THE IMPACT PRINCIPLES OF CRIMINAL LAW

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***Abstract:** From the theoretical and practical perspective of regulating and protecting social relations of criminal law, the article analyzes and comments on the principles of impact of criminal law, thereby highlighting the necessity of prescribing the principles of impact of criminal law in Vietnamese Penal Code.*

***Keywords:** Impact of criminal law; impact purpose of criminal law; principles of criminal law; adjustment of criminal law*

MỤC ĐÍCH TÁC ĐỘNG CỦA PHÁP LUẬT HÌNH SỰ

Tóm tắt: Từ góc nhìn lý luận và thực tiễn điều chỉnh - bảo vệ các quan hệ xã hội của pháp luật hình sự, bài viết phân tích, bình luận về nguyên tắc tác động của pháp luật hình sự, qua đó làm nổi bật sự cần thiết của việc ghi nhận (quy định) nguyên tắc tác động của pháp luật hình sự trong Bộ luật Hình sự nước ta.

Từ khóa: Sự tác động của pháp luật hình sự; mục đích tác động của pháp luật hình sự; các nguyên tắc của luật hình sự; điều chỉnh pháp luật hình sự

Introduction

Playing an “orienting” and “directing” role in the process by which criminal law regulates and protects social relations, the impact principles of criminal law ensure the reasonableness (appropriateness), groundedness, legality, and humanity of determining the grounds, conditions, procedures, nature, and scope (limits) for applying criminal law impact measures to a subject deemed at fault in committing a crime; as well as determining the grounds and nature of the general-preventive impact of criminal law impact measures. However, in the science of criminal law, the impact principles of criminal law have not yet been addressed as a subject of study. Meanwhile, practice in the making and implementation of criminal law impact measures - especially criminal liability measures - shows that, although “oriented” and “directed” by the (general) principles of criminal law, the determination of the grounds, conditions, procedures, nature, and scope (limits) for applying criminal law impact measures to a subject deemed at fault in committing a crime has not truly been reasonable, well-grounded, fair, or humane. The effectiveness of criminal law’s impact has therefore not met expectations.

For that reason, alongside research into theoretical issues of criminal law’s impact, such as criminal liability, punishment in criminal law, the impact mechanism, the limits and stages of impact, the content and forms of impact, and the purposes of impact[1], there is an urgent need to study in a full, comprehensive, in-depth, and systematic manner the issue of the impact principles of criminal law. This article is written to address that need.

1. The concept of the impact principles of criminal law

In order to construct, on a solid theoretical and practical basis, the concept of the impact principles of criminal law that is consistent with the mechanism of criminal law’s impact, it is necessary not only to proceed from the purposes and principles of criminal policy, criminal law policy, each specific impact measure, and the system of criminal law impact measures as a whole, but also to proceed from their core content (fundamental

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[1] Ho Sy Son, “On the concept, nature, content and limits of criminal liability,” *State and Law Review*, No. 6/2010; Ho Sy Son, “Punishment in criminal lw,” *State and Law Review*, No. 6/2020; Ho Sy Son, “The impact mechanism of criminal law,” *Journal of Social Science Human Resources*, No. 2/2020; Ho Sy Son, “The limits and stages of the impact of criminal law,” *State and Law Review*, No. 10/2021; Ho Sy Son, “The content and forms of the impact of criminal law,” *State and Law Review*, No. 10/2022; Ho Sy Son, “The purpose of the impact of criminal law,” *Journal of Procuratorate Studies*, No. 12/2024.

requirements), which is not entirely identical to the principles of criminal law.

The impact principles of criminal law emerge as the result of concretizing general legal principles, inter-branch legal principles, and the principles of the criminal law branch, in order to ensure that the impact principles of criminal law correspond to the distinctive nature of the mechanism of criminal law's impact. This concretization is necessary, because the application of criminal law impact measures would not ensure completeness, correctness, and effectiveness if it were guided solely by the broader, more general principles mentioned above.

If the specialized (branch) principles of criminal law are recognized in the Penal Code, they carry great significance for the practice of regulating criminal law (its making, application, and improvement). However, only a small number of countries (such as the Russian Federation) recognize the principles of criminal law directly in the Penal Code like the principles of legality, equality of citizens before the law, guilt, justice, and humanity (Articles 3 to 7 of the 1996 Penal Code of the Russian Federation). Vietnamese legislator does not recognize the principles of criminal law in separate articles, but records them in a single provision titled "principles of handling" (Article 3 of the 2015 Penal Code), including impartiality, legality, justice, equality, and humanity. Meanwhile, in criminal law scholarship, the number and content of criminal law principles are also not entirely uniform. For example, one view holds that the principles of Vietnamese criminal law include: The principle of socialist legality; the principle of personal responsibility; equality before the law; the principle of guilt; the principle of not letting offenders escape; the principle of justice; and the principle of socialist democracy[2]. Another view considers the general legal principles of criminal law are democracy; humanity; legality; harmonizing patriotism and international solidarity; liability only for specific acts; and equality of citizens before the law[3]. This view further holds that the specialized principles of criminal law include: The inevitability of criminal liability and punishment; personal responsibility; liability based on fault; differentiation of liability depending on the circumstances of the commission of the crime; individualization of liability and punishment; and justice[4]. Analysis of criminal law principles allows the observation that the list of criminal law principles (whether recorded in the Penal Code or derived from interpretation of criminal law norms) remains incomplete; moreover, in terms of content, criminal law principles have not been explained with precision.

To date, neither criminal law science nor positive criminal law has addressed the impact principles of criminal law. Therefore, to construct the concept of the impact principles of criminal law, it is necessary, on the one hand, to rely on the results of scholarly understanding regarding criminal law principles and on those recorded in the Penal Code; and, on the other hand, to clarify the core content (fundamental requirements) of the impact principles of criminal law, which is not entirely identical to the principles of criminal law.

In principle, the core content (fundamental requirements) of the impact principles of criminal law may be recognized directly and/or indirectly in the Penal Code, as independent principles, and may be "dispersed" throughout the provisions of the Penal Code so that, taken as a whole, they form the "spirit" and "principled foundation" of criminal law's impact. In this regard, one cannot but share the view that, unlike general and specific legal rules - whose existence in legal life depends on being recorded in legal norms - principles may manifest their legal essence even when not recorded in a specific legal norm; in that case, they regulate social relations through this group of norms or another[5].

