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ИСПОЛЬЗОВАНИЕ СПЕЦИАЛЬНЫХ ПРОЦЕССУАЛЬНЫХ РАССЛЕДОВАНИЙ ДЛЯ РАЗРЕШЕНИЯ УГОЛОВНЫХ ДЕЛ, СВЯЗАННЫХ С КОРРУПЦИЕЙ ВО ВЬЕТНАМЕ

Аннотация: основная тема статьи заключается в анализе и оценке практики применения положений Уголовно-процессуального кодекса, касающихся специальных мер процессуального расследования, применяемых к преступлениям, связанным с коррупцией. Цель статьи состоит в том, чтобы в будущем улучшить уголовно-процессуальное законодательство Вьетнама и повысить его эффективность.

Ключевые слова: расследование, коррупционное преступление, преступник, специальная мера процессуального расследования, дело, обвинение.

USING SPECIAL PROCEDURAL INVESTIGATIONS TO RESOLVE CORRUPTION-RELATED CRIMINAL CASES IN VIETNAM

Annotation: an analysis and evaluation of the practice of implementing the provisions of the Criminal Procedure Code on special procedural investigation measures applied to corruption crimes is the primary focus of this article. The article's



objective is to improve the criminal procedure law and the effectiveness of these measures in Vietnam in the future.

Key words: investigation, corruption crime, criminal, special procedural investigation measure, case, prosecution.

1. Provisions of the 2015 Criminal Procedure Code (amended and supplemented in 2021) on special procedural investigation measures

Procedure investigative measures are new laws in the 2015 Criminal Procedure Code (further - CPrC). When used in practice, this is a measure that has the common features of criminal case investigation but also has its unique qualities expressed in the "secret" nature. Special procedural investigative procedures include: covert audio and video recording; secret telephone conversations; and secret electronic data collecting, according to Article 223 of the 2015 CPrC. These safeguards enable the capture of high-resolution photos, high-quality audio, and other information and documents while maintaining anonymity with the intended audience and unrelated individuals. Information and documents gathered via the use of special procedural investigative techniques may be used to resolve the case. Special procedural investigative methods are used exclusively when investigating “crimes of infringement on national security, drug crimes, crimes of corruption, terrorism, money laundering, and other organized crimes in the category of particularly serious crimes” [1]. These are closely organized crimes, methods and tricks for committing crimes and concealing sophisticated and cunning crimes, subjects who are frequently stubborn, opposed to the end, lack of cooperation with procedural agencies, resulting in normal procedural investigation measures that are ineffective or inefficient.

However, since specific procedural investigative procedures connected to people' right to privacy cannot be used arbitrarily, Article 225 of the 2015 CPrC imposes rather strong limits on the power to use. As a result, the topics include: Heads of provincial-level investigating bodies, heads of military investigation bodies of military zone or higher have the authority to issue decisions to apply special



procedural investigation measures on their own or at the request of the Chairperson of the provincial-level People's Procuracy, the Chairperson of the military zone-level military procuracy. The decision to use the special procedural investigation measure must clearly state the necessary information about the object to be used, the name of the measure to be used, the time limit and location of application, the agency implementing the special procedural investigation measure, and the contents specified in Clause 2, Article 132 of the 2015 CPRC, heads of investigating bodies, heads of competent procuracies, and those who carry out decisions to employ special procedural inquiry methods must remain anonymous. [2, c.21].

The time restriction for using the special process for investigation should not exceed two months from the date of approval by the Procuracy Chairperson. Special procedural investigation measures only apply during the investigation stage and after the commencement of a case, thus if a difficult case needs time to continue gathering documents and evidences, the investigation time restriction may be extended but not exceeded [3, c.17]. If the head of the investigating body that issued the application decision believes it is necessary to extend the time limit for the application of special procedural investigation measures, he or she must send a written request to the chairperson of the procuracy that approved the consideration and decision on the extension at least 10 days before the expiry of the time limit.

Information and documents gathered from special procedural investigation measures relating to individuals' privacy, so the procedure-conducting agency and the enforcement agency must analyze, evaluate, and select valuable information and documents to prove the crime, the offender, track down accomplices, prevent the offender from fleeing, trace the offender's property... and use it as evidence for the initiation, investigation, prosecution, and trial of the crime. Information and documents unrelated to the case must be destroyed as soon as possible; the use of information, documents, and evidence gathered for other reasons is absolutely banned [4].



