

NEW AND EMERGING FORMS OF CORRUPTION IN VIET NAM

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The practice of solving corruption cases in recent years in Viet Nam shows that corruption is the most complicated and difficult to prove as compared with other crimes. This crime is committed by individuals with powers, positions and professional qualifications in the field of work, having wide social relations, and the ability to influence other people under their authority, and they commit criminal acts in a sophisticated way and are capable of concealing their criminal acts.

Among the types of corruption that have been detected and handled, emerging corruption cases are related to state assets, finance and banking. Most of these cases are very serious or particularly serious; the value of appropriated or damaged property is huge with a large number of defendants, and each defendant/accused has a different role and position, performs a different function, task or stage of work with close, well-organized connections. The criminal acts take place for a long time, infringing upon many laws.

I. THE CHARACTERISTICS AND MODUS OPERANDI OF CORRUPTION CASES

Corruption cases generally have similar characteristics, such as the subject of the crime, the self-interested mental state of the accused and the criminal conduct.

A. The Characteristics of Corruption Cases

Regarding the subject of crime: Like other corruption cases, in the corruption cases related to state assets, finance and banks, the subject of the crime is a person holding position of authority, powers by appointment, election or assignment in an agency, organization or economic unit. However, in these cases, there are many defendants/accused holding positions and powers in many agencies, organizations and units inside and outside the State colluding to commit crime. Position and authority are not only the specific personal characteristics of the offender, but also a means used by the offender to perform self-seeking motives through appropriating or causing damage or loss of property of agencies, organizations or economic units. Common positions and powers of offenders in these cases are heads of ministries, sectors and local authorities, chairpersons of the management board, directors, deputy directors, accountants, treasurers and bank officials. For example, in case of offender Pham Cong Danh, he and his accomplices were convicted of the crimes of “Deliberately violating the State's regulations on economic management, causing serious consequences”¹ and “Violating regulations on lending in business activities”. activities of credit institutions”,² “Lack of responsibility causing serious consequences”,³ the Procuracy prosecuted all 46 defendants, including the accused who is the Deputy Governor of the State Bank, the Chairman of the State Bank of Viet Nam. Director General of Management Board of Dai Tin Commercial Joint Stock

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¹ Article 165 of the revised 2009 Penal Code.

² Article 179 of the revised 2009 Penal Code (Article 206 of the revised 2017 Penal Code).

³ Article 360 of the revised 2017 Penal Code.

Bank (TrustBank) and many other companies. Or the case of offender Vu Huy Hoang and his accomplices were convicted crime of “Violating regulations on the management and use of state assets, causing loss and waste”⁴ and the crime of “Violating regulations on land management”,⁵ which occurred at the Ministry of Industry and Trade and in Ho Chi Minh City in relation to the land No. 2-4-6 Hai Ba Trung, District 1, Ho Chi Minh City, the Procuracy has prosecuted the accused, who are the Minister, Deputy Minister of Industry and Trade, Vice Chairman of the People's Committee of Ho Chi Minh City and leaders of relevant departments. For corruption related to state assets, finance, and banking, in the past 10 years, Viet Nam's criminal justice agencies have prosecuted 6 ministers and former ministers, 13 general officers in the armed forces, a number of deputy ministers, former deputy ministers, provincial chairmen, provincial vice-chairmen; many leaders of banks and companies.

Regarding the subjective consciousness: the main purpose of the accused and defendants is self-interest expressed in receiving material benefits (taking bribes, embezzlement of property) or causing losses, damage of property of the State, the bank to benefit themselves or other defendants. For example, in the case of Phan Van Anh Vu committing the crime of “abusing positions and powers while performing official duties”,⁶ the defendants took advantage of their assigned positions and powers to transfer the ownership and the use of land owned by the State to companies established and operated by the defendant at a cheap price and then sold the land to third parties for profit and causing damage to State assets.

