

## **Procurator's Litigation in Cases of Human Trafficking in Accordance with the Law of Vietnam**

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### **Abstract**

The crime of human trafficking is defined in the Vietnam Penal Code as a crime with extreme danger to society, including: Trafficking in people (Article 150 of the Penal Code); Crime of trafficking in people under 16 years old<sup>3</sup> (Article 151 of the Penal Code); Crime of trading, appropriating human tissues or organs (Article 154 of the Penal Code). Procurators exercise prosecution rights and administer judicial activities in human trafficking cases, including litigation at court to ensure the prosecution and accusation of correct people and correct crimes in accordance with the law. The article presents the Procurator's litigation at the trial in human trafficking cases and specific litigation situations in order to improve the Procurator's awareness and skills.

**Keywords:** *Penal code, criminal procedure code, investigation agency, agency assigned to some investigative tasks, procuracy, court, procurator, judge, litigation, exercise prosecution rights, injustice.*

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## Introduction

As defined by Jurisprudence Dictionary, Encyclopedia Publishing House and Justice Publishing House in 2006, litigation "Is a procedural activity carried out by the parties involved in the proceedings (the accusing party and the accused) who have equal rights to collect and present evidence to defend their own views and interests, to reject the opposing side's views and interests. Litigation is a procedural activity conducted at the trial by two parties participating in the proceedings, in order to protect the opinions and arguments of each party and reject the opinions and arguments of the other party under the control of the Court as an intermediary, arbitrator". Litigation in criminal proceedings is the activity of the accusing party (Defendant, Procuracy) and the defendant (Defendant, the defense) in the process of resolving criminal cases to find out the objective truth and to defend their own opinion. Article 26 of the 2015 Criminal Procedure Code (CPC) for the first time stipulates the principle: "Litigation in the trial is guaranteed" with the content: "Documents and evidences of the case filed to the court by the Procuracy for trial must be complete and legal ... The Court is responsible for creating conditions for Procurators, defendants, defense and other participants to fully exercise their rights and obligations and litigate democratically and equally before the Court.

All evidences of guilt, innocence, aggravation, and extenuating circumstances of criminal liability, application of points, clauses and articles of the Penal Code to determine the crime, the punishment, compensation for the defendant, the handling of evidences and other facts that are significant for the settlement of the case must all be presented, debated and clarified at the court hearing. The Court's judgments or verdicts must be based on the results of the examination and assessment of evidences and the results of litigation at the court"<sup>4</sup>

Thus, the Court is not a subject in the litigation but is responsible for creating conditions for litigation subjects to fully exercise their rights and obligations to determine the truth of the case objectively, comprehensively and completely (Vu Gia Lam, 2015).

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<sup>4</sup> Article 322 of the Criminal Procedure Code: "Argument" concretizes the principles of litigation and contains the most complete content of the proceedings in criminal proceedings

The conclusion that a person is accused of committing a crime that the 2015 Criminal Code stipulates is most obviously reflected in the process of objective litigation at court (Hoang Van Hanh, 2015).

According to the provisions of the Vietnam Penal Code 2015 (Penal Code), the crimes of human trafficking include: crime of Human Trafficking (Article 150 of the Penal Code); Crime of trafficking people under 16 years old<sup>5</sup> (Article 151 Penal Code); Crime of trading, appropriating human tissues or organs (Article 154 of the Penal Code).

The object of the crime in this criminal group is the right to be protected in terms of human freedom, safety, honor and dignity (Nguyen Van Minh, Nguyen Thi Nhu Huyen, 2019). The crime of human trafficking violating the dignity, honor, freedom, and inviolable rights to the human body has been specified by the Constitution and other legal documents (Trinh Tien Viet, 2011). The objective acts of the crimes include many acts that infringe on human life, health, dignity or honor such as: buying, selling people or buying, selling or appropriating human tissues or organs. The subjective side of the crime is the offender's intentional sin: The offender is well aware that his offense is dangerous to the society, foreseeing the consequences but still want the consequences to happen. The subject of the crime is a person of full age for penal liability (a person aged of full 14 years or older), and has criminal liability capacity. For the crime of trading or appropriating human tissue or organs (Article 154 of the Penal Code), the subject must be a person aged of full 16 years or older.

