Lex Humana, v. 15, n. 3, 2023, ISSN 2175-0947
© Universidade Católica de Petrópolis, Rio de Janeiro, Brasil

PROVISIONS OF CRIMINAL LAW FOR CRIMINAL PEOPLE FROM FULL 14 YEARS OLD TO UNDER 16 YEARS OLD: SOME INNOVATIONS AND RECOMMENDATIONS

DISPOSIÇÕES DA LEI PENAL PARA CRIMINOSOS DE 14 ANOS A MENOS DE 16 ANOS: ALGUMAS INOVAÇÕES E RECOMENDAÇÕES

NGUYEN THI BAO ANH
Can Tho University, Vietnam
ntbanh@ctu.edu.vn

MAC GIANG CHAU
Can Tho University, Vietnam
mgchau@ctu.edu.vn

Received: 30 Jan 2023
Accepted: 21 April 2023
Published: 26 May 2023

Corresponding author:
ntbanh@ctu.edu.vn

Abstract: Children are the future of society, the next generation of humanity, so they also need age-appropriate protection, care and education. Children's violation of criminal law is an unavoidable social phenomenon in most countries. The countries' handling lines and criminal policies show humanity along with the general global trend, persons aged 14 to under 16 are not fully limited to criminal liability. This subject needs to be protected, but some provisions of the current criminal law still have many problems. Based on analyzing the provisions of the 2015 Penal Code (amended and supplemented in 2017), this article points out the shortcomings and recommendations to improve the criminal law of Vietnam.

Keywords: Minors. The age of criminal responsibility. diversion handling.

Resumo: As crianças são o futuro da sociedade, a próxima geração da humanidade, por isso também precisam de proteção, cuidados e educação adequados à idade. A violação da lei penal por crianças é um fenômeno social inevitável na maioria dos países. As linhas de tratamento e as políticas criminais dos países mostram humanidade junto com a tendência global geral, pessoas de 14 a 16 anos não estão totalmente limitadas à responsabilidade criminal. Esse sujeito precisa ser protegido, mas algumas disposições da legislação penal atual ainda apresentam muitos problemas. Com base na análise das disposições do Código Penal de 2015 (alterado e complementado em 2017), este artigo aponta as deficiências e recomendações para melhorar o direito penal do Vietnã.

Palavras-chave: Menores. A idade de responsabilidade criminal. Tratamento de desvio.

Lex Humana, v. 15, n. 3, 2023, ISSN 2175-0947
© Universidade Católica de Petrópolis, Rio de Janeiro, Brasil

1. Introduction

As a country, Vietnam is cognisant of the importance of nurturing its children. The generally accepted view is that Vietnamese children are the future owners of the country. This basically implies that the direction the country will take will be significantly influenced by how children are modelled. Minors who commit crimes are disadvantaged if they are taken through a legal system designed for adults. It should be noted that despite their nefarious acts, delinquent minors are not yet mature mentally, physically and emotionally and should not be subjected to the same processes as adults. Unicef Viet Nam (n.d.) has noted that Vietnam, just like many countries in the world, has a justice system designed for adults hence not child friendly. Unicef further notes that numerous alleged Vietnamese juvenile offenders (about 11,000) face barriers in their quest for justice. It is noted that the main challenges include *"weak coordination and strategic planning, limited child justice capacity, ineffective community-based diversion and alternatives to detention, lack of public awareness and reliable data collection"*(Unicef Viet Nam, n.d.).

Moreover, according to Unicef Viet Nam (n.d.) UNICEF has partnered with the government of Vietnam and civil society organisations to ensure the Vietnamese justice system is upgraded to protect the children who go through it. UNICEF has advocated for programmes involving communities to develop solutions to juvenile delinquency and rehabilitate child offenders. This approach is a positive step because imprisonment alone cannot solve the problem of juvenile delinquency. Involving the community in keeping minors from crime is the best approach. One of the benefits is that the community can take up an educational role whereby minors are educated and sensitized against crime. The upside of this approach is that crime is prevented before it happens. The other facet of involving communities involves educating the community on the importance of embracing former juvenile offenders once they reform after rehabilitation. All in all, the ideal situation is whereby imprisonment of juvenile offenders occurs only after all other possible interventions have been exhausted.

