

**HO CHI MINH NATIONAL ACADEMY OF POLITICS**

**ENSURING THE HUMAN RIGHTS OF DEFENDANTS  
DURING THE INVESTIGATION PHASE OF NATIONAL  
SECURITY OFFENCES IN VIETNAM TODAY**

**SUMMARY OF DOCTORAL DISSERTATION**

**Major: Laws on Human Rights**

**Code: Pilot**

**HA NOI - 2025**

**The dissertation was completed at:**  
**Ho Chi Minh National Academy of Politics**

  
**Supervisors: Assoc. Prof. Dr. Tuong Duy Kien**

**Dr. Le Thi Thu Mai**



**Reviewer 1:** .....

.....

**Reviewer 2:** .....

.....

**Reviewer 3:** .....

.....

**The dissertation will be defended before the Dissertation Evaluation  
Council at Academy level, convened at the Ho Chi Minh National Academy of  
Politics**

*At ... hour ... day ... month ... year 20...*

**The dissertation can be consulted at:**

- **The National Library of Vietnam**
- **The Library of the Ho Chi Minh National Academy of Politics**

## INTRODUCTION

### 1. Rationale of the Study

In the current context, crimes against national security are particularly dangerous acts for society, posing a threat to the political and social security of any country in the world. According to Vietnamese criminal law, crimes against national security are acts intentionally committed by individuals with criminal responsibility, infringing upon core elements of the nation such as the political system, economy, culture, national defense, foreign relations, independence, sovereignty, unity, and territorial integrity of the Socialist Republic of Vietnam. In practice, this type of crime has been on the rise in recent years, with increasingly sophisticated and unpredictable methods, seriously impacting political and social security. Therefore, ensuring the human rights of defendants in cases involving violations of national security is not merely a legal requirement, but also a crucial political requirement, aimed at protecting the foundations of the socialist regime, safeguarding national security, and affirming the democratic and humane nature of the Vietnamese legal system.

In particular, during the investigation phase of criminal cases – a crucial stage that determines the objective truth – ensuring the human rights of the accused is even more important. This is an indicator reflecting the democratic and humane nature of the legal system. Accused individuals are among the most vulnerable groups in the judicial system; therefore, prioritizing the protection of their human rights is an essential requirement and a principle recognized in international and Vietnamese law. On the other hand, human rights have long been exploited by some hostile forces as a pretext to interfere in the internal affairs of independent nations – especially socialist countries. Therefore, ensuring the rights of accused individuals in cases of violating national security is an issue with far-reaching implications for politics, foreign relations, and national standing.

In practice, despite achieving many positive results, ensuring the human rights of suspects in investigations of national security violations still faces limitations. Some rights are not fully guaranteed, the period of pretrial detention is still prolonged, and investigative activities are sometimes flawed. The causes of these shortcomings may stem from an incomplete legal system; uneven levels of competence and capacity among judicial officers; low quality of defense lawyers; and ineffective oversight mechanisms. Therefore, continued research, evaluation, and improvement of legal regulations, policies, and implementation mechanisms to ensure the human rights of suspects in investigations of national security violations are extremely urgent. This is a necessary step to enhance the effectiveness of human rights protection, while preventing and deterring acts of exploiting the "human rights" pretext to negatively impact the investigation process and national security protection.

Therefore, the doctoral candidate's choice of the topic *"Ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam today"* as the research topic for his doctoral dissertation in human rights law is appropriate and urgent in the current context.

### 2. Research Purpose and Objectives

#### 2.1. Research Purpose

Based on an analysis and clarification of fundamental theoretical issues regarding the guarantee of human rights for defendants during the investigation phase of national security offenses, this dissertation analyzes and evaluates the current state of guaranteeing the human rights of defendants during the investigation phase of national security offenses; and proposes solutions to ensure the human rights of defendants during the investigation phase of national security offenses in Vietnam in the future.

#### 2.2. Research Objectives

*Firstly*, this thesis will conduct a comprehensive review of scientific works related to ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam and around the world, aiming to evaluate the research already conducted and identify issues requiring further study.

*Secondly*, the study examines fundamental theoretical issues regarding the guarantee of human rights for defendants during the investigation phase of national security offenses, such as the concept, characteristics, and factors influencing the guarantee of human rights for defendants during the investigation phase of national security offenses; and the content and methods of guaranteeing these rights for defendants during the investigation phase of national security offenses.

