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ON THE EXECUTION OF PUNISHMENTS
AGAINST LEGAL ENTITIES AND OTHER CHANGES
IN THE CRIMINAL AND PENAL LEGISLATION
OF THE SOCIALIST REPUBLIC OF VIETNAM IN 2019

ОБ ИСПОЛНЕНИИ НАКАЗАНИЙ В ОТНОШЕНИИ
ЮРИДИЧЕСКИХ ЛИЦ И ИНЫХ ИЗМЕНЕНИЯХ УГОЛОВНОГО
И УГОЛОВНО-ИСПОЛНИТЕЛЬНОГО ЗАКОНОДАТЕЛЬСТВА
СОЦИАЛИСТИЧЕСКОЙ РЕСПУБЛИКИ ВЬЕТНАМ В 2019 Г.

Abstract. The article is devoted to the changes in the Law on the execution of criminal penalties of the Socialist Republic of Vietnam and the Criminal Code of the Socialist Republic of Vietnam in 2019. The main focus is on the regulation of criminal liability and the procedure for punishments execution in respect of commercial legal entities. The following issues are also analyzed: the right of a seriously ill convict to request a medical examination; additions to the category of separately held convicts at the expense of homosexuals, transsexuals and persons with uncertain gender; specification of the legal status of those sentenced to imprisonment (ensuring their safety, realization of their right to freedom of conscience and religion, to get a job in a penitentiary institution, apply for early release from serving a sentence, etc.). It is concluded that the changes in the Criminal and Penal legislation of the Socialist Republic of Vietnam in 2019 increase the effectiveness of criminal penalties execution.

Keywords: Socialist Republic of Vietnam, execution of criminal penalties against legal entities, seriously ill convict, transsexual, legal status of convicts.

Аннотация. В статье рассматриваются изменения 2019 г. в Законе об исполнении уголовных наказаний Социалистической Республики Вьетнам и Уголовном кодексе Социалистической Республики Вьетнам. Основное внимание уделяется вопросам регулирования уголовной ответственности и порядка исполнения наказаний в отношении коммерческих юридических лиц. Анализу также подвергаются следующие проблемы: права тяжело больного осужденного ходатайствовать о проведении медицинского освидетельствования; дополнения категорий отдель-

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но содержащихся осужденных за счет гомосексуалистов, транссексуалов и лиц с неопределенным полом; конкретизации правового положения осужденных к лишению свободы (обеспечения их безопасности, реализации их права на свободу совести и вероисповедания, получения работы в пенитенциарном учреждении, ходатайство о досрочном освобождении от отбывания наказания и т. п.). Сделан вывод о том, что изменения 2019 г. уголовного и уголовно-исполнительного законодательства Социалистической Республики Вьетнам повышают эффективность исполнения уголовных наказаний.

Ключевые слова: Социалистическая Республика Вьетнам, исполнение уголовных наказаний в отношении юридических лиц, тяжело больной осужденный, транссексуал, правовое положение осужденных.

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Фунг, Н. Х. Об исполнении наказаний в отношении юридических лиц и иных изменениях уголовного и уголовно-исполнительного законодательства Социалистической Республики Вьетнам в 2019 г. / Н. Х. Фунг, Х. Н. Ле, А. П. Скиба // Международный пенитенциарный журнал. – 2020. – Т. 2(1–3), № 2. – С. 76–81. – DOI : 10.33463/2712-7737.2020.02(1-3).2.076-081.

