

THE COMPLETION OF LEGAL SYSTEM AGAINST CRIMES IN THE PROCESS OF BUILDING A LAW-BASED STATE IN VIETNAM

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1. Introduction

1. In the period of law-based state building and judicial reform in Vietnam, the completion of a legal system against crimes is of great necessity. This is due to the three main reasons that follow.

1.1. Firstly, in legislation, the building of civil society and a law-based state is a necessity of all nations, for the fact that in the time of globalization and stormy development of technology and informatics as well as the complicated development of international crimes (especially the regional and international terrorist crime), all states have to complete their own legal systems on fighting against crimes in order to co-exist and integrate into the international community.

1.2. Secondly, in practice, in Vietnam's current legal system against crimes, the three law branches of criminal law, criminal procedure law and criminal execution law have many norms and institutions which reveal certain weaknesses and insufficiencies, and in fact, are inadequate to the internationally recognized principles and norms of the criminal judicial field. Thus, they cannot ensure a high efficiency of the fight against

crime (especially international and transnational crimes).

1.3. Thirdly, in theory, in the current period of building a law-based state and carrying out legal reform, there remains a lack of scientific studies which are concerned with arguments and analysis in order to figure out scientific and legislative solutions to complete its current legal system against crimes, specifically the norms and institutions of the three law branches of criminal judicial field (criminal law, criminal procedure law and criminal execution law) as mentioned above.

2. Thus, what has been mentioned above not only allows us to confirm the socio-political and legal meaning as well as the scientific and practical significance of having researches on how to complete the legal system against crimes in Vietnam in the stage of building a law-based state, but also acts as the justification for the title of this article.

2. Content

1. Concepts and Basic Features of the Legal System against Crimes

1. *Legal system against crimes is the first concept* that should be clarified before dealing with the characteristics and analyzing the basic content of the process to complete the system. However, the concept has never been mentioned in any

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study in legal science of Vietnam and, thus, in the current period of building a law-based state, a scientific and working definition of this concept can be given as follows: *Legal system against crimes is a system of legal norms of three law branches under the criminal jurisdiction (Criminal law, Criminal procedure law and Criminal execution law) which regulate the four groups of social relations: (1) Social relations arisen between the state and the guilty persons; (2) Social relations arisen in the process of investigating, prosecuting and judging criminal cases; (3) Social relations arisen in the execution of criminal verdicts and judgments and, (4) Social relations arisen in the international corporations of Vietnam to ensure the high efficiency of the fight to prevent and against crimes, to contribute to the success of the Legitimate State building process and the judicial reform; to firmly protect human rights and freedom of Vietnamese citizens, as well as peace and security of human being in the region and all over the world.*

2. Basic features of the legal system against crimes. Based on the above mentioned definition of the legal system against crimes, the analysis of the regulations of the three legal branches of criminal jurisdiction, and the study on the practices implementing those regulations in Vietnam, we can point out five basic features of the legal system against crimes in the period of building a law-based state as the follows:

2.1. The first feature is that the legal system against crimes is first of all the overall legal norms of the three law

branches of the criminal jurisdiction (Criminal law, Criminal procedure law and, Criminal execution law).

2.2. The second feature is that the legal system against crimes includes norms and institutions regulating four groups of social relations: (1) between the State and convicts; (2) in the process of investigating, prosecuting and judging criminal cases; (3) in the execution of criminal verdicts and judgments and; (4) in the international co-operations between relative criminal judiciaries of Vietnam and other countries on fighting against crimes.

2.3. The third feature is that norms and institutions of the legal system against crimes are to ensure a high efficiency of the fight against domestic and transnational crimes, to contribute to the success of a law-based state building process and the judicial reform; to firmly protect human rights and freedom of Vietnamese citizens, as well as peace and security of human beings in the region and all over the world.

2.4. The fourth feature is that the implementation of norms and institutions of the legal system against crimes is guaranteed by the most strictly coercive power of the State – the criminal judicial coercion.

2.5. The fifth and the last feature is that in the current trend of integration and development, the Vietnamese legal system against crimes has to be built in accordance with the principles and norms of the international law on criminal jurisdiction which are commonly conceded.

