

## Exercising Precautions and Supervising Inspection, Supervising Judgment of Cases of Violating the Order of Economic Management

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### Abstract

*Crimes of infringing upon economic management order are specified in Section 1, Section 2, Section 3 Chapter 18 of the 2015 Penal Code, including 48 crimes, divided into 3 groups of crimes. According to the provisions of the 2013 Constitution, the 2014 Law on Organization of the People's Procuracy and the 2015 Criminal Procedure Code, the People's Procuracy exercises the right to prosecute and supervise judicial activities to ensure all legal rights and interests. Criminal acts must be detected, investigated, prosecuted and adjudicated in a timely manner, without causing unjust, wrong, or omission of criminals and at the same time not causing injustice to innocent people. The article presents the crimes of infringing upon the economic management order specified in the 2015 Penal Code, the prosecutor's exercise of the right to prosecution and judicial supervision during the investigation period; prosecuting and adjudicating cases of infringing upon economic management order.*

**Key-words:** Constitution, Criminal Code, Criminal Procedure Code, Investigating Body, Procuracy, Court, Procurator, Investigators, Trial Panel, Exercise of the Right to Prosecution, Inspection Supervise Judicial Activities, Wrongdoing, Let Go of Crime.

### 1. Introduction

Crimes of infringing upon economic management order are specified in Section 1, Section 2, Section 3 Chapter 18 of the Penal Code 2015, including 48 crimes, divided into three groups of crimes:

The first group: Crimes in the fields of production, business and commerce, including 12 crimes, specifically: smuggling (Article 188); Crime of illegally transporting goods and currency across borders (Article 189); Crime of producing and trading in banned goods (Article 190); Crime of

storing and transporting banned goods (Article 191); Crime of producing and trading in fake goods (Article 192); Crime of producing and trading in counterfeit goods being food, foodstuffs and food additives (Article 193); Crime of producing and trading in counterfeit goods being curative and preventive drugs (Article 194); Crime of producing and trading in counterfeit goods being animal feed, fertilizers, veterinary drugs, plant protection drugs, plant varieties and livestock breeds (Article 195); Crime of speculation (Article 196); Crime of false advertising (Article 197); Crime of deceiving customers (Article 198); Crime of violating regulations on electricity supply (Article 199).

The second group: Crimes in the fields of taxation, finance, banking, securities and insurance, including 17 crimes, specifically: Tax evasion (Article 200); Crime of lending heavy interest in civil transactions (Article 201); Crime of making and trading fake stamps and fake tickets (Article 202); Illegally printing, issuing, trading in state budget receipts and receipts (Article 203); Crime of violating regulations on preservation and management of invoices and receipts for state budget collection (Article 204); Crime of illegally establishing funds (Article 205); Crime of violating regulations on banking activities and other activities related to banking activities (Article 206); Crime of making, storing, transporting and circulating counterfeit money (Article 207); Crime of making, storing, transporting or circulating fake negotiable instruments or other fake valuable papers (Article 208); Crime of intentionally disclosing false information or concealing information in securities activities (Article 209); Crime of using inside information to trade securities (Article 210); Crime of manipulating the securities market (Article 211); Crime of falsifying documents in securities offering and listing documents (Article 212); Crime of fraud in insurance business (Article 213); Crime of cheating on social insurance and unemployment insurance (Article 214); Crime of health insurance fraud (Article 215); Crime of evading payment of social insurance, health insurance and unemployment insurance for employees (Article 216).

The third group: Other crimes infringing upon economic management order, including 19 crimes, specifically: Crime of violating competition regulations (Article 217); Crime of violating regulations on multi-level business (Article 217a); Crime of violating regulations on asset auction activities (Article 218); Crime of violating regulations on management and use of State property, causing loss and waste (Article 219); Crime of violating regulations on management and use of public investment capital, causing serious consequences (Article 220); Crime of violating regulations on accounting causing serious consequences (Article 221); Crime of violating regulations on bidding, causing serious consequences (Article 222); Crime of colluding, covering up for taxpayers, causing serious consequences (Article 223); Crime of violating regulations on investment in construction works causing serious consequences (Article 224); Crime of infringing upon copyright and related

rights (Article 225); Crime of infringing industrial property rights (Article 226); Crime of violating regulations on research, exploration and exploitation of natural resources (Article 227); Crime of violating regulations on land use (Article 228) Crime of violating regulations on land management (Article 229); Crime of violating regulations on compensation, support and resettlement when the State recovers land (Article 230); Crime of intentionally violating regulations on distribution of relief money and goods (Article 231); Crime of violating regulations on exploitation and protection of forests and forest products (Article 232); Crime of violating regulations on forest management (Article 233); Crime of violating regulations on wildlife protection (Article 234).

