

ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

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I. INTRODUCTION

Anti-corruption is an important task and is always regarded by countries as a leading priority. One of the components that plays a key role in dealing with this threat is the criminal justice system. Discovering corrupt conduct and applying criminal procedure measures to bring corruption offenders to justice are considered as difficult and sophisticated processes, requiring judicial authorities to have sufficient capacity and expertise along with legal power provided by the laws. In this process, criminal investigative authorities must play a pivotal role to contribute to the effort in the fight against corruption as their main function is to discover, locate and obtain evidence and documents to determine and prove corrupt acts. To effectively perform investigative activities against crimes in general and corruption crimes in particular, it is desirable for countries to establish an appropriate system of investigative agencies in addition to improving the criminal procedure legislation related to the investigative phase. As a result, countries will be able to efficiently investigate crime including corrupt acts. This paper will introduce measures to enhance investigative ability in corruption cases in Vietnam, including its system of investigative agencies, measures in the investigative phase, procedures in the prosecution phase as well as some difficulties and challenges in investigating corruption cases.

II. SYSTEM OF INVESTIGATIVE AGENCIES

According to its legal system, Vietnam has the following investigative agencies¹:

1. Investigative agencies in the Public Security Department;
2. Investigative agencies in the Army;
3. The investigative agency under the Supreme People's Procuracy.

The system of investigative agencies in the Public Security Department consists of security investigative agencies and police investigative agencies. The system of investigative agencies in the Army consists of military security investigative agencies and military criminal investigative agencies. Generally, both systems of investigative agencies in the Public Security Department and investigative agencies in the Army are organized at three administrative levels, including the national, provincial or equivalent, and district or equivalent levels. Concerning

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¹ Act of Criminal Investigation 2004.

investigative scope, the system of investigative agencies in the Army shall only investigate crimes under the jurisdiction of the military courts. The investigative agency under the Supreme People's Procuracy shall investigate crimes violating judicial activities and those committed by judicial officers. The system of investigative agencies in the Public Security Department shall investigate all kinds of crime except for crimes investigated by the investigative agencies in the Army and the Investigative Agency under the Supreme People's Procuracy². Most corruption crimes are investigated by the investigative agencies in the Public Security Department. Therefore, there are specialized units in this force, including the Department for Investigation of Corruption Crime under the Police Investigative Agency of the Ministry of Public Security, the Divisions for Investigation of Corruption Crime under the Police Investigative Agency of the Public Security Department in provinces or cities equivalent to provinces and, depending on certain cases, Teams for Investigation of Corruption Crime under the Police Investigative Agency under the Public Security Department in districts of each province.

III. TYPICAL PROCEDURES AND INVESTIGATIVE ACTIVITIES DURING THE INVESTIGATIVE PHASE

A. Some Typical Procedures

Dealing with reports about crime: Any citizen, state agency or organization can make reports about crime to law enforcement agencies. Reports about crime can be made in writing or orally, as long as oral reports are reduced to writing.³ In relation to competency, the investigative agency that receives a report deals with the investigation. The relevant People's Procuracies (prosecution offices) shall be responsible for supervising the handling of reports about crime conducted by the investigative agencies. When receiving reports about crime, the People's Procuracies or other law enforcement agencies shall, without delay, send them to a competent investigative agency to be handled. In terms of procedures to deal with reports about crime, the investigative agency shall deal with the report about the crime within a period of 20 days and decide whether to initiate a criminal case. When the report involves complex crime, the period to deal with such report may be more than 20 days but no more than 2 months. When dealing with a report about crime, the investigative agency must apply measures to protect the people making the report and inform them and the relevant People's Procuracy of the result.⁴

Initiating criminal investigation: Upon a finding that a crime occurred, the investigative agency shall issue a decision to initiate the criminal case to conduct investigative activities about the crime. Crimes are typically identified using the following methods: (1) Crime reports made by citizens; (2) Reports of crimes provided by any agencies or institutions; (3) Reports of crime by the media; (4) the law enforcement agencies themselves discover the crime; (5) the offender surrenders himself.⁵

Initiating the criminal case against the accused: When there are sufficient grounds for believing that a person has committed a crime, the investigative agency shall issue a decision to initiate investigation against such person. The decision to initiate investigation against a person

² Article 110 of the Criminal Procedure Code

³ *Id.* at Article 101.