II. Concept and Scientific Foundations of the Completion of the Legal System against Crimes

1. Concept of the Completion of the legal system on fighting against crimes. The Concept of the Completion of the legal system on fighting against crimes is not in existence in Vietnam's legal science. However it can be roughly understood as: *a system of comprehensive measures making all regulations of the Criminal law, Criminal procedure law and, the Criminal execution law appropriate to the internationally conceded principles and norms of the criminal judicial field, contributing to the efficiency of the legal adjustment, ensuring the synchronous and correct implementation of those regulations in practice.*

2. Scientific and practical foundations of the completion of legal system against crimes. Based on the above mentioned concept, the analysis of objective rules of socio-politics, economics, culture, law and traditional history currently existing in Vietnam, as well as the analysis of the regulations of the three law branches of criminal jurisdiction and the implementation of them, we can point out five scientific and practical foundations of the completion of legal system against crimes in Vietnam in the period of building a law-based state.

2.1. Foundation 1: The completion of legal system the against crimes in the period of building a law-based state in Vietnam has to meet urgent requirements of the social practice and the practice of the fight against crimes in general, and of

the legislation and the implementation of the three law branches in the system of criminal judiciary laws (Criminal law, Criminal procedure law and, the Criminal execution law) in Vietnam in particular.

2.2. Foundation 2: The completion of the legal system against crimes in the period of building a law-based state in Vietnam should be based on the theoretical foundations of specialized legal science relative to the three legal branches mentioned above which have been soundly and objectively clarified, and should ensure the convincing power with new, advanced and democratic legal thinking.

2.3. Foundation 3: The completion of legal system on fighting against crimes in the period of building a law-based state must be in conforming with the commonly conceded principles and norms of international law on the criminal judicial field, and should be concurrently based on the legislative and humanity ideologies of a law-based state for the sake of human rights and freedom.

2.4. Foundation 4: The completion of legal system against crimes in Vietnam in the stage of building a law-based state must assure the *harmonization* between the traditional legal values of the nation and the advanced achievements of the legal science in the world.

2.5. Foundation 5: The completion of the legal system against crimes in Vietnam in the stage of building a law-based state must be synchronically implemented with the renovation of legal criminal judicial system, criminal law, criminal legal procedure, and criminal enforcement law.

III. Some Main Synchronic Measures to Accomplish the Criminal Law System

By analyzing the regulations of the current criminal law of Vietnam and its practice in recent years, it is possible to determine the following main synchronic measures to accomplish the criminal law system in the stage of building a law-based state in our country:

1. By continuously perfecting and ensuring the stability of criminal law system through public and democratic mechanisms in *criminal legislation* to continually renovate, amend, and supplement to the current Penal Code of Vietnam, issued in 1999, on *progressive and humanitarian legal provisions or institutions of human civilization*, on the basis of comprehending the commonly conceded principles of judicial criminal practice in a law-based state.

2. By analyzing the current Penal Code scientifically and putting forth objective and well-founded evidence, and by ensuring the scientific and logically consistent accuracy of series of regulations and the institutions which are insufficient and incoherent in terms of legislation, we aim at perfecting the state's criminal law, as specified in [4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14]:?

1) The provisions on *source* and *missions* of criminal law;

2) The institution on the principles of criminal law (because although this is a very important institution which completely penetrates all provisions of the General and the Sins in Penal Code, in the

recent second canonization of the Vietnam's criminal law, it was not officially recognized in the current Penal of Vietnam 1999;

3) The institution on efficiency of the Penal Code;

4) The institution on crime;

5) The institution on stages to crime (as the Penal Code of Vietnam 1999 lacks two legal definitions of "completed crime" and "incomplete crime");

6) The institution on one's own initiative to end the crime halfway (because this institution must be regulated to all accomplices, not only to one kind of accomplice, the performer, as stipulated in Article 19, Penal Code of Vietnam 1999, where the legislators only mention the action to end "crime action" – the "crime performance" behaviour;

7) The institution on accomplice (because this institution in the Penal Code of Vietnam 1999 has many shortcomings – the legal definition of accomplice as "to perform a crime together" at Point 1, Article 20 only mentions one kind of accomplice, which is the *performer* instead of the "co-performer" that can covers all other kinds of accomplices. The institution also lacks important provisions which mention legal definitions of the concept of two *other kinds* of accomplices (*simple* and *complicated*), crime organizing and the adjustment of criminal liability of members in a group);

8) The institution of multi-crimes (because this institution only mentions types of recidivism, whilst lacking

provisions to fully regulate its three other kinds – *to sin many times, to have many sins and to sin professionally*, as these three kinds have not officially been recognized in the Penal Code of Vietnam 1999);

9) The institution of circumstances (details) that exclude the *criminality* of behaviours;

10) The institution of criminal liability, etc.

