

HO CHI MINH NATIONAL ACADEMY OF POLITICS

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**ENSURING THE RIGHTS OF DEFENDANTS
UNDER 18 YEARS OLD AT THE FIRST-INSTANCE
TRIAL AT THE DISTRICT LEVEL COURT IN
VIETNAM**

SUMMARY OF DOCTORAL THESIS

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INTRODUCTION

1. The necessity of the topic

The right to a fair trial is recognized in many international human rights documents. The right to a fair trial is also recognized in the Constitution and Laws of Vietnam. According to international law on human rights, a person under 18 years of age is considered a juvenile - a concept that has a distinct meaning from an adult. Current Vietnamese law also stipulates in Clause 1, Article 21, Civil Code 2015: "A juvenile is a person under 18 years of age". From the above analysis, in this thesis, the two concepts "juvenile" and "person under 18 years of age" are considered to have the same meaning and are used interchangeably in some sections of the thesis.

From a scientific perspective, juveniles are individuals who have not fully developed physically, mentally and spiritually are in the process of forming their personalities, so they are easily agitated. They tend to want to assert themselves but do not have mature thinking when deciding their actions. These psychological and physiological characteristics make juveniles a vulnerable group who are prone to breaking the law, causing harm to others and to themselves.

In Vietnam, according to the 2019 Population Census, the 0-4 age group accounted for 8.13% of the total population, the 5-9 age group for 8.66%, the 10-14 age group for 7.5%, and the 15-19 age group for 6.76%. Along with representing a significant portion of the population, juveniles constitute a group at high risk of committing crimes in Vietnam. According to statistics from the authorities, between 2006 and 2019, an average of at least 13,000 juveniles violated the law each year, with property-related offenses being the most common (nearly 46%), particularly property theft (nearly 38%).

When a person under the age of 18 commits a crime, they may be brought to trial in a criminal court. The trial must serve the purposes of deterrence and education while simultaneously ensuring the defendant's human rights. This is a requirement established for all countries under the 1989 United Nations Convention on the Rights of the Child (CRC) and the 1966 International Covenant on Civil and Political Rights (ICCPR).

However, in the practice of criminal trials in Vietnam in recent times, ensuring the right to a fair trial for defendants under 18 years of age has continued to encounter numerous limitations and difficulties. These challenges stem from various reasons, such as the insufficient awareness of the prosecution agencies regarding the specific characteristics of this group, the limited capacity

of judicial personnel, and inadequate material conditions that fail to meet procedural requirements. In reality, some trials involving defendants under 18 years of age in Vietnam have not fully adhered to the standards of a fair trial. Persistent issues such as the failure to guarantee the right to legal aid, the lack of consideration for age-specific psychological factors, and the absence of appropriate protective measures have negatively impacted the rights and legitimate interests of defendants under 18 years of age

The above context highlights the urgent need for a comprehensive and systematic study on ensuring the rights of defendants under 18 years of age in criminal proceedings in Vietnam. Although there have been several studies on this issue in recent years, there has not yet been any research project that provides a comprehensive and systematic examination of ensuring the right to a fair trial for defendants under 18 years of age at first-instance criminal trials at the district level. Therefore, the PhD candidate has chosen the topic “*Ensuring the rights of defendants under 18 years old at the first-instance trial at the district-level court in Vietnam*” to undertake for the doctoral dissertation in Human Rights Law.

2. Objectives and tasks of the research

2.1. Research objectives

The purpose of this dissertation is to comprehensively assess the current situation of criminal trials involving defendants under 18 years of age at the first-instance trial at the district-level court in Vietnam, and to propose perspectives and solutions aimed at enhancing the effectiveness of ensuring the right to a fair trial for defendants under 18 years of age in criminal trials in Vietnam in the future.

2.2. Research tasks

To achieve the above-mentioned objective, this dissertation addresses the following research tasks:

It provides an overview and evaluation of domestic and international studies related to ensuring the right to a fair trial for defendants under 18 years of age, identifies existing research gaps, and formulates scientific hypotheses and research questions. At the same time, the dissertation analyzes relevant international legal provisions and those of selected countries on this issue, in comparison with the current legal framework and law enforcement practices in Vietnam, particularly at the first-instance trial at the district-level court. Based on the results of this analysis, the dissertation proposes perspectives and solutions to enhance the effectiveness of ensuring the right to a fair trial for defendants under 18 years of age within Vietnam’s criminal justice system in the coming period

3. Subject and scope of the research

3.1. Research subject

The subject of this dissertation is the legal framework and the implementation of laws concerning the ensuring of the right to a fair trial for defendants under 18 years of age at first-instance criminal trials in Vietnam.

3.2. Scope of the research

- *Scope of Content*: The dissertation focuses on studying theoretical, legal, and practical issues concerning the ensuring of the right to a fair trial for defendants under 18 years of age at first-instance criminal trials, particularly at the district level in Vietnam. It does not extend to the ensuring of the right to a fair trial for other subjects in criminal proceedings.

- *Scope of Space*: The dissertation concentrates on examining the ensuring of the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials across the entire territory of Vietnam.

- *Scope of Time*: The dissertation focuses on the ensuring of the right to a fair trial for defendants under 18 years of age at first-instance criminal trials in Vietnam from the time the Penal Code was amended in 2015 to the present.

