

CORRUPTION CRIMES IN VIET NAM AND THE ROLES OF THE SUPREME PEOPLE’S PROCURACY OF VIET NAM IN DEALING WITH REQUESTS FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS RELATING TO CORRUPTION CASES

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I. THE NECESSITY OF MUTUAL LEGAL ASSISTANCE FOR DEALING WITH CORRUPTION CASES IN VIET NAM

In recent years, corruption crimes have become a national problem and directly threatened the financial security of the nation, casting doubt on the prestige and reliability of Viet Nam among the international community. According to the statistics reported by the Ministry of Public Security of Viet Nam, corruption crimes mainly occurred in the fields of economics, politics, the judiciary, education and training, healthcare, personnel management, etc. In 2015, 265 corruption cases were detected and handled. Many extremely serious corruption cases have been prosecuted and adjudicated, such as: the case of Huynh Thi Huyen Nhu and her workers at VietinBank who appropriated property by fraud, causing damage of 4 trillion VND (about 174 billion USD); the corruption case of Construction Bank’s former President Pham Cong Danh causing the damage of 18 trillion VND (about 783 billion USD); the corruption case of Ocean Bank’s former President Ha Van Tham causing damage of 27 trillion VND (about 1,174 billion USD), etc. The majority of large-scale corruption cases are foreign related ones, for instance: the corrupt property is foreign currency, offenders have interactions with foreign partners, offenders save their proceeds of corruption at foreign banks or use proceeds of corruption in business or interactions abroad or in buying real estate in foreign countries. Corruption offenders often ask their relatives or friends to help them register the proceeds of crimes in these persons’ names and move the proceeds of crime to foreign countries for dispersal and erasing traces of crime. After committing corruption crimes, offenders do their utmost to flee for shelter in neighbouring countries via border paths or flee to countries which do not have bilateral treaties on extradition with Viet Nam in order to avoid being extradited back to Viet Nam and being prosecuted for their criminal liability. Others even flee to countries which do not impose the death penalty or do not execute death penalty judgments so that they will not be sentenced to the death penalty if they are extradited back to Viet Nam.

It is predicted that corruption crimes in Viet Nam will trend towards transnational organized crime with collusion between domestic offenders and their foreign accomplices. There will be an increase in the number of Vietnamese corruption fugitives to foreign countries. They conspire to obtain a huge number of properties by corruption domestically and disperse these proceeds of corruption to foreign countries. Once their criminal acts are detected by investigation agencies,

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they will intermediately escape to foreign countries to avoid being caught. Some offenders even send their children to study abroad to make preparations in advance. With huge proceeds of corruption at their disposal, corruption offenders lead enjoyable lives in foreign countries, which are indeed their ideal shelters. This situation requires criminal justice authorities of each country to further strengthen cooperation aiming at taking tougher measures on fighting against corruption crimes, defeating completely the conspiracy of corruption offenders to flee abroad for shelter. Hence, mutual legal assistance in criminal matters is considered as one of the most important channels for international cooperation in the criminal justice field, especially for supporting each country in dealing with foreign-related criminal cases including foreign-related corruption cases. It is mutual legal assistance in criminal matters that helps domestic investigation agencies and prosecution services collect relevant information, materials and necessary evidence in foreign countries for proving offences and deciding on whether or not to prosecute the accused. In fact, many cases have been suspended or even dismissed by the courts because of the lack of executed requests for mutual legal assistance from foreign countries. Thus, promotion of mutual legal assistance in criminal matters among criminal justice authorities of every country for fighting against corruption crimes in the context of globalization and international integration is completely indispensable.

II. THE ROLES OF THE SUPREME PEOPLE’S PROCURACY OF VIET NAM IN DEALING WITH REQUESTS FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS RELATING TO CORRUPTION CASES

Pursuant to Paragraph 2, Article 493, Criminal Procedure Code 2015 of Viet Nam, the Supreme People’s Procuracy is the Central Authority of the Socialist Republic of Viet Nam for mutual legal assistance in criminal matters and other types of international cooperation in criminal proceedings in accordance with law. As the Central Authority of Viet Nam for mutual legal assistance in criminal matters, the Supreme People’s Procuracy has the power, on behalf of the Socialist Republic of Viet Nam, to undertake the negotiation and conclusion of Treaties on Mutual Legal Assistance in Criminal Matters between Viet Nam and other countries, as well as to make decisions on receiving and dealing with requests for mutual legal assistance between Viet Nam and foreign countries, which covers: 1. Service of papers, dossiers and documents related to criminal legal assistance; 2. Summoning of witnesses and experts; 3. Collection and supply of evidence; 4. Penal liability examination; 5. Escorting prisoners for providing evidence; 6. Transfer of offenders for prosecuting criminal liability; 7. Information sharing; 8. Other requests for criminal legal assistance.

