

Crimes of Infringing Upon the Marriage and Family Regime According to Vietnamese Law

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Abstract:

Research in a complete, comprehensive and systematic way on crimes of infringing upon the marriage and family regime according to Vietnamese criminal law. The research results of the research contribute to building and developing a more complete theory of crimes against the marriage and family regime in our country. The research provides scientific arguments about the content, thereby raising awareness in law building and law application on crimes against the marriage and family regime in accordance with Vietnamese criminal law.

Keywords: *Infringing upon the marriage and family regime*

1. Introduction

The State protects social relations by law. In social relations, the family background is always focused to ensure conditions for national development, construction and defense of the Fatherland.

The family is the cell of the society, so in order to build a developing society, it is essential to focus on the healthy development of cells and pay attention to the protection of a progressive marriage relationship.

Since ancient times, laws and ethics and traditional practices have also established regulations in the establishment of behaviors on matters related to marriage and family relationships.

In the judicial reform in our country, the Party and State always pay attention to and give prominence to policies in law construction and application, many resolutions have been born to meet the implementation requirements. political tasks in the new period such as: Resolution No. 08 / NQ-TW dated January 2, 2002 of the Politburo on "Some key judicial tasks in the coming time", Resolution No. 48 / NQ-TW dated May 24, 2005 of the Politburo on "Strategy on building and perfecting the legal system of Vietnam to 2010, with an orientation to 2020" and Resolution No. 49 / NQ-TW dated 02 / 06/2005 of the Politburo on "Strategy for judicial reform to 2020" [55, 56, 57].

The 2013 Constitution of the Socialist Republic of Vietnam is specified in Article 36 to protect the family marriage system according to the principles of voluntary, progressive, monogamous and equal husband and wife. together. The State protects marriage and family, protects the rights of mothers and children [106, Article 36].

The marriage and family regime plays an important role in social life, so it is protected by many different means, including the legal means, which plays an important role in the criminal law. Criminal law always pays attention to the protection of the marriage and family regime through defining specific acts for society that are crimes against the marriage and family system and other measures. criminal penalties for the person who commits such dangerous acts. The Penal Code 2015 specifies violations of the marriage and family regime that are considered crimes and provides penalties for such acts from Articles 181 to 187 in Chapter XVII. violating the marriage and family regime [16].

The Penal Code only regulates acts of infringement on the marriage and family regime which are of a serious nature that can lead to damage to the lives, health and property of family members and persons. other, can affect the social order and safety, the healthy development of society, in order to protect the whole society in general, including the purpose of protecting the good values of the family, rights and legal interests of each family member.

The behavior of this type of crime not only directly violates the legal marriage and family regime but also causes many consequences affecting other social relationships that need to be protected such as property and life, human honor, reputation but also cause insecurity, social order and safety etc.

Violations of the marriage and family regime are sometimes very simple, but sometimes they happen in a complicated, diverse, even defined way to deal with difficulties between the ethical and administrative boundaries and criminal crimes. From the living reality of life, it is necessary to have a deep, scientific awareness of this criminal group and to have necessary and timely provisions of the law to be put into appropriate application in practice.

However, theoretically, many issues have not been fully and in-depth researched, because they have not been approached by many different research approaches, especially the legal sociology approach in general and sociology of criminal law in particular.

At present, there are many publications, documents, and research works on this criminal group, but the quantity is not many and many topics are not in depth or incomplete in different forms of crime, while Meanwhile, violations of the marriage and family regime are taking place every day, sometimes with a smoldering secret, but sometimes there are public manifestations with many consequences that the public has strongly reacted.

Current situation in the perception of theoretical research has significantly affected the current situation of the adjustment of regulations in law construction, many legal provisions have not met the real life of society, applied practice. Also facing many difficulties and shortcomings because the provisions of the law are still limited and many other influencing factors.

On the other hand, in practice, the application of the criminal law on crimes against the marriage and family system still has many shortcomings, such as determining crimes, application of laws and decision on criminals, penalties as well as other related issues still have limitations and are incomplete in terms of the nature and extent of the crime, leading to inaccurate crime, improper punishment, contributing to the judgment. has been canceled, corrected, or otherwise defamatory, allowing criminals to fall, which has limited effectiveness in general handling, education, deterrence and prevention methods.

In the face of the need to protect justice, human rights, and reform the criminal justice towards enhancing the virtuous character of dealing with crime, there is a very necessary need to improve the law and build solutions. The law aims to improve the quality of the application of criminal legislation on the above crimes. To fulfill that need, it is necessary to study more deeply and fully the theoretical aspects, the adjustment of the law and practice in building and applying criminal law to the crimes of violating the marriage regime and family.

2. Literature review

2.1. Studies on theoretical perceptions and general regulations on crimes against the marriage and family regime in the country

Curriculum on Vietnamese criminal law, General section edited by Prof. Dr. Vo Khanh Vinh, published by Social Science Publishing House in 2014 [158], this is a research on theory, providing practical values and benefits, many theoretical issues about crime, punishment and many other related issues, are the basis for the author of this study to have a deep understanding of the concepts concepts and definitions of crimes in general and crimes against the marriage and family regime in particular.