[2] Dao Tri Uc, *Vietnamese criminal law – Volume I: General issues*, Social Sciences Publishing House, Hanoi, 2000, p. 226.

[3] Vo Khanh Vinh (ed.), *Vietnamese criminal law, General part*, Social Sciences Publishing House, Hanoi, 2014, p. 33.

[4] Vo Khanh Vinh (ed.), ibid, p. 38.

[5] Beljaev, N.A., Glístin, V.K., & Okherov, V.V. (co-eds.), *Criminal law in the present period*, Moscow, 1992 (in Russian).

From the foregoing general analysis, the "impact principles of criminal law" may be understood as *guiding ideas and viewpoints with core content (fundamental requirements) that are recorded in criminal law or derived from interpretation of criminal law, concerning: Determining the grounds, conditions, procedures, nature, and scope (limits) for applying criminal law impact measures to a subject deemed at fault in committing a crime; and determining the grounds and nature of the general-preventive impact of criminal law norms.*

Accordingly, the difference between the impact principles of criminal law and the principles of criminal law lies in the scope of their "orientation" and "direction" over criminal law issues. The principles of criminal law are "basic ideas and principles that guide the prescription of crimes and punishments, and other matters related to crimes and punishments", whereas the impact principles of criminal law are guiding viewpoints and ideas for determining the grounds, conditions, procedures, nature, and scope (limits) for applying criminal law impact measures to a culpable subject in committing a crime. This difference does not negate the relationship between the principles of criminal law and the impact principles of criminal law. In that relationship, the principles of criminal law are the general, while the impact principles of criminal law are the particular[6].

Applying the relationship between the general and the particular in Marxist-Leninist philosophy to the field of criminal law, it can be seen that: *First,* the principles of criminal law "orient" and "direct" the entire process by which criminal law regulates social relations, whereas the impact principles of criminal law "orient" and "direct" the prescription and application of criminal law impact measures. *Second,* the prescription and application of criminal law impact measures must, on the one hand, comply with the principles of criminal law and, on the other hand, comply with the impact principles of criminal law. The impact principles of criminal law ensure that the prescription and application of criminal law impact measures truly correspond to the mechanism of criminal law's impact.

Criminal law's impact always aims to achieve certain purposes[7]. Those purposes are realized through the performance of tasks set in the process (stages) of criminal law's impact[8]. Each task of criminal law's impact, in turn, is directed toward achieving a certain purpose, and, taken as a whole, enables attainment of the overall purpose of criminal law's impact. The performance of each task is "directed" (oriented) by a most fundamental idea or viewpoint; in the other words, by a certain principle. Thus, criminal law's impact has multiple principles. Each principle, in addition to the content (requirements) of the (general) principle of criminal law's impact, also has its own content (requirements) that determine its designation.

On the basis of the content (requirements) of each principle, the principles of criminal law's impact may be identified as including: The principle of reasonableness; the principle of groundedness; the principle of justice; the principle of legality; the principle of humanity; and the principle of equality before criminal law. Thus, each impact principle of criminal law is qualitatively defined, has independent significance, and contains its own content (requirements) that define its "profile" and distinguish it from other principles. At the same time, all impact principles of criminal law are closely interrelated and mutually influential; each principle contains requirements common to all principles and, because of its "interwoven content" with other principles, is defined in unity and interaction with them. As a result, taken as a whole, all impact principles of criminal law form a system that governs the legislator's criminal law making and governs the activities of competent bodies and individuals applying the law in combating crime. It should be noted that each principle contains requirements related to the content

[6] K. Marx & F. Engels, *Collected works*, Vol. 1, National Political Publishing House – Truth, Hanoi, 1995, p. 232.

[7] Ho Sy Son, "The purpose of the impact of criminal law", *Journal of Procuratorate Studies*, No. 12/2024.

[8] Ho Sy Son, "The limits and stages of the impact of criminal law", *State and Law Review*, No. 10/2021.

and nature of criminal law impact measures, to their expression in sanctions, and to the forms in which they are expressed.

2. The system of the impact principles of criminal law

2.1. The principle of reasonableness

The principle of reasonableness of criminal law's impact requires that the prescription in the Penal Code and the actual application of the system of criminal law impact measures be "measured" against the purposes of criminal law's impact (in general) and against the tendency of implementing those purposes with respect to specific crimes[9]. Each impact measure must not only be consistent with the impact purposes that the Penal Code needs to (has) determine (prescribe) in advance, but also, by virtue of its content and impact capacity, contribute to achieving those purposes to the maximum necessary degree in each specific case - yet without society having to pay an excessively high cost. Therefore, the criminal justice system must "report" to society on the results it achieves in protecting the legal order from criminal encroachments, as well as on the social resources (economic, human, material-technical…) that have been calculated for use in the struggle against crime, without causing significant harm to the resolution of other important social tasks and without the application of criminal law entailing adverse economic, political, ideological, and social consequences.

Each time the issue of applying criminal law impact measures is addressed, the court or other agencies applying criminal law must not only correctly apply all relevant provisions of the Penal Code, consider the nature and degree of social danger of the criminal act, mitigating and aggravating circumstances of criminal liability, and the offender's personal characteristics, but also consider potential adverse consequences that the anticipated criminal law decision may bring not only to the individual but also to society (in general). In criminal law science, scholars have rightly drawn attention to the adverse consequences of the application of imprisonment (deprivation of liberty) and certain other penalties (for example: The extensive application of prohibitions on holding office, practicing a profession, or doing certain work may lead to labor shortages in some occupations such as sales and driving…). Similarly, the unconsidered application of such penalties as fines, confiscation of property, fixed-term imprisonment, and other impact measures (suspended penalty, amnesty…) may generate negative consequences for the convicted person's family.

The principle of reasonableness requires that decision makers must not apply criminal law impact measures that are inconsistent with their social purposes; that is, they must not apply them to achieve any benefit that is not directly connected with the realization of the purposes of criminal law's impact. For example, the court must not apply property-based penalties solely on the ground that property damage was caused by the crime, and then use such penalties to compensate for damage caused by the crime. Even if judgments do not explicitly state the motive for applying a criminal law impact measure, or state it only in the most general form, that motive may still be revealed through analysis of the case file materials.

