

Presumption of Innocence – Application in Exercising Prosecution Rights, Supervising the Investigation and Adjudication of Criminal Cases under Vietnam Legal



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ABSTRACT: The presumption of innocence is one of the fundamental principles, widely applied in modern legal science, as the basis for achieving fair and humane justice. This principle was formed very early in the history of the human law, in addition, the Vietnamese law has also absorbed the progressive thought early, recognized as one of the basic principles to ensure human rights and the overall effectiveness of criminal proceedings. The article analyzes the history, nature as well as the practice of applying this principle in the settlement of criminal cases in Vietnam according to the functions and duties of the People's Procuracy.

KEYWORDS: Presumption of innocence; Criminal Procedure; Exercising prosecution rights; Supervising the investigation and adjudication; Procuracy

JEL codes: K14

1. INTRODUCTION

The presumption of innocence principle in the Criminal Procedure Code 2015 has a huge meaning in criminal proceedings, plays the role of guideline and direction for thinking and actions of Investigators, Investigation officers, Procurators, Checkers, Judges, Assessors in the process of conducting the proceedings, thereby leading to the decision of the proceeding agencies (Investigation Authorities, Procuracy, Court) to properly resolve a criminal case; it is also a legal tool to ensure the rights of accused persons, not to happen wrongfully and left untried crime.

Innocent speculation is one of the most important and widely used fundamentals in modern legal science. Accordingly, the principle of presumption of innocence is a principle of assuring human rights. However, the practice of lawyers' defense activities shows that many activities of lawyers for defense of accused persons have not been respected and guaranteed by the agencies and competent persons conducting legal proceeding. That principle of presumption of innocence is not guaranteed (Mai & Huong, 2020).

Faced with the need to protect human right and the increasing trend of international integration, innocent presumption is one of the basic principles, widely applied in the judiciary of many countries (Hanh, 2020).

From the above reasons, this paper is necessary and meaningful.

This paper comprises five sections. Following this introduction is a brief synopsis of the literature on the principles presumption of innocence. The next section outlines the methodology; research results and discussions and implications; and conclusion.

2. THEORETICAL BACKGROUND AND LITERATURE REVIEW

2.1. Concept of the presumption of innocence in criminal procedure

Speculation, in Latin origin means Presumption. The presumption of innocence demonstrates the request: A defendant shall be regarded as innocent when their guilty is not proved in accordance with legal procedure and the sentence of the Court has acquired full legal effect (Uc, 2017). The principle of presumption of innocence in criminal procedure is established and confirmed by the bourgeois legislators in important legal documents and is recognized and applied by the international community, such as: Article 9 Declaration of human rights and civil rights of 26 August 1789 (French National Assembly, 1789) regulated "As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law". Article 11 The Universal Declaration of Human Rights

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1948 (French National Assembly, 1948) regulated “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense” (Bien & Luc, 2020).

The lawmakers of the Soviet Union - the first Socialist State in the world - have initially defined the principle of presumption of innocence in Constitution of the Soviet Union 1977 (The Supreme Soviet of the Soviet Union, 1977) and were inherited in the 1993 Constitution of the Russian Federation (The Supreme Soviet of the Soviet Union, 1993). Specifically, Article 160 of the 1977 Soviet Union Constitution stipulated “No one may be adjudged guilty of a crime and subjected to punishment as a criminal except by the sentence of a court and in conformity with the law”. Article 48 of the current 1993 Constitution of the Russian Federation states: “(i) Any person accused of committing a crime shall be considered innocence until his (her) guilt is proven in accordance with the procedure stipulated by federal law and is confirmed by a court sentence which has entered into legal force; (ii) The accused shall not be obliged to prove his (her) innocence; (iii) Irremovable doubts about the guilt of a person shall be interpreted in favor of the accused”

According to the provisions of international legal documents, the defendant's rights are rooted in a fundamental principle of criminal law which is presumption of innocence. The European Court of Human Rights (ECHR) has ruled that this regulation requires civil servants not to “formally declare that someone is guilty, unless there is a court decision” (Dao, 2020).

