

# COMBATING TORTURE IN VIETNAM: FROM INJUSTICE CASES OF NGUYEN THANH CHAN AND HAN DUC LONG

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## ***Abstract:***

Combating torture in the criminal proceedings is one of the issues to focus on International human rights law. Vietnam has participated in United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) since 2012, up to now, the legal system and criminal procedure have been renewed to be consistent with the contents of UNCAT. In the past, Vietnam has had a number of injustice cases, their reason was that the investigators' use of torture methods to coerce the accused to confess guilt, typically the injustice case of Nguyen Thanh Chan and Han Duc Long in Bac Giang Province. From these cases in Vietnam, it shows that legal and ethical issues in criminal proceedings need to be further improved to combat torture in resolution process of criminal case today.

**Keywords:** Torture; injustice cases; criminal proceedings; Nguyen Thanh Chan; Han Duc Long.

## **1. Introduction**

Torture is inhumane treatment and a cause of injustice in the criminal proceedings. In Vietnam, in recent years, there has been some criminal cases that happened in the wrong trial course are caused by the use of torture in the investigation process and taking the accused's testimony. Typically, the injustice cases of Nguyen Thanh Chan<sup>1</sup> and Han Duc Long<sup>2</sup>, in these cases, due to many objective reasons that investigators did not collect sufficient evidence and because of pressure to resolve the case, therefore, investigators used torture to force the accused to confess guilt, which led to prosecution, adjudicating the wrong person, the right crime, leading to injustice against Mr. Nguyen Thanh Chan and Mr. Han Duc Long.

The article aims to analyze and clarify the injustices in the cases of Nguyen Thanh Chan and Han Duc Long from the investigator's use of torture, thereby pointing out challenges in the implementation of combating torture during the current criminal proceedings in Vietnam.

## **2. Combating torture in the International human rights law and Vietnam's participation**

### ***2.1. Combating torture in the International human rights law***

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, adopted by the General Assembly of the United Nations on December 10, 1984 under Resolution No. 39/64, comes into force June 26, 1987 after being ratified by 20 countries and June 26 every year becomes the "International Day to Support Victims of Torture".

The Convention builds on the principles stated in the UN Charter recognizing the equal and irreversible rights of all members of the human community; it is the basis of freedom, justice and peace in the world and is consistent with other UN legal documents on human rights. UNCAT is an expression of the will of humanity loving peace, progress in the world to wish to remove brutal and inhumane treatment or punishment from social life.

Under the provisions of the Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such

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<sup>1</sup> Mr. Nguyen Thanh Chan (in Bac Giang) was sentenced to life for murder. He was released only in November 2013 after the surrender of the case. By that time he had been in prison for more than 10 years.

<sup>2</sup> Mr. Han Duc Long (in Bac Giang) was sentenced to death for murder, rape and rape of children. On December 20, 2016, he was released after 11 years of unjustly imprisoned.

pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions (Article 1)<sup>3</sup>; Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. An order from a superior officer or a public authority may not be invoked as a justification of torture (Article 2)<sup>4</sup>; Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature (Article 4)<sup>5</sup>.

## ***2.2. Vietnam's participation in United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***

The 1946 Constitution defined for the first time the principle of combating arbitrary acts in judicial activities in Vietnam: "If the judiciary has not yet decided, it is forbidden to arrest and imprison Vietnamese citizen" (Article 11)<sup>6</sup>. Although this provision did not specifically address torture, it was very important to protect human rights in the criminal proceedings, laid the foundation for the implementation of against torture and other cruel, inhuman or degrading treatment or punishment in resolution process of criminal case.

Vietnam acceded to UNCAT on November 7, 2013 is an important event, demonstrating Vietnam's political determination in recognition and enforcement of human rights in accordance with international legal frameworks. After that, on November 28, 2013, a new constitution was issued (effective from January 1, 2014), in which human rights and human rights protection are clearly stipulated, especially it is clear that "Everyone has the right to (...) not be tortured, violent, persecuted, corporal or any other form of treatment that infringes upon the body, health, offends honor and dignity" (Clause 1, Article 20)<sup>7</sup>.