When resolving the issue of selecting a criminal law impact measure to apply to the person who committed the crime, Investigators, Prosecutors, Judges and Jurors must proceed from the purposes of criminal law's impact. However, in many cases in practice, they do not even reflect on the purposes for which such criminal law impact measures as exemption from criminal liability, suspended penalty, imprisonment… are applied to a specific offender in a specific case, whether such a measure is capable of realizing the corresponding purposes, and by what means those measures can achieve their purposes once applied.

From the foregoing general analyses, it can be seen that the precision and groundedness of determining (prescribing) in advance the purposes of criminal law's impact in the Penal Code, and of weighing the purposes, conditions, and procedures for applying

[9] Ho Sy Son, ibid, p. 3-10.

criminal law impact measures recorded in the Penal Code, are of great significance. In this regard, reference may be made to the provision newly supplemented into Article 50 of the 2015 Penal Code on "grounds for deciding penalties." Specifically, Clause 2 provides: "When deciding to impose a fine, in addition to the grounds specified in Clause 1 of this Article, the Court shall base its decision on the offender's property situation and capacity for enforcement." However, this provision appears to be only half measures because it selects only one of the purposes of punishment.

The principle of reasonableness is important because the effectiveness of criminal law's impact largely depends on the realization (implementation) of the core content (requirements) of this principle. A penalty or other criminal law impact measure applied to a culpable offender, if inconsistent with the requirements of the principle of reasonableness, will not produce the desired effectiveness. Not only each impact measure and each impact sanction, but also the system of impact measures and the system of impact sanctions recorded in the Penal Code - and their practical application - must all satisfy the requirements of the principle of reasonableness. Accordingly, the Penal Code needs to prescribe a system of diverse criminal law impact measures so as to enable the bodies applying criminal law to select the most reasonable impact measure to apply to the culpable offender in each specific case. In this respect, one cannot but share the view that "the diversity of penalties prescribed in the "General Provisions" (Part One) of the Penal Code, the level of use of particular penalties within the sanctions of the Special Part of the Penal Code, and the correlation between the punitive element and the educative element in each type of penalty, are all of important significance"[10].

The principle of reasonableness also entails legislative-technical requirements regarding how the content of the impact principles of criminal law is expressed (reflected) in the Penal Code. From the perspective of criminal legislative technique, the principle of reasonableness requires:

- It is necessary to determine (prescribe) directly in the Penal Code the entire system of criminal law impact measures and their composite (linking) purpose(s).

- For different types of penalties, it is necessary to reflect adequate diversity within the system of sanctions; excessive predominance of one type of penalty over others beyond what is necessary is clearly unreasonable.

- More reasonable methods should be used in constructing relatively definite sanctions, as well as alternative sanctions; where necessary, supplementary penalties should be employed.

- With respect to relatively definite sanctions, it is necessary to prescribe clearly the limits of penalty frames that are not overly broad (for example, Clause 2 and Clause 3 of Article 273 of the 2015 Penal Code on Obstructing inland waterway traffic, Clause 1 and Clause 2 of Article 248 on Illegal transport of narcotic substances, Clause 1 and Clause 2 of Article 354 on Taking bribes…), and also not overly narrow (for example, Clause 1 and Clause 2 of Article 291 on Collecting, storing, exchanging, buying, selling, or unlawfully disclosing information on bank accounts…). For serious crimes, the sanction limits should be determined (prescribed) in a manner compatible with multiple sanction options. At the same time, from the standpoint of the principle of reasonableness, it is necessary to determine (prescribe) specific "variants" of specific sanctions. For relatively definite sanctions, it is necessary to properly resolve the problem of optimizing both the minimum and maximum limits and to optimally prescribe the "interval" between them so that they reasonably and accurately reflect the nature and degree of social danger of the type of crime, along with the legal and social evaluation thereof. Prescribing sanction limits must, on the one hand, provide a necessary breadth for judicial consideration, while, on the other hand, excluding or minimizing judicial arbitrariness. For alternative sanctions,

[10] Kriger, G.L., *Improving measures to combat crime under the conditions of the scientific and technological revolution*, Science Publishing House, Moscow, 1980, p. 296 (in Russian).

it is necessary to determine (prescribe) types of penalties which, by their nature, number, and correlation, create all possibilities for the court to choose a penalty level that best ensures individualization, fairness, and reasonableness for each culpable subject committing that type of crime. For sanctions with supplementary penalties, it is necessary to combine the principal penalty and supplementary penalties to optimally realize the purposes of punishment, while still complying with the requirements governing their combination - whereby the lesser severity of a supplementary penalty compared to the principal penalty lies in nothing other than its nature.

In determining criminal law impact measures, it is necessary not only to take into account the nature and degree of social danger of the criminal act, the offender's personal characteristics, and mitigating and aggravating circumstances of criminal liability, but also to consider the effects of the imposed penalty on the offender's reformation as well as on the living conditions of the offender's family.

The idea of individualizing criminal law impact measures - one of the ideas that forms the principle of reasonableness - cannot be disregarded when determining (prescribing) criminal law impact measures, when determining the procedures and conditions for their application, when expressing them in sanctions, and when selecting them for application in a manner consistent with the personal characteristics of the convicted person. From this, it can be seen that, in order to achieve the purposes of criminal law's impact, criminal law impact measures must be appropriate not only in scale but also in nature in relation to the offender's personal characteristics. The principle of reasonableness is ensured by the differentiation of these impact measures within the Penal Code itself and by their practical application in accordance with the offender's personal characteristics. To achieve the purposes of criminal law's impact, the Penal Code should:

- Prescribe a relatively flexible system of diverse criminal law impact measures;

- Prescribe the possibility of using criminal law impact measures in relation to different types of offender personality;

- Restrict the possibility of applying certain specific criminal law impact measures to certain categories of offenders, such as offenders under 18 years of age, female offenders, offenders lacking capacity to work…;

- Prescribe broad limits for relatively definite sanctions; prescribe supplementary sanctions that take into account the possibility of applying criminal law impact measures not linked to punishment in certain cases;

- When constructing the penalty system and determining their content, nature, and limits, take into consideration the characteristics of the personality types of those committing the corresponding types of crimes;

- By constructing discretionary sanctions, enable the Court to resolve the question of the reasonableness of applying one degree or another of supplementary penalties depending on the specific features of the crime and the personal characteristics of the culpable person committing the criminal act;

- With respect to certain types of supplementary penalties - whether or not they are prescribed in the sanction of an article - the law applier should not be deprived of the possibility of choosing their application to the accused; rather, the Court should be empowered to decide at its discretion;

