The Compatibility of Vietnam's law on Recovering Criminal Assets with the International Convention Against corruption

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Abstract: *The United Nations Convention Against Corruption (UNCAC) is the foremost internationally legal document in the field of corruption prevention. UNCAC contains adequate and comprehensive regulations about the minimum standards for recovering corrupted assets in the mechanisms for asset recovery. Vietnam is a member of UNCAC. In recent years, Vietnam's legal system has gradually been modified and updated to ensure its compatibility to UNCAC standards in international cooperation in asset recovery. This article provides more information about the compatibility of Vietnam's law to the legal framework of international cooperation in corrupted asset recovery.*

Keywords: *corruption; criminal assets; asset recovery; international cooperation in corrupted asset recovery; international convention against corruption*

1. An overview of criminal asset recovery and international cooperation in criminal asset recovery

The most complicated crimes of corruption and money laundering require the efforts to recover assets beyond the national borders. This is because 1) part of the crime was committed overseas as in the case of a company giving bribes to foreign officials for the contract in their country; and 2) corrupted officials can launder their illegal money in another financial entity. For example: money laundering by international transfer has been popular in recent years in countries with serious corruption where the fight against corruption has intensified. The money laundering performed by professional financial institutions can be processed quickly. Meanwhile, it can take months or years for legal executives and prosecutors to recover the assets because national sovereignty restrains competent authorities to conduct an investigation, take legal action and obtain a sentence in a foreign country.

When the crime extends beyond national borders, officials who are in charge of recovering the criminal assets immediately need to engage in international cooperation and maintain this cooperation from the start to the end of the case. They cannot wait until the recovery order is issued by a court to start the process of identifying and protecting the assets in the foreign countries because the cooperation at this stage is very limited and ineffective in recovery. Late international cooperation also allows the corrupted officials to transfer their money

to other financial entities, which apply banking confidentiality to uncooperative entities. Therefore, the relevant authorities of the foreign entity need to be engaged from the beginning, at the least through an unofficial cooperation mechanism. Early cooperation will help the officials of asset recovery to understand the foreign laws, the legal challenges, to find out more cues and to shape their strategy. It also helps the foreign entity to provide their early support.

In several countries, the competent authorities of asset recovery often prepare the request for legal cooperation quickly when they identify the need for international cooperation. However, to get the important information quickly and determine the procedures to follow, they often contact the foreign legal authority and the financial intelligence unit directly or collect the information from legal staff from the diplomatic missions in their country or in the region. Such support can help to quickly identify the asset, clarify the necessary assistance and more importantly, create a strong foundation for judicial support. The communication brings opportunities to understand the procedures and mechanisms of the foreign entity and evaluate strategic options. Unofficial communication needs to be approved by the central organization of the asset recovery officials to make sure there are no violations against the protocol with other entities or against the legal rules about foreign assistance.

Currently, the framework for international cooperation in recovering criminal assets is stipulated in several international legal documents. As the largest international organization, the United Nations has implemented many asset recovery and corruption prevention activities on a global scale by issuing international conventions against money laundering and corruption.

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 specified the issue of criminal asset recovery. In 2000, the UN ratified the Convention Against Transnational Organized Crime, which includes clauses about asset recovery. However, only until UNCAC was born, was the issue of corruption and asset recovery more comprehensively and adequately stipulated. It has been affirmed that international cooperation plays an important role in recovering assets which are distributed to foreign countries. Currently, the international community has signed several conventions and multilateral agreements to request member countries to cooperate with one another in investigating, providing evidence, applying temporary measures, recovering and returning the assets.

2. Vietnam's law on international cooperation in criminal asset recovery

After the Law against money laundering was passed in 2018, the Government and State Bank quickly issued the instruction documents to implement the law. The decision, numbered 20/2013/QĐ-TTg dated April 18, 2013 by the Prime Minister stipulated the ceiling value of the transactions, which must be reported. This Decree, numbered 116/2013/NĐ-CP dated October 4, 2013 by the Government

provides detailed instructions for implementing some articles in the Law against Money Laundering (Decree 116). Circular 35/2013/TT-NHNN dated December 31, 2013 instructed the implementation of some regulations against money laundering (Circular 35). Circular 31/2014/TT-NHNN dated November 11, 2014 revised and added some articles to Circular 35.

