

DETENTION OF CHILDREN UNDER VIETNAMESE ADMINISTRATIVE LAW: IS IT CRIMINAL?



University of Oslo
Faculty of Law

Candidate number: 8014
Supervisor: Thomas Horn
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1 Introduction

In the Socialist Republic of Vietnam, two systems exist to handle children who come in conflict with the law – the criminal law system and the administrative law system. The latter is the system most commonly used by Vietnamese authorities and has seen the detention of thousands of children in reform schools under Article 24 of the Ordinance on the Handling of Administrative Violations, the Ordinance.¹ This system allows executive authorities to detain children who have committed minor violations of the law for up to two years with very little procedural safeguards to protect their rights as guaranteed by international human rights law. The situation of children handled under Article 24 of the Ordinance attracts the protections of Article 9 of the International Covenant on Civil and Political Rights, ICCPR concerning the right to liberty and security.² However, in light of jurisprudence of Human Rights Committee, HRC and to an extent jurisprudence of the European Court of Human Rights, the Court, this thesis would like to go one step further. The clarification and development of the concept of a ‘criminal’ charge by these two bodies allows for the full application of Article 14 of the ICCPR and the right to a fair trial to situations where individuals are charged with offences under laws distinct from the criminal law, but which are nevertheless ‘criminal’ in nature. The present thesis will pose the question: To what extent does the sending of juveniles to reform schools under Vietnamese administrative law deal with ‘criminal’ charges.

¹ Pháp lệnh xử phạt vi phạm hành chính [Ordinance on Handling of Administrative Violations] (Socialist Republic of Vietnam) No. 44/2002/PL-UBTVQH10, 2 July 2002 (*‘Ordinance’*) art 24.

² *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

1.1 The Socialist Republic of Vietnam

The Socialist Republic of Vietnam, located on the Indochinese peninsula in Southeast Asia has a population of approximately 86 million people, making it the 13th most populated country in the world.³ Of this, 30 million Vietnamese are under the age of 18 years, comprising approximately one third of the population.⁴ Vietnam is a one-party state, comprising of four major structures: The Vietnam Communist Party, VCP, the People's armed forces, the state bureaucracy both central and local and the Vietnam Fatherland Front, an umbrella group for mass organisations.⁵ In accordance with the *1992 Constitution of the Socialist Republic of Vietnam* the VCP is 'the leading force of the State and society.'⁶ Besides the VCP, Vietnam is also led by the President of Vietnam, currently Truong Tan Sang, the National Assembly, and the Government as led by Prime Minister Nguyen Tang Dung. The National Assembly is vested with constitutional and legislative power, deciding on fundamental domestic and foreign policies as well as appointing the judiciary. The Government, through its Ministries is tasked with the overall management of state affairs and is the highest of all executive organs.⁷ The VCP is considered the 'leadership nucleus' with its hand in all political, economic, military and social organisations.⁸

At each level of government, sits the People's Council, the legislative organ and the People's Committee, a department within the People's Council responsible for the administration and execution of the law on a local level. Each People's Council and People's Committee is accountable to its counterpart in the next highest level, creating a chain of supervision from the central government straight to the bottom.⁹

³ Socialist Republic of Vietnam, *National report submitted in accordance with paragraph 15(A) of the Annex to the Human Rights Council Resolution 5/1: [Universal Periodic Review]* 16 February 2009, UN Doc A/HRC/WG.6/5/VNM/1, para 6.

⁴ Rebeca R Kohn, Vu Xuan Nguyet Hong and Nguyen Tam Gang, 'An Analysis of the Situation of Children in Vietnam' (Report, UNICEF Vietnam, 2010) 17 <http://www.un.org.vn/en/publications/publications-by-agency/cat_view/126-un-publications-by-agency/94-unicef-publications.html?start=5> ('*Situation Analysis*')

⁵ Carlyle A Thayer, 'Political legitimacy in Vietnam: Challenge and Reponse' (2010) 38 (3) *Politics & Policy*, 423, 424.

⁶ Hiến pháp [*Constitution of the Socialist Republic of Vietnam*] art 4 ('*The Constitution*').

⁷ Ibid arts 109-114.

⁸ Thayer above n 5, 424.

⁹ *The Constitution* chapter IX.

1.2 Article 24 and the sending of children to reformatories

The measure of sending children to reformatories is contained in the Ordinance passed by the Standing Committee of the National Assembly on 2 July 2002 and coming into effect on 1 October 2002. The Ordinance can be described as a procedural code for the execution of administrative sanctions and handling measures. Over 70 pieces of secondary legislation contain the substantive elements of administrative violations and additional procedural guidelines for implementation.¹⁰ In 2010, the Ministry of Justice, began the drafting of the new version of the Ordinance and released the latest Draft Law on the Handling of Administrative Violations on 18 July 2011, the Draft Law.¹¹ The Ministry of Justice stated that after eight years of implementation, the Ordinance had revealed several shortcomings.¹² The Draft Law is yet to be passed through the National Assembly and considering the need to amend and enact secondary legislation, this could take considerable time. It is therefore essential to examine the Ordinance and Draft Law together.

According to the Ordinance, children can be subject to administrative handling measures, which are qualified as measures applied to ‘individuals who commit acts of violating the legislation on security, social order and safety but not to the extent of being examined for penal liability.’¹³ The Draft Law contains a similar definition but describes the violation as ‘not seriously enough for criminal prosecution’.¹⁴ The handling measures applicable to children include education at the local level and confinement to reformatories.¹⁵ The Draft Law has retained both of these measures.¹⁶ I will be limiting my analysis to provisions

¹⁰ Department of Administrative and Criminal Law, Ministry of Justice Vietnam, *Assessing Report on System of Legal Normative Documents on Handling of Administrative Violation* (2007) 5.

¹¹ Dự thảo Luật Xử lý vi phạm hành chính [Draft Law on the Handling of Administrative Violations] (Socialist Republic of Vietnam) 18 July 2001, (*Draft Law*).

¹² Ministry of Justice Vietnam, ‘Ministry of Justice Activities: The Third Legal Policy Dialogue: Law on Handling of Administrative Violations’ (Media Release 24 June 2011)

<http://moj.gov.vn/en/ct/Lists/Ministry%20of%20Justices%20Activities/View_Detail.aspx?ItemID=117>

¹³ *Ordinance* art 1(3).

¹⁴ *Draft Law* art 2(3).

¹⁵ *Ordinance* arts 22, 24.

¹⁶ *Draft Law* arts 96-103, 104-114.

regarding the sending of children to reformatories under Article 24 of the Ordinance, being the most serious measure of the two. Children who are subject to the sending to reformatories can be detained in a closed facility for a minimum of six months to two years.¹⁷ The Draft Law has extended the minimum time of detention to 12 months, with a maximum time of 24 months.¹⁸ According to official statistics, 1,831 children were sentenced to reform schools in 2006.¹⁹ One source states in 2007 the four reforms schools in Ninh Binh, Da Nang, Dong Nai and Long An held over 4000 children in total, with numbers likely to be higher now.²⁰ All statistics should be treated with caution.

1.3 The ICCPR and the Human Rights Committee

The ICCPR and the Optional Protocol to the ICCPR, OP, came into force 23 March 1976 with currently 167 and 114 parties, respectively.²¹ Vietnam acceded to the ICCPR on 24 September 1982. It is however, not a signatory to the OP. In addition to guaranteeing and protecting civil and political rights, the ICCPR established the role of Human Rights Committee. The HRC was created under Part IV of the ICCPR and has the authority to consider State reports, make concluding observations, develop general comments on the provisions of the ICCPR and consider state-to-state complaints.²² The OP grants the HRC competence to receive and consider individual communications.²³ Individual communications are not binding under international law however they are generally

¹⁷ *Ordinanc*, art 24.

¹⁸ *Draft Law* art 104(2).

¹⁹ Socialist Republic of Vietnam, *The Third and Fourth Country Report on Vietnam's Implementation of the United Nations Convention on the Rights of the Child in the 2002-2007 Period, Advanced unedited versio*, 25 March 2011, UN Doc CRC/C/VNM/3-4, para 247

²⁰ Letter, 'Child Labour in Vietnamese Juvenile Reform Schools' (anonymous source).

²¹ United Nations Treaty Collection Online Database, *Chapter IV: Human Rights: 4. International Covenant on Civil and Political Rights* <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en> ; See also United Nations Treaty Collection Online Database, *Chapter IV: Human Rights: 4. Optional Protocol to the International Covenant on Civil and Political Rights* <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en>

²² *ICCPR* Part IV.

²³ *Optional Protocol to the International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1 ('OP').

complied with.²⁴ Although Vietnam is not a signatory to the OP, decisions and resolutions made by the HRC based on consensus are highly ranked and considered an authoritative interpretation of ICCPR provisions.²⁵ The use of HRC case law to interpret the obligations of Vietnam under the ICCPR is not excluded by the mere fact that Vietnam is not a signatory to the OP.

1.3.1 Rights of children sent to administrative detention under Article 9 of the ICCPR

Juveniles subject to detention in reform schools under the administrative system are entitled to significant protections established under Article 9 of the ICCPR. Article 9 of the ICCPR concerns the right to liberty and security of the person, stating clearly that no person shall be subject to arbitrary arrest or detention. This safeguard against arbitrariness in situations of deprivation of liberty incorporates the principle of legality, notions of proportionality, foreseeability, predictability and rights of due process.²⁶ In addition, anyone subject to a deprivation of liberty is entitled to have their detention challenged in a court of law without delay, otherwise known as the right to habeas corpus.²⁷ The HRC has made it abundantly clear that Paragraphs 1, part of paragraphs 2 and the whole of paragraph 4 of Article 9 apply to all types of deprivations of liberty, whether in criminal cases or other cases such as mental illness, vagrancy, drug addiction, educational purposes, immigration control etc.²⁸ In addition all persons wrongly deprived of their liberty are entitled to compensation.²⁹

²⁴ Manfred Nowak, *UN. Covenant on Civil and Political Rights: CCPR Commentary* (N. P Engel Publishing, 2nd revised ed, 2005) XXII [8].

²⁵ *Ibid*

²⁶ Office for the High Commissioner for Human Rights & International Bar Association, 'Chapter 5: Human Rights and arrest, pre-trial detention and administrative detention' in *Professional Training Series No. 9: Human Rights in the administration of justice: A manual on human rights for judges, prosecutors and lawyers* (United Nations, 2003) 165-169 <<http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx>>

²⁷ ICCPR art 9(4).

²⁸ Human Rights Committee, *General Comment No. 8: Right to liberty and security of persons: Article 9*, 16th Sess (30 June 1982) para 1 ('*General Comment No. 8*')

²⁹ ICCPR art 9(5).

1.3.2 Article 14 of the ICCPR, scope and protection

Although all persons subject to deprivation of liberty are granted significant protections under Article 9 of the ICCPR, Article 14 grants fuller protections to those who fall under its scope. Article 14 aims to ensure the proper administration of justice through the guarantee of a series of specific rights and establishes the following:³⁰ Everyone is granted equality before the courts and tribunals.³¹ The right to a fair and public hearing by a competent, independent and impartial tribunal is granted to two categories of people – persons charged with a criminal offence and persons whose rights and obligations are being determined in a suit at law.³² Fuller and more specific rights, limited to persons charged with a ‘criminal’ offence are contained under Articles 14(2) to (7) and include: the right to be presumed innocent, right to adequate time and facilities and access to counsel, right to trial without delay, right to be present at trial, right to defend oneself in person or through legal assistance, right to be assigned legal assistance where the interests of justice require, right to examine witnesses, right to free assistance of an interpreter, protection against testifying against oneself, right to have your conviction and sentence reviewed by a higher tribunal, a right to compensation in the case of miscarriage of justice and protection against double jeopardy. In relation to juveniles, procedures are to take account of their age and the desirability of promoting rehabilitation.³³ Persons charged with a criminal offence are granted additional protections under Article 14 of the ICCPR, distinct from the due process rights granted under Article 9. *The correct classification of an offence, in particular one which may lead to a deprivation of liberty is thus essential for determining whether the fuller protections of Article 14 will apply, or the protections under Article 9.*

³⁰ Human Rights Committee, *General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, 90th Sess, UN. Doc CCPR/C/GC/32 (23 August 2007) para 2 (‘*General Comment No.32*’).

³¹ ICCPR art 14(1).

³² Ibid.

³³ Ibid arts 14(2)-(7).

1.3.3 Concept of a ‘criminal’ charge: brief introduction

The limitation of part of Article 14 to persons charged with a ‘criminal’ offence may on its face appear to allow States to avoid its application by removing ‘criminal’ offences from the criminal law and classifying them under other bodies of law. However, recent case law adopted by the HRC in 2009, namely *Oisyuk v Belarus* has provided clarification of the concept of a ‘criminal’ charge and safeguarded against this.³⁴ The concept of a ‘criminal’ charge under Article 14 of the ICCPR was confirmed as having autonomous meaning.³⁵ As a result the HRC is able to go beyond the classification of an offence under the domestic law of a State to its scope, purpose, nature and severity and pose the question: is this offence a ‘criminal’ charge? Thus a person, charged under legislation other than the criminal law or penal code of the State will attract the full protection of Article 14 if the charge is deemed ‘criminal’ in nature. As a result of this interpretation by the HRC, the possibility for the application of Article 14 to the situation of children being sent to reformatories under Article 24 of the Ordinance is created, on the condition the offence is deemed ‘criminal’.

1.4 Previous research on administrative detention of children

Research on the juvenile justice system in Vietnam is limited. Research specifically identifying and critiquing the procedural safeguards available to a child subject to administrative reform school, is even more so. Some scholars have provided useful insights into the situation of children subject to reforms schools in Vietnam, including Burr who critically discusses children’s rights from the perspective of Vietnamese street children.³⁶ Burr questions whether the children received legal advice before their arrival at the reform school, and describes how one boy was ‘told what to say’ by a guard during sentencing.³⁷ Cox provides Vietnamese youth justice as an example of how global processes of policy

³⁴ Human Rights Committee, *Views: Communication No. 1311/2004*, 96th Sess, UN Doc. CCPR/C/96/D/1311/2004 (30 July 2009) (*Oisyuk v Belarus*).

³⁵ *Ibid* para 7.3.

³⁶ Rachel Burr, ‘Global and Local Approaches to Children’s Rights in Vietnam’ (2002) 9(1) *Childhood*, 49-61; Rachel Burr, *Vietnam’s Children in a Changing World* (Rutgers University Press, 2006) 134-163.

³⁷ Burr, *Changing World* above n 36, 143.

convergence have their local limits, using counselling in reform schools as an example.³⁸ Cox also argues a historically informed analysis can enrich an understanding of Vietnamese youth crime and efforts to address it.³⁹ The procedural safeguards available or applicable to the accused child during the decision making process is not the main theme of the above literature and is therefore not discussed.

Volkman opens discussion on the absence of procedural rights for a child risking assignment to a reform school.⁴⁰ Volkman recognises the positive value of treating juveniles through an alternative system to the criminal law system. The avoidance of a criminal record and the facilitation of reintegration into society as a goal of administrative justice were viewed as positive for the child.⁴¹ Whether children under administrative system avoid a record is questionable as details of their violations are recorded in their dossiers and curriculum vitae.⁴² Reports state children are stigmatised by their ‘educational records’ and labelled as offenders despite not officially having a criminal record, questioning one aspect of the positive value of treatment outside the criminal law system.⁴³ Volkman qualifies that the positive value is undermined by similarities in criminal law sanctions and administrative handling measures for the child, as well as a lack of specific criteria to determine which system the child is handled under and whether to send the child to reform school. Most relevant to this thesis was the criticism the administrative process is lacking in specific guidelines for authorities to ensure the rights of the accused child are fully respected.⁴⁴ Although mentioning the risk of arbitrary sentencing as a result of vague criteria, no specific articles of human rights standards are explicitly pointed to.

³⁸ Pamela Cox, ‘Juvenile Justice Reform and Policy Convergence in the New Vietnam’ (2010) 10 *Youth Justice*, 227.

³⁹ Pamela Cox, ‘History and Global Criminology: (Re)Inventing Delinquency in Vietnam’ (2011) *British Journal of Criminology* 1-15 <<http://bjc.oxfordjournals.org/content/early/2011/08/01/bjc.azr061.short?rss=1>>

⁴⁰ Christian S Volkman, ‘30 Years after the war: children, families, and rights in Vietnam’ (2005) 19 *International Journal of Law, Policy and the Family* 23.

⁴¹ *Ibid* 33.

⁴² See *Ordinance* art 75.

⁴³ *Situation Analysis*, 17.

⁴⁴ Volkman above n 40, 33.

A similar finding regarding the absence or insufficiency of procedural safeguards was found in the joint Evaluation of Pilot Project Report of the Ministry of Labour, Invalids and Social Affairs, MOLISA, of Vietnam and UNICEF in 2008.⁴⁵ Here participants were questioned whether administrative sanctions against juveniles should be changed considering the lack of consultation with the juvenile and the absence of protective rights. 87% of participants answered the measure should be changed or needed to be changed, in particular the procedure regarding the sending of juveniles to reform schools.⁴⁶ This desire for consultation with the juveniles was repeated by MOLISA and UNICEF in 2009. The Creating a Protective Environment Report recommended legal documents to be amended to allow juveniles, parents and victims direct involvement in the decision making process to send juveniles to reform schools. Human rights standards were quoted in general as requiring any decision to impose deprivation of liberty to be made by a ‘competent authority having due regard for the juvenile’s due process rights.’⁴⁷ Although specific provisions of the ICCPR were not explicitly stated a preference towards Article 9 rights is apparent.

The need to provide for improved procedural rights for juveniles being subject to the sending to reformatories was a clear motivation of the Government of Vietnam when embarking on the amendment of the Ordinance and creation of the Draft Law. The aim of ongoing reforms of the Ordinance is to ensure greater consistency and compliance with international human rights standards to which Vietnam are a signatory, indicating the

⁴⁵ Ministry of Labour, Invalids and Social Affairs and UNICEF Vietnam, ‘Evaluation of the Pilot Project on Non-custodial Measures, Reintegration and Support Services to Juveniles in Conflict with the Law in Haipong, Vietnam’ (Evaluation Report, 2008) 37 <http://www.unicef.org/evaldatabase/index_58812.html> (*‘Evaluation of Pilot Project Report’*).

⁴⁶ Ibid 37.

⁴⁷ Ministry of Labour, Invalids and Social Affairs and UNICEF Vietnam, ‘Creating a Protective Environment for Children in Vietnam: An Assessment of Child Protection Laws and Policies, Especially Children in Special Circumstances in Vietnam’ (Report, 2009) 78 <http://www.un.org.vn/en/publications/publications-by-agency/cat_view/126-un-publications-by-agency/94-unicef-publications.html?start=20> (*‘Creating a Protective Environment Report’*).

existence of a current incompatibility.⁴⁸ Government debate surrounding the insertion of a role for the People's Court in the decision making process of Article 24 suggests an attempt to comply with Article 9(4) of the ICCPR and the right to habeas corpus.⁴⁹ However, no specific reference to provisions of international human rights standards is identifiable in publicly available Government documents.

The most comprehensive identification of rights to which juveniles under the Ordinance are entitled to was made by the United Nations, UN, Vietnam office. In their assessment of an earlier version of the Draft Law, the UN found the draft lacked the 'procedural safeguards necessary to ensure a fair process in compliance with international law.'⁵⁰ The general position of the United Nations appears to invite insertion of due process rights required under Article 9 of the ICCPR into the Ordinance, in addition to certain guarantees under the Convention on the Rights of the Child. For example, the UN recommended the insertion of the right to access to legal representation, the right of the accused/representative to receive the file before the hearing, the right to challenge evidence presented against him/her before the case is decided, and the right to a hearing, all of which are associated with the due process rights necessary to protect against arbitrary detention.⁵¹ No mention of the distinct rights of criminally charged persons contained under Article 14 was made in the submission to the Vietnamese Government.

1.4.1 Significance of the present thesis

The need for fuller protections for children falling under the scope of Article 24 is exacerbated by several social and political factors including: a new emphasis on a

⁴⁸ Ministry of Justice Vietnam, 'Ministry of Justice Activities: The Third Legal Policy Dialogue: Law on Handling of Administrative Violations' (Media Release 24 June 2011)

<http://moj.gov.vn/en/ct/Lists/Ministry%20of%20Justices%20Activities/View_Detail.aspx?ItemID=117>

⁴⁹ Ministry of Justice, 'Letter to the Government About the Project of Law on Administrative Sanctions' (Draft Letter presented at the Workshop: Completing the Law on Handling Administrative Violations in Vietnam, Tam Dao, Vietnam 26-27 September 2011) 21.

⁵⁰ United Nations Vietnam, 'United Nations Comments on the Draft Law on the Handling of Administrative Violations: draft no.4 of June 2011', (Paper presented at the Workshop: Completing the Law on Handling Administrative Violations in Vietnam, Tam Dao, Vietnam, 26-27 September 2011) 3 [8].

⁵¹ *Ibid* 3 [9].

‘civilised’ city, where the streets are ‘less and less places for living’.⁵² This policy coincides with reports of sweeping arrests of street children and their confinement in reform schools and social protection institutions.⁵³ Hayton also describes the emergence of a changing youth culture played out and celebrated on the streets and its possible clash with the authorities’ need for control.⁵⁴ This ‘moral panic’ surrounding the emergence of these new youth cultures finds support or basis in the steady increase of youth crime in Vietnam.⁵⁵ The danger to youth here lies in the Government’s need to legitimate its power by securing social order and ensuring the safety of citizens. Incarceration and the fast tracking of children and youth into institutions provides a suitable solution for government authorities in achieving this legitimacy.⁵⁶ The need for reform schools to house a target number of children in order to receive a target budget, also presents a danger to youths.⁵⁷ Thus demand for fuller procedural protections to safeguard the liberty of Vietnamese children and safeguard against abuses of power becomes evident.

The significance of determining the extent to which Article 24 of the Ordinance deals with a ‘criminal’ charge is the difference in application of the various provisions under the ICCPR. Literature regarding Article 24 indicates, albeit without explicit reference to provisions of the ICCPR, a preference towards Article 9 as a basis for critique and reform. Previous research does not explore the possibility of application of Article 14 of the ICCPR, which is associated with fuller rights for the criminally charged individual. Thus an analysis of Article 24 of the Ordinance, against the concept of a ‘criminal’ charge as developed by the HRC and to an extent, the Court, fills a significant gap in research on juvenile justice in Vietnam and provides a new avenue for arguing for fuller rights for the accused child.

⁵² Bill Hayton, *Vietnam Rising Dragon* (Yale University Press, 2010) 53.

⁵³ See Burr, *Changing World* above n 36, 134; See also Hayton above n 52, 64.

⁵⁴ Hayton above n 52, 56-62.

⁵⁵ Cox, *History and Criminology* above n 39, 3-5.

⁵⁶ *Ibid* 9

⁵⁷ Hồng Thuý, ‘Nhiều trẻ em bị đưa vào trường giáo dưỡng...oan.’ [Many children are sent to reformatories...unreasonably] Ministry of Justice website, 6 March 2008 retrieved from <http://moj.gov.vn/ct/tintuc/Lists/Nghin%20cu%20trao%20i/View_Detail.aspx?ItemID=1838>

1.5 Methodology and limitations

The present thesis requires a review of the concept of a ‘criminal’ charge in order to conduct a proper analysis of Article 24 of the Ordinance. Jurisprudence of the HRC is of relevance here. However, their development of the concept of a ‘criminal’ charge is limited and far less comprehensive than case law under Article 6 of *the European Convention for the Protection of Human Rights and Fundamental Freedoms*, ECHR concerning the right to a fair trial.⁵⁸ Jurisprudence developing the autonomous nature of a ‘criminal’ charge was adopted by the HRC only in 2004, in contrast to an abundance of jurisprudence by the Court dating as far back as 1976. Although the HRC has eagerly referred to international instruments to interpret the rights under Article 14, it has generally refrained from directly quoting the ECHR and other regional instruments.⁵⁹

Despite this, and for the purposes of this thesis, reference to jurisprudence of the Court feels justified in light of the stark similarities between Article 14 of the ICCPR and Article 6 of the ECHR, their common historical backgrounds and the underdevelopment of the concept of ‘criminal’ charge by the HRC.⁶⁰ Furthermore, the HRC has adopted a similar approach to the Court in its interpretation of Article 14.⁶¹ For example, the decision of the HRC on the definition of ‘rights and obligations in a suit at law’ under Article 14, essentially ‘echoes the jurisprudence of the ECHR’.⁶² Thus, the scope of Article 14 under the ICCPR has before now followed that of Article 6 of the ECHR. Commentary on Article 14 of the ICCPR and in particular the concept of a ‘criminal’ charge has also made immediate reference to jurisprudence of the Court.⁶³ This coincides with the desire for the HRC to make more systematic references to comparable international bodies to enable the

⁵⁸ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5 (entered into force 3 September 1953) (‘ECHR’).

