

**MINISTRY OF NATIONAL
DEFENCE OF VIETNAM**

No. 07/2023/TT-BQP

THE SOCIALIST REPUBLIC OF VIETNAM
Independence – Freedom – Happiness

Hanoi, January 27, 2023

CIRCULAR

**GUIDELINES FOR IMPLEMENTATION OF SOME ARTICLES OF GOVERNMENT’S
DECREE NO. 120/2013/ND-CP DATED OCTOBER 09, 2013 ON PENALTIES FOR
ADMINISTRATIVE VIOLATIONS AGAINST REGULATIONS ON NATIONAL DEFENSE
OR CIPHER AND GOVERNMENT’S DECREE NO. 37/2022/ND-CP DATED JUNE 06, 2022
ON ADMENDMENTS TO SOME ARTICLES OF DECREES ON PENALTIES FOR
ADMINISTRATIVE VIOLATIONS AGAINST REGULATIONS ON NATIONAL DEFENSE
OR CIPHER; MANAGEMENT AND PROTECTION OF NATIONAL BORDER; WITHIN
THE TERRITORIAL WATERS, ISLANDS AND CONTINENTAL SHELF OF THE
SOCIALIST REPUBLIC OF VIETNAM**

Pursuant to Government’s Decree No. 120/2013/ND-CP dated October 09, 2013 on penalties for administrative violations against regulations on national defense or cipher;

Pursuant to Government’s Decree No. 37/2022/ND-CP dated June 06, 2022 on amendments to some Articles of Decrees on penalties for administrative violations against regulations on national defense or cipher; management and protection of national border; within the territorial waters, islands and continental shelf of the Socialist Republic of Vietnam;

Pursuant to Government’s Decree No. 01/2022/ND-CP dated November 30, 2022 on functions, tasks, powers, and organizational structure of the Ministry of National Defense of Vietnam;

At the request of Chief Inspector of the Ministry of National Defense;

The Minister of National Defense hereby promulgates a Circular on guidelines for implementation of some Articles of Government’s Decree No. 120/2013/ND-CP dated October 09, 2013 on penalties for administrative violations against regulations on national defense or cipher (hereinafter referred to as “Decree No. 120/2013/ND-CP”) and Government’s Decree No. 37/2022/ND-CP dated June 06, 2022 on amendments to some Articles of Decrees on penalties for administrative violations against regulations on national defense or cipher; management and protection of national border; within the territorial waters, islands and continental shelf of the Socialist Republic of Vietnam (hereinafter referred to as “Decree No. 37/2022/ND-CP”).

Chapter I

GENERAL PROVISIONS

Article 1. Scope

This Circular provides guidelines for implementation of Clause 1, Clause 2, Article 4; Article 6; Clause 2 Article 7; Point a, Clause 2, Article 11; Article 12; point a, point b Clause 2 Article 23; Clause 1, Article 30 of Decree No. 120/2013/ND-CP, amended by Clause 5, Clause 7, Clause 8, Clause 9, Clause 12, Clause 24, Clause 26, Clause 27, Clause 28 Article 1 of Decree No. 37/2022/ND-CP and additional regulations in Clause 13, Clause 16, Clause 17, Clause 18, Clause 19 and Clause 46, Article 1 of Decree No. 37/2022/ND-CP.

Article 2. Regulated entities

This Circular applies to domestic and foreign organizations and individuals that commit administrative violations against regulations on national defense or cipher within the territory of Vietnam; persons who have the power to record administrative violations, persons who have the power to impose penalties for the administrative violations, organizations and individuals related to imposition of penalties for administrative violations against regulations on national defense or cipher.

Article 3. Determination of penalty amounts in specific cases

1. The specific penalty amount for an act of administrative violation shall comply with regulations at Clause 4, Article 23 of the 2012 Law on Handling Administrative Violations, amended in 2020.
2. Determination of the specific penalty amount for an act of administrative violation in case there are numerous aggravating and extenuating circumstances shall comply with regulations at Clause 1 Article 9 of Government's Decree No. 118/2021/ND-CP dated December 23, 2021 on elaboration of certain Articles and enforcement of the Law on Handling of Administrative Violations (hereinafter referred to as "Decree No. 118/2021/ND-CP").

