

# SUPREME PEOPLE'S PROCURACY OF VIET NAM: SKILLS FOR PROSECUTION, SUPERVISING INVESTIGATIONS AND ADJUDICATION OF EMBEZZLEMENT CASES

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## I. FUNDAMENTAL ELEMENTS OF PROPERTY EMBEZZLEMENT

### A. Definition and Specific Elements of Embezzling Property

#### 1. Definition

Article 353 of the Criminal Code 2015 provides that:

*1. Any person who abuses his/her position or power to embezzle property under his/her management assessed at from VND 2,000,000 to under VND 100,000,000 or under VND 2,000,000 in any of the following cases shall face a penalty of 02 - 07 years' imprisonment:*

- a) The offender was disciplined for the same offence;*
- b) The offender has a previous conviction for any of the offences specified in Section 1 of this Chapter which has not been expunged.*

*2. This offence committed in any of the following cases shall carry a penalty of 07 - 15 years' imprisonment:*

- a) The offence is committed by an organized group;*
- b) The offence involves deceitful or dangerous methods;*
- c) The offence has been committed more than once;*
- d) The property appropriated is assessed at from VND 100,000,000 to under VND 500,000,000;*
- d) The money or property embezzled was meant for poverty reduction, provision of benefits for wartime contributors, contribution to reserve funds, provision of emergency aid for people in areas suffering from a natural disaster or epidemic or extremely disadvantaged areas;*
- e) The offence results in property damage of from VND 1,000,000,000 to under VND 3,000,000,000;*
- g) The offence has a negative impact on life of officials, public employees, and workers of an agency or organization.*

*3. This offence committed in any of the following cases shall carry a penalty of 15 - 20 years' imprisonment:*

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- a) *The property embezzled is assessed at from VND 500,000,000 to under VND 1,000,000,000;*
- b) *The offence results in property damage of from VND 3,000,000,000 to under VND 5,000,000,000;*
- c) *The offence has a negative impact on social security, order, or safety;*
- d) *The offence results in bankruptcy or shutdown of another enterprise or organization.*

*4. This offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death:*

- a) *The property embezzled is assessed at  $\geq$  VND 1,000,000,000;*
- b) *The offence results in property damage of  $\geq$  VND 5,000,000,000.*

*5. The offender might also be prohibited from holding certain positions or doing certain jobs for 01 - 05 years, liable to a fine of from VND 30,000,000 to VND 100,000,000 or have part or all of his/her property confiscated.*

*6. Office-holders in enterprises and organizations other than state organizations who take bribes shall be dealt with in accordance with this Article.*

## 2. Specific Elements of Embezzlement

- \* ***Object of crime:*** embezzlement directly infringes upon two social relations which are the legitimate activities of an agency, organization ***or enterprise***; and ownership relation (rights).
- \* ***Objective of crime:*** Abusing a position and power; and embezzling property from VND 2,000,000 or under VND 2,000,000 but the offender is disciplined for the same offence or previous conviction for any corruption-related crimes which have not been expunged.
- \* ***Subject of crime:*** There are two conditions: the offender must have power and position and must be responsible for property management.
- \* ***Subjectivity of the crime:*** the offender commits a crime with a directly intentional mistake.

## **B. Matters Must be Proven to Establish the Crime of Property Embezzlement**

1. Whether embezzling property happened; when and where it happened; what are its modalities, cunning and development; and when it was revealed.
2. Who are the offenders; whether accomplices were involved; how did the offender abuse his/her power, position, official duties and missions for the commission of crime; and the penal liability capacity of each offender.

3. Specific circumstances aggravating and extenuating the penal liability of each offender; the personal character of the offender.
4. The nature and extent of damage to society caused by the act of embezzlement; the agency, enterprise or organization damaged; property value damaged and other consequences; and recoverable property.

### **C. Evidence to Prove Property Embezzlement**

- All coming and outgoing vouchers, documents, accounts, financial reports, agreements and contracts, and invoices.
- The statements or testimony of denunciators, of witnesses and persons involved.
- The statements of suspects and persons who committed property embezzlement.
- Material evidence of criminal embezzlement.
- Assessed conclusion and appraised conclusion issued by professional offices.