⁵⁹ Alex Conte and Richard Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (Ashgate Publishing Limited, 2nd ed, 2009) 16;

⁶⁰ Nowak above n 23, 307.

⁶¹ Dominic McGoldrick, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Clarendon Press, 1991) 439.

⁶² *Ibid* 415 when referring to Human Rights Committee, *Views: Communication No. 112/1981*, 27th Sess, UN Doc. CCPR/C/27/D/112/1981 (8 April 1986) (‘*Y.L v Canada*’).

⁶³ Nowak above n 23, 318.

development of more consistent human rights standards.⁶⁴ The present thesis will not provide a discussion of all jurisprudence of the Court regarding the meaning of ‘criminal’ charge, but will limit itself to the most relevant case law.

The present thesis will also focus on the rights of the juvenile under Article 14 of the ICCPR, rather than their rights under Article 40 of the Convention on the Rights of the Child, CRC, to which Vietnam is also a party. Unlike Article 14 of the ICCPR, Article 40 of the CRC refers to children accused of or having infringed the ‘penal law’ of the State party.⁶⁵ The concept of the ‘penal law’ under the CRC is far less developed than the concept of the ‘criminal’ charge under the ICCPR and the ECHR. There is no jurisprudence on the meaning of ‘penal law’, due to the absence of an individual complaints system under the CRC which would enable the Committee on the Rights of the Child, ComRC, to develop case law. Although rights under Article 40 are discussed at length in General Comment No. 10, clarification of the words ‘penal law’ is not offered.⁶⁶ In consideration of the unrefined concept of ‘penal law’, examination of whether the concept incorporates instances where juveniles are accused or charged with ‘criminal’ offences outside the penal law of the State is not possible without requiring a much larger leap in interpretation. Thus examining the situation of Article 24 juveniles in this particular context is preferred under Article 14 of the ICCPR.

Examination of Article 24 of the Ordinance against the concept of ‘criminal’ charge will be made with reference to the Ordinance itself as well as available decrees and circulars of the various Vietnamese institutions. The Ordinance and secondary legislation reviewed in the present thesis have been translated by the Vietnamese translator employed with The Vietnam Programme of the Norwegian Centre for Human Rights. A significant limitation of this thesis is the availability of secondary legislation regarding the sending of juveniles

⁶⁴ Sarah Joseph et al, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 2nd ed, 2004) 31.

⁶⁵ *Convention on the Rights of the Child*, opened for 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (‘CRC’), ratified by Vietnam on 28 February 1990.

⁶⁶ Committee on Rights of the Child, *General Comment No. 10: Children’s Rights in Juvenile Justice*, 44th Sess, UN.Doc CRC/C/GC/10 (25 April 2007) (‘General Comment No. 10’).

to reform schools. Not all the decrees, circulars or decisions of various government authorities are available online in either Vietnamese or English. However, this has not hindered the assessment of Article 24, as the most significant legislation, including the Ordinance itself, and Decree 142/2003/ND-CP Prescribing and Guiding in Detail the Application of the Measure of Consignment to Juvenile Detention Centres, Decree 142/2003, have been made available in English.⁶⁷

When assessing the purpose, nature and severity of Article 24, this thesis will look at the practice of sending juveniles to reform schools. Although research on the practice of reform schools is limited, scholarly articles by academics who have gained access to Vietnamese reform schools as well as reports of non-government and government organisations working on the ground will be used as a factual basis for the assessment of Article 24 against the concept of a ‘criminal’ charge.

1.6 Structure of Thesis

Chapter two will provide a discussion of the concept of a ‘criminal’ charge as developed by the Court and affirmed by the HRC. Each criterion of the concept of a ‘criminal’ charge will be discussed separately.

Chapter three involves the assessment of Article 24 and the measure of sending children to reformatories against the concept of a ‘criminal’ charge. The assessment will follow the criterion developed by the Court and HRC.

The final chapter will provide a brief summary and discussion of the major findings of the thesis, including any future implications.

⁶⁷ Nghị định của Chính phủ số quy định việc áp dụng biện pháp xử lý hành chính đưa vào trường giáo dưỡng [Decree Prescribing and Guiding in Detail the Application of the Measure of Consignment to Juvenile Detention Centers] Socialist Republic of Vietnam, No. 142/2003/ND-CP.

2 The meaning of ‘criminal charge’

2.1 The autonomous character of the concept of ‘criminal charge’

A generally recognised rule of interpretation of human rights texts is the rule of autonomous interpretation. This rule was recognised in *Gordon C. Van Duzen v Canada*, where the HRC confirmed the terms and concepts within the ICCPR, must be interpreted and applied independent from specific national systems or laws, as well as dictionary definitions.⁶⁸ Following this general rule of interpretation, the HRC affirmed the autonomous character of the concept of ‘criminal charge’ in its consideration of admissibility in *Perterer v Austria*. Here, the HRC stated the concept of a ‘criminal’ charge extended to matters which ‘regardless of their qualification in domestic law, are penal in nature.’⁶⁹ *Osiyuk v Belarus* is the HRC’s most recent and detailed case on the meaning of ‘criminal’ charge. The Author, Ivan Osiyuk, was charged and convicted under the *Code on Administrative Offences* for the illegal crossing of the border. The Author was fined 700, 000 roubles and had his vehicle confiscated. Here, the HRC provided further endorsement of the autonomous nature of ‘criminal charges’ stating the concept must be understood within the meaning of the Covenant.⁷⁰

The Court, in its evaluation of the case of *Engel and others v the Netherlands*, stated the effects of the principle of autonomy as it relates to the concept of a ‘criminal’ charge. The Court found that the ECHR without a doubt allows States the freedom to designate acts or omissions as criminal offences within their national laws. This criminalisation, in principle,

⁶⁸ Human Rights Committee, *Views: Communication No. 50/1979*, 15th Sess, UN Doc. CCPR/C/15/D/50/1979 (7 April 1982) para 10.2 (*Van Duzen v Canada*).

⁶⁹ Human Rights Committee, *Views: Communication No. 1015/2001*, 81st Sess, Un Doc. CCPR/C/81/D/1015/2001 (20 July 2004) 273 [9.2] (*Perterer v Austria*).

⁷⁰ Human Rights Committee, *Views: Communication No. 1311/2004*, 96th Sess, UN Doc. CCPR/C/96/D/1311/2004 (30 July 2009), 8 [7.3] (*Osiyuk v Belarus*).

is not open to the scrutiny of the Court in this particular context. This freedom from inquiry however, is limited, working only in one direction.⁷¹ Therefore, when a State designates an act or offence as ‘administrative’ or ‘disciplinary’, the autonomous character of ‘criminal charge’ opens the door to scrutiny of the act or offence regarding its true nature. Thus, by deeming the concept of ‘criminal charge’ as independent from the domestic systems of State Parties, this allows the HRC or the Court to satisfy itself that acts classified by the State party as falling outside the scope of the criminal law system do not in fact encroach upon it.

The importance of adopting an autonomous interpretation of ‘criminal charge’ is obvious. In *Osiyuk v Belarus*, the HRC argued that allowing State parties to transfer decisions over criminal offences to administrative bodies would effectively allow State parties to avoid the guarantees of Article 14 under the ICCPR.⁷² In *Engel and others*, the Court emphasized that such discretion would undermine the application of Article 6 of the ECHR, leaving interpretation up to the sovereign will of the State party.⁷³ The adoption of an autonomous interpretation of ‘criminal’ charge minimises this danger. Both the HRC and the Court agreed that without the effect of the autonomous concept of ‘criminal charge’, discretion to this degree would lead to results which are incompatible with the objects and purpose of Article 14 and Article 6 respectively.⁷⁴ Due to the potential to circumvent the protections of Article 14 by the mere classification of an offence as non-criminal, an autonomous interpretation of the concept of ‘criminal charge’, is essential to the effective interpretation of Article 14.⁷⁵

⁷¹ *Engel and others v The Netherlands* [1976] 22 ECHR (ser A) para 81 (‘*Engel and Others*’)

⁷² *Osiyuk v Belarus* (2009) HRC , para 7.3.

⁷³ *Engel and Others* [1976] ECHR, para 81.

⁷⁴ *Osiyuk v Belarus* (2009) HRC, para 7.3; *Engel and Others* [1976] ECHR, para 81.

⁷⁵ *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) (‘VCLT’) art 31(1); See Birgit Schlütter, ‘Aspects of Human Rights Interpretation by the Un Treaty Bodies’ G Ulfstein and H Keller (eds.) *UN Treaty Bodies - Law and Legitimacy* (Cambridge: Cambridge University Press, 2012 - Forthcoming) 20 regarding HRC adoption of the principle of effectiveness.

2.2 Introduction of the criteria

As a result of the autonomous character of a ‘criminal’ charge, the HRC and the Court have developed criteria to facilitate an overall evaluation of the offence in question. The criteria, introduced in *Engel and others*, can be divided into three parts; identification of the classification of the offence under the domestic law of the State; followed by examination of the scope of the norm and nature of the offence, including the purpose of the penalty; and/or determination of the nature and severity of the penalty.

The criteria set by the HRC follows the same direction. In its General Comment No. 32 on Article 14, the HRC deems the ‘purpose, character and severity’ as relevant factors to be considered when determining the penal nature of the sanction.⁷⁶ Although the HRC did not address all the aspects of the criteria in General Comment No. 32 and use slightly different terminology, the classification of the offence, its scope and purpose of the penalty are all dealt with in *Osiyuk v Belarus*. The failure to consider the third criterion in *Osiyuk v Belarus*, the nature and severity of the penalty, may be due to jurisprudence stating the second and third criteria are alternative and not cumulative. Thus, if the second criterion is satisfied, there is no need to assess the third criterion. It should be noted, however, that a cumulative approach may be adopted where the separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a ‘criminal charge’.⁷⁷ The HRC has developed a similar approach to the Court in the determination of a ‘criminal’ charge under Article 14 of the ICCPR, further justifying use of ECHR jurisprudence in the assessment of Article 24 of the Ordinance.

In line with HRC and the Court’s jurisprudence, our analysis of the ‘criminal’ charge criterion will be divided into: the classification of the offence, the scope of the norm and nature of the offence, and the nature and severity of the penalty.

⁷⁶ *General Comment No. 32*, para 15.

⁷⁷ *Lauko v Slovakia* (1998) VI ECHR para 58 (*‘Lauko v Slovakia’*).

2.3 Classification under the domestic law

The first criterion to be applied to the question of whether a ‘criminal charge’ is being dealt with by the HRC is its classification under the domestic law of the State.⁷⁸ Here, the HRC must ask, under what type or body of law is the offence created and defined? The first criterion is a relatively straightforward one. If the offence is designated under the domestic criminal law of the State party, Article 14 will apply and no analysis of its criminality is necessary. On the other hand, if the offence is contained under ‘administrative’, ‘disciplinary’ or other non-criminal bodies of law, further examination of the offence is required to ascertain whether Article 14 is applicable. Thus, the classification of the offence under the domestic law is no more than a starting point. In accordance with *Engel and others*, this exercise has only a formal value and must be considered in relation to the other criteria.⁷⁹ In all likelihood, the first criterion seems to carry the least amount of weight when a non-criminal classification is discovered. In fact, the Court has emphasised the classification of the offence under the domestic law of the State party is not decisive for the purposes of the Convention.⁸⁰

2.4 Scope of the norm and nature of the offence

2.4.1 Scope of the norm

Analysis of the scope of the norm requires examination of the persons or audience the offence attempts to encompass. The Court and the HRC have recognised a distinction between the scope of a norm associated with criminal offences, and the scope of a norm under truly disciplinary, administrative or regulatory laws. According to the Court and the HRC the criminal law is, in general, aimed at the population as a whole. For example, in assessing the scope of the norm in *Öztürk v Germany*, the Court found the regulatory offence applied to ‘all citizens in their capacity as road-users’.⁸¹ Similarly, the HRC in

⁷⁸ *Engel and Others* [1976] ECHR, para 82.

⁷⁹ *Ibid* para 82.

⁸⁰ *Öztürk v Germany* (1984) 73 ECHR (Ser A), para 49.

⁸¹ *Ibid* para 53.

Osiyuk v Belarus found the administrative sanction applied to ‘everyone in his or her capacity as individuals crossing the national frontier of Belarus’.⁸² Thus, an offence that applies to the general population as a whole is found to possess a scope consistent with the scope of criminal law offences.

On the other hand, the scope of an offence that is truly disciplinary, administrative or regulatory is aimed at a particular group of people. Both the HRC and the Court has described this group as a group ‘possessing a special status’.⁸³ This a qualification enables the scope of a disciplinary or administrative law norm to be distinguished from the scope of a criminal law norm. The question then is; what gives a group this ‘special status’? Do groups such as adults, or guardians, spouses or civil servants qualify as a group possessing a ‘special status’? Van Dijk et al argues the defining characteristic is not the number of members, but their quality as members of a particular group, in combination with the interests of that group the offence attempts protect.⁸⁴

The need for internal regulation is a distinguishing characteristic of a group of ‘special status’. Members of particular professions provide an example of groups requiring internal regulation for the functioning of the group and/or the system under which they operate. For example, military servicemen are liable under disciplinary law ‘governing the operation of the armed forces’ as separate from the criminal law.⁸⁵ Judges and lawyers are also liable under disciplinary law as a result of their close association with the functioning of the court.⁸⁶ Members of Parliament and civil servants are also distinguished by a requirement to submit to internal rules of regulation.⁸⁷ The need for internal regulation of prisons and

⁸² *Osiyuk v Belarus* (2009) HRC, para 7.4.

⁸³ *Ibid*; See also *Lauko v Slovakia* (1998) ECHR, para 54.

⁸⁴ Pieter Van Dijk et al (eds) *Theory and Practice of the European Convention on Human Rights* (Intersentia Publishers, 4th ed, 2006) 544.

⁸⁵ *Engel and Others* [1976] ECHR, para 82.

⁸⁶ *Case of Weber v Switzerland* (1990) 177 ECHR (Ser A) para 33 (*‘Weber v Switzerland’*).

⁸⁷ *Case of Demicoli v Malta* (1991) 210 ECHR (Ser A) para 33 (*‘Demicoli’*); Human Rights Committee *Views: Communication No. 1001/2001*, 76th Sess, UN Doc CCPR/C/76/D/1001/2001 (1 November 2002) para 7.3 (*‘Strik v The Netherlands’*).

the desire to have tailor made sanctions elevates prisoners to a group special status.⁸⁸

Electoral candidates are a group of special status due to the need to ensure compliance with electoral rules.⁸⁹ Reference to quality as a member by Van Dijk et al, requires an assessment of the individuals membership in the group of special status.

A disciplinary or administrative norm, which is in fact directed to the general population, will begin to take on a ‘criminal’ character. On the other hand a norm which is aimed at a member of a group possessing a special status will continue to appear as disciplinary or administrative. The group of ‘special status’, to which the individual must belong, is characterized by a need for internal regulation which aims to protect the general interests of the group, by regulating the functioning of each of its members. The general character of the scope of the norm does not suffice on its own to bring the sanction into the criminal sphere. The second criterion for determining whether a sanction is a ‘criminal charge’ is cumulative.⁹⁰ Therefore it is necessary for us to examine the nature of the offence in order determine whether the sanction is ‘criminal’.

2.4.2 Nature of the offence

The nature of the offence involves assessment of two aspects which are heavily related – the character of the offence itself and the purpose of its corresponding penalty. I will begin with a discussion of the purpose of the penalty.

The HRC and the Court have identified two purposes, which are capable of pushing a sanction into the criminal sphere. Punishment was found by the Court to be a ‘customary distinguishing feature of criminal penalties.’⁹¹ The deterrence of the offender through the punishment was also found to be a distinguishing characteristic of the criminal law.⁹² Similarly, punishment and deterrence were viewed by the HRC as purposes which are

⁸⁸ *Case of Campbell and Fell v The United Kingdom* (1984) 80 ECHR (Ser A) para 72 (*‘Campbell and Fell’*).

⁸⁹ *Case of Pierre-Bloch v France* (1997) VI Eur Court HR 2223 [56], [58] (*‘Pierre-Bloch’*).

⁹⁰ *Osiyuk v Belarus* (2009) HRC, para 7.4; See also *Öztürk v Germany* (1984) ECHR, para 53.

⁹¹ *Öztürk v Germany* (1984) ECHR, para 53.

⁹² *Lauko v Slovakia* (1998) ECHR, para 58.

‘analogous to the criminal law.’⁹³ Thus, the purposes of punishment and deterrence are purposes which both the Court and the HRC deemed to be distinguishing features of criminal law penalties.

In finding that punishment and deterrence are purposes analogous to the criminal law, the Court and the HRC reasoned that administrative or regulatory sanctions that possess this purpose are in fact criminal. For example, in *Öztürk v Germany*, despite the reclassification of the traffic offence into an Ordnungswidrigkeit or ‘regulatory offence’, the purpose of fining offenders who breached the traffic regulations continued to be both punitive and deterrent and thus within the ‘criminal’ sphere.⁹⁴ In *Lauko v Slovakia*, the Court found the fine imposed on the author was intended to punish the defendant and ensure he did not reoffend and was therefore a ‘criminal’ charge.⁹⁵ Likewise, when assessing the purpose of the administrative sanctions in *Osiyuk v Belarus*, the Committee found the offence had the aim of repressing particular behaviour, serving as a deterrent for others and punishing the author. As these objectives were ‘analogous to the general goal of the criminal law’, the administrative offence was in fact ‘criminal’.⁹⁶ A sanction which pursues distinctive criminal law goals and which is directed towards all citizens and not towards a group possessing a special status, will be deemed a ‘criminal charge’, attracting the application of Article 14.

Reparation and compensation are not distinguishing goals of the criminal law and thus incapable of pushing a sanction into the ‘criminal’ sphere. In regards to sanctions, created with a partly compensatory purpose and a partly punitive purpose, it is the latter purpose which will push the sanction into the criminal sphere.⁹⁷ The purpose of ‘ensuring compliance with the regulations which govern the particular group’ is also inconsistent

⁹³ *Osiyuk v Belarus* (2009) HRC, para 7.4.

⁹⁴ *Öztürk v Germany* (1984) ECHR, para 53.

⁹⁵ *Lauko v Slovakia* (1998) ECHR, para 58.

⁹⁶ *Osiyuk v Belarus* (2009) HRC, para 7.4.

⁹⁷ Van Dijk et al above n 84, 546.

with the criminal law.⁹⁸ This purpose is heavily linked with a scope of norm limited to a group holding a special status, recalling the need of the group to protect their interests through internal regulation. The non-criminal purpose of compelling adherence to internal regulations is not always convincing or easily distinguishable from the criminal aims of punishment/deterrence as both attempt to ensure future violations of internal regulations and the law, respectively.⁹⁹ When a disciplinary offence possesses a criminal character due to its parallels with criminal law offences, this distinction between the two purposes is further blurred, as the purpose of ‘compelling adherence to internal regulation’ in fact seeks to ensure future adherence to the law rather than mere internal regulations. How then has the Court dealt with this overlap?

The corresponding penalty to an offence that possesses qualities of or a likeness to criminal law offences is deemed to be of punitive purpose. The Court has demonstrated an offence of criminal character will attract a punitive penalty, regardless of the stated purpose of the Government in question. In *Öztürk v Germany* decriminalisation did not change the content or the general criminal character of the offence, only the procedure and range of penalties available. The purpose of the penalty was found to be punitive.¹⁰⁰ The fact that the disciplinary offence could amount to an offence under the criminal law was used to refute the penalty’s ‘maintenance of prison order’ purpose.¹⁰¹ It is interesting to note that in *Ezeh and Connor* the satisfaction of the elements of the offence required a finding of culpability or guilt, attesting to its punitive purpose.¹⁰² Administrative offences in *Sergey Zolotukhin v Russia* served to ‘guarantee the protection of human dignity and public order, values and interests which normally fall within the sphere of protection of criminal law’. In light of its criminal nature, the purpose of the penalty was found to be punitive.¹⁰³ Therefore, an

⁹⁸ *Pierre-Bloch* (1997) ECHR, paras 56, 58; See also *Case of Ravensborg v Sweden* (1994) 283-B ECHR (Ser A) para 34.

⁹⁹ Van Dijk et al above n 84, 544.

¹⁰⁰ *Öztürk v Germany* (1984) ECHR, para 53.

¹⁰¹ *Campbell and Fell* (1984) ECHR, para 71.

¹⁰² *Case of Ezech and Connors v The United Kingdom* (2003) X ECHR para 105 (*Ezech and Connors*).

¹⁰³ *Case of Sergey Zolotukhin v Russia* (2009) ECHR para 55

<<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Sergey%20%7C%20Russia&sessionid=81724329&skin=hudoc-en>> (*Sergey Zolotukhin*).

offence adopts a ‘criminal’ character when exhibiting parallels with criminal law offences. It follows; a criminal law offence attracts a criminal law penalty. Seeing as punishment and deterrence are distinguishing features of criminal law penalties, a strong link is created between sanctions exhibiting parallels with the criminal law and a punitive and deterrent penalty, as evidenced by the above case law.

In reverse, the penalty corresponding to a disciplinary or regulatory offence absent of criminal character will retain its stated purpose. For example, in *Bell v The United Kingdom* as the offence of using insubordinate language to a superior officer had ‘no civil criminal equivalent’, the aim of the penalty was to ‘maintain discipline within the armed forces’.¹⁰⁴ Likewise in *Young v The United Kingdom*, the offence of failure to obey a lawful order ‘could only be prosecuted by prison services’ having ‘no civilian criminal equivalent’ and the penalty was thus aimed at maintaining discipline within the prison.¹⁰⁵ In *Pierre-Bloch* exceeding the election expenditure limit did not ‘belong to the criminal law’ and a breach of the rule could not be described as ‘criminal’ in nature.¹⁰⁶ Thus where the offence shows no parallels with the ‘criminal’ law, both the nature of the offence and the associated penalty will be deemed truly disciplinary or regulatory.

2.5 Nature and severity of the penalty

Assessment of the nature and severity of the penalty is the third criterion when evaluating whether a sanction is a ‘criminal charge’ under Article 14 of the ICCPR.¹⁰⁷ It should be remembered the three criteria are alternative and not cumulative. Therefore, assessment of the third criterion is capable of pushing the sanction into the criminal sphere, if evaluation of the second criterion does not do so. A cumulative approach can, however, be adopted

¹⁰⁴ *Case of Bell v The United Kingdom* (2007) ECHR para 38 <
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Bell%20%7C%20the%20%7C%20United%20%7C%20Kingdom&sessionid=81724329&skin=hudoc-en>> (*Bell v The UK*)

¹⁰⁵ *Case of Young v The United Kingdom* (2007) ECHR para 35 <
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=9&portal=hbkm&action=html&highlight=Young%20%7C%20the%20%7C%20United%20%7C%20Kingdom&sessionid=81948936&skin=hudoc-en>> (*Young v The UK*)

¹⁰⁶ *Pierre-Bloch* (1997) ECHR, para 54.

¹⁰⁷ *Engel and others* [1976] ECHR, para 82.

when the assessment of each criterion does not lead to a clear conclusion on whether a ‘criminal charge’ exists.¹⁰⁸ A combination of the assessment of the nature of the offence, followed by assessment of the nature and severity of the penalty can be seen in *Campbell v Fell* and *Ezeh and Connor v UK*, which lead to the finding of a criminal charge.¹⁰⁹

It is important not to confuse the nature of the penalty with the purpose of the penalty, examined under the second criterion. The nature of the penalty refers to the type or form of the penalty, for example imprisonment, fine, disqualification of a licence and so on. On the other hand, the purpose of the penalty refers to the aim of the penalty; punishment, deterrence, compensation or compelled adherence to certain group regulations. The severity of the penalty requires an evaluation of its harshness or intensity. When assessing this criterion, it is not the penalty that was imposed which is of relevance, but the maximum penalty, that is, what the offender stands to lose if found guilty of the offence.¹¹⁰

2.5.1 The ‘appreciably detrimental’ test

The ‘appreciably detrimental’ test was introduced in *Engel and others* which found that deprivations of liberty liable to be imposed as punishment belong to the ‘criminal’ sphere, except those which by their ‘nature, duration or manner of execution cannot be appreciably detrimental.’¹¹¹ In fact the Court in *Ezeh and Connors* found that in instances of deprivation of liberty, a presumption lies in favour of a ‘criminal’ charge. This presumption can be ‘rebutted entirely exceptionally’ where the nature, duration and manner of execution is *not* ‘appreciably detrimental’.¹¹² Therefore if the deprivation is proven to be ‘sufficiently unimportant or inconsequential’ it will displace the presumption in favour of a ‘criminal’ charge.¹¹³ Although the ‘appreciably detrimental’ test was formed in the context of disciplinary proceedings, it has developed into a test applied to all instances of deprivation

¹⁰⁸ *Lauko v Slovakia* (1998) ECHR, para 58.