On that basis, the 2015 Penal Code (amended in 2017), effective from January 1, 2018 and the Criminal Procedure Code 2015 was issued, with a tendency to respect, ensuring and upholding human rights, especially in the field of criminal proceedings.

## **3. The cases of Nguyen Thanh Chan and Han Duc Long: legal issues of combating torture in Vietnam**

### ***3.1. Overview the cases of Nguyen Thanh Chan and Han Duc Long***

#### *\* Overview the cases of Nguyen Thanh Chan*

On the night of August 15, 2003, a murder happened in Me village, Nghia Trung commune, Viet Yen district, Bac Giang province, the victim was Ms. Nguyen Thi Hoan, born in 1972. After the investigation, the Police Department Investigate Bac Giang province police to prosecute the accused and applied detention measures against Mr. Nguyen Thanh Chan (born 1961, residing in Me village, Nghia Trung commune, Viet Yen district, Bac Giang province) from 28 September 2003. Then, on March 26, 2004, the People's Court of Bac Giang province sentenced Mr. Chan to murder, and a life sentence. On July 26-27, 2004, the Supreme Court of Appeal of the Supreme People's Court in Hanoi declared the verdict of the first instance, not accepting the appeal of defendant Nguyen Thanh Chan's appeal. Mr. Nguyen Thanh Chan is

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<sup>3</sup> United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>, accessed May 5 2021

<sup>4</sup> United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>, accessed May 5 2021

<sup>5</sup> United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>, accessed May 5 2021

<sup>6</sup> National Assembly, *The Constitution of the Democratic Republic of Vietnam 1946*, [https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=536](https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=536), accessed April 22, 2021

<sup>7</sup> National Assembly, *The Constitution of the Socialist Republic of Vietnam 2013* <[https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=28814](https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=28814)> accessed April 22, 2021

sentenced to life imprisonment at Vinh Quang Detention Center, Ministry of Public Security. The special thing in the case file shows that Mr. Nguyen Thanh Chan confessed and claimed to be the one who killed Ms. Hoan, but his confession was constantly changing and at the end of the investigation, he began to betray. Starting from the first instance trial, Mr. Nguyen Thanh Chan appealed, denouncing the persecution and corporal punishment. Many witnesses determined the alibi of Mr. Chan. During the penalty execution process, Mr. Nguyen Thanh Chan and his family sent complaints to the competent authority for continuous complaints for many years, but to no avail<sup>8</sup>.

On October 25, 2013, Ly Nguyen Chung, who lived with Mr. Chan at the time of the case, confessed to killing Ms. Hoan to steal property. On October 29, 2013, the Investigation Agency of the People's Procuracy was determined to prosecute the criminal case of murder, robbery of property and prosecute the defendant Ly Nguyen Chung for the two above acts. On November 4, 2013, the Director of the Supreme VKSND issued a reopening appeal No. 01/QD-VKSNDTC-V3, proposing to cancel the first-instance and appellate judgment, and suspend the judgment execution against Mr. Chan. On November 6, 2013, the Council of Judges of the Supreme People's Court met and issued a reopening decision No. 18/2013 / HS-TT, canceling the appellate criminal judgment No. 124 / PTHS dated July 27, 2004 of the Court. Appeal of the People's Court in Hanoi and first instance criminal judgment No. 45/HSST dated March 26, 2004 of the People's Court of Bac Giang province against Mr. Nguyen Thanh Chan; transferred the file to the Supreme VKSND for re-investigation according to general procedures. On January 25, 2014, the police investigation agency of the Ministry of Public Security issued a decision to suspend the investigation of the accused, and Mr. Chan was officially determined innocent by the procedure-conducting agency<sup>9</sup>.

