

FINES IN THE VIETNAMESE CRIMINAL CODE - PRACTICAL APPLICATION

MULTAS NO CÓDIGO PENAL VIETNAMITA - APLICAÇÃO PRÁTICA

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Abstract

Although the provisions on fines in the Vietnamese Criminal Code have been amended, supplemented, and undergone numerous changes to align with evolving circumstances, the regulations concerning fines in the Vietnamese Criminal Code and their practical application still exhibit certain shortcomings and limitations. Therefore, conducting research to identify these shortcomings and limitations, while proposing recommendations to enhance the provisions of the Criminal Code on fines, holds significant importance.

Keywords: Criminal Law. Crime. Penalty. Fine. Vietnam.

Resumo

Embora as disposições relativas às multas no Código Penal vietnamita tenham sido alteradas, complementadas e submetidas a inúmeras mudanças para se adequarem às circunstâncias em evolução, os regulamentos relativos às multas no Código Penal vietnamita e sua aplicação prática ainda apresentam certas deficiências e limitações. Portanto, é de grande importância realizar pesquisas para identificar essas deficiências e limitações, ao mesmo tempo em que se propõem recomendações para melhorar as disposições do Código Penal relativas às multas.

Palavras-chave: Direito Penal. Crime. Pena. Multa. Vietnã.

1 INTRODUCTION

Crime is a socio-legal phenomenon intrinsically linked to the emergence of the State and law, as well as to the advent of private property and the division of society into classes (Le Van Cam, 2005, p. 287). Crime constitutes a socially dangerous act; accordingly, the efforts to prevent and combat crime, maintain social order, and protect the legitimate rights and interests of organizations and individuals represent a core duty of any State. To fulfill this duty, the State employs a combination of measures across economic, political, social, educational, and legal domains... These measures are mutually



supportive, and depending on the specific exigencies of each period, certain measures may be prioritized over others. Among these, penalties in general, and fines in particular, play a pivotal role.

Research into the historical development of Vietnamese criminal law provisions on penalties, including fines, from 1945 to the present reveals that fines have been regulated differently across periods, with elements of continuity and supplementation. Notably, the provisions on fines in the 2015 Criminal Code (as amended and supplemented in 2017) represent the culmination of theoretical synthesis and practical application by law enforcement agencies.

A fine is an economic sanction imposed on convicted natural persons and commercial legal entities, entailing the forfeiture of a sum of money to the state treasury. This serves to educate, rehabilitate, and deter the offender from committing further crimes, while also exerting a broader educative and preventive effect on society. Fines play a crucial role in implementing the criminal policy of the Party and the State, particularly in reducing custodial sentences and expanding non-custodial sanctions. This approach embodies a progressive perspective that aligns with the fundamental principles of criminal law, including respect for and protection of human rights, emphasis on preventive efficacy, and a rehabilitative orientation in offender treatment - consistent with global trends in criminal law development. Furthermore, fines introduce diversity and flexibility into criminal sanctioning measures for varying factual scenarios, thereby operationalizing the principles of differentiated treatment and penalty individualization. This contributes to cost reduction while augmenting state budget revenues.

Although the Criminal Code has undergone substantial revisions to adapt to contemporary conditions, deficiencies persist in both its provisions and their practical application. This is compounded by global trends, particularly in developed nations, where fines are widely applied with broad scope and high efficacy. Such trends align with the spirit of Politburo Resolution No. 49 dated June 2, 2005, on the "Strategy for Judicial Reform until 2020," which stipulates: "Expediently complete the legal framework pertaining to the judicial sector in accordance with the objectives of the strategy for building and perfecting the legal system. Prioritize the refinement of criminal policy and judicial procedural mechanisms, emphasizing preventive efficacy and a rehabilitative orientation in offender handling. Reduce custodial sentences and expand the application of fines and penalty of non-custodial penalties for certain categories of offenses"

(Politburo Resolution No. 49, 2005, p.3). Consequently, research aimed at refining and enhancing the effectiveness of the Criminal Code's provisions on fines constitutes an essential imperative in contemporary Vietnam.

2 LITERATURE REVIEW

Fines hold an important position and role in the penalty system and are one of the subjects of study in criminal law science. Fines have attracted attention from many scientists, practitioners, and managers both domestically and internationally, including: Trinh Quoc Toan (2015) - Research on Penalties in Vietnamese Criminal Law from the Perspective of Human Rights Protection; Nguyen Son (2002) - Principal Penalties in Vietnamese Criminal Law; Trinh Quoc Toan (2010) - Supplementary Penalties in Vietnamese Criminal Law; Nguyen Minh Khue (2015) - Non-Custodial Penalties in Vietnamese Criminal Law; Institute of Legal Science Research (1995) - Penalties in Vietnamese Criminal Law; Nguyen Ngoc Hoa (2001) - Criminal Liability and Penalties; Dang Quang Phuong (1996) - Theoretical and Practical Foundations for Enhancing the Effectiveness of Judicial Measures and Non-Custodial and Non-Death Penalties; Institute of Legal Science Research (2015) - Basic Survey Project: Current Status of Implementing the 1999 Criminal Code for Comprehensive Amendment of the 1999 Criminal Code in the Future; Trinh Quoc Toan (2006) - Fines as Supplementary Penalties in Our Country's Criminal Law and Recommendations for Perfection; Truong Quang Vinh (2002), "Fines in the 1999 Criminal Code"; Tran Thuy Hang (2010) - Need to Supplement and Amend the Conditions for Applying Fines and Penalty of Non-Custodial Penalties in the Criminal Code; Dau Anh Tuan and Nguyen Minh Duc (2015) - Provisions on Fines for Commercial Legal Entities Committing Crimes; Heinrich Oppenheimer (1913) - The Rationale of Punishment; Yvonne Jewkes - Punishment in Europe: A Critical Anatomy of Penal Systems; Bill Wringe (2016) - An Expressive Theory of Punishment; Keith N. Hylton (2005) - The Theory of Penalties and Economics of Criminal Law; Kate Warner (2013) - Theories of Sentencing: Punishment and the Deterrent Value of Sentencing.