Vietnam has recently faced a worrying persistence in juvenile crime. This trend calls for the nation to act collectively and decisively to deal with the problem before it is too late. On this front, Vietnam has made significant strides in legislating on issues concerning minors involved in breaking the law. Since 2013, Vietnam has worked intensively on the aspects of the law that deal with minors breaking the law and preventing crime among minors and also how to integrate juvenile offenders within the community once they are rehabilitated. Trang (2022, p.2018) states that juvenile crime is addressed in *"the section on juvenile principles and regulations. Specifically, the*

Children's Law, the Criminal Code, the Criminal Procedure Code, and the Law on Handling of Administrative Violations have provisions for prevention, handling principles, education, and community reintegration for people under 18 years old"

It is to be understood that in any country, some juveniles getting involved in delinquency is not a new phenomenon. According to Trang (2022, p.222), data gathered in the *"Red River Delta, Nothern Midlands, Mountainous North Central Coast and South Central Coast, Central Highlands, Southeast, and Mekong River Delta"*showed a degree of juvenile delinquency prevalence. The 2018 data showed that the highest cases of minors breaking the law and getting prosecuted were recorded in the North Central and South East Coast. The two regions recorded 1052 and 777 juvenile prosecutions, respectively. Disturbingly, the cases reported in the two regions represented more than 50% of the entire juvenile crime prosecutions in Vietnam. On the other hand, the northern midlands and the Mountainous regions recorded the lowest instances of juvenile delinquency prosecutions(Trang, 2022, p. 222 citing Vietnam Ministry of Justice and UNICEF, 2019, p.40).

The concept of a child is not the same as that of a juvenile, although both refer to a person who has yet to fully develop physically and mentally without full legal rights and obligations (Dan,2021,p.15). According to Clause 1, Article 21 of the 2015 Civil Code Persons under 18 are collectively referred to as minors. However, as per Article 1 of the 2020 Youth Law, a person from full 16 years old to under 18 years old can be called a "youth". Meanwhile, Article 1 of the 2016 Children Law stipulates that people from full 14 years old to under 16 years old are called "children". The two concepts "youth" and "child" not only describe and mark the process of physical and psycho-physiological development but also represent the legal assessment of the relationship between age and nature, as well as the level of danger to society of criminal law violations (Khoi, 2012, p.47).

According to Cuong (2022, p.58) the status of juveniles, especially children, violating the law is always a painful problem for society. According to some statistics, the rate of committing law violations among minors in the whole country is 5.2% for people under 14 years old, 24.5% for people from 14 to under 16 years old and 70.3% for people from 16 to under 18 years old. The trend of increasingly younger offenders leads to many concerns for the morality and safety of the community.

Along with the above trend are the State's measures to prevent and control crimes committed by minors. Criminal law policy has undergone many changes to adapt to the new situation. The 2015 Penal Code (amended and supplemented in 2017) has made many changes

related to people from full 14 years old to under 16 years old committing crimes. Emphasis is placed on educational rather than punitive purposes, expanding the application of diversion handling measures and emphasizing restorative justice. However, because it is a new issue, some regulations still need to improve, affecting the feasibility of applying the law to those from full 14 years old to those under 16 years old who commit crimes.

A look at the nature of minors who broke the law shows a disturbing trend. Many offenders had an element of adult involvement, either directly or indirectly. Statistics show that between 2006 and 2010, 34% of the minors who broke the law did it with an adult and, in some cases, with their parents (Vietnam Ministry of Justice and UNICEF, 2019,p.77). Moreover, the type of families from which the minors who broke the law came also impacted crime. Earlier research conducted between 2006-2010 showed that many minor offenders came from low-income families, families experiencing domestic violence, families where one or both parents had been convicted of a crime before, broken families, single-parent families, etc. (Vietnam Ministry of Justice and UNICEF, 2019,p.77).

The 1989 International Convention on the Rights of the Child has also addressed the issue of children who go through the justice system. The convention noted that although not a desirable situation, some children might, unfortunately, find themselves at loggerheads with the justice system of their respective countries. Article 40 (1) of the 1989 International Convention on the Rights of the Child says,

> States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society (UN General Assembly, 1989).

