

Research Article

Disturbance of Public Order in Legal Regulations of Vietnam's Criminal Law - Current Situation and Suggested Solutions

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Abstract

Public order control is a very important issue in the state management policies of each country. Accordingly, each one has its own legal provisions in general and criminal law provisions for those offenses in particular. Vietnam is currently experiencing rapid socio-economic development, resulting in an increase of public order crimes with more and more complicated and dangerous cases. In this article, the authors examine the current situation and regulations on the public order disturbance crime in Vietnam's Criminal Law, discuss and suggest some solutions to improve the control and handle this type of crime.

Keywords: *Vietnam, public order disturbance, legal regulations, criminal law.*

Introduction

In the history of development in thousands of years, there have been regulations on public order in Vietnamese state regimes. In the early days, these criminal-related regulations existed in the form of "unwritten laws" on the basis of "village practices" and "political practices" or "Edicts" of tribes or the Kings. Although those have not been clearly defined, along with the state regimes, these regulations have been the premise for the later legal systems. The typical evidences are the rules of organizing armed forces to protect the village, such as setting up guard stations, patrol hares, equipping weapons... to prevent swearing,

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limit the thefts and gambling (Dinh Khac Thuan, 2012). Village practices also included rewards and punishments for people with outstanding performance or violating the rules. By 1042, the first written law "*Hinh Thu*" was enacted, laying the foundation for the laws of Vietnam as well as regulations on public order protection. The "*Quoc Trieu Hinh Luat*" (the Criminal Law of the Dynasty) of the Tran Dynasty (1225-1400) *regulated a number of acts related to public order, such as theft, rebellion, cursing at grandparents and parents, etc.* (Vu Thi Quynh, 2012, p27). The 1399 Edict of King Tran Thieu De stipulated the issue of the "protection of security and order" associated with order protection in public areas (Vu Thi Quynh, 2012, p28). The Hong Duc Laws of 1483 then stipulated the acts that had more similarities with the crimes of disturbing public order today, typically in which was the crime of "beating the drums causing a disturbance in the imperial city at night, playing amusing games at night without informing the authorities in advance (Article 69), getting angry, quarreling, fighting, making noise disturbing the King in the capital (Article 91), beating people with bare hands was whipped 60 sticks, with an object (a jack) was 80 sticks ... Up to that time, the Vietnamese feudal courts had a quite complete legal system, with different levels of fines and penalties (like the current aggravating circumstances) to handle the violators corresponding to the severity level of the illegal actions. In 1815, the Hoang Viet laws (Gia Long Code, 1815) were issued together with a number of sections related to the violation of public order such as homicide, gathering up to 10 people, disturbing people, threaten people to take property, fighting or quarrelling in the capital (Section 236) (Nguyen Quyet Thang, 2002).

In the period from 1884 to 1945, crimes related to public order were applied interchangeably between Vietnam's feudal laws originating from the above fundamental laws and the laws of France. From 1945 up to now, in association with the foundation and development of the modern Vietnamese state, the provisions of the criminal law have been built and perfected from the Presidential decrees on criminal handling to the introduction of the Penal Code 1985, the 1999 Penal Code, the 2015 Penal Code amended and supplemented in 2017. These laws all specify the acts of public order offence.

Article 318 - Criminal Code 2015, amended and supplemented in 2017, specifies the crime of disturbing public order as follows:

1. "1. Any person who disturbs the public order adversely impacts the social security, social order and safety, or has been administratively sanctioned for this offence, or has

been convicted of this crime, has not had his criminal record removed but deliberately committed another offence, will be carry a fine of between VND 5,000,000 and 50,000,000, a non-custodial reform for up to 2 years or a penalty of 3 month - 2 year imprisonment”.

2. Any person committing one of the following the crimes will be liable for a conviction of imprisonment from 2 to 7 years:
 - a. In an organized manner.
 - b. Using weapons, dangerous instruments or committing acts of vandalism.
 - c. Causing serious obstruction to the traffic or delay the public activities.
 - d. Inciting others to public order offence.
 - e. Assaulting the people who interfere with the protection of public order.
 - f. Dangerous recidivism.