Various problems of sentencing and execution of sentences, as well as early release from serving them in Vietnam, have recently been increasingly considered in the legal literature (Buy, M. Z. 2019, pp. 34–39; Stepanova, M. A. & Krekhovets, A. V. 2019, pp. 63–66; Phung, N. Kh. & Ngo, V. V. 2018, pp. 329–333; Krymov, A. A., Phung, N. Kh. & Skiba, A. P. 2018, pp. 143–149; Phung, N. Kh., LeTkhi, M. Kh. & Skiba, A. P. 2019, pp. 165–169). In the Socialist Republic of Vietnam (Vietnam) the Law on the execution of criminal penalties currently consists of 16 chapters and 207 articles and in 2019 has undergone major changes, including on issues related to sentences execution against legal entities, as well as in the field of ensuring the legal status of convicts. These changes are similar with the spirit of the 2013 Constitution of Vietnam and the 2015 Criminal Code of Vietnam, and are aimed at eliminating shortcomings in the practice of institutions and bodies that carry out punishments, and are as follows:

- the procedure for punishments execution in respect of commercial legal entities was established;
- the procedure for early release of convicted persons from punishment was clarified and expanded;
- the activities of the Council for the execution of death sentences are specified, including in terms of interaction with other institutions and bodies, registration of materials for obtaining the remains of the executed, including the ashes of the cremated body;
- the powers of people's district committees and the command of military units to control and correction of convicted persons who are on probation under a suspended sentence or serving sentences not related to deprivation of liberty, etc. were supplemented.

The execution of criminal penalties in respect of commercial legal entities

For the first time in the history of the country's criminal legislation, the criminal liability of legal entities was introduced in the Criminal Code of Vietnam in 2015. This issue is also discussed

in Russia (Ivanov, L. 2009, pp. 125–129; Kibal'nik, A. G., Volosyuk, P. V. & Demin, S. G. 2017; Kashuba, Yu. A. & Karibov, S. I. 2008). Chapter XI "Execution of a sentence against commercial legal entities", which contains 9 articles, provides: entry of judgment into legal force; general issues of sentence execution; rights and duties of commercial entities; issues of coercion in sentence execution; transfer of obligations on execution of sentence in case of reorganization of a commercial organization; the order of registration of the fact of punishment execution, etc. In addition, after receiving the decree on the entry into force of the sentence, the commercial organization must publish it on its website.

Materials on the execution of a sentence against a commercial legal entity must contain:

- sentence and other court decisions that entered into force;
- information about calling the legal representative of a commercial legal entity;
- written request to the relevant state authority about the activities of a commercial organization;
- report of a legal entity on the execution of a sentence;
- other documents containing information about the execution of the sentence.

In accordance with the changes in the legislation adopted on 2019, a commercial legal entity that was sentenced must:

- send a legal representative of the legal entity, when it called by the bodies that execute criminal penalties, except in cases of force majeure (natural disasters, epidemics, other emergencies, etc.);
- within 3 business days from the date the decision on sentence entry into force publish this decision on its website, at its head office and at the actual location of this commercial legal entity, and subsequently notify the relevant authorities and individuals about the execution of the requirements of the sentence, as well as other measures taken by the court;

– commercial legal entities whose activities are suspended for a certain period of time are required not to perform business operations in accordance with the court's verdict or other measures;

– commercial legal entities, that are prohibited from conducting business activities in certain areas (production of products, provision of services, etc.), do not have the right to carry them out during the period established by the court's verdict, which is calculated from the moment the verdict enters into force;

– commercial legal entities whose activities were stopped must fully comply with the court's verdict;

– commercial legal entities that are prohibited from raising capital are not allowed to perform such actions during the period established by the court's verdict, which is calculated from the moment the verdict enters into legal force;

– commercial legal entities must report the measures taken for the execution of the court's sentence in written form to the bodies that execute criminal penalties, the relevant state administration bodies, etc.

Other changes in the Law on execution of criminal penalties of Vietnam in 2019

Firstly, a seriously ill convict can apply for a medical examination. This new legal provision means that a convicted person who has symptoms of severe mental illness or mental retardation can be examined by doctors, and the execution of the sentence is suspended by a court decision and a convicted person is sent to a medical facility for care and treatment. However, in the case of recovery of a convicted person on the basis of materials from the body executing the sentence, or the relevant medical institution by the decision of the court that previously issued the suspended sentence, it is resumed.

