

HANDLING JUVENILE OFFENDERS UNDER CRIMINAL LAW IN VIETNAM

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I. INTRODUCTION

In Vietnam, juveniles¹ committing crimes are not handled by a separate court system, but the general criminal court system. However, as well as many other countries, Vietnam has special provisions, stipulated in the Penal Code² and Criminal Procedure Code,³ which are applicable to juvenile offenders. They provide the age subject to penal liability, principles for handling juvenile offenders, judicial measures and penalties applicable to juvenile offenders, the order and procedures of investigating, prosecuting, and adjudicating juvenile offenders and executing judgments. These provisions ensure that the handling of juvenile offenders aims mainly to educate them and help them redress their mistakes, develop healthily, and become citizens who contribute to society.⁴

Within the scope of this paper two main points will be presented. In Section I, the statistics of the Supreme People's Court of Vietnam will be outlined to show the situation of juveniles committing crime and the handling of same in recent years in Vietnam. In Section II, the current legal framework applicable to juveniles committing crime as well as challenges and disadvantages arising from legal proceedings will be discussed. My personal opinion on more effective measures will be given in the conclusion.

II. STATISTICS OF JUVENILE OFFENDERS IN VIETNAM

According to the statistics of the Supreme People's Court of Vietnam, the number of juveniles committing crime has not declined in recent years, but has continuously increased; specifically:

- In 2004 there were 2,540 juvenile offenders;
- In 2005 there were 5,305 juvenile offenders (twice as many as 2004);
- In the first nine months of 2006 there were 4,438 juvenile offenders.

The figures show that the number of juvenile offenders adjudicated each year constitutes from 6.5% to 6.9% of the total number of defendants adjudicated by the Vietnamese Courts. The majority of them were between 16 and 18 years old. Although there is no exact data on the application of penalties to juvenile offenders (warning, fine, non-custodial reform, termed imprisonment) recorded by the courts, in practice, many of them were sentenced to fixed terms of imprisonment.⁵ Also, the statistics show that juvenile offenders usually commit certain crimes, namely: intentionally inflicting injury on or causing harm to the health of other persons; plundering property (robbery); extortion of property; robbery by snatching; stealing property (theft); and breaching regulations on operating road vehicles. Specific figures are given in the following chart.

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¹ Article 18 of the Civil Code of Vietnam, "juveniles" are individuals under eighteen years of age.

² This Code was passed by the National Assembly of the Socialist Republic of Vietnam, Xth Legislature, at its 6th session on 21 December 1999, replacing the Penal Code of 1985.

³ This Code was passed by the National Assembly of the Socialist Republic of Vietnam, XIth Legislature, at its 4th session on 26 November 1999, replacing the Criminal Procedure Code of 1988.

⁴ Article 69(1) of the Vietnamese Penal Code.

⁵ Juvenile offenders who are given less than three years' imprisonment may be entitled to a suspended sentence if they meet the requirement of Article 60 of the Penal Code.

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Crime	2004	2005	First Nine Months of 2006
Intentionally inflicting injury on or causing harm to the health of other persons	374	653	527
Plundering property	552	822	772
Extortion of property	65	150	72
Robbery by snatching	117	380	312
Stealing property	650	1649	1259
Breaching regulations on operating road vehicles	99	179	144

According to a 1994 survey carried out by the Institute of Law Research of the Ministry of Justice, among 1,983 juveniles prosecuted, there were 377 recidivists; in 1995, the number of recidivists was 302 of 2,269 juveniles prosecuted; in 1996 the number of recidivists was 287 of 2,337 juveniles prosecuted. There is no exact data on the recidivism of juveniles in recent years recorded by the Vietnamese Courts. However, in practice, it is clear that the number of juveniles offending in recent years has risen. Also, many of them are drug addicts or alcoholics.