3 RESEARCH METHODS

To study the contents of this article, the author has employed specific scientific research methods, including analysis, synthesis, document research, historical, comparative, and statistical methods...

The methods of analysis and synthesis are used throughout the article to elucidate and clarify theoretical issues, provisions, and practical application of fines, thereby providing assessments and evaluations;

The document research method is used to examine documents, statistical data, and surveys to explore contents relevant to the article;

The historical method is used to investigate the legislative history of fines and their developmental trends to provide evidence for the analyses;

The comparative method is employed to compare changes in perceptions, provisions, application, and enforcement of fines across periods or with other countries or with other types of penalties or coercive measures to elucidate the issues under study;

The statistical method is used to evaluate the current status of provisions on fines and the practical application of fine provisions.

The above research methods are combined closely and reasonably by the author to achieve the research objectives of the article.

4 RESULTS AND DISCUSSION

A fine is a severe coercive measure of the State imposed on convicted natural persons and commercial legal entities, depriving them of a certain amount of money to be forfeited to the state treasury, aimed at punishing and educating them in legal compliance and social norms, preventing them from committing new crimes; and educating other natural persons and commercial legal entities to respect the law and engage in crime prevention and combat. The current Vietnamese Criminal Code provides for fines as follows: Article 35 of the Criminal Code stipulates that fines may be applied as principal penalties for less serious crimes, serious crimes as provided by the Code; and very serious crimes infringing economic management order, environment, public order, public safety, and certain other crimes as provided by the Code. Fines may be applied as supplementary penalties for crimes of corruption, narcotics, or other crimes as provided

by this Code. The fine amount is determined based on the nature and degree of danger of the crime, while considering the offender's financial situation and price fluctuations, but shall not be less than 1,000,000 VND. Fines for commercial legal entities committing crimes are provided in Article 77 of the Code.

From the above provisions on fines in the Criminal Code, researching the practical application of fine provisions is extremely important to evaluate results, the suitability of fine provisions with practice, identify advantages and difficulties, limitations in application, causes of limitations, and thereby propose solutions to perfect and enhance the effectiveness of applying fines in Vietnam.

4.1 Practical application of fine provisions in Vietnam

Research on the practical application of fines in 10 provinces and cities across different regions and localities shows that the application of fines varies with increases and decreases, even with significant disparities among provinces and cities, as well as disparities in application among crime groups:

The practical application of fines in 10 provinces and cities across different regions and localities indicates:

Some provinces and cities have a large number of cases and defendants brought to trial but low rates of fine application (Hanoi, Ho Chi Minh City, Quang Ninh), while some provinces and cities have far fewer defendants brought to trial but higher application rates (Hai Phong, Nghe An, Can Tho)...., Additionally, it is noteworthy that the fine rates in Khanh Hoa are among the lowest nationwide, specifically: 0.14% in 2014, 1.22% in 2015, 0.16% in 2016, 0.20% in 2017, and 1.25% in 2018.

- There are disparities in the rates of applying fines as principal penalties and supplementary penalties across provinces and cities. Hai Phong has higher rates of supplementary fine application than principal, with principal fine rates of 1.89% and supplementary of 19.92% in 2014, 2.04% and 15.92% in 2015, 1.48% and 11.42% in 2016, 2.39% and 13.28% in 2017. In contrast, Nghe An has higher principal fine rates than supplementary, with principal rates of 11.66% and supplementary of 3.47% in 2014, 14.29% and 2.86% in 2015, 10.01% and 4.79% in 2016, 10.60% and 6.57% in 2017.

- Fine application rates in provinces and cities also vary with increases and decreases; some provinces and cities show increasing fine application rates, such as Can Tho (7.26% in 2014, 8.63% in 2015, 13.37% in 2016, 12.94% in 2017, 9.74% in 2018), while others show decreases, such as Da Nang (6.97% in 2014, 5.55% in 2015, 2.89% in 2016, 3.10% in 2017, 3.72% in 2018), etc.

Practical application of fines across crime groups shows:

- Some crime groups have low fine application rates (all under 1%), such as infliction of harm to human life, health or dignity; criminal offences against personal liberty, citizens' rights to freedom and democracy; property ownership infringement; and some crime groups have no fine applications for many years, such criminal offences against family law (years 2008, 2011, 2012, 2013, 2016, 2017, 2018), other offences related to abuse of power (years 2007, 2010, 2011, 2014, 2015). In contrast, higher fine application rates are concentrated in infringement upon public safety, public order (26.12%), economic offences (10.39%). This can be explained by the 1999 Criminal Code providing fines as principal and supplementary penalties at high rates for infringement upon public safety, public order (32/59 articles for principal, 31/59 for supplementary), economic offences (25/35 for principal, 29/35 for supplementary). Meanwhile, fines are rarely provided in infliction of harm to human life, health or dignity (only 02/30 articles as supplementary), crimes infringing human freedoms and citizens' democratic rights (02/09 as supplementary), property ownership infringement (01 article as principal and 10/13 as supplementary). Additionally, differences in the number of cases and defendants brought to trial among crime groups also affect fine application rates.
- There are also disparities in the rates of applying fines as principal and supplementary penalties among crime groups, with drug-related offences having supplementary fine rates much higher than principal, accounting for over 90% or even 100% in some years; corruption-related crimes, environmental offences, and property ownership infringement also have higher supplementary rates at 80%, 70%, and 64% respectively. However, many crime groups have higher principal fine rates, such as other offences related to abuse of power at 86%, offences against administrative management order at 68%, infringement upon public

safety, public order at 51% (but this group has a very high number of defendants with principal fines: 44,398/86,218).

- Fine application rates in crime groups also vary with increases and decreases. Some groups show increasing trends, such as economic offences, offences against administrative management order, infringement upon public safety, public order. However, many groups show decreasing trends, such as and property ownership infringement, infliction of harm to human life, health or dignity, corruption-related crimes, with drug-related offences showing a sharp decrease in recent years (14.20% in 2007 to 3.20% in 2017).
- The 2015 Criminal Code, effective from 1 January 2018, expanded the scope of fine application to many crime groups, but fine application rates have not shown significant changes; some groups increased, such as economic offences, environmental offences, corruption-related crimes, but some decreased, such as drug-related offences, offences against administrative management order.
- The 2015 Criminal Code provides for criminal liability and penalties for commercial legal entities in certain crimes under economic offences, environmental offences, infringement upon public safety, public order groups, however, to date, only 02 cases have involved commercial legal entities being prosecuted and subjected to penalties.