- Not exclude the possibility that, in certain cases, not merely one but several types of supplementary penalties may be applied;

- Recognize a mandatory requirement to consider the culpable person's characteristics and to consider mitigating and aggravating circumstances of punishment (Clause 1, Article 50 of the 2015 Penal Code)…

The principle of reasonableness of criminal law's impact also requires the most optimal combination of primary penalties and supplementary penalties. The effectiveness of criminal legal sanctions and of criminal law's impact in general depends to a significant extent on the optimality of that combination. In the making of the Penal Code and in practical application, this combination

is considered optimal when it satisfies the following requirements:

1. A supplementary penalty needs not be of the same type or nature as the primary penalty, so that its content is not merely a continuation of the primary penalty's content, and the overall severity of the penalty is not regarded as a special tendency to intensify the elimination of the antisocial nature of the convicted person's personality, as well as to reform and prevent that person from committing new crimes.

2. The degree of the supplementary penalty prescribed in the sanction and applied to the convicted person must not be more severe than the primary penalty, because "the primary penalty, first and foremost and primarily, is regarded as the prospective punitive response to crime and as the main instrument of education and reform of the culpable person committing the crime. If the achievement of those tasks is transferred to the supplementary penalty, then, first, it violates the Penal Code's idea of dividing penalties into primary penalties and supplementary penalties; and, second, the function of each type of penalties becomes unclear"[11].

The above requirements stem from the legal nature of principal penalties and supplementary penalties, and from the logic of the relationship between their roles in realizing the purposes of punishment.

2.2. The principle of groundedness

The principle of groundedness of the impact of criminal law requires that the regulation of issues relating to the impact of criminal law must have adequate legal grounds and adequate practical grounds. This means that the impact of criminal law impact measures must be confirmed by facts and by well-considered, persuasive arguments. Not only specific impact measures, the procedures and conditions for applying specific impact measures, and the reflection of those procedures and conditions in particular sanctions, as well as the system of such measures and the criminal law sanction system as a whole, but also their actual application in specific cases, must all have sufficient legal and practical grounds.

Identifying the legal grounds for applying criminal law impact measures and criminal law sanctions is simpler than identifying (prescribing) them in the Penal Code. Each criminal law impact measure and each criminal law sanction may be applied only in strict conformity with legal provisions and only where the conditions prescribed by law are present. The existence of a social need for types of impact measures that accurately reflect the nature and degree of social danger of crimes - where the commission of such crimes requires corresponding impact measures - is regarded as the practical ground for prescribing criminal law impact measures in the Penal Code, for embodying those measures in sanctions, and for applying them in practice. Each impact measure and each criminal law sanction must have a practical ground; that is, it must derive from corresponding social needs. The prescription of unnecessary criminal law impact measures and criminal law sanctions, as well as the incorrect selection of the type of impact measure, or the classification of impact measures not according to their content as required by the circumstances of the case, must be regarded as lacking practical grounds. Therefore, it must absolutely be avoided to prescribe criminal law impact measures and criminal law sanctions which, considering the nature and "scope" of the crimes and the subjects committing them, are in fact unnecessary. Regrettably, in positive criminal law and in the practice of institution, investigation, prosecution, and adjudication, there are not a few examples of prescribing and applying this or that impact measure and sanction without sufficient grounds. Moreover, failure to apply criminal law impact measures and criminal law sanctions when necessary - even where all grounds for application are present - must also be regarded as inconsistent with the principle of practical groundedness.

[11] Gannherin, I.M., & Melnhikova, Ju.B., *Supplementary Ppenalties*, Justice Publishing House, Moscow, 1981, p. 11.

As one of the principles governing the application of criminal law impact measures, the principle of groundedness is expressed in that every decision relating to the application of a specific criminal law impact measure must, first and foremost, be based on the factual circumstances of the criminal case. The application of a specific criminal law impact measure is determined not only by the circumstances of the committed crime but also by the personal characteristics of the culpable subject who committed the criminal act, such that the chosen measure is most optimal for eliminating the causes and conditions of the commission of the crime and for achieving the purposes of criminal law's impact.

The principle of groundedness further requires that, when addressing sanction issues, all legally and socially significant indicia of the corresponding crime types must be weighed; where they occur, these indicia allow determination of the nature and degree of social danger, the form and types of fault, and so forth. With respect to sanctions, the authors share the view that: "The sanction of a criminal law norm is the result of a social evaluation of crime. The legislator's prescription of sanctions is not merely a technical process. In this case, prescribing sanctions takes place in the form of implementing the State's criminal policy. The social content of crime, its nature, objective and subjective features, and other circumstances influencing the direction of criminal policy in combating this or that crime all exert a certain impact on the nature and scope of sanctions"[12].

When prescribing criminal law sanctions, the legislator must first proceed from the nature and social value of the object of the crime, and then from the seriousness of the harm caused to the social relations recognized and protected by the Penal Code. The nature, content, and limits of criminal law sanctions and their implementation in legal practice as well, also depend on the foregoing circumstances.

Weighing objective elements of the crime, such as the characteristics of the criminal act, the mode of commission, and the nature and seriousness of consequences has great significance for prescribing and applying criminal law sanctions. For example, violent criminal conduct evidences the aggressive nature of the culpable person and therefore requires impact on the corresponding aspect of that person's personality by isolating the person from social life; the seriousness of the consequences determines the severity of the sanction, and so forth.

Subjective elements like the type and form of fault, motive, purpose, and the presence or absence of an emotional disturbance also influence the prescription of sanctions. For instance, mercenary motives may serve as a basis for prescribing property-related penalties in sanctions; liability for negligent crimes arises only in cases prescribed by the Penal Code and is generally less severe than for intentional crimes. Subjective elements also influence the choice of criminal law impact measures in particular cases, such as choosing between criminal liability (punishment) "or" punishment with a suspended penalty; exemption from criminal liability or exemption from punishment; and so forth.

When prescribing sanctions and applying them in practice, it is also necessary to consider personal characteristics of the offender, especially recidivism/reoffending characteristics, indicia of a special subject, and other personal characteristics of the culpable person. In criminal law theory, differing opinions exist on whether the prevalence of crime types affects the construction (prescription) of sanctions, for example the breadth of specific sanction ranges. One view holds that "the optimal ranges of sanctions are determined based on weighing the degree of social danger and the prevalence of the act, the objective and subjective indicia of the crime, the degree of social danger of the offender's personality, and the level of legal consciousness of society"[13]. Another view,

[12] Zagorodnhikov, N.I., "Issues of improving the Criminal Code", *Collection of Journal Articles*, Moscow, 1984, p. 46.

