
Further improving of juvenile criminal justice system in China

Xie Gangju

China University of Political Science and Law

Before that the full liberalization of the effectiveness of two-child policy has not yet got great results, the only child of minors will continue to give priority in China, so if in the one-child family underage children start a life of crime, then the results for the whole family will be unimaginable, fight against with which will cause catastrophic and devastating, truly, it can be a difficult and painful process. However, as a country, where live nearly 400 million minors, like China, the healthy growth of minors directly related to the future of the country and the nation.

A) First, in the "Criminal Procedure of People's Republic of China" , which is established in 2012, the "proceedings in juvenile criminal cases" got great significance.

Juvenile Criminal Justice has always highly valued the rule of law around the whole world, of course including in China. Nowadays in most of countries in the world have established a relatively sound and blameless juvenile justice system. After centuries of legislation, accumulation of judicial practice in this area has accumulated more profound legal basis of consensus, where have been achieved a lot of consequent. As for it, the main legal basis can be concluded as the following:

First, the concept of restorative justice. Using the concept of restorative justice as a good approach to deal with the problem of juvenile delinquency has become the trend of the world development in criminal justice. The concept of restorative justice consists of two basic characteristics, namely "recovery" and "participation." The former refers to that through the judicial activities restore the social order and state before the crime, however the "participation" refers to attract both national and crime, including human, all the forces involved in the crime-related cases, including the conviction and sentencing, and execution of compensation, corrections and return to society. Juvenile criminal justice in China based on the "education, supplemented by punishment" principle and the "education, probation and saving" as the main approach, fully embodies the spirit of the connotation of the concept of restorative justice, stressing that the judicial intervention in helping juvenile suspects and victims return to the social play a great educational role.

Second, the theory of the state parental rights. When the core meaning of the theory of the state parental rights is that minor's parents or guardian can not protect the interests of minors, the State has the obligation and responsibility to protect their behalf "Future property" - minors. In its essence the problem of crime and deviation to its "protection" is better than the punishment" position to deal with troubled teens, and reflect the family atmosphere and gentle as parents actions and measures to be taken. Our society is in transiting and increasingly frequent population movements, the floating population of minors and children left behind become a major issue of juvenile criminal judicial practice faced. Based on these the parents of these children can not be good parents to exercise their parental rights, in order to better protect the rights of minors litigation and other benefits, for highlighting the difference between the treatment of minors and special care, our juvenile criminal justice height national importance and social responsibility of guardianship of minors to carry out targeted treatment and rescue work.

In a sense, "Criminal Procedure Code" may be referred to juvenile criminal justice field "mini-constitution", for the purposes of the interests of the whole field of the protection of minors has a programmatic action, and plays a leading role in minors the of criminal justice. After several twists and turns, when the legislative changes in 2012, the establishment of the "Minors in Criminal Suit Procedure" as a special chapter in the "Code of Criminal Procedure," undoubtedly has far-reaching historical significance

and great practical significance. Its progressive performance in at least the following two aspects:

The first is in the formal progressive legislation. In "Criminal Procedure" of 1979 and 1996, with regard to juvenile criminal proceedings notwithstanding the provisions, but provisions scattered, incomplete and unsystematic. For example, the legal representative of the old law specified in the present system of chapter "Basic principles" assigns defense provisions minors accused in chapter "Defense and Agent" in the "procedure of first instance" provides adult criminal cases not heard in public. This form of decentralized provision hard get into the system, and some content has been lagging behind the needs of development and the concept of judicial litigation practice.

In "Criminal Procedure" 2012 exist additional special procedures in the code a series, in which the first chapter is the "minor criminal case proceedings." Compared with other three special procedures, this chapter is the re-integration of original content of the old law, on this basis, and make a significant improvement. Particularity of juvenile criminal cases, the code for the first time sets out principles and guidelines for minors in criminal proceedings: "The implementation of education for juvenile delinquency, persuasion and redemption policy, adhere to education, and Punishment principle "; in order to fully protect the rights of juvenile criminal suspects and defendants litigation, legislation also provides that:" when people's courts, people's procuratorates and public security organs handle juvenile criminal cases, minors should be guaranteed the exercise of their legal rights to protect them get legal help, besides these cases should be undertaken by judges, prosecutors, investigators, who are familiar with the physical and psychological characteristics of minors. "This is the first time in legal form to regulate institutions and personnel on the handling of juvenile criminal cases.

