, ensuring the best interests of people under 18 years of age. Judges wear administrative work clothes of the People's Court (not wearing gowns). In special cases where it is necessary to protect the defendant or victim who is under 18 years old or at the request of a person under 18 years old or their representative or to keep their private life secret and protect people under 18 years old, the Court also the trial can be held in private, but the verdict must be announced publicly. There is no mobile trial for criminal cases involving defendants who are under 18 years old (Article 7 of Circular No. 02/2018 of the Supreme People's Court).

The trial of a defendant under 18 years of age must be attended by a representative of the person under 18 years of age; representative of the school where people under 18 years old study; representatives of agencies and organizations where people under 18 years old work and study. In case these people are absent for the first time or absent for the second time due to force majeure or objective obstacles, the Court must postpone the trial. In case these people are absent for the second time not due to force majeure or objective obstacles but to ensure the best interests of people under 18 years old, the Court may also postpone the trial (Article 8 of Circular No. 02/2018 of the [Supreme People's Court](#)).

3. Some Recommendations to Improve the Provisions of the 2015 Criminal Procedure Code to Ensure Children' Right

3.1. It Is Necessary to More Clearly Stipulate the Principles of Conducting Proceedings for Cases Involving Participants in the Proceedings Who Are under 18 Years Old

First, the content of the principles needs to ensure the right to keep personal secrets of accused persons under 18 years of age

Article 40 of the International Convention on the Rights of the Child requires member states to specifically ensure that "the privacy of the child is fully respected throughout all stages of the proceedings". Rule 8.1 of the Beijing Rules also stipulates that "The privacy of minors must be respected at all stages of the proceedings, in order to avoid harm caused by excessive publicity or regulation take a shot". Both of these international legal documents emphasize ensuring the privacy rights of minors in criminal proceedings in general as well as ensuring the privacy rights of minors charged with crimes in particular all stages of the proceedings.

Although the 2015 Criminal Procedure Code has regulations on the right to

ensure personal privacy of people under 18 years old, including those charged with crimes under 18 years old, it is not specific. Clause 2, Article 414 of the Criminal Procedure Code stipulates the principle of “Ensuring the preservation of personal secrets of people under 18 years of age”, Clause 2, Article 423 of the Criminal Procedure Code stipulates: “Special cases requiring protection If the defendant or victim is under 18 years old, the Court may decide to conduct a closed trial.” The inadequacy is shown in the fact that, according to General Comment No. 10 guiding countries, it is necessary to stipulate that the trial of cases in which the defendant is a minor must be conducted “in private”, and that the trial of cases in which the defendant is a minor must be conducted in public. These hearings are considered only “exceptional” cases and require a written decision from the court, which can also be appealed. Meanwhile, according to Article 423 of the Criminal Procedure Code, the trial of cases involving defendants and victims who are under 18 years old can be conducted publicly in normal cases and will only be considered. closed hearing if the Court finds that it is a “special” case (Quyen, 2022). Thus, the way Article 423 is prescribed is not consistent with the spirit of international law. In addition, the 2015 Criminal Procedure Code also lacks provisions on the right to keep personal secrets of accused persons under 18 years old during other stages of the proceedings such as the investigation and prosecution stages... Therefore, Clause 2, Article 414 of the Criminal Procedure Code should be amended and supplemented in the direction of ensuring the personal confidentiality of people under 18 years old during the entire proceedings.

Second, because these are the principles that lay an important foundation for the resolution of cases involving people under 18 years of age, they need to be brief and concise in content, expressing the true spirit of the orientation for the trial, the name of the first principle was amended to “Ensure friendly proceedings; ensure the legal rights and interests of people under 18 years old”; the third principle is amended to “Ensure the right to participate in proceedings of representatives, schools, and organizations”.

Third, it is necessary to rearrange the principles in a more reasonable order, should unify them from principles related to criminal proceedings and then to criminal matters. The sixth principle should be ranked last because it is related to the Penal Code’s principles of handling crimes against people under 18 years of age.

The author proposes to amend and supplement Article 414 of the Criminal Procedure Code specifically as follows:

Article 414. Principles of conducting proceedings

1. Ensure friendly proceedings; ensures the legal rights and interests of people under 18 years old.
2. Ensure the personal confidentiality of people under 18 years old throughout the entire legal process.
3. Ensure the right to participate in proceedings of representatives, schools and organizations.
4. (Constant)

5. (Constant)

6. Ensure quick and timely resolution of cases involving people under 18 years old.

7. Ensure the handling principles of the Penal Code for people under 18 years old who commit crimes.

3.2. It Is Necessary to More Specifically Stipulate the Application of Preventive Measures for Accused Persons under 18 Years of Age

The application of preventive measures against accused persons under 18 years of age is based on the provisions of Article 419 of the Criminal Procedure Code. Meanwhile, Article 419 only refers to the grounds in Articles 110, 111, 112, 119 of the Criminal Procedure Code, the measure to prevent temporary detention in Article 117 of the Criminal Procedure Code is not mentioned. This leads to an inadequacy when applied, if it is necessary to apply temporary detention measures to people under 18 years of age, it will only follow the provisions of Article 117 as adults without any other provisions being cited to protect them. Guarantees legal rights and benefits for people under 18 years old. Therefore, it is necessary to add to Clause 2, Article 419 of the Criminal Procedure Code the legal basis for applying temporary detention measures to people under 18 years old, specifically as follows: “People from 14 years old to under 16 years old may be held in an emergency, arrested, detained or temporarily detained for crimes specified in Clause 2, Article 12 of the Penal Code if there are grounds specified in Articles 110, 111, 112, 117 and Clause 2, Article 119 of this Code”.