Crimes of infringing upon the economic management order, violating on the relations of economic management order in a number of areas of the national economy, cause damage to the interests of the State, the legitimate rights and interests laws of agencies, organizations and individuals. Crimes are committed by acts of commercial individuals or legal entities, infringing upon State regulations on economic management, such as tax evasion; forging in printing and issuing invoices and receipts for collection and payment to the State budget; violating regulations on competition, multi-level business, etc. The subject of the crime is a person aged full 16 years or older, having criminal liability capacity and a commercial legal entity; crimes are committed with intentional error. Crimes of infringing upon the order of economic management have the highest penalty frame of life imprisonment, in addition to a number of additional penalties.

## **2. Discussion**

### **2.1. Legal basis**

Procurators exercise the right to prosecute and supervise judicial activities in the investigation, prosecution and adjudication of criminal cases in general and cases of crimes infringing upon economic management order in particular; which are based on the following legal documents: Article 107 of the 2013 Constitution of Vietnam; Law on Organization of People's Procuracy 2014; Penal Code 2015; Criminal Procedure Code 2015; Regulation on the exercise of the right to prosecution, supervision of prosecution, investigation and prosecution (issued together with Decision No. 111/QD-VKSTC, dated April 24, 2020 of the Chief Procurator of the Supreme People's Procuracy high); Regulations on the exercise of the right to prosecute, supervise and adjudicate criminal cases (issued together with Decision No. 505/QD-VKSTC, dated December 18, 2018 of the Chief Procurator of the Supreme People's Procuracy); Directive No. 05/CT-VKSTC dated April 27,

2020 of the Procurator General of the Supreme People's Procuracy "On strengthening prosecutorial responsibility in solving criminal cases, meeting the requirements of crime prevention and combat "; and some other text.

## **2.2. Exercising the Right to Prosecute and Supervise Judicial Activities in the Investigation and Prosecution of Crimes Infringing Upon Economic Management Order**

According to the provisions of the 2013 Constitution, the 2014 Law on Organization of the People's Procuracy and the 2015 Criminal Procedure Code, the People's Procuracy exercises the right to prosecute and supervise judicial activities to ensure all legal rights and interests. Criminal acts must be detected, investigated, prosecuted and adjudicated in a timely manner, without causing unjust, wrong, or omission of criminals, and at the same time not making innocent people unjust. The investigation stage of criminal cases on crimes infringing upon economic management order begins when the investigating agency issues a decision to prosecute the case and prosecute the accused. Direct procedure-conducting persons are investigators, responsible for conducting procedural activities in accordance with law to clarify all circumstances of crimes, identify offenders for prosecution, investigation and prosecution. After issuing a decision to prosecute the case and prosecute the accused, the investigating agency shall transfer the decision and all the documents to the Procuracy to exercise the right to prosecute and supervise the prosecution of the case. prosecute the accused and investigate (Tran Cong Phan, 2016). In the exercise of the right to prosecution and investigation, it is necessary to accurately evaluate each case, ensure that all criminal acts and offenders are detected, prosecuted, investigated, prosecuted and tried. promptly, strictly, with the right person, at the right crime, in accordance with the law, not unjustly offending innocent people, not ignoring criminals and offenders (Le Xuan Hai, 2020). Within 03 days according to the provisions of the Criminal Procedure Code, the procurator representing the Procuracy must study the dossier, check the groundability and legitimacy of the decision to prosecute the case. criminal proceedings, prosecution of the accused, procedural activities of investigators in the prosecution of the case and the prosecution of the accused. After studying the file, the procurator evaluates the evidence, reports to the Leader of the Procuracy (Procurator, Deputy Director) to decide to approve or cancel or change the decision to prosecute the case or prosecute the case. accused. After the Procuracy approves the decision to prosecute the accused, the investigating body shall take investigation measures to clarify the contents of the case. During the investigation process, the investigating agency must clarify the contents of the case: Time, crime, consequences of the crime,

