WRONGFUL DEATH PENALTY AND THE RIGHT TO COLLECT EVIDENCES

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Currently, the provisions governing the death penalty in Vietnam are very diverse and varied and presented in many different aspects. The right to life is recognized in the Constitution of the Socialist Republic of Vietnam adopted in 2013 and concretized in special laws. One can say that at present, the right to life in Vietnamese law has been close to the international human rights law at the basic principles. However, if compared with the specific requirements of these rights in the international human rights law, there are still some gaps that need to be studied for the continued improvement in accordance with the international law and following general trends in the world.

In this paper, the author focuses on analyzing the applicable regulations of Vietnam related to the death penalty, based on which the shortcomings in the regulations as well as the limitations and problems are pointed out when these regulations are applicable in practice, especially inadequacies in the current execution of the death penalty.

In addition, looking from a number of wrongful cases in Vietnam in recent years, the author analyzes a number of causes of the wrongful case, of which the biggest inadequacy that leads to injustice is the failure to ensure the principle of collecting evidence and the right to collect evidence of the defendant.

Therefore, the author realizes that it is important to ensure the role and necessity of the right to collect evidence of the defendant to limit the wrongful sentence in general and the injustice in the death penalty in particular.

1. Overview of the death penalty and the right to life

The death penalty is the most special and severe criminal sanctions, under which the right to life of the defendant is deprived and this is only applicable to offenders who are especially dangerous to the society. Compared to the others in the penalty system, the death penalty has its particular characteristics: (1) The most special and severe criminal sanctions, under which the right to life of the defendant is deprived; (2) A form
of punishment of radical prevention, without reforming or educating the defendant but with effectiveness and education in crime prevention in general; (3) An unchanging punishment, which puts an end to the possibility of overcoming mistakes in judicial activities.

In the world, especially in developed countries such as the US, France etc., it is believed that people are “endowed by their Creator” with natural rights to life. In these countries, the right to life is affirmed in famous legal documents from the 18th century: The United State Declaration of Independence of 1776; The Declaration of the Rights of Man and of the Citizen of France of 1789. By the 20th century, the International Human Rights Law inherited and officially affirmed and recognized the right to life as an international legal standard of countries. As per Article 3 of the Universal Declaration of Human Rights (UDHR) of 1948: "Everyone has the right to life...". This was concretized in Clause 1, Article 6 of the International Covenant on Civil and Political Rights (ICCPR): “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Subsequently, Paragraphs 2, 3, 4, 5, 6, Article 6 of the Convention specify conditions for the application of the death penalty in countries where the penalty is still maintained, namely: a) sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime; b) Sentence of death may not be contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide; c) This penalty can only be carried out pursuant to a final judgement rendered by a competent court; d) Those who are sentenced to death have the right to apply for parole and to be considered for parole or other change of punishment; e) Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women; (f) Nothing in Article 6 shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Thus, it can be observed that the International Human Rights Law and the ICCPR both stipulate that the right to life is a supreme right but not an absolute right. In spite of not prohibiting, the International Human Rights Law and the ICCPR encourage the
elimination of the death penalty and prescribe that it is applicable for the most serious crimes only. Over the past time, as a general trend, the countries around the world have gradually narrowed down the crimes of the death penalty and gradually removed this severe penalty.

Vietnam has joined both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, but the death penalty is still maintained in this country. However, from perspectives on the trends, it can be observed that right from the first Constitution of 1946, Vietnam mentioned the right to life, which was the inviolable right to body, life, and health of citizens and to the Constitution of 2013, the right to life was directly stated, associated with legal protection. As per Article 19 of the Constitution of 2013: “Everyone has the right to live. Human life is protected by the law. No one shall be illegally deprived of his or her life”; As per Article 20: “Everyone shall enjoy the inviolability of the individual and the legal protection of his or her life, health, honour and dignity and is protected against torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health and offence against honour and dignity”. In addition, currently a number of laws such as the Penal Code of 2015, the Criminal Procedure Code of 2015, the Civil Code of 2015 ... all have provisions aiming at protecting the rights to life: The Penal Code of 2015 the Criminal Procedure Code of 2015 crimes of infringing upon human life, health, dignity and honor (Chapter 14); The the Criminal Procedure Code of 2015 prescribes the veneration and protection of human rights and individuals’ legitimate rights and interests: “Competent procedural authorities and persons, when instituting legal proceedings within their duties and authority, must respect and protect human rights... ”(Article 8); protection of individuals’ life, health, ...: "Life, health...of every person are protected by the law.