The system of legal documents against money laundering has stipulated a series of solutions to prevent money laundering, including articles and clauses, which directly involve corruption prevention and asset recovery. Article 13 of the Law Against Money Laundering is directed at politically influential figures. Article 33 of the Law Against Money Laundering and Article 22 of Decree 116 are about delaying transactions. Article 34 of the Law against money laundering and Article 23 of Decree 116 are about locking down accounts and sealing or seizing assets.

The regulations about preventing and detecting corrupted assets in Article 52 of UNCAC were localized in the Law Against Corruption and its instruction documents. The Law Against Corruption of 2005 states that "Corrupted assets must be recovered and taken back"(Article 4). The 2018 Law Against Corruption continues by saying that "Corrupted assets must be recovered, returned to legitimate owners or taken back by the rules of the law"(Clause 1, Article 94) and "The loss caused by the acts of corruption must be amended; people who commit the act of corruption must make up for the loss according to the rules of the law" (Clause 2, Article 94).

The Government Inspection cooperated with the State Bank to pass joint Circular 07/2015/TTLT-TTCP-NHNN dated November 25, 2015 to lock down the accounts of the subjects of inspection. The account is locked when the subjects of inspection show signs of dispersing their assets or do not comply with the request to hand over the money, assets in line with the decision to take back the money, assets by the government inspection body or state authority, which has the power to implement the inspection conclusions. This regulation of Vietnam's law is compatible with Recommendation 4 by The Financial Action Task Force (FATF) (The organization to supervise global financial terrorism and money laundering was established in July 1989 at G7 Summit in Paris) and article 54 of UNCAC.

In addition, the regulations about asset recovery in criminal and civilian laws in Vietnam have been gradually modified and supplemented to meet the requirements of UNCAC. While the solutions for preventing and detecting corrupted assets of UNCAC were legally localized in a legal framework about corruption prevention and money laundering, the solutions for direct asset recovery and the UNCAC solutions in international cooperation in recovering the assets were localized with Vietnam's regulations in the revised 2017 version of the Criminal Code 2015 and the Criminal Prosecution Law of 2015.

2.1. Principles, scope and authorities of international cooperation

The principles for international cooperation and the scope and authority of international cooperation are specified in Article 491, 492 and 493 of the Criminal Code 2015 specifically as follows:

– Principles for international cooperation are: 1) respect for national independence, sovereignty and territory without interfering in the domestic affairs of the other; equality and mutual benefit; suitability with Vietnam's Constitution and laws and the international conventions of which Vietnam is a member; 2) In cases in which Vietnam has not signed or is not a member of the international conventions, international cooperation in criminal prosecution will be implemented based on reciprocity as long as it is not against Vietnam's law and is suitable to international laws and international customs.

– The scope of international cooperation includes: 1) Mutual collaboration and support to implement the investigation, prosecution, trial and execution of criminal sentences; 2) Judicial assistance in criminal investigation, extradition, receipt and transfer of people under jail sentence and other international cooperation activities as stipulated in this law about judicial assistance and international conventions of which Vietnam is a member.

– The authorities in international cooperation: 1) The Ministry of Public Security is Vietnam's central authority for extradition and transfer of criminals; 2) The Supreme People's Procuracy is Vietnam's central organization for judicial assistance in criminal affairs and other international cooperation activities by the law.

The Law Against Corruption of 2018 added regulations about international cooperation in recovering corrupted assets (Article 92), in which the scope of international cooperation is identified as: property distraint, account lockdown, corrupted asset recovery and withdrawal, and the return of the assets to the rightful owners. The People's Supreme Procuracy receives and processes the request for judicial assistance for corrupted asset recovery by foreign institutions and requests the foreign institutions to provide judicial assistance in recovering the corrupted assets of Vietnam.