identity of the offender or the commercial legal entity committing the crime, other relevant circumstances related to the correct settlement of criminal cases; Gather sufficient evidence to convict as well as exculpatory evidence. For commercial legal entities committing crimes, investigators must determine the time of committing the crime and ending the crime to determine the statute of limitations for criminal prosecution (Nguyen Thanh Mai, Nguyen Thi Hong Van, 2019). At the same time, among the issues that need to be proved, the fault of the legal entity, the fault of the individual who is a member of the commercial legal entity committing a crime is a very important issue to prove (Hoang Hai, 2020). When conducting an investigation, the investigating authority may issue a variety of decisions, such as arrest warrants, custody orders, orders to arrest the accused for temporary detention, decisions to apply other preventive measures, and search warrants. ; decide to extend temporary detention or investigation; decide to solicit the assessment and valuation of assets; decision to suspend the case, to suspend the case... These orders and decisions of the investigating authority must be sent to the procuracies together with the case files so that the procuracies can exercise the right to prosecute and inspect the groundability and legality of the decisions. The procurator must study the records, check the validity and legitimacy of the orders and decisions of the investigating authority, and the procedural activities conducted to report to the leadership of the Procuracy for decision. to approve, disapprove, cancel or change such orders or decisions. When studying the case file, the procurator carefully reads each page of documents, orders and decisions, records the contents of the documents, copies important documents, carefully examines photos, video-clips or other objects. other evidence to determine the incriminating evidence and also evidence that can exclude criminal responsibility for the accused; other circumstances related to the correct settlement of the case.

The procurator studies and examines the following documents, documents and evidences: A written request for consideration and approval of the decision to prosecute the accused; The decision to prosecute the case; The decision to prosecute the accused. Documents used as a basis for prosecution of the accused such as: denunciations, crime reports, petitions for prosecution of agencies, organizations and individuals; documents collected by the investigating authority when conducting inspection, verification and investigation measures; assessment conclusions, property valuation conclusions (if any); minutes and results of mutual legal assistance; minutes of testimonies of victims, witnesses, persons with related interests and obligations; minutes of interrogation of the accused; Extract and copy the administrative sanctioning decision (if any), the court's decision or judgment (if any).

Procurators may cooperate with investigators in taking testimonies of the arrested, the accused, witnesses and victims to clarify the grounds for prosecuting the accused, the grounds for temporary detention, the grounds for forcing the accused. sin.

The groundability of the decision to prosecute the case, prosecute the accused, the decisions of the investigating agency is reflected in the fact that the documents in the case file contain evidences for accusations, such as criminal acts. of the accused, motives, purposes, tools, means and tricks of the crime, consequences of the crime, satisfying the requirements of the criminal constituency for infringing upon the economic management order; there is no ground to suspend the case as prescribed in Article 157 of the Criminal Procedure Code, Articles 19 and 26 of the Penal Code. There are grounds to apply the custody or temporary detention measure specified in Article 113, Article 119 of the Criminal Procedure Code,; grounds for search according to the provisions of Articles 192 to 195 of the Criminal Procedure Code, such as having grounds to determine that there are traces of a crime in the person's person, residence or place of work or vehicle, or to rescue victims.... For decisions on temporary suspension or suspension of investigation, there must be grounds for temporary suspension or suspension according to the provisions of Articles 229 and 230 of the Criminal Procedure Code.

The legitimacy of the decision to prosecute the case, prosecute the accused, and other decisions of the investigating agency is reflected in the fact that the decisions are issued in accordance with their competence, such as those made by the heads and deputy heads of the investigating bodies. promulgated investigation; order and procedures for making decisions or conducting investigative activities of investigators, and the time limit for sending decisions to the procuracies, to the accused, victims... custody, detention...; the file does not show that there is a forced confession, use of corporal punishment, or falsification of the case file.

After researching, the procurator evaluates and concludes on the researched contents, the groundability and legitimacy of the decisions, records and reports, and proposes to the leadership of the Procuracy to handle the case as following:

a) If it is found that the decisions or orders of the investigating bodies on crimes of infringing upon the economic management order are grounded and lawful, they shall approve such orders and decisions;

b) If finding that the decision or order of the investigating authority on crimes of infringing upon the economic management order is groundless and illegal, it shall issue a decision not to ratify it or cancel or change those decisions;

c) If the grounds for determining that the accused commit crimes are unclear, request the investigating authority to conduct additional investigative activities to collect more evidences for the consideration and approval of decisions;

d) If it is found that in addition to the accused (individuals or commercial legal entities) who have been prosecuted, there are other people or legal entities who have committed criminal acts in the case but have not yet been prosecuted, not yet applied. If the investigating authority fails to take preventive measures, the Procuracy shall issue a written request to the investigating authority to issue a decision to prosecute the accused, to apply appropriate preventive measures, to decide to search, etc. Currently, the Procuracy directly issues decisions to prosecute the accused and other decisions in accordance with the provisions of the Criminal Procedure Code.