4. Methodology and research methods

4.1. Methodology

The thesis is based on the dialectical materialist methodology of Marxism-Leninism, the thoughts of President Ho Chi Minh, and the viewpoints of the Communist Party of Vietnam on human rights and children's rights.

The author also applies the following theories to guide the research: Mauro Cappelletti's "access to justice" theory; UNDP's "human rights-based approach" (HRBA) theory; and theories on juvenile delinquency.

4.2. Research Methods

The dissertation simultaneously applies the following research methods to address the proposed research questions: analytical and synthetic methods, comparative method, statistical method, and case analysis method.

5. New contributions of the thesis

The dissertation is a comprehensive and systematic monographic study on ensuring the right to a fair trial for defendants under 18 years of age at first-instance criminal trials in Vietnam. The dissertation systematizes and clarifies the theoretical foundations of the right to a fair trial for defendants under 18 years of age. At the same time, it supplements theoretical perspectives on the characteristics of defendants under 18 in criminal trials, emphasizing the necessity of protecting their rights and ensuring a child-friendly procedural process.

The dissertation argues that ensuring the right to a fair trial for defendants under 18 years of age requires special attention through a specialized procedural mechanism, given that defendants under 18 constitute a particularly vulnerable group, still immature both physically and mentally. It demonstrates that current limitations in ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam mainly stem from the insufficient consideration of the specific characteristics of juveniles in the development of the legal framework, as well as from a lack of full adherence to relevant international standards. Additional contributing factors include the limited awareness and professional capacity of judicial officers, and the inadequate material conditions of the court system, which hinder the practical realization of the right to legal aid for defendants under 18 years of age at the district level.

The dissertation affirms the necessity of continuing to improve the model of the Family and Juvenile Court alongside the effective implementation of the Law on Juvenile Justice in Vietnam. Furthermore, it argues that in parallel with legal reforms, it is essential to implement practical measures to improve trial practices, including enhancing the capacity of judicial personnel, creating a more child-friendly trial environment, and strengthening family and social support measures for defendants under 18 years of age.

6. Theoretical and practical significance of the thesis

6.1. Theoretical significance of the thesis

The research findings of the dissertation will contribute to strengthening the scientific theoretical foundation and improving the legal framework and mechanisms for ensuring the right to a fair trial for defendants under 18 years of age at first-instance criminal trials in Vietnam.

6.2. Practical significance of the thesis

The dissertation serves as a valuable reference for the court sector, other state agencies, social organizations, and the general public in activities related to ensuring the right to a fair trial for defendants under 18 years of age in Vietnam in the coming period.

In addition, the dissertation also provides a useful resource for teaching and research on human rights law at the Human Rights Institute of the Ho Chi Minh National Academy of Politics, as well as at other educational and research institutions in Vietnam.

7. Structure of the thesis

Apart from the Introduction, Conclusion, and References, the dissertation consists of 4 chapters and 14 sections.

Chapter 1

LITERATURE REVIEW OF THE RESEARCHES RELATED TO THE THESIS TOPIC

1.1. RESEARCH SITUATION IN VIETNAM

1.1.1. Studies related to theoretical issues on ensuring the rights of defendants under 18 years old at the first-instance trial at the district-level court in Vietnam

The dissertation provides an overview of research works related to theoretical issues concerning the ensuring of the right to a fair trial for defendants under 18 years of age at criminal trials in Vietnam. These studies have, to some extent, addressed, analyzed, and clarified various theoretical aspects of fair trials and the right to a fair trial, including the concept, role, content, mechanisms, and measures to ensuring the right to a fair trial for defendants under 18 years of age in criminal trials in Vietnam.

1.1.2. Research related to the situation of ensuring the rights of defendants under 18 years old at the first-instance trial at the district-level court in Vietnam

The dissertation has reviewed research works related to the actual ensuring the rights of defendants under 18 years old at the first-instance trial at the district-level court in Vietnam. Studies on the current state of ensuring the rights of defendants under 18 years old at the first-instance trial at the district-level court in Vietnam have identified several existing issues, such as the lack of child-friendly courtrooms, the insufficient expertise of defense counsel, and the inconsistent application of legal provisions regarding the right to a closed trial. Some research also highlights the lack of specialized training in juvenile justice for procedural officers, leading to improper treatment of defendants under 18 years of age during proceedings. In addition, the protection of children's rights in criminal cases remains inadequate, affecting the fairness and the legitimate interests of defendants during the trial process.

1.1.3. Research on the orientation and solutions for ensuring the rights of defendants under 18 years old at the first-instance trial at the district-level court in Vietnam

The dissertation has reviewed groups of international research works related to this issue. A common point among these studies is the affirmation of the importance of improving the model of the Family and Juvenile Court system in Vietnam, including the expansion of this model to district-level People's Courts and the reform of certain operational regulations to enhance its

effectiveness. The doctoral candidate also referred to several observations, assessments, and proposals from these studies when researching solutions to promote the ensuring of the right to a fair trial for defendants under 18 years of age in Vietnam.

1.2. RESEARCH ABROAD

1.2.1. Research works on fair trials

Research works on the right to a fair trial primarily focus on the protection of defendants' rights during procedural processes, with numerous important documents from international organizations and renowned authors, such as the United Nations High Commissioner for Human Rights and various international scholars. These studies analyze fundamental rights in criminal procedures and clarify the differences in ensuring the right to a fair trial across different legal systems, both at the national and international levels.