4.2 Advantages in the application of fines

From researching the provisions of the Criminal Code on fines and the practical application of fines nationwide and in some localities, as well as the collected and referenced data above, it can be seen that the regulation and application of fines have the following advantages:

- Expanding and strengthening fines in the Criminal Code provisions embodies and meets the requirements of international integration and the orientation, strategy of the Party and State on judicial reform in the current period. Specifically, the 2015 Criminal Code provides for fines as principal penalties not only for less serious crimes as before, but also for serious crimes and even some very serious crimes. The 2015 Criminal Code has 119 articles and 278 offense elements providing fines as principal penalties (of which 33 articles and 91 constituent elements provide

for the application of fines to commercial legal entities), 138 articles with 167 elements providing fines as supplementary penalties (of which 29 articles and constituent elements provide for the application of fines to commercial legal entities). Thus, the 2015 Criminal Code has 43 more articles providing fines as principal penalties than the 1999 Criminal Code (119 vs. 76, an increase of over 50%) with 278 offense elements vs. 80 (a 3.47-fold increase). For supplementary penalties, the 2015 Criminal Code has 138 articles, an increase of 28 (25.2%) over the 1999 Criminal Code, and 167 elements, an increase of 57 (50.4%).

- Expanding and strengthening the application of fines will contribute to minimizing judicial errors, as they can be remedied by restoring honor, compensation, mitigating consequences for convicted persons and commercial legal entities, for the State... This also ensures the right to compensation and restoration of honor and reputation for wrongfully convicted persons and commercial legal entities, enhancing the responsibility of competent authorities in procedural activities, making case resolutions more accurate, thereby enhancing the prestige of procedural agencies and increasing public trust in the Party, State, and the judiciary.
- In the context of a market economy and international integration trends, provisions on fines as principal or supplementary penalties are highly significant, especially for less serious crimes and economic crimes... Economic sanctions against criminal acts will deprive them of the ability and opportunity to reoffend, create conditions for them to continue labor to remedy consequences, while helping the State reduce costs in enforcing custodial sentences in prisons.
- Fines have contributed to thorough handling, differentiating criminal liability and penalties to meet crime prevention and combat requirements. In the Criminal Code, fines are an important component of the penalty system, contributing to its diversity and completeness. Fines open up flexible application possibilities in various cases, while contributing to implementing the principles of differentiated handling and penalty individualization.
- Fine application rates from statistical data in recent years have shown an increasing trend, indicating certain changes in the effectiveness of fine application. Specifically, 2011 and 2012 saw rapid increases in fine application rates compared to previous years, with increases of 1.58% and 1.26%; the increases in 2011 and

2012 were due to sharp rises in cases and defendants, specifically 57,115 cases in 2011 (up 5,251 or 10.13% from 2010), 97,678 defendants (up 10,795 or 12.43% from 2010), and 65,974 cases in 2012 (up 8,859 or 15.51% from 2011), 117,866 defendants (up 20,188 or 20.68% from 2011). However, data also shows that in 2010, cases and defendants decreased by over 10% from 2009, but fine application rates increased by 0.56%. Overall, fine application rates, including both principal and supplementary, from 2007 to 2016 basically trended upward, nearly 4% from 2007-2009 to 2012-2019. The total number of defendants fined as principal penalties over total defendants tried trended upward, especially from 2011 to 2016 nearly tripling, some years more than tripling compared to 2006-2010 (1,905 defendants = 1.86% in 2009 vs. 6,396 = 6.01% in 2015). In 2015 alone, defendants with principal fines nearly equaled the total from 2007-2010 (6,396 vs. 6,895).

- Providing for criminal liability and penalties for commercial legal entities is one of the new points in the 2015 Criminal Code. This is a progressive, suitable provision meeting the requirements of protecting and developing a market economy, creating a legal basis for criminal handling of commercial legal entities, with fines being the basic and primary penalty applied to commercial legal entities, as their primary goal is profit; thus, applying fines is appropriate by depriving them of a sum of money, thereby deterring, educating, and preventing new crimes. Additionally, fines show superiority over other penalties by achieving deterrence and education without halting the legal entity's operations.

4.3 Shortcomings and limitations in the application of fines

The 2015 Criminal Code was newly promulgated and amended, supplemented in 2017, although it has undergone many changes to suit socio-economic development and crime prevention and combat requirements, it still reveals inadequacies, specifically:

- The scope of fine application under the 2015 Criminal Code has been expanded compared to the 1999 Criminal Code and has overcome contradictions with the 1999 provisions. Specifically, the 2015 Criminal Code has 119 articles and 278 offense elements providing fines as principal penalties (including 33 articles and 91 elements for commercial legal entities), 138 articles with 167 elements providing fines as supplementary penalties (including 29 articles and elements for

commercial legal entities). Meanwhile, the 1999 Criminal Code had 76 articles and 80 elements for principal fines, 111 articles and elements for supplementary fines. Thus, the 2015 Criminal Code has 43 more articles for principal fines (119 vs. 76, over 50% increase) with 278 vs. 80 elements (3.47-fold increase). For supplementary penalties, 138 articles increased by 28 (25.2%) over 1999, and 167 elements increased by 57 (50.4%). However, the scope and conditions of application remain limited, specifically only about 1/3 of articles provide fines as principal and supplementary penalties, but nearly 100% are optional and discretionary sanctions, *with only 01 article providing fines as the sole mandatory supplementary penalty* (Paragraph 4, Article 329 of the 2015 Criminal Code on *Engaging in prostitution with a person under 18*: The offender shall also be fined from 10,000,000 VND to 50,000,000 VND). Therefore, when deciding penalties, courts tend to choose imprisonment rather than fines. This is also a primary cause affecting the effectiveness of fine application: "This provision does not bind courts to apply fines in many cases and thus effectively narrows the scope of fine application in practice" (Institute of Legal Science Research, 2015, p. 158).