[13] Ignatov A.N., "Improving criminal sanctions as a means

criticizing the foregoing for "lacking clear criteria for classifying factors influencing sanction ranges", asserts that "the degree of social danger of the act and of the offender's personality does not exist outside the objective and subjective indicia of the crime; the above factors interweave and cannot exist as independent phenomena; the social danger of the act and of the culpable person is determined by the objective and subjective indicia of the crime"[14].

However, this view is also not fully accurate regarding whether prevalence affects the nature and range of the corresponding sanction, as it suggests that "building sanctions while considering prevalence is unreliable because it would undermine the stability of sanctions"[15]. This inaccurate view further argues that considering prevalence is closely linked to general prevention as a purpose of punishment, and that punishment is not deliberately decided for general prevention because general prevention is not independently reflected in sanctions[16]. The author raises questions: Is it correct to claim that punishment is not decided "deliberately" for general prevention because that purpose is not independently reflected in sanctions, and to assert that the prevalence of crime should not directly affect sanction limits? Is it correct to equate general prevention with prevalence? And is it correct to construct sanctions - particularly their limits - without considering prevalence? The author considers such claims incorrect.

The prevalence of crime does not directly affect sanctions under the principle that the more frequently an act occurs, the greater the overall harm it causes to society, and therefore sanctions must be harsher. Rather, prevalence influences the nature and range of sanctions indirectly, under a different principle: The more prevalent a crime is, the more diverse its forms of manifestation and the more diverse the personal characteristics of those who commit it. Thus, the range of criminal law impact measures provided in sanctions must be richer, and the corresponding sanction limits must be broader to allow consideration of all features of particular cases.

Prevalence also indirectly influences the dispositive parts of Penal Code provisions, the number and types of corpus delicti. When considering diverse manifestations of a crime type, the legislator should, in such cases, prescribe not merely one but multiple variants of the same crime: beyond the basic corpus delicti, aggravated and/or mitigated variants should be provided.

Concerns about instability of sanctions due to considering prevalence should be understood as considering the relative prevalence of crime types over long periods, not year-to-year fluctuations. For example, theft, rape, murder, and some other "traditional" crimes are "prevalent" over long periods, even if there are significant fluctuations in particular years. In contrast, treason, espionage, and other less "traditional" crimes should not be classified as "prevalent," even if they may occur more frequently in some specific years. Of course, such situations cannot serve as a basis for rapidly changing sanctions, but considering the "traditional prevalence" of corresponding crime types in legal reform or when applying new sanctions is, in the author's view, necessary. Such consideration appeared in the drafting and promulgation of the 2015 Penal Code (amended and supplemented in 2017, 2021, 2025). It may also be seen where previously rare crime types have become "prevalent" in some years. This does not mean prevalence is the sole or decisive factor in sanction design. However, the author emphasizes that, under equal conditions, the more prevalent a crime is, the more socially dangerous it is, and this factor should be considered at least in the following relations:

of enhancing the effectiveness of the use of deprivation-of-liberty penalties also contains certain inaccuracies," in *Comprehensive Study of Issues of Enforcement of Punishments*, Moscow, 1979, p. 50 (in Russian).

[14] Kozlov, A.P., "Issues of criminal policy and punishment", *Inter-University Collection*, Krasnoyarsk, 1986, p. 134 (in Russian).

[15] Demenchev, S.I., *Deprivation of liberty: Criminal law and corrective labour aspects*, Rostov, Rostov State University Publishing House, 1981, p. 151 (in Russian).

[16] Kozlov, A.P., op. cit., p. 133.

- The range of relatively definite sanctions should be broader and include more alternative penalties;

- Sanctions should generally be relatively stricter than for crimes that are not truly prevalent;

- The dispositive part of the provision should be constructed more broadly to cover all possible manifestations of the corresponding crime type;

- Not only the basic corpus delicti but also mitigated and aggravated variants should be prescribed.

The prevalence factor is particularly important for criminalization and decriminalization of negligent crimes, because the social danger of negligent crimes is largely determined by prevalence. Nevertheless, prevalence does not have independent significance in a number of the cases discussed above. Revising sanctions annually or over a few years due to fluctuations in the incidence of corresponding crime types is, of course, incorrect and unreasonable.

Analysis of practice in institution, investigation, prosecution, and adjudication shows that, in most cases, punishment and other criminal law measures are applied with grounds. However, there remain not a few shortcomings and even errors. Sometimes criminal law measures are applied without adequate grounds, or the wrong measure or scope is applied because not all circumstances of the case are considered. Practice also reveals not a few cases of applying a punishment option in the chosen sanction without sufficient grounds; or applying a suspended penalty to a culpable person committing a very serious crime, even an especially serious crime. Grounded decision-making in applying punishment and other criminal law measures is significant because ungrounded application may undesirably increase the punitive character of criminal law's impact, whereas ungrounded non-application may make the set purposes unattainable.

A mandatory condition for grounded application in practice is the existence of reliable legal guidelines that allow answering when and in what cases competent bodies reasonably apply corresponding criminal law measures. Such guidelines are set out in the General Provisions of the Penal Code, which prescribe the purposes and tasks of criminal law's impact and regulate the procedures and conditions for applying specific impact measures. Regrettably, these established guidelines are not always clear, specific, and well-grounded; thus, corresponding criminal law norms should continue to be improved, including strengthening the groundedness of reflecting criminal law impact measures in the sanctions of provisions in the Crimes Part of the Penal Code.

A grounded criminal law impact measure and a grounded criminal law sanction are lawful measures and sanctions, and at the same, time fair and reasonable measures and sanctions, meaning that they also satisfy the requirements of other principles of criminal law's impact. A decision on prescribing or applying a criminal law impact measure and/or a criminal law sanction that lacks the legal and practical grounds described above means the decision is unreasonable, ungrounded, inconsistent with reality, and inconsistent with law. The effectiveness of applying criminal law depends greatly on the groundedness of sanctions prescribed in the Penal Code.

