



Practical Application of Provisions of the Vietnam Criminal Code to Drug Crimes and Solutions to Improve the Effectiveness of the Application

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ABSTRACT

The article examines the practical application of the provisions of the Vietnam Criminal Code in dealing with drug crimes, thereby giving an overview of the complicated situation of drug crimes in Vietnam. Specifically, the author analyzes statistical data on drug cases, difficulties and entanglements in narcotic substance identification, narcotic substance content assessment and description of criminal signs. The article also proposes a number of solutions to improve the effectiveness of applying the provisions of the Criminal Code 2015 in combating drug crimes.

KEYWORDS:

Drug crime, Vietnam Criminal Code, narcotic substance identification, narcotic substance content assessment, fighting against drug

1. Practical application of drug crimes in general

In recent times, the situation of drug crimes has become complicated, appearing in many areas, from urban to rural, border, sea and mountainous areas. As Vietnam is a transit area for drugs from countries in Southeast Asia to third countries on many routes, many border gates, this has made the situation of drug crimes in our country tend to increase in quantity, nature and danger level.

Recently, many cross-national drug crime gangs and organizations have appeared, especially foreign individuals coming to Vietnam to commit drug crimes. These subjects collude with criminal organizations in Vietnam to form many gangs, organize the transportation, and illegal trading of drugs with many sophisticated tricks and hide criminal behaviors, making the fight against drug crimes extremely difficult.

The air route is becoming more and more complicated, focusing on the routes from Ho Chi Minh City to Australia; Ho Chi Minh City to Taiwan, China, typically the case of 04 female

flight attendants "hand-carrying drugs".¹ On the sea route, there are also many complications, a number of cases of subjects taking advantage of the form of temporary import, re-export of goods through seaports to transport drugs, opium seeds have been detected. The key sea areas about drugs in our country are the Northeast Sea, the North Central Sea, the Southeast Sea and the Southwest Sea, the most complicated is still the Gulf of Tonkin². The main source of drugs is smuggled from abroad with many different types. The method of committing crimes is becoming more and more sophisticated and cunning, with the aggressive nature of fighting back fiercely when caught.

According to statistics of the Supreme People's Court, from 2013 to 2023, the entire People's Court branch has tried 708,210 cases with 1,238,247 defendants. In which, the number of drug crime cases tried with 203,437 cases/

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¹Than Hoang (2024), *From the case of 4 female flight attendants, the police cracked down on the "largest in history" drug trafficking ring*, source: <https://tuoitre.vn/tu-vu-4-nu-tiep-vien-hang-khong-cong-an-triet-pha-duong-day-ma-tuy-lon-nhat-lich-su-20240119203815322.htm>.

² Nguyen Xuan (2019), *Cooperation in combating drug trafficking and transportation by sea*, source: <https://pcmatuy.bocongan.gov.vn/DesktopModules/DnnForge%20-%20NewsArticles/Print.aspx?tabid=34&tabmoduleid=82&articleId=1021&moduleId=390&PortalID=0>

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257,792³ defendants, accounting for 28.69% compared to other types of crimes.

2. Some difficulties and entanglements in the practice of adjudicating drug crimes

Firstly, limitations and entanglements in narcotic substance identification

In recent years, agencies in charge of investigating, prosecuting and adjudicating drug crimes have discovered many new synthetic narcotic substances appearing for the first time in Vietnam. This substance is not in the list of narcotic substances in Vietnam⁴, so criminals take advantage to transport, trade and use illegally, making it difficult to handle and fight. Currently, some countries in the world such as the US, UK, Canada ... has put this substance in the control list⁵. According to local police, a new drug called "happy water" has appeared in many places. The assessment of professional agencies is that this is a dangerous drug, causing strong hallucinations and psychosis. Therefore, the determination of the narcotic substance amount still faces difficulties and entanglements, especially for narcotic substances in the form of crystals, solutions, leading to difficulties in handling these cases.

In addition, many cases show that people transport "drug-infused alcohol" but in fact, it is soaked in the body, roots, leaves, flowers of opium plants. Meanwhile, the laws on illegal hoarding, transportation and trading do not list the above subjects.

Secondly, difficulties and entanglements in assessing the narcotic substance content and the narcotic substance amount illegally manufactured, hoarded, transported or traded in practice that has no material evidence recovered

Practical handling shows that determining the narcotic substance amount in many cases is very difficult, although the Investigation Conclusion, Indictment determines the narcotic substance amount already available, but when the court studies the dossier, it shows that the basis for conclusion is not solid, especially for the cases being traced. For example, it is concluded that A sold 10 cakes of Heroin to B, C, D while that narcotic substance amount was not caught red-handed, just the statements of the defendants, the evidence was no longer, the amount of Heroin had been sold out, had been used up, the time was long... the confession was not consistent, while catching A red-handed only selling 50 g of

Heroin. So the conclusion that A sold 50 g or sold 10 cakes of Heroin is a very difficult issue in the trial.

