

Responses to Information Requests

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19 March 2021

VNM200561.E

Viet Nam: Whether more than one criminal code can be in effect at once and which criminal code is currently in effect (2015–March 2021)

Research Directorate, Immigration and Refugee Board of Canada

Sources report that Viet Nam's National Assembly adopted a new Criminal Code in 2015 (D&N International 15 Dec. 2017; DFDL 25 Jan. 2018; VietNamNet Bridge 30 June 2016). Sources note that the Criminal Code was initially due to come into effect on 1 July 2016 but that, in June 2016, the National Assembly voted to delay implementation in order to consider further amendments (DFDL 25 Jan. 2018; Mazars Vietnam Feb. 2018). According to sources, the amended 2015 Criminal Code was set to come into effect on 1 January 2018 (D&N International 15 Dec. 2017; VietNamNet Bridge 20 June 2017) and did so (Mazars Vietnam Feb. 2018).

Article 426 of the Criminal Code adopted on 27 November 2015 provides the following about implementation: "This Code comes into force from July 01, 2016. Criminal Code No. 15/1999/QH10 and Law No. 37/2009/QH12 on amendment to Criminal Code are null and void from the effective date of this Code" (Viet Nam 2015). Article 7 provides the following on the chronological effect of the new Criminal Code:

1. A provision of law effective at the same time as the commitment [sic] of the criminal offence shall be applied to such criminal offence.
2. A provision of law that provides for a new crime, a more severe sentence, a new aggravating factor or reduce[s] the scope of suspended sentences, exemption from criminal liability, removal of criminal responsibility, exemption from sentence, commutation, or conviction expungement which is less favorable shall not be applied to criminal offences committed before such provision of law comes into force.
3. A provision of law that removes a new crime, a sentence, a[n] aggravating factor or provides for a less severe sentence, a new mitigating factor, or increase[s] the scope of probation, exemption or conviction expungement of criminal liability, exemption from sentence, commutation, conditional parole, or conviction expungement, and other provisions which [are] more favorable may be applied to criminal offences committed before such provisions of law com[e] into force. (Viet Nam 2015)

According to sources, the 2015 Criminal Code ["effectively" (Attorney 10 Mar. 2021)] replaced the 1999 Criminal Code when it came into effect on 1 January 2018 (Professor 3 Mar. 2021; Associate Research Fellow 12 Mar. 2021), except in two "exceptional" cases (Attorney 10 Mar. 2021). In correspondence with the Research Directorate, a Vietnamese attorney and Master of Laws (LLM) candidate at the University of Pennsylvania indicated that, according to Resolution 41, the 2015 Criminal Code is now "generally applied" except in the following two instances:

1. for crimes for which the 2015 Criminal Code imposes "harsher treatment," where the crime in question
 - a. was committed prior to but discovered after 1 January 2018, or
 - b. is being "officially investigated, prosecuted, or tried" under the 1999 Criminal Code, but no conviction has yet been made
2. for four particular crimes that
 - a. were considered crimes under the 1999 Criminal Code but are no longer criminalized under the 2015 Criminal Code, and
 - b. were committed, discovered, and began to be formally investigated, prosecuted, or tried prior to 1 January 2018, but for which there had not yet been a conviction (Attorney 10 Mar. 2021).

In correspondence with the Research Directorate, an associate research fellow at RMIT University in Australia, who studies criminal justice in Viet Nam, noted that the provisions of the 1999 Criminal Code "continu[e] to apply" to any of the four crimes if they were committed before 1 January 2018 and for which prosecution was in progress (Associate Research Fellow 12 Mar. 2021). According to sources, the following four crimes from the 1999 Criminal Code are no longer considered crimes under the 2015 Criminal Code:

1. conducting banditry activities (Article 83)
2. registering illegal marriage (Article 149)
3. conducting business illegally (Article 159), and

4. deliberately acting against the State's regulations on economic management causing serious consequences (Article 165) (Attorney 10 Mar. 2021; Associate Research Fellow 12 Mar. 2021).

In correspondence with the Research Directorate, a professor of law at Vietnam National University indicated that individuals cannot be charged under the 1999 Criminal Code and that, under Vietnamese law, no retrospective effect is allowed unless there are provisions in favour of the accused (Professor 3 Mar. 2021). The Associate Research Fellow noted that new regulations set out in the 2015 Criminal Code that are favourable for offenders will apply for acts committed before 1 January 2018; however, new regulations that are unfavourable for offenders will not apply for acts committed before 1 January 2018 (Associate Research Fellow 12 Mar. 2021). Similarly, the attorney noted that Article 7 of the 2015 Criminal Code "establishes a principle of non-retrospective application of the Code," which means that no new charges can be applied for actions committed prior to 1 January 2018 unless it is beneficial for the defendant (Attorney 10 Mar. 2021).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References

Associate Research Fellow, RMIT University. 12 March 2021. Correspondence with the Research Directorate.

Attorney. 10 March 2021. Correspondence with the Research Directorate.

D&N International. 15 December 2017. Dang Tran Vu. "Criminal Code 2017: New Developments in the Fight Against Intellectual Property Crimes." [Accessed 11 Mar. 2021]

DFDL. 25 January 2018. "Vietnam Legal Alert: New Penal Code Enters into Force." [Accessed 12 Mar. 2021]

Mazars Vietnam. February 2018. "📄 Tax Alert." [Accessed 11 Mar. 2021]

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VietNamNet Bridge. 20 June 2017. "Parliament Adopts Amendments to 2015 Penal Code." [Accessed 11 Mar. 2021]

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Additional Sources Consulted

Oral sources: Dean of a law school in Australia whose research focuses on the history and development of legal institutions in Viet Nam; lecturer at a law school in Viet Nam; lecturer in civil law at a law school in Viet Nam.

Internet sites, including: Amnesty International; Australia – Department of Foreign Affairs and Trade; Baker McKenzie; BBC; Bertelsmann Stiftung; *Le Courier du Vietnam*; ecoi.net; Fédération internationale pour les droits humains; Freedom House; Herbert Smith Freehills; Human Rights Watch; Institute for Social Development Studies; National University of Singapore – Centre for Asian Legal Studies; New York University – Hauser Global Law School Program; *Nhân Dân*; Norton Rose Fulbright; Organisation for Economic Co-operation and Development; Radio Free Asia; Thư Viện Pháp Luật; Tilleke & Gibbins; *Tuổi Trẻ*; UN – International Labour Organization, Refworld, UN Office on Drugs and Crime; University of Melbourne – Asian Law Centre; US – Library of Congress; Viet Nam – Ministry of Justice; *Việt Nam News*; *The Washington Post*.

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