ASSESSING THE HUMANITY IN THE LEGAL PROVISIONS ON SANCTIONING ADMINISTRATIVE VIOLATIONS IN VIETNAM

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ABSTRACT

The purpose of this study is to analyze the humanitarian in the provisions of sanctioning in Vietnamese laws on administrative violations. This research is based on Vietnamese legal regulations as well as practical sanction in administrative violations. Descriptive and correlation analyses are used to analyze the data. The findings from this research indicate that the Law on Handling Vietnam's administrative violation has many humanitarian regulations to protect the rights of those sanctioned for administrative violations. However, sub-law documents such as Decree and Circular do not comply with the provisions of the Law and cause disadvantages to the sanctioned people. Another significant finding is that many issues relate to humanity in sanctioning administrative violations, but are not clearly stipulated in the current law. These findings indicate that the application of laws when sanctioning people who commit administrative violations has not ensured their rights. This research ends by proposing some solutions to improve the law to ensure humanitarians in the provisions of sanctioning in Vietnam's law on administrative violations.

Keywords: Administrative Violation, Humanity, Human Right, Sanctioning of an Administrative Violation, Sanctioning Forms.

INTRODUCTION

According to the provisions of Vietnamese law, an administrative violation is an illegal act committed by an organization or individual with administrative legal responsibility. Individuals who are subject to administrative violations include Vietnamese citizens, foreigners and stateless people living in the Vietnamese territory. When sanctioning those committing administrative violations, competent persons will apply sanctions and remedial measures to violators. In order to ensure the rights of people who are sanctioned for administrative violations, Vietnam's law on handling administrative violations has many humanitarian provisions such as: stipulating that the obligation to prove violations belongs to those with sanctioning competence; exempt or reduce fines for violators facing difficult circumstance. Most previous research in Vietnam focuses on analyzing the humanity in the provisions of the criminal law. Currently, there are very few studies on the humaneness of the legal provisions on handling administrative violations. Meanwhile, the humanitarian issue in the legal provisions on handling administrative violations is a very important content of the Vietnamese legal system. This article focuses on researching the humanity in the legal provisions on handling administrative violations. This article also examines and evaluates the unethical provisions in the sub-law documents on

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sanctioning of administrative violations. Finally, this article recommends legal reform to ensure humanity in the legal provisions on sanctioning administrative violations.

LITERATURE REVIEW

Internationally, there have been many studies on the humanity of the law. Ahmae Zaki Yamani (1985) in "*Humanitarian International Law in Islam: A General Outlook*" presented about the humanitarianism in the laws of Islam countries. Greenwood (1996) in "*International Humanitarian Law and the Tadic Case*" examined the issues of humanitarian law in the Tadic case and to attempt an assessment of the impact of the decision on the development of that law. Ilias Bantekas (2006) in "*Reflections on Some Sources and Methods of International Criminal and Humanitarian Law"* stated that humanity must always exist in the provisions of international criminal law. Julian Wyatt (2010) in *"Law-making at the intersection of international environmental, humanitarian and criminal law: the issue of damage to the environment in international armed conflict"*, presented specifically about humanity in international criminal law. Hans-Joachim Heintze (2010) in "*On the relationship between human rights law protection and international humanitarian law"* concluded that there is a close relationship between human rights law and international humanitarian law. Louise Doswald-Beck and Sylvain Vite (2010) in *"International Humanitarian Law and Human Rights Law"* stated that international humanitarian law is increasingly perceived as part of human rights law applicable in armed conflict. The greater awareness of the relevance of humanitarian law to the protection of people in armed conflict, coupled with the increasing use of human rights law in international affairs, means that both these areas of law now have a much greater international profile and are regularly being used together in the work of both international and non-governmental organizations. Louis Henkin (2017) in "*Kosovo and the Law of Humanitarian Intervention*" stated that humanitarian intervention is necessary to protect civilians during war. These studies and many others have clarified many aspects of the humanitarianism of the law.

In Vietnam, since the ratification of ICESCR, CEDAW, and CRC, research on humanistic in Vietnamese law has been carried out systematically. However, the studies in Vietnam are basic research on humanity in criminal law. In 2007, Son, H. S., published the book "*Humanitarian principles in Vietnamese criminal law".* The book presents humanitarian issues in criminal law, such as exemption from criminal liability; imposing penalties in favor of juvenile offenders. Toi (2011) in "*The policy of leniency and humanity of our state party in the law on criminal judgment execution"* research on leniency and humanity policy in criminal judgment execution law. Sua (2018) in "*The humanity of the Hong Duc Code with the completion of the Penal Code in 2015"* discussed humanity in feudal legal documents and proposed to improve contemporary criminal law on the basis of ensuring humanity. Du H. X presented the humanitarian policy in the legal provisions for conditional release of prisons. There are many studies, but in Vietnam, there have not been in-depth studies on the humanitarianism in the legal provisions on sanctioning administrative violations. Notably, there have been no works that have reviewed and evaluated the regulations that have not yet ensured the humanity in the sub-law documents on sanctioning of administrative violations. Therefore, this article is the first research project in Vietnam on the humanity in the legal provisions on sanctioning of administrative violations.

