

Offences against regulations on hazardous waste management and crime of bringing wastes into Vietnam's territory under criminal law of Vietnam

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Abstract:

Activities of daily living and production are the main causes generating huge amount of wastes, hazardous wastes included. Disposal in general and hazardous wastes in proper are the main sources of causing the environmental pollution. In recent years, it can be clearly seen that the number of offences against regulations on environmental protection in general and regulations on hazardous waste management in proper has been on the increase. The author would discuss about the rules on offences against hazardous waste management and crime of bringing wastes into Vietnam's territory provided in the Criminal Code(s) of Vietnam; application of criminal rules on these crime and reforming criminal rules on offences against regulations on hazardous waste management and crime of bringing wastes into Vietnam's territory.

Keywords: Waste - hazardous waste - hazardous waste management - bringing waste - Vietnam's territory - criminal code - criminal law

1. Introduction

For centuries, countries in the world have developed rule over environmental issues that however focused primarily on the use of shared watercourses, rights to water, fishing rights and some other issues over natural resources. They have not addressed pollution issues for the beginning purpose. In recent years, the growth of industrial development, especially the industrial revolution 4.0, has rendered the protection of the environment a matter of sudden and immediate concern all over the world. Many countries have resorted to criminal law in the protection of the environment because other measures such as administrative sanctions, social encouragement... proved to be inadequate or ineffective.

The Vietnamese government has also utilized many methods to prevent and handle the violations against regulations on the environment protection such as administrative sanction, criminal prosecution.... Of these, resorting to criminal law seems to be the most punishable but effective method in the protection of the environment. This article discuss about the rules on offences against hazardous waste management and crime of bringing wastes into Vietnam's territory provided in the Criminal Code(s) of Vietnam.

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2. Overview on management of wastes and hazardous wastes

2.1. Definition of management of wastes and management of hazardous waste

Activities of daily living and production are the main causes generating huge amount of wastes, hazardous wastes included. According to Clause 12 of Article 3 of the Law on environmental protection 2014 of Vietnam, “Wastes refer to a kind of materials emitted from activities such as manufacturing, trading, service, daily activities and others”. On the basis of characteristics, wastes are divided into different kinds: liquid waste, gaseous waste, solid waste, waste in the form of odor, radioactive waste and other waste compounds. In terms of generating sources, wastes are categorized into daily activities’ wastes, industrial wastes and medical wastes. On the basis of the impacts on waste on health and the environment, wastes are classified into normal waste and hazardous waste². Clause 13 of Article 3 of the Law on environmental protection 2014 of Vietnam stated: “Hazardous wastes refer to the wastes that exhibits one or more of hazardous traits such as toxicity, radioactivity, infectivity, ignitability, explosiveness, corrosivity or other poisonous characteristics”. Therefore, it can be clearly seen that wastes or hazardous wastes are any kind of materials emitted from human activities (primarily manufacturing, trading, service, daily activities...), which results in the difference of seriousness and danger to society. Wastes are different in terms of physical and chemical characteristics because of their compounding elements. Also, there are various methods for determining the types of wastes and the determination often depends on the subjective evaluation of its generators. Wastes generated from activities of daily living and production could be non-recyclable or recyclable ones of which the later accounts for the vast majority. Waste disposal of a manufacturing process could thereby be the input materials of another process. In that case, Clause 16 of Article 3 of the Law on environmental protection 2014 of Vietnam provided another definition on disposal as follows: “Scrap refers to materials that are collected, classified and selected from discarded materials and products during the manufacturing or consumption process, which can be then reused as materials for another manufacturing process”.

Disposal in general and hazardous wastes in proper are the main sources of causing the environmental pollution, which requires thereby both the generators and the State officials to take actions on a precautionary basis to ensure the safety of the environment. Pursuant to Clause 15 of Article 3 of the Law on environmental protection 2014 of Vietnam, “Waste management refers to the process of prevention, control, minimization, monitoring, classification, collection, transportation, reuse, recycling and disposition of wastes”. However, because of the higher risks and danger to society of hazardous wastes, these types of disposal should be managed in different framework of stricter rules. Previously, the definition of management of hazardous wastes was regulated for the first time in Clause 3 of Article 3 of the Regulation on management of hazardous wastes³ (promulgated together with Decision No. 155/1999/QĐ-TTg of July 16, 1999 of the Prime Minister) and then revised in Clause 1 of Article 3 of the Circular No. 12/2011/TT-BTNMT of April 14, 2011, stipulating hazardous waste management. According to that, “hazardous waste management means activities related to the prevention, minimization, classification, sorting, direct reuse, temporary storage, transportation and treatment of hazardous wastes”. However, the Circular No. 12/2011/TT-BTNMT was later replaced by the Circular No. 36/2015/TT-BTNMT of June 30, 2015 on management of hazardous wastes (enter in force on September 1, 2015) that does not provide any definition of hazardous waste management. For this reason, based on the definition

² Hanoi Law University, *Book on Environmental Law*, People’s Police Publisher, Hanoi, 2015, page 84-85.