Regarding objective behaviour: in these cases, the accused and defendants performed many different acts, not only infringing upon many relationships protected by law such as: the proper functioning of state agencies, organizations and units; ownership relationship; order of economic management and in some cases even infringed upon administrative management order. For example, in the case of Pham Cong Danh, the defendants violated the administrative management order (regulations on state management of economic management), infringed on economic management relations (regulations on lending activities of credit institutions) to cause damage to the bank. Objective acts that the accused and defendants perform are often interlaced and consecutive, in which there are acts performed with the nature of the preceding acts, creating conditions for the performance of specific acts specified in the composition of that type of crime. In the case of offender Nguyen Bac Son, he and his accomplices were convicted of the crimes of “Violating regulations on management and use of public investment capital, causing serious consequences”,⁷ “Giving bribes”,⁸ “Bribery”,⁹ which occurred at Mobifone Telecommunications Corporation, Global Audiovisual Joint Stock Company (AVG), Ministry of Information and Communications, defendants Nguyen Bac Son, Truong Minh Tuan, Le Nam Tra has taken bribes to decide and direct Mobiphone company to buy AVG company at a price many times higher than the real value, causing loss of state property.

B. Modus Operandi

Corruption cases typically involve similar tactics. The accused and defendants establish many legal entities to use as tools to commit crimes. In order to establish these legal entities, the accused and defendants ask or direct their relatives and/or subordinates to provide

⁴ Article 219 of the revised 2017 Penal Code.

⁵ Article 229 of the revised 2017 Penal Code.

⁶ Article 356 of the revised 2017 Penal Code.

⁷ Article 220 of the revised 2017 Penal Code.

⁸ Article 364 of the revised 2017 Penal Code.

⁹ Article 354 of the revised 2017 Penal Code.

identification documents to complete the dossier and act as their legal representative. In fact, these companies have no business activities, are only used to sign their names in economic contracts, open bank accounts, carry out procedures to legalize loans, act as intermediaries in financial transactions, disbursing, receiving money from the bank and then transferring it back to the defendants or opening securities accounts in order to perform acts of manipulating the stock market and earning illicit profits.

1. False Identity Documents

In the case of offender Pham Cong Danh and his accomplices, Pham Cong Danh directed his subordinates to use 12 legal entities belonging to Thien Thanh Group Company, owned by Danh, to sign fake lease contracts with his own companies; Prepare documents for purchase and sale of building materials, develop a debt repayment plan to borrow money from VNCB Construction Bank. After being disbursed, Danh continued to direct the transfer of more than 644 billion VND (29,272,000 USD) to personal accounts and then withdrew money to pay debts for six companies of Thien Thanh Group with Danh as Chairman of the Management Board in the name of customer care money but actually transferred money to Danh. Or the case of stock market manipulation related to the FLC Group Joint Stock Company, which the Vietnamese legal proceedings agencies are currently dealing with. According to the initial investigation results, it was determined that Trinh Van Quyet directed his younger sister Trinh Thi Minh Hue to borrow the citizen identity cards of 26 individuals who are relatives of Quyet's family to establish 20 enterprises, and she then opened 450 securities accounts at 41 securities companies to perform acts of manipulating stock prices in order to create fake supply and demand with six securities codes of companies established or directed by Quyet, to gain illicit profits of initially estimated at VND 975 billion (44.3 million USD), causing especially great losses to investors.

2. Using Established Legal Entities, Subordinates and Relatives to Sign Economic Contracts, Buy and Sell a Property to Inflate the Value and Then Collude with the Bank to Mortgage or Resell that Property to the Bank, Earning an Amount Many Times Higher Than the Real Value of the Property

In the case of Hua Thi Phan and her accomplices, convicted of “Abusing trust to appropriate property” and “Deliberately violating state regulations on economic management, causing serious consequences”, after buying house No. 5 Pham Ngoc Thach, Ward 6, District 3, Ho Chi Minh City, Hua Thi Phan instructed her subordinates to buy and resell many times to increase the value of the house to 8 times higher and then sell the house to Dai Tin Joint Stock Commercial Bank for 1,256 billion VND (57,000,000 USD), appropriated from the Bank 1,105 billion VND (50,200,000 USD).

3. Colluding with the Bank's Leaders, Using an Asset, Then Overstating its Value, Mortgaging It at Different Banks to Borrow Money, and Then Legally Appropriating It, Leading to the Inability to Repay the Debt, Causing Damage to the Bank

In the case of Pham Cong Danh who used some real estate in Ho Chi Minh City and Da Nang City to mortgage at many banks to appropriate 2,095 billion VND (US\$ 95,227,000).

