

ORDINANCE ON HANDLING OF ADMINISTRATIVE VIOLATIONS

(No. 04/2008/PL-UBTVQH12)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10;

Pursuant to Resolution No. 11/2007/QH12 of the National Assembly on the law- and ordinance-making programs of its XIIth term (2007-2011) and 2008;

The Standing Committee of the National Assembly promulgates the Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Handling of Administrative Violations.

Article 1.-

To amend and supplement a number of articles of the Ordinance on Handling of Administrative Violations:

1. To amend and supplement Article 12 into the following:

“Article 12.- Forms of sanction for administrative violations and remedies

1. For each act of administrative violation, the violating individuals or organizations will be subject to one of the following principal forms of sanction:

a/ Caution;

b/ Fine.

2. Depending on the nature and seriousness of their violations, individuals or organizations that commit administrative violations may also be subject to one or more of the following additional forms of sanction:

a/ Deprivation of the right to use licenses or professional practice certificates;

b/ Confiscation of material evidence and means used in administrative violations.

3. Apart from the forms of sanction specified in Clause 1 and Clause 2 of this Article, the violating individuals and organizations may also be subject to the application of one or several of the following remedies:

a/ Forced restoration of the initial state altered due to the administrative violation or forced dismantlement of illegally constructed works;

b/ Forced application of measures to overcome the environmental pollution or epidemic spread caused by the administrative violation;

c/ Forced bringing out of the Vietnamese territory or forced re-export of goods, articles and means;

d/ Forced destruction of articles harmful to human health, domestic animals or cultivated plants, and of harmful cultural products;

e/ Other remedies as decided by competent persons according to the Government’s regulations.

4. Foreigners who commit administrative violations may also be sanctioned by expulsion. Expulsion may be applied as a principal or an additional form of sanction on a case-by-case basis.”

2. To amend and supplement Article 14 into the following:

“Article 14.- Fines

1. Fine levels imposed for administrative violations range from VND 10,000 to VND 500,000,000.

2. Depending on the nature and seriousness of violations, the maximum fine levels applicable to state management domains are prescribed as follows:

a/ A fine of up to VND 30,000,000 may be imposed for acts of administrative violation in the domains of security, social order and safety; traffic works management and protection; irrigation works exploitation and protection; labor; measurement and product and goods quality; accounting; statistics; justice; social insurance; and fire prevention and fighting;

b/ A fine of up to VND 40,000,000 may be imposed for acts of administrative violation in the domains of road traffic; inland waterway traffic; culture and information; tourism; social evils prevention and combat; dikes and flood and storm prevention and fighting; health; pricing; electricity; plant protection and quarantine; aquatic resource protection; veterinary; plant varieties; livestock breeds; defense; population and children; overseas guest workers; vocational training; and national boundaries;

c/ A fine of up to VND 70,000,000 may be imposed for acts of administrative violation in the domains of trade; charges and fees; customs; radiation safety and control; railway traffic; post, telecommunications and radio frequencies; technology transfer; insurance business; industrial explosive management; and physical training and sports;

d/ A fine of up to VND 100,000,000 may be imposed for acts of administrative violation in the domains of ocean shipping; civil aviation; science and technology; survey and mapping; education; information technology; water resources; and taxation;

e/ A fine of up to VND 500,000,000 may be imposed for acts of administrative violation in the domains of environmental protection; securities; construction; land; banking; intellectual property; forest management, forest protection and forest product management; investigation, exploration and exploitation of marine resources, oil and gas and other minerals.

3. For acts of administrative violation in the state management domains not yet prescribed in Clause 2 of this Article, the Government shall stipulate fine levels which, however, must not exceed VND 100,000,000.

When a law provides for a maximum fine level different from those stipulated in this Article, the provisions of such law prevail.”

3. To add the following Article 21a to Article 21:

“Article 21a.- Expenses for taking remedies

In case individuals or organizations are unable to take remedies for consequences caused by their acts of administrative violation specified in Articles 18, 19, 20 and 21 of this Ordinance or they flee away but taking remedies is extremely urgent to protect the environment or ensure uninterrupted traffic or social order and safety, competent management agencies may use funds from their allocated state

budgets to take such remedies. Violating individuals and organizations shall repay such funds to remedy-taking agencies.”

4. To amend and supplement Article 28 into the following:

“Article 28.- Competence of commune-level People’s Committee presidents to handle administrative violations

Commune-level People’s Committee presidents have the power to:

1. Impose caution;
2. Impose fines of up to VND 2,000,000;
3. Confiscate material evidence and means used in administrative violations valued at up to VND 2,000,000;
4. Compel the restoration of the initial state altered due to administrative violations;
5. Compel the taking of remedies for environmental pollution or epidemic spread caused by administrative violations;
6. Compel the destruction of articles which are harmful to human health, domestic animals and cultivated plants; and of harmful cultural products;
7. Decide on the application of the measure of education at commune, ward or district township.”

