

EXERCISE AND PROSPECTUS OF INVESTIGATING CASE OF PROPERTY REPRESENTATIVE PROVISIONS OF VIETNAM LAW

EXERCÍCIO E PROSPECTO DE INVESTIGAÇÃO DE CASOS DE REPRESENTAÇÃO DA PROPRIEDADE DISPOSIÇÕES DO DIREITO VIETNAMITA

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Abstract: The crime of property robbery is specified in Article 168 of Chapter XVI of the Penal Code 2015 (Criminal Code), including 3 types of acts: Using force, threatening to use force immediately or committing acts other acts that make the attacked person fall into a state of being unable to resist in order to appropriate property. The subject of a crime is any person 14 years of age or older who has criminal capacity. According to the provisions of the 2013 Constitution (Constitution), the 2014 Law on Organization of the People's Procuracy (the Law on Organization of the People's Procuracy) and the 2015 Criminal Procedure Code (Criminal Procedure Code). then the People's Procuracy exercises the right to prosecute and supervise judicial activities to ensure that all criminal acts are detected, investigated, prosecuted and adjudicated in a timely manner, without allowing unjust circumstances to occur. wrong, omitting criminals and at the same time not unfairly harming innocent people. The article presents the crime of property robbery specified in Article 168 of the Penal Code, the prosecutor's exercise of the right to prosecution and supervision of judicial activities during the investigation phase during the investigation phase of the case. property robbery.

Keywords: Exercise of the right to prosecutors. Prosecutors. The prospectus of investigating. Property robbery, Vietnamese law.

Resumo: O crime de roubo de bens está especificado no artigo 168º do Capítulo XVI do Código Penal 2015 (Código Penal), incluindo 3 tipos de atos: Uso da força, ameaça de uso imediato da força ou prática de outros atos que façam a pessoa atacada cair num estado de incapacidade de resistência para se apropriar de bens. O sujeito de um crime é qualquer pessoa com 14 anos de idade ou mais que tenha capacidade criminal. De acordo com as disposições da Constituição de 2013 (Constituição), da Lei sobre a Organização da Procura Popular de 2014 (Lei sobre a Organização da Procura Popular) e do Código de Processo Penal de 2015 (Código de Processo Penal). então a Procura Popular exerce

o direito de processar e supervisionar as atividades judiciais para assegurar que todos os atos criminosos sejam detectados, investigados, processados e julgados atempadamente, sem permitir a ocorrência de circunstâncias injustas. errados, omitindo criminosos e ao mesmo tempo não prejudicando injustamente pessoas inocentes. O artigo apresenta o crime de roubo de bens especificado no artigo 168º do Código Penal, o exercício pelo procurador do direito à ação penal e a supervisão das atividades judiciais durante a fase de investigação durante a fase de investigação do caso. roubo de bens.

Palavras-chave: Exercício do direito ao Ministério Público. Procuradores. O prospecto da investigação. Roubo de propriedade. Lei vietnamita.

1. INTRODUCTION

In recent years, the crime situation in general and property robbery in particular in Vietnam has increased and complicated developments. The behavior and tricks of the crime of property robbery are becoming more sophisticated and dynamic, and the nature and level of danger to society is increasing, and it is necessary to have effective measures to fight and prevent. According to the provisions of the Criminal Procedure Code of Vietnam, the prosecution and investigation of criminal cases in general and criminal cases of property robbery in particular belong to the investigating agency, the agency assigned to conduct a number of investigative activities (hereinafter referred to as the Investigating Authority). Investigating agencies have the duties, powers and responsibilities to promptly detect all crimes and offenses, prosecute cases, and quickly conduct all investigative measures to clarify crimes and offenders. The Procuracy exercises the right to prosecute in criminal cases, prosecutes and charges, and supervises the judicial activities of the investigating bodies to ensure that the right people are prosecuted and investigated. crime, in accordance with the law, not allowing the situation of injustice and omission of criminals. In the past 5 years (2018 - 2022), the Procuracy has exercised the right to prosecute and investigate 5,578 cases of property robbery with a total of 8,860 defendants, making an important contribution to the fight against this type of crime. crime, maintain political security, social order and safety, protect human rights and citizens' rights in criminal proceedings.