Procurators closely supervise the observance of the law in investigative activities to ensure that investigation activities comply with the provisions of the law on competence, order, procedures, time limits and security to ensure progress of investigation, do not allow wrongful prosecution, detention or omission of criminals. At the same time, there should be no situation where investigators force confessions, use corporal punishment or falsify case files for personal motives or self-interest. The prosecutor always closely follows the investigation process, promptly issues an investigation request for the investigator to perform in order to quickly clarify the contents of the case. The purpose of making an investigation request is “to clarify criminals and offenders” (Nguyen Cao Cuong, 2019). When detecting a violation of the law by the investigating agency or investigator, the Procurator resolutely requests the termination or reports it to the Institute's leadership to request termination, remedy or take appropriate handling measures according to regulations of the law, such as annulling illegal decisions, strictly handling investigators who commit illegal or criminal acts.

At the end of the investigation period, the investigating agency shall issue an investigation conclusion and propose the prosecution to the Procuracy with all the case files. The procurator shall continue to study the file within the statutory time limit to re-check the legitimacy and legitimacy of the decisions and procedural activities of the investigating bodies and investigators. Prosecutors need to have good skills in synthesizing and evaluating evidence, thereby deciding to use evidence in fighting crime (Nguyen Thanh Mai, 2018). At the end of the prosecution period, if it is determined that the prosecution and investigation are grounded and in accordance with the law, the procurator shall request the leader of the Procuracy to issue an indictment to prosecute the accused before the court for trial.. In order to ensure the prosecution of the right person and the right crime, the procurator should directly conduct a number of investigative activities such as interrogating the accused, taking testimonies of victims and witnesses to strengthen the incriminating evidence and as

to check and re-evaluate the survey results conducted by the enumerator (Hoang Anh Tuyen – Pham Thi Thuy Linh, 2020).

Following are the procurator's skills when exercising the right to prosecute, supervise, investigate, prosecute and adjudicate a number of crimes in the group of crimes of infringing upon economic management order:

- For the crime of tax evasion: The crime of tax evasion (Article 200 of the Penal Code), there are regulations on quantification as a basis for criminal prosecution or prosecution with an amount of tax evasion of 100,000,000 VND or more., or the amount of tax evasion is less than VND 100,000,000 but has been administratively sanctioned for tax evasion or has been convicted for this crime or for one of the crimes specified in Articles 188, 189, 190, 191, 192, 193, 194, 195, 196, 202, 250, 251, 253, 254, 304, 305, 306, 309 and 311 of the Penal Code, who have not yet had their criminal records cleared but continue to commit them, shall be liable to bear the penalty. criminal responsibility.

Therefore, if in a case the amount of tax evasion is less than VND 100,000,000, the procurator should check whether the file shows that the tax evader has been administratively sanctioned or has been convicted of tax evasion. the aforesaid crimes and have not yet been expunged; has expired to be considered as not yet administratively sanctioned. The procurator must carefully study the dossier to consider the commercial legal entities, which acts the accused have committed to evade taxes specified at Points a to i, Clause 1, Article 200 of the Penal Code (9 acts of criminal law). vi) to consolidate evidence and prove the crime. In order to have a basis to determine how much tax evasion is, the investigating authority must issue a decision to solicit expertise to assess the tax evasion corporate or individual. In all cases, if there is any doubt about the supporting documents, the procurator must request the local Tax Departments to verify and reply in writing, because tax records, invoices, and accounting documents are very important. In complicated cases, if necessary, tax officials can be consulted directly on related issues.

Procurators need to ask the investigating agency to clarify the tax evasion tricks of individuals and businesses: Income tax evasion tricks of businesses are often outside the accounting system of the basic construction units to evade corporate income tax and value added tax, or put unreasonable and illegal expenses in to increase costs, reduce interest, thus reducing the amount of income tax payable. When the tax authorities can prove that the basic construction works are left out of the books, they will apply the evaded tax amount according to the normative tax rate to determine, while eliminating illegal and unreasonable expenses is difficult because The current state of using invoices

is still inadequate, and the cost norms prescribed by the State also contain many contents that are not close to reality. There are 5 types of acts of appropriating value added tax as follows:

The first type: Legal entity or individual who completely signs a contract and buys false invoices, has no goods, makes fake receipts and payments, then colludes with Customs to make false export declarations. Thereby, giving goods sale and purchase contracts, value-added invoices to make fake records, apply for tax refund, withdraw money to share.

The second type: Legal entities and individuals have real exported goods, but in the total export sales, there is a part of fake goods, but have colluded with Customs to export a certain amount of goods, this quantity is also included in the file to apply for tax refund, appropriate tax refund.