¹⁰⁹ *Campbell and Fell* (1984) ECHR paras 71-73; *Ezeh and Connors* (2003) ECHR, para 130.

¹¹⁰ *Weber v Switzerland* (1990) ECHR, para 34.

¹¹¹ *Engel and Others* [1976] ECHR, para 82.

¹¹² *Ezeh and Connors* (2003) ECHR, para 126.

¹¹³ *Ibid* 129.

of liberty as a part of the third criterion. The test allows us to look deeper into the deprivation of liberty itself, identifying its qualities, the conditions under which subjects live, the manner by which the detention is applied and of course the severity of the detention in terms of duration.¹¹⁴ The Court in *Ezeh and Connors v UK* referred to this task as ‘concentrating on the realities of the situation’.¹¹⁵

In instances where the scope of the norm is limited, the ‘appreciably detrimental’ test is utilised as part of a cumulative approach to show the punitive penalty imposed is significant or severe enough to warrant the finding of a ‘criminal’ charge. For example in *Engel and others* a punitive penalty of two days strict arrest imposed on Engel sufficed to rebut the presumption *in favour* of a ‘criminal’ penalty, due to its short duration. This finding demonstrates a disciplinary system can penalise its members by imposing detention, so long as the detention liable is not ‘appreciably detrimental’. In contrast, deprivation in the form of committal to a disciplinary unit for three to four months was found ‘appreciably detrimental’ and thus ‘criminal’.¹¹⁶ Note here the Court found committal to a disciplinary unit was by its character and duration the most severe of penalties under disciplinary law and individuals committed under disciplinary proceedings were not separated from those committed under criminal proceedings.¹¹⁷ Likewise in *Ezeh and Connor*, an additional seven days deprivation imposed on a prisoner was found ‘appreciably detrimental’ and ‘criminal’.¹¹⁸ In relation to the nature of the penalty, the Court noted the detention was served in the prison and under the prison regime.¹¹⁹

More remarkably the test of ‘appreciably detrimental’ is capable of pushing a sanction found to possess a purpose other than punishment or deterrence into the criminal sphere due to its nature, duration and severity. Here the ‘appreciably detrimental’ test is applied alternate to the second criterion and expressed without any reference to the purpose of the

¹¹⁴ See *Engel and Others* [1976] ECHR, para 64 as a case in point.

¹¹⁵ *Ezeh and Connors* (2003) ECHR, para 123.

¹¹⁶ *Engel and Others* [1976] ECHR, para 85.

¹¹⁷ *Ibid* 64.

¹¹⁸ *Ezeh and Connors* (2003) ECHR, para 126.

¹¹⁹ *Ibid* 128.

penalty, whether punitive or not. For example, in *Bell v The UK*, the offence in question was limited to members of the armed forces and aimed at the maintenance of discipline within the armed forces.¹²⁰ The Court proceeded to the third criterion and in applying the ‘appreciably detrimental’ test found the deprivation of liberty of 28 days was appreciably detrimental and not capable of displacing the presumption in favour of a ‘criminal’ charge.¹²¹ Similarly in *Young v The UK* the Court applied the ‘appreciably detrimental’ test despite the aim of the deprivation being to maintain discipline within the prison.¹²² A liability of 42 days detention was considered ‘appreciably detrimental’.¹²³ In both instances it was the nature, duration and manner of execution alone which brought the penalty into the criminal sphere. Therefore there exist deprivations of liberty imposed on individuals for purposes other than punishment or deterrence, which are capable of being appreciably detrimental and attracting the label of a ‘criminal’ charge.

¹²⁰ *Bell v The UK* (2007) ECHR para 38.

¹²¹ *Ibid* para 42.

¹²² *Young v The UK* (2007) ECHR para 35.

¹²³ *Ibid* para 38.

3 The extent to which Article 24 deals with ‘criminal’ charges

3.1 Introduction

The procedure for sending juveniles to reformatories can be summarised as follows: the President of the commune-level People’s Committee is obliged to compile a dossier for the recommendation of the juvenile to be sent to a reformatory. The dossier must contain the curriculum vitae of the child, documents relating to the violation, any records of handling measures previously applied and remarks from the police, reformatories and mass organisations. Importantly, the police play an active role in the collection and compilation of the dossier.¹²⁴ The dossier is considered by the Advisory Council, which is set up at the district-level and comprises of the district police chief, head of the Legal Section, and the head of the Population, Family and Children Board. Within seven days of receiving the dossier, the Advisory Council must relay a report containing the opinions and conclusions of the Advisory Council to the district-level President of the People’s Committee, who has five days to make the final decision regarding the sending of the child to the reformatory.¹²⁵

The procedural safeguards available to children handled under Article 24 of the Ordinance are minimal. Some general protections require competent persons to handle violations strictly in accordance with law provisions.¹²⁶ Violators of administrative law are protected against abuse of power/or position, harassment, cover up and sever or unjust handling of administrative violations.¹²⁷ In regards to the rights explicitly available to the child under Article 24, the Ordinance is absent of any explicit guarantee for participation of the child or

¹²⁴ *Ordinance* art 75.

¹²⁵ *Ibid* arts 76-83.

¹²⁶ *Ibid* art 3(4).

¹²⁷ *Ibid* art 4(1).

their representative through the investigatory or decision making process. Juveniles are informed of their right to complain and initiate lawsuits against the decision made, however there is no indication to what extent this right is explained to the juvenile.¹²⁸ Most significant is the absence of any right to habeas corpus under the current Ordinance.

Proposal 1 of the Draft Law explicitly grants the right to juveniles, their parents and legal representatives to participate during recommendation of the juvenile to detention, allowing them to ‘express their opinion’.¹²⁹ Note however if the juvenile and their representatives are absent for ‘reasonable reasons’ the deliberation can still take place.¹³⁰ The final decision maker is not present during deliberation but receives only the minutes from deliberation and the case file to base his/her final decision upon.¹³¹ Unlike the First Proposal of the Draft Law, the Second Proposal rests the final decision to send the juvenile to a reform school with the People’s Court on district level.¹³² An outline of rights and protections available to the juvenile in relation to these Court proceedings is, however, lacking.

3.2 Classification under the domestic law

The first criterion to be applied in the determination of a ‘criminal charge’ is the classification of the offence under the domestic law of the State. As a starting point, the measure of sending juveniles to reformatories is contained under Article 24 of the Ordinance, which forms part of the administrative law system in Vietnam. In dealing with juveniles who have come into conflict with the law, the administrative law system and the provisions of the Ordinance are considered distinct from and alternative to the criminal law system.¹³³ The Vietnamese Government refers to the handling of children in conflict with

¹²⁸ Ibid arts 78.

¹²⁹ *Draft Law* art 107(3)-(4).

¹³⁰ Ibid art 107(3).

¹³¹ Ibid art 107(5)-(6).

¹³² Ibid art 110.

¹³³ Christian S Volkmann, ‘30 Years after the war: children, families, and rights in Vietnam’ (2005) 19 *International Journal of Law, Policy and the Family* 23-46, 32.

the law by ‘either’ the criminal law system or the administrative law system.¹³⁴ With a classification distinct from the criminal law system, it is necessary to consider the second criterion in the concept of a ‘criminal’ charge.

3.3 Scope of the norm and nature of the offence

3.3.1 Scope of the norm

The very nature of the offence is of far greater weight than its classification under the law of Vietnam. The first step in assessing the nature of the offence involves the evaluation of the scope of the norm.¹³⁵ An offence directed towards the general population as a whole lends support to its ‘criminal’ nature, whilst an offence directed towards ‘group possessing a special status’ may fall under administrative or disciplinary law and thus outside the scope of Article 14 of the ICCPR.¹³⁶ In accordance with the current Ordinance, the scope of the norm, in Article 24(2) (a) is children aged between 12 and 14. In Article 24 (2) (b), the scope is children between the age of 12 and 16. Article 24 (2) (c) applies to children between the age of 14 and 18. In regards to the latter two, the children must have already been subject to education at the communes, wards or district towns, or who have not yet been subject to this measure, but have no place of residence. The Draft Law raises the age of application in paragraphs (2) (a) and (b) to 14 years of age. In light of these provisions, we can conclude only minors aged between 14 and 18 years old fall under the scope of the norm.

Do minors qualify as a group holding a special status? Van Dijk et al, states the distinguishing feature of this criterion is not the number of addressees the offence encompasses, but their quality as members of a particular group, in combination with the

¹³⁴ Socialist Republic of Vietnam, *The Third and Fourth Country Report on Vietnam’s Implementation of the United Nations Convention on the Rights of the Child in the 2002-2007 Period, Advanced unedited version: Vietnam*, 25 March 2011, UN Doc CRC/C/VNM/3-4, para 247 (‘CRC Vietnamese Country Report’).

¹³⁵ *Engel and Others* [1976] ECHR, para 82.

¹³⁶ *Osiyuk v Belarus* (2009) HRC, para7.4.

interests of that group the offence attempts to protect.¹³⁷ Although the Article 24 of the Ordinance is aimed only at persons aged between 14 and 18, their quality as members of a group possessing a special status in accordance with jurisprudence concerning the meaning of a ‘criminal’ charge is doubtful. Minors do not form a specific group entrusted with particular functions and displaying the need for a distinct disciplinary system of rules and corresponding sanctions. Nor are minors a part of a distinct group of society with a special need for upholding discipline, like in the case of soldiers and prisoners. A minor is merely a human being at a certain age. The offences highlighted under Article 24 of the Ordinance are not aimed at protecting any special interests of individuals aged between 14 to 18, but are aimed at protecting the interests of society as a whole. It is true that minors are often equated with special status, or referred to by their status as minors. However, this status is associated more with the need to protect minors as a group, rather than an internal need for regulation of the group in the sense required by the concept of ‘criminal’ charge. As members of a group, minors lack the quality required to distinguish them from the general population in the context of determination of a ‘criminal charge’.

Consideration of Vietnamese minors as a ‘group possessing a special status’ within this particular context, where minors are dealt with under the administrative law, would be a step towards their effective removal from the full protection of Article 14 of the ICCPR. The HRC has made it clear that juveniles ‘are to enjoy at least the same guarantees and protection’ as adults under Article 14 of the Covenant, if not more.¹³⁸ The possibility that minors handled under an administrative system could be excluded from the full protection of Article 14 due to their character as a ‘group possessing a special status’, would be counter to an effective interpretation of Article 14 in accordance with its object and purpose.

In light of the cumulative nature of the second criterion, an assessment of the very nature of the offence is now required.

¹³⁷ Pieter Van Dijk et al (eds) *Theory and Practice of the European Convention on Human Rights* (Intersentia Publishers, 4th ed, 2006), 16.

¹³⁸ *General Comment No.32* para 42.

3.3.2 Nature of the offence

3.3.2.1 The offence

The offences created by Article 24 are criminal in nature. Article 24 can be divided into the measure or sanction - confinement in a reform school and the offences to which the measure is applied to, in paragraphs 2, sub paragraphs (a), (b), (c). Article 24 does not explicitly identify each and every offence under its scope but refers to a category of offences. Individuals who commit acts with ‘signs of very serious crimes or particularly serious crimes’ in Article 24(2)(a) and ‘signs of less serious crimes or serious crimes’ in Article 24(2)(b) as ‘prescribed by the Penal Code’ are liable to confinement in reform schools. Acts of petty theft, petty swindle, petty gambling and public disorder are also offences encompassed by Article 24.¹³⁹

The basis for imposition of the measure under Article 24 is the committal of a minor criminal offence. Article 24 directly refers to offences which have their content in the Penal Code. The acts must show ‘signs of’ or ‘elements of’ offences under the Penal Code, coinciding with the general practice that administrative measures are applied to minor offences. Although the administrative offences are less serious than those contained in the criminal law, the degree of seriousness of the offence is irrelevant as Article 14 does not distinguish between less serious and serious crimes.¹⁴⁰ The minor nature of the offence does not detract from its basis in the Penal Code. The character of Article 24 can be compared with the case of *Sergey Zolotukhin* where the Court found in Russia and similar legal systems ‘administrative’ offences embrace offences that have a ‘criminal connotation but are too trivial to be governed by criminal law and procedure’.¹⁴¹ The criminal character of the offence is further evidenced by the significant role of the Police in the detection of the offence, arrest and detention of the child, collection of evidence, compilation of the

¹³⁹ Ordinance art 24(2)(c).

¹⁴⁰ See *Öztürk v Germany* (1984) ECHR, para 53.

¹⁴¹ *Sergey Zolotukhin v Russia* (2009) ECHR para 54.

dossiers and execution of the decision to send the child reformatories;¹⁴² Evidence and files regarding the offence are evaluated by the Advisory Council and President of the People's Committee prior to a decision, implying a finding of culpability is required.¹⁴³ Accordingly, the Draft Law grants the right of individuals to 'prove he/she is not at fault'.¹⁴⁴ The Ordinance allows consideration of mitigating and extenuating circumstances.¹⁴⁵ The above factors are indicative of the criminal nature of the administrative offences under Article 24.¹⁴⁶ Like in *Sergey Zolotukhin* the offences under Article 24 are aimed at securing public order an aim commonly falling within the sphere of the criminal law.¹⁴⁷ Offences under Article 24 find their content and basis in the Penal Code of Vietnam showing more than mere parallels with criminal law offences, giving the offences a distinct criminal character. With the criminal nature of the offence in mind, the purpose of the corresponding penalty can be evaluated.

3.3.2.2 The purpose of the measure

The purpose of the penalty must be one that is analogous to the criminal law for Article 24 to fall within the meaning of a 'criminal' charge.¹⁴⁸ Punishment and deterrence are two goals identified as being consistent with the goals of criminal law penalties. So what then is the purpose of the penalty in Article 24 of the Ordinance?

In accordance with the Ordinance, the purpose of sending children to reform schools is for the supervision of their 'general education, vocational education, job training, labour and activities'.¹⁴⁹ The Draft Law proposes a similar aim.¹⁵⁰ These activities constitute a method

¹⁴² *Ordinance* arts 45, 75-79.

¹⁴³ *Ibid* arts 76-77.

¹⁴⁴ *Draft Law* art 3(d).

¹⁴⁵ *Ibid* art 8.

¹⁴⁶ See *Ezeh and Connor* (2003) ECHR para 105; See also *Case of Ziliberberg v Moldova* (2005) ECHR para 34 <<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Ziliberberg&sessionid=82070267&skin=hudoc-en>> ('*Ziliberberg v Moldova*').

¹⁴⁷ *Sergey Zolotukhin v Russia* (2009) ECHR para 55.

¹⁴⁸ *Osiyuk v Belarus* (2009) HRC para 7.3.

¹⁴⁹ *Ordinance* art 24(1).

¹⁵⁰ *Draft Law* art 104(1).

to achieve rehabilitation, coinciding with the overall aim of developing the child into a ‘useful citizen’.¹⁵¹ The Constitution of Vietnam can be of assistance in discovering the qualities of a ‘useful’ or ‘good’ citizen. Citizens have both a right and obligation to work and participate in education.¹⁵² More significantly citizens are duty bound to protect and respect the law, the Constitution, the rules of public life, and safeguard national security, social order and safety.¹⁵³ Although not an exhaustive list of obligations of a citizen, the rehabilitation or development of the child into a ‘useful’ citizen implies future fulfilment of one’s obligations to work, educate and more notably to abide by the law.

The stated purpose for sending children to reform schools must be understood in its historical context. Since the 1950s the governments of Vietnam have believed they could rehabilitate or reform Vietnamese citizens into ‘better’ or ‘useful’ citizens through the practice of re-education.¹⁵⁴ In 1961, the Democratic Republic of Vietnam, DRV in the North, sanctioned the use of re-education camps as an administrative measure to be imposed on ‘counterrevolutionary elements’ and ‘professional scoundrels’.¹⁵⁵ After its victory over the Republic of South Vietnam in 1975, the DRV applied re-education in the South, requiring individuals with ties to the regime to cleanse themselves of their wrongdoing and reshape themselves into ‘genuine’ Vietnamese citizens. The measure was regarded as a form of clemency, a method to achieve rehabilitation and for ensuring the stability of the new socialist state.¹⁵⁶ Rehabilitation was to be achieved through forced labour and political education.¹⁵⁷ The DRV did not consider re-education in camps as a penal punishment or the inmate as a criminal offender.¹⁵⁸ However, when discussing re-education camps in 1978 Prime Minister Pham Van Dong stated high powered Southern

¹⁵¹ *CRC Vietnamese Country Report* para 247.

¹⁵² *The Constitution* arts 55,58.

¹⁵³ *Ibid* arts 78, 79.

¹⁵⁴ Bill Hayton, *Vietnam Rising Dragon* (Yale University Press, 2010) 62.

¹⁵⁵ Viet V.Le, ‘Vietnamese Re-education camps: Do They Violate Both Traditional and Modern Vietnamese Criminal Law?’ (1994) 11 *Arizona Journal of International and Comparative Law*, 145, 168.

¹⁵⁶ Stephen B Young, ‘The Legality of Vietnamese Re-education Camps’ (1979) 20(2) *Harvard International Law Journal*, 519, 520-521.

¹⁵⁷ *Ibid* 525.

¹⁵⁸ *Le* above n 155, 168.

officials had committed ‘grave crimes’, demonstrating past application of rehabilitative re-education to offences perceived as crimes.¹⁵⁹

Following the reasoning of relevant jurisprudence, the stated purpose of rehabilitation cannot be accepted in light of the criminal character of the administrative offences under Article 24. An offence of criminal character is highly associated with a criminal law penalty, which is distinguished by its punitive and deterrent purpose. In *Campbell and Fell*, the criminal character of the offence was used to refute the purpose of ‘maintaining order within the prison environment’.¹⁶⁰ Likewise the criminal character of Article 24 offences as discussed above is capable of refuting the stated purpose of rehabilitation. Consistent with *Sergey Zolotukhin* the administrative offences under Article 24 must attract a punitive and deterrent penalty capable of securing future law abidance and ultimately protecting social order.¹⁶¹ Following the reasoning of the Court and the HRC and their recognition of the link between criminal offences and punitive and deterrent penalties, Article 24’s basis in the Penal Code of Vietnam and its distinct criminal character causes the corresponding penalty to attract a punitive and deterrent purpose, displacing the stated purpose of rehabilitation.

¹⁶²

Rehabilitation as the stated purpose of Article 24 penalty is further undermined by its overlap with punitive and deterrent penalties, in what it attempts to achieve. Rehabilitation of the child into a useful citizen, that is, a law abiding citizen, is not easily distinguishable from the criminal aims of punishment and deterrence, designed also to secure future law abidance and the reintegration of the individual into society. In this instance, where the

¹⁵⁹ Young above n 156, 523.

¹⁶⁰ See *Campbell and Fell* (1984) ECHR, para 71.

¹⁶¹ *Sergey Zolotukhin v Russia* (2009) ECHR, para 55.

¹⁶² It is interesting to note the case of *A v The Public Prosecution (A mot Den offentlige påtalemyndighet)* Norwegian Supreme Court HR-2003-735-a - Rt-2003-1827. Although not having any formal authority in relation to this case, the Norwegian Supreme Court was required to determine whether the institutionalisation of children who showed signs of behavioural problems through serious or repeated criminality was a ‘criminal’ offence in accordance with the *Engel* criteria. The Court found institutionalisation of children for this reason was ‘punishment’ as the decision to institutionalise is based on the child committing a crime/s, para 69.

decision to send a child to a reform school for their rehabilitation, is based on contravention of offences in the Penal Code the distinction is further blurred. To be convincing as a distinct method of securing future law abidance separate from punishment and deterrence depends largely on the nature of the rehabilitation and its manner of execution. This is to be explored later in this Chapter.

The HRC and the Court reasoned a non-criminal sanction designed for a purpose analogous to the criminal law, is ‘criminal’ in nature. This begs the question as to the purpose of Vietnamese criminal law penalties. The goal of the Penal Code as it specifically deals with juveniles aims ‘mainly to educate and help them redress their wrongs, develop healthily and become citizens useful to society.’¹⁶³ Immediately we see the Vietnamese criminal justice system adopting as its main goal the rehabilitation and reintegration of the child into society. The sending of juveniles to reformatories is available under the Penal Code as a ‘judicial measure’ imposed where it is unnecessary to penalise the offender.¹⁶⁴ Judicial measures are of ‘educative and preventative character’.¹⁶⁵ Note Chapter 10 of the Penal Code, dealing with juveniles also contains section allowing for the imposition of ‘penalties’, which includes warnings, fines, non-custodial reform and imprisonment. The distinction of these sanctions as ‘penalties’ may indicate they serve an alternative purpose, such as punishment or deterrence. Nevertheless, a central purpose of the Penal Code is to educate and aid juveniles to become useful citizens.

This trend towards a more restorative or welfarist approach to juveniles has been observed by scholars following the Vietnamese juvenile justice system - where the view of crime is shifting to its perception as a product of ‘personal disadvantage, deprivation or shortcomings of some kind’, resulting in measures, which focus more on the needs of the

¹⁶³ Bộ luật Hình sự Việt Nam sửa đổi, bổ sung 2009 [Vietnam Penal Code with Amendments and Supplements 2009] No.15/1999/QH10, Socialist Republic of Vietnam, art 69(1) (*‘Penal Code’*).

¹⁶⁴ Ibid art 69(4).

¹⁶⁵ Ibid art 70(1).

offender and their victim.’¹⁶⁶ Rehabilitation and the development of the child into a useful citizen is a purpose analogous to the Vietnamese criminal law system. As the Vietnamese criminal law and the administrative system share the same goal in their treatment of juveniles, the absence of a punitive or deterrent aim of Article 24 does not preclude the offence from being considered a ‘criminal’ charge.

Exclusion of rehabilitation or education as an accepted purpose of the criminal law as it deals with juveniles is inconsistent with Article 14 and other human rights standards. The ICCPR requires procedures dealing with juveniles to ‘take account of their age and their desirability of promoting their rehabilitation.’¹⁶⁷ The CRC explicitly states the traditional aims of criminal justice – repression and retribution, ‘must give way to rehabilitation and restorative justice objectives when dealing with juveniles.’¹⁶⁸ Furthermore, the treatment of juveniles under the penal law must promote the child’s reintegration and assumption of a constructive role in society.¹⁶⁹ It is evident that rehabilitation and facilitation of juveniles back into society is actively promoted by the ICCPR and CRC as an aim of juvenile justice systems. Thus its rejection as a purpose analogous with juvenile criminal law by the HRC would be inconsistent with Article 14 and provisions of the CRC. Such exclusion would allow States aiming to rehabilitate the child into a future law abider through non-criminal mechanisms to avoid the requirements under Article 14 of the ICCPR, affording them less protection, rather than the desired special protection.¹⁷⁰ In cases where the administrative system deprives the juvenile of their liberty, such as in Article 24 of the Ordinance, this is especially dangerous.

¹⁶⁶ Pamela Cox, ‘Juvenile Justice Reform and Policy Convergence in the New Vietnam’ (2010) 10 *Youth Justice*, 227, 231.

¹⁶⁷ ICCPR art 14(4).

¹⁶⁸ *General Comment No. 10* para 10.

¹⁶⁹ CRC art 40(1).

¹⁷⁰ *General Comment No. 32*, para 42, which states ‘juveniles need special protection’.

3.3.3 Concluding remarks

In order to fall under the scope of Article 24 a child must commit an offence under the Penal Code, albeit to a minor degree. A criminal offence attracts criminal law penalties, which are distinguished by their punitive and deterrent purpose. Therefore the penalty of detention in a reform school under Article 24 must be considered punitive and deterrent. These two factors give Article 24 a ‘criminal’ character, supporting an argument for application of Article 14 rights. Nonetheless, rehabilitation of the child into a useful citizen is stated as the purpose of sending children to reform schools under Article 24. However, rehabilitation designed to secure future adherence to the law is not convincing as a distinct purpose, sharing a common goal with punishment and deterrence. Its capacity as an explicit goal depends largely on its nature and manner of execution. In the alternative, rehabilitation of the child into the useful citizen can be argued as a goal analogous to Vietnamese criminal law, as it deals with juveniles. The above factors and the general scope of the norm supports the conclusion children handled under Article 24 of the Ordinance are charged with a ‘criminal’ offence and therefore, worthy of the full protection of Article 14 of the ICCPR.