The convention in this article has emphasized how a minor accused of breaking the law must be treated. It is imperative to note that the convention calls for such a child to be treated with dignity. The logic behind this is that a child handled with respect and dignity will learn the importance of respecting other people's rights. Also, article 40 (1) of the 1989 Convention on the Rights of the Child stresses the importance of a justice system acknowledging that children are what they are (children) and not miniature adults. The legal systems of various countries have been designed to accommodate the age and level of development of minors who break the law.

In the same Article 40 (2), the International Convention on the Rights of the Child has set out the obligations for state parties regarding children who break the law. In Article 40(2)

(a) Children are protected from any offences not deemed to be offences by the type they were committed in the national and international law. This means that children are protected from retrospective legislation.

(b) i. Children accused of committing an offence will be deemed innocent until proven guilty.

ii. Children should be informed promptly of all accusations levelled against them. Then they shall be assisted either by their parents, guardians, or the State to retain the services of a counsel to help them prepare their defence.

iii. Children are entitled to a prompt, fair trial by an impartial hearing. The accused child has a right to a lawyer or any other assistance that will help argue his case. Also, unless it is deemed that the presence of a guardian or parent is not in the child's best interest, they should be present during the trial (UN General Assembly,1989).

Further, Article 40 (3) of the international convention on the Rights of the Child says that,

> 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
> 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence (UN General Assembly, 1989).

Therefore, it is clear that the International Convention on the Rights of the Child article 40(3) a. recognizes that there is a need for state parties to have specific legislation regarding age limits for children who are said to have infringed the law. The convention is also in Article 40(3) b. The convention further advocates for (whenever possible) tackling issues regarding children breaking the law without using judicial proceedings. Judicial proceedings should be the last option. Article 40 (4) also encourages states to adopt other measures of dealing with children who break the law but not imprisonment. The convention foresees a situation whereby the imprisonment of children will affect their general well-being. Hence, alternative methods such as counselling, probation and education would be more appropriate for dealing with children offenders.

2. Methods

This article is based on library study methodology. The author of the article has analysed existing publications related to the scope of the study to come up with the final article.

3. Results

Vietnam does not have a centralised system for collecting, analysing and reporting crimes committed by juvenile offenders. Hence, according to the Vietnam Ministry of Justice and UNICEF (2019, p.61) different officers, for example, officers under the Criminal police department, officers working in the supreme court procuracy, officers within child justice adjudications etc., collate their data on minors who break the law according to their roles and the systems available for their office. The collected data falls under six major categories:

"(1) General statistics on minor offenders;

(2) Exemption of criminal liability of minors in contact with the law(MICWL) for supervision by families and organizations;

(3) Custody and pre-trial detention;

(4) Profile of MICWL;

(5) Sanctioning; and

(6) Reintegration" (Vietnam Ministry of Justice and UNICEF, 2019.p. 62)

According to available Criminal Police Department, Ministry of Public Security data from 2006-2018 of the total number of offences committed by minors, the number of minors between the age of 14 years and 16 years of age accused of breaking the law decreased from 34.8% in 2006 to 24% in 2018 (Vietnam Ministry of Justice and UNICEF, 2019.p. 73. The nature of crimes committed by minors from 2004-2015 ranged from homicide 9.3%, deliberately causing harm to other people 13.6%, rape of children 24.5%, robbery 12.6%, Snatching 3.6%, Theft 12%, deliberate destruction of property 23.2%, drug-related crimes 16.6%, gambling 4.7% among others (Vietnam Ministry of Justice and UNICEF, 2019, p. 75).

According to the provisions of Article 12 of the 2015 Penal Code (amended and supplemented in 2017), persons from full 14 years old to under 16 years old only have to bear penal liability for grave and severe crimes specified in Article 28 of the 2015 Penal Code (amended and supplemented in 2017). These crimes infringe on virtual objects such as life, health, honour, human dignity, property infringement, drug-related crimes, public safety and

order violations. From here, it can be seen that people from full 14 years old to under 16 years old do not fall into the case where the statute of limitations does not apply (Point d, clause 2, Article 27 of the 2015 Penal Code (amended and supplemented in 2017). Instead, the statute of limitations for criminal prosecution is applied as a general rule, 15 years for grave crimes[1] and 20 years for severe crimes.