The third type: A legal entity or individual declares an increase in the purchase price of the input in the tax invoice to increase sales in order to receive a value-added tax refund more than the prescribed amount.

The fourth type: Legal entities or individuals who do not have goods for sale or export, but closely collude with Customs and many other enterprises to hire or borrow exported goods to compile export dossiers according to official procedures applying for value-added tax refund to appropriate.

The fifth type: Legal entities or individuals that sign contracts for the sale and purchase of exported goods transported at sea, after issuing a float, do not sell pirated goods to foreign businessmen, avoiding export tax. Then take the purchase value-added invoice to declare the number of input goods to evade tax.

The procurator must request the local Tax Departments to verify their answers on the input tax payment situation and the activities of enterprises selling short goods to the tax refund unit. In fact, in the cases investigated and prosecuted, up to 80% of input short-selling units are enterprises. Private companies, joint-stock companies set up not for business but only for legal entities to sign. The contract of selling fake invoices legalizes the documents for the tax refund procedure unit to enjoy a certain percentage, so they do not pay tax to the local tax department, usually they sell the invoice and run away, some units have paid but only a very small percentage.

For the crime of illegally printing, issuing, trading in invoices and receipts for payment to the State budget according to Article 203 of the Penal Code, the procurator requires investigators to clearly identify the following acts: Illegal printing invoices and receipts for state budget collection, is the act of self-printing invoices or creating e-invoices when the conditions are not met, or the contents are incorrect or incomplete as prescribed by law; Illegally issuing invoices and receipts for collection and payment to the state budget is the act of making an incomplete release notice; failing to

send or post up the invoice issuance notice in accordance with regulations; Illegally trading in invoices and receipts for state budget payment, including the following acts:

- + Purchase and sale of invoices without content or with incomplete or inaccurate content as prescribed;

- + Buy and sell invoices with their contents written on, but without accompanying goods or services;

- + Buy and sell fake invoices, invalid invoices, expired invoices, invoices from other business and service establishments to legalize purchased goods or services. to customers when selling goods and services;

- + Buy, sell, use invoices with differences in value of goods and services between copies of the invoice.

The crime of illegally printing, issuing, trading in invoices and receipts for State budget collection and payment only constitutes a crime when the invoices and receipts for payment to the state budget are in the form of embryos from 50 numbers to less than 100 numbers, or applications and vouchers with contents from 10 to less than 30 numbers or illegally profiting from VND 30,000,000. Crimes are committed by individuals and commercial entities.

For the crime of violating regulations on banking activities and other activities related to banking activities as prescribed in Article 206 of the Penal Code, the procurator should request the investigator to clearly define the methods and procedures. crime section. The tricks of the offenders in this crime are often acts of taking advantage of public positions, powers and duties (primarily credit officers) to create fake documents and records. short savings, fake gold as collateral, then appropriate property; forge signatures of depositing customers to appropriate property; collect debt but do not enter the fund and appropriate it; make a false loan application; fail to appraise or knowingly misappreciate the mortgaged property; inflated the value of collateral to appropriate the bank's assets (Pham Minh Tuyen, 2019). The group of behaviors of the subjects who are the bank's customers is usually faking loan documents or making fake payment orders to bring to the bank to request money transfer and appropriate (Nguyen Quang Thanh, 2020).

During the investigation and prosecution process, the procurator should require the investigator to fully implement investigative measures to collect both incriminating evidence and exculpatory evidence. Important investigation measures need to be taken such as: inspection to identify fake invoices and documents; identify individuals or legal entities that have specific acts of illegally printing, issuing, trading in invoices and receipts for collection and payment to the State budget; Are you an accomplice in the case? If they are accomplices, it must be determined that there

is close collusion between the offenders to prosecute them for penal liability according to the provisions of Clause 2, Article 230 of the Penal Code on the circumstances of "organized crime" or other circumstances. other aggravating frameworks.

For a commercial legal entity committing a crime, the Procurator should ask the investigator to clarify the criminal act of the legal entity, which is reflected in the behavior of an individual such as the Director, the Chairman of the Board of Directors or other persons who have committed a crime; duties and powers in the legal entity. At the same time, when examining the criminal liability of a legal person, it is necessary to consider the criminal prosecution of individuals to ensure comprehensiveness and thoroughness, not to let the crime slip.