- Many articles provide fines as principal penalties but not as supplementary, reducing the effectiveness of fine application, as in cases where principal fines are not applied, supplementary fines could be, to enhance flexibility and the supportive role of supplementary penalties: "Supplementary fines play a supportive role, enhancing the impacts of principal penalties in educating and rehabilitating offenders, eliminating conditions for new crimes. Fines also achieve general deterrence and prevention for unstable individuals in society" (Trinh Quoc Toan, 2011, p. 172).
- The minimum fine amount between principal and supplementary penalties is not separately provided; both the 1999 and 2015 Criminal Codes provide a common minimum of 1 million VND. This does not ensure the principle of penalty individualization, as principal penalties must be more severe in nature and degree than supplementary. Such provision fails to reflect the different natures and roles of principal and supplementary penalties. Moreover, in current reality, a minimum of 1 million VND is too low, inconsistent with price fluctuations and the coercive, deterrent nature of criminal sanctions. Additionally, Paragraph 3, Article 35 of the 2015 Criminal Code provides a minimum of 1 million VND, but in articles under

the Crimes section, minimum fines for offenders, whether principal or supplementary, start from 5 million VND upward, with no frame providing 1 million VND.

- Regarding fine calculation, for some crimes, the 1999 Criminal Code provided calculation based on multiples of the value of illegal goods or illicit profits; many opinions noted this was difficult to apply, as figures are often hard to determine accurately, undermining penalty effectiveness and purpose. This calculation method was not retained in the 2015 Criminal Code, but the author believes it should be kept for some crimes to provide more choices in penalty determination, enhancing application effectiveness. Research on foreign laws shows such calculations are common. Also on fine calculation, including for commercial legal entities, opinions state: "Fine levels for commercial legal entities are still 'arbitrary,' lacking convincing basis as they rely entirely on absolute figures" (vneconomy.vn/doanh-nhan, 2016). Not using relative or proportional methods lacks preventive effect for particularly serious violations or large damages. In practice, some cases cause massive damages but have low fine provisions, making proportionate penalties difficult. For example, the Formosa Ha Tinh Company discharge case caused massive damages in central coastal provinces; provisions would not suit particularly serious cases. Currently, the maximum fine for commercial legal entities under the 2015 Criminal Code is 20 billion VND; opinions note: "This may be a very large fine in Vietnam's legal system, but for some large corporations, it is a small amount if they intentionally violate for illegal profits" (vneconomy.vn/doanh-nhan, 2016).
- Regarding fine enforcement, the 2015 Criminal Code does not provide methods and timelines for paying fines, nor coercive measures to ensure enforcement. Thus, when convicted persons or commercial legal entities deliberately delay or refuse payment, complicating enforcement, there are no handling measures.
- The Criminal Code provides for deducting pretrial detention and custody periods from non-custodial and fixed-term imprisonment but not for fines; if convicted persons were detained pretrial but fined at trial, detention periods cannot be deducted, potentially leading judges to impose imprisonment or non-custodial penalties instead of fines.

- The Criminal Code requires considering the offender's financial situation when deciding fines and amounts but lacks provisions on measures to prove offenders' assets; in practice, judges do not verify assets when applying fines. This affects fine decisions, amounts, and enforcement, making declared fines infeasible and failing purposes.
- “Ineffective application also stems from legal interpretation, guidance, inspection, and supervision of law application being inconsistent, inadequate, untimely, with shortcomings; limited capacity, competence, and courage of some judicial personnel, even errors and negative practices affecting law application and trial quality.” (Supreme People's Court, 2015, p. 26). Additionally, investigations reveal judges hesitate to apply fines in cases, despite suitability, due to perceptions of fines as light penalties and potential negative concerns; this is common but not reflected in statistics, affecting fine effectiveness. Ms. Ta Thi Minh Ly, Chair of the Association for Judicial Support for the Poor, points out another reason courts rarely apply fines or non-custodial penalties: "Monitoring enforcement for non-custodial convicts is not well organized, so the punitive, rehabilitative effectiveness and general preventive education of this penalty type are not truly effective." "Fines, warnings, non-custodial rehabilitation are principal penalties highly beneficial for society and convicts in rehabilitation and education if well implemented, but rarely applied due to poor monitoring and enforcement (from convicts to local authorities)... Thus, courts opt for suspended sentences to limit liberty deprivation, etc".

Survey data also shows propaganda, explanation, and guidance on fine application by courts at all levels are ineffective and inconsistent, leading to incorrect, incomplete perceptions of fines' meaning and role in trials. On this, research on fine application in Khanh Hoa Province shows very low rates (0.14% in 2014, 1.22% in 2015, 0.16% in 2016, 0.20% in 2017, 1.25% in 2018); Khanh Hoa is the only surveyed province where fines were deemed ineffective and needing elimination at the highest rate over other options (fines effective and to be maintained: 26.3%; somewhat effective and needing amendment: 28%; *ineffective and needing elimination: 45.7%*). (Institute of Legal Science Research, 2015, p. 158).

4.4 Comparison of Penalty Provisions in Criminal Codes of some countries

In this article, the authors select to comparatively study fine provisions in the Vietnamese Criminal Code with those of countries related in history, culture, politics (Russian Federation, People's Republic of China) and countries with developed legal science (Federal Republic of Germany, Kingdom of Sweden) for reference to progressive, suitable contents that Vietnam can adopt.

- **Regarding penalty types**, the Vietnamese Criminal Code provides fines as both principal and supplementary penalties; fines may be supplementary when principal penalties are not fines and only when articles provide so. The Russian Criminal Code (Article 46) also provides fines as both principal and supplementary. The Chinese Criminal Code does not provide fines as principal but only supplementary; however, fines as supplementary can be applied independently in some cases, a special provision on supplementary penalty application. For example, Article 213: "Whoever, without permission of the trademark owner, uses the same trademark on the same goods as those registered by another, if serious, shall be sentenced to fixed-term imprisonment of up to three years or criminal detention and fined or fined only." Meanwhile, the German Criminal Code does not classify penalties as principal and supplementary but provides only four types: imprisonment, fines, property penalties, and auxiliary penalties.
- **Regarding fine application scope**, the Vietnamese Criminal Code allows fines as principal for less serious, serious crimes, and very serious economic offences, environmental offences, infringement upon public safety, public order and other certain crimes as provided. Fines as supplementary for corruption-related, drug-related crimes, or other crimes as provided. Meanwhile, the Russian Criminal Code allows application even for extremely serious crimes.