For persons from full 14 years old to under 16 years old committing a crime, based on the nature and degree of danger to society of the crime, the law also applies different handling methods:

- Persons from full 14 years old to under 16 years old committing grave crimes:

+ The investigation agency, procuracies or Court may be exempt from penal liability and apply supervision and education measures if the following conditions are fully satisfied: (i) Belonging to the case specified at point b Clause 2, Article 91 of the 2015 Penal Code (amended and supplemented in 2017); (ii) Many extenuating circumstances; (iii) Voluntary redress of most consequences; (iv) Not in the case of exemption from criminal liability specified in Article 29 of the 2015 Penal Code (amended and supplemented in 2017); and (v) The offender or their legal representative agrees. Persons from full 14 years old to under 16 years old committing grave crimes specified at point b, clause 2, Article 91 of the 2015 Penal Code (amended and supplemented in 2017) may only be applied one of the two measures of supervision and education, which are conciliation in the community and education in communes, wards and townships.

+ Non-custodial reform is applied.

- Persons from full 14 years old to under 16 years old committing severe crimes, the Courts shall impose a term of imprisonment. This regulation's theoretical and practical reasons stem from the characteristics of severe crimes. Although this is the type of crime with the highest nature and level of danger to society, applying non-punitive diversion measures will not guarantee the meaning of criminal prosecution (Clause 1, Article 100 of the 2015 Penal Code (amended and supplemented in 2017).

Besides, regardless of the case where a person from full 14 years old to under 16 years old commits a grave or severe crime, if he is an accomplice who plays an insignificant role in the case and meets the conditions, there may be exempt from criminal liability and apply reprimand (Point b, clause 1, Article 93 of the 2015 Penal Code (amended and supplemented in 2017).

[1] Clause 3, Article 14 of the 2015 Penal Code (amended and supplemented in 2017).

Unlike the discrimination on subjects applied in punishment and measures of supervision and education, according to Clause 1, Article 96 of the 2015 Penal Code (amended and supplemented in 2017) persons from full 14 years old to under 16 years old who commit crimes can be applied by the Courts to educational institutions in reformatory schools, with a term of 01 to 02 years; also, as per Clause 1, Article 430 of the 2015 Criminal Procedure Codethe Jury shall decide in the judgment if it deems it unnecessary to apply a penalty. Therefore, the educational judicial measure in reformatory schools is not a diversion handling measure but a form of criminal liability (Hoa, 2020, p.39).

In addition, the provisions of the law on deciding penalties for persons from full 14 years old to under 16 years old committing crimes have the following specific features:

+ According to Clause 2, Article 101 of the 2015 Penal Code (amended and supplemented in 2017) the maximum term of imprisonment is 12 years if the law applies the penalty of life imprisonment or the death penalty. If the law provides for a term of imprisonment, the penalty shall not exceed one-half of the sentence prescribed by that law. In addition, according to Articles 103 and 104 of the 2015 Penal Code (amended and supplemented in 2017)when summarizing the penalties, the term of imprisonment does not exceed 12 years.

+ They only have to be criminally responsible for preparing to commit murder (Article 123) and robbery (Article 168)[2], accounting for only 2/25 of the laws providing for criminal liability for preparing to commit a crime (Clause 2, Article 14 of the 2015 Penal Code -amended and supplemented in 2017). Also, according to Clause 2, Article 102 of the 2015 Penal Code (amended and supplemented in 2017) the maximum penalty for preparing to commit a crime is at most one-third of the prescribed penalty.

+ For uncompleted crimes, the maximum penalty is one-third of the penalty level of non-custodial reform and fixed-term imprisonment (Clause 3, Article 102 of the 2015 Penal Code (amended and supplemented in 2017).

+ It is considered that there is no criminal record as per Point a, Article 107 of the 2015 Penal Code (amended and supplemented in 2017) and, therefore, going by Clause 7, Article 91 of the 2015 Penal Code (amended and supplemented in 2017) the sentence issued is not valid to determine recidivism or dangerous recidivism.

It should be noted that although criminal law provides 4 types of penalties that can be applied to persons under 18 committing crimes, those from full 14 years old to under 16 years old committing crimes can only apply non-custodial reform detention and term imprisonment.