2.3. The principle of justice

Justice is one of the most important principles of social life, expressing the requirement of proportionality between rights and responsibilities of members of society "between conduct and result, between labor and remuneration, between crime and punishment, between everyone's contribution and society's recognition"[17]. This principle is recognized in the Penal Codes of some countries. For example, Article 6 of the 1996 Penal Code of the Russian Federation provides that "Punishment and other criminal law measures applied to a person who has committed a crime must be just, correspond to the nature and degree of social danger of the crime, the circumstances of its commission, and the personality of the offender. No one

[17] *Encyclopedic Dictionary of philosophy*, Moscow, 1983, p. 650 (in Russian).

shall bear criminal liability twice for the same crime". In Vietnam, the principle of justice has not been directly prescribed in the Penal Code; it is mainly derived through interpretation of criminal law norms.

In criminal law scholarship, "the principle of justice is considered on two levels: Justice of the Penal Code and justice of the punishment applied by the Court for the crime"[18]. The authors further add that criminal law impact measures prescribed in the Penal Code and applied in practice must satisfy the requirements of the principle of justice. The justice of criminal law norms and criminal law impact measures recognized in criminal law norms also presupposes reasonableness, groundedness, and conformity with the requirements of the principle of humanity. In this regard, one view holds that "a just statute is one that meets the requirement of having a social basis for the criminalization of conduct and the decriminalization of offenses. A statute that does not meet these requirements is a predetermined statute; it does not reflect the legal consciousness of society and does not protect society's interests"[19]. Justice in the impact of criminal law is a condition and a guarantee for the effectiveness of that impact. In this regard, another view holds that "unjust criminal law contains "gaps in the law", that is, it fails to criminalize conduct that is in fact socially dangerous. Legal gaps often relate to less serious offenses located at the boundary between crime and non-criminal violations, and such non-criminality creates objective difficulties in delimiting their scope. Legal gaps may also arise from delays in responding through criminal law to new forms of crime."[20]

Justice also requires ensuring the inevitability of criminal law impact in relation to all persons who commit crimes, and likewise does not permit criminal law impact to be exercised against persons who are not at fault in committing a crime. In connection with this issue, it is difficult not to agree with the view that "Punishment is perceived by society as just if: (a) Those at fault for committing the crime understand it; (b) It is proportionate to the act; and (c) All persons at fault for committing the crime understand that degree of proportionality"[21]. In the authors' view, this assertion is not only valid with respect to punishment but also applies to other criminal law impact measures. The principle of justice further requires that offenders be subjected to just punishment. Just as imposing liability on a person without fault or failing to impose liability on a person with fault is unjust, so too is deciding a punishment that is excessively severe or excessively lenient, or applying another criminal law impact measure in an unduly lenient manner without grounds. Under criminal procedure law, an unjustly imposed punishment is one of the grounds for quashing or amending a judgment.

Offenders inevitably face criminal law measures, and such measures may be applied only to the extent not contrary to the requirement of proportionality between punishment or other criminal law measures and the social danger of the committed crime and the offender's personality. These requirements constitute the content and significance of the principle of justice. When choosing a criminal law impact measure for a specific offender in a specific case, competent procedure bodies and persons must determine a measure that is necessary and sufficient to reform the offender, prevent reoffending, and establish social justice. A heavier criminal law measure, such as a more severe type of punishment among those prescribed for the committed crime, may be applied only where a lighter measure (for example, exemption from criminal liability, suspended sentence, or a less severe punishment) cannot achieve the purposes of criminal law's impact (for example, the purposes of punishment, where punishment is applied).

The absence of such rules in the current Penal Code affects not only just sentencing

[18] Kuznhexova, N.Ph., *Textbook of Criminal law – General Part*, Moscow State University Publishing House, Moscow, 1999, p. 75 (in Russian).

[19] Kuznhexova N.Ph., Ibid, p. 75.

[20] Kuznhexova N.Ph., Ibid, p. 77.

[21] Shargorodskji, M.D., *Punishment: Its purpose and effectiveness*, Leningrad State University Publishing House, Leningrad, 1973, p. 83 (in Russian).

but also the fair application of other criminal law measures. Accordingly, Article 50 of the 2015 Penal Code on grounds for sentencing should be supplemented and amended in the direction that: (1) Punishment imposed must be just within the limits prescribed by corresponding provisions in the Crimes Part, while taking into account provisions in the General Provisions; (2) A more severe punishment among those prescribed may be decided where lighter punishment cannot ensure achievement of the purposes of punishment; (3) When deciding punishment, the Court considers the nature and degree of social danger, the offender's personality, and mitigating/aggravating circumstances, but the Code does not require the Court to consider the effect of the punishment on the offender's reformation and on the living conditions of the offender's family, thus Article 50 should be revised accordingly. Besides, from substantive and legislative-technical perspectives, Article 50 should be "redesigned" so that all principles of criminal law are concretized into sentencing grounds. It would be reasonable for the Penal Code to prescribe principles and grounds not only for sentencing but also for applying criminal law impact measures generally, because other measures, especially suspended sentences and diversion measures for offenders under 18 are increasingly applied.

To individualize criminal law impact measures, the principle of justice requires that, when prescribing those measures in the Penal Code, prescribing procedures and conditions for their decision and application, reflecting them in sanctions, and applying them in practice, decision makers must consider not only seriousness of the crime but also offender personality type and mitigating/aggravating circumstances. An important aspect of justice is considering the legal consciousness of citizens, especially prevailing societal conceptions of justice in criminal law's impact. A view is cited that legal consciousness of the population is among the objective factors of law application because: 1) Raising (satisfying) society's legal consciousness is one of the purposes of punishment; 2) Educating society's legal consciousness is one of the principles of sentencing. Therefore, adjudication should proceed on the motto: Consider the population's legal consciousness but also stay ahead of it, contributing to overcoming outdated tendencies and applying more progressive tendencies[22].

2.4. The principle of legality

This is a constitutional principle of social and state life in the Socialist Republic of Vietnam (Articles 4, 8, 14, 24, etc. of the 2013 Constitution). Formally, with the requirement of strict and regular compliance with legal provisions, legality characterizes all other principles because it "covers certain ideas and a certain legal shell"[23]. At the same time, legality has its own specific content.

In the 2015 Penal Code, legality is first recorded in Article 1 ("This Code provides for crimes and punishments"), and then in a series of provisions such as Article 2 ("Grounds of criminal liability"), and Articles 5, 6, 7 of Chapter II on the "effect" of the Penal Code, and so forth.