In principle, Vietnam can cooperate with countries that have not signed the collaboration agreement based on the rule of reciprocity. International cooperation in corrupted asset recovery is done by the People's Supreme Procuracy. This regulation in the Law Against Corruption and the 2015 Criminal Code ensures the integrity of Vietnam's laws and compatibility with the requirements of UNCAC for international cooperation in recovering corrupted assets.

2.2. Methods for recovering the corrupted assets in Vietnam today

First, asset recovery by criminal prosecution.

This is the most important and popular method of recovering the corrupted assets and plays the decisive role among all methods, which are allowed by Vietnamese laws. This method also has a strong legal foundation to recover corrupted assets

in Vietnam. This method was comprehensively and closely regulated in the law for criminal prosecution and it is done through the prosecution procedures such as verification, case prosecution, prosecution of the accused, property distraint and withdrawal. The prosecuting organization is responsible to the court for the recovery method and the legal execution organization is responsible for carrying out the sentence of the court.

Article 949 of the 2015 Criminal Code specifies that the documents and materials which are collected by the foreign competent authority at the judicial request of Vietnam's authority or the documents and materials which are sent from the foreign competent authority to Vietnam for criminal prosecution can be regarded as evidence. In case the documents and materials have the characteristics as specified by Article 89 of this law, they can be considered as material evidence. In addition, the 2015 Criminal Code also specifies the process of the reception and transfer of documents and materials, which are included in the case (Article 497) and the processing of corrupted assets (Article 507). These regulations create the important legal foundation to recover the assets by criminal prosecution and ensure compatibility with the international legal requirements in international cooperation for corrupted asset recovery.

Second, confiscation by administrative procedures.

According to Vietnam's laws, the inspection and audit organizations have the authority to confiscate illegal assets by administrative decisions. If they discover corruption, they can conclude and recommend that competent authorities recover the corrupted assets. In some cases, the inspection and audit organizations can transfer the documents to the investigating organizations to proceed with methods of criminal prosecution.

Article 46 and Article 53 of the inspection laws stipulate that the head of the administrative and special inspection delegation have the authority to request the competent officials to temporarily hold the money and assets, request the credit organizations to lock down the accounts of the persons who are being inspected when they have enough evidence that the subjects of inspection are trying to disperse their assets.

Article 48 and Article 55 of the inspection laws stipulate that the officials who issued the administrative and special inspection decisions have the authority to request the credit organizations to lock down the accounts of the subjects of the inspection when they have sufficient evidence that the subjects of the inspections are dispersing their assets and failing to comply with the decision to confiscate the money and assets, which were taken, misused or lost because of the violations by the subjects of inspection.

In addition to the inspection organizations, the current law regulates that the state audit, made by the auditor general, has the right to request the audited organizations to amend and fix their violations. If the audited organizations fail to

comply with the auditing decisions and recommendations, the auditor general has the authority to consider and take legal actions by virtue of Article 13 and Article 14 of the State's audit law.

The 2018 law against corruption added new regulations about international cooperation in recovering corrupted assets under Article 92. It is stated that the Government Inspection, the Ministry of Foreign Affairs, the Ministry of Justice and other relevant state organizations have the responsibility to cooperate with the People's Supreme Procuracy in the international cooperation of corrupted asset recovery. This is the legal foundation to initiate international cooperation in corrupted asset recovery with administrative decisions via inspection. This regulation has met the international standards in corrupted asset recovery with administrative withdrawal.

Third, direct asset recovery through international cooperation.

First, the application of necessary measures allows competent authorities to recognize the effectiveness of the confiscation order passed by the court of other member countries. These measures allow Vietnam's court to recognize the effectiveness and the implementation of foreign orders, decisions and sentences as they are specified in the 2015 Civil Prosecution Law.

Article 423 of the 2015 Civil Prosecution Law stipulates the recognition and execution of sentences and decisions by foreign civil courts as well as the right to request recognition and execution of sentences by foreign courts in Vietnam, etc. Chapter 38 of the 2015 Civil Prosecution Law regulates the authority and procedures to solve civil cases with foreign involvement. Article 470 affirms the exclusive authority of Vietnam's civil court in handling civil cases, which involves land and real estate in Vietnam. Therefore, the civil courts in Vietnam have the authority to process civil cases with regard to rights or ownership rights to assets in Vietnam's territory and identify the legal events in Vietnam's territory as well as handle and identify rights to the assets.

