

CHALLENGES IN INVESTIGATING ACCUSATION OF TORTURE AND DURESS IN VIETNAM

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Abstract: *The accusation of torture and duress in prosecution has the sign of the offence “Use of torture,” or “Obtainment of testimony by duress.” An indication of injury or death is not an obligatory element of these crimes. The practice shows that these crimes are only convicted by consequence, such as death, serious injury, or wrongful conviction. The allegation of accused people, their relatives, are hard to demonstrate. The main reason is that only one source of evidence comes from the denunciation of the accuser without other sources; therefore, the investigation authority does not open an investigation. Applying some measures such as strengthening the application of technology in prosecution, tape-recording, and video recording when taking testimony are some of the initiatives to prevent torture and duress and enhance the efficiency of investigating an accusation of torture duress.*

Keywords: *investigation, accusation, torture, duress, Vietnam.*

1. Provisions relating to investigating an accusation of torture and duress

1.1. Provisions in the Criminal Code

The term “torture” and the prohibition of torture have been provided in the 2013 Constitution (Art.20), the 2015 Criminal Procedure Code (Art.10), the 2015 Law on Execution of Temporary Custody and Detention (Arts.4, 8), the 2015 Law on Organisation of Criminal Investigation Agencies (Art.14).

The 1999 Criminal Code (as amended and supplemented in 2009) has not a separate provision on offences of torture and definition of torture. However, every act which has torture nature, has been defined as criminal acts, and has been provided directly in crime of applying corporal punishment (Art.298); crime of obtaining testimony by duress (Art.299); crime of bribing or coercing other persons to make false declarations or to supply false documents (Art.309). Acts of torture nature can also be prosecuted under other crimes such as: murder (Art.93); causing death to people in the performance of official duties (Art.97); coercing suicide (Art.100); threatening to murder (Art.103); inflicting injury on or causing harm to the health of other persons while performing official duty (Art.107); ill-treating other persons (Art.110); humiliating other persons (Art.121); illegal arrest, custody or detention of people (Art.123); insulting or assaulting commanders or superiors (Art.319); humiliating or applying corporal punishment to subordinates (Art. 320); humiliating or assaulting companions-inarms (Art.321); ill-treating prisoners of war and/or enemy deserters (Art.340).

The 2015 Criminal Code has widened criminal subjects and acts and increased punishment for acts relating to torture. Thus, it has been more conformed to the UNCAT’s provisions and specific conditions and situation of Viet Nam, in particular, crime of applying corporal punishment (Art. 373); crime of obtaining testimony by duress (Art. 374); crime of bribing or coercing other persons to make false declarations or to supply false documents (Art. 384).

One new point in legal system of Viet Nam can be applied when dealing with torture cases is that, Viet Nam has accepted the choice and the application of legal precedents in adjudication.

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The application of legal precedents is a progress, contributing to flexible and uniform application of law, especially in the field that may have different interpretations like law on human rights and law concerning torture. The Chief Justice of Supreme People's Court issued Decision No. 220/QD-CA of 6th April, 2016 and Decision No. 698/QD-CA of 17th October 2016 on announced precedents of the court.

During the prosecution in a criminal case, the elements constituting a crime relevant to torture and duress are:

- + The offence "Use of torture" is provided in Article 373, the 2015 Criminal Code, amended 2017 having new points in comparison with the 1999 Criminal Code.

- + Consider the brutal treatment or insultation as an element of this crime to encompass the mental torture.

- + Expand the scope of criminal offenders using torture as any person in prosecution, judgment execution, or during mandatory attendance at a correctional institution or rehabilitation center.

- + Concretize circumstances aggravating criminal liability and add a new clause (clause 4) to aggravate criminal liability for death with a penalty of 12 to 20years imprisonment or life imprisonment.

- The offence "Obtainment of testimony by duress" is provided in Article 374, the 2015 Criminal Code, amended 2017 having new points in comparison with the 1999 Criminal Code:

- + Expand the scope of criminal offenders: Not only competent persons in taking testimony from the accused and defendant in a criminal case but also persons who interrogate witness, victim, or persons with related interests or obligations.

- + Using the term "interrogated person" instead of "person being questioned" is compatible with the 2015 Criminal Procedure Code provisions regarding taking a statement from witness and victim.

