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EXERCISING THE RIGHT TO PROSECUTION IN THE FIRST INSTANCE TRIAL OF CRIMINAL CASES

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INTRODUCTORY

Before the Criminal Procedure code in 2015 was in effect, the exercise of prosecution rights of Procuracy in the period of trial of criminal cases is governed by the provisions of the Criminal Procedure code in 2015, the Law on organization of People’s Procuracy 2002 and other relevant documents. However, there are still many inadequacies in the provisions of such document relevant to the exercise of prosecution rights in the period of trial of criminal cases: (1) The Criminal Procedure code has no specific provisions on the duties and powers of the People's Procuracy when exercise of prosecution rights in the period of trial of criminal cases; (2) The Criminal Procedure code 2015 has supplemented the provisions on duties and powers of the People's Procuracy when exercise of prosecution rights in the period of trial of criminal cases, but there are still many inconsistencies and ambiguities. The practice of this law has led to a number of limitations and obstacles in practice. In addition, a number of limitations due to other reasons also contribute to the implementation of exercising the prosecution rights of Procuracy in the period of trial of criminal cases is not really quality assurance.

From a research perspective, although there have been many scientists researching on prosecution rights, practicing prosecution rights ... but there have not been any scientific research studies on the exercise of prosecution rights in the period of trial of criminal cases since the Criminal Procedure code 2015 is valid until now. This poses an urgent need for a systematic and comprehensive scientific research work on the subject matter process in the period of critique in both theoretical and practical terms. Stemming from these reasons, I decided to select the topic "Practicing prosecution rights in the first instance trial of criminal cases" as the content of the research in his doctoral dissertation.

The purpose of the thesis research is on the basis of studying the theoretical issues about exercise of prosecution rights in the trial of criminal cases, the current status of the law and exercise of prosecution rights in the period of trial of criminal cases, offers solutions to improve the quality of exercise of prosecution rights of Procuracy during the trial of criminal cases. For this purpose, the thesis has the tasks of: clarifying the

overview of the research situation on exercise of prosecution rights during the trial of criminal cases indicating the issues that need further study; clarify the theoretical issues about exercise of prosecution rights during the trial of criminal cases especially the concepts and characteristics of exercise of prosecution rights during this period; analysis and evaluation of the current state of the law and the practice of the implementation of Procuracy's exercise of prosecution rights during the trial of criminal cases (achieved results, limitations, problems and causes causes of limitations and obstacles); Identify requirements and propose specific solutions to improve the quality of exercise of prosecution rights of Procuracy during the trial of criminal cases. The thesis is researched on the basis of dialectical materialism and historical materialism of Marxism - Leninism and Ho Chi Minh thought, the views of the Communist Party of Vietnam on human rights, on the strategy of improvement. judicial way and on the construction of the rule-of-law state of the people, by the people and for the people, and at the same time using other appropriate specialized scientific research methods such as analysis, demonstration, comparison, interpretation. and sociological method to elucidate research issues.

Scientific and practical meanings of the thesis are:

- The dissertation is the first scientific doctoral thesis after Criminal Procedure code in 2015, with direct and detailed research into exercise of prosecution rights in trial of criminal cases.

- The results of the thesis contribute to supplementing and completing the scientific theory of exercise of prosecution rights in the trial of criminal cases. In the legal aspect, the analysis and evaluation of the thesis on the status of the provisions of the law on exercise of prosecution rights during the trial of criminal cases are the basis for perfecting Vietnam's criminal procedure law on Procuracy exercise of prosecution rights during this period.

- The solutions proposed by the thesis have practical significance in resolving outstanding issues in the practice of Vietnam's criminal procedure law on exercise of prosecution rights of Procuracy, meeting the requirements

of judicial reform, improve the quality of exercise of prosecution rights of Procuracy during the trial of criminal cases.

- The findings of the thesis are practical references for research, teaching and development of Vietnam's criminal procedure law.

In addition to the introduction, an overview of the research issue, conclusions, list of references and appendices, the research findings section of the thesis consists of 3 chapters:

Chapter 1: Theoretical issues on exercising prosecution rights during the first instance trial of criminal cases.

Chapter 2: Vietnamese criminal procedure law on the exercise of prosecution rights in the first instance trial of criminal cases and their practical implementation.

Chapter 3: Requirements and solutions to improve the quality of the prosecution rights practice in the first instance trial of criminal cases.

Chapter 1
THEORETICAL ISSUES ON EXERCISING THE RIGHT TO PROSECUTION IN THE FIRST INSTANCE TRIAL OF CRIMINAL CASES

1.1. Definition and characteristics of exercising prosecution rights in the first instance trial of criminal cases

The right to prosecute is the State's right to accuse people who commit dangerous acts for society, in order to protect the interests of the State, the legitimate rights and interests of individuals, agencies and organizations.

The exercise of prosecution rights is the Procuracy's application of laws to carry out charges against persons committing crimes, starting from the receipt of notices and denunciations of crimes and recommendations. to prosecute until the Court's judgments take legal effect, protect the interests of the State, the legitimate rights and interests of individuals, agencies and organizations.