4. Making False Documents, Validating the Investment, Payment to Withdraw Money from Enterprises and Banks

For example, in the case of offender Ha Van Tham, he and his accomplice were convicted of “intentionally violating State regulations on economic management, causing serious consequences”, “embezzlement of property”, “abuse of positions and powers to appropriate assets”. Ha Van Tham, as Chairman of Ocean Commercial Joint Stock Bank (Ocean Bank),

and his accomplices made 45 false contracts to withdraw money for personal use, causing damage to the bank in the amount of 118 billion dong (US\$ 5,336,000). In Dinh La Thang's case, defendant Trinh Xuan Thanh, as Chairman of the Vietnam Oil and Gas Construction Corporation (PVC), set out a policy and colluded with a number of other defendants by making false documents to withdraw 13 billion dong (about US\$ 59,000) from the Vung Ang - Quang Trach Project Management Board for personal use.

5. Intentionally Violating the State's Regulations on Economic Management to Appropriate Property or Cause Damage to the Bank or the Company in which the Offender Holds a Leadership and Management Position

For example, in the case of offender Ha Van Tham, with the position of Chairman of OceanBank, Ha Van Tham directed to pay bank deposit interest rates exceeding the ceiling rate prescribed by the State Bank, to pay extra interest, collect other fees in contravention of regulations. In order to legalize and withdraw the differences of amount (interest rate exceeding the ceiling rate and illegal fees) out of the bank, Tham and his accomplices required customers who borrowed capital or bought foreign currency to sign a service contract with BSC Vietnam Joint Stock Company (founded by Tham) and transferred the differences to this company. In the case of offender Dinh La Thang, former Chairman of the Membership Board of the Vietnam Oil and Gas Group (PVN), despite knowing that the Vietnam Oil and Gas Construction Joint Stock Corporation (PVC) is incompetent and has a financial imbalance but still set out guidelines and decided to appoint contractors, allowing PVC Corporation to perform many bidding packages in the Construction Project of Thai Binh 2 Thermal Power Plant in contravention of regulations, and at the same time directed subordinates to advance more than 66.2 million USD for PVC, causing damage to the State of nearly 120 billion VND (5.4 million USD).

6. The Consequences of Crime

The appropriated amount of money, the value of damaged property caused by the criminal acts of the accused and defendants in these cases are very huge. In the case that happened at Mobifone Telecommunications Corporation, Audiovisual Global Joint Stock Company (AVG), the Ministry of Information and Communications, defendant Nguyen Bac Son received a bribe of 3 million USD, and the defendants caused damage to state property of 6,500 billion VND (more than 300 million USD). In the case of offenders Ha Van Tham and Nguyen Xuan Son, the defendants embezzled state assets with an amount of more than 2.5 million USD, and at the same time caused damage to Ocean Bank of more than 1,300 billion VND (more than 72 million USD). In Vu Huy Hoang's case related to the land at No. 2-4-6 Hai Ba Trung Street, the defendants caused damage to the State amounting to VND 2,700 billion (more than USD 130 million).

II. EXPERIENCES IN THE PROCESS OF EXERCISING THE PUBLIC PROSECUTION AND SUPERVISING INSTITUTIONS: INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES RELATED TO STATE ASSETS, FINANCE AND BANKING

The Procuracy plays an important position and role in the process of solving criminal cases. It is the agency that exercises the public prosecution and supervises judicial activities, and the Procuracy has taken many measures to ensure the resolution of criminal cases in general, and corruption cases in particular, to which the offender shall be charged, investigated, prosecuted and adjudicated in a prompt, strict, accurate, fair and lawful manner. The Procuracy must

neither let injustice be done against the innocent nor omit offences and offenders. As discussed further below, the Procuracy pursues the maximum recovery of corrupt assets.

The Procuracy has the following roles and responsibilities in handling criminal cases: Supervising 100 per cent of crime information and denunciations, petitions for institution of proceedings, ensuring that the institution of the case is grounded, and the case is handled according to its competence; strictly supervise the receipt and preparation of casefiles to handle crime information; proactively set out requirements of inspection and verification to clarify the facts, orient the inspection and verification by the investigating agency; resolutely request or directly issue decisions to annul the unlawful decisions to open or refrain from opening criminal cases by the investigating bodies; directly inspect and verify when detecting serious violations of the law or signs of omission of crimes which the Procuracy has requested in writing but the investigating agency does not correct accordingly etc; ensure 100 per cent of corruption-, position- and economics-related cases must be instituted and investigated according to law as soon as there are sufficient grounds.