- + Concretize circumstances aggravating criminal liability, including use of torture or brutal treatment, insulting interrogated person; adding a new clause (clause 4) to aggravate criminal liability with a penalty of 12 to 20years imprisonment or life imprisonment if one of the following cases is found: the suicide of the interrogated person; wrongful conviction of an innocent person; omission of a severe crime or severe crime.

1.2. Provisions in the Criminal Procedure Code about processing offence denunciation related to the use of torture and duress

Denunciations related to the use of torture and duress are a source of offence that is processed following the 2015 Criminal Procedure Code provisions. To be more specific, the accusation needs to be received and resolved promptly and legitimately according to the Criminal Procedure Code.

Competent persons have to comply with provisions and bear responsibility for their actions and decisions.

The investigation agency must organize 24/24 criminal duty. Procuracy at all levels must organize 24/24 professional duty to fully receive all reports of criminal denunciations, including allegations about torture and duress (including reporting crimes on the mass media); classify and immediately transfer to the competent authorities for settlement. The reception place must be located conveniently, with a signboard showing the agency's name and widely announced for everyone to know.

Agencies tasked to investigate, such as police of communes, wards, townships, police stations, must arrange officers directly to receive reports of criminal denunciations. There are allegations of torture and duress. Other agencies and organizations, when there are allegations of torture and duress, must assign recipients.

Investigation agency, Procuracy, agencies tasked to investigate when receiving allegations of torture and duress through the post, telephone service, or other means of communication, record in the receipt. Suppose individuals directly denounce allegations of torture and duress, or representatives of agencies or organizations come to report the news. In that case, they shall make a record of receipt and record them in the reception book. The reception can be audio or video recorded.

After receiving allegations of torture and duress, the investigation agency must conduct classification within 24 hours from the date of receipt. In case of allegations of torture and duress under their jurisdiction, they shall be handled according to regulations. If there is a basis for determining that the allegations of torture and duress do not fall under the jurisdiction of their respective agencies, immediately forward the allegations of torture and duress to the competent investigating agency for settlement within a period of more than 24 hours since there is a basis to determine. If the transfer is not possible, it must be notified by the fastest form of contact to the competent investigation agency².

Settlement of allegations of torture and duress: Within 03 days from the date of receipt of allegations of torture and duress, the Head of the investigation agency directly dictates and assigns investigators and investing officers under the authority to accept, resolve or issue a decision to assign the Deputy Head of the investigation agency to organize, direct the acceptance, settlement and notify in writing to the competent Procuracy. For allegations of torture and duress, after being received, the elements of the crime are clear and have enough basis to prosecute criminal cases. The investigation agency shall issue a decision to initiate the criminal case following the 2015 Criminal Procedure Code.

At the end of the process of settling denunciations, criminal reports, and criminal case initiation proposal, the investigation agency must issue one of the decisions, which is the decision not to prosecute a criminal case; Decisions to prosecute criminal cases or decisions to suspend the handling of criminal information when there is the basis for suspension.

To prevent acts of torture, the 2015 Criminal Procedure Code provides for recording audio, video when interviewing the accused (Art.183) and may record audio, video when receiving denunciations and reports on crimes and proposal of institution of criminal cases (Art.146), in obtaining testimony (Arts.187, 188, 442), in confrontation (Art.189), in trial (Art.258); the right to give statements and opinions, the right not to testify against themselves or admit to guilt of persons kept in emergency situation, persons held in temporary custody or detention, arrestees, persons held in temporary custody or detention, the accused, defendants, legal representatives of legal entities (Arts.58, 59, 60, 61, 435); the right of defense counsels to participate from the time of arrest, engage in the activities of confrontation, identification, recognition of voice and petition for legal proceedings according to the law (Arts.73, 80).

1.3 Provisions in Law on Organization of Criminal Investigation Bodies

Law on Organization of Criminal Investigation Bodies provides prohibited acts in criminal proceedings to protect the accused and arrested persons: “Forcing persons to give testimonies, applying corporal punishment and forms of torture or barbarous and inhuman treatment, penalties or humiliation or any acts infringing upon the legitimate rights and interests of agencies, organizations, and individuals.”

Authority to settle denunciation relating to the use of torture and duress in criminal proceedings is entitled to the Investigating Office of the Supreme People’s Procuracy and Central Military Procuracy³.

² Joint circular No. 01/2017/TTLT-BCA-BQP-BTC-BNN&PTNT-VKSNDTC 2017.