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METHODOLOGY

To do this article, the authors have researched practical laws, including Vietnamese laws and sub-law documents on the issue of sanctioning administrative violations, with three steps:

Firstly, studying the provisions on humanity in Vietnam's legislation on sanctioning administrative violations, including specialized laws such as the 2015 Penal Code, the 2012 Law on Handling of Administrative Violations, Decrees on sanctioning of administrative violations in the fields, circulars. These regulations have been analyzed and commented.

Secondly, using the method of comparative jurisprudence to identify the favorable and unfavorable regulations when sanctioning administrative violators. These findings will be a rationale for giving solutions to amend, supplement and complete the Vietnamese legal system on the basis of ensuring humanity.

Thirdly, researching the practical application of the legal provisions on sanctioning ofadministrative violations in Vietnam in order to ensure humanity when sanctioning administrative violators. On that basis, the authors recommended that the competent authorities need to overcome shortcomings and limitations in order to enforce the effective application of the law and ensure the rights of administrative violators.

Humanity in the Provisions of the Law on Sanctioning Administrative Violations

According to the Vietnamese Dictionary, "*humanity*" is *"ethical expression of love, respect and protection of people"* (Lan, 2006). Thus, humanity is the way to be human, is the ideal towards a good, fair, less suffering society, is the full human support material and spiritual for the disadvantaged (Vietnam Red Cross Society, 2017).

As a humane nation, the Vietnamese people have a humanitarian tradition in their way of life. As a result, the Vietnamese legal system is deeply humanitarian. Therefore, even when applying legal sanctions to individuals and organizations that violate the law, the State also has commitments to ensure that the prosecution for legal liability is carried out fairly, humanely. Humanity in the law is not abstract or difficult to understand, but simply regulations that are beneficial to the vulnerable people or who are in difficult circumstances (Khieu, 2000).

Currently, there have been many research works and articles on the humanity in the provisions of the criminal law such as the application of penalties (Sua, 2018), early release from prison (Du, 2018), penalty exemption or reduction (Toi, 2011), etc. Humanitarianism in the provisions of the law on sanctioning administrative violations has hardly been studied specifically. It can be seen that both criminal and administrative liability are legal liabilities that are detrimental to the State. Therefore, the legal provisions related to the prosecution of criminal or administrative liability must show humanity because, as mentioned, humanity is the dominant ideology in the Vietnamese legal system (Son, 2008). Studying the provisions of the law on sanctioning administrative violations, it can be seen that humanity is expressed through many specific regulations.

First of all, the humanity in the law on sanctioning administrative violations is reflected in the provisions on the obligation to prove administrative violations.

Article 3 of the 2012 Law on Handling of Administrative Violations stipulates the principles of handling administrative violations, in which there is a very humane principle and is an important legal guarantee in the protection of human rights. Clause 1, Article 3 of the 2012

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Law on Handling of Administrative Violations stipulates: *"The person with sanctioning competence has the responsibility to prove the administrative violation. Sanctioned individuals and organizations have the right to prove by themselves or through their lawful representatives that they have not committed administrative violations".*

The essence of this principle is similar to the principle of "*presumption of innocence*" in the 2015 Criminal Procedure Code (Hop, 2017). According to this principle, state agencies are obliged to prove the fault of the violator. If state agencies cannot prove that individuals or organizations are at fault, they cannot be sanctioned. The 2012 Law on Handling Administrative Violations for the first time recognized this principle as an improvement. This is a very meaningful addition because it is not only consistent with international practices, but also reflects the importance of ensuring human rights. With this regulation, it can be seen that all activities of the State must take human rights as the basis, as a goal to strive for their activities and dedication (Hai, 2012).

In the relationship between the State and individuals and organizations, individuals and organizations are always considered "*weak people*" (Phat, 2003). Therefore, in order to create a fair balance, the law must protect the weak. A civilized legal system must prioritize the protection of the weak. With this legal mindset, the burden of proving administrative violations must belong to the State because the State has the power and has a powerful force to perform the burden of proof. Meanwhile, sanctioned individuals and organizations do not have this privilege at all. Therefore, stipulating the obligation to prove administrative violations by competent state agencies is completely reasonable and deeply humane (Minh, 2014).

Secondly, the humanitarianism in the law on sanctioning administrative violations is reflected in the provision of lighter administrative responsibilities for specific and vulnerable subjects.

Administrative liability is the legal responsibility of the subject of administrative violations with the State (Hop, 2017). Therefore, it is necessary for the State to develop clear and specific administrative responsibility measures to create consistency in the application of the law. In addition, the State also needs to pay attention to the circumstances that affect the commission of the violation, thereby reflecting the lower or the higher danger of the violation and is the basis for identifying violators who can bear administrative responsibility at a lower or higher level. Legal science calls these extenuating circumstances and aggravating circumstances.

