

Current Situation of Corruption Offenses and Measures for Improvement of Anti-Corruption Effectiveness in Vietnam's Economy

Tran Thanh Thao^{1,2,*}

¹People's Friendship University of Russia, Moscow, Russia

²Ho Chi Minh City University of Law, Ho Chi Minh, Vietnam

*Corresponding author. Email: ttthaohs@hcmulaw.edu.vn

ABSTRACT

Along with the promulgation of 2008 Law on Anti-Corruption, thanking to the comprehensive solutions and determinations of the whole governmental apparatus, there are signals of a positive change in the fight against corruption in Vietnam's market economy. However, compared to other countries around the world, the corruption in Vietnam is still a national problem. The number of corruption cases may decline, but the scale and severity has been increasing. Many cases has involved high-ranking officials in the government with more than 20 general officers in the armed forces to be sentenced. On the basis of analysing the current situation of corruption in recent years, the author hereby recommends some synchronous solutions to improve the effectiveness of anti-corruption.

Keywords: *corruption offenses, anti-corruption effectiveness, Vietnam's economy*

1. INTRODUCTION

Corruption is a serious problem in developing countries, including Vietnam. Corruption causes great damages to the property of the State, collectives and citizens. The damaged or lost asset value involved each corruption case can reach tens, hundreds, even thousands of billion dong. These are large and worrying numbers compared to Vietnam's annual budget revenues. Consequences of corrupt acts are not only the transformation of property and interests of the State, collectives or individuals into the private property of person who commit the corrupt act, but for being more dangerous, the corrupt acts also causes damage, loss and waste of a large amount of property of the State, collectives and citizens [1-4]. Therefore, it is necessary to make researches and assessments on the current status of corruption and take action measures to prevent these acts, contributing to ensuring the stable development of the economy.

2. VIETNAM LAWS ON CORRUPTION OFFENSES IN VIETNAM'S ECONOMY

Many legal normative documents provide provisions on dealing with corruption in Vietnam, such as 2018 Law on Anti-Corruption; 2015 Penal Code (amending and supplementing a number of articles in 2017); 2008 Law on Cadres and Civil Servants; 2010 Law on Public Employees, etc. [5].

Under Clause 1, Article 3 of the 2018 Law on Anti-Corruption, corruption means an office holder's abuse of his/her official capacity for personal gain. The law is

divided into two main groups, state sector and non-state sector, with its highlight to expand the scope of fight against corruption to the private sector, an area playing a greatly important role in the development of the country and as a "backyard" supported by office holders in state organizations, the two identified groups of corrupt acts include:

Group 1: Acts of corruption committed by office holders in state organizations include 12 acts of: embezzlement of property; bribery; abuse of one's position or power for illegal appropriation of assets; abuse of official capacity during performance of tasks or official duties for personal gain; acting beyond authority in performance of one's duties for personal gain; abuse of official capacity to influence another person for personal gain; impersonation for personal gain; bribing or brokering bribery for taking advantage of one's influence over a state organization or for personal gain; illegal use of public assets for personal gain by abuse of official capacity; harassment for personal gain; failure to perform or correctly perform one's duties for personal gain; abuse of official capacity to screen violations of law for person gain; illegally intervening or obstructing supervision, inspection, audit, investigation, prosecution, adjudication or judgment enforcement for personal gain.

Group 2: Acts of corruption committed by office holders in non-state organizations include 03 acts of embezzlement of property; bribery; bribing or brokering bribery for taking advantage of one's influence over the operation of the enterprise or organization, or for personal gain.

Such division is completely consistent with the State's organizational structure as well as to classify corrupt subjects according the actual situation in our country. And, the expansion of anti-corruption to the non-state sector is

in line with the international trends and current fast-growing practice of Vietnam's economy.

In addition, Chapter IX specifies the content of dealing with corruption and other acts of violating the law on anti-corruption. Clause 1, Article 92 shows that: "Persons who commit acts of corruption, regardless of holding any position, shall face harsh penalties as prescribed by law, including those who have retired, resigned or reassigned". In addition, this Law also provides for handling of violations against anti-corruption regulations, including: information disclosure and transparency during operation of state organizations; norms, standards and benefits; code of conduct; conflict of interest; reassignment of office holders; responsibility for reporting corrupt acts and processing reports on corrupt activities; truthful declaration of assets and income and explanation for increase in assets and income; time limit for declaration of assets and income or violations against other regulations on assets and income control.

A person who commit any of the violations shall, depending on the nature and severity of his/her violations, face disciplinary actions, administrative penalties or criminal prosecution, and pay compensation for any damaged caused by such violations. A violator who is the head or deputy of a state organization shall incur harsher penalties. A violator who is a member of a political organization, socio-political organization or social organization shall also incur penalties prescribed by such organization.

3. CURRENT SITUATION OF CORRUPTION AND ANTI-CORRUPTION

Along with the promulgation of 2008 Law on Anti-Corruption, thanks to the comprehensive solutions and determinations of the completely governmental apparatus, there are signals of a positive change in the fight against corruption in Vietnam's market economy. However, compared to other countries around the world, the corruption in Vietnam is still a national problem. The number of corruption cases may decline, but the scale and severity has been increasing. Many cases have involved high-ranking officials in the government with more than 20 general officers in the armed forces to be sentenced.