Vietnam's civil courts also have the authority to recognize and implement effective sentences and decisions by foreign courts and carry out the civil entrustment by foreign courts. Asset processing in criminal cases is considered as a civil case and will be carried out as in a civil case. Therefore, Vietnam's laws meet the requirements of Article 53 of UNCAC.

Second, this regulates the confiscation of assets when the criminal trial has not been conducted against the violators because this person has died, run away or fails to present at the court or in similar situations. Vietnam's laws do not have specific regulations on the above issues and can only use civil prosecution law to handle the identification of rightful ownership or management. If the rightful ownership or management is not identified by the rules of civil law, the assets will be owned by the State of Vietnam and it will be confiscated and allocated to the public fund. Therefore, Vietnam's laws meet this requirement of the Convention.

Third, this regards the application of asset lockdown or confiscation. The application of necessary measures to lock down or confiscate the assets by the order and decisions of competent authorities in member countries will be implemented by the regulations of the international conventions that Vietnam signed or in which it participated within the field of criminal judicial assistance. The recognition and execution of the court sentence, decision and request by foreign arbitration will be implemented by the regulations of the 2015 Civil Prosecution Law.

In addition, Article 507 of the 2015 Civil Prosecution Law regulates the processing of criminal assets and Article 508 determines the collaboration in inspection and application of special prosecution measures, which apply to money laundering. Therefore, the competent authorities of Vietnam cooperate with foreign competent authorities to find, sequester, distrain, lock down, confiscate and handle criminal assets to serve the requirements of investigation, prosecution, trial and execution of criminal sentences. The process to find, sequester, distrain, lock down and recover criminal assets in Vietnam will be implemented by the regulations of the 2015 Civil Prosecution Law and other relevant regulations. The processing of criminal assets in Vietnam will be implemented by the international conventions to which Vietnam is signatory as a member or by the agreements in specific cases between competent authorities of Vietnam and those of foreign countries. Therefore, Vietnam's laws meet the requirements of the Convention about the application of measures to lock down or confiscate the assets.

Fourth, international cooperation for the purpose of confiscation.

The international cooperation in asset recovery will be implemented within the framework of bilateral agreements of judicial assistance or bilateral and multilateral conventions of which Vietnam is a member. Article 470 of the 2015 Civil Prosecution Law stipulates that the identification of asset ownership or management in the territory of Vietnam is the authority of qualified courts in Vietnam. The recovery of the assets as defined by the Convention is suitable to the regulation of Vietnam's laws in chapter 27 of the 2015 Civil Prosecution Law about the procedures to consider the request to receive and execute the civil sentence and decision of foreign courts in Vietnam. Chapter 36 of the 2015 Civil Prosecution Law contains specific requirements for the regulation and procedures to recognize and execute the civil sentence and decisions of foreign courts in Vietnam as well as the authorities and procedures not to recognize the civil sentences and decisions of foreign courts. However, the 2015 Civil Prosecution Law also regulates the criminal prosecution or the execution of criminal sentences and the decisions of foreign courts upon Vietnamese citizens who are refused extradition in Article 498.

In addition, by the regulation of the law, the authority against money laundering in the State Bank is responsible for receiving, collecting information, documents and evidences about the transactions, which are reported according to Article 19

and Article 20 of the Law Against Money Laundering and transfer the information or the case to competent investigation authorities when they have sufficient clues to suspect the reported transaction through information and reports about money laundering or money laundering for terrorism. The State Bank is responsible for collaborating and exchanging information with relevant authorities in the investigation, prosecution and trial of money laundering criminals; exchanging information with qualified authorities investigating, prosecuting and trying money laundering criminals; exchanging information with relevant ministries and agencies to prevent money laundering (The Law Against Money Laundering, Article 32). Therefore, Vietnam basically meets the requirements for international cooperation for the purpose of confiscation as stated by the Convention.