Especially in the chapter "Crimes of infringing upon the marriage and family system" in the Vietnamese criminal law textbook has given scientific knowledge that helps the author of this study to properly and deeply perceive legal signs, general principles as well as the specific and specific characteristics of the crimes against the marriage and family system, and the scientific nature in the application of punishment for these crimes.

In addition, it also details behaviors and consequences of crimes against the marriage and family regime under the perspective of common theoretical awareness, asking questions and answers to help the study author understand. clearer the legal signs of crimes violating the marriage and family regime, at the same time there is a condensation of regulations in a specific, easy to understand, easy to apply in research as well as in combat activities. and prevention of these crimes.

In addition to the above work, there are also studies in the form of monograph books such as: Human rights approaching multidisciplinary and interdisciplinary jurisprudence edited by Prof. Dr. Vo Khanh Vinh, Commune Science Publishing House published in 2010 [159]. The book introduces a new approach to the study of human rights, not only studying one aspect or simply in a certain social sciences, but in a multidisciplinary and interdisciplinary approach to child rights jurisprudence. who creates a general knowledge system of human rights, helps the author to deeply and comprehensively realize the value of human rights, in which moral rights are identified as one of the basic contents. of human rights and inseparable from human rights, thereby helping the research author to have an approach to view and to have a more scientific method of research on issues related to rights and obligations. of people in marriage and family relations, especially in research on crimes against the marriage and family regime.

The book Mechanism to ensure and protect human rights of the authors collective, edited by Prof. Dr. Vo Khanh Vinh, published by Social Science Publishing House in 2011 [148]; The book Theoretical and practical problems of the new rights group appeared in the development process of the author Prof. Dr. Vo Khanh Vinh published by the Social Science Publishing House in 2012 [157]; The book Human rights in the 2013 Constitution - New perspectives with new approaches and new regulations ”by PhD. Nguyen Van Hien, editor, National Politics Publishing House, published in 2014 [60].

In these books, the authors have analyzed the characteristics of human rights in the new conditions as well as the legal mechanisms to protect human rights in the stages of social development. The meaning helps the author to be more aware of the conditions, circumstances and development of the process of perfecting legal policies on human rights as well as the system of legal policies on marriage and family from there. There are recommendations to propose appropriate regulations to effectively protect the above social relations.

The study Comparing new points for the crimes of infringing upon the HN & GD regime of Chapter XV of the 1999 Penal Code and Chapter XVII of the Penal Code 2015, by the authors Luu Xuan Sang, Hoang Thi Ngoan published by The Procuracy in 2015 [122]. The authors have compared legal signs and crimes and highlighted new points of chapter XVII of the 2015 Penal Code as well as evaluated the suitability and inappropriate when applied in practice, the comparison. The above comparison helps the research author to have a deeper insight into the similarities and differences of legal provisions on crimes against the marriage and family regime over time, from which there is an appropriate assessment. when proposing solutions to perfect the law.

2.2. The research works on practical issues of law application, solutions contributing to perfecting the law provisions for crimes against the marriage and family regime in the country

Research on Incest Crime in Vietnam Criminal Law, author Nguyen Thi Lan published by Journal of Science - Law Specialist No. 04/2015 [82, p. 50.55]. The author has pointed out a number of shortcomings in the criminal law and proposed some recommendations to improve the effectiveness of combating incest crimes in Vietnam's criminal law and the issue of criminal liability for each. Specific crime cases, which analyze the legal signs of this crime in regulations and practices, it makes sense to help study authors see more comprehensively about this crime.

The research on Violation of monogamy under the social-legal aspect and the posed problems, by Nguyen Thi Lan, published by Journal of Science - Journal of Law No. 01 / 2015 [84, p.43-49]. The author has focused on analyzing the current law provisions on the violation of monogamy and pointing out some problems arising in

modern society. On that basis, the author also proposes a number of recommendations to improve provisions of the criminal law on the offense of violating the monogamy regime.

The book *Living with homosexuals*, by the author Phuong Thao, published by Law and Society Publishing House in 2015. The author poses issues related to the crimes of infringing upon the HN & GD regime of the current Penal Code, giving situations that have arisen but have not been mentioned by law. That is the situation in which a gay husband and wife have a couple relationship with another homosexual person and analyze whether the relationship between two homosexuals is considered a violation of monogamy. husband or not [135], According to the author of the study, this is a pressing issue that the current society is very concerned about, so it is necessary to have regulations to ensure both protection of social relations. It is also necessary to ensure that the humanities respect human freedom and privacy in marriage and family relationships, helping the study author to have more vivid interpretations in the study of invasions. violating the marriage and family regime under Vietnam's criminal law, especially explaining issues related to human rights, legitimate needs, as well as the protection of justice.