*Thirdly*, the study analyzes the current state of ensuring the human rights of defendants during the investigation phase of national security offenses from 2015 to 2025; assesses the achievements, limitations, and identifies the causes of these limitations and shortcomings in ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam.

*Fourthly*, it provides forecasts and some perspectives and solutions for ensuring the human rights of defendants during the investigation phase of national security offenses.

### **3. Research Object and Scope**

#### **3.1. Research Object**

This dissertation focuses on researching the theoretical and practical issues of ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam today, from the perspective of human rights theory and law.

#### **3.2. Research Scope**

- In terms of location: Vietnam.
- In terms of time: from 2015 to the end of 2025.
- In terms of content: focusing on regulations concerning the human rights of defendants as stipulated in Vietnamese criminal procedure law, with reference to regulations in international law and the laws of some typical countries.

### **4. Theoretical Basis and Research Methodology**

#### **4.1. Theoretical basis**

This dissertation is based on the application of Marxist-Leninist theory, Ho Chi Minh's thought on the state and law; international treaties on human rights in general, and on the accused in particular; and documents and resolutions of the Communist Party of Vietnam on judicial reform and the guarantee of human rights in judicial activities.

#### **4.2. Research Methodology**

The research topic is based on the theoretical framework of the Party and State's doctrines and viewpoints on perfecting the law, ensuring, respecting, protecting, and implementing human rights; the dialectical materialism method; and the historical materialism method of Marxism-Leninism and Ho Chi Minh Thought to clarify the content of the topic. These methods are applied synchronously, with a combination and relative independence to clarify the basic content of the topic, ensuring scientific and logical consistency between the issues in the chapters. The topic uses specific research methods, mainly such as document research; synthesis and analysis; statistical and comparative methods; the Human Rights-Based Approach (HRBA); comparative law; case study... to address the issues raised in the research of the dissertation topic.

### **5. Novel Scientific Contributions of the Dissertation**

*Firstly*, the dissertation develops a scientific concept of ensuring the human rights of defendants during the investigation phase of cases involving violations of national security, and defines the content of these human rights within the context of ensuring their rights during the investigation phase of such cases.

*Secondly*, the dissertation contributes to changing the perceptions of prosecuting authorities, competent state agencies, and other stakeholders in society regarding the significance and role of ensuring the human rights of defendants during the investigation phase of cases involving violations of national security.

*Thirdly*, the dissertation establishes a system of methods for ensuring the human rights of defendants during the investigation phase of cases involving violations of national security and identifies factors influencing this assurance in Vietnam today.

*Fourthly*, the dissertation studies and systematizes the human rights of defendants in general, and of defendants during the investigation phase of national security offenses in particular; it identifies differences, achievements, and limitations through the study of the laws of countries following different criminal procedure models, thereby offering lessons for Vietnam in improving its laws and enhancing the effectiveness of ensuring the human rights of defendants during the investigation phase of national security offenses.

*Fifthly*, the dissertation studies and evaluates the current state of ensuring the human rights of defendants during the investigation phase of national security offenses; it assesses the achievements, limitations, and identifies the causes of these limitations and shortcomings in ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam.

*Sixthly*, the dissertation develops viewpoints and proposes solutions to ensure the human rights of defendants during the investigation phase of national security offenses.

## **6. Theoretical and Practical Significance of the Dissertation**

- This dissertation is valuable for reference in building and improving mechanisms to ensure the human rights of defendants during the investigation phase of national security offenses in Vietnam in the future.

- It is valuable for individuals and relevant agencies to refer to and research in the process of improving the relevant legal system and serves as a reference source in teaching and research on criminal procedure law, human rights, and the protection of human rights.

**7. Structure of the Dissertation:** Besides the introduction, conclusion, and bibliography, the thesis consists of 4 chapters and 13 sections.

## **Chapter 1**

### **LITERATURE REVIEW ON THE DISSERTATION TOPIC**

**1.1. Research abroad regarding the protection of the human rights of suspects during the investigation phase of cases involving violations of national security.**

#### ***1.1.1. Studies on human rights conducted abroad.***

In the current global legal science system, the issue of human rights and the guarantee of human rights is studied at many different levels and scopes. To support this dissertation research, the doctoral candidate has selected and reviewed representative works on the theory of human rights by authors such as Jack Donnelly, Raija Hanki, Markku Suksi, Frances Butler, Timothy Waters, and others.

