

OVERVIEW OF THE TASKS AND FUNCTIONS OF THE VIETNAMESE PEOPLE'S PROCURACY IN PREVENTION OF AND FIGHT AGAINST CORRUPTION

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I. VIETNAMESE ANTI-CORRUPTION AGENCIES

The system of Vietnamese anticorruption agencies encompasses the Central Steering Committee for Directing Prevention and Anticorruption led by the Prime Minister, provincial and municipal steering committees for anticorruption which are under the direction of the Chairman of the People's Committees of the respective provinces or municipalities, and specialized anticorruption units belonging to the organizations of the government inspectorate, public security and people's procuracy.

II. THE PEOPLE'S PROCURACY

The people's procuracy service in Vietnam was established in 1960. In accordance with the constitution, the institution of people's procuracy is one of the four organs constituting the State Structure, organized as an independent hierarchy from the central to local levels, and functioning under the centralized management and control of Procurator General of the Supreme People's Procuracy (SPP). The people's procuracies perform their functions and tasks through: (i) exercising the right to prosecute and supervise the observance of the law in investigation and adjudication of criminal cases; (ii) supervising the observance of the law in the execution of judgments and decisions of the courts, and in the temporary detention, preventive detention, management and education of prisoners; and (iii) directly conducting investigation in some types of offences against judicial activities, committed by officials of judicial bodies. Under the Law on the Organization of the People's Procuracy (2002), the Investigation Agency of SPP is the only investigating body within the procuracy sector. The Investigation Agency has authority to investigate some types of crimes of infringing upon judicial activities,

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crimes of infringing upon the legitimate activities of investigating, procuracy, adjudicating and judgment-executing agencies, and crimes that are provided in Articles 292-314, Chapter XXII (Crimes of infringing upon judicial activities) of the Penal Code 1999 (revised in 2009). Those types of crimes include making illegal decisions, applying corporal punishment, forcing evidence or testimony, falsifying case dossiers, etc. However, the authority of the Agency could be expanded to other types of crimes within Chapter XXI (Positions of authority crimes) of the Penal Code 1999 (revised in 2009), which include corruption crimes, in cases where the offenders are investigators, procurators, judges, or other judicial staff. The investigating bodies system within the public security (ordinary police and security police forces) sector is responsible for investigating the remaining types of crimes provided in the Penal Code.

Under Vietnam's Law on Mutual Legal Assistance 2007 and numerous mutual legal assistance treaties signed with other states, the SPP plays the role of a central authority in mutual legal assistance in criminal matters, with its duties to receive, transfer, monitor and speed up the implementation of requests for mutual legal assistance in criminal matters, and propose revisions, supplements and further improvement to the law on mutual legal assistance. Accordingly, the people's procuracy has been coordinating with relevant domestic and foreign authorities in investigating, prosecuting and trying criminals; particularly those who commit transnational organized crime, including corruption.

III. THE SPECIALIZED ANTI-CORRUPTION UNIT OF THE SPP

1. Specialized anti-corruption units within the people's procuracy sector

There are two units specializing in prosecution and supervision over investigation of corruption cases within people's procuracies for the time being. The former belongs to the SPP (i.e., at central level) and the latter belongs to the People's Procuracy of Hanoi City (i.e., at provincial level), whose personnel both are competent officials and procurators who meet the requirements of qualification and integrity for the job.

2. The functioning and powers of the specialized anti-corruption unit of the SPP

The Department of Public Prosecution and Supervision over the Investigation of Corruption Crime of SPP (hereinafter referred to as the Department) was established in 2006, and its performance must conform to the Law on the Organization of the People's Procuracy (2002) and the Regulations on Organization and Functioning of the Department (newly revised in 2011). In the mean time, officials and procurators of the Department are implementing their duties in accordance with the relevant provisions of the domestic laws, including the Penal Code 1999 (revised in 2009), Criminal Procedure Code 2003, the Anti-corruption Law 2005, Law on Mutual Legal Assistance 2007, etc., and international bilateral and multilateral treaties to which Vietnam is a party, that include, inter alia, the United Nations Convention against Corruption.

Additionally, the Department is also functioning in effective cooperation with relevant state agencies at the central level, such as the Office of Central Steering Committee for Directing Prevention and Anticorruption, Ministry of Public Security, Supreme People's Court, Government Inspectorate, and State Audit. Thereby, the Department's performance is in accordance with the coordinative regulation that is signed by those institutions on the prevention of and fight against corruption.¹ Also, the Department is responsible for drafting regular reports submitted to the Central Steering Committee for Directing Prevention and Anticorruption on the outcome of corruption cases with specific statistics on quarterly, half-yearly, and yearly bases within the whole system of people's procuracies.²

Under the Anti Corruption Law 2005, corrupt acts include:³

- (i) Embezzling properties;
- (ii) Taking bribes;
- (iii) Abusing positions of authority and/or powers to appropriate properties;

¹ The Coordinative Regulation No. 01/QCPH dated 15 January 2009.

² On the request of the Official Correspondence No. 16/CV-BCD dated 27 April 2007 of Central Steering Committee for Directing Prevention and Anticorruption.

³ Article 3 of the Anti-corruption Law.