## **II. SKILLS FOR EXECUTING PROSECUTION AND SUPERVISING INVESTIGATIONS**

### **A. Skills for Prosecution and Supervising Compliance with Law on Receiving and Dealing with Crime Information and Denouncement, and Filing Criminal Charges**

Prosecutors and their assistants must be in compliance with principles, procedures, orders and powers of the People's Procuracy on receiving and dealing with crime information and denouncement, and filing criminal charges provided by:

- The Inter-ministerial Circular 06/2013/TTLT-BCA-BQP-BTC-BNN&PTNT-VKSNDTC, dated 2 August 2013;
- The Direction 06/CT-VKSTC, dated 6 December 2013, of the Prosecutor General of the Supreme People's Procuracy;
- Articles 3, 12 and 13 of the Law on Organization of the People's Procuracy 2014 and Articles 159 and 160 of the Criminal Procedure Code 2015;
- Provisional regulation on executing prosecution and supervising compliance with law on receiving and dealing with crime information and denouncement, and request of criminal institution issued by Decision 169/QĐ-VKSTC, dated 2 May 2018, of the Prosecutor General of Supreme People's Procuracy.

The following concrete steps should also be fully executed:

*Firstly*, requesting the investigation body to collect evidence, documents on operation and organization and financial management regulations of the relevant enterprise or agency; decision paper on granting power and position, official duties and missions of the suspects, offenders and persons involved in order to determine the scope of power and position, to define violation acts which have been directed and decided and their damages when financial regulation and economic management are violated. In such cases, prosecutors have to request the investigation body and investigators to request the preparation of professional assessments and appraisals to clarify the damages caused by the crime.

*Secondly*, for enterprises, it must be clear that legal documents of the enterprise have to be collected, and information establishing the illegal acts of the suspect has to be collected as well. Furthermore, regulations, financial statutes, decision papers on granting power, position, official duties and missions must be studied carefully in order to determine mistakes of each suspect involved, including the Chairman, Chief Executive Officer, Chief Accountant and Cashier, based on the provisions of the Accounting Law 2014.

*Thirdly*, fully supervising the legal foundations of documents and evidence collected by investigation body, such as how such documents and evidence have been collected; whether financial documents have been certified or not; and the process of taking statements and testimonies must be in compliance with law as well; and whether financial data has been collected or seized.

*Fourthly*, if necessary, they should request the investigation body to provide further documents and evidence in terms of legal foundation and limited time. If documents and evidence fully meet the requirements to charge the accused, then prosecutors have to take charge of the investigation and prosecution of the crime according to the law.

## **B. Skills for Executing Prosecution and Supervising Compliance with the Law within the Investigation Process**

### **1. Legal Foundation**

Articles 14 and 15 of the Law on Organization of the People's Procuracy 2014 and Article 161 of the Criminal Procedure Code 2015 require prosecutors to supervise strict compliance with the law on arrest and its ratification, especially in urgent circumstances, when issuing detention orders, legal foundations for institution of criminal proceedings by filing criminal charges. In addition, prosecutors also have to pay close attention to the regulations of the Direction 15-CT/TW when dealing with criminal cases in which an offender holds an important position in a governmental agency.

### **2. Important Matters to Clarify during the Investigation Process to Correctly Prove Property Embezzlement**

*Firstly*, prosecutors must collect and verify documents and evidence in order to prove property embezzlement. This includes making inquiries to verify the consequences of the crime. If necessary, the prosecutor has to request assessment and financial appraisal of the harm caused by the crime.

*Secondly*, prosecutors must determine who committed the embezzlement, how the embezzlement was conducted, and whether any accomplices were involved in the offence.

*Thirdly*, prosecutors must issue instructions to the investigators in order to clarify what evidence needs to be collected.

### 3. Documents and Evidence Collected within the Search Process

- Documents and evidence to verify the responsibility of offenders in connection with property management, including decisions on assignment and position; regulations on operation and organization of agencies, organizations and enterprises.
- Vouchers, documents, and account books involving property embezzlement signed by the offender, which are valuable records for proving necessary facts related to the embezzled property.
- Documents representing the sharing of embezzled property with accomplices.
- Instruments and means used to execute the embezzlement.
- Type of property embezzled.
- Type of instrument and means for hiding the embezzled property.

### **C. Preparation and Interrogation of the Offender**

- Studying principles, policies, regulations, and directives on economic and financial management and property management.
- Studying the personal character of the suspect, including the offender's attitude and psychological state.
- Studying and investigating offenders' other social relations.
- Studying the criminal case, the evidence and the documents related to criminal acts.
- Setting time and location for interrogation and issuing summonses.