In fact, the number of public order disturbance cases in Vietnam tends to increase in recent years, from more than 200 cases in 2013 to nearly 400 cases in 2020. Public areas such as bus stations, docks, amusement parks, entertainment areas, markets are the common places of these cases, and some occur at the airports, in some rural and mountainous areas. The common age group for public order disturbance is from 18 to 35 years old, accounting for about 72% of the cases. Especially, there are some organized cases with many offenders in which the instigators are from 50 to 75 years old. Public order disturbances have caused a lot of damage to people's lives, health and property; have obstructed the normal operation of the State, organizations and individuals. Therefore, doing the research on the legal regulations, identifying their advantages and limitations and suggesting solutions to improve the law on this crime is essential to tighten the control, identify and handle the right people, the right offence so as to remedy those limitations thoroughly in the legal system.

Discussion

Viewpoint about the Crime of Public order Disturbance in Vietnam

According to the dictionary of jurisprudence (Hanoi Law University), public order disturbance is "an act of infringing on the stable state of social activities, violation of the prescribed codes of conduct setting for every citizen in public places. These might be either "closed" places (theaters, cinemas ...) or "open" ones (stadiums, parks, streets ...) where social activities take place regularly or irregularly..."

A disorderly conduct at public places can be considered a crime if it satisfies all criminal constituents as prescribed by the laws. It can be seen that the crime of "disrupting public order" was defined very early in the laws and defined as an independent crime in the 1985 Penal Code. In each period, each stage in the development of the country, criminal constituents of the public order disturbance crime have been amended and supplemented by the lawmakers to suit the socio-economic situation of the country, ensuring the inheritance and development from Penal Code 1985 to Penal Code 1999 and more recently 2015 Criminal Code. They are reflected in the followings:

According to Clause 1, Article 245 of the 1999 Penal Code (amended and supplemented in 2009) stipulates: "Any person who disturbs the public order causes serious consequences, or has been administratively sanctioned for this act, or has been convicted of this crime, has not had his criminal record removed but committed another offence, shall be carry a fine of between one million and fifty million VND, non-custodial reform for up to two years or a penalty of from three month to two year imprisonment".

According to sub-section 5.1 of Resolution No. 02/2003 / NQ-HDTP dated April 17, 2003 of the Judicial Council of the Supreme People's Court, specifically guides "causing serious consequences" in the crime of disturbing public order as follows:

"5.1. Public order offences which cause consequences in one of the following cases are considered "serious consequences" and face a penal liability according to Clause 1, Article 245 of the Penal Code:

- a. The offence obstructs or blocks traffic in less than 2 hours;
- b. The offence obstructs the normal operation of state agencies, economic organizations, social organizations, and people's armed forces;
- c. The offence results in a property loss assessed of ten million VND or more;
- d. The offence causes death;
- e. The offence results in body harm or $\geq 31\%$ physical disability of a person;
- f. The offence causes body harm upon many people or the rate of physical disability is less than 31% per person, but the total rate for all of these is 41% or more;
- g. The offence causes body harm upon a person or a physical disability rate between 21% and 30% with a property loss assessed of five million VND or more;

- h. The offence results in body harm upon many people or a physical disability rate less than 21% per person, but the total rate for all of these ranged from 30% to 40% with a property loss assessed of five million VND or more.

In addition to the serious consequences on people's lives, health and property as guided above, the reality shows that there may be non-material consequences such as the negative effects in the implementation of the Party's guidelines, the State's policies, adversely impact the security, diplomacy, social order and safety ...

Among these cases, it must depend on each specific case to assess whether the consequences caused by the crime are serious or not".

Social order and safety refers to the state of peace, stability, order, and discipline of the society. That state is established on the basis of the general rules of conduct promulgated by the State (legal norms) and social values, traditional ethical standards recognized, respected and complied by everyone in society. In other words, social order and safety is an orderly and disciplined social state, in which everyone has a peaceful life on the basis of defined legal norms and ethical and legal standards. Therefore, the offences that adversely impact the social security, order and safety can be considered as the crime affecting, threatening, or disrupting the peaceful state of society.

Thus, in comparison with the 1999 Penal Code, the 2015 Penal Code stipulates the crime of disturbing public order with a broader connotation and scope. While the 1999 Penal Code specifies that a person, whose acts such as disturbing, shouting, vandalizing, assaulting others... causing serious effects, commits this type of crime, the provisions of the 2015 Penal Code on the offences which adversely affect the security, social order and safety are broader and include the scopes of space and time. Just by having actions that adversely impact the social security and order may constitute this crime, not necessarily "Causing serious consequences". These can be offences such as: affecting, threatening, causing confusion and fear for some families in a residential area; affecting the security and order management, or disturbing public places ... can be considered a negative impact. Thus, "causing bad effect to the social security, order and safety" refers to the offences of an individual or legal entity that affects, threatens, or disrupts the order and discipline of the society, making a relatively large part of the population, a residential area or a community confused, frightened, outraged; or infringe upon the legitimate rights and interests of the citizens, agencies, organizations; and affect, threaten or break the general codes of conduct issued by the State; or infringe on social values and ethical standards that are respected, acknowledged and followed by everyone (Ho Quan, 2020).