³ Law on Organization of Criminal Investigation Bodies 2015.

The Investigating Office of the Supreme People's Procuracy investigates allegations of torture and duress related to officers working at Investigation Agency, People's Court, People's Procuracy, enforcement agency, and competent persons implementing judicial activities if a crime is under the People's Court's jurisdiction.

The Investigating Office of the Central Military Procuracy investigates allegations of torture and duress related to officers working at Investigating bodies of the People's Army, Military Procuracy, Military Court, Borderland security, Coast Guard when a crime is under Military Court's jurisdiction.

The Investigating Office of the Supreme People's Procuracy and of the Central Military Procuracy must organize criminal affairs, receive allegations of torture and duress under their jurisdiction or immediately transfer them to competent agencies for settlement.

2. Measures to investigate denunciation relating to torture and duress

In order to investigate allegations of torture and duress, the investigating agency needs to clarify these issues: whether or not the torture employed, the time, place, and other circumstances related to the act of torture and duress; Who is the one who conducts the acts; deliberate or involuntary; capacity to bear criminal responsibility; purpose, dynamic; circumstances that mitigate or aggravate criminal liability and personal characteristics of suspects and defendants; the nature and extent of damage caused by the criminal acts; the cause and conditions of the crime; other circumstances related to the exemption from criminal liability and penalty⁴.

To clarify these issues, the investigating agency would conduct these matters to collect and assess the evidence.

- **Take testimony:** After receiving the denunciation, the investigating officers take testimony from a tortured person and alleged persons, including Investigator, Investigating Officer, Prosecutors, witnesses.

According to regulations, investigators and investigating officers must explain to the person taking testimony about their rights and obligations in accordance with the Criminal Procedure Code before taking testimonies. Officers also have to ask the relation between interrogated persons and the accuser, the accused, and other facts about the identity traits of these people.

For taking testimonies, it is necessary to understand that these factors will affect the testimony's dynamic to testify. Investigators must pay attention to the objective and subjective factors that inhibit or urge the testimony, such as the health status of the witness when witnessing the crime, the witness's awareness and knowledge level about the subject, whether the witness is afraid of being retaliated or not.

When taking testimony, the Investigators ask witnesses to present or write honestly and voluntarily what they know about the case before interrogating. When finding that investigators' testimonies are not objective or illegal, the Prosecutors may take testimonies from witnesses.

At the end of taking testimony, investigators and investigating officers who record the statement must read the written record to the witnesses and their representatives (if any), explain to them their right to supplement, and comment on the record. Additional ideas and comments of these people are written in the record. In case of not accepting the supplement, the reason must also be specified in the record. Witnesses, investigators, and investigating officers all sign the record together. If the witness or representative (if any) does not sign the record, the investigator shall clearly state the reason and invite the witness to sign the record. If witnesses are illiterate, investigators shall read the record out in the presence of witnesses. The record bears the signature of witnesses and the fingerprint of illiterate persons.

⁴ Criminal Procedure Code 2015.

To ensure objectivity when taking testimonies and the results of taking testimony, officers need to have an audio and visual record. In this case, when the testimony is taken, the witness must be informed. In the end, the audiotape must be replayed. The content of the testimony must be recorded so that the investigator and the witness must listen together and sign the written record.

- ***Confiscate related objects and documents:*** Confiscate objects and documents through a search of a body, residence, workplace, area, vehicle, document, item, mail, telegraphy, postal package, and electronic data. Seize mails, phones, telegraphs, electronic data. Documents and objects are examined and identified to determine the extent to which they are related to the act of torture or corporal punishment.

- ***Solicit expert assessment:*** Based on the initial testimony of the relevant persons, the Investigation Agency may request forensic examination to determine the cause of death; injury assessment to determine the victim's physical disability; inspect traces to determine how the victim's body is harmed, examine documents and materials; convert electronic data into readable, audible documents, inspect the integrity of documents on images, sound assessment, thereby determining the content and development of the incident.

- ***Conduct experimental investigation:*** by reproducing a crime scene, replaying acts, situations, or other facts of a particular event, and by performing other experimental activities deemed necessary in order to inspect and verify documents and acts significantly to solve the case. An experimental investigation requires measurements, photographs, video recordings, sketches. Results of the experimental investigation shall be specified in writing⁵. This measure can assess the statement of the victim, the accused, and witness: whether the accused could use torture and duress, whether the witness can hear the victim from a specific distance.