5. To amend and supplement Article 29 into the following:

“Article 29.- Competence of district-level People’s Committee presidents to handle administrative violations

District-level People’s Committee presidents have the power to:

1. Impose caution;
2. Impose fines of up to VND 30,000,000;
3. Deprive of the right to use licenses or professional practice certificates falling under their competence;
4. Confiscate material evidence and means used for administrative violations;
5. Take remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance;
6. Decide to apply the measure of confinement to a reformatory;
7. Decide to apply the measure of confinement to a medical treatment establishment.”

6. To amend and supplement Article 31 into the following:

“Article 31.- Competence of People’s Police to handle administrative violations

1. People’s police officers on duty have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 200,000.

2. Station heads and team heads of persons defined in Clause 1 of this Article have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 500,000.

3. Commune-level police chiefs may apply sanctions against administrative violations specified in Article 28 of this Ordinance, except the measure of education at commune, ward or district town.

4. District-level police chiefs have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 10,000,000;

c/ Deprive of the right to use licenses or professional practice certificates falling under their competence;

d/ Confiscate material evidence and means used in administrative violations;

e/ Apply remedies specified at Points a, b and d of Clause 3, Article 12 of this Ordinance.

5. Heads of Police Bureaus for Administrative Management of Social Order, heads of Order Police Bureaus, Police Bureaus for Investigation into Social Order-Related Crimes, Police Bureaus for Investigation into Economic Management Order and Position-Related Crimes, Police Bureaus for Investigation into Drug- Related Crimes, Road and Railway Traffic Police Bureaus, Waterway Traffic Police Bureaus, Fire Prevention and Fighting Police Bureaus, Judicial Protection and Assistance Police Bureaus, Environmental Police Bureaus, Immigration Management Bureaus, Mobile Police units of company or higher level; and police stations or posts at border gates or export processing zones have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 10,000,000;

c/ Deprive of the right to use licenses and professional practice certificates falling under their competence;

d/ Confiscate material evidence and means used in administrative violations;

e/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

6. Directors of provincial-level Police Departments and Fire Prevention and Fighting Police Departments have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 30,000,000;

c/ Deprive of the right to use licenses and professional practice certificates falling under their competence;

d/ Confiscate material evidence and means used for administrative violations;

e/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

f/ Directors of provincial-level Police Departments have the power to apply the sanction of expulsion as decentralized by the Minister of Public Security.

7. The directors of the Police Department for Administrative Management of Social Order, the Police Department for Investigation into Social Order-Related Crimes, the Police Department for Investigation into Economic Management Order- and Position-Related Crimes, the Police Department for Investigation into Drug-Related Crimes, the Road and Railway Traffic Police Department, the Waterway Traffic Police Department, the Fire Prevention and Fighting Police Department, the Judicial Protection and Assistance Police Department, and the Environmental Police Department have the power to:

a/ Impose caution;

b/ Impose fines of up to maximum levels applicable to domains under their respective management specified in Clause 2 and Clause 3, Article 14 of this Ordinance;

c/ Deprive of the right to use licenses and professional practice certificates falling under their competence;

d/ Confiscate material evidence and means used in administrative violations;

e/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

8. The director of the Immigration Management Department has the power to impose sanctions according to Clause 7 of this Article and decide to apply the sanction of expulsion as decentralized by the Minister of Public Security.

9. The Minister of Public Security shall decide on the application of the sanction of expulsion.”

7. To amend and supplement Article 32 into the following:

“Article 32.- Competence of the border guard to handle administrative violations

1. Border guard soldiers on duty have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 200,000.

2. Team leaders of the persons defined in Clause 1 of this Article, and chiefs of border-guard control stations have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 500,000.

3. Border guard post chiefs, border guard flotilla commanders, sub-regional border guard commanders and port border guard commanders have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 10,000,000;

c/ Confiscate material evidence and means used in administrative violations;

d/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

4. Provincial-level border guard commanders and commanders of border guard fleets under the Border Guard Command have the power to:

a/ Impose caution;

b/ Impose fines of up to maximum levels applicable to the domains under their respective management specified at Points a, b, c and d of Clause 2 and Clause 3, Article 14 of this Ordinance;

c/ Confiscate material evidence and means used in administrative violations;

d/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.”

8. *To amend and supplement Article 33 into the following:*

“Article 33.- Competence of the coast guard to handle administrative violations

1. Members of coast guard operation teams on duty have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 500,000.

2. Heads of coast guard operation units have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 1,000,000.

3. Heads of coast guard operation teams have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 5,000,000.

4. Coast guard flotilla captains have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 10,000,000;

c/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

5. Coast guard fleet commanders have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 20,000,000;
- c/ Confiscate material evidence and means used in administrative violations;
- d/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

6. Coast guard region commanders have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 30,000,000;
- c/ Confiscate material evidence and means used in administrative violations;
- d/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

7. The director of the Coast Guard Department has the power to:

- a/ Impose caution;
- b/ Impose fines of up to maximum levels applicable to the domains under his/her management specified at Clauses 2 and 3, Article 14 of this Ordinance;
- c/ Deprive of the right to use licenses and professional practice certificates falling under his/her competence;
- d/ Confiscate material evidence and means used in administrative violations;
- e/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.”