[2] Clause 3, Article 14 of the 2015 Penal Code (amended and supplemented in 2017).

The warning penalty is not specified in Section 4, Chapter XII of the 2015 Penal Code (amended and supplemented in 2017), so the general provisions must be applied as stipulated in Article 90 of the 2015 Penal Code (amended and supplemented in 2017). In addition, in line with Article 34 of the 2015 Penal Code (amended and supplemented in 2017) this penalty is not listed in the penalty bracket for any crime, so the Court only applies it when: (i) committing a less severe crime and (ii) there are many extenuating circumstances, but not to the extent of punishment. Those from full 14 years old to under 16 years old committing crimes are not criminally responsible for less serious crimes, so this penalty cannot be applied. As for the fine, although it applies to grave crimes as defined in Point b, clause 1, Article 35 of the 2015 Penal Code (amended and supplemented in 2017) it has been excluded to apply only to people from full 16 years old to under 18 years old who have income or own property as laid out in Article 99 of the 2015 Penal Code (amended and supplemented in 2017).

4. Discussion

4.1. Regarding exemption from criminal liability and application of supervision and education measures

Firstly, applying a diversion handling measure with a waiver of criminal liability contradicts the presumption of innocence principle.

If, in essence, criminal liability is a form of legal liability "*that is the state's response to law violations*" (Hien, 2018, p.139), criminal responsibility will also be the State's response through the application of legal consequences to violations of criminal law, namely, crimes and through crimes effect on people who already have enough constitutive elements, offenders, on the basis that only people who commit a crime prescribed by the Penal Code should bear penal liability as seen in Clause 1, Article 2 of the 2015 Penal Code (amended and supplemented in 2017).

Exemption from criminal liability is an institution associated with criminal liability which does not force a subject to be criminally responsible. Therefore, like criminal liability, exemption from criminal liability can only be applied to persons with criminal responsibility - offenders. If, according to this understanding, the authority to exempt criminal liability belongs only to the subject who can declare the existence of a crime and someone is the offender, that is the Court. Only the Court, through a fair trial and a valid judgment, has the power to convict a crime and the right to immunity from criminal liability. Therefore, the exemption from criminal liability in the case of diversion handling will be extremely complicated because it is difficult to determine

whether criminal responsibility is present when the proceeding agency applies the diversion handling measure (Phuong,2018, p.52-53).

Currently, based on the provisions of current law, it can be seen that the exemption from criminal liability and the application of supervision and education measures for persons from full 14 years old to under 16 years old committing crimes is simply a measure of conditional criminal liability, according to Report No. 77/BC-BTC of the Vietnam Ministry of Justice (2015) that is, "*applying preventive educational measures instead of unconditionally releasing them*".

From there, the author recommends applying supervision and education measures without being exempt from criminal responsibility, ensuring the principle of presumption of innocence.

Secondly, the conditions for admitting the crime have yet to be clearly defined

The current criminal law in Clause 2, Article 91 of the 2015 Penal Code (amended and supplemented in 2017 only recognizes that a person from full 14 years old to under 16 years old "voluntarily overcomes most of the consequences". From this provision, it is difficult to speculate that a person from full 14 years old to under 16 years old admitted to having committed the offence. Furthermore, the law does not recognize the voluntary recognition of one's behaviour as a prerequisite for applying criminal liability exemption and diversion measures (Chi & Vu, 2022, p.71). It is a rather important issue because this subject may not commit a crime but is subject to a handling measure, recognising the crime.

The diversion measure is only available when the accused consents, which can be a form of admission of offence. However, the consent of the legal representative also has the same effect. Using the word "or" by the law leads to conflicts about the agreement to exempt from criminal liability and apply supervision and education measures between the offender and the legal representative, that which party's opinion will be followed. Based on the wording of the law, there is a view that when there is a conflict of opinion, agreeing to be exempt from criminal liability and applying supervision and education measures between the offenders under 18 years old and their legal representatives will base on the point of view of the party agreeing to apply (Xuyen, 2022, p.65). If a person from full 14 years old to under 16 years old disagrees, this opinion will not be accepted and will not show the will to admit the crime.