Examination of the third criterion is arguably unnecessary due to a finding of a criminal charge under the second criterion. However, in order to provide an overall and thorough assessment of Article 24, assessment of the nature and severity of the penalty will follow. This is not to say a negative finding in the third criterion is capable of rebutting the finding of a ‘criminal’ charge under the second criterion.¹⁷¹

¹⁷¹ *Ziliberberg v Moldova* (2007) ECHR, para 34. Cf with *Sergey Zolotukhin* where the Court, confusingly failed to qualify that the additional assessment of the ‘appreciably detrimental’ test under the third criteria did not detract from the ‘criminal’ nature of the offence discovered under the previous examination of the second criteria.

3.4 Nature and severity of the penalty

Assessment of the extent to which Article 24 deals with a ‘criminal’ charge requires examination of the nature and severity of sending juveniles to reformatories.¹⁷²

The sending of juveniles to reformatories under Article 24 is by its nature, a deprivation of liberty. Deprivation of liberty refers to the restriction of an individual’s freedom of bodily movement through the forceful detention of that person in a restricted location, such as a prison, other type of detention facility, mental institution, re-education camp and so on.¹⁷³ Juveniles handled under Article 24 are to study, work and live ‘under the management and supervision of the school and its personnel’, indicating a state of constant supervision and strict control by reform officials.¹⁷⁴ At night, juveniles are locked in collective rooms and staff members keep watch over the building.¹⁷⁵ Furthermore, juveniles who escape the confines of the reform school before the expiration of their detention period are hunted down and returned.¹⁷⁶ Juveniles are not released from the reform school without an approved certificate of completion from the district-level Chairman of the People’s Committee.¹⁷⁷ The above factors support a finding that juveniles under Article 24 are deprived of their liberty within reformatories, in that their freedom of bodily movement is heavily restricted.

3.4.1 The ‘appreciably detrimental’ test

A deprivation of liberty belongs to the criminal sphere. This presumption can be rebutted if by its nature, duration and manner of execution, the deprivation of liberty is not

¹⁷² *Engel and Others* [1976] ECHR, para 82.

¹⁷³ Manfred Nowak, *UN. Covenant on Civil and Political Rights: CCPR Commentary* (N. P Engel Publishing, 2nd revised ed, 2005) 212.

¹⁷⁴ Nghị định của Chính phủ số quy định việc áp dụng biện pháp xử lý hành chính đưa vào trường giáo dưỡng [Decree Prescribing and Guiding in Detail the Application of the Measure of Consignment to Juvenile Detention Centers] Socialist Republic of Vietnam, No. 142/2003/ND-CP art 25 (*‘Decree 142/2003’*).

¹⁷⁵ *Ibid* art 29.

¹⁷⁶ *Ibid* art 19.

¹⁷⁷ *Ibid* art 39.

‘appreciably detrimental’.¹⁷⁸ The Court and the HRC are yet to examine a deprivation of liberty in a reform school in the manner executed and the period specified under Article 24. In the following section we pose the question: Is the nature, duration and manner of execution of detention in reform schools under Article 24 ‘appreciably detrimental’? This assessment can inform our analysis of the existence of a ‘criminal’ charge in two ways: The assessment of ‘appreciably detrimental’ can lead to a finding of a criminal charge as an alternate aspect of the third criterion, separate from any determination of purpose.

On the other hand, if taking a cumulative approach assessment of the nature, duration and manner of execution of detention in reform schools can support previous arguments attesting to its punitive purpose, particularly where conditions within the reform centre are not conducive to rehabilitation.

3.4.2 The nature, duration and manner of execution of the sending of juveniles to reform schools under Article 24 of the Ordinance

On its face, detention in a reform school is presumably *not* ‘appreciably detrimental’ as its nature and manner of execution reflects its rehabilitative purpose. In theory, rehabilitation in a reform school seeks to benefit the child by addressing their offending behaviour through treatment, equipping them with life skills and facilitating their development into a constructive member of society as opposed to punishing or causing detriment to the child for past wrongs. On paper, reform schools in Vietnam offer a regime of education, counselling and vocational training to juveniles. The provision and emphasis on these activities may distinguish a reform school from a typical prison setting or confinement to a disciplinary unit that have been found by the Court to be ‘appreciably detrimental’ and are designed by their nature and manner of execution to punish the offender. In light of this, a closer evaluation of the education, counselling and vocational training provided in reform schools is necessary to determine the realities of the situation.

¹⁷⁸ *Ezeh and Connors* (2003)ECHR, para 126.

In regards to the nature and manner of execution in general, the execution, management and organisation of reformatories is notably under the control of the Ministry of Public Security, MPS who are also responsible for the administration of the police force and prison systems.¹⁷⁹ Thus an additional parallel with the penal system is apparent. Adding further to the detrimental nature of reform schools under Article 24 is the lack of separation from juveniles convicted of crimes.¹⁸⁰ Sources confirm that reform schools house a small percentage of children ‘sentenced by the Court’, referring to sentencing under the Penal Code.¹⁸¹

3.4.2.1 The education component of detention in reform schools

Submission to education is a fundamental requirement for juveniles detained in reform schools under Article 24. However, the nature of education provided and its manner of execution undermines the argument that provision of education in reform schools is capable of diminishing the detriment of detention within the reform school.

In brief, juveniles in reformatories under Article 24 of the Ordinance, who have not completed primary education, are to study general knowledge under the program of the Ministry of Education and Training, MOET.¹⁸² The provision of primary education is undoubtedly consistent with rehabilitation and development into a ‘useful citizen’, in particular for those without access to primary education outside the reform school environment, for example, street children.¹⁸³ Participation in the classroom environment as

¹⁷⁹ Sửa đổi, bổ sung một số điều của Nghị định số 142/2003/NĐ-CP ngày 24 tháng 11 năm 2003 của Chính phủ quy định việc áp dụng biện pháp xử lý hành chính đưa vào trường giáo dưỡng [To Amend and Supplement Some Articles of Decree 142/2003/ND-CP on Prescribing and Guiding in Detail the Application of the Measure of Consignment to Juvenile Detention Centers] Socialist Republic of Vietnam, No 66/2009/ND-CP, para 4 (*Decree 66/2009/ND-CP*).

¹⁸⁰ Volkman above n 133, 33.

¹⁸¹ VietnamNet, “Đã có học sinh nuốt kim vào bụng để tự vẫn...” [“There once was a student who swallowed needle to suicide”] VietnamNet online, 29 April 2010 <<http://vietbao.vn/Giao-duc/Da-co-hoc-sinh-nuot-kim-va-o-bung-de-tu-van/20906971/202/>>

¹⁸² *Decree 66/2009/ND-CP*, para 4.

¹⁸³ Rachel Burr, *Vietnam’s Children in a Changing World* (Rutgers University Press, 2006) 206.

opposed to confinement to a cell or barracks, further attests to the non-punitive and non-detrimental nature of reform schools.

Juveniles are also to study ‘citizen education programs...and other educational programs required by the Ministry of Public Security.’¹⁸⁴ Content of the educational programs set by the MPS, are not specified in available sources but corresponds with reports of re-education and an emphasis on learning rules of state management. For example, Burr witnessed the re-education of children within the reform schools through the political writings of Ho Chi Minh.¹⁸⁵ Political education and learning of State rules coincides with its historical application in re-education camps of the 1970s as a method of rehabilitation. Although the child leaves aware of rules and doctrines of the State, this may have limited value in terms of development of productive educative tools for future use outside of the reform school. A focus on learning the rules of state management can also be interpreted as a method of deterrence or punishment, with the aim of securing future compliance with the laws.

Calls for improvement to the education program taught in reform schools indicate that its current implementation is not conducive to the goal of rehabilitation or reintegration into society. There are consistent calls for the improvement of the content of education programs provided in reform schools. One UNICEF worker stated her work consisted of securing more ‘constructive re-education programs’.¹⁸⁶ A desk review revealed a lack of ‘appropriate’ education programs and vocational training for juveniles.¹⁸⁷ Reconsideration of the education curriculum on offer in reform schools and strengthening the partnership with the Department of Education were two activities of the project reviewed in the Evaluation of Pilot Project Report.¹⁸⁸ Furthermore, the Creating a Protective Environment Report explicitly stated education and vocational training programmes within reform

¹⁸⁴ *Decree 66/2009/ND-CP*, para 19.

¹⁸⁵ Burr above n 183, 146.

¹⁸⁶ Cox above n 166, 233.

¹⁸⁷ Ministry of Labour, Invalids and Social Affairs and UNICEF Vietnam, ‘Evaluation of the Pilot Project on Non-custodial Measures, Reintegration and Support Services to Juveniles in Conflict with the Law in Haiphong, Vietnam’ (Evaluation Report, 2008) 36 <http://www.unicef.org/evaldatabase/index_58812.html (*‘Evaluation of Pilot Project Report’*).

¹⁸⁸ *Ibid* 7.

schools require improvement and vocational training and, in particular, should be designed to provide marketable skills to juveniles in order to facilitate employment upon release.¹⁸⁹ The above calls for improvement suggests the current substance and execution of education and vocational training within reform schools is inconsistent or inappropriate for achieving reintegration of child into society.

3.4.2.2 The counselling component of detention in reform schools

The provision of counselling for children in reform schools must be treated with caution, in light of divergent approaches to counselling adopted in reform schools and other factors relating to its execution.¹⁹⁰ Thus counselling cannot be fully relied upon as an argument that detention in reform schools under Article 24 is not ‘appreciably detrimental’.

Despite its provision, the local adaptation of counselling within Vietnamese reform schools may be ‘illusory’ and two examples illustrate concerns regarding the execution of counselling in reform schools.¹⁹¹ The counselling system in one reform school was described by Cox as follows: Eight designated areas of discussion are listed on a form for the child to choose from in advance, despite some being illiterate or having very low literacy skills. Most children choose counselling on ‘reproductive health, family issues and social issues’. Each appointment with the child is half an hour and details of the meetings are recorded in a book. Among other details, the book contains the result of the counselling appointment which is measured in terms of whether the child leaves feeling ‘confident or not’. Cox was told that it was in fact possible to reach the level of ‘confident’ in such a short time period.¹⁹²

¹⁸⁹ Ministry of Labour, Invalids and Social Affairs and UNICEF Vietnam, ‘Creating a Protective Environment for Children in Vietnam: An Assessment of Child Protection Laws and Policies, Especially Children in Special Circumstances in Vietnam’ (Report, 2009) 78 <http://www.un.org.vn/en/publications/publications-by-agency/cat_view/126-un-publications-by-agency/94-unicef-publications.html?start=20> (*‘Creating a Protective Environment Report’*)

¹⁹⁰ Cox above n 166, 236.

¹⁹¹ Ibid 239.

¹⁹² Ibid 237-238.

This example raises some initial concerns regarding the execution of counselling in reform schools. Topics for discussion are fixed in advance. This circumstance is consistent with the Vietnamese counselling method of direct advice giving, described by Cox as the practice of listening to the child for a few minutes and proceeding to tell them what to do.¹⁹³ It is questionable to what extent this counselling method is capable of impacting on the wellbeing of the child as children subject to reform schools have been observed as suffering from complex individual, mental and physical problems.¹⁹⁴ The provision of only thirty minute counselling sessions casts doubt on the prioritisation of counselling over other reform school programmes. Reform schools are known to experience overcrowding and under resourcing.¹⁹⁵ Although children may opt for more counselling sessions, these factors may inhibit the ability of reform counsellors to deliver sufficient sessions to the child in order to facilitate their rehabilitation.

The role of the police in the execution of counselling provides support for what Cox describes as the ‘illusory’ introduction of child counselling in reform schools and creates further parallels with the penal law system.¹⁹⁶ Reform school programs are delivered by reform school staff, the majority of whom are police officers holding permanent positions.¹⁹⁷ The police officer as the counsellor raises doubt regarding professional training, and issues of trust and openness usually required in a counselling setting. The negative role of police in the counselling process can be highlighted by a further example. In 2008, with the assistance of an INGO, a reform school permitted children access to a national child helpline and contact with counsellors specialising in child welfare and child rights operating outside the reform school environment. In practice, children wishing to use the helpline were required to state topics of discussion in advance to reform school officials, and conversations with helpline operators were conducted in the presence of a police officer sitting alongside throughout the telephone conversation. The presence of the

¹⁹³ Ibid 236.

¹⁹⁴ Ibid 237.

¹⁹⁵ Letter from unpublished source (2011) 2.

¹⁹⁶ Cox above n 166, 239.

¹⁹⁷ Ibid 237.

police officer was justified as being necessary to help the child ‘make themselves understood’ and facilitate effective follow-up on the advice given.¹⁹⁸ The heavy guarding of helpline sessions and the role of police in the execution of counselling questions the capacity of counselling within reform schools to facilitate rehabilitation of the child. An environment of supervision and strict control by the police adds to the punitive nature of detention in reform schools.

3.4.2.3 The forced labour component of detention in reform schools

Forced labour is actively practiced in Vietnamese reform schools and supports a finding that detention of juveniles under Article 24 of the Ordinance is appreciably detrimental and capable of attracting the safeguards under Article 14 of the ICCPR. Vietnamese authorities deny the existence of child labour or forced labour in reform schools, claiming juveniles are involved in ‘training’ or ‘vocational training’.¹⁹⁹ The confusion between ‘vocational training’ and ‘labour’ is said to be deliberate, with ‘vocational training’ becoming a euphemism for what is in fact forced labour.²⁰⁰ Nevertheless, labour or *lao động* is clearly endorsed in Article 31 of Decree 142/2003, titled ‘Chế độ lao động của học sinh’ or ‘labor regime’. Vocational training is distinguished from forced labour here as training or education for the purpose of learning a trade or practical skill such as woodwork, mechanical or electrical skills. This type of training is offered in reform schools, however is limited and available only to a minority of children.²⁰¹ On the other hand, forced labour is ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.’²⁰²

¹⁹⁸ Ibid 238.

¹⁹⁹ Pamela Cox, ‘History and Global Criminology: (Re)Inventing Delinquency in Vietnam’ (2011) *British Journal of Criminology* 1-15, 11

<<http://bjc.oxfordjournals.org/content/early/2011/08/01/bjc.azr061.short?rss=1>>

²⁰⁰ Human Rights Watch, ‘The Rehab Archipelago: Forced labour and Other Abuses in Drug Detention Centers in Southern Vietnam’ (Report, September 2011) 47 (*‘Human Rights Watch Report’*).

²⁰¹ Letter above n 195, 1.

²⁰² *Convention Concerning Forced or Compulsory Labour* (No.29), opened for signature 28 June 1930, 39 UNTS 55 (entered into force 1 May 1932) art 2(1).

International NGOs given rare access to work in the reform schools have documented, but not published, the use of child labour in the schools.²⁰³ The practice of forced child labour has been confirmed in at least three of the four reform schools – Da Nang, Dong Nai and Long An.²⁰⁴ A recent Human Rights Watch Report highlighted the practice of forced labour in drug detention centres in Southern Vietnam.²⁰⁵ Sources confirm the culture of forced labour discovered in drug detention centres mirror that in reform centres.²⁰⁶ Thus the Human Rights Watch Report will be used to illustrate conditions in reform centres. Children in reform schools ‘must participate in labour activities organised by reformatories.’²⁰⁷ Inmates highlighted in the Human Rights Watch Report, described the beatings they received on refusal to work, stating children in the centres were not immune from such treatment.²⁰⁸ One child described being sent to the punishment room with 41 others for over three months.²⁰⁹ Although testimony from inmates of drug detention centres, reference to a ‘penalty room’ in Circular 19/2011/TT-BCA indicates a similar punishment is available to children in reform schools.²¹⁰ The threat of punishment for misbehaviour and the availability of the penalty room in itself provides further evidence for the detrimental nature of reform schools under Article 24.

Juveniles within reform schools are forced to perform hazardous, monotonous and low-skilled work. One example is the large scale manual peeling of cashew nuts for commercial sale.²¹¹ This work is particularly harmful, causing skin rashes, burns, other allergic

²⁰³ Cox, *History and Global Criminology*, above n 199, 11.

²⁰⁴ Letter above n 195, 1.

²⁰⁵ Human Rights Watch, ‘The Rehab Archipelago: Forced labour and Other Abuses in Drug Detention Centers in Southern Vietnam’ (Report, September 2011) (*Human Rights Watch Report*).

²⁰⁶ Letter above n 192, 1.

²⁰⁷ *Decree 142/2003*, art 30(1).

²⁰⁸ *Human Rights Report*, 66.

²⁰⁹ *Ibid* 68.

²¹⁰ Thông tư 19/2011/TT-BCA về quy định chi tiết thi hành biện pháp xử lý hành chính đưa vào trường giáo dưỡng do Bộ Công an ban hành [Circular 19/2011/TT-BCA Guiding on the Application of the Administrative Handling Measure of Consignment into Reformatories] Ministry of Public Security, Vietnam, Circular 19/2011/TT-BCA, issued 20 April 2011, art 19(3) (*Circular 19/2011/TT-BCA*).

²¹¹ Letter above n 192, 1.

reactions from the oil of the cashew and respiratory problems.²¹² Other children were witnessed with bruising and burns to their faces, hands and arms due to poor protective gear and welding equipment.²¹³ The large scale peeling of cashew nuts is extremely monotonous. In order for a child to produce five kilos of kernels, they would have to peel approximately 4,800 nuts.²¹⁴ Evidence from former detainees show daily quotas ranged from five to eight kilos.²¹⁵ Other monotonous and low-skilled work performed by children in reform schools include mattress making, wood collecting, basic welding, farming and packing of shower caps for hotel chains.²¹⁶ The hazardous, low-skilled and monotonous nature of work within reform schools is not conducive to rehabilitation. This conclusion is consistent with criticisms stating the forms of labour adopted in reform schools do not equip juveniles with appropriate skills for use outside of reformatories and ignores children with higher aspirations than work in menial labour.²¹⁷ The very nature of work imposed upon children under Article 24 reform schools speaks more to the punitive nature of the penalty than its rehabilitative purpose and supports a finding of ‘appreciably detrimental’.

The maximum time to be spent on all compulsory reform programs – labour, education and vocational training – is seven hours in a day. Confusingly, time spent in vocational training is considered as time spent labouring. Juveniles can also be forced to work overtime or night shifts.²¹⁸ Evidence from the Human Rights Watch Report show children confined to drug detention centres were made to work eight hours a day, six days a week.²¹⁹ Sources state in any given time large numbers of children were spotted working, suggesting the same conditions may exist in reform centres under Article 24.²²⁰ The proportion of time spent on labour of this nature gives little time for education, counselling and vocational training and suggests the low prioritisation of these more valuable activities. Labouring

²¹² *Human Rights Watch Report*, 39.

²¹³ Letter above n 195, 3.

²¹⁴ *Human Rights Watch Report*, 39.

²¹⁵ *Ibid* 39-40.

²¹⁶ Letter above n 195, 3.

²¹⁷ *Evaluation Report*, 44.

²¹⁸ Decree 42/2003, art 31(3).

²¹⁹ *Human Rights Report*, 66, 67.

²²⁰ Letter above n 195, 3.

such long hours in combination with the nature of the work can be considered ‘appreciably detrimental’ to the child.

The Human Rights Watch Report describes the practice of centre-imposed deductions on inmate wages. Here, reform school officials deduct expenses for accommodation, food, electricity and clothing directly from inmate wages which are already far below the Vietnamese minimum wage.²²¹ After deduction of such ‘reasonable expenses’, children in reformatories are entitled to 8% of the leftover income generated from their labour as a reward for ‘achievements in labour, learning and training’.²²² An income, set solely as a percentage figure leaves room for significant variation in wages due to the child. Furthermore, the deduction of ‘reasonable expenses’ before calculation of children’s wages diminishes the pot from which the 8% is calculated, lowering the wages owed to the child. The ambiguity of provisions regarding the management and use of income from reform school labour and the general commonalities in income building between drug detention centres and reform centres suggests children under Article 24 are released with minimal money or could in some cases even be indebted to the reform centres for expenses accumulated during detention. The absence of reward for work performed may attest to the punitive or deterrent purpose of the work as releasing children with minimal money or indebted to the centre cannot be argued to be consistent with their reintegration into society.

3.4.2.4 Duration of the measure

We can recall that in *Engel and others*, a period of detention in a disciplinary unit for three to four months was considered appreciably detrimental.²²³ In fact in *Ezeh and Connors*, a period of seven days additional imprisonment time was considered to be severe enough to place the sanction in the criminal sphere.²²⁴ Case law regarding the severity of the penalty

²²¹ *Human Rights Watch Report*, 55-56.

²²² *Circular 19/2011/TT-BCA*, art 20(2).

²²³ *Engel and Others* [1976] ECHR, para 85.

²²⁴ *Ezeh and Connors* (2003) ECHR, para 78.

requires us to consider the maximum penalty available to be imposed.²²⁵ According to Article 24 of the Ordinance, children subject to the measure of sending to reformatories can be detained for six months to a maximum of two years.²²⁶ The minimum possible time for detention is irrelevant, as is the possibility for a reduction of time if the child has made marked progress.²²⁷ In light of previous case law regarding the length of detention required to set an administrative or disciplinary measure into the criminal sphere, the possibility of two years detention in a reform schools is lengthy enough to be considered appreciably detrimental.

3.4.3 Concluding remarks

The provision of education, counselling and vocational training can, on its face support an argument that the nature and manner of execution of reform schools is not ‘appreciably detrimental’. However a closer examination of the realities of education and counselling in reform schools demonstrates the need for caution when using the two activities as justification against the application of Article 14 rights. Factors such as the content of education programs, methods of counselling, the dominate and supervisory role of the police in the reform centres, under resourcing and overcrowding, undermines the ability of reform schools to avoid a determination of ‘appreciably detrimental’.

The forced labour element of the Article 24 measure provides a compelling argument for finding detention under Article 24 ‘appreciably detrimental’. Despite its historic use as a method of re-education and rehabilitation of an individual to a ‘useful’ citizen, the hazardous, menial and monotonous nature of the work is detrimental to the child. The nature of forced labour itself as well as the manner in which it is executed – with punishment on refusal, and either minimal or no pay – speaks more to its punitive rather than its rehabilitative character. In addition, its dominance as the primary activity of children in reform schools leaves minimal time for more productive and conducive

²²⁵ *Weber v Switzerland* (1990) ECHR, para 34.

²²⁶ *Ordinance* art 24(1).

²²⁷ *Ordinance* art 81.

activities such as education, counselling and true vocational training. As a result of the forced labour element, the realities of education and counselling and the dominate role of the police in the execution of reform schools the penalty under Article 24 is ‘appreciably detrimental’ and assumes the character of a punitive penalty, capable of attracting the label of a ‘criminal’ charge.

4 General Discussion

With application of the criterion set out in *Engel and others*, which was later confirmed by the HRC in *Osiyuk v Belarus*, this thesis found that despite its classification as an administrative offence and administrative handling measure, Article 24 of the Ordinance deals with criminal charges. The above jurisprudence requires an assessment of the classification of the norm, its scope, the nature of the offence, and the nature and severity of the penalty to provide an overall picture of the true character of the offence in question.

The following factors provide strong support for the finding of a ‘criminal’ charge. Examination of the scope of the norm revealed Article 24 applies to the general population as a whole, consistent with the general scope of criminal law offences. Despite Article 24’s limitation to persons aged between 14 and 18, minors do not constitute a group of special status within the meaning of a ‘criminal’ charge.

The nature of the offences incorporated under Article 24 is directly linked to the Vietnamese Penal Code, giving Article 24 a distinct criminal character. Thus in order to attract the penalty under Article 24 a child must contravene the Penal Code, albeit to a lesser degree. This basis in criminal law creates uncertainty regarding the purpose of the penalty. Jurisprudence shows a high correlation between a ‘criminal’ offence and a punitive and deterrent penalty. As a result of its criminal character Article 24 must attract a punitive penalty. Nevertheless, the stated purpose of the measure of sending children to reformatories is to rehabilitate the child into a ‘useful’ citizen. This concept of a ‘useful’ citizen implies future adherence to laws of state management. Thus, rehabilitation of the child in this instance overlaps with punishment casting further doubt upon the true purpose of Article 24 as development of the ‘useful’ citizen as a law abider is arguably the aim of both punishment and rehabilitation. In the alternative, although rehabilitation has not been confirmed by the HRC and the Court as a distinct purpose of the criminal law, Vietnamese

criminal law as it deals with juveniles aims also to rehabilitate the child into a ‘useful’ citizen. If following the reasoning of the HRC and the Court, we can conclude that Article 24 possesses an aim analogous to that of the criminal law. Furthermore rejection of rehabilitation as a purpose analogous with the criminal law as it deals with juveniles would be inconsistent with an effective interpretation of Article 14(4) of the ICCPR.