9. To amend and supplement Article 34 into the following:

“Article 34.- Competence of customs to handle administrative violations

1. Customs officers on duty have the power:

- a/ Impose caution;
- b/ Impose fines of up to VND 200,000.

2. Operation team leaders under Customs Sub-Departments and Post-Clearance Examination Sub-Departments have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 5,000,000.

3. Heads of Customs Sub-Departments and Post-Clearance Inspection Sub-Departments, heads of control teams of provincial, inter-provincial, municipal Customs Departments (below collectively referred to as Customs Departments), leaders of Anti-Smuggling Control Teams and commanders of

sea control flotillas under the Anti-Smuggle Investigation Department of the General Department of Customs have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 20,000,000;
- c/ Confiscate material evidence and means used in administrative violations.

4. Directors of Anti-Smuggling Investigation Departments, Post-Clearance Inspection Departments and Customs Departments have the power to:

- a/ Impose caution;
- b/ Impose fines of up to maximum levels applicable in the customs and taxation domains specified at Points c and d, Clause 2, Article 14 of this Ordinance;
- c/ Deprive of the right to use licenses falling under their respective competence;
- d/ Confiscate material evidence and means used in administrative violations;
- e/ Apply remedies specified at Points c and d, Clause 3, Article 12 of this Ordinance.

10. To amend and supplement Article 35 into the following:

“Article 35.- Competence of the Ranger to handle administrative violations

1. Ranger officers on duty have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 200,000.

2. Ranger station chiefs have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 5,000,000;
- c/ Confiscate material evidence and means used in administrative violations valued at up to VND 20,000,000.

3. Heads of ranger units, heads of Forest Products Re-Inspection Sub-Departments and heads of Mobile Ranger teams have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 10,000,000;
- c/ Confiscate material evidence and means used in administrative violations valued at up to VND 30,000,000;
- d/ Compel the restoration of the initial state altered due to administrative violations.

4. Directors of Ranger Sub-Departments and heads of ranger task force teams have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 20,000,000;

c/ Deprive of the right to use licenses and professional practice certificates falling under their competence;

d/ Confiscate material evidence and means used in administrative violations;

e/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

5. The director of the Ranger Department has the power to:

a/ Impose caution;

b/ Impose fines of up to maximum levels in the field of forest management, forest protection and forest product management specified at Point e, Clause 2, Article 14 of this Ordinance;

c/ Deprive of the right to use licenses and professional practice certificates falling under his/her competence;

d/ Confiscate material evidence and means used in administrative violations;

e/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.”

11. To amend and supplement Article 36 into the following:

“Article 36.- Competence of tax offices to handle administrative violations

Unless fine levels are otherwise prescribed by law, the following persons have the power to:

1. Tax officers on duty:

a/ Impose caution;

b/ Impose fines of up to VND 200,000.

2. Tax station chiefs and tax team leaders:

a/ Impose caution;

b/ Impose fines of up to VND 5,000,000.

3. District-level Tax Department directors:

a/ Impose caution;

b/ Impose fines of up to VND 20,000,000;

c/ Confiscate material evidence and means used in administrative violations.

4. Provincial-level Tax Department directors:

a/ Impose caution;

b/ Impose fines of up to the maximum level applicable in the taxation domain specified at Point d, Clause 2, Article 14 of this Ordinance;

c/ Confiscate material evidence and means used in administrative violations.”

12. To amend and supplement Article 38 into the following:

“Article 38.- Competence of specialized inspectorates to handle administrative violations

1. Specialized inspectors on duty have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 500,000;

c/ Confiscate material evidence and means used in administrative violations valued at up to VND 2,000,000;

d/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance, except for forced dismantlement of illegally constructed works.

2. Specialized chief inspectors of provincial-level Services have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 30,000,000;

c/ Deprive of the right to use licenses and professional practice certificates falling under their competence;

d/ Confiscate material evidence and means used in administrative violations;

e/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

3. Specialized chief inspectors of ministries or ministerial-level agencies have the power to:

a/ Impose caution;

b/ Impose fines of up to maximum levels applicable in the domains under their respective management specified at Clause 2 and Clause 3, Article 14 of this Ordinance;

c/ Deprive of the right to use licenses and professional practice certificates falling under their respective competence;

d/ Confiscate material evidence and means used in administrative violations;

e/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.”

13. To amend and supplement Article 39 into the following:

“Article 39.- Competence of directors of seaport authorities, inland river port authorities and airport authorities to handle administrative violations

Directors of seaport authorities, inland river port authorities and airport authorities have the power to:

1. Impose caution;
2. Impose fines of up to VND 10,000,000;
3. Deprive of the right to use licenses and professional practice certificates falling under their respective competence;
4. Confiscate material evidence and means used in administrative violations;
5. Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.”

14. To amend and supplement Article 40 into the following Article 40 and Article 40a:

“Article 40.- Competence of People’s Courts to handle administrative violations

1. Judges chairing court sessions have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 2,000,000;
- c/ Confiscate material evidence and means used in administrative violations.