The above problem stems from the fact that the State thinks it knows what is good for society and those accused. Meanwhile, the determination of what society needs and what the accused needs from criminal justice should come from those subjects' positions and personal needs. The State is defaulting on the person being prosecuted for criminal responsibility as guilty,

and the diversion measure will benefit them. This way of thinking leads to a somewhat coercive regulation from the State, needing more will directly apply to the subject.

Therefore, it is necessary to clearly define the condition for applying the diversion handling measure when it is agreed upon by the accused. For example, suppose there is a difference of opinion between the accused and their representative; the opinion of the accused person should be applied since the diversion measure is only well applied with the cooperation of the applied person.

Thirdly, excluding some crimes at point b, clause 2, Article 91 of the 2015 Penal Code (amended and supplemented in 2017) is inappropriate.

Persons from full 14 years old to under 16 years old have to take penal liability for grave crimes specified in 28 articles; however, the cases where supervision and education measures are applied only account for half of the law's total articles (14/28). Therefore, the remaining 14 articles are excluded from the application. The legislators needed to explain the reason for the above exclusion clearly. However, based on Section I.7 of Report No. 77/BC-BTC of the Ministry of Justice report (2015) they only stated that they were "*expanding the subjects exempt from criminal liability for grave crimes, but also excluding some dangerous crimes*".

Thus, the 14 excluded types of crimes will be more dangerous than the 14 applied types of crimes. This argument is entirely unreasonable because all 28 crimes are grave. Although it cannot be denied that the more critical the act of infringing on objects (social relations) is, the more dangerous it is and should be dealt with strictly (Beo, 2019,p.141). Nevertheless, practice and theory require a distinction that shows the offence's danger and the punishment level. In criminal law science, there are 4 criteria to classify crimes, including (i) The nature of danger; (ii) The degree of danger; (iii) The nature of the fault; (iv) Sanctions. The criterion of sanctions (maximum and minimum levels of the penalty frame) is a legal criterion for criminal justice agencies to classify crimes. It also reflects the perception of criminals legislator for the remaining 3 criteria (Cam, 2005,p.319-322).

Along with the two grave crimes with the penalty frame ranging from 07 to 15 years in prison, it is difficult to judge which is more dangerous. Besides, there are also cases where the object cannot wholly decide, comparing the crime of property robbery (clauses 2 and 3, Article 171) with the object being the personal rights and property ownership of the individual with the crime of terrorism (clause 2, Article 299) has the object of public safety, public order, life, bodily freedom, citizens' health and properties of agencies, organizations and individuals. Moreover, between private and public interests, crimes involving private interests are excluded, while crimes

involving public interests apply. All comparisons seem lame, but this example can demonstrate how this rule is entirely unscientific.

In addition, the excluded crimes have many that occur in the group of people from full 14 years old to under 16 years old with apparent damage and victims. Again, this leads to impractical regulation.

Therefore, removing the exclusions specified at point b, clause 2, Article 91 of the 2015 Penal Code (amended and supplemented in 2017) is recommended so that the competent authority can decide depending on the case. The Court shall apply diversion handling measures to persons from full 14 years old to under 16 years old who commit grave crimes.

4.2. Regarding criminal prosecution with the act of preparing to commit a crime

Crime preparation is one of the stages of committing a crime, appearing only in intentional crimes. Nevertheless, after all, preparing to commit a crime is not yet an objective act of the crime; that is, the crime has not been committed, although it is dangerous, but at a low level. In some countries, preparation to commit a crime is regulated by specific laws with an independent component (Son, 2018, p.118-119). On the other hand, it is challenging to prove the offender (only a preparatory act) about a particular crime. It always carries the risk of presumption of guilt for the preparer when it is difficult to determine.

In the Draft Penal Code (amended), legislators have proposed not to criminally handle people from full 14 years old to under 16 years old who have prepared to commit a crime following the humanitarian spirit, avoiding deduction and imposition in criminal proceedings (Drafting Committee of Penal Code, 2015). However, when the Penal Code was passed in 2015, people from full 14 years old to under 16 years old must be held criminally responsible for preparing to commit a crime for 04 crimes as set stipulated in clause 3, Article 14 of the 2015 Penal Code, including: Murder (Article 123), Intentionally causing injury or harm to the health of others (Article 134), Robbery (Article 168) and Kidnapping to appropriate property (Article 169 , and then clause 4, Article 1 of the Law No. 12/2017/QH14 amended and supplemented the number of articles of the Penal Code No. 100/2015/QH13 has reduced to 02 crimes.