#### ***1.1.2. Studies abroad on the human rights of accused persons in criminal proceedings.***

For research on the human rights of the accused, the dissertation focuses on works on regulations in international law on human rights in general, and the rights of the accused in particular, at different levels such as: (1) at the international level with many research works from the perspective of systematizing and comparing legal regulations on rights and practices of guaranteeing rights among countries in the world by Craig M. Bradley, Fedorova Masha, Sten Verhoeven, Jan Wouters, Jarinde P.W. Temminck Tuinstra...; (2) at the regional level, many research works have analyzed and compared the system of legal regulations related to rights and guaranteeing human rights in criminal proceedings, thereby providing an overview of the legal systems of many countries in the world such as by Jeremy McBride, J.A. Andrews, M. Cherif

Bassiouni and Ziyad Motala, Cotran Eugene and Sherif Adel Omar...; (3) At the national level, there are research works by some representative authors such as: Jianfu Chen, Fan Chongyi and Gu Yuanzhong (China); Stroykova Anastasia Sergeevna, Yana Loshkobanova, Vakhrameva L.N (Russian Federation)...

***1.1.3. Studies conducted abroad regarding the specific rights of defendants in criminal proceedings.***

These studies directly mention the "defendant," clarifying the specific human rights of this subject in criminal proceedings, such as the right to a fair trial (authors Stefan Trechsel, Richard Clayton and Hugh Tomlinson, Shunji Miyake, Dimitar Markov, Miriana Ilcheva, Maria Yordanova...); and the right to remain silent (Peggy ter Vrugt)...

**1.2. The current state of domestic research related to ensuring the human rights of defendants during the investigation phase of cases involving violations of national security.**

**1.2.1. The current state of research in the country related to the guarantee of human rights, and the human rights of defendants in criminal proceedings.**

***1.2.1.1. Research studies related to ensuring human rights in criminal proceedings.***

Human rights have been a subject of interest for domestic researchers since quite early on, with an increasing number of specialized studies that have partly met the requirements for respecting and guaranteeing human rights, as well as for activities related to the development, application, and improvement of laws in Vietnam today. Generally, the research of these authors has comprehensively addressed the theoretical system of human rights, the characteristics of human rights, and the responsibilities of competent state agencies in ensuring human rights, notably those of Nguyen Dang Dung, La Khanh Tung, Le Van Cam, Tuong Duy Kien, Vo Khanh Vinh, Vu Cong Giao, Vo Thi Kim Oanh, etc.

***1.1.2.2. Research studies on human rights and the guarantee of human rights for defendants in criminal proceedings***

Researching theoretical issues on human rights and human rights protection in a narrower scope, specifically in the field of criminal procedure and limiting the research subject to the accused, studies have addressed many contents related to the dissertation topic such as: (1) the basis for ensuring the human rights of the accused in criminal procedure by authors: Nguyen Huu Hau, Tran Quang Tiep, Lai Van Trinh...; (2) on some specific rights of the accused in criminal procedure by authors Hoang Thi Minh Son, Tran Van Do, Pham Thanh Huyen...

***1.2.2. Research studies related to ensuring the human rights of defendants during the investigation phase of cases involving violations of national security.***

Several other theoretical aspects that are particularly relevant to the dissertation topic, such as the concept and characteristics of the VAHS investigation phase, and the relationship between investigation in criminal proceedings and the protection of human rights, are also addressed in the studies of authors such as Ngo Quang Hong, Nguyen Thanh Long, Nguyen Tat Thanh, Tran Thi Thu Hien, etc.

**1.3. An overall assessment of the research situation related to the topic and the issues the dissertation will continue to research**

***1.3.1. Overall assessment of the research situation related to the topic***

*First, the results achieved*

*Firstly*, regarding theoretical issues. Studies clarify the concepts of human rights, civil rights, the relationship between human rights and civil rights, and human rights in criminal proceedings. These studies also affirm that to ensure human rights in criminal proceedings, countries must specifically recognize these rights in their criminal procedural legal systems and have methods and measures to implement them in practice.