2. Judges assigned to settle bankruptcy cases have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 10,000,000;
- c/ Confiscate material evidence and means used in administrative violations.

3. Presidents of district-level People’s Courts, provincial-level People’s Courts and regional Military Courts have the power:

- a/ Impose caution;
- b/ Impose fines of up to VND 15,000,000;
- c/ Confiscate material evidence and means used in administrative violations.

4. Presidents of provincial-level People’s Courts and military zone- or equivalent level military courts and the president of the Supreme People’s Court have the power to:

- a/ Impose caution;
- b/ Impose fines of up to VND 20,000,000;
- c/ Confiscate material evidence and means used in administrative violations.

Article 40a.- Competence of civil judgment enforcement agencies to handle administrative violations

1. Civil judgment enforcers on duty have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 200,000.

2. Heads of district-level civil judgment enforcement agencies have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 500,000.

3. Heads of provincial-level civil judgment enforcement agencies and military-zone judgment enforcement agencies have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 1,000,000.

4. Civil judgment enforcers who are leaders of property liquidation and management groups in bankruptcy cases have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 5,000,000.”

15. To add the following Articles 40b, 40c and 40d to Article 40a:

“Article 40b.- Competence of heads of overseas Vietnamese diplomatic missions, consulates and other agencies authorized to perform consular functions, and the director of the Overseas Labor Management Department to handle administrative violations

1. Heads of overseas Vietnamese diplomatic missions, consulates and other agencies authorized to perform consular functions have the power to:

a/ Impose caution;

b/ Impose fines of up to VND 10,000,000;

c/ Apply the measure of compelling overseas guest workers to return home under Clause 6, Article 75 of the Law on Vietnamese Guest Workers Working Under Contracts.

2. The director of the Overseas Labor Management Department has the power to:

a/ Impose caution;

b/ Impose fines of up to VND 40,000,000;

c/ Apply additional sanctions specified at Point b, Clause 3, Article 75 of the Law on Vietnamese Guest Workers Working Under Contracts;

d/ Apply remedies specified in Clause 4, Article 75 of the Law on Vietnamese Guest Workers Working Under Contracts.

Article 40c.- Competence of the Chairman of the Competition Council and the head of the Competition Management Agency to handle administrative violations

Unless otherwise provided for by law, the following persons have the power:

1. The director of the Competition Management Department:

a/ Impose caution;

b/ Impose fines of up to VND 70,000,000;

c/ Confiscate material evidence and means used in administrative violations;

d/ Deprive of the right to use licenses and professional practice certificates falling under their respective competence.

2. The Chairman of the Competition Council:

a/ Impose caution;

b/ Impose fines of up to VND 70,000,000;

c/ Confiscate material evidence and means used in administrative violations;

d/ Apply remedies specified at Points a, b and d, Clause 3, Article 12 of this Ordinance.

Article 40d.- Competence of the State Securities Commission to handle administrative violations

1. The chief securities inspector has the power to:

a/ Impose caution;

b/ Impose fines of up to VND 70,000,000.

2. The Chairman of the State Securities Commission has the power to:

a/ Impose caution;

b/ Impose fines of up to the maximum level applicable in the securities domain specified at Point e, Clause 2, Article 14 of this Ordinance;

c/ Apply additional forms of sanction and remedies specified in Clause 2 and Clause 3, Article 119 of the Securities Law.”

16. To amend and supplement Article 41 into the following:

“Article 41.- Authorization of the power to handle administrative violations

Persons competent to handle administrative violations defined in Articles 28, 29 and 30; Clauses 2, 3, 4, 5, 6, 7 and 8 of Article 31; Clauses 2, 3 and 4 of Article 32; Clause 3, 4, 5, 6 and 7 of Article 33; Clauses 2, 3 and 4 of Article 34; Clauses 2, 3, 4 and 5 of Article 35; Clauses 2, 3 and 4 of Article 36; Clause 2, 3 and 4 of Article 37; Clauses 2 and 3 of Article 38; Article 39; Clauses 3 and 4 of Article 40; Clauses 2 and 3 of Article 40a, Article 40b, Article 40c and Article 40d of this Ordinance may authorize their deputies to exercise the power to handle administrative violations. Authorized

deputies shall take responsibility to their heads and law for their decisions to handle administrative violations.”

17. To amend and supplement Article 42 into the following:

“Article 42.- Principles for determining the competence to handle administrative violations

1. Presidents of People’ Committees at all levels are competent to sanction administrative violations in state management domains in their respective localities.

Persons competent to sanction administrative violations defined in Articles 31 thru 40d of this Ordinance are competent to sanction administrative violations in the domains and branches falling under their respective management.

Where an administrative violation falls under the sanctioning competence of more than one person, sanctioning shall be effected by the person who first receives and processes the case.

2. The sanctioning competence of the persons defined in Articles 28 thru 40d of this Ordinance is applicable to a single act of administrative violation. In case of fine, the sanctioning competence shall be determined on the basis of the maximum level of the fine table prescribed for each specific act of violation.