Project on Reducing the status of child marriage and close marriage among ethnic minorities approved by the Committee for Ethnic Minorities on December 27, 2014, No. 28/2014 / TT-UBDT on December 27, 2014 [147], content giving out inadequacies on the causes and limitations in the criminal law on the above crimes in the lives of ethnic minorities in practice and offering solutions to improve the efficiency in law application, issues related to criminalization and non-criminalization in each stage of development, this has meaning not only in finding out the causes, limitations and shortcomings in the legal regulations. specific crimes in the group of criminals violating the HN & GD regime, but it is also a useful lesson to help the research author orient in making forecasts as well as proposing content solutions to perfect the law. in a more practical, profound, and closer way to the life rhythm and breath of contemporary society.

In addition to the above studies, there are also dissertations and studies related to crimes of infringing upon the marriage and family regime such as:

Master thesis *The relationship between ethics and law in the field of marriage and family in our country today is protected by practitioner Vu Thi Phuong* in 2016 at Hanoi National University [104]; Doctoral study on *Marriage and Family Law, theoretical issues defended by graduate student Bui Thi Mung* in 2015 at Hanoi Law University [97].

Doctoral study *Crimes of infringing upon the marriage and family system under Vietnamese criminal law defended by graduate student Nguyen Thi Lan* in 2017 at Hanoi National University [85], this work analyzes marriage and the family has the role of reproducing life, reproducing people, is the foundation of each nation, helping citizens to be formed, grow and develop, is one of the weak The important factor determining the quality of citizenship, wherever any country is located, regulates and protects the marriage and family regime by criminal law, the continuous improvement of the law is an inevitable need. of all countries of the world.

Doctoral study on criminal policy of juvenile offenders in Vietnam today defended by graduate student Hoang Minh Duc in 2016 at the Academy of Social Sciences [46], with the content affirming and fighting Prevention and control of crimes in general and crimes committed by minors are the responsibility of each citizen, each family, state agencies and the entire society, especially there must be a system of Appropriate and timely points, lines, guidelines and directions to ensure each appropriate step is both strategic and strategic in certain conditions and circumstances. criminal policy, contributing to the coordination of activities of State agencies, social organizations and citizens with the aim of overcoming, limiting and repelling crimes.

Doctoral study *Crimes infringing upon the honor of human dignity under Vietnamese criminal law defended by graduate student Vu Hai Anh* in 2017 at the Academy of Social Sciences [4], identifying infringing crimes Human dignity and honor is one of the groups of particularly serious crimes with acts of danger to society as specified in the Penal Code, committed deliberately by persons with criminal responsibility. Attention, infringes

on human dignity and honor, this type of crime not only harms the normal and healthy development of the person, but also adversely affects the mind and physiology of the victim in the long run. long term, emotionally damaging the victim as well as their families. In addition, there is also a negative impact on the surrounding environment, in recent years, the author has studied the theoretical issues and practical evaluation of the application of criminal law on this group of crimes, giving a number of opinions. Recommendations contribute to ensuring the correct application of criminal law provisions on this criminal group in practice.

The above essays and studies have helped the author clarify some common concepts of crime and apply related or similar punishment in the group of crimes against the marriage and family regime. , theoretical and practical issues must be analyzed under many different angles, in addition to helping the author see some of the reasons for the limitations and shortcomings in the provisions of the law, the limitations. regulations on the qualifications and professional capacity of the procedure-conducting persons, helping the author of this study to have an overview to have the best solutions in proposing the improvement of criminal law and recommendations on guiding the application of criminal law, making recommendations on the practical review of the application of criminal law, a number of other solutions to improve the qualifications and capacity of law enforcement officers as well as improve their work. propagating, disseminating and educating about law in the community

In summary, the topics in the country are research works, teaching textbooks, scientific commentary or articles of general scientific theoretical nature, and also the topics shown. in the form of specific research works, with each crime analyzed in many legal and social perspectives and especially the topics as theses and studies presented in different ways. A scientific and practical approach, thereby helping the research author to recognize the positives and limitations in the law provisions on crimes against the marriage and family regime as well as in the practical application in social life. These are extremely valuable documents that help the author of this study to gain new insights, so that they can focus their thinking in the research and complete the research effectively.

2.3. The research works on practical issues of law application to crimes against the marriage and family regime abroad

The research on Human dignity, protected interests in criminal law, by Tatjana Hornle and Mordechai Kremnitzer published in the Srael Law eview (Germany), No. 44, volume 1, 2, 2011, internal Human dignity can be a protected concern in criminal law, starting with some reflection on the meaning of human dignity and then examining the description of the offense in the law. German Criminal Code and Israel's Criminal Code, which give many examples of criminal acts, are excluded by pointing to human dignity. In addition, this work also gives more solutions to improve regulations to protect human dignity, including relationships between father, mother, wife, husband, and children related to institutional crimes. degree of marriage and family [179, p.143-168].

