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**АНАЛИЗ РОЛИ СОУЧАСТНИКОВ
В ОКАЗАНИИ ПОМОЩИ ПРИ СОВЕРШЕНИИ ПРЕСТУПЛЕНИЙ
ПО ЗАКОНОДАТЕЛЬСТВУ ВЬЕТНАМА:
ПРАВОВАЯ БАЗА И ПРАКТИЧЕСКИЕ ПРОБЛЕМЫ
ANALYZING THE ROLE OF ACCOMPLICES
IN ASSISTING IN CRIMINAL CASES UNDER VIETNAMESE LAW:
LEGAL FRAMEWORK AND PRACTICAL CHALLENGES IN VIETNAM**

Аннотация: В уголовном процессе точное определение ролей соучастников, включая основных преступников, организаторов, подстрекателей и пособников, является важным для обеспечения справедливости и пропорциональности наказания. В данной статье рассматриваются правовая классификация и толкование роли пособников (помогающих соучастников) в рамках уголовного законодательства Вьетнама. Исследуются практические сложности в различении пособников от основных преступников и подстрекателей, особенно когда поддержка включает материальную или психологическую помощь. Через анализ судебных дел в статье выявляются несоответствия в судебной практике и предлагаются законодательные и процессуальные реформы для прояснения ответственности соучастников. В статье подчеркивается необходимость создания детальных рекомендаций и разработки прецедентного права для обеспечения последовательности, справедливости и индивидуализированного наказания.

Abstract: In criminal proceedings, accurately determining the roles of accomplices—including principals, organizers, instigators, and supporters—is vital to ensuring justice and proportionality in sentencing. This article examines the legal classification and interpretation of the role of supporters (aiding accomplices) under Vietnamese criminal law. It explores practical difficulties in distinguishing supporters from principals and instigators, particularly when support involves either material or psychological assistance. Through case analysis, the paper highlights inconsistencies in judicial practice and recommends legislative and procedural reforms to clarify accomplice liability. The article advocates for detailed guidelines and the establishment of case law to promote consistency, fairness, and individualized sentencing.

Ключевые слова: ответственность соучастников, роль пособника, содействие и подстрекательство, уголовное право, судебная практика, Вьетнам.

Keywords: Accomplice liability, supporter role, aiding and abetting, criminal law, judicial practice, Vietnam.

Introduction

In the adjudication of criminal cases, identifying the precise role of each accomplice—whether as a principal, organizer, instigator, or supporter—is a crucial step. Not only does this impact the fairness of sentencing, but it also affects how criminal liability is assessed and individualized. The classification of accomplice roles in Vietnam's Penal Code (PC) 2015, amended in 2017, provides a foundational framework, but its practical application remains contentious [1].



Legal Provisions on Complicity

According to Clause 3, Article 17 of the 2015 Penal Code (amended and supplemented in 2017), complicity is categorized into four types based on the role and nature of each person's participation in the criminal act: organizer, executor, instigator, and accomplice. These classifications are determined by the role, level of participation, and the degree of influence each individual has on the commission of the crime. This system serves as a basis for determining criminal responsibility in proportion to each individual's involvement, ensuring fairness and effectiveness in the judicial process. It also contributes to quantifying punishments based on the defendant's level of participation when deciding on sentencing [2].

Accomplice with the Role of Assisting in the Case

Under the 2015 Penal Code, an accomplice is defined as someone who creates either material or spiritual conditions that facilitate the commission of a crime.

- **Material assistance** may include providing resources such as money, tools, or means to directly support the commission of the crime. It can also involve actions that remove obstacles for the criminal act to take place.

- **Spiritual assistance** is expressed through actions such as guiding, advising, or providing information about plans or methods of execution. It can also involve promises of concealment or offering spiritual benefits that further motivate the offender.

While accomplices who provide spiritual assistance are sometimes confused with instigators due to their influence on the offender's thoughts and psychological state, there is a key difference. An accomplice providing spiritual assistance only supports a crime that has already been planned and has the intent to be carried out [3]. They are not the initiators or promoters of the crime, whereas instigators are the ones who incite or plant the intention to commit the crime in the minds of others.

Difficulties and Obstacles in the Process of Law Enforcement

- Determining the "Insignificant Role" of an Accomplice in the Case

A significant challenge arises from the practical application of Clause 2, Article 54 of the Penal Code, as there are differing opinions on how to interpret what constitutes an "insignificant role" in complicity cases. Determining an accomplice's insignificant role relies on qualitative criteria, such as the nature of the case and the defendant's objective actions, which are assessed to gauge their level of participation. The role of the accomplice is considered "insignificant" if their actions are relatively unimportant compared to other accomplices, do not directly cause the criminal consequences, and are not substantial in the overall case. However, this qualitative approach leads to inconsistencies in legal interpretation, particularly among prosecuting agencies [4, c.16].

- Confusion in Defining the Roles of Accomplices in Material Support and Executors

In current trial practice, the majority of criminal cases involving accomplices typically feature the defendant playing the role of the executor. Cases in which a defendant participates solely as an accomplice are relatively rare. For certain crimes committed by multiple individuals, however, determining the specific role of each accomplice, especially those providing material support, remains ambiguous. For example, in cases of "Disturbing public order," which involve large groups of people, not every participant directly engages in the criminal act [5, c.47]. Some individuals may only provide support, such as preparing weapons, escorting others to the crime scene, or even simply standing by to observe, while the objective of the crime typically involves actions such as the use of weapons, vandalism, traffic obstruction, or assaulting those intervening to protect public order. The involvement of some individuals who merely gather or escort others to the scene does not align with the objective act of disturbing public order, leading to discrepancies in how their roles are defined in practice.

