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LEGAL TRUTH AND ADOLESCENT TRUTH: A COMPREHENSIVE VISION IN CRIMINAL LAW WITH ADOLESCENTS

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ABSTRACT

In this text with a case study, it is delimited by contextual analysis, theoretical description and reflection; about the procedural truth and the adolescent truth, in the penal system for adolescents. Supported by the philosophy of law, psychology and the legislation of the adolescent system. The central issue is related to the conduct of the judicial authority, which gives special emphasis to the procedural truth, leaving behind the psychological and social factors of adolescent truth. The main argument of this text emphasizes harmonizing the procedural truth and the adolescent truth in the criminal justice system for adolescents; in order to combine the trinomial truth, justice and comprehensive reparation.

KEYWORDS

Context in adolescent; Domestic violence; Legal process; Procedural Truth and Truth in criminal law.

Summary: I. Introduction II. Methodology. III. Legal Truth in Criminal Law. IV. Procedural Truth V. Adolescent Truth. 1. Legal framework for adolescents. 2. Psychological framework of the adolescent. 3. Social framework of the adolescent. 4. Adolescent in conflict with the law. VI. Case study: Three adolescents, four constants. VII. Conclusions. VIII. Bibliography.

I. INTRODUCTION

Adolescence is a fundamental stage for personal development. In some cases, at this stage, people come into conflict with the law, by some conduct classified as a crime. This is mentioned in the National Survey of Adolescents in the Criminal Justice System; registering 5038 adolescents who have had contact with the judicial authority (2017). Therefore, a portion of adolescents violate norms and require specialized intervention, due to their particular age conditions.

In this sense, this text with a case study, will identify the executive characteristics of the authority in criminal matters with adolescents, at the time of coming into conflict with the law. In order to propose a comprehensive intervention by the authority, from the procedural truth and the adolescent truth. In order to make clear the best interests of the child in the reality and adolescent truth.

To begin, there is no absolute truth, but truth as an abstract concept, which requires other components to be delimited, addressed and raised. The Royal Spanish Academy establishes the concept of truth in two main definitions: the first from a subjective aspect, where it relates the truth with the congruence of saying what you feel or think; the second from the concrete, where a judgment or purpose cannot be rationally denied. Therefore, depending on the disciplines with which the subject is addressed, there will be a diversity of truths.

In criminal law it is fundamental to reach the truth of the trial, this revolves around the facts, therefore, it is recurrent to seek that the subjects of law tell the truth and that it is verifiable.

For this, criminal law implements a rationalist methodology based on: complaint, proof and resolution; which led to procedural truth. With this perspective, criminal law aims to fulfill the objective of approaching the truth, matter or facts.

But, to delimit the possible truth, it is necessary to make holistic use of the elements that interact in its constitution. That is why, in criminal law with adolescents, it is essential to approach it from the procedural truth, material truth and adolescent truth.

The first from due process and its guarantees, the second from what happened and interpretation of the parties, and the third from the psychological, social and legal reality of the adolescent.

Finally, criminal law for adolescents, in addition to clarifying the facts, obliges the operators of the system to carry out comprehensive interventions with adolescents. Which are a vulnerable group, due to the characteristics of the age, also because they recent constant affectations of violence in the family group and also secondary and tertiary revictimization at the time of contact with the authority.

II. METHODOLOGY

This project was developed through the case study, which sought to describe the situational context of the judicial field, in criminal matters with adolescents. Similarly, an analysis of the problem was carried out, at the moment in which the adolescent comes into conflict with the law.

The main objective was to identify the executive characteristics of the authority in criminal matters with adolescents, when they come into conflict with the law. In order to propose a comprehensive intervention by the authority, from the procedural truth and the adolescent truth.

We rely on the legal positivism of legislations, theories and concepts, referring to the central issue of adolescents in conflict with the law. Similarly, in realism making use of observation and intervention.

The techniques related to the subject were in two senses: Positivism, through documentary sources of information, which correspond directly to the current legal sphere of the adolescent, the psychological, social and legal characteristics of this. Realism, was through the observation of the phenomenon, the semi-directive open interview and application of the projective test drawing of the human figure; performed on adolescents in conflict with the law.