Doctor of jurisprudence research on the topic of Crime of infringing upon children's rights in the field of family relations by Kolmakova Oksana Sergeevna (Russian Federation) published in 2014. The author's general study on social conditions The legal framework of the provisions on crimes against families and minors under the provisions of the Penal Code of the Russian Federation, clarifying the concept and content of children's rights under the Family Law of the Russian Federation and the law international [170]. The problem approach is quite close to scientists in Vietnam when the author researches systematically the history of formation and development of the criminal law of the Russian Federation on crime. family and juvenile harm, at the same time also researched against the laws of some countries around the world and classified these crimes according to the Penal Code of the Russian Federation. Through the research of this author, shows quite fully the content of the criminal law of the Russian Federation on domestic and juvenile crimes, specific legal characteristics, thereby receiving Seeing many issues that this State is very concerned about, while the 1999 Vietnam Penal Code and the 2015 Penal Code have not mentioned it, they are issues related to adoption and confidentiality of

information related to the adoption. This is also an important part of a family relationship that needs to be protected by criminal law.

The above-mentioned research works are vivid documents on objective reality in marriage and family relationships, not only in Vietnam but also in other countries around the world that are especially interested in studying crimes. Violating the marriage and family regime, this helps the author of this study have cognitive relationships in the protection of human rights, the protection of progressive social relationships, and the protection of customs, ethics, culture of humanity and especially protection of justice throughout society.

Through synthesizing and absorbing theoretical issues of criminal law, marriage and family relations, the research author will systematize scientific theoretical issues about crimes against the regime. Marriage and family, clarifying the effects on economic, cultural, ethical, social, etc., how each period affects people's perception of marriage and family relations, on the marriage and family regime, from there we see the development direction of these social relations.

Through studying the provisions of Vietnamese law in each historical and social period, the research author will build a relatively general picture of the legal mechanism in Vietnam in protecting the marriage and family regime, from there, to realize the inherited values in the history of the criminal legislature in the protection of marriage and family relationships, and the protection of the marriage and family regime.

Through researching data on the trial situation of marriage and family infringement cases at the People's Court of two levels in Ho Chi Minh City, during the period from 2005 to 2019, the author studies will evaluate the process of applying the provisions of the law on crimes against the marriage and family regime, thereby identifying and analyzing the causes of limitations, difficulties and problems in practice. apply.

3. Research methodology and methods

The study takes the dialectical materialism and historical materialism of Marxism-Leninism, Ho Chi Minh's thought, the views of the Party and our State on crime and punishment, on the fight against crime, anti-crime as methodology for research issues within the research content.

The research also used in a whole set of other specific research methods such as inductive analysis, synthesis, statistics, tables of symbols, comparison, to implement the topic.

4. Result

4.1. In Vietnam

On the basis of the 1980 Constitution, the 1985 Criminal Code was born, which adjusted social relations on the basis of individualizing crimes, arranging the crimes in this group into a separate chapter in order. in a scientific and reasonable way, suitable to the economic and social situation in the new period. In Chapter V, the part of the crimes of violating the HN & GD regime [111] includes: 1 / Crime of forcing marriage or preventing voluntary and progressive marriage [111, Article 143]; 2 / Crime of violating the monogamy [111, Article 144] regime; 3 / Organizing underage marriage, underage marriage [111, Article 145]; 4 / Incest incest [111, Article 146]; 5 / Serious abuse or abuse of parents, spouses, children [111, Article 147].

Stemming from the criminal policy for the crimes of violating the HN & DV regime in this period, the Penal Code in 1985 has largely completed the separation of crimes, determining that these crimes are in a less serious group with high sentences. 3 years imprisonment, except for incest, which carries the highest sentence of 5 years.

The 1985 Penal Code has existed for more than 15 years, this time was amended and supplemented 4 times in 1989, 1991, 1992 and 1997, after these amendments and supplements, the Penal Code has developed Respond

somewhat to the demands of the struggle against crime in innovative terms. This shows the perfect criminal law, it is consistent with the development of the society.

On December 21, 1999, the National Assembly passed the 1999 Penal Code to replace the Penal Code in 1985 in order to meet the requirements of fighting against crime in the new situation. The crimes of infringing upon the HN & GD regime in 1999 are defined in Chapter XV, including 7 crimes [113] as follows: 1 / Crime of forcing marriage or obstructing voluntary and progressive marriage [113, Article 146]; 2 / Crime of breaching the monogamy [113, Article 147] regime; 3 / Organizing underage marriage, underage marriage [113, Article 148]; 4 / Crime of illegal marriage registration [113, Article 149]; 5 / Incest [113, Article 150]; 6 / Crime of mistreating or torturing grandparents, parents, spouses, children, grandchildren, people with meritorious service to them [113, Article 151]; 7 / Crime of refusing or avoiding the obligation to support [113, Article 152].

Thus, in comparison with the 1985 Penal Code, the 1999 Penal Code has added 2 new crimes: Crime of illegal marriage registration and Crime of refusing or avoiding support obligations.