³ Clause 3 of Article 3 of the Regulation promulgated together with Decision No. 155/1999/QĐ-TTg: “Hazardous waste management includes activities of controlling hazardous wastes throughout the process, from the generation to collection, transportation, transit, keeping, treatment and disposal of hazardous wastes”.

on management of wastes stated in the Law on environmental protection 2014 of Vietnam, it can be understood that “*hazardous waste management refers to the process of prevention, control, minimization, monitoring, classification, collection, transportation, reuse, recycling and disposition of hazardous wastes*”.

2.2. Regulations on waste management and hazardous waste management

In the world, there have been two popular approaches of managing wastes that are end-pipe-line-approach (waste management at the end of production line) and production-pipe-line approach (waste management along with the production line). Besides, some developed countries take a consumer-driven-approach in the management of wastes that focuses on consumers. This approach could be utilized as an important tool to raise both consumer and manufacturer’s awareness about the safety and quality of the products that meet the environmental standards and rules as well as are friendly to the environment and the customers would therefore take environment-friendly actions in their activities of daily living⁴. The Law on environmental protection 2014 of Vietnam provides a new but more comprehensive regulation on waste management under which “*wastes must be managed throughout the process of generation, minimization, classification, collection, transport, recycling, and destruction*” (Clause 1 of Article 85). The legal makers create various rules on management of different types of waste that should be on the basis of analyzing the waste’s impacts to the living environment.

Regarding the management of hazardous wastes, the law provides for stricter and more detailed rules on the conditions and requirements, which is a solid basis for keeping the living environment safe. Hazardous wastes shall be treated by the methods, techniques and facilities that are suitable for the chemical, physical and biological of any kind of wastes in order to meet the environmental standards. The process of managing hazardous wastes is divided into five different stages as follows: (1) Management of the sources generating hazardous wastes. In this stage, suitable methods are utilized in the management of hazardous wastes at their sources; (2) Classification, collection and transportation of hazardous wastes. During this stage, hazardous wastes are classified, collected at their sources, then transported to treatment zones for disposal or transport stations or temporary storage areas; (3) Intermediate treatment. In this stage, hazardous wastes are treated with various methods like physical, chemical, biological and thermal treatment in order to decrease the amount of wastes as well as minimize or eliminate the toxicity of hazardous wastes so that they could be more suitable to the final treatment stage; (4) Transportation of hazardous wastes for latter treatment. After the intermediate treatment, hazardous wastes would be transported by specialized vehicles to the final treatment zones; (5) Disposition of hazardous wastes. After the treatment, if the waste could not be reused or recycled, they are disposed with different methods.

3. Offences against regulations on hazardous waste management; Bringing wastes into Vietnam’s territory under criminal code of Vietnam

3.1. Criminal rules on offences against regulations on hazardous waste management

Crime of violating regulations on hazardous waste management is stated in Article 236 of the Criminal Code of Vietnam 2015. According to that, this kind of crime is understood to be a violating act of any competent person who permits one legal person to bury, dump, discharge of hazardous wastes containing extremely hazardous pollutants beyond the limits prescribed by law or chemicals that must be eliminated according to Appendix A of Stockholm Convention on persistent organic pollutants against the law, or wastes containing radioactive substances.

⁴ Hanoi Law University, *Book on Environmental Law*, People’s Police Publisher, Hanoi, 2015, page 85-86.

- Regarding the object of the crime: This crime violates the State's regulations on the management of hazardous wastes; in other words, the object of this crime is the social relations in the field related to the prevention, minimization, classification, collection, transportation, capture, treatment and disposition of hazardous wastes. Offences against the social relations in this field might cause serious impacts to the living environment such as the pollution, which has bad influences on human health and other living creatures.

- About the subject of the crime: The offender of this crime is a special subject. Along with other conditions of a normal criminal subject, the subject of this crime must be any competent person in the management of hazardous wastes. Those persons have direct duties to the management of hazardous wastes as well as responsibilities for organizing, inspecting and supervising the relevant activities. People having direct duties and responsibilities in the management of hazardous wastes and doing activities related to hazardous wastes might be any generator of hazardous wastes, treater of hazardous wastes, hazardous waste management practitioner, transporter of hazardous wastes...

