

## ARTICLE

### Mitigating Circumstances in the Law Sanctioning Administrative Violations of Vietnam and Some BRICS Countries

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<https://doi.org/10.21684/2412-2343-2025-12-4-70-97>

Received: July 11, 2023

Reviewed: October 20, 2023

Accepted: September 1, 2025

**Abstract.** Administrative violations are a type of violation that occurs commonly in society. In many cases, such violations are influenced by complex factors, including factors that reduce the level of risk that behavior poses to society. These are circumstances that mitigate administrative liability. Mitigating circumstances have a direct impact on the violator's administrative liability. Specifically, the violator will suffer lower legal consequences than the violation in normal cases. Vietnam, along with some BRICS countries (such as Russia and China), is one of the few countries with laws on sanctioning administrative violations and specific regulations on circumstances that mitigate administrative liability. This article presents the results of our research on mitigating circumstances in the laws governing the sanctioning of administrative violations in Vietnam, the Russian Federation, and China. Additionally, the article compares and contrasts the regulations to draw conclusions about the

similarities and differences in circumstances that mitigate administrative liability across the laws of these countries.

**Keywords:** mitigating circumstances; administrative violations; Vietnam; Russian Federation; China; BRICS.

**To cite:** Cao, M. V., & Cao, T. N. A. (2025). Mitigating circumstances in the law sanctioning administrative violations of Vietnam and some BRICS countries. *BRICS Law Journal*, 12(4), 70–97.

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## Introduction

Along with Vietnam, Russia and China are among the few countries with laws on sanctioning administrative violations. In Vietnamese law, the concept of administrative violation is stipulated in the 2012 Law on Handling Administrative Violations (amended and supplemented in 2020 and 2025) (hereinafter "LHAV"). Accordingly, an administrative violation is an act committed by an individual or organization that violates the law on state management but is not a crime and must be administratively punished according to the law (cl. 1, Art. 2). Under the 2001 Code of Administrative Offenses of the Russian Federation (hereinafter Code or "CAO"), a wrongful act of an individual or legal entity is subject to administrative

sanctions as prescribed by this Code or by the laws governing administrative violations by subjects (individuals and legal entities) of the Russian Federation (cl. 1, Art. 2.1). Meanwhile, the 2021 Administrative Punishment Law of the People's Republic of China (hereinafter "APL") does not have a law that clearly stipulates the concept of administrative violations. However, through the definition of sanctioning administrative violations, it can be understood that administrative violations are acts that violate the state management order, committed by individuals, legal entities, or other organizations (Art. 2). Thus, although there are differences in definitions, the laws of Vietnam, Russia, and China all agree to define the nature of administrative violations as at-fault acts, which are committed by individuals, legal entities, or organizations and violate the order of state management.

The laws on sanctioning administrative violations in these three countries all agree to uphold the principle that all administrative violations must be punished according to the provisions of law. In other words, when individuals, legal entities, or other organizations commit administrative violations, administrative liability measures must be applied. However, even when applying administrative liability measures for violators, the state also needs to make a specific distinction in terms of nature and severity of the violation in order to determine the forms of sanctions and levels of punishment. Accordingly, this means that although the acts may all constitute administrative violations, the awareness, attitude, and behavior of the violator may be very different. In many cases, these factors play an important role in deciding whether legal liability should be reduced or aggravated.<sup>1</sup>

Therefore, the laws on sanctioning administrative violations of Vietnam, Russia, and China all list cases that are considered to reduce the danger of violations—referred to as mitigating circumstances, or light administrative responsibilities. The state applies these mitigating circumstances to extend leniency to violators demonstrating genuine good will.<sup>2</sup> Therefore, a person who commits an administrative violation with mitigating circumstances will bear a lighter administrative liability than a violation committed under normal conditions. However, the form and content of mitigating circumstances in the laws on sanctioning administrative violations in Vietnam, Russia, and China are not completely the same, depending on the legislature of each nation.

Based on a comparative study of mitigating circumstances in administrative liability under the legal systems of Vietnam, Russia, and China, this article examines the similarities and differences in the relevant legal provisions. It further provides a legal analysis of these convergences and divergences across the three jurisdictions. Drawing upon the legislative experiences of China and Russia, the article proposes

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<sup>1</sup> Amirault, J., & Beauregard, E. (2014). The impact of aggravating and mitigating factors on the sentence severity of sex offenders: An exploration and comparison of differences between offending groups. *Criminal Justice Policy Review*, 25(1), 78–104.

<sup>2</sup> Maxfield, L. D. (2002). Prior dangerous criminal behavior and sentencing under the federal sentencing guidelines. *Iowa Law Review*, 87, 669–683.

recommendations for improving Vietnam's legal framework on mitigating circumstances in administrative liability.

Mitigating circumstances are an important legal concept recognized across many legal systems, intended to adjust the severity of sanctions applied to unlawful acts. In the field of administrative violations, identifying and applying mitigating circumstances plays a crucial role in ensuring humanity, fairness, and the differentiation of administrative responsibility based on specific situations. Both domestic and international studies have approached this issue from various perspectives, ranging from general legal theory to comparative law and practical application analysis.

At the international level, the BRICS countries, despite differences in their legal traditions (civil law and common law systems), all recognize the role of mitigating circumstances in the handling of administrative violations. Nguyen<sup>3</sup> states that the application of the mitigating circumstances in handling administrative sanctioning activities needs to adhere to certain principles in order to achieve the intended effect. Unfortunately, the Law on Handling of Administrative Violations of 2012 in Vietnam and its implementing documents have not yet established general principles to apply the mitigating circumstances when sanctioning, thereby creating many legal gaps when applying these facts in sanctioning practice. In his study, the author analyzes the theoretical issues of mitigating circumstances in administrative liability under Vietnamese law, points out some shortcomings, and provides proposals for improvement. Similarly, Pinkevich,<sup>4</sup> in her study, offers an in-depth analysis of mitigating circumstances in administrative liability within the framework of Russian administrative law, examining both theoretical underpinnings and practical implementation. The author argues that the recognition and application of mitigating circumstances not only serve the principle of fairness and individualization of punishment but also enhance the humanity and effectiveness of administrative sanctions. In addition, Tsechoyev<sup>5</sup> discusses the legal nature of administrative violations and the framework of administrative liability under the law of the Russian Federation. The author highlights mitigating circumstances as an important factor in the individualization of administrative responsibility, which aim to ensure that penalties are not only deterrent in nature but also proportionate to the degree of fault and the specific circumstances of the offender.

In Vietnam, mitigating circumstances in administrative sanctions are primarily regulated under the Law on Handling Administrative Violations (2012, amended

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<sup>3</sup> Nguyen, N. K. (2020). Extenuating mitigating circumstances of administrative liability in the Law on Handling of Administrative Violations of Vietnam. *Kutafin Law Review*, 7(1), 45–66.

<sup>4</sup> Pinkevich, T. V. (2007). Circumstances mitigating administrative liability in Russian administrative law. *Society and Law Journal*, 4(18), 242–250. (In Russian).

<sup>5</sup> Tsechoyev, K. (2009) Administrative violation and administrative responsibility. *Economic and Law Journal*, 40, 229–231. (In Russian).

