

# **Organized System, Current Situation and Development of Chinese Juvenile Tribunal**

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Not long ago, one famous juvenile criminology expert pointed out that juvenile delinquency and gang crime would become the key public security problems in the next century. We could not predict the trend of juvenile delinquency in the new century for we are not researchers who engage in studying it. Obviously, juvenile delinquency is one of the most serious social problems faced by the whole world and judicial department of every country endeavors to find out how to prevent and reduce it effectively. Today, we feel greatly honored of having the pleasure to discuss with people of the same occupation at this special moment.

The juvenile judicial system in our country originated from the establishment of the first juvenile tribunal in Shanghai Changning District People's Court in 1984. Although it has been rapidly improved in the last two decades, as a judicial system, it is not perfect yet. Notwithstanding differences among juvenile delinquencies in each country, generality can be drawn from measures taken by governments to overcome it. We can learn a lot of successful experiences from other states. In our country, minor criminal judicatory will break down the current judicial system in the near future; establishment of juvenile court seems to be more necessary than ever. There is much in other states' experiences that we can use to develop our own.

In China, juveniles constitute almost half the population. There are about 400,000,000 of them under 18, who make up one third of the total population of our country. The government pays much attention to juvenile protection. In the aspect of legislation, the principle of juvenile protection is clearly stipulated in the Constitution. Special material and procedural articles are provided both in criminal law and civil law. Additionally, Compulsory Education Law, Protection of Minors Law, Prevention of Minor Crime Law and some other special laws are enacted in order to facilitate the healthy growth of the younger generation and taking preventive measures against crimes. A fairly complete legal system of juvenile protection and prevention of minor offences is established. On the judicature level, the judicial departments try their best to protect juvenile's legal interest. Great efforts have been made to redeem juvenile delinquents by means of education and persuasion. After 16 years study and practice, a set of minor criminal judicial system, which conforms to our national conditions, has been set up. Great success has been achieved in protecting minors' interests and reforming minor delinquents.

1. A review of the juvenile tribunals establishment and development in our country

From 1970s, minor crime has been rising steadily and it turned to be one of the most serious social problems. In 1979, juvenile delinquents condemned by court at age between 14 and 25 amounted to 41, 734 and they made up 30.87% of the total criminals; 43.79% in 1980; 61% in 1989; 45.54% in 1995 and 39.9% in 1998. Not only have the number of juvenile delinquents been increased but methods also have become intellectual and experienced. Juvenile delinquent has turned to the fact that endangers public security and it arouses general concerns from the government and the whole society.

As a juvenile delinquent becomes more and more conspicuous, people's court switched its way in trying minor offences, which committed by minors at age between 14 and 18, in one criminal court to establish independent juvenile tribunals. In 1984, the first collegial bench specialized in trying minor offences was set up in Ahnghai Changning District People's Court. The Supreme Court drafted rules on the special procedure of minor criminal trials on basis of relative regulations in Criminal Procedural Law and the practice of juvenile tribunals. Simultaneously, the court began to remold juvenile delinquents under the cooperation of other judicial branches and juvenile protective organizations. All the facts discussed above marked the establishment of juvenile judicial system in our country, in 1995, the Supreme Court enacted provisions on the application of the Criminal Law in minor criminal trials in the light of the Criminal Code. From then on, minor criminal judicatory in our country became unified, standardized and stipulated.

## 2. Organized system of the juvenile tribunal in our country.

People's courts in our country are divided in to 4 levels; they are primary people's courts, intermediate people's courts, high people's courts and the Supreme Court. It is definitely regulated in the Criminal Law that minor criminals could not be sentenced to death. According to the regulations of jurisdiction in the Criminal Proceedings Law, most of the minor criminal cases are tried in primary courts. Only a small part of them is tried in intermediate courts, such as the cases that the principal offenders of joint offenses would be sentenced to permanent imprisonments or above. Thereby, more than 2500 juvenile tribunals are set up in primary courts. At present, there are more than 7500 judges and law clerks working in juvenile tribunals through out the country. Almost all minor criminal cases are tried before juvenile tribunals.