When it is no longer necessary to apply for special procedural investigation measures, there is a violation in their implementation, or there is a written request from the Head of a competent investigating authority, the chairperson of the same-level procuracy shall cancel the special procedural investigation measures [5, c.20]. When a district-level investigation agency or regional military investigation agency accepts the application of special procedural investigation measures and wishes to cancel them, it must send a written request to the head of the provincial-level investigation agency or military zone-level military investigation agency, who must then request the chief procurator of the same-level investigation agency.

2. Practices and restrictions in the use of special procedural investigative methods in corruption cases

The condition of corruption crime has remained difficult over time, with a rising scope in numerous professions, branches, and levels. According to the Criminal Investigation Police Department's evaluation report on corruption, economy, and smuggling, the most corrupt locations are: Capital construction investment, public asset management, finance, banking, home and land use management, land clearing, and environmental resources are some of the services offered. Corruption offenses have happened in the domains of education, health, and public policy in recent years. The investigation findings of investigative agencies at all levels of the People's Public Security Forces represent the condition of corruption offenses. The investigating bodies at all levels of the People's Public Security Forces have worked closely with the People's Procuracy and civil judgment enforcement agencies to take steps to close down and freeze accounts, as well as ask that transactions involving assets (especially real estate) connected to corruption cases be put on hold. This is all done to make sure that corrupt assets are returned.

As a consequence, in recent years, the recovery of corrupt assets has yielded notable successes, such as: The Office of the Investigation Police Agency seized about VND 5,500 billion, USD 700,000, and several other assets; implemented actions to distrain assets including 50.5 tons of steel, 6 land plots, and 04 projects in



Da Nang; and froze a VND 250 billion account. They has taken procedures to confiscate, seize, distraint, and freeze accounts worth VND 14,821.4 billion, USD 3.2 million, other assets worth VND 32,521.9 billion, and numerous more assets whose value is unknown. The Investigation Security Agency retrieved VND 725 billion and identified 44 properties [6]. Many instances, in particular, creating especially catastrophic repercussions due to the quantity of theft and massive damage, have shown the Party's and the State's dedication in the battle against corruption.

Furthermore, the investigation of corruption charges is subject to certain limits, which include: The pace of investigating very significant corruption cases that are of public interest remains sluggish; Most severe and particularly severe situations are identified by verifying the source of public complaints and conducting inspections and examinations. The procedural records exhibit a low level of quality, resulting in numerous cases requiring additional investigation files and multiple reinvestigations that can span over several years. Notably, there are instances where cases have remained unresolved for over a decade [7]. Moreover, many accused individuals and defendants experience suspension from investigation or are compelled to alter their charges during the prosecution process. The scope of asset recovery in corruption cases remains restricted and has not yet reached the level necessary to generate significant public outcry. The aforementioned limitations have multiple causes, but a significant factor contributing to these limitations is the insufficiency of legal provisions, resulting in a diminished effectiveness in combating corruption and recovering assets related to corrupt activities. Specifically:

Firstly, according to the 2015 CPrC, and in theory, procedural investigation measures should be implemented when the decision to initiate a criminal case is made and should continue until the investigation period is over. Nevertheless, using this technique from the outset of the case has challenges in meeting the investigative criteria for this particular offense. The low efficacy of implementing this technique after the commencement of the criminal case is primarily attributed to the attributes of the corrupt offender. It becomes challenging to gather evidence to substantiate the



corruption offense as well as to detect and recover corrupt assets. Consequently, employing specific investigative procedures prior to the commencement of a criminal case to gather information through interactions and solicitations and subsequently combining this information with other evidentiary documents can serve as compelling evidence to establish the commission of a crime. Employing this approach can significantly enhance efforts to combat corruption and ascertain the origin of assets that must be reclaimed.

Secondly, to guarantee that information and documents obtained through special procedural investigation methods are utilized solely for their intended purposes as specified in the decision to employ them, the CrPC 2015 mandates the following: Information and documents acquired through special procedural investigation measures may exclusively be employed for the commencement, inquiry, prosecution, and adjudication of criminal cases; any information and documents unrelated to the case must be promptly eradicated. Utilizing information, papers, and evidence gathered for alternative objectives is explicitly prohibited [8]. Nevertheless, the authors argue that the law stipulating the timely destruction of information and documents unrelated to the case, as outlined in Clause 1, Article 227 of the 2015 CrPC, is too inflexible. Some cases may indeed include information and documents gathered via special procedural investigative procedures that are not directly relevant to the current inquiry, but are still connected and have tangible significance for other criminal cases. Consequently, if compelled to obliterate, it will impede the detection and substantiation of crimes, resulting in the loss of evidence and documents.

