

COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE PRACTICES IN VIETNAM

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I. OVERVIEW

In recent years, Vietnam has been promoting the fight against corruption. The guidelines, policies and laws of Vietnam express a strong determination to prevent and eliminate corruption. In 2005, the government adopted the Anti-Corruption Law, which criminalizes several types of corruption, establishes asset disclosure requirements for governmental officials, and establishes whistle-blower protection. Vietnam ratified the United Nations Convention against Corruption (UNCAC) in 2009, adopting an implementation plan in the following year. The country has participated in several regional and world forums against corruption, has endorsed the Anti-Corruption Action Plan for Asia and the Pacific in July 2004, and has joined the South-East Asian Parties against Corruption (SEA-PAC).

Especially, the Amended 2015 Penal Code has some major policies for corruption crimes as follows: i) Expanding the concept of corruption crime in the private sector like property embezzlement, taking bribes...; (ii) Expanding the content of “bribery” to include “non-material benefits”; (iii) Modifying and supplementing some criminal elements; (iv) Specifying details of offences and determining penalty frames.

However, Vietnam still suffers from a poor ranking in the Corruption Perceptions Index. In the Corruption Perceptions Index 2017, which measures the perceived levels of public sector corruption, Vietnam performed below average with a score of 35 on a 0 (highly corrupt) to 100 (highly clean) scale. Vietnam ranked 107 out of 182 assessed countries worldwide.

The National Anti-Corruption Strategy 2020 by the government highlighted that the system of policies and laws has not been well synchronized or well aligned; especially there is the lack of a comprehensive long-term strategy or plan for preventing and combating corruption. This means that, Vietnam does not have a strong judiciary and that investigation, prosecution and adjudication face many difficulties and obstacles.

II. AN ACTUAL CORRUPTION CASE AND PROBLEMS IN VIETNAM

A. An Actual Corruption Case

Vinaline is Vietnam National Shipping Lines, established in 1995, which is a state-owned company managed by the Vietnam Maritime Administration and the Ministry of Transport and Communication. The case of embezzlement caused serious consequences in Vinaline is as follows:

In January 2012, the Investigation Department of the Ministry of Public Security (C48) confirmed the signs of crime concerning floating dock 83M, which was produced in 1965 but is now badly damaged and no longer active. The Russian Registrar stopped issuing inspection licenses, and it was not eligible to be imported to Vietnam. Earlier, in the process of buying that floating dock, Vinalines had sent 4 officials to Russia to assess the technical status and legal records of floating dock 83M. They set up 2 fake dossiers of contracts of floating dock 83M for 2.9 billion dongs. On February 1, 2012, C48 decided to prosecute the case and arrested those 4 officials above.

On June 6, 2012, when C48 was investigating the case in Vinalines, DCD — Chairman of Vinalines Board — it was decided by the Prime Minister of Vietnam to appoint the Director of Vietnam Maritime Administration.

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On May 17, 2012, C48 issued a decision to arrest DCD but he fled to Cambodia. On May 18, 2012, C48 made a special wanted decision for accused Duong Chi Dung.

On September 5, 2012, Vietnamese police coordinated with the Royal Cambodian police to arrest DCD who was hiding in Phnom Penh, after his failed attempt to escape to the United States. DCD escaped with the help of his brother, Duong Tu Trong (Deputy Director of Hai Phong City's Police Office) who used all tricks to destroy hiding evidence.

On December 16, 2013, the Hanoi People's Court sentenced DCD to the death penalty on charges of "embezzlement". DCD had to return and compensate 10 billion dong.

B. Problems in Investigation, Prosecution and Adjudication

1. Difficulties in Identifying Corrupt Acts and Individuals

Corruption is one of the white-collar crimes along with fraud, bribery, insider trading, cybercrime, copyright infringement, money laundering, identity theft and forgery. However, it does not mean that every police officer, prosecutor or judge can identify them. Most corruption cases are often hidden for a long time before being discovered. Vietnam has been changing from a socialist command economy to a market economy with both private and public ownership of the factors of production. Offenders often abuse this situation to convert state money into their private money. Furthermore, corruption cases often occur in many fields of governance such as education, economics, justice, infrastructure construction and so on. It requires investigators, prosecutors, lawyers, judges and juries to have wide knowledge and skills to handle such cases. Corruption crimes are committed by people who have expert knowledge and skills in their job and wide knowledge of the law as well. So they are able to figure out loopholes that help them perform criminal acts. In Vietnam, we face many difficult problems with investigation of corruption crimes because of the lack of experts and experience.

2. Difficulties in Investigation, Prosecution and Adjudication of Corruption Cases

Firstly, there are many problems in collecting and protecting evidence in corruption cases because most of these cases concern powerful leaders in government who abuse their positions and conceal their crimes. It is a fact that many corruption cases have not been discovered for this reason. Offenders often use technology to conceal their crimes. After being detected, offenders hide, falsify or destroy documents, making it difficult to collect evidence. After charging suspects, prosecutors must continue to handle evidence in such a way that it is admissible and persuasive in court. It is very important to protect evidence because it impacts whether or not corruption crimes will be convicted. Offenders often deny guilt or keep silent in court. If evidence is not strong enough to incriminate offenders, prosecutors will lose the case.

In the case of DCD, he had good relationships with leaders in the government, and his brother was a senior policeman in the city in which his company was located. He committed a crime and escaped easily. He had been engaging in corruption for seven years. According to the investigation agency, the Ministry of Public Security: "this case caused serious damages, very complex and affected [the] reputation of the Vietnamese government". After being detected, he fled to Cambodia with the help of his brother and a senior officer in the Ministry of Public Security. The investigation agency arrested him by an international arrest warrant with the Interpol Notice. The Vietnamese government had lost a lot of time, effort and money to solve this case.

