



Principles of Punishment Without Deprivation of Liberty in The Provisions of Vietnamese Law

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Received: 15th January 2023

Accepted: 09th March 2023

Published: 3rd April 2023

ABSTRACT

Vietnam has promulgated many legal documents as a basis for the organization and operation of criminal judgment enforcement. However, most of them focus mainly on the execution of prison and death penalty without really paying enough attention to the execution of punishments without deprivation of liberty. The system of legal documents on penalty enforcement without deprivation of liberty was issued at different times, so there are still many shortcomings, many contents have not been specified, leading to many difficulties and obstacles in law enforcement. Because it is an administrative-judicial activity, the execution of punishments does not deprive freedom of many subjects, and the order and procedures for judgment execution are relatively complicated, errors may occur, reducing the sense of justice. The meaning of punishment is not deprivation of liberty. Therefore, studying the principles of punishment without deprivation of liberty in the provisions of the law has scientific and practical significance.

Keywords: Principle, punishment, not deprived of liberty, law, Vietnam

INTRODUCTION

Penalty enforcement without deprivation of liberty (warning, fine, non-custodial reform) is a part of criminal judgment enforcement activities and is carried out by non-specialized agencies and social organizations. Being carried out in accordance with the legal order and procedures, closely combining punishment and education, encouraging and creating conditions for the sentenced person to work, study and reform to become an honest person, quickly to reintegrate into society in a normal life environment, to put the judgments and decisions of the Court into practice with high social efficiency, ensuring the interests of the State, organizations and the public people and protect social order.

Penalties that do not deprive freedom of freedom are gradually getting more attention, awareness and widespread application, contributing to better protection of human rights, freedoms and democracy of citizens (Tran, 2021).

Punishment not only has punitive content but also educational and reforming content. We can only talk about punishment when there are two factors present. If the punishment has only punitive content but no educational or remedial content, it is just a measure of pure revenge. The relationship between coercion and persuasion as well as between punishment and re-education, education in punishment is dialectical, they always move, change, and interact with each other (Trinh, 2011).

Imposing penalties in general, and penalties that do not deprive freedom in particular are a special activity of the Trial Panel because if they are applied too harshly, they will seriously infringe human rights and go against the law. Humanitarian and good-oriented viewpoints and policies make offenders feel unfair, depressed, distrustful of justice and no longer motivated to actively try to re-educate them to become good citizens. On the contrary, applying punishment in a way that is too light also does not achieve the purpose of the punishment, making the offenders as well as others disregard the criminal sanctions, increasing the crime (Tran, 2022).

The non-custodial environment will have its own peculiarities, and each non-deprivation penalty has its own particularities. At present, there are still many different views on the nature of criminal judgment enforcement, as well as the nature of the enforcement of non-freedom punishments. There is a view that judgment enforcement is the next stage of the trial process (Institute of Legal Sciences, 2002, p.8).

In essence, litigation is the settlement of disputes through the court's adjudication procedures. That is to say, when the Court has made a judgment on the truth of the matter, on the guilt or non-compliance and on the punishment to be applied in one case or another, the proceedings will also come to an end. In other words, criminal proceedings determine whether or not there is a criminal law relationship in this case. If there is such a relationship, the next process is to implement the content of the criminal law: penalties or criminal justice measures. Implementation of this content cannot follow the order and procedures, because there is no dispute that needs to be adjudicated. Here, in fact, is administrative management - criminal justice. Because the law on criminal judgment execution has an object of regulation that is "the field of social relations arising in the process of executing all types of criminal judgments, in the process of educating and rehabilitating the responsible person criminal or convicted" (Dao, 2000, p.14).

RESEARCH METHODS

In this article, the author mainly uses analysis, synthesis and comparison methods:

Analysis is a method of perceiving things and phenomena by dividing things and phenomena (whole or whole) into parts, parts, and simpler dimensions for study. When studying the principles of penalty enforcement without depriving Vietnamese law of freedom, the author studies the basic principles and specific principles, formed in a different era or social regime. Through analyzing and clarifying each part, each part, summarizing the results, chaining, re-sequencing, to have an overall picture of the principles of penalty enforcement without depriving Vietnamese law of freedom. The analytical method in scientific research is the application of a way of thinking, dividing difficult tasks into many easy tasks.