3. Based on the above mentioned idea and the objective, scientific, well-founded, and convincing justification, we should try our utmost to provide clear regulations in the defined criminal law:

1) The limitations of *criminalization* (to what extent peril behaviour to the society is considered a crime) and *non-criminalization* (what peril behaviour to be excluded from the list of crimes).

2) The foundation of *criminalization* (the possibility to be criminally punished concerning what peril behavior causes to what society) and *noncriminalisation* (certain conditions to exclude the criminal punishment, shifting to apply legal provisions of related law branches that are less strict than criminal law or to extend the scope of exemption).

3) Different ways to exercise the criminal liability with the diversity of criminal coercions.

IV. Some Main Synchronic Measures to Complete the Criminal Procedure Law System

By analyzing the regulations of the current criminal procedure law of Vietnam

and its practices in recent years, it is possible to determine the following main synchronic measures to accomplish the criminal procedure law system in the stage of building a law-based state in our country:

1. Continuously accomplishing and ensuring the stability of *criminal proceeding law system* through public and democratic mechanisms in *criminal proceeding legislation* to continually renovate, amend, and supplement to the *criminal proceeding law*, on *progressive and humanitarian legal provisions or institutions of human civilization*, on the basis of comprehending the common conceded principles of judicial criminal practice in a law-based state.

2. Investigating and supplementing to the current Code of Criminal Procedure 2003 *three fundamental conditions* to achieve the goals of a punishment when pronouncing a sentence: (1) The veraciousness of the sentence – punishment or a certain coercive measure should be taken when a person is pronounced sinful, and when a person who did not have sin should be pronounced sinless and should necessarily be excused; (2) The ground of a sentence – when the factual details of the criminal case in that sentence are defined as appropriate and accurate to the objective facts; (3) and the correctness of the sentence – the sentence is pronounced in accordance with all the requirements of the law and is based only on the legal foundations that are stipulated by law.

3. Furthermore, it is necessary to supplement to the Code of Criminal Procedure 2003 all the corresponding cases in which the Court must pronounce one of *the two sentences*: (1) The sentence that pronounces the criminal is sinful (accused); and (2) The sentence that pronounces the criminal is sinless (acquitted).

4. Continuing to research to better complete the institution of clearing the accusation in the criminal procedure law of Vietnam with the mentioned provisions:

4.1. One of the responsibilities of the criminal procedure law of Vietnam in the stage of building a law-based state – *completely and rapidly clear the sinless for the people of accusation*.

4.2. Legislatively confirming that clearing the accusation is one of the principles of the criminal procedure law:

1) That *the State will fully or partially compensate* the material damages, overcome the consequences of mental losses and restore the lost rights to the citizens who were unjustly accused by the authority during the criminal investigation;

2) Citizens who were unjustly accused have the right to be cleared of accusation and the authority who falsely accused them have the responsibility to completely and seriously obey the regulations of the law in order to clear those citizens of accusation;

3) The sequence and procedure of compensating the material damages, overcoming the consequences of mental

losses and restoring the lost rights to the citizens who were unjustly accused by the authority, as well as determining kinds of citizens to be cleared of accusation and recognizing the right to be cleared of accusation of each of them must be in accordance with the regulations of the Code of Criminal Procedure.

4.3. Four foundations for the criminal suspects or the accused not to be considered sinful and to be cleared of accusation: (1) No evidence of sin but the suspect is still accused, investigated and judged; (2) The behavior which they performed is not a crime; (3) They have no connection to the criminal act, and (4) The procurator withdraws the indictment at the court.

4.4. Basis and consequences of vindication and procedures of recovering losses and interests for those vindicated.

5. Continuing to carry out researches to further perfect *the institutions on principles of the criminal procedure law* in the Vietnamese Code of Criminal Procedures 2003. The reasons are as follows:

5.1. Of the 346 articles of the Criminal Procedure Law of Vietnam adopted in 2003, the content of all the basic principles are mentioned in 30 other articles in Chapter II “*General Principles*” (Articles 3 - 32). Thus, this is inadequate in terms of legislation making.