2020). Minh<sup>6</sup> suggests that mitigating and aggravating circumstances are manifestations of the subject, circumstances, conditions, and situations that affect the violation, thereby indicating whether the administrative violation presents a lower or higher level of danger than normal. In practice, mitigating circumstances are applied as an expression of leniency by the state toward violators demonstrating good intentions.

In his article, Cao not only presents the general provisions of the law on mitigating circumstances of administrative liability but also analyzes shortcomings in the legal provisions, particularly regarding how mitigating circumstances influence the application of administrative liability measures. Regarding the authority to prescribe mitigating circumstances for administrative liability, Nguyen<sup>7</sup> believes that the list of mitigating circumstances is not a closed list and can be supplemented. This is because in Vietnam, in addition to the National Assembly, the government also possesses the right to legislate additional circumstances mitigating administrative liability. These supplements to the circumstances mitigating administrative liability are typically implemented through the government's issuance of decrees on sanctioning administrative violations in various fields. Furthermore, Nguyen<sup>8</sup> also believes that it is necessary to have specific regulations on the authority to regulate mitigating circumstances of administrative responsibility in order to avoid arbitrariness in the process of sanctioning and violating human rights.

However, there remains a gap in comparative studies on mitigating circumstances in administrative sanctions among the BRICS countries. Most of the current works focus either on individual countries or mainly on the criminal field. Therefore, this study seeks to fill that gap by systematically studying the recognition, interpretation, and application of mitigating circumstances in the administrative laws of Vietnam and selected BRICS countries. Through this analysis, it aims to draw lessons and propose policies suitable to the legal context of Vietnam.

## **1. Overview of Circumstances Mitigating Administrative Liability**

### **1.1. Concept of Circumstances Mitigating Administrative Liability**

In criminal liability, one of the indispensable principles when applying punishment is the need to take into account circumstances that mitigate responsibility for the crime. This principle stems from the obligation to strictly comply with constitutional

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<sup>6</sup> Cao, V. M. (2023). Mitigating circumstances in the application of administrative liability. *Journal of Legal Studies*, 8, 3–18.

<sup>7</sup> Nguyen, C. H. (Ed.). (2017). *Scientific commentary on the Law on Handling of Administrative Violations in 2012*. Hong Duc Publishing House.

<sup>8</sup> Nguyen, N. K. (2021). Controlling discretionary rights in the construction and application of mitigating circumstances and aggravating circumstances of administrative liability. *Vietnam Journal of Legal Science*, 4, 14–26.

principles of respecting and protecting human rights and civil rights.<sup>9</sup> Similarly, in administrative responsibility, it is also necessary to take into account circumstances that extenuate administrative responsibility. In practice, when a subject who has committed an administrative violation is aware of his or her mistakes, repents of his or her misbehavior and takes positive actions to limit or eliminate the negative consequences caused by the violation, such behavior should be acknowledged and taken into account.<sup>10</sup> The awareness, attitude, and positive behavior of the violator reflect a lower level of danger level from the violation.<sup>11</sup> Accordingly, the competent person needs to decide on a lower fine to reflect the humanity, leniency, and effectiveness of the policy of the state, which seeks to balance punishment with education.<sup>12</sup>

The doctrine of mitigating circumstances in criminal cases originated in South Africa.<sup>13</sup> Through the process of development, mitigating circumstances in the criminal field have received more attention and more systematic research than mitigating circumstances of administrative liability. The laws on sanctioning administrative violations of Vietnam, Russia, and China all recognize the consideration of circumstances mitigating administrative liability when sanctioning administrative violations. However, none of these regulations provide a formal definition or conceptual framework for the circumstances mitigating administrative liability.

From an academic perspective, administrative responsibility is a special type of legal responsibility, manifested in the application of sanctions for administrative violations to individuals and organizations that commit administrative violations as enforced by competent agencies and civil servants.<sup>14</sup> Administrative liability is the adverse legal consequences that an administrative violator must bear before the state,<sup>15</sup> expressed through the imposition of sanctions and remedial measures on the violator.<sup>16</sup> In other words, administrative responsibility is the state's negative

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<sup>9</sup> Melnikova, A. S. (2019). Mitigating circumstances in administrative and tax law. *Epomen*, 28, 126–133. (In Russian).

<sup>10</sup> Tudor, S. K. (2008). Why should remorse be a mitigating factor in sentencing? *Criminal Law and Philosophy*, 3(3), 241–257.

<sup>11</sup> Zillmann, D., & Cantor, J. R. (1976). Effect of timing of information about mitigating circumstances on emotional responses to provocation and retaliatory behavior. *Journal of Experimental Social Psychology*, 12(1), 38–55.

<sup>12</sup> Trinh, T. V. (2004). On the influence of mitigating circumstances in deciding penalties. *Journal of Legal Sciences*, 1, 39–43.

<sup>13</sup> Turrell, R. (2004). *White mercy: A study of the death penalty in South Africa* (p. 4). Westport, Praeger.

<sup>14</sup> Tsechoyev, 2009.

<sup>15</sup> Nguyen, C. H. (Ed.). (2017). *Vietnamese Administrative Law Textbook* (p. 569). Hong Duc Publishing House.

<sup>16</sup> Nguyen, C. H. (2016). Administrative responsibility and the need to amend the Law on Handling of Administrative Violations in 2012. *Journal of Legal Science*, 7, 20–23.

reaction to the subject who commits an administrative violation, resulting in that subject suffering adverse physical and mental consequences.<sup>17</sup>

From a linguistic perspective, the term “extenuate” comes from Latin, combined from the words “*ex*” and “*tenuare*,”<sup>18</sup> meaning to make a wrong action less serious by giving reasons for that action.<sup>19</sup>

Combining these understandings, it can be defined that “circumstances mitigating administrative liability are circumstances prescribed by law and are the basis for competent persons to punish subjects of administrative violations less severely than how they punish other subjects with the same violation in normal cases.”

### **1.2. Characteristics of Circumstances Mitigating Administrative Liability**

First, the circumstances mitigating administrative liability regulations are included within the law on sanctioning administrative violations. Consequently, they must first be stipulated in the law on sanctioning administrative violations of each country. Specifically, circumstances mitigating administrative liability are specified in Article 9 LHAV, Article 4.2 CAO, and Article 32 APL.

Second, mitigating circumstances are factors that reflect the objective, subjective, or personal characteristics of the violator. These factors serve to more clearly delineate the administrative violations that occur in reality, thereby providing a basis for an accurate and complete assessment of the level of harm to society, and consequently determining the extent to which administrative liability should be mitigated. This ensures fairness in the application of the law, ensuring that violating individuals and organizations will be held legally responsible corresponding to the characteristics, nature, and extent of each subject’s violation.

Third, circumstances that extenuate administrative liability serve as the basis for those with sanctioning authority to consider and apply lighter sanctions and penalties to violators. Mitigating circumstances help both the officials and society visualize the reduced level of severity of the violation as compared with violations in normal cases.