(iv) Taking advantage of positions of authority and/or powers while performing tasks or official duties for self-seeking benefit;

(v) Abusing powers while performing tasks or official duties for self-seeking benefit;

(vi) Taking advantage of positions of authority or powers to influence other persons for self-seeking benefit;

(vii) Committing forgeries in work for self-seeking benefit;

(viii) Giving bribes or bribe brokerage by a person in a position of authority and/or with power to settle affairs of agencies, organizations, units, or localities for self-seeking benefit;

(ix) Taking advantage of positions of authority and/or powers to unlawfully use state properties for self-seeking benefit;

(x) Harassment for self-seeking benefit;

(xi) Failure to perform tasks or official duties for self-seeking benefit;

(xii) Taking advantage of positions of authority and/or powers to cover up for law offenders for self-seeking benefit; illegally obstructing or intervening in examinations, inspections, auditing, investigations, prosecutions, adjudications, or court judgment enforcement for self-seeking benefit.

Meanwhile, in daily practice, the Department is authorized to handle criminal cases involving seven types of corruption crimes as provided in Articles 278 - 284, Section A, Chapter XXI (Positions of authority crimes of the Penal Code 1999) (revised in 2009), as follows: (i) embezzling properties (Article 278); (ii) receiving bribes (Article 279); (iii) abusing positions of authority and/or powers to appropriate properties (Article 280); (iv) taking advantage of positions of authority and/or powers while performing official duties (Article 281); (v) abusing powers while performing official duties (Article 282); (vi) taking advantage of positions of authority and/or powers to influence other persons for self-seeking benefit (Article 283); and (vii) committing forgeries in work (Article 284).

3. The annual reports of the Department

The annual work reports of the Department from 2008 to 2010 show that of the total number of corruption cases and defendants investigated for the above seven types of crime (i.e., 282 cases with 622 defendants in 2008, and 177 cases with 328 defendants in the first 10 months of 2010),⁴ embezzling properties was the most prevalent offence (i.e., 138 cases with 267 defendants and 88 cases with 157 defendants respectively) and the second largest number was the offence of taking advantage of positions of authority and/or powers while performing official duties (49 cases with 182 defendants and 36 cases with 78 defendants respectively).

Those annual reports also indicate that the total number of sophisticated and serious corruption cases and defendants handled by the Department itself remained stable, i.e., 32 cases with 315 defendants, 36 cases with 269 defendants, and 35 cases with 244 defendants in 2008, 2009 and 2010 respectively. In such corruption cases, there are several high profile cases that have been supervised and directed by the Central Steering Committee for Directing Prevention and Anticorruption. Some of them required mutual legal assistance from foreign competent authorities, and numerous defendants took advantage of the positions of Vice Minister, Director General of big state-owned enterprises, Senior Investigator, or Judge, etc., while performing official duties or receiving bribes. The corruption crimes have been committed in a wide range of public sectors, such as construction investment, trading, imports and exports, land use management, large state projects, etc.

V. CONCLUSION

It could be said that the handling of corruption cases by the people's procuracy sector in general and by the Department in particular in the past three years was in accordance with both of the national laws and relevant international conventions, which guarantee the effective investigations and prosecutions of crimes and ensure that justice is done and that the guilty shall not escape justice. The Department, functioning in close

⁴ The Annual Work Report of 2009 had not updated the statistics for the corruption cases and defendants that were initiated by the investigation agencies on the above seven types of crimes in 2009.

collaboration with relevant state agencies, has achieved significant results. However, those annual reports also reflected the fact that the number of corruption cases that had been detected, investigated, prosecuted and tried by the law enforcement agencies is still moderate in comparison to other types of crime in the same period. During the fact finding process of some complex corruption cases, the investigations still exceed the regulatory time frame.

In order to enhance the effectiveness of the people's procuracy service in handling corruption cases, the following major issues should be considered:

(i) Continuing to establish the units specializing in prosecution and supervision over investigation of corruption cases at the provincial people's procuracies, especially where more corruption acts have been committed, in order to set up a network within the procuracy sector to receive and deal with corruption crime reports or information effectively.

(ii) Enhancing the cooperation with the government inspectorates in handling alleged acts of corruption when they are detected and sending the files to the people's procuracy together with the request to initiate investigations. Thereby, the government inspectorates should be seen as one of the important channels within the executive branch which provide the procuracy with crime reports and information.

(iii) Considering a proposal to revise and supplement Articles 103, 104 and 126 of the Criminal Procedure Code 2003 by setting forth the powers of the procuracy to examine crime reports or information and initiate the investigations themselves, because the current Code lacks stipulations of investigation agencies' responsibilities in the case that they do not follow directions or instructions given by the procuracies.

(iv) Strengthening discussions with investigating agencies in order to draw lessons and experience from handling complex corruption cases to avoid undue and lengthy investigation processes.

(v) Raising the quality of issuing judicial requests to the heads of the institutions or organizations within administrative, economic, or social sectors, where corrupt acts have been committed, to take all necessary measures to prevent such violations in the future. This is one of the remaining powers since the procuracy has no longer had the power to supervise the operation of those institutions after 2002.

(vi) Improving facilities for specialized units of prosecution and supervision over investigation of corruption cases, especially applying IT in case files management within the procuracy sector. Although the information technology has been developed for a few years, the records system sometimes causes errors that limit its positive effects.