The Constitution of the Socialist Republic of Vietnam, which was passed on November 28, 2013, by the XIIIth National Assembly of the Socialist Republic of Vietnam, at its 6th session, effective from January 1, 2014, had mentioned the principle - “presumption of innocence” - which is specified in Clause 1, Article 31 of the Constitution: “A defendant shall be regarded as innocence until the crime is proved in accordance with legal procedure and the sentence of the Court has acquired full legal effect”.

On the basis of the provisions of the 2013 Constitution, Article 13 of the 2015 Vietnam Criminal Procedure Code (CPC) has provided the principle of presumption of innocence with the following content:

“A accused person is deemed innocent until his guilt is evidenced according to the procedures and formalities as defined in this Law and a Court passes a valid conviction. If grounds for conviction, as per the procedures and formalities in this Law, do not suffice, competent procedural authorities and persons shall adjudge the accused person to be not guilty”.

Previously, Article 72 of the 1992 Constitution states “No one shall be regarded as guilty and be subjected to punishment before the sentence of the Court has acquired full legal effect”. Article 9 of the 2003 Criminal Procedure Code concretizes the above provisions of the 1992 Constitution and considers the contents determined in this Article is a basic principle of the Vietnamese criminal procedure. However, the principles stated in Article 72 of the 1992 Constitution as well as Article 9 of the 2003 Criminal Procedure Code and the presumption of innocence are completely different in their meaning. In the first case, it is construed as inference of guilt. In the second case, the presumption of innocence principle is based on the accused person and the speculation is based on the inference of the innocence of the accused (Uc, 2017).

Besides, some typical studies in Vietnam, such as, Hanh (2020) analyzed the situation of provisions on ensuring the implementation of the principle of innocent presumption in the Vietnam Criminal Procedure Code of 2015. Mai and Huong (2020) shed light on the practice of ensuring the presumption of innocence principle of lawyers when participating in the defense of criminal cases during the first instance trial, on which basis proposes a number of recommendations to ensure this principle in practice.

2.2. The content of the presumption of innocence principle in criminal procedure.

The presumption of innocence prescribed in Article 13, Criminal Procedure Code of 2015 contains the following basic contents:

(i).The accused is deemed not innocent until his guilt is evidenced according to the procedures and formalities as defined in this Law and a Court passes a valid conviction.

Accused persons under Article 4, Criminal Procedure Code, include those arrest, detainees, suspects, defendants, that is, those who are initially determined to have committed crimes by procedural agencies; they may not have been criminally charged such as arrest, detainees, or are facing criminal charges such as suspects, defendants. The basic common point here is that these people in varying degrees are being accused of committing the crime and are being subjected to examination, verification, investigation, prosecution and adjudication by the procedure conducting agencies. However, these persons are considered by law, procedure conducting agencies and procedure-conducting persons to be not guilty until their crimes are proven according to the order and procedures prescribed by Criminal Procedure Code and when the judgement of conviction of the Court takes effect. The rights to presumption of innocence force Investigation authorities, procuracies, courts to carry out the orders and procedures prescribed by Criminal Procedure Code to determine the facts of the cases in an objective, comprehensive and complete, clarify evidence of determination of guilt, evidence of determination of innocence, aggravating circumstances, and mitigating factors of criminal liability of suspects and defendants (The & Huong, 2017). Proof of crimes in accordance with the provisions of Criminal Procedure