The Constituent Elements of the Public order Disturbance Crime

Objects: The objects of the Criminal Code are the state of social security, order, safety and the normal life of the community. Thus, the acts of intervening, adversely impact the travelling, working and playing in public places where there are many people constitute the crime. This also infringes upon the property of the State, of the collective, the health and property of citizens and foreigners associating with public areas. At the same time, it also adversely affects the implementation of the policies of the Party, of the State, and local governments in social management, community policies, and the control of public places (Nguyen Van Duong, 2021).

Objective side: Offenders commit public disorder under many different types of acts such as gathering people to riot, disturbing, fighting in public places, damaging property, yelling, cursing, obstructing traffic, throwing or placing garbage, dirt, objects in squares, streets, bus stations, parks, around the State offices ... and other public places obstructing normal operations in these areas. However, when determining the offence, it is also necessary to distinguish it from the acts with similar signs of disrupting public order but constituting another crime, the person who commits the offence can only be prosecuted criminal liability for other respective crimes without being examined for the offence of disturbing public order.

Consequences of public order disturbance are both material and intangible damage to the society. Consequences are mandatory and optional signs of this crime. They are compulsory signs if the offender has not been administratively sanctioned for the act of disturbing public order or has not been convicted of this offence or has been convicted but his criminal record has been removed. It is not a mandatory sign if the offender has been administratively sanctioned for this act or has been convicted of this offense, has not been cleared of his criminal records but deliberately committed another offense (Nguyen Van Duong, 2021).

Subjects: The subject of this crime is not special, as long as the offender is of the age of responsibility and has the capacity of criminal liability, he can be the subject of the crime. Article 12 of the current Penal Code stipulates that only people aged of 16 years or older are the subject of this crime, since there is no case of very serious crime or particularly serious crime. If the offence does not affect the social security and order, or cause serious consequences, the offender will only be examined for penal liability if he has been

administratively sanctioned for this act or has been convicted of this crime, his criminal record has not been removed but he continues to commit.

Subjective side: The offender must be a person who has full capacity to act, who is aware that his or her actions will adversely affect the social security and order, the state of public places, the normal activities of State agencies, organizations and individuals in public places.

Criminal Punishment

Clause 1 - Article 318 specifies fines, non-custodial reform and imprisonment not exceeding 2 years, for the group of less serious crimes. Clause 2 of this Article stipulates the imprisonment of from 2 to 7 years for the group of less serious or serious crimes.

For the fine punishment, in addition to the provisions of this Article, Clause 3 - Article 35 of the 2015 Penal Code stipulates the fine level to be decided based on the nature and severity of the crime, and at the same time considering the property situation of the offender, the fluctuation in price, but must not be lower than VND 1,000,000. Based on the provisions on extenuating and aggravating circumstances in Article 51 and Article 52 - Criminal Code 2015, the offenders may be considered for the mitigation or aggravation of the penalty by the Court.

At the same time, Clause 6, Article 91 stipulates that the Court shall only apply a term imprisonment to a person under the age of 18 who commits the crime when it deems that the penalties and other educational measures do not work as a deterrent prevention. When applying a term of imprisonment, the Court allows the offender under 18 years old bears a lighter sentence than the one aged full 18 years or older in the same crime and with the shortest appropriate period of time. Accordingly, a public order disturbance offender under 18 years old will also be subject to a lighter sentence than the one full 18 years old at trial.

Advantages, Limitations and Remained Problems of Public Order Disturbance Offence in Vietnam's Criminal Code

Advantages

The provisions on the crime of disturbing public order in Vietnam's Criminal Law are important foundation to ensure the criminal handling of this crime although it is not a crime with high rates but greatly affects the normal activities of many people and of society in public places and adversely affects the social security and order. In recent years, it has helped criminal proceedings agencies to handle many cases across the country, preventing false and

backlog cases; the rate of appeals and complaints related to the proceedings has been very low.

The above provisions clearly reflect the appropriate distinction of the dangerous nature and levels of the offences, reflect the humanity with many extenuating circumstances, the strict conditions when applying penalty of imprisonment for the offenders under 18 years old. At the same time, Clause 2 of this Article and Vietnam Criminal Law also provide aggravating circumstances to strictly handle the violators who pose a high level of danger to the society, act deliberately, the organizers, the masterminds, the leaders of manipulation, seduction, and agitation.