There are two ways to carry out an experimental investigation: reproducing and replaying.

Reproducing: Based on the testimony of the accused, temporarily arrested person, witness, the investigating agency allows them to witness a crime scene as they stated in order to provide objective conclusion about their statement as well as the documents, facts collected.

Replaying: Based on the gathered documents, facts, and investigative hypothesis, investigating body replays acts, situations, or other facts of a particular event to perform necessary experimental activities to identify the possibility and the level of torture, duress, then conclude the documents and investigative hypothesis objectively. There are different types of experimental investigation.

Experimental investigation to determine the ability to perceive a particular event or phenomenon: An activity of an investigative agency aimed at organizing a person to replay the fact that they heard in the same conditions as a testimony to determine if they perceive it or not? How is the specific level consistent with the testimony made? This process is conducted to examine the audiovisual ability of a particular participant in the proceedings for a specific episode or phenomenon related to torture and corporal punishment to conclude the objectivity of their testimony. The contents of the procedure participants' testimonies (detainees, defendants, witnesses, victims) of their claims to have heard or heard are to be conducted.

When organizing this kind of investigative experiment, it is necessary to reproduce the conditions and circumstances of conducting experiments to the maximum extent with the conditions and circumstances when the event or phenomenon occurred in the past, including two types of primary conditions: objective and subjective factors. Objective factors include location, time, space. It is necessary to choose an appropriate way to ensure maximum similarity of lighting, distance, weather. Subjective factors include the health, psychological state of the person. This type

⁵ *ibid.*

of condition is relatively difficult to reproduce, cannot be reproduced entirely, especially in the psychological state, so when the assessment must be very objective.

Experimental investigation to determine the ability to perform a particular act, a particular task: An investigation agency organizes a detainee, the accused, the victim, the witness to perform an act, a task they claimed to have done under the same conditions as their testimony to see whether they could do it? What is the level of performance? How does it correlate with their testimony? All these procedures aim to make it clear that someone can perform a particular act of harassment, corporal punishment, or a particular act in general or under specific conditions or in a specified period or not based on which assess the accuracy of their testimony.

This type is conducted when the content of the participants' testimonies (usually of the detainee or the accused) about the behavior, the facts they claim, and the subjective and objective conditions of these acts—provided that the experiment is conducted to the maximum extent with the conditions and circumstances claimed, including both the objective and the subjective factors.

Experimental investigation to determine the likelihood of an event or phenomenon: An investigative agency organizes an experiment on an event or phenomenon under certain conditions and circumstances to determine whether the phenomenon can happen? What are the cause and manner? Is it consistent with the collected documents or the investigative hypotheses set forth? These procedures aim to determine the cause, the evolution of the incident, the phenomenon to have a basis for dictating the direction of the investigation.

For this type of experiment, the collected documents and evidence are very few. They cannot themselves reflect the process of arising, the course of the event, the phenomenon that happened, it is necessary to have mechanical theories facility to reproduce the scene and conduct necessary test operations. However, the hypothesis given must be based on an individual basis (evidence, collected documents), not on the investigator's imagination.

For experiments related to different scientific and technical fields, it is necessary to arrange experts and professional staff according to the respective scientific and technical fields to participate. In addition, it is necessary to have a plan to prevent and overcome the damage to humans and property caused by the experiment.

- **Identification:** This measure aims to identify the similarity of difference between the objects and the old version to verify the offender and proofs. Investigators may present persons, photos, or items to witness testifies, suspects, or defendants for identification. The identified object includes: The main object is the object to be identified concerning the torture incident; a Similar object is an unrelated object that voluntarily participates in the identification, has an appearance similar to the main object, and identifies with the primary objective to ensure objectivity. If a similar subject is a human being, that person must be of the same sex, similar to the main object in height, skin color, and age. If it is an object, the object must be of the same type, close to the main object in size and color. Steps of identification⁶

Before carrying out identification, investigators must notify the same-level Procuracy of the conduct of identification to appoint Prosecutors to participate in the inspection of identification. Investigators must ask identifiers in advance about facts, traces, and features by which they can identify.

The pre-inquiry gives identifiers time and conditions to recall details, traces, and characteristics of the object that they have perceived before. This is the basis for checking and evaluating their testimony after the identification has ended and also to determine whether identification is necessary or not. When asking identifiers, investigators need to carefully ask them

⁶ Criminal Procedure Code 2015.

about details, traces, and characteristics of identifiable objects; the objective factors while they perceive the object, such as light, distance; the subjective factors while they perceive the object.