Synthesis is the reverse of analysis. In essence, however, synthesis is the next step of the analytical method. After having individual knowledge about each piece, each part, the connection and combination of separate knowledge into a total knowledge is the synthesis method in scientific research in general and scientific research legal in particular.

It can be said that analysis and synthesis are two closely related and complementary methods in this article.

RESULTS AND DISCUSSION

Principles are understood as basic ideas and opinions, which play the role of directing specific actions. Principles are often expressed in the form of arguments and principles that have a starting point, orientation and must be respected and mastered in a series of actions. Principles are both objective and subjective. The principle is, first of all, an objective reflection, reflecting the reality of the movement and existence of society, the nature of the regime, the socio-economic basis, the level and conditions of development, history of the country. At the same time, the principle is also imbued with a subjective impression, because objective reality is reflected in people's perception, which is elevated to perspective, through ability, level, and awareness of the objective needs of life. Therefore, when it comes to principles, we have to talk about both the common ones and the specifics of the birth and formation in a different era or social regime.

The basic principles of organization and operation of criminal judgment execution without deprivation of liberty are the ideologies, viewpoints and guiding principles on the organization and operation of criminal judgment execution in the course of criminal judgment execution criminal judgments and decisions of courts that have taken legal effect on penalties that do not deprive freedom of liberty in practice; educate and rehabilitate convicts, prevent new crimes, create conditions for them to reintegrate into the community and educate others to respect the law and fight crime. Therefore, the current system of principles of organization and enforcement of non-freedom punishment judgments in Vietnam must both reflect the nature of non-freeze penalty enforcement activities in our country, as well as calculate towards the development of our society in the coming years under the influence of judicial reform and administrative reform, it must reflect the specificity of penalty enforcement without deprivation of liberty in the socio-political conditions - society at the present stage.

Article 4 of the Law on Criminal Judgment Execution stipulates eight basic principles as guiding ideas, which are reflected throughout the provisions of the law on execution of punishments without deprivation of liberty as well as in enforcement activities non-deprivation of liberty, including:

Firstly, complying with the Constitution and laws, ensuring the interests of the State, and the legitimate rights and interests of organizations and individuals: This is one of the basic principles in the organization and operation of the State. In the current state apparatus of Vietnam, this

principle is also recognized in Article 8 of the 2013 Constitution. Complying with the Constitution and the law, ensuring the interests of the State, the legitimate rights and interests of the organization, individual, is the top requirement in the organization and operation of judgment enforcement. In the implementation of penalties without deprivation of liberty, the main content of that principle is that the enforcement of these penalties must be lawful in accordance with the law. The penalty-executing agency shall not deprive the person of his/her liberty, and the individual competent to execute the penalty shall not deprive himself of his/her liberty to strictly abide by the Constitution and the law in order to ensure the legitimate rights and interests of the individual. In order to ensure the principle of compliance with the Constitution and the law, the interests of the State, and the lawful rights and interests of organizations and individuals in the execution of punishment without deprivation of liberty, a number of conditions must be met, the following case:

In the relationship between the organization and enforcement of punishments without deprivation of liberty, the law on the execution of criminal judgments must always hold a preeminent position. The entire process of enforcing non-liberal punishments, from organization to execution, must be placed within a strict legal framework. Legal documents should be the basis for order and stability of organizational relationships and the enforcement of punishments without deprivation of liberty, as well as for building and resolving relationships. The relationship arising between the subjects participating in the judgment enforcement relationship is the basis for ensuring the purpose and effectiveness of the penalty execution without deprivation of liberty.

The system of legal documents governing the organization and operation of penalties without deprivation of liberty must be relatively complete and appropriate. Legal documents must be built on the basis of correct awareness of the objective laws of social development, fully expressing the characteristics of social relations arising in that process. Execution of judgments, ensuring the interests of the State, lawful rights and interests of the community, of each relevant organization and individual, and being able to effectively adjust the organization and operation of judgment enforcement.