Sanctioning administrative violations, besides the purpose of punishment, also aims to improve legal consciousness. Therefore, it is necessary to be fully aware of the meaning and role of aggravating and mitigating circumstances in deciding sanctioning forms. Extenuating circumstances are applied as a leniency of the State to violators who have a good sense of direction. In addition, the humanity in mitigating circumstances is also reflected in the provisions of lighter liability for vulnerable groups of people who commit administrative violations. For example, the subject of the violation is *"pregnant woman"*; *"the elderly and weak"* are considered as extenuating circumstances. Obviously, these subjects are disadvantaged groups in society.

In addition, stemming from the nature of a juvenile as a person who is immature and does not have full awareness of illegal acts as well as the consequences caused by their actions, so when sanctioning, legislators also consider tolerance factor. The law punishes people with legal capacity committing a foul. Adults with mature and complete awareness should, when violating,

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have to bear the adverse consequences caused by their actions. Meanwhile, juveniles have incomplete awareness, psychology and physiology, so when violating, they must be handled with an appropriate tolerance policy. Practices prove that applying strict sanctions will lead to negative consequences for juveniles (Bazelon, 1999). With such a meaning, the punishment, in addition to punishment and deterrence, must also be directed towards good intentions, helping juveniles to correct their mistakes and to become good citizens. Therefore, the 2012 Law on Handling of Administrative Violations has devoted a separate chapter to stipulating the sanctioning of juveniles who commit administrative violations on humanitarian grounds. Accordingly, juveniles for a full 14 years old to under 16 years old are administratively sanctioned for intentional administrative violations (Point a, Clause 1, Article 5 of the Law on Handling Administrative Violations in 2012) and only a warning sanction is applied as the main form of sanction (Article 22 of the Law on Handling Administrative Violations in 2012). A juvenile from full 16 years old to under 18 years old who commits an administrative violation may be subject to a fine. However, the fine level for this group of subjects is not more than one-half (1/2) of the fine applied to adults. Compared with the form of warning, fines clearly show the purpose of punishment and deterrence. However, the application of a lighter fine compared with that of an adult with the same violation has clearly demonstrated the humanitarian purpose of educating juveniles sense of law compliance (Khanh & Ngoc, 2020).

Thirdly, the humanity in the law of sanctioning administrative violations is reflected in the provision of applying a favorable sanction when the age of the individual committing an administrative violation cannot be determined.

When sanctioning administrative violations against individuals, age plays a very important role. Specifically, age is an indispensable basis for competent persons to decide whether or not to sanction administrative violations. In addition, age is also the basis for deciding the application of the sanction and the corresponding fine level. However, in some specific cases, it is not possible to determine the age of individuals, especially juveniles who commit administrative violations. Therefore, Clause 1, Article 14 of Decree No. 81/2013/ND-CP (amended and supplemented by Decree No. 97/2017/ND-CP) stipulates: *"when sanctioning administrative violations against juveniles, if the exact age cannot be determined to apply the sanctioning form, the person with sanctioning competence shall choose to apply the sanctioning form that is most favourable to the violator"*. The application of the most favourable form of sanction to juveniles shows the severity, but still shows the leniency and the humanity of the law. It is this leniency and humanity that will be the foundation for juveniles to realize their mistakes (Hoan, 2011). However, at present, this content is no longer specified in Decree No. 118/2021/ND-CP when this Decree replaces Decree No. 81/2013/ND-CP (amended and supplemented by Decree No. 81/2013/ND-CP as amended by Decree No. Decree No. 97/2017/ND-CP).

Fourthly, the humanity in the law sanctioning administrative violations are reflected in the provisions on postponing the execution of the sanctioning decision or exempting or reducing fines for violators who have difficult conditions and circumstances.

According to the law, individuals and organizations sanctioned for administrative violations must comply with the sanctioning decision within 10 days from the date of receipt of the decision on sanctioning of administrative violations. In case the decision on sanctioning of administrative violations has an execution time limit of more than 10 days, such time limit shall

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be followed (Clause 1, Article 73 of the Law on Handling Administrative Violations in 2012). However, when individuals or organizations encounter difficult economic conditions and circumstances due to disasters or epidemics, the execution of the decision on fines may be postponed (Article 76 of the Law on Handling Administrative Violations in 2012). In addition to the postponement of the execution of the fine decision, the individual subject to the expulsion sanction is also entitled to postpone the execution of the expulsion sanctioning decision in case of serious illness, emergency or health reasons (Article 9 of Decree No. 112/2013/ND-CP stipulating the sanctioning of expulsion, measures of temporary detention and escort of violators according to administrative procedures). The provision on postponing the execution of the sanctioning decision also shows the humane element in ensuring the rights of the individuals and organizations being sanctioned, creating favorable conditions for them physically and mentally so that they can execute these sanctioning forms.

