

Research Article

Supervising the Investigation of Criminal Cases Committed by Commercial Legal Entities under The Regulation of Vietnam Criminal Procedure Code

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Abstract

The commercial legal entity committing criminal offence is a new institution defined in Articles 74 through 89, in Chapter XI, of the 2015 Penal Code, thus, investigation of criminal cases committed by commercial legal entities also has its own regulations and certain difficulties and challenges. The People's Procuracy's supervising of investigation of criminal cases carried out by commercial legal entities in order to ensure that the investigation is carried out in accordance with the law, preventing the situation of criminal charge, investigation, prosecution and unfair trial or crime neglect.

Keywords: *Criminal code, criminal procedure code, commercial legal entity committing criminal offences, investigation authority, authorities assigned to perform certain activities of investigation, supervising of investigation, prosecution, injustice, criminal neglect.*

Introduction

The Commercial legal entity committing criminal offences (referred as Legal entity criminal liability) is new regulation which specified from Article 74 to Article 89, in Chapter XI, the Penal Code 2015 (revised, supplemented in 2017, referred to as the 2015 Code). Article 76 the 2015 Code prescribes “A corporate legal entity shall only bear criminal responsibility for the following criminal offences: Article 188; Article 189; Article 190; Article 191; Article 192; Article 193; Article 194; Article 195; Article 196; Article 200; Article 203; Article 209; Article 210; Article 211; Article 213; Article 216; Article 217; Article 225; Article 226; Article 227; Article 232; Article 234; Article 235; Article 237; Article 238; Article 239; Article 242; Article 243; Article 244; Article 245; Article 246; Article 300 and Article 324 of

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this Code”. This is an important change in criminal policy, affirming our State's point of view in strictly handling commercial legal entities violating the law, meeting the requirements of fighting against crime in the new period (Nguyen Van Tuan, 2020).

Therefore, the 2015 Code establishes 33 crimes specified in Chapters: Chapter XVIII (crimes infringing upon the economic management order), Chapter XIX (environment-related crimes), Chapter XXI (crimes infringing upon the public order and public safety), for which legal entities may be charged.

According to Chapter XXIX the Criminal Procedure Code 2015 (referred to as the 2015 Procedure Code) “Procedures for prosecuting legal entities criminal liability” (under Part 7: Special Procedures), the proceedings for legal entities which are denounced, reported on crime, petition for charges, investigated, prosecuted, adjudicated and executed of judgment shall be conducted under the provisions of Chapter XXIX, and also under the other provisions of the 2015 Procedure Code that are not contrary to the provisions of Chapter XXIX. Thus, the procedure for resolving criminal cases carried out by legal entities is conducted under general provisions; besides a number of separate provisions apply to legal entities guilty (Vu Gia Lam, 2016).

According to provisions of Constitution 2013, Law on organization of people’s procuracies 2014, the Criminal Procedure Code 2015, The Procuracy (VKS) exercises the right to prosecute and supervise law compliance in criminal proceedings, decide on charges, detect violations of the law to ensure all criminals, offenders, juridical persons who commit crimes and violations of the law must be promptly and strictly detected and handled; it must assure that the charge, investigate, prosecute, adjudicate, execute judgments on the right people, right crimes, according to law, crime neglect and offenders, juridical persons, not to slander innocent people. In the stage of charge, investigation and prosecution, the person who conducting the proceedings directly is Investigators, Procurators are responsible for carrying out statutory activities to clarify all details of the crime, determine persons with criminal signs must be charged, investigated and prosecuted (Hoang Minh Khoi, 2020). The exercise of prosecution rights, supervising judicial activities during the period of charge and investigation of criminal cases need to be renewed, focusing on the following key contents: The procuracy must strengthen responsibility to prosecution, supervising investigation of criminal cases (Tran Cong Phan, 2016).