According to the Vietnam Criminal Procedure Code, the prosecution and investigation of criminal cases belong to the investigation agency<sup>6</sup>, the agency tasked to conduct a number of investigative activities<sup>7</sup> (hereinafter collectively referred to as Investigation agency). The Investigation agencies have the duties, powers as well as responsibility to promptly detect all crimes, criminal acts, prosecute the case, promptly conduct all investigation measures to

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<sup>5</sup> Under Article 1 of the Law on Children, passed by the National Assembly of the Socialist Republic of Vietnam on April 5, 2016, a child is a person under 16 years old.

<sup>6</sup> According to Article 134 of the CPC and Article 4 of the Law on Organization of Investigation Agencies in 2015, the investigating bodies include: 1) Investigation Agency of the People's Public Security Forces; 2) Investigation Agency in the People's Army; 3) Investigation Agency of the Supreme People's Procuracy.

<sup>7</sup> According to Article 145 of the CPC, the agencies assigned to conduct a number of investigative activities include: a) Border guard's agencies; b) Customs authorities; c) Forest Protection Agencies; d) Coast Guard offices; đ) Fisheries Resources Department's agencies; e) The agencies of the People's Public Security Forces are tasked with conducting a number of investigative activities; g) Other agencies in the People's Army that are tasked with conducting a number of investigative activities.

clarify criminals and offenders. The Procuracy exercises the prosecution rights in criminal cases, conducts the prosecution, the accusation and supervise the judicial activities of the investigation agencies and the courts to ensure the investigation, prosecution and adjudication of the right person, right crime, right law, avoiding injustice and crime omission.

Practicing the prosecution rights at criminal courts for human trafficking cases, the procurators perform the Procuracy's duties and powers as prescribed in Article 266 of the Vietnam Criminal Procedure Code, in which the Procurator argues (litigation) with participants in the proceedings (the defense, defendants, victim, the defense of legitimate rights and interests of involved parties), using evidences and arguments to prove and defend his/her own accusations (Nguyen Thi Mai, 2020). The Procurators litigate to defend the Procuracy's point of prosecution and accusations on crimes, penalties, civil damages, the handling of material evidence and other matters related to the correct settlement (Nguyen Van Linh, 2021). The defendants, defense counsels and victims, defense counsels of the involved parties' legitimate rights and interests, victims and other participants have the right and obligation to litigate with Procurators in order to protect their legitimate rights and interests. The practice of first-instance trial of criminal cases shows that, at the court session, the Procurator mainly argues with the defendant or his/her defense. According to statistics of the Court, from 2009 to the first 6 months of 2019, during the first-instance trial of a criminal case, the number of cases without a defense for the defendant makes up a relatively high proportion. (from 89.6% to 93.7%) (Le Minh Long, 2020).

## **Discussion**

In recent years, despite having been curbed, the situation of human trafficking remains complicated, increasing in level with very sophisticated and cunning methods and tricks, and a close structure between domestic and foreign subjects. In addition, these criminals also form trafficking lines from Vietnam to regional countries such as Hong Kong, Singapore, Malaysia, Taiwan ... with the main purpose of selling people to prostitution and forced labor.

From December 1<sup>st</sup>, 2016 to May 30<sup>th</sup>, 2020, 432 cases/724 suspects on human trafficking were discovered, prosecuted and investigated. The Procuracy at all levels decided to prosecute a total of 369 cases/643 defendants on charges of human trafficking and trafficking

people under 16 years old; exercised the right to prosecute and supervise the first instance trial of 387 cases/648 offenders of human trafficking (Le Minh Long, 2020).

The Procurators exercise the right to prosecute, administer the first-instance trial of criminal cases on human trafficking crimes in accordance with the provisions of the CPC and the following documents of the Procuracy:

- Directive No.09/CT-VKSTC, dated April 6<sup>th</sup>, 2016 of the Procurator General of the Supreme People's Procuracy on “Strengthening measures to improve the quality of Procurator's litigation at the trial”;
- Regulation on the exercise of prosecution rights, supervising the adjudication of criminal cases (Issued together with Decision No.505/QD-VKSTC dated December 18<sup>th</sup>, 2017 of the Procurator General of the Supreme People's Procuracy;
- Procurator's code of conduct when exercising the prosecution rights and supervising judicial activities at court sessions (Issued together with Decision No.46/QD-VKSTC dated February 20<sup>th</sup>, 2017 of the Procurator General of the Supreme People's Procuracy; and some other documents.