In addition to the provision for postponement of the execution of the sanctioning decision, the law on sanctioning administrative violations also stipulates the reduction and exemption of fines.

The reduction and exemption of fines is also a legal institution showing the humanity of the State in the process of sanctioning administrative violations. This regulation ensures the actual implementation of the decision on sanctioning of administrative violations, and at the same time shows sympathy for sanctioned individuals and organizations falling into difficult circumstances. The condition for fine reduction or exemption is that the sanctioned individual or organization must continue to face economic difficulties due to natural disasters, disasters, fires or epidemics (Article 77 of the Law on Handling Administrative Violations in 2012).

The Reality of Humanity in the Provisions of the Law on Sanctioning of Administrative Violations

The principle that *"the person with sanctioning competence is responsible for proving the violation"* has not been strictly followed:

According to Report No. 29/BC-BTP of the Ministry of Justice dated February 23, 2021, in order to implement the Law on Handling of Administrative Violations, the Government has issued 130 decrees detailing the Law on Handling of Administrative Violations. In which, there are 74 decrees sanctioning administrative violations in the fields of state management. In addition to these decrees, many state agencies still issue many circulars and administrative dispatches explaining the regulations on sanctioning administrative violations, including some regulations on violations of humanity in sanctioning administrative violations.

For example, Article 12 of Decree No. 134/2013/ND-CP sanctioning administrative violations in the field of electricity, stipulates that individuals and organizations have stealing electricity not to the extent of criminal prosecution (under 20,000 kWh) will be administratively sanctioned. In addition to the application of sanctions, individuals and organizations are also subject to the remedial measure *"they have to compensate the total amount of damage caused by electricity theft."*

In order to create a technical rule in calculating the amount of damage caused by electricity theft as a basis for compensation, on October 31, 2013, the Ministry of Industry and Trade issued Circular No. 27/2013/TT- Report on inspection of electricity activities and electricity use. Accordingly, Clause 1, Article 32 of Circular No. 27/2013/TT-BCT stipulates:

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"*In case the inspected party commits an act of stealing electricity for multiple purposes, the electricity price used to calculate compensation shall be determined on the basis of the highest price of the electricity tariff in the use purposes of the inspected party"*.

I believe that this is an unscientific regulation and breaks the humanity in the overall regulations sanctioning administrative violations. In sanctioning administrative violations, the obligation to prove the violation belongs to the person with sanctioning competence. Electricity price depends on the purpose of use (living purposes, production purposes, business...). Therefore, in order to determine the exact amount of compensation, the person with sanctioning authority must have the obligation to prove that the stolen electricity is used for specific purposes. In other words, the person with sanctioning authority must prove the exact amount of electricity used for each specific purpose and then calculate the amount of compensation. If it can be proved that the stolen electricity is used for many different purposes, but the exact amount of electricity used for each specific purpose cannot be determined, then the price that is most favorable to the violator must be applied (i.e. the lowest price). The regulation *"if it cannot be proven, then determine according to the highest price"* will possibly lead to arbitrariness and irresponsibility of the person with the sanctioning authority.

Failure to regulate the age of violators does not ensure humanity in sanctioning administrative violations

When sanctioning administrative violations against individuals, age plays a very important role. For juveniles, age plays a decisive role. However, the 2012 Law on Handling of Administrative Violations and its guiding documents do not specifically stipulate how to determine age to make decisions on sanctioning administrative violations in the case it is not possible to determine the exact date and month of birth of the juveniles.

According to Article 13 of Decree No. 81/2013/ND-CP of the Government detailing a number of articles and measures to implement the Law on Handling of Administrative Violations: In the case there are no papers to determine the age for handling administrative violations, based on civil status books or other papers, books and documents of relevant state agencies determine the age of the administrative violators. If the date, month and year of birth recorded in the above papers are not consistent, the date of birth in the papers shall be determined according to the direction that is most beneficial to the administrative violators. If the documents specified in Clause 1 of this Article do not clearly state the date of birth, the determination of the date of birth shall be calculated as follows:

1. If a specific month is identified, but the date is not determined, the last date of that month shall be used as the date of birth;
2. If the specific quarter of the year can be determined, but no date in the quarter can be determined, the last date of the last month in that quarter shall be used as the date of birth;
3. If the first half of the year or the second half of the year can be determined, but cannot determine which day or month is in the first half of the year or the second half of the year, June 30 or December 31 of that year shall be used as the date of birth;
4. If the specific year can be determined, but the date and month cannot be determined, December 31 of that year shall be used as the date of birth.

It should be noted that the scope of Article 13 of Decree No. 81/2013/ND-CP only applies to determining the age of the person subject to measures to isolate the violator from society. This provision cannot become a basis for determining the age of a person sanctioned for

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an administrative violation. In fact, there is no official answer to the question of whether the method of determining the age of a juvenile who is sanctioned for an administrative violation is the same as that specified in Article 13 of Decree No. 81/2013/ND-CP, because the The violations of Article 13 do not apply to subjects sanctioned for administrative violations. Whether state agencies apply similar laws or not depends on the discretion of these subjects, not on common standards (Minh, 2019).