In which there are 4 crimes including: Crime of forced marriage or obstructing voluntary and progressive marriage, Crime of violating the monogamy regime; Organizing underage marriage, underage marriage; The crime of mistreating or torturing grandparents, parents, spouses, children, grandchildren, people with meritorious services to them, is required to show signs of being administratively sanctioned for this act but also commit violations. Newly dealt with criminal.

In addition, for 2 offenses, namely violation of the monogamy and monogamy system and the crime of mistreating or torturing grandparents, parents, spouses, children, grandchildren, and people with meritorious service to them, are specified more. It is imperative that there are serious consequences that constitute a crime.

The birth and development of the Penal Code in 1999 has been fundamentally changed, completing one step more provisions in the general section to ensure the science and practice, has changed the structure of criminal chapters in the direction of both. consistent with the new developments of the criminal situation in Vietnam and consistent with the general trend of criminal law in the world, with a higher level of segregation of criminal responsibility to improve efficiency in practical application,

During this period, due to the criminal policy towards the above criminal group with special attention to the reality of development of social life increasingly high, in the conditions of scientific progress, a fair society, people then, civilized, has paved the way for the completion of the 1999 Penal Code.

4.2. Crimes of infringing upon the marriage and family system under the criminal law of some countries around the world:

Social relations about HN & GD are not only regulated in Vietnam, many countries around the world such as Russia, China, Germany .. are also recognized and protected by criminal law. Although the physical aspect or the structure of laws in the form, quantity and content of these crimes differ in each country's Penal Code, the common point is to maintain order. marriage and family and protect human rights in marital, blood and nurturing relationships, but different countries still use the Penal Code to protect the marriage and family regime.

Crime of infringing upon the marriage and family system under the Penal Code of the Russian Federation

The Russian Federation is a country with a large area in the world, from Eastern Europe, through North Asia, to the Pacific coast. Russia possesses a relatively complete and rich system of legal regulations. HN & GD regime in Russia is also interested in through the Constitution, the Criminal Code, and the Family Law.

Criminal Code of the Republic of the Russian Federation regulates HN & GD crimes in Chapter XX with the name: Crimes of domestic abuse and juvenile [131], including: 1 / Crime of manipulating juvenile offenders

crime (Article 150); 2 / The crime of inducing juveniles into social evils (Article 151); 3 / Crime of swapping babies (Article 153); 4 / Crime of illegal adoption (Article 154); 5 / Crime of revealing secrets of adoption (Article 155); 6 / Crime of not performing the obligation to raise minors (Article 156); 7 / Crime of deliberately avoiding paying expenses for raising children or nurturing parents who are no longer working (Article 157).

Objects of these crimes: The family system and the juvenile. Families often have a close relationship with minors because they believe that juveniles often cannot live independently and need the family's patronage, nurturing, care, protection, and education. Minors are the responsibility of the family and then the society. Penal Code of the Russian Federation only protects the family system and minors. Example: The preservation of confidential information in adoption for the purpose of protecting a stable life, from psychological disturbance and other benefits of the adopter and the adopted child feed. The fact of giving and adopting a child has become a new family relationship and that family needs to be protected at a high level, the quality of citizenship is mostly from the family [131, Article 155].

Issues related to the private life of individuals such as violation of monogamy, incest, child marriage, and violation of marriage conditions are not defined as specific crimes [131].

Objective aspects of these crimes: Behavior dangerous to society is defined by the form of action or inaction. Forms of offenses include: Crime of swapping babies (Article 153), Crime of illegal adoption (Article 154), Crime of revealing secrets about adoption (Article 155). Forms of non-action include the following crimes: Crime of intentionally avoiding paying expenses for raising children or nurturing incapable parents (Article 157), Crime of not performing responsibility juvenile education (Article 156).

Dangerous consequences for society are not a mandatory sign of this group of criminals, but criminal tricks are mandatory for some crimes. For example, acts committed more than twice as a mandatory sign of "Crime of unlawful adoption" [131, Article 154], or cruel attitude that is a trick of emotional violence is also Compulsory sign of Crime of not performing the responsibility of educating minors [131, Article 156].

The subject of these crimes: Is a person of age for criminal responsibility and has the capacity to bear criminal responsibility [131]. For example: According to the Penal Code of the Federal Republic of Russia, the Crime of intentionally avoiding the contribution of child support money and the incapable of working parents, the subject of the crime must be an adult, capable labor and there is a decision on the court's nurturing contributions [131, Article 157]. In addition, some crimes in family crimes have special subject provisions, such as Crime of not performing the responsibility of educating minors, the offender must be a parent or a responsible person. juvenile education is a teacher or other employee of a school or educational institution [131, Article 156].

The subjective side of these crimes: Performance is regulated by willful guilt and the motive of the crime is often prescribed as a mandatory sign of the criminal constituent. For example, self-interest or other nefarious motives are mandatory signs to convict a crime of swapping a newborn [131, Article 153], Crime of illegal adoption [131, Article 154], Crime of revealing secrets about adoption [131, Article 155].