The foregoing with the intention of offering an alternative of integral intervention by the judicial authority, at the moment that the adolescent comes into conflict with the law.

III. LEGAL TRUTH IN CRIMINAL LAW

The subject of truth in the legal field has presented special interest regardless of the time and discipline with which it is observed. Since its origins, the legal truth in criminal law has sought to prosecute and punish people who commit behaviors classified as a crime.

This can be recorded historically in the so-called savages, who gave specific attention and intervention to those aspects of the criminal truth, when sanctioning prohibited behaviors. These primitive groups exercised the penal truth, guided according to Bronislaw (1985) “by a transcendent solidarity of the group” (p.49). Therefore, punishments were often exemplary, to seek collective order.

Similarly in ancient Roman law, pillars were established aimed at determining the criminal truth and issuing sanctions to offenders. This through the public trial, which gave the opportunity to express grievances, presentation of evidence, and

thus the authority issued the sentence. This gave the State and criminal law a special emphasis as executor and sanctioner.

At present, our country is no exception to this vision of the State; Article 20(A) (I) of the Mexican Constitution establishes that criminal proceedings shall be accusatory and oral. It shall be governed by the principles of publicity, contradiction, concentration, continuity and immediacy. Similarly, it states that “the purpose of the criminal process will be to clarify the facts, protect the innocent, ensure that the guilty does not go unpunished and that the damages caused by the crime are repaired.”

From the above, we glimpse that the legal truth in criminal law, from the so-called savages to the present day, has been based on the clarification of the facts, through the evidence presented to the authority, so that it can establish the truth, sanction and therefore the social order.

IV. PROCEDURAL TRUTH

It is in the sanctioning activity, where the procedural truth plays an important role. In this sense, from the twentieth century to the present time, an exceptional development has been generated, in terms of institutions and legislations that seek to “know and reach the truth” (Rodríguez, 1999, p. 1). To give the State legitimacy in the “exercise of the right to punish” (Zamora, 2014, p.1).

That is why the Mexican legal system executes a methodological system of rationalist court, based on due process that, according to the jurisprudential thesis, 1a. / J. 11/2014 (10a.), issued by the Supreme Court of Justice of the nation, consists of the notification of the beginning of the procedure, the opportunity to offer and vent the evidence in which the defense is fined; the opportunity to argue and a resolution settling the issues discussed.

With the above, in a procedural manner it is sought to maintain balance between the parties, at the time of being heard and defeated in trial. Similarly, monitor the conduct of the jurisdictional authority. Finally establish the procedural truth; which establishes the power and sanctioning legitimacy of the State; indirectly falling back into a “process of criminalization” (Morrison, 2012).

This is because, procedural truth is rationalist, with an objectivist epistemological approach, where the “subject is determined by the object” (Hessen, 1999, 27). Which means that the active subject is diluted or made invisible by the judicial process; which is fundamental for the legitimation of the State, but not of the person. Therefore, with adolescents in conflict with the law, it is important to “question the purposes of criminal law” (Taruffo, 2010, p.109). Since the penal system with adolescents, seeks a comprehensive intervention; Beyond the penalty.

This coincides with what Gascón (2010) stated, “the judicial model of fixing the facts is the need to reconcile the main objective of “search for truth” with the “guarantee of other values”” (p. 107). Therefore, we understand that at present criminal law in its practical purposes pursues procedural truth, but harmonized with the values and principles that sustain it.

Thus, the truth from the criminal law for adolescents, needs to be built and reformulated in the principles of best interests of the child, comprehensive protection, non-discrimination, favorable application, responsibility and specialization; in addition to considering the context in which the adolescent develops. For all this, it is necessary to delimit criminal law in harmony with the so-called procedural truth and adolescent truth.

V. ADOLESCENT TRUTH

Adolescence is considered a stage of primary development in people’s lives, in this period the bases of social and emotional development are deployed; where the creative capacity is potentiated – if all goes well – a situation that can be reflected in the future life. Therefore, in the adolescent or contextual truth, it is important to demarcate the legal, psychological and social aspect of this group, a situation that is distant from the procedural truth.