*\* Overview the cases of Hàn Đức Long*

At around 7:00 p.m. on May 16, 2005, Mr. Son and her husband Lieu (from Yen Ly village, Phuc Son commune, Tan Yen district, Bac Giang province) came home from work and found their daughter – Yen, Nguyen Thi Yen (born 2000), was lost. The next morning, Yen's body was found in the field with many signs of rape. After 4 months of investigation, Bac Giang Province Police Investigation Police could not identify the suspect, so it decided to suspend the case, and at the same time launched the public to denounce the crime. At this time, the family in the same village - Mrs. Ngo Thi Khuyen and her daughter - Mss. Truong Thi Nam wrote a complaint denouncing Han Duc Long of rape both mother and child, and denouncing this man as the perpetrator of raping Yen. From this denunciation, the Investigation Police Agency, the police of Bac Giang province arrested Han Duc Long to investigate. During the interrogation process, Han Duc Long confessed to rape and then killed Yen. Bac Giang Provincial People's Court brought the case to first instance trial and declared Han Duc Long to death. The Supreme Court appealed the sentence. After that, the Court of Judges of the Court of Cassation Review decided to cancel two first-instance and appellate judgments to re-investigate from the beginning. By 2011, the People's Court of Bac Giang province tried the second first instance and the Supreme People's Court tried the second appellate still to keep the death penalty for Han Duc Long. At the end of 2014, the Court of Judges of the People's Court tried the Cassation Review decided to cancel the first-instance judgment and the appellate judgment to death Han Duc Long. Then the case was assigned to the prosecution agency of Bac Giang province to re-investigate. On December 20, 2016, it was considered not be enough grounds to prosecute the criminal responsibility of defendant Han Duc Long for the crimes of “murder, rape, rape of children”, the

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<sup>8</sup> Minh Tú – Hùng Mạnh – Ngọc Anh, *Looking back on the vindication for Mr. Nguyen Thanh Chan - Term 1: Light at the end of the tunnel* <<https://coquandieutravksc.gov.vn/nhin-lai-vu-minh-oan-cho-ong-nguyen-thanh-chan-ky-1-anh-sang-cuoi-duong-ham/>> accessed March 24, 2021.

<sup>9</sup> Duong Minh Kien, “Analysis of the injustice case Nguyen Thanh Chan”, Vietnam Lawyer Journal (Hanoi, April 2014) 32-33

People's Procuracy of North Province Giang decided to suspend the case, cancel the detention measure with defendant Han Duc Long<sup>10</sup>.

*\* The common points of both of the cases*

(i) Both of these wrongful cases happened in Bac Giang province, not far apart, the case of Mr. Nguyen Thanh Chan in 2003 and the case of Mr. Han Duc Long in 2005. These are two particularly serious cases, so the cases were handled and resolved by the provincial public investigative agency, the investigative agency of the Provincial People's Procuracy and the People's Court of Bac Giang province, both of these cases "jointly investigated, prosecuted and tried by a number of agencies and judicial officers in Bac Giang province with the same investigator, same prosecutor, same judge"<sup>11</sup>.

(ii) Victims of two cases died, witnesses and evidence of the crime were not clear, direct and could not prove the defendant's criminal acts. Mr. Chan was summoned to the police station 15 days after the murder, Mr. Long was summoned to the police station after nearly 4 months from the date of the murder. Mr. Chan had a water shop near the football field because he was busy helping the investigation agency to be questioned; Mr. Long because while the investigative agency was urgently searching for the perpetrator, he fought aggressively with the neighbor's family, so he was noticed as the perpetrator. The basis of the charges against the two defendants is their testimony, but when going to court, both defendants counter-attack and asserted that they were unjustly and in the process of taking testimony, they were both applied by investigating officers measures to force corporal punishment, force them to confess guilt. However, "the judicial basis of the proceedings was based on the defendant's testimony and the judicial authorities judged that the confession was consistent with the traces obtained at the scene"<sup>12</sup>; both were "self-drawn" to map the crime path, re-executed criminal acts and both were described as "proficient" by the investigative agency<sup>13</sup>.