As detention in a reform school under Article 24 constitutes a deprivation of liberty, the ‘appreciably detrimental’ test was adopted, allowing examination of the nature, duration and manner of execution of reformatories as an overall indication of severity. This thesis found that the provision of education, counselling and vocational training must be treated with caution if arguing detention in a reform school is not appreciably detrimental. More significantly, the practice of forced labour in reform schools and its prioritisation over other reform school activities provides strong support for a finding that detention under Article 24 is appreciably detrimental. The nature of forced labour itself gives detention in reform schools a punitive character and refutes any claim as to its rehabilitative worth. In light of the nature and manner of execution, detention in reform schools for up to two years is sufficiently severe to warrant a finding of ‘appreciably detrimental’. With that said and in light of previous findings casting doubt on the true purpose of Article 24, detention in a reform school must fall within the concept of a ‘criminal’ charge. The above findings regarding the scope of Article 24, the nature of the offences it encompasses, the purpose of the penalty and the nature, duration and manner of execution of reform schools supports a finding that Article 24 deals with ‘criminal’ charges and attracts the application of Article 14 of the ICCPR.

One might argue that the inability or ineffectiveness of Vietnamese authorities in achieving or providing meaningful rehabilitation is in itself not sufficient evidence for stating rehabilitation is not the true aim of the Article 24 measure. However, the concept of the ‘criminal’ charge and the test of ‘appreciably detrimental’ in particular, allow us to examine the realities of the situation and measure the overall severity of the deprivation in question. To accept the aim of rehabilitation on its face, without assessing the realities of its

execution, is to fail to apply the test. Furthermore, whilst detention in reform schools continue to appear more punitive than rehabilitative, it must be made more difficult for authorities to impose such sanctions onto children. To use the inability of Vietnamese authorities to provide meaningful rehabilitative tools as justification for disregarding the punitive nature of confinement in reform schools would be to ignore the above need. The insertion of Article 14 rights and their implementation in practice can serve as this additional barrier and check on the power of government authorities to impose such a severe penalty on children in conflict with the law.

The implications of the above findings require the insertion of Article 14 rights, in particular those in Paragraphs two to seven, in both the text of the Ordinance and secondary legislation and the practice of sending children to reformatories in Article 24 of the Ordinance. In the current period of reform, both national and international actors must argue not only for due process rights under Article 9 but the fuller rights applicable to persons charged with a criminal offence under Article 14. In addition any future assessment of Article 24 and the process of sending children to reform schools against international human rights standards must include examination against Article 14 of the ICCPR.

This thesis has attempted to challenge the character of Article 24 and its perception as an administrative and rehabilitative measure. It argues instead that the nature of Article 24 is criminal and punitive in character. In light of the historical use of reform institutions as places of rehabilitation this requires a significant change in perception on behalf of Vietnamese authorities. The current text of the Draft Law and the explicit insertion of certain due process rights including the right to habeas corpus and the role of the lawyer indicates a great willingness on behalf of senior government officials to incorporate human rights standards into the process of sending children to reform schools. Amendments in this direction may also signify a change in perception of detention in reform schools as a measure, burdensome enough to require further checks and balances on the powers of local authorities. Following this, the thesis provides a challenge to Vietnamese authorities to

view and understand the measure of sending children to reform schools under Article 24 in light of the above analysis and the concept of a 'criminal' charge.

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Annex I

EXTRACTS FROM ORDINANCE ON HANDLING OF ADMINISTRATIVE VIOLATIONS

(No. 44/2002/PL-UBTVQH10 of July 2, 2002)

In order to prevent and combat administrative violations, contributing to maintaining security, social order and safety, protecting the interests of the State as well as the legitimate rights and interests of individuals and organizations, enhancing the socialist legislation and raising the State management effectiveness;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001 of the Xth National Assembly, the 10th session;

Pursuant to the Resolution of the Xth National Assembly, 10th session, on the 2002 law-and ordinance-making program;

This Ordinance prescribes the handling of administrative violations.

Chapter I

GENERAL PROVISIONS

Article 1.- Handling of administrative violations

1. Handling of administrative violations shall include the administrative sanctions and other administrative handling measures.

2. The administrative sanctions shall apply to individuals, agencies and organizations (hereinafter referred collectively to as individuals and organizations), that intentionally or unintentionally commit acts of violating law provisions on State management, which, however, do not constitute crimes and, as required by law, must be administratively sanctioned.

3. Other administrative handling measures shall apply to individuals who commit acts of violating the legislation on security, social order and safety but not to the extent of being examined for penal liability as prescribed in Articles 23, 24, 25, 26 and 27 of this Ordinance.

Article 2.- Competence to prescribe acts of administrative violation and the regime of application of other administrative handling measures

The Government shall prescribe acts of administrative violation, sanctioning forms, consequence-overcoming measures applicable to each act of administrative violation in the field of State management; prescribe the regime of application of measure of education at communes, wards, district towns, sending to reformatories, education establishments or medical treatment establishments, and placing under administrative probation.

Article 3.- Principles for handling administrative violations

1. All administrative violations must be detected in time and stopped immediately. The handling of administrative violations must be effected swiftly, fairly and absolutely; all consequences caused by administrative violations must be overcome strictly according to law provisions.

2. Individuals and organizations shall be administratively sanctioned only when they commit administrative violations prescribed by law.

Individuals shall be subject to the application of other administrative handling measures only if they belong to one of the subjects prescribed in Articles 23, 24, 25, 26 and 27 of this

Ordinance.

3. The handling of administrative violations must be effected by competent persons strictly according to law provisions.

4. An act of administrative violation shall be administratively sanctioned only once.

If many persons commit the same act of administrative violation, each of the violators shall be sanctioned.

If a person commits many acts of administrative violation, he/she shall be sanctioned for each act of violation.

5. The handling of administrative violations must be based on the nature and seriousness of the violations, the personal identity of the violators and the extenuating as well as aggravating circumstances in order to decide on appropriate handling forms and measures.

6. Administrative violations committed in cases of emergency circumstances, legitimate self-defense, unexpected incident or in cases where the violators are suffering from mental diseases or other ailments, which deprive them of the capability to be aware of or control their acts.

Article 4.- Responsibilities to combat, prevent and oppose administrative violations

1. Agencies, organizations and all citizens must strictly abide by the law provisions on handling of administrative violations. Agencies and organizations are obliged to educate their members in the sense of defending and abiding by laws, the rules of social life, and take prompt measures to preclude causes and conditions for committing administrative violations in their agencies and organizations.

2. Upon detection of any administrative violations, the persons with competence to handle administrative violations shall have to handle such violations strictly according to the

provisions of law.

It is strictly forbidden to abuse ones' positions and/or powers to harass, tolerate, cover up and/or unseverely and unjustly handle administrative violations.

3. Citizens have the rights and obligations to detect, denounce all acts of administrative violations and acts of law offenses committed by persons competent to handle administrative violations.

4 The Vietnam Fatherland Front Committee and the Front's member organizations shall, within the ambit of their respective functions, tasks and powers, have to supervise the law observance in handling administrative violations.

Article 5.- Supervision and inspection in handling of administrative violations

1. The Nationality Council and Committees of the National Assembly, the People's Councils shall, within the ambit of their tasks and powers, supervise the law observance in handling administrative violations.

2. The heads of State bodies shall have to regularly inspect the handling of administrative violations by persons competent to handle administrative violations under their respective management, timely handle law offenses and settle complaints and denunciations in the handling of administrative violations according to law provisions.

Article 6.- Subjects handled for administrative violations

1. The subjects sanctioned for administrative violations include:

a) Persons aged between full 14 and under 16 shall be administratively sanctioned for intentional administrative violations; persons aged full 16 or older shall be administratively sanctioned for all administrative violation acts they have committed.

Active-service army men, reserve army men during the time of concentrated training and

persons of the people's police force, who commit administrative violations, shall be handled like other citizens; in cases where it is necessary to apply the sanctioning form of stripping off the right to use a number of operation permits for defense and security purposes, the sanctioning persons shall not directly handle but propose the competent agencies, army units or police units to handle according to discipline regulations;

b) Organizations shall be administratively sanctioned for all administrative violations they have committed. After serving the sanctioning decisions, the sanctioned organizations shall determine individuals who have committed the administrative violations in order to determine their legal liability according to law provisions;

c) Foreign individuals and organizations that commit administrative violations within the territory, the exclusive economic zone and/or continental shelf of the Socialist Republic of Vietnam shall be administratively sanctioned according to the provisions of Vietnamese laws, except otherwise provided for by international treaties which the Socialist Republic of Vietnam has signed or acceded to.

2. Subjects liable to the application of other administrative handling measures are persons defined in Articles 23, 24, 25, 26 and 27 of this Ordinance.

The other administrative handling measures prescribed in this Ordinance shall not apply to foreigners.

Article 7.- Handling minors who commit administrative violations

1. Persons aged between full 14 and under 16 who commit administrative violations shall be sanctioned with warning.

Persons aged between full 16 and under 18 who commit administrative violations may be subject to the application of the administrative-violation sanctioning forms prescribed in Article 12 of this Ordinance. When imposing fines on them, the fine levels must not exceed half of the fine levels applicable to the majors; where they have no money to pay the fines,

their parents or guardians shall have to pay instead.

2. Minors who commit acts of law offenses prescribed in Clause 2 of Article 23, Clause 2 of Article 24, Point b, Clause 2, Article 26 of this Ordinance shall be handled according to the regulations therein.

3. Minors who commit administrative violations thus causing damage shall have to pay the compensations therefor according to the provisions of law.

Article 8.- Extenuating circumstances

1. The following circumstances shall be the extenuating circumstances:

a) The violators have prevented or reduced harms done by the violations or volunteer to overcome the consequences, pay compensations;

b) The violators have voluntarily reported their violations, honestly repenting their mistakes;

c) The violators commit violations in the state of being spiritually incited by other persons' illegal acts;

d) The violators commit violations due to being forced to or due to their material or spiritual dependence;

e) The violators are pregnant women, old and weak persons, persons suffering from ailment or disability which restrict their capacity to perceive or to control their acts;

f) The violators commit violations due to particularly difficult plights brought upon them not by themselves;

g) The violations are committed due to backwardness.

2. Apart from the circumstances prescribed in Clause 1 of this Article, the Government may define others as the extenuating circumstances in documents prescribing the sanctioning of administrative violations.

Article 9.- Aggravating circumstances

Only the following circumstances are aggravating circumstances:

1. The violations are committed in an organized manner;
2. The violations are committed many times in the same domain or repeated in the same domains;
3. Inciting, dragging minors to commit violations, forcing materially or spiritually dependent persons to commit violations;
4. The violations are committed in the state of being intoxicated by alcohol, beer or other stimulants;
5. Abusing one's positions and powers to commit violations;
6. Taking advantage of war, natural disaster circumstances or other special difficulties of the society to commit violations;
7. Committing violations while serving criminal sentences or decisions on handling of administrative violations;
8. Continuing to commit administrative violations though the competent persons have requested the termination of such acts;
9. After the violations, having committed acts of fleeing or concealing the administrative violations.

Chapter III

OTHER ADMINISTRATIVE HANDLING MEASURES

Article 22.- Other administrative handling measures

Other administrative handling measures include:

1. Education at communes, wards, district towns;
2. Sending to reformatories;
3. Sending to education establishments;
4. Sending to medical treatment establishments;
5. Administrative probation.

Article 23.- Education at communes, wards, district towns

1. The education at communes, wards or district towns shall be decided by presidents of the People's Committees of communes, wards or district towns (hereinafter referred collectively to as the commune-level) and applicable to persons prescribed in Clause 2 of this Article in order to educate and manage them at their residence places.

The time limits for application of the measure of education at communes, wards or district towns shall range from three to six months.

2. Subjects to whom the measure of education at communes, wards or district towns shall apply include:

- a) Persons aged between full 12 and under 16 who have intentionally committed acts with signs of serious crimes prescribed in the Penal Code;
- b) Persons aged full 12 or older who have repeatedly committed acts of petty larceny, petty swindle, petty gambling, causing public disorder;
- c) Drug addicts aged full 18 or older, regular prostitutes aged full 14 or older and having given residence places;
- d) Women aged over 55 and men aged over 60, who have committed acts of law offense prescribed in Clause 2, Article 25 of this Ordinance.

3. The statute of limitations for application of measure of education at communes, wards or district towns shall be six months as from the time of committing violation acts prescribed at Point a or from the last time of committing the violation acts prescribed at Points b and c, Clause 2 of this Article; the above-said statute of limitations shall also apply to cases prescribed at Point d, Clause 2 of this Article, as from the last time of committing the violation acts prescribed in Clause 2, Article 25 of this Ordinance.

4. The commune-level People's Committee presidents shall have to organize the implementation of measure of education at communes, wards or district towns; coordinate with concerned local agencies and organizations as well as families in managing and educating these subjects.

5. The Ministry of Public Security shall uniformly direct the application of measure of education at communes, wards and district towns.

Article 24.- Sending to reformatories

1. The sending of minors who have committed acts of law offense prescribed in Clause 2 of this Article to reformatories to have their general education, vocational education, job training, labor and activities under the management and education by the reformatories

shall be decided by presidents of the People's Committees of rural districts, urban districts, provincial capitals or towns (hereinafter referred collectively to as the district level).

The time limits for application of measure of sending to reformatories shall range from six months to two years.

2. Subjects to whom the measure of sending to reformatories shall apply include:

a) Persons aged between full 12 and under 14, who have committed acts with signs of very serious crimes or particularly serious crimes, as prescribed in the Penal Code;

b) Persons aged between full 12 and under 16, who have committed acts with signs of less serious crimes or serious crimes, as prescribed in the Penal Code, and had previously been subject to the application of measure of education at communes, wards or district towns or not yet been subject to the application of this measure but having no given residence places;

c) Persons aged between full 14 and under 18, who have repeatedly committed acts of petty theft, petty swindle, petty gambling, causing public disorder, and had previously been subject to the application of measure of education at communes, wards or district towns or not yet been subject to the application of this measure but have no given residence places.

3. The statute of limitations for application of measure of sending to reformatories are prescribed as follows:

a) One year as from the time of committing the violation acts prescribed at Point a, Clause 2 of this Article;

b) Six months as from the time of committing violation acts prescribed at Point b or from the last time of committing one of the violation acts prescribed at Point c, Clause 2 of this Article.

4. The Ministry of Public Security shall set up reformatories according to regions; in cases where localities have the demand, the presidents of the People's Committees of provinces or centrally- run cities (hereinafter referred collectively to as the provincial level) shall propose the Ministry of Public Security to set up reformatories in their localities.

The Ministry of Public Security shall uniformly manage the reformatories and coordinate with the Ministry of Education and Training, the Ministry of Labor, War Invalids and Social Affairs, the Vietnam Committee for Child Protection and Care and the concerned agencies and organizations in organizing and managing reformatories suitable to the age groups of between full 12 and under 15 and between full 15 and under 18.

Chapter VII

PROCEDURES FOR APPLICATION OF OTHER ADMINISTRATIVE HANDLING MEASURES

Section 2. PROCEDURES FOR SENDING TO REFORMATORIES

Article 75.- Compiling dossiers proposing the sending to reformatories

1. For minors who have committed acts of law offense, as prescribed in Article 24 of this Ordinance and need to be sent to reformatories, the commune-level People's Committee presidents of the localities where such persons reside shall compile dossiers for submission to the district-level People's Committee presidents.

Such a dossier shall comprise a curriculum vitae, the documents on law offenses committed by such person, the education measures already applied, remarks of the police office, comments of the reformatory, the Fatherland Front Committee, the Youth Union, the Women Union, the Population, Family and Children Board of the locality and of his/her parents or guardian.

2. For minors who have no fixed residence, the commune-level People's Committee

presidents of the localities where such persons have committed acts of law offenses shall make records thereon and report such to the district-level People's Committee presidents.

Where the subjects in law-breaking cases are detected, investigated and handled directly by the district- and/or provincial-level police offices, who have committed offenses not to the extent of being examined for penal liability but are subjects to be sent to reformatories, the police offices which are processing the cases must verify, gather documents and compile dossiers for submission to the district-level People's Committee presidents.

Such a dossier shall comprise a curriculum vitae, documents on the law offenses committed by such person, the extracts of previous judgments, previous incidents, the already applied education measures (if any).

3. The police offices shall have to assist the presidents of the People's Committees of the same level in gathering documents and compiling dossiers.

4. Within three days after the receipt of the dossiers or records prescribed in Clauses 1 and 2 of this Article, the district-level People's Committee presidents shall hand them to the chiefs of the police offices of the same level. Within 15 days after the receipt of the dossiers, the district-level police offices shall have to verify, gather documents, complete the dossiers and send them to members of the Advisory Council.

Article 76.- The Advisory Council for sending to reformatories

1. The Advisory Council for sending to reformatories shall be set up under decision of the district-level People's Committee presidents, comprising the district police chief, the head of the district Legal Section, the head of the district-level Population, Family and Children Board. The district police chief shall act as the standing member of Advisory Council.

2. Within seven days after the receipt of the dossiers, the Advisory Council shall have to examine the dossiers and organize meetings to scrutinize and approve the dossiers.

The Advisory Council shall work according to the collective regime and make conclusions by majority. Divergent opinions shall be recorded in the minutes of the meetings and enclosed to the report to be submitted to the district-level People's Committee president.

Article 77.- Decisions on sending to reformatories

1. The district-level People's Committee presidents shall consider and decide on the sending to reformatories within five days after the receipt of the report from the Advisory Council.
2. The decisions shall take effect after their signing and must be sent immediately to persons to be sent to the reformatories, the parents or guardians of such persons, the district-level police offices, the district-level People's Councils and the commune-level People's Committees of the localities where such persons reside.

Article 78.- The contents of decisions on sending to reformatories

The decisions on sending to reformatories must clearly state the dates of their issuance; the full names and positions of the decision issuers; the full names, birth dates and residence places of persons to be sent to reformatories; acts of law offense committed by such persons, clauses and articles of applicable legal documents; the time limit and places for execution of decisions; the right to complain and initiate lawsuits against decisions on sending to reformatories according to law provisions.

Article 79.- Execution of decisions on sending to reformatories

1. Within five days as from the date of issuing the decisions, the district-level police offices shall have to coordinate with the families or guardians of the persons serving the decisions in sending such persons to reformatories.
2. The duration of serving the decisions on sending to reformatories shall be calculated from the date the persons subject to such decisions are sent to reformatories.

Article 80.- Postponement of or exemption from the execution of decisions on sending to reformatories

1. Persons sent to reformatories may postpone the execution of the decisions in the following cases:

- a) Being seriously ill, with written certification of hospitals of the district or higher level;
- b) Their families are meeting with particular difficulties and file the applications therefor, which are certified by the commune-level People's Committee presidents of the localities where such persons reside.

When the conditions for postponement of the decision execution no longer exist, the decisions shall continue to be executed; if during the postponement period, such persons have made marked progress in the observance of law or recorded merits, they may be exempt from serving the decisions.

2. The persons sent to reformatories shall be exempt from serving the decisions in the following cases:

- a) They have suffered from dangerous diseases as certified by hospitals of the district or higher level;
- b) They are pregnant as certified by hospitals of the district or higher level or women who are nursing their children of under 36 months old and file their applications therefor with certification of the commune-level People's Committees of the localities where such persons reside.

3. The district-level People's Committee presidents shall consider and decide on the postponement of or exemption from decision execution, based on the applications filed by the persons who have to serve the decisions on sending to reformatories. In case of necessity, the district-level People's Committee presidents shall assign the chiefs of the

police offices of the same level to verify the cases before making decisions.

Article 81.- Reduction of time limit for, temporary suspension of, or exemption from, serving the remaining duration in reformatories

1. Persons who are sent to reformatories and have served half of their terms, if making marked progress or recording merits, shall be considered for partly reduction of, or exemption from serving the remaining duration.

2. Where the persons serving decisions at reformatories are seriously ill and sent back to their families for treatment, they shall be temporarily suspended from serving the decisions; the medical treatment duration shall be counted into the decision-serving duration; if after their recovery from ailment the remaining serving duration is six months or more, such persons must continue to serve the decisions at the establishments. Persons suffering from dangerous diseases and pregnant women are exempt from serving the remaining duration.

3. The directors of the Detention Camp Management Department, education establishments or reformatories shall decide to reduce the time limit for, temporarily suspend or exempt the decision execution, as prescribed in Clauses 1 and 2 of this Article, at the proposals of the directors of the reformatories. These decisions shall be sent to the district-level People's Committee presidents who have issued decisions on sending to reformatories.

Article 82.- The statute of limitation for execution of decisions on sending to reformatories

The statute of limitation for execution of decisions on sending to reformatories shall expire after one year as from the date of issuing the decisions. Where the persons to whom the measure of sending to reformatories is applied deliberately evade the execution thereof, the above-said statute of limitation shall be recalculated from the time the act of evasion terminate.

Article 83.- Expiry of the time limit for execution of the measure of sending to reformatories

When the persons sent to reformatories have completely served the decisions, the directors of the reformatories shall issue them certificates and send the copies thereof to the directors of the Detention Camp Management Department, education establishments, reformatories, the district-level People's Committee presidents who have issued the decisions, the commune-level People's Committee of the localities where such person reside as well as their families.

Chapter X

IMPLEMENTATION PROVISIONS

Article 123.- Implementation effect

This Ordinance takes effect as from October 1, 2002.

It shall replace the July 6, 1995 Ordinance on Handling of Administrative Violations.

All previous regulations on handling of administrative violations, which are contrary to this Ordinance, shall be annulled. Where it is otherwise provided for by laws, the provisions of laws shall apply.

Article 124.- Implementation guidance

The Government shall detail and guide the implementation of this Ordinance.

On behalf of the National Assembly Standing Committee Chairman *NGUYEN VAN AN*

THE END

Annex II

Extracts from THE DRAFT LAW ON THE HANDLING OF ADMINISTRATIVE VIOLATIONS

(Draft Version of July 18, 2011)

Based on the Constitution of the Socialist Republic of Viet Nam 1992 as amended and revised by the Resolution No. 51/2001/QH10 dated 25th December, 2001 adopted by the National Assembly, Legislature X in the tenth sitting

The National Assembly hereby promulgates the Law on the Handling of Administrative Violations.

PART ONE

GENERAL PROVISIONS

Article 1. Governing scope

This law provides for the handling of administrative violations, which includes sanctioning administrative violations and applying administrative handling measures.

Article 2. Interpretation of terminology

For the purpose of this Law, the terms and phrases hereafter shall be construed as follows:

1. “Administrative violation” means an act that is committed intentionally or unintentionally by an individual or organization, violates statutory provisions on state administration, does not constitute a crime and is punishable by administrative sanctions as prescribed by law.

2. “Sanctioning administrative violations” means the competent authority imposes forms of sanctions and remedial measures on the violating individual or organization in accordance with the procedures specified herein.

3. “Administrative handling measures” mean the measures applied to individual who commits an act in breach of laws on social security, safety and order but not seriously enough for criminal prosecution, include education at communes, wards, or townships; placement in juvenile reformatories and placement in education facilities.

4. “Substitutive administrative handling measures” mean the applications of measures in preventive and educational nature those are applied in replacement of the applications of forms of administrative sanctions or administrative handling measures against administrative juvenile-violator in order to help them to recognize and correct their faults, and remedy the consequences caused by the violations.

5. “Repetition” refers to such cases where an individual or organization who has been sanctioned for an administrative violation commits the same violation when the time limit for being considered as not administratively handled, upon the completion of serving the administrative sanctions or handling decisions or upon the elapse of the statute of limitations for executing the those decisions.

6. “Multiple-time violation” refers to such cases where an individual or organization repeats an act of administrative violation that has been committed by the subject in the past but not yet sanctioned and the statute of limitations for sanctioning such violation has not yet elapsed.

7. “Organized violation” refers to such cases where an individual or organization in conspiracy with another individual or organization deliberately commits an administrative violation.

8. “Permits, licenses for professional practice” mean the documents issued, in accordance with laws, by the competent state agency or person to individuals, organizations to facilitate those to do business, operate, practice or use of equipments or means, excluding the business registration certificate or other types of certificates those are

closely linked with the holder's personality and not for purpose of giving allowance to practice.

9. "Residence" means the place where individuals or households regularly reside with household registration or temporary stay registration; or where the vehicle is registered if the vehicle is the regular place of residence of individuals or households.

10. "Sanctioned organizations" mean legal persons, cooperative groups or households under the Civil Code that commits administrative violation.

11. "Emergency" is a case where an individual or organization wants to stop an imminent threat or damage to the interests of the State, organizations, or agencies or to the legitimate rights and interests of that person or others, and such person has no other alternative but to cause a damage of lesser extent than the damages to be prevented.