Cases of tax evasion, crime of printing, issuing, trading invoices and receipts for payment to the state budget, crimes of violating regulations on banking activities, and other activities related to banking activities also like other crimes in the group of crimes of infringing upon economic management order. They are often complicated cases, so when exercising the right to prosecute and supervise judicial activities during investigation and prosecution, they must regularly inspect them closely, monitor investigation activities, promptly issue investigation requests in order to quickly clarify crimes and offenders; promptly study dossiers, propose to approve or disapprove, cancel decisions and orders of investigating bodies. Procurators must promptly detect violations of the law by investigating bodies and investigators in order to request termination, remedy or handling of violations, and ensure that the prosecution, investigation and prosecution comply with regulations of the law, not allowing wrongdoing or omission of crimes.

### **2.3. Exercising the Right to Prosecute and Supervise Judicial Activities in Adjudicating Cases Infringing Upon Economic Management Order**

When exercising the right to prosecute and supervise judicial activities in the adjudication of cases infringing upon the economic management order, the procurator shall announce the indictment, prosecute and argue, and at the same time supervise the compliance with the law of the Court, the participants in the proceedings.

Interrogation of the accused: The procurator examines the accused about the evidences, documents and objects related to the defendant's crime, such as the criminal acts, the consequences of the crime, tools, means, etc. criminal tricks; the role of each defendant in the case; clarifying the aggravating and mitigating circumstances of the criminal liability to properly determine the crime and punishment, on that basis to defend the prosecution and accusation point of view of the Procuracy. If

the defendant's testimony contradicts the testimonies at the investigating agency or at the first-instance court hearing, the defendant shall be requested to clearly state the reasons for such inconsistency as a basis for consideration and assessment of the truthfulness, objectivity in the defendant's testimony. If the defendant fails to testify or the testimonies contain contradictions, the procurator shall request the trial panel to disclose the testimonies during the investigation and prosecution. When the accused or other procedure participants present new evidences, documents and objects at the court hearing, the procurator shall examine and question the origin and content of such evidences, documents and objects in order to conclusions on the legitimacy and groundedness of evidences, documents and objects. In case there are not enough grounds to conclude that such new evidences, documents and objects may change the contents and nature of the case, the procurator shall request the Trial Panel to postpone the court session so that the investigating agency can continue with the investigation verification and conclusion. In particular, the procurator should examine and clarify the appropriated amount and where it is hidden to take measures to recover and remit it to the State budget (Hoang Anh Tuyen - Nguyen Thi Thuy Linh, 2020). When interrogating the accused, the procurator must ask clear, concise and understandable questions and must be directly related to the elucidation of the contents of the case and relevant circumstances. The attitude of the Procurator must be calm, not completely dependent on the outline of the interrogation, but must be flexible, proactive and quick to ask appropriate questions according to the developments of the trial.

In addition, the procurator must question victims, witnesses and other procedure participants in order to objectively and comprehensively determine the contents of the case.

At the end of the interrogation, the Procurator presented the impeachment. The prosecutor's impeachment focuses on analyzing and assessing the nature of the danger to society of the accused's criminal acts, the consequences of the crime, the offender's identity, the ability to educate and reform offenders, thereby requesting the Trial Panel to apply the appropriate type and level of punishment and compensation for the accused. After the prosecutor's impeachment, the defendant, the defendant's defense counsel, the victim and other participants in the proceedings expressed their opinions on the prosecutor's point of view on accusations. Defendant and defense counsel present excuses with exoneration content for the accused (Nguyen Van Linh 2021). The practice of first-instance trial of criminal cases shows that, at the trial, the procurator mainly argues with the defendant or the defendant's defense counsel. According to court statistics, from 2009 to the first 6 months of 2019, during the first-instance trial of criminal cases, the number of cases without defense counsels and the defendants defended themselves accounted for a similar proportion relatively high (from 89.6% to 93.7%) (Cao Thi Ngoc Ha, 2020). Procurators debate and respond to objections of the accused,

defense counsel, victims and other participants in the proceedings to defend the Procuracy's point of view on prosecution and accusation. The conclusion that the accused committed a crime as prescribed by the Penal Code is most clearly shown in the process of objective debate at the trial (Hoang Van Hanh, 2020).

When arguing, the procurator must give his/her arguments to respond to the end of each opinion, i.e. to all requests, suggestions and views made by procedure participants, content of the responses. straight to the point, satisfying their needs to be answered. Procurators need to base themselves on the reasoning of the criminal's composition and the reasoning on evidence to oppose the incorrect opinions of the participants in the argument. During the argument, the procurator should be calm, flexible, and the style and language used when responding must be clear, easy to understand, accurate, concise, straight to the point, affirmative, and critical. The defense must be lively, persuasive, reasonable, and sympathetic on the basis of respecting the objective truth of the case, so that the accused and defense counsel realize that the defendant's criminal act is dangerous for society and the Procuracy's decision to prosecute is the right person, the right crime, and the right law (Le Duc Xuan, 2018). Procurators must respect the defendant's right to defense and the rights of other participants in the proceedings (Mai Dac Bien, 2018). The practice of exercising the right to prosecute at the first-instance trial of a criminal case for crimes of infringing upon economic management order shows that procurators often argue with defendants and defense counsel on the following issues:

- Failing to admit the accused to committing crimes according to the prosecution's indictment and conclusions in the prosecutor's impeachment. In this case, the procurator needs to analyze the reasoning about the criminal composition of the crime that the Procuracy has prosecuted, assess the defendant's behavior, motives, purposes, and consequences of the damage caused. cause-and-effect relationship between behavior and consequences; the relevant evidences collected during the investigation, prosecution and adjudication are sufficient to confirm that the defendant's act is a criminal act specified in the Penal Code that the Procuracy has invoked to prosecute. The reasons given by the defendant and defense counsel to prove that the defendant has not committed a crime are groundless and inconsistent with the provisions of criminal law.
- The defendant, the defense admits that the defendant commits a crime but commits another less serious crime than the one prosecuted by the Procuracy, and proposes to change another lighter crime. In this case, the Procurator, in addition to analyzing the theory of criminal

constituency of the crime prosecuted by the Procuratorate, also analyzes the theory of criminal constituency of the crime that the defendant, defense counsel, and victim put forward and beat assess the defendant's objective behavior, the consequences and damage, the motive, the purpose of the crime, the cause-and-effect relationship between the act and the consequences... These factors confirm that the defendant's criminal act has committed crimes that the Procuracy has prosecuted, the change of crime at the request of the accused or defense counsel is groundless and does not comply with the provisions of the criminal law.

- Admit that the accused committed a crime in accordance with the law that the Procuracy has prosecuted, but committed another, less serious crime. In this case, the procurator, in addition to analyzing the signs of the crime, also specifically analyzes the defendant's behavior that has caused damage or other circumstances that are the basis for setting the penalty frame such as: damage, the aggravating circumstances are framed to confirm the prosecution of the Procuracy is grounded and in accordance with the law.
- Admitted that the defendant committed the crime according to the crime and terms of the Procuracy prosecuted, but the investigation, prosecution and trial process seriously violated the procedure, so it is recommended that the Trial Panel postpone the trial. court, return the file requesting additional investigation. In this case, the procurator must clearly argue that these violations are specific violations. If there is a violation, the procurator shall evaluate the extent and nature of that violation to determine whether this is a basis for returning the dossier requesting additional investigation or it can be remedied at the court hearing. In case there is a serious violation of procedural procedures that it deems necessary to investigate, clarify, and ensure the objectivity of the case, in cases where the case is returned for additional investigation, the procurator must request The trial panel adjourned the court session and returned the file for additional investigation. In case the defendant believes that during the investigation and prosecution process, investigators and procurators have committed violations such as forced bows or corporal punishment, the procurator may request the Trial Panel to convene Article 1 of this Article. Inspectors and procurators come to court sessions to confront or explain matters related to the denunciation. Accountability of investigators and procurators so that human rights and citizens' rights are effectively guaranteed and protected (Hoang Minh Khoi, 2020)
- Disagree with the type and level of punishment proposed by the Procurator. Defendants and defense counsel often think that the type and level of punishment proposed by the Procuracy's

representative are too heavy for the defendant, not commensurate with the offense, and inconsistent with the criminal law policy of the defendant. State, need to reduce penalties; In this case, the procurator must respond, analyze and evaluate the nature and degree of danger of the criminal act based on the infringed object, the affected object, the methods and tricks of the crime. vi, form and extent of fault, extent of damage caused, measures and possibility of remedying damage, aggravating and mitigating circumstances of criminal liability, identity and possibility of rehabilitation of the accused report, to conclude and affirm that the type and level of punishment proposed by the procurator are grounded and in accordance with law.

Simultaneously with the exercise of the right to prosecution at the court hearing (interrogation, impeachment, debate), the procurator must also supervise judicial activities at the trial. The procurator supervises the legal compliance of the trial panel and the participants in the proceedings to ensure the court's proper observance of the provisions of law in the adjudication, and that no adjudication occurs unjustly, wrongly or omitted the crime. The procurator shall supervise the composition of the Trial Panel and the presence of procedure participants at the court hearing, the limits of the trial; supervise the procedure for starting the trial, trial and argument procedures; deliberation and sentencing procedures; the application of preventive measures and other decisions of the Trial Panel. In case of detecting violations by the Court in the trial of criminal cases on crimes of infringing upon economic management order, the procurator shall, depending on the nature and extent, request the Court to terminate, remedy or report to the leadership of the Procuracy to issue a protest to the Court.