Suppose an identifier is a person under the age of 18. In that case, the Investigator must, before the identification proceeding, notify their counsel, representative, or advocate of their legitimate rights and interests.

If there are witnesses or the victim is an identifier, the Investigator must, before conducting identification, explain to them the responsibility of refusing or evading statements or deliberately giving false statements. This step must be written in the record. There are many reasons for the witness or victim to refuse, avoid testimony or intentionally make false testimony, such as fear of retaliation, having a family relationship, a friend, affecting the identification results. Therefore, the above provisions are necessary, ensuring the testimony of the witness, the victim.

There must be at least three externally identical persons, photos, or items to be identified, except for identifying corpses. On the contrary, if few or many people, photos, or objects are taken out, the identification will not be objective.

During the identification process, the Investigator can not pose suggestive questions. These questions make the identifier easily report bias investigator's discretion, affecting the objectivity of the identification results. After an identifier has confirmed that a person, object, or photograph has been shown for identification, Investigators ask them to explain what traces or features they have based on to confirm that person, thing, or picture.

At the end of the identification, the investigator must make a record. Identification records must follow relevant regulations. The record clearly states the identifier's identity and health status and those identified for the identification; characteristics of objects or photos shown for identification; statements and presentations of the identifier; light conditions when performing identification.

- **Confrontation:** If testimonies from two or several persons come into conflict despite various investigative measures implemented, investigators shall conduct a confrontation. They are conducting confrontation during the investigation of allegations of torture and duress to clarify the contradictory details of the previous testimony, thereby determining the truthfulness of the testimony between two or more people to find out the truth. At the beginning of the confrontation, investigators shall inquire into the mutual relationship of attendees before asking about facts to be clarified. Investigators may raise additional questions to each attendee after listening to the confrontation. During the confrontation, investigators can present relevant evidence, documents, and items. Attendees may question each other. Their questions and answers shall be reduced to writing. Attendees' previous statements shall be restarted only after the attendees in the confrontation complete their depositions⁷. In short, investigators only conduct the confrontation when the case meets two conditions: (1) there are contradictory details of testimony between two or many persons; (2) other measures are already carried out, but the contradict was not resolved. Therefore, the confrontation is the ultimate investigating measure⁸ to assess the statements.

3. Challenges in investigating denunciations of torture and duress

From 2011 to 2015, the Ministry of Public Security received 24 reports and denunciations related to torture, harassment, and corporal punishment. They have solved 16 cases, and they are

⁷ 'Đổi chất trong Bộ luật Tố tụng hình sự năm 2015' (*hinh-su.luatviet.co*) <<https://hinh-su.luatviet.co/doi-chat-trong-bo-luat-to-tung-hinh-su-nam-2015/n20161028120823468.html>> accessed 5 May 2021.

⁸ 'Nhận thức và áp dụng biện pháp điều tra đổi chất trong việc điều tra giải quyết vụ án hình sự|VIỆN KIỂM SÁT NHÂN DÂN TỈNH LẠNG SƠN' <<https://vienkiemsatlangson.gov.vn/nghien-cuu-phap-luat/1875/nhan-thuc-va-ap-dung-bien-phap-dieu-tra-doi-chat-trong-viec-dieu-tra-giai-quyet-vu-an-hinh-su#.YJKuXi8RpQI>> accessed 5 May 2021.

dealing with 08 cases. Meanwhile, from 2010 to October 15, 2016, the Supreme People's Procuracy received 82 reports and denunciations of crimes with signs of harassment and corporal punishment. They have issued a decision to prosecute a criminal case for 15 denunciations/25 defendants and decided not to prosecute a criminal case for 51 denunciations. Currently, they are verifying 16 reports. From 2011 to 2015, the court only accepted and tried at first instance 10 cases of using torture, no case of duress⁹.

Over the past time, there have been many reports and denunciations that have been checked, verified with no signs of the crime of torture, duress like the case of Mr. Nguyen Duc Thang, in Phu Ninh, Phu Tho province denouncing the police department of the police of Dong Anh district, Hanoi city for beating and forcing Mr. Thang to confess his crime; the case of Mr. Nguyen Van Nam in Xuan Truong, Nam Dinh denounced Mr. Sy, Duy, and several officials from the Xuan Truong district police of beating and forcing his bow to convict him resists law enforcement officers¹⁰.