12. "Self-defence" is a case where an individual, for the purpose of defending the interests of the State, organizations or agencies or protecting the legitimate rights and interests of his/her own or of others, adopts a necessary countermeasure against another person who is infringing upon the aforementioned interests.

13. "Unforeseeable event" is a case where an individual or organization commits a harmful conduct to society because such person is not able or not obliged to foresee the consequences of such harmful conduct.

14. "Force majeure" means an event that happens objectively, unforeseeably and irrecoverably although all necessary capable measures have been applied.

15. "Administrative incapacity" is a case where a person commits an administrative violation while that person is suffering mental illness or other medical condition that results in his/her inability to reason and control his/her behaviour.

Article 3. Principles for handling administrative violations

1. Principles for sanctioning administrative violations:

a) Any administrative violation shall be detected in a timely manner and be sanctioned; all consequences of the administrative violation shall be remedied in accordance to law.

b) The sanctioning of administrative violations shall be administered swiftly, openly and objectively, in assurance of fairness and equality and in accordance with laws.

c) In sanctioning an administrative violation, the nature, seriousness and consequences of such violation, the violator's personal identity, as well as the mitigating and aggravating circumstances shall be assessed in order to determine the appropriate type and severity of sanctions to be imposed.

d) Administrative sanctioning shall only be applied when administrative violations as prescribed by laws occur.

Each administrative violation shall be sanctioned once only.

If more than one person jointly commits one administrative violation, each and every joint violator shall be sanctioned.

If a person commits multiple administrative violations, he/she shall be sanctioned separately for each violation.

đ) Person competent to sanction administrative violations shall establish the administrative violation. Individual or organization sanctioned shall have right to prove that he/she is not at fault.

2. Principles for applying the administrative handling measures:

a) An individual may be subject to administrative handling measures only if such individual falls under one of the subject categories prescribed in Articles 97, 105, 116 and 127 hereof.

b) The principles prescribed in items b, c, đ, Clause 1 hereof shall also apply.

Article 4. Authority to stipulate about sanctioning of administrative violations

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1. The Government shall stipulate acts of administrative violation, maximum monetary fine against the administrative violations in accordance with clause 7 Article 24 hereof, other remedial measures, authority to apply the provisions in item k Clause 1 Article 30 hereof, and stipulate forms to be used in handling administrative violations.

2. Based on this Law, the Government shall stipulate the application of administrative sanctions, remedial measures, authority to sanction and authority to make minutes against each concrete administrative violation in state administration areas.

3. The Government shall regulate the application of the measures of education at communes, wards, or townships, placement in juvenile reformatories, placement in education facilities, placement in medical treatment facilities.

5. The Prime Minister, Ministers, Heads of Ministerial-level agencies, People's Councils and People's Committees at various levels shall not prescribe acts of administrative violation, types and severity of administrative sanctions; as well as remedial measures.

Article 5. Subjects to be handled for administrative violations

1. The subjects to administrative sanctions include the followings:

a) Persons aged between full 14 and under 16 shall be sanctioned for those administrative violations that they intentionally committed; persons aged full 16 and above shall be sanctioned for any administrative violation they committed.

Active army servicepersons, reserve army persons during the period of training gatherings, or persons serving in the People's Public Security force who committed administrative violations shall be sanctioned in the same manner as civilians be; in cases where it is necessary to deprive such persons of certain operational licences/permits granted for national defence and security purposes, the sanctioning person shall not directly order such deprivation, but request the relevant authority in the army or Public Security force to handle the case in accordance with the Code of discipline.

b) An organization shall be sanctioned for any administrative violation it committed. After serving the sanction decision, the sanctioned organization shall identify

the culpable individual(s) within the organization so as to determine legal responsibility of such individual(s) in accordance with law.

c) Foreign individuals and organizations that commit administrative violations within the territory, contiguous zone, the exclusive economic zone and the continental shelf of the Socialist Republic of Viet Nam, in aircrafts with Vietnamese nationality, vessels flying Vietnamese flags, or Vietnam oil-rigs overseas shall be sanctioned in accordance with Vietnamese law, unless otherwise provided for by international treaties to which Vietnam is a signatory.

2. Subjects of administrative handling measures shall be individuals who fall under one of the categories prescribed in Articles 97, 105, 116 and 127 hereof.

Administrative handling measures provided for in this Law shall not be applied to foreign individuals.

Article 6. The statute of limitations for handling administrative violations

1. The statute of limitations for sanctioning administrative violations shall be stipulated as follows:

a) The statute of limitations for sanctioning an administrative violations shall be one year; the statute of limitations shall be two years if it is an administrative violation in the areas of finance, securities, intellectual property rights, construction, environment, atomic energy, residential housing, land, dykes, publication, print newspapers, export, import, immigration, emigration, or if the act of violation is the manufacture or trade of prohibited items or counterfeit goods, except otherwise provided by laws.

b) The statute of limitations provided for in item a Clause 1 hereof shall be calculated as follows:

For an administrative violation completed, the statute of limitations shall start from the termination of such act of violation;

For an administrative violation that is still in progress, the statute of limitations shall start from the detection of such act of violation.

Where an individual is being formally investigated, or prosecuted or brought to trial under criminal procedures, and it is then decided to discontinue such proceedings, but the unlawful conduct contains elements of administrative violation, the statute of limitations for administrative sanctioning shall be three months, commencing the date the person competent to sanction receives the decision on case suspension, decision on referral of case for administrative sanctions and the case file.

c) Within the statute of limitations specified in Clauses 1 and 2 hereof, if the violator commits another violation in the same area or if the violator intentionally evades or obstructs the sanctioning, such statute of limitations as prescribed in Clauses 1 and 2 hereof shall not apply; the statute of limitations for administrative sanctioning shall be recounted from commitment of such new violation or from termination of such evasion or obstruction.

d) If the statute of limitations specified in items a, b, c hereof has expired, the administrative sanctions will not be applied, but the remedial measures provided for in Clause 1 Article 30 hereof shall be applied; the exhibits of administrative violations those are not allowed to be put in circulation shall be destroyed, or confiscated into State budget.

2. The statute of limitations for applying administrative handling measures shall be stipulated as follows:

a) The statute of limitations for applying the measure of education at communes, wards, or townships shall be one year, counting from commitment of an violation stipulated in Clause 1, Article 98 or six months counting from commitment of an violation stipulated in Clause 2 Article 97; or six months from commitment of the latest violation stipulated in Clauses 3, 4 and 5 Article 97 hereof;

b) The statute of limitations for applying the measure of placement in juvenile reformatories shall be one year , counting from commitment of an violation stipulated in Clause 1 Article 105; six months counting from commitment of violation stipulated in Clause 2 Article 105, or from commitment of the latest violation stipulated in Clause 3 Article 105 hereof;

c) The statute of limitations for applying the measure of placement in education facilities shall be one year, counting from commitment of the latest violation stipulated in Clause 1 Article 116 hereof.

d) The statute of limitations for applying the measure of placement in medical treatment facilities shall be one year, counting from commitment of the latest violation stipulated in Clause 1 Article 127 hereof

Article 7. Time frame for being considered as not having been administratively handled

1. If, within one year upon the full execution of the administrative sanction or upon the elapse of the statute of limitations for executing the sanction decision, the sanctioned individual or organization does not repeat the violation, then such individual or organization shall be considered as not having been administratively sanctioned.

2. If, within two years upon the completion of the administrative handling measure or upon the elapse of the statute of limitations for enforcing the administrative handling measure, the handled individual does not repeat , then such individual shall be considered as not having been handled by an administrative handling measure.

Article 8. Calculation of time, time limits and statute of limitations in handling administrative violations

1. Night-time in this Law shall be from 22 hour of the preceding day to 6 hour of such a day.

2. Time limits or statute of limitations by months or years in this Law shall be calculated on months and years of solar calendar, including holidays as provided for in the Labour Code.

3. Time limits stipulated by days in this Law shall be calculated on working days, excluding holidays as provided for in the Labour Code.

Article 9. Mitigating circumstances

1. The following shall be the mitigating circumstances:

- a) The violator has prevented or reduced harms caused by his/her violation or has voluntarily remedied the consequences and paid compensation;
- b) The violator has voluntarily reported his/her violation and shown remorse;
- c) The violator commits the violation in the state of being emotionally provoked by unlawful conducts of (an) other person(s);
- d) The violator is forced to commit the violation or commits the violation as a result of his/her material or emotional dependency:
- đ) The violator is a pregnant woman, or is an old-aged and sick person; or the violator has diminished capacity due to their illness or disability;
- e) The violation is committed under particularly difficult circumstances that are not created by the violator him/herself;
- g) The violation is committed due to backwardness

2. Apart from the circumstances prescribed in Clause 1 hereof, the Government may specify other mitigating circumstances in their regulations on handling of administrative violations.

Article 10. Aggravating circumstances

- 1. Only the following shall be aggravating circumstances:
 - a) Organized violation;
 - b) Multiple-time violation;
 - c) Repetition;
 - d) Instigation, enticement and exploitation of juvenile/s to commit a violation; or forcing materially and emotionally dependent persons to commit a violation;
 - đ) Exploitation of a person who is clearly known by the violator to be suffering from mental illness or other illnesses which lead to inability to reason and to control behaviour for committing the violation;

e) Revilement or contempt of officials in service, violations of brutal nature, or violations committed in the state of being intoxicated by alcohol, beer or other stimulants;

g) Abuse of power or authority to commit violations;

h) Exploitation of crisis circumstances like wars, natural disasters or other difficult times of the society to commit violations;

i) Violations committed during the time of serving a criminal sentence or executing an administrative handling measure;

k) Continuation of an administrative violation despite the fact that the relevant authority has ordered the cease of such act of violation;

l) Evasion or concealing of an administrative violation after committing such violation;

m) Violation in large scale, violation against multiple persons;

n) Goods in violation in high value;

o) Goods in violation in high quantity.

2. The circumstances prescribed in Clause 1 hereof shall not be considered aggravating factors if they are already defined as administrative violations.

Article 11. Cases not subject to handling of administrative violation

1. Handling of administrative violations will not carried out in the following situations:

a) Violation in emergency;

b) Violation in self-defence;

c) Violation in unforeseeable events;

d) Violation in force majeure;

đ) Violator is in administrative incapacity;

e) Act of administrative violation committed by staff, public servants or officials directly relates to the mandates assigned. Handling of those violations shall be carried out in accordance with laws on staff, public servants and officials.

2. In the situations provided for in item a, b, c, d and d Clause 1 hereof, persons competent to sanction shall not issue sanction decision, but can apply the remedial measures and confiscate the exhibits and means of administrative violations into State budget, or destroy those not allowable to be put in circulation.

Article 12. Prohibited conducts

1. Retaining cases that contain elements of crime for handling as administrative violations.

2. Abusing power or position to harass, tolerate or shield in handling administrative violations.

3. Issuing regulations on acts of administrative violation, regulations on authority to sanction administrative violations, types of administrative sanctions, remedial measures, or administrative handling measures in exceeding the authority granted.

4. Not sanctioning administrative violations or not applying administrative handling measures (where such sanctions or measures are needed); failing to sanction administrative violations or to apply the administrative handling measures in a timely, just manner, within the authority, in accordance with procedures, or on right subjects as provided for hereof.

5. Applying administrative sanctions and remedial measures those are not appropriate or proportionate to each administrative violation.

6. Extending the time limit for applying an administrative handling measure.

7. Using monetary sums collected from sanctioning of administrative violations or proceeds from selling of confiscated exhibits and means to reward provide financial supports to agencies or organizations handling administrative violations.

8. Forging and garbling case files of administrative violations or case files of applying administrative handling measures.

9. Opposing, evading, delaying or obstructing the execution of decisions on administrative sanctions, decisions on execution of administrative sanctions, decisions on application of administrative handling measures.

10. Assaulting upon the life, health, honour or human dignity of a person who is the subject of an administrative sanction, an administrative handling measure, a measure to prevent administrative violations and ensure the execution of decision on administrative sanctions, a measure to prevent administrative violation and ensure the execution of decision on administrative handling measures.

Article 13. Compensation for damages caused by administrative violation

1. The State is liable for payment of compensation for damages caused by illegal action of official-duty performers in accordance with clause 1,2,3,4 Article 13 of Law on state compensation liability.

2. Compensation for damages caused by an administrative violation shall be effected in accordance with civil legislation.

Article 14. Responsibilities in preventing and deterring administrative violation

1. Agencies, organizations and all citizens shall strictly abide by legal provisions on the handling of administrative violations. Agencies and organizations shall be obliged for educating their members so as to improve their sense of obedience to law and social norms, and for taking measures to preclude contributing factors and conditions of administrative violations committed in their agencies and organizations.

2. Upon detection of any administrative violation, the person competent to handle administrative violations shall handle such violation in accordance with law.

3. Citizens have rights and obligations to detect, report and deter any act of administrative violation.

Article 15. Complaints, denunciations and taking action in handling administrative violations

1. Administratively sanctioned individual, organization and their legal representatives shall be entitled to make complaint, denunciation against the handling of administrative violations in accordance with laws on complaints and denunciations.

In the course of complaint settlement, if deeming that the execution of a complained administrative decision will cause irremediable consequences, the first complaint settler shall have to issue a decision to temporarily suspend the execution of such administrative decision as provided for in the Article 35 of Law on complaints and denunciation.

2. Administratively sanctioned individual, organization and their legal representatives shall be entitled to take action against the decision on handling of administrative violations in accordance with laws on administrative procedure.

Article 16. Handling violation against persons competent to handle administrative violations

Persons competent to handle administrative violations, who extort, tolerate, shield, fail to handle or handle unduly, overly, or handle in excess of his/her authority shall be disciplined or criminally prosecuted depending on the nature and severity of the violation; and shall compensate for the damage caused, if any, in accordance with laws.

Article 17. Liabilities on administration of enforcement of laws on handling of administrative violations

1. The Government shall consistently administrate the enforcement of laws on handling administrative violations at nationwide.

2. The Ministry of Justice shall be responsible to the Government for the administration of enforcement of laws on handling administrative violations and have the following rights and mandates:

a) Making suggestions to the Government of development and improvement of laws on handling administrative violations;

b) Drafting and submitting legal normative documents on handling administrative violations to competent agencies for enactment;

c) Instructing and organizing the implementation of legal normative documents on handling administrative violations; organizing dissemination and education of laws on handling administrative violations;

d) Following up, reporting the state of enforcement of laws on handling of administrative violations; making statistics and developing database on handling administrative violations;

đ) Monitoring and inspecting the enforcement of laws on handling administrative violations.

3. Within their mandates and functions, the Ministries, the Ministerial level Agencies shall cooperate with the Ministry of Justice in performance of mandates provided for in Clause 2 hereof; make six-month, annual or ad hoc reports to the Ministry of Justice on handling administrative violations within their state administration authorities.

4. People's Councils at all levels shall administrate the enforcement of laws on handling administrative violation in the locals and have the following rights and mandates:

a) Instructing and organizing the enforcement of legal normative documents on handling administrative violations; organizing legal dissemination and education on handling of administrative violations;

b) Monitoring, inspecting, handling violations and resolving, within their authorities, complaints and denunciations on enforcement of laws on handling administrative violations;

c) Making six-month, annual or ad hoc reports to the Ministry of Justice on handling administrative violations and state of enforcement of laws on handling administrative violations in the locals.

Bodies of Justice shall be responsible to help the People's Councils at respective levels in administration of the enforcement of laws on handling administrative violations in the localities.

Article 18. Liability to monitor the handling of administrative violations

1. Heads of state agencies shall, within their respective mandate and power, shall regularly monitor and inspect the handling of administrative violations conducted by authorized persons in their respective area of management, and shall promptly deal with any unlawful conduct as well as with any complaint or denunciation related to the handling of administrative violations in accordance with law.

2. Ministers, Heads of Ministerial level Agencies, Chairmen of People's Councils at all levels shall be responsible to:

a) Regularly monitor the handling of administrative violations by persons competent to handle the administrative violations under their managerial powers;

b) Discipline against person at fault in handling administrative violations under respective managerial field;

c) Handle timely complaint and denunciation on handling of administrative violations in the professions or fields under respective managerial powers in accordance with laws;

d) When a competent person detects that a sanction decision or a decision on application of administrative handling measure issued by him/herself or his/her inferiors is in error, that person shall timely revise, supplement or set aside that decision and issue a new one.

If a sanction decision has been issued, but not fully executed, and subsequently, the act of violation is found to contain signs of crime and the statute of limitation for criminal prosecution has not elapsed, person issuing the sanction decision shall immediately issue the decision on suspension of execution of the former decision and within three days counting from the commencement of suspension, send the file of the violation case to the competent investigatory body and procuracy for a proposal of prosecution of a criminal case; if the sanction decision has been fully executed, person issuing the decision shall send case file of violation to the competent investigatory body and procuracy. If the agency conducting criminal procedure has decided to prosecute the case, the person competent to sanction shall set aside the decision on handling of administrative violation and send all of

exhibits, means and documents relating to the execution of the said decision to the agency conducting criminal procedure.

Article 19. Supervision of handling of administrative violations

State agencies, Vietnam Fatherland Front Committee and its members, people elected representatives shall have right to supervise the performance of agencies and persons competent to handle administrative violations.

If the illegal conduct committed by the agency where person competent to handle administrative violation works is detected, state agencies, people elected representative shall have right to request, the Vietnam Fatherland Front Committee and its members shall have right to recommend to the agency where the competent person works for consideration and resolution in accordance with laws. Agency and competent person shall consider, resolve and response such request or recommendation in accordance with laws.

Article 20. Legal effects of the Law on the Handling of Administrative Violations on administrative violations committed outside the territory of the Socialist Republic of Vietnam

Citizens, organizations violating administrative laws of the Socialist Republic of Vietnam outside her territory may be subject to handling of administrative violations as prescribed in this Law.

PART THREE

ADMINISTRATIVE HANDLING MEASURES

CHAPTER I

ADMINISTRATIVE HANDLING MEASURES AND AUTHORITY TO DECIDE THE APPLICATION OF THE ADMINISTRATIVE HANDLING MEASURE

Proposal 1:

Administrative handling measures including education at communes, wards or townships, placement in juvenile reformatories, placement in education facilities, placement in medical treatment facilities are based on Ordinance on the handling of administrative violations. Procedures of application are revised to be more transparent and publicly. Prostitutes who are applied administrative handling measures and sanctioned for administrative violations are not subjects to the measure of placement in medical treatment facilities.

Proposal 2:

The measure of placement in medical treatment facilities are not regulated hereof. Drug addicted persons shall be subject to compulsory drug treatment as provided for in the Law on prevention and fight against drug. Prostitutes shall be sanctioned for administrative violations.

Administrative handling measures including education at communes, wards or townships, placement in juvenile reformatories, placement in education facilities are considered and decided by the Court in accordance with justice rules and procedures.

Proposal 1

CHAPTER 1

ADMINISTRATIVE HANDLING MEASURES AND AUTHORITY TO DECIDE THE APPLICATION OF THE ADMINISTRATIVE HANDLING MEASURE

CHAPTER 2

PLACEMENT IN JUVENILE REFORMATORIES

Article 104. Placement in juvenile reformatories

1. The measure of placement in juvenile reformatories shall apply to individuals who have committed violations as defined in Article 105 hereof with the purpose to enable them to take part in basic education, vocational training, labour and everyday life activities under the supervision and education of the reformatories.

2. The duration for applying the measure of placement in juvenile reformatories shall range from 12 months to 24 months.

3. The Chairman of People's Council of District shall have authority to decide the application of placement in juvenile reformatories.

Article 105. Subjects to the measure of placement in juvenile reformatories

1. Individuals aged between full 14 and under 16 who have unintentionally committed act that contains elements of a very serious crime as prescribed in the Criminal Code.

2. Individuals aged between full 14 and under 16 who have intentionally committed act that contains elements of a serious crime as prescribed in the Criminal Code and have previously sanctioned by the measure of education at communes, wards or townships; or have not been sanctioned by such measure but do not have a permanent place of residence.

3. Individuals aged between full 14 and under 18 who have, for multiple times, committed petty theft, petty fraud, petty gambling or public order disturbance and have

previously sanctioned by the measure of education at communes, wards or townships; or have not been sanctioned by such measure but do not have a permanent place of residence.

4. The measure of placement in juvenile reformatories shall not be applied to pregnant women certified by a hospital, or women who is raising child less than 36 month of age and lodged an application certified by the People's Council of communes where such person is residing.

Article 106. Preparation of case files recommending the application of placement in juvenile reformatories

1. Preparation of case files recommending the application of placement in juvenile reformatories to violators described in the Article 105 hereof shall be as following:

a) If the violator is a juvenile having permanent residence, the Chairman of People's Council of Commune where such a person residing shall prepare a case file recommending the application of placement in juvenile reformatories.

The case file shall include a short resume, documents on violations committed by said person; applied education measures, written presentation of the violator or his/her legal representatives.

b) If the violator is a juvenile not having permanent residence, the Chairman of People's Council of Commune where such a person committed violations shall prepare a case file recommending the application of placement in juvenile reformatories

The case file shall include a violation report, short resume, documents on violations committed by said person; applied education measures, an extract of criminal records (if any), written presentation of the violator or his/her legal representatives.

c) In cases where a juvenile violator has been directly identified by Public Security of District or Province in their investigation into law violations but his/her violation is not seriously enough for criminal prosecution, and such violator is subject to placement in juvenile reformatories measure as prescribed in Article 105 hereof, then the Public Security

Agency that is dealing with the case shall verify facts, gather documents and prepare the case file recommending the application of placement in juvenile reformatories.

The case file shall include a short resume, documents on violations committed by said person; applied education measures, written presentation of the violator or his/her legal representatives.

3. After completing the preparation of case files recommending the application of placement in juvenile reformatories as described in clause 1 and 2 of this Article, the prepared agencies shall be responsible to send them to the Head of Public Security of District.

Article 107 Order and procedure for consideration of application of placement in juvenile reformatories measures

1. Within 7 days from the receipt of the case file recommending the application of placement in juvenile reformatories, Chief of Public Security of District shall have responsibilities to consider and submit to the chairman of People's Council at the same level to set up a Consultant Council.

Members of the Consultant Council include Chairman of Consultant Council, who is deputy Chairman of people's Council of District, and standing members, who are Chief of Public Security of District, Chief of Justice Department, Head of Department of Labour-Invalids and Social affairs, representatives of lawyers association at the same level and relevant social organizations.

2. Upon the decision of setting up the Consultant Council, standing members have responsibilities to send the case file to all members of Consultant council, organize the meeting of Consultant Council to consider the case file within 10 days from the date of setting up of the Consultant Council and assign secretary to write the meeting minutes.

3. The Consultant Meeting is held if at least $\frac{2}{3}$ rd of the Council's members participate. The Consultant Council members work together and decide by majority.

The juvenile violator, juvenile's parents or guardian, lawyers, legal aid officers, or other legal representatives, representatives of organizations and agencies where such juvenile

studies or works must be invited to participate in the meeting of Consultant Council. The meeting shall be continued to organize in case the above persons are not present without reasonable reasons.

4. Chairman of the Consultant Council coordinate the meeting.

Members of the Council have responsibilities to consider and give their opinions about the committed violations, subjects, conditions and orders and procedures to apply the measure of placement in juvenile reformatories and other relevant issues.

The juvenile violator and other persons participating in this meeting as described in Clause 3 hereof have right to express their opinion on the application of the measure of placement in juvenile reformatories.

5. The meeting of the Consultant Council shall be recorded in written. The meeting minutes describe the events of the meeting, opinions and proposals of participants of the Consultant Council. The Chairmant of

the Consultant Council and the secretary shall have to sign the minutes.

6. Within 3 days from the ending of the meeting of the Consultant Council, the standing Council have responsibilities to send the meeting minutes and case file as provided for in Clause 1 and 2 of Article 106 hereof to the Chairman of people's Council of District for consideration and making decision.

Article 108 Procedures for deciding the application of the measure of placement in juvenile reformatories

1. Within 5 days from the receipt of meeting minutes of the Consultant Council and the case file , the Chairman of People's Council at district shall consider and decide the application of the measure of placement in juvenile reformatories.

2. The decision of application of the measure of placement in juvenile reformatories shall include date of decision, full name and position of the person who issued the decision, full name and date of birth of the juvenile, violations committed by the said person, applied legal documents, articles and clauses, the date and place of execution, the right to lodge a complaint or take a lawsuit against the decision as specified by law

3. The decision of application of placement in juvenile reformatory measure shall take effect from the date of signing and shall be sent to the juvenile and his/her family, Public Security of District, People's Council of District and the agency that prepared case file recommending the application of placement in juvenile reformatory measure.