In criminal law, legality means: The criminality of an act, its punishability, and other legal consequences are determined only by the current Penal Code; application of the Penal Code by analogy is not permitted. These contents reflect humanity's legal-moral position captured in the maxim *nullum crimen, nulla poena sine lege* (no crime, no punishment without law). Legality requires a written Penal Code and prohibits deciding criminal law measures that the Penal Code does not provide. Punishment and other criminal law measures may be applied only by competent state bodies, accurately in accordance with the Penal Code, and under law-prescribed procedures. Only acts causing significant harm to individual, social, or state interests should be criminalized; thoughts, ideas,

[22] Osipov, P.P. (ed.), *Comprehensive study of the system of impacts on the crime situation*, Leningrad State University Publishing House, 1978, p. 67 (in Russian).

[23] Osipov, P.P., *Theoretical foundations for the formulation and application of criminal law sanctions*, Leningrad State University Publishing House, 1976, pp. 93-100 (in Russian).

intentions, and the like (not manifested as conduct), however dangerous, should not be criminalized and penalized.

Legality strictly prohibits imposing criminal liability for conduct not prescribed by the Penal Code and prohibits applying analogous norms by analogy. For each offender, legality requires ensuring the inevitability of criminal law impact measures. For example, Article 2 of the 2015 Penal Code provides: "1) Only a person who commits a crime prescribed by this Code shall bear criminal liability; 2) Only a commercial legal entity that commits a crime prescribed in Article 76 of this Code shall bear criminal liability."

On the basis of these requirements, application of criminal law measures recorded in the General Provisions and the Crimes Part of the Penal Code must:

First, comply with the procedures and conditions specific to each type of punishment and other measures;

Second, comply with sanction limits prescribed in the Crimes Part;

Third, not impose a fine where a fine is not prescribed as a supplementary penalty in the corresponding sanctions;

Fourth, not decide punishments that, under the Code, cannot be imposed on particular defendants (under-18 offenders, women, elderly persons);

Fifth, not decide supplementary penalties where, under the Code, such decision falls within principal penalty decisions;

Sixth, not aggregate supplementary penalties in multiple-offense or multiple-judgment aggregation where the penalty is not prescribed for any of the aggregated crimes.

2.5. The principle of humanity

The principle of humanity in criminal law's impact requires ensuring human security and safety. Punishment and other criminal law measures applied to offenders are not intended to inflict physical suffering or degrade human dignity; rather, they aim to protect society and educate and reform offenders. On this basis, humanity is understood in two fundamental aspects: *First,* humanity requires comprehensive protection of persons, ensuring safety of life and health and protecting lawful rights and interests from criminal infringement. Persons in this first sense are those who "comply with criminal law" (do not commit crimes), including victims of crime. *Second,* humanity requires a certain degree of clemency and tolerance toward offenders; offenders are not treated as enemies to be suppressed but, first and foremost, as citizens of the State with a certain legal status, tied to the community and performing many social functions. Accordingly, their handling must respect dignity and create conditions for education, reform, and social reintegration.

The principle of humanity requires individualization in applying criminal law impact measures to a person at fault for committing a criminal act. Accordingly, when applying criminal law impact measures to an offender, it is necessary to consider the seriousness of the crime, the offender's personal characteristics, and mitigating and aggravating circumstances of criminal liability. The principle of humanity is reflected in mitigating, to a certain extent, the punitive impact on the offender where the case involves circumstances such as the offender's past contributions to society, the offender being under 18 years of age or elderly, the offender suffering from a serious chronic illness, or the offender being in exceptionally difficult economic circumstances, and so forth. However, the principle of humanity must not be reduced merely to an attitude of leniency toward offenders. The principle of humanity also requires that criminal repression be kept to the minimum necessary to ensure comprehensive protection of Vietnam's social interests and to protect citizens' lawful rights and interests from criminal infringement, while achieving the purposes of criminal law's impact. The principle of humanity requires economizing criminal repression.

Humanitarian ideas permeate the 2015 Penal Code and the system of criminal law impact measures. As a principle governing application of measures, humanity is reflected, inter alia, in:

- Prescribing the Penal Code's tasks, with protection of human rights and citizens' rights among the foremost values (Article 1);
- Prescribing the principle of lenient handling toward individuals and commercial legal entities committing crimes (point d, đ, e, g Clause 1 and point d Clause 2 of Article 4);
- Grounds for exemption from criminal liability (Article 29);
- Prescribing more non-custodial penalties (Clause 1 of Article 32);
- Grounds for sentencing (Article 50);
- Mitigating circumstances (Article 51);
- Sentencing below the lowest level of the frame (Article 54);
- Exemption from punishment (Article 59);
- Exemption from serving punishment (Article 62);
- Reduction of pronounced punishment (Article 63);
- Reduction of term of serving punishment (Article 64);
- Suspended sentence (Article 65);
- Returning property, repairing or compensating for damage, and compulsory public apology (Article 48);
- Substantially limiting, within the Penal Code itself, the possibility of applying the death penalty by categories of crimes and by categories of offenders (Clauses 2, 3, and 4 of Article 40);
- Not permitting the Prnal Code to prescribe, nor practice to apply, criminal law impact measures that are cruel, insulting, or degrading to human dignity;
- Defining (prescribing) in the Penal Code optimal limits on the use of criminal law impact measures in combating crime by restricting the applicability of certain measures (especially stricter measures), the conditions for their application, the duration of their application, and the categories of subjects to whom they may be applied (Articles 34, 35, 36, 38, 39, 40).

In addition, from the provisions of the 2015 Penal Code, it can be seen that the principle of humanity is also reflected in:

- Not recognizing, in the Penal Code (unlike the criminal law of certain countries), indeterminate sanctions and indeterminate sentences;
- Gradually limiting coercive elements and increasingly strengthening educational elements in the construction (design) of the penalty system, the system of sanctions, and other criminal law impact measures, and in their practical application; giving priority, in the system and in practice, to less severe penalties that potentially cause the least harm to offenders and society and, under specific conditions, are capable of maximizing the effectiveness of criminal law;
- Approaching the determination of supplementary penalties in such a way that the application of supplementary penalties is not only - and is not primarily - a means to reduce the overall severity of punishment, but rather a means to individualize punishment depending on specific circumstances, reduce the level of the principal penalty, and enable those who have completed a term of imprisonment to adapt to life under conditions of freedom, thereby realizing the purposes of criminal law's impact.