As reported by the Government of Vietnam on the anti-corruption, in 2019, 26 cases (up 4% compared to 2018) were found with 30 violators by making internal inspection, while 69 cases (down 11.5% compared to 2018) were discovered through inspection activities, with 45 corrupt and corrupt-related subjects [6-9]. The handling of complaint and denunciation also discovered 17 cases (down 57.5% compared to 2018) with 37 violators. The audit activity found seven cases.

A number of 423 cases was accepted and investigated by the investigation police of People's Public Security with 1073 persons accused of corruption; including: unhandled cases of 203 with 558 defendants; on-going cases of 220 cases with 515 defendants (down 0.9% in number of cases,

up 20.6% in number of defendants compared to 2018). A number of 225 cases was completed for prosecution of 685 defendants; 14 cases with 32 defendants to be halted in investigation; 07 cases with 04 defendants to be stopped in investigation; other handling (changing crime, merging case, case handling reappointed to other forces, etc.) of 03 cases with 05 defendants. The damage was over 7503 billion VND, 22069m² of land; value of assets recovered in the accepted and invested cases was over 9455 billion VND, 11867 m² of land and lots of assets (04 houses, 23 certificates of land use rights to be distrained, accounts of 400 million VND to be frozen).

The Procuracy at all levels made prosecution against 300 cases with 672 defendants, accounting for 99% of total number of completed cases, an increase of 1% over the same period in 2018; and suspension of 03 cases with 04 defendants. The Investigation agency of Supreme People's Procuracy made new prosecution against 12 cases with 16 defendants on corruption offense in judicial activities.

The People's Court at all levels accepted 410 cases with 976 defendants on corruption offenses in the order of first instance procedure (an increase of 20.6% cases, and 18% defendants); in which 279 cases with 614 defendants to be judged by first instance trial. The proportion of serious, very serious, and particularly serious crimes accounted for 42.1% (up 0.6% over the same period in 2018). The proportion of defendants receiving suspended and non-custodial reform sentences was 23.2% (up 1.4% over the same period in 2018). Ten defendants receive death and life imprisonment sentences.

As reported by the Government of Vietnam on the anti-corruption, in 2020, there are 81 cases involving leaders to be concluded as being irresponsible for occurring corruption; 62 violators to be disciplined, including 12 violators to be criminally convicted for corrupt acts occurred in organizations or agencies under their management responsibility.

For anti-corruption work in non-state organizations, the State Securities Commission of Vietnam deployed 49 inspection teams at securities companies, fund management companies, public companies, etc. Through such inspections, to apply administrative sanctions of an amount of 2556 billion VND and an amount of 4679 billion VND to be collected and remitted to the state budget. Ministries, industries and local governments also made their inspection on the implementation of anti-corruption law as specified, and found 2 cases having signals of corruption.

For results of detection and handling of corruption, the whole inspection department made 4706 administrative inspections and 150560 specialized inspection and examination. The inspection helped improve the management work, complete legal mechanisms and policies in many fields; detect economic violations of 64551 billion VND, 7077 hectares of land; recommend to recover 26007 billion VND and over 1174 hectares of land, transfer 124 cases with 118 violators to the investigation police for criminal handling. Based on audit results, it was recommended on financial settlement of 5477044 billion VND; 04 cases with criminal signals

detected through audit to be transferred to the investigation police; 02 cases to be reported to the Prime Minister; 101 audit reports and related documents to be provided to the competent authorities. A number of 508 cases was accepted and investigated by the investigation polices of People's Public Security with 1186 persons accused of corruption. 218 cases with 621 defendants was settled by the Procuracy at all levels, accounting for 74.1%, down 1% over the same period in 2019 (including 218 cases/577 defendants to be prosecuted). The People's Court at all levels accepted 388 cases with 1101 defendants; including 203 cases/523 defendants to be judged on the first instance trial for corruption offenses.

4. LIMITATIONS AND SOLUTIONS FOR IMPROVEMENT OF ANTI-CORRUPTION IN VIETNAM'S ECONOMY

The anti-corruption measures have not been fully promoted and some of them reached the low effectiveness. The handling of responsibility of the head for occurring corruption such as change of work position, control of asset, income, and return of gifts remains lots of limitations and problems. In some localities, the head has not paid attention to full implementation of law provisions on information disclosure and transparency during operation of agencies, organizations as well as accountability in public service activities. The organizational staffing and management for purpose of anti-corruption is still limited [10,11]. Some ministries, industries and localities still remain the lack of strict approval and appointment of management level, in many cases lacking of conditions, standards, qualifications and capabilities; arranging jobs to relatives or helping relatives do business within the scope of management; lacking of determination on transferring or replacing officials according to the public opinions or having negative expression, corruption, low reputation.