5.2. In addition, some of the general principles are, in legal nature, more of *principles of organization and operation of legal agencies* (i.e. the People’s Procuracy or People’ Court) in a broader sense and

having been provided in corresponding laws. Examples include a variety of principles set out in articles 15-22, 24, 26, and 27. Hence, it is not necessary to provide such principles in the Code of Criminal Procedure. However, they are still included herein as they have been mentioned in the Code.

5.3. The provision of resolution of civil factors in a criminal case (in article 28), in our opinion, *could not be regarded as a general principle of criminal procedures law* but merely a civil legal norm. It is advisable that it be added to Chapter XIII “*Examination, seizure, custody, distraintment and resolution of civil matters in criminal cases*”, which would be more scientifically and legislatively reasonable.

5.4. It is legislatively possible to combine articles in Chapter II into 15 general principles. The principle of proceedings for criminal cases, though not separately provided in Chapter II “*General principles*” like the other 15 discussed thereafter, which to some extent has been mentioned elsewhere in the Act (e.g. Chapter XX “*Procedures of questioning at court*”, Chapter XXI “*Debate at court*”). It is essential that the principle of proceedings between relevant parties in criminal case procedures be explicitly set out; in so doing its advanced, democratic and scientific nature would be highlighted and the spirit of the Resolution 08/TW by the Politburo of the Party Central Committee [15].

5.5. *Academic model of proceeding principles of Vietnam.* The norms set out in the first two chapters of the Act are supposed to include matters of the

criminal procedures act. Actually, two significant articles are not set out, one of the sources of Vietnam’s Criminal Procedure Act and the other of the system of principles (which only maps out the name of the principles and goes before the article with contents of them). Therefore, we reckon law-makers to combine Chapter I and Chapter II into one – Chapter I “*About the criminal procedure act*” housing all the 20 articles, 3 of which regarding sources, mission and effect of the act, and the remaining 17 for the principles of criminal procedure law. [16]

V. *Some Major Synchronized Measures to Improve the Legal System of Criminal Sentence Execution*

To improve the legal system of criminal sentence execution, the following measures should be taken into consideration:

1. Carrying on researches to promulgate and put into effect the criminal sentence execution code as soon as possible and further improving and assuring the sustainability of the legal system of criminal execution with democratic and open regime in *criminal execution legislation*, which is to add in generally accepted advanced and humane legal regulations in the light of the criminal law principles generally accepted in our law-based state.

2. Proposing an academic model of law-making recommendations of norms and institutions of the criminal sentence Criminal Execution Law, on the basis of objective, reasonable and persuasive evidences, to make the will-be-promulgated

Code a virtue one with maximum adjustments of norms, institutions, general matters, and basic standards *to reflect respect and protection by the government for convicts*. For instance:

2.1. Legal status of criminals convicted to various types of punishments (i.e. sentenced with or without freedom, or penalty).

2.2. Inspection and investigation institutions (e.g. inspection of State authorities, investigation of the Court, investigation of superior criminal execution agencies over junior ones and that of the People's Procuracy) over criminal execution agencies.

2.3. Educating and organizing vocational training for prisoners.

2.4. Assisting prisoners who have their cases shortened, canceled or delayed to execute the punishments and the inspecting over them.

3. The Vietnamese Criminal Execution Code in the period of building law-based state needs drafting carefully enough to gain legislative acknowledge in terms of a separate institution. Ten rules of Criminal Execution Law are (1) Legal system; (2) Fair; (3) Humanity; (4) Democracy; (5) Equality right of the convict towards Criminal execution law; (6) Unavoidance to execute the criminal judgment; (7) Maximal and discriminated individualisation of the levels of the criminal execution; (8) Limit to the maximum criminal suppress methods in enforcing criminal judgments; (9) Co-ordinate persuasion – education with enforcement and reeducation; (10)

commit to respect human rights according to international standards about dealing with prisoners.

4. From the point of view stated above, the theoretical framework for the Vietnamese Criminal Execution Rules in the future should, more or less, be organised around two parts *The General* and *The Sins*. In the Criminal Code, these two parts are divided into seven sub-sections with 17 chapters as follows.

4.1. Part I: General Provisions: the Criminal Execution Code in the future should have only one section. The first three chapters are about the common regulations of the Criminal Execution Law. Chapter I is *"About the criminal execution Code"*. Chapter II deals with *"Legal status of the convict"* and chapter III is about *"criminal execution agencies and the inspection and investigation over these agencies"*.