3. In case a person is sanctioned for more than one act of administrative violation, the sanctioning competence shall be determined on the following principles:

a/ If the sanctioning form and level prescribed for each act fall under the competence of the sanctioning person, the sanctioning competence also rests with such person;

b/ If the sanctioning form and level prescribed for one of the acts fall beyond the competence of the sanctioning person, he/she shall transfer the case of violation to an authority with sanctioning competence;

c/ If acts fall within the sanctioning competence of more than one person in different branches, the sanctioning competence will belong to the People’s Committee president with sanctioning competence in the locality where the violation is committed.”

18. To amend and supplement Article 45 into the following:

“Article 45.- Competence to keep persons in custody according to administrative procedures

1. The following persons may decide to keep persons in custody according to administrative procedures:

a/ Commune/ward/township People’s Committee presidents and ward police chiefs;

b/ District police chiefs;

c/ Heads of Police Bureaus for Administrative Management of Social Order, Order Police Bureaus, Road and Railway Traffic Police Bureaus, Waterway Traffic Police Bureaus, Police Bureaus for Investigation into Economic Management Order and Position-Related Crimes, Police Bureaus for Investigation into Social Order-Related Crimes, Police Bureaus for Investigation into Drug-Related Crimes and Immigration Management Bureaus of provincial-level Police;

d/ Heads of mobile police units of company or higher levels and heads of border-gate police stations;

e/ Heads of ranger units and leaders of mobile ranger teams;

f/ Heads of Customs Sub-Departments, leaders of Control Teams of Customs Departments, leaders of Anti-Smuggling Control Teams and leaders of sea control flotillas under the Anti-Smuggling Investigation Department of the General Department of Customs;

g/ Leaders of market management teams;

h/ Commanders of border guard sub-regions, commanders of border guard fleets, commanders of border guard flotillas, heads of border guard posts and commanders of border guard units stationed in border regions and islands;

i/ Commanders of coast guard flotillas and fleets;

j/ Airplane or ship captains when airplanes or ships have left airports or seaports.

2. Persons defined in Clause 1 of this Article may authorize their deputies to exercise the power to keep persons in custody according to administrative procedures and authorize the taking of measures to stop administrative violations and ensure the handling of other administrative violations. Authorization must be effected in writing. Authorized deputies shall take responsibility to their heads and law for their custody decisions.

19. To amend and supplement Article 46 into the following:

“Article 46.- Seizure of material evidence and means of administrative violations

1. Seizure of material evidence and means of administrative violations may apply only to cases in which it is necessary to verify circumstances used as a basis for deciding to handle or immediately stop administrative violations.

Persons defined in Article 45 of this Ordinance, chief specialized inspectors of provincial-level Services and chief specialized inspectors of ministries and ministerial-level agencies, directors of seaport authorities, directors of inland river port authorities and directors of airport authorities may decide to seize material evidence and means used in administrative violations.

2. In case there are grounds to believe that the material evidence and means of administrative violations can be dispersed or destroyed if they are not seized immediately, immediate superiors of people’s police officers, border guards, ranger officers, customs officers, market controllers or specialized inspectors may decide to seize such material evidence and means. Within 24 hours after the decisions are issued, the decision issuers shall report to their superiors who are competent to seize material evidence and means of administrative violations defined in Clause 1 of this Article and get their written consent; in case of failure to get written consent of such persons, the decision issuers shall immediately cancel their seizure decisions and return the seized articles, money, goods and means.

3. Persons who have issued decisions on the seizure of material evidence and means of administrative violations shall make records of the seizure, which must clearly state the names, quantities, categories of the seized material evidence and means and be signed by the decision issuer and the violator. They have the responsibility to preserve those material evidence and means; if the material evidence and means are lost, sold or damaged due to their fault, they shall pay compensations therefor.

In case the material evidence and means need to be sealed, the sealing must be conducted in front of the violators; if the violators are absent, the sealing must be conducted in front of their families’ representatives, organizations’ representatives, local administration’s representatives and witnesses.

4. For Vietnamese currency, foreign currencies, gold, silver, precious stones, precious metals, narcotics and other objects subject to special management, they shall be preserved in accordance with law.

For material evidence being commodities and articles which are easy to decay, the persons issuing decisions on their seizure shall handle them under Clause 3, Article 61 of this Ordinance.

5. Within ten days from the date of seizure, the persons who have issued the seizure decisions shall handle the seized material evidence and means with measures indicated in the handling decisions or return them to the concerned individuals or organizations if the sanctioning form of confiscation is not applied. This seizure duration may be prolonged in complicated cases requiring verification but must not exceed sixty days counting from the date of seizure. Prolongation of the duration of seizure of material evidence and means shall be decided by persons defined in Clause 1 of this Article.

6. Seizure of material evidence and means of administrative violations must be effected under written decisions enclosed with seizure records to be handed over to the violators or representatives of the violating organizations, one copy each.”

20. To amend and supplement Article 49 into the following:

“Article 49.- Search of places where material evidence and means of administrative violations are hidden

1. Search of places where material evidence and means of administrative violations are hidden may be conducted only when there are grounds to believe that material evidence and means of administrative violations are hidden in those places.