According to Clause 1, Article 14 of Decree No. 81/2013/ND-CP: *"When sanctioning an administrative violation against a juvenile, in the case it is impossible to determine the exact age to apply the sanction, then the person with sanctioning competence chooses to apply the sanctioning form that is most beneficial to the violator"*. However, *"choosing to apply the most beneficial sanctioning form when sanctioning administrative violations against juveniles"* is not an optimal regulation to solve all practical problems. It seems that the above provision is only meaningful for administrative offenses committed by juveniles for which the sanction provided for may apply one of several different sanctions (E.g. Clause 1, Article 72 of Decree No. Decree No. 100/2019/ND-CP stipulates a warning or a fine of between VND 100,000 and 200,000 for the act of using fake train tickets to ride the train). For administrative violations for which the sanction prescribed only applies a fixed sanction, the above provision is completely invalid (E.g. Clause 1, Article 20 of Decree No. 155/2016/ND -CP stipulates a fine of from 150,000 VND to 250,000 VND for acts of *"personal hygiene (urinating, defecating) at the wrong place in the apartment, commercial, service or public places*)*"*. Therefore, the competent person will not be able to know and choose to apply *most beneficial sanctioning form* for the juvenile who commits administrative violations. Besides, even if the fine is minimal, this is only the option of *"the most beneficial fine"* and not the "*most beneficial sanctioning form*" for juveniles who commit administrative violations.

Thus, with the provisions of Articles 13 and 14 of Decree No. 81/2013/ND-CP, the competent person will not be able to have a solid legal basis to determine the age of the juvenile who commits an administrative violation. From my point of view, this is a juvenile omission that may affect the humanity in sanctioning juveniles who commit administrative violations. In fact, many decisions on sanctioning administrative violations due to the incorrect age of the sanctioned people were canceled by competent state agencies (Report summarizing 5 years of implementation of the Law on Handling of Administrative Violations in 2012 of the People's Committee of Soc Trang).

Currently, the Government has issued Decree No. 118/2021/ND-CP to replace Decree No. 81/2013/ND-CP. Unfortunately, Decree No. 118/2021/ND-CP does not completely regulate this issue.

The way to determine the time limit for suspending the right to use permits, professional practice certificates is not reasonable and can violate the right of the violator

Among the sanctioning forms for administrative violations specified in Article 21 of the Law on Handling of Administrative Violations in 2012, there is a sanctioning form of *"suspending the right to use permits, professional practice certificates in a definite term"*. The sanctioning form of *"suspend the right to use permits, professional practice certificates in a definite term"* shall be applied within a period of from 1 month to 24 months from the effective date of the sanctioning decision.

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According to Decree No. 81/2013/ND-CP, in the case an individual or organization is sanctioned because of two or more acts that are subject to the application of a fine at the same time, but, violators will be sanctioned for each act and in total will be subject to a fine equal to the sum of the violations. In the case where an individual or organization is sanctioned due to two or more acts that are subject to the sanctioning form of suspending the right to use same permits, professional practice certificates in a definite term at the same time, then the term of deprivation of rights of administrative violations with the longest period of deprivation shall be applied (Clause 1, Article 7 of Decree No. 81/2013/ND-CP).

Decree No. 118/2021/ND-CP, which replaced Decree No. 81/2013/ND-CP, stipulates: *"In the case an individual or organization commits many administrative violations and is sanctioned at the same time, but has two or more acts subject to the sanctioning form of suspending the right to use same permits, professional practice certificates, then the maximum level of the period of suspending the act with the longest period of deprivation shall be applied".* However, the above regulation is still not really scientific and does not fully show the humanity of the law on sanctioning administrative violations in protecting the vulnerable. Specifically, if violations have different terms of suspending of rights, but the gap between the minimum and maximum disqualification periods is large, in some cases; this provision will be detrimental to individuals and organizations administrative violations.

For example, according to point a, clause 7, Article 12 of Decree No. 28/2020/ND-CP, the act of *"performing the labor subleasing without the consent of the employee"* will lead to *"suspending the right to use the labor subleasing operation license with a term from 01 month to 03 months"*. According to point a, clause 7, Article 12 of Decree No. 28/2020/ND-CP, the act of *"outsourcing labor to employees for more than 12 months"* will lead to *"suspending the right to use the labor subleasing operation license with a term from 06 months to 12 months*".