In addition, several studies on criminal law have clarified the types of crimes against national security, pointing out the history of formation, elements, and characteristics of these

crimes, as well as the characteristics of the perpetrators of acts against national security.

*Secondly*, regarding the current state of the law. Research studies have summarized the process of formation and development of legal regulations on guaranteeing the human rights of defendants in criminal proceedings, focusing on analyzing the provisions of criminal procedural law concerning the human rights of defendants. At the same time, some studies also address international standards on guaranteeing the human rights of accused persons in criminal procedural law and the laws of some countries regarding the rights of defendants in criminal proceedings in general.

*Thirdly*, regarding the practical implementation of criminal procedure law concerning the protection of the rights of the accused. In the authors' research, the practical aspects of ensuring the human rights of the accused in criminal proceedings are analyzed according to the stages or activities of the proceedings. From there, the authors have analyzed and clarified the shortcomings, limitations, and causes of these shortcomings and limitations, in order to propose recommendations and solutions for improving criminal procedure law regarding the rights of the accused during the investigation phase of criminal cases, as well as for crimes against national security.

*Secondly, regarding the issues that remain unresolved.*

*Firstly*, theoretically, research studies still lack consensus on certain concepts related to the dissertation topic, such as the concept of the human rights of the accused in criminal proceedings and the concept of guaranteeing human rights in criminal proceedings. This stems from differing approaches, leading authors to offer different definitions of the mechanism for guaranteeing human rights in general and the mechanism for guaranteeing the human rights of the accused during the criminal investigation phase in particular.

*Secondly*, some aspects remain unclear in existing research; no studies have defined the concept of guaranteeing the human rights of suspects during the investigation phase of national security offenses, focusing only on general research; and no studies have comprehensively examined all legal provisions regarding the guarantee of human rights for defendants during the investigation phase of national security offenses.

### ***1.3.2. The issues of on-going research of the dissertation***

Based on an assessment of the current research situation, this dissertation can build upon existing dissertations to identify areas requiring further research, specifically as follows:

*Firstly*, theoretically, the dissertation comprehensively and in-depth studies the theoretical issues of ensuring the human rights of defendants during the investigation phase of national security offenses. Along with this, the dissertation establishes a system of human rights for defendants during the investigation phase of national security offenses; the content of activities to ensure these rights in criminal proceedings, serving as a basis for surveying activities to ensure these rights. The dissertation aims to identify factors influencing the assurance of human rights for defendants during the investigation phase of national security offenses; clarifying the significance of ensuring the human rights of defendants during the investigation phase of criminal cases in terms of political, social, and legal significance.

*Secondly*, regarding the current state of the law. The dissertation researches and clarifies international legal standards on the rights of the accused in general, and defendants in particular. In addition, it is necessary to study the laws of countries representing different models of criminal procedure worldwide. From this, lessons learned can be drawn for improving Vietnam's criminal procedure law regarding the guarantee of the human rights of defendants during the investigation phase of criminal cases. At the same time, the dissertation conducts a more comprehensive and in-depth study of the current state of the law on guaranteeing the human rights of defendants during the investigation phase in Vietnam, including the current state of law promulgation and application. From this, it provides assessments, particularly focusing on limitations and analyzing

their causes, thereby laying the groundwork for solutions to improve the effectiveness of guaranteeing the human rights of defendants during the investigation phase of cases involving violations of national security.

*Thirdly*, the dissertation analyzes and evaluates the extent to which the human rights of defendants are guaranteed during the investigation phase of criminal cases in accordance with current Vietnamese criminal procedure law; it assesses the practical aspects of guaranteeing the human rights of defendants during the investigation phase of cases involving violations of national security. From this, the thesis also points out positive results, limitations, and obstacles, and identifies the causes of these limitations and obstacles.

#### **1.4. Research questions and scientific hypotheses**

##### **1.4.1. Research questions**

The dissertation needs to address several key research questions, as follows:

1) What studies on ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam should be inherited, developed, and further researched?

2) What are the characteristics of ensuring the human rights of suspects during the investigation phase of cases involving violations of national security? What is the significance and role of this activity?

