



NEW POINTS OF THE CRIMINAL PROCEDURE CODE 2015 ON PROCEDURES FOR PEOPLE UNDER 18 YEARS OLD

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Abstract:

The Criminal Procedure Code 2015 is defined as a fundamental and comprehensive amendment, including 510 articles, of which 176 new articles are added, 317 articles are amended, and 26 articles are annulled. The Code is created to meet the requirements of building and perfecting a socialist law-governed state of Vietnam and implementing the policy of judicial reform, meeting the practical requirements of the investigation, prosecution and adjudication and protect human rights. The article focuses on analyzing the new points of the Criminal Procedure Code 2015 on legal procedures for people under 18 years old.

Keywords: new points, Criminal Procedure Code 2015, proceedings, people under 18 years old

1. Introduction

Inheriting the regulations of the Criminal Procedure Code 2003, codifying the guiding documents, the Criminal Procedure Code 2015 more closely and specifically stipulates the procedures for taking statements from detainees in case of emergency custody, the arrested person, the temporary detainee, the victim, the witness; interrogation of suspects; confrontation is a person under 18 years old; amending and supplementing in the direction of minimizing the taking of statements, interrogation and confrontation for people under 18 years old, in order to ensure that legal activities are carried out in accordance with psychology, age and maturity level, the cognitive ability of people under the age of 18, assuring their rights and best interests, in accordance with the provisions of the International Convention on the Rights of the Child.

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2. Contents

In order to ensure that the handling of juvenile offenders is objective, accurate, humane, and in line with international standards, Criminal Procedure Code 2015 has had many new amendments and supplements to meet the requirements of judicial reform and international integration. Procedures for juveniles are specified in Chapter XXVIII of the Criminal Procedure Code 2015 with the name: *“Procedures for persons under 18 years of age”* include 18 articles (from Article 423 to Article 430). New points of Criminal Procedure Code 2015 on legal proceedings against persons under 18 years old are concretized:

Firstly, identifying the age of the accused and the victim. The Criminal Procedure Code 2003 did not have regulations on how to identify the age of the accused, the victim under 18 years old. Therefore, the presiding authorities face many difficulties in the settlement process. The Criminal Procedure Code 2015 has added a new regulation to identify the age of the accused, the victim under 18 years old, ensuring that it is consistent with the principle that benefits the accused as a juvenile. Accordingly: *“If the month of birth is identified but the day is unknown, the last day of that month shall be the day of birth; If the quarter when birth occurred is identified but the date is unknown, the last date of that quarter shall be the date of birth; If the half of the year when birth occurred is identified but the date is unknown, the last day of the final month of that half of the year shall be the date of birth; If the year of birth is identified but the date is unknown, the last day of the final month of that year shall be the date of birth”*. (Clause 2, Article 417). *“If the year of birth is not identified, age shall be determined through expert examination”* (Clause 3, Article 417).

Second, participants in legal proceedings. The 2015 Criminal Procedure Code adds 9 types of participants in legal proceedings, including:

- denouncers, informants, persons proposing charges;
- persons denounced or charged;
- persons held in emergency custody;
- persons arrested;
- witnesses;
- valuers;
- interpreters and translators;
- protectors of lawful rights and benefits of persons denounced or facing requisitions for charges;
- legal representatives of juridical persons committing crime.

Supplementing the arrested, the temporarily detained, suspects and defendants some of the following rights:

- be informed about legal decisions related to you;
- present evidences;
- confer on relevant evidences, documents and items and ask authorized procedural persons to inspect and evaluate such;
- give statements and opinions, have no obligation to testify against themselves or admit to guilt;

- requisition expert examinations, valuation; changes of valuers, interpreters and translators;
- read and write digital documents or copies of such regarding charges them from the case file after the end of investigation in accordance with the provisions of this Code, upon request;
- ask procedure participants if obtaining the Presiding judge's permission;
- some other rights.

Supplementing the rights and clarifying the obligations of civil plaintiffs, civil defendants, and persons incurring interests and duties from a criminal lawsuit. (Articles 63, 64 and 65):

- be given the evidences;
- be presented relevant evidences, documents and items and ask authorized procedural persons to inspect and evaluate such;
- requisition expert examinations, valuation; changes of valuers, interpreters and translators;
- be informed of the final settlement of the cases;
- be inquired and requested Court presidents to question courtroom participants;
- defend or have their legitimate rights and benefits defended and some other rights.

Supplementing the duty to conform the procedural decisions of competent agencies in order to strengthen their responsibilities in the process of settling cases in order to ensure a quick, timely and lawful settlement of the case.

Thirdly, the application of preventive measures, coercive measures. More specific provisions on arrest measures (Article 109): in order to ensure the specificity in the method of regulation on arresting measures; at the same time, to meet the requirements of international cooperation in criminal proceedings, the Criminal Procedure Code 2015 stipulates the arrest cases, including: emergency custody; arrest of perpetrators of crimes in flagrante; or wanted fugitives; capture of suspects and defendants for detention; arrest of persons for extradition.