Secondly, the categories of convicts put separately from the rest of the convicted population were supplemented. Previously, they included: women; persons under 18 years of age; foreign citizens; patients with serious infectious diseases; those with severe mental

or other diseases that make prisoners incapacitated or unable to control their actions; often violating the rules of serving a sentence. In 2019 these categories of convicts were added: homosexuals, transsexuals, as well as persons with an uncertain gender. This issue is also relevant for Russia (Voronkova, E. O., Gorovaya, V. Yu., Gorovoy, S. A. & Starodubtseva, M. A. 2019, pp. 145–150; Skiba, A. P. 2019, pp. 77–85).

Thirdly, Article 27 "Rights and obligations of prisoners" specifies the legal status of those sentenced to imprisonment by adding their rights and obligations:

– to ensure the safety of life, physical integrity, property of prisoners, as well as respect for their honor and dignity;

– to know their rights and obligations, internal rules of penitentiary institutions and places of detention;

– food, clothing, medical care, communication with relatives, sending and receiving mail, physical activity, sports, receiving money by mail, cultural activities (art), receiving books, newspapers, magazines;

– the right to freedom of conscience and religion;

– to get a job in a penitentiary institution;

– the right for education and professional training;

– to maintain communication with the diplomatic missions and consular offices of their States;

– to meet with a legal representative (lawyer) and receive legal assistance, including for conducting civil-law transactions;

– to apply for early release from serving their sentence;

– to file complaints and appeal to the appropriate authorities about violations of the law;

– to conduct a medical examination on arrival at the penitentiary institution, etc.

In addition, in accordance with Article 51 of the Law on the execution of criminal penalties of Vietnam in the new version of 2019, prisoners are allowed to receive monetary

bonuses, as well as send money to relatives (no more than 2 times a month by mail). At the same time, employees of the administration of correctional institutions receive, open and check items received by mail in order to prevent the convicted person to get prohibited items.

Fourthly, the list of objects and things prohibited for storage by convicts was specified. These include: weapons, explosives, military equipment; flammable substances, radioactive substances, chemicals and poisons; narcotic substances and drugs that are addictive; alcohol, beer and other stimulants; items that can be used as weapons (belts, cords, threads, utensils, stones, glass, sharp objects, etc.); Vietnamese currency, foreign currency, gold, silver, precious stones, precious metals; identity documents (passport, diploma, etc.); technical means and electronic equipment (audio-visual players, telephones, radios, etc.); paintings, photographs, films with superstitious, reactionary and vicious content; maps, etc.

Fifthly, changes in the Law on the execution of criminal penalties in Vietnam adopted in 2019 also affected suspended sentences and non-custodial sentences. In particular, the duties of bodies that execute suspended sentences during the probation period and the procedure for attracting convicted persons to work for non-custodial sentences are clarified; probationers are allowed to apply for a reduction in the probation period once a year, and so on.

Thus, it can be stated that the 2019 amendments to the Law on the execution of criminal penalties and the Criminal Code of Vietnam increase the effectiveness of the execution of criminal penalties, as well as specify the legal status of convicts.

References

Bui, M. Z. 2019, 'Execution of criminal penalties in Vietnam: theoretical and practical issues', in *IV International penitentiary forum "Crime, punishment, correction" (to the 140th anniversary of the Russian penal system and the 85th anniversary of the Academy of the Federal penitentiary service of Russia): collection of*

speeches and reports of participants (Ryazan, November 20–22, 2019), in 10 vols, vol. 1, Materials of the plenary session, pp. 34–39, Academy of the FPS of Russia, Ryazan.

Stepanova, M. A. & Krekhovets, A. V. 2019, 'The system of penalties under the criminal law of the Socialist Republic of Vietnam', *Problems of law enforcement activity*, iss. 2, pp. 63–66.

Phung, N. H. & Ngo, V. V. 2018, 'The Institute of parole in various countries and its improvement in Vietnam', *Penal law*, vol. 13(1–4), iss. 3, pp. 329–333.