2. Persons defined in Article 45 of this Ordinance may decide to search places where material evidence and means of administrative violations are hidden; if such place is a residence, the search decision must be consented in writing by the district-level People’s Committee president before the search is conducted.

3. Search of places where material evidence and means of administrative violations are hidden must be conducted in the presence of the owners of such places or members of their families and witnesses. In case the place owners or members of their families are absent while the search cannot be postponed, the presence of a representative of the local administration and two witnesses is required.

4. Search of places where material evidence and means of administrative violations are hidden must not be conducted at night, except in emergency cases or when the search cannot be finished before night, but the reason therefor must be clearly indicated in the search records.

5. All searches of places where material evidence and means of administrative violations are hidden must be effected under written decisions and recorded in writing. Such decisions and records must be handed to the place owners, one copy each.”

21. To amend and supplement Article 54 into the following:

“Article 54.- Simple procedures

For caution or fine of between VND 10,000 and 200,000, persons with sanctioning competence may issue decisions to sanction on the spot. For on-the-spot sanctions, it is not required to make a written record, except for administrative violations detected with the aid of professional technical devices.

A sanctioning decision must clearly state the date of issuance; the full name and address of the violator or violating organization; act of violation; place where the violation is committed; full name and position of the decision issuer; and applicable legal provisions. Such decision must be handed to the sanctioned individual or organization, one copy each. When a caution is imposed on a minor, the caution decision must be sent to his/her parent or guardian or the school where he/she is studying.

In case of fine, the decision must clearly state the fine level. Violating individuals and organizations may pay fines on the spot to the persons with sanctioning competence who shall issue fine receipts to the fined persons.”

22. *To amend and supplement Article 55 into the following:*

“Article 55.- Making records of administrative violations

1. Upon detecting administrative violations in their respective management domains, persons with sanctioning competence on duty shall promptly make records thereof, except for cases of sanctioning according to simple procedures. When the administrative violation does not fall under the sanctioning competence of the record maker, the record shall be promptly sent to a person with sanctioning competence for sanctioning.

For administrative violations detected by professional technical devices, a record shall be made immediately after violators are identified.

For administrative violations committed on aircraft or ships, the aircraft or ship captains must make records thereof and send them to persons with sanctioning competence when the aircraft or ships return to the airports or seaports.

2. An administrative violation record must clearly indicate the date and place of making the record; full name and position of the record maker; full name, address and occupation of the violator or name and address of the violating organization; time, date and location when and where the administrative violations occur; act of violation; measures taken to prevent the administrative violation and ensure sanctioning (if any); conditions of the seized material evidence and means (if any); statements of the violator or representative of the violating organization. If there are witnesses, victim or representative of the victim organization, their full names, addresses and statements must be indicated in the record. If the administrative violator deliberately escapes or is absent from the place where the violation occurred for objective reason, the record must be signed by a representative of the administration of the place where the violation occurred or by two witnesses.

3. A record must be made in at least two copies; signed by the record maker and the violator or the representative of the violating organization. If there are witnesses, victims or representatives of the victim organizations, they must also sign the record. If the record consists of many pages, the persons mentioned in this Clause shall sign on each page. If the violator, the representative of the violating organization, witnesses, victims or representatives of the victim organizations refuse to sign, the record maker shall write the reasons therefor in the record.

4. Records, when completely made, shall be handed to violating individuals or organizations, one copy each. If the case of violation is beyond the sanctioning competence of the record maker, the record maker must send the record to the person with sanctioning competence.”

23. *To add the following Article 55a to Article 55:*

“Article 55a.- Use of professional technical devices ensuring traffic order and safety to detect and track down administrative violators

1. Cameras, visual speedometers or other professional technical devices may be used in ensuring traffic order and safety in roads, railways, inland waterways, maritime navigation and civil aviation to detect and track down administrative violators.
2. Evidence collected through professional technical devices must be indicated in records of administrative violations.
3. The Prime Minister shall issue regulations on management and use and a list of professional technical devices used to collect evidence of administrative violations.”

24. To amend and supplement Article 57 into the following:

“Article 57.- Fining procedures

1. Sanctioning with fines of over VND 200,000 must strictly comply with the provisions of Articles 55 and 56 of this Ordinance.
2. When fining, the specific fine level for an act of administrative violation is the average of the fine bracket prescribed for such act; if extenuating circumstances are involved, the fine level can be reduced but not to below the minimum level of the fine bracket; if aggravating circumstances are involved, the fine level may be increased but not beyond the maximum level of the fine bracket.
3. Where only a fine is imposed on the violating individual or organization, the person with sanctioning competence may temporarily seize the permit for circulation of the vehicle or driving license or other necessary relevant paper until such individual or organization completely abides by the sanctioning decision. If the violating individual or organization does not have any of these papers, the person with sanctioning competence may temporarily seize the material evidence or means in violation.
4. Fined individuals and organizations shall pay fines and get fine receipts.
5. Collected fines must be remitted into the state budget via accounts opened at state treasuries. Fines may be paid in installments or lump sum within the time limit decided by persons with sanctioning competence.
6. The Government shall stipulate the payment of fines in installments and the management of fine receipts and fine money.”