Fourth, mitigating circumstances are “open,” diverse, and undetermined in number. In addition to the law on penalties for administrative violations, each country may stipulate mitigating circumstances in other legal documents, often issued by the government. Moreover, judges, agencies, and people with sanctioning authority are also empowered to proactively identify and apply mitigating circumstances on administrative liability to suit each specific violation.

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<sup>17</sup> Nguyen, C. H. (2013). *Vietnamese administrative law textbook* (p. 507). Hong Duc Publishing House.

<sup>18</sup> Bhattathiri, N. (2015). English and Latin words dataset for the article: Comparative r>t transformation in Latin and Malayalam: Implications for historical linguistics. *International Journal of Dravidian Linguistics*, 42(2), 1–47.

<sup>19</sup> Extenuate. (n.d.). Cambridge English Dictionary. <https://dictionary.cambridge.org/dictionary/english/extenuate? q=Extenuate>

Fifth, the level of mitigation is considered and determined by the person with authority to sanction administrative violations. The presence of circumstances mitigating the administrative liability serves only as a basis to demonstrate that the violation poses a lower level of danger to society compared to violations in normal cases. Laws in each country only provide the general principle that when sanctioning administrative violations, mitigating circumstances must be considered, without specifying a specific level of mitigation. The final assessment of the extent to which administrative liability is reduced depends on the review and decision of the person with sanctioning authority.

Sixth, the influence of each mitigating circumstance on the seriousness of the violation is not uniform. Circumstances mitigating administrative liability differ in their legal, social, and political significance. Some circumstances may greatly influence the decision to sanction, while others exert a lesser degree of influence.

## **2. Circumstances Mitigating Administrative Liability in the Laws of Vietnam, Russia, and China**

### **2.1. Circumstances Mitigating Administrative Liability in Vietnam**

In Vietnam, circumstances mitigating administrative liability are divided into two groups:

- i. mitigating circumstances prescribed by the National Assembly in Article 9 of the LHAV;
- ii. mitigating circumstances prescribed by the Government in its decrees on sanctioning administrative violations in each specific field.

**Group 1:** Mitigating circumstances prescribed by the National Assembly in Article 9 of the LHAV.

*\* The violators have prevented or reduced harms caused by the violations or have voluntarily taken measures to overcome the consequences and pay compensations*

*The violators have prevented or reduced harms done by the violations*

This mitigating circumstance applies when the administrative violator has performed positive actions that have real effects to prevent or reduce the consequences of the violation. Such actions may be performed voluntarily by the violator or on the advice of another person. However, the extent to which administrative liability may be mitigated depends on the violator's willingness and proactive attitude toward preventing or alleviating the consequences of the violation. Greater mitigation may be granted when the violator takes such actions voluntarily, as opposed to merely acting upon the advice or persuasion of others.

*The violators have voluntarily taken measures to overcome the consequences or to pay compensation*

This mitigating circumstance requires violators to voluntarily remedy the direct or indirect damages caused by their administrative violations or compensate with



property for damages caused by their administrative violations. However, in cases where such remediation or compensation is carried out only after being required by other people or state agencies or social organizations, it is not regarded as a mitigating circumstance.

Voluntary remediation of consequences and compensation for damages must be carried out prior to the issuance of an administrative sanctioning decision by the competent authority. It is important to note that when applying this mitigating circumstance, if the violator only voluntarily remedies the consequences, then only the mitigating circumstance of “voluntary remediation of consequences” shall be recognized; in other words, “voluntary compensation for damages” shall not be concurrently applied. However, if the violator both voluntarily remedies the consequences and voluntarily compensates for the damages, and their conduct infringes upon only one protected interest, both mitigating circumstances shall be acknowledged. For instance, if a person destroys another’s bicycle, and after the incident, the violator offers to repair the bicycle and also compensates the owner for the depreciation in value resulting from the damage, the violator is deemed to have demonstrated both mitigating circumstances: voluntary remediation of consequences and voluntary compensation for damages.

*\* The violators have voluntarily reported their violations, sincerely repenting their mistakes and actively help authorities in detecting and handling administrative violations*

*The violators have voluntarily reported their violations, sincerely repenting their mistakes*

This circumstance reflects a positive change in the attitude and awareness of the violator after committing an administrative violation. It indicates that the violator is genuinely repentant, realizes their mistakes, and honestly reports all issues related to the administrative violation. This mitigating circumstance helps the entity with sanctioning authority to make a comprehensive and objective assessment, and quickly resolve the violation. Typically, voluntary confession and genuine remorse are demonstrated during the stage when the competent authority conducts proceedings and prepares the administrative violation record. Therefore, to effectively enable the application of this mitigating circumstance, the record of the interview process and the administrative violation report must clearly indicate that the violator voluntarily confessed and expressed genuine remorse.

*The violators actively help the authorities in detecting and handling administrative violations*

This circumstance applies when a violator proactively provides all information, documents, and evidence that are of practical significance for detecting and handling administrative violations, including any administrative violations unrelated to him or her. The extent of mitigation depends on the violator’s initiative and degree of active cooperation, the importance of the information, documents or evidence provided, and the overall effectiveness of the assistance rendered by the violator.

*\* The violators commit violations in a state of being “spiritually incited” by other persons’ illegal acts, acting beyond the limits of legitimate defense or exceeding the requirements of the emergency circumstances*

*The violators commit violations in the state of being spiritually incited by the illegal acts of other persons*

Being “spiritually incited” refers to a mental agitation in which an administrative violator is completely autonomous and cannot control his or her behavior. It is important to note that the mental agitation of administrative violators must be directly caused by the illegal acts of others. It is necessary to understand that the term “other persons” refers to people directly impacted by the administrative violations. In case an illegal act is committed by one person and the violator commits the violation with unrelated people, it is not considered a mitigating circumstance. In addition, in practice, for this mitigating circumstance to be applied, the violator must not be under the influence of alcohol, or beer, or other stimulants. In cases where a person, due to the consumption of alcohol or strong stimulants, loses self-control and commits a violation as a result of another’s unlawful act, such behavior shall not be considered a mitigating circumstance. In these instances, the violation is deemed to have been committed under provocation induced by the substance’s use; in other words, the unlawful act of the other person is not considered the direct cause of the violator’s mental provocation.

*The violations are committed by people who are beyond the limits of legitimate defense<sup>20</sup> or the requirements of emergency circumstances<sup>21</sup>*

In such cases, the violations may initially appear as legitimate self-defense or acts committed in urgent situations, however, upon a closer investigation of those acts, there are a number of details that definitely lessen the socially dangerous nature of the behavior. Therefore, in these situations the persons committing such acts are not considered administrative violators. In cases where the legitimate defense limits or the requirements of an urgent situation are exceeded, administrative liability still applies, but these factors are considered mitigating circumstances.

*\* The violators commit administrative violations because they are being forced to or due to their material or spiritual dependence*

In many cases, physical or mental coercion or dependence limits the subjects’ right to choose, forcing them to commit violations. Since the act is not entirely the

<sup>20</sup> Cl. 12, Art. 2 of the LHAV stipulates: “Legitimate self-defense is behaviors of individuals, aiming to protect interests of the State, organizations, their own legitimate rights, interests or legitimate rights and interests of others, they necessarily resist those who having acts violating the above-mentioned rights and interests.”