In addition, preventive measures such as placing money as security, prohibiting leaving the place of residence... have not been mentioned in Article 419 specifically for accused persons under 18 years old, so they also need to be supplemented.

3.3. About Defending the Accused

Some provisions of the Criminal Procedure Code still do not really guarantee the defense rights of accused persons under 18 years of age.

First, in the case of changing or refusing the defense counsel

Clause 1, Article 77 of the Criminal Procedure Code stipulates: “The following people have the right to refuse or request to change the defense counsel: the accused; the accused’s representative; relatives of the accused person. All cases of changing or refusing the defense counsel must have the consent of the accused person and be recorded in writing and included in the case file, except for the cases specified in Point b, Clause 1, Article 76 of the Criminal Procedure Code “. According to this regulation, in case the representative of an accused person under 18 years old or a relative of an accused person under 18 years old refuses or requests to change the defense counsel, the consent of the accused person is not required accusation. Clause 3, Article 77 of the Criminal Procedure Code stipulates: “In case of refusal of a defense counsel, the competent authority conducting the proceedings shall make a record of the refusal of the defense counsel of the

accused person or representative, relatives of the accused person as prescribed in Point b, Clause 1, Article 76 of the Criminal Procedure Code and terminate the appointment of a defense counsel. The provisions in Clause 1 and Clause 3, Article 77 are consistent in determining that the appointed defense will end when the accused person under 18 years old refuses or the representative or relative of that person refuses. This leads to people under 18 years old being limited in ensuring they have a defense attorney, because if the accused person does not refuse a defense attorney but their representatives or relatives refuse, the competent authority will the right to conduct proceedings still accepts this refusal and terminates the appointment of a defense counsel. Therefore, Article 77 of the Criminal Procedure Code needs to be amended to determine that for accused persons under 18 years of age, the refusal of defense counsel requires their consent.

Second, about the presence of the defense attorney at the first instance trial of the criminal case

Article 291 of the 2015 Criminal Procedure Code stipulates the presence of a defense attorney at the first instance trial. In case a defense attorney is appointed but the defense attorney is absent, the Trial Council must postpone the trial, but if the defendant or the defendant's representative agrees to trial in the absence of the defense counsel, the Trial Panel will proceed with the trial according to normal procedures without the defense's presence. However, the law stipulates that such a condition is not appropriate because if the cases of appointment of defense counsel according to Point a, Clause 1, Article 76 of the Criminal Procedure Code include "suspects and defendants of crimes that the Ministry The Criminal Code stipulates that the maximum penalty range is 20 years in prison, life imprisonment, or death penalty." This is not the case when there is a representative participating in the proceedings, so it only needs to be stipulated that the defendant agrees to a trial in absentia the defense counsel's face; according to Point b, Clause 1, Article 76, including the cases of "the accused has a physical weakness that cannot defend himself, a person has a mental weakness or is under 18 years old", it is necessary to regulate in the direction of Trial in the absence of the defense if the defendant and the defendant's representative both agree because in this case the defendant does not have or has limited cognitive ability in a comprehensive way, so consent is required of the representative to ensure maximum presence of the defense attorney at the trial.

Third, add regulations on the time limit for resolving cases in which the accused or victim is under 18 years old

Due to their immaturity, the accused or victim during the proceedings will have anxiety, fear, and shame when facing their parents, friends, and people around them. There are even many cases where accused and victims under the age of 18 suffer psychological trauma, leading to a pessimistic mood and doing foolish things. The resolution of the case needs to proceed quickly, limiting negative impacts on the psychology of the accused and victims under 18 years of age. Accordingly, the author recommends that there should be specific regulations on the time limit for resolving cases where the participants in the proceedings, including the

accused and the victim, are people under 18 years old in the direction of the total time to resolve the case. The case is 1/2 to 2/3 of the time it takes to resolve a case for an adult.

Fouth, policy on handling of child offenders in particular and minors in general

The practice of handling criminal cases involving children and minors shows that the handling viewpoint is still heavily focused on deterrence and punishment without determining that punishment should only be used as a last resort; not paying attention to creating opportunities for juvenile offenders to correct and improve their behavior; inter-sectoral coordination is sometimes and in some places still lacking in synchronization and effectiveness; investment resources for the care and protection of juveniles in litigation activities have not met the needs;... These limitations are one of the reasons leading to the fact that the rate of juvenile offenders and recidivists is still high and tends to increase. Therefore, criminal justice policies for children and minors need to have a specialized approach, appropriate to their age and cognitive ability, and aim at the main purpose of educating, reforming, helping them to correct their mistakes, improve their awareness and behavior, and become good citizens for society (Binh, 2024).

4. Conclusion

Vietnam needs to continue to improve the capacity of its legal staff, organize exchanges, share and learn domestic and foreign experiences in developing laws to protect children's rights, with priority given to assessing the impact of policies related to children's rights before proposing to develop laws. In addition, the development of laws to protect children's rights must be compatible with the general provisions of international and regional law. In the trend of international economic integration, especially when Vietnam has an increasingly high position and reputation in international relations, legal reform, especially reforms in the development of laws to protect children's rights, is even more important. Criminal procedure law in general, and the 2015 Criminal Procedure Code in particular, have many new and progressive points to ensure the rights of accused people, victims, and witnesses who are children. Specific regulations on the principles of conducting proceedings, applying preventive measures or ensuring the right to defend the accused... have created an important legal corridor to protect the legitimate rights and interests of people. Children, resolving the case quickly and promptly helps limit psychological damage to them. In addition, these regulations still need to continue to be researched and amended based on further reference from international conventions as well as the legislative experience of other countries to become more and more complete.

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Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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