⁴ *Id.* at Article 103.

⁵ *Id.* at Article 100.

shall indicate the offence that the person is alleged to have committed, the provisions of the penal code applied, the date and place at which the crime occurred and other facts of the crime.⁶

Basically, to officially investigate a crime in accordance with provisions of the Criminal Procedure Code, the investigative agency shall issue the decision to initiate a criminal case, and the decision to investigate, against the suspect. These two decisions shall be sent to the relevant People's Procuracy for ratification.

Preventive measures: Along with procedures to issue the above-mentioned decisions and depending on the level of crime, preventive measures may be imposed against the suspect, the accused or any dependents. Such preventive measures include urgent arrest, arrest for detention, and detention. The decision or order to apply preventive measures is made by the investigative agency and shall be ratified by the relevant People's Procuracy. In some cases, preventive measures may not be imposed against the accused or the defendant, but the accused may be placed under house arrest. Other preventive measures may be applied against the accused or the defendant, including release on bail subject to a cash bond or on the defendant's personal recognizance (promise or guarantee to attend court).⁷

Officer in charge of investigation: Normally, after the decision to initiate an investigation against the accused is issued, the head of the investigative agency shall assign an investigator to handle the case. Once assigned, the investigator can carry out any investigative activities provided in the Criminal Procedure Code to prove the crime, including interviewing the accused, taking statements of witnesses, the victim or other parties, conducting interviews and interrogations, identity confirmation, conducting searches and seizures of evidence and freezing assets.

B. Some Investigative Activities during the Investigative Phase

Interviewing the accused: The accused is interviewed and his/her statement is made in writing in most of cases. In addition, the interview may be tape recorded. The interview is conducted in the form of questions and answers. The questions and answers are to determine whether or not the criminal act occurred and other facts relevant to the case. Any contents of the written statement of the accused must be confirmed by the signature of the accused as well as the investigator. The counsel or the interpreter can participate in the interview pursuant to the Criminal Procedure Code. Where necessary, the prosecutor may participate in the interview and may directly raise questions.⁸ The accused has the right to make a confession but is not required to prove his or her innocence.⁹ Thus, investigative agencies are not allowed to rely only on a confession by the accused to prove the criminal act. The confession of the accused must be corroborated by other evidence to prove the crime.

Taking statements of the witnesses: Those who know about the facts of the case can be summoned to provide statements. When not appearing after being summoned, the accused can be compelled to cooperate with the investigation.¹⁰

⁶ *Id.* at Article 126.

⁷ *Id.* at Articles 80, 81, 86, 88, 91, 92, & 93.

⁸ *Id.* at Articles 131 & 132.

⁹ *Id.* at Article 10.

¹⁰ *Id.* at Articles 133-135.

Confrontation: When there are contradictions between statements of two or more parties in the case, the investigator can conduct interviews and interrogation. The investigator can pose the same question to different parties or can ask the parties separately. The investigator can also allow the parties to ask questions to each other.¹¹

Identification: Where necessary, the investigator can present objects or photos to the witness, the victim or the accused for the purpose of identification. The investigator must ask the identifying person in advance about the details, traces and characteristics owing to which they may make the identification. The identifying person can be asked to explain why he/she can identify such objects or photos. The identification must be conducted in the presence of the third party.¹²

Search, seizure and freezing assets: When there are sufficient grounds for believing that there are instruments or proceeds of crime or any evidential items at a place or in a person's possession, the investigative agency can ask such person or the person controlling such place to voluntarily surrender such instruments or proceeds of crime or evidential items. Otherwise, a search is conducted. The search must be in the presence of a third party.¹³

Restraint: Restraint may be applied in cases where the accused may be imposed with the punishment of confiscation or pecuniary penalty or for the purpose of civil responsibility.¹⁴

Forensics: Where necessary, the investigating agency may carry out forensic work to clarify matters such as financial forensics, asset evaluation, and a person's liabilities. Forensic work is conducted by the forensic center in the Public Security Department and the army. Currently, there are not any private forensics centers or forensics centers in universities in Vietnam.