The regulation of criminal liability for the act of preparing to commit the crime of murder and robbery of persons from full 14 years old to under 16 years old is not appropriate. Because, as analyzed above, preparing to commit a crime has a low level of danger to society and is also heavily speculative, the application to people from full 14 years old to under 16 years old will not guarantee education and the need for criminal prosecution. Besides, the maximum penalty for

preparing to commit a crime is 05 years in prison. According to the regulations on the classification of crimes, this is only a grave crime.

Meanwhile, people aged 14 to under 16 are prosecuted for penal liability for grave and severe crimes. This regulation is unnecessary and has not considered the crime's dangerous nature and the crime prevention requirements. Therefore, it is necessary to abolish the regulation on the criminal prosecution of persons from full 14 years old to under 16 years old preparing to commit crimes in Clause 3, Article 14 of the 2015 Penal Code (amended and supplemented in 2017) and related regulations.

4.3. Regarding the statute of limitations for criminal prosecution

Clause 1, Article 90 of the 2015 Penal Code (amended and supplemented in 2017) deals with handling offenders from full 14 years old to under 16 years old to ensure their best interests and educate and help them correct their mistakes, develop healthily, and benefit society. The above principle comes from the humanitarian point of view of the State towards children, who are not fully developed and vulnerable, and this is also a subject that needs to be protected. Therefore, the law has introduced non-punitive handling measures for this subject.

Therefore, the law has introduced non-punitive handling measures for this subject.

Through the review, we can realize that a common point of the measures is to educate and help them develop healthy and suitable only for offenders who are underage at the time of application. In cases where the offender is an adult, it is not compatible. The most evident proof that non-punitive measures are only suitable for minors is in the presence of a legal representative, while for adults, it is not necessary. Legislators overlook adult subjects during a criminal prosecution, forgetting that people from full 14 years old to under 16 years old are at the time of the crime, not at the time of trial (Tuyen,2021, p.104). There is always a certain skewness between the time of committing the crime and the time of criminal prosecution for various reasons. Then, if it is acknowledged that the juvenile has not yet fully developed awareness, it is clear that the adult is at the time of application.

Thus, if a case takes many years to catch the offender, it is undoubtedly difficult for the Court to apply the measure of education in a reformatory. Because maybe, during that undetected time, the offender has changed, becoming a valuable citizen of society. However, the statute of limitations for criminal prosecution for them remains unchanged, and penalties must

Lex Humana, v. 15, n. 3, 2023, ISSN 2175-0947
© Universidade Católica de Petrópolis, Rio de Janeiro, Brasil

be applied. In this case, prosecuting criminal liability does not guarantee the purpose but may lead to the opposite result (Beo, 2019, p.448).

Therefore, it is necessary to have a special provision for the statute of limitations for criminal prosecution for those from full 14 years old to under 16 years old committing crimes and stemming from the theory that the perception of age can change over time, as well as in line with the humanitarian point of view of the statute of limitations for a criminal prosecution, which is to allow offenders to correct mistakes and become valuable citizens of society. Referring to the provisions of the Article 29 of the Criminal Code in the 1996 Russian Federation, the statute of limitations for criminal prosecution against juveniles is reduced by half. However, based on this reference, the author only proposes to reduce by half the statute of limitations for criminal prosecution for persons from full 14 years old to under 16 years old committing crimes, while other subjects still keep the statute of limitations for criminal prosecution the same as current law.

5. Conclusion

The 1989 United Nations Convention on the Rights of the Child in Article 40 (3) (b) states: "*Whenever it is deemed appropriate and necessary, measures should be taken to deal with children who violate the criminal law, without resorting to the judicial procedure, provided that human rights and legal protections are fully respected*".

The article has also noted that many minors aged between 14 and 16 are involved in breaking the law. The reasons for this behaviour are diverse and Vietnam. Also, Vietnam has tried to develop legislation that would help combat cases of minors breaking the law while still nurturing them as children. It is also seen that Vietnam has to a certain degree, come up with a law that addresses the cases of minors between 14-16 years of age in line with Article 40 of the 1989 International Convention on the Rights of the Child. This means offenders between the ages of 14 and 16 are not tried and sentenced as adult offenders.