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Code shall be carried out by procedure-conducting agencies and procedure-conducting persons (National Assembly, 2015). Investigation authorities, authorities assigned to perform certain activities of investigation (referred to Investigation authorities) has the duty and responsibility to carry out inspection, verification and investigation activities to identify criminals and offenders. These agencies have the authority and responsibility to conduct all methods of examination, verification and investigation such as scene examination, autopsy, testimony, interrogation, confrontation, identification, experimental investigation, search, etc. to collect evidence, clarify the content of the case. Under the provisions of Articles 165, 166, 236, 237, 266, 267 of the Criminal Procedure Code, The Procuracy exercises prosecution rights, and supervise the law observance in investigation, prosecution and adjudication of criminal cases, ensure that the criminal charges, investigation, prosecution and adjudication of criminal cases comply with the provisions of law on order, procedures, competence and time limit, ensure objectivity, comprehensiveness and completeness. The collection of evidence proving that the crime and the criminal act must not infringe the legitimate rights and interests of the accused, such as these forms are not allowed: torture, violence, harassment, corporal punishment, seduction, deception, etc. Procuracies exercising prosecution rights have the tasks and powers to approve correct procedural decisions of investigating authorities; not to approve, change or cancel the unlawful decisions of the Investigation Authorities.

At the end of the investigation, the case file and written conclusions of investigation are transferred to the Procuracy. Within the time limit prescribed by the Criminal Procedure Code, the Procuracy shall study case files, examine and assess evidence to determine the factuality and legality of decisions to press criminal charges, decisions to charge a suspect, etc. as well as case file. In cases where the case files and documents show satisfy requirements for factuality and legality, the Procuracy shall issue a decision to prosecute the accused to court for trial. Offenders must be tried at court openly, fairly, objectively and in accordance with the law on order, procedures, time limit, authority, and other matters. At the court session, the trial panel shall examine and evaluate evidence proving the crime by questioning, arguing and examining new evidences collected at the court session. In case the result of the questioning or argument at the court hearing determines that the defendant has committed a crime according to the indictment and accusation of Procuracy of the Procuracy, the Court shall issue a conviction judgment on the defendant. A guilty judgment pronounced against the offender takes legal effect upon the expiration of the time limit for filing an appeal, appeal by the Procuracy without being appealed or protested (National Assembly, 2015). Only after the conviction takes legal effect, the accused will be considered guilty.

(ii). If grounds for conviction, as per the procedures and formalities in the Law, do not suffice, competent procedural authorities and persons shall adjudge the accused person to be not guilty.

A crime means an act that is dangerous for society, is committed by a person or a commercial legal entity that infringes on social relations protected by the criminal code.

In order to clarify the above-mentioned contents of proof of crime, investigation authorities, procuracies, courts must, within the scope of their respective tasks and powers, thoroughly apply investigation and prosecution measures, legal trial as well as comply with the order, procedures, competence, time limit ... as provided by the Criminal Procedure Code.

Accused persons have no responsibility or obligation to prove their innocence, that is, they are not required to present alibi or other evidence to prove to legal protection agencies that they are innocent. Because they are naturally considered to be not guilty, if accuse or convict them, the procedure- conducting agencies must have the responsibility to find evidence to serve the accusation and conviction. According to the basic principles of the Criminal Procedure Code as provided in Article 15: "A accused person is entitled to but is not obliged to prove his innocence". Therefore, when the accused does not perform the proof of his innocence, it should not be considered as stubborn, resisting acts (attitude) to aggravate the punishment for them. However, the accused person has the right to prove his innocence through testimony, defense, witnesses or exhibits in his favor or by other legal means. The process of proving a crime, finding the objective truth of the case cannot avoid difficulties and problems when there are cases that the Investigation authority, the Procuracy or the Court have applied all appropriate investigation measures in accordance with provisions of the Criminal Procedure Code to prove, but is insufficient or unable to collect sufficient evidence to prove the crime or criminal act of the accused person. Therefore, the grounds for accusations and convictions have not been clarified. In that case, the agency or person competent to conduct the proceedings must conclude that the accused is not guilty. That means that the agency or person with authority to conduct proceedings must use evidence in a favorable direction (exonerating) to apply, bring to the accused so that they can enjoy those benefits to exonerate, and prove their innocence.