<sup>21</sup> Cl. 11, Art. 2 of the LHAV stipulates: “Emergency circumstances are situations that individuals, organizations wish to avoid a risk which actually threatening the interests of the state, organizations, their legitimate rights and interests or legitimate rights and interests of others and with no other way, must cause a damage being smaller than damage which needs be prevented.”

result of one's own intention and choice but is largely influenced by the will of others, the law stipulates that this is one of the circumstances that mitigate administrative liability.

*\* The violators are pregnant women, old and weak persons, or persons suffering from an ailment or disability that restrict their capacity to perceive or to control their acts*

Pregnant women, the elderly, and people with diseases or disabilities that limit their cognitive abilities or ability to control their behavior constitute groups of people who are more vulnerable than others. For example, during pregnancy, a woman will have significant changes in her physical condition, health, and emotional state. These changes tend to make pregnant women weaker, more stressed, and more vulnerable.<sup>22</sup> In the same vein, elderly individuals may experience similar health-related limitations due to their advanced age. Such health constraints, combined with the aging process, may impair their capacity for perception and behavioral control. As a result, old age has been recognized as a mitigating factor in legal liability for centuries.<sup>23</sup> In general, these are people with limitations in health, cognitive ability, and behavioral control. Therefore, although they may commit administrative violations, compared to normal people, the danger to society is assessed as lower as other violators.

*\* The violators commit violations due to particularly difficult plights not caused by the violator's themselves*

Administrative violations arising due to exceptionally difficult circumstances not caused by the violator themselves are understood to be cases where the violator faces exceptionally difficult circumstances that directly lead them to commit an administrative violation. These difficult situations may be the result of physical or mental conditions beyond the violator's control. However, in cases where the violator's hardships are a result of their own actions, such as financial difficulties caused by gambling, then the administrative violation is not considered a mitigating circumstance.

*\* The violations are committed due to backwardness<sup>24</sup>*

Administrative violations due to "backward qualifications" (i.e., a lack of knowledge) are cases where people commit administrative violations due to ignorance of the law, as their behavior in society is governed by outdated customs and habits. There are many reasons leading to backwardness such as geographical factors (living in remote areas), ethnic factors (ethnic minorities), and cultural factors (superstition, bad customs, etc.).<sup>25</sup> From a subjective standpoint, the violator did not intend to

<sup>22</sup> Pham, T. H., Huynh, N. K. T., & Ngo, N. X. (2018). Prevalence of iron deficiency anemia in pregnant women visiting Tu Du Hospital. *Journal of Obstetrics and Gynecology*, 4, 41–46.

<sup>23</sup> Tran, N. H. (2002). On the term "elderly and weak persons" under Article 70 of the Criminal Procedure Code. *Journal of Prosecution*, 12, 30–31.

<sup>24</sup> Ornduff, J. S. (1996). Releasing the elderly inmate: A solution to prison overcrowding. *Elder Law Review*, 4, 173–189.

<sup>25</sup> Nguyen, M. L. (2013). Studying Ho Chi Minh's ideology on preventing and combating outdated habits. *State Organization Review*, 7, 40–42.

commit the act; rather, due to certain characteristics of their community or region—where long-standing customs and traditions prevail—they have not been able to keep pace with the general development of society, including the advancement of human knowledge. As a result, they are unable to distinguish between what is right and what is wrong. In addition, the cause of the violator’s “backward qualifications” must be objective (for e.g., a lack of opportunities for education, limited access to information, and the ability to stay informed) in order to be considered a mitigating circumstance.

**Group 2:** Mitigating circumstances specified by the government in decrees on sanctioning administrative violations in each specific field.

In addition to the mitigating circumstances prescribed by the National Assembly as discussed above, clause 8, Article 9 of the LHAV also allows the government to stipulate other mitigating circumstances, and importantly, this authority rests solely with the government; no other entity may exercise this right. For example, Decree No. 75/2019/ND-CP on sanctioning administrative violations in the field of competition introduces another mitigating circumstance, referred to as the “first violation.”<sup>26</sup> According to the authors’ research, in addition to the mitigating circumstance of “first-time violation,” the government also provides for yet another mitigating circumstance—namely, that “the value of the violating item does not exceed 50% of the minimum fine level prescribed for the act.” This clause is stipulated in Decree No. 128/2020/ND-CP. However, it appears that, in the process of drafting decrees on administrative sanctions across various sectors, the government has primarily focused on specifying prohibited acts and corresponding penalties, while paying insufficient attention to other mitigating circumstances that may be specific to particular areas of state management.<sup>27</sup>

## **2.2. Circumstances Mitigating Administrative Liability in Russia**

Circumstances mitigating administrative liability under the law of the Russian Federation are divided into three groups:

- i. mitigating circumstances prescribed by the Russian State Duma in clause 1, Article 4.2 of the Code of Administrative Offenses;
- ii. mitigating circumstances added by judges, agencies, or competent authorities when handling administrative violations;
- iii. mitigating circumstances prescribed in other legal documents of the Russian Federation.

<sup>26</sup> Point “d,” Cl. 1, Art. 5 of Decree No. 75/2019/ND-CP on sanctioning administrative violations in the field of competition.

<sup>27</sup> Nguyen, N. K. (2019). Mitigating circumstances in the Law on Administrative Sanctions. *Legislative Studies Journal*, 15, 29–38.

**Group 1:** Mitigating circumstances prescribed by the Russian State Duma in clause 1, Article 4.2, CAO.

*\* Repentance by the person who has committed an administrative offense*

Similar to Vietnamese law, Russian law evaluates the violator's sense of repentance, remorse, and desire to change and make amends as grounds for reduced administrative liability. This mitigating circumstance is completely aligned with the preventive purpose and educative purpose of administrative liability measures, as it serves not only to deter future violations but also to promote civic consciousness and respect for the law.<sup>28</sup> In order for this mitigating circumstance to apply, the violator must demonstrate genuine remorse and a clear promise that he or she will not reoffend.<sup>29</sup>

*\* The voluntary termination of wrongful behavior by the person who has committed an administrative offense*

In the practice of sanctioning, this circumstance is often considered and applied in conjunction with the abovementioned mitigating circumstance, i.e., "repentance by the person that has committed an administrative offense," since if the administrative violator does not sincerely repent, he or she cannot genuinely volunteer to stop future violations. However, if the termination of the violation is unintentional and does not stem from the violator's intention, it does not constitute a mitigating circumstance.

*\* The voluntary provision of information about an administrative offense by the person that committed it to a body empowered to carry out proceedings in a case of that administrative offense*

The act of voluntarily providing information about administrative violations demonstrates the positive and cooperative attitude of the violator. Violators may provide information to authorities verbally or in writing. However, in some cases, the law of the Russian Federation requires violators to provide information about administrative violations in written form.<sup>30</sup>

*\* The assistance of the person who committed an administrative offense to a body empowered to carry out proceedings in a case of that administrative offense*

To apply this mitigating circumstance, it is required that violators must not avoid investigation and must actively assist competent authorities in verifying necessary details. Mere accidental disclosure or passive cooperation in an administrative violation is not considered a mitigating circumstance.