- As regards to the objective aspect of the crime: The objective act of the crime of violating regulations on hazardous waste management is the act of illegally permitting a legal person to bury, dump, discharge different types of hazardous wastes as follows:

First, the act of illegally permitting a legal person to bury, dump, discharge hazardous wastes containing hazardous pollutants beyond the limits prescribed by law or chemicals that must be eliminated according to Appendix A of Stockholm Convention on persistent organic pollutants against the law. The Stockholm Convention on persistent organic pollutants is an international treaty on the environment signed by States on May 22, 2001 in Stockholm and entered in force on May 17, 2004. Vietnam ratified the Convention on July 22, 2002, and then became its 14th State member. The Stockholm Convention has been created with the purpose of protecting human health and the living environment from threats and risks posed by persistent organic pollutants (POPs).

*"POPs are extremely toxic chemicals that persist in the environment and are capable of widely spreading and highly bio-accumulating in bio-tissues, causing serious harms to human health (reproductive, mental or immunity diseases, cancer, genetic injuries....), biodiversity and the living environment"*⁵. Of these, some are persistent and toxic organic pollutants made by humans such as plant protection drugs and insecticides, some are formed through industrial production, daily life or waste treatment activities. Appendix A of the Convention provides a list of chemicals that must be eliminated. According to the aforementioned regulations on hazardous waste management, the competent persons who are responsible for managing hazardous wastes have to apply suitable methods within their duties in order to ensure human health as well as the safety of the living environment; however, they violate those regulations for different motives (primarily for private profits).

Second, the act of illegally permitting a legal person to bury, dump, discharge wastes containing radioactive substances that cause radioactive pollution in the environment are radioactive sources of below average danger according to National Technical Regulation on radiation safety and categorization of radioactive sources beyond permissible limits. Radioactive sources are classified on the basis of their operation, of their use and of the harmful characteristics of their isotopes. Therefore, they are categorized into 5 groups. Also, radioactive sources are sorted into 3 types: (1) radioactive sources of above average danger; (2) radioactive sources of average danger; (3) radioactive sources of below average danger. The third type is of group 4 and group 5.

⁵ Item a of Clause 1 of the Decision No. 184/2006/QĐ-TTg of August 10, 2006 on approving the national plan on implementation of the Stockholm Convention on persistent organic pollutants.

Article 236 of the Criminal Code 2015 provides a big important change in the provisions on the objective act of violating regulations on hazardous waste management in comparison with those stated in the Criminal Code 1999. Article 182a of the Criminal Code 1999 does not provide a concrete description of the objective act of the crime but regulate the act in a general way that is “violating regulations on hazardous waste management”; therefore, understanding the offences would be gained by referring to environment-specific provisions that are stated in Articles from 90 to 94 of the Law on environmental protection 2014 of Vietnam. Moreover, the acts of violating regulations on management of hazardous wastes prohibited by law are regulated in Articles from 21 to 23 of the Decree No. 155/2016/NĐ-CP of November 18, 2016 on penalties for administrative violations against regulations on environmental protection; of these, the acts of illegally burying, dumping, discharging hazardous wastes are also stated. However, the objective acts described in Article 236 of the Criminal Code 2015 are not the above-mentioned acts but the illegal acts of competent persons permitting to do these acts. In another fact, the acts of illegally burying, dumping, discharging hazardous wastes are described in the crime of causing environmental pollution (Article 235 of the Criminal Code 2015).

Causing serious consequences to society to is not a compulsory constituent element of the crime of violating regulations on hazardous waste management, which is also one of the important novelties of the rules on the elements of this crime regulated in the Criminal Code 2015 in comparison with those provided in the Criminal Code 1999. Under the Criminal Code 1999, most of the crimes in the chapter of environmental offences are offences in which material elements must be constituted. However, regulating the crime with material elements has limited the ability to prosecute criminal responsibility of the persons violating these kinds of regulation because it is very difficult to determine the environmental consequences. In many cases, consequences caused by environmental offences do not happen right after the violating acts are done, but after a long time when the time limit for criminal prosecution of these crimes is expired. On the other hand, the determination of the causal link between the violating acts and the consequences is a very complicated issue, which requires the application of high-tech devices that not every local handling office could do. To address this legal shortcoming, legal makers of Vietnam have incorporated many innovative changes into the relevant articles of the Criminal Code 2015 including Article 236 on hazardous waste management; of these, the primary change is the condition of prosecuting criminal responsibility. Instead of regulating consequences to be one needed element in the criminal prosecution, the Criminal Code 2015 provides a quantitative tool to determine the condition of prosecuting criminal responsibility of persons committing the crime. In that sense, the acts of permitting to bury, dump, discharge hazardous wastes against the law are considered as offences against regulations on hazardous waste management if those wastes are of from 3,000 kg and contain extremely hazardous pollutants beyond the limits prescribed by law or chemicals that must be eliminated according to Appendix A of Stockholm Convention, or they are wastes containing radioactive substances that generate radioactive pollution and are radioactive sources of below average danger.