Among 31 High Courts in our country, some of them, such as Heilongjiang High Court and Fujian high Court, established juvenile tribunals as well. Other High courts (except Chongqing High Court and Tibet High court) set up Juvenile Tribunal Directing Group according to the Supreme Court's request. A directing group was set up in the Supreme Court in 1994 and a vice president of the Court was in charge of its work. Office was established under the Directing Group and it I responsible for the daily work. All Directing Groups in High courts are responsible for guiding local juvenile tribunals and supervising their daily work. They are also in charge of reporting difficulties met in trials to the Supreme Court.

There are two basic forms of juvenile tribunals. One is to set up a collegial bench in charge of trying minor criminal cases inside present criminal tribunal; the other is to set up a juvenile tribunal, which is separate and independent to other tribunals. Containing certain collegial benches. Courts in remote districts, which could not set up juvenile tribunals due to the limitation of administrative budget, must appoint someone to be responsible for trying minor criminal cases according to the Supreme Court's request. But this could only be an exception.

Besides minor criminal cases, all juvenile tribunals may expand their scope of cases on basis of the number of judges. Some of them also hear criminal cases in which minors are victims. Some make efforts to hear civil and administrative cases involving minors' interests.

### 3. Characteristics of juvenile tribunals' work in our country

Although there is no specialized minor criminal law or correspondent procedure law in our country, a system of how to deal with minor criminal cases has been formulated in practice. Characteristics of this system are:

Firstly, physical and mental characteristics and interests of minors must be fully considered. For example, courts should insist on the attendance of minors' agent *ad litem* when minor criminal cases are heard; cases relating to minor offences should not be heard in public; courts should not only investigate facts and evidences but also should look into reasons and backgrounds why they did so; minor criminal cases should be dealt with in time, etc.

Secondly, the principle of education must be carried out during the hearing. The court should pay more attention to remold the mentality and conduct of minors who commit a crime. After the action is brought before the court, judges of juvenile tribunal must explain relative law and procedural provisions to the minor accused in order to remove his fear and resistance. Only under such circumstances could cases be tried properly. During the trial, judges should interrogate the accused with easily understood words and manage to keep the atmosphere being serious and ease. After the examinations of factual proof, the juvenile tribunal should carry out legal education in light of specific situations. If the accused is found to be guilty, the court should help him realize the reason and danger of the offence so that he will understand the characteristic of his conduct. In other case, the tribunal should spur the accused that is not guilty but does harm to others and the society to examine himself. Judges should go to custodial education places for minor offenders is not enforced in prison, the juvenile tribunal must require them to report their thinking and other conditions regularly and assist relative departments and organizations in helping them.

The third question is the application of punishment to minor offenders. It is necessary to punish minor criminals since they do harm to public orders. Otherwise, crimes will be indulgent. Non-punishment is unfavorable for educating minors and

maintaining public orders. But to some extent, minor offenders are victims of harmful effects. Some specific characteristics in minor offenders should be considered, such as mental and physical defects, weakness in judgment and self-control and so on. That is why we pay more attention on education than punishment. The court should avoid punishing first offenders, casual offenders, accessories whose offences are not that serious and minor offenders who must be punished, the court ought to avoid putting them into prison if it is allowed to do so.

Fourthly, the juvenile tribunal needs to establish cooperation with investigative departments, prosecuting departments, administrative departments for justice and protective organizations for minors on basis of Protection of Minors Law and Prevention of Minor Crime Law. This will be effective in preventing minor offenders from recommitting offence after re-entry into the society.

Recently, great success of reform and control of minor offenders has been achieved with efforts made by all departments. Most of minor offenders have been awarded prizes during the term of imprisonment. With their re-entry into the society, they study and work so hard as ever. Some of them are even qualified to go to university and some are awarded the title of Advanced Worker.