III. PROVISIONS APPLICABLE TO JUVENILES COMMITTING CRIMES

A. Age Subject to Penal Liability

Article 12 of the Penal Code stipulates that:

- “1. Persons aged 16 or older shall have to bear penal liability for all crimes they commit.
2. Persons aged 14 or older but under 16 shall have to bear penal liability for very serious crimes intentionally committed or particularly serious crimes”.

The very serious crimes mentioned in Article 12 above are those which cause very great harm to society and the maximum penalty bracket for such crimes is fifteen years' imprisonment. Also, particularly serious crimes are those which cause exceptionally great harm to society and the maximum penalty bracket for such crimes shall be over fifteen years' imprisonment, life imprisonment or capital punishment.⁶

In accordance with Article 12 of the Penal Code, Article 302(2) of the Criminal Procedure Code requires that in the process of investigation, prosecution and trial, the exact age of the juvenile offenders shall be identified. The identification of a juvenile offender's age can be based on his or her personal documents such as a birth certificate or a family household book. If the exact age cannot be found in such documents, the identification can be made in the locality where he or she was born or resides.

However, a problem arising from practice is that, in some cases, juvenile offenders do not have any type of personal documents. Also, the local authority does not have evidence to confirm the age of such juveniles. In order to deal with this problem, the Supreme People's Court issued the Official Letter No: 81/2002/TANDTC on 10 June 2002 to guide as follows:

- (i) If a specific month is identified, but not a specific day, his/her date of birth shall be determined as the last day of such a month;
- (ii) If a specific quarter of a year is identified, but not a specific day and a specific month, his/her date of birth shall be determined as the last day of the last month of such a quarter.
- (iii) If the first half or second half of a year is identified, but not a specific day and specific month, his/her date of birth shall be determined as the 30 June or 31 December respectively.

B. Principles for Handling Juvenile Offenders

The principles for handling juvenile offenders are provided in Article 69 of the Penal Code, accordingly:

⁶ Article 8(3) of the Penal Code.

1. The handling of juvenile offenders aims mainly to educate and help them redress their wrongs, develop healthily and become citizens useful to society.

In all cases of investigation, prosecution and adjudication of criminal acts committed by juveniles, the competent State agencies shall have to determine their capability of being aware of the danger to society of their criminal acts and the causes and conditions relating to such criminal acts.

2. Juvenile offenders may be exempted from penal liability if they commit less serious crimes or serious crimes which cause no great harm and involve many extenuating circumstances and they are received for supervision and education by their families, agencies or organizations.
3. The penal liability examination and imposition of penalties on juvenile offenders shall only apply to cases of necessity and must be based on the nature of their criminal acts, their personal characteristics and crime prevention requirements.
4. The courts, if deeming it unnecessary to impose penalties on juvenile offenders, shall apply one of the judicial measures prescribed in Article 70 of this Code.
5. Life imprisonment or the death sentence shall not be imposed on juvenile offenders. When handing down sentences of termed imprisonment, the courts shall impose on them lighter sentences than those imposed on adult offenders of the corresponding crimes.

Pecuniary punishment shall not apply to juvenile offenders who are from 14 to under 16 years old. Additional penalties shall not apply to juvenile offenders.

6. The judgment imposed on juvenile offenders aged under 16 years shall not be taken into account for determining recidivism or dangerous recidivism.”

The judicial measures set out in Article 69(4) include: education at communes, wards or district towns, or sending juveniles to reformatory school. However, in reality, these measures are rarely applied. Why judges decide not to use these measures is a controversial issue. There are some who state that these measures are often applied to less serious cases by the executive before the legal proceedings.⁷ Others suppose that some judges impose a penalty instead of judicial measures as they are afraid of taking a risk. Whatever the reason, this fact reduces the effectiveness of Article 69(4) and Article 70.