1. Legal framework for adolescents

The adolescent truth from the legal sphere, is governed by the Convention on the Rights of the Child (1989), which establishes in its Article 4 “Best interests of the child”, Article 39 “States parties shall adopt all appropriate measures to promote

physical and psychological recovery and social reintegration ...”; Similarly, article 4, ninth paragraph of the Political Constitution of the United Mexican States (1917) establishes the “best interests of children”, which seeks a harmonious physical, psychological and social development of children; and by the National Law of the Integral Justice System for Adolescents (2016), where it is established in Article 13 “... Opportunities and facilities shall be guaranteed to them, in order to ensure the best conditions for their physical, psychological and social development, in conditions of dignity.”

Derived from the legal framework, it is generally an obligation of the Mexican State to ensure compliance with the best interests of the child, which in practice is relegated to being reflected in the text of the sentence, while it must be manifested in the reality of the adolescent, from the first contact with the judicial authority.

Thus, all authorities within the scope of their competence must ensure the best interests of children, recovery and social reintegration, not only respecting due process, but also promoting an environment of containment, with restorative and restorative nuances. In other words, from the moment of arrest until the judicial resolution, the adolescent must be guaranteed due process, respect for his human rights and also extensive protection and emotional containment.

2. Psychological framework of the adolescent.

For the psychological and emotional aspect, adolescent truth is marked by the so-called concrete and egocentric field; which means that in adolescence the subject experiences and interprets from the sensations and thoughts of the moment; regular specificities of this stage of development.

It is important to demarcate that adolescence is a continuous stage of childhood, in the latter the development of the first years is characterized by physical, psychological and social immaturity; where minors require special care for survival. Usually and apparently, the people in charge of providing food, care and emotional stimuli are the parents.

That is why, from the first months of birth to adolescence, a dialectic of relationship is generated between childhood and parents. Infants in the first years of life forge a

boundless bodily identification with caregivers, to meet their basic needs for food and affection.

This situation has been called the mirror stage, where the infant projects an image on the caregiver, seeking to establish a relationship between the child's organism and its own reality (Lacan, 2009, p. 102). Therefore, the infant relies on mirror fantasies, to integrate as a subject of a social environment and thus shape his ego; in an alienating destination.

This situation decreases as one progresses to adolescence, but emotional attachment with parents and friends continues to persist. Therefore, the adolescent self in formation is influenced by the social environment, through perception and consciousness. An idea that is strengthened, with some research, where it is considered that the psychological aspect of the adolescent is formed through the social relationship, developed in the interaction of personal needs and cultural demands (Silva and Tuleski, 2014, p. 15). Actions that found the parent-child relationship.

In this sense, adolescence retains traces of emotions and “egocentric” thinking (Papalia, 1997,360). This means that, for the adolescent, it requires adequate interaction with the other, to continue shaping their identity.

But, this interaction is tinged with ambiguous motions with “the father loved and hated, the mother loved and hated” (Klein, 2016, p.368), a situation that makes overcoming the adolescent stage more complex. We find that, at this stage, a veiled emotional ambivalence with the other persists. Constitutive situation in the regular development of the adolescent, which accompanied by security, attachment and self-concept; They are fundamental to the promotion of free personality development.

Thus, the development of adolescence is marked by the dialectical relationship between the adolescent, caregivers or authority figures. Therefore, it is essential to focus attention on parents; which can make the difference between adequate or poor development in adolescence.

For this reason, parents or caregivers when they opt for paternity or maternity; They choose to satisfy the demands of their children in an unlimited way. In some,

but not all, cases, parents or caregivers find a sense of fulfillment through their offspring.

In this sense, parents who have assumed the role of procurers of the healthy development of their children; They are essential in adolescence to contribute to the regulation of subjective emotional factors. Promoting respectful relationships of the personal process, supported by empathy, which is understood as follows:

Empathy is an understanding of the inner and deep relationships of the person, while remaining oneself. Comprehension is done through verbalization, where an environment is generated conducive to personal intimacy making its appearance. Empathy is a way of understanding novelty from within, respecting the originality and indivisibility of the person. It is to respect the totality lived and its results. In other words, empathy involves knowing the other. It is the ability to understand the desires, feelings, thoughts and attitudes of the other. (Calderón, 2021, p.100).