Article 109. Execution of the decision of application of placement in juvenile reformatory measure

1. Within 5 days from the date of decision, the Public Security of District shall take the violator to the juvenile reformatory.
2. The duration of serving decision on placement in juvenile reformatory is calculated from the date when person subject to the execution is brought to the juvenile reformatory.

Article 110. The statute of limitations for executing the decision on placement in juvenile reformatory

The statute of limitations for executing the decision on placement in juvenile reformatory shall elapse after one year from the date of such decision. In case a person who is subject to the decision on placement in juvenile reformatory intentionally avoids execution of such decision, the statute of limitations shall be recounted upon termination of such avoidance.

Article 111. Deferral of or exemption from the execution of the decision on placement in juvenile reformatory

1. Persons subject to the decisions on placement in juvenile reformatory are deferred the execution of the decision in the following situations:
 - a) (The said person) is suffering from critical illness, which has been certified by a hospital;
 - b) The said person is pregnant with certification from a hospital or women who is raising children less than 36 month of age and lodged an application certified by the People's Council of Commune where such person is residing.

The said person's family is under exceptionally difficult circumstances, verified by the Chairman of People's Council of the Commune where such person is residing.

When the conditions for deferred execution no longer exist, the execution of decision shall resume.

2. Persons subject to placement in a juvenile reformatory shall be exempted from executing the decision in the following cases:

a) (The said person) is suffering from critical illness, which has been certified by a hospital ,

b)if, during the time of deferment as provided for in Clause 1 hereof, the violator has made significant progress in law observance or has accomplished a feat/merit.

3. The Chairman of People's Council of district that issues the decision on the placement in juvenile reformatories shall consider and decide the deferral or exemption of the execution of the decision, based on the violator's application.

Article 112. Reduction, temporary suspension of or exemption from execution the remaining term in juvenile reformatories.

1. For those violators who have served half of their term in juvenile reformatories, if they have made significant progress or accomplished some feat, such violators shall be considered for a reduction in their remaining term of placement or exemption from execution of their remaining term.

2. When a person who is executing the decision of placement in a juvenile reformatory becomes seriously ill and is sent back to his/her family for treatment, such person shall granted a suspension of execution; the time spent in treatment shall be counted as part of the execution term; upon his/her recovery, if the remaining term is more than 3 months, such person shall resume execution of the decision in juvenile reformatories. If the female violator is pregnant, she shall be granted temporary suspension of execution of the decision until her children reach 36 month of age, if, during the time of deferment, such person has made significant progress in law observance or has accomplished a feat/merit ,

she shall be exempted from executing the remaining term. When a person is suffering from critical illness, such person shall be exempted from execution of his/her remaining term.

3. Head of Agency in charge of administration of the juvenile reformatories shall make a decision on reduction, temporary suspension of, or exemption from execution of the decision on application of placement in juvenile reformatories as provided for in the Clause 1 and 2 hereof on the recommendation made by Head of the juvenile reformatory.

The decisions shall be sent to the Chairman of the People's Council of District that issued the decision on application of placement in juvenile reformatories and to the said person's family.

Article 113. Management of persons granted with deferral or temporary suspension of execution of decision on placement in juvenile reformatories

1. Persons who have been granted deferral or temporary suspension of execution of placement in juvenile reformatories shall have to present themselves to the local government of the commune, ward or township where they are residing or the organization or agency for whom they are working; such persons shall not move out of their place of residence without approval of the foresaid authorities or organizations.

2. During the time of deferral or temporary suspension of the execution of decision on placement in juvenile reformatories, if such person commits violations related to public security, social order and safety, or if there are enough grounds to believe that such person has absconded, then Head of Agency in charge of administration of the juvenile reformatories which issued the decision of deferral or temporary suspension shall revoke such decision and issue a decision to enforce the decision of placement in juvenile reformatories. The enforcement decision shall be sent to the Public Security of District. Upon receipt of the enforcement decision, the related Public Security of District shall conduct the escort of the said violator into the juvenile reformatory.

Article 114. Completion of execution of decision on placement in juvenile reformatories

When the violator has fully executed the decision in application of placement in a juvenile reformatory measure, the Head of juvenile reformatory shall grant a certificate to such person and shall send copies to the Head of Agency in charge of administration of the juvenile reformatories, the Chairman of the People's Council of District which issued the decision, the People's Council of Commune where such person is residing and to the person's family.

CHAPTER V

OTHER PROVISIONS RELEVANT TO THE APPLICATION OF ADMINISTRATIVE HANDLING MEASURES

Article 137 Temporary removal of person serving placement in juvenile reformatories or education facility out from the place of execution at the request of agency conducting criminal proceedings

1. At the request of competent agency conducting criminal proceedings, the Head of juvenile reformatory, the Director of education facility shall decide the temporary removal of person serving the administrative handling measure out of the place of execution to take part in the litigation relating to the said person.

2. Duration of temporary removal out of the place of execution shall be counted into the duration of execution of such measure.

Article 138. Transfer the case file of person to be applied administrative handling measures with the elements of crime for criminal prosecution

1. When examining the case file to decide the application of administrative handling measures, if it is found that the violation committed by such person contains elements of a crime, the competent person shall immediately transfer the case file to the competent agency conducting criminal proceedings.

2. When the decision on application of administrative handling measure is issued, if it is subsequently found that the violation committed by the subject on whom the administrative measure is imposed containing the elements of a crime, provided that the

time limit for criminal prosecution has not yet expired, person issuing the decision on application of administrative handling measure shall set aside such decision and within three days from that date and transfer the case of the subject to the competent agency conducting proceedings.

If [the subject] is sentenced by imprisonment by the Court, the duration of serving the placement in juvenile reformatory, placement in education facility measure shall be counted in the duration of imprisonment sentence. Two days serving the placement in juvenile reformatory, education facility is counted as one day serving the imprisonment sentence.

Article 139. Criminal charge for the criminal act committed before or during the time of serving the administrative handling measure

If it is found that the person applied with administrative handling measure did commit, or commits, a criminal act before or during the time of execution of the decision, at the request of the competent agency conducting criminal proceedings, person issuing the decision on education at commune, ward or township, the Head of juvenile reformatory, the Director of the education facility shall issue the decision on temporary suspension of the execution of the decision and transfer the file of such person to the agency conducting criminal proceedings; if such person is sentenced by imprisonment by the Court, he/she is exempted from serving the rest of time of the decision on application of administrative handling measure; if the punishment applicable is not imprisonment sentence, such person could be required to resume serving the decision on application of administrative handling measure.

Article 140. Handling the case where a person is subject to placement in the education facility or placement in juvenile reformatory, but also subject to placement in forced drug treatment facility

1. If a person is subject to placement in education facility, in juvenile reformatory, but also subject to placement in forced drug treatment facility, the placement in forced drug treatment facility shall be applied.

2. If the subject is narcotic addicted, ruffian and ferocious, placement in juvenile reformatory or in education facility shall be applied. The juvenile reformatory or education facility shall conduct forced drug treatment for this kind of person.

3. In fit of addiction cutting off or recovery stage in the forced drug treatment , if the narcotic addict commits a violation of provision in Clause 3 Article 100 and Clause 1 Article 102 hereof, the placement in juvenile reformatory or in education facility measure shall be applied to that person.

The Director of the forced drug treatment facility shall prepare case file recommending the placement of narcotic addict in education facility, juvenile reformatory based on available case file and minutes on the newly committed violation and send it to the People's Court of District which determined the decision on application of administrative handling measure.

Procedure for application and execution of placement in juvenile reformatory, education facility measures against such kind of persons shall be conducted in compliance with provisions of this Law.

Proposal 2

CHAPTER 1

Article 96. Administrative handling measures

Administrative handling measures include:

1. Education at communes, wards, or townships;
2. Placement in juvenile reformatories;
3. Placement in education facilities.

Article 97. Education at communes, wards, or townships

1. Education at communes, wards, or townships apply to educate and manage individuals that fall under Article 98 hereof in the place of their residence.
2. The duration for applying the measure of education at communes, wards, or townships ranges from 3 months to 6 months.

Article 98. Subjects to the measure of education at communes, wards, or townships

1. Individuals aged between full 12 and under 14 who have intentionally committed an act of violation that contains elements of serious crime or especially serious crime as prescribed in the Criminal Code;
2. Individuals aged full 14 and under 16 who have intentionally committed an act of violation that contains elements of a serious crime as prescribed in the Criminal Code.
3. Individuals aged full 14 and above who have, for multiple times, committed petty theft, petty fraud, petty gambling, or public order disturbance.
4. Females aged 55 and above, and males aged 60 and above who have committed infringement upon property of agencies or organizations; infringement upon property, health, honour and human dignity of domestic or foreign citizens; or committed public safety and order disturbance on a frequent basis but not seriously enough for criminal prosecution.

Article 99. Placement in juvenile reformatories

1. The measure of placement in juvenile reformatories shall apply to individuals who have committed violations as defined in Article 100 hereof with the purpose to enable them to take part in basic education, vocational training, labour and everyday life activities under the supervision and education of the reformatories.

2. The duration for applying the measure of placement in juvenile reformatories shall range from 12 months to 24 months.

3. The Government shall stipulate the establishment and administration of juvenile reformatories.

Article 100. Subjects to the measure of placement in juvenile reformatories

5. Individuals aged between full 14 and under 16 who have unintentionally committed act that contains elements of a very serious crime as prescribed in the Criminal Code.

6. Individuals aged between full 14 and under 16 who have intentionally committed act that contains elements of a serious crime as prescribed in the Criminal Code and have previously sanctioned by the measure of education at communes, wards or townships; or have not been sanctioned by such measure but do not have a permanent place of residence.

7. Individuals aged between full 14 and under 18 who have, for multiple times, committed petty theft, petty fraud, petty gambling or public order disturbance and do not have a permanent place of residence.

8. The measure of placement in juvenile reformatories shall not be applied to pregnant women certified by a hospital, or women who is raising child less than 36 month of age and lodged an application certified by the People's Council of communes where such person is residing.

Article 101. Placement in education facilities

1. The measure of placement in education facilities shall apply to (the subjects defined in) Article 102 hereof to enable them to take part in basic education, vocational training, labour and everyday life activities under the supervision of the education facilities.

2. The duration for applying the said measure ranges from 6 months to two years.

Article 102. Subjects to the measure of placement in education facilities

1. The measure of placement in education facilities shall apply to individuals who have committed infringement upon property of agencies or organizations; infringement upon property, health, honour and human dignity of domestic or foreign citizens; or committed public safety and order disturbance on a frequent basis but not seriously enough for criminal prosecution, and have previously been sanctioned by the measure of education at communes, wards, or townships, or have never been sanctioned by the education measure but do not have a permanent place of residence.

2. The said measure shall not apply in the following circumstances:

a) individuals aged under 18;

b) females aged over 55, or males aged over 60;

c) pregnant women certified by a hospital;

d) women who is raising child less than 36 month of age and lodged an application certified by the People's Council where such person is residing.

Article 103. Authority to decide the application of administrative handling measures

People's Courts of district, prefectures, towns, cities of province (hereinafter referred to as People's Court of District) shall have authority to decide the application of administrative handling measures as prescribed in Article 96 hereof.

CHAPTER II

ORDER AND PROCEDURE FOR PREPARATION CASE FILES

RECOMMENDING THE APPLICATION OF ADMINISTRATIVE HANDLING
MEASURES

Section 2

**Preparations of case file recommending the application of placement in juvenile
reformatories measure**

**Article 107. Preparation of case files recommending the application of
placement in juvenile reformatories measure to violators with permanent residence**

1. If it is necessary to apply the measure of placement in juvenile reformatories to person who commits a violation of laws as prescribed in Article 100 hereof, the Chairman of People's Council of Commune where such a person residing shall prepare a case file for submission to the Chairman of People's Council of District.

Public Security of Commune shall be responsible to assist the Chairman of People's Council at the same level in gathering materials and preparing case file recommending the application of placement in juvenile reformatories measure.

2. A case file shall include a short resume, documents on violations committed by said person; personal records and other important facts relevant to the violator, medical records (if any), administrative handling measures applied, presentation of the violator, comments of the Public Security agency, Fatherland Front Committee and other relevant social organizations at the same level.

In addition to the comments of the above agencies, the case file shall contain comments made by school where the said person is studying, his/her parents' or guardian's opinion.

3. Within three days from the receipt of the case file, the Chairman of the People's Council of District shall hand it over to the Head of Public Security of District.

Within ten days from the receipt of the case file, the Chief of Public Security of District shall verify and complete the case file and report to the Chairman of the People's Council of District.

Article 108. Preparation of case files recommending the application of placement in juvenile reformatories measure to violators with no permanent residence

1. If it is necessary to apply the measure of placement in juvenile reformatories to person who commits a violation of laws as prescribed in Article 100 hereof and does not have a permanent residence, the Chairman of People's Council of Commune where such a person committed the violation shall make a minutes of violation and report to the Chairman of People's Council of District.

2. Within three days from the receipt of the minutes, the Chairman of the People's Council of District shall assign the Chief of Public Security of District to gather materials and prepare case file recommending the application of placement in juvenile reformatories.

Within 15 days from the receipt of the minutes, the Chief of Public Security of District shall verify, complete the case file and report to the Chairman of the People's Council of District.

3. The case file shall include a short resume, documents on violations committed by said person; personal records and other important facts relevant to the violator, the extract of criminal records, and written presentation of the violator.

Article 109. Preparation of case files recommending the application of placement in juvenile reformatories measure where the violation is detected, investigated and handled by Public Security agencies at district or provincial levels

1. In cases where an violator has been directly identified by Public Security of District or Province in their investigation into law violations but his/her violation is not seriously enough for criminal prosecution, and such violator is subject to placement in juvenile reformatories measure as prescribed in Article 100 hereof, then the Public Security

Agency that is dealing with the case shall verify facts, gather documents and prepare the case file for submission to the Chairman of the People's Council of District.

2. A case file sending to the Chairman of the People's Council of District shall include a short resume, documents on violations committed by said person; personal records and other important facts relevant to the violator, an extract of criminal records (if any), administrative handling measures applied (if any), written presentation of the violator, comments made by school where said person is studying, his/her parents' or guardian's opinion.

3. Within three days from the receipt of the case file as prescribed in Clause 1 hereof, the Chairman of People's Council of District shall hand over it to the Chief of Public Security of District for consideration and proposal, except when the case file is prepared by the Public Security of District. Within five days from the receipt of case file, the Chief of Public Security of District shall consider and report to the Chairman of People's Council of District.

Article 110. Referrals of case file recommending the application of placement in juvenile reformatories measure to the People's Court of District

1. Within three days from the receipt of case file as prescribed in Articles 107, 108 and 109 hereof, the Chairman of People's Council of District shall decide the referral of the file case recommending the application of placement in juvenile reformatories measure to the People's Court of District. If the case file is insufficient, it shall be sent to the Public Security of District for supplementation.

Office of Justice shall be responsible for examining the case file before the Chairman of the People's Council of District issues the decision on referral of case file to the People's Court of District.

2. The case file recommending the application of placement in juvenile reformatories measure to the People's Court of District includes:

a) Case file recommending the application of placement in juvenile reformatories measure as prescribed in Articles 107, 108 and 109 hereof;

b) Document of the Chairman of People's Council of District recommending the application of placement in juvenile reformatories measure.

3. This case file shall be sent also to the Procuracy for supervision of the compliance with laws in the course of considering the application of placement in juvenile reformatories measure.

CHAPTER 3

ORDER AND PRCEDURE FOR DECIDING THE APPLICATION AND EXECUTION OF ADMINISTRATIVE HANDLING MEASURES

Article 115. Order and procedure for consideration and decision of application of administrative handling measures in People's Courts

The Standing Committee of the National Assembly shall stipulate the order and procedure for consideration and decision of application of administrative handling measures in People's Courts.

Article 116. Sending the decision of application of administrative measures for execution

1. Within five days from the date where the decision of application of administrative measure takes effect, the Court issuing the decision shall send it to the agency preparing case file for execution.

Article 117. Execution of decision on application of education at commune, ward or township measure

1. Upon the receipt of the decision, the People's Council of Commune that prepared the case file shall be responsible to:

- a) assign individual, organization to directly assist the educated individual;
- b) Instruct, organize and supervise the execution of the education at commune, ward and township measure.

2. Public Security of Commune shall be responsible to assist the Chairman of the People's Council at the same level to execute the education at commune, ward or township measure.

3. Relevant agencies, organizations and populate unit at grass root shall be responsible to cooperate with the People's Council of the Commune in management and education of the educated individual.

4. Person assigned to assist shall have plan on management, education and assistance of the educated individual and be entitled to allowance for management, education and assistance.

5. The educated individual shall make written commitment on the compliance with the decision on education at commune, ward or township.

6. The educated individual's family shall be responsible to cooperate strictly with the People's Council of the Commune, individual, organization or agency assigned with the task of management and education (hereinafter referred to as the organization assigned with management and education task) in managing and educating the educated individual.

7. The Ministry of Finance shall make instruction on allowance for the individual assigned to assist as provided for in Clause 5 hereof.

Article 118. Execution of the decision on application of placement in juvenile reformatories, education facilities measure

1. Upon the receipt of the decision, the agency which prepared the case file for recommendation shall take persons subject to the execution to juvenile reformatory, education facility.

In respect to the execution of the decision on placement in the education facility measure, the agency which prepared the case file for recommendation shall cooperate with the family or the guardian to take person subject to the execution to the education facility.

2. The duration of serving decision on placement in juvenile reformatory or education facility is calculated from the date when person subject to the execution is brought to the juvenile reformatory or education facility.

Article 119. The statute of limitations for executing the decision of application of administrative handling measures

The statute of limitations for executing the decision of administrative measures shall elapse after one year from the date of such decision. In case a person who is subject to administrative handling measures intentionally avoids execution of such decision, the statute of limitations shall be recounted upon termination of such avoidance.

Article 120. Exemption from or deferral of the execution of the decision of administrative handling measure when the subject of the decision has not been brought to execute the measures

1. Persons subject to the decisions on placement in juvenile reformatories or education facilities are deferred the execution of the decision in the following situations:

a) (The said person) is suffering from critical illness, which has been certified by a hospital;

b) The said person's family is under exceptionally difficult circumstances, verified by the Chairman of People's Council of the Commune where such person is residing.

When the conditions for deferred execution no longer exist, the execution of decision shall resume.

2. Persons subject to placement in a juvenile reformatory, education facility shall be exempted from executing the decision in the following cases:

a) (The said person) is suffering from critical illness, which has been certified by a hospital and such person is no longer dangerous to the society;

b) Female violator who is pregnant, with certification from a hospital;

c) if, during the time of deferment, the violator has made significant progress in law observance or has accomplished a feat/merit.

3. The People's Court of district that issues the decision on the placement in juvenile reformatories, education facilities shall consider and decide the deferral or exemption of the execution of the decision, based on the violator's application. Where it is

necessary, it may request the Chairman of People's Council at the same level to verify before deciding.

Article 121. Reduction, temporary suspension of or exemption from execution the remaining term in juvenile reformatories, education facilities

1. For those violators who have served half of their term in juvenile reformatories, education facilities, if they have made significant progress or accomplished some feat, such violators shall be considered for a reduction in their remaining term of placement or exemption from execution of their remaining term.

2. When a person who is executing the decision of placement in a juvenile reformatory, education facility becomes seriously ill and is sent back to his/her family for treatment, such person shall be granted a suspension of execution; the time spent in treatment shall be counted as part of the execution term; upon his/her recovery such person shall resume execution of the in the facility.

3. People's Court of District issuing decision on placement in juvenile reformatories, education facilities shall make a decision on reduction, temporary suspension of, or exemption from execution of the remaining term on the recommendation made by Head of the juvenile reformatory, Director of the education facility.

Decisions to grant temporary suspension of or exemption from the execution of the decision on application of placement in juvenile reformatories or placement in education facilities shall be sent to the People's Council of the Commune where such person is residing and to the said person's family, the Head of Agency in charge of administration of juvenile reformatories, education facilities.

4. Person whose place of residence cannot be identified and who falls into the circumstances of temporary suspension of execution of the decision or exemption from the execution of the remaining time as provided for in Clause 2 hereof shall be sent to local medical facility where the juvenile reformatory or the education facility is located.

Article 122. Management of persons granted with deferral or temporary suspension of execution of decision on placement in juvenile reformatories or education facilities

1. Persons who have been granted deferral or temporary suspension of execution of placement in juvenile reformatories or education facilities shall have to present themselves to the local government of the commune, ward or township where they are residing or the organization or agency for whom they are working; such persons shall not move out of their place of residence without approval of the foresaid authorities or organizations.

2. During the time of deferral or temporary suspension of the execution of decision on placement in juvenile reformatories or education facilities, if such person commits violations related to public security, social order and safety, or if there are enough grounds to believe that such person has absconded, then the People's Court of District which issued the decision of deferral or temporary suspension shall revoke such decision and issue a decision to enforce the decision of placement in juvenile reformatories or education facilities. The enforcement decision shall be sent to the Public Security at the same level where the People's Court issuing such decision is located. Upon receipt of the enforcement decision, the related Public Security shall conduct the escort of the said violator.

Article 123. Completion of execution of administrative handling measures

1. When the violator has fully executed the decision in application of administrative handling measure, the Chairman of the People's Council of Commune, the Head of juvenile reformatory, the Director of education facility shall grant a certificate to such person and shall send copies to the People's Court of District which issued the decision, the Head of Agency in charge of administration of the juvenile reformatories, education facilities, the People's Council of Commune where such person is residing and to the person's family.

2. Person, whose place of residence cannot be identified, who is juvenile, or ill and incapable to work, upon completion of placement in juvenile reformatory or education facility measures, shall be sent to Centre of Social Protection in the locality where the juvenile reformatory, education facility is located.

Annex III

***Extracts from* DECREE 142/2003/ND-CP PRESCRIBING AND GUIDING IN DETAIL THE APPLICATION OF THE MEASURE OF CONSIGNMENT TO JUVENILE DETENTION CENTRES**

(No. 142/2003/ND-CP of November 24, 2003)

The National Assembly

Pursuant to the Law on Government Organization on Dec. 25, 2001;

Pursuant to the Ordinance on Handling Administrative Violations July 2, 2002;

At the request of the Minister of Public Security,

Article 19 Hunt for and arrest of subjects who have already been given the decisions on consignment to reformatories but escaped

1. If the persons who have been given decisions on consignment to reformatories escape before being taken to the reformatories, the police chiefs of the districts where such persons reside or where the dossiers have been compiled shall issue decisions to hunt for them.
2. Where reformatory inmates escape, the directors of the reformatories shall issue decisions to hunt for them. The duration of their escape from reformatories shall not be counted into the duration of decision execution.
3. The agencies which have issued decisions on the hunt therefor shall have to organize the hunt for and arrest of the escapees. If subjects resist when being arrested, necessary

coercive measures may be applied under the provisions of law and guidelines of Ministry of Public Security to compel such persons to abide by the decisions.

4. The People's Committees and police offices at all levels shall have to coordinate with and assist the above-mentioned agencies in the hunt for and arrest of the escapees.

When detecting the subjects to be hunted for, every people shall have to promptly report thereon to the nearest police offices or People's Committees or arrest and escort them to the above-mentioned agencies.

5. When the escapees are arrested or the subjects are handed over, the police offices must make records thereon and question them for their declarations; and at the same time notify the agencies which have issued decisions to hunt for them so that the latter can come and receive the subjects.

Upon receiving the notification, the agencies which have issued hunting decisions must send their people to receive the subjects and take them to reformatories; the hand-over and receipt of subjects must be recorded in writing according to regulations.

It is strictly forbidden to temporarily hold subjects in criminal remand or detention houses or in places failing to ensure hygiene and safety for persons held in administrative custody.

Article 21 Organization of reformatories

1. The organization and apparatus of an reformatory is composed of the director, deputy-directors, administrators, educators, general education and vocational teachers; logistic, technical and medical staff and guard police force.

2. The appointment and dismissal of directors and deputy-directors of reformatories, the payroll and organizational apparatuses of reformatories shall be decided by the Minister of Public Security.

The reformatories shall be sized to manage between 500 and 1000 inmates each. Reformatories accommodating over 1,000 inmates may set up sub-zones according to regulations of the Ministry of Public Security.

Article 22 Directors and deputy-directors of reformatories

1. Directors of reformatories are the heads of reformatories and have to take responsibility for the entire operation of their reformatories.
2. Deputy-directors are persons who assist the directors in performing tasks assigned by the directors and are answerable to the directors and law for their assigned work domains.

