

COMPARISON OF THE DEATH PENALTY BETWEEN VIETNAM AND CERTAIN COUNTRIES IN THE WORLD

COMPARAÇÃO DA PENA DE MORTE ENTRE O VIETNAME E CERTOS PAÍSES DO MUNDO

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Abstract: The historical process of the use of the death penalty and its forms is a significant part of human history and related to social issues over time. Considered a highly effective sanction for deterrence, the death penalty among countries is a matter of concern. This has become a subject of discussion and controversy when many consider that certain forms of the death penalty have seriously violated human rights conventions. At the same time, some countries intend to abolish the death penalty. Within the scope of the article, the author will analyze specifically the death penalty in Vietnam and some countries worldwide through different periods. From there, the author will provide a comprehensive view of this issue, and then the future legislative development directions of Vietnam will be evoked.

Keywords: Death penalty. Human rights. Right to life.

Crime. Education.

Resumo: O processo histórico do uso da pena de morte e das suas formas é uma parte significativa da história humana e está relacionado com questões sociais ao longo do tempo. Considerada uma sanção altamente eficaz para dissuasão, a pena de morte entre países é motivo de preocupação. Isto tornou-se um tema de discussão e controvérsia quando muitos consideram que certas formas da pena de morte violaram gravemente as convenções de direitos humanos. Ao mesmo tempo, alguns países tencionam abolir a pena de morte. No âmbito do artigo, o autor analisará especificamente a pena de morte no Vietname e em alguns países do mundo através de diferentes períodos. A partir daí, o autor fornecerá uma visão abrangente desta questão, e depois serão evocadas as futuras direcções de desenvolvimento legislativo do Vietname.

Palavras-chave: Pena de morte. Direitos Humanos. Direito à vida. Crime. Educação.

1. Introduction

1.1. The development history of the death penalty in the world

First of all, the death penalty is considered one of the most severe penalties in the judicial system and has a long history in the world. The death penalty is a long-standing, traditional type of penalty. The English term is “death penalty” or “capital punishment.” Capital comes from the Latin word “capitalis”, in which the root of the word *caput* means head. “Capital punishment” means a penalty by which, the person to whom the penalty is imposed is deprived of their head, i.e. deprivation of a person of his or her right to life. In French, this punishment is called “peine de mort” or “peine capitale”; in German, it is called “*todesstrafe*”. With its special roles, the death penalty prescribed in the countries' criminal laws only applies to crimes considered particularly serious, with a particularly large nature and degree of danger to society. Therefore, the development and the death penalty change through each period of human development history has been markedly different.

In ancient times, the death penalty in Oriental criminal law appeared very early and commenced from the chattel slavery period. It is obviously shown in the two typical Codes of this period, Hammurabi and Maru. The forms of capital punishment are harsh, such as burning, drowning, or impalement. The consequences of punishment often show a degree of proportionality to the crime committed by the person. In ancient Eastern law, the boundaries between the law fields are unclear. Also, the criminal laws were domineering, vengeful, and cruel in this period. For example, in Vietnam, Gia Long Code was the most important legal document and the longest legal relic of the feudal State of Vietnam in the 19th century. Gia Long Code, the official name is “Hoang Viet Rules”, in addition, it is also called other names such as “Imperial Rules” or “Imperial Laws”. The death penalty was divided into five levels depending on the severity of the crime. The two levels of death are usually “*zhǎn*” and “*jiǎo*.” “*Zhǎn*” is beheading, while “*jiǎo*” is killing but keeping the body intact (such as garrote). In addition, there are three additional levels of death (called “*rùn sǐ*”) of a more severe nature (Ngoc, n.d.). This was also seen as a feature of the death penalty in the ancient Western period, specifically in the Roman Code. This Code deeply reflected the economic and social relations in the early stages of the Roman empire and acknowledged the form of equal and proportionate revenge, which is quite similar to the Oriental State. It can be said that the Roman Law in the pre-Columbian formula gradually included an extremely harsh penal code. However, one characteristic that makes it typical is the

remnants of the tribal regime and the seriousness of the law in ownership acknowledgment. Punishment is often torturous and is governed by the status of the offender in society. In ancient Greece and Hellenistic countries, the death penalty was widely used as a form of criminal punishment. In all these countries, the main purpose of discipline is to threaten and intimidate. If a person acts against the current regime, his actions are considered treason and he is sentenced to death. The wife's adultery was considered a very serious and immoral crime, and the husband was empowered to kill his adulterous wife (Usmonovna & Kholmurodovich, 2020).