For example, a labor outsourcing enterprise that commits the two violations mentioned above will be subject to the maximum limit of the time frame for *suspending* the right to act with the longest term of deprivation of rights (suspending the rights of 12 months). This disqualification period is clearly more detrimental to the labor subleasing enterprise than the sum of the disqualification periods of each violation. Specifically, in the absence of aggravating and extenuating circumstances, the act of *"performing the labor subleasing without the consent of the employee"* will lead to suspending the right to use the labor outsourcing license for 02 months and the act of *"outsourcing labor to employees for more than 12 months"* will lead to suspending the right to use the labor outsourcing license for 9 months. When combined, the outsourcing enterprise will only be deprived of the right to use the labor outsourcing license for 11 months (02 months +09 months). The calculation of the time limit for *suspending* the right to use the labor outsourcing license as above is even more detrimental to the violator compared to the provisions of Decree No. 81/2013/ND-CP. Specifically, in the absence of aggravating circumstances and extenuating circumstances, the two violations mentioned above will lead to suspending the right to use the labor subleasing operation license for 9 months because 9 months is the longest period of deprivation.

In addition, the above provision is unreasonable because it does not take into account the value of aggravating and extenuating circumstances. Specifically, in the case the violator commits many administrative violations and is sanctioned at the same time, in which there are two or more violations, the sanction of deprivation of the right to use the same type of license,

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practice certificate, the maximum level of the time frame for deprivation of the rights of the act with the longest term of deprivation will always be applied, regardless of whether the subject has many extenuating or aggravating circumstances.

For example, one person has the act of "*driving a motorbike on the highway" and "driving a motorbike on the road after using illegal drugs"*. The act of driving a motorbike on the highway shall lead to the right to use the driving license being revoked from 03 months to 05 months. The act of "*driving a motorbike on the road after using illegal drugs"* shall result in the right to use the driving license being revoked from 22 months to 24 months. In this case, this person is deprived of the right to use his driving license for 24 months. If this person has 02 extenuating circumstances (or has 02 aggravating circumstances), he will also be deprived of the right to use the 24 months driving license. Obviously, in this case, the extenuating circumstances (or aggravating circumstances) did not promote their value in the prosecution of administrative liability.

The current law does not provide the provisions to compare the strict coercive nature in two types of the sanctioning form of fines and suspending the right to use permits, professional practice certificates in a definite term

Currently, many decrees sanction administrative violations stipulate the provisions on *"transitional regulations".* Actually, *"transitional regulations"* have to be considered as a significant practical matter. Obviously, when issuing a new legal document, it is necessary to deal with the relationships that arise while the application of the old legislative document has not ended yet but continues until the time the new legal document comes into force (Viet, 2007). If there are not *"transitional regulations"* then it will lead to a blank in "*national law*," create an opportunity for "*local law*" or even "*custom*" to take effect, which causes disorder in the legal system.

For example, Article 28 of Decree No. 45/2019/ND-CP sanctioning administrative violations in the field of tourism provides the transitional regulations as follows: *"As for administrative violations in tourism committed before the effective date of this Decree but detected after that or being handled, regulations which are advantageous to the wrongdoers shall be applied".* Similarly, Article 37 of Decree No. 159/2013/ND-CP stipulates the transitional regulations as follows: *"Concerning administrative violations arising in the journalism and publishing realm before the date of entry into force of this Decree but discovered after that, or being under consideration and handled, any regulation advantageous to violating organizations or individuals shall prevail".*

However, the formula of *"application of regulations which are advantageous"* seems to only work when the old and new legal documents both provide one or different types of sanctions which are easy to compare their coercion's level of strictness. For violations that have simultaneously applied the sanctioning form of fines and the sanctioning form of suspending the right to use licenses, the above transitional regulations may create a way of inconsistently applying the laws.

For example, according to Article 7 of Decree No. 138/2013/ND-CP sanctioning administrative violations in the field of education, the act of "*organizing tutoring activities without a license"* shall be fined from 6,000,000 VND to 12,000,000 VND and be deprived of the right to use the education license from 12 months to 24 months. According to Article 6 of Decree No. 04/2021/ND-CP, the act of "*organizing tutoring activities without a license*" will be

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fined from 10,000,000 VND to 20,000,000 VND and be deprived of the right to use the education license from 6 months to 12 months. Thus, according to Decree No. 138/2013/ND-CP, the fine level will be lower, but the time of deprivation of the right to use the education license is longer. In contrast, according to Decree No. 04/2021/ND-CP, the fine level will be higher, but the time of deprivation of the right to use the education license is shorter. In this case, it is difficult to judge *"regulations which are advantageous"*.

There is an opinion that fines are the principal sanctioning form, so the competent person choosing to impose fines at the lower level is *"applying the rules that are advantageous to the violating organization or individual"* (Report No. 248/BC-UBND dated October 23, 2017 of the People's Committee of Tra Vinh province on sanctioning of administrative violations). Another opinion is that applying the principal sanctioning form such as a fine does not cause as much impact on the lives of individuals and organizations as depriving the right to use licenses (Report summarizing 5 years of implementation of the Law on Handling of Administrative Violations in 2012 of the People's Committee of Soc Trang). Therefore, the competent person choosing sanction form with less depriving time means "*applying the rules that are advantageous to the violating organization or individual"* (Minh, 2020). Apparently, the work on assessing *"applying the rules that are advantageous to the violating organization or individual"* is not simple and will undoubtedly create an inconsistent interpretation and application of the law.