Therefore, empathic containment is fundamental for the free development of the personality and the restoration of the adolescent person. But, in cases of rejection, abandonment or physical and emotional abuse, poor containment is executed in criminal acts.

Acts that manifest the confusion of subjective roles, where the “other who has been called *victim*, is fundamental as a reflection of the restoration of the adolescent, since the adolescent in the subjectivity of lost enjoyment is that other” (Calderón, 2021, p.104).

This is evident with Legendre (2009), in his work entitled *The Crime of Cape Lortie*. The text states what happened in May 1984, when a corporal of the Canadian army stormed the Parliament of Quebec shooting left and right with the intention of killing the government of Quebec! Detained after killing three people and wounding eight others, the corporal said: *The Quebec government had my father’s face!*

While it is true, that Lortie manifests the desire parricide in the other. It is also true that, along with the act, Lortie wishes to annihilate him as a teenager; Deduced from the expression was my father’s face .

The adolescent criminal act reveals the subjective confusion of egocentric feelings, in relation to the other and to oneself; but at the same time a delimiting desire between the two. This derives from concrete thinking, where the adolescent externalizes in the acts the need for a limiting reality.

The above agrees with what is mentioned in the text *Adolescence Times of Conjecture*, which refers to the lost enjoyment of childhood and the narcissism of adolescence, a delirium of all power, without limits; but according to the author “part of the paradoxical feat of pride is to place a limit within the limitlessness of its power” (Orozco, 2000, p. 54).

Therefore, the adolescent in his delirium of omnipotence with the other, arises the need for adequate containment, a situation registered at the time of coming into conflict with the law, through the criminal act; with which it demands emotional and mental containment.

Finally, we can deduce that procedural truth is far from adolescent truth. The procedural truth deals with the formal issues of the process, the adolescent truth of the subjective ones that operate in the subject at the time of the criminal act.

3. Social framework of the adolescent

In cases known as adolescent criminality, we find the constants of “something unsaid from their childhood, which is marked by violence and abandonment, mainly” (Martínez, 2021, p.1). This in relation to the family, which is the basis for the free development of the adolescent personality.

These constants of grievance are understood as domestic violence, defined in the Federal Criminal Code, in its article 343 bis.

The crime of domestic violence is committed by anyone who carries out acts or conduct of domination, control or physical, psychological, patrimonial or economic aggression, to any person with whom he is or has been united by marriage, kinship by consanguinity, affinity or civil, concubinage, or a couple relationship inside or outside the family home.

We understand that these behaviors are a form of adolescent abuse, which cause damage to health, development and dignity; putting at risk the survival of this vulnerable group. For the World Health Organization (2020)

Abuse causes stress and is associated with disorders of early brain development. Extreme cases of stress can alter the development of the nervous and immune systems. As a result, adults who have been abused as children are at greater risk for behavioural, physical and mental problems.

This situation is reflected at the national level in our country. The National Institute for Women (2020), presented the National Survey on the Dynamics of Relationships in Households (ENDIREH) 2016, among adolescents aged 15 to 18:

26.1% reported having suffered violence during childhood: 20.4% physical violence, 10.5% emotional violence and 5.5% sexual violence. Regarding sexual abuse during childhood: 3.4% had their private parts touched or forced to touch the private parts of another person without their consent; 1.9% tried to force her to have sex and 1.8% were forced to have sex.

Similarly, Michoacán is no exception in terms of mistreatment and vulnerability of rights in adolescence. The Congress of the State of Michoacán in the LXXXV legislature, presented an overview of the rights of children in Michoacán, text where Vargas (S.f) states “The girls and boys of Michoacán are different, however, they live in a higher degree of vulnerability, with more marked ethnic, economic and social differences.”

From the above, we can distinguish that at the international, national and local levels; the adolescent population suffers from aggression, violence within the family and vulnerability of rights in a very high percentage; leaving negative effects on their physical, psychological and social development.

In relation to the sequelae of child and adolescent abuse, González (2014) mentions “we can affirm that it causes short and long-term effects. As consequences we can highlight an desensitization to pain that increases or favors antisocial actions and delinquency in the future” (p.14).