Under the Law on Organization of the People’s Procuracies of Viet Nam, the Supreme People’s Procuracy has the functions of executing public prosecution power and supervision over mutual legal assistance in criminal matters. Specifically, the Supreme People’s Procuracy is empowered to make final decisions on requesting the competent agencies of foreign countries to summon witnesses and experts, to collect and provide relevant evidence, and to prosecute offenders who are appearing in the requested nation for his or her criminal liability. In addition, the Supreme People’s Procuracy also has the power of deciding to transfer requests for mutual legal assistance in criminal matters made by Central Authorities of requesting nations to competent investigation agencies of Viet Nam for initiating criminal proceedings and investigation. The Supreme People’s Procuracy supervises the execution of requests for mutual

legal assistance by competent investigation agencies, procuracies and courts. Once violations are detected, the Supreme People's Procuracy asks them to make sure that the information, materials and evidence collected legally via the mutual legal assistance channel will be promptly sent to the Central Authority of the requesting nations.

Before making decisions on sending the requests for mutual legal assistance to the Central Authority of the requesting nations, the Supreme People's Procuracy plays a core role in examining the dossiers of request for mutual legal assistance made by investigation agencies in Viet Nam to make sure that the requests are made in accordance with both the Law on Mutual Legal Assistance of Viet Nam and the bilateral or multilateral treaties on Mutual Legal Assistance to which Viet Nam and the requested nation are parties; the requests have to be translated into the languages that are stipulated in the treaties or are acceptable by the requested nation. One of the most important points that needs to be overseen by the Supreme People's Procuracy is the offences mentioned in the requests for mutual legal assistance have to comply with the dual criminality principle in order to avoid refusal to execute by the requested nations. Fortunately, corruption is viewed as a crime under UNCAC and the penal codes of almost all of countries worldwide. This means the requests for mutual legal assistance relating to corruption cases will meet the requirement of dual criminality and will be handled if they are made in the correct format.

In recent years, as the Central Authority of Viet Nam for mutual legal assistance in criminal matters, the Supreme People's Procuracy has made a positive contribution to the process of dealing with foreign-related corruption cases in Viet Nam. Notably, in the case relating to the Ha Noi urban railway project in 2015, six senior officials of Viet Nam Railway Corporation were accused of extorting a JTC contractor to give a bribe for creating favourable conditions for the implementation of the urban railway project in Ha Noi. In the beginning stage of the investigation of this case, a group of prosecutors from Tokyo visited the Supreme People's Procuracy and cooperated closely with the Department of International Cooperation and Mutual Legal Assistance in Criminal Matters. The two sides kept in regular contact during the process of dealing with the case, especially in the process of summoning and interviewing witnesses and relevant persons both in Japan and in Viet Nam to clarify the criminal acts of the defendants. Eventually, all six defendants were sentenced to imprisonment for the offence of abusing their positions and powers while undertaking official missions, which is one of the offences stipulated in the group of corruption and position-related crimes under the Penal Code of Viet Nam. The most severe penalty, 13 years of imprisonment, was imposed on the ringleader, Pham Hai Bang, former Deputy Manager of the railway project PMU under Viet Nam Railway Corporation for his receipt of the bribe.

In another case, Giang Kim Dat, former Head of the Business Division of Vinashin Corporation, a State-Owned Corporation, and his accomplices embezzled more than 260 billion VND (about 11.3 million USD) and then fled to Cambodia. The Supreme People's Procuracy requested Cambodia to assist in searching for, arresting and transferring Giang Kim Dat back to Viet Nam. Meanwhile, the Supreme People's Procuracy also requested the Singaporean side to assist in providing information and recovering the proceeds of crime. In 2017, the High Court in Ha Noi sentenced Giang Kim Dat to the death penalty for committing the offence of embezzlement.

Viet Nam has witnessed the trend toward transnational corruption crimes. Thus, mutual legal assistance in criminal matters is one of the most important steps in the process of investigation, prosecution and adjudication of foreign-related corruption cases. The evidence collected via mutual legal assistance channels is acknowledged as a legitimate source of evidence in accordance with the Criminal Procedure Code 2015. In foreign-related criminal cases, including corruption cases, the cases may be suspended if the results of executing requests for mutual legal assistance from foreign competent agencies have not been provided within the time limit of investigation as stipulated clearly in Criminal Procedure Code. Therefore, the Supreme People's Procuracy, as the Central Authority of Viet Nam for mutual legal assistance in criminal matters, has to play a positive role in dealing with foreign-related corruption cases, to bring corruption offenders to justice, and to contribute to the sustainable development of the nation.