C. Arrest, Custody, Temporary Detention and Other Deterrent Measures

Article 303 of the Criminal Procedure Code provides:

1. Persons aged between 14 years and under 16 years may be arrested, held in custody or temporary detention if there are sufficient grounds prescribed in Articles 80, 81, 82, 86, 88 and 120 of this Code, but only in cases where they commit very serious offenses intentionally or commit especially serious offenses.⁸
2. Persons aged between 16 years and under 18 years may be arrested, held in custody or temporary detention, if there are sufficient grounds prescribed in Articles 80, 81, 82, 86, 88 and 120 of this Code, but only in cases where they commit serious offenses intentionally or commit very serious or especially serious offenses.
3. The bodies ordering the arrest, custody or temporary detention of juveniles must notify their families or lawful representatives thereof immediately after the arrest, custody or temporary detention is effected”.

Besides the provisions on arrest, custody and temporary detention, the Criminal Procedure Code allows

⁷ Under Vietnamese administrative law, juveniles violating laws may be subject to a form of sanctioning, administrative violation or other administrative handling measures, including: warning; fines; education at communes, wards, or district towns; sending to reformatory schools, educational establishments, or medical treatment establishments; or administrative probation. These sanctions and measures are decided by the executive.

⁸ Articles 80, 81, 82, 86, 88 and 120 of the Criminal Procedure Code are applied to criminals in general.

the investigating bodies, procuracies or courts to assign juvenile offenders to their parents or guardians for supervision so as to secure their appearance in response to summonses of the procedure. Persons assigned to supervise the juvenile offenders are required to do so closely, to oversee their behaviour and ethics and to educate them.⁹ This measure can be seen as a special deterrent measure applicable to juvenile offenders. It also increases the responsibility of juvenile offenders' parents and guardians to educate and help juveniles to redress their wrongs.

D. Defence

Under Article 57(2) of the Penal Code and Article 305 of the Criminal Procedure Code, juvenile accused or juvenile defendants must be assisted by defence counsel. Where they or their lawful representatives refuse to select defence counsel, the investigating bodies, procuracies or courts must request bar associations to assign lawyers' offices to appoint defence counsel for them or propose the Vietnam Fatherland Front Committee or the Front's member organizations to appoint defence counsels for their members. Where defence counsel is assigned, the counsel's fee shall be paid by the investigating bodies, procuracies or courts.

Although the provisions mentioned above ensure that the juvenile offenders are assisted by defence counsel in proceedings, the legal interests of juveniles may not be well protected. The problem arising is that, due to the low fees paid by the investigating bodies, procuracies or courts, the defence of juvenile offenders is often assigned to inexperienced lawyers. Also, in some cases, such lawyers may work irresponsibly. This fact badly affects the defence of juvenile offenders.

E. Trial

At first-instance, the trial panel shall be composed of one judge and two people's assessors.¹⁰ For serious and complicated cases, the trial panel may be composed of two judges and three people's assessors. According to Article 307 of the Criminal Procedure Code, where the defendants are juveniles, the composition of a trial panel must include a people's assessor (juror) who is a teacher or a Ho Chi Minh Communist Youth Union cadre. In addition, Article 302(1) requires that judges who handle juvenile defendants must possess the necessary knowledge of the psychology and education of juveniles as well as knowledge of activities to prevent and fight crime committed by juveniles. However, currently, there are no judges specializing in handling juvenile offenders in Vietnam. Therefore, personally, I think the provision of Article 302(1) is ineffective.

F. Participation in the Procedure by Families, Schools and Organizations

Under Article 306 of the Criminal Code, participation of families, schools and organizations in the criminal procedures of juvenile offenders is not only a right, but also an obligation; accordingly:

- “1. Representatives of the families of persons kept in custody, the accused or defendants, teachers or representatives of schools, the Ho Chi Minh Communist Youth Union or other organizations where the persons kept in custody, the accused or defendants study, work and live shall have the right as well as obligation to participate in the procedure under decisions of the investigating bodies, procuracies or courts.
2. Where the persons kept in custody or the accused are between 14 years and under 16 years old or juveniles with mental or physical defects, or in other necessary cases, the taking of their statements and interrogation must be attended by their families' representatives, except for the cases where their families' representatives are deliberately absent without plausible reasons. The families' representatives may inquire about the persons kept in custody or the accused, if the investigators so agree; they may produce documents, objects, make requests or complaints, and read the case files upon the termination of the investigation.
3. At the court sessions to try juvenile defendants, the presence of their families' representatives, except for the cases where their families' representatives are deliberately absent without plausible reasons, of their schools' and/or organizations' representatives is compulsory.