The exercise of prosecution rights during the trial of criminal cases stage is a continuation of the succession of exercising prosecution rights during the stage of investigation and prosecution, but it is more clear and fuller than the nature of the prosecution rights is a right of great right. Attend the State to accuse the offender before the Court and defend the charge.

The exercise of prosecution rights during the trial of criminal cases period reflects specifically the functions of the State's charges against people who commit dangerous acts for society, first of all to protect the common interests of the State and the collective. then it is for the benefit of the individual.

Procuracy's right to prosecute during the trial of criminal cases is carried out in parallel with the trial control, but only exercising prosecution rights is aimed at the accused and only when exercising prosecution rights, Procuracy was given the right to prosecute to make charges against the offender before the Court.

The exercise of prosecution rights during the trial of criminal cases is limited to the start and end times of the trial of criminal cases and is limited by the legal status of Procuracy and the Court during the trial period of criminal cases.

Exercising the right to prosecute during the first-instance trial of a criminal case is a summary of Procuracy's activities accusing offenders,

starting from the time the Court receives the case file and ending when the time limit of appeals and protests expires, ensuring that all criminal acts must be detected, handled, not to be caught by criminals and offenders, protecting the interests of the State, the legitimate rights and interests of individuals, agencies and organizations.

1.2. Content of exercising prosecution rights in the first instance trial of criminal cases

The content of Procuracy's exercising prosecution rights contents in the trial of criminal cases can be divided into three groups of activities performed at three times: before the opening of the trial, at the trial and after the judment of the trial of criminal cases:

Firstly, exercising prosecution rights before opening a trial of trial of criminal cases: asking the Court to return additional investigation files, requesting the Court to summon witnesses or other participants in legal proceedings to attend the trial.

Secondly, exercising prosecution rights at trial of criminal cases trial includes: Announcement of indictment, participation in interrogation, impeachment presentation, answer, debate; to withdraw prosecution decisions, conclude other offenses equal to or less than the prosecuted crimes, conclude other clauses with the prosecuted items in the same law.

Third, exercising prosecution rights after the conclusion of the trial: appeal against a judgment, decision without legal effect of the first-instance Court if it is found that the judgments of the first-instance Court have serious mistakes, wrongdoing, leaving criminal and offenders.

1.3. Relationship betweeen the exercise of prosecution rights and supervising judicial activities

Exercising prosecution rights and supervising judicial activities are two functions that are independent of each other but performed in parallel, this function is a premise, is the basis of the other function and vice versa. Supervising judicial activities is particularly important in improving the effectiveness and effectiveness of exercising prosecution rights from the following angles:

- Supervising judicial activities at first instance trial creates the conditions for exercising prosecution rights to access the Court's law violations as soon as possible to promptly detect, remedy or request the Court

to remedy violations of procedural laws while such violations are likely to lead to injustice, wrongdoing and neglect of crimes.

- Supervising judicial activities at first instance trial contributes to reflect the quality of exercising prosecution rights of Procuracy at the earlier stages of prosecution, investigation, prosecution to promptly overcome the limitations, inadequacies and promote results in the exercising prosecution rights. For example, through the inspection of the presence of people summoned by the Court to the trial, Procuracy may discover gaps in the process of collecting evidence from the testimony of participants in legal proceedings in the stage of investigation and prosecution, thereby helping to find the cause of the mistake and have appropriate solutions to correct and remedy such mistakes.

- Do well the supervising judicial activities at the first instance trial help the exercising prosecution rights more accurate and ensure the objectivity in the process of checking the basis and legality for decisions to solve the case, thereby ensuring the prosecution of the right people, the right crime, and the law.

- Supervising judicial activities in the first instance trial contributes together with exercising prosecution rights to exercise State’s power, ensure socialist legislation, ensure the interests of the State, and the legitimate rights and interests of individuals and organizations. officials.

- Conduct supervising judicial activities in the first instance trial in parallel with exercising prosecution rights, contributing to creating favorable conditions for the Court to make an impartial and lawful judgment, contributing to strengthening the people's confidence in judicial activities of the Court, improving the prestige of the procedure-conducting agencies, especially Procuracy and the Court.

1.4. Factors affecting the quality of the Procuracy's right to exercise prosecution rights during the first instance trial of criminal cases

Improving the quality of exercising prosecution rights during the trial of criminal cases depends not only on the results of exercise prosecution rights during the investigation and prosecution stage, but also on the following four basic factors:

- Legal factor;
- Human factors;
- Factors of management, direction, administration, assignment and assignment.
- Factors of Material facilities, equipment and remuneration.

Chapter 2
VIETNAM CRIMINAL PROCEDURE LAW ON THE PROCURACY'S RIGHT TO EXERCISE PROSECUTION RIGHTS DURING THE FIRST INSTANCE TRIAL OF CRIMINAL CASES AND PRACTICE

2.1 Brief history of the development of Vietnam prosecution law on the Procuracy's right to exercise prosecution rights during the first instance trial of criminal cases

2.1.1 Provision on the Procuracy's right to exercise prosecution rights during the first instance trial of criminal cases before Criminal Procedure code in 1988

- Prior to Criminal Procedure code in 1988, regulations on tasks and powers of Procuracy in general and exercising prosecution rights of Procuracy during the trial of criminal cases in particular were scattered in different legal documents. The most notable of these was the creation of Law on organization of People’s Procuracy in 1960 that marked the formation of Procuracy as an independent institution. In the early days, the exercising prosecution rights function was not recognized as an independent function of Procuracy, so the activities of Procuracy during the trial of criminal cases were under the function of monitoring law compliance.