When investigating allegations of torture in judicial activities, with some difficulties in collecting documents and evidence to clarify the issues in the following aspects:

Occurred in particular circumstances: The act of harassment, torture is difficult to detect, hard to prove, and difficult to handle because, in investigation activities, we can not always supervise investigating officers in proceedings. Procedures for taking the testimony of an emergency arrest person and temporary detainee are carried out by investigators and investigating officers only. The early days of arrestation are a sensitive time. It is hence straightforward to use torture and duress.

In many cases, the defendants denounce that they were tortured and brutally treated. However, they can not bring out any evidence to prove. Similarly, in Mr. Chan's case, he was forced to take testimony, but he could not demonstrate in front of the trial¹¹.

Difficulty in collecting physical traces to determine the torture incident: In the cases brought to the prosecution, the trial over the past time uses corporal punishment to the victim's death. If the victim is injured then recovered and does not have physical traces such as tools and means related to the torture allegation, it will be difficult to prove the torture incident.

The "Murder" case happened on 8/2003 in hon Me, Nghia Trung commune, Viet Yen district, Bac Giang. Mr. Nguyen Thanh Chan said: "Before beating me, they all drank alcohol, their faces were red, their hands were hammered nails or knives, their eyes were red, I was scared." "Investigator L. asked, "If you do not confess, I will let you die." Another investigator beat me and forced me to repeat the movements from the prison to conduct experimental scene," said Mr. Chan¹². This is the testimony of Mr. Nguyen Thanh Chan. In addition, there is no other document to prove. Therefore, the Investigator and Procurator of Mr. Nguyen Thanh Chan's case were not prosecuted, tried for "use of torture" or "taking testimony by duress," but convicted "negligence that results in serious consequences."¹³

⁹ PLO.VN, '5 Năm, xét xử 10 vụ dùng nhục hình' (PLO, 17 January 2017) <<https://plo.vn/content/NDIxOTEx.html>> accessed 5 May 2021.

¹⁰ Viet nam's initial report: On the implementation of the united nations convention against torture and other cruel, inhuman or degrading treatment or punishment

¹¹ VnExpress, 'Ông Nguyễn Thanh Chấn mô tả việc bị ép cung' (vnexpress.net) <<https://vnexpress.net/ong-nguyen-thanh-chan-mo-ta-viec-bi-ep-cung-2906391.html>> accessed 5 May 2021.

¹² 'Nguyễn Thanh Chấn: Trước khi đánh đập tôi, họ đều uống rượu' (ZingNews.vn, 17 November 2013) <<https://zingnews.vn/zingnews-post369627.html>> accessed 5 May 2021.

¹³ News VietNamNet, 'Vụ án oan ông Chấn: Điều tra viên, kiểm sát viên lĩnh án' (VietNamNet) <<https://vietnamnet.vn/vn/phap-luat/ky-su-phap-dinh/vu-an-oan-ong-chan-dieu-tra-vien-kiem-sat-vien-linh-an-353416.html>> accessed 5 May 2021.

The victim can not identify: Because the proceedings occur in a unique circumstance, in a short period (emergency arrest in 3-6 days) with many investigators taking testimony, the victim can not remember precisely then identify the officer had the acts of torture and duress. The collection of evidence hence becomes challenging through identification measures.

Testimony of witness, person present where the torture appeared: Since the torture and harassment happen in prison or detention center, collecting evidence relating to torture and duress is impossible. It also difficult to gather facts with great demonstrate value.

Testimony of the accused and victim: In almost all wrongful conviction cases, the defendants argue that they are tortured and brutally treated during the investigation process. Nevertheless, their statement is only legitimate when it is compatible with other objective evidence. Unfortunately, there is no other evidence matching the testimony relating to torture and harassment.

Audio and video recording when taking testimony: The regulation that provides the audio and video recording when taking testimony is enacted 01/01/2018. This treaty is applied nationally since 01/01/2020. According to this provision, taking testimony from the accused has to be audio and video recorded at the prison or detention center. This obligation is an essential measure to fight against torture, harassment in criminal proceedings and also a source to prove the use of torture.

Nevertheless, audio and video recording are not obligatory in case of emergency arrest or temporary detainee. These cases become a sensitive gap where torture and harassment could happen.