Chapter II

ADMINISTRATIVE VIOLATIONS, SANCTIONS, REMEDIAL MEASURES FOR VIOLATIONS AGAINST REGULATION ON NATIONAL DEFENSE OR CIPHER

Article 4. "Sound reasons" specified in Articles 6, 7, 11 and 12 of Decree No. 162/2013/ND-CP, amended by Clauses 8, 9, 12 and 13 Article 1 of Decree No. 37/2022/ND-CP

1. Sound reasons:

- a) The person required to participate in pre-enlistment medical check-up or medical check-up for reserve officer selection; or comply with the enlistment order, the call to reserve officer training or the order for concentrated training, practicing or examination on readiness for mobilization/fighting (hereinafter referred to as "conscript") is ill or involved in an accident or is ill or involved in an accident on the way and must receive treatment at the medical facility.

b) A family member of the conscript, including his/her biological father/mother; father-in-law or mother-in-law; adoptive father/mother; legal guardian, spouse, biological child or legally adopted child, is ill or involved in an accident and she/he is receiving treatment at the medical facility.

c) A family member of the conscript specified in point b of this Clause is deceased but the funeral has not taken place or completed.

d) The house of the conscript or a family member of the conscript specified in point b of this Clause is located in an area struck by natural disasters, epidemics or fire seriously affecting their life.

dd) The conscript fails to receive the written call to pre-enlistment medical check-up or medical check-up for reserve officer selection; enlistment order, the call to reserve officer training or the order for concentrated training, practicing or examination on readiness for mobilization/fighting or the conscript receives the written call but the time or the location is not clearly stated in the written call due to a mistake of the competent person or authority or obstruction caused by another person according to regulations in Article 7 of this Circular.

2. The cases specified in Point a and Point b Clause 1 herein must be confirmed by the People's Committee of commune where they reside or the medical facility or health station of commune where they reside; the cases specified in Point c and Point d Clause 1 herein must be confirmed by the People's Committee of commune where they reside; the case specified in Point dd Clause 1 herein must be confirmed by the People's Committee of commune where they reside or the competent authority.

Article 5. Violation against regulation on conscription registration specified in Clause 2, Article 4 of Decree No. 120/2013/ND-CP, amended by Clause 7 Article 1 of Decree No. 37/2022/ND-CP

1. The “failure to apply for supplemental conscription registration” specified in Point c Clause 2 Article 4 of Decree No. 120/2013/ND-CP, amended by Clause 7, Article 1 of Decree No. 37/2022/ND-CP means a violation where a citizen fails to directly apply for supplemental conscription registration at the chain of communal military command in case of change of position, educational attainment, qualification, health conditions and other information related to conscription according to regulations at Article 6 of Government’s Decree No. 13/2016/ND-CP dated February 19, 2016 on procedures for registration, regimes and policies of citizens in the period of registration and pre-enlistment medical check-up (hereinafter referred to as “Decree No. 13/2016/ND-CP”).

2. The “failure to apply for conscription registration in case of change in residence or workplace/school” specified in Point d, Clause 2 Article 4 of Decree No. 120/2013/ND-CP, amended by Clause 7 Article 1 of Decree No. 37/2022/ND-CP means a violation where a citizen who has registered conscription and left district-level administrative unit in which he/she resides, studies or works for 3 consecutive months or more fails to directly apply for conscription

registration for movement at the chain of communal military command according to regulations at Article 7 of Decree No. 13/2016/ND-CP.

3. The “failure to apply for registration for absenteeism from conscription” specified in Point dd, Clause 2 Article 4 of Decree No. 120/2013/ND-CP, amended by Clause 7 Article 1 of Decree No. 37/2022/ND-CP means a violation where a citizen who has registered conscription and left district-level administrative unit in which he/she resides, studies or works for 3 consecutive months or more fails to directly apply for registration for absenteeism from conscription at the chain of communal military command according to regulations at Article 8 of Decree No. 13/2016/ND-CP.

Article 6. “Alteration of health classification results” specified in Point a, Clause 2, Article 6; Clause 2 Article 7 and Point a Clause 2 Article 11 of Decree No. 120/2013/ND-CP, amended by Clauses 8, 9 and 12 Article 1 of Decree No. 37/2022/ND-CP

1. “Alteration of health classification results” specified in Clause 8 Article 1 of Decree No. 37/2022/ND-CP:

a) A person undergoing medical check-up uses methods or measures to intentionally change his/her health condition right before or during examination in order to avoid conscription and the competent authority has concluded that this is a deceitful act (such as use of drugs, stimulants or banned substances; self-injury or self-harm to his/her health, or use of other methods for alteration of health classification results)

b) A person undergoing a medical check-up changes results of classification of his/her health during the examination to avoid conscription.

c) A person asks another person to undergo medical check-up.