#### 4. The development of juvenile tribunal in our country

The trial of minor offences has been improved in two aspects;

First, the minor criminal trial is innovated since it is simultaneous to the reform of the trial's form.

All juvenile courts in our country concentrate on reforming the form of minor criminal trial in the light of regulations in new Criminal Procedure Law from its enactments in 1996. According to the procedural rules, which will be enacted by the Supreme Court, minor criminal trial will be reformed in two aspects:

The first one is about the pre-trial investigation. The most important amendment of the new Criminal Procedure Law is the radicalization of the principle that "No one should be determined guilty unless the People's Court so adjudicates according to law." This principle could not be carried out unless the present investigation system is changed. Previously, the judge would investigate the cause of the crime comprehensively in order to educate minor offenders in accordance with their specific characteristics. Moreover, these facts should be considered fully in measuring penalty. But this will make the judge have prejudice against the accused. Furthermore, in most circumstances, the judge will determine the accused to be guilty on the ground. This kind of prejudice will affect the justice and objectivity of the trial. After reforming, the investigation will be completed by either party or the juvenile protective organizations. In this way, not only the investigation system of minor criminal trial is preserved but also prevent the judge from having prejudice

before a court session. Thus, the judge could provide a just verdict on basis of arguments from both parties and specific conditions of the minor offenders.

The second question is the doctrine-“educations while trying.” This doctrine has been persisted in hearings taken by minor criminal tribunals. The content is, education should be regarded as the most important element during the entire proceedings. Particularly, an education section has been added to the hearing in order to make minor offenders reform willingly. This kind of education works well in redeeming the guilty accused. Unfortunately, this is contrary to the new Criminal Procedure Law. It has been agreed that such education should be given only after the guilty verdict is coming out instead of before the verdict. To the innocent, the tribunal does not need to education.

The second reforming step taken by the juvenile tribunal is to “try minor criminal cases collectively” by designated courts.

From May 1998, courts in Lianyungang City of Jiangsu Province, Heilongjin Province, Shanghai and Henan Province adopted the modus operandi to hear minor criminal cases collectively by designated courts. In this way, the doctrine—cases should be tried by court at the locality of a crime—is broken down. In Shanghai, for instance, minor criminal cases have been centralized from 20 competent primary courts to 4 primary courts. In this way, the disequilibria on quality of the trial have been removed and the question of inadequacy of cases caused by decentralizations has been solved. Although there are still some questions that should be considered carefully, the Juvenile Tribunal Directing Group of the Supreme Court holds a supporting opinion.

As we learned from the Juvenile Tribunal Directing Group of the Supreme Court, most of the judges engaged in minor criminal trial are in favor of the opinion to establish juvenile court. Some courts even have started to make preparation.

All in all, the practice of juvenile tribunal has laid a foundation for the establishment of juvenile court and we need to work harder to complete juvenile judicial system in our country. Lacking definite regulations, we are still in the process of testing. Regulations laid down by the Supreme Court on basis of the Criminal Law and the Criminal Proceedings Law are just interpretive instruments. Moreover, the Criminal Proceedings Law itself is not particularly set for juvenile so unfitness of minor criminal trial cannot be avoided. In china, a developing country, it is lack of funds that cannot remove shortages in our work at one time. Besides, there are some spaces in the aspect of social management during reform of the society that will affect the education and reform of juvenile delinquents more or less. Our research on juvenile judicial system is so shallow that it is not able to expedite the development of juvenile judicial system.

Undoubtedly, there will be many difficulties in the procedure of improving and developing the juvenile judicial system in our country. As far as we are concerned,

the juvenile judicial system is corresponding to juvenile offenses and it has its own inevitability. It can be regarded as a landmark on the way of improving judicial system at the very beginning of its establishment. Therefore, we are sure that at the very beginning of its innovated rapidly with the progress of the whole society. As judges who preside over minor criminal trials, we would like to endeavor with all people to facilitate minor criminal judicatory in our country and the healthy growth of the younger generation.