⁹ Article 304 of the Criminal Procedure Code.

¹⁰ A people's assessor, selected by the courts, is a person who meets the requirements set out in Article 29 of the Ordinance on Judges and Assessors of the People's Courts.

Representatives of the defendant's family and representatives of their school and/or organization attending the court sessions shall have the rights to produce documents, exhibits, to request or propose to change the procedure-conducting persons; to join in the arguing process, and lodge complaints about procedural acts of the persons with procedure-conducting competence, and court decisions".

G. Penalties Applicable to Juvenile Offenders

According to Article 71 of the Penal Code, juvenile offenders shall be subject to one of the following penalties for each offence:

- (i) Warning
- (ii) Fine
- (iii) Non-custodial reform
- (iv) Termed-imprisonment.

The Penal Code also has special provisions relating to fines, non-custodial reform and termed imprisonment applicable to juvenile offenders. Accordingly, a fine shall be applied as a principal penalty to juvenile offenders aged between 16 years and under 18 years, if such persons have income or private property. The fine levels applicable to juvenile offenders shall not exceed half of the fine level prescribed by the relevant law provision.¹¹

In respect of the non-custodial reform penalty, Article 73 of the Penal Code stipulates that when applying non-custodial reform to juvenile offenders, the income of such persons shall not be deducted. The non-custodial reform duration for juvenile offenders shall not exceed half of the term prescribed by the relevant law provision.

In relation to the termed imprisonment penalty, Article 74 of the Penal Code provides as follows:

"The juvenile offenders shall be penalized with termed imprisonment according to the following regulations:

1. For persons aged between 16 and under 18 when they committed crimes, if the applicable law provisions stipulate life imprisonment or the death sentence, the highest applicable penalty shall not exceed eighteen years of imprisonment; if it is termed imprisonment, the highest applicable penalty shall not exceed three quarters of the prison term prescribed by the law provision;
2. For persons aged 14 to under 16 when committing crimes, if the applicable law provisions stipulate life imprisonment or the death sentence, the highest applicable penalty shall not exceed twelve years; if it is the termed imprisonment, the highest applicable penalty shall not exceed half of the prison term prescribed by the law provision".

As mentioned above, although the Penal Code provides four types of penalties applicable to juvenile offenders, in practice, a penalty of termed imprisonment is regularly applied. In some cases the courts decide to impose a warning, fine or non-custodial reform on juvenile defendants.

H. Augmentation of Penalties in Cases of Multiple Crimes

Under Article 75 of the Penal Code, for a person who has committed more than one crime, of which the most serious was committed before he or she reached the age of 18 years, the common penalty shall not exceed the highest level prescribed in Article 74 mentioned above. If the most serious crime is committed after such person has reached the age of 18 years, the common penalty is the same as that applicable to adult offenders.

I. Serving of Imprisonment Penalties

Article 308 of the Criminal Procedure Code provides:

- "1. Juvenile offenders shall serve their imprisonment penalties according to a separate detention regime prescribed by law.

¹¹ Article 72 of the Penal Code.

It is forbidden to keep juvenile offenders together with adult offenders.

2. The juvenile convicts must be provided with job training or general education while they are serving their imprisonment penalties.
3. If the juveniles reach the age of 18 years while serving their imprisonment penalties, they shall be moved to be subject to the imprisonment regime applicable to adults.
4. For juveniles who have completely served their imprisonment penalties, the superintendence boards of their prisons shall have to coordinate with the administrations and social organizations in the communes, wards or townships in helping them to lead a normal life in society.”