1.2.2. Research works on the right to a fair trial for defendants under 18 years of age

The dissertation has reviewed groups of international research works related to the right to a fair trial for defendants under 18 years of age. Studies such as *Child-Friendly Justice* by Pernilla Leviner (2015) and UNICEF's publication *Fair Trial for Children in Conflict with the Law in Europe and Central Asia* (2022) focus on building a child-friendly justice system and protecting children's rights in criminal cases. The article *Hearing of Children in Criminal Procedure* by the European Commission and other studies such as *Fairness to the Juvenile Offender* by Monrad G. Paulsen and *The Impact of Waiver to Adult Court on Youths' Perceptions of Fairness* by Suzanne O. Kaasa (2019) analyze factors affecting fairness in juvenile trials and the impact of transferring juveniles to adult courts.

1.3. GENERAL ASSESSMENT OF THE RESEARCH SITUATION AND ISSUES TO BE FURTHER ADDRESSED IN THE DISSERTATION

1.3.1. General assessment of the research situation related to the dissertation topic

Domestic and international research works have addressed, analyzed, and clarified many theoretical and practical issues concerning fair trials and the right to a fair trial. However, these studies have mainly provided a general analysis and have not delved deeply into the specific requirements for ensuring the right to a fair trial in relation to the protection of other human rights in criminal proceedings. Special procedural conditions necessary to ensure the right to a fair trial for defendants under 18 years of age during trials conducted by the People's Courts in Vietnam have not been thoroughly studied. Currently,

only a few domestic studies have analyzed the actual situation of ensuring the right to a fair trial for juvenile defendants in criminal proceedings, and the level of analysis remains relatively superficial. Moreover, there has not yet been an in-depth study specifically on ensuring the right to a fair trial for defendants under 18 years of age at first-instance criminal trials in Vietnam.

1.3.2. Issues requiring further research in the dissertation

From the overview of the research situation related to the thesis topic, the author identifies issues that need to be further researched, research hypotheses, research questions that the thesis needs to answer in all three aspects of theory, practice and solution perspectives to ensure the right to a fair trial for defendants under 18 years old at first instance criminal trials in Vietnam.

1.4. SCIENTIFIC HYPOTHESES AND RESEARCH QUESTIONS OF THE DISSERTATION

1.4.1. Scientific hypothesis

The right to a fair trial is an important human right of defendants under 18 years of age in criminal proceedings, and as such, it is recognized and protected under both international law and Vietnamese law. In Vietnam, the ensuring of the right to a fair trial for defendants under 18 years of age in criminal proceedings has received increasing attention from the State in recent years. However, the legal framework addressing this issue remains incomplete, and the effectiveness of its implementation in practice is still limited due to various subjective and objective reasons. To overcome these shortcomings, it is necessary to simultaneously improve both the legal framework and the law enforcement mechanisms, based on a comprehensive approach that covers all essential requirements for ensuring the right to a fair trial for defendants under 18 years of age. Key solutions include expanding the coverage of the Family and Juvenile Court system to the district level and strengthening the responsibilities not only of the People's Courts, Judges, and Jurors, but also of the People's Procuracies, Procurators, defense counsels, and other actors involved in juvenile justice.

1.4.2. Research questions

In connection with the above-mentioned scientific hypothesis, the dissertation seeks to address the primary research question: *"How can the right to a fair trial for defendants under 18 years of age be ensured at district-level first-instance criminal trials in Vietnam?"*

In addition to this main question, the dissertation also aims to address several specific research questions.

Summary of Chapter 1

Chapter 1 has reviewed, selected, and evaluated notable domestic and international research works related to the dissertation topic, focusing primarily on the following issues: (i) Theoretical issues concerning the right to a fair trial for juveniles in criminal proceedings; (ii) International and national legal issues regarding the right to a fair trial for juveniles in criminal proceedings; and (iii) The current state of Vietnamese law and its implementation regarding the right to a fair trial for juveniles in criminal proceedings. Although these studies provide general insights, they lack comprehensive and in-depth analysis. Nevertheless, the research findings offer valuable references for the dissertation in defining its research content and identifying the remaining gaps that require further in-depth exploration.

Chapter 2

THEORETICAL FOUNDATIONS FOR ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT CRIMINAL TRIALS

2.1. GENERAL THEORETICAL FOUNDATIONS FOR ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS AT CRIMINAL TRIALS

2.1.1. The concept and role of the right to a fair trial in criminal proceedings

2.1.1.1. The concept of the right to a fair trial in criminal proceedings

The right to a fair trial in criminal proceedings is a fundamental human right, protected by international human rights law and the domestic laws of each country, aimed at ensuring that all individuals involved in criminal trials are treated equally, impartially, and in accordance with legal regulations. Ensuring the right to a fair trial in criminal proceedings is the responsibility of the courts and imposes numerous requirements on the organization and operation of the courts in particular, as well as on the criminal procedure system of each country in general.

2.1.1.2. The role of the right to a fair trial in criminal proceedings

Firstly, to protect the rights of defendants, especially the right to the presumption of innocence.

Secondly, to ensure the fairness and reliability of the trial process.

Thirdly, to prevent the abuse of power.

Fourthly, to protect the rights of victims.

2.1.2. The concept of ensuring the right to a fair trial in criminal proceedings

Ensuring the right to a fair trial in criminal proceedings refers to the State's provision of necessary conditions to ensure that defendants and other parties involved in the criminal trial are treated equally, impartially, and in accordance with the law by the court during the adjudication of the case.