Legislation on the enforcement of non-deprivation penalties must be strictly and consistently observed. That requirement must first be thoroughly grasped in the entire organization and operation of the agency and judgment enforcement officer. Judgment enforcement agencies are responsible for organizing the strict enforcement of legally effective court judgments and

decisions, eliminating arbitrariness, disorganization and lack of discipline in the field of judgment enforcement. Strictly handle all manifestations of law violations in the field of judgment enforcement, including violations of the law by persons obliged to serve judgments and persons responsible for organizing judgment enforcement (Vo & Nguyen, 2006, pp. 50-51).

All activities in the field of criminal judgment execution in general and in non-free punishment execution in particular must ensure the interests of the State, the legitimate rights and interests of organizations and individuals. Any illegal acts infringing on these rights and interests are against the law and must be strictly handled.

From the above analysis, it can be seen that the principle of complying with the Constitution, the law ensuring the interests of the State, and the legitimate rights and interests of organizations and individuals are currently setting specific requirements for the work. Formulate, perfect and enforce the law on non-deprivation of freedom in Vietnam today. It is necessary to soon complete legal documents to create a solid legal basis for the establishment and improve the efficiency of non-deprivation penalty enforcement. In addition, it is also necessary to organize a system of judicial agencies operating according to a combination of the principle of centralization and unity and promoting the active and proactive role of the government and the supervision of mass organizations.

Second, valid judgments and decisions must be strictly respected and obeyed by agencies, organizations and individuals: The central task of criminal judgment execution in general and the enforcement of penalties is not deprivation of liberty in particular is to ensure the correct execution of valid judgments and decisions. This task is associated with the greatest goal of criminal proceedings, which is to clarify the truth of the case, to judge the right person, to commit the offence, and to comply with the law. The correct execution of effective judgments and decisions is the basis for performing other tasks of the enforcement of non-deprivation of liberty: education, deterrence of convicts and education of a sense of respect. the law, the sense of participation in crime prevention of all citizens. Thus, the correct execution of valid judgments and decisions is an objective requirement.

In order for a valid judgment or decision to be properly implemented, agencies, organizations and individuals must respect and strictly abide by that judgment or decision. In the spirit of this principle, all agencies, organizations and individuals involved in the enforcement of an effective

judgment or decision need to clearly define their duties in the execution and execution of the judgment, decide and complete that task well. Only when all parties involved in the enforcement of judgments and decisions are effective and comply with that spirit, can these judgments and decisions be properly implemented in practice.

Third, ensure socialist humanitarianism, respecting the dignity, rights and legitimate interests of the sentenced person: In the law of the execution of punishments without deprivation of liberty, the humanitarian principle demonstrates the superiority of the social system as well as the humanitarian tradition of the Vietnamese people and concretized in Article 20 of the 2013 Constitution. In addition, the humanitarian principle is also recognized in Article 5 of the Universal Declaration of Human Rights: “No one may be tortured or punished. punish inhuman and cruel treatment” (Institute of Legal Sciences, 2006, p.64). The basic content of the principle of humanitarianism in the law of executing punishments that do not deprive them of liberty is not to cause physical pain or humiliation to their personality, but to enforce justice. ensuring fairness, educating offenders to be aware of law enforcement... Therefore, the humanitarian principle requires that punishment enforcement activities that do not deprive freedom of liberty must respect the dignity and honor of individuals but still must ensure effective law enforcement, harmonizing different interests.

The principle of humanitarianism in the organization, the enforcement of punishments without deprivation of liberty does not mean leniency or unfounded contempt for those who do not comply with the legally effective judgments or decisions.

The observance of the principle of humanity must not detract from the strictness of the law and must not violate other principles on the organization and operation of punishment without deprivation of liberty. Therefore, the principle of humanity is always reflected in all regulations on conditions and procedures for judgment execution, regulations on rights and obligations of convicts with punishments that do not deprive them of their liberty. The idea is to respect the rights, values and dignity of the sentenced person.