IV. PROSECUTION PHRASE

Generally, after finishing the investigative phrase, the investigative agency shall make a report called the "investigative conclusion" of the case. The investigative conclusion is attached to the file of the case, which is later sent to the People's Procuracy to decide whether to prosecute. When finding that the case requires further investigation, the People's Procuracy may either return the file to the investigative agency for further investigation or directly conduct additional investigation. When the investigation of the case is considered to be fully completed, the People's Procuracy shall make an indictment within the period of time required by law. The period in which the People's Procuracy must issue the indictment is 20 days for most cases, which may be extended by no more than 10 days. For serious cases, an indictment must be filed within 30 days, but this period may be extended by no more than 15 days.¹⁵ The content of the indictment shall include the time and place at which the crime occurred; methods, motives, and consequences of the crime; facts and evidence to prove the crime and other matters relevant to the case.¹⁶

¹¹ *Id.* at Article 138.

¹² *Id.* at Article 139 of the Criminal Procedure Code.

¹³ *Id.* at Articles 140-143.

¹⁴ *Id.* at Article 146.

¹⁵ *Id.* at Article 166.

¹⁶ *Id.* at Article 167.

After issuing the indictment against the accused, the People's Procuracy shall send the case to the court for trial. The prosecutor must study the case carefully to defend his/her indictment against the accused.

V. DIFFICULTIES AND CHALLENGES IN INVESTIGATING CORRUPTION CASES IN VIETNAM

Corruption is a sophisticated and complicated criminal act, which is committed by those who abuse power, have acquaintances and are able to exert influence on the criminal justice system in order to avoid prosecution for their wrong doings. Like other countries, investigative activities against corrupt acts in Vietnam face numerous difficulties and challenges.

The first concerns Vietnam's current status of legislation. The implementation of investigative activities has shown that Vietnam's legal framework in anti-corruption is probably insufficient, outdated and incomprehensive. An example of this is dealing with instruments and/or proceeds of crime, which is as important as the prosecution of the corruption offender. With regard to this, the purpose of the provisions on tracing, restraining, freezing, and seizing assets in the Criminal Procedure Code is just to facilitate the prosecution of the crime, not really aiming at confiscation of the unlawful assets themselves. Vietnam is now implementing policies to make assets transparent; however, this effort does not seem to be effective. This may allow the corruption offender to conceal the proceeds of crime. Meanwhile, the criminal procedure legislation of well-developed countries considers asset recovery and confiscation as tasks essential as the prosecution of the offender, in which civil forfeiture is a process separate from the prosecution of the offender. Therefore, Vietnam's Criminal Procedure Code is not really an effective legal instrument to deal with the proceeds of corrupt acts. In addition, the criminal procedure code lacks provisions to enable investigative activities aimed at corruption acts, such as asset evaluation, financial forensics, voice recording, surveillance, and collection of electronic evidence. Concerning the Penal Code, some corruption offences remain unclear and obscure. This may cause difficulties determining and proving corrupt acts.

The second is the organization and collaboration of law enforcement agencies. The laws authorize the investigative agencies to investigate corruption crimes; however, these agencies cannot exercise their functions without the cooperation of other law enforcement agencies. In practice, investigating financial matters is a challenge. Vietnam has an anti-money-laundering department, but the powers and functions of this agency have remained limited. There has been an absence of specialized agencies for financial forensics or intelligence units. This has also caused a number of difficulties in investigating corruption cases as well as confiscating proceeds of crime.

The third problem may be human resources. Vietnam has made huge efforts to improve its human resources in the criminal justice system. However, these efforts have not met requirements in reality. Some investigators do not have enough experience, knowledge and capacity related to corruption crime, such as international laws, financial legal matters, intensive investigative skills, foreign languages or high-technology facilities.

The fourth problem is international cooperation in the fight against corruption. Corruption offenders tend to run to foreign countries to avoid punishment. There have been some cases in

which Vietnam has requested foreign countries to extradite offenders for prosecution in Vietnam, but such extradition requests have been refused. Additionally, asset recovery is a problem. Due to differences between legal systems; Vietnam has not implemented the process to return unlawful assets related to corrupt acts.