According to Jelil (n.d.) As the first country in Asia and the second in the world to ratify the Convention, Vietnam has always been at the forefront of child rights protection, especially as one of the few countries in the region of East Asia and the Pacific that adopts a minimum age of criminal responsibility of from full 14 years of age, consistent with the recommendations of the Committee on the Rights of the Child.

In addition to those successes, the current criminal law for people from full 14 years old to under 16 years old has several provisions that overemphasize the diversion handling without respecting other fundamental rights of the accused (right to be presumed innocent); some regulations are punitive but lack the purpose of education and re-education of offenders into valuable citizens for society. Through this article, the author wishes to improve Vietnamese law's provisions to protect children's and the accused's rights within a solid criminal law framework.

Reference

Beo, P.V. *Criminal Law of Vietnam (Volume 1: General part).*National Political Publishing House..

Cam, L.V. (2005). *Basic issues in criminal law science (Common part).* Vietnam National University Press, Hanoi.

Chi, T.K. & Vu, T.T. (2022).Diversion handling of juvenile offenders – Australia's experience in improving Vietnamese law. *Journal of Jurisprudence*, 9, 62-77.

Convention on the Rights of the Child(n.d.) https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child,.

Criminal Code of the 1996 Russian Federation. (n.d.) https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.html .

Cuong D.V. (2022). Some issues about the increasingly young crime trend. *Journal of the Law Profession*, 2. , 57-63.

Dan, N.L. (2021) .Legal age of children: Some theoretical and practical issues.*Journal of Industry and Trade*, 23, 14-19.

Drafting Committee of Penal Code (amended). (April 2015). *Detailed explanation of draft Penal Code (amended).*Hanoi.

Hien, P.T. (2018). *Theory of the state and law (Volume 2).* National Political Publishing House, Hanoi.

Hoa, N.T.P. (2020). Measures of education in reformatories according to the provisions of the Penal Code and recommendations for improvement. *Journal of Jurisprudence*, 8, 36-45.

Jelil, Y.A. (n.d.).Protecting Children: Harsh punishing children who break the law does not stop crime. UNICEF Portal, https://tth.vn/ctVe .

Khoi, H.M. (2012).The concept of juveniles and juveniles who violate the law in current legal documents. *Journal of State Management*, 200, 46-50.

Phuong, H.T.T.(2018).Discussing the exemption from criminal liability under the Criminal Law of Vietnam based on the presumption of innocence. *Journal of Legal Science*, 4, 47-54.

Report No. 77/BC-BTC dated March 26, 2015, of the Ministry of Justice synthesizing, absorbing and explaining opinions of ministries, branches and localities on the (amended) Penal Code project.

Son, H. S. (2018). *Criminal Law Comparison*.National Political Publishing House, Hanoi.

The 2015 Civil Code.

The 2015 Criminal Procedure Code.

The 2015 Penal Code (amended and supplemented in 2017).

The 2016 Children Law.

The 2020 Youth Law.

Trang, N.T. (2022) .Juvenile delinquency: theory, reality, and reasons in Vietnam. *Indonesia Law Review*,11(2), 217-227 DOI: 10.15742/ilrev.v11n2.6

Tuyen, P.K. (2021). Protecting human rights in deciding penalties for people under 18 who commit crimes in Vietnam today. *Journal of Human Rights Law*,1, 102-113.

UN General Assembly.(1989). Convention on the Rights of the Child, 20 November 1989, United Nations, *Treaty Series*, 1577,3. https://www.refworld.org/docid/3ae6b38f0.html .

Unicef Viet Nam, (n.d.)Child Justice. https://www.unicef.org/vietnam/child-justice.

Vietnam Ministry of Justice and UNICEF. (2019).Analysis Report: The Child Justice Legal Framework and Situation of Minors in Conflict with the Law in Vietnam.

Xuyen, N.T. (2022). Completing the provisions of the 2015 Penal Code on supervision and education measures applied to people under 18 years old. *Journal of Law Profession*,7 61-65.