(iii) The legal basis for handling the case is the 1999 criminal code and the 1988 and 2003 criminal procedure code, this is the time when Vietnam has not acceded to UNCAT, so there are many loopholes in the Vietnamese legal system without clear and strict regulations to protect accused persons from torture in the criminal proceedings.

(iv) In the trial court, both complained and reported the persecution, corporal punishment, were forced to testify as requested by the investigator. However, the complaints of both were not considered by the Trial Panel.

### ***3.2. Legal issues of combating torture in Vietnam from the injustice cases***

From the injustice case of Mr. Nguyen Thanh Chan and Mr. Han Duc Long, there are many legal issues that need to be explained, that is: why the officer handling the case deliberately used torture in the process to get testimony of the suspect by the investigating officer? What are the provisions of the Vietnamese legal system at the time of the case resolution to protect defendants from torture? Why do mistakes in solving two cases have similarities?

*Firstly*, there is very high risk of applying measures of duress and corporal punishment in the process of taking testimony of investigators against defendants in the interrogation procedure model.

In the interrogation procedure model, the procedural files are of particularly important value, serving as a basis for the judge or presiding judge to issue a verdict on the defendant. In case the increase of evidence and exhibits is not enough to prove the offense, the defendant's testimony is considered the only important and only basis for accusation. In fact, from the the injustice cases of Nguyen Thanh Chan and Han Duc Long, it shows that the People's Court of

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<sup>10</sup> Duc Thuan and Minh Hai, "An uproar of 'death row' apology Han Duc Long: The father of the murdered child spoke up" <<https://vtc.vn/nao-loan-buoi-xin-loi-tu-tu-han-duc-long-bo-chau-be-bi-giet-hai-len-tieng-ar318659.html>> accessed April 20, 2021

<sup>11</sup> Ngo Ngoc Trai (Lawyer), *An unjust journey for death row inmate Han Duc Long* (Writers Association Publishing, Hanoi, 2019) 150

<sup>12</sup> Ngo Ngoc Trai (Lawyer), *Ibid*, 149

<sup>13</sup> Ngo Ngoc Trai (Lawyer), *Ibid*, 150

Bac Giang province, as well as the high-level People's Court, only bases on the defendant's testimony to make evidence of the accusation, meanwhile, the testimony of the defendant was falsified because they were forced to report so otherwise they would be tortured and beaten.

In the case of Mr. Nguyen Thanh Chan, confession of guilt is due to forced bow, the Investigator instructs him to report the incident, guides the drawing of the scene, is practiced many times to experiment with the investigation ... The first-instance and appellate judgments shall all apply to defendants entitled to criminal liability mitigation circumstances as provided for at Point o, Clause 1, Article 46 of the 1999 Penal Code as "The offender confesses"<sup>14</sup>. Telling the press about the officers who pushed him on the path to pleading guilty, "Directly investigator Tran Nhat Luat, Nguyen Huu Tan, Ngo Dinh Dung, Nguyen Trung Thanh, Doan Van Bien and prosecutor Dang The Vinh ... They took turns interrogating me day and night. At times, Mr. Tam took a knife to threaten me, then Mr. Luat took a hammer and hit me in the head. They read and made me copy my confession form. As for Mr. Vinh, every time I met me, I was afraid that if I didn't sign, I would beat to death" said Mr. Nguyen Thanh Chan<sup>15</sup>. Regarding investigator Tran Nhat Luat, "The day I first arrested and detained, every night he came, Mr. Luat called to the room to get a bow and forced me to draw knives. At that time there was only me and him in one room, I didn't know how to draw the knife properly so he was beaten again. I fainted in pain, but he continued to intimidate. I still remember the night when he took the ginseng bag from the bag to drink without needing water to regain his strength to continue beating and forced me to confess murder. He also frequently threatened me: "You wouldn't accept me to beat you a death like Hoan"<sup>16</sup> said Mr. Chan<sup>16</sup>.