The laws penalize all unlawful violations of a person's life, health..."(Article 11)

Therefore, the right to life is basically protected by Vietnamese law and is compatible with the International Human Rights Law. With the determination to gradually align with the common view of the United Nations, the Politburo issued Resolution No.49/ NQ-TW dated June 2, 2005 on the Judicial Reform Strategy to 2020,
paying close attention to step by step restricting and minimizing the imposition of the death sentence for crimes in order to gradually eliminate the death sentence in the penalty system. If it is necessary to maintain, the death penalty should only be applied to murder and treason. However, after 10 years of implementing Resolution No.49 of the Politburo, the Penal Code of 2015 failed to apply the death penalty only to murder and treason as the goal of Resolution No.49, but eliminated the death penalty for 7 specific crimes including: Robbery (Article 168); Manufacturing and trading of counterfeit food or food additives (Article 193); Illegal storage of narcotic substances (Article 249), Appropriation of narcotic substances (Article 252); Destruction of work, facility, equipment important for national security (Article 303); Crime of fighting against orders (Article 394) and Surrendering to enemy (Article 399).

Currently, Vietnam has death punishment on its books for 18 crimes, including: 06 crimes of infringing upon the national security (High treason - Article 108; Activities against the people's government - Article 109; Espionage - Article 110; Rebellion - Article 112; Terrorism to oppose the people's government - Article 113; Sabotaging facilities of Socialist Republic of Vietnam - Article 114); 02 crime of infringing upon human life, health, dignity and honor (Murder - Article 123 and Rape of a person under 16 - Article 142); 01 crime of infringing upon the order of economic management (Manufacturing and trading of counterfeit medicines for treatment or prevention of diseases - Article 194); 03 crime of drugs (Illegal manufacturing of narcotic substances - Article 248; Illegal storage of narcotic substances - Article 249; Illegal deal in narcotic substances - Article 251); 01 crime of infringing upon public safety and public order (Terrorism - Article 299); 02 crimes of position (Embezzlement - Article 353 and Taking bribes - Article 354); 03 crime of disruption of peace, crime against humanity and provocation of war of aggression (Disruption of peace, provocation of war of aggression - Article 421; Crimes against humanity - Article 422; War crimes - Article 423).

Although the death penalty cannot be minimized as the goal of the Politburo in Resolution No.49/2005, it is obvious that the legal policies in Vietnam over the past time have clearly shown a gradual reduction of crimes of the death penalty. Compared with the provisions of the previous Penal Code, the Penal Code of 2015, amended in
2017 has narrowed the scope of imposition of the death sentence to reduce the crimes of death penalty. In fact, of the 18 crimes of the death penalty, over the past time, Vietnam has applied the death penalty only to the following crimes: Murder; Illegal conveyance of narcotic substances; Illegal storage of narcotic substances and Illegal deal in narcotic substances.

Not only reducing the crimes of the death penalty, the Penal Code of 2015 also expands the objects upon whom the death penalty are not imposed and enforced: Adding new regulations, death sentence shall not be imposed and enforced upon people from 75 years of age or older when they commit the crime or during trial (Para. 2, Para. 3, Article 40 - Death sentence). This is a new humanitarian rule as there are virtually no people of this age who are executed and sentenced to death. In addition, the Penal Code of 2015 also adds new provisions at Point c, Para. 3, Article 40: “3. The life sentence shall not be executed in...c) The person sentenced to death for embezzlement or taking bribes, after being sentenced, has returned at least one third of the property embezzled or bribes taken, closely cooperates with the authorities in the process of investigation or trial, or has made reparation in an effort to atone for the crime”.

Besides, Para. 6, Article 63 of the 2015 Penal Code also stipulates: “6. With regard a person who is sentenced to death and receives a commutation, or a person sentenced to death in the case specified in Point b or Point c Clause 3 Article 40 hereof; the first commutation may only be given after the convict has served the sentence for 25 years. Nevertheless, he/she must serve the sentence for at least 30 years in reality”. Under this additional provision, a person sentenced to death who is allowed to enjoy concessions will be continuously considered for sentence reduction provided that the time serving the sentence to be considered for the first reduction of sentences is 25 years and despite a series of reduction of sentences, the actual time serving the penalty must be 30 years. These new regulations aim to gradually reduce and possibly eliminate the death penalty while demonstrating humanity in criminal policy in Vietnam.

In Vietnam, a criminal was previously sentenced to death by firing squads. However, this form of execution has many shortcomings including the high cost
for death penalty execution, a judgment execution council with many participants required for each execution, especially the image of the execution causing pressure, even heavy psychological obsession for both the executor as well as the relatives of the judgment creditors when certifying to conduct the customary burial. After many comments, arguments and learning from many countries around the world, Vietnam has made a breakthrough and has now replaced firing squads with lethal injections according to the provisions of Decree No.47/2013/ND-CP amending and supplementing Decree No.82/2011/ND-CP. This replacement is clearly much more humane for both the executor, the judgment debtor and the relatives of the judgment debtor. At the same time, it marks a significant improvement in the judiciary in Vietnam, especially a major change in awareness of the right to preserve the body even when forced to die.