Therefore, physical and emotional abuse in adolescents impairs the capacity for self-regulation, manifesting itself in the criminal act. In the following way, Anaya, Bustamante, Cohen and Domínguez (2011) explain it “because the lack of attachment also causes alterations in the brain, in the right orbitofrontal area, which helps in the recognition of the emotions of others, regulates them, as well as impulse control” (p.5).

Simplifying, family violence in adolescence qualifies the criminal act. This is because, for some adolescents, the criminal act manifests what is not said in words. Being the expressive opportunity for growth, exchanging the role of oppressed to oppressor.

4. Adolescent in conflict with the law

The situation of abuse and domestic violence in adolescence worsens when it comes into conflict with the law. We ask this to be told in the case “Street Children” (Villagrán Morales et al.) v. Guatemala, a judgment issued in 1999 by the Inter-American Court of Human Rights. Although it is true that this sentence is from another territorial latitude destined to the Mexican one; also that it is binding on our country, this because in Mexico fundamental rights of adolescence are violated directly and indirectly. This is reported by the Mexican Children’s Rights Index, where Almanza (2019) mentions “Mexico is a country where children’s rights are violated in a generalized way.”

It is important to consider that the adolescent offender is a person with human dignity. Although it is difficult to accept, an offender tells us Lovatón (n.d.) “can also be considered as a victim, for example, through secondary and tertiary victimization” (p.217). Victimization that unfolds directly when in contact with the judicial authority and this indirectly violates the development of the adolescent’s personality.

A situation that generates an intersection with the opinion of international law, in relation to the issue of children and justice. The Supreme Court of Justice of the Nation, in a course entitled “Children’s Rights and Access to Justice” (2021), presented a compilation of the Committee’s concluding observations to Mexico, from 1994, 1999, 2006 and 2015.

These observations instruct the Mexican State to work to establish a normative framework that respects the rights of children enshrined in the 1989 Convention on the Rights of the Child and that they are reflected in the context of children and adolescents; and not only in the regulatory framework.

Finally, adolescent truth is composed of psychological, legal and social factors; which must be harmonized when the adolescent comes into contact with the law, to guarantee a comprehensive intervention.

In this thread, the truth in general must be harmonious, from its various edges. Such is the case of procedural truth and material truth, where it is absurd to justify the actions and resolutions of the authority, only in procedural action. This coincides with what was stated by Ferrer. (2005)

However, the distinction between material truth and formal truth emphasizes the authority conferred on the declaration of proven facts made by the judge and on the legal irrelevance of material truth once the case has been resolved (p.62).

According to the author, there must be congruence between procedural truth and material truth. We attach to the reflection, the so-called adolescent truth in the criminal process, this with the intention of integrating the trinomial truth, justice and integral reparation.

VI. CASE STUDY: THREE ADOLESCENTS, FOUR CONSTANTS

The present study was conducted randomly to three adolescents, the only constant was that they had had contact with the authority, derived from a criminal act. The interaction was through semi-directive interview, which consists of the adolescent expressing what he wants and only specifying aspects necessary for the subject studied. The Human Figure Test or Machover of 1976 was applied¹, which is a graphic, projective test that allows diagnosing emotional and personality traits.

The theoretical support of the test is based on psychoanalytic contributions and neurological development. This test was chosen for the economy and practicality

¹ An interview is conducted to know the current state of the person. Then you are asked to draw a person and then to draw another of the opposite sex.

of it, also because it allows to identify how the subject modifies the body image, in relation to the interaction with the environment and others. In our country, the Human Figure Drawing (DFH) test has been carried out, an analysis of correspondence with adolescents. Where one of the conclusions of Ruiz (2009) indicates the following:

The graphic elements of the DFH have different importance during the development of adolescence, in addition to corroborating that it can identify people with difficulties in physical and emotional development without the need for a standardized score. Therefore, it is a useful instrument to identify adolescents with possible or potential emotional disorders, as long as all the graphic elements are integrated and the association of a single graphic element is not made as a prototype of some emotional problem. (p.42)

Therefore, the open, semi-directive interview and projective test are suitable for the group of adolescents in the case study.