In the middle ages, in the Orient, the Chinese feudal dynasties laws developed and strongly influenced countries such as Vietnam, North Korea, Japan, etc. They were the introduction of the rule of the man of Confucius or the rule of law of Guanzhong, Zichan and Han Feizi. Depending on each dynasty's influence, the death penalty's forms and severity vary from period to period. In the West, criminal law still maintained the practice of “blood will have blood”. Normally, the court imposed the death penalty on those who commit serious crimes by causing protracted pain, but this penalty is not prescribed in the law (Thuy, 2006).

The history of the death penalty use and its form is an important part of human history. It is related to religion and social form over the ages. With the advent of ancient states, this punishment evolved. Over time, the death penalty has also become less severe from a humanitarian point of view and is therefore seen as an inevitability. Even so, it will not be a quick change in the short term, as there are still many reasons to maintain this penalty.

1.2. The purposes of the death penalty application

According to experts, the cause of the death penalty is due to the revenge of people in society or their families. With the advent of the state, the death penalty became the only prerogative of the state. The death penalty was a legal penalty that emerged during the transition to a society governed by law. It can be said that the purpose of the penalty in each country has different characteristics, for example, in the current Vietnamese Penal Code, Vietnam.const.art.31.amend.(2017) *“Sentences are meant not only for punishing people and corporate legal entities that commit criminal offences, but also raising awareness of compliance with law, preventing them from committing other crimes, educating other people and corporate legal entities in compliance with the law, prevention of and fight against crimes”*. Currently, in criminal legal science, there are many different views on the purpose of punishment as follows (Thuy, 2005):

– The first point is that *the death penalty has a punitive purpose as well as the reform and education of offenders*. Punishment is both a purpose and a means. It is also a premise for reforming and educating offenders. An offender is a person who has committed highly dangerous acts for society, so it is necessary to apply coercive measures to punish them. Hence, they understand the mental losses they have caused to others, helping them correct their errors and repent. With this view, the State should provide for and impose a severe penalty commensurate with the dangerousness committed by the offender, in cases where the imposition of the penalty is no longer necessary.

– The second point is that *the penalty is not intended to punish but to rehabilitate and educate offenders and prevent crimes*. “Punishment is a strict coercive measure of the State” – this strict coercion is reflected in the content of punishment, means to reform and educate offenders. With this view, the State should prescribe a moderate penalty to improve and inform the offender to become useful to society.

– The third point is that, *in essence, the purpose of the penalty is to restore social justice and create an equal, compassionate, stable, and better society*. Both punishment and reform and education are not the purposes but the content of the penalty. In particular, each person's legitimate rights and interests are respected and protected, the guilty are punished, the meritorious persons are rewarded, etc. With this view, the State stipulates that reforming and educating the offenders become useful to society and educate all sense of observance of the law and the rules of life. From there, build an equitable, equal, and compassionate community (quite similar to the second point).

In summary, the purpose of the death penalty depends and is significantly governed by the law-making views of individual countries. In the author's view, if the death penalty is applied, the State's purpose is not to subject the offender to the same suffering as the victim, but the death penalty will minimize the most painful situation for the body as well as the spirit of the offender. Of course, at this time, the purposes of “reform and education” can only be achieved for other people but the offenders because they have lost their right to life at that time.