The Swedish Criminal Code provides fines in Chapter 25, a commonly used penalty in Sweden considered less severe than imprisonment, probation, and conditional sentences. Fines are mainly for less serious crimes. The Swedish Criminal Code allows fine application even if not provided in articles. Article 2, Chapter 27 provides for conditional penalties: " Conditional penalties may be combined with day-fines up to a

maximum of two hundred day-fines, regardless of whether day-fines are a penalty prescribed for that offence or not.”

The German Criminal Code has more than two-thirds of its articles providing for fines, whereas the Vietnamese Criminal Code has only one-third of its articles providing for fines. The German Criminal Code has more than two-thirds of the articles concerning offenses providing for fines as independent penalties (like principal penalties) alongside imprisonment, thereby enabling the court to choose between them. Remaining articles, though not providing independent fines, allow courts to impose fines substituting short-term imprisonment if conditions met. Thus, the scope for independent fine application is broader and more flexible than in the Vietnamese Criminal Code. The German also provides fines accompanying liberty penalties, per Article 41: "If the offender profited or sought profit through the crime, fines may accompany liberty penalties not or only optionally threatened if appropriate to the offender's personal and economic circumstances." This resembles Vietnamese supplementary penalties but with narrower conditions and scope: only for profit-oriented crimes, accompanying liberty penalties, optional. The German also provides fines substituting short-term liberty penalties (imprisonment) when six months or more imprisonment unnecessary, differing from the Vietnamese, which does not allow fines substituting other penalties or vice versa.

- **Regarding fine amounts and calculation**, the Vietnamese Criminal Code provides minimum and maximum levels, minimum 1 million VND, maximum determined in crimes section.

The Russian Criminal Code prescribes a minimum fine of 2,500 rubles and a maximum of up to 1,000,000 rubles, or an amount equivalent to the wages or other income of the offender being convicted for a period ranging from two weeks to five years. It allows installment payments up to three years, differing from the Vietnamese (the 1999 Vietnamese allowed one-time or multiple payments but not installments).

The Chinese Criminal Code has diverse fine calculations, such as based on illicit profits or illegal values. Article 153: "Whoever smuggles goods... evading taxes over 500,000 yuan shall be sentenced to over 10 years or life imprisonment and fined 1 to 5 times evaded taxes." Compared to Vietnam, the 1999 Criminal Code had similar calculations, but the 2015 only uses minimum-maximum. Regarding the amount of fines, the Criminal Law of the People's Republic of China does not prescribe minimum or maximum fine levels in the General Part, nor do the majority of articles in the Specific

Part stipulate fine ranges specifying minimum and maximum monetary amounts. The determination of the fine amount in a specific criminal case shall be made by the court in accordance with the principle for determining fines provided in Article 52 of the Criminal Law: “The amount of the fine shall be determined according to the circumstances of the crime.” Some articles specify limits, e.g., Article 161: fines from 20,000 to under 200,000 yuan; Article 225 provides for fines in respect of persons having acts of illegal business being fined ... and fined multiples from 1 to 5 times the amount of money obtained through the crime”; Article 158 provides “in respect of persons using fake certificates in order to apply for registration of establishment of the company ... then being fined... and being fined from 1% to less than 5% of the amount of falsely declared capital”. This differs from the Vietnamese, which provides general minimum and specific minimum-maximum per penalty frame in crimes articles.

The Swedish Criminal Code allows fines even if not provided in articles. Article 2 of Chapter 27 of the Swedish Criminal Code provides for conditional penalties: “Conditional penalties may be combined with day-fines with a maximum of two hundred day-fines, regardless of whether day-fines are a penalty prescribed for that offence or not.” This differs from the Vietnamese, requiring article provision. Regarding the forms of fines, the Swedish provides one-time fines and day-fines. One-time fines are standardized, minimum 100 Swedish kronor (Article 4). Day-fines are a form of fine that is applied on the basis of the daily income of the offender, whereby a specific fine amount is fixed for each fine day and multiplied by a certain number of days. The Vietnamese Criminal Code does not have similar provisions, but only has the method of calculating fines according to the minimum and maximum levels.

The German Criminal Code provides day-fines with minimum-maximum. Fines pronounced in daily income units, minimum 5 units, maximum 360 unless otherwise provided. Courts determine unit value based on offender's personal and economic circumstances. The minimum amount of the daily income unit is determined to be 1 euro and the maximum amount is 30,000 euros. The income of the offender, their assets and other sources are the basis for determining the daily income unit (Article 40). Thus, bases for fine amounts resemble Vietnamese (considering economic circumstances), but calculation differs: German uses daily income units, the minimum level being 5 daily income units and the maximum level in cases where the law does not provide otherwise being 360 days. The current Vietnamese Criminal Code does not provide for day-fines

but fixes the minimum level for offenders at 1 million VND and for commercial legal entities at 50 million VND without providing for a maximum level, the determination of the minimum level and the maximum level being in accordance with the provisions in the part on specific offences.

- **Regarding measures to ensure fine enforcement**, the Vietnamese Criminal Code does not provide for coercive enforcement measures or conversion to other penalties, only applying Article 380 (Failure to serve a judgment) for non-compliance.

The Russian Criminal Code permits the conversion of fines into another form of punishment in the event that the convicted person willfully evades enforcement of the sanction. Where fines imposed constitutes the principal punishment, it shall be replaced by another punishment within the range of sanctions prescribed by the relevant provision in the Special Part of the Code.