The Penal Code also stipulates a special provision to reduce penalties served by juvenile offenders as follows:

- “1. If juvenile offenders, who are subject to non-custodial reform or imprisonment, have made good progress and already served one-quarter of their term, they shall be considered by the court for a penalty reduction; particularly for imprisonment, their penalty can be reduced each time by four years but only if they have already served two-fifths of the declared penalty term.
2. If juvenile offenders who are subject to non-custodial reform or imprisonment have recorded achievements or suffered from dangerous illnesses, they shall be immediately considered for penalty reduction and may be exempt from serving the remainder of their penalty.
3. For juvenile offenders who are subject to a fine penalty but fall into prolonged economic difficulties due to natural calamities, fires, accidents or ailments or who have recorded great achievements, the courts, at the proposal of the directors of the procuracies, may decide to reduce or exempt them from the remainder of the fine penalty.”

J. Remission of Criminal Records

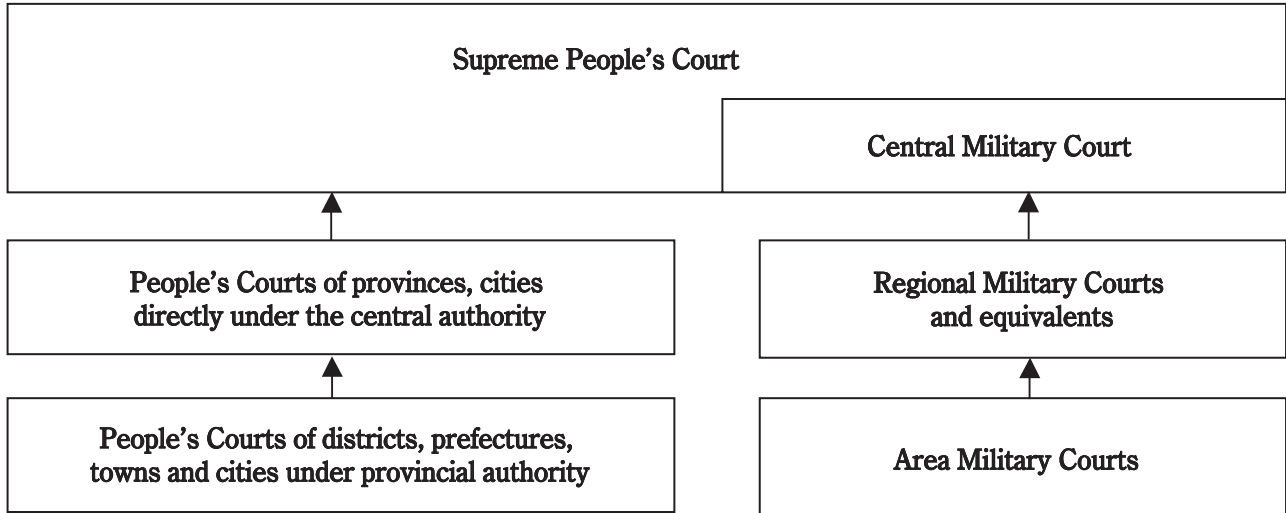
The time limit for criminal record remission for juvenile offenders shall be half of the time limits applicable to adult offenders. Juvenile offenders subject to judicial measures shall be considered as having no criminal records.¹²

IV. CONCLUSION

In spite of a quite good legal framework provided in the Penal Code and the Criminal Procedure Code, the number of juvenile offenders has continuously increased. It could be a result of poor implementation of existing relevant legislation. In my opinion, to make the juvenile justice system more effective, it is necessary to train the investigators, prosecutors and judges who specialize in handling juvenile offenders. Enlightening lawyers on their responsibility and necessary skills is also an effective remedy to protect juveniles' rights and prevent them from committing crimes.

¹² Article 77 of the Penal Code.

APPENDIX A
Court System of the Socialist Republic of Vietnam



APPENDIX B
Organization of the Supreme People's Court of Vietnam