The "two aspects" of humanity (toward victims of crime and toward offenders) are closely interrelated. Therefore, humanity is by no means groundless leniency (clemency), though, regrettably, this still sometimes occurs in criminal adjudication practice. There are even cases where a person who commits a very serious crime is still sentenced to a penalty lighter than a fixed-term imprisonment sentence, while the structure and dynamics of the crime situation do not at all require such punitive practice. In sentencing, improper leniency (clemency) becomes inhumanity toward those citizens who are victims of crime.

2.6. The principle of equality of citizens before criminal law

"All persons who commit crimes are equal before the law, without discrimination as to gender, ethnicity, belief, religion, social class, or social status" (point b, Clause 1, Article 3 of the 2015 Penal Code). This provision concretizes the constitutional principle recognized in Article 16 of the 2013 Constitution, whereby all citizens are equal before the law and no one is discriminated

against in political, civil, economic, cultural, or social life. This is a constitutional principle governing the organization and operation of the socialist rule-of-law State of Vietnam, and it constitutes a foundation for each branch of law and for the legal system as a whole.

In criminal law, this is the principle of equality before the Penal Code: Equality in the right of all persons within the territory of Vietnam to be protected by criminal law; and equality in the criminal liability incurred by committing crimes (for example, equality in the grounds of criminal liability and in the application of criminal law impact measures). At the same time, this principle does not mean that criminal liability and punishment must be identical; it does not mean that the limits and content of criminal liability and punishment must be the same. Differences may arise, for example, from gender, age, or the official nature of the offender's position. For instance, unlike men, pregnant women and women nursing children under 36 months at the time of the offense or at the time of trial are not subject to the death penalty (nor is the death penalty applied to persons under 18 at the time of the offense, or persons aged 75 or above at the time of the offense or at the time of trial, Clause 2, Article 40). A person who abuses a position or powers to commit a crime is subject to a higher penalty (for example, a person abusing a position or powers to commit defamation may be sentenced to a term of imprisonment under Clause 2, Article 156). Equality before the Penal Code does not mean that offenders must be subjected to criminal law impact in the same manner.

Accordingly, the principle of equality before the Penal Code contains certain inherent tensions. On the one hand, it sets identical requirements and prescribes the same measures of criminal liability (within the sanction range of the relevant Penal Code provisions). On the other hand, it requires consideration of offenders' personal characteristics and other mitigating circumstances of criminal liability in order to decide a sentence below the minimum of the applicable penalty frame (Article 54), exemption from criminal liability (Article 29), or exemption from punishment (Article 59). Like other principles governing the impact of criminal law, this principle may be likened to "two sides of the same coin", consisting of two groups of requirements that are closely connected, mutually determinative, mutually supplementary, and, to a certain extent, mutually corrective. These requirements, on the one hand, express the qualitative specificity and relative independence of the principle of equality before criminal law (the Penal Code), and on the other hand reflect its dialectical relationship with the principles of justice, humanity, and reasonableness in the impact of criminal law.

Due to certain personal characteristics, offenders may be exempted from criminal liability or from punishment, or may receive mitigation of criminal liability or punishment. For example, offenders who are under 18 years of age, pregnant women, and elderly persons (75 years of age or older) bear lighter criminal liability than offenders who do not have such indicia. Conversely, offenders with indicia of a special subject, such as "abuse of position or powers" (point a, Clause 2, Article 151. Trafficking in persons under 16) or "abuse of profession" (point b, Clause 2, Article 152. Substitution of a child under 01 year of age) have to bear more severe criminal liability.

Compliance with the principle of equality before the law is ensured by law, including criminal law norms. The 2015 Penal Code prescribes, among the "principles of handling", that all offenders are equal before the law without discrimination as to gender, ethnicity, belief, religion, social class, or social status (point b, Clause 1, Article 3). It also provides for criminal liability for acts undermining the policy of national solidarity that incite hatred, discrimination, division, or ethnic secessionism and infringe the right to equality within the community of Vietmam's ethnic groups (point b, Clause 1, Article 116. Sabotaging the policy of national solidarity). In addition, the crime of infringing gender equality provides for criminal liability for acts that, for gender-related reasons and

in any form, obstruct another person from participating in activities in the fields of politics, economy, labor, education and training, science and technology, culture, information, physical training and sports, and healthcare, where the perpetrator has already been disciplined or administratively sanctioned for such conduct and continues to violate (Article 165).

Conclusion

For criminal law impact measures to be truly effective, it is necessary to perceive, identify (prescribe), and apply fully and correctly the impact principles of criminal law. These principles are political, moral, and ethical ideas that arise from the socio-economic nature of society, reflect the interests and legal worldview of society, are recognized in criminal law norms or derived through interpretation of criminal law, and play a decisive role in determining the nature and limits of the impact of criminal law.

Criminal law impact measures not only possess rich and multifaceted capacities for punitive impact, reformation, education, and prevention with respect to offenders, but also possess capacities for educational and preventive impact on other members of society. Therefore, the proper and full use of these capacities of criminal-law impact measures is considered an important factor in preventing and combating crime. The results, quality, effectiveness, and purposes of the impact of criminal law depend on many different factors, including the principles governing the impact of criminal law. Nevertheless, to date, neither criminal law scholarship nor positive criminal law has addressed the impact principles of criminal law. Meanwhile, in order to apply criminal law impact measures effectively, it is necessary to recognize (in the Penal Code) and apply correctly the impact principles of criminal law. Practice shows that failure to recognize the impact principles of criminal law in the Penal Code may entail serious negative consequences, such as an ungrounded increase in punitiveness, an ungrounded expansion of judicial discretion, and unjust decisions in criminal cases.

Facing the requirements of protecting justice, protecting human rights and citizens' rights, and performing fully and effectively the tasks of criminal law, thinking on the impact principles of criminal law should continue to be researched comprehensively and systematically, covering all domains of theory, criminal law drafting and application, training, and criminal law education, so as to better align with the country's new development conditions. Thinking on the impact principles of criminal law must overcome and push back old thinking, replacing it with positive new thinking, in order to bring about a qualitative change in criminal law, serving better the cause of national renewal in general and the need for effective crime prevention and control in particular./.

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