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<sup>28</sup> Skaleukh, K. A., & Myasnikov, A. P. (2012). Individualization of administrative responsibility. *Yurist-Pravoved*, 6(55), 10–21. (In Russian).

<sup>29</sup> Guev, A. N. (2009). *Commentary on the Code of the Russian Federation on Administrative Offenses* (p. 232). Exam. (In Russian).

<sup>30</sup> Letter of the Federal Antimonopoly Service of February 15, 2012, No. IA/4429 "On the specifics of determining circumstances mitigating and aggravating administrative liability." (In Russian).

*\* The prevention of harmful consequences of an administrative offense by the person who committed the administrative offense*

Some acts are considered acts to prevent damage from administrative violations, such as the violator taking preventive measures to prevent or minimize the damage from the violation, informing the affected person of potential damages, and taking steps to rectify or eliminate the harm caused.<sup>31</sup>

*\* Voluntary compensation by the person who has committed an administrative offense for inflicted damage or voluntary elimination of inflicted harm*

Compensation may include partial or full physical, material, or moral compensation for the consequences of the violation. The violator can compensate for damages in any form (for e.g., money, personal labor, or any tangible object or item). Compensation for moral or non-material harm may be expressed in written or verbal form.<sup>32</sup>

*\* The voluntary fulfillment by the person who has committed an administrative offense of an order to eliminate a committed offense, issued by a state control body, prior to the issuance of a decision in the administrative offense*

The practice of sanctioning administrative violations in Russia shows that this mitigating circumstance is frequently applied as violators often invoke this mitigating circumstance as grounds for leniency and legal tolerance.<sup>33</sup>

*\* The commission of an administrative offense in the state of strong mental agitation (heat of passion) or under grave personal or family circumstances*

A highly agitated mental state is only considered a mitigating circumstance when the violator is temporarily mentally agitated without suffering from diseases related to chronic mental disorders or dementia—that is, the violator is momentarily unable to recognize the true nature of his or her behavior.

*\* The commission of an administrative offense by a minor*

Article 60 of the Constitution of the Russian Federation stipulates that Russian citizens can independently exercise all their rights and obligations from the age of 18. Article 21 of the Civil Code of the Russian Federation also stipulates that the age of majority for citizens is 18 years old. Furthermore, Article 2.3 of the CAO stipulates that people aged 16 years or older must bear administrative responsibility. Therefore, if a person aged 16 years to under 18 years commits a violation, he or she will be administratively sanctioned, but the mitigating circumstance “*The commission of an administrative offense by a minor*” will apply. This provision stems from the rationale that if the punishment measures for minors are too strict, it will undermine the preventive purpose of administrative liability measures.<sup>34</sup>

<sup>31</sup> Pinkevich, 2007.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Rossinsky, B. V. (2014). *Code of the Russian Federation on Administrative Offenses: Article-by-article scientific and practical commentary*. Library RG. (In Russian).

*\* The commission of an administrative offense by a pregnant woman or a woman with an infant*

In addition to considering pregnant women committing administrative violations as a mitigating circumstance, like Vietnamese law, Russian law also stipulates that women raising small children constitutes a mitigating circumstance of administrative liability. This is a unique mitigating circumstance in administrative liability, reflecting the humanitarian nature of the legal system of the Russian Federation. Studies show that having and raising children may impact a woman's life in multiple ways (sometimes in negative ways).<sup>35</sup> Specifically, when a woman is raising a young child, she often faces significant difficulties, both materially and psychologically.<sup>36</sup> These hardships may drive her to a desperate situation, leading to the commission of an administrative violation. Therefore, imposing overly severe sanctions may have a profound impact on her livelihood as well as the quality of care and upbringing of the child. In light of these humanitarian considerations, the Code of Administrative Offenses (CAO) recognizes "a woman who is raising a young child" as a mitigating circumstance in administrative liability.

**Group 2:** Mitigating circumstances added by judges, agencies, or other competent persons when handling administrative violations.

In addition to the mitigating circumstances specified in clause 1, Article 4.2 of the CAO, in the process of handling administrative violations, judges, agencies, and other competent persons are allowed to apply new mitigating circumstances such as administrative violations committed by retired people or by people dependent on elderly parents.<sup>37</sup>

**Group 3:** Mitigating circumstances specified in other legal documents of the Russian Federation.

In addition to the above cases, circumstances mitigating administrative liability are also stipulated in legal documents in each specific field. For example, Article 112 of the Tax Code of the Russian Federation stipulates mitigating circumstances when sanctioning tax-related administrative violations, including:

- i. violations due to difficult personal or family circumstances;
- ii. violations committed under threat due to financial dependence.

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<sup>35</sup> Johnson, A. B., & Rodgers, J. (2006). The impact of having children on the lives of women: The effects of children questionnaire. *Journal of Applied Social Psychology*, 36(11), 2685–2714.

<sup>36</sup> Cramer, J. C. (1979). Employment trends of young mothers and the opportunity cost of babies in the United States. *Demography*, 16, 177–197.

<sup>37</sup> Rossinsky, 2014.

### **2.3. Circumstances Mitigating Administrative Liability in China**

In China, circumstances mitigating administrative liability are divided into two groups:

- i. mitigating circumstances are specified in Article 32 APL;
- ii. mitigating circumstances prescribed in laws, administrative regulations or Government regulations.

**Group 1:** Mitigating circumstances are specified in Article 32 APL.

*\* Violators actively eliminate or reduce the harmful consequences of violations*

Similar to the laws of Vietnam and Russia, Chinese law believes that actively eliminating or minimizing the consequences of administrative violations not only reduces the harmful effects of violations to society but also shows that the violator acknowledged and made efforts to rectify his or her mistake. Applying this mitigating circumstance provides violators with a “path for innovation” and reflects the humanitarian approach of the law.<sup>38</sup>

*\* Violators were compelled or enticed by others to commit violations*

A person who is forced or deceived by another person to commit a violation may have their administrative liability reduced because, first of all, the illegal act of the person being forced or deceived is not entirely voluntary. At that time, the violator is in a state of relative loss of freedom and will; therefore, a reduction in his or her administrative responsibility is justified.

*\* Violators actively confess to unlawful conduct that the administrative organs did not know of*

This mitigating circumstance refers to the fact that the violator voluntarily reports their violation and cooperates with administrative agencies in investigating and handling the violation before being discovered. The purpose of this provision is to encourage violators to proactively report violations of the law.

*\* Violators cooperate with administrative organs and make a major meritorious contribution to investigating unlawful conduct*

Similar to the laws of Vietnam and Russia, Chinese law also recognizes that cooperation with administrative agencies in the investigation of violations indicates a positive attitude and desire to rectify and eliminate their unlawful behavior. Accordingly, reducing administrative responsibility in this case is also deemed reasonable. It should also be noted that such cooperation is only considered a mitigating circumstance when the behavior yields tangible results that meaningfully aid in the process of investigation and sanctioning of administrative violations.

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<sup>38</sup> How to accurately understand the provisions of Art. 27 of the Administrative Penalty Law. Other lenient or reduced administrative penalties in accordance with the law. [https://m.thepaper.cn/baijiahao\\_10181783](https://m.thepaper.cn/baijiahao_10181783). (In Chinese).