Krymov, A. A., Phung, N. H. & Skiba, A. P. 2018, 'On the structure and certain provisions of the Criminal-procedural Code of the Socialist Republic of Vietnam', *Bulletin of the Kuzbass Institute*, iss. 3, pp. 143–149.

Phung, N. H., LeThi, M. H. & Skiba, A. P. 2019, 'Capital punishment in the criminal law of Vietnam and several countries: some issues of regulation and law enforcement', *Penal law*, vol. 14(1–4), iss. 2, pp. 165–169.

Ivanov, L. 2009, 'The principle of guilt and public liability of a legal entity (on the issue of criminal liability of legal entities)', *Criminal law*, iss. 1, pp. 125–129.

Kibal'nik, A. G., Volosyuk, P. V. & Demin, S. G. 2017, *Questions of criminal liability of legal entities*, Urlitinform, Moscow.

Kashuba, Yu. A. & Karibov, S. I. 2008, *Doctrinal bases of criminal responsibility of legal organizations*, Rostov State University of Economics (RSUE), Rostov-on-Don.

Voronkova, E. O., Gorovaya, V. Yu., Gorovoy, S. A. & Starodubtseva, M. A. 2019, 'Statement of the problem for identifying the gender of a person as the basis for assigning criminal penalties', *Society and Security Insights*, vol. 2, iss. 4, pp. 145–150.

Skiba, A. P. 2019, 'About some directions of penal law development', *Bulletin of the Moscow State Regional University, Jurisprudence Series*, iss. 4, pp. 77–85.

Библиографический список

Буй М. З. Исполнение уголовных наказаний во Вьетнаме: теоретические и прак-

тические вопросы // IV Международный пенитенциарный форум «Преступление, наказание, исправление» (к 140-летию уголовно-исполнительной системы России и 85-летию Академии ФСИН России) : сб. тез. выступлений и докладов участников (г. Рязань, 20–22 нояб. 2019 г.) : в 10 т. Рязань : Академия ФСИН России, 2019. Т. 1 : Материалы пленарного заседания. С. 34–39.

Степанова М. А., Креховец А. В. Система наказаний по уголовному законодательству Социалистической Республики Вьетнам // Проблемы правоохранительной деятельности. 2019. № 2. С. 63–66.

Фунг Н. Х., Нго В. В. Институт условно-досрочного освобождения в различных странах и его совершенствование во Вьетнаме // Уголовно-исполнительное право. 2018. Т. 13(1–4), № 3. С. 329–333.

Крымов А. А., Фунг Н. Х., Скиба А. П. К вопросу о структуре и некоторых положениях Уголовно-процессуального кодекса Социалистической Республики Вьетнам // Вестник Кузбасского института. 2018. № 3. С. 143–149.

Фунг Х. Н., ЛеТхи М. Х., Скиба А. П. Смертная казнь в уголовном праве Вьетнама и ряда стран: некоторые вопросы регу-

лирования и правоприменения // Уголовно-исполнительное право. 2019. Т. 14(1–4), № 2. С. 165–169.

Иванов Л. Принцип вины и публичная ответственность юридического лица (к вопросу об уголовной ответственности юридических лиц) // Уголовное право. 2009. № 1. С. 125–129.

Кибальник А. Г., Волосюк П. В., Демин С. Г. Вопросы уголовной ответственности юридических лиц : монография. М. : Юрлитинформ, 2017. 190 с.

Кашуба Ю. А., Карибов С. И. Доктринальные основы уголовной ответственности легальных организаций : монография. Ростов н/Д : Ростовский государственный экономический университет (РИНХ), 2008. 153 с.

Воронкова Е. О., Горовая В. Ю., Горовой С. А., Стародубцева М. А. Постановка проблемы идентификации пола лица как основания назначения уголовного наказания // Society and Security Insights. 2019. Т. 2, № 4. С. 145–150.

Скиба А. П. О некоторых направлениях развития уголовно-исполнительного права // Вестник Московского государственного областного университета. Сер. Юриспруденция. 2019. № 4. С. 77–85.