- The provisions of the Law on organizaion of Procuracy in 1960 and some other legal documents do not clearly define the prosecutor's duties of Procuracy with those of other procedural authorities: building the indictment primarily under the responsibility of the Investigation Agency, Procuracy only exercises the authority to approve the indictment; The court can adjudicate without indictment of Procuracy; Procurator may be absent from the trial where the Court is adjudicating normally; in the course of trial, the indictment reading is performed by the Court Clerk, during the interrogation and debate process, the Judge may limit the time for argument of the Procurator; after the trial of criminal cases, Procurator may appeal even in the absence of a previous hearing.

- The 1980 Constitution and the Law on organization of People's Procuracy in 1980 were firstly recognized as the Procuracy’s exercising prosecution rights function independent of the law-monitoring function. Since then, only Procuracy is the sole entity has the right to prosecute offenders with indictment; At the trial, procurators are indictors rather than court clerks.

2.1.2 Provision on the Procuracy's right to exercise prosecution rights during the first instance trial of criminal cases of Criminal Procedure code in 1988 and Criminal Procedure code in 2003

- The issuance of Criminal Procedure code in 1988 and followed by Law on organization of People's Procuracy in 2002 marked a strong development step in our country's legislative work during this period. Since then, regulations on tasks and powers of Procuracy when exercising prosecution rights in the process of resolving criminal cases have gradually been formed.

- Criminal Procedure code in 1988 was the first Criminal Procedure code of our country which showed quite clearly the exercising prosecution rights of Procuracy during the trial of criminal cases. However, some regulations in the 1988 Criminal Procedure code do not yet show the role of Procuracy in exercising prosecution rights.

- The provisions of Procuracy 's exercising prosecution rights during the trial of criminal cases of the Criminal Procedure code in 2003, on the one hand inheriting the provisions in the 1988 Criminal Procedure code, on the other hand has overcome a number of shortcomings in the provisions of the 1988 Criminal Procedure code, including the specific provisions on Procuracy 's procedure conductors are the Head, Deputy Head and Procurators.

- Criminal Procedure code in 1988 and Criminal Procedure code in 2003 did not recognize Procuracy 's regulations on tasks and powers when exercising prosecution rights during trial of criminal cases, although this activity was actually conducted for so many years. Therefore, after more than ten years of implementation, Criminal Procedure code in 2003 revealed many inadequacies and placed urgent requirements on the need to amend and supplement to suit the situation of resolving criminal cases while the economic and social context, there have been many changes.

2.2 Current criminal procedure law on the exercise prosecution rights during the first instance trial of criminal cases

2.2.1. Exercising the procuracies' right to prosecute before opening the first instance trial for criminal cases

- Request the Court to return the file when it is found that there are a basic to return the file for additional investigation: specified in Clause 2, Article 280 Criminal Procedure code in 2015; Joint Circular No.

02/2017/VKSND-TAND-BCA-BQP dated July 22, 2017 stipulating the coordination between the procedure-conducting agencies in implementing a number of Criminal Procedure code's regulations on returning the file for additional investigation.

- Withdrawal of prosecution decision: (Point c, Clause 1, Article 266 Criminal Procedure code in 2015). Inadequacies in this regulation are shown in (1) no specific provisions on the authority to suspend the case when Procuracy withdraw all decisions to prosecute at the time of prostitution after having decided to bring the case to trial. , before the trial; (2): There is no specific provision that Procuracy may withdraw part or the whole of the prosecution decision before opening the trial.

- Request to summon more witnesses, request to bring more evidences and documents to consider: Criminal Procedure code in 2015 also does not provide for Procuracy's right to request the Court to summon those who need questioning. However, Article 287 Criminal Procedure code in 2015, which stipulates the authority of the Presiding Judge in convening people who need questioning, clearly states that the Presiding Judge's trial based on "The decision to bring the case to trial, request of Procurator, defense counsels and other participants in legal proceedings".

2.2.2. Exercising the procuracies' right to prosecute at the first instance trial for criminal cases

** Announcing the indictment, the decision to prosecute according to simplified procedures, other decisions on accusations against the defendant at the trial:* (Point a, Clause 1, Article 266 Criminal Procedure code in 2015; Point l, Clause 1 Article 42 Criminal Procedure code in 2015; Article 306 Criminal Procedure code in 2015; Clause 1 Article 18 Law on organization of People's Procuracy 2014; Article 23 Regulations on the exercise of prosecution rights and supervising judicial activities).

- Point a, Clause 1, Article 266 of Criminal Procedure code in 2015 specifies that in addition to the publication of the indictment or the decision to prosecute according to simplified procedures, Procurator may "announce other decisions about the charge against the accused". report at the trial ".