Administering investigation of criminal cases in general, and criminal cases conducted by legal entities in particular is performed by Prosecutor under the assignment, direction and inspection of the leader of the Procuracy. Prosecutor exercises prosecution rights and

administering investigative activities of investigation authorities (IA) and units assigned to investigate (hereinafter referred to as IA) according to the provisions of the 2015 Procedure Code, Law on Organization of the People's Procuracy in 2014, Directive No. 06/CT-VKSTC dated December 6th, 2013 of the Head of the Supreme People's Procuracy (SPP) "On strengthening the prosecution responsibility in investigating activities, attaching prosecution to activities dynamic investigation to meet the requirements of preventing and fighting against crime "; Temporary regulation about Exercising prosecution rights and managing criminal charges, investigation, prosecution (Issued together with Decision No. 111 QĐ-VKSTC, dated April 17th , 2020 of the Head of the SPP, hereinafter referred to as Regulation No. 111); Joint Circular No. 04/2018/ TTLT-VKSTC-BCA-BQP dated October 19th , 2018 by the SPP, Ministry of Public Security, Ministry of Defense "Regulations on coordination between investigation authorities and the People's Procuracy in implementing some regulations of Criminal Procedure Code (hereinafter referred to as Joint Circular No. 04/2018) and a number of other legal documents.

Discussion

According to provisions at Article 166, the 2015 Procedure Code, People's Procuracy manages legal compliance of investigation criminal cases with lots of content, in which, when managing investigation criminal cases that performed by legal entities, Prosecutor focus on checking the following important points:

Administering the Legal Compliance of Charges, Investigation, Documentation by IA Firstly, Administering the Pressing of Criminal Charge and Filling of Charges against Suspects

Upon the expiration of the time limit of the processing of denunciations, criminal information disclosed and requisitions for charges for legal entities, in case of matters exhibiting criminal signs, Investigation authorities shall make decisions on pressing criminal charges. When a juridical person is found on sufficient evidences to commit an act defined by the Criminal Code as a crime, investigation authorities shall decide to file charges against suspects for legal entities. Investigation authorities, in 24 hours upon their decision to press criminal charge and charge suspects, must send such decisions and all relevant documents on case file to the equivalent Procuracy for exercising prosecution rights and administering the legal compliance. The Leaders of PP assign the Prosecutor to conduct the managing criminal charge by IA. Within 3 days, Prosecutor shall administer criminal charge of IA by examining the ground and lawful of decision to press charge, decision to charge against suspects, as well

as the validity and legality of the evidence documents used by the IA as a basis of criminal charges and charge against suspects for legal entities. Prosecutor researches the documents, and evidences used as a justification for IA to issue a decision to press criminal charge, charge against suspects for legal entities, including: denunciations, criminal information disclosed, requisition for charges and relevant documents which are provided by authorities, organizations or individuals; Documents of acquisition, examination and verification of denunciations, criminal information disclosed, requisition for charges by investigation authorities; the written record of crime scene examination, the written record of autopsy, search... together with documents, traces, exhibits which have been found and seized; the written record and conclusion of expert examinations about traces, exhibits of crime such as level of environmental pollution, counterfeiting, dirty food...; the written record and conclusion of property valuation that damaged by criminal activities of legal entities; the written record of depositions by crime victims, witness testifiers, persons having interests and duties in connection with the case. The above-mentioned documents must show that the legal entities has committed one or several criminal acts which prescribed in Article 76 of the Penal Code 2015, the consequences of criminal acts and other factors are sufficient to constitute a specific crime; Legal entities having all the conditions for criminal liability which are provided in Article 75 of the Penal Code 2015. The conditions for a corporate legal entity to bear criminal responsibility: a) The criminal offence is committed in the name of the corporate legal entity; b) The criminal offence is committed in the interests of the corporate legal entity; c) The criminal offence is under instructions or approval of the corporate legal entity; d) The time limit for criminal prosecution specified in Clause 2 and Clause 3 Article 27 hereof has not expired.