I agrees with the second opinion and believes that the longer the time for suspending the right to use licenses is, the more detrimental it causes for the violator because of the deprivation of the right to use a license or practicing certificate for a limited time can cause material damage much more than the main fine. However, these are only academic and research points of view, not official regulations of the State, so they are not normative. Practitioners are in desperate need of clear regulations of competent state agencies to compare the strict level of coercive nature in two types of sanctioning form: fines and suspending the right to use licenses.

DISCUSSION

The term "*rule of law*" is not only understood in the formal sense that the state is bound by laws, but also means that a state have to uphold justice and humanity. The rule of law state not only includes principles such as division and control of state power, but more importantly the recognition and implementation of democratic and human rights (Duong, 2017). Therefore, in the rule of law, respecting and protecting human dignity is the duty of all subjects assigned to exercise state power (Minh, 2018). In order to protect human rights, against infringements from other subjects, the State has prepared legal sanctions that punish administrative violations, which is one of the effective tools. However, even when applying administrative sanctions for law breakers, the State also needs to make commitments to ensure that the sanctioning of administrative violations is fair and humane.

Therefore, the 2012 Law on Handling of Administrative Violations needs to strongly affirm the principle: *"The person with sanctioning competence has the responsibility to prove the administrative violation. In the process of proving administrative violations, if there is any unclear or unspecified circumstance, it must be considered on the basis of the favor of the violator"*. On that basis, the regulations on sanctioning administrative violations against the violators should be abolished or amended to ensure the humanity of the legal system to sanction

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administrative violations. Thus, Clause 1, Article 32 of Circular No. 27/2013/TT-BCT can be amended as follows: *"when the act of stealing electricity for different purposes is proved, but the exact the determination of the quantity of electricity used for each specific purpose must be based on the lowest price of the electricity tariff for the purposes of use"*.

Secondly, as mentioned, Decree No. 118/2021/ND-CP does not specify how to determin the age of the violator to make decisions on sanctioning administrative violations in the cases it is impossible to accurately determine the date and month of birth of the violator. Compared to Decree No. 81/2013/ND-CP, this "*neglect*" in Decree No. 118/2021/ND-CP is a step backwards.

Currently, Article 417 of the Criminal Procedure Code 2015 still maintains the age calculation in favor of the accused who are under 18 years old. That shows the necessity and importance of this legal regulation (Hung, 2021). Therefore, the Government needs to continue to provide specific regulations on how to calculate age to make decisions on sanctioning administrative violations in the cases it is impossible to determine the exact date and month of birth of the violator. This is especially important for juvenile offenders. In my opinion, the Government can issue a decree detailing this content. In terms of legislative techniques, this new decree may stipulate in the spirit of Article 13 of Decree No. 81/2013/ND-CP and widen the scope of general application to both subjects subject to administrative sanctions and to subject to the application of measures to isolate violators from society (Minh, 2021).

Thirdly, the regulation that *"in the case an individual or organization with two or more violations is deprived of the right to use the same license or practice certificate, the maximum level of the longest suspending time frame shall be applied"* is not really fair. In many cases, the above regulations are detrimental to individuals and organizations committing administrative violations. Over the past time, due to the outbreak of the Covid-19 epidemic along with social distancing measures, nearly 10,700 businesses have been dissolved on average every month in Vietnam. In the first eight months of 2021, 85,500 enterprises stopped conducting production and business activities in Vietnam (Vietnamplus, 2022). This shows that the suspension of production, business and service establishments, whether for subjective or objective reasons, can cause these organizations to be dissolved.

Compared to fines, the coercive nature of the sanction of deprivation of the right to use licenses and practice certificates for a limited time is very strict. Therefore, the Government should only stipulate the application of the period of deprivation of the right to use the license or practice certificate of the administrative violation with the longest term of deprivation. This provision will also promote the value of aggravating and mitigating circumstances when deciding the duration of disqualification in specific cases.