The Chinese Criminal Code specifies fine enforcement methods per Article 53: four methods. Pursuant to the provisions of the law, the Court shall determine the fine method enforcement: one-time payment, multiple within set period, payment anytime upon court demand if payable, coercive collection for untimely payment. This resembles the 1999 Vietnamese Criminal Code provisions (one-time or multiple within court-decided period), but the 2015 Criminal Code contains no provision on this matter.

The Swedish Criminal Code allows conversion from fines to imprisonment if the convicted person fails to pay the fine; this measure serves to secure enforceability of fines. Article 8, Chapter 25: "Unpaid fines convert to imprisonment minimum 14 days, maximum 3 months, unless otherwise." Conversion to imprisonment is common in Europe, however, no such provision exists in the Vietnamese Criminal Code.

The German Criminal Code allows immediate one-time enforcement, deferred, or partial. Courts decide per circumstances (Article 42). This resembles the 1999 Vietnamese Criminal Code, but 2015 does not provide for enforcement provisions. Article 42 provides leniency if offender's circumstances prevent immediate payment, allowing one-time or specified partial payments. The Vietnamese Criminal Code provides fine exemption per Paragraph 5, Article 62: "Convicted fined who actively complied partially but faces prolonged special economic hardship from natural disasters, fires, accidents, or illness preventing remaining compliance, or renders great merit, upon prosecutor's proposal, court may exempt remaining fine."

- **Regarding fine provisions for juveniles**, the Vietnamese Criminal Code allows principal fines for those 16 and older with income or assets; no supplementary penalties, including fines, for juveniles.

The Russian Criminal Code allows for those 14 and older for some crimes: property snatching (Article 161), robbery (Article 162), extortion (Article 163)... Vietnamese does not allow fine application or enforcement on parents or representatives; Russian allows deduction from parents or representatives with consent. On amounts, Vietnamese sets juvenile fines at half adult levels. Russian sets specific: 1,000 to 50,000 rubles or juvenile's salary/other income from two weeks to six months.

The Swedish Criminal Code provides that sanctions are not imposed on offenders who have not yet reached the age of 15. This can be understood to mean that all types of penalties are inapplicable to persons under 15 years of age, while those aged 15 and above may be subject to criminal sanctions, including fines. In addition, the Swedish Criminal Code does not specify the fine levels applicable to juvenile offenders.

- **Regarding legal entities and fines for them**. The Vietnamese Criminal Code specifically provides crimes and penalties for commercial legal entities, including fines.

The Russian Criminal Code does not provide for specific legal entity provisions and fines, only provide for criminal unions per Paragraph 4, Article 35, liability for commanders and heads per Articles 208 (Illegal Armed Formation or Participation), 209 (Banditry), 210 (Crime Organization or Participation).

The Chinese Criminal Code provides fines for legal entities committing crimes. However, the scope of legal entities that may bear criminal liability under the Chinese Criminal Code is broader, encompassing companies, enterprises, as well as State organs, organizations, and mass institutions. Per Articles 30, 31: a company, enterprise, organ, organization or mass association which commits a socially dangerous act shall be regarded as a unit offender and bear criminal liability "Units committing crimes shall be fined..." Article 34 on supplementary penalties provides: "Supplementary penalties may apply independently." Thus, fines are mandatory independent for companys, enterprises, organs, organizations or mass associations; Article 231: "Units committing crimes under Articles 221-230 shall be fined..." Under the Vietnamese Criminal Code, only legal entities are subjects of criminal offences, and fines are among the most significant penalties applicable to such entities. Fines are prescribed as the sole principal punishment

in all statutory provisions concerning legal entities. Supplementary fines applicable to legal entities are discretionary sanctions that may be imposed together with certain other penalties.

The Swedish Criminal Code provides in Chapter 36 on property forfeiture, corporate fines, other legal measures for crimes; Article 7: "For crimes in business activities, upon prosecutor's proposal, business owners may be fined if: crime seriously infringes special business obligations or deemed serious; owner did not take the necessary measures to prevent the offence." Article 8: " The fine for an enterprise shall be not less than 10,000 curons and not more than 3,000,000 curons." The Swedish Criminal Code does not provide specific legal entity crimes, only general as above, the handling of liability is carried out upon the prosecutor's request. In comparison with the provisions on legal entities and fines applicable to them, the Vietnamese Criminal Code sets out a dedicated chapter on criminally liable commercial legal entities (Chapter XI), which specifies the categories of offences and the types of penalties applicable to such entities, including fines.

4.5 Solutions to enhance the effectiveness of fine application in Vietnam

From researching Criminal Code provisions on fines, based on statistical data, analyzing limitations in fine application, and referencing foreign provisions, the author proposes solutions to perfect provisions and enhance fine application effectiveness in contemporary Vietnam.

First, expand the scope of fine application as principal and supplementary for less serious, serious, very serious crimes, not only for economic offences, infringement upon public safety public order, offences against administrative management order, corruption, drug-related offences but also for offences against the person and reputation; human freedom and citizens' democratic rights infringement; marriage and criminal offences against family law; other offences related to abuse of power according to the orientation: "Prioritize refining criminal policy and judicial procedures, emphasizing preventive efficacy and rehabilitative orientation in offender handling. Reduce imprisonment, expand fines and non-custodial rehabilitation for certain crimes." (Politburo Resolution 49, 2005, p. 3). "This expansion allows greater judicial flexibility in implementing the State's humane reform ideology: studying imprisonment reduction, expanding fine

possibilities; avoiding absolutism that fines are always lighter than imprisonment; key is achieving penalty purposes" (Central Internal Affairs Committee Electronic Newspaper, 2013).

Along with scope expansion, it is necessary to supplement conditions to increase fine applicability, reference may be made to the provisions of certain countries, such as the Swedish Criminal Code, in which the great majority of chapters provide for fines and even permit the imposition of a fine in cases where the individual provision does not itself prescribe it. The Criminal Code of the People's Republic of China regulates the fine as a supplementary penalty, yet in certain cases allows it to be imposed independently as a principal penalty. In the German Criminal Code, more than two-thirds of all provisions defining criminal offences stipulate the fine as an independent penalty (equivalent to a principal penalty) alongside imprisonment, thereby giving the court a choice; in respect of the remaining provisions, although the fine is not stipulated as an independent penalty, the court may nevertheless impose it in substitution for a short-term sentence of imprisonment where the statutory conditions are met. The German Criminal Code further provides for the substitution of a fine for a short-term sentence of imprisonment where a term of imprisonment of six months or more is not necessary, this is a regulation that we may usefully adopt in order to restrict the application of imprisonment in respect of less serious offences or in cases in which the imposition of imprisonment is unnecessary; only in this way can a genuine legal basis be created for limiting imprisonment penalties and strengthening the application of fines.