Measures of emergency custody (Article 110): the Criminal Procedure Code 2015 specifically stipulates the case of emergency custody, namely, within 12 hours from the time of holding persons in emergency custody or taking in emergency detainees, investigation authorities and units assigned to investigate must conduct the following activities: take statements promptly; issue a temporary detainment order; issue an arrest warrant order on the detainee and deliver promptly to the equivalent procuracy together with relevant documents to the detention for approval or release of the detainee.

Supplement and strictly regulate the persons authorized to arrest detainees in case of emergency or temporary detainment (Article 110 and Article 117) The Criminal Procedure Code 2015 adds the authority to arrest people detained in an emergency, to temporarily detain a number of subjects belonging to Border protection force, Maritime police force, Fisheries Surveillance in association with the criterion of "*performing tasks in border areas, islands, far from specialized investigation agencies*", specifically:

- commander of an independent military unit at regimental level and equivalent one; commanding officers of border protection posts,
- commanders of border protection units at border gates,
- captains of border protection units in provinces and centrally-affiliated cities,
- heads of border reconnaissance departments and drug and crime departments of the border protection force,
- heads of special services against drug and crime of the border protection force;
- zone commanders of maritime police force;
- heads of specialized and legal departments of the maritime police force;
- heads of special service of drug enforcement of the maritime police force;
- heads of zonal bureaus of fisheries resources surveillances.

Specifying what to do immediately after arresting or receiving the arrested person (Article 104): in order to overcome the limitations of the current Criminal Procedure Code, the 2015 Criminal Procedure Code clearly stipulates the responsibilities of agencies that arrest or receive arrestees in case of wanted; responsibility of the agency that issued the wanted notices.

Fourthly, the rights of representatives, schools and organizations. In order to ensure the necessary support for persons under 18 and for the accurate and objective settlement of the case, Article 420 of the Criminal Procedure Code 2015 provides more complete provisions than Article 306 of the Criminal Procedure Code 2003 on the rights when participating in legal proceedings of representatives, schools and organizations of persons under 18, which are: representatives of persons less than 18 years of age can attend the session of deposition and interrogation of persons under 18.

Such representatives can submit evidences, documents, items, requests, complaints and charges. They can read, transcribe and photocopy documents related to charges against persons aged below 18 from the case file after investigative activities end; representatives of persons aged below 18, teachers and representatives of the school, Youth Union and other organizations, where persons aged under 18 pursue education and perform daily activities, shall have the right to present evidences, documents, items, requests, to requisition the replacement of presiding officers, to express opinions, arguments, and to file complaints against procedural acts.

Fifthly, the procedures for statement extraction, interrogation and confrontation. In order to ensure the procedures for statement extraction of persons held in emergency, persons arrested, persons held in custody, victims and witnesses; interrogation of the accused; confronting person under 18 in accordance with the law, avoiding violations, Article 421 of the Criminal Procedure Code 2015 stipulates the procedures for statement extraction, interrogation and confrontation person under 18 as follows:

When taking testimonies or interrogating persons under the age of 18, the competent procedural authorities must inform the defense counsel, representative and protector of such person's legitimate rights and benefits of the time and location of statement extraction or interrogation in advance. The defense counsel or representative must be present during the taking of depositions from person held in emergency custody,

apprehended or temporarily detained or during the interrogation of suspects. The representative or protector of legitimate rights and benefits of crime victims or witness testifiers must attend the deposition of such persons. The defense counsel and representative can pose questions, with the consent of the investigators or procurators, to the persons apprehended and detained or suspects under the age of 18. After competent individuals end each session of deposition or interrogation, the defense counsel and representative can raise questions to the suspects or persons held in emergency custody, apprehended or held in temporary custody.

There shall be at most, on daily basis, two sessions of deposition of persons under 18. Each session shall be less than 2 hours, unless the following case: firstly, the case comprises a variety of complex factors; secondly, interrogation of organized crime suspects; seeking of fugitive criminals; prevention of crimes; searching of tools or instruments of crime or other exhibits related to the case; cases with several complex facts.

Authorized procedural persons shall have suspects or defendants confronted with crime victims aged below 18 for the sole purpose of elucidating facts of the case if the case cannot be solved without confrontation.

Sixthly, the right to defense. Regarding the defense and protection of legal rights and benefits of defendants and litigants. Expanding the number of people guaranteed the right to defend (Article 72): supplementing the detainee in case of emergency, the arrested person is also guaranteed the right to defense.

Renewal of regulations on grant of defense registration (Article 78): replacing the issuance of the defense counsel certificate with procedures for registration of defense counsel. In 24 hours upon receiving sufficient documents as stated in law, competent procedural authorities must verify papers provided by defense counsel, if requirements are satisfied, competent procedural authorities shall enter information into a written record for registration of defense counsel, promptly send a notice of defense counsel to the entities registering such defense counsel. The written notice of defense counsel takes effect during legal proceedings.