### **3. Results and Recommendations**

Over the years, the Procurator has well performed the function of exercising the right to prosecute and supervise judicial activities in investigating, prosecuting and adjudicating cases of infringing upon economic management order. That result has contributed positively to maintaining political security, social order and safety, protecting the interests of the State, and the legitimate rights and interests of agencies, organizations and individuals. According to statistics of the Supreme People's Procuracy, from January 2015 to May 2021 nationwide, the Investigation Agency prosecuted 11,316 cases/ 17,708 defendants for crimes of infringing on administrative order. economic logic. In which, the Investigation Agency proposed the Procuracy to prosecute 8442 cases/15,355 defendants. The Procuracy prosecuted 8244 security cases/15038 defendants; The court has tried 7637 cases/13865 defendants.

Although there have been many good results, there are still limitations and difficulties such as there are still cases of prosecution, prosecution, wrongful trial or omission of crimes; the status of returning records for additional investigation has not been resolved; The quality of the questioning and debate at the court hearing was not high because some procurators did not prepare well the argument outline, did not anticipate the situations that would arise at the trial, when the argument did not respond to each point. ideas, avoid difficult problems.

In order to overcome the above limitations and difficulties, the author proposes a number of recommendations and solutions to improve the quality of the practice of the right to prosecution, supervision of judicial activities in the investigation, prosecution and trial of criminal cases. Cases of infringing upon the economic management order of procurators are as following:

Firstly, continue to improve the provisions of the law: Law is the basic factor, ensuring the quality of the exercise of the right to prosecution, and supervision of judicial activities in the investigation, prosecution and trial of cases infringing upon the economic management order of the procurator. Therefore, it is necessary to continue to amend and improve the Criminal Code, the Criminal Procedure Code, and the regulations of the Procuracy. Completing procedural regulations in the direction of strengthening the duties and powers of the Procurator during the investigation and prosecution stage, ensuring that the Procurator is more independent when performing his/her functions and duties mine. It is necessary to continue to amend the Criminal Procedure Code in the following direction: The court has no responsibility to prove the crime, but only the duty of trial, the responsibility to prove the crime at the trial belongs to the procurator. Therefore, it is necessary to amend Articles 307, 309, 310, and 311 of the Criminal Procedure Code so that the Trial Panel does not participate in questioning and proving the crime at the trial.

Second, strengthen the work of training and fostering to improve the professional qualifications and capacity, political qualities, professional ethics and sense of responsibility of the Procurator: The Procuracy sector needs to strengthen the training and re-training of the procurator team in legal knowledge, professional skills to practice prosecution rights, supervision of judicial activities in general, and in-depth skills in dealing with criminal matters. cases of infringing upon economic management order; foster interrogation and litigation skills at criminal court hearings; regularly draw experience in the exercise of the right to prosecution and supervision of judicial activities at the trial. Education to improve moral quality and political bravery for the procurator team, always uphold the spirit of fighting against crime to protect the State, society, human rights and citizens' rights.

Third, ensure appropriate facilities and treatment regime for Procurators to exercise the right to prosecute and supervise judicial activities: The State has increased investment in necessary facilities such as working offices, working equipment, technical means, and at the same time ensure the salary and allowance regime for the team of procurators.

#### **4. Conclusion**

Exercising the right to prosecute and supervise judicial activities in cases of infringing upon the economic management order is extremely important in criminal proceedings, It ensures the prosecution and prosecution of the Procuracy, supervise the whole process of settling the case in a grounded and lawful manner; ensure the rapid detection of crimes, timely investigate and clarify crimes and offenders. During the trial period, on the basis of questioning and public debate, democracy, the contents of the case are clarified; the accused, defendants and defense counsels are made public; democracy gives defense opinions, clears their guilt, argues equally with the Prosecutor and other participants in the proceedings. Victims, defenders of the litigants' legitimate rights and interests, victims may participate in the protection of their legitimate rights and interests that have been infringed upon by criminals. The results of the litigation help the Trial Panel to make its correct judgment, to proceed the prosecution, investigation, prosecution to eliminate wrongful trial, wrongful trial or omission of the crime. Well perform in the function of exercising the right to prosecute and supervise judicial activities in cases of infringing upon the economic management order, contributing to well perform the functions and tasks of the Procuracy. Thereby, maintaining security, political order and social security, ensuring the interests of the State, the lawful rights and interests of agencies, organizations and individuals, especially the accused and defendants.

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