Additionally, to increase practical fine application, for some crimes provide only non-custodial principal penalties (including fines) or fines as sole principal and supplementary (mandatory), especially less serious, profit-motivated, money-as-means crimes: "Need to build penalty frames for certain crimes with only non-custodial principal penalties, eliminating non-custodial as optional with imprisonment. Thus, non-custodial provisions become reality in application" (Phan Thi Lien Chau, 2002, p. 63).

Second, provide fines as supplementary in all articles with principal fines to expand and enhance supplementary fine effectiveness: " The supplementary penalty of fine plays a supportive role in reinforcing the effects of the principal penalty in the offenders' education and rehabilitation, eliminating the conditions that could lead to the commission of new offences by them. At the same time, the imposition of the fine thereby

also fulfils the objective of deterrence and general prevention with respect to individuals who lack steadfastness in society." (Trinh Quoc Toan, 2011, p. 172).

Third, with respect to the minimum level of the fine, the Criminal Code provides that the minimum amount of the fine is VND 1,000,000 and does not distinguish between its application as a principal penalty and as a supplementary penalty. Furthermore, Clause 3 of Article 35 of the Criminal Code 2015 stipulates the minimum fine at VND 1,000,000; yet in the provisions of the Part on Specific Offences, the minimum fine prescribed for offenders – whether imposed as a principal or supplementary penalty – is uniformly set at VND 5,000,000 or higher, with no penalty range whatever providing for VND 1,000,000. It is evident that the above regulation of fine levels is excessively low and moreover fails to ensure the principle of individualisation of punishment, since under that principle the principal penalty must be more severe in character and degree than the supplementary penalty; the existing regulation does not reflect the differing nature and roles of principal and supplementary penalties. Consequently, in order to accommodate fluctuations in prices, to ensure the severity, coercive force and deterrent effect of criminal sanctions, and to uphold the principle of individualisation of punishment, it is necessary to increase the minimum fine provided in Clause 3 of Article 35 and to prescribe separate minimum amounts for fines imposed as principal penalties and as supplementary penalties, with the minimum fine for a principal penalty being higher than that for a supplementary penalty. *Accordingly, the minimum fine when imposed as a principal penalty should be raised to VND 10,000,000 and when imposed as a supplementary penalty to VND 5,000,000.*

Fourth, on fine enforcement and assurance measures, the Criminal Code must provide payment times and periods, *possibly one-time or multiple but not over 3 times and 2 years, decided by court in judgment.* This provision creates favorable conditions for the convicted person to pay the money but still ensures the strictness as well as the effectiveness of the fine when clearly stipulating the number of times and the time period that the fine must be paid “The fixation of this issue through a judgment decided by the Court – the sole organ possessing judicial power – will have a high legal basis, not only creating favorable conditions for the judgment enforcement agency in the enforcement of the judgment but simultaneously creating favorable conditions so that the offender can enforce the fine in practice” (Nguyen Minh Khue, 2015, p. 139).

For the measures to ensure enforcement of fines and handling of cases where convicted persons refuse to comply despite having the financial means to do so: On this issue, reference may be made to the provisions of certain countries worldwide, such as the German Criminal Code, which provides for the substitution of imprisonment for fines; this provision applies in cases where the fine cannot be enforced, in which event the fine is replaced by imprisonment. The Russian Criminal Code provides that where an offender deliberately evades compliance with the penalty and the fine has been imposed as the principal penalty, the fine shall be replaced by another penalty within the sanction range provided by the corresponding article in the Specific Part of the Code... We should also adopt the experience of other countries in this regard and may stipulate as follows: *Unpaid fines shall be converted into imprisonment, with 03 days of income being equivalent to 01 day of imprisonment. The basis for calculating daily income shall be the base salary coefficient applicable to civil servants and public employees or the statutory minimum wage prescribed for different categories of persons.*

Fifth, it is necessary to have provisions on measures to prove assets, income, and financial capacity of natural persons and commercial legal entities committing crimes as the basis for deciding the application of fines. In the practice of criminal judgment enforcement in Vietnam, the compliance with judgments by convicted persons in respect of fines shows that many difficulties are still encountered, such as the failure to timely seize assets to ensure judgment enforcement, the assets of the convicted person again being joint assets with other persons or with relatives in the family... Therefore, the provision of measures to prove assets and income is necessary in order to ensure the effectiveness of the application and enforcement of fines.

Sixth, it is necessary to have provisions on the deduction of the period of pretrial detention and custody in cases where the offender is sentenced to a fine. It is possible to take daily income (calculated according to the base salary coefficient of civil servants and public employees or the minimum wage level prescribed for different subjects) as the basis for deduction into the period of pretrial detention and custody; this is extremely necessary in order to further expand the possibility of applying fines, because in many cases, if there is no such provision, situations may occur where the Court will apply imprisonment so as not to have to convert. It is possible to provide for deduction as follows: *In cases where a person has been subjected to pretrial detention or custody but is sentenced to a fine, the period of pretrial detention and custody shall be deducted from*

the amount of money that the convicted person must serve, with every 01 day of pretrial detention or custody being equivalent to 03 days of income.