3) How are the human rights of the accused during the investigation phase of a national security violation determined under criminal procedural law? What are the characteristics and content of this provision in the laws of several countries within typical criminal procedural models?

4) Based on the assessment of the current situation, why is it that in some cases, activities to ensure the human rights of defendants during the investigation phase of national security offenses are not truly timely and complete?

5) What groups of solutions should be applied to improve the effectiveness of ensuring the human rights of suspects during the investigation phase of cases involving violations of national security?

##### **2.4.2. Scientific hypotheses**

Based on theoretical and practical research on ensuring the human rights of defendants during the investigation phase of national security offenses, this dissertation verifies the following hypothesis: *The human rights of defendants in national security offense cases have received special attention and assurance from the Party and the State through legal regulations and the activities of competent state agencies. Due to the characteristics of the type of crime and the personal background of the perpetrators, the issue of ensuring the human rights of these defendants during the investigation phase is unique, receiving special attention and ensuring its implementation. However, in practice, the human rights of defendants in the investigation of some national security offense cases are still not fully and promptly guaranteed. Therefore, specific directions are needed, along with the simultaneous implementation of measures to improve the effectiveness of ensuring the human rights of defendants during the investigation phase of national security offense cases.*

## **CHAPTER 2**

### **THEORETICAL ISSUES REGARDING THE GUARANTEE OF HUMAN RIGHTS FOR DEFENDANTS DURING THE INVESTIGATION PHASE OF CASES INVOLVING NATIONAL SECURITY**

**2.1. The human rights of the defendants during the investigation phase of cases involving violations of national security.**

**2.1.1. The concept of investigation phases in crimes against national security.**

**2.1.1.1. The concept of crimes against national security.**

*Crimes against national security are socially dangerous acts stipulated in Chapter XIII of*

*the Penal Code, committed by individuals aged 16 and above with criminal responsibility, with direct intent, infringing upon the independence, sovereignty, unity, and territorial integrity of the Fatherland, as well as the political system, economic system, culture, national defense, and security, and which, according to regulations, must be subject to criminal prosecution.*

Crimes against national security share common characteristics with other crimes, while also possessing distinct legal features, specifically:

- A special object – national security and the existence of the State.
- Political purpose is a mandatory element of the criminal act.
- High danger to society and wide scope of impact.
- The perpetrators are highly skilled, organized, and possess elements of antagonism, demonstrating fierce resistance to the State.
- Criminal acts are often carried out secretly, are organized, and utilize advanced technology.
- Particularly strict criminal policy towards these types of crimes (through high penalties, including life imprisonment or the death penalty, demonstrating the severity and special deterrent effect of the law).

#### *2.1.1.2. The concept of investigation phases in crimes against national security.*

The investigation of a case involving violations of national security can be understood as an independent stage of criminal proceedings, in which security investigation agencies at all levels apply measures stipulated in the Criminal Procedure Code to collect evidence to identify the crime, the perpetrator, and other necessary circumstances as a basis for resolving the case of violations of national security.

#### *2.1.2. The concept of human rights of the defendants during the investigation phase of cases against national security.*

##### *2.1.2.1. The concept of human rights*

Human rights are the result of a sustained struggle throughout human history. Particularly since the establishment of the United Nations and its official recognition of human rights as a protected value in the 1945 Charter and the 1948 Universal Declaration of Human Rights, human rights have developed into a moral, political, and legal framework, ensuring that human rights become a guiding principle for the development of human society. Studying the concept of human rights from various perspectives such as political, moral, and legal; from natural and legal theories, the author argues that *human rights are inherent, natural values, essential rights that each individual is entitled to equally and without discrimination; recognized and protected by national and international law; and interconnected and inseparable.*

##### *2.1.2.2. The concept of human rights for defendants during the investigation phase of cases involving violations of national security.*

The human rights of the defendant during the investigation phase of a national security offense are those recognized and guaranteed by criminal procedural law in specific criminal proceedings, allowing them to enjoy, exercise, and demand these rights without any obstruction or restriction during this stage of the proceedings. When considering the human rights of the defendant during the investigation phase of a national security offense, it is evident that this is a two-way relationship: on the one hand, it is a regulation concerning the rights of the accused; on the other hand, the exercise of these rights is also an obligation of the competent authorities in ensuring their protection. In other words, the human rights of the defendant are those recognized by law, which the accused are entitled to enjoy, exercise, and are guaranteed by the obligations of the competent authorities in criminal proceedings.