**Group 2:** Mitigating circumstances prescribed in laws, administrative regulations, or government regulations.

In addition to the mitigating circumstances specified in Article 32 of the APL, other circumstances mitigating administrative liability are also specified in laws, administrative regulations, and various regulations of the government.

For example, on 1 August 2022, the Guannan District Comprehensive Administrative Law Enforcement Bureau issued Notice No. 13 on the list of cases of non-sanctions and reduced penalties for minor administrative violations. The notice identified administrative sanctions for fifty-two administrative violations in different fields for which mitigating circumstances could be applied. For example, in the field of water conservation, the violation of “not meeting the prescribed conditions for hydrological activities according to regulations” may result in administrative liability reduced when the violator “ceases the illegal activity within a certain period of time prescribed by the regulations and does not gain any illegal profits.” Similarly, in the field of physical education, the act of “not meeting the conditions to participate in sports business activities but still conducting any sports activities” may have administrative liability reduced if the violator “actively eliminates or minimizes the harmful consequences of the unlawful activities.”

### **3. Comments on Circumstances Mitigating Administrative Liability in the Laws of Vietnam, Russia, and China**

As previously discussed, although a variety of acts may constitute administrative violations, the intent, attitude, and conduct of the violators may vary significantly. In particular, the violator’s awareness, attitude, and behavior after the commission of the violation play a crucial role in determining whether legal liability should be mitigated or aggravated.<sup>39</sup> From a theoretical perspective, mitigating circumstances in administrative liability must relate to the characteristics of the violator, as well as the conditions, context, or specific circumstances that influence the commission of the violation, thereby reflecting a lower-than-usual level of social danger posed by the administrative offense. In practice, when an individual, after committing an administrative violation, demonstrates awareness of their wrongdoing, expresses remorse, and takes proactive steps to mitigate or eliminate the adverse consequences caused by the violation, such conduct should be positively acknowledged.<sup>40</sup> It is precisely this awareness, attitude, and positive conduct that reflect the reduced level of social danger posed by the violation.<sup>41</sup> Accordingly, the competent authority

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<sup>39</sup> Amirault & Beauregard, 2014, p. 79.

<sup>40</sup> Tudor, 2008.

<sup>41</sup> Zillmann & Cantor, 1976, p. 38.

should impose a lower penalty to reflect the state's humanitarian and lenient policy, which embodies a balanced approach between punishment and education.<sup>42</sup>

Through analysis, it can be seen that Vietnam, Russia, and China all recognize and focus on applying mitigating circumstances in the process of sanctioning administrative violations. This may stem from the fact that the laws of all three countries are influenced by the Soviet legal system. However, despite the many similarities in their provisions, the regulations on circumstances mitigating administrative liability in these countries also exhibit unique features, as outlined below:

*Sources of circumstances mitigating administrative liability*

Basically, mitigating circumstances must first be stipulated in the laws on sanctions for administrative violations of each country. This law is considered a framework law, a document that stipulates basic, general mitigating circumstances that can be applied in all areas of administrative violations.

In addition to the laws on sanctions for administrative violations, each of these country's laws also stipulate the circumstances mitigating administrative liability through different sources. For instance, in Vietnam, both the National Assembly and the government have the right to legislate additional circumstances administrative liability. These supplements are typically implemented through the government's issuance of decrees that sanction administrative violations in various fields. This authority granted to the government to stipulate other mitigating circumstances seems reasonable, as it enable the government to create favorable conditions to proactively develop mitigating circumstances appropriate to the diversity of administrative violations in a manner that benefits the violator.<sup>43</sup>

Meanwhile, mitigating circumstances in the law on penalties for administrative violations in Russia may be additionally stipulated in other legal documents or can even be decided by judges, agencies, or other competent officials when imposing penalties for administrative violations. Granting these authorities the right to proactively determine circumstances mitigating administrative liability reflects the humane principles of Russian administrative law, as these are the people directly reviewing and handling administrative violations. Through direct engagement with each case, they are best positioned to clearly understand the details and circumstances of the administrative violation and to apply the most appropriate and equitable mitigating circumstances.

In China, besides their law on handling of administrative violations, circumstances mitigating administrative liability are also stipulated in other normative legal documents. These could include laws on sanctioning administrative violations in specific fields or via official notices (for e.g., sectoral decrees and public announce-

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<sup>42</sup> Trinh, 2004.

<sup>43</sup> Nguyen (Ed.), 2017, p. 169.

ments by competent authorities) that define the appropriate mitigating circumstances in sanctioning administrative violations along with the scope of their application in each particular district.

**Table 1: Sources of circumstances mitigating administrative liability in the laws on administrative sanctions of Vietnam, Russia, and China**

Criteria	Vietnam	Russia	China
Basic source	The 2012 Law on Handling of Administrative Violations (amended and supplemented in 2020) (LHAV)	The 2001 Code of Administrative offenses of the Russian Federation (CAO)	The 2021 Administrative Punishment Law of the People's Republic of China (APL)
Other sources	Government decrees may also provide for administrative sanctions in various fields	Other legal documents or can be decided by judges, agencies, or competent persons when imposing penalties for administrative violations	Other legal documents. These documents may be laws on sanctioning administrative violations in specific fields and official notices of mitigating circumstances in sanctioning administrative violations, along with the scope of their application in each district
Purpose	To limit the arbitrariness of public servants, the mitigating circumstances of administrative liability are strictly regulated by the National Assembly and the government. The person with the authority when imposing penalties for administrative violations is only allowed to apply the mitigating circumstances as regulated by the National Assembly and the government and is not permitted to “create” new mitigating circumstances	Encourage initiative and creativity among competent persons when handling administrative violations. The person with the authority when imposing penalties for administrative violations can “create” new mitigating circumstances	Encourage initiative and creativity of competent persons when handling administrative violations.  Local authorities with the authority to impose administrative sanctions can also “create” new mitigating circumstances

### *Similarity of mitigating circumstances*

The purpose of mitigating circumstances of administrative liability is to demonstrate humanity in the provisions of law, so the laws of Vietnam, Russia, and China are, in a sense, similar. There are provisions for mitigating circumstances related to the violator's will to "do good," that is, to acknowledge wrong-doing, take corrective action, and mitigate harm. Although the terminology and legislative expressions may have different names, most of the mitigating circumstances specified in the laws on sanctioning administrative violations of these countries are quite similar in nature, as illustrated in the table below:

**Table 2: Statistics of mitigating circumstances of a similar nature in the laws on administrative sanctions in Vietnam, Russia, and China**

<b>Vietnam</b>	<b>Russia</b>	<b>China</b>
Violators have prevented or reduced the harmful consequences caused by their violations	The prevention of harmful consequences of an administrative offense by the person who committed an administrative offense	Violators actively eliminate or reduce the harmful consequences of violations
Violators volunteer to remedy the consequences and provide compensation	Voluntary compensation for inflicted damage or voluntary elimination of inflicted harm by the person who committed an administrative offense	
Violators have voluntarily reported their violations and sincerely repent	Repentance demonstrated by the person who committed an administrative offense	Violators actively confess to their unlawful conduct that the administrative organs did not know of
Violators actively help authorities in the detecting and handling of administrative violations	The voluntary provision of information about an administrative offense by the person who committed the offense to a body empowered to carry out the proceedings in a case concerning the administrative offense;  Assistance provided by the person who committed an administrative offense to a body empowered to carry out proceedings in a case of an administrative offense	Violators cooperate with administrative organs and make a major meritorious contribution to investigating the unlawful conduct