Therefore, Prosecutor should thoroughly examine documents and text documents showing the direction, management or approval of legal entities, criminal acts on behalf of legal entities and for the benefit of legal entities. In case a person working in a legal entity commits an offense such as buying and selling counterfeit goods, discharging hazardous substances into the environment, but only for personal self-interest, not for the benefit of a legal entity, the legal entity is not subject to criminal liability (Nguyen Thanh Mai, Nguyen Thi Hong Van, 2019).

Determining the time when the crime is committed, the time of ending the offense to determine time limit for criminal liability prosecution. The Decision to charge a suspect must

specify the legal entity's name, address as well as other contents as provided in Article 179 the Criminal Procedure Code 2015. The legality of the Decision to press criminal charges, the Decision to charge a suspect for legal entities (which is also the legality of documents, evidences) is Investigation authorities strictly comply with the order, procedures and competence prescribed by law to detect, examine, verify and collect evidences proving crimes and criminal acts of legal entities; form and content of the charges decisions. The evidence proving the offense of legal entities must ensure the properties of the evidence, that is, to have the authenticity, relevance and legitimacy. Procurators must ensure the principle of innocence when examining the grounds for prosecuting the accused. Ensuring the implementation of the principle of innocence requires that the criminal proof process be based on authentic evidence, no longer doubts. All doubts about the arrested person, the person held in custody, the accused or the defendant must be checked, proven and clarified (Hoang Van Hanh, 2020). Other factors should also be demonstrated such as circumstances of mitigation of criminal liability, exemption from criminal liability, exemption from penalties and determination of causes, criminal conditions of commercial legal entities (Nguyen Thanh Mai, Nguyen Thi Hong Van, 2019). Based on the inspection results, the leaders of People's Procuracy approve decision to charge a suspect if there were sufficient grounds and lawful; issue decision to annul decision to press criminal charges, decision to charge a suspect if they are groundless and unlawful; Request investigation authorities and units assigned to investigate to amend or add Decision to press criminal charges, to charge a suspect in accordance with the offense of the accused; Request investigation authorities and units assigned to investigate to provide relevant documents for the administration of criminal charges or The prosecutor can collect additional evidences and documents for approval. One issue that People's Procuracy should consider and administer is criminal charges a suspect who is an individual of legal entity has committed criminal acts. Because the Penal Code stipulates criminal liability of legal entities does not exclude the criminal liability of individuals, ie the person of the legal entity who directly committed the offense on behalf of the legal entities, it is necessary to charge a suspect with that individual. That individual can be the leader or the person whose duties, powers and responsibilities of legal person have directly directed, operated, approved or directly committed the criminal act and the statute of limitations has not yet expired of criminal prosecution (Nguyen Phuong Anh, 2020).

In case investigation authorities do not consider, do not charge a suspect, the Procuracy must request IA to consider, charge a suspect, avoid leaving the criminals. Prosecutors are also required to ensure that the accused person has an advocate since the detention order or the

decision to charged the accused. According to statistics of agencies conducting legal proceedings, the number of cases with defense counsels is not high. In the first 6 months of 2019, out of a total of 26,846 first-instance court cases, there were 24,296 cases without defense counsels participating, accounting for 90.6% (Cao Thi Ngoc Ha, 2020). However, one difficulty here is that in the case of personal charges, how are the order and procedures to charge to ensure lawful, for example, should we press a criminal charge in a separate case or not? or just need to charge a suspect for individuals, while a criminal charge under the decision to criminal charge against the criminal acts of the legal entity. At the same time, among the issues that need to be proven, the error factor of the legal entity, the fault of the individual being a member of the commercial legal entity committing criminal offence is very important issue to prove (Hoang Hai, 2020). Study the subjective side of 33 crimes for which commercial legal entities are subject to criminal liability as provided in Article 76 of the Penal Code 2015, all are intentional errors. Thus, the fault of a commercial juridical person must be an intentional fault, can not an unintentional fault (Hoang Minh Duc, 2020).