1.3.Provisions on the death penalty: Provisions in international law

Currently, the abolition of the death penalty is considered the trend of criminal law legislation in countries around the world. Some typical conventions in this regard include the International Covenant on Civil and Political Rights (ICCPR); the Protocol to the American Convention on Human Rights to Abolish the Death Penalty; Protocol No. 6 to the European

Convention for the Protection of Human Rights and Fundamental Freedoms; and Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Others strictly limit the death penalty, including the Convention on Human Rights and Fundamental Freedoms of the Community of Independent States; the American Convention on Human Rights; and the Arab Charter on Human Rights. Typical of this is Article 6 of the ICCPR which states:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out according to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

The most important provision relating to the death penalty at the international level is Article 6 of the ICCPR. Only ten countries had abolished the death penalty by the time the ICCPR was drafted (1947-1966), but there was widespread debate about its status under the covenant (Hood, 2006). In 1984, the Economic and Social Council announced safeguards guaranteeing the rights of those facing the death penalty. In which the most serious crimes should not exceed intentionally lethal or other extremely serious consequences. Nonjudicial, summary, or arbitrary executions have stated that the death penalty should be eliminated for economic crimes, drug-related crimes, crimes without victims, and actions involving moral values, including adultery, prostitution, and sexual orientation Bar Association International (2008).

In addition, under article 1 of the Convention Against Torture, the term “torture” means “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as...punishing him for an act he... has committed*”, yet it specifically excludes “*pain or suffering arising only from, inherent in or incidental to lawful sanctions*”, thus the death penalty is not prohibited. In general, the death penalty is not prohibited by the International Covenant on Civil and Political Rights (ICCPR) or any other almost universal international treaty. Similarly, international custom law does not prohibit the death penalty at the present time, but customs are rapidly changing towards support for the death penalty abolition worldwide. In the process, the difficulty of determining a uniform interpretation is that there is no uniformity due to the fact that these regulations are contested by some countries, and therefore cannot be considered universally accepted. At the same time, specific implementation forms have not been mentioned in depth for countries that apply the death penalty because they depend largely on the views and economic situation in the country, which the author will refer to in the following section.

2. Method

This article is based on published work in the field of the death penalty. Library based collection of data was used to gather information on the topic from its historical perspective to the present. Also, analysis of Vietnam’s laws on the death penalty was used to enrich the article further.

3. Results

As mentioned, although the death penalty has not yet been prohibited under generally binding international law, its abolition is strongly encouraged, and it can only be applied within very strict limits, namely:

- *In the USA*

In ancient times, Western nations often used capital punishment, which was often beheading, but it was never used in the United States. However, criminals were sentenced to death by shooting, garrotte, electric chair, gas chamber, and lethal injection. Currently, most states use lethal injection for the death penalty, but some states allow other methods to be on the list above.

According to the Constitutional Rights Foundation (2012) another trend started in the 1800s. Many people in the United States and Europe opposed the death penalty. The state of Michigan abolished it in 1845, and Wisconsin joined the Union in 1848 without the death penalty in the penal codes. The protest movement against the death penalty grew stronger after World War II, especially in Europe, where many people were tired of numerous killings during the war. The death penalty in the United States is imposed through the state's judicial systems and, in some cases, through the federal system. Under applicable federal law, each state has the authority to impose the death penalty for murders involving actions or situations commonly referred to as “*special circumstances*.” Similarly, any state is free to prohibit the death penalty. Since this document, 18 states have banned it, and recently, 3 states, including Washington, Oregon, and Colorado have imposed a moratorium. The death penalty in the United States has also been shown unfair to people of color. Typically, statistical data from 2011 showed that a case with a white victim is three times more likely to be sentenced to death than a case with an African American victim, and four times more likely than a case with a Latino victim. While only 27.6% of the murdered victims were white, 80% of the prisoners executed in California were convicted of white murder. The location of murder also affects the likelihood of the offender receiving a death sentence. In California, a homicide offender in Alameda County is eight times more likely to be sentenced to death than in Santa Clara County. These apparent differences are evidence that the death penalty is being imposed in a discriminatory manner, which undermines a fundamental objective of our criminal justice system: unequal treatment and equality under the law (Šimonovi´c, 2014)

- *In Asian countries*

The great influence of ideas in culture and many other reasons led to Asian countries still maintaining the death penalty in their system. However, the use of the death penalty is quite limited, such as provisions on the conditional application of the death penalty in China. It is not to impose this penalty on two special subjects: those who have not yet reached the age of 18 when committing the crime and pregnant women at trial. In addition, in the Penal Code of this country, there is a provision for the postponement of the death penalty and grounds to be replaced by fixed-term imprisonment during the postponement period. Regarding the death penalty, in addition to shooting, China now also has another popular form of execution in the world: lethal injection. According to this provision, the court may pronounce the death sentence on the offender but may postpone the execution for two years

(Vietnam National University, 2009). If the convicted person repents, actively rehabilitates, or educates within the period, the death penalty shall be converted into life imprisonment or 20-year imprisonment.