Setting up a special chapter in the law department of "relative concentration of" legislative model, with respect to the dispersion in the various departments of the provisions of the law "loose" legislative model, no doubt, it is a huge step forward. Legislation in the form of a special chapter further highlights the special nature of juvenile criminal proceedings, showing a juvenile criminal justice system, large-scale, systematic, making juvenile criminal proceedings become the main source of law juvenile criminal justice.

Second is the progressive meaning of designing system. In the existing code in the "minor criminal case proceedings" a total of 11 articles in the chapter, including the principles, guidelines and systems minors in criminal proceedings. Establishment of Article 266 about basic principles for Minors Criminal Justice for the conduct of the public prosecutor, the juvenile criminal justice authorities played a role in a broad outline, and for the orderly conduct of all relevant work set the overall goal. The provisions of Article 267 about the appointment of defense, clear the minors criminal defense mandatory, effective protection of the rights of juvenile criminal suspects and defendants in litigation. Establishment of 268 social investigation system for public security, procuratorial and judicial organs to accurately grasp the juvenile criminal suspects and defendants in criminal causes and background, targeted to develop a reasonable treatment plan to provide a reference. 269 stipulates strictly limits that on juvenile criminal suspect or defendant applies arrest, interrogation must review the arrest of minors and listen to his defense counsel, as well as adults in charge of the sub-charge, etc., for reducing juvenile suspects, the defendant's pretrial custody, to curb cross-infection and so has a positive significance. Article 270 established the presence of an appropriate adult system, questioned the original law, the trial "may" notify the legal representative of minors to be present "should" inform, can effectively protect the juvenile criminal suspects and defendants and juvenile victims, witnesses lawsuit intended to authorities handling judicial conduct an effective norms and constraints. Article 271-273 conditional non-prosecution system regulations, given the prosecution not to prosecute a brand new powers, and can only be applicable to juvenile suspects, increased discretion, to a certain extent on the prosecution can reduce the negative effects of criminal proceedings for minors. Article 274 minors case law is not made public hearing process to modify and improve, clear the "trial" under the legal conditions for 18 years as a non-public hearing to make the system more rational and

canceled the original law on "over 16 the age of 18 are generally not public trial" requirement, increase efforts to protect minors. Article 275 of the criminal record sealed provision is meant to protect juvenile criminal suspects and defendants privacy, avoid minor misdemeanor criminal record back into the community of the burden at the time, in order to facilitate their return to society.

The establishment of the above special procedures, so that minors formed a significant divide between the criminal justice system and the adult criminal justice system, in favor of an independent run juvenile criminal proceedings and the special protection of minors.

Second, the rule of law fully the plight of juvenile criminal justice system in the context of the construction

The party's "eighteen" since the full rule of law curtain has been opened, the state of social governance and the level of requirements has increased. How many of the charges made against minors and other special groups to implement effective assistance and education, so as to achieve the purpose of preventing and reducing crimes, become the country's juvenile criminal justice problems must be tackled. However, the overall situation of minors, criminal justice can not meet the full requirements of the new rule of law in the context of the construction of the judicial system, there are still a number of shortcomings:

Firstly, judicial philosophy behind. The current juvenile criminal justice has yet to get rid of the adult criminal justice "to combat and punish crime," the concept of the impact on the substantive law and procedural law, criminal proceedings will adults as a basic frame of reference for system design, so juvenile criminal justice became a "little adult law" does not bring the "education, supplemented by punishment" principle implemented; assistance and education measures in adult sentence afterwards is also reflected in the juvenile criminal justice on that early intervention crime before the intervention mechanism has not been established, so that the effects of these measures admonishing greatly reduced.

Secondly, a large legislative limitations. Our legislation on juvenile justice is currently dispersed across multiple branch laws, and different branches of law rank. Law in a number of departments, accounting for a smaller space, provision is not focused, it is difficult to highlight its importance. In addition, China's legislation on juvenile justice seem less rigid, advocacy, principled norms, less mandatory provisions, operational, lack of effective implementation.

Thirdly, coordination and liaison mechanism is not perfect. The current number of agencies involved in juvenile criminal justice, public security organs, people's procuratorates and people's courts, judicial department (bureau) and other judicial and administrative authorities bear the primary responsibility for the juvenile criminal justice, the Communist Youth League, women's federations, trade unions, civil affairs executive agencies and departments, the next generation working Committee and other protection and education of minors to carry out correction work within the scope of its administrative powers, the protection of minors organizations, social organizations and other social institutions probation minors criminal justice implementation of the system to provide power support. However, due to the lack of effective and coherent coordination and liaison mechanisms and concerted efforts of the whole society does not minors protection agencies, judicial practice, the effect also appears less effective.