- As regards to the subjective aspect of the crime: The subjective aspect of a crime is the inner manifestation of the crime that defines a person’s psychological attitude to his socially harmful act at the time of the crime in the forms of criminal fault (intent or negligence), motive and purpose of the crime. The crime of violating regulations on hazardous waste management is always committed with intent, which means the offender is aware of the social danger of his act(s) of illegally permitting to bury, dump, discharge hazardous wastes containing extremely hazardous pollutants beyond the limits prescribed by law or chemicals that must be eliminated according to Appendix A of Stockholm Convention, or wastes containing radioactive substances that cause radioactive

pollution, foresees the possibility of socially harmful consequences of the act(s) but desires or allows those consequences to occur.

3.2. Criminal rules on crime of bringing wastes into Vietnam's territory

The crime of bringing wastes into Vietnam's territory is regulated in Article 239 of the Criminal Code 2015. Under this article, the crime is understood as the act(s) of bringing wastes or hazardous wastes into Vietnam's territory against the law.

- Regarding the object of the crime: The act(s) of committing the crime of bringing wastes into Vietnam's territory violate(s) the State's regulations on waste management. Offences against the social relations in this field are capable of causing serious consequences to the environment such as the environmental pollution, serious diseases and many other damages to society and the State.

- As regards to the subject of the crime: Unlike the offences against regulations on hazardous waste management, the crime of bringing wastes into Vietnam's territory is committed by a normal subject. In other words, the subjects have to meet the common conditions of a normal criminal subject, namely (1) criminal responsibility and (2) being at the age of criminal responsibility. Both natural person and corporate legal person could be prosecuted for criminal responsibility for this crime.

- About the objective element of the crime: The objective act of this crime is the conduct of illegally bringing wastes into Vietnam's territory in different types as follows:

First, wastes brought into Vietnam's territory contain extremely hazardous constituents beyond the limits prescribed by law or hazardous wastes containing chemicals that must be eliminated according to Appendix A of Stockholm Convention on persistent organic pollutants (this type of hazardous wastes is similar to that stated in the crime of violating regulations on hazardous waste management as mentioned above).

Second, wastes brought into Vietnam's territory stated in Article 239 of the Criminal Code 2015 might be other wastes.

Like the crime of violating regulations on hazardous waste management, causing serious consequences to society is not a compulsory element of the crime of bringing wastes into Vietnam's territory. Moreover, the manner of committing this crime stated in the Criminal Code 2015 is different from that regulated in the Criminal Code 1999. While Article 185 of the Criminal Code 1999 states clearly that the manner of committing the crime is to take advantage of "*the import of technologies, machinery, equipment, biological preparations, chemical preparations, noxious matters, radioactives substances or discarded materials which fail to satisfy the environmental protection criteria*", Article 239 of the Criminal Code 2015 regulates the crime in a shorter manner but does not describe the manner of committing the crime. According to the latter, the offenders who bring wastes into Vietnam's territory against the law in any manner could be prosecuted for criminal responsibility for the crime of bringing wastes into Vietnam's territory.

- As regards to the subjective aspect of the crime: The subjective aspect of a crime is the inner manifestation of the crime that defines a person's psychological attitude to his socially harmful act at the time of the crime in the forms of criminal fault (intent or negligence), motive and purpose of the crime⁶. The crime of bringing wastes into Vietnam's territory is committed with intent, which means the offender is aware of the social danger of his act(s) of illegally bringing wastes into Vietnam's territory, foresees the possibility of socially harmful consequences of the act(s) but desires or allows those consequences to occur.

⁶ See above.

4. Application of criminal rules on offences against regulations on hazardous waste management and crime of bringing wastes into Vietnam's territory in practice

4.1. Application of criminal rules on offences against regulations on hazardous waste management

In recent years, the Vietnamese Party and State have increasingly focused on the protection of the environment in general and the management of hazardous wastes in proper. The fact that the economy has developed rapidly at a larger scale means that a huge amount of natural resources have been over-exploited. Parallel with the economic development, a great amount of hazardous wastes are omitted into the environment. In that sense, the environment is both the only natural resource making human life exist and the place where wastes disposed by humans in the exploitation, production and consumption are received and stored. Moreover, policies of attracting investment in order to achieve a rapid economic development have made a rapid rise in the number of factories and industrial zones. Many industrial and economic activities have generated significant adverse effects on the environment related to noise, air quality, especially use and storage of hazardous substances. Many enterprises that want to realize cost savings, but do not care about the control of the environmental pollution, usually discharge, dump and bury hazardous wastes under the ground, which cause serious consequences to society. Therefore, it can be clearly seen that the number of offences against regulations on environmental protection in general and regulations on hazardous waste management in proper has been on the increase. However, that is the amount of violation of the rules provided in Article 82a of the Criminal Code 1999 where, as mentioned above, the offences against regulations on hazardous waste management are stated in different way with those in Article 236 of the Criminal Code 2015.