#### 1. Contents of Interrogation

- The position, assignment and responsibility for property management.
- Location, time, means, occurrence and consequences of the act of property embezzlement.
- The role, position, mission and participating level of each offender and other persons involved; and the relationship between offenders and persons involved.

- Property sharing, quantity, location of concealed property and the sale of property.
- Other criminal acts of offenders and persons involved.
- Weaknesses and shortcomings in economic management and property preservation at the scene of the crime.

**D. Taking Testimony of Witnesses**

Preparation activities include:

- Studying the criminal case and the personal character of each witness.
- Studying the reactions of agencies, organizations and enterprises to the embezzlement in order to understand the witness's testimony and attitude.
- Studying the relationships between offenders and witnesses.
- Setting the location, time, summons method and official taking of testimony.

1. The Main Contents of Witness Testimony

- Embezzled property of each offender and person involved; the consideration and evaluation of witnesses to the embezzlement.
- Other suspicious relationships of offenders.
- The spending, shopping, concealment of property of the offender; and destruction of documents and evidence by the offender.
- The bribery, domination or threatening of witnesses by offenders and persons involved.
- Vouchers, documents, invoices, property revealed by the witness.
- Weaknesses and shortcomings of personnel management at the embezzling site.

**E. Other Procedural Activities such as Confrontation, Identification, Experimental Investigation, and Appraisal**

Prosecutors should study the investigative conclusion and compare documents and evidence in the case with investigative requests issued in order to address unanswered questions which require further inquiry (if any). Prosecutors should also take part in, and coordinate with, investigators in the process of making the investigative report by examining and arranging documents, evidence and orders in the criminal case (if necessary).

## **F. Making the Indictment**

Together with guidelines on making the indictment provided in the regulation on executing prosecution, supervising institution of criminal proceedings, investigation and prosecution (issued by Decision 03/QD-VKSTC dated 29 December 2017 of the Prosecutor General of the Supreme People's Procuracy), prosecutors should pay close attention to the following important matters:

- + Presenting legal foundations to determine the ownership of enterprises or agencies where property embezzlement has occurred; the position, power and role of offenders and persons involved in financial management and economic management at such enterprises and agencies.
- + Summarizing evidence to prove means and artifices of executing the property embezzlement scheme; considering and presenting documents and evidence to prove the criminal conduct and the offender's awareness of the criminal conduct under his or her his management;
- + Analysing and presenting clearly "*the streamline of money*" through financial management and economic management in which the offender has executed fraudulent acts to appropriate State property based on the legal provisions of financial law, accounting law and economic management law;
- + Collecting assessments and professional appraisals, which play significant roles in proving the offender's appropriation of property, to present at indictment.

## **III. SKILLS FOR EXECUTING PROSECUTION AND SUPERVISING ADJUDICATION OF FIRST INSTANCE TRIALS**

### **A. Skills for Studying Embezzlement Cases**

Prosecutors should carefully review the following:

- + Documents and evidence to determine the state laws and regulations that control actions on finance and economics of enterprises, agencies and organizations having violations.
- + Documents to determine position and power to make decisions, set direction and manage economic and financial policies and practices of enterprises, agencies and organizations having violations.
- + Documents and evidence to prove illegal acts of financial and economic management by persons holding power and position in order to appropriate State property.
- + Material evidence to prove means and artifices of offenders; describing the occurrence of financial activities and economic operations which clearly demonstrate the offender's awareness of the appropriation of State property by means of decision, direction, examination, assignment, etc.

- + Summaries of economic and financial contracts of enterprises, agencies and organizations that are artifices by persons holding power and position to appropriate the embezzled property; account books and financial data showing illegal acts on financial principles and economic management to appropriate state money.
- + Assessments and appraisals by legal assessors; reports on determining and verifying financial and economic operations.
- + The statements of offenders and persons involved in the case.

Prosecutors should also carefully review the draft indictment in order to avoid mistakes, such as unclear arguments, legal foundations, financial data, provisions and articles, criminal records, sections and subsections that apply to the case, and other contents determining the plaintiff, seizing and keeping money, exhibits, and accounts for executing judgment, for prosecution and adjudication. Moreover, they should actively cooperate with the chairman of the trial to exchange information about the case in order to ensure that the prosecution is in full compliance with the law and to protect the offender's rights.