Additionally, the record only starts when the investigators or investigating officers push the button then note the timeline in writing¹⁴. The torture or harassment could occur before the record started or at the pause of the whole process. The audio and video recording thus hardly constitutes eminent evidence in demonstrating the use of torture and duress.

The result of confrontation: When there are contradictory details in statements of persons with relevant interests or obligations, investigating body needs to conduct confrontation. Practice shows that the result of confrontation can not resolve the contradiction between these persons. Therefore, authorities do not have enough evidence to verify which testimony is accurate and objective.

4. Solutions to enhance the efficiency of investigation relating to torture and duress **- Amend relevant regulations**

Although investigation proceedings are the most sensitive time to occur torture, provisions stipulate issuing defense notice for the counsel are delayed comparing the whole proceedings. Therefore, we need to amend regulations to assure the presence of the counsel at the first meeting with the investigating body in case of emergency arrest, temporary detainee. This is a crucial measure to prevent torture and duress in criminal proceedings.

Furthermore, we need to improve provisions to abolish taking testimony by duress under any form. Simultaneously, evidence coming from torture or duress would not be appropriate to prosecute in every proceeding phase¹⁵.

Audio and video recording is obligatory in case of emergency arrest, acts in flagrant. The record has to start when investigators meet the accused. The end of the record does not depend on the timeline in writing.

Transfer the authority to investigate allegations of harassment and corporal punishment related to officers in the People's Procuracy to The Investigating Security Office of the Ministry of

¹⁴ Joint Circular No. 03/2018/TTLT-BCA-VKSNDTC-TANDTC-BQP 2018.

¹⁵ ‘Sự hài hòa, tương thích của pháp luật Việt Nam với công ước chống tra tấn (UNCAT)’ <<http://lyluanchinhtri.vn/home/index.php/dien-dan/item/1183-su-hai-hoa-tuong-thich-cua-phap-luat-viet-nam-voi-cong-uoc-chong-tra-tan>> accessed 5 May 2021.

Public Security. To ensure the impartiality of prosecutors in investigating allegations of anti-torture in the People's Procuracy, thereby improving the effectiveness of investigating charges against torture.

Developing case law with offence “use of torture” and “taking testimony by duress” is significant. This tendency contributes to incorporating and enhancing flexibility in law enforcement, especially in areas with different commentaries such as human rights or law on torture.

- Strengthen the application of technology in investigating

Reinforce the application of information technology to criminal investigations to improve the effectiveness of criminal investigations and enhance the capacity of transparent and democratic investigation agencies.

Implement audio and video recording regulations synchronously when interrogating suspects at offices of investigating agencies and detention centers. Accordingly, if there is no audio or video recording equipment available, the interrogation of suspects is prohibited at detention centers. Investigators and investigators must not turn off or stop audio and video recording devices while interrogating the accused. The interrogation session must stop when interrogating the accused or having trouble with audio and video recording equipment. Audio and video record data of the interrogation session assure data integrity, entirely stored on the server system to ensure safety and confidentiality.

- Measures in terms of code of conduct, infrastructures

The People's Public Security strictly implement the Circular 126/TT-BCA dated December 1, 2020, of the Ministry of Public Security on the implementation of democracy in investigation activities of the people's police in order to tighten discipline, improve morality, responsibility, manners as well as professional qualifications of investigators in the course of performing duties, to combat general law violations, and combat torture and corporal punishment in the process of solving criminal cases in particular. Serious implementation will reduce the number of investigating officers, investigators and violating the law to be penalized for acts of infringing upon judicial activities. Improving professional qualifications, skills, political and ethical bravery of investigators, heads, and deputy heads of investigation agencies and people participating in investigation activities will contribute to protecting the law, preserving and enhancing the reputation of the People's Public Security.

Increase investment in facilities, equipment, and means, promoting training and fostering investigation skills, improving bravery for investigation officers and investigators of the Investigating Office of the Supreme People's Procuracy. Thereby, we can improve the investigation capacity of the Supreme People's Procuracy in investigating crimes under its jurisdiction in general and investigating allegations of harassment and corporal punishment in criminal proceedings in particular.

Concentrate resources on investment and upgrade the system of custody rooms, detention centers, and prisons; increased application of technology in custody and temporary detention enforcement is a factor ensuring safety in custody and temporary detention and supervising the detention process of arrested persons and temporary detainee.

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