In summary, the worldwide trends in general as well as the criminal law policy in Vietnam in particular are aimed at gradually reducing and eliminating the death penalty in order to absolutely protect the right to life. However, at present, there remains a gap in the protection of the right to life between the concretization and enforcement of the right to life in Vietnamese law and international law as well as the laws of many countries around the world. The protection of the right to life and human rights in Vietnam still needs to have clear, specific and institutionalized goals in the legal framework according to a certain roadmap to be able to quickly adapt with the International Law, it is an indispensable requirement in the context of global and regional integration.

2. Wrongful death penalty and the right to collect evidences of the defendant withdrawn from a number of wrongful cases in Vietnam over the past time.

As the only penalty depriving the right to life of the defendant, the death penalty is typically unchangeable, terminating the overcoming of mistakes in judicial activities. Therefore, the wrongful death penalty is considered a terrible catastrophe of any national judiciary, any era; it unjustly deprives the spiritual right to life of a person, and completely break humankind's belief in the strongholds of justice. In any justice system, wrongful conviction is always a taboo and wrongful conviction to the death penalty
should be prohibited absolutely. If under the wrongful case, the death penalty is sentenced and executed to the defendant, the public opinion will not stop at being bad, but there will be an outrage in public opinion, especially for those who are the relatives of such defendant.

In the past decade, a few rare wrongful cases that are historically seen in the legal proceedings of Vietnam have been announced one after another. Among which, there must be typical cases of Nguyen Thanh Chan (Bac Giang) who was vindicated after 10 years of serving sentence, Huynh Van Nen (Binh Thuan) who spent more than 17 years wrongfully in jail, and Tran Van Them (Bac Ninh) with an injustice lasting nearly half a century. What is mentioning is that the common point in these cases is the highest level of sentence imposed to these defendant, that is death penalty, of which, some were imprisoned and waited for the execution of the sentence, but they were fortunately vindicated because the real murderers confessed their guilt (the case of Mr. Tran Van Them for example). These wrongful cases are reviewed as follows 2.1. The case of Mr. Nguyen Thanh Chan (Bac Giang)

On August 15, 2003, in Me village, Nghia Trung commune, Viet Yen district, Bac Giang province, Vietnam, there was a shocking murder case, Ms. Nguyen Thi Hoan was killed at her home with brutal injuries to her face and head…ruptured arteries and acute blood loss resulted in death. Based on evidence at the scene and the results of the investigation, Bac Giang Province’s police arrested Mr. Chan for investigation, prosecution and trial. According to Bac Giang Province’s police: On August 15, 2003, a football exchange was held in Me village, Mr. Chan and his wife sold water at the stadium. At 19 o'clock, Mr. Chan's wife told him to go home to take water. On the way home, when passing by the victim's house, Mr. Chan had the intention of rape, so he rushed to molest the victim. Failing to grope and rape, Mr. Chan committed murder. After that, Mr. Chan went home to get water and brought to his wife to sell, the total time from the time Mr. Chan came back to get water and returned to the water shop was about 30 minutes. (According to Minh Tu - Hung Manh - Ngoc Anh, Looking back on the vindication for Mr. Nguyen Thanh Chan, April 2017:}
When the experiment was investigated, it took 15 minutes to take water and return to the shop. Thus, in the remaining 15 minutes, Mr. Chan did all the work: arising intentions, calculating, rushing in, and when he failed, he went out to kill the victim. This is unreasonable, especially with that time, but Mr. Chan had no trace left at the scene. Only later, when Mr. Chan was vindicated, looking back at the cause that led to his wrongful penalty, people found that in the criminal proceedings, only one episode, a negligence element in the investigation process also turned the case into a completely different direction. The scene examination and the alibi of the defendant is extremely important. During the re-investigation process, the Supreme People's Procuracy indicated that in this case, Mr. Chan was arrested in the absence of a crime, but in the process of investigation, prosecution and trial, there were many mistakes, even the case was wrong, but it was still forced to be right, put together to finish. Right from the investigation of the scene, although in the crime scene, there were many footprints on the floor, bloody hand marks on the door, the power switch ... but these traces were not fully collected and scientific assessment was not allowed to serve as solid evidence to confirm criminal acts or offenders. Particularly, both the appellate judgments and the first-instance judgments were based on the results of comparing and determining the footprints of Mr. Chan, his left foot nearly fit the footprints left at the scene, and this was considered as an evidence to accusing Mr. Chan of being at the scene. In addition, at the crime scene there was a sharp blade that was identified as the weapon, but the police failed to seize the knife handle and therefore the objectivity was not assured when Mr. Chan accepted the blade. In addition, in the minutes of testimony before prosecuting the accused and the testimony at the first-instance trial, appellate trial and after the appellate trial, Mr. Chan maintained his innocence said that the investigators forced him and primed him about what to say, drew the scene maps and trained him many times to conduct an experimental investigation... An important episode in the case was that the information about assets such as a gold ring, and the victim's money lost when she was killed provided by the relatives of the victim and the witnesses was not clarified. However, the case was still closed and Mr. Chan was convicted of
murder for failing to satisfy his sexual desire... For this reason, when looking back on the wrongful case of Nguyen Thanh Chan, Mr. Nguyen Hoa Binh – the former head of the Supreme People's Procuracy, currently Chief Justice of the Supreme People's Court, said: "This is an expensive lesson for those who work in legal proceedings", there were no traces of Mr. Chan at the crime scene confirming that Mr. Chan was at the scene, even the footprints left at the scene were not his footprints, but this document was hidden by the investigator and not included in the case file. Mistakes and too many details, too many evidences that were uncoincidental and approximative were used as evidences of the conviction and then under a murder and robbery case, an investigation process without objectivity, failure to comply with the criminal proceedings became a murder because of sexual desires. Only when the real killer confessed the crime, the blurred spots in the case were clarified, the footprints left on the scene were the footprints of the real perpetrator in the case. The problem is that the proceeding agencies pursued, collected and tried to force, tried to combine the evidences of accusation, not paying attention to the evidences of incrimination, the evidences of the alibi of Mr. Chan such as: Mr. Chan's footprints did not fit the footprints left at the crime scene, bloody fingerprints left on the wall and on the electric socket were not Mr. Chan's fingerprints... and the core of this case is that there was not any evidence to confirm that Mr. Chan was definitely present at the crime scene, which means that the right to collect evidences of the defendant was neglected and not mentioned.