Penalties for these crimes: The maximum main penalty is 5-year imprisonment applied for Swap infants [131, Article 153]. Additional penalties are fines and deprivation of the right to assume certain positions, prohibition from practicing or doing certain jobs, can be imposed on the crime of swapping infants [131, Article 153], Crime of disclosure. secrecy on adoption [131, Article 155], Crime of not performing the responsibility of educating minors [131, Article 156]. Or there are certain crimes committed with the motive of self-seeking, so the form of economic responsibility is a fine, which is often applied for the purpose of influencing the self-seeking factor.

Criminal law of the Russian Federation has not separated between social relations related to juveniles and social relations about family, in which it is mainly concerned with the interests of minors. Thereby drawing lessons for Vietnam the following issues: For social relations in the field of giving, adopting and adopting a

child, it is also necessary to be regulated by criminal law, because it affects directly next to current marriage and family relations. For crimes related to economics or self-interest motives, the application of fine penalties is consistent with current reality in Vietnam. These lessons have been largely absorbed in the Criminal Code 2015 past.

Crime of infringing upon the marriage and family system under the Criminal Code of the People's Republic of China

China is located in the northern half of the Eastern Hemisphere. The world's largest population with many ethnic groups. The Criminal Code of the People's Republic of China stipulates a number of crimes related to HN & GD in Chapter IV, Criminals section with the name: Crimes infringing upon the freedom of body, democracy of citizens [72]. The crimes of infringing upon the marriage and family relations of this country have not been separately defined into a chapter, but are classified with the chapter on the crimes of infringing upon the rights to freedom of the body, the democratic rights of citizens. Weaknesses defined in Articles 257 to 262 of the Penal Code include: 1 / Crime of using force to intervene in freedom of marriage (Article 257); 2 / Crime of violating the monogamy regime (Article 258, Article 259); 3 / Crime of mistreating family members (Article 260); 4 / Crime of refusing the obligation to nurture the elderly, children, the sick or other incapable of living (Article 261); 5 / Crime of seducing a child under 14 years old to leave the family or guardian (Article 262).

Objects of these crimes: The marriage, family and juvenile regime. Crimes related to family relationships are defined as Crime of mistreating family members [72, Article 260], Crime of refusing the obligation to nurture the elderly, children, the sick or incapable. Other self-living [72, Article 261], Crime of seducing children under 14 years old to leave the family or guardian [72, Article 262]. There are also provisions to extend the obligation to take care of each other in cases where there is a possibility between grandparents and grandchildren, between siblings. For incestuous acts, if having sexual intercourse with an incestuous nature with a girl aged full 14 years or older, it is not a crime, incest is only considered as an aggravation of criminal liability.

The characteristic of this country's criminal law comes from the long-standing feudal regime, patriarchal customs, old and out-of-date cultural and customs that have deeply influenced social life. Therefore, social relations on marriage and family are highly valued and occupy a decisive position in human religion as well as the rule of the country, with Confucian ideology in this country with three principles, four virtues. Inequality in the patriarchal family relationship, the common five, spoke of the inequality. Therefore, the criminal law often provides for marriage-related crimes such as violation of the monogamy or forced marriage to strictly handle in order to step by step fight with unequal feudal practices. this [72]. In addition, China also specifies a crime of violating a military's marriage because it thinks that the army is the mainstay of the people's democratic dictatorship, and the protection of a military's marriage is necessary [72].

Objective aspects of these crimes: Are objective acts performed in the form of action or inaction. Forms expressed by actions include the following crimes: Crime of interfering with force [72, Article 257], Crime of illegal marriage [72, Article 258, Article 259], Crime of mistreatment [72, Article 260], Crime seducing children [72, Article 262]. Forms expressed by inaction include crimes: Crime of not performing the obligation to nurture [72, Article 261]. Objective behavior including acts of violence and non-violent behavior, with dangerous consequences for society is not a mandatory sign of all these crimes, but in some cases Consequences of crime may become indicative to determine aggravation penalty frame. For example, serious injury or death to the victim is the fact that determines the aggravating penalty frame for the crime of mistreatment [72, Article 260].

Subjects of these crimes: Persons who are full 16 years old, have criminal liability capacity to bear criminal responsibility for crimes of marriage and family relations, special subjects are also specified. For example, being a member of a family can be the subject of the crime of abuse [72 Article 260], or be a person with support obligation to be the subject of the crime of denial of custody [72 , Article 261].

The subjective side of these crimes: Crimes of this group are all committed in the form of intentional sin. Anyone who unintentionally performs the specified behavior in HN & GD crimes are not liable for criminal responsibility. Crime motives and purposes are not mandatory signs of the subjective side.

Penalties for these offenses: The maximum main penalty can be up to 7 years imprisonment. For example, for the crime of interfering with force [72, Article 257] or for the crime of mistreatment [72, Article 260] when there is an additional incident where the victim dies or is seriously injured. The Chinese Criminal Code does not provide for the application of additional penalties for these crimes.