2. Constituting the crime of property robbery according to the provisions of the Vietnamese Penal Code

The crime of property robbery is specified in Article 168 of the Penal Code with the following contents: “Criminal robbery

1. *Those who use force, threaten to use force immediately or commit other acts to make the attacked person fall into an irresistible state in order to appropriate property, shall be sentenced to between three years of imprisonment and a term of imprisonment of between three years and three years. 10 years.*

2. *Committing the crime in one of the following circumstances, the offenders shall be sentenced to between 07 and 15 years of imprisonment: a) In an organized manner; b) Be of a professional nature; c) Inflicting injury or causing harm to the health of others with an injury rate of between 11% and 30%; d) Using weapons, means or other dangerous tricks; dd) Appropriating property valued between VND 50,000,000 and under VND 200,000,000; e) Committing the crime against a person under 16 years old, a woman who is known to be pregnant, an elderly person or a person incapable of self-defense; g) Causing adverse effects on social security, order and safety; h) Dangerous recidivism.*

tricks;

3. *Committing the crime in one of the following circumstances, the offenders shall be sentenced to between 12 and 20 years of imprisonment: a) Appropriating property valued between VND 200,000,000 and under VND 500,000,000; b) Inflicting injury or causing harm to the health of others with an injury rate of between 31% and 60%; c) Taking advantage of natural disasters and epidemics.*

4. *Committing the crime in one of the following circumstances, the offenders shall be sentenced to between 18 years and 20 years of imprisonment or life imprisonment: a) Appropriating property valued at 500,000,000 VND or more; b) Inflicting injury or causing harm to the health of 1 person with an injury rate of 61% or higher, or causing injury or causing harm to the health of 2 or more people with an injury rate of 61% or more. each person 31% or more; c) Causing death; d) Taking advantage of the situation of war or state of emergency.*

5. *Those who prepare to commit this crime shall be sentenced to between 01 and 05 years of imprisonment.*

6. *Offenders may also be subject to a fine of between VND 10,000,000 and 100,000,000, probation, ban from residence for between 01 and 05 years, or confiscation of part or all of their property”.*

Composition of the crime:

- Objects of the crime: Crime of robbing property infringing upon the object of the crime is the property rights of state agencies, organizations and individuals and at the same time infringing upon human life and health. protected by law.

- The objective side of the crime: The objective side of the crime is the manifestation outside the objective world of the crime, including the objective behavior, the consequences of the crime, the tools and means of the crime, the time and place of the crime. The objective behavior of the crime of property robbery is expressed in the following three types of behavior:

Firstly, the act of using force to appropriate property is an act of using physical force or violence to attack or affect another person's body, causing damage or threatening to cause damage to life or health. their health with a sense of paralyzing their will to resist, in order to seize property. The offender may use tools, means or no tools, to affect the body of another person. The object of impact can be the owner of the property or any person that the offender thinks can prevent the appropriation of his or her property.

Second, the act of threatening to use immediate force to appropriate property, is the act of threatening to use physical force, violently attack, and immediately affect the body of the owner of the property or other people. with the sense that the threatened person has grounds to fear that the use of force will be made immediately if the offender is not allowed to appropriate the property.

Third, other acts that make the attacked person fall into a state of being unable to resist in order to appropriate property, is an act other than the act of using force, threatening to use force immediately, capable of causing harm. allowing others to fall into a state of paralysis of resistance in order to appropriate property. For example: using poisons, anesthetics to make others unconscious to appropriate property.

The crime of robbery is completed as soon as the offender performs an objective act (Nguyen Thi Minh Trang, 2021). Consequences of crime: The offender appropriates any kind of property; may or may not cause damage to the life or health of the victim or others. Offenders can use tools and means to commit crimes at any time and place.

- Subject of crime: According to the provisions of Article 12 of the Penal Code, the subject of property robbery is any person who is full 14 years old and has criminal liability capacity.