Fourth, handling team building difficult. With step by step to promote judicial reform, reform in post handling redundancies existing abatement, but also to investigators specially juvenile criminal justice poses a challenge. In some areas even a one size fits all approach to reform, abolition, merger guidelines in the new Code of Criminal Procedure did not check up just established, Unexamined sector. Some strong professional, business and strong investigators do not want to leave without inspection, without trial sector, and the choice go to other business units. In the field of Juvenile Criminal Procedure Law are still gaps in the existing situation needs to be improved degree of specialization, exacerbating the juvenile criminal justice investigators ranks shrink this approach to some extent.

Third, to seize the opportunity to reform and improve the juvenile criminal justice

Although China has basically established a legal system of protection of minors, but not close enough link between the law, the relationship between the law has not yet been completely straightened out, many of the newly established rules for the operation of the system have yet to be clarified and improved .

Only from the perspective of perfect "Criminal Procedure" in the "minor criminal case proceedings," the terms of the special procedures, after the 2012 legislative changes to this particular procedure appear at least four primary law does not have the content: social survey; appropriate adult present; conditional non-prosecution and archival storage. From more than three years of judicial practice of operation point of view, this system can at least make the following several modifications and refinement: social survey, the provisions of the current law is too principle, only the general provisions of the contents of the survey as "juvenile suspects, the accused's upbringing, the causes of crime, guardianship, education, etc., "and for the society in which the investigation stage of the proceedings should be carried out by what agencies and organizations or individuals, and the effectiveness of the investigation report and other forms required, the lack of operability . Thereafter the contents of the judiciary made judicial interpretations are inconsistent, also failed to form an effective convergence. Issues related to the need for legislation to further refine and improve. Proposed legislation to further clarify the provisions of social investigation stage should be investigation and prosecution procedures, as the subject of social investigation to the public security organs and people's procuratorates is appropriate to assume that their complaints follow function. Grassroots judicial administrative organs, the Communist Youth League organizations and other social groups cooperate. Social inquiry report should be made in writing and must be docketed into the file transfer, it should be verified in court investigation, so as to play an effective role.

For adults, the presence of a suitable system, the existing Article 270 of the Code of legislative changes intention is undoubtedly good. In order to enhance the protection of minors, right of action, the original law of interrogation, trial juvenile criminal suspect or defendant "can" notice the presence of his legal representative changed to "shall" notice, and this provision suitable extended to minor victims and witnesses. But the current Code section 270, there are some problems, one this provision is inconsistent with the provisions of Article 106 stipulates that there is a contradiction in the range of adults; the second is an adult no particular order, leading to the status of parents and other adults, lawsuits ill-defined rights; third is the lack of provisions pertaining to the treatment of people within the scope of the legal representatives shirk their responsibilities. These are to be further improved legislation.

For the conditional non-prosecution. Since the entry into force of the current Code of Criminal Procedure in 2013, with conditions not to prosecute the application is not satisfactory, there are figures show that in 2014 China had only 4021 people were conditional non-prosecution, equivalent to an average of less than 1.3 for each person the grassroots People's Procuratorate , while in 2014 a total of 50,000 people sentenced to juvenile offenders. The scope of the conditions attached to the existing law not to prosecute is too narrow, the condition is too high, the program is not clear enough, leading to the implementation of this system is difficult to play, and a program of special protection for juvenile diversion. Proposed legislation appropriate to relax the conditional non-prosecution of the applicable conditions, thinning conditional non-prosecution process, a clear test of minors during treatment of specific educational content. In addition, the increase in the minors while in line with the provisions of the discretion not to prosecute conditional non-prosecution and conditions shall prevail discretion not to prosecute, so as to truly benefit minors.

For criminal record sealed system, the people's court for judicial practice, the People's Procuratorate has been archived file, but the criminal record system of public security organs in the inquiry still technical issues, the provisions of the legislation which a proposal for a unified authority as the final archive of organs obviously the most appropriate court. Judicial or other relevant organs of the investigators need, when only

the authority to query. The files related to the other organs should be eliminated, so that the full realization of the rights of minors special protection.

Juvenile Criminal Justice Despite the job belongs to the judiciary, but is one of the important work of them, but if it is to achieve legislative changes in mind, the best social effects, there is clearly a long way to go, so-called long way to go. And further improve the code of criminal procedure, criminal law minors can help building the judicial system.