Chinese criminal law pays much attention to protecting both social relations arising in the field of marriage and the family. Thereby, we draw lessons for Vietnam about the resolute struggle with outdated feudal practices, to contribute to the successful implementation of innovation, industrialization and modernization. In addition to nationalization, in addition to protecting the marriage of the soldiers, it is also a good suggestion to continue to improve the Penal Code in order to improve the military's fighting strength in the new era.

Crime of infringing upon the marriage and family system under the Criminal Code of the Federal Republic of Germany

The Federal Republic of Germany is an important economic center of Europe, the political regime is a democratic, social and constitutional country, the HN & GD regime in Germany is also interested in through the Constitution, the Penal Code. Family Law and other relevant legal regulations. Criminal Code of the Federal Republic of Germany regulates HN & GD crimes in Chapter XII Section of crimes with the name: Crime of infringing upon civil status, marriage and family [128], including the following crimes: 1 / Crime of deceiving civil status (Article 169); 2 / Crime of breaching the support obligation (Article 170); 3 / Crime of violating the obligation to care and teach (Article 171); 4 / Crime of pairing (Article 172); 5 / Crime of intercourse between relatives (Article 173).

Object of this criminal group: is the marriage, family and juvenile regime, in which there is a crime of deceiving civil status (Article 169), not directly related to the marriage and family regime. has not been separated yet and there is one crime where the subject of abuse is the marital regime, which is the crime of marriage [128, Article 172], the other crimes, the subject of abuse is the family regime [128 , Articles 170-171-173].

Objective side of this criminal group: are objective acts performed in the form of action or inaction. Forms expressed in action include the crimes of marriage (Article 172), having sexual intercourse with immediate relatives or with siblings (Article 173). Forms of inactivity include: Crime of breaching the obligation to support (Article 170), Crime of breaching the obligation to care and teach (Article 171).

The above crimes are not violent behaviors. Dangerous consequences for society can be an imperative indication of the objective side of the crime, and can be an indication of the penalty frame. For example, the crime of breaching the obligation of care and teaching provides that the sponsored person is put at risk of serious harm to his physical and psychological development, and the risk of living a life. living a crime or at risk of prostitution, the subject who commits the act will be prosecuted for criminal liability [128, Article 171], or the crime of violating the support regime also stipulates consequences for the victim. . For example, the pregnant woman is supported, due to the lack of support resulting in an abortion, this is a sign of the penalty frame [128, Article 170].

The subject of these crimes: Most crimes are specified with a special subject. For example, a crime of violating a support obligation where the subject must be a person with support obligation (Article 170), Crime of breaching the obligation to care and teach that the subject must be the subject of care and Teaching children under the age of 16 (Article 171), Crime of having intercourse with relatives, where the subject must be people with immediate relatives or siblings (Article 60, Article 173), for this crime, in cases where a person under 18

years of age commits sexual intercourse with a person with an immediate relative or sibling, it shall not be considered a crime (Article 173).

The subjective side of these crimes: Crimes of this group are all committed in the form of intentional sin. Anyone who unintentionally commits acts specified in marriage and family crimes are not liable for criminal responsibility. The motives and purposes of the crime are not obligatory signs of the subjective aspect of the crime.

Penalties for these offenses: Imprisonment for up to three years or a fine, the law does not provide additional penalties, except for a framework of mitigation for sexual intercourse with relatives. the upper directive is a penalty of up to two years or a fine.

Criminal law of the Federal Republic of Germany on aggravation or mitigation in general does not have many new points compared to the current law of our country. However, in terms of the object, the Criminal law of the Federal Republic of Germany has imported two subjects, namely the state management of civil status and HN & GD, but also follows the trend of very focused on protecting the target group of HN & GD, This country's conflict of crimes against the HN & domestic regime is mainly aimed at education and prevention, notably the differentiation of criminal liability over incestuous behavior is a very special point for the lawmakers of Vietnam. refer to experience, research on many scientific angles, for incestuous relations, the superior is someone with life experience, needs a model to be an example for the younger members of the family, but still intentionally committing incestuous acts should deserve stronger condemnation than those below. On the other hand, the subordinates are in a smaller order of roles, so it is easy to listen to their words and tendencies, so if they perform incestuous acts, they will reduce criminal liability for them.

5. Conclusion

Penalty is the most severe coercive measure of the State specified in the Penal Code, the punishment not only punishes the offenders but also educates them to comply with the law and rules of life, preventing them new crimes, legal respect education, prevention and fight against crimes [9, Article 30]. The penalty decision is one of the measures to bring the Penal Code into social life, in addition to contributing to the implementation of the criminal policies of the Party and the State, the penalty decision is one of the the basic stage of the penalty process [9, Article 31].