Violators commit violations in a state of being spiritually incited by the illegal acts of other	The commission of an administrative offense in a state of strong mental agitation ("heat of passion")	–
Violators commit administrative violations due to being forced to or due to their material or spiritual dependence	–	Violators were compelled or enticed by others to commit violations
The violators are pregnant women	The commission of an administrative offense by a pregnant woman	–

### *The uniqueness of the mitigating circumstances*

Although the three countries share many similarities in their mitigating circumstances, as seen in Table 2 above, the laws of each country also have distinct mitigating circumstances, typically as follows:

For instance, in Russia, administrative violations committed by minors (aged 16 years to less than 18 years) are considered a mitigating circumstance. In such cases, the determination of the specific fine level will depend on the decision of the judge, agency, or competent person with sanctioning authority (for example it may be partially reduced or lighter than the minimum fine level prescribed for a regular individual, depending on each administrative violation).<sup>44</sup>

Meanwhile, in Vietnam, administrative violations committed by minors are not considered circumstances that mitigate administrative liability. Instead, clause 3, Article 134 of the LHAV clearly stipulates that if a person aged 16 to under 18 commits an administrative violation and is fined, the fine must not exceed half of the amount typically applied to an adult violator.

Similarly, Chinese law contains a separate provision in the APL stipulating that administrative violations committed by people aged 14 to under 18 will have a reduced administrative liability (Art. 30).

In general, although regulated under different regulations, the laws of these three countries all aim to reduce administrative responsibility while creating conditions for minors who commit administrative violations to have the opportunity to correct and overcome mistakes.

In addition, the CAO stipulates that women raising small children committing an administrative violation is considered a mitigating circumstance in Russia. However, this detail has not been recorded in Vietnamese and Chinese law. In the future, the circumstance of "women raising small children committing an administrative violation" should be recorded in the laws of the three countries.

<sup>44</sup> Point 2.2, Art. 4.2 of the CAO.

nistrative violation” should perhaps be formally recognized as a mitigating factor in administrative liability under Vietnamese law.

On the other hand, in Vietnam, administrative violations due to backward qualifications are considered a circumstance that mitigates administrative responsibility. Meanwhile, this mitigating circumstance is not specified in the laws on sanctions for administrative violations of Russia and China. Regarding this issue, a Chinese author notes that we only need to rely on our own experience and conscience to judge whether our behavior is harmful or beneficial to others or society or not. At the same time, lawmakers cannot prohibit or penalize behaviors that are beneficial to society.<sup>45</sup>

For example, a person who runs a red light even for a beneficial purpose (such as rushing an injured person to the hospital) cannot claim that he or she did not know that doing so could cause actual harm.<sup>46</sup> Perhaps for that reason, China does not consider administrative violations due to “backward qualifications” as a circumstance that mitigates administrative responsibility.

#### *Diversity of mitigating circumstances*

The variety of circumstances mitigating administrative liability depends on the legal source of these circumstances in each country’s law.

As analyzed above, the mitigating circumstances in the law on penalties for administrative violations in Russia are stipulated from the most diverse sources; therefore, the circumstances mitigating administrative liability in this country are the most varied. In addition to the circumstances specified in the CAO and other legal documents, judges, agencies, and competent persons can also proactively apply new mitigating circumstances appropriate to the circumstances of the violation to ensure the purpose of the sanction.

Meanwhile, Vietnam is the country with the fewest number of mitigating circumstances among the three countries, because apart from the circumstances specified in the LHAV, Vietnamese law only authorizes the government to legislate additional mitigating circumstances. However, in the process of developing decrees on sanctioning administrative violations in various fields, drafting agencies often focus primarily on regulating behavior and fine levels without paying attention to other specific regulations in the field of state management.<sup>47</sup> Therefore, the circumstances mitigating administrative liability in Vietnam are relatively limited, largely restricted to only seven circumstances as specified in Article 9 of the LHAV.

<sup>45</sup> Zhanglin, X. (2020). Legal ignorance in administrative penalty and its standardization. *Journal of East China University of Political Science and Law*, 1. (In Chinese).

<sup>46</sup> Zhanglin, X. (2013). Does administrative violation really not need to harm the results? *Administrative Law Research*, 1, 33–43. (In Chinese).

<sup>47</sup> Dao, T. T. A. (2007). Mitigating and aggravating circumstances in handling administrative violations – Implementation practices and raised issues. *Journal of Democracy and Law*, 8, 9–12.

In summary, the laws on sanctioning administrative violations in Vietnam, Russia, and China have certain similarities as well as differences in terms of circumstances mitigating administrative liability. This comes from the distinct political regimes, legislative perspectives, culture, and society of each country. It should be noted that the rationality and legitimacy of law in a society must, and can only, be based ultimately on the recognition of that society and not on any abstract practices or principles of foreign.<sup>48</sup> Therefore, the differences in regulations on circumstances mitigating administrative liability between the laws of other countries as above are only for comparison and reference purposes. While one single national law cannot be taken as a “model” for regulations and applied to other national laws, studying the mitigating circumstances in the laws on sanctioning administrative violations of some countries with similar characteristics, such as Russia and China can provide useful insights to refine and perfect Vietnamese law.

#### **4. Improving Vietnam’s Legal Provisions on Mitigating Circumstances in Administrative Liability: Lessons from the Legislative Experiences of Russia and China**

In June 2025, Vietnam became the 10th partner country of the BRICS group, marking a milestone in Vietnam’s efforts to deeply integrate with global multilateral cooperation mechanisms. Common understanding and uniform practical application of consistent administrative liability will enable the countries in these regions to create a unified customs, tax, technological, and environmental space while ensuring effective legal regulation of diverse public relations that are necessary for the protection of rights and legitimate interests and security of citizens, as well as to ensure the unification of the legislation of these countries.<sup>49</sup> Therefore, it could prove valuable to study the mitigating circumstances in the field of administrative liability in Russian Federation law and Chinese law to improve Vietnamese law.

First of all, Vietnam is a country that has consistently focused on protecting the rights and interests of women in all areas of law, such as limiting the husband’s right to divorce when the wife is pregnant or raising a child under 12 months of age (as per the country’s marriage law), while female workers are guaranteed equality in work opportunities, income, and wages without discrimination (under the labor law). However, the circumstance of women raising children is currently only considered in the field of criminal law<sup>50</sup> and is not reflected in the law on penalties for administrative

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<sup>48</sup> Su, L. (2004). *Principles lead to the city: Transforming China’s rule of law* (p. 298). Law Press. (In Chinese).

<sup>49</sup> Panteleev, V. (2022). Transformation of the concept of administrative liability in the protection of the rights, legitimate interests and security of citizens. *BRICS Law Journal*, 9(4), 64–80.