The first of the adolescents, belongs to the male sex, 14 years of age, 4th grade schooling, born in the city of Morelia Michoacán, low socioeconomic level, lives with the maternal grandmother in the city of Morelia Michoacán, is of absent parents, has had contact with the judicial authority for damage in things. His experience with the authorities says “at the time of the arrest they did not beat me, because I did not put up resistance” “I remember that the cop, told me: son stop your mother. The cop behaved chido.” His legal situation was resolved due to lack of denunciation, by the offended party

The second, belongs to the male sex, brother of the third subject, 14 years of age, 5th grade schooling, born in the municipality of Apatzingán Michoacán, low socioeconomic level, lives with the mother in the city of Morelia Michoacán, of absent father, has had contact with the judicial authority for simple robbery. His experience with the authorities says “at the time of arrest they did hit me, because I put up resistance and ran.” “The one who behaved chido was Lic., he gave me confidence.” Their legal situation was resolved by reparatory agreement, pardon of the injured party and reparation of the damage.

The third, belongs to the male sex, brother of the second subject, 16 years of age, 3rd grade schooling, born in the municipality of Apatzingán Michoacán, low socioeconomic level, lives with the mother in the city of Morelia Michoacán, of absent father, has had contact with the judicial authority for simple robbery. His experience with the authority says “at the time of the arrest they also beat me, because I ran” “Yes, Lic. behaved chido” His legal situation was resolved, with reparatory agreement, forgiveness of the offended and reparation of the damage.

Finally, the three teenagers mentioned, “we eat Resistol, because we are broken inside.”

Table 1

Constants of adolescent truth in conflict with the law

Adolescent	Schooling	Types of domestic violence	Psychological damage (DFH)	Contact with the law or conduct
First	4°	Psychological mistreatment	Infantilism	Damage to things
Second	5°	Physical mistreatment	Aggressiveness	Simple theft
Third	3°	Sexual abuse	Self-harm	Simple theft

Own elaboration.

The information was gathered from the interview and application of the DFH TEST to the three adolescents.

According to the intervention with case study, four constants were identified with adolescents in conflict with the law. The main constants are: poor school performance, family violence with the variants of psychological, physical and sexual abuse; impacting on emotional affectations, which are subsequently reflected in the criminal act.

Similarly, it can be identified that judicial intervention based solely on procedural truth leaves out the psychological and social factors of the so-called adolescent truth, which is fundamental for social reintegration.

The main authors consulted in relation to the social framework of this study agree that adolescent maltreatment wreaks havoc on school dropout and poor social and productive performance; impacting on behaviors classified as criminal.

Finally, it can be seen that children and adolescents are a mostly vulnerable group, because they suffer family violence and secondary and tertiary revictimization when they come into conflict with the law. In other words, the two guarantors of the rights of adolescence violate them, the first directly in the home and the second indirectly when administering justice.

We deduce that criminal law for adolescents requires considering procedural truth and adolescent truth. Bringing together facts, evidence, and emotional and mental containment. Situation that is implicit in the values and principles of criminal law for adolescents.

VII. CONCLUSIONS

The legal truth in honeycomb law is fundamental for its operation, which requires reasonable knowledge of the facts and the establishment of the sanction. But criminal law for adolescents also requires a specialization for comprehensive intervention. Therefore, it is necessary to harmonize procedural truth and adolescent truth.

The procedural truth is conformed by international and national legal standards. But a sentence alone only contributes to the protection of due process, but not of the adolescent. It is necessary that the legal framework maintains a balance and harmony with the psychological one of the adolescent.

It is important to consider that the adolescent truth has the constants of low school performance, family violence, abuse and tertiary revictimization, Therefore, it is essential that a psychological intervention of emotional and mental containment

is carried out. Leaving out psychologisms, contributors to early diagnoses of personality, which contribute to the criminalization of adolescents.

The administration of justice, when it comes into contact with the adolescent, must seek a comprehensive encounter with the adolescent; which must be in accordance with the specific needs of adolescent development and its cultural context.

Similarly, early intervention should not be an exclusive activity of specialists in the psi field, but of all operators of the judicial system, with whom the adolescent has contact in the process.

It requires procedural truth and adolescent truth; come together to integrate the trinomial Truth, Justice and Integral Reparation. This with the main idea of harmonizing the repair of the damage, but in the same way of the adolescent person.

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