- Thus, in addition to the form of indictment or prosecution decision, Procuracy can issue "other decisions" about the charge against the accused. But Article 306 Criminal Procedure code in 2015 only stipulates that Procurator publishes the indictment and presents additional opinions if any.

- Studying the current provisions of Vietnam's criminal procedure law, there are no laws or guidelines on whether Procuracy can issue other "decisions" (other than the indictment, prosecution decision) on accuse the accused and in fact the Procurator trial only publishes the indictment or prosecution decision. Therefore, the provisions at Point a, Clause 1, Article 266 of Criminal Procedure code in 2015 are inconsistent with other relevant regulations and not in compliance with practical practices.

** Questioning, examining evidence and examination on the spot:*

- According to the provisions at point b, clause 1 of Article 266 Criminal Procedure code in 2015 on the tasks and powers of Procuracy when exercising of prosecution rights at the trial, Procurator is the person conducting "Questioning, examining material evidence and examination in place ", but the provisions on the order of interrogation in Article 307 Criminal Procedure code in 2015 left Procurator in a “passive” position because the interrogation process was run and decided by the Judge.

- In accordance with the spirit of point b, clause 1 of Article 266 Criminal Procedure code in 2015, Procurator must be in the position to ask first to prove his accusation, then to defendants, defense counsels and other participants in the proceedings. The Trial panel, which is mainly the Presiding Judge, is the person in charge of the proceedings at the trial, only conducting the questioning after the parties have finished questioning and only asking about the issues. clear, needs clarification.

** Impeach, argue, withdraw part or the whole of the decision to prosecute; conclusions on other crimes are equal or less serious; expressing the opinion of Procuracy on the resolution of the case at the trial*

- Regulations on duties and powers of Procuracy when exercising of prosecution rights during the trial period in Clause 1 Article 266 Criminal Procedure code in 2015 did not mention the authority of Procuracy (specifically the authority of Procurator) when discussing crimes at the trial can be concluded that the other is lighter or heavier than the one Procuracy has prosecuted in the same law. Meanwhile, Clause 3, Article 25 Regulations on the exercise of prosecution rights and supervising judicial activities provides that Procurator may conclude that the other is lighter or heavier than the one Procuracy has prosecuted in the same clause.

- Point c, Clause 1, Article 266 Criminal Procedure code in 2015 stipulates that Procuracy has the right to "conclude other or lesser offenses"

but Clause 3 Article 321 Criminal Procedure code in 2015 (Impeachment of Procurator) and Clause 1 Article 325 Criminal Procedure code in 2015 (Consider withdrawing the decision to prosecute or conclude a lesser offense at the trial) only stipulates that Procurator can conclude on a lesser offense without Procurator may conclude with another offense equal to the prosecution.

- Clause 1, Article 325 Criminal Procedure code in 2015stipulates that when Trial panel continues to hear the case, Trial panel continues to hear the case but does not specify whether Trial panel is sentenced with the decision to prosecute. has been withdrawn by Procurator or not.

- Provisions on cases where Procurator withdraws all decisions to prosecute Trial panel continues to adjudicate the case, showing a conflict between the judicial function of the Court and the prosecution function of Procuracy. "When Procurator on behalf of Procuracy withdraws the decision to prosecute, it means that the basis of the trial is not available, there is no reason for the Court to hear the case anymore, if the Court continues to hear when Procurator has withdrawn the decision. to prosecute, then invisible to the Court that has performed both prosecution and adjudicatory functions”[1].

- Clause 4, Article 326 Criminal Procedure code in 2015provides that if Procurator withdraws the entire decision to prosecute at the trial that Trial panel finds that the decision to prosecute is unfounded, "the decision to suspend the case and petition to Procuracy at the same level or Procuracy direct superior ". However, Procurator 's withdrawal of the entire decision to prosecute at the trial is not a basis for suspending the case in accordance with the 2015 Criminal Procedure code.

- Article 319 Criminal Procedure code in 2015 and Clause 3 Article 321 Criminal Procedure code in 2015 provide for Procurator "to conclude on lesser offenses".

- Provisions on the case under the jurisdiction of the superior Procuracy assigned to Procuracy subordinates exercise of prosecution rights and supervising judicial activities that Procurator has grounds to withdraw the decision to prosecute at the trial, they can make a decision to withdraw themselves. or must request Trial panel to postpone the trial to report the inconsistent leadership of Procuracy.

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[1] Nguyen Van Tuan (2015), *Some issues about Vietnam's criminal procedure law*, Justice Publishing House, Hanoi, p.216

- Regarding the scope of the content of debate, the Procurator 's responsibility regulation is to present evidence, documents and arguments to respond to the same opinions of the defendants, defense counsels and other participants in legal proceedings. at the trial (Article 322 Criminal Procedure code in 2015) is not yet consistent with the legal status of the participants in the proceedings arguing with Procurator at the trial.

- At Point c, Clause 1, Article 266 of Criminal Procedure code in 2015, there is a provision that Procurator holds the right to prosecute at the trial and has the right to express the views of Procuracy on the resolution of the case, but contrast with other provisions in Criminal Procedure code in 2015 did not find mention of this authority of Procurator at the first instance trial, only the Procurator stated the views on the resolution of the case in the appellate trial.

