



Completing Law to Ensure Human Rights in Crime Investigation in Vietnam

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Abstract: Human rights are the great value of human society that we are trying to keep it based on legislation. Human rights are influenced by the conditions of politics, economics, history, and socio-culture of a particular country. Vietnam is on the way to socialism; therefore protecting human rights is critical as it is an essence as the nature of socialism. Although achievements of human rights protection, Vietnam has still faced a number of offense human rights, particularly in crime investigation activities. Hence, it is necessary to comprehend law to ensure human rights in crime investigation in Vietnam.

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1. Introduction:

Human rights are the fundamental rights of a human. Ensuring human rights is to create a legal, institutional and social environment so that basic human rights are respected and not compromised; is a prevention activity, prevention of human rights violations, strict handling of violations of human rights. Protecting human rights is the common value of humanity, as specified in the International Covenant on Human Rights and other legal instruments that Vietnam has signed. When the acts of infringing on human rights are condemned, the State functional agencies shall promptly detect and make inquiries clearly so as to handle them strictly according to the provisions of law.

Criminal handling is the state's most severe form of punishment for offenders who can be sentenced to life imprisonment or capital punishment. Therefore, a criminal investigation is directly related to the rights and legitimate interests of people. If a criminal investigation is carried out objectively and legally, it is the best way to protect human rights. If the investigation activities are lacking in objectivity, unfairness and law violation, it is a direct violation of the human rights of honest people, the innocent and criminals. The legal basis for criminal investigations is the system of legal documents. Therefore, in order to ensure human rights in a criminal investigation, the leading factor is the improvement of the legislation related to criminal investigation.

The article contains three main sections: the need to ensure human rights in criminal investigations in Vietnam; the status of legislation documents related to human rights assurance in criminal investigation and the emerging issues; some recommendations to improve the law and

measures to enhance the protection of human rights in a criminal investigation.

2. The need to ensure human rights in criminal investigations in Vietnam:

The practice of criminal investigation in Vietnam in recent years is complicated by the complexity of identifying the truth. Besides the great achievements contributing to national security and maintaining social order and safety, the criminal investigation activities also appear shortcomings and weaknesses. Over the past years, there have been cases where the investigation process of the Investigation Department and investigators has been shortcomings due to limited capacity, causality in working procedures and flaw laws. There is an abuse of power leading to serious consequences for citizens, and procedural prosecutors such as investigators, procurators, and Judge.

2.1. Case studies in Vietnam in recent years:

The case of Mr. Tran Van Them (81 years old, lived in Yen Phu commune, Yen Phong district, Bac Ninh province) has been sentenced to death for more than 40 years, convicted of murder and robbery. On 11 August 2016, Mr. Them had been proved innocent.

Mr. Tran Van Chien was justified after the execution of life sentences of murder. The case occurred in May 1979, the victim was the police chief of Tan Dien commune, Go Cong Dong district, Tien Giang. After more than 16 years of imprisonment, in August 1995, he was released from bail. Two years after Mr. Chien's release from prison, Tran Van U admitted that only he was the only



murder. At the end of 2004, Chien was compensated by the People's Court of Tien Giang Province for 252 million VND due to the wrong sentence.

Mr. Bui Minh Hai is a cadre of Long Tan commune, Nhon Trach district, Dong Nai province. On the afternoon of 24 January 1998, he went to Long Thanh town to have a party with his friends and brought his Seiko watch for repair. On the way back to the workplace, due to drunkenness, he fell and dropped the watch by the side of the road. Near the scene where Mrs. Dung was killed, the police collected Hai's watch and accused Hai as the murderer. In November 1998, the Dong Nai Provincial People's Court sentenced Hai as the crime of murder, robbery, and rape. Later, the investigation agency arrested Nguyen Van Teo who admitted to have killed Mrs. Dung. After 16 months of imprisonment, Hai was vindicated and compensated 59.9 million VND for the wrongful conviction. There were officers, in this case, to be forced to suspension or removal.

In the case of Huynh Van Nen, the only person in the history of prosecution carried two criminal charges of murder. In April 1998, he was accused of using a rope to kill Mrs. Le Thi Bong for robbing the ring. More than two years later, the People's Court of Binh Thuan province sentenced him to life imprisonment for murder, 3 years for robbery and 2 years for intentional destruction of property. During the investigation process, Mr. Nen and nine people from his wife's side were also in charge of killing Ms. Duong Thi My five years ago. After 12 years, the investigation agency had insufficient evidence, and not been able to find the suspect. Mr. Nen's family was vindictive, compensated nearly one billion VND. Nearly 17 years in jail, at the end of 2015, Binh Thuan Provincial Public Security suspended the execution of Mr. Nam after finding out the killer. As soon as he was released, he wrote a complaint to the Supreme People's Procuratorate to prosecute 14 officers involved his case which caused him and 9 people in his wife's family. He claims compensation of 18 billion VND for two wrong charges of murder.