The Prosecutor General of the Procuracy at all levels directly directs the exercise of public prosecution, supervision of the investigation, prosecution and adjudication of corruption and position cases. Prosecutors firmly grasp the progress of the investigation of the case, proactively make investigation requirements to orient and support investigators in collecting evidence and documents to clarify circumstances in the case, accurately identify the offender and appropriated or lost properties; being cautious in considering and approving procedural orders and decisions submitted by the investigating agencies; directly interrogate the defendant before approval in cases where the arrested person, the defendant does not admit or has a conflict between documents and evidence; strictly and fully perform direct supervision when investigators conduct investigative activities such as: search, confrontation, voice recognition etc; implement and strictly supervise the interrogation of the accused, taking testimonies with audio or video recording; strictly supervise the transfer of investigation documents; closely supervise the decision to suspend the investigation, especially the suspension of exemption from criminal liability or because of acts that do not constitute a crime; strictly manage the case file and the defendant in temporarily suspension in order to request recovery of the case when there are sufficient grounds, to avoid omitting criminals, offenders etc.

During the prosecution stage, the prosecutor carefully studies the case file, obtains the defendants' testimony to examine and assess their prior statements, documents, incriminating evidence and exculpatory evidence in a comprehensive and objective manner before deciding to prosecute, ensuring that the prosecution is performed in an accurate, fair and lawful manner.

In the process of adjudicating corruption-, position- and economic-related cases, the Prosecutor collects both incriminating and exculpatory evidence, fully anticipates issues to be questioned, develops a plan for arguments and response at the trial, and drafts accusation right from the trial preparation stage. At the trial, the Prosecutor actively interrogates and argues to clarify the circumstances of the case, present documentary evidence and arguments to fully respond to the opinions of the accused, defence counsels and participants in the proceedings, and closely supervises the adjudication activities of the Trial Panel.

Regarding recovery of corrupt assets, the Procuracy proactively sets out investigation requirements, requests for inspection and verification of assets; closely coordinates with the investigating agency to apply measures to seize or distrain assets, freeze bank accounts of those suspected of crimes relating to corruption and position right from the stage of denunciation,

crime information; promptly applies measures to prevent the suspected from transferring, dispersing, concealing or legalizing assets; encourages offenders to voluntarily hand over the appropriated property, to voluntarily recover the damage caused. Prosecutors directly participate in interrogation activities of the defendant, request agencies and organizations to provide documents related to the assets of the defendant in the case in order to promptly detect the assets coming from the criminal, assets owned by the defendant, assets of the defendant but transferred to his/her relative's name with signs of property dispersal, and on that basis, request the investigating agency to apply measures to distrain assets and freeze bank accounts.

III. DIFFICULTIES FACED BY VIETNAMESE CRIMINAL JUSTICE AGENCIES IN DEALING WITH CORRUPTION CASES

Viet Nam's legal system is constantly being improved, creating a legal basis to detect and handle corruption and abuse of position cases quickly and promptly. However, some regulations related to land, state property management, economy, finance and banking are still unclear and unspecific. A number of regulations are still inconsistent with the provisions of the Criminal Procedure Code, causing difficulties for criminal justice agencies in the process of resolving corruption and abuse of position cases.

To determine the amount of appropriated money and the value of damaged property caused by the criminal acts of the accused or defendants in cases related to state property, finance, banks, criminal justice agencies must have the ability to assess and value cases like a specialized agency. However, many cases happened many years ago in which books and documents were lost and destroyed; construction works were damaged or still in the process of construction, leading to incomplete collection of documents, difficulties in assessment and valuation, and even some cases could not be assessed and valued.

Corruption and position-related crimes are often accompanied with money-laundering and transnational crimes. Therefore, to solve and clarify the whole case and ensure that no offenders are omitted requires mutual legal assistance and international cooperation. However, the cooperation in the fight against crime between countries still does not meet the requirements. In some cases, the defendant flees to other countries, and Viet Nam's investigative agency has made an international arrest but to no avail.