- The subjective side of the crime: The subjective side of the crime is the internal psychological state of the offender when committing the crime, expressed by the fault, motive and purpose of the crime.

The crime of property robbery is committed with intentional error, the offender is well aware that his act is dangerous to society, foresees the consequences of that act and wants the consequences to happen. The motive of the crime in robbery is not required. The purpose of the crime is to appropriate another person's property.

Article 168 of the Penal Code stipulates that the main punishment for property robbery is imprisonment from three years to life imprisonment. In addition, there may be additional penalties such as a fine of from VND 10,000,000, probation, ban from residence from 01 to 03 years or confiscation of part or all of the property.

3. Exercise the right to prosecute and supervise judicial activities in investigating cases of property robbery

3.1. Legal basis

Procurators exercise the right to prosecute and supervise judicial activities in the investigation of criminal cases in general and cases of property robbery in particular, based on the following legal documents: Article 107 of the Constitution; Law on Organization of People's Procuracy; Criminal Code; Criminal Procedure Code; Regulation on the exercise of the right to prosecution, supervision of prosecution, investigation and prosecution (issued together with Decision No. 111/QD-VKSTC, dated April 24, 2020 of the Chief Procurator of the Supreme People's Procuracy High); Directive No. 05/CT-VKSTC dated April 27, 2020 of the Procurator General of the Supreme People's Procuracy "On strengthening prosecutorial responsibility in solving criminal cases, meeting the requirements of crime prevention and combat "; Some other text.

3.2. Activities to exercise the right to prosecute and supervise judicial activities in investigating cases of property robbery

According to the law, the People's Procuracy exercises the right to prosecute and supervise judicial activities in the criminal domain to ensure that all criminal acts and offenders are detected, investigated and prosecuted. promptly prosecute and adjudicate, not allowing unjust, wrong, and omission of criminals, and at the same time not unjustly offending innocent people. The stage of investigating criminal cases in general and property robbery in particular begins when the investigating agency issues a decision to prosecute the

case and prosecute the accused. Investigators have the duties, powers and responsibilities to conduct investigative activities in accordance with law to clarify the contents of the case, all circumstances of the crime, identify the offender to serve the case. prosecute, adjudicate and impose penalties on offenders. After issuing the decision to prosecute the case and prosecute the accused, the investigating agency shall transfer the decision and all case files to the Procuracy to exercise the right to prosecute and supervise the prosecution of the case. prosecution, prosecution and investigation (Tran Cong Phan, 2016). In the exercise of the right to prosecution and investigation, it is necessary to accurately evaluate each case, ensure that all criminal acts and offenders are detected, prosecuted, investigated, prosecuted and tried. promptly, strictly, with the right person, at the right crime, in accordance with the law, not unjustly offending innocent people, not ignoring criminals and offenders (Le Xuan Hai, 2020). According to the provisions of the Criminal Procedure Code, within 03 days from the date of receipt of the decision to prosecute and the case file, the procurator on behalf of the Procuracy conducts the study of the file, examines the case file. , assess the validity and legitimacy of the decisions to prosecute the case, prosecute the accused, the investigative activities in the stage of solving crime information, report to the Leaders The Procuracy (Director, Deputy Director) shall decide to approve or cancel or change the decision to prosecute the case or prosecute the accused. After the Procuracy approves the decision to prosecute the accused, the investigating agency shall take investigation measures to clarify the contents of the case.

During the investigation process, the Procurator always closely follows the investigation process, promptly issues an investigation request for the investigator to implement in order to quickly clarify the contents of the case, identify the offender (Tran Thanh Thuy, 2016). The purpose of making an investigation request is “to clarify criminals and offenders” (Nguyen Cao Cuong, 2019). The procurator requested the investigator to conduct investigation activities to clarify the contents of the case about: Time, place, and the crime of robbery, in which it was determined that the accused had committed specific acts. such as using force or threatening to use force immediately or other acts..., the consequences of the crime must clearly determine who is the victim, how much property is appropriated? Is the property money or other material thing? Has the victim suffered damage to his or her health or life? If there is damage to health and life, what is the extent of the damage? The above damage must be determined by the conclusion of property valuation, the conclusion of the forensic examination or the documents and conclusions of the competent State