Thirdly, the competence to decide on exceptional procedural investigative measures is mandated for the heads of provincial-level investigating bodies under the requirements of Article 225 of the 2015 CrPC. If the matter is being investigated by a district-level investigating body, the heads of district-level investigating bodies who want to use special procedural investigative measures must first request that the heads of provincial-level investigating bodies evaluate and determine whether to use them. In effect, this clause will make the urgency of the evidence-gathering procedure for



the corruption case more difficult. Because the request took many days to be approved, the subject was able to scatter papers or discreetly transfer assets to others in order to protect the quantity of assets obtained by the crime.

Fourthly, Article 223 of the 2015 CPrC only documented three procedural investigative procedures, namely secret audio and video recordings, secret phone conversations, and secret electronic data collecting. At the same time, the crime of corruption is one of the circumstances where special procedural investigative procedures may be used, pursuant to Clause 1, Article 224 of the 2015 CPrC. This clause stems from the definition of corruption as a crime. This is one of the most difficult crimes to investigate since it is essentially a hidden crime involving just two pleased persons. When there is no contradiction, there is no need to expose the truth. Furthermore, the person who conducts corruption offenses often employs criminal techniques, such as methods to conceal and remove evidence of exceedingly advanced illegal acts [8]. They also have the ability to silence individuals implicated by intimidation, even violence, in order to influence any inquiry.

3. Suggestions for enhancement

To effectively address challenges and hurdles in investigating corruption offenses, it is crucial to execute many solutions in a synchronized manner. The following solutions should be prioritized:

First and foremost, the investigation of corruption cases should be under the direct, absolute, and comprehensive supervision and control of Party committees at all levels. Conducting investigations into corruption cases is a very challenging and laborious endeavor, particularly during the pre-prosecution phase. The gathering of documents, compilation of evidence, and initial verification process have significant importance. Indeed, pursuing a very grave corruption case is quite challenging. To ensure a successful investigation into corruption charges, it is crucial for the investigating agency to gather enough evidence and seek assistance from relevant committees and local authorities.



Throughout the inquiry, investigators must actively collaborate with procurators and assessors to efficiently gather documents, compile compelling evidence, and enhance the overall quality of the case files. The investigation demonstrates that by diligently consolidating records and evidentiary documents, thoroughly examining the case, avoiding the need for further investigation and suspension of the accused and defendants, and fully implementing legal measures to seize and trace corrupt money and assets, the recovery of corrupt assets will be significantly more efficient. In order to uphold the principles of judicial reform, it is essential for investigators to provide conducive circumstances that enable attorneys to fully exercise their right to defense. They should refrain from creating obstacles or impeding the work of competent lawyers, and instead, guarantee the right to defense for both the accused and defendants involved in criminal proceedings. In the future, the investigator must further provide arguments in court to support the findings of their inquiry.

Second, it is advisable to revise and include the following clauses in the 2015 CPrC in order to streamline the investigation of corruption offenses:

- Modifying and enhancing the commencement time for the implementation of procedural investigation measures, particularly upon receipt of crime reports or recommendations for the initiation of criminal proceedings, when authorities have identified indications of crimes as stipulated in Article 223 of the CPrC in 2015.

- The 2015 CPrC grants the power to implement exceptional procedural investigative measures to the heads of district-level investigating bodies without requiring consultation, as stated in Clause 1, Article 225. Nevertheless, it is imperative to notify the director of the provincial investigative agency.

- Introducing exemptions to the regulations stated in Clause 1, Article 227 of the CPrC of 2015 (revised and updated in 2021). More precisely, any information and documents obtained by special investigative methods that are not relevant to the current case must be swiftly eliminated, unless they pertain to previous cases [9, с.39].



Third, the Ministry of Public Security should thoroughly evaluate and revise, supplement, or create a new document that establishes a coordination mechanism between the investigating agency and the specialized reconnaissance force for the implementation of special procedural investigation measures. This is to ensure strict adherence to the pertinent regulations outlined in the CPrC of 2015.

Fourth, provide professional training and expertise in the field of corruption investigation, including the use of specialized procedural investigative techniques for investigators. In order to effectively discover, preserve, and present evidence during legal procedures, it is essential for investigators to possess specialized and widely applicable legal and accounting skills and expertise due to the wide range of corruption offenses that exist. Providing training to investigators on the techniques required to handle corruption, particularly in cases of large-scale corruption crimes and corruption involving former high-ranking officials, as well as investigations and legal proceedings related to tracing, blocking, seizing, and confiscating assets in corruption cases, poses a unique challenge for law enforcement agencies in developing nations.

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