#### *2.1.3. Characteristics of the human rights of defendant during the investigation phase of cases involving violations of national security.*

*Firstly*, the special object – national security and the existence of the State. The object

directly violated is national security, including independence, sovereignty, unity, territorial integrity, the political system, and the power of the people.

*Secondly*, political intent is a mandatory element of criminal behavior. Unlike other crime categories, most crimes against national security are aimed at political objectives such as opposing the people's government, undermining the stability of the regime, or serving hostile forces.

*Thirdly*, crimes that infringe upon national security pose a high risk to society and have a wide-ranging impact. These crimes not only cause direct material or psychological damage but also seriously threaten political stability, social order, and the people's trust in the State.

*Fourthly*, the perpetrators of crimes are highly educated, organized, and possess elements of resistance, demonstrating a fierce opposition to the State.

*Fifthly*, criminal acts often occur secretly, are organized, and utilize advanced technology.

*Sixthly*, the criminal policy is exceptionally strict. This group of crimes often carries high penalties, including life imprisonment or the death penalty, demonstrating the severity and deterrent effect of the law.

## **2.2. Theories on ensuring the human rights of suspects during the investigation phase of cases involving violations of national security**

### **2.2.1. The concept and characteristics of ensuring the human rights of suspects during the investigation phase of cases involving violations of national security**

#### *2.2.1.1. The concept of guaranteeing the human rights of defendants in investigations of cases against national security*

The guarantee of human rights is understood as a system of socio-economic, political, ethical, organizational, and legal prerequisites, conditions, and tools aimed at creating equal conditions for individuals to exercise their freedoms. These individual rights are met and implemented by the activities of competent authorities of a nation, linked to specific entities that carry out these rights in practice. Therefore, it can be seen that guaranteeing the rights of defendants in criminal proceedings is also within the scope of guaranteeing human rights in general. Guaranteeing the human rights of defendants in criminal proceedings is necessary and objective so that those who commit crimes do not escape just punishment and the innocent are not wrongly convicted.

When defining the concept of guaranteeing the human rights of suspects in the investigation of national security offenses, the author of this thesis argues that it is necessary to identify this as an activity of specific entities; regulated in legal documents; and ensured through the supervisory activities of agencies and individuals. From the above analysis, *the definition of guaranteeing the human rights of defendants during the investigation of national security offenses can be given as the activity of competent authorities in establishing the legal prerequisites and conditions for criminal procedure, implementing and supervising the implementation of those regulations during the investigation phase, in order to help ensure that the human rights of those criminally prosecuted for acts violating national security are exercised and protected, so that the defendants are entitled to, allowed to do, and guaranteed by the obligations of competent authorities in criminal procedure activities.*

#### *2.2.1.2. Characteristics of ensuring the human rights of defendants during the investigation phase of cases involving violations of national security.*

- Ensuring the human rights of defendants during the investigation of national security offenses is carried out on the basis of compliance with the provisions of the law on human rights in general.

- Ensuring the human rights of defendants during the investigation of national security offenses must comply with the policies and laws of the Party and the State regarding offenders who commit crimes against national security.

- Ensuring the human rights of defendants during the investigation of national security offenses must meet the political and professional requirements of the security investigation agency.
- Ensuring the human rights of defendants during the investigation of national security offenses must ensure the principle of balance between protecting national security and ensuring human rights.

### ***2.2.2. The human rights of defendants during the investigation phase of cases involving violations of national security.***

#### ***2.2.2.1. The inviolable right to physical integrity, honor, and dignity of the defendants during the investigation phase of cases against national security.***

This right reflects a fundamental principle of law, affirming that no one is permitted to be subjected to physical or moral harm without the approval of a competent authority or without reasonable justification as prescribed by law. All forms of treatment of persons deprived of liberty in detention facilities must ensure humanity and respect for human dignity, because the purpose of applying this measure is to serve the investigation and clarify the facts, not to punish the accused.

##### ***2.2.2.2. The right of the accused to protection against arbitrary arrest and detention.***

The right to protection from arbitrary arrest and detention is a fundamental right of all citizens, including