Secondly, Administering Investigation Acts of Investigation Authorities

Investigation authorities conduct investigation activities for legal entities through representatives of legal entities. Legal entities must appoint and ensure their legal representatives to fully participate in charges, investigation, prosecution, trial and judgment execution activities at the request of competent agencies or persons. In case the legal representative person of a legal entity is charged, investigated, prosecuted, judged or unable to participate in the proceedings, the legal entity must appoint another person as his legal representative to join the proceedings. At the time of charges, investigation, prosecution or trial, if a legal entity does not have a legal representative person or there are many persons are legal representative persons, the competent procedural authorities shall appoint one person who representatives for legal entities participating in the proceedings.

The Procuracy assigns Prosecutor closely supervise the investigation activities of IA in criminal legal entity cases to ensure procedural decisions and investigation activities are implemented in accordance with law. Procedural decisions issued during the investigation of crime performed by legal entities include: Decision of apply preventive measures, decide to requisition expert examinations, requisition of valuation, search warrants, inventory orders property margins, blockade of accounts, decision of interpretation etc. Investigation activities can includes: deposition by representative person, crime victims, witness testifiers, and persons having interests and duties in connection with the case; confrontation, identification, experimental investigation (in case charges, investigation the individual who commanded,

administrated, approved or directly committed criminal acts on behalf of legal entity); crime scene examination, autopsy, search, seizure and impoundment of documents, items, electronic media and data and other investigation acts. Some provisions on issues to prove in the general case resolution process will not apply to the commercial legal entity representative, such as interrogation (Nguyen Quang Hien, 2021). When managing the procedural decisions, the prosecutors must check, consider and assess the grounds, the legality and the necessity to apply such decisions. When managing the proceedings of IA, Prosecutor closely supervises the order and procedures for conducting, the competence, the time limit and the time to comply with the provisions of the criminal procedure code. Such investigations must be carried out quickly, within the statutory time limit, clarifying the contents of the case, for example, must identify specific offenses, criminal methods, tricks, tools and means as well as motives, purposes of criminal acts of legal entities and individuals; consequences of crime; compensation for damage; seizure of evidence; handling evidence; reasons as well as conditions of crime.

For the investigation, the Prosecutor should pay attention to check whether the IA has requested to requisition expert examination or requisition for valuation or not? Has the result of the expert examination or valuation of the property damaged or not? Because crimes committed by legal entities often involve issues that need to be assessed and evaluated such as the level of environmental pollution, counterfeit goods, fake food, foreign objects, wildlife or natural resources, minerals. Procurators need to be properly aware of expertise activities as well as soliciting expertise to ensure timely requests, detect violations, shortcomings and take corrective measures (Tran Dinh Hai, 2020). The problem of damage level, or the consequences of criminal acts committed by legal entities, must also be clearly and specifically investigated, whether or not it has reached the level of criminal prosecution? If yes, under which clause of that crime? These are largely dependent on the results of valuation of the damaged property or the expert examination results. Mitigating factors, aggravating factors as well as other factors of case must also be clearly investigated, such as complicity, recidivism and dangerous recidivism; whether or not factors that exclude criminal liability, exemption of criminal liability, exemption from punishment for legal entities. In addition, Prosecutor must closely manage the investigation activities of the investigator, ensuring that there is no use of torture, no obtainment of testimony by duress of the legal representative person, the accused (being individuals), witnesses or other participants in proceedings; do not let Investigator takes advantage of the investigation to carry out illegal acts such as falsifying case files, not conducting or incomplete investigative activities, having beneficial behaviours

affecting the investigation results; ensuring that the investigation is conducted objectively, comprehensively and fully, collecting evidence of accusation and evidence of innocent for the accused. Issues on collection, preservation and handling of exhibits must be conducted in accordance with law.

The Third, Managing the Preparation of Criminal Case Files

Criminal case files are all documents, evidences collected through criminal case investigation under the provisions of Criminal Procedure Code 2015, established by investigators to prove the criminal acts of the legal entity and other circumstances related to the case.