2.1.3. Conditions for ensuring the right to a fair trial in criminal proceedings

The ensuring of the right to a fair trial in criminal procedure in general, and in criminal trials in particular is influenced by various factors (conditions), including:

Firstly, legal conditions.

Secondly, conditions ensuring the independence of the court and judges in adjudication.

Thirdly, political conditions.

Fourthly, socio-cultural conditions.

2.2. THE CONCEPT, CHARACTERISTICS, AND SIGNIFICANCE OF ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT CRIMINAL TRIALS

2.2.1. The concept of defendants under 18 years of age

In Vietnam, according to Clause 1, Article 61 of the 2015 Criminal Procedure Code, a "defendant" is defined as "a person or legal entity who has been decided by the court to be brought to trial." A defendant participates in the criminal proceedings from the moment the presiding judge issues a decision to bring the case to trial.

Currently, Vietnamese criminal procedure law does not specifically define the term "defendant under 18 years of age," but there is a similar concept-"offenders under 18 years of age"-which was first introduced in the 2015 Penal Code (as amended and supplemented in 2017) to replace the former term "juvenile offenders."

In this dissertation, the term "defendant under 18 years of age" refers to individuals under 18 years old who have committed a crime and have been decided by the court to be brought to trial in accordance with Vietnam's criminal procedure law.

According to Article 12 of the 2015 Penal Code (as amended and supplemented in 2017), persons aged 14 and above are subject to criminal liability for very serious crimes and particularly serious crimes. This means that the concept of "defendants under 18 years of age" may include individuals from

14 years old to under 18 years old who have committed a crime and have been brought to trial under Vietnam's criminal procedure law.

2.2.2. Characteristics of defendants under 18 years of age

2.2.2.1. Legal characteristics

(i) In terms of age, the defendant is a juvenile (under 18 years of age); (ii) Regarding the form of handling, in most legal systems, when a person under 18 is a defendant, they are typically subject to different forms of handling compared to adults; (iii) Regarding rights and protection, defendants under 18 years of age are entitled to legal protections, including the right to legal representation and the right not to disclose private information during the proceedings; (iv) In terms of education and reintegration, the legal systems of many countries often focus on education and reintegration efforts to support the positive development and future orientation of defendants under 18 years of age; (v) Regarding penalties, punishments for defendants under 18 years of age are generally limited to ensure humanity and to promote the defendant's future development; (vi) Regarding the courts handling such cases, in many countries, cases involving defendants under 18 years of age are adjudicated by Family and Juvenile Courts—a specialized type of court within the national court system

2.2.2.2. Psychological and physiological characteristics

Firstly, at under 18 years of age, defendants often develop a strong impression that they are no longer children, accompanied by other psychological phenomena related to puberty, which causes unbalanced physical development and sudden physiological changes that may lead to psychological crises.

Secondly, most defendants under 18 years of age often lack the conditions and capacity to fully acquire general knowledge and to receive proper guidance and education from parents and teachers.

Thirdly, regarding the personality traits of defendants under 18 years of age.

2.2.3. The concept and significance of ensuring the right to a fair trial for defendants under 18 years of age at criminal trials

Based on the analyses presented above, ensuring the right to a fair trial for defendants under 18 years of age at criminal trials can be understood as the State's provision of necessary conditions to ensure that such defendants are treated equally, impartially, and in accordance with special trial procedures applicable to cases involving juveniles, with the aim of protecting the specific procedural rights of individuals under 18 as recognized under international human rights law.

- First, a fair trial helps protect the legitimate rights and interests of individuals under 18 years of age.

- Ensuring the right to a fair trial at criminal proceedings also helps to limit the negative impacts of judicial proceedings on defendants under 18 years of age.

- Moreover, ensuring the right to a fair trial at criminal trials creates opportunities for defendants under 18 years of age to reintegrate into the community.

In summary, for defendants under 18 years of age, ensuring the right to a fair trial at criminal trials not only ensures the protection of human rights but also creates opportunities for them to correct their mistakes, develop in a healthy manner, and reintegrate into society, rather than being subjected to harsh punishments that could negatively affect their future.

2.3. CONTENT, SUBJECTS, AND METHODS OF ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT CRIMINAL TRIALS

2.3.1. Content of ensuring the right to a fair trial for defendants under 18 years of age at criminal trials

The ensuring of the right to a fair trial for defendants under 18 years of age at criminal trials encompasses the following main aspects:

First, ensuring the presumption of innocence

Second, ensuring the right to defense and self-defense (the right to legal counsel and the right to self-representation)

Third, ensuring the right to access evidence and witnesses

Fourth, ensuring the right to a public trial

Fifth, ensuring the independence and impartiality of the trial

Sixth, ensuring timely adjudication

Seventh, ensuring non-discrimination

From a more specific perspective, ensuring the right to a fair trial is also reflected in special procedural rights that defendants under 18 years of age must be granted and protected during criminal trials, including:

Firstly, the right to proceedings that are friendly and appropriate to the psychology, age, maturity level, and cognitive capacity of the individual under 18 years of age

Secondly, the right to the protection of personal privacy

Thirdly, the right to have legal representation participate in the trial

Fourthly, the right to participate and express opinions at the trial

Fifthly, the right to legal defense during the trial

Sixthly, the right to the application of special principles and measures in handling juvenile offenders

Seventhly, the right to a prompt and timely trial

Eighthly, the right to be tried by judges and jurors who meet specific qualifications and requirements for handling cases involving juveniles.

