

SOUTH VIETNAMESE LAW ON HOMICIDE

Two penal codes are presently in effect in South Vietnam, the Penal Code of Central Vietnam, promulgated in 1933, which is applicable in the area formerly known as Annam, and the 1912 Penal Code of South Vietnam, applicable in the area formerly called Cochinchina.

According to the 1933 Code, murder is voluntary homicide and is punishable, except in cases where other punishments are prescribed by the law, with hard labor for life for the chief offender, and with hard labor of from 15 to 20 years for the co-offender and the accomplice (Article 282). Under certain conditions, e.g., if the murder is preceded, accompanied, or followed by another felony, the punishment will be death for the chief offender and hard labor for life for co-offender and accomplice (Article 283).

The law regarding complicity is contained in Article 68, which says that where more than one person is found guilty of having participated in the same felony or misdemeanor, the court will determine according to traditional rules who is to be considered the chief offenders. The others are to be considered as accomplices and punished with one half of the penalty pronounced against the former, unless otherwise decided by the law. It is stipulated that certain persons are to be punished as chief offenders (Article 69). These are the

solicitor or instigator of the felony; the leader or person who directs the criminal action or who assumes a leading part in it; the person who has previously been convicted of felonies or misdemeanors. Article 70 states also that the following persons are to be considered as accomplices and punished as such, except in some cases where the law decides otherwise: those who knowingly aid or assist the chief offender or offenders in the commission of the felony by participation in preparatory acts or acts that facilitate the offense, including transport facilities; those who knowingly give shelter to persons wanted by the authorities for being guilty of a felony or misdemeanor and do not denounce them; those who knowing the criminal conduct of those practicing banditry or violence against national security and being subject to no duress, provide or direct others to provide lodging, refuge, place of gathering, clothing, food, road information, or any other means of subsistence or escape from apprehension, and fail to denounce them or to have them apprehended.

Under the provisions of the 1912 Penal Code, a murder that is preceded or accompanied or followed by another felony shall be punished with death (Article 304). Murder committed with the purpose of preparing, facilitating, or executing a misdemeanor, or of aiding the escape or insuring the impunity of offenders and accessories of this misdemeanor, are likewise punishable with death. In all other cases,

the person guilty of murder is to be sentenced to hard labor for life. Article 295 states that a homicide which is intentional is a murder. According to Article 309, striking or wounding, committed without intent to kill but resulting in death, is punishable with a limited term of hard labor.

Article 55 states that persons sentenced for the same felony are to be jointly and severally held liable to pecuniary penalties, restitution, compensation and costs. Article 59 stipulates that accessories shall receive the same penalty as the chief offender, unless otherwise prescribed by law. As to who is to be punished as accessories, Article 60 names the following: those instigating or giving instructions for the commission of a felony or misdemeanor by means of donation, promise, threat, abuse of authority, abuse of power, or illegal machination or artifice; those providing weapons, equipment, or other means used in committing the offense with full knowledge that they will be used for this purpose; those knowingly aiding and assisting the chief offender or offenders in the preparation, facilitation, and commission of the offense. To this, Article 61 adds as accessories those providing malefactors with lodging, refuge and place of gathering with full knowledge that the malefactors are engaging in banditry, in violence against State security, against public peace, or against people or property.

The statute of limitations under the 1933 Code is 10 years for felonies and misdemeanors if during that period no investigation, no complaint, and no prosecution has been made. If the offender of a felony has remained unknown for over 15 years, no prosecution may be made. (Articles 45 and 46). According to the 1912 Code, if a criminal sentence for a felony cannot be enforced within 20 years, it will be extinguished and will become unenforceable. No other form of limitation is mentioned.

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