Issues related to humanitarian policy are often greatly influenced by the provisions of the International Convention. It can be said that the ICCPR is an international treaty that provides safeguards for civil and political rights that greatly impact Asian countries in particular and the world in general. So far, 168 countries have ratified the ICCPR, and 5 of the 23 Asian countries have not yet confirmed the ICCPR. Obviously, the countries that have ratified it shall take the necessary administrative, judicial and legislative measures to ensure those rights are protected and respected in their country. As analyzed above, the contents of the ICCPR do not set a blanket moratorium on the death penalty, but set limits on when the death penalty can be imposed. It is notable that the death penalty can only be imposed for crimes considered “most serious” under Article 6 of this Convention. An authoritative recent United Nations report²² stated: *“In many countries in Asia, specifically in death penalty cases, the right to a fair trial was impeded by laws which denied due process. Even in countries where due process safeguards exist, they were not applied in practice”*(Šimonovi’c, 2014, p.59). Thus, capital punishment has been somewhat considered a “tool” for violating human rights if the procedural environment is not guaranteed. With economic growth spread across large segments of Asia, the pace of social change and some political changes has been maintaining high levels over the past decades. The issue is about developments over time in many parts of Asia that also affect the pace of change in the death penalty policies in the countries in this region. There are two reasons why Asia, particularly the rapidly developing nations of East Asia, will play a central role in global death penalty policy developments over the first two decades of the 21st century, namely (Zimring & Johnson, 2008)

– Firstly, with internationally monitored commitments to non-execution in Western, Central, and Eastern Europe, the developing nations of Asia are one of the last major frontiers for domestic and international efforts to end executions.

– Secondly, Asia is an important arena for understanding the dynamics of the death penalty in modern government because the Pacific Rim nations are culturally distinct and economically autonomous from Western European influence.

- *In Latin American countries*

Countries transitioning from war to peace or dictatorship to democracy face fundamental political and social transformations. At the same time, the trend towards

abolition has progressed with the wave of democratization in Latin American countries in the 1980s and in the former Soviet bloc in the 1990s, as well as with the increase in the number of countries experiencing post-conflict peacebuilding since the late 1980s. 12 countries, including Slovenia, Romania, Hungary, the Czech Republic, and Slovakia, abolished the death penalty in 1989 and 1990. Some countries such as Angola, Bosnia, Burundi, Mozambique, and Timor-Leste have abolished the death penalty in post-war peacebuilding. However, there were also cases such as Rwanda, which, shortly after the 1994 genocide, claimed that the death penalty was necessary for the country's transition and then applied it. For example, in Nigeria, which has a mainly Muslim north and Christian south, Shari'a law exists in some form. Each state of Nigeria has its laws, while the Muslim north still carries out punishment, and the Southern states have imposed a moratorium on capital punishment since 2004. Crimes punishable by the death penalty in countries where the death penalty has been imposed or where the death penalty has previously been abolished include the following crimes:

- Impeachment of a child to cause death;
- Assaulting an official, judge, or jury member who is on active duty with intent to cause death and use torture;
- Counterfeiting, terrorism, acts of torture or cruelty, kidnapping, theft or destruction of the territory; sabotage of public and economic works;
- Deliberate destruction of military equipment leading to death, massacre and slaughter, participation in armed groups or rebel movements, treason, espionage, aggravated murder, castration leading to death, etc (United Nations University, 2013).

According to Van Do (2005) in general, based on each country's perception, the conception of the purpose and role of the death penalty, the tradition, and the ability of each country to ensure the execution of the death penalty differs. Some forms of modern death is as follows:

- Shooting is the most commonly used form before the lethal injection was born. It is thought that the execution of the death penalty by shooting is the most economical and humane method due to not causing physical pain and giving the death quickly. However, the shooting caused a bad mentality for the executioner. Although in some countries, the execution of ammunition is improved such as automatic shooting, shooting through the veil, shooting through the back of the prisoner under death penalty, etc.