2.3.2. Subjects and methods of ensuring the right to a fair trial for defendants under 18 years of age at criminal trials

About the subject

In general, the following actors participate in the trial process and, depending on their position and role, are responsible for ensuring the right to a fair trial for defendants under 18 years of age in criminal trials:

- (i) Judges and jurors
- (ii) Representatives of the prosecution agencies/People's Procuracy
- (iii) Defense lawyers or legal aid providers
- (iv) Guardians and psychological or social experts
- (v) Judicial support agencies.

About the method

Compared to adult defendants, ensuring the right to a fair trial for defendants under 18 years of age in criminal trials requires a number of specific methods, specifically as follows:

- (i) Organize a friendly court session
- (ii) Guarantee the right to full defense.
- (iii) Individualization in trial.
- (iv) Guarantee the right to a due process trial.
- (v) Involvement of psychologists and social workers.
- (vi) Monitor and inspect the guarantee of procedural rights.

2.4. CONDITIONS FOR ENSURING AND FACTORS INFLUENCING THE PROTECTION OF THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT CRIMINAL TRIALS

2.4.1. Conditions for ensuring the right to a fair trial for defendants under 18 years of age at criminal trials

Firstly, regarding procedural actors

Secondly, regarding the presence of the defendant's legal representative

Thirdly, regarding the examination and arguments at the trial.

2.4.2. Factors influencing the ensuring of the right to a fair trial for defendants under 18 years of age at criminal trials

2.4.2.1. Political and legal factors

2.4.2.2. Economic, social and cultural Factors

2.4.2.3. International factors

2.5. ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE IN INTERNATIONAL HUMAN RIGHTS LAW AND THE LAWS OF SELECTED COUNTRIES: REQUIREMENTS AND LESSONS FOR VIETNAM

2.5.1. Ensuring the right to a fair trial for defendants under 18 years of age in international human rights law and requirements for Vietnam

2.5.1.1. Ensuring the right to a fair trial for defendants under 18 years of age in international human rights law

International law, specifically international human rights law, recognizes the right to a fair trial for defendants in general and the specific rights of defendants under 18 years of age through numerous legal instruments. In addition to general provisions on the right to a fair trial, international human rights law also includes specific documents aimed at protecting defendants under 18 years of age. The most significant international legal instruments that directly ensuring the right to a fair trial for defendants under 18 include: the 1989 Convention on the Rights of the Child (CRC); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, 1990); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985); and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (1990). These international instruments provide the minimum framework to ensure the rights of individuals under 18 years of age during trial proceedings.

It can be summarized that the most important objective of these international legal instruments concerning the right to a fair trial for defendants under 18 years of age is to establish child-friendly justice principles, specifically:

Firstly, the principle of non-discrimination

Secondly, the principle of the best interests of the child

Thirdly, the principle of a separate justice system for children

Fourthly, the principle of specialized juvenile justice practitioners

Fifthly, the principle of ensuring privacy.

2.5.1.2. Requirements for Vietnam

Firstly, Vietnam must ensure that its national legal system fully reflects the principles of international human rights law regarding fair trials for individuals under 18 years of age.

Secondly, Vietnam needs to focus on fully incorporating the right to a prompt and timely trial for individuals under 18 years of age into its domestic

legislation.

Thirdly, Vietnam must guarantee the right to free legal assistance for individuals under 18 years of age throughout the entire proceedings, as emphasized in the CRC.

Finally, Vietnam should strengthen the protection of confidentiality and privacy rights for individuals under 18 years of age during the trial process.

2.5.2. Ensuring the right to a fair trial for defendants under 18 years of age in the laws of selected countries and lessons for Vietnam

2.5.2.1. Ensuring the right to a fair trial for defendants under 18 years of age in the laws of selected countries

Juvenile justice systems have been established and implemented in many countries worldwide; however, Thailand, Sweden, the United Kingdom, and France have been selected by the doctoral candidate for the study of experiences in ensuring the right to a fair trial for defendants under 18 years of age in law and practice.

The reason for selecting these four countries is that they have well-developed and effectively functioning juvenile justice systems. In particular, Thailand, located in Southeast Asia, shares significant cultural and geographical similarities with Vietnam.

2.5.2.2. Reference values for Vietnam

Important solutions include establishing specialized juvenile courts, prioritizing rehabilitative measures over punitive sentencing, ensuring the presence of defense lawyers and psychological experts for defendants under 18, organizing child-friendly court hearings, and protecting the confidentiality of juvenile defendants' identities. Vietnam can also draw from international experiences in appointing specialized juvenile judges and developing mechanisms to supervise and support defendants under 18, with the aim of promoting reintegration into the community and preventing recidivism.

Summary for Chapter 2

Chapter 2 has focused on studying the theoretical foundations for ensuring the right to a fair trial for defendants under 18 years of age at criminal trials. It has clarified theoretical issues related to the protection of the right to a fair trial and analyzed the ensuring of the right to a fair trial for defendants under 18 years of age under international human rights law and the laws of selected countries, along with the resulting requirements for Vietnam.