2.2.3. Exercising the procuracies' right to prosecute after the first-instance trial of criminal cases

- After finishing the first-instance trial, the Procuracy shall continue exercising the right to prosecute with the appeal of judgments or decisions which have not yet taken legal effect of the first-instance Courts. Point d, Clause 1, Article 266 of Criminal Procedure Code in 2015 stipulates that Procuracy has the tasks and powers of "Appeal against the Court's judgments and rulings in case of injustice, wrongdoing, crimes and offenders".

- In the period of trial of criminal cases, Criminal Procedure Code in 2015 provided that the right to appeal is both the task and the right of Procuracy when exercising of prosecution rights and the task and authority of Procuracy when supervising the trial. However, when examining records and appeal decisions, Procuracy always considers the case in its entirety, including both procedural and substantive matters, regardless of whether it is exercise of prosecution rights or operational control Justice. This raises the question that is the fact that Criminal Procedure Code in 2015 delineated the jurisdiction of appeal of Procuracy in accordance with the current regulations?

2.3. Practicing the implementation of Vietnam's Criminal Procedure Code provisions on the Procuracy's exercise of prosecution rights during the first instance trial of criminal cases

2.3.1. These achievements

- The number of cases that the Court returns to the Procuracy for additional investigation tends to decrease;

- The number of adjudicated cases that the Court has the same opinion with Procuracy on crime and punishment is increasing;

- Procuratorial debate activities in court are increasingly being strictly and strictly regulated;

- The quality of appellate appeals increased significantly.

2.3.2. The limitations and obstacles

** Exercise the prosecution rights of the Procuracy before opening court hearings for first-instance criminal cases:*

- Procurator has not actively studied the file, promptly proposed to the Institute's leader to resolve issues that arise before the trial.

- Procurator is often not active and proactive in proactively requesting the Court to return additional investigation records in practice.

- After having decided to bring the case to trial, Procurator usually does not withdraw the decision to prosecute (even if there are grounds to withdraw) but wait until the opening of the trial to ensure strict procedures as prescribed by Criminal Procedure Code.

** Exercise the prosecution rights of the Procuracy at the first instance trial of criminal cases*

- There is still a situation of Procurators who are not active in questioning in court, questioning is not really full and comprehensive;

- Many Prosecutors are psychologically avoiding the withdrawal of prosecution decisions or conclusions on other lesser offenses at the trial despite having grounds, leading to prolonged case resolution;

- The impeachment of many Procurators still depends too much on the prepared document, less adherence to the proceedings of the trial;

- Discussions in the Procurator's trial are still more formal, many procurators avoid the debate;

- The detection of mistakes and violations by the first-instance Court after the conclusion of the first-instance court trial is still limited.

2.3.3. Causes of limitations and problems:

* *Firstly*, causes of law*:*

- The provisions on duties and powers of entities in criminal proceedings are not consistent with the determination of the legal status and basic functions of criminal procedures performed by such subjects. The Court not only carries out the function of adjudication, but also participates in the performance of the Procuracy's impeachment function (The Court returns

additional investigation records in the absence of evidence; the Court continues to adjudicate when the Procuratorwithdraws all decision to prosecute, Court prosecute the case at the trial).

- The responsibility of proving that the offenses of the competent procedural authorities are not consistent: Procuracy cannot be concluded under other terms that are heavier than the prosecuted, and may not be concluded under other crimes more serious than the prosecuted charges, although the results of interrogations and arguments in court may change the perception of criminal acts compared to the time of prosecution.

- Tasks and powers of Procuracy when exercise the prosecution rights and when monitoring compliance with the law in criminal proceedings are not clearly delineated.

- A number of provisions of the current criminal procedure law relating to Procuracy's exercise the prosecution rights during trial of criminal cases are still inadequate, especially the provisions on the order of interrogation at the trial; in case the Court adjudicates on a more serious crime or other sums heavier than the one in the offenses Procuracy has prosecuted but beyond the jurisdiction of the Court ...

* *Second*, other causes:

- Limitations on qualifications, capacity, sense of responsibility of some officials, Procurators.

- Restrictions on the direction and administration of Procuracies all levels;

- Restrictions on organization of personnel, assignment and assignment in the control branch.

- Working conditions, facilities, regimes and policies for officials and Procurators are not guaranteed.

Chapter 3
REQUIREMENTS AND SOLUTIONS TO IMPROVE THE QUALITY OF EXERCISING THE PROSECUTION RIGHTS DURING THE FIRST- INSTANCE TRIAL OF CRIMINAL CASES

3.1. Requirements to improve the quality of exercising the prosecution rights of the Procuracy at the first instance trial of criminal cases

- Improve the quality of exercising the prosecution rights at the first instance trial of criminal cases to meet the requirements of the current judicial reform strategy in Vietnam;

- Improve the quality of exercising the prosecution rights at the first instance trial of criminal cases must comply with the provisions of the Constitution, ensuring the consistency between the criminal procedure documents and the general legal system.