– Garrote: is the most common form of execution after shooting and lethal injection. This is also a costly form of help but does not meet the humanitarian requirements in executing the death penalty.

– Lethal injection: this is the new form of death penalty used in the last few decades. Currently, countries in the world tend to use this form as an alternative to shooting or other forms. This is considered the most humane form of execution. The prisoner under the death penalty is given a certain amount of poison (intravenous injection) and will die in a very short period of time (several tens of seconds) and without pain. However, the execution of death by poison is very expensive (execution rooms, production of poison causes rapid death,...) and to a certain extent creates a negative mentality for the executioner. In order to relieve the psychological pressure on the executioner, in some countries, two different needles are used (one is poisonous, the other is distilled water) and the two executioners will not know what is in their needles.

– Electric chair or gas chamber: these were once used in some states in the United States and some American countries in the late 19th and early 20th centuries. However, this form of execution is also very expensive, has many risk cases and is not guaranteed to not cause pain for the prisoner. In the 50s and 60s of the 20th century, in the United States, many cases were executed by electric chairs or gas chambers, and many prisoners did not die due to technical problems or due to the special structure of the body of prisoners.

– Stone throwing: is a form of death penalty used in some Islamic countries, especially for adulterous offenders. The prisoner was tied to a pit and stoned to death by the public. This is a short, savage and intimidating form of fear.

It is possible to summarize the evolution of the current forms of death as commented by Professor John Stinneford: *We applied different methods of execution, each of which is thought to be more scientific and less cruel than the previous ones* (Stinneford ,2018, p.15-20). Naturally, the humanitarian character of the forms of death is increasingly promoted according to the general development of the world and in parallel, the cost applied to the whole process of death of an offender also increases. Another problem with the execution of the death penalty is that the countries of the world perform very differently and the conception in determining the form of execution is also very different regarding whether the execution should be carried out publicly or secretly. In Muslim countries, for example, stoning, garrote or ammunition

executions are also carried out publicly. Contrary to the above, another trend in the world is the abolition of the death penalty with the following causes:

- Wrongful convictions are not completely avoidable, but capital punishment (unlike life imprisonment) cannot be reversed
- There is no convincing evidence supporting the deterrent effect of the application of the death penalty as an available sanction.
- The death penalty is time-consuming and expensive if there are extensive legal procedures, and therefore up to two fines, a long prison sentence and an execution.
- Delays in executions delay closure and healing for the families of the victims (as well as for the offenders).
- Given the nature of offenders and ending up in the prison system, it is often vulnerable members of society who are more likely to receive a death sentence; in America, it is widely acknowledged that even when controlling for the nature of crime, race affects people who are more likely to receive a death sentence.
- The death penalty violates a basic human right to life.
- The death penalty is likely to be abused: for example, it can be used to target specific social or political groups (The Scottish Center for Crime & Justice Research, 2015).

4. Discussion

As in many other countries in the world, the death penalty has long been applied and currently been regulated by law and enforced in Vietnam. Many measures of death penalty are cruel or brutal vengeance such as “three familial exterminations”, “lingchi (death by a thousand cuts)”, “quartering”, “chopping”, and “dismemberment”, etc. according to the motto “punishment of one person as a warning to others” or “prescribing punishment without the use of punishment.” As analyzed in the general history, our country belongs to the Oriental countries, so at a certain stage (usually the middle age), the legislature is easily influenced by religion. In later periods, as in the period from 1945 to 1985, the issue of the death penalty is also regulated in many other legal documents of the State, including decrees, laws, ordinances, and circulars (Loi, 2006).

Ensuring legal completeness is a premise for the introduction of the Penal Code, typically, the Vietnam Penal Code in 1985. Through the amendments and supplements to