Supplementing the rights and mechanisms to ensure defense counsels well exercise their statutory rights (Article 73), include:

- the rights to be present during the extraction of statements from arrestees;
- after authorized individuals end a session of statement extraction or interrogation, defense counsels may raise questions to arrestees, temporary detainees and suspects instead of only being asked when the competent procedural authorities agree as at present;
- be informed by competent procedural authorities of timing and location for taking statements or interrogating, and schedule and venue for other activities of investigation as per this Law;
- gather evidences;
- inspect, assess and confer on relevant evidences, documents and items and request authorized procedural persons to check and evaluate such;

- request competent procedural authorities to collect evidences, add or repeat expert examinations or reevaluate property;
- request the changes or termination of preventive and coercive measures;
- at the same time, supplementing the obligation of the defense counsel to be present at the request of the Investigation authorities, Procuracy;
- it is forbidden to divulge information on the lawsuit when participating in procedural activities related to the case or related to the person, they are defending to those who are not responsible for solving the case.

Besides, mechanisms for the defense counsel to make a good defense are also supplemented, such as:

- regulation of responsibilities of the procedural authorities to inform the defense counsel in advance of the time and place of conducting proceedings in which they are entitled to participate;
- regulation of procedures for meeting the accused persons who are being arrested, held in custody or temporary detention, procedures for handing over evidences, and procedures for reading, taking notes and copying documents in case files.

Expansion of cases requiring defense counsel (Article 76): supplementing the cases where defense counsel is required, including:

- suspects or defendants facing charges that may lead to the harshest sentence of 20 years in prison, life imprisonment or death as per the Criminal Code;
- persons facing charges and not capable of defending themselves due to physical defects; those with mental disabilities or those under 18 years of age (Article 76).
- stipulating an earlier time for defense counsels to participate in the proceedings (Article 72), since someone is arrested.

Regarding the protection of the legitimate rights and interests of persons denounced or charged, crime victims and litigants (Articles 83 and 84):

- it is stipulated that right from the stage of processing of denunciations, criminal information disclosed, persons denounced or facing requisitions for charges have already had the right to have protectors of their legitimate rights;
- the right to submit evidences, documents, items, requests;
- confer on relevant evidences, documents and items and ask authorized procedural persons to inspect and evaluate such;
- requisition expert examinations and valuation;
- the right to participate in legal proceedings to defend the persons denounced or charged, crime victims and litigants and some other rights.

Seventhly, the trial procedures. In the trial procedure, the provisions concretize and ensure that it is suitable for people under 18 years old, such as: Judge, the trial panel of the first-instance court must consist of a lay assessor who has been a teacher or Youth Union's official or possessed experience and psychological knowledge regarding persons less than 18 years of age.

The judge, when assigned to conduct procedures for a case involving a person under 18 years of age, must satisfy at least one of the following conditions:

- having experience in adjudicating cases involving persons under 18 years of age;
- having been trained, practiced and fostered in skills of solving criminal cases involving persons under 18 years of age;
- having been trained, practiced and fostered in psychology and educational science for people under 18 years old.

Lay assessors participating in the First-instance trial panel of a case involving a person under 18 years old must be a teacher, Ho Chi Minh Communist Youth Union's officials or someone with experience and psychological understanding of people under 18 years old.

Persons with experience and psychological knowledge regarding persons less than 18 years of age are those who have seniority in the field of justice, management, training, protection, care and education of persons under 18 years of age; people who are trained in educating youth, children or other people who have experience and psychological knowledge of people under 18 years old.

Specifying that in special cases where it is necessary to protect the defendant or the victim who is under 18 years old, the Court may decide to conduct a closed trial; Supplementing people who are required to attend the court hearing to best assist the defendant who is under 18 years old, including: the representatives of defendants aged under 18, representatives of the school, or organization where such defendants pursue education and do daily activities, unless such representatives are absent not due to force majeure or objective obstacles.

3. Conclusion

Assuring human rights is a very important issue, and this is always concerned and protected by the Party, State and people. The State has officially recognized and guaranteed human rights and citizens' rights, considering them as important institutions. The Criminal Procedure Code 2015 of our country has institutionalized the 2013 Constitution, which recognizes the protection of human rights and citizens' rights through various regulations. Regulations on temporary detention are one of the regulations aimed at protecting human rights and citizens' rights, which are directly those of people in temporary detention. The Criminal Procedure Code 2015 has many specific regulations on the friendly and humane procedures applied to persons under 18 years of age. Assuring the handling of people under 18 years old who commit crimes for their best interests and mainly for the purpose of educating and helping them to correct their mistakes, develop healthily, and become useful citizens for society, contributing to ensuring human rights and citizenship for the sake of a rich people, strong country, democracy, justice and civilization.

Conflict of Interest Statement

The author declares no conflicts of interest.

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