Fifth, special cooperation activities.

International cooperation in criminal prosecution is regulated in Part 8 of the 2015 Criminal Prosecution Law. Accordingly, judicial assistance in the criminal field can be implemented with binding regulations of the conventions that Vietnam has signed or participated in or which will be implemented on the basis of reciprocity and preserving the sovereignty, territory and security of Vietnam.

International cooperation in criminal prosecution includes judicial assistance for criminal investigation, extradition, reception and transfer of the people under the jail sentence and other international cooperation activities as they are stipulated in the 2015 Criminal Prosecution Law, the law about judicial assistance and international conventions of which Vietnam is a member. Vietnamese laws do not have specific regulations about the case transfer, the prosecution and trial or information about the criminal cases, which are related to corrupted assets as regulated in Article 53 of UNCAC. Vietnam can only do it on the principle of reciprocity in the regulation of its 2015 Criminal Prosecution Law. Therefore, Vietnam can partially meet the requirements for special cooperation.

Sixth, about deciding and returning the assets.

The principles for the withdrawal, confiscation and return of corrupted assets to the rightful owners or managers or the state fund were regulated in the 2015 civil law, the 2015 criminal code and the law against corruption.

Vietnam's laws stipulate the return of assets to rightful owners or managers through the processing of criminal and civil cases of the court. Vietnamese laws require the verification and proof of the asset origin and asset valuation be it in the criminal prosecution process or the civil prosecution process. According to the above regulations of the Convention, the rightful owners or managers, who the assets will be returned to, must prove their rightful ownership or management of the assets before the suitable court of Vietnam.

International conventions on judicial assistance or international cooperation in the civil field that Vietnam signed or participated in contain regulations about reasonable cost control used in the process of investigation and the prosecution

and trial with exception to specific cases that the two countries mutually agree on. Therefore, Vietnam's laws basically meet the requirements for returning and deciding on the assets to be returned as defined by the Convention.

Seventh, about the financial intelligence unit.

In addition to the regulations in the 2015 Criminal Prosecution Law, Chapter 9 of the 2018 Law Against Corruption contains specific regulations about financial intelligence in the law against money laundering. Article 48 of the law regulates the responsibility of state organizations in international cooperation toward preventing money laundering. Article 47 regulates the content of cooperation in preventing money laundering. Article 46 regulates the principles for international cooperation in preventing money laundering.

Vietnam's laws regulate the financial intelligence unit in the Law Against Money Laundering and the responsibility of the Vietnam State Bank as the central organization of the Government to collect, process and transfer information about money laundering behaviors to competent state organizations. It also regulates the requested relevant organizations and individuals to provide information, evidence about the transactions and other information to analyze and transfer the information about money laundering (Article 37). Therefore, Vietnam's laws meet the requirements for a financial intelligence unit as defined by the Convention.

In summary, Vietnam has seriously implemented its commitments to international cooperation in recovering corrupted assets. The contents about asset recovery in UNCAC were legally localized in Vietnam's system of laws to create its legal foundation for implementing the regulations regarding criminal asset recovery while at the same time ensuring compatibility with international conventions that Vietnam signed and participated in. It also helps to enhance the effectiveness of preventing corruption.

REFERENCES

1. Bui Tien Dat, Tran Huyen Trang (2020), "Controlling interest conflict in international law and national laws and the implications for Vietnam", Conference proceedings *The law on controlling interest conflict in official affairs in the world and in Vietnam*, Faculty of Law, Vietnam National University of Hanoi, 24/9/2020, pp.123-124.

2. Vu Cong Giao, Vu Thanh Cu, Pham Thi Yen (2021), "Recovering corrupted assets in Vietnam", *Journal of Legal Studies*, No. 07 (431), April 2021.

3. United Nations, *The anti-corruption toolkit*, retrieved from: http://www.oas.org/juridico/pdfs/mesicic4_hti_sc_amos.pdf (date of retrieval: 28/7/2020).

4. Government Inspection (2014), *International experiences in preventing corruption*, Labor publishing house, Hanoi.