several articles in 1989, 1991, 1992 and 1997, the provisions on the death penalty are stipulated in 29 articles out of 195 articles in criminal law. However, after four amendments, by 1997, the number of laws regulating the death penalty in the 1985 Penal Code had increased to 44 out of 216 (Hai, 2015). This increase reflects the increasingly more stringent crime prevention and combat in the period 1985-1997 in Vietnam. Subsequently, the National Assembly approved the Penal Code in 1999 on December 21, 1999, to replace the Penal Code in 1985, consisting of 24 chapters with many articles, including 29 articles with the highest penalty bracket of death. However, this Code was amended in 2009, which abolished the death penalty with eight (8) articles. The above amendment stems from the policy of limiting the death penalty in the spirit of Resolution No. 08/NQ-TW dated January 2, 2002, of the Politburo on some central tasks of judicial work soon (Resolution No. 08/NQ-TW). Accordingly, Resolution No. 49/NQ-TW affirmed the “*restriction of the application of the death penalty to only a small number of particularly serious crimes*” and based on the principle of humanity - one of the fundamental principles of the Penal Code with the aim of guaranteeing the minimum benefits, the inviolability of honor, dignity and life for human. These issues have been implemented since 2009 when the Penal Code was amended and supplemented in 1999 and also have been implemented when developing and promulgating the Penal Code in 2015. The Penal Code in 2015 was amended and increased in a number of articles in 2017 to continue to abolish the death penalty for eight (8) other crimes and stipulated that persons under 18 years of age, pregnant women, women who are nursing children under 36 months of age, persons who are 75 years of age or older when committing crimes or on trial are not subject to the death penalty. In total, the number of crimes applying the death penalty in the Penal Code in 2015 was amended and supplemented in a number of articles in 2017 as 18/314 crimes (Giao & Duc, 2021).

At the same time, the execution of the death penalty also reflects the humanitarian principles of the Party and our State. Appearing in the Criminal Judgment Execution Law in 2010 and being inherited in the Criminal Judgment Execution Law in 2019, the new method of executing the death sentence is the form of “lethal injection”. The essence of this death penalty measure is to give the person under the death penalty an injection of poison. Lethal injection has been applied instead of shooting by many countries around the world. This form is less painful for the sentenced person, ensuring that the body is intact, less expensive and reducing psychological pressure for the person directly executing the sentence (currently executed by the Judicial Support Police force). World medical experts often comment on this

death penalty as “gentle death” or “painless death.” Some medical experts also compare the execution of this crime to suicide, which is taking sleeping pills or taking poisons. Lethal injection to execute the death penalty is a new issue in our country. The contents are specified in Decree No. 43/2020/ND-CP of the Government dated April 8, 2020 promulgating new regulations on the execution of death sentences by lethal injection. Some issues worth discussing this form of death include (Khoi, n.d.).

– *Firstly*, regulations on injections and physical facilities are used to execute the death sentence. Injections used for the execution of the death penalty include: 1. An injection that causes loss of consciousness; 2. An injection that paralyzes the musculoskeletal system; 3. An injection that stops the activity of the heart. One injection is given to one person. The Ministry of Health issues drugs used for the execution of death sentences at the request of the Ministry of Public Security and the Ministry of National Defense. At the same time, the facilities and equipment and facilities used for the execution of the death sentence are stringently required, including a bed with belts used to fix the sentenced person; an automatic drug dispenser with push buttons; a heart rate monitor; a monitor and monitoring equipment for the execution of the sentence; other tools and equipment for the execution of the sentence.

– *Secondly*, about the process of injection. The order of execution of the death sentence must comply with the provisions of Clauses 2, 3 and 4, Article 82 of the 2019 Law on Execution of Criminal Judgments, and the provisions of Decree 43/2020/ND-CP. Suppose the person sentenced to death has not died in ten minutes after injected. In that case, the examiner shall report to the Chairman of the death sentence execution council to continue using the second and third injections. In case of complete injection of the third dose after ten minutes but the sentenced person has not died, the examiner shall report to the Chairman of the death sentence execution council to issue a decision to suspend the execution of the death sentence. The execution of the steps may be conducted by an automated or direct method.

– *Thirdly*, on the responsibilities of the institutions and organizations. To ensure that errors do not occur during the execution of the death penalty by lethal injection, it requires “assurances” from the authorities throughout the execution process. Specifically, responsibilities of the following agencies: Responsibilities of the public security agencies (Responsibilities of the temporary detention and custody management agencies of the Ministry of Public Security; Responsibilities of the criminal judgment execution agencies of

the provincial-level police offices; Responsibilities of the district-level police offices where the death sentences are carried out; Responsibilities of the detention centers where the persons sentenced to death are held); Responsibilities of the army agencies (Responsibilities of the military zone-level criminal judgment execution agencies, Responsibilities of the detention centers where the persons sentenced to death are held); Responsibilities of the ministries and People's Committees at all levels.

