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СБОР ДОКАЗАТЕЛЬСТВ В СООТВЕТСТВИИ С ЗАКОНОДАТЕЛЬСТВОМ ВЬЕТНАМА

Аннотация: доказательства имеют решающее значение в процессе доказывании, с помощью которого компетентные органы проводят процессы, чтобы показать, было ли совершено преступление, кто совершил преступление, а также другие важные факторы, относящиеся к разрешению уголовных дел. Сбор доказательств является первым этапом демонстрации дела. Для обеспечения объективности доказательств сбор доказательств должен



осуществляться в порядке и процедурах, предусмотренных Уголовно-процессуальным кодексом (далее — УПК) Вьетнама 2015 г.

Ключевые слова: уголовно-процессуальный кодекс, доказательство, дело, собрание доказательств, стадия, расследование.

COLLECTING EVIDENCE IN ACCORDANCE WITH VIETNAM'S LEGAL FOUNDATION

Annotation: Evidence is crucial in the process by which competent authorities undertake processes to show whether or not a crime was committed, who committed the crime, and other essential factors pertaining to the resolution of criminal cases. Gathering evidence is the first stage of demonstrating a case. To ensure that the evidence is objective, the collection of evidence must be carried out in the order and procedures prescribed by the Criminal Procedure Code (further - CrPC) Vietnam 2015.

Key words: Criminal Procedure Code, evidence, case, gathering evidence, stage, investigation.

Some issues about evidence gathering in criminal proceedings

The process of demonstrating the case must go through different stages. There are many different views on the stages (steps) of the proof process, each is based on a specific theoretical basis and division method. However, it is generally agreed that the proof process consists of only three stages: collecting evidence, examining evidence, and evaluating evidence. Therefore, collecting evidence is an early stage of the process to prove the case. The results of evidence-gathering activities are important and directly affect the effectiveness of investigations, prosecutions and adjudication. Therefore, this activity needs to be conducted objectively and cautiously in accordance with the provisions of the CrPC and other relevant legal documents.

Criminals always leave traces in the objective world in both physical and non-physical forms. To prove a crime, collecting left traces is always a must. Gathering



evidences is the agency's use of legal remedies and methods as prescribed by law to detect, record, seize and preserve documents, objects, information...to serve the right resolution of the case. Gathering evidence is a combination of detecting, capturing, recording and preserving evidence.

Detecting evidence are acts of finding things, phenomena, traces, documents ... related to the case. The reality shows that each case has different manifestations and details, so it is necessary for the authorized subjects to use methods and remedies in accordance with the law of evidence's establishment and changes.

Capturing evidence is an activity conducted after the evidence is detected. It is a source of evidence that serves the proof of crime or in other words, it makes detected evidence become valuable to prove a crime. The requirements here is to ensure the safety of evidence and its demonstrating value during the whole process. Also, the seizure must follow the prescribed legal procedures as to ensure the "legal" characteristic of evidence.

Recording evidence is the making of a description about information, documents, objects...that are discovered and seized. The manifestation of this activity is usually in the form of proceedings, such as: interrogation records of suspects and witnesses, the record of property valuation...In addition, recording evidence can be expressed in many other manners: photo, crime scene diagram, conclusion of assessment ...

Preservation of evidence is the act of applying appropriate measures to protect and preserve the integrity of evidence so that it will not be lost, damaged or changed its proving value. The evidence recorded in the procedural documents is preserved in the case file. Exhibits must be preserved from the time they are detected and seized in accordance with the provisions of the CPrC Vietnam until there is a decision of a competent state agency.

In each stage of the proceedings, the competent authority applies various methods of gathering evidence as prescribed by law. Based on the provisions of the 2003 CPrC Vietnam [2], it can be seen that:



- For the stage of prosecution of a criminal case, the competent authority shall request the agency, organization or individual to provide relevant documents, objects and details related to the verification of detected information about criminals...

- For the stage of investigating a criminal case, the investigating agencies often apply many measures to collect evidence for the resolution of the case. This is an important stage in collecting evidence. In this stage, not only the participants in the proceedings but also organizations and individuals will have the right to present documents, objects and present matters related to the case.

- During the prosecution period, the procuracy collects evidence to make full understanding of problems that need to be proved but not yet investigated by the investigating agency. In case of necessity, the procuracy also has the right to conduct several investigative activities.

- In the arbitration stage, the court based on the evidence gathered at the investigation stage and examined at the prosecution stage; the results of the dispute in the court to make judgments and decisions. However, during the trial preparation period, if the judge find it necessary to consider important evidence for the case that could not be supplemented at the court, they have the right to give the case file back to the prosecuracy for futher investigation.

Provisions of the 2015 CPrC Vietnam on collecting evidence

“Article 88. Collection of evidences

1. Competent procedural authorities, to collect evidences, are entitled to perform activities of evidence collection as per this Law, and to request other authorities and entities to provide evidences, documents, items, electronic data and facts that solve the case.

2. Defense counsels, to collect evidences, are entitled to meet persons whom they defend, crime victims, witness testifiers and other individuals knowledgeable about the case to put questions and hear such persons' stories related to the case; to request authorities and entities to provide documents, items and electronic data for pleading.