agency. What are the tools and means used by the accused to commit the crime? Where is the origin? Clearly identify the offender's identity in terms of name, age, place of residence, criminal record, criminal record and other details related to the proper settlement of the criminal case; collect sufficient evidence to convict as well as exculpatory evidence for the accused. Excluding evidence may be circumstances that exclude criminal liability, exempt from criminal liability, or extenuating circumstances of criminal liability specified in the Penal Code and the Criminal Procedure Code. Investigative activities in a robbery case may include: Scene examination, autopsy; take testimonies, interrogate the accused; take testimonies of victims and witnesses; confront, identify, experimentally investigate, search, distrain assets, freeze accounts; property valuation, forensic examination and a number of other investigative activities. When conducting an investigation, the investigating authority can issue many types of decisions such as: Orders for arrest of persons in case of emergency, orders for arrest of persons held in urgent cases, custody orders, and orders to arrest the accused for temporary detention. detention, decision to apply other preventive measures, coercive measures, search warrant; decide to extend temporary detention or investigation; decide to solicit the assessment and valuation of assets; decided to temporarily suspend the case, suspend the investigation of the case... These orders and decisions of the investigating authority must be immediately sent to the procuracies together with the case files so that the procuracies can exercise their right to prosecute and inspect the grounds and legitimacy of the decisions. Procurators in the entire process of investigating the case regularly conduct research on records, inspect the groundability and legitimacy of orders and decisions of the investigating agency, and procedural activities conducted. to report to the leadership of the Procuracy for decision on approval, non-approval, cancellation or change of such orders or decisions. When studying the case file, the procurator carefully reads each document page, takes notes of the document's content, copies important documents, carefully examines the photo, video-clip or other recorded data. video with sound, other evidence to identify incriminating evidence and evidence that can exclude criminal responsibility for the accused; other circumstances related to the correct settlement of the case.

Procurators may coordinate with investigators in taking testimonies of the arrested, the accused, witnesses, victims or other investigative activities to clarify the grounds for instituting the accused, the grounds for the prosecution. detention, grounds for charges. Procurators regularly closely supervise the compliance with the law in investigating activities of investigators to ensure that the investigation activities comply with the provisions of the

law on competence, order, procedures and time. to ensure that the investigation is on time, and that there is no wrongful prosecution, detention or omission of criminals. At the same time, the situation of the investigator forcing the confession, using corporal punishment or falsifying the case file for personal or self-seeking motives should not be allowed. When detecting a violation of the law by the investigating agency or investigator, the Procurator resolutely requests the termination or reports it to the Institute's leadership to request termination, remedy or take appropriate handling measures according to regulations. of the law, such as annulling illegal decisions, strictly handling investigators, requesting the replacement of investigators, and criminally prosecuting investigators who commit crimes.

At the end of the investigation period, the investigating authority shall issue an investigation conclusion, propose prosecution or issue a decision to terminate the investigation of the case. These decisions and the entire case file are transferred to the Procuracy for the Procuracy to issue prosecution decisions or other decisions. Within 20 days for less serious crimes or serious crimes and 30 days for very serious or particularly serious crimes, the procurator shall continue to study the records to re-check the grounded and lawful decisions and procedural activities of investigating bodies and investigators. Prosecutors need to have good skills in synthesizing and evaluating evidence, thereby deciding to use evidence in fighting crimes (Nguyen Thanh Mai, 2018). At the end of the prosecution period, if it is determined that the prosecution and investigation are grounded and lawful, the Procuracy shall issue an indictment to prosecute the accused before the court for trial. To ensure the prosecution of the right person and the right crime, the Procurator directly conducts a number of investigative activities such as interrogating the accused, taking testimonies of victims and witnesses to strengthen the incriminating evidence as well as to check and re-evaluate the survey results conducted by the enumerator (Hoang Anh Tuyen – Pham Thi Thuy Linh, 2020).