Article 23 Criteria of directors, deputy-directors of reformatories

Directors and deputy-directors must be the graduates from one of the following schools: The People's Police Academy, the People's Security Academy, the Law University, the Social Sciences and Humanity University or the Pedagogical University, and must have experiences in administering and educating law offenders. Directors and deputy-directors must be the persons who have good political quality, good sense of organization and discipline and have good knowledge about their profession and law. In cases where directors and deputy-directors are graduates from the Law University, the Social Sciences and Humanity University or the Pedagogical University, within 1 year from the day of appointment, they must study police or security discipline.

Article 24 Criteria of officials and employees of reformatories

1. Administrators, educators, general education and vocational teachers, logistic and medical officials and guard police must be the persons who have good political quality, good sense of organization and discipline and have good knowledge about their profession and law.

2. Administrators, educators, general education and vocational teachers and commanders of the guard police forces must be the graduates from Intermediate Police Schools, Intermediate Security Schools or equivalent or higher level.

3. Police officers and men performing the tasks of management, escort and/or protection must be persons trained in specialized operation under the regulations of the Ministry of Public Security.

4. Officials and staffs of reformatories shall be granted allowances and titles in accordance with provisions of education law.

Article 25 Management of inmates

The persons subject to the application of measure of consignment to reformatories must study, labour and live under the management and supervision of the reformatories.

Depending on the number of inmates, education duration, personal identities, the nature and seriousness of violations, health conditions, sex, age group of each type of subjects, the reformatories directors shall work out measures to organize the management and education of the subjects in a proper manner.

Every team or group of inmates shall be directly supervised by a teacher.

Inmates who want to be go out of the reformatory must be permitted by the Head of the reformatory and shall be supervised by a staff of the reformatory.

Article 26 Temporary release of inmates from reformatories at the request of competent criminal proceeding agencies

1. Upon the requests of moving inmates out of the reformatories, the heads of the competent legal proceeding agencies must send official dispatches to the directors of the reformatories, clearly stating the full names, date of birth and permanent address of the persons to be moved, the reasons for and duration of moving out. Basing themselves on the

written requests of the legal proceeding agencies, the directors of the reformatories shall issue decisions to release inmates to participate in the legal proceedings in cases related to them. The decisions on inmate release must clearly state the full names, ages and addresses of the persons to be released, the agencies requesting the release, the purposes and duration of the release, the ranks and positions of the persons who sign the decision.

2. The agencies requesting the temporary release shall have to take away the released persons and return them to the reformatories within the time limits inscribed in the temporary release decisions. Upon hand-over and receipt of persons under temporary release decisions, the records thereon must be made strictly according to regulations.

3. The inmate release duration shall be counted into the duration of execution at the reformatories. One day of release shall be counted into 2 days of execution at the reformatories.

Article 27 Food regime

The monthly food ration for an inmate is prescribed as follows:

- 17 kg of rice,
- 0.7 kg of meat
- 0.7 kg of fish,
- 0.5 kg of sugar,
- 0.5 kg of salt,
- 1 kg of seasoning powder
- 1 liter of fish sauce,
- 15 kg of vegetables,

-15 kg of firewood or equivalent for fuel

2. On public holidays and solar New Year day, their daily food ration shall be trebled at most; and on the lunar New Year festival, they shall be given additional food not more than 5 times the daily ration. The food rations shall be calculated at the market prices in each locality.

3. The food regimes for diseased inmates shall be decided by medical staffs or doctors.

4. Water for drinking and cooking shall be taken from clean water resources as regulated by the medical bodies. Reformatories shall ensure the food regime and hygiene of food for inmates in accordance with law.

Article 28 Clothing regimes

1. Each year, an inmate shall be provided with 2 sets of long dresses, 2 sets of underwear, 1 set of uniform long dresses, 2 towels, 2 pairs of plastic sandals, 2 toothbrushes, 1 raincoat, 1 hat; in northern cold regions, an inmate shall be provided with an addition of 1 warm coat, 1 wool hat and 2 pairs of socks. Each quarter, an inmate shall be provided with a toothpaste tube, 1 kg of soap;

2. An inmate of reformatories in southern region shall be provided with a blanket. An inmate of reformatories in northern region shall be provided with a padded cotton blanket with cover. Inmates shall be provided with 1 blanket, 1 mosquito-net, 1 warm coat and 1 cotton blanket in every two years. 2 sedge mats shall be provided to inmates every year.

Female inmates shall be provided with monthly personal hygiene money equivalent to 2 kg of rice, calculated at the local market prices.

Article 29 Accommodation of inmates

1. Inmates shall be lodged in collective rooms for teams, groups or subgroups to suit the requirements of the work of management and education of each type of subjects. At night,

inmates shall sleep in locked collective rooms and a staff of reformatory shall watch for the building.

2. Rooms of inmates must be cool in summer and sheltered in winter and ensure hygiene environment. Inmates shall be given beds (or sleeping floors). In Northern reformatories, if the floor is built of cement with ceramic floor tiles, the inmates shall be provided with woody board to lie. The sleeping places of inmates are at least 2.5 m² each. Lodging areas for men and women are separated from each other.

3. Inmates are allowed to bring into reformatories essential personal effects prescribed by the Ministry of Public Security.

Article 30 The studying regime of students

1. Students at reformatories study general knowledge under the program of Ministry of Education and Training. Studying general knowledge is compulsory for all students who have not finished their primary education yet. Depending its ability and factual conditions, each school will organize other education programs for students.

Besides learning general knowledge, students must study citizen education programs, vocational education, vocational training and other educational programs required by the Ministry of Public Security. Monthly expenses for training – studying occupations of each student are equivalent with the local market price of 05 kg of rice.

2. Monthly expenses for purchasing books, notebooks, studying equipments are equivalent with the local market of 05 kg of rice.

3. It is the duty of reformatories to: (i) organize mid-term tests, final exams, upgrade-level examinations, the gifted-selection tests and honor class tests; and (ii) provide certificate or degree equivalent with the normal education program of the Ministry of Education and Training.

4. Transcripts, study records, documents and relevant forms related to the teaching and learning activities in reformatories is the same with general forms of the Ministry of Education and Training and the Ministry of Public Security.

5. Diplomas and certificates in general education and vocational training of reformatories have the same value with diplomas and certificates at high schools.

Article 31 Labor regime

1. During the time being consigned, besides studying times, students must participate in the labor activities organized by reformatories. Reformatories are responsible for arranging works suitable with (i) the age from 12 to 15 and from 15 to 18 year-old and (ii) the health of students to support for the normal development of strength, minds and personalities of students.

2. Using students in heavy jobs, works with hazardous conditions, toxic-substances or works with adverse effects to characteristics of students is forbidden by law. These works are included in a list issued by The Ministry of Labor - Invalids and Social Affairs and Ministry of Health.

3. The maximum time for labor, general knowledge study and vocational training of each inmate is 7 hour per day. Time for vocational training is counted as the labor time. Time for labor is no more than time for studying. In case of necessary, reformatories can utilize students to work overtime or work at night shift but it must be in line with labor law and guiding of Ministry of Public Security. Students can take rest in Saturdays, Sundays, public holidays, and New Year Day as prescribed by law.

In addition to the off-work time following general regulations, students could be off-work in case of: (i) taking sick rest with allowance form physicians and/or doctors; (ii) meeting families and friends with the permission of competent authority staffs of reformatories.

Female students could take a 30-minute rest a day during the menstruation.

4. For jobs requiring labor protection under law provisions, the reformatories have to supply labor safety clothing and equipment suitable to requirements of such jobs. In case of working on night shift, allowances shall be paid according to regulations. In case of accident occurring with students, reformatories have the duty to make timely rescue and necessary procedures to provide allowance as prescribed by law.

Article 32 Management and use of labor fruits of reformatories

1. Labor fruits of students and staffs of each reformatory are uniformly managed and used by that reformatory as regulated.

2. Labor fruits of reformatories, after excluding appropriate expenses, are spent for: (i) supporting study, food, activities, medical examination and treatment for students; (ii) rewarding students with excellent achievements in studying, labor, and personality improvement; (iii) rewarding their officers and teachers with fruitful achievement in organizing labor management; (iv) supplementing their welfare funds; (v) investing in enlarged production and vocational training; (vi) buying labor safety clothing and equipment; and (vii) constructing their material bases as the guidance of Ministry of Public Security.

Article 33 Activity regime

Besides time for studying, vocational training and labor, reformatories must organize the cultural, artistic, physical training, sport activities as well as time for reading books, newspapers, watching television, and other entertainment activities for students.

Article 40 Complaints, denunciations, administrative lawsuits

1. Persons subject to the application of measure of consignment to reformatories or their lawful representatives may lodge their complaints about, or initiate administrative lawsuits against, the application of such measure.
2. All citizens are entitled to denounce illegal acts in the application of measure of consignment to reformatories.
3. The competence, procedures and time limits for settling complaints and/or denunciations or the procedures for settling administrative lawsuits shall comply with law provisions on complaints and denunciations or with the procedures for settling administrative cases.

Annex IV

***Extracts from* DECREE 66/2009/ND-CP TO AMEND AND SUPPLEMENT SOME ARTICLES OF DECREE NO. 142/2003/ND-CP OF NOVEMBER 24, 2003 OF THE GOVERNMENT STIPULATING THE APPLICATION OF CONSIGNMENT INOT REFORMATORIES**

The National Assembly

(Decree 66/2009/ND-CP of 1 August 2009)

1. Article 2 is amended and supplemented as follows:

"Article 2: Consignment into reformatories

Consignment into a reformatory measure is an administratively handling measure decided by Chairman of the People's Committees of districts, towns and provincial cities (hereinafter referred to as district level) which apply for juvenile who have committed law violations specified in Clause 2 of this article with conditions to have their education, vocational education, vocational training, labor, rehabilitation of drug addiction and everyday life activities under the management and supervision of reformatories.

The duration of application of measures of consignment into reformatories ranges from six months to two years.

2. Subject consigned to reformatories include:

- a) Persons aged between full 12 years and under 14 years who have committed act that contains elements of a serious crime as prescribed in the Criminal Code;
- b) Persons aged between full 12 years and under 16 years who have committed act that

contains elements of a less serious crimes or serious crimes prescribed in the Penal Code and have previously been sanctioned by the measure of education at communes , ward, township or have not been sanctioned by such measure but do not have a permanent place of residence;

c) Persons aged between full 14 years and under 18 who have repeatedly committed acts of petty theft, minor fraud, petty gambling, public disorder disturbance and have previously been sanctioned by the measure of education at communes , ward, township or have not been sanctioned by such measure but do not have a permanent place of residence

d) Persons aged between full 12 years and under 18 years who are drug addicted, ruffian and ferocious, but not serious enough for criminal prosecution or are under the age of criminal responsibility, have committed acts of disturbing public order ; aggressive fighting and conducting assault and battery, taking action against the person on duty, illegal organizing racer twice or more times in a duration of 12 months,

đ) Persons aged between full 14 years and under 18 years who are serving the decision pf placement at the medical treatment facilities, in the period of detoxification and rehabilitation have committed acts of theft, petty swindle, petty gambling, assault on the person on the duty, causing public disorder in the medical treatment facilities from twice or more times in duration of twelve months.

The legal basis for determining the age of the violating persons is birth certificates. If there is no birth certificate, the competent authorities shall base on identity card; or household registrations. In the absence of the above documents, the competent authorities shall base on testimony and other valid documents to determine the age of the violating individuals. The age referred to in paragraphs a, b, c, d, e, Clause 2 of this article is the age of violating individual when he made violations of law. In case at the time of signing decisions on consignment to reformatories that person is full 18 years of age, the measure of consignment into reformatories shall not be applied and the competent authorities shall consider and compile dossiers proposing the measure of consignment into educational camps if the violating individual is subject to this measure.

3. Where the juvenile persons who have committed law violations are the subject to be consigned to reformatories and concurrently the subject to be sent to medical treatment facilities, the competent body shall only apply the measure of sending them to the medical treatment facilities.

The agency which has received the dossier of consignment to the reformatories shall have to transfer the entire dossier of such persons to the Advisory Council for sending into medical treatment facilities prescribed by law.

4. The measure of consignment into reformatories shall not be applied for foreigners.

2. Article 3 is amended and supplemented as follows:

"Article 3. The principle of application of measure of sending to reformatories

1. All acts of violation specified in Clause 2 of Article 2 of this Decree must be timely detected, handled in a prompt and just manner in accordance with the provisions of this Decree and relevant laws.

2. The juvenile persons shall be consigned into reformatories only if they have committed violations of law as provided for in points a, b, c, d, e, Clause 2 of Article 2 of this Decree.

3. The application of measures of consignment to reformatories must ensure the right persons, the right procedures and competence specified in the Ordinance on Handling of Administrative Violations July 2, 2002 (as amended and supplemented in 2008) and documents guiding the implementation of the above Ordinance.

4. When deciding to apply the measure of sending to reformatories, the responsible persons shall base themselves on the provisions of law, the nature and seriousness of the violation, the personal identity of the offender and the extenuating and aggravating circumstances and administrative responsibilities in order to make proper decisions.

5. All acts of infringing upon the life, health, honor, dignity and property of the person subject to the application of measures of consignment into reformatories are strictly forbidden.

4. Article 5 is amended and supplemented as follows:

"Article 5. Establishment and management of reformatory

1. Ministry of Public Security shall decide the establishment of reformatories in regions, merger or dissolution of the reformatories. Where there is a need of establishment of reformatory in a local region, the Chairman of the People's Committees of provinces and cities under central authority (hereinafter referred to as provincial level) shall draw up specific plans and propose the Ministry of Public Security to establish a reformatory in the local area.

The reformatory is planned, designed and built according to regulations of the Ministry of Public Security, to ensure conformity with the characteristics and requirement of management, education, drug rehabilitation, medical treatment, vocational training, physical education, sports, and entertainment for students and ensure the standards of fire prevention and fighting, environmental hygiene.

2. Ministry of Public Security shall uniformly manage the reformatories throughout the country and coordinate with the Ministry of Education and Training, Ministry of Labour – War Invalids and Social Affairs, Ministry of Health and other agencies and organizations in the organization of education, vocational training, drug rehabilitation, medical treatment and prevention and regular health examinations for students at reformatories at ages between 12 years and under 15 years old and between 15 years of age to under 18 ".

5. Article 6 is amended and supplemented as follows:

"Article 6. The functions of reformatories

1. Reformatories are places where juvenile persons execute the decision of consignment to reformatories specified in Clause 2 of Article 2 of this Decree.

2. The reformatory shall have the duty to provide the persons executing the decision of consignment to reformatories with management, ethics and legal education, vocational education, drug rehabilitation , care, counseling, HIV / AIDS treatment, labor organizations and activities consistent with their age to help them to correct their faults, to make progress in studying and training and to ensure physical, mental, and intellectual health development in order to become honest and useful citizens of the society.

3. Organization and operation of a reformatory must comply with the provisions of this Decree and other relevant laws. "

13. Article 19 is amended and supplemented as follows:

"Article 19. Hunt for persons who have already been consigned to reformatories in case of escape

1. If the persons who have been given decisions on consignment to reformatories escape before being taken to the reformatories, the police chiefs of the districts where such persons reside shall issue the decision to hunt for them. If such persons have no permanent residence, the police chiefs of the district where the dossiers have been compiled shall issue decisions to hunt for them.

2. Where reformatory inmates escape, the directors of the reformatories shall issue decisions to hunt for them. The duration of their escape from reformatories shall not be counted into the duration of decision execution.

3. The district police agencies which have issued decisions on the hunt shall have to organize the hunt for and arrest of the escapees. If subjects resist when being arrested, necessary coercive measures may be applied under the provisions of law and guidelines of Ministry of Public Security to compel such persons to abide by the decisions.

4. The People's Committees and police offices at all levels shall have to coordinate with and assist the agencies mentioned in clause 3 of this Article in the hunt for and arrest of the escapees.

When detecting the subjects to be hunted for, every people shall have to promptly report thereon to the nearest police offices or People's Committees or arrest and escort them to the above-mentioned agencies.

5. When the escapees are arrested or the subjects are handed over, the police offices must make records thereon and question them for their declarations; and at the same time notify

the agencies which have issued decisions to hunt for them so that the latter can come and receive the subjects. If necessary, the persons who have authority to issue decision on administrative detention specified in Article 45 of Ordinance of handling administrative violations shall issue the decision on administrative detention and take the escapees to the administrative detention house of the police agency.

It is strictly forbidden to detain administrative violators in detention or custody cells for criminal proceeding or in places that are not hygiene and safe for detainees.

Upon receiving the notification, the agencies which have issued hunting decisions must send their people to receive the subjects and take them to reformatories; the hand-over and receipt of subjects must be recorded in writing according to regulations.

6. If the persons who have been given decisions on consignment to reformatories escape before being taken to the reformatories and be arrested when such persons are full or above 18 years of age, the police chiefs of the districts where the dossiers proposing the application of measure of consignment into reformatories have been compiled and Head of the reformatory propose Chairman of the People Council at the same level to abolish the decision of application of measure of consignment into reformatories and compile dossiers to propose the application of measure of consignment to education camps. Police chief at district level shall have responsibilities to strictly supervise the violating individuals at the district police agency during the time of compiling dossiers.

If the persons who have been given decisions on consignment to reformatories escape when they are executing the decision at the reformatories and be arrested when such persons are full or above 18 years of age, the police chiefs of the districts where the dossiers proposing the application of measure of consignment into reformatories have been compiled and Head of the reformatory propose Chairman of the People Council at the same level to abolish the decision of application of measure of consignment into reformatories and compile dossiers to propose the application of measure of consignment to education camps. Police chief at district level shall have responsibilities to strictly supervise the violating individuals at the district police agency during the time of compiling

dossiers. Provincial level police shall have responsibilities to take the violating individuals into the education camps.

14. Article 21 is amended and supplemented as follows:

"Article 21. Organization and apparatus of reformatories

1. The organization and apparatus of an reformatory is composed of the principals, deputy principals, heads of branches, deputy chief branches, team leaders, deal of the professional team, officers, professional officers, technical officers and guard police personnel.

2. The appointment and dismissal of principals, deputy principals, heads of divisions, deputy chief of divisions, the payroll and organizational apparatuses of reformatories shall be decided by the Minister of Public Security.

3. The reformatories shall be sized to manage between 500 and 1000 students each. The size and place of reformatories shall be decided by the Ministry of Public security. Reformatories accommodating over 1,000 inmates may set up sub-zones according to regulations of the Ministry of Public Security.

If the number of students exceeds the size of the reformatory or because of reasonable condition, students are required to be transferred from one reformatory to another reformatory, the director of prison management, principals of education camps, and reformatories shall issue decisions to transfer in accordance with the provisions of the Public Security Ministry. The decision to transfer must be sent to the People's Committee at district level where the decision of consignment to a reformatory was issued, the commune-level People's Committees where students reside, parents or guardians of students. "

15. Article 23 is amended and supplemented as follows:

"Article 23. Criteria of principals and vice principals, heads of divisions of reformatories
Principals and vice principals must be the graduates from one of the following schools: The People's Police Academy, the People's Security Academy, the Law University, the Social Sciences and Humanity University or the Pedagogical University, and must have

experiences in administering and educating law offenders. Principals and vice principals must be the persons who have good political quality, good sense of organization and discipline and have good knowledge about their profession and law. In cases where principals and vice principals, head of division of reformatories are graduates from the Law University, the Social Sciences and Humanity University or the Pedagogical University, within 1 year from the day of appointment, they must study police or security discipline.

19. Article 30 is amended and supplemented as follows:

“Article 30: The studying regime of students:

1. Students at reformatories study general knowledge as the program of Ministry of Education and Training. Studying general knowledge is compulsory for all inmates who have not finished their primary education yet. Depending on the ability and factual conditions, each school will organize the education program for inmates with higher levels. If the students were dropouts before entering reformatories and have no school records, the principal of reformatories in coordinate with the Head of District Education Department organize to examine the competent of student in literacy and mathematic in the form of written test. Based on the results of the tests, principal of the reformatory determine the suitable level of education for such students. This Decision replaces the lost previous transcripts to consider the graduation for student

In addition to general education, students shall have to study civil education programs, vocational education, vocational training and other educational programs decided by the Ministry of Public Security. Monthly expenses for training – studying occupations of each student are equivalent with the local market price of 5 kg of rice.

2. Monthly expenses for purchasing books, notebooks, studying equipments are equivalent with the local market of 7 kg of rice.

3. It is the duty of reformatories to: (i) organize mid-term tests, final exams, upgrade-level examinations, the gifted-selection tests and honor class tests; and (ii) provide certificate or

degree equivalent with the normal education program of the Ministry of Education and Training.

4. Transcripts, study records, documents and relevant forms related to the teaching and learning activities in reformatories is the same with general forms of the Ministry of Education and Training and the Ministry of Public Security.

5. Diplomas and certificates in general education and vocational training of reformatories have the same value with diplomas and certificates at high schools.

20. Article 33 is amended and supplemented as follows:

"Article 33: Activity regime

1. Besides time for studying, vocational training and labor, reformatories must organize the cultural, artistic, physical training, sport activities as well as time for reading books, newspapers, watching television, and other entertainment activities for inmates.

2. Every reformatory shall establish a library, every division of the reformatory shall establish a reading room, entertainment centers, home fitness, sports center for students to exercise; and shall be equipped with radio system, the local cable television. Each room is equipped with a color television 21 inches, delivered a youth newspaper and a student newspaper. "

24. Article 44 is amended and supplemented as follows:

"Article 44. Responsibilities of the Ministry of Public Security

1. Providing consistent management of reformatories, organizing and guiding police units, local reformatories in the country to implement measures of consignment into reformatories.

2. Issuing guidelines and rules of reformatories, necessary forms to implement measures of consignment into reformatories.

3. Regularly supervising the implementation of measures of consignment into reformatories, ensuring that such activities are in accordance with the law.
4. Coordinating with the Ministry of Labour – War Invalids and Social Affairs, Ministry of Finance, Ministry of Health, Ministry of Education and Training and the Ministry, other related agencies, the provincial People's Committee, the State agency, political - social organizations, economic organizations, social organizations to implement measures of consignment into reformatories. "

Annex V

Extracts from CIRCULAR 19/2011/TT-BCA GUIDING ON THE APPLICATION OF THE ADMINISTRATIVE HANDLING MEASURE OF CONSIGNMENT INTO REFORMATORIES

Ministry of Public Security

(Circular 19/2011/TT-BCA of 20 April 2011)

Article 19 Commending, rewarding and dealing with inmate's infringement

1. The commendation, rewarding for reformatory inmates and dealing with their infringements are pursuant to regulations at Article 41 and 42 of Decree 142/2003/ND-CP.
2. Inmates, to be rewarded by allowing to take leave for visiting family must be students with remarkable progress in labour, learning and training, being graded at good or higher and whose father, mother, relatives (grandfather, grandmother, own brother, own sister or the direct person that brings the student up) are still alive.

The leave time is counted in the consignment serving period at the reformatory.

3. As for inmates who are isolated in the penalty room, if the inmates are making remarkable progress and well aware of their fault, the Principal of the Reformatory may consider and decide to reduce the isolation time in the penalty room.

Article 20 Management and usage of working results in a reformatory

1. The management and usage of working results in a reformatory must be in accordance with regulations at Article 32, Decree 142/2003/ND-CP and other related legal regulations.

2. The rest of working results in a reformatory after deducting reasonable expenses according to legal regulations can be used as follows:

- Spending 20% on additional food for inmates and as additional expense for diseases prevention and cure for inmates in addition to the standard expenses provided by the Government;

- Spending 25% as way of compensation for electric expense utilized by inmates, books, notebooks, measures and tools for education and subsistence and other additional educational activities (culture, arts, physical exercises, sports, entertainment), sightseeing, taking leave... for inmates;

- Spending 15% on rewarding for officers and inmates, in which 8% on rewarding for students with remarkable achievements in labour, learning and training and 7% on rewarding for the reformatory's officers, teachers with achievements in student management, education and labour organization, management;

Inmates who are rewarded by money may use the money for additional food, buying personal items for life, depositing and receiving back later at request or by end of consignment period or sending home to support family according to the reformatory's regulations.

- Spending 25% on construction and repairing of infrastructure;

In case spending the school's working results on construction and repairing of the reformatory infrastructure, Principal of the reformatory must build a plan and report in writing to ask for approval of the General Department of Police for Enforcement of Criminal Sentences and Judicial Assistance before implementation.

- Spending 15% to build allowance fund for the reformatory.

3. The reformatory must report in detail on the working results, the management and usage of working results in its unit to the Ministry of Police (via the General Department of

Logistics – Technique, Department of Finance and General Department of Police for Enforcement of Criminal Sentences and Judicial Assistance) periodically every 6 months and annually.