Chapter 3

THE LEGAL FRAMEWORK AND THE SITUATION OF ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT THE FIRST-INSTANCE TRIAL AT THE DISTRICT LEVEL COURT IN VIETNAM

3.1. VIETNAM'S LEGAL FRAMEWORK FOR ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT THE FIRST-INSTANCE CRIMINAL TRIALS AT DISTRICT-LEVEL

3.1.1. Vietnam's legal framework for ensuring the right to a fair trial in criminal proceedings

The dissertation analyzes the Vietnamese legal framework concerning the right to a fair trial in criminal procedure, as set forth in the Constitution, specialized laws, and guiding legal documents, with a particular focus on the 2013 Constitution and the 2015 Criminal Procedure Code.

The 2013 Constitution clarifies fundamental rights such as the right to trial by an independent court, the right to appeal, the presumption of innocence, and the right to legal defense. The 2015 Criminal Procedure Code further concretizes these rights, ensuring swift and fair handling of cases and the protection of lawful human rights throughout the procedural process.

These legal provisions aim to ensure human rights and affirm the principle of the rule of law.

3.1.2. The concept and characteristics of the first-instance criminal trials at district level

3.1.2.1. *The concept of the first-instance criminal trials at district level*

Through an analysis of the key elements of district-level first-instance criminal trials, the dissertation formulates the following definition: A district-level first-instance criminal trial is a trial conducted by the People's Court at the district level; it only takes place after the court has issued a decision to bring the case to trial and lasts from the opening to the conclusion of the trial. It adjudicates criminal cases involving less serious crimes, serious crimes, and very serious crimes, except for those offenses that, according to criminal procedure law, fall under the jurisdiction of the People's Court at the provincial level.

3.1.2.2. *Characteristics of the first-instance criminal trials at district level*

Based on the above definition, several characteristics can be identified:

Firstly, the trial is conducted by the People's Court at the district level

Secondly, during the district-level first-instance criminal trial, the defendant's rights must be ensured from the initiation of proceedings to the conclusion of the trial

Thirdly, the trial is conducted according to strict procedural rules and formalities.

3.1.3. Specific legal provisions on ensuring the right to a fair trial for defendants under 18 years of age at the first-instance criminal trials at district level in Vietnam

The dissertation analyzes the special procedural provisions for individuals under 18 years of age, which are primarily set out in Chapter XXVIII of the 2015 Criminal Procedure Code. It can be observed that while Vietnam's legal framework has several strengths, it also presents some notable limitations, as detailed below:

Strengths

Firstly, Vietnamese law stipulates forms of trial organization that are appropriate for defendants under 18 years of age, including the requirement to conduct closed hearings when necessary.

Secondly, Vietnamese law ensures the presence of legal representatives for defendants under 18 years of age—such as defense counsel, guardians, school representatives, and representatives from relevant organizations—at district-level first-instance criminal trials.

Thirdly, Vietnamese law has made initial efforts to ensure that judges, defense lawyers, and legal representatives possess the necessary knowledge and skills when participating in criminal trials involving defendants under 18 years of age.

Limitations

Alongside these strengths, Vietnamese law still contains certain limitations that hinder the protection of the rights of defendants under 18 years of age at district-level first-instance criminal trials, including:

Firstly, there is currently no mandatory requirement to establish Family and Juvenile Courts at all district-level People's Courts.

Secondly, the law does not provide clear and reasonable provisions on the right of teachers, school representatives, youth union officials, or other organizational representatives—where the defendant under 18 studies, works, or participates in activities—to request the replacement of procedural actors

Thirdly, the provisions of the 2015 Criminal Procedure Code regarding the court's obligation to prove criminal charges during the trial process are considered insufficiently objective, potentially affecting the fairness and effectiveness of district-level first-instance criminal trials involving defendants under 18 years of age.

Fourthly, there is still no comprehensive and synchronized system of legal aid services dedicated to individuals under 18 years of age in criminal proceedings.

3.2. THE CURRENT SITUATION OF ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT DISTRICT-LEVEL FIRST-INSTANCE CRIMINAL TRIALS IN VIETNAM

3.2.1. The current situation of implementing special procedural rights to ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam

3.2.1.1. The right to legal defense and the right to free legal counsel

In Vietnam, the right to legal defense for defendants under 18 years of age has a constitutional basis in Article 31 of the 2013 Constitution. To concretize this constitutional provision, the 2015 Criminal Procedure Code recognizes the right to defense for defendants under 18 years of age through several provisions, notably Clause 5 of Article 414, Article 422, and Article 423.

However, ensuring the right to defense for defendants under 18 years of age in Vietnam still faces several limitations, caused by both subjective and objective factors. For example, if the defendant under 18 years of age and their legal representative refuse to accept any assigned defense counsel, the court may proceed with the trial without the participation of a defense counsel. This situation can be detrimental to the rights of the defendant under 18 years of age.

In addition, the 2015 Criminal Procedure Code does not mandate the presence of a lawyer during the first interrogation conducted by the investigative body for defendants under 18 years of age. This contradicts the principle of child protection in juvenile justice and fails to fully guarantee the actual right to defense for defendants under 18 years of age.

Moreover, the law currently does not clearly define the responsibilities of procedural authorities in ensuring the right to defense for defendants under 18 years of age. The legal aid mechanism for defendants under 18 years of age remains insufficiently regulated and has not been effectively implemented.

3.2.1.2. The right to have a legal representative, school, and organizations present at the trial

Vietnamese law currently provides for the participation of legal representatives, schools, and organizations at trial, thereby aiming to best ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials. However, in practice, the application of these provisions by different courts has been inconsistent. Some courts ensure the participation of schools and organizations at trials involving defendants under 18 years of age, while others do not guarantee this right.