Secondly, another difficulty in investigating and prosecuting corruption cases is international cooperation because many corruption cases are related to foreigners or international organizations. Vietnamese police and prosecutors have to ask other countries for help to gather evidence. Much key evidence can only be collected abroad, but we do not have authority to investigate overseas so we need help from other countries. However, the results of international cooperation were not what we had expected, or it took a long time to get the results and so on. It was easier working with countries that we had entered into treaties with on Mutual Legal Assistance in Criminal Matters and Extradition than it was with countries that we had not entered into treaties with.

Also in the case, there was key evidence that DCD signed an approval decision to buy floating dock 83M from Russia. He bribed intermediary companies to falsify contracts of sale and payment, then doubled the dock's price. This means that he converted state property into his private property. We had to ask for help

from the Internal Affairs Department of Russia to collect this information. After arresting Dung in Cambodia, we had to have him extradited to Vietnam based on the Vietnam-Cambodia Treaty on Mutual Legal Assistance.

Thirdly, the use of expert witnesses suffers from many inadequacies because determining loss of property is the first thing to prove in a corruption case. If we cannot demonstrate damage to property, then no crime has occurred. Investigators must have financial and accounting expertise, technical expertise and quality construction expertise and so on. These are important sources of evidence to prove the crime, and sometimes they are the only source of evidence. However, agencies which are needed for their expertise are often uncooperative, afraid of testifying in open court.

Lastly, corruption cases in Vietnam often involve accomplices, which means that there are at least two people who commit the crime. In some cases, this number can be larger. Offenders often collude closely using sophisticated tricks. The more people that are involved in the crime, the more successful the crime is. This problem is also difficult for investigators and prosecutors in Vietnam. In a corruption case, we have to select investigators and prosecutors who have the experience and knowledge of measures for dealing with this type of crime, but we do not have enough people who meet those requirements. Moreover, anti-corruption in Vietnam is quite sensitive, and it directly attacks powerful people in the government so that investigators and prosecutors deny investigating because they do not want the corrupt conspirators to retaliate against them. Additionally, some judicial officers have been bribed, and they continue to abet corruption crimes.

3. Difficulties and Restrictions in Asset Recovery

In Vietnam, in recent years, the results of corruption property recovery are still limited which are caused by the following difficulties:

- Difficulties in verification of assets, verification of judgement execution because in corruption cases, offenders often do not declare assets, or they disperse or hide assets;
- The police and prosecutor's offices have not been aggressive and have not promptly applied preventive measures to avoid the dissipation of corrupt assets;
- Corruption acts are often committed by many offenders so the investigation process often requires assessment to determine the damage, but the assessment of economic losses, land etc. is quite complicated.

III. SOLUTIONS TO AND NEW IDEAS FOR ANTI-CORRUPTION IN VIETNAM

To improve preventing and combating corruption in Vietnam, we suggest the following solutions:

Firstly, it is necessary to promote education, improve awareness and establish a sense of responsibility within the Communist Party and among all citizens, the state and the unions. They should have a comprehensive and deep understanding that corruption is a crime and that it is also an indicator of degenerating morality and personality, degrading lifestyle, and is the internal enemy existing inside each person. The employees and civil servants must be trained in the courses of morality before working. Raising social pressure to severe criticism for corruption and reporting cases of corruption through media is an example.

Secondly, the Government has to strive to improve its legal systems and promote the lives of public servants. We should make changes, adjustments and amend legal provisions which are inaccurate or unclear in order to minimize the abuse of loopholes. Corruption crimes must be considered as crimes; punish the evil to protect the good. Corruption must be punished; the higher positions and powers they have, the heavier punishment they will get when they engage in corruption; there must be no restricted areas, no exceptions. Moreover, the wage regime must be radically reformed. The low or inadequate salaries will distract officials from their jobs or lead to corruption.

Thirdly, Vietnam needs to have policies to protect whistle-blowers and their families from criminal defendants and offenders. At present, legal protection for whistle-blowers is insufficient; whistle-blowers are

afraid of retaliation; thus would-be whistle-blowers do not dare to denounce the criminals. Likewise, it is necessary to impose strict penalties against persons holding positions of power for their corrupt acts. Vietnam should have a “resignation mechanism” for those who do not deserve to stay in office, make mistakes or are guilty of crimes. The result of Vietnam’s anti-corruption efforts has been ineffective; however, no one takes responsibility or resigns as a result.

Furthermore, Vietnam should add provisions about responsibilities of legal offices in verifying assets of judgement execution. It’s necessary to state that at the beginning of corruption investigations, property distraint measures should be applied as soon as possible in order to avoid the dissipation of assets. Besides, Vietnam should supplement the regime for declaration of assets and incomes; supplement regulations on income control for civil servants who have positions and powers.

Finally, Vietnam should reinforce international cooperation in identifying and handling corrupt acts by delegating investigations or requesting foreign agencies to verify, freeze and confiscate corruption proceeds originated in those foreign countries or sent to those countries from Vietnam. Vietnam should reinforce cooperation in preventing money laundering activities, enhance mutual assistance in the investigation, and detect and identify money laundering offences.

Fighting against corruption is a difficult, long-term battle that requires strategic measures. It is hoped that these measures will reverse the increasing trend of corruption in Vietnam, which will improve Vietnam’s ranking in the Corruption Perceptions Index in the near future.