3. RESEARCH SUBJECT AND METHODOLOGY

Research Subject: The subject of this research is analyzed the history, nature as well as the practice of applying the presumption of innocence principle in the settlement of criminal cases in Vietnam according to the functions and duties of the People's Procuracy.

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Qualitative Research Methodology:

This research used a qualitative research methodology based on Theoretical background and previous studies.

4. RESEARCH RESULTS

4.1. Practical application of the presumption of innocence principle of Procurator in exercising prosecution rights, supervising the investigation, examining and adjudicating of criminal case

According to statistics of the Bureau of Statistics - Supreme People's Procuracy, from 2008 to 2018, the People's Procuracy at all levels exercised prosecution rights, supervised investigated 796,453 criminal cases/ 1,214,882 accused; practice prosecution rights, supervised adjudicate 665,325 cases / 1,149,372 defendants (Supreme People's Procuracy, 2019).

Thus, every year, the Procuracy at all levels has exercised the right to prosecute, supervise investigate and supervise adjudicate hundreds of thousands of criminal cases, making an important contribution to prevent and fight against crime, maintain political security, social order and safety, effectively protect human rights and citizenship. Procurators has always adhered to provisions of the criminal procedure law, the provisions of the Procuracy, in which, special attention is paid to the application of the principle of innocence to ensure human rights and citizenship of suspects and defendants. Specifically:

First, about the attitude towards the suspects, the defendants:

In practice of prosecution rights, supervise investigation, supervise adjudication, Procurators always comply with the provisions of the Procuracy (Supreme People's Procuracy, 2020), always consider the accused and defendants to be non-guilty from that to have points of accusation, exoneration as well as the right attitude, without prejudice. The Procurator's gestures, actions, words, postures, manners and attitude are always standard, showing the image of the Procurator "Justice, Integrity, Objectivity, Careful, Modesty". The prosecutor always has a respectful attitude towards the accused, the defendant, does not take actions, criticisms, disdain, despises, insults the honor and dignity of the accused, the defendant, the defense, even in case that the accused or defendants do not admit their criminal acts or object to the prosecutor's point of charged. When exercising the right of prosecution, supervising the investigation, procurators always closely monitor the investigators' activities to ensure that there are no acts to obtain of testimony by duress, using torture, falsifying the case file or have judgments or words that offend the honor and dignity of the accused or defendants. The procurator shall ensure that the accused can exercise his / her rights and perform his obligations in accordance with the provisions of the Criminal Procedure Code. When exercising the right of prosecution and supervising the trial in court, the Procurator always strictly complies with the provisions of the Criminal Procedure Code, provisions of the Procuracy. When questioning the accused, the Procurator always maintains a calm attitude, not impatient. When arguing with defendants or defense counsels, prosecutors are always calm, objective, and respectful opinions of defendants, defense counsels, procedure participants, and respond with each their opinion till the end, acknowledge their correct opinions but also firmly reject those opinions and proposals that have no legal basis, which are contrary to social ethics.

Second, to thoroughly implement the provisions of the law to impeach charges as well as to exonerate the accused and defendants The practice of prosecution right, supervise investigation and adjudication of the case shows that the most important and central task of the Procurator is to accuse the suspect, the defendant, that is to prove the guilt of the suspect, the defendant. At the same time, the task of exonerate the accused and the defendant is always respected by the Procurator to ensure no wrongdoing or omission of crime in criminal proceedings. Therefore, during the investigation, Prosecutor always closely supervises all investigative activities of the Investigator, ensuring that all procedural decisions, investigation activities must aim to clarify the contents that need to prove criminals which is provided in Article 85 of the Criminal Procedure Code. The decision to press criminal case charges, the decision to charge a suspect, and the decision to prosecute the accused must be well-grounded and legal, that is, there must be sufficient evidence proving that there is a crime, the accused has committed crime, the investigation strictly complied with provisions of the Criminal Procedure Code. The accusation about defendants at court sessions must ensure sufficient evidence to prove crimes and criminal acts in the process of investigation and prosecution and results of questioning and arguing at court. The exonerate of the accused and the defendant is carried out in parallel with the accusation, that is, Procurators, when practice prosecution rights, supervise investigations, supervise adjudication, always focus on requesting Investigators to collect also evidence proving that the accused does not commit a crime, such as the accused underage for criminal responsibility, incapable of criminal liability, and a behavior dangerous to society that is not a crime, has expired effect of criminal prosecution, criminal acts in the cases of exclusion of criminal liability or exemption from criminal liability (National Assembly, 2015). At the trial, the Procurator thoroughly applies the provisions of the law on the duties and powers of the Procuracy to make charged, simultaneously exonerating the accused. The Prosecutor interrogates the defendant about evidence, documents, and items in connection with conviction or acquittal and other facts of the case. (Clause 2, Article 309 of the Criminal Procedure Code