- Improve the quality of exercising the prosecution rights at the first instance trial of criminal cases must be consistent with the requirements of ensuring human rights in criminal proceedings;

- Improve the quality of exercising the prosecution rights at the first instance trial of criminal cases must be consistent with the requirements of the crime prevention practice.

- Improve the quality of exercising the prosecution rights at the first instance trial of criminal cases must ensure the principles of criminal proceedings.

3.2. Solutions to improve the quality of exercising the prosecution rights of the Procuracy at the first instance trial of criminal cases

3.2.1. Complete solution of the law

- *Firstly*, on some basic principles of Vietnam's criminal procedure, I think that it is necessary to amend as follows:

+ Amending provisions of Article 20 Criminal Procedure Code 2015:

"Article 20: Responsibility to exercise the right to prosecution and control judicial activities in criminal proceedings

The Procuracy exercises prosecution rights in criminal proceedings and decisions on charges, in order to ensure that all offenses, offenders and legal entities must be detected and dealt with promptly and strictly. , the prosecution, investigation, prosecution, trial, judgment execution of the right

people, right offenses, right law, not to fall into crimes and offenders, legal entities committing crimes, do not injustice innocent people.

Procuracy shall supervise judicial activities in criminal proceedings, control the lawfulness of activities of agencies and persons competent to conduct legal proceedings, in order to ensure all violations of law by agencies and persons. competent to conduct proceedings must be detected and handled in a timely, strict and strict manner according to the provisions of law. "

+ Amending provisions of Article 15 Criminal Procedure Code 2015:

"Article 15: Principles for determining the facts of a case

The responsibility to determine the truth of the case rests with the competent procedural authorities. The accused is entitled but not obliged to prove his innocence.

The responsibility to prove the crime rests with the investigating authority, the agency tasked to conduct a number of investigating activities and procuracies. The court issues a ruling based on the facts of the case which was proved at the trial.

Within the scope of their tasks and powers, competent procedural authorities must apply legal measures to determine the truth of the case objectively, comprehensively and fully. "

+ Amending provisions of Article 18 Criminal Procedure Code 2015:

"Article 18. Responsibility to prosecute and handle criminal cases

When detecting acts showing criminal signs, within the scope of their tasks and powers, investigating bodies and agencies assigned to conduct a number of investigating activities and procuracies shall institute charges. cases and application of measures prescribed by this Code to identify crimes and handle offenders and legal entities committing crimes.

Not to prosecute cases other than the grounds, order and procedures prescribed by this Code. "

- *Secondly*, regarding the duties and powers of the Director, Deputy Director, Procurator, I propose to amend the provisions of Articles 41 and 42 Criminal Procedure code in 2015 as follows:

"Article 41: Tasks, powers and responsibilities of the Head and Deputy Head of The Procuracy

1. (unchanged)

2. When exercising the right to prosecute in criminal procedures, Procurators who are heads of procuracies have the following tasks and powers: ... ..

3. When administering judicial activities in criminal procedures, Procurators who are heads of procuracies have the following tasks and powers: ... "

"Article 42: Tasks, powers and responsibilities of procurators

1. When being assigned to exercise the right to prosecute in criminal proceedings, Procurators have the following tasks and powers:….

2. When being assigned to supervise judicial activities in criminal procedures, procurators shall have the tasks and powers ... "

- *Thirdly*, regarding the Court's duties and powers during the first instance trial of a criminal case, I propose amending some provisions as follows:

+ Supplementing the regulation on changing the limit of adjudication that leads to a change in jurisdiction will be resolved in accordance with Article 274 Criminal Procedure Code 2015 in Article 298 Criminal Procedure code 2015:

"Article 298: Limits of trial

1. (unchanged)

2. (unchanged)

3. (unchanged)

4. If the change of trial limit leads to the change of jurisdiction, it shall be settled in accordance with Article 274 of this Code ".

+ Amending the provisions of Article 280 Criminal Procedure code in 2015 towards: removing the provisions on the Court to return additional investigation dossiers according to the grounds prescribed at Points a, b and c, Clause 1, Article 280, continuing stipulating the basis for returning additional investigation files is the process of investigation, prosecution and adjudication of serious procedural violations (Point d, Clause 1, Article 280 Criminal Procedure code in 2015) and supplementing bases for returning additional investigation files at Procuracy's request.

+ Amending the provisions of Article 153 Criminal Procedure code in 2015 (Competence to institute criminal cases) in the direction of abolishing the provisions on the authority to institute criminal cases of trial panel; at the same time amending the provisions of Clause 7, Article 326 Criminal Procedure code in 2015 about the deliberation of trial panel, accordingly, at the trial, if detecting a crime, Trial panel petitioned Procuracy to prosecute the case instead. for making his own decision to prosecute the case.