On the other hand, according to Resolution No. 41/2017/NQ-QH14 dated June 20, 2017 of the National Assembly on the implementation of Criminal Code No. 100/2015/QH13, the following cases are required to assess the content of narcotic substances: "In case the seized substance is suspected to be a narcotic substance in solid form that has been dissolved into a solution, the narcotic substance in liquid form has been diluted, opium smoking or addictive drugs, hallucinogenic drugs prescribed in Articles 248, 249, 250, 251 and 252 of Criminal Code 2015, it is necessary to determine the narcotic substance content as a basis to determine the weight or volume of seized narcotic substances".⁶ However, in practice, for the assessment of the content of narcotic substances or drug precursors, most local inspection agencies do not have the material conditions as well as standard drug samples for assessment comparison. Most drug cases are not tested for morphine because only the National Institute of Criminal Sciences of the Ministry of Public Security can do this. In addition, the re-assessment does not have immediate results but must wait, leading to difficulties in approving emergency arrest, detention at the initial time or difficulties for prosecution and trial.

Thirdly, difficulties from the provision of the Criminal Law on unclear signs, which can lead to different interpretations.

The crime of illegal drug manufacturing is currently not uniformly understood, so there are different views on the charges. For example, the following case:

On April 10, 2018, the Investigation Police Agency of District E discovered and seized a total of 517 trees with green stems, yellow leaves with serrated shapes, oval green fruits, on the fruit body there were many cut marks (suspected to be opium plants); 01 (one) red nylon bag inside contains black plastic substance (suspected to be opium). Lau Mi C confessed to sowing opium seeds mixed with corn seeds on the hill in front of the house. Around March 2018, C harvested by tying five pieces of metal together and then cutting on the opium fruits vertically from top to bottom for the resin to flow out; then, wait for the resin on the opium fruit to dry, then collect and store it on the kitchen mezzanine of the family...⁷.

³ Data from the Statistics - General Department of the Supreme People's Court.

⁴ Government (2022), Decree No. 57/2022/ND-CP dated August 25, 2022, Hanoi.

⁵ <https://vtv.vn/phap-luat/canh-bao-chat-ma-tuy-moi-lan-dau-xuat-hien-o-viet-nam-20230413180243037.htm>. Accessed on January 10, 2024

⁶ The National Assembly (2017), Resolution No. 41/2017/QH14 dated June 20, 2017 on implementing the Criminal Code No. 100/2015/QH13 having a number of

articles under Law No. 12/2017/QH14 amended and supplemented and on the effect of the Criminal Procedure Code No. 101/2015/QH13, Law on Organization of Criminal Investigation Agencies No. 99/2015/QH13, Law on temporary detention and custody No. 94/2015/QH13, Hanoi.

⁷ See: Criminal judgment of first instance No. 05/2020/HSST of the People's Court of Dong Van district, Ha Giang province.

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For the viewpoint of determining the crime of Lau Mi C, there are two following opinions:

- Defendant Lau Mi C had the act of extracting drugs from opium fruits, meaning the act of separating drugs from various types of plants containing drugs by different methods. Therefore, Lau Mi C is considered to have committed the crime of illegal drug **manufacturing** according to Article 248 of Criminal Code 2015.

- Another viewpoint argues that this is not an act of "extraction" to create drugs but this is an act of "harvesting" in the connotation of the act of planting opium, coca... Therefore, the charge of Lau Mi C is the crime of planting opium, cannabis... or other plants containing drugs according to Article 247 of Criminal Code 2015.

Fourthly, the description of signs identifying crimes in the basic crime constitution is somewhat unreasonable, also causing difficulties and entanglements for the application process

Other common crimes describe specific quantitative signs considered as crime constitution. For example, the act of illegal hoarding of drugs with a quantitative level is 0.1g Heroin... opium resin, cannabis resin... 01g... is considered a crime. Below these levels, accompanied by signs of having been administratively sanctioned, having been convicted but not yet expunged ... will be considered a crime. With the above description, it is reasonable, consistent with the common regulation of other crimes.

Currently, Point a, Clause 1, Article 249 of the Criminal Code 2015 stipulates:

... "a/ Have been administratively sanctioned for acts specified in this Article or having been convicted of this offense or one of the offenses specified in Articles 248, 250, 251 and 252 of this Code, have not yet had their convictions cleared but also violated."

In practice, there must be an act of hoarding with drug subjects under the levels prescribed at points b, c, d, dd, g, h to be prosecuted for criminal responsibility. Therefore, the structure of the signs as currently at Articles 249, 250 of Criminal Code 2015 is unreasonable, causing certain confusion for the applicator.