2. “Deceitful act aimed at evasion of enlistment order after obtainment of the result of pre-enlistment medical check-up which shows that a person is eligible for conscription specified in Clause 9 Article 1 of Decree No. 37/2022/ND-CP means a violation where the person uses methods or measures to change his/her condition to make it different from the result of pre-enlistment medical check-up certified by the pre-enlistment check-up board which shows that the person is eligible for conscription.

Article 7. “Obstruction” specified in Clause 2, Article 21, Clause 3 Article 23 of Decree No. 120/2013/ND-CP, amended by Clauses 16, 17, 18 and 19 Article 1 of Decree No. 37/2022/ND-CP

1. “Obstruction” specified in Clause 2 Article 21 of Decree No. 120/2013/ND-CP, amended by Clause 16 Article 1 of Decree No. 37/2022/ND-CP means a violation where a person uses words or take actions to obstruct or make physical or mental threat to prevent persons who are responsible for organization of militia and self-defense forces from fulfilling their tasks in the case of execution of the decision on organization of militia and self-defense forces issued by the competent authority.

2. "Obstruction" specified in Clause 17 Article 1 of Decree No. 37/2022/ND-CP means a violation where a person uses words or take actions to obstruct or make physical or mental threat to prevent other persons from participating in militia and self-defense forces.

3. "Obstruction" specified in Clause 18 Article 1 of Decree No. 37/2022/ND-CP means a violation where a person uses words or take actions to obstruct or make physical or mental threat to prevent organization of training for militia and self-defense forces according to the plan of the competent authority or prevent persons summoned to participate in training for militia and self-defense forces from fulfilling their tasks in training according to regulations.

4. "Obstruction" specified in Points a, b Clause 2 Article 23 of Decree No. 120/2013/ND-CP, amended by Clause 19 Article 1 of Decree No. 37/2022/ND-CP means a violation where a person uses words or take actions to obstruct or make physical or mental threat to prevent officials or soldiers of militia and self-defense forces from fulfilling their tasks according to regulations of the law, or executing the decision on mobilization of militia and self-defense forces for fulfillment of their tasks of the competent authority.

Article 8. Imposition of penalties for administrative violations against regulations on land for national defense, unmanned aerial vehicles and ultralight aerial vehicles specified in Clause 46, Article 1 of Decree No. 37/2022/ND-CP

1. In case of detection of violations against regulations on use of land for national defense according to regulations at Government’s Decree No. 91/2019/ND-CP dated November 19, 2019 on penalties for administrative violations against regulations on land (hereinafter referred to as “Decree No. 91/2019/ND-CP”), amended by Government’s Decree No. 04/2022/ND-CP dated January 06, 2022 on amendments to some Articles of Decrees on penalties for administrative violations against regulations on land, water resources and minerals; hydrometeorology; topography and cartography (hereinafter referred to as “Decree No. 04/2022/ND-CP”), the persons who have power to record administrative violations, impose penalties for the administrative violations specified in Clause 37 Article 1 of Decree No. 37/2022/ND-CP shall record and impose penalties according to regulations. To be specific:

a) Determination of illegal gains obtained from invading or appropriating land for national defense shall comply with regulations in Clause 2 Article 7 of Decree No. 91/2019/ND-CP, amended by Clause 2 Article 1 of Government’s Decree No. 04/2022/ND-CP. To be specific:

$$\begin{array}{l}
 \text{Illegal gains} \\
 \text{obtained} \\
 \text{from} \\
 \text{violation}
 \end{array}
 =
 \frac{
 \begin{array}{l}
 \text{Area of land for} \\
 \text{national defense} \\
 \text{in violation}
 \end{array}
 \times
 \begin{array}{l}
 \text{Land price listed under land} \\
 \text{price schedules specified by} \\
 \text{provincial People’s} \\
 \text{Committee}
 \end{array}
 \times
 \begin{array}{l}
 \text{Years of} \\
 \text{violation}
 \end{array}
 }{
 \begin{array}{l}
 \text{Total land use period according to land price} \\
 \text{schedules of land type of definite use term being used;} \\
 \text{in case of long use term, the period shall be 70 years}
 \end{array}$$

b) Determination of invasion or appropriation of land for national defense, penalty rates and remedial measures shall comply with regulations in Clause 4 Article 14 of Decree No. 91/2019/ND-CP.

c) Determination of destruction of land for national defense, penalty rates, remedial measures shall comply with regulations in Article 15 of Decree No. 91/2019/ND-CP.

d) Determination of obstruction or damage to land for national defense, penalty rates, remedial measures shall comply with regulations in Article 16 of Decree No. 91/2019/ND-CP.

dd) Determination of violations against regulations on management of markers of use of land for national defense, penalty rates, remedial measures shall comply with regulations in Article 34 of Decree No. 91/2019/ND-CP.

e) Determination of area of land for national defense of violations and penalty rates shall comply with regulations in Article 8 of Decree No. 91/2019/ND-CP.