The limitations in ensuring the presence of legal representatives, schools, and organizations at trials arise from several causes, one of which is the fact that the legal framework regarding this issue remains incomplete and lacks coherence, as reflected in the following points:

Firstly, the law lacks provisions on sanctions or remedies when the legal representative is absent from the trial of a defendant under 18 years of age.

Secondly, there are no mandatory provisions requiring schools to appoint representatives to attend trials involving their students under 18 years of age.

Thirdly, the law does not specifically regulate the role of child protection organizations in participating in trials to protect the rights of defendants under 18 years of age.

Fourthly, the legal provisions remain inconsistent regarding the right to request the replacement of procedural actors at criminal trials.

3.2.1.3. The right to a closed trial when necessary

Under Vietnam's current laws, the court must conduct a closed trial for cases involving defendants under 18 years of age, except where the defendant or their legal representative requests a public hearing. During such trials, only individuals directly related to the case—such as members of the trial panel, prosecutors, defense lawyers, legal aid providers, the defendant and their legal representative, and representatives of the school or child protection organizations—are permitted to attend. The protection of the defendant's identity (name, address, image, etc.) is mandatory and must not be disclosed to the media or on social networks.

Although the requirement for closed trials in criminal cases involving defendants under 18 years of age has been clearly established in Vietnamese law, in practice, it is sometimes not strictly observed.

The reasons for this situation include the insufficient understanding by some courts and judges of the importance and significance of closed trials for defendants under 18 years of age, leading to the underestimation of the defendant's right to a closed hearing. Additionally, the persistence of public trials for defendants under 18 years of age at some courts is partly due to the lack of a strict supervision and monitoring mechanism.

3.2.2. The current situation regarding special conditions and procedures to ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam

3.2.2.1. Special Procedural Conditions

Special procedural conditions can be understood as specific regulations or standards applied during the trial process to accommodate particular situations or types of cases. These conditions aim to ensure fairness, efficiency, and careful deliberation in the court's decisions.

In the context of trials involving defendants under 18 years of age, certain special procedural conditions may include the establishment of specialized courts, the arrangement of child-friendly courtrooms, and the appointment of suitable procedural actors.

In summary, it can be observed that Vietnamese law has set out specific requirements for judges and jurors participating in trials involving defendants under 18 years of age, with the purpose of ensuring the best interests of the child. However, there are still some notable limitations in the current legal framework, including:

Firstly, the law does not provide specific standards or qualifications for judges assigned to adjudicate cases involving defendants under 18 years of age.

Secondly, regarding jurors, the 2014 Law on the Organization of the People's Courts does not clearly stipulate that jurors participating in trials involving defendants under 18 years of age must have expertise in education or child rights protection.

Thirdly, there is a lack of necessary guidance related to the work of judges and jurors in these cases.

3.2.2.2. Special procedural measures

The dissertation analyzes that, during the first-instance criminal trials involving defendants under 18 years of age, the courts must adhere to special procedural measures to protect the rights and interests of the defendants. These measures include conducting examinations and arguments in a manner appropriate to the defendants' age and level of development. However, in practice, several issues still persist, such as unclear regulations regarding the right of related organizations to participate in arguments, inconsistency in the determination of legal guardians, and a lack of objectivity in some trials where courts tend to focus on proving the guilt of the defendant. In addition, the regulations allowing for the return of case files for additional

investigation weaken the principle of the presumption of innocence, create psychological pressure, and generate a sense of injustice for defendants, especially those under 18 years of age.

3.2.3. General assessment of the practical application of Vietnamese law on ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials

3.2.3.1. General assessment of achievements

Based on the analyses presented above, it can be observed that Vietnam has made significant achievements in ensuring the right to a fair trial for defendants under 18 years of age in criminal trials. The most notable achievements include:

Firstly, the development of a relatively comprehensive specialized legal framework

Secondly, the establishment of specialized judicial institutions for juveniles

Thirdly, the recognition and efforts to ensuring numerous important procedural rights associated with the right to a fair trial for defendants under 18 years of age in criminal proceedings

Fourthly, efforts to ensure special procedural conditions linked to the right to a fair trial for defendants under 18 years of age in criminal proceedings

Fifthly, efforts to ensuring special procedural measures associated with the right to a fair trial for defendants under 18 years of age in criminal proceedings.

3.2.3.2. General assessment of limitations

Firstly, although Vietnamese law provides for the right to legal defense for defendants under 18 years of age, access to lawyers and free legal aid remains limited, affecting the rights of these defendants. The quality of defense in cases involving juveniles is still insufficient due to a lack of expertise and experience among some defense counsels, particularly the shortage of psychological experts.

Secondly, ensuring the right to the presence of legal representatives, schools, and organizations at trials involving defendants under 18 years of age faces difficulties in Vietnam, due to perfunctory participation, absenteeism, or a lack of legal and psychological knowledge necessary to effectively protect children's rights.

Thirdly, ensuring the right to a closed trial for defendants under 18

years of age faces challenges due to the lack of clear criteria in the law, resulting in inconsistent application and violations of children's privacy, especially regarding the publication of information in the media.

Fourthly, ensuring child-friendly courtrooms and child-sensitive procedural actors in Vietnam remains problematic due to the lack of suitable courtroom environments and insufficient juvenile justice training for trial panels, thereby affecting fairness in the adjudication of defendants under 18 years of age.