3. *Other participants in legal proceedings, authorities and entities can provide evidences, documents, items, electronic data and relate matters of the case.*

4. *Competent procedural authorities, when receiving evidences, documents, items and electronic data related to the case from individuals as stated in Point 2 and Point 3 of this Article, shall make written records of submission, verify and assess such as per this Law.*

5. *In 05 days' time upon making written records of investigative activities, collecting and receiving documents on the case, which procurators do not directly administer according to this Law, investigation authorities and units assigned to investigate are responsible for transferring such records and documents to the Procuracy for the latter's administration of the establishment of case files. Such deadline may be extended for at most 15 days in case of objective obstacles. In 03 days' time, the Procuracy affixes seal on records and documents for administration and have them archived and transferred to investigation authorities and units assigned to investigate. The delivery of records and documents are executed in writing according to Article 133 of this Law."*

Compared with the provisions of Article 65 of the 2003 CPrC Vietnam, the 2015 CPrC Vietnam supplements and completes the provisions on evidence collection. Pursuant to Article 88 of the 2015 CPrC Vietnam, the act of collecting evidence is expressed in the following forms:

Self-proactive form: The competent procedural authority actively conducts activities to collect evidence, summons people knowing about the case, solicit an expert assessment, conduct searches, tests, or request authorities and entities to provide documents, items and electronic data for pleading.

For the first time in the CPrC 2015 Vietnam, the defense counsel is also the subject with the right to actively collect evidence. The defense counsel has the right to meet vindicated persons, victims, witnesses, and other persons who are aware of the cases to ask them about matters related to the cases; request agencies,



organizations and individuals to supply documents, objects and electronic data related to the defense.[3, с.20]

Passive form: Participants in legal proceedings, agencies, organizations, individuals can provide evidence, objects, documents, electronic data and present matters related to the case. In this way, for the first time in the CPrC 2015, a defendant is entitled to ask other defendants, victims, witnesses and the people concerned on matters related to the defendants [4, с.124].

According to the form of captured evidence, information and documents related to the case must be seized and recorded in the case by the determined procedure. Usually, the activities of collecting evidence are recorded in the writing of procedural activities according to the CPrC.[5, с.197]

Gathering evidence is the first stage of demonstrating a case. To ensure that the evidence is objective, the collection of evidence must be carried out in the order and procedures prescribed by the CPrC. Only general evidence collection methods provided in Article 88 of the CPrC 2015 are accepted. At the same time, the collection of exhibits must comply with Article 105 of the 2015 CPrC; a collection of electronic means and electronic data must comply with Article 107 of the CPrC 2015. When collecting specific evidence, the order and procedures prescribed for the corresponding procedural activities must be complied with

To ensure the development of a transparent, democratic judicial proceeding that respects and protects human rights and to implement the principle of determining the truth of the case, the rule of the lawsuit in court, CPrC 2015 contains new provisions on evidence collection, specifically:

- The subject who collects the evidence has been adjusted and expanded as analyzed above.

- Supplement procedures to receive evidence of the competent procedural authority. Accordingly, when receiving evidence, documents, items, and electronic data, the competent procedural authorities must make a report, examine, evaluate and put it into the case file (Clause 4 of Article 88).



- Supplement procedures for bringing evidence in the investigation stage into the case file in order to enhance the inspection and control role of the procuracy in the collection of evidence; avoid cases where competent procedural authorities try not to include sufficient evidence in the filing of cases (Clause 5, Article 88).

- Supplement the regulation on collecting electronic means and data (Article 107 of the CPrC). The regulation that identifies electronic data as a source of evidence is essential, indispensable in the current situation when the problem of using high technology to commit crimes is becoming increasingly common.

In order to collect electronic data, the procedural authority first must seize the electronic means that stores electronic data. In case it is impossible to collect electronic data storage facilities, the competent procedural authority shall carry out the backup of such electronic data into electronic media. Another way to collect electronic evidence is to prevent electronic data from being transmitted via computer networks, telecommunication networks or other transmissions.[6]

In addition, the competent procedural authority may decide to solicit expertise for restoration, search, and verification of electronic data. These collection activities are carried out on copies and must be converted into readable, audible and visible forms.

- Supplement the regulations on recording sound or video when interrogating the accused (Item 6 of Article 183 of the CPrC 2015). The reality shows that bow, torture ... are the reasons for many wrongful cases. Despite the fact that many defendants have reported in court, there was no basis for the trial panel to consider whether it was correct or not. Therefore, this is a progressive regulation, aiming to supervise the process of interrogating suspects, fight against archery, torture and ensure humiliation in the interrogation of the accused; thereby ensuring the objectivity of the accused's statements in the process of collecting evidence.

- Supplement a chapter on special methods of investigation (Articles 223 to 228 of the CPrC 2015). Accordingly, after prosecuting a case of crimes of infringing upon national security, drug-related crimes, crimes of corruption, terrorism, money



laundering or other organized crimes of extremely serious crimes, in the investigation process, the competent person conducting the proceedings may apply special methods of investigation and proceeding: secret recording; secret phone listening; confiscating confidential electronic data.

In the world, many countries such as China, Germany, France, the United States, Russia ... have regulations to apply special investigation measures to effectively fight extreme dangerous criminals [7, с.78]. However, these are measures that have the risk of violating human personal life and freedoms; On the other hand, we have no experience with practical application. Therefore, from the perspective of gathering evidence, it is necessary to research and improve the provision to ensure the legality of evidence when applying these investigation measures in practice.

In conclusion, collecting evidence is an early stage of the process to prove the case. The results of evidence collection activities directly affect the effectiveness of the investigation, prosecution, and adjudication. The CPRC 2015 was then amended and supplemented to improve the regulations on evidence collection. However, new points need to be further researched and completed; If not, these regulations will not be realistic or results collected will not guarantee the legality of the evidence.

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