The procurators' litigation activities at first-instance criminal court of human trafficking are carried out as follows:

### **1. Carefully Study the Case Files**

The careful study of criminal case files is a requirement as well as the most important content of the Procurator when being assigned to exercise the prosecution rights and supervise the adjudication at the court for cases of human trafficking. Only on the basis of a firm grasp of the content of the case (incriminating evidence, detention evidence, aggravation, extenuating circumstances, other relevant facts), can the Procurator be able to give out the right views and have a firm belief in defending them. At the same time, grasping the content of the case helps the Procurator to identify and make firm arguments to prove the crime, the offender in trafficking cases during the litigation process. Injustice and wrong cases happening when the Procurator is not sure of the contents of the case can not occur when the Procurator has studied the case carefully, grasping every detail, compare and evaluate evidence objectively

and comprehensively in the overall content of the case at different angles (Mai Dac Bien, 2018). When studying the case files, Procurators must carefully read each page of documents, extract (record) the full contents, details of the case as well as procedural documents; check, compare, compare evidences, detect inconsistencies, suspicious points in the dossier to take measures to handle. Procurators shall examine the photos, audio and video documents during the investigation or prosecution process. If necessary, the procurator can directly examine the place where the crime of trafficking occurs. The Prosecutors need to have the skills to synthesize and evaluate evidence well, thereby deciding to use evidence in the battle against criminals (Nguyen Thanh Mai, 2018). In addition, to protect victims and their families from retaliation during the pre-trial phase, measures of detaining the offender should be taken (Pham Minh Tuyen, 2020).

## **2.2. Litigation Activities at the First-instance Criminal Trial**

Before the litigation, the Procurator presents the impeachment, in which analyzing and evaluating objectively, comprehensively, fully the nature and level of danger to the society of the crime; the consequences of the crime and other facts that are significant for the case. On the basis of analysis and evaluation, the Procurator requests the Trial Panel to apply the crime (articles, clauses, points of the Penal Code), the penalty level, the level of compensation for damage, measures to handle material evidence, judicial measures against the defendant.

Defendants, attorneys and other procedural participants have the right to present their opinions, evidences, documents and arguments to respond to Procurators about evidences of guilt, evidence of innocence; the nature and degree of danger to the society of the criminal act; consequences caused by criminal acts; the defendant's identity and role in the case; aggravating or mitigating criminal liability circumstances; penalty level; civil liability; handling of exhibits; judicial measures; criminal causes and conditions and other significant facts to the case. Defendants, attorneys and other procedural participants have the right to make their proposals.

Procurators must attentively listen to the parties presenting their opinions, record summaries to grasp the proposed content, rebuttal opinions, quickly identify the content to be answered, the evidence and documents which should be presented to prove their allegation. Evidences and documents presented by the Procurators must be related to the case and must be in the

file and examined and evaluated at the court hearing. In case new documents arise, they must also be documents related to the case and origin and legality of such documents must be checked in order that procurators will have a counter argument. Procurators argue and respond to clarify the contents of the issues raised by procedural participants, not to avoid difficult issues but to calmly step by step argue and respond to each opinion to protect the accusing point of view of the Procuracy.

When arguing, the Procurator has a calm, proper, respectful attitude towards the respondents, argues, and behaves in a culturally appropriate manner at the court hearing (Le Duc Xuan, 2016).

The practice of prosecution at the first instance trial of criminal cases for trafficking cases shows that the procurator often focuses on debating with the defense counsel, the accused, and the victim on the following issues:

1. The defendant does not admit to the crime according to the prosecution's indictment of the Procuracy and the conclusion in the impeachment document of the Procurator.

In this case, the Procurator should analyze the theory of the crime composition, evaluate the defendant's behavior, the motives, the purpose, the consequences of the damage caused, the causal relationship between the act and the consequence; citing the clerk numbers in the case file containing the relevant evidence gathered during the investigation, prosecution and adjudication is enough to confirm that the defendant's behavior is a crime under the article of The Criminal Code that the Procuracy has invoked to prosecute, the Procurator has concluded in the impeachment document. The reasons given by defendants or defense counsels such as underage for criminal responsibility, loss of criminal capacity, behavior not to the extent of criminal liability or other circumstances of exclusion of criminal liability... is unfounded, inconsistent with the objective facts of the case, inconsistent with the provisions of the criminal law.

2. The defendants and defense counsels admit that defendants commit crimes but committing other crimes less than those crimes that the Procuracy has prosecuted, conclude, and propose to change the crime.

In this case, the Procurator analyzes the theory about the crime composition of the crime that the Procuracy has prosecuted and accused. The prosecutor also analyzes the elements of the crime composition that is brought by the defendant, the defense counsel, and compares them with the criminal acts committed by the defendant, confirming the defendant's criminal acts inconsistent with that crime composition, thereby concluding that the change of the crime at the request of the defendant, the defense counsel is unfounded, not in accordance with the provisions of law.