<sup>50</sup> The 2015 Criminal Code (amended and supplemented in 2017) currently stipulates the following: the death penalty shall not be applied to women raising children under 36 months of age (cl. 2, Art. 40);

violations. Perhaps, to better protect the rights of women during the period of raising young children, Vietnam's law on administrative sanctions should be amended to include the mitigating circumstance of "women raising young children committing administrative violations."

This amendment would not only ensure the rights of women raising young children but also create compatibility with criminal law because the 2015 Penal Code of Vietnam does stipulate that "women raising children under 36 months old committing a criminal offense is considered a mitigating circumstance."

Secondly, compared to the legal systems of Russia and China, the mitigating circumstance of "committing an administrative violation due to backward educational or cognitive conditions" is a distinctive feature of Vietnamese law. Vietnam is a multi-ethnic country with 54 recognized ethnic groups. The Kinh ethnic group accounts for the largest proportion—nearly 86% of the population—while the remaining 53 ethnic minorities constitute just over 14% (approximately 14 million people).<sup>51</sup> Thus, the Kinh ethnic group is considered the majority group, accounting for the largest proportion of the national population, while the remaining 53 ethnic groups are classified as ethnic minorities.<sup>52</sup> In general, the educational level of ethnic minority groups remains lower than the national average. Moreover, as these populations often reside in areas with especially difficult socio-economic conditions, their level of development is significantly lagging behind.<sup>53</sup> Therefore, maintaining the mitigating circumstance of "committing an administrative violation due to backward educational or cognitive conditions" is necessary and consistent with the ethnic composition of Vietnam. However, in order for this mitigating circumstance to be applied uniformly, the legislature must clearly define what constitutes an "administrative violation due to backwardness." At present, Vietnamese law does not provide a specific definition of this concept. As a result, the application of this mitigating circumstance in practice lacks consistency, and in some cases, competent authorities may even hesitate to apply it.

According to the authors, the Vietnamese legislature could define "administrative violation due to backwardness" as a violation committed by members of ethnic minority groups residing in areas with especially difficult socio-economic conditions. Due to their residence in such disadvantaged regions, these individuals often lack access to education and communication, which leads to limited legal awareness and

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Do not execute the death penalty for women raising children under 36 months of age (point "a," cl. 3, Art. 40); Postponement of prison sentences for women raising children under 36 months of age (point "b," cl. 1, Art. 67).

<sup>51</sup> Nguyen, T. V. H., & Tran, T. C. T. (2004). Factors influencing the formulation of policies and laws for ethnic minority development in Vietnam. *State Organization Journal*, 6, 61–63.

<sup>52</sup> Nguyen, T. T. (2020). Developing ethnic minority education. *Vietnam Human Rights Journal*, 11, 30–32.

<sup>53</sup> Chu, T. H. (2020). Development in ethnic minority regions: Bridging the gap between policy and implementation. *Vietnam Human Rights Journal*, 11, 27–29.



consequently, to legal violations. With a clear legal provision in place, competent authorities would be better equipped to identify this mitigating circumstance in practice and apply more lenient penalties accordingly.

Finally, previously, Article 4 of the 2012 Law on Handling of Administrative Violations only allowed the government to have the authority to prescribe administrative sanctions in the fields of state management. However, following the 2020 amendment to the Law, in addition to the government, the Standing Committee of the National Assembly was also granted the authority to regulate administrative sanctions. Specifically, the Standing Committee of the National Assembly is empowered to issue ordinances governing administrative sanctions in state audit activities and for acts obstructing procedural activities. This development requires the Standing Committee of the National Assembly to be empowered to prescribe additional mitigating circumstances because administrative sanctions for violations in state audit activities and for acts obstructing procedural activities have their own particular characteristics that are not comprehensively addressed by the mitigating circumstances currently stipulated by the National Assembly. Meanwhile, newly introduced mitigating circumstances prescribed by the government through its decrees are only applicable within the specific administrative domains covered by those decrees and do not have a binding legal effect on acts and activities falling under the regulatory authority of the Standing Committee of the National Assembly. Therefore, it would be advisable to consider amending the LHAV to allow the Standing Committee of the National Assembly to stipulate additional mitigating circumstances beyond those prescribed by the National Assembly in Article 9 of the LHAV. Following this amendment, the ordinances regulating administrative sanctions issued by the Standing Committee of the National Assembly could, if necessary, prescribe additional mitigating circumstances without being limited to solely the mitigating circumstances prescribed by the National Assembly.<sup>54</sup> Granting the Standing Committee of the National Assembly this authority would not only facilitate the Committee's initiative in developing and selecting mitigating factors tailored to the diverse nature of administrative violations but would also ensure consistency with the provisions of the CAO. Once the power has been delegated to the National Assembly Standing Committee, it would be equally necessary to establish an adequate system of regulation and supervision to prevent abuse of power and arbitrariness while ensuring the maximum benefit of individuals, organizations, and society as a whole.<sup>55</sup>

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<sup>54</sup> Cao, V. M. (2024). Authority to prescribe administrative responsibilities of the National Assembly Standing Committee. *Journal of State and Law*, 8, 16–26.

<sup>55</sup> Gavrilenko, V., & Shenshin, V. (2023). Control and supervisory activities as an institute of administrative law. *BRICS Law Journal*, 10(2), 156–183.

## Conclusion

After researching and comparing the provisions on mitigating circumstances in the laws on sanctioning administrative violations of Vietnam and selected BRICS countries, specifically Russia and China, it can be seen that each country has its own unique characteristics in determining mitigating circumstances. These differences stem largely from the uniqueness of each country's legal system. However, in addition, there are also circumstances that mitigate administrative liability that are quite similar in nature. After all, all regulations ultimately aim to demonstrate the humanity of the law and individualize administrative responsibility.<sup>56</sup> When administrative violations occur, each circumstance has a different nature and level of danger. Even where the nature and level of infringement appear to be the same, there are still different factors such as with respect to the violator's identity, the space, time, location, and circumstances of the violation.<sup>57</sup> Therefore, the requirement to individualize administrative responsibility requires that competent entities not only rely on the consequences of the actions but also evaluate factors related to the violator's awareness, identity, and specific circumstances of the violation in order to accurately quantify the level of danger of the violation,<sup>58</sup> and consequently apply the law appropriately. This ensures fairness in the application of administrative responsibilities.

Finally, analyzing and comparing the mitigating circumstances under the laws of Vietnam, Russia, and China can create conditions to identify and further research the issue of mitigating circumstances in Vietnam and other BRICS countries. Such comparative research not only contributes to the identification of shared principles and best practices but also opens promising avenues for further research aimed at maximizing the effectiveness and fairness of sanctioning administrative violations.

## Acknowledgements

This research was funded by the University of Economics and Law, Vietnam and Vietnam National University, Ho Chi Minh City, Vietnam.

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<sup>56</sup> Cao, 2023.

<sup>57</sup> Nguyen, 2021.

<sup>58</sup> Pham, T. H. (2017). *Basic contents of the subject theory of state and law* (reprinted with edits and supplements) (p. 147). Publishing House National Politics.

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