25. To amend and supplement Article 61 into the following:

“Article 61.- Handling of material evidence and means used in administrative violations

1. For confiscated material evidence and means used in administrative violations, persons who have decided to confiscate them shall preserve such material evidence and means.

If the material evidence and means used in administrative violations are confiscated under decisions issued by competent persons of central agencies, they shall be delivered to the provincial-level auction service center of the place where administrative violations occur for auction.

If the material evidence and means used in administrative violations are confiscated under decisions issued by competent persons of provincial-level agencies, they shall be delivered to the provincial-level auction service center of the place where the agency of the competent person who has issued the confiscation decision is headquartered for auction.

If the material evidence and means used in administrative violations are confiscated under decisions issued by competent persons of district- or lower level agencies, a district-level auction board will be set up to auction such material evidence and means.

Auction of material evidence and means used in administrative violations must be carried out according to the law on auction.

When confiscated material evidence and means cannot be sold, the agency of the competent person that has issued the confiscation decision shall set up a board to liquidate the property in accordance with law.

Proceeds from the auction of material evidences and means used in administrative violations, after subtracting expenses according to law, must be remitted into the state budget via accounts opened at state treasuries.

2. For material evidence and means used in administrative violations which are harmful cultural products, fake goods of no use value, articles harmful to human health, domestic animals or plants and must be destroyed or confiscated material evidence and means are of no use value, competent persons shall set up a handling board to destroy them. Depending on the nature of the material evidence and means, the handling board may be composed of representatives of concerned state bodies. The destruction of material evidence and means used for administrative violations must be recorded in a minute signed by members of the handling board.

For goods, articles and means forced to be brought out of the Vietnamese territory or forced to be re-exported, the violating individuals or organizations shall take them out of Vietnamese territory within the time limit prescribed in the sanctioning decisions.

3. For material evidence used in administrative violations being goods and articles which are easy to decay, the persons competent to confiscate them shall make records thereof and immediately organize their sale. The proceeds from the sale must be deposited into temporary custody accounts opened at state treasuries. If later, by decisions of competent persons, such material evidence is confiscated, the proceeds shall be remitted into the state budget. In case such material evidence is not confiscated, the proceeds shall be returned to the lawful owners, managers or users.

4. For material evidence and means used in administrative violations, except for those mentioned in Clauses 2 and 3 of this Article, of which the lawful owners, managers or users are unidentified or these people do not come to receive them, the persons competent to confiscate them shall announce such on the mass media and post up notices at their offices; within thirty days from the date of public notice, if the lawful owners, managers or users cannot be identified or these persons do not come to receive them, competent persons shall issue decisions to confiscate the material evidence and means of violations for handling according to Clause 1 of this Article.

5. For material evidence and means illegally appropriated and used in administrative violations, they must be returned to their lawful owners, managers or users.

6. Expenses for warehousing, yard storage and preservation of material evidence and means used in administrative violations and other expenses compliant with legal provisions may be subtracted from the proceeds from the sale of material evidence and means used in administrative violations. Charges for warehousing, yard storage and preservation of material evidence and means shall not be collected if the owners of such material evidence and means are not at fault in the administrative violations or the measure of confiscation is not applied to their material evidence and means.

7. Persons with material evidence and means used in administrative violations which are seized shall pay charges for their warehousing, yard storage and preservation and other expenses as prescribed by law according to the duration of seizure within the time limit specified in Clause 5, Article 46 of this Ordinance.

If the person with material evidence and means used in administrative violations who has been notified to receive the material evidence and means fails to come to receive them on time as notified, he/she shall pay charges for the warehousing, yard storage and preservation of the material evidence and means and other expenses for the time beyond the notified deadline, unless he/she has a plausible reason. Past 30 days after the notified deadline, if the person with the material evidence and means fails to come to receive them, the material evidence and means will be handled according to Clause 4 of this Article.”

26. To amend and supplement Article 64 into the following:

“Article 64.- Compliance with decisions to sanction administrative violations

1. Individuals and organizations sanctioned for administrative violations shall comply with the sanctioning decisions within ten days from the date they are given the sanctioning decisions, unless otherwise provided for by law.

2. Past the time limit prescribed in Clause 1 of this Article, if the individuals or organizations sanctioned for administrative violations still fail to voluntarily comply with the sanctioning decisions, they shall be forced to do so.

27. To add the following Article 66a to Article 66:

“Article 66a.- Responsibilities of credit institutions in implementing decisions to enforce compliance with decisions on sanctioning administrative violations

1. Upon receiving a decision to enforce compliance with the decision on sanctioning an administrative violation, the credit institution at which the individual or organization against whom compliance is enforced shall retain in the account of that individual or organization a sum of money equivalent to the sum of money that individual or organization is ordered to pay by the competent agency or person that has issued the enforcement decision, if, at that time, the deposit account has a balance equal to or higher than the sum of money payable by that individual or organization; at the same time, within ten days from the date of receipt of the enforcement decision, shall deduct and transfer the sum of money payable by that individual or organization from this deposit account into the state budget via a state treasury account; if the balance of the deposit account is smaller than the sum of money payable by that individual or organization, the credit institution shall still retain, deduct and transfer the balance. Five working days before deducting and transferring money, the credit institution shall notify that individual or organization of the deduction and transfer but such deduction and transfer does not require approval of that individual or organization.