Seventh, regarding the method of calculating fines, the 2015 Criminal Code only provides a single method of determining the fine amount, namely fixing the minimum and maximum amounts in the article; this method of provision manifests advantages such as ease of application, avoidance of arbitrariness, and non-uniformity in the manner of determining the fine amount. However, for cases of crimes having a particularly serious nature and degree, causing excessively large damage or obtaining excessively large illicit profits... (for example, the Formosa company waste discharge case causing damage to the central Vietnam provinces), this provision will not ensure thorough handling. Therefore, the Criminal Code should provide additional multiple methods of calculating fines for certain crimes in order to ensure diversity and flexibility in the application of fines to different cases with the aim of maximizing application effectiveness. *It is possible to provide for fine calculation methods according to ratios such as fixing the maximum level determined on the basis of multiples of the value of goods or assets involved in the crime, according to multiples of evaded tax amounts, according to the amount of money or assets obtained through profiteering, or according to the degree of damage caused by natural persons or commercial legal entities.*

Eighth, strengthen propaganda work, explanation, guidance on law application, inspection and supervision of trial activities, development of case law, enhancement of capacity, professional expertise level, awareness, and responsibility of the contingent of Judges and People's Jurors at courts of all levels; summarization of practice, cooperation and exchange of experience with foreign countries. Comrade Truong Hoa Binh, Standing Deputy Prime Minister of the Government, former Chief Justice of the Supreme People's Court, holds that: "The cadre force plays a decisive role in the quality of trials, therefore it is necessary to train a contingent possessing capacity, qualities, ethics, proficiency in professional skills, limiting to the lowest level possible wrongful convictions, creating strong changes in awareness among cadres of the court sector." It can be said that the root of success or failure lies precisely in cadre work; to improve trial quality, it is necessary to start from the root issue, which is cadre work of the Court sector. Accordingly, the Court sector needs to build a clean and strong force throughout the entire sector, consisting of persons possessing talent, possessing virtue, and truly being upright cadres "Build the contingent of judicial cadres and judicial support cadres, especially cadres

holding judicial titles, in the direction of enhancing authority and legal responsibility, raising and specifying standards on politics, qualities, ethics, professional expertise and experience, social knowledge with respect to each type of cadre” (Politburo Resolution 49, 2005, p. 3) and “Train a sufficient number of judicial cadres possessing professional expertise and foreign languages specialized in the international justice field in order to protect the legitimate rights and interests of the State, organizations, and Vietnamese citizens, meeting the requirements of international and regional integration” (Politburo Resolution 49, 2005, pp. 7-8). In order to enhance professional expertise and skills, the Court sector needs to organize assessment work, capacity enhancement, encouragement of self-study and self-training among cadres of the sector; regularly organize experience withdrawal through cases; create conditions for cadres to receive professional training and skills development domestically and abroad. Together with that, it is necessary to have solutions to create better working conditions, appropriate remuneration regimes, especially salary policies, housing, and special regimes and policies, ensuring livelihood so that cadres and public employees of the Court sector can rest assured in performing their duties “Amend the salary regime, allowance regime and promulgate other preferential policies for Judges and cadres and public employees of Courts to suit the specific characteristics of Court work, creating conditions to improve the lives of cadres and public employees of the sector, helping the People's Courts sector to have mechanisms to attract high-quality human resources to work in the sector” (Supreme People's Court, 2011, p. 20). The Court sector also needs to have viewpoints and methods for evaluating and using cadres and the contingent of Judges in an objective, scientific, impartial manner, properly handling the relationships between virtue and talent, authority and responsibility, obligations and interests, standards and structure, actual capacity and qualifications, having synchronous policies to encourage, motivate, and uphold the spirit of responsibility, labor discipline, and professional ethics of the cadre contingent and the Judge contingent, as well as regularly inspecting and urging implementation, timely rewarding collectives and individuals with achievements, strictly and promptly handling collectives and individuals with violations, timely withdrawing experience, finding solutions to remedy manifestations of violations and deviations in cadre work and Judge contingent building.

Ninth, strengthen the summarization of practice, cooperation and exchange of experience with foreign countries: In the process of national development, the Party and

State always attach importance to the work of summarizing practice in order to supplement and develop theory; thanks to regularly summarizing practice, the lines, guidelines, and policies of the Party are always suitable to practice, possess sufficient capacity to direct practice, and are verified by the achievements in the cause of national development over the past period. Therefore, in order to enhance the effectiveness of law application in general and of fines in particular, the work of summarizing, evaluating, and drawing lessons from the practice of law application is very necessary in order to minimize shortcomings and errors, timely amend and supplement provisions to meet the needs of practice “Strengthen the work of summarizing trial practice, guiding unified law application and developing case law; regularly organize withdrawal of experience on trial work for types of cases in order to synthesize common errors and difficulties that Courts often encounter in order to timely guide unified law application.” (Supreme People's Court, 2015, p. 30). In addition, in the context of deep and extensive international integration, Vietnam has participated in signing many treaties and many instruments with countries and international organizations; therefore, expanding and effectively implementing international cooperation activities, actively participating in international forums related to Court work, and well preparing human resources to serve international integration are inevitable requirements. The process of international cooperation helps share information and experience on law and achievements in trial work, while at the same time mobilizing resources and learning international experience in the process of judicial reform in Vietnam, including the construction and application of the provisions of the Criminal Code in general and of fines in particular.

5 CONCLUSION

From the practical application of fines, combined with the study of survey data and judgments in which fines have been imposed, it is evident that although the Vietnamese Criminal Code has expanded the scope and conditions for the application of fines, the number of defendants subjected to fines has increased yet still constitutes a low proportion of the total number of defendants brought to trial, and the rate of fine application exhibits significant disparities among localities, among crime groups, and between principal and supplementary penalties. The article also identifies the advantages as well as the existing shortcomings and limitations that adversely affect the effectiveness

of fine application. On the basis of analysing the limitations in the application of fines, the article sets requirements for the improvement of the law and proposes solutions to enhance the effectiveness of fine application: perfecting the provisions of the Criminal Code concerning fines in order to meet the extremely essential requirements in the implementation of the judicial reform strategy, the construction and perfection of the legal system and the criminal policy of the Party and the State, harmonisation with the international treaties on the prevention and combat of crime to which Vietnam is a party, and the assurance of humanitarian principles and human rights values; strengthening propaganda, explanation and guidance on the application of law as well as inspection and supervision of trial activities; raising the capacity, professional expertise, awareness and sense of responsibility of the contingent of Judges and People's Jurors at courts of all levels; and carrying out the summarisation of practical experience together with cooperation and exchange of experience with foreign countries.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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