2.2. The case of Mr. Tran Van Them (Bac Ninh)

In 1970, during a business trip at night, Mr. Them and his cousin Nguyen Khac Van had a rest at a temporary tent next to Cau Dien (Dong Tinh commune, Tam Duong district, Vinh Phu province) when an incident occurred. While fighting with this group of robbers, Mr. Van was beaten to death, Mr. Them was also injured with a long wound on the top of his head, but during the investigation of the case as well as the trial of this case. Mr. Them's head wound was turned into the episode that he staged the robbery and was the one who killed his cousin to rob him. Although at both the first-instance and appellate courts, Mr. Them maintained his innocence, but his appeal was not considered, was not accepted, and
he was sentenced to death on murder and robbery. Five years later, while Mr. Them was in solitary confinement awaiting the execution of the sentence, perpetrator of the case surrendered, Mr. Them was released from prison, but on the grounds that he was seriously ill and could not work, so he was released. (According to Ngoc Chi - Kim Anh, What did lawyer Tran Dinh Trien say about Mr. Tran Van Them's case and the wrongful sentence? August 2016 (https://vov.vn/vu-an/luat-su-tran-dinh-trien-noi-gi-ve-vu-ong-tran-van-them-va-an-oan-sai-539414.vov)

After being released from prison, his maintaining innocence was also uncommon, the actual perpetrator of murder and robbery confessed his crime, but it took Mr. Them more than 40 years to be vindicated.

Under this case, Mr. Cu Van Tien, who directly investigated the case and proposed to release Mr. Them, clearly pointed out that the causes of Mr. Them's wrongful penalty included the scene examination, assessment of evidences during investigation and subjective and sketchy trials: The killer used a hammer to cut wood with a sharp tongue to kill a person, Mr. Them suffered a long cranial wound with this hammer but when forced pleading guilty, he claimed to use a wooden bicycle stakes to commit the crime and injure himself. It is clear that the woodcutter wound with a sharp tongue and the bicycle stick wound is completely different, but the right to collect evidences and evaluate evidences for disarming the defendant was not considered, the evidences were only captured, gathered and combined for accusation to find somebody guilty. If the right to collect evidence is guaranteed and the evidences are assessed for incriminating the defendant, then only an examination of the wound on Mr. Them's head would be examined to conclude that this wound had been caused by a sharp-edged object. This scientific evidence was enough to prove that Mr. Them could not injure himself with the weapon of a bicycle pole and perhaps this was the strong proof of his innocence and no wrongful sentence would exist.