## **B. Skills for Preparing Interrogation Reports and Arguments at Trial**

The following evidence and documents should be carefully prepared:

- + Summaries of important documents and evidence to prove that the embezzled property has been included in the indictment; then it is important to clarify the crime process and to fully interrogate the suspect with the following questions:
  - Position, role and power of the offender and his or her activities.
  - Determination and conclusion on how the enterprise's property has been appropriated.
  - Summarizing and reckoning the number of documents and evidence in the case in order to classify evidence, including inculpatory and exculpatory evidence, so the prosecutor can easily interrogate the suspect.

Note that in addition to statements and testimony, the prosecutor should use concrete material evidence to analyse, argue and draw conclusions of criminal activity based on specific characteristics of the embezzled property.

- + For embezzlement cases including assessment and appraisal reports, prosecutors should actively request assessors to explain what legal foundations have been executed to determine violations, consequences, property appropriated and whether such consequences have been caused by a person who holds position, power or mission in financial or economic management.

### **1. Preparing Arguments**

In addition to the above suggestions, one of the most difficult and complex situations which prosecutors must expect is remaining composed during trial because defence lawyers will be



trying to protect their clients and prove their innocence, or at least cast doubt on their guilt. Prosecutors should pay attention to the following matters:

*Firstly*, analysing documents and evidence to make clear the object and objective of the crime in connection with the offender's position, power and mission characteristics, compliance with financial management and economic management of the offenders at their enterprise, agency or organization;

*Secondly*, clearly proving the consequences of the crime, which include the appropriation of state property, the relationship between the cause and effect of the illegal acts and the motive to appropriate property at the offender's direction and by the offender's decision;

*Thirdly*, clearly proving that economic and financial operations have been executed with the subjective awareness of the offenders by intentional acts and fraudulent schemes caused by non-compliance with economic management principles, financial management principles and private motivation which existed before the offender decided to commit the crime for his or her own personal gain. This can be done by:

- Making reports and suggestions on the level of penalty.
- Making draft arguments: in property embezzlement cases, the focus of the argument is the use of material evidence presented in the indictment in order to analyse fully the crime's motivation, the goal of the appropriation of property through means, artifices and orders executed by the offenders.
- Preparing for possible situations and other circumstance which could happen at trial in order to provide suitable solutions.

### **C. Skills for Prosecution and Adjudication at Trial**

- Supervising criminal procedure based on provisions and regulations of the Criminal Procedure Code 2015.
- Preparing mentally to present the indictment.
- Preparing to deal with the jury, defence lawyers, offenders and other persons participating in the trial.
- *Interrogation method*: questions must be short and clear; they should not be long or complicated, and especially leading questions should not be asked. The questions should be designed to reveal clear explanations of the embezzling acts, artifices and consequences of the crime.
- *Skills for argument at trial*: In practice, when dealing with prosecution and adjudication of embezzlement cases, new information is provided in the process of interrogation and argument at trial. Therefore, prosecutors have to concentrate on taking notes on

documents and evidence which have passed cross-exam in order to rectify false or misleading characterizations and to cite to key evidence later.

If the jury is having difficulty reaching a decision, then the prosecutor should actively request the jury to suspend the trial for evidential review.

- *Skills for presenting arguments:* For embezzlement cases, arguments presented must be highly convincing so that members of the general public can understand the nature of the criminal conduct. Therefore, based on previous preparation, the prosecutor should focus on proper ways for proving, arguing and concluding which must be based on evidence, documents, and assessments.
- *Skills for rebuttal and other responses:* rebuttal arguments and other responses to questions posed by an offender or defence counsel must be based on evidence and documents of criminal cases, legal regulations, and provisions of law, so prosecutors should attentively listen to the accused, lawyers and persons participating in the criminal trial; prosecutors must quickly take note of controversial remarks, such as statements or opinions, in order to add them to the prosecution's written responses or rebuttals.

#### **D. Necessary Matters Done after Trial**

- Examine the trial record.
- Summarize the faults and mistakes or violations (if any)
- Review the judgment.
- Consider filing petitions to correct faults or mistakes, or, if necessary, appeal.
- Arrange and store documents and evidence according to the law.