According to Lawyer Pham Ngoc Minh - YouMe Law Firm, the case of Mr. Nguyen Thanh Chan shows the inadequacy of the evidence institution of the criminal procedure law (the case was accepted and adjudicated according to the 1988 and 2003 criminal procedure code). In fact, the case of "Nguyen Thanh Chan murder" shows that there are documents, objects and presentation that should be considered as evidence, but has not been fully considered and considered as evidence by the proceeding agency. If the law guarantees that documents, objects or representations "in favor" of the defendant, the defendant must be treated as evidence, given by the accused, defendant or their defense attorney. In addition, given a full and comprehensive review by the proceeding agency (not "ignored"), at least these grounds are sufficient to deny Mr. Chan's murder and could not lead to the injustice case, seriously wrong like that<sup>17</sup>. According to Lawyer Duong Minh Kien, in the case, Mr. Chan voluntarily "confessed" to aim to enjoy the circumstances of reducing criminal liability and the leniency of the law. However, when he was publicly questioned by the Trial Panel at the first instance trial, Mr. Chan immediately appealed<sup>18</sup>, this showed the inconsistency in the defendant's own psychology and must have a special reason. Mr. Chan had to plead guilty in the process of taking testimony to then appeal in court.

Similar to the above case, in the case of Mr. Han Duc Long, the case files all show that, in the process of interrogating the defendant Long at the investigation stage, the investigation

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<sup>14</sup> National Assembly, *The 1999 Penal Code* <<https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-Luat-hinh-su-1999-15-1999-QH10-46056.aspx>> accessed May 3, 2021

Article 46. Facts mitigating criminal liability

1. The following circumstances are circumstances of reduction of criminal liability:

o) The offender confesses;

<sup>15</sup> Bao Chan, "After the case of injustice Nguyen Thanh Chan: Warning bells and problems remain open", *Legal Journal* (Hanoi, October 2014) 14

<sup>16</sup> Bao Chan, "After the case of injustice Nguyen Thanh Chan: Warning bells and problems remain open", *Legal Journal* (Hanoi, October 2014) 14-15

<sup>17</sup> Phi Long, *An overview of an unjust sentence in Bac Giang: Returning after 10 years of life imprisonment* <<https://laodong.vn/archived/toan-canh-ky-an-oan-o-bac-giang-tro-ve-sau-10-nam-bi-an-tu-chung-than-706444.lido>> accessed April 17, 2021.

<sup>18</sup> Duong Minh Kien (Lawyer), "Analysis of the case of injustice Nguyen Thanh Chan", *Vietnam Lawyer Journey* (Hanoi, April 2014) 34

agency of Bac Giang province repeatedly took testimony. and for the accused to write his own statement, draw a scene map of the road to the crime, in which many times invited the procurator of the People's Procuracy of Bac Giang province to participate. The prosecutor also directly interrogated the defendant Long, the accused all made a sincere declaration and asked for the leniency of the law<sup>19</sup>. However, when talking to the lawyer, Mr. Long said that “many times were interrogated on the second floor room of the investigative agency's office building and beaten here, many investigative activities took place. Out here, the service does not take place in the interrogation room of the prison. That is, the investigation did not take place in the interrogation room of the prison to be supervised, but took place within the workplace of the investigative agency”<sup>20</sup>; during the course of taking testimony, he was beaten by the investigator, used with a pen and finger and beaten with a wooden ruler<sup>21</sup>; tortured that he will die while in custody, “the defendant must confess to have the chance to live in court and tell the truth that he has not committed a crime (...). The defendant confessed that the investigator asked to write according to the words, when he did not write, the ballpoint pen was stabbed in his hand”<sup>22</sup>; “when the prosecutor comes to work with the accused, there are investigators to work with. Mr. Long said that the prosecutor copied the transcript of the investigation and told to sign the statement”<sup>23</sup>.