Fourth, combine punishment and re-education in judgment enforcement, application of the measure of re-education must be based on the nature and extent of the crime, age, gender, educational level and other personal characteristics of the sentenced person: To achieve the purpose of the punishment is not only to punish but also to educate and rehabilitate offenders, the

principle of combining education and re-education with coercion is reflected in the provisions of the law on the enforcement of punishments without deprivation of liberty as well as in the practice of these penalties. Thus, it is necessary to prescribe and apply appropriate measures and forms of education and rehabilitation. It is important to help convicts be aware of their wrongdoings, see the consequences they have caused to society, their families and themselves, so that they can think and act correctly in the future.

For penalties that do not deprive freedom of liberty, the voluntary execution of judgments is one of the important factors that facilitate the smooth and effective execution of judgments, avoiding unnecessary costs. Therefore, encouraging provisions in the law on judgment enforcement are necessary for the judgment debtor to voluntarily perform the obligations required by the court's judgment or decision and create the necessary procedure, for them to do so voluntarily. The application of coercive measures is only applied when the judgment debtor does not voluntarily and the application of coercive measures is really necessary for the judgment enforcement activities to achieve the set purposes. This is the last measure to ensure the validity and strictness of the law and of judgments pronounced in the name of the state. Applying the principle of combining education, re-education and coercion in the organization and enforcement of punishments without deprivation of liberty requires finding the right combination. This relationship needs to be built on the basis of awareness of different levels and doses of the combination of educational, remedial, persuasive and coercive measures for each type of enforcement. However, in all cases, the spirit of the above principle requires that the application of coercive measures is at a minimum level and dose, and that educational, remedial and persuasive measures are applied, to the maximum extent and dosage.

Fifth, judgment enforcement against minors is mainly aimed at educating and helping them to correct their mistakes, develop healthily and become useful people to society: Juveniles are always the recipients of special attention of the State and society in the field of criminal justice in general, in the field of criminal judgment execution in particular. This principle requires that the measures and regimes applied to juvenile offenders must be primarily educational, affecting the sentenced person in order to educate and help them correct their mistakes, equipping them with the necessary knowledge, habits and life skills. These measures and regimes must not be harsh, revengeful, insulting to the dignity and honor of the sentenced person.

Sixth, to encourage the sentenced person to repent, actively study, do re-educational labor, and voluntarily pay compensation for damage: The goal of criminal judgment execution in general and punishment is not deprived of liberty. In particular, it is to return to society a safe and stable state by educating and rehabilitating convicts to become useful people to society, overcoming the consequences that crimes have been caused, and preventing crimes. This goal can only be achieved when all relevant actors in the criminal judgment enforcement organization really make efforts. In addition, it is indispensable for the efforts of the sentenced person himself. Therefore, the State needs to have policies to encourage the sentenced person to repent, actively study, do re-education labor, and voluntarily pay compensation for damage and remedial consequences for the crimes committed. The content of this principle is reflected in the provisions of the law as well as in the practical implementation of punishments that do not deprive freedom of liberty, which should be recognized and appropriate encouragement and encouragement measures should be taken on the basis of the degree of repentance, actively study, do re-education labor, and voluntarily compensate for damage of the sentenced person. Appropriate and timely forms of encouragement and reward are the most concentrated expression of this encouragement.

Seventh, to ensure the right to complain and denounce illegal acts and decisions in penalty enforcement activities without depriving freedom of freedom: To ensure the law as well as the rights and interests of all individuals and organizations All violations of the law in the execution of penalties without deprivation of liberty should be strictly handled. The basic content of this principle is that the right to complain and denounce illegal acts and decisions in penalty enforcement activities without deprivation of liberty must be recorded in the law and guaranteed in practice. Expressing the spirit of this principle, the Law on Criminal Judgment Execution clearly stipulates many contents related to the right to complain and denounce in criminal judgment execution. Along with the rules on complaints and settlement of such complaints. The Law on Criminal Judgment Execution also has quite specific and clear provisions on denunciation and denunciation settlement in criminal judgment execution such as stipulating that the right to denounce in criminal judgment execution is the right of the person to obey and all citizens; rights and obligations of the accuser and the accused...