2. A credit institution that fails to retain in the account of the individual or organization against whom compliance is enforced the sum of money as prescribed in Clause 1 of this Article shall pay that sum of money by itself. The individual or organization against whom compliance is enforced shall refund the sum of money which the credit institution has paid to the State. If the balance of the deposit account is less than the sum of money to be deducted and transferred, the individual or organization against whom compliance is enforced shall, apart from paying the sum of money already paid by the credit institution, pay to the State the deficit of the payable sum.

3. If failing to deduct and transfer money, the credit institution shall be imposed a fine equal to the sum of money which it fails to deduct and transfer into the state budget via a state treasury account but not exceeding VND 500,000,000.”

28. To amend and supplement Article 67 into the following:

“Article 67.- Competence to issue enforcement decisions

The following persons are competent to issue enforcement decisions and tasked to organize enforcement of compliance with sanctioning decisions of their own and their subordinates:

1. Presidents of commune-level, district-level or provincial-level People’s Committees;
2. Chiefs of police stations, chiefs of district-level police, directors of provincial-level fire prevention and fighting police departments, directors of provincial-level police, the director of the Police Department for Administrative Management of Social Order, the director of the Police Department for Investigation into Social Order-Related Crimes, the director of the Police Department for Investigation into Economic Management Order- and Position-Related Crimes, the director of the Police Department for Investigation into Drug-Related Crimes, the director of the Land and Railway Traffic Police Department, the director of the Waterway Traffic Police Department, the director of the Fire Prevention and Fighting Police Department, the director of the Immigration Management Department, the director of the Judicial Protection and Assistance Department and the director of the Environmental Police Department;
3. Heads of border guard posts, commanders of port border-gate border guard stations, commanders of provincial-level border guards; commanders of border guard fleets under the Border Guard Command; and the director of the Coast Guard Department;
4. Directors of Customs Departments, the director of the Post-Clearance Inspection Department, and the director of the Anti-Smuggling Investigation Department under the General Department of Customs;
5. Heads of Ranger Sub-Departments and the director of the Ranger Department;
6. Directors of provincial Tax Departments;
7. Heads of Market Management Sub-Departments and the director of the Market Management Department;
8. The director of the Overseas Labor Management Department; heads of overseas Vietnamese diplomatic missions, consulates, and other agencies authorized to perform the consular function;
9. The director of the Competition Management Department;
10. The Chairman of the State Securities Commission;
11. Specialized chief inspectors of provincial-level services, specialized chief inspectors of ministries or ministerial-level agencies;
12. Directors of seaport authorities, directors of inland river port authorities and directors of airport authorities.

13. Presidents of district-level People’s Courts, presidents of provincial-level People’s Courts, presidents of regional military courts, presidents of military zone- and equivalent level military courts, the president of the Supreme People’s Court, heads of provincial-level civil judgment enforcement agencies, and heads of military zone-level judgment enforcement agencies.”

28. *To amend and supplement Article 113 into the following:*

“**Article 113.-** Handling of cases where a person is subject to both confinement to an educational establishment and confinement to a medical treatment establishment or both confinement to a reformatory and confinement to a medical treatment establishment

1. In case a person has committed an act in violation of law subject to both confinement to an educational establishment and confinement to a medical treatment establishment or both confinement to a reformatory and confinement to a medical treatment establishment, the measure of confinement to a medical treatment establishment will be applied.

2. A drug addict who is classified as a dangerous gangster shall be confined to an educational establishment or a reformatory, which shall also help detoxify drug addicts.

3. In the period of detoxification and rehabilitation, if persons who are staying in a medical treatment establishment commit acts in violation of Point c, Clause 2, Article 24 and Clause 2, Article 25 of this Ordinance, they shall be confined to an educational establishment or a reformatory.

Directors of medical treatment establishments shall compile dossiers of proposal to confine to an educational establishment or a reformatory persons who commit acts specified in Clause 3 of this Article on the basis of their existing dossiers and records of new acts of violations and send them to presidents of district- or provincial-level People’s Committees that have issued decisions for consideration and application of the measure specified in Clause 1, Article 24 or Clause 1, Article 25 of this Ordinance.

Procedures for considering confinement of the above persons to an educational establishment or a reformatory shall be carried out under the provisions of this Ordinance.

Article 2.-

1. This Ordinance takes effect on August 1, 2008.

2. All previous regulations on handling of administrative violations which are contrary to this Ordinance are annulled. In case it is otherwise provided for by a law, the provisions of the law apply.

On behalf of the National Assembly Standing Committee
Chairman
NGUYEN PHU TRONG