From the above two injustice cases, the defendant has no other way to prove his innocence except “confess” to live and go to the court to hear publicly slander, from there the opportunity to vindicate for himself.

*Secondly*, the injustice cases of Nguyen Thanh Chan and Han Duc Long occurred and were accepted by the 1999 Penal Code and the 1988 and 2003 Criminal Procedure Code.

According to the provisions of the 1988 and 2003 Criminal Procedure Code, testimony is evidence. Although modern criminology has affirmed: “only people and things that exist in space and time when crime occurs, there are traces of crime on top of that, allowing people to look at it. How crime happened and who committed the crime and who committed that crime is considered evidence”<sup>24</sup>. In Vietnam, however, for a long time, “people still have used the minutes of testimony to make charges, even when the defendant refuses to go to court, the original confession is still used as a pretext. Department of convictions”<sup>25</sup>.

Provisions in these two laws have many limitations, especially lack of provisions to protect the rights of defendants during detention and testimony. The 1988 and 2003 Criminal Procedure Code provided that the responsibility to prove a crime rests with the procedural agency. Also according to the provisions of the Criminal Procedure Code, participants in the proceedings, agencies, organizations or any individual can present documents, objects and present matters related to the case. However, the documents, objects and presentations can only be evidence when they are submitted to the proceeding agencies and recognized by these agencies and included in the case files. Thus, the agency conducting the proceedings has the privilege of “ignoring” the “evidence” in favor of the defendant in the case file. These provisions have shown the lack of fairness between the subjects in criminal proceedings, and it is necessary to be amended and supplemented to ensure clarification of the objective truth of the case, protection of rights and the legitimate interests of the suspected criminal, decrease the injustice cases.

Testimony is only used as a basis for deciding the case if the reporter voluntarily and is not subject to torture. To ensure that factor, the report must be witnessed by a lawyer, or must record and record the interrogation to ensure that the report is voluntary. Although these shortcomings have been significantly overcome in the 2015 Penal Code (Amended in 2017) and the 2015

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<sup>19</sup> Ngo Ngoc Trai (Lawyer), Ibid, 31

<sup>20</sup> Ngo Ngoc Trai (Lawyer), Ibid, 152

<sup>21</sup> Ngo Ngoc Trai (Lawyer), Ibid, 64

<sup>22</sup> Ngo Ngoc Trai (Lawyer), Ibid, 267

<sup>23</sup> Ngo Ngoc Trai (Lawyer), Ibid, 84

<sup>24</sup> Ngo Ngoc Trai (Lawyer), Ibid, 243

<sup>25</sup> Ngo Ngoc Trai (Lawyer), Ibid, 84

Criminal Procedure Code, in theory, it is possible to partially overcome the application of measures of duress, coercion and corporal punishment in the process of taking testimony of the defendant, such as the process of taking testimony must be supervised by the Procurator, the Lawyer and the interrogation room must have a camera, a recorder, an observation room from the outside, ect. However, in practice, acts of intimidation, coercion, and other torture methods against the accused may be carried out before the accused comes to the interrogation room in order to create coercive pressure to the accused to have declare exactly like that was suggested before is completely possible.

*Thirdly*, in reality, it is difficult to determine the demarcation between the investigators' use of professional methods against the accused and the alleged acts of coercion, corporal punishment, torture, and inhuman treatment.

The case of Mr. Nguyen Thanh Chan happened in 2003, while the case of Mr. Han Duc Long happened in 2005, 2 years apart. Because the same case is particularly serious happening in Bac Giang, the investigation, prosecution and trial are carried out by a number of agencies and judicial officers. Two cases were resolved by the same number of judicial officers, the same investigator, the same prosecutor, the same judge, the same sentence style and writing<sup>26</sup>.