2. In case of detection of violations against regulations on unmanned aerial vehicles and ultralight aerial vehicles, the persons who have the power to record administrative violations, impose penalties for the administrative violations against regulations on national defense or cipher shall comply with regulations at Government's Decree No. 144/2021/ND-CP dated December 31, 2021 on administrative penalties for violations against regulations on social safety, security, order; social evils, fire prevention and firefighting; rescue; domestic violence prevention and control. In case of imposition of penalties beyond their competence, the dossier on administrative violations shall be transferred to the competent authority according to regulations.

Article 9. Imposition of supplementary sanctions of confiscating material evidence or means used for commission of administrative violations specified in Decree No. 120/2013/ND-CP, amended by Article 1 of Decree No. 37/2022/ND-CP

1. When imposing supplementary sanctions of confiscating material evidence or means used for commission of administrative violations against regulations on national defense or cipher, the competent persons on duty shall adopt procedures for confiscating material evidence or means used for commission of administrative violations according to regulations at Article 81 of 2012 Law on Handling of Administrative Violations, amended in 2020.

2. Handling of material evidence or means involved in commission of administrative violations of which decisions on confiscation have already been issued shall comply with regulations at Clause 42 Article 1 of 2020 Law on amendments and supplements to certain Articles of Law on handling of administrative violations.

3. Management of material evidence and means illegally owned or used for administrative violations in cases of confiscation shall comply with regulations at Article 23 of Decree No. 118/2021/ND-CP.

4. Identification of power to impose penalties for material evidence or means of administrative violations which are products prohibited from possession or circulation shall comply with Article 24 of Decree No. 118/2021/ND-CP.

Article 10. Remedial measure of enforced performance of conscription according to regulations of the Law on Military Service

The remedial measure of “enforced performance of conscription” according to regulations of the Law on Military Service in the case of the violations specified in Clause 2 Article 7 of Decree No. 120/2013/ND-CP, amended by Clause 5, Article 9 of Decree No. 37/2022/ND-CP means that a citizen has to continue to comply with regulations on medical check-up for conscription and enlistment in the next medical check-up or next conscription according to the Law on Military Service and other relevant legal documents immediately after the decision on imposition of remedial measure is issued.

Chapter III

POWER AND PROCEDURES FOR IMPOSITION OF PENALTIES AND EXECUTION OF DECISION ON IMPOSITION OF ADMINISTRATIVE PENALTIES FOR ADMINISTRATIVE VIOLATIONS AGAINST REGULATIONS ON NATIONAL DEFENSE OR CIPHER

Article 11. Identification of power to impose penalties for administrative violations against regulations on national defense or cipher

1. If multiple persons have the power to impose a penalty for an administrative violation against regulations on national defense or cipher, the imposition of a penalty shall comply with regulations in Clause 3 Article 52 of 2012 Law on handling administrative violations, amended in 2020.

2. The power to impose penalties on an individual who commits multiple administrative violations against regulations on national defense or cipher shall be determined according to regulations in Clause 4 Article 52 of 2012 Law on handling administrative violations, amended in 2020.

Article 12. Imposition of penalties for administrative violations against regulations on national defense or cipher without violation records

Imposition of penalties for administrative violations against regulations on national defense or cipher without violation records applicable to case where a warning is issued with regard to violation specified in Clause 1 Article 4 of Decree No. 120/2013/ND-CP shall comply with regulations at Article 56 of 2012 Law on handling administrative violations, amended in 2020.

Article 13. Imposition of penalties for administrative violations against regulations on national defense or cipher with violation records

1. Imposition of penalties for administrative violations against regulations on national defense or cipher with violation records is applicable to administrative violations committed by individuals and organizations other than cases specified in Article 12 of this Circular.

2. The violation records shall be made according to regulations in Article 58 of 2012 Law on handling administrative violations, amended in 2020 and Article 12 of Decree No. 118/2021/ND-CP.