- *Fourthly*, on the tasks and powers of Procuracy when exercising the right to prosecute in the first instance trial of criminal cases, I thinks that it is necessary to complete the provisions of Clause 1, Article 266 of Criminal Procedure code in 2015 according to specify the duties and powers of Procuracy at all three times before the opening of the trial, at the trial and after the end of the trial criminal case as follows:

"Article 266: Tasks and powers of the procuracy exercising prosecution rights during the trial period

1. When exercising the right to prosecute in the first instance trial, the procuracies have the following tasks and powers:

a) Exercising the right to prosecute before opening a trial at first instance trial: withdrawing part or the whole of the decision to prosecute; request the Court to return additional investigation files; to request the Court to summon participants in legal proceedings, to request additional evidence and documents to be reviewed at the trial; to protest against the Court's decision to suspend or suspend the Court in case there are grounds to determine injustice, wrong or omission of a crime, a person or a legal entity committing a crime;

b) Exercise the right to prosecute at the first-instance trial: Publicize the indictment, announce the decision to prosecute according to simplified procedures; request the Court to summon more people to participate in the proceedings; interrogation, material evidence examination and on-site examination; withdraw part or the whole of the decision to prosecute; impeachment; conclusions on other crimes are equal or less serious; to conclude that the other item is lighter or heavier than the one the Procuracy has prosecuted in the same law; discuss.

c) Exercising the right to prosecute after a trial at first instance trial: To protest against court judgments or rulings in cases where there are grounds to determine injustice, wrongdoing or leaving off criminals, persons or legal persons committing crimes. "

- *Fifth*, for other provisions in Criminal Procedure code 2015 on exercising of prosecution rights of Procuracy during the trial of criminal case, I proposed amending a number of provisions as follows*:*

+ Supplementing the provisions of Article 285 Criminal Procedure code 2015 about Procuracy withdrawing part or the whole of the decision to prosecute before opening the trial:

"Article 285. The Procuracy withdraws the decision to prosecute

The Procuracy withdraws part or the whole of the grounds specified in Article 157 of this Code or if there are grounds specified in Article 16 or Article 29 or Clause 2 Article 91 of the Criminal Code before opening the trial. If the Procuracy withdraws part of the decision to prosecute, the Court only decides to bring to trial the part where the Procuracy still prosecutes, in case Procuracy withdraws the entire decision to prosecute, the Court issues a decision to suspend the case judgment. "

+ Supplementing the provisions of Article 299 Criminal Procedure code 2015 that Trial panel may open a meeting in case Procuracy withdraws the entire decision to prosecute when a decision to bring the case to trial is opened, before the trial is opened:

"Article 299. The issuance of judgments and decisions of the Court

1. (Unchanged)

2. Decisions on changing members of the trial panels, procurators, court clerks, expert examiners, property valuators, interpreters, translators, temporarily suspending or suspending cases , postponing the trial, arresting detainees or releasing the defendant must be discussed, passed in the deliberation room and made in writing. In case of suspension of a case where the Procuracy withdraws all decisions to prosecute when a decision to bring the case to trial is issued, before the trial, the Trial panel shall hold a meeting and issue a decision to suspend the case. the case without having to open the trial ".

3. (Unchanged) ".

+ Amending regulations on the order of interrogation in Article 307 Criminal Procedure code 2015:

"Article 307. Order of interrogation

1. The trial panel must fully determine details of each incident and each crime in the case and each person. The presiding judge ran the questioning.

2. When questioning each person, *the presiding judge shall decide the procurators and defense counsels to ask first, then come to the defense counsels of the legitimate rights and interests of the involved parties to conduct the questions. The judge and jurors further questioned unclear issues to clarify details of the case.*

Participants in court proceedings are entitled to request the presiding judge to ask for further clarifications.

Expert witnesses and property valuators may ask questions about issues related to asset appraisal and valuation.

3. During interrogation, the trial panels, *procurators, defense counsels and protectors of the legitimate rights and interests of the involved parties* shall examine material evidence related to the case. "

+ Amending the name of Article 319 Criminal Procedure code 2015 "The procurator withdraws the decision to prosecute or concludes a lesser crime in court" to "*The procurator withdraws the decision to prosecute at the trial*" with the content as follows:

"Article 319: Procurators withdraw the decision to prosecute at the trial

Procurators, after finishing questioning, may withdraw part or the whole of the decision to prosecute ".

+ Amending the title of Article 325 Criminal Procedure code 2015 "*Consider withdrawing the decision to prosecute or conclude on lesser charges in the trial*" to "*Consider withdrawing the decision to prosecute in court*" with the content as follows:

"Article 325: Examining the withdrawal of prosecution decisions at court

1. When a procurator withdraws part of the decision to prosecute, the Court shall hear only the part where the Procuracy still prosecutes.

2. When procurators withdraw all decisions to prosecute, the trial panels shall decide to suspend the cases or declare defendants innocent. "

+ Amend and supplement the provisions of Clause 4, Article 326 of Criminal Procedure code 2015 on how to handle Trial panel in case Procurator withdraws the entire decision to prosecute and supplement Clause 6 on the authority to suspend the case of Trial panel is as follows:

“Article 326: Resolution

1. (unchanged)

2. (unchanged)

3. (unchanged)

4. If the procurator withdraws the entire decision to prosecute, the Trial panel shall issue a decision to suspend the case.

5. (unchanged)

6. At the end of the deliberation, Trial panel must decide one of the following:

a) Making judgments and pronouncements;

b) Return to the interrogation and debate if any details of the cases have not been questioned or clarified;

c) Return case files for further investigation by Procuracy; request Procuracy to supplement documents and evidence;

d) Temporarily suspend the case;

d) Suspend the case.