In general, the reduction of the number of crimes subject to the death penalty and the change in the form of the death penalty is one of the prerequisites for our country to gradually reduce and move towards the abolition of the death penalty as the general trend of countries in the world. In our country, the main measures are education and reform. Only in certain types of particularly serious crimes, when education and reform are impossible, will the courts impose the death penalty and deprive offenders of their right to life. In a broad sense, capital punishment is also aimed at educating others to respect the law and fight against crime. The change and application of this new death penalty measure are expected to contribute to the implementation of the humanitarian policies of the Party and the State in the fight against crime, protecting national security and order in the period of international integration.

5. Conclusion

From the point of view of the author, in order to create the prerequisites as well as the basis to complete the regulations on capital punishment, we need to first implement the following solutions:

Firstly, ensuring the tendency to “shrink” the death penalty from a statutory perspective and practical application. With the socio-economic conditions as well as the political situation in our country, the maintenance of the death penalty is considered necessary in the fight against crimes of a particularly serious nature. However, the scope of death penalty crimes should be narrowed. Through the study of the regulations related to the death penalty in the Penal Code through amendments and supplements, since the Penal Code in 1985 up to now, it can be seen that the number of laws with the highest penalty bracket is death, sometimes increasing, sometimes decreasing depending on each period. The courts mainly apply the death penalty to a number of cases of murder (such as murder to seize property; the murder of a hooligan nature, dangerous recidivism, committing crimes to

the end, using treacherous and cruel tricks, etc.) and the crime of illegal possession, transportation, trafficking or appropriation of narcotic substances (mainly objects trading and storing in large quantities of drugs with organized activities). However, it should also be noted that the rate of over 8% in 1999 Penal Code legislation as per Thao (n.d) and approximately 6% in the current Penal Code that provides for the death penalty is still quite high compared to the world's overall ground. Therefore, considering reducing and converting penalties, especially for economic crimes, is considered a perfectly appropriate trend, contributing to minimizing costs when implementing and saving the National Budget.

I was secondly, completing the issues related to criminal procedure law. It can be said that the regulations on the organization and operation of the court in criminal procedures can be perfected on the basis of identifying as the central agency of criminal proceedings protecting human rights, strictly handling all violations of the legitimate rights and interests of citizens (Chi , 2011). Typically, transparency in the matter of taking testimonies of defendants and witnesses must be carefully recorded and filmed, even in the public security agencies at all levels. At the same time, it is necessary to supplement the procedures for confessing in the criminal procedure law. Also, in the Penal Code, it is essential to supplement the regulations on confession as a special mitigating circumstance to significantly mitigate the criminal liability and consider it as a basis in deciding the offender's punishment. Through these issues, completing the law on capital punishment and limiting the scope of capital punishment is a completely correct policy of the Party and the State, in accordance with the world trend.

Thirdly, gradually implementing the abolishment of the death penalty in Vietnam. Most countries have now abolished the death penalty, but there has been no consensus against its use. Despite the global movement and judicial reform, Vietnam maintains the death penalty. The main argument can explain this tendency that Vietnam does not have the right context to abolish the death penalty. Prerequisite platforms do not meet abolition requirements. For example, economic, social, cultural, and legal conditions remain low; thus, Vietnam cannot create alternative sanctions to ensure the purpose of punishment and maintain social order. It can be said that the institution of the death penalty is one of the important provisions of criminal law, especially, in the period when the death penalty in the national judiciary becomes one of the important criteria for assessing the progress of that country. However, along with the development of the rule of law and the advancement of society, a new movement considers the death penalty application unnecessary, unfair or

ineffective. The view that the death penalty should be abolished from democratic and civilized societies in order to ensure the effective exercise of the right to life as enshrined in Article 3 of the World Declaration of Human Rights and Article 6 of the ICCPR has increasingly received international consensus (JULE, 2019).