Article 14. Explanations from organizations and individuals that commit administrative violations against regulations on national defense or cipher

In case of explanation, form of explanation, organization of explanation session, consideration of explanation shall comply with regulations at Article 61 of 2012 Law on handling administrative violations, amended in 2020 and Article 17 of Decree No. 118/2021/ND-CP.

Article 15. Transfer of files on administrative violations against regulations on national defense or cipher suspected of crime for criminal prosecution

1. In the process of consideration of violation against regulations on national defense or cipher for imposition of a penalty, in case of suspicion of a crime, the person who has power to impose the penalty shall immediately transfer the dossier on the violation to the competent authority entitled to pursue criminal proceeding according to regulations at Article 62 of 2012 Law on handling administrative violations, amended in 2020 for handling.

2. The transfer of the files to the competent authority entitled to pursue criminal proceeding shall be recorded in writing on transfer of the violation dossiers according to regulations.

Article 16. Issuance and execution of decisions on imposition of penalties

1. The issuance of decisions on imposition of penalties for administrative violations against regulations on national defense or cipher shall comply with regulations at Article 67 of 2012 Law on handling administrative violations, amended in 2020.

2. The contents of decisions on imposition of penalties for administrative violations against regulations on national defense or cipher shall comply with regulations at Article 68 of 2012 Law on handling administrative violations, amended in 2020.

3. The execution of decisions on imposition of penalties for administrative violations against regulations on national defense or cipher shall comply with regulations at Section 2 Chapter III Part 2 of 2012 Law on handling administrative violations, amended in 2020.

4. The enforced execution of decisions on imposition of penalties for administrative violations against regulations on national defense or cipher shall comply with regulations at Section 3 Chapter III Part 2 of 2012 Law on handling administrative violations, amended in 2020 and Decree No. 166/2013/ND-CP dated November 12, 2013 of the Government on enforced execution of decisions on imposition of penalties for administrative violations.

Article 17. Forms and procedures for payment of fines

1. Organizations or individuals who commit administrative violations against regulations on national defense or cipher shall pay fines under forms specified in Clause 1 Article 20 of Decree No. 118/2021/ND-CP
2. Organizations or individuals who commit administrative violations against regulations on national defense or cipher shall adopt procedures for payment of fines according to regulations at Article 78 of 2012 Law on handling administrative violations, amended in 2020 and Clause 2 Article 20 of Decree No. 118/2021/ND-CP
3. Documents of collection and payment of fines and late fine payment interests for administrative violations shall comply with regulations at Article 21 of Decree No. 118/2021/ND-CP.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 18. Transitional clauses

1. Administrative violations against regulations on national defense or cipher committed before July 22, 2022 and under consideration shall be handled according to regulations of the Government's Decree No. 120/2013/ND-CP and Circular No. 95/2014/TT-BQP dated July 07, 2014 of the Minister of National Defense on guidelines for the Government's Decree No. 120/2013/ND-CP dated October 09, 2013 on penalties for administrative violations against regulations on national defense or cipher.
2. Administrative violations against regulations on national defense or cipher committed before July 22, 2022 and discovered afterwards or under consideration shall be handled according to regulations of Decree No. 37/2022/ND-CP and this Circular if the application of such Decree and this Circular is favorable to the individuals and organizations who commits these violations.
3. If the organization or individual that incurs a penalty still files a complaint against the decision on imposition of penalties for administrative violations against regulations on national defense and cipher issued or completely executed before the effective date of this Decree, the regulations of law taking effect at the time of committing the administrative violation shall apply.

Article 19: Entry into force

This Circular takes effect from March 14, 2023 and supersedes Circular No. 95/2014/TT-BQP dated July 07, 2014 of the Minister of National Defense on guidelines for the Government's Decree No. 120/2013/ND-CP dated October 09, 2013 on penalties for administrative violations against regulations on national defense or cipher.

Article 20. Responsibility for implementation

1. Chief of the General Staff, Chairman of the General Department of Politics and heads of agencies, units, and relevant organizations and individuals shall be responsible for implementation of this Circular.
2. In the cases where any of the documents referred to in this Circular is amended or replaced, the newest one shall apply.
3. Any difficulty or problem that arises during the implementation of this Circular should be reported to the Ministry of National Defense (via Inspectorate of the Ministry of National Defense) for consideration and resolution.

**PP. MINISTER
DEPUTY MINISTER**

Lieutenant General Vo Minh Luong

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