In 2003, Nguyen Minh Hung was arrested and imprisoned as a drug dealer transporting heroin in Tay Ninh province. According to the delivery notebook and the boss's testimony, Mr. Hung was charged with illegally transported 25 packs of heroin. He was sentenced to death with five others. On the second appeal in April 2007, the court found contradictions in evidence against him. In particular, the head of the line petitioned for court appeal to Hung on the grounds of earlier false statements. Also, according to her statement, the notebook had been edited and added the name of the Hung below. This is done by a female investigator of Tay Ninh police. Due to the investigation officer's threat, she declared that Hung has joined the line. After more than four years of waiting for justice in prison, Mr. Hung was finally released and being apologized publicly by the authorities in the locality and compensated more than 100 million VND.

In August 2003, Nguyen Thanh Chan was arrested by the police of Viet Yen district, Bac Giang province, who allegedly killed her neighbor Nguyen Thi Hoan. Nguyen Thanh Chan was convicted of murder and sentenced to life imprisonment. His wife had gone to many authorized agencies to complain about her husband. She also sought to clarify the culprit of the case, Ly Nguyen Chung and convinced Chung to confess to the police. Chung admitted to kill Hoan to rob two rings with 59,000 VND. In early 2014, Mr. Chan was found innocent, vindicated and he received a compensation of over 7 billion VND.

3 young people were released after 10 years in prison for rape. In the custody appeal of the custodian on January 26, 2010, Mr. Le Huu, The deputy director of the Supreme People's Procuratorate affirmed: "The investigation agency was lacking in objective and inadequate. The investigation process has many serious breaches of criminal procedure law. The first instance and appellate judgments were based on the evidence which lacks objectivity of the investigation".

Through the investigation of false cases, it emerged that in investigating activities, there have been no manifestations or even serious violations of the regulations investigated as investigators are not careful in the collection, analysis, evaluation of information on the scene, on the corpse. Furthermore, they force the suspects to make statements "fit" with the documents collected by the investigation agency. The taking of testimony of witnesses proceeds in a very sketchy manner and does not analyze the objectivity or contradiction in the testimony of the witnesses. Investigation agencies did not exercise the right of the defender. Investigation process was not supervised properly in these cases due to irresponsibility. Procurators did not detect contradictions in the records resulting in prosecution or prosecution of defendants lack objective evidence to identify criminals. The trial also did not respect litigation, assesses the evidence publicly at the trial, especially the information from the defendants, lawyers, and the others.

Among the causes of problems, the major cause is the flaw of the legal system in investigating activities.

2. Current status of legal documents related to human rights assurance in criminal investigation and issues

2.1. The provisions on the competence of criminal investigation activities and the provisions of the law on human rights enshrined in the system of Vietnamese legal documents and international law which Vietnam has signed

Firstly, the provisions of the Constitution on Human Rights: The Vietnamese constitutions: 1946, 1959, 1980, 1992 (amended 2001) and the Constitution 2013 affirm the fundamental rights of citizens and protect them by law. The Constitution- the first Constitution of the Democratic Republic of Vietnam, now the Socialist Republic of Vietnam, Article 6 stipulates: "All Vietnamese citizens are

equal in politics, economics, and culture"; Article 10 states: "Vietnamese citizens have the rights: freedom of speech; freedom of publishing; freedom of organization and association; freedom of belief; freedom of residence, travel within the country and abroad.

Regarding the investigation activities, Article 11 of the Constitution of 1946 states: "The judiciary has not yet decided to arrest and detain Vietnamese citizens. Housing and correspondence of Vietnamese citizens cannot be illegally violated" (Yem & Luyen, 2002).

The 1980 Constitution provides for the fundamental rights of citizens. In connection with the investigation, Article 69 states: "Citizens have the right to inviolate their bodies. No one shall be arrested without the decision of the People's Court, the decision or the approval of the People's Procuracy. The arrest and detention of persons must be in accordance with the law. Prohibit all forms of coercion, corporal punishment" (Hai, 2008).