The trial practice for crimes against the HN & GD regime over the past time shows that, when deciding on a penalty, the Court always relies on the bases specified in Article 45 of the Penal Code to make a suitable judgment. commensurate with the nature and level of social danger of the behavior. Crime always takes place in a very diverse and complex society, each specific case of behavior has a different nature and level of danger, so the choice to apply the punishment of the Court should be. carefully consider and ensure the commensurate with penalties with criminal acts committed and consequences caused by criminal acts.

The penalty system under the Penal Code includes: The main penalties are: Warning, fine, deportation, non-custodial reform, term imprisonment, life imprisonment and the death penalty; Additional penalties are: Prohibition of holding certain posts, prohibition of practicing or doing certain jobs, Prohibition of residence, Probation, Deprivation of certain citizenship, Confiscation of property, Fine (when not applicable is main penalty) and Expulsion (when not applicable as the primary penalty); For crimes of violating the HN & GD regime, the main penalties are applied including: Prisoner with a term of up to 5 years, Non-custodial reform, Warning, Fine.

The state's criminal policy on these crimes is mainly aimed at educating, convincing, and at the same time there is a relatively clear division of criminal responsibility for each specific type of behavior, in the 7 crimes of the Chapter. violating the HN & GD regime, there are 4 crimes that are less serious, the maximum penalty is up to 3 years in prison, the remaining 3 crimes are Incest, mistreatment or abuse of grandparents, parents. , spouses,

children, grandchildren or people with meritorious services to nurture themselves, The crime of organizing surrogacy for commercial purposes is the highest penalty bracket of up to 5 years imprisonment. Therefore, the application for those who committed these crimes is mostly measures that do not deprive or deprive but not more than 5 years.

From 2005 to 2019, the application of main penalties for these crimes is as follows:

Trial according to the first instance order: The number of 48 defendants, of which 31 were applied imprisonment sentence with a sentence of less than 3 years in prison, 17 defendants were applied for suspended sentence.

Trial according to appellate order: Number of 11 defendants, of which 8 were applied imprisonment sentence with sentence of less than 3 years in prison, 3 defendants were applied for suspended sentence.

For warning and fine penalties, non-custodial reform has not been applied to crimes of this group in Ho Chi Minh City recently.

For additional penalties, the new law has not been applied.

The 1999 Criminal Code on this criminal group does not provide for aggravation, until the 2015 Penal Code constitutes aggravation, which is only regulated in Crime of violating the monogamy [9, Article 182], Crime mistreating or abusing grandparents, parents, spouses, children, grandchildren or people with meritorious services to them [9, Article 185] and Crime of organizing surrogacy for commercial purposes [9, Article 187].

In addition to the positive results achieved, when the Investigation Agency gives the Investigation Conclusion, the Procuracy issues the Indictment, the Impeachment Statement at the trial and the Court when judging and deciding the penalty in the judgment. , in order to apply the penalty to a number of defendants, there are also certain limitations and errors that lead to the not really appropriate penalty decision.

Marriage and family relations play a very important role in the social life, it is the foundation for the survival and development of each country, because each individual member of the family is also a member of the commune. Association, or in other words, every family is a cell of society, each member of the family is part of the cell, so the countries of the world pay special attention to the protection of the marriage regime and the family by setting rules in many different forms and degrees, be it educational, persuasion, administrative or criminal, but in which the most common and effective rules for Behavior that endanger social relations above is by means of criminal punishment.

Through studying the issue of marriage and family, it can be seen that, as a philosophical category, its starting point is derived from nature and society, social development, through practice. labor, creativity and thinking, human capacity is more and more perfect, this natural feature has existed in the history of human development as a driving force of social development. When the society divided the class, through the state of the ruling class, policies and laws were used to regulate and intervene in the development of marriage and family relations in a progressive and suitable direction. In accordance with the natural law and ensuring the interests of the ruling class by coercive measures, the marriage and family regime has been born since then.

The marriage and family regime plays a role in creating the physical and spiritual life of people, it is the foundation of each nation, the cell of society to help citizens to be formed and born. growth and development is also one of the important factors determining the quality of citizenship, while ensuring sustainable development for society. Each country in the world has different geographical conditions, location, population, economy, customs, traditions, so the regulations on crimes against the marriage and family regime are also different, because Based on the political, social, economic, ethical, emotional, cultural, and traditional bases of the country to promulgate legal regulations, so the Penal Code of each country always has similarities. and different. Through studying the provisions of the Criminal Code in some countries around the world on crimes

against the marriage and family regime has brought a number of legislative experiences worth reference in using the Penal Code. the regulation of marriage and family relations in Vietnam.

In Vietnam, marriage and family relations are always concerned and protected from ancient historical periods, if the feudal period is aware of the regulations and law application in dealing with criminal infringement. When marriage and family are oppressive in order to protect the interests of the feudal class, demonstrating an unequal relationship, in today's modern era, the awareness, regulation and application of the law in dealing with crimes of infringing upon the marriage and family system has the meaning of progress, humanitarian, punishment combined with education and persuasion.

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