Because the assets appropriated by defendants are typically quite large, especially in cases related to state assets, bank and finance, the assets are often transferred abroad for dispersal or money-laundering. Therefore, verification and recovery of these assets are often difficult, depending on the cooperation of the country where the assets are located:

<https://lsvn.vn/tuong-tro-tu-phap-hinh-su-asean-va-thuc-tien-thuc-hien-cua-viet-nam.html>

IV. NEW AND EMERGING TRENDS OF CORRUPTION IN VIET NAM

The recent practice of dealing with corruption and position cases related to State property, finance and banks has shown that corruption and position-related crimes related to State assets, finance, and banks tend to be increasingly serious. A large number of defendants and the accused participate in sophisticated schemes infringing upon many social relations and, at the same time, appropriate property and its damage is serious and involves close collusion between the defendants, the accused, holding positions and powers in State agencies. The defendants and the accused also work in banks and private companies, and many cases involve foreign elements. Along with the development of the economy and the policies promoting development,

creating favourable conditions and business environment for enterprises, corrupt acts are expected to increase in number and in the seriousness of their nature in the near future.

The speed of urbanization and the rapid development of the real estate and financial markets is the driving force for economic and social development, but these markets also become the targets of corruption. Besides new and innovative forms of investment and business to optimize profits, increase quality and efficiency, corruption related to State assets, finance and banks are also planned. Corruption will appear in more forms, employing sophisticated schemes. The stricter degree of collusion requires criminal justice agencies to continuously update knowledge and information, have an accurate and appropriate approach to identify all criminals, but not criminalize business relationships to ensure a stable business environment, protect legitimate businessmen.

Corruption involving position-related crimes involving state property, finance, and banks are not only limited to the territory of Viet Nam but are gradually expanding to many foreign individuals and organizations.

The development of science and technology also creates conditions to commit corruption, conceal their criminal acts, organize, connect with accomplices, launder money, disperse corrupt assets and flee when discovered.

V. SOLUTIONS AND RECOMMENDATIONS

A. Legislative Activities

Amending and perfecting the law on state asset management, finance and banks, ensuring to fill legal gaps in accordance with international treaties that Viet Nam has signed and international practices while minimizing violations and crimes; create a clear and transparent legal corridor in the management and handling of crimes. Administrative reform, improving the efficiency of public service performance, limiting and ending the "ask-give" mechanism of administrative agencies and state management.

B. International Cooperation

Strengthening the negotiation and signing of mutual legal assistance agreements; strengthening cooperation between law enforcement agencies in different countries, first of all in the ASEAN region, regularly exchange practical experiences, closely coordinate in crime prevention and control, especially in corruption, position-related crimes and money-laundering; quickly and promptly providing mutual legal assistance, extradition and recovery of criminal assets.

C. Activities of Exercising of Public Prosecution and Supervising Institutions: Investigation, Prosecution and Adjudication of Corruption and Position-related Cases

Leaders of procuracies at all levels must uphold their responsibilities, especially the heads; regularly direct, guide and inspect the professional activities of the prosecutor, directing the settlement of problems in the process of exercising public prosecution and supervising investigation and adjudication. For cases of corruption and position-related crime, the Chief Prosecutor must direct and assign experienced and capable prosecutors to perform the task of exercising public prosecution, supervising investigation and adjudication; must directly examine documents and evidence in order to promptly detect violations and shortcomings in the process of handling crimes information and denunciations, petitions for institution and

investigation. Leaders need to promote collective wisdom through roundtable meetings among members of the Procuracy Committee at the provincial level, internal meetings at the district level to assess evidence for complicated cases and to discuss solutions; to establish expert working groups to assist the Prosecutor in the process of settling the case.

Focusing on the evaluation, arrangement, use and appointment of Prosecutors in order to select the prosecutors with sufficient qualities, capabilities and qualifications to meet the requirements of performing their assigned responsibilities and tasks on the basis of responsibility, quantity and efficiency, sense of professional discipline; ability to research, grasp, propose and handle situations arising in practice.

D. Innovating and Improving Training

Training institutions of the Procuracy need to invest in building curriculum and invite experienced and qualified lecturers to train in-depth skills in receiving and handling crimes information, denunciation and proposing to institute cases of corruption and position-related crimes; make investigation requirements, request collection of evidence and documents, develop expertise in solicitation and interrogation of the accused; interrogation skills at court; argumentative and debating skills. Focusing on summarizing practice, developing topics to draw experience to organize specialized training courses or in-depth training to equip Prosecutors and legal officials with knowledge and skills; organize annual intensive training courses to draw experience, exchange and update knowledge and skills in dealing with corruption, positions, and economics related to position cases.