From these two false cases, it shows that the reason for the use of torture to charge the two defendants is partly due to the capacity and morality of the investigating officers and prosecutors of Bac Giang province, but at the same time shows the large gaps in the Vietnamese criminal justice system at that time, "making the procedure contains many risks, leading to injustice. The prosecutor's body is also unconscious. They have applied the correct legal process but still cause injustice in the form of doing wrong but do not know"<sup>27</sup>, that is the issue of duress, corporal punishment; lack of the original defense attorney's role; the problem is that there is no audio or video recording when interrogating, so when the accused confesses he lacks the basis to record it; the trial status is approved in advance without the basis of the argument at the trial, etc.

*Fourthly*, the investigation of suspects Nguyen Thanh Chan and Han Duc Long by investigating officers in Bac Giang was not carried out in the interrogation room of the detention center, but took place in another room without supervision of administrators of prison. Therefore, "this is probably the reason why the injustice case in this province is more prominent than other provinces, because the interrogation has not been supervised by the administrators of prison"<sup>28</sup>.

#### **4. Conclusion and recommendations**

In the criminal proceedings, suspects, defendants and defendants must be considered a vulnerable group and special measures should be taken to protect their human rights. During the prosecution, investigation and prosecution phase, they need to apply special protective measures to avoid the risk of torture or inhumane treatment. Therefore, the legal system, especially the criminal procedure law needs to be perfected in the direction that proof of criminal acts is the responsibility of the authorities; all claims of the accused and the accused are only the reference opinion, not the main evidence, mainly to convict the defendant. Therefore, to ensure the human rights of accused persons from being tortured, it is necessary to ensure the right to silence for the accused and defendants; stipulating that the defendant's testimony is not evidence; Investigators must participate in the proceedings at court sessions for the Trial panel and lawyers to verify the validity of collected documents and evidence, cross-examine and clarify allegations of persecution and corporal punishment that the defendant testifies at the court session; ensure the principle of adversarial proceedings in the trial process.

This fact shows that the Vietnamese legal system in general and the criminal justice law in particular has continued to be perfected in the direction of protecting the legitimate rights and interests of defendants, victims and the involved legal interests were getting better and better.

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<sup>26</sup> Ngo Ngoc Trai (Lawyer), Ibid, 134

<sup>27</sup> Ngo Ngoc Trai (Lawyer), Ibid, 168

<sup>28</sup> Ngo Ngoc Trai (Lawyer), Ibid, 152

However, no matter how complete this legal system, there will be shortcomings and gaps, which requires individuals and agencies must be fair, integrity and for justice, for people in using and applying law. Because, if it leaves justice, all activities that apply the law, especially in criminal justice, it will prosecute and judge wrong person, wrong crime and lead to injustice. Reality shows that, even if using recording and video recording methods, having a private bow room, closely monitored and with lawyers involved, the pressure, or collusion of parts (investigators, supervisors, prosecutors) can still happen and cause psychological and physical pressure before the interrogation to accuse the accused of confessing or being forced to confess guilt according to the script drawn out from before.

So, in addition to perfecting the law, perfecting technical measures to minimize the use of torture to force the accused to confess guilt, the selection, training and training of the team Judicial officers are really “serving the public interest and justice, absolutely comply with the law, wholeheartedly for fairness, not self-interest, for own sake” are especially important, because this is not only a professional measure and public duty but also for human rights.

In addition, the criminal procedure legal system in Vietnam continues to improve in the direction of ensuring independence in proceedings, in order to overcome the situation of “collusion” between prosecutors and investigators in the process, submitting investigation and prosecution, thereby ensuring that the People's Procuracy performs well the function of supervising judicial activities to prevent the use of investigative officers' powers in taking testimony for overcoming the situation of torturing the accused./.

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