3.3. MAIN CAUSES OF THE LIMITATIONS IN ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT DISTRICT-LEVEL FIRST-INSTANCE CRIMINAL TRIALS IN VIETNAM TODAY

Firstly, the legal framework on ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials remains incomplete.

Secondly, there is a lack of knowledge and training for personnel working within the judicial system.

Thirdly, there is an insufficiency of guidance materials and legal counseling.

Fourthly, attitudes and perceptions regarding individuals under 18 years of age within the judicial system are still inappropriate.

Fifthly, support for defendants under 18 years of age and their defense counsels remain limited.

Summary of Chapter 3

Chapter 3 has focused on analyzing and assessing the current situation regarding the ensuring of the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam; analyzing the current implementation of special procedural rights to protect the right to a fair trial for defendants under 18 years of age; and examining the special conditions and procedures designed to ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam. Through this, the chapter has provided a general assessment of the achievements, limitations, and underlying causes.

The research findings of Chapter 3 serve as a foundation for the doctoral candidate to propose viewpoints and solutions to strengthen the ensuring of the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam in the coming years.

Chapter 4

VIEWPOINTS AND SOLUTIONS FOR ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT DISTRICT-LEVEL FIRST-INSTANCE CRIMINAL TRIALS IN VIETNAM

4.1. VIEWPOINTS ON ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT DISTRICT-LEVEL FIRST-INSTANCE CRIMINAL TRIALS IN VIETNAM

4.1.1. Ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials must adhere to the guidelines, policies, and laws on human rights of the Communist Party and the State of Vietnam

4.1.2. Ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam must align with international human rights standards regarding juvenile justice

4.1.3. Ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials must be based on an interdisciplinary social science approach

4.1.4. Ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials must be carried out in a synchronized manner, combining the improvement and effective implementation of the relevant legal system

4.1.5. Ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials must involve raising public awareness and encouraging the participation of multiple stakeholders in society

4.2. SOLUTIONS FOR ENSURING THE RIGHT TO A FAIR TRIAL FOR DEFENDANTS UNDER 18 YEARS OF AGE AT DISTRICT-LEVEL FIRST-INSTANCE CRIMINAL TRIALS IN VIETNAM

4.2.1. Group of solutions to improve the Vietnamese legal framework on ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials

Firstly, amend regulations to establish Family and Juvenile Courts at all district-level People's Courts to ensure that all trials involving defendants under 18 years of age are conducted by specialized courts.

Secondly, amend and supplement certain provisions of the Criminal Procedure Code, the Penal Code, and other relevant laws to align with the spirit and contents of the Law on Juvenile Justice.

Thirdly, further specify and guide the implementation of several provisions of the Law on Juvenile Justice.

4.2.2. Group of solutions to improve the effectiveness of law enforcement in ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials

Firstly, improve the quality of adversarial proceedings at district-level first-instance criminal trials involving defendants under 18 years of age.

Secondly, ensure the participation of defense lawyers and improve the quality of legal defense for defendants under 18 years of age at district-level first-instance criminal trials.

Thirdly, ensure the participation of family representatives and social organizations in trials involving defendants under 18 years of age.

Fourthly, create a child-friendly trial environment and ensure closed hearings when necessary for defendants under 18 years of age.

Fifthly, enhance the awareness and capacity of procedural actors in ensuring the right to a fair trial for defendants under 18 years of age.

Sixthly, guarantee the right of defendants under 18 years of age to express their opinions during district-level first-instance criminal trials.

Seventhly, ensure that defendants under 18 years of age are tried promptly and without undue delay.

Eighthly, improve the material facilities for trials involving defendants under 18 years of age at district-level first-instance courts.

Ninthly, promote community awareness and education about the rights of defendants under 18 years of age.

Summary of Chapter 4

Based on the theoretical issues clarified in Chapter 2 and the current situation assessed in Chapter 3, Chapter 4 has focused on proposing and elaborating several orientations and solutions to enhance the effectiveness of ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam. These solutions are divided into two main groups: (i) a group of solutions to improve the Vietnamese legal framework for ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials; and (ii) a group of solutions to enhance the effectiveness of law enforcement in ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials.

CONCLUSION

The dissertation titled " Ensuring the rights of defendants under 18 years old at the first-instance trial at the district-level court in Vietnam" aims to contribute to strengthening the scientific foundation for ensuring children's right to a fair trial in Vietnam. To achieve this objective, the dissertation has:

1. Studied and clarified theoretical issues regarding the ensuring of the right to a fair trial for defendants under 18 years of age at criminal trials, including fundamental concepts such as children, juveniles, defendants, defendants under 18 years of age, and the right to a fair trial; as well as the characteristics, roles, content, requirements, influencing factors, and conditions for ensuring the right to a fair trial for defendants under 18 years of age at criminal trials.

2. Examined and identified the international and Vietnamese legal frameworks related to ensuring the right to a fair trial for defendants under 18 years of age at criminal trials; assessed the level of conformity; and pointed out the limitations of Vietnamese law in comparison with international legal standards on this matter.

3. Studied and evaluated the current situation of ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam. Based on that, the dissertation analyzed the causes of shortcomings and identified issues that need to be addressed to improve the effectiveness of ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam.

4. Proposed and elaborated viewpoints and solutions for improving the legal framework and mechanisms to enhance the effectiveness of ensuring the right to a fair trial for defendants under 18 years of age at district-level first-instance criminal trials in Vietnam in the coming years.

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