Clarification on the Role of Accomplices in the Crime of "Disturbing Public Order"

In this case, the author presents a detailed example involving Pham Minh Th. and several other individuals in the crime of "Disturbing public order". The group, led by Nguyen Hoai K., gathered with the intent to fight another group, and Pham Minh Th. played a significant, yet somewhat passive, role in the events. The example demonstrates the complexities of determining the exact role of an accomplice in a case where their involvement may not be as direct as that of other participants.



The Example: Pham Minh Th. and his associates, C., P., T., and H., were asked by Nguyen Hoai K. to engage in a fight with Doan Thanh M.'s group. They agreed to participate. That evening, the two groups met at the NB cemetery, where they prepared weapons, including knives carried by C. and P. Pham Minh Th., however, did not directly participate in the fighting. Th. sat on a motorbike with C., observing the fight from a distance, while others in the group chased and fought M.'s group, causing chaos by smashing weapons into fences and shouting. After the confrontation, Th. returned the group to P.'s motel. All participants, except K., were charged with the crime of "Disturbing public order". K. was charged with multiple offenses, including "Intentionally damaging property" and "Intentionally causing injury".

The Issue of Role Determination:

The key question is whether Pham Minh Th. should be considered an accomplice in the role of an "accomplice" or an "executor" in this crime. Two opinions on this matter have been proposed:

- First Opinion: This perspective holds that Th. should be considered an accomplice in the role of an executor because he drove the subjects to and from the crime scene and observed the crime being committed. Despite not actively participating in the fighting, Th.'s presence in the car, transporting armed individuals to the scene and observing the violence, could be seen as indirectly contributing to the disorder and negatively impacting social order and safety.

- Second Opinion: According to this view, Th. should be seen as an accomplice in the role of an assistant. The reasoning is that Th. did not directly engage in the crime; he did not chase, fight, or use weapons. Instead, his role was limited to transporting others to the crime scene and observing. As such, he did not directly contribute to the consequences outlined in Article 318 of the Penal Code, which addresses the criminal act of disturbing public order.

The author believes that Th.'s actions should classify him as an accomplice in the role of an assistant. Article 318 of the Penal Code defines the crime of disturbing public order as having "negative impacts on security, order, and social safety." Th.'s act of transporting the individuals carrying weapons to and from the scene can be considered an act of providing material assistance to the crime, in line with Clause 3, Article 17 of the Penal Code, which states that "an accomplice is a person who creates spiritual or material conditions for the commission of a crime."

While Th. was present at the scene, sitting in the car and observing the events unfold, this did not directly affect the security or social order. Th.'s passive observation of the crime did not contribute to the disorder that ensued. Therefore, the author's opinion is that Th.'s role in the case is best described as that of an accomplice providing material assistance to the crime, rather than being an executor of the criminal act itself.

The classification of Pham Minh Th. as an accomplice in this case reflects the complexities of determining roles in criminal acts where participation varies. In this instance, while Th.'s actions indirectly supported the commission of the crime, they did not constitute active engagement in the fighting itself. His role should be considered as an accomplice in the assistant capacity, providing material support for the crime without directly influencing the outcomes of the disorder. This distinction helps ensure that the legal classification remains consistent with the actual level of involvement of each individual in the criminal act, in line with the principles set out in the Penal Code.

Recommendations and Proposals

First, it is recommended that the Central Inter-agency Committee promptly issue specific guidance documents regarding the application of Clause 2, Article 54 of the 2015 Penal Code to ensure uniformity in trial practice. In particular, a clear explanation of the criteria for determining what constitutes an accomplice with an insignificant supporting role is essential [6, c.63]. This will prevent inconsistent interpretations and applications of the law among prosecuting agencies.

This guidance will not only ensure fairness in handling criminal cases but also contribute to the individualization of criminal responsibility. It will provide the basis for applying leniency policies to cases involving low levels of participation in crimes, in line with the humanitarian principles of criminal law. Furthermore, documents addressing the challenges faced in 2020 by the Supreme People's Procuracy could be examined and applied. According to these documents, an individual with



an "insignificant role" is someone whose actions are minimal, present low societal danger, and have a limited level of participation compared to other accomplices. Typically, such an individual does not directly cause material harm in the commission of the crime.

Second, in cases involving multiple accomplices, determining the specific role of each person is often challenging, especially when their criminal actions are intertwined, closely coordinated, or their level of involvement remains unclear. Therefore, the development and application of precedents is essential to ensure consistency in the adjudication activities of prosecuting agencies, particularly the Court. Precedents would guide the assessment of the criminal responsibility of each accomplice, helping to avoid uneven or unfair applications of the law in cases with similar circumstances.

The use of precedents will not only contribute to improving the effectiveness of adjudication but also foster transparency, fairness, and consistency within the judicial system. By providing clear guidelines, precedents will assist in resolving ambiguities, ensuring that accomplices are treated equitably according to the nature and extent of their involvement in criminal acts.

Conclusion

The role of supporters in criminal cases requires clearer legal interpretation and more consistent application in practice. Ambiguities in the classification of accomplice roles and inconsistencies in judicial decision-making risk undermining fairness and proportionality. Legislative clarification, judicial guidance, and the establishment of case law are necessary to ensure that Vietnam's criminal justice system equitably attributes liability and applies humane sentencing principles.

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