Article 72 of the 1992 Constitution states: "No one shall be considered guilty and shall be punished without having been sentenced by a court of competent jurisdiction. Persons who have been arrested, detained, prosecuted or tried in contravention of law are entitled to compensation for material damage and restoration of their honor. Persons who commit illegal acts in arresting, detaining, prosecuting or adjudicating persons who cause damage to other persons must be strictly dealt with."

Article 73 of the 1992 Constitution states: "Citizens have the right to inviolate on accommodation". Vietnam's Constitution (2013) has devoted Chapter II to "Human Rights, Basic Rights and Obligations of Citizens".

Second, the oversight of the National Assembly, which oversees the criminal investigation

The National Assembly is constitutional and legislative; deciding important issues of the country; exercise the supreme supervision of the Ministry of State.

Article 70 of the Constitution of 2013 stipulates that the National Assembly has the following duties and powers: "To exercise the utmost supervision over the observance of the Constitution, laws, and resolutions of the National Assembly."

Third, the provisions of the Criminal Code and Ordinance on Criminal Investigation (now the Law on Organization of the Criminal Investigation Agency in 2015).

Provisions of the Criminal Code:

Article 2. The basis of criminal liability: "Only those who commit a crime prescribed by the Penal Code shall be subject to criminal liability."

Article 3. Principles:

"1. All offenses must be detected promptly, dealt with promptly and fairly in accordance with law.

2. All offenders shall be equal before the law, irrespective of gender, sex, ethnicity, creed, religion, composition, and social status".

Provisions of the Ordinance on Organization of Criminal Investigations:

Article 5 of the Ordinance on Criminal Investigating stipulates the principles of investigative activities:

"1. Only investigation agencies conduct a number of investigative activities as prescribed in this Ordinance shall be allowed to conduct criminal cases investigations. All investigative activities must follow the Criminal Procedure Code and this Ordinance.

2. Investigative activities must respect the truth, conduct objectively, comprehensively and fully; to accurately and promptly detect all offenses, clarify evidentiary evidence and evidence of innocent, aggravating circumstances and extenuating circumstances of the offenders."

Fourthly, the provisions of the Criminal Procedure Code and the Procurator Law

Article 4 of the Criminal Procedure Code (2003) stipulates the respect and protection of the fundamental rights of citizens. Article 6 of the Criminal Procedure Code provides for the safeguarding of the inviolability of citizens:

"No one shall be arrested without a decision of the Court, decision or approval of the Procuracy, except for cases of clear offenses. The arrest and detention of persons must be in accordance with the provisions of this Code. Prohibit all forms of coercion, corporal punishment".

Article 23 of the Criminal Procedure Code provides for the exercise of the right to prosecution and control of the observance of the law in criminal proceedings.

The People's Procuracy has two functions: the prosecution function and the function of the observance of the law. Activities of procurators must comply with the provisions of law. This is an important activity limiting errors, violations of human rights in the investigation.

Fifthly, the provisions on the activities of defense counsel in investigative activities (the Criminal Procedure Code, 2015)

Article 58 of the Criminal Procedure Code provides for the rights and obligations of defense counsel. The law also specifies the rights and obligations of lawyers.

Sixthly, Vietnam adheres to and strictly implements the United Nations conventions which Vietnam has signed and acceded to, including provisions related to investigative activities. That is the Convention on Human Rights; Universal Declaration of Human Rights; The Convention Against Torture.

Seventhly, the regulations on inspection, examination, and settlement of complaints and denunciations related to criminal investigation activities. As the Law on Inspection; The Law on Complaints and Denunciations, which stipulates the settlement of complaints and denunciations, is the compulsory and regular activities of functional agencies to ensure the



legitimate rights and interests of citizens related to criminal investigation activities

2.2. Inadequate legal issues related to the assurance of human rights in a criminal investigation

First of all, thinking in the current criminal procedure system in Vietnam is to build the legal system in the form of interrogation, which is reflected in the investigation to prosecution. Although there are grounds for increased litigation, neither the legal basis nor the practical application of this guarantee is enforced. The principle of "the defendant has the right to silence" has not been fully recognized in the Criminal Procedure Code.

The right to counsel is provided for in Article 11 of the Criminal Procedure Code (2003):

Persons held in custody, the accused or defendants shall have the right to defend themselves or ask others to defend them.

The investigating agencies, the procuracies, and the courts shall have the task of ensuring that the persons kept in custody, the accused or defendants exercise their right to defense according to the provisions of this Code.