2.3. The case of Mr. Huynh Van Nen (Binh Thuan)

On the night of April 23, 1998, Mrs. Le Thi Bong (Binh Thuan) was killed by the murderer who used a rope to strangle her and stole a gold ring. Immediately after that, Binh Thuan province police prosecuted the case and conducted an investigation. While the
investigation agency did not found the culprit, Huynh Van Nen, by drinking alcohol, joked with everyone that he was the one who killed Ms. Bong. Unexpectedly, just from a joke of a drunk man, Mr. Nen was prosecuted and arrested. Later, at the Court, Mr. Nen claimed that the investigator beaten and primed him about what to say for several days to force him to confess guilt. Even in order to escape the death penalty, according to the investigator's words, Mr. Nen also claimed that 9 people in his wife's family participated in the killing in a case known as “cashew garden” that happened 5 years before. It was only from his testimony that three generations in a family including 9 people and Mr. Nen himself continued to be prosecuted and falsely sentenced. Mr. Nen was sentenced to 5 years imprisonment for the case of “cashew garden” and life imprisonment for murder and robbery in the case of Ms Bong by the People's Court of Binh Thuan province. Mr. Nen was sentenced to life imprisonment at the first-instance court hearing but he did not know how to make an appeal, so the first-instance judgment took legal effect. After serving nearly 17 years of his life sentence, and when almost no one remembered his case, the actual murderer of Ms. Bong was arrested and confessed his murder, Mr. Nen was acquitted and subsequently released from prison.(Looking back at Huynh Van Nen case, January 2017 (https://vtv.vn/trong-nuoc/nhin-lai-vu-an-oan-huynh-van-nen-20170117155457385.htm)

For the case of "cashew garden", because there were many defendants who clearly proved their alibi, the weapons were not consistent; Investigators let the defendants hear each other's testimonies before questioning…so the case was finally suspended.

For the murder case of Ms. Bong, after the real killer pleaded guilty, Mr. Nen was released from prison, during the re-investigation process, according to the investigation results, his confession of guilt was inconsistent with the details in the case; the position where Ms. Bong was killed was not consistent, the method of killing her was inappropriate and inconsistent with the wound on the her neck. For her lost property, sometimes he confessed to flee for nothing, other times claimed to have obtained a gold ring. ..At the scene, on the side of the leather sofa chair at the main house, there were 3 footprints without sandals measuring 22x8.5cm and heels 4cm wide; 1.5m southwest far
from the main porch of the house was a right foot left imprinted on the sand sized 23x9cm with the heels 4.5cm wide. The Criminal Technical Department of Binh Thuan Province determined that there were not enough specific characteristics to trace the stripe, so the investigation police agency did not conduct the solicitation of the survey. Therefore, there is not enough basis to conclude the killer's feet. There were many other details about the witness's testimony and Mr. Nen's self-confession before, during and after the murder of Ms. Bong was inconsistent. During the process of re-investigation, Mr. Nen claimed to be depressed, so it was impossible to investigate to clarify the above contradictions. Without evidence to prove, the Police Investigation of Police Department of Binh Thuan province concluded that the investigation process had many difficulties because the scene has changed, some people knowing about the case had left the locality or no longer remembered clearly the content of the case, so many contents required by the Supreme People's Court could not be investigated. However, the police investigation agency made it clear that although Mr. Nen had accepted to kill and rob Ms. Bong's property in the past, during the investigation and prosecution, there was no evidence to prove that his above testimony was correct. This testimony also did not match the witness testimony and the results of the scene examination. Therefore, the investigating agency concluded that Mr. Nen did not commit a crime as previously reported. Considering that Mr. Huynh Van Nen's behavior did not constitute murder and robbery, the police investigation of police agency of Binh Thuan province suspended the investigation of the arrestee Huynh Van Nen.

In the history of proceedings in Vietnam in particular and in the world in general, perhaps Mr. Huynh Van Nen (Binh Thuan) was the only one who was unjustly accused of up to two cases, both of which were murder but finally, he was vindicated. This was called the strange wrongful sentence to Mr. Nen but it still happened.

3. Viewpoints, solutions and recommendations

Through the above wrongful cases, looking back at the causes leading to such cases, it can be observed that the common point and also the basic cause of the injustice is that the evidences of the defendant for disarmament are not considered or mentioned,
their right to collect evidences for detention to prove they are alibi and not guilty is forgotten both during the investigation and at the trial hearings. Meanwhile, the incriminating evidences are only relative, approximate, and not solid to for accusing. However, in all 3 cases that were vindicated above, the vindication only happened after the real perpetrator in the cases confessed. The problem is that if the perpetrators do not confess, do not admit the guilt, it is certain that the above cases of injustice will not be vindicated. In the 4 cases with the above 3 wrongful defendants, one person was sentenced to death, the two others were sentenced to death, one of whom was entitled to extenuating as he was the only son of martyr (Mr. Chan) and one avoided the death penalty due to deprivation and confessed to another case (Mr. Nen). We assume that the above perpetrators had not confessed to guilt or pleaded guilty after the death penalty was executed against Mr. Tran Van Them.. this false death penalty would take Mr. Them's right to life. It raises the issue that the consequences of the wrongful death penalty are terrible and what it really means to collect and evaluate evidences for detention of the defendant.