3. Admit that the accused commits a crime in accordance with the Article prosecuted by the Procuracy but commits another Clause less than the Clause prosecuted by the Procuracy.

In this case, the Procurator, in addition to analyzing the signs of the crime prosecuted by the Procuracy, also analyzes in detail the defendant's actions that have caused very serious or particularly serious damage or other circumstances as grounds for determination aggravated penalty frameworks such as: Being organized; committing two or more crimes; crimes against 02 or more people; Dangerous recidivism ... to confirm that the Clause has prosecuted by the Procuracy is grounded and lawful.

4. Admit that the accused committed a crime in accordance with the crime, the article, the clause that the Procuracy prosecuted, charged, but the investigation, prosecution and adjudication process has seriously violated the proceedings, thus propose the trial panel postpones the court hearing and returns the file to request additional investigation.

According to the provisions of the Criminal Procedure Code, a serious violation of procedural procedures is one of the grounds for returning a file to request additional investigation or canceling a court judgment or decision. Prosecutors analyze the provisions of criminal law, criminal proceedings, and sub-law documents to determine if the issues are a serious violation of the proceedings? If there is a violation, the Procurator evaluates the extent and nature of the violation to determine whether this is a basis for returning the file to request for additional investigation, or it can be overcome at the court hearing. In addition to the grounds for returning the file as provided in Articles 245 and 280 of the Criminal Procedure Code, Procurators must grasp and apply the provisions and instructions in Joint Circular No. 02/2017 / TTLT / VKSNDTC - TANDTC- BCA - BQP of the Supreme People's Procuracy, Supreme People's Court, Ministry of Public Security, Ministry of National Defense dated



December 22, 2017 (hereinafter referred to as Joint Circular No. 02/2017) returns the file to Additional investigation to argue and respond.<sup>8</sup> In case the defendant believes that during the process of investigation and prosecution, Investigators, Procurators have committed acts of violation such as harassment or corporal punishment, the Procurator may request the Trial Panel to summon Investigators, Procurators come to court to participate in confrontation or present contents related to denunciations. Accountability of investigators and procurators so that human rights and citizenship are guaranteed and effectively protected (Hoang Minh Khoi, 2020). In case of determining that there is a procedural violation, the Procurator must carefully consider and evaluate each type of violation, if the violation does not affect the determination of the objective truth of the case or does not affect the right and the legitimate interests of defendants, litigants and crime victims, the procurator expresses his/her disagreement with the request to postpone the court hearing and return the files for additional investigation. At the same time, the Procurator proposes measures to overcome the violation.

5. Disagree with aggravating or mitigating of criminal liability circumstances, so suggest removing or increasing aggravating or mitigating circumstances.

In this case, the Procurator needs to argue and respond based on the analysis and assessment of the defendant's criminal acts, the defendant's identity, the victim's violation acts in the case (if any), other relevant details, citing the provisions of the Criminal Code, the Criminal Procedure Code, and sub-law documents to identify and affirm aggravating and mitigating of criminal liability circumstances that the Procuracy imposes is correct and grounded. The reasons for the elimination of circumstances of aggravation of penal liability given by the defense counsels are unfounded, inconsistent with the provisions of law and the case content.

6. Disagree with the type and level of punishment that is proposed by the Procurator

Defendant and defense counsels often believe that the type and level of punishment proposed by the Procurator is too heavy for the defendant, incompatible with the offense, inconsistent with the criminal law policies of the State, need to change to a different type of penalty or reduced punishment;

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<sup>8</sup> According to the Joint Circular No. 02/2017, the serious violations of the proceedings but not return of the files for additional investigation are: a) There are serious violations of the proceedings, but not seriously harming the legitimate rights and interests of procedure participants (Author's word)

In this case, the procurator must argue and respond based on the analysis and assessment of the nature and danger level of the criminal act, based on the harmed object, the impacted object, the method, tricks for performing the act, the form and extent of the error, the consequences of damage caused, the measures and ability to overcome the damage, the aggravating, mitigation of criminal liability circumstances, the defendant's personal identity, the defendant's ability to reform and educate. In addition, the Procurator can assess the negative impact of the crime that the defendant has caused on the local security and order situation. The procurator shall compare with the type and level of the penalty of the law in the Penal Code to conclude and confirm that the type and level of the penalty proposed by the Procurator are grounded, in accordance with the provisions of law, has shown the leniency policy of the State, enough to educate and reform the defendant into a good citizen, useful person to the society.