REFERENCES

- Article 300 of the 2015 Penal Code (amended and supplemented in 2017).
Bar Association International. (2008). The Global Voice of The Legal Profession. *The Death Penalty under International Law: A Background Paper to the IBAHRI Resolution on the Abolition of the Death Penalty*.
- Cam Ngoc, C. (n.d.). Death Penalty in Gia Long Law. *Vietnam Lawyer Journal*. <https://lsvn.csmot-so-van-de-ve-hinh-phat-toi-tu-tu-hinh-trong-luataiah-long1627890648.html>, accessed on 02 August 2021.
- Constitutional Rights Foundation. (2012). *A History of the Death Penalty in America*.
- Doan Thi Ngoc Hai, D.T.N. (n.d). *Death penalty – some theoretical as well as practical issues and proposed directions for improvement*. Ministry of Justice website. <https://moj.gov.csqt/tintuc/Pages/ngghien-cuu-trao-doi.aspx?ItemID=1820>., accessed on January 1, 2015.
- EU JULE, E. (2019). *Study Report: Vietnam's Possibility of Acceding to the Second Optional Protocol to Abolish the Death Penalty under the International Covenant on Civil and Political Rights (ICCPR)*, 10/2019.
- Franklin E. Zimring F.E. & David T. Johnson, D.T. (2008). Law, society, and capital punishment in Asia. *SAGE Journals*, 10(2).
- Ivan Šimonović, I. (2014). *Moving Away from the Death Penalty: Arguments, Trends, and Perspectives*., UNITED NATIONS HUMAN RIGHTS.
- John Stinneford, J. (2018). Original Meaning and the Death Penalty. *University of St. Thomas Journal of Law and Public Policy*, 13 .
- Law on Execution of Criminal Judgments in 2019.
- Minh Khoi, M. (n.d.) *Execution of the death sentence, the third dose injected but the sentenced person not died, the execution suspended*, People's Court online Magazine, <https://tapchitoaan.csbaiviet/cong-dan-va-phap-luat-2/thi-hanh-an-tu-hinh-neu-tiem-het-lieu-thuoc-thu-ba-ma-nguoi-bi-thi-hanh-an-chua-chet-thi-tam-dung-thi-hanh-an>, accessed on April 11, 2020.
- Nguyen Ngoc Chi, N.N (2011). Completing the criminal procedure law – a significant factor in ensuring human rights. *Journal of Science of the Vietnam National University*, 27: Hanoi – Legal Studies.
- Orzikulova Gulbahor Usmonovna, O.G. & Orzikulov Bahrom Kholmurodovich, O.B. (2020). In The History of The Ancient World - The Death Penalty. *JournalNX- A Multidisciplinary Peer Reviewed Journal*, 6(8).
- Pham Van Loi, P.V. (2006). *Some issues on the death penalty and the execution of the death penalty*. National Political Publishing House, Hanoi
- Phuong Thao, P. (n.d) *Narrowing the scope of the death penalty in the Criminal Code in 1999*, General Portal of the Central Internal Affairs Committee, <https://noichinh.csngghien-cuu-trao-doi/201312/thu-hep-pham-vi-ap-dung-hinh-phat-tu-hinh-trong-bo-luat-hinh-su-nam-1999-293434/>, accessed on December 23, 2013.
- Roger Hood/Center for Human Rights and Global Justice - (2006). The Enigma of the ‘Most Serious’ Offences, *NYU School of Law*, (9)

The Scottish Center for Crime & Justice Research and University of Glasgow. (2015), *Capital Punishment.*, 2015.

Tran Van Do, T.V.(2005). Executing the death penalty in some countries in the world and completing the law on the death penalty in Vietnam. *State and Law Review*,3

United Nations University. (2013). *Policy Brief: Death Penalty Policy in Countries in Transition.*

Vu Cong Giao, V.C. and Nguyen Quang Duc, N.Q.(2021)., Advantages and challenges for the abolition of the death penalty in Vietnam. *Journal of Legislative Studies*, 06(430): 3 – 12

Vu Thi Thuy, T. V. (2006).Death Penalty in World Criminal Law Through Historical Times. *Journal of Legal Sciences*, 06(37).

Vu Thi Thuy, V.T.(2009). Discussing the purpose of the death penalty in Vietnamese criminal law. *Vietnam Journal of Legal Sciences*,04(47) (2008).