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of 2015 - National Assembly, 2015). In case of interrogation, the defendant does not commit a crime, the Procurator withdraws a decision to prosecute and requests the Trial Panel to declare the defendant not guilty in accordance with Article 320 of the Criminal Procedure Code. In case the defendant does not commit the offense that the Procuracy has prosecuted but commits another lesser crime or clause, the Procurator shall change the Procuracy's point of view of prosecution and accusation to another lesser crime or clause. Procurators can reduce circumstances that aggravate criminal liability, increase circumstances to mitigate criminal liability or reduce the liability to compensate defendants. In cases where there are sufficient grounds to conclude on another more serious crime, the procurator may not request trial on the heavier crime but request the Trial panel to postpone the court hearing and return the case file to the Procuracy for closely to consider, decide, ensure the objectivity and correctness of the resolution of the case.

Third, thoroughly implementing duties and powers to exercise prosecution rights, supervising law observance to ensure the principle of innocence.

When exercising prosecution rights, administering charged and investigation, procurators thoroughly implement the duties and powers of procurators and Procuracies to approve, disapprove, or change or cancel the procedural decisions of investigation authorities; request investigation authorities to conduct investigative activities, change and supplement procedural decisions; strictly deal with Investigators who violate the law, etc. At the court hearing, procurators exercise prosecution rights by announcing indictments, questioning, impeachment, arguments, and at the same time supervising the law observance of trial panels and procedure participants to ensure that the trial must be carried out in accordance with the provisions of law. On the basis of compliance with the provisions of the law, human rights and citizenship rights in criminal proceedings will be ensured, especially the legitimate rights and interests of defendants, including the right to "presumption of innocence".

4.2. Skills to deal with difficulties and problems in applying the principles of innocence of Prosecutor when exercising prosecution rights, supervising investigation, administering adjudication criminal cases

First, the skill of solving difficulties and problems in applying the principle of innocent speculation in case the investigating authority has not properly perceived the principle of innocence, so the criminal charge and the investigation did not base.

According to Article 179 of the Criminal Procedure Code, when a person or juridical person is found on sufficient evidences to commit an act defined by the Criminal Code as a crime, investigation authorities shall decide to file charges against suspects... However, in some cases, it is also difficult for Investigation authority to properly assess the "grounded" nature to determine that a person or juridical person has committed an act defined by the Criminal Code as a crime. According to Article 8 of the Penal Code, crime is an act dangerous to society specified in the Penal Code. For some types of crimes, it is difficult to assess whether the behavior is significantly dangerous to society because the article in the Penal Code does not specify. For example, the Crime of Insults to another person (Article 155 of the Penal Code) or the Crime of Slandering (Article 156 of the Penal Code), to determine the level of "serious insults" is not easy (Supreme People's Procuracy, 2016). Therefore, in some cases, when the act shows signs of a crime, the investigation authority has charged the criminal case, charge the accused and applied preventive measures, coercive measures and conduct investigative activities for the accused. So, in practice, there have been cases of injustice and wrong investigation of the accused. With the responsibility of being the agency exercising prosecution rights, supervising the law observance in prosecution and investigation of criminal cases, procurators must promptly supervise and detect violations of the prosecution and wrong investigation to promptly rectify and remove. In the above cases, in order to promptly detect, correct and eliminate violations in prosecution and injustice investigation, the procurator conducts the supervising right from the time the investigation authority accepts and resolves criminal information, issues a decision to charge a criminal case, to charge suspect, and conducts investigation activities. The prosecutor focuses on researching and evaluating documents, evidence proving a crime, the offender collected by the Investigation Authority to conclude whether or not a crime has occurred, who is the person committing criminal acts.