Returning to the issue, with the determination to abolish the death penalty in accordance with the spirit of Resolution No.49/2005 of the Politburo and in line with the general view of the International Law, the right to life is considered an absolutely inviolable right, Vietnam should abolish the death penalty for each crime group, specifically:

For terrorism and most crimes in the group of crimes of infringing upon national security and the group of crimes of disruption of peace according to the provisions of the current Penal Code, in reality, Vietnam has not almost applied the death penalty. Even the provisions of the International Criminal Court (the Rome Statute of 1998) did not provide for the death penalty for these crimes.

For drug offenders, although these are high-risk crimes to society, the application of the death penalty to this criminal group is still strongly opposed by the world because there are so many offenders in this criminal group are the poor, the ignorant, seduced, or bribed persons .. while the number of people being executed to death in this crime
group is very high compared to other criminal groups. On the other hand, the death penalty is almost impossible to prevent and drug-related crimes. According to statistics, in recent years in Vietnam, although the death penalty is still being applied, drug crimes tend and develop complicatedly, which shows that the death penalty does not have much impact on the action of this crime.

For some remaining criminal groups, it can be seen that in some countries where the death penalty is abolished, the crime, especially dangerous crimes like murder, does not increase or even decreases. Meanwhile in Vietnam and some other countries where the death penalty are imposed, these crimes tend to increase...It requires criminal researchers to have an objective and scientific view about the preventive effects of the death penalty. Of course, like any other penalty, the death penalty is still effective in preventing crime, even as mentioned at the beginning, this is the most severe punishment that thoroughly prevents recidivism because the defendant has been deprived of the right to life. However, in common assessment for prevention, will the death penalty have a preventive effect outweigh the other types of punishment? In the event that the death penalty does not have a remarkable effect, it is really necessary to remove it and replace it with other ones because maintaining the death penalty poses a lot of risks due to its immutability, failing to regain the life of those who are wrongly sentenced that has completely ended the judiciary's ability to overcome mistakes; In addition, the death penalty caused a terrible emotional crisis for the entire family of the prisoner under death penalty. Especially, in the era of global integration, this is the increasing pressure of the international community to face the death penalty.

For economic criminals, according to statistics, after Vietnam abolished the death penalty for fraud and appropriation of property (Article 139 of the 1999 Penal Code) in 2009, this category of crimes increased in the number of offenders and the danger of the offense; cases with an increasingly large amount of property appropriated, even great, especially in the banking sector such as: Huynh Thi Huyen Nhu fraudulently appropriated assets of many banks and many individuals with the total amount of more than VND 4,900 billion; Chu Minh Ngoc, Director of Cimco Company and his accomplices set up false steel trading documents in order to validate the fraudulent loan
documents to appropriate VND 1,124 billions of 7 banks; Phan Ba Tong, Director of Thien Ma Seafood Import and Export Co.,Ltd. committed fraudulent act of appropriating VND 700 billion from banks and customers...Only in Hanoi city, according to 2017 annual report of the Economic Police Department - Hanoi Police has investigated 90 cases of property ownership infringement, of which 65 cases are abuse of trust to appropriate property (accounting for 72.22%), leading to property damage of VND 22,555 million (as per 2017 annual report of the Economic Police Department - Hanoi Police).

Therefore, there are many views that it is because the death penalty for this crime has been deleted, but if a comprehensive study of the factors that lead to the increase of the abuse of trust to appropriate property, it is found that one of the most prominent factors is the strong development of the banking system in the loose legal conditions in this area, which is an important cause of the cases of frauds to appropriate huge assets in the banking sector that has increased dramatically in recent years. It means that, although the death penalty still exists, the situation of the abuse of trust to appropriate property in this field is surely increased.

For the remaining crimes, if the death penalty is still maintained, it should apply to cases where the offenses are violent, barbaric, brutal, causing discontent or outrage among the people, or for large-scale gang crimes that cause damage to many people, causing widespread social security disruption, but the subjects of application should be narrowed down to the mastermind, leader, command, stubbornly opposed, thug, thugs, dangerous recidivism, committing professional crimes ...

Regarding the objects to whom the death penalty is not applied, people over 70 years old should be considered when committing crimes or when adjudicating as currently prescribed in the criminal law of some countries around the world.

In addition to the above contents, Vietnam, in particular needs to do some of the following:
Firstly, it is necessary to publish statistics on the application of the death penalty as before in order to be consistent with resolutions of the United Nations General Assembly on not applying the death penalty, which urges countries to provide the Secretary-General of the United Nations with information on the application of the death penalty and the implementation of measures to protect those who are facing the death penalty; disclosing information on the application of the death penalty, what information could contribute to national debates about transparency in the application of the death penalty. Disclosure of information on the application of the death penalty will contribute to enhancing the reputation of Vietnam's human rights with the international community and facilitate in-depth research and discussion on the issue of the death penalty in Vietnam.