Finally, regarding the *"transitional regulations",* the formula *"applying the rules that are advantageous to the violating organization or individual"* as in the decrees on administrative sanctions is unclear and causes many controversies. I thinks that, for any violations, the new legal document reducing the fine, but increasing the time to apply the sanctioning form of suspending the right to use the license compared to the corresponding provisions in the old legal document, it must be based on the duration of suspending the right to use the licenses to determine "*the rules that are advantageous to the violating organization or individual".* Accordingly, although the sanctioning form has a higher fine, the lower time for suspending the right to use licenses is *"application of regulations which are advantageous."*

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Theologically/Theoretically, unlike the sanctioning form of suspending the right to use the licenses, fines only cause material damage without affecting violators' identities. Thus, fines' coercive nature will be less draconian than the sanctioning form of suspending the right to use licenses. The sanction form of fines can be applied leniency policies from the state, such as postponing fines, reducing fines, and exempting fines (Article 76, 77 of the Law on handling administrative violations in 2012). Meanwhile, suspending the right to use the license once applied then it can not be exempted, reduced the time limit, or delayed the execution. The practice of sanctioning administrative violations shows that suspending the right to use the license causes damage to violators and significantly affects other entities. Therefore, the longer the period of suspending the right to use the license is made, the more difficult it is for violators and other entities related to violators. For example, suspending the right to use the license of several large enterprises will significantly affect the socio-economic development of localities and laborers in the enterprises (Hop, 2017). On that basis, the legislator should stipulate the *"transitional regulations"*.

CONCLUSION

For administrative violations occurring before the effective date of this Decree, which is later discovered or considered and settled, the provisions advantageous to violating organizations and individuals shall be applied. When applying the sanctioning form of suspending the right to use licenses, professional practice certificates concurrently with other sanctioning forms, it must be based on the time limit for suspending the right to use permits, professional practice certificates in a definite term to determine application of regulations which are advantageous. In the case that the time for suspending the right to use permits, professional practice certificates in a definite term is less (shorter), it is considered to be an application of reasonable regulations.

REFERENCES

Bantekas, I. (2006). Reflections on some sources and methods of international criminal and humanitarian law. *International Criminal Law Review*, *6*(1), 121-136.

Bazelon, E. (1999). Public access to juvenile and family court: Should the courtroom doors be open or closed. *Yale Law and Policy Review*, *18*(1), 155-167.

Doswald-Beck, L., & Vite, S. (2010). *International humanitarian law and human rights law*. Cambridge University Press.

Du, H.X. (2018). *Conditional early release from prison: A policy of leniency and humanity.*

Duong, T.T. (2017). *The concept of the rule of law, the principle of the rule of law.*

Greenwood, C. (1996). International humanitarian law and the tadic case. *European Journal of International Law, 7*, 265-283.

Hai, H.H. (2012). *Completing the 1992 Constitution with consolidation and development of human rights and citizenship.*

Heintze, H.J. (2010). *On the relationship between human rights law protection and international humanitarian law*. Cambridge University Press.

Henkin, L. (2017). *Kosovo and the law of humanitarian intervention*. Cambridge University Press.

Hoan, N.V. (2011). *Sanction forms and administrative handling measures for minors in the Draft Law on Handling of Administrative Violations.*

Hop, N.C. (2017). *Scientific commentary on the law on handling of administrative violations 2012*.

Hop, N.C. (2017). *Textbook of Vietnamese administrative law*. Hong Duc Publications.

Citation Information: Cao, V.M. (2022). Assessing the humanity in the legal provisions on sanctioning administrative violations in Vietnam. *Journal of Legal, Ethical and Regulatory Issues, 25*(5), 1-14.

Hung, P.M. (2021). *Determining age when settling criminal liability issues and applying legal proceedings against persons under 18 years of age.*

Khanh, N.N., & Ngoc, D. (2020). *The form of fines in the law on sanctioning administrative violations of the year*.

Khieu, V. (2000). *Ethics and law in development philosophy in Vietnam*.

Lan, N. (2006). *Vietnamese dictionary*.

Minh, C.V. (2014). New points of the 2012 law on handling administrative violations in ensuring human rights and citizens' rights. *People's Court Journal, 13, 1-9.*

Minh, C.V. (2019). *Contents that need to be amended in the law on handling administrative violations 2012.*

Minh, C.V. (2020). *The form of Stripping off the right to use permits professional practice certificates in a definite term under the Vietnamese law.*

Minh, C.V. (2021). *Contents that need to be detailed when sanctioning juveniles who commit administrative violations.*

Minh, D.D. (2018). *The concept and content of the rule of law.*

Phat, N.N. (2003). *Some theoretical and practical issues on contract law in Vietnam.*

Son, H.S. (2008). *Theory of awareness of humanitarian principles in criminal law.*

Sua, L.V. (2018). *The humanity of the Hong Duc Code with the completion of the Penal Code in 2015.*

Toi, D.A. (2011). The policy of leniency and humanity of our state party in the law on criminal judgment execution.

Viet, N.C. (2007). *One law or two laws?*

Vietnam Red Cross Society. (2017). *Ho Chi Minh with humanitarian cause*.

Vietnamplus. (2022). *85,500 businesses had to withdraw from the market due to the impact of COVID-19.*

Wyatt, J. (2010). Law-making at the intersection of international environmental, humanitarian and criminal law: the issue of damage to the environment in international armed conflict. *International Review of the Red Cross, 879*(92), 593-646.

Yamani, A.Z. (1985). Humanitarian international law in Islam: A general outlook. *Michigan Journal of International Law, 7*(1), 189-215.

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