Second, the skill to solve difficulties and problems in applying the principle of innocence in case the investigating authority has not properly perceived the principle of innocence, thus violating the regulations on the investigation of the criminal case, such as: obtainment of testimony by duress, corporal punishment, falsifying case files, suspending, dismissal of cases, handling evidence. For investigators, their main purpose is to clarify the criminal quickly and promptly, the offender as well as other relevant facts. Therefore, in the investigation process, when initially identifying the person committing the crime (the accused), in the mind of some investigators, it is definitely the person who committed the crime, Therefore, they often focus on applying legal investigative measures, even illegal measures such as harassment, corporal punishment, falsifying case files to extract information from the accused. In such cases, the Procurator must closely follow the investigation process of the Investigation Authority, carefully study

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the documents and evidence of the Investigator, compare, and evaluate them specifically in the whole all evidence to promptly detect the Investigator's violation so that Investigators' violations cannot occur.

Third, the skills to solve difficulties and problems in applying the principle of innocence in case the accused, the defendant are denied the crime, do not admit their crime acts.

The nature of the offender is to deny sin, seek to conceal, not admit his offenses in order to avoid the punishment of law. The accused, the defendant is denied the crime, does not admit his crime by many different forms and tricks, such as refusing to report, giving false testimony, devious, cheating, destroying evidence of the case ...; give false evidence to prove the alibi; do not admit the charges of the Procuracy in court, etc. When the accused person denies the crime, the Procurator is not allowed to be impatient, angry, and hateful, so that illegal acts such as harassment, corporal punishment, insult honor and dignity of the accused. Procurators need to carefully study the case files, carefully evaluate the collected documents and evidence to coordinate with the Investigator in order to properly investigate to continue collecting evidence to prove criminal offenses. At the trial, in order to fight to clarify the crime or criminal act, the Procurator must interrogating the defendant on the evidences, documents and items related to the charge, exonerate and other details of the cases as provided for in Clause 2, Article 309 of the Criminal Procedure Code. While arguing, the Procurator needs to analyze and evaluate the defendant's behavior, motivation, purpose, the consequences have been caused, the causal relationship between the behavior and the consequences; the relevant evidence gathered during the investigation, prosecution and adjudication process is enough to confirm that the defendant's behavior is a criminal act that specified in the Penal Code that the Procuracy has invoked to prosecute.

Fourth, skills to solve difficulties and problems in applying the principle of innocence in case the Court decides to resolve a criminal case without ground or against the law.

The Court's decisions and judgments must be correct, objective, fair, and the trial panel's resolutions must be based on evidences and documents that have been examined at the court session, on the basis of considering fully and comprehensively evidences of the cases, opinions of procurators, defendants, defense counsels and other procedure participants. In such cases, in order to ensure the principle of innocence, procurators must promptly in time re-examine the case files, decisions, judgments of the Court, legal documents which the Court applies to report and propose leaders of the Institute to issue petitions, appellate protests, cassation and reopening procedures in order to correct violations, ensure the correct settlement of criminal cases, thereby ensure the principle of innocence in criminal proceedings.

5. CONCLUSION

One of the new features of the Criminal Procedure Code 2015 is the first time the presumption of innocence has been recognized in the Vietnam Criminal Procedure Code. The recognition of the principle of presumption of innocence has effectively contributed to the protection of human rights in criminal proceedings.

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