The validity of the decision to prosecute the case, prosecute the accused, and the decisions of the investigating authority is reflected in the fact that the documents in the case file have firmly identified the incriminating evidences, such as: criminal acts of the accused, motives, purposes, tools, means and tricks of the crime, consequences of the crime, satisfying the requirements of the crime constituting property robbery; there is no ground to terminate the case as prescribed in Article 157 of the Criminal Procedure Code, Articles 19, 26 or Clauses Article 91 of the Penal Code. There are grounds to apply the custody or temporary detention measure specified in Article 113, Article 119 of the Criminal Procedure Code; have

grounds to search and seize electronic objects, documents and data as prescribed in Articles 192 to 195 of the Criminal Procedure Code, such as having grounds to determine in person, residence or workplace, the vehicle of the person being searched has traces of a crime or to rescue the victim.... For decisions to temporarily suspend the case or investigate the case, there must be grounds for such suspension or suspension as prescribed in Articles 229 and 230 of the Criminal Procedure Code.

The legitimacy of the decision to prosecute the case, prosecute the accused, and other decisions of the investigating authority is reflected in the fact that the decisions are issued in accordance with their competence, such as those made by the heads and deputy heads of the investigating bodies. promulgation; strictly follow the order and procedures for making decisions or conducting investigative activities of investigators, and the time limit for sending decisions to the procuracies, to the accused and victims; strictly comply with the investigation time limit, custody and temporary detention time limit, etc. as prescribed by the Criminal Procedure Code; the file does not show that the investigator forced the confession, used corporal punishment, or falsified the case file or case.

After researching, the Procuracy evaluates and concludes on the groundability and legitimacy of the decisions, case files and decisions as follows:

a) If the investigation agency's decision or order and the investigator's procedural activities are grounded and lawful and it is clear that the accused has committed the crime of property robbery, a decision to prosecute the accused shall be issued first. Court for trial;

b) In case the investigation agency's decision or order or the investigator's procedural activities are groundless and illegal, there is one of the grounds not to prosecute the case as prescribed in Article 157 The Criminal Procedure Code or having grounds specified in Article 16 or Article 29 or Clause 2, Article 91 of the Penal Code, shall issue a decision to terminate the case or to terminate the case against the accused;

c) In case there are grounds to suspend the case as prescribed in Article 247 of the Criminal Procedure Code and Clause 6, Article 1 of Law No. 02/2021/QH15 dated November 12, 2021 on amendments and supplements to a number of Article of the Criminal Procedure Code 2015 shall issue a decision to temporarily suspend the case or suspend the case for the accused;

d) If the evidence is not sufficient to determine that the accused has committed the crime of property robbery or committed serious procedural violations, a decision to return

the dossier shall be issued to request the investigating authority to conduct additional investigation activities. to collect additional evidence for prosecution.

4. Some recommendations and solutions to improve the quality of prosecutorial practice and supervision of judicial activities in investigating cases of property robbery

According to statistics of the Supreme People's Procuracy, from 2018 to 2022, the Procuracy at all levels nationwide has exercised the right to prosecute, supervise the prosecution, and investigate 4389,852 criminal cases with a total of 630,068 defendants, including 5,578 cases of property robbery with a total of 8,860 defendants. The Procuracy prosecuted 325,153 cases with a total of 570,625 accused, including 3,886 cases of property robbery with a total of 7,913 defendants. The court heard 317,000 cases with a total of 550,777 defendants, including 3,831 cases of robbery with a total of 7,747 defendants.

Procurators of the Procuracy at all levels have well performed their functions of exercising the right to prosecute and supervise judicial activities in investigating, prosecuting and adjudicating property robbery cases (Cao Thi Ngoc Ha, 2020). The cases of property robbery prosecuted by the Procuracy and brought to trial by the Court are basically all the right people, the right crimes, and the law, no case has been wrongly prosecuted or convicted. That result has positively contributed to maintaining political security, social order and safety, protecting the interests of the State, and the legitimate rights and interests of agencies, organizations and individuals. However, there are still a number of cases of property robbery that have been suspended from investigation or trial due to insufficient evidence to prove the defendant's criminal behavior and due to a number of other reasons. The status of returning dossiers for additional investigation many times but failing to overcome shortcomings and violations during the investigation process; a number of procurators do not have high legal knowledge, experience and skills in practicing the right to prosecute and supervise investigations, and have not fulfilled their responsibilities when accepting and settling criminal cases.