Secondly, constantly consider to strengthen legal provisions and safeguards to promote the rights of people sentenced to death, including prisoners awaiting execution in certain time to be consistent with relevant international standards to ensure the best chance of being able to remedy the mistakes of the judiciary.

Thirdly, refer to the experience of other countries in providing alternative penalties for the death penalty and special humane provisions regarding the application of such penalty such as provisions on the deferment of execution of the death sentence for 2 years to consider life imprisonment in China.

Fourth, encourage and promote researches and debates in society on theoretical and practical issues related to the death penalty. To propose and consult with the United Nations, non-governmental organizations, and countries that have abolished the death penalty, supporting experiences to amend and complete legal regulations, legal policies on the death penalty so that it is possible to study the possibility of joining the ICCPR's Second Optional Protocol on the abolition of the death penalty in the near future.

Last but not least, with the policy of thoroughly grasping the judiciary: preventing and combating wrongful sentences and preventing crime omission, the Politburo's Resolution No.49-NQ/TW in 2005 on the Judicial Reform Strategy to the year 2020; Directive No.48-CT/TW dated 2010 of the Politburo on enhancing the Party's leadership
over crime prevention and combat in the new situation: The judiciary must really be the support for people in protecting justice, human rights; at the same time is an effective tool to protect the law and socialist legislation; "Continue to promote judicial reform, improve the quality and efficiency of investigation, prosecution, adjudication ... to detect promptly and strictly handle all criminal acts, not to neglect the crime. commit and do not slander innocent people “is considered one of the key tasks, mainly in crime fighting and prevention in the coming time.

Over the past years, although the entire judiciary has made many efforts in fighting against crime and overcoming criminal neglect, it is necessary to focus on meeting the requirements of non-unfairness. However, in reality, there are still cases of injustice, infringing upon citizens' legitimate rights and interests; affecting the people's confidence in the judiciary. Through some of the above false cases, it can be seen that: the cause of the wrongful sentences is that collecting evidences to prove the criminal acts of the defendant fails to respond with the principles in the criminal proceedings. Meanwhile, the right to collect evidences for the alibi and innocence of the defendant is not almost considered and paid close attention to.

A prominent issue is that the wrongful sentences are only determined and pronounced after the case had happened a long time and mainly in murder cases, when the real perpetrator of the case confessed their criminal acts. Meanwhile, wrongful sentences hardly appear in other crime areas such as drug crime, property crime...hardly appear although the number of complaints in these types of cases is numerous. This raises the problem: Why do cases have to go through many procedures and proceedings and must be investigated and sentenced by a series of agencies who have powers to collect, examine, assess evidence and control each other; The trial of these defendants is conducted publicly, with the presence of defense counsels... but the wrongful sentences are still unavoidable? The objective and subjective causes leading to the wrongful sentences show that: Objectively, the law has not guaranteed the strict enforcement; Subjectively, it is because the fault of people conducting procedural activities, wrongful sentenced defendants, and the other participants in the proceedings, especially the fault of investigators, prosecutors and Judges. Specifically, although there
are clear procedural time limits for each stage, many cases last long, violating the time limit, but the people involved are not handled; although there are provisions on the competence to investigate, prosecute and adjudicate, there are still many cases of investigation that are not under the right authority or are overlapping; There are also cases that the Procuracy requires for investigation, but some investigating agencies do not implement and they are not sanctioned; under many cases, apart from the defendant’s confession, there are no other evidence to prove, but the proceeding agency still uses confession to make charges; etc. ... All of the above situation is due to the fact that the law requires to do without any sanctions attached, it is not clear what the consequences of not doing it. Therefore, it is necessary to have clear regulations and sanctions if there are violations of law, especially violations of proceedings, violations during the investigation and collection of evidences. For example, the rule is clear: testimonies without the participation of an advocate in cases where an advocate is required cannot be used as evidence of accusation; the evidence collection must comply with the order and procedures prescribed by law, evidences collected by illegal methods and procedures shall have no legal validity and must not be used as accusation grounds. Currently, the Vietnamese law does not have a clear regulation on the elimination of evidence that has no legal validity, failing to guarantee the legality to be able to use as criminal proofs, leading to the inconsistent and non-strict use and assessment of evidences. In the coming time, it is necessary to quickly study and prepare a comprehensive law on evidences.