The statistics of the Department of Environmental Police, Ministry of Public Security have shown that the violations against regulations on waste, hazardous waste management have happened primarily in three types: (1) Violations against regulations on waste and wastewater treatment in industrial zones, trade villages; (2) Violations against regulations on management and treatment of hazardous wastes, medical wastes; (3) Violations against regulations on hazardous waste management by illegally importing wastes including hazardous wastes. In recent years, many violations against regulations on environmental protection in general and regulations on hazardous waste management have been found and handled. Even though Article 182a on offences against regulations on hazardous waste management was amended in 2009, it has not been applied in practice.

Example: Offence of burying hazardous wastes committed by NICOTEX Thanh Thai Joint Stock Company situated in Cam Van commune, Cam Thuy district and Yen Lam commune, Yen Dinh district, Thanh Hoa province. This company is specialized in bottling, packing and trading pesticide products. According to the information given by people living in the surroundings, NICOTEX Thanh Thai had buried a huge amount of hazardous wastes that are out-of-date packages and pesticides under the company's ground. The Ministry of Natural Resources and Environment has directed the Vietnam Environment Administration to conduct the verification, investigation of the cases and handle them by forming two groups of missionary officials working with the Department of Natural Resources and Environment and People's Committee of Thanh Hoa province and inspecting in the NICOTEX Thanh Thai company. On September 18, 2013, the People's Committee of Thanh Hoa province issued the Decision No. 3253/QĐ-XPHC on penalties for administrative violations against regulations on environmental protection according to which NICOTEX Thanh Thai was subject to a fine of VND 421,150,000⁷. Then, NICOTEX Thanh Thai had to treat all the

⁷ DUY TUYEN, *Fine company buried pesticides more than 400 million*, <https://dantri.com.vn/xa-hoi/phat-cong-ty-chon-giau-thuoc-tru-sau-hon-400-trieu-dong-1379990134.htm>, accessed on September 24, 2017

hazardous wastes that were buried pesticide products. Nevertheless, the offence committed by NICOTEX Thanh Thai was just administratively but not criminally sanctioned because it did not constitute the crime pursuant to Article 182a of the Criminal Code 1999 due to lack of serious consequences.

4.2. Application of criminal rules on crime of bringing wastes into Vietnam's territory

In recent years, the environmental pollution and violations of environmental law have posed many threats and risks to human health and the living environment. The increasing process of industrializing the country has resulted in huge demand for manufacturing materials and pushed the process of recycling and reusing wastes as materials for other manufacturing process, which have also generated violations against business law by for example importing discarded materials into Vietnam's territory. According to the National Environmental Report 2011 of the Ministry of Natural Resources and Environment, there were nationwide about 160 companies licenced to import scraps. Of these, companies specialized in manufacturing, recycling that directly imported scraps accounted for 75%; imported to distribute accounted for 18% and the remained companies are entrusted importers of scraps. The statistics have shown that the total amount of scraps imported to be reused as materials in 2011 were of more than 2,9 million tons that were primarily iron and steel scraps, plastic, paper, cindery sand, slay, plaster orginated mainly from America, South Africa, Australia, EU. Each year, hundreds of million tons of goods are imported into Vietnam by paying full tax. Many of these goods were machineries, outdated equipments, old equipments, broken equipments, discarded electronics that contained hazardous pollutants beyond the limits as prescribed and have raised threats and risks of polluting the living environment⁸.

It is clear that like the offences against regulations on hazardous waste management, nearly 100% of offences of bringing wastes into Vietnam's territory have not been prosecuted for criminal responsibility although many of them caused serious consequences. The reason why the situation of industrial wastes imported into Vietnam has been increasing in volume and changing in category is the fact that the importation and transportation of "wastes" emitted from developed countries could bring huge amount of profits, many domestic enterprises and individuals have tried to find their own ways to "disguise" in different forms, then imported and transported industrial wastes into Vietnam in the legal sense but reaped illegal profits. The subjects of the crime of bringing wastes into Vietnam's territory often utilize the manner of transporting illegal goods to the country in the form of signing import-export or temporary import for re-export contracts. The content of the contracts, custom declaration procedures have shown that the goods were legal but the real imported goods in the containers were wastes. When the truth has been revealed, the domestic enterprises tried to handle the offences in another name. By using many tricks such as temporary import for re-export, the enterprises have brought "illegal goods" into Vietnam's territory. Like ripples, those who should receive the goods issued correspondences immediately to refuse those goods. The practice has shown that it is very difficult to handle the offences committed by import enterprises because most of them are "shell corporations". After finishing their duties of "exporting" industrial wastes to Vietnam or other third countries, they wiped out all traces of their illegal activities. This fact makes the police and other officials (including Interpol) difficult to trace to their address in order to handle the offences. According to the statistics, as of August 2004, there were about 5,450 containers that have been stored in large container ports for days. Many of them had been left for 03

⁸ NGO NGOC DIEM, "Article on crime of bringing wastes into Vietnam's territory under criminal law", Journal of Procuracy, No. 17 (September 2014), Hanoi, page 37.

months or even 10 years. Especially, at Hai Phong port, the number of left containers has reached 5,060 accounting for 95%, then the ports of Ho Chi Minh city, Da Nang, Quang Ninh respectively⁹.