Criminal case files reflect the whole contents of the case, are important documents for the prosecutor to prosecute, the Court adjudicates legal entities that committed crimes and make decisions to handle criminal cases properly. Prosecutor closely manages the preparation of criminal case files of investigator, ensure that each page of documents in the file of emergency custody of a person, arrest, temporary detainment, detention (for individuals), criminal charges, charges against suspects and other documents during investigation process must be complete, stamped by Investigation authorities and attached with a complete list of the document's name, the number of pages for each document. Criminal case file must be arranged scientifically in a certain order and may be ordered according to time or set (each accused). If the criminal case file is sent to the Procuracy for approval, after the approval is completed, the Prosecutor who receives and resolves the case must seal of the Procuracy into those documents and put it in the case file. Through checking the case file, Prosecutor determine whether the investigation of investigator is sufficient or not? Is it in accordance with the law? From there, it may be necessary to conduct further investigation activities or overcome violations of the proceedings and procedures. One criminal case file which was committed by legal entities must response two requests: correct and sufficient. "Correct" is a file showing the settlement of denunciations and criminal information disclosed and requisitions for charges, the investigation strictly complies with the provisions of law; detecting, collecting and preserving evidence and documents in accordance with regulations, no counterfeiting of evidence, no use of torture, obtainment of testimony by duress or other illegal measures to achieve evidence; order, procedures, authority to conduct procedural activities in accordance with regulations of the criminal procedure law. Sufficient is a file containing all information and evidence about criminals, offenders, facts relating to crime, in response to the prosecution and adjudication of criminal cases that could not be returned by

The Court for requesting additional investigation, or could not be declared innocent by the court (Mai Dac Bien, 2019).

Demand the IA to Proceed Investigation According to the Law

During the administering of the investigation process, if the investigation is inadequate, violating the law, the Procuracy demands the IA to perform the following activities:

Proceeding investigation according to the law;

Investigating a case evolving legal entities is proceeding activities that requiring the prosecutor to be experienced, skilled, and firmly grasp the provisions of law. Criminals committed by legal entities are often complicated, involving a variety of fields, objects and infringe many legal objects, on large scales, happening at many areas (domestic and overseas), therefore there will be violations in investigation activities of investigators. Procecutors closely supervise investigation activities to ensure that such activities are carried out in accordance with the law. For instance, during the crime scene examination of discharging hazardous wastes or organic substances that are difficult to decompose into the environment which violating Article 235 of the Penal Code "Causing environmental pollution" offense, investigator has violated the regulations on the participants of the crime scene examination, order and procedures of collecting material evidence, making record of collection. In that case, the prosecutor must quickly request the investigator to conduct additional crime scene examination, re-examine, strictly abide by the regulations on the participants of the examination, the order and procedures for collecting, sealing and preserving the evidence.

Administering the Investigation and Notify the Results to the Procuracy

The investigation to clarifies criminal acts as well as other facts of the case committed by legal entities has to be carried out quickly, according to regulations and within the prescribed time limit. However, for many reasons, investigation process might not be proceeded properly, not be proceeded in time or signs of other violations in the investigation. In this case, Procuracy must demand the IA to check the investigation and notify the results to the Procuracy.

Providing Documents Related to Acts and Procedural Decisions that Violate the Law during the Investigation

In cases where the Procuracy finds out the procedural decisions of the IA or the acts of the Heads, Deputy Heads of the IA, the investigators, investigation officers violate the law during the investigation process or there is complaint about the violation of the IA, then the Procuracy demands IA to provide documents related to violations. Such documents may be documents or evidence related to the issuance of procedural decisions such as decisions to press criminal charges, decisions on pressing charges against suspects, orders to distrain asset, blockade accounts or examination records, crime scene examination record, crime scene sketch, asset valuation results, conclusion of expert examinations... to determine violations in procedural decisions or in the crime scene examination activities of investigators. All requests of the Procuracy must be strictly implemented by the IA in order to ensure the investigation of crimes committed by legal entities is in accordance with the provisions of law and highly effective. Right after receiving documents provided by IA, prosecutors will research these documents to determine whether there is any violation of law in those decisions or documents? If yes, prosecutors have to determine how severe the violation is, the level of violation then report and propose to the Head of Procuracy to have timely and correct solutions.