In 2006, the National Assembly promulgated the Law on Lawyers, amended in 2007. However, the guiding documents for the implementation of this provision are lacking, and in particular, regulate the handling of criminal procedure proceedings who implement this right is not enough. Therefore, the right to counsel has not been taken seriously in the practice of investigation. This is one of the most fundamental causes, profoundly leading to false allegations in criminal investigations in Vietnam (Luyen, 2005).

Secondly, the Ordinance on Criminal Investigation Organization stipulates that other agencies are assigned the task of carrying out some investigative activities, but there are inconsistencies with the provisions of the Criminal Procedure Code in practice (Vietnamese Dictionary, 1997).

The Criminal Procedure Code provides for activities such as issuing a decision to institute a case, taking a testimony, conducting a field inspection, conducting a search, seizing and preserving material evidence and documents directly related to the case must be done by the heads of the investigation agencies or investigators. Therefore, the current practice, some agencies of the Police force cannot exercise the power to initiate the initial investigation in accordance with the Ordinance on Criminal Investigation.

Thirdly, the witnesses in the cases are not safeguarded while the treatment of both material and spiritual is not adequate so that many people afraid to cooperate with investigation agencies, especially in the cases of drug, economic, corruption crime. Until now, Vietnam has no Law on the protection of witnesses.

Fourthly, the rights of the accused, the defendant for the solicitation of expertise, the use of assessment conclusions are still inadequate.

The above legal obstacles create a closed investigation and many cases of lack of objectivity have resulted in serious consequences of human rights violations. In many cases, the defendant has been jailed for many years, in which case the defendant died in the detention center.

3. Some recommendations to improve legislation and measures to enhance the protection of human rights in criminal investigation:

In order to strengthen the protection of human rights in a criminal investigation, the following issues need to be addressed:

Firstly, to improve the legal system related to criminal investigation. Basic principles of common values of humankind work to ensure objectivity and transparency in investigating criminal offenses, which need to be codified as the principle of "the defendant has the right to remain silent", especially when the Law on Organization of the Criminal Investigation Agency and the revised versions of Criminal Code and Criminal Procedure Code go into effect, it is necessary to issue consistent guiding documents. Focusing on the breakthrough is the implementation of the principle of innocent speculation, the principle of litigation in the trial. The Criminal Procedure Code in 2015 has overcome some of the content but is not synchronous and thorough. It is necessary to promulgate documents guiding the implementation of the Code soon (Phong, 2005).

Secondly, to issue a monitoring mechanism, to increase transparency in investigative activities.

Thirdly, supplementing legal documents guiding the Lawyer Law and defenses regulation; improving the quality of the defense counsel.

Fourthly, to issue documents guiding the specialized inspection and examination related to criminal investigation activities.

Fifthly, the promulgation of the Law protects witnesses and intensifies the supervision of the people and the mass media to protect human rights.

Sixthly, the implementation of family and juvenile courts nationwide to protect the rights of juvenile offenders. Currently, this Court is being deployed in Ho Chi Minh City. Experience should be drawn for deployment in other localities throughout the country.

Seventhly, establish a national human rights agency that promotes state governance and law enforcement to ensure effective human rights.

Eighthly, strengthen international cooperation on human rights and international human rights monitoring to ensure objectivity, serious enforcement and effective human rights in Vietnam.

4. Conclusion:

Vietnam is heading to socialism - a good regime that is concerned with the protection of human rights as the



nature of the regime, of the State, which has been striving since the founding of democratic Vietnam. The Socialist Republic of Viet Nam, increasingly perfects the legal framework, mechanisms, material conditions, and organization to enforce human rights in daily life. Human rights derive from the need for human nature to protect human rights as common values in human progress, including in Vietnam. Human rights are associated with the values of politics, ethics, traditional culture, legal and socio-economic conditions of Vietnam.

Therefore, Vietnam is ready to communicate with organizations and countries that are interested in human rights in Vietnam on the principle of respect for national independence and sovereignty. At the same time, resolutely resist all human rights defenses to intervene in Vietnam's internal affairs, such as the annual human rights report of the United States, which contains the content of the human rights case. Or other hostile forces to slander Vietnam in violation of its sovereignty. Vietnam was elected as a Member of the UN Human Rights Committee (2014 - 2016) with the highest votes. This is a testimony to the prestige of Vietnam to the international community on human rights protection. Therefore, human rights must be in line with the political, economic, cultural and social characteristics of each country and human rights cannot be higher than national sovereignty.

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