Under Article 7 of the Law on environmental protection 2014 of Vietnam, acts of importing and transiting wastes from overseas countries in any form are prohibited. However, it is legally allowed to import scraps that are emitted from a manufacturing or consumption process, then collected, classified, selected and reused as materials for another manufacturing process. It has become very difficult to determine and handle the offences of bringing wastes into Vietnam's territory because the enterprises have taken advantage of the aforementioned legal act of importing scraps. To take an example that is the case of 6 tons of unclaimed zinc ores left at the Hai Phong port. As such, May 2014, a temporary import to re-export consignment was shipped to the Hai Phong port by Xinhairong vessel and was declared to be 6,458 tons of zinc ores originated from South Korea for re-exporting to China. The receiver of the goods should have been the STC Trading & Service Joint Stock Company whose address was at 27C Dien Bien Phu street, Hong Bang district, Hai Phong city. STC signed immediately a contract with the Hai Phong port to disembark 6,458 tons of zinc ores and store them in the storage zone of the Hai Phong port. However, the goods have not been transported out of Hai Phong port but left at the storage zone. On August 14, 2014, the officials of Hai Phong port received a correspondence from STC saying that the importer would give up 6,458 tons of zinc ores because he could not contact the real owner in China and had not got the documents related to the consignment and the costs incurred for the goods. The 6,458 tons of zinc ores have been left at the port Hai Phong for the last six months as of August 14, 2014, causing loss of income of VND 195,000,000 per month "because the consignment has not been cleared to get places for other goods"¹⁰. Especially, the ownerless imported huge amount of zinc ores has caused serious pollution to the environment. After each raining, the Hai Phong port had to create a group of tens of workers to keep a close watch over the consignment and prevent them from drifting out that may cause the drainage congestion and serious pollution to the environment. Many experts have pointed out that the unclaimed consignment of 6,458 tons of zinc ores was **just a kind of hazardous industrial waste**, but not raw ores that should be really valuable.

Under the current legal framework of Vietnam, the above-mentioned offences could be administratively sanctioned. Concretely, those illegal acts are regulated in item c of Clause 5 of Article 25 of the Decree No. 155/2016/NĐ-CP of November 18, 2016 on penalties for administrative violations against regulations on environmental protection. The item c of Clause 5 of Article 25 of the Decree states that: "Failing to re-export or transit the entire amount of scrap transported into the territory of the Socialist Republic of Vietnam". However, a fine ranging from VND 200,000,000 to VND 250,000,000 would not be strict and punishable enough to handle and prevent those offences because they cause extremely serious consequences to the living environment as well as to the State with the function of ensuring human health.

⁹KIM OANH, *Thousands of waste containers at Hai Phong port: The problem of handling!*, <https://infonet.vn/hang-nghin-container-phe-lieu-tai-cang-hai-phong-luan-quan-chuyen-xu-ly-post161696.info>, accessed on September 24, 2017.

¹⁰ ANH THE - QUOC DO, *Hai Phong port is in danger of being harmed by waste*, <https://dantri.com.vn/xa-hoi/cang-hai-phong-truoc-nguy-co-bi-hang-phe-thai-xam-hai-1351553883.htm>, accessed on September 24, 2017.

5. Reforming criminal rules on offences against regulations on hazardous waste management and crime of bringing wastes into Vietnam's territory