Eighth, to ensure the participation of agencies, organizations, individuals and families in the education and re-education of the sentenced person: Executing punishments without deprivation of liberty is a complex administrative-judicial activity, whose effectiveness depends not only on

the efforts of specialized judgment enforcement agencies, but also on the participation of local authorities, other state agencies, and social organizations and of all citizens. Therefore, ensuring the coordination between judgment enforcement agencies with local authorities, other state agencies, social organizations and all citizens in judgment enforcement must be considered as one of the most important factors in the enforcement of judgments. Important principles of criminal judgment enforcement and need to be applied and implemented seriously in practice.

In criminal judgment execution, the coordination relationship between three agencies: The Judgment enforcement agency, the Court, and the Procuracy plays a particularly important role. According to the provisions of law, the judgment enforcement agency is responsible for organizing the execution of legally effective judgments and decisions of the Court. Criminal judgment enforcement activities cannot begin without an enforcement decision from the Court. In addition, the Court also has the right to handle a number of other issues related to judgment enforcement activities such as deciding to postpone judgment execution, to suspend judgment enforcement... when there are grounds prescribed by law. The procuracies have the right to supervise the observance of law by judgment enforcement agencies and other agencies, organizations and individuals related to judgment execution in order to ensure that this activity is carried out in accordance with law. Timely detect and remedy all manifestations of law violations in judgment enforcement activities. The interrelationship and mutual binding between these agencies requires a new synchronous coordination mechanism that can form a smooth and consistent operation, ensuring the effectiveness of criminal judgment execution.

In the field of criminal judgment execution, in addition to the specialized judgment enforcement agencies in charge of executing prison sentences (police agencies, military organizations), expulsion penalties (police agencies), fines, confiscation of property (civil judgment enforcement agency), the commune, ward or township administration or the agency or organization where the convict resides, or works is in charge of executing the penalties. such as non-custodial reform. Thus, the local government and the above-mentioned organizations both have relations with law enforcement agencies (Courts, Procuracy) as the unit responsible for the enforcement of penalties. sentenced to imprisonment and has a relationship with the Judgment Enforcement Agency as a coordinating unit to ensure the effectiveness of judgment enforcement. Therefore, it is necessary to clearly define this relationship mechanism and concretize it with legal provisions in order to avoid the situation of pushing responsibility or stepping on each other in judgment enforcement.

Citizens have the responsibility to create conditions for judgment enforcement agencies to perform their duties. Citizens have the right to complain and denounce illegal acts of judgment enforcement agencies. Competent authorities must promptly review and resolve complaints and denunciations and take remedial measures.

Thus, the coordination of other state agencies, social organizations and citizens with judgment enforcement agencies is one of the conditions to ensure effective judgment enforcement activities. The quality and performance of the Judgment Execution Agency depends heavily on the degree of coordination between the judgment enforcement agencies and other agencies and organizations (Vo & Nguyen, 2006, pp. 63-66).

CONCLUSION

Punishment without deprivation of liberty is applied as the main punishment, demonstrating the humanitarian principle in Vietnam's criminal law, the policy of the State of Vietnam towards offenders and their behavior, encouraging offenders to guilty of making atonement, demonstrating the ability to quickly re-integrate into the community and become a useful person to society when there are certain conditions. The provision in the Vietnam Penal Code on punishment that does not deprive freedom of liberty represents the correct motto of the criminal handling line, which is to ensure a harmonious combination of severe criminal coercion measures the State's strictest measures against other social impact measures, with penalties that do not deprive the offender of freedom to rehabilitate and educate offenders, thereby limiting the application of repressive measures in terms of criminality.

The principle of non-deprivation of liberty is established in the provisions of Vietnamese law in order to establish minimum standards set by the State to protect minors deprived of their liberty in any form. Consistent with fundamental human rights and freedoms and aimed at combating the harmful effects of all forms of incarceration and promoting social inclusion. These rules should be applied fairly, without discrimination of any kind on the basis of race, color, sex, age, language, religion, nationality, political opinion or other opinions, cultural customs or beliefs, property, family background or status, ethnic or social origin, and disability. The beliefs, religious and cultural practices, and moral beliefs of minors should be respected.

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