Limitations and Problems

- Although the Criminal Code specifies the crimes, the concept of “public order disturbance” has not been concretely explained in terms of law, resulting in the lack of synchronization in explanation, application in the practice of localities. Occasionally there exists inconsistency in the opinion of litigants in determining charges between disruptive offences and other crimes.
- The term "adversely impact the social security, order, and safety ..." in Clause 1, "using weapons", "having acts of vandalism" at Point b, Clause 2, Article 318 have still not been explained and specifically instructed in the legal documents. Therefore, the current procedural bodies basically still apply the explanation in Resolution 02/2003/HĐTP dated April 17, 2003 of the Judicial Council of the Supreme People's Court - which explains to the 1999 Criminal law has now expired. Specifically, disturbing public order, causing consequences in one of the following cases is considered "causing serious consequences" (Section 5.1): Obstructing, blocking traffic for less than 2 hours; obstructing the normal operation of the State agencies, economic organizations, social organizations, and people's armed forces; damaging property assessed of VND 10,000,000 or more; causing death; causing body harm to another person or physical disability rate of 31% or more; causing injury to many people and physical damage of less than 31% individually, but the total physical disability rate of all of these people is 41% or more; causing injury to another person or causing physical disability rate of 21% - 30% and a loss of property assessed at five million VND or more; causing injury to many people or physical disability rate of less than 21% per person, but the total rate of all ranged from 30% to 40% and a property damage assessed of five million VND or more. In addition to the consequences on

people's lives, health and property as mentioned above, the reality shows that there may be non-material consequences such as adversely impact on the implementation of the Party's and the State's policies, adversely affecting the security, diplomacy, social order and safety.

The term "dangerous instruments" still have applied the explanation of the concept of "weapons, dangerous means" (Sections 2.1 and 2.2 of this Resolution). Accordingly, "weapons" include military weapons, sports weapons, shotguns, rudimentary weapons specified in Clause 1, Article 1 of the Regulation on management of weapons, explosives and supporting tools (issued together with the Government's Decree No. 47/CP of August 12, 1996). After the 2011 Ordinance on management and use of weapons, explosives and supporting tools took into effect, weapons were the ones including military weapons, shotguns, rudimentary weapons, and sports weapons and other weapons with similar features and functions. This concept has now been replaced with some different points in the Law on Arms, Explosives and Support Tools Management 2017. This law makes it clearer that a weapon might be equipment, a vehicle or a combination of vehicles, capable of causing damage, harming people's lives and health, destroying material structures, including: military weapons, shotguns, rudimentary weapons, sport weapons and other weapons with similar features and effects.

The term "weapons" in Article 318 of the 2017 Penal Code includes not only weapons, but also the "dangerous means" explained in Resolution 02/2003 / HDTP including tools or instruments designed to serve human life (in production, in daily life) or objects that the offender has made to use as a means in the crime or the ones available in the nature; if those tools are used to attack other people, they will endanger the lives or health of the assaulted.

However, the above application has had many changes compared to the initial time, so the application process faces many difficulties due to the lack of synchronization and timeliness of legal documents. Especially, how to apply exactly the term "weapon" is still a big obstacle because it has not been explained separately.

- The fine applied to the crime of disturbing public order in Vietnam is still not heavy compared to many countries in the world at present. Therefore, the punishment and deterrent effect on the offenders, especially in the cases of "causing serious consequences, are not yet in wide scope.
- The method of calculating fines by determining the frame from VND 5,000,000 to 50,000,000 also shows some limitations. Normally, the Criminal law takes effect in a

long period of time (in Vietnam it usually lasts about 15 to 20 years); these result in the lack of compliance of the fines by the end of the year it is in effect. This is due to the rapid and continuous increase in the average income per capita in Vietnam in recent years.

- The average number of public order offences being fined for administrative violations is about 50,000 cases per year, but the prosecution for public order disturbances accounts for only a low rate, it does not reflect the real situation due to the lack of explanation, definition and appropriate understanding of this crime. The equivalent similarities of this crime with a number of other crimes make it confusing and capable of inaccurately identifying the crime.

Findings and Conclusions

Firstly, it is Necessary to Clarify the Details Specified in the Penal Code

The Supreme People's Court and the functional authorities clearly explain the concept of public disorder crime in a specific legal document instead of letting the procedural bodies apply themselves based on the factors constitutes the crime with strong personal opinions as at present. That explanation will create the unity throughout the country in determining the crime as well as clarifying the line between the crime of disrupting public order and other related crimes.