Requesting the Head of the IA to Change the Investigator, Investigation Officer, Strictly Penalize Investigators who Violate the Law in Procedural Activities

This is a vital aspect related to the tasks and powers of the Procuracy when administering the investigation of criminal cases in general and criminal cases committed by legal entities in particular. Investigation of criminals conducted by legal entities requires investigators to perform complicated and time-consuming investigation measures, facing those who hold strong financial and economic potential and have high educational and legal knowledge, they have an impact, significantly affecting the investigation results. Investigators are not only good at the profession but also the person who is rich in political bravery, has a high responsibility, has a spirit of uncompromising struggle with criminals, has a good morality. In the situation when the investigator, investigation officer, for many different reasons, could not perform the investigation as required, or violated the law, depending on the extent of the violation, the Procuracy requires the Head of IA changes the investigator, the investigation officer or strictly penalize that investigator, investigation officer. Along with the request to strictly penalize the investigator, investigation officer, the Procuracy can petition or request the IA to remedy the damage caused by violation in the investigation.

Administering some other Contents According to the Provisions of Law

In addition to the above-mentioned inspection contents for the investigation authorities and investigators in charging and investigating criminal cases performed by legal entities, the Prosecutor must also pay attention to supervising criminal proceedings of the participants in the procedure; request and requisition competent agencies, organizations and individuals to strictly handle legal proceeding violators; to requisition concerned agencies and organizations to apply measures to prevent crimes and law violations; perform other tasks and powers in supervising criminal cases according to the provisions of the Criminal Procedure Law in 2015. These are important contents in the process of managing investigation, in which Prosecutor pays close attention to the investigation authority because the scope of crime that legal entities perform is often very wide, related to many different administration areas and according to many different penalties, are factors that generate disputes about investigating authority among investigating authorities.

To determine the investigation authority of criminal cases which are committed by legal entities, Prosecutor bases on Article 163 The Criminal Procedure Code 2015 which regulate about the authority to investigate. According to the provisions of Article 163 The Criminal Procedure Code 2015, it is possible to determine, the majority of crimes committed by legal entities under the investigation authority of investigation authorities in the People's Police Force (except for criminals related to military agencies will be carried out by the investigation authorities in the army). Investigation authorities has authority to investigate criminal cases that crimes occur in their territory (may be places where legal entities have their offices or where legal entities commit criminal acts). In cases where crimes are carried out in many different places or cannot determine the place of crime, the investigation falls under the authority of the investigation authorities where the crime is detected, where the legal entity is located.

Recommendations and Conclusions

The provisions of Commercial legal entities criminal liability as well as the procedure and proceeding applicable to legal entities criminal liability are a new issue stipulated in the Penal Code and the Criminal Procedure Code in 2015 and there are not many guide documents. Hence, the investigation acts as well as the managing investigation criminal cases performed by legal entities will face many difficulties and troubles that need to be researched and found solutions to overcome and improve. In the immediate future, the central judicial agencies should quickly issue documents to guide the order and procedures for charges, investigation, prosecution and adjudication of crimes committed by legal entities For example, guidelines

on case of charge against suspects as an individual of legal entities committing a crime, the individual as an accused can be the representative of a legal entity to resolve a criminal case? Determination of legal entity's fault? SPP also needs to issue a professional Regulation to regulate and guide the exercising prosecution rights, managing investigation, prosecution, adjudication of crimes committed by legal entities to facilitate in resolve the criminal case of the Procuracy. The central judiciary agencies also need to issue a joint circular to guide the order and procedures for judgment execution against legal entities who commit crimes or amendment.

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