4.2. Part II: Specific Provisions. The Vietnamese Criminal Execution Code in the future should have six sub-sections with 14 chapters as follows:

1) Section two "Additional and main execution without taking away freedom" has five chapters. Chapter IV "Enforce surveillances, expel and seize property", Chapter V "Enforce warning punishments", Chapter VI "Enforce fines", chapter VII "Enforce non-imprisonment punishments" and Chapter VIII "Enforce expelling punishments";

2) Section three "Enforce sentences of imprisonment" has four chapters which are: Chapter IX "Enforce non-life sentences", Chapter X "Classification of

regimes for prisoners in reeducation camps”; Chapter XI “Regulations on education and vocational training for the non-life sentenced” and Chapter XII “Enforcement of life sentences”;

3) Section four and at the same time Chapter XIII “enforcement of capital punishments”;

4) Section five “Implementation of punishment-free and punishment-executing methods” has three chapters. Chapter XIV “Implement of punishment-free methods”, Chapter XV “Implementatiron of punishment-executing methods”, Chapter XVI “Assisting prisoners who have their punishments cancelled and investigating over them”;

5) Chapter XVII “Characteristics of criminal execution over adolescence convicts.

Conclusion

From what has been discussed above, it is possible to come to the following conclusions:

1) The legal system improvement needs a reasonable, objective and persuasive scientific-practical base, which is the prerequisite for the effectiveness of the fight against crime.

2) Under the effect of the complicated and serious issue of domestic and transnational crime and the international common trend in joining, which is indispensable among the countries in the region and all over the world now, law makers in every country should continuously find out synchronous and overall solutions to complete the national

legal system against criminals. Thus, Vietnam cannot be an exception.

3) To join the world in ensuring the high effect of the struggle against crimes, especially international and transnational one for the sake of peace and security of the mankind and to keep institutions and law order; to protect people with their rights and freedom from mistakes in criminal procedure process as well as to meet the demands regarding duties in the process of building a Law-based state, Vietnamese law protecting organs' practical officers need a continuous learning of professional and legal knowledge.

4) To make the Vietnamese law system against crimes match with the rules and regulations commonly conceded by international law regarding criminal justice as well as to make the forecasting competence efficient and build theoretical premises with scientific bases to drive the fight against crime in practice to the right direction, scientists – law makers in the field of criminal justice of Vietnam should continue studying their scientific drafts synchronously, deeply, entirely and more systematically to complete regulations in Criminal law, Criminal Procedure Law and Criminal Execution Law.

5) Finally, to complete the law system against crimes, it is imperative that we carry out solutions in terms of legislation, concept and practice synchronously to get success in drafting *possible law mechanisms* parallel to the regulations of the three criminal justice fields stated above in order to fully-implement the

guidelines on criminal dealing, which are “right cases, right convicts, and under law”, in alliance with contemporary social

relations and to meet the demands of the process of building a law-based state in Vietnam.

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HOÀN THIỆN HỆ THỐNG PHÁP LUẬT VỀ ĐẤU TRANH CHỐNG TỘI PHẠM Ở VIỆT NAM TRONG GIAI ĐOẠN XÂY DỰNG NHÀ NƯỚC PHÁP QUYỀN

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Bài viết đề cập đến một nghiên cứu về hoàn thiện hệ thống pháp luật về đấu tranh chống tội phạm trong giai đoạn xây dựng Nhà nước pháp quyền (NNPQ) ở Việt Nam. Thông qua những phân tích khoa học, tác giả làm rõ một số vấn đề về chính là: 1) Khái niệm và các đặc điểm cơ bản của hệ thống pháp luật về đấu tranh chống tội phạm; 2) Khái niệm và những cơ sở khoa học – thực tiễn của việc hoàn thiện hệ thống pháp luật về đấu tranh chống tội phạm; 3) Một số biện pháp đồng bộ chủ yếu để hoàn thiện hệ thống pháp luật hình sự; 4) Một số biện pháp đồng bộ chủ yếu để hoà thành hệ thống pháp luật tố tụng hình sự; 5) Một số biện pháp đồng bộ chủ yếu để hoàn thiện hệ thống pháp luật thi hành án hình sự.