The number of cases which were detected and handled does not reflect the true situation of corruption. The quality and progress of investigation, prosecution and adjudication of some corruption and economic cases have not met requirements. The coordination between functional agencies in some specific cases is still poor. The property appraisal and valuation have been increasingly improved, but it remains a number of cases which have been delayed in issuing conclusions on property examination and valuation leading to the prolongation of case resolving time. Some cases remains the situation of escaped subjects and difficulty in criminal justice assistance. The inspection and handling of corruption at localities and grassroots has changed positively without the comprehensive manner by a number of localities that still rarely detect and handle corruption cases. The recovery of asset in the period of judgment execution is not effective. There remain some officials in the anti-corruption law protection agency taking acts of corruption.

It still takes long time to complete the anti-corruption power control mechanism including the ineffective inspection and supervision on power exercise by office holders and limited inspection on staffing work; The anti-corruption assessment still faces many difficulties and is incomplete, failing to meet requirement of taking anti-corruption results as a measure of qualifications, capacities, responsibilities and levels of duty completion of the head.

Firstly, it is required to strengthen the state management in the anti-corruption work. All governmental levels need to raise perception and be aware of dangers of corruption on the economy, thereby concentrate the maximum resources on anti-corruption work. To strengthen the inspection and supervision of superiors and subordinates. To strictly examine the responsibility of Party organizations at all levels, heads of organizations, localities and agencies in case of corruption acts taken by officials under their authority. Therefrom, the instructions by the Party Central Committee on an anti-corruption work may have the power to spread among ministries, industries and localities.

Secondly, the legal system on anti-corruption needs to be completed by the Government as a legal basis for the anti-corruption work. However, the applicable anti-corruption legal system is still lacking and inconsistent. Regulations on anti-corruption work in the non-state sector are still vacant in many fields. It is necessary to complete and well implement the law provisions on responsibilities and powers of cadres, civil servants and public employees as well as responsibilities of party members to this team. It The attention on implementation of preventive measures in fighting against corruption (such as asset declaration, etc.) is still formalistic and ineffective, and it is required to continue the strengthening of inspection, examination and auditing work, especially in the fields of having a lot of negative public opinions, corruption, and waste.

It is required for the Government to study the requirements on incorporation of international law of the United Nations Convention against Corruption (UNCAC) on illicit enrichment. The above criminal provisions will lead to a request to amend the Criminal Procedure Code, thereby transferring a part of the burden of proof from competent authorities (proceedings conducting agency) to individuals so that they can prove that the source of properties is legal or illegal. To apply effectively the anti-money laundering measures specified in the 2012 Law on Anti-money Laundering. And, to make research on incorporation of international law on anti-money laundering measures specified in UNCAC, United Nations Convention against Transnational Organized Crime (TOC) and Stolen Asset Recovery Initiative of United Nations Office on Drugs and Crime (UNODC) (financial institutions may take a check on customer information for all people having political powers; requiring beneficiaries declarations; requiring income and asset declarations; conducting periodic reviews of clients who are politically powerful without any limitation on any individual who is considered a person having political power, etc.). To complete regulations on blockade, distraint, seizure and return of property gained

illegally under the criminal code, especially the blockade, distraint, seizure and return of property gained illegally with foreign factors, accordingly, to make study and supplement to regulations on orders and procedures for property blockade and distraint at the request of a foreign court. To strengthen the international cooperation in recovery of stolen assets. To join Egmont Group of Financial Intelligence Units (EGMONT).

Thirdly, it is necessary to build a specialized force who is mainly responsible in the country for anti-corruption work. This force needs to be well trained and equipped with strong legal empowerment to fight against corruption. In this force, it is essential to build a competent and qualified anti-corruption team. All corrupt officers of the Party and Government must be resolutely removed.

Fourthly, to strengthen the law dissemination and education in order to raise legal awareness of the People; promoting the role of the People and the mass media in the anti-corruption work. In the past years, the people and press force have contributed significantly to the anti-corruption work. So, in order to further strengthen the power of People and mass media in this struggle, it is necessary to raise awareness of citizens and journalists to produce sharp articles in head-on fight against corruption, waste and bureaucracy. The high-attention of People and the strength of mass media play an important factor in the prevention, fight and handling of law violation acts.

Fifthly, it is necessary to reform the salary policy so that cadres, civil servants and employees can earn the living

wages. It is also required to build an open and transparent society so that the corruption cannot exist, accordingly, office holders do not "wanna" and "cannot" take corrupt acts.

Sixthly, to strictly handle the corrupt acts if being detected. To ensure that any corrupt act will be handled by laws. The law must be strictly complied with no "forbidden zone" for law violators.

5. CONCLUSION

The researches on corruption in countries around the world and in Vietnam show that the corruption is a social phenomenon associated with the emergence of private ownership, formation of classes and establishment and development of the Governmental apparatus and powers and other public powers. The corruption exists in all regimes to varying degrees. As long as the State and political powers still exist, there are conditions for corruption. Therefore, international law includes a lot of conventions to prevent this type of act. Vietnam, as a lately developing country, needs to incorporate international laws to national laws and also, learn from the experience of developed countries in prevention and repulsion of corruption offenses.

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