### **Results and Recommendations**

Over the years, the Procurator has performed well the adversarial process at the criminal court in general and the trial on human trafficking in particular. Procurators carefully study the case files during the trial preparation stage, anticipating issues that need to be questioned, answered and debated at the trial, so the quality of litigation is increasingly improved. At the trial, the Procurator actively argued to clarify the details of the case, new issues that arose, and defended the Procuracy's stance on prosecution and accusation.

Although there have been many good results, there are still cases of unsatisfactory litigation at the trial because some procurators have not prepared well the argument outline, have not anticipated the situations arising at the trial, someone when debating do not respond to each opinion, avoiding difficult issues.

In order to overcome the limited quality of the prosecutor's litigation at the trial on human trafficking cases, the author proposes several recommendations and solutions to improve the litigation quality of the Procurator as follows:

- Amend the Provisions of the Law

The law is a fundamental factor, ensuring the quality of the procurator's litigation at the trial of criminal cases. Therefore, to improve the litigation quality of the Procurator at the trial, the important solution is to continue to develop and perfect the Criminal Procedure Code. Completing regulations on procedural procedure in the direction of inheriting the advantages of the interrogation model and selectively absorbing the progressive elements of the litigation model, ensuring the basic principles of the Criminal Procedure Code, ensuring human rights. Need further amended the Criminal Procedure Code in the direction of the Court does not have the burden of proving the crime that only the task of adjudication. The responsibility of proving the crime rests with the procurator. Therefore, it is necessary to amend Articles 307, Article 309, Article 310, Article 311 of the Criminal Procedure Code so that the questioning belongs to the Procurator.

- Strengthening training and retraining to improve qualifications and professional capacity, political qualities, professional ethics and sense of responsibility of procurators participating in litigation activities at court hearings of criminal cases.

The Procuracy needs to strengthen the training and re-training of the procurator team in skills and knowledge of questioning and arguing at criminal trials on human trafficking cases, regularly drawing experience in their exercise the right to prosecute and supervise judicial activities in court. Education to improve moral quality and political bravery for the procurator team, always uphold the spirit of fighting against crime to protect the State, society, human rights, and citizens' rights. Procurators must always train themselves, study, and research to improve their legal knowledge, skills, professional expertise, and in-depth understanding of the distinctive features of dealing with human trafficking case. The purpose of the procurator's litigation at the trial of criminal cases is to argue against and refute the incorrect views of the participants of adversarial process and to defend his/her correct accusations, so it is required that the procurator must make good use of their legal knowledge and professional skills.

- Ensure adequate facilities and remuneration for procurators to exercise the right to prosecute and supervise judicial activities.

For the procurator's adjudication and litigation activities to be of quality and effective, the State needs to ensure sufficient necessary facilities such as working offices, working equipment and technical means, and at the same time ensure the salary and allowance regime for the procurator team. With material security, it will improve the quality of the procurator's litigation at the trial.

- Increase legal awareness among the people

The enhancement of legal consciousness among the people is very important in the awareness and implementation of the law provisions on ensuring the principle of litigation, actively participating in litigation with the Procurator at the trial. The dissemination of legal education needs attention, which can be done through various ways such as through mobile trials, through propaganda and legal education dissemination sessions in the community, schools, through the mass media. The improvement of people's legal knowledge will motivate them to actively argue at the trial and perform well the supervision of the Procurator's litigation activities, thereby contributing to improving the litigation responsibility of the Procuratorate.

### **Conclusion**

Procurator's litigation in criminal cases in general and in human trafficking cases in particular, is extremely important in the whole process of solving criminal cases, it ensures that the prosecution's accusations are grounded and lawful. On the basis of the results of the litigation, the contents of the case are clarified, the accused, defendants and defense counsels are made public, democratically gives their point of view of exculpation, democratic debate and equality with the Prosecutor and other proceeding participants. Victims, defense counsel of lawful rights and interests of victims may participate in protecting their legitimate rights and interests that have been infringed upon by criminals. The results of the litigation help the Trial Panel to make its right opinion and judgment, limit and proceed to eliminate the charge, investigation, prosecution, wrongful trial, error or omission of the crime. Ensuring litigation in criminal cases on human trafficking contributes to well performing the functions and tasks of exercising the right to prosecution of the Procuracy, thereby maintaining political security, social order and safety, ensure the lawful rights and interests of agencies, organizations and individuals, especially those of the accused.

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