The Trial panel must notify the people present at the trial and the participants in the proceedings who are absent from the trial about the decisions in points c, d and dd of this clause.

7. *(amended to remove Trial panel's authority to institute criminal cases)".*

+ Supplementing the provisions of Article 321 Criminal Procedure code 2015 (Impeachment of Procurator) that Procurator may conclude that another offense is equal to the crime prosecuted by the Procuracy, for a lighter or heavier provision. in the same law to conform to the provisions of point c, clause 1, Article 266 Criminal Procedure code 2015and the guidance in Clause 2, Article 21 Regulations on the exercise of prosecution rights and supervising judicial activities.

+ Amending provisions of Article 322 Criminal Procedure code 2015:

"Article 322. Argumentation at the trial

1. Defendants, defense counsels and participants in a debate have the right to present their opinions, present evidences, documents and arguments in response to the procurators on matters related to their rights. and their lawful interests or relates to the legitimate rights and interests of the people they protect.

Defendants, defense counsels and participants in arguments have the right to make their proposals.

3. The presiding judge must not limit the time for debate, must create conditions for Procurator, defendants, defense counsels, crime victims and other participants in the debate to present their opinions but have the right to cut comments. comments are not related to the case and opinions are repeated

The presiding judge requests procurators to respond to the opinions of the participants in the debate that were not discussed by Procurator.

4. (unchanged)".

+ Removing the provisions of Clause 5, Article 267 of Criminal Procedure code 2015, amending the provisions of Clause 6, Article 267 of the Criminal Procedure code 2015 2015, in the direction of:

"6. To propose and request courts, agencies, organizations and individuals to conduct procedural activities according to the provisions of this Code; to propose courts to remedy violations in procedural activities and violations regarding procedure."

- *Sixthly*, finalize the provisions of the Law on Organization of the People's Procuracy 2014 and the Regulations on the practice of prosecution and adjudication to ensure consistency with the provisions of the 2015 Criminal Procedure code.

- *Seventhly*, Procuracy urgently needs to develop and issue industry guidelines related to exercise of prosecution rights; it is necessary to promulgate regulations on coordination between Procuracy and the Court in the criminal trial period.

3.2.2. Other solutions

- Ensuring the quantity and improving the quality of the contingent of officials and Procurators;

- Enhancing the direction, administration, assignment and assignment in the industry;

- Strengthening facilities, remuneration, policies for officials, Procurators.

GENERAL CONCLUSIONS

Through the study of the topic "Practicing prosecution rights in the first instance trial of criminal cases", the following conclusions can be reached:

1. To exercise the right to prosecution arising from the natural needs of any State before the requirements of ensuring legislation, protecting the common interests of the State, society and citizens. In particular, the trial of criminal case is meant as a public proceeding to handle people with dangerous acts for society, where all parties involved in the criminal procedure legal relationship should claim. There must be a high level of concretization of the rights and obligations of the parties, especially those who represent State power.

2. As the exercise prosecution rights agency during the trial of criminal case, Procuracy's duties and powers must be fully presented at all three times before, during and after the end of the trial criminal case. The presence of the Procuracy agency when exercise prosecution rights during the first trial period at all three times is both to perform the function of the State's charges against offenders, while ensuring against the "abuse of power" in trial of the Court.

3. Meeting the requirements of Vietnam's judicial and criminal procedure reforms, there have been fundamental innovations, especially the introduction of Crimial Procedure code 2015, Law People’s Procuracy 2014 with specific provisions. Procuracy's rights and duties when exercise prosecution rights is in the trial of criminal case. However, Vietnam's criminal procedure law still reveals inadequacies and limitations when Procuracy's tasks are not fully and reasonably defined in general criminal proceedings and trial of criminal private.

4.The practical implementation of the provisions of the criminal procedure law on Procuracy's exercise prosecution rights during the first trial period achieved many positive results but still remained limited, partly due to legal reasons. , but also comes from the professional competence of officials, Procurator leadership ability, administration, management of leaders of the control levels, equipment conditions, facilities of the inspection industry, the infrastructure is missing.

5.Quality improvement solutions exercise prosecution rights in the first trial period include systematic, complete and complete legal solutions and other solutions such as improving the professional competence of Procurators, ensure the number of Procurator at all levels, improve the management, direction and administration capacity of the supervisory leadership, consolidate facilities, remuneration, policies for officials, Procurators.

LIST OF PUBLISHED RESEARCH WORKS RELATED TO THE THESIS

1. Tran Thi Lien (2018), "Activities of exercising the right to prosecute before the opening of first-instance trial of a number of countries in the world - Compared with Vietnam's criminal procedure legislation", *Journal of Procuratorate Studies*, (05);

2. Tran Thi Lien (2019), “Provisions of criminal procedure legislation on the exercise of prosecution rights, control of first instance trials and completion recommendations", *Journal of Procuratorate*, (07);

3. Tran Thi Lien (2019), "Functions to exercise the right to prosecute and supervise judicial activities in criminal procedure", *Jurisprudence journal* (2).