In addition, the Supreme People's Court should issue a document guiding to continue using the cases of "causing serious consequences" under the guidance of Resolution No. 02/2003/NQ-HDTP to handle the public disorder cases in the principle that ensuring the benefit of the convicted person. At the same time, it is urgent to develop the guidelines to clearly explain the cases that are considered as "adversely impact on the social security, order, and safety ..." for the unified implementation of the law enforcement agencies nationwide.

Similarly, the two details of using the "weapons" and having "destructive acts" need to be clearly defined and continued to apply under Resolution 02/2003/NQ-HDTP or issuing new guidelines, in which, in the opinion of the authors, the promulgation of the new documents together with other terms should be prioritized in the earliest time.

Secondly, it is necessary to increase the fines for the public order disturbance offence

With the characteristics of a densely populated country, and rapid development in all socio-economic aspects, the public order disturbances are increasingly complicated, the number of cases tends to increase, the nature of these is getting more and more severe. Therefore, the

current penalty is quite low compared to the level of the people's income per capita. Therefore, the authors suggest that the fine level should be increased to the minimum of VND 20,000,000 and the maximum should be VND 200,000,000 to ensure the deterrence.

Thirdly, it is necessary to change the method of calculating fines

As mentioned above, the current method of calculating the fines will make it difficult to ensure the updating and progressing over time. Therefore, the authors propose to change the way of calculating fines in accordance with the minimum income. The Criminal Code needs to determine the minimum and maximum penalty in accordance with the minimum wage. Accordingly, the Court will decide the fines basing on the minimum wage within the legal limits, associated with the specific time when the case occurs and when the judgment is pronounced, ensuring the correspondence with the reality.

Fourth, it is necessary to build a mechanism to apply the precedent for the offense of disturbing public order in some specific cases, especially with the factor "adversely impact on the social security and order".

In many cases of disturbing public order offence, it is necessary to have a mechanism to avoid different interpretations of each judge, of the trial panel, the difference in localities and the time of the trial. In order to have a unified understanding when explaining the inadequate wording, it is necessary to apply the judicial precedent to the offense of disturbing public order, to avoid injustice and to have the same applicable penalty level, which commensurate with the danger of the offense to the society.

In addition, it is necessary to develop a legal document with a legal comparison between the crime of disrupting public order with a number of other crimes with similar objective aspects, that is, the ways of committing the violation are nearly the same. At the same time, it is clearly stated that the purpose of committing the crime of disturbing public order is to resolve the contradiction and social conflicts that arise in daily life, and during the process of participating in public activities.

Fifth, the consequences of the public order disturbance "adversely impact on the social security, order and safety"

According to the 2015 Penal Code regulations, there have not yet been issued any guiding documents or regulations up to present although the 2015 Penal Code has come into effect from January 1, 2018. This has caused difficulties for the agencies conducting legal proceedings in applying the law on the offense of disturbing public order in practice (Thu

Hien, 2019). According to the researchers' point of view, in waiting for the guiding to the law application, the proceeding agencies should continue applying the cases of "causing serious consequences" in the direction of cited in sub-section 5.1 of Resolution No. 02/2003/NQ-HDTP to deal with the public order disturbance offences to ensure the benefits of the offenders. However, for the strictness and consistency of the law, the competent central agencies are requested to issue specific guidance documents on the acts of disturbing public order "causing negative effects on the social security, order and safety" to help agencies conduct legal proceedings, investigate, prosecute, adjudicate the right person, the right crime under the law, avoid overlooking the crime and convicting the innocent.

Conclusion

Public order disturbance is a common administrative violation. Although there are not many crimes of this type in Vietnam, it tends to increase both in number and the severity level. Especially in recent decades, when the country has made strong socio-economic developments and international integration, many new contradiction and social conflicts have emerged, and the legal awareness of the citizens has not yet been really as high as the expectation, resulting in the public order disturbance crime, including "unprompted" acts and "organized" offenses. In order to meet the requirements of the changes in reality, in the newly enacted Criminal Code, this crime has been amended and supplemented in some points. Although the provisions of the Criminal Code 2015 show their advantages and positive values, there have been a number of legal limitations and shortcomings that require an objective and thoroughly study and assessment. In this article, the authors have also proposed a number of key solutions to solve problems and perfect the system of criminal law provisions in handling this type of crime.

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