On the other hand, it is necessary to further strengthen the defense counsel's role right from the early stages and early proceedings. Particularly, a mechanism should be in place to ensure a balance in the collection of evidence between the accuser and the debtor. At present, almost the new regulations only guarantee the collection of evidences by the accusers for accusation. Collection of evidences for vindication (alibi, innocence ...) has not been focused and guaranteed. Once the right to collect evidences and the collection of evidences for vindication are not guaranteed by the law, the weaker party has no guarantees to collect evidence for their innocence, the injustice and wrong situation is inevitable. It is acknowledged that, in the cases of innocence, the role of the defense counsel has not been confirmed or properly promoted. Under these cases, the
advocates were not fully involved at the outset of the proceedings; the justification for vindication has not been given proper attention by the proceeding agencies.

Theoretically, the right of defense counsels is the responsibility of ensuring the implementation of procedural agencies, but in fact, due to the lack of regulations that are responsible for ensuring the implementation, the above provisions have not been fully implemented in practice and when not fully implemented, it will not be handled due to the lack of specific sanctions. In addition, due to the limited awareness of the law of the people in Vietnam, the defendants, when arrested or summoned to give testimonies or in custody, do not have enough knowledge about his power to have the right to invite defense counsels; the right to remain silent... and when they are arrested, they don't know how to invite an advocate. In some cases, it is not clear that the defense counsel must be invited by procedural bodies. Currently, Vietnam's Criminal Procedure Law stipulates 03 cases under which procedural agencies have to invite defense counsels for defendants, including underage defendants; defendant with mental or physical defects and the defendant sentenced to death. In many cases, when prosecuting, the investigation cannot immediately determine whether it is required to invite the defense or not? On the other hand, this provision also does not mean that the defense is required to participate from the beginning of the investigation process, so many defendants participate when the case is almost done. Thus, in terms of theory or practice, it is necessary for the defense to have the rights and obligations as well as for the proceeding agency to have responsibility to ensure the presence of defense counsel right from the proceedings, especially in "murder" cases. To overcome the wrongful situation in general and the death penalty in particular, Vietnam needs to clearly stipulate and have specific sanctions to ensure the participation of defense counsels right from the first activities of the proceedings. In the process of resolving the case, this must be considered as the obligation of the proceeding agency, especially in cases that infringe on human life and health.

Vietnam's criminal procedure law needs to stipulate and ensure that the arrested or detained persons have the right to request a defense counsel or a legal representative for them when taking testimony; Under this provision, proceeding agencies have the
responsibility to invite defense counsels for the defendants and only when this requirement is met can they declare. This is the content of the "right to silence" of arrestees, suspects, and defendants.

Another content related to the spirit of the Party's Resolution on judicial reform is the restriction of the application of detention during the investigation, prosecution and trial process. The nature of custody and temporary detention is to prevent suspects and defendants from escaping, causing difficulties in the proceedings; prevent the accused, the defendant who can continue to commit crimes. However, the current provisions of the Criminal Procedure Code do not fully express the above spirit, the grounds for applying these measures are still general, creating a space for agencies to conduct proceedings and prosecutors and to apply but are intended primarily to facilitate the investigation, not to prevent a suspect's possibility of fleeing or continuing to commit a crime. For example, cases related to banking activities, when the defendants are prosecuted, they have to temporarily suspend their work, the continuing to commit this crime is impossible, but the number of suspects and defendants of bail is still limited.

In short, with the aim of judicial reform in accordance with the Politburo's Resolution No.49/2005, Vietnam is gradually reducing and eventually eliminating the death penalty following the above general trend all over the world. However, to do this, Vietnam needs a synchronous and drastic participation of all levels and sectors according to a specific roadmap and a certain time. First of all, Vietnam needs to take strong and practical measures to minimize the wrongful sentences and the neglect of criminals. For crimes of the death penalty, it is necessary to study and adjust the provisions of the law to suit the general trend of the countries, to consider the wrongful death penalty a taboo in judicial activities. To this end, Vietnam gradually moves towards a balance, compatibility with the international laws on human rights in general and the right to life in particular./.
REFERENCES

A. Legal documents of the Government and Party
5. Resolution No.49-NQ/TW dated 2 June 2005 of the Politburo on the Judicial Reform Strategy to 2020;
6. Directive No.48-CT/TW dated 2010 of the Politburo on enhancing the Party's leadership over crime prevention and combat in the new situation;

B. Books, Newspapers, Scientific Magazines
10. International Covenant on Civil and Political Rights - Vietnam Law Library
11. United States Declaration of Independence in 1776;
12. French Declaration of Independence in 1789;
17. Looking back at the case of the wrongful sentence of Mr. Huynh Van Nen, January 2017 (https://coquandieutravkstc.gov.vn/nhin-lai-vu-minh-oan-cho-ong-nguyen-thanh-chan-ky-1-anh-sang-cuoi-duong-ham);