On the other hand, the current regulation of the act of manufacturing, sale in any form, with any amount... is all considered a crime. Therefore, there is no case of being administratively sanctioned for the act of illegal manufacturing, sale of drugs, so according to the author, it is not necessary to mention in the content of the crime of illegal hoarding, transportation of drugs when there are signs of having been administratively sanctioned... of crimes at Articles 249, 250 of Criminal Code 2015.

3. Some solutions to improve the effectiveness of application of the provisions of the Criminal Code 2015 to the illegal manufacturing, hoarding, transportation and trading of narcotic substances

3.1. Solutions to amend and supplement the provisions of the Criminal Code 2015 on crimes of illegal manufacturing, hoarding, transportation and trading of narcotic substances.

Article 248 of the Criminal Code 2015 should be amended as follows: *Illegal manufacturing of narcotic substances*

Any person who *manufactures or hoards or transports* for the purpose of illegally manufacturing narcotic substances in any form shall face a penalty of 02 - 07 years' imprisonment...

Article 249 of the Criminal Code 2015 should be amended as follows: *1. Any person who hoards narcotic substances for the following cases shall face a penalty of 01 - 05 years' imprisonment:*

a) Opium resin, cannabis resin or coca tar weighing from 01 gram to less than 500 grams;

b) Heroin, Cocaine, Methamphetamine, Amphetamine, MDMA or XLR-11 weighing from 0.1 grams to less than 05 grams;

c) Coca leaves; Catha edulis leaves; leaves, roots, stems, branches, flowers, fruits of cannabis plants or parts of other plants containing Government-regulated narcotic substances weighing from 01 kilogram to less than 10 kilograms;

d) Dried poppy fruits weighing from 05 kilograms to less than 50 kilograms;

dd) Fresh opium poppy fruits weighing from 01 kilogram to less than 10 kilograms;

f) Other narcotic substances in solid form weighing from 01 gram to less than 20 grams;

g) Other narcotic substances in liquid form ranging in volume from 10 milliliters to less than 100 milliliters;

h) There are 02 or more narcotic substances whose total mass or volume is equivalent to the weight or volume of narcotic substances specified at one of the points from Points b to h of this Clause.

i) If not falling into the cases mentioned at Points a, b, c, d, dd, e, g, h but have been administratively sanctioned for acts specified in this Article or have been convicted of this crime or one of the crimes specified in Articles 248 and 250, 251 and 252 of this Code, which have not yet had their convictions expunged but also violated.

3.2. Competent agencies should provide written explanations to the Criminal Code 2015 on crimes of illegal manufacturing, hoarding, transportation and trading of narcotic substances in general and crimes of illegal manufacturing, hoarding, transportation and trading of narcotic substances

Currently, Joint Circular No. 17/2007/TTLT-BCA-VKSNDTC- TANDTC- BTP dated 24.12.2007 – Joint Circular No. 08 dated 31.12.2015 on guiding the application of certain provisions of Chapter XVIII "drug crimes"; Joint Circular No. 06/2008/TTLT-BCA-VKSNDTC- TANDTC and the Resolution of the Council of Judges of the Supreme

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People's Court dated March 15, 2001 on guiding drug crimes with many contents that are no longer relevant, especially the guilty circumstances, aggravating circumstances with many new contents such as subjects containing narcotic substances and some other contents. In particular, it is necessary to clearly explain that selling drugs to 02 or more people will apply one or more aggravating circumstances (repeated offenses, crimes against 02 or more) for uniform application.

- It is necessary to clearly explain how the circumstance of using a person under 16 years old to commit a crime is understood, in which if a person from 14 years old to under 16 years old is also prosecuted for criminal responsibility for drug crimes with the role of accomplice with the person who used them to commit a crime, then do they apply this aggravating circumstance defining the frame or not?

According to the author's viewpoint, in this case, the user is not subject to the aggravating circumstance defining the frame for crimes of illegal hoarding, transportation and trading of drugs, but can apply the aggravating circumstance of criminal responsibility for the act of inciting a person under 18 years old to commit a crime (point o paragraph 1 Article 52 of the Criminal Code 2015)

- For the case of committing a crime with many different types of drugs including powder form, liquid form, various types of stems, roots, leaves... it needs to be explained for easy application. According to the author, guidance should be given in a principled direction:

- If there are various types of stems, roots, leaves... and opium resin... then convert to the amount of opium resin... to handle.

- If there is opium resin... and Heroin... then convert from opium resin... to Heroin to handle.

- If there are both stems, roots, leaves... and opium resin... along with Heroin then convert to Heroin to handle.

CONCLUSION

The drug crime situation in Vietnam has been increasingly complicated, requiring attention from authorities in applying the laws to handle. Problems in the process of investigating and handling drug cases such as identifying narcotic substances, assessing narcotic substance content and describing signs of crime need to be addressed thoroughly. At the same time, the amendment and supplementation of drug-related legal provisions in the Criminal Code 2015 is necessary to improve the effectiveness of drug crime prevention and fighting, while ensuring the fairness and efficiency of the judicial process.

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