In order to overcome the above limitations and difficulties, the author proposes a number of recommendations and solutions to improve the quality of the prosecution's practice and control of the judicial activities of the procurator in the investigation of criminal cases. The crime of robbery is as follows:

Firstly, continue to improve the provisions of the law: The law is a fundamental and important factor to ensure the quality of the exercise of the right to prosecution, and to supervise the judicial activities of the Procurator in investigation and prosecution. prosecuting and adjudicating cases of robbery. Therefore, it is necessary to continue to amend and improve the Criminal Code, the Criminal Procedure Code, and the regulations of the Procuracy in the direction of strengthening the duties, powers and responsibilities of the Procurator in the investigation stage. investigate, prosecute, and ensure that procurators are more independent when performing their functions and duties. In addition, in order to ensure the uniform handling of property robbery, there is no contradiction in the determination of some other crimes belonging to the group of property infringement crimes. property robbery, property robbery and property theft (Phan Anh Tuan, 2016)

Second, strengthen training and retraining to improve professional qualifications and capacity, political qualities, professional ethics and sense of responsibility of prosecutors: The People's Procuracy needs to strengthen their work. train and re-train a team of procurators in legal knowledge, professional skills to practice prosecution rights, supervise judicial activities in general and in-depth skills in solving cases of property robbery; fostering skills in studying records, identifying law violations by investigating agencies and investigators in case investigation; the skill of making inquiry requests; regularly summarize and draw experience in the exercise of the right to prosecution and supervision of judicial activities in the criminal field. Strengthening education to improve moral quality, political bravery and responsibility for public service for the procurators, always upholding the spirit of crime prevention and fighting to protect the State, society and rights. human rights, civil rights.

Third, strengthen facilities and appropriate remuneration for Procurators to exercise the right to prosecute and supervise judicial activities: The State needs to increase investment in necessary facilities such as office buildings. work, working equipment and technical means for the procurator team to facilitate the performance of their official duties. Strengthening remuneration regimes and policies such as salary, bonus, allowance, and reward in an appropriate and satisfactory manner so that the procurator team can rest assured in their work, without negative thoughts and behaviors, and corruption, intentionally doing wrong, causing bad consequences to the performance of functions, tasks and powers of the People's Procuracy.

Fourth, strengthen the supervision of State agencies and the people: Strengthen the coordination with the supervisory agencies of the National Assembly, the People's Council,

and the Vietnam Fatherland Front Committee in the field of law. the supervision of the exercise of the right to prosecution and judicial activities of the Procuracy in general and the investigation of property robbery cases in particular to ensure that the investigation and prosecution do not occur unjustly or wrongly. or omit criminals.

5. CONCLUSION

Exercising the right to prosecute and supervise judicial activities in the investigation of cases of property robbery is extremely important in criminal proceedings, it ensures the prosecution, investigation, prosecution and trial. The trial of the Procuracy in the whole process of settling the case is grounded and in accordance with law; ensure the quick detection of crimes, timely investigation and clarification of the case's contents. At the same time, promptly detect violations of the law by investigating bodies and investigators in the prosecution and investigation, thereby quickly requesting termination and remedial consequences, ensuring the prosecution and investigation. investigating, prosecuting and adjudicating the right people, the right crimes, and the law, there are no cases of injustice, wrongdoing or omission of crimes. Well performing the function of exercising the right to prosecute and supervise judicial activities in investigating cases of property robbery, contributing to well performing the functions and tasks of the People's Procuracy, thereby maintaining security. political, social order and safety, protect the interests of the State, the legitimate rights and interests of agencies, organizations and individuals, especially the accused in criminal proceedings.

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