5.1. Reforming criminal rules on offences against regulations on hazardous waste management

As far as the first consideration is concerned, as mentioned above, the Criminal Code 2015 provides for some innovative changes on the elements of the crime of violating regulations on hazardous waste management by omitting “causing serious consequences” that is one of the compulsory conditions to prosecute criminal responsibility under the Criminal Code 1999. Instead of regulating “causing serious consequences” or “causing other serious consequences” as one element of the crime, Article 236 of the Criminal Code 2015 provides a clearer basis for the criminal prosecution. Concretely, the acts of illegally permitting to bury, dump, discharge hazardous wastes may constitute the crime only if the wastes that contain extremely hazardous pollutants beyond the limits prescribed by law or chemicals that must be eliminated according to Appendix A of Stockholm Convention are of 3,000 kg, or they contain radioactive substances that are radioactive sources of below average danger. However, in the provisions on the offences against regulations on hazardous waste management, the Criminal Code 2015 does not regulate criminal responsibility of competent persons in the case where they permit to bury, dump, discharge **less than 3,000 kg** of hazardous wastes containing extremely hazardous pollutants beyond the limits prescribed by law or chemicals that must be eliminated according to Appendix A of Stockholm Convention against the law but **have already been administratively sanctioned for such acts or sentenced for such offences, not yet entitled to criminal record remission but still commit them**, which is stated in the similar way in many other articles on environmental offences (items b, d, e and g of Clause 1 of Article 235 on Causing environmental pollution; Clause 1 of Article 241 on Spreading dangerous infectious diseases in animals or plants; Clause 1 of Article 242 on Destroying aquatic resources; item g of Clause 1 of Article 243 on Destroying forest; item e of Clause 1 of Article 244 on Offences against regulations on management and protection of endangered, rare animals; item c of Clause 1 of Article 245 on Offences against regulations on management of wildlife sanctuaries, item a of Clause 1 of Article 246 on Importing, spreading invasive species). So, providing any kind of regulations as discussed above would ensure the prevention and punishability of environmental offences in general and offences against regulations on hazardous waste management in proper, which could thereby protect the living environment from the threats and risks of the crime.

Second, the author assumes the necessity of regulating criminal responsibility of any corporate legal person committing the crime of violating regulations on hazardous waste management. The Chapter on environmental offences provided in the Criminal Code 2015 (Chapter XIX) is comprised of 12 articles. Of these, 8 articles regulate that any corporate legal person committing the crime stated in those articles would be prosecuted for criminal responsibility; 3 other articles including Article 236 on offences against regulations on hazardous waste management do not regulate criminal responsibility of corporate legal persons. The statistics on offences against regulations on hazardous waste management over the past years have shown that the offenders have primarily been corporate legal persons. Concretely, of 1,741 offences against regulations on hazardous waste management, the subjects of this crime could be categorized into different groups as follows: (1) factories, manufacturing enterprises in the industries (898/1741 offences, accounting for 51%); (2) manufacturing, commercial and constructing entities (101/1741 offences, accounting for 5%); (3) handicraft manufacturers (452/1741 offences, accounting for 26%); (4) other industries

(380/1741 offences, accounting for 22%)¹¹. Moreover, even though the Criminal Code 2015 provides innovative changes on the crime of violating regulations on hazardous waste management as discussed above, none of them is on the prosecution of criminal liability of corporate legal persons. Therefore, regulating criminal liability of corporate legal persons committing this crime would ensure the prevention and increase punishability of the offences against regulations on hazardous waste management.

Third, amending objective acts of the crime violating regulations on hazardous waste management or revising provisions related to objective acts of this crime. The name of the crime stated in Article 236 “*offences against regulations on hazardous waste management*” would actually cause people to understand that objective acts of this crime could be any of the offences against regulations on hazardous waste management. Under the Law on environmental protection 2014 of Vietnam and the Decree No. 155/2016/NĐ-CP of November 18, 2016 on penalties for administrative violations against regulations on environmental protection, many forms of acts are defined as offences against regulations on hazardous waste management. However, Vietnamese legal makers regulate criminal liability for only the acts of illegally permitting to bury, dump and charge hazardous wastes. In the author’s opinion, it would be indispensable to regulate criminal liability for many other objective acts of violating regulations on hazardous waste management because of its threats and risks to human health and the living environment. It could be the omissions or acts of hazardous waste generators: “(1) *Failing to collect hazardous wastes as regulated*; (2) *Storing hazardous wastes outdoor causing the pollution to surrounding environment*; (3) *Failing to pack and preserve hazardous wastes in packing and storage equipment suitable to their types which meet the prescribed technical requirements*; (4) *Failing to allocate or allocating areas for temporary storage of hazardous wastes which fail to meet the prescribed technical requirements...*”¹². It could also be the omissions or acts of hazardous waste transporters: “(1) *Collecting and transporting types of hazardous wastes other than those in the list of types of hazardous wastes prescribed in the License for treatment of hazardous wastes*; (2) *Using means of transporting hazardous wastes that are not prescribed in the License for treatment of hazardous wastes*; (3) *Failing to meet technical requirements for specialized means and equipment for collecting, transporting, packing, preserving and temporarily storing hazardous wastes...*”¹³. In that sense, regulating criminal responsibility only for the acts stated in Article 236 of the Criminal Code 2015 would not ensure the comprehensibility of the regulations on hazardous waste management in general and of the criminal rules on the management of these types of wastes in proper.

5.2. Reforming criminal rules on crime of bringing wastes into Vietnam’s territory

As discussed above, the Criminal Code 2015 provides some innovative changes on the elements of the crime of bring wastes into Vietnam’s territory in comparison with those stated the Criminal Code 1999. However, it remains some issues in the article on this crime that should be revised and amended in order to be suitable to the reality of the prevention of offences in practice and the new context as well as compatible with the specific law.

First, one of the elements of the crime of bring wastes into Vietnam’s territory regulated in Article 239 of the Criminal Code 2015 is “... *illegally bringing wastes into Vietnam’s territory...*”.

¹¹ DUONG MINH TIEN, “*Offences against regulations on hazardous waste management under Vietnamese criminal law*”, LL.M Thesis, Hanoi, 2015, page 66.

¹² Article 21 of the Decree No. 155/2016/NĐ-CP of November 18, 2016 on penalties for administrative violations against regulations on environmental protection.

¹³ Article 22 of the Decree No. 155/2016/NĐ-CP of November 18, 2016 on penalties for administrative violations against regulations on environmental protection.

This provision would result in the understanding that there are some cases where bringing wastes into Vietnam's territory is legal, which is not compatible with the rules stated in Clause 9 of Article 7 of the Law on environmental protection 2014 of Vietnam. Clause 9 of Article 7 regulates one of the prohibited acts that is to "*import and transit wastes from overseas countries in any form*". In other words, acts of bringing wastes into Vietnam's territory in any form are prohibited by laws and none of them is legal. On the other hand, Vietnamese law allows enterprises to import discarded materials into Vietnam's territory, which results in the fact that many commentators argue that allowing to import scraps means to allow to import wastes¹⁴. Nevertheless, the author could not agree with this opinion because Article 3 of the Law on environmental protection 2014 of Vietnam provides for the definition of wastes and scrap that are different as follows: "*Wastes refer to a kind of materials emitted from activities such as manufacturing, trading, service, daily activities and others*" (Clause 12) while "*Scrap refers to materials that are collected, classified and selected from discarded materials and products during the manufacturing or consumption process, which can be then reused as materials for another manufacturing process*" (Clause 16). As such, whether a material is waste or not does not depend on the subjective will of its owners (except for the case where the owners have to discharge materials because of the specific features in its operation and the acts of discharging materials are passive to the owners as well as to other persons). A material exists under the form of wastes from the time when it is emitted by its legal owners or users to the time when it is reused as material for another manufacturing or using process¹⁵. Vietnamese law provides two different terms to determine "wastes" and "scrap". Although scraps are also materials emitted from some activities, they could be reused as materials for other activities. Therefore, acts of importing discarded materials could not mean those of importing wastes and the author assume that it is not necessary to regulate "*against the law*" as one part of the element of the acts of bringing wastes into Vietnam's territory.

Second, Vietnamese legal makers should incorporate the act of bringing scraps into Vietnam's territory, then not re-exporting or transmitting them through Vietnamese borders as one form of the crime of bringing wastes into Vietnam's territory. As analyzed above, scraps are different from wastes only in terms of the reusability of scraps for applications as materials in another manufacturing process. Therefore, scraps that are brought into Vietnam's territory but then not transmitted to its users would become wastes. The practical reality over the past years has shown that there have been many cases where scraps were brought into Vietnam's territory but then could not be re-exported, which resulted in serious consequences to human health and the living environment and the government must spend great amount of budget and time handling the environmental issue.

Third, with the purpose of ensuring the prevention and punishability of the crime of bringing wastes into Vietnam's territory, the author assumes the necessity to incorporate the criminal responsibility of any person who brings into Vietnam's territory an amount of wastes less than prescribed in Article 239 of the Criminal Code 2015 but previously incurred an administrative penalty for any of the acts stated in this Article or has a previous conviction for the same offences which has not been expunged but still commits them.

¹⁴ NGUYEN DUC VIET, "*Management of hazardous wastes brought into Vietnam*", Journal of State and Law, No. 8, 2011, Hanoi, page 72.

¹⁵ DUONG MINH TIEN, "*Offences against regulations on hazardous waste management under Vietnamese criminal law*", LL.M Thesis, Hanoi, 2015, page 12.

6. Conclusion

The Vietnamese Party and State have increasingly focused on the protection of the environment in general and the management of hazardous wastes in proper. The fact that the economy has developed rapidly at a larger scale means that a huge amount of natural resources have been over-exploited. Parallel with the economic development, a great amount of hazardous wastes are omitted into the environment. In that sense, the environment is both the only natural resource making human life exist and the place where wastes disposed by humans in the exploitation, production and consumption are received and stored. The environmental pollution and violations of environmental law have posed many threats and risks to human health and the living environment. The increasing process of industrializing the country has resulted in huge demand for manufacturing materials and pushed the process of recycling and reusing wastes as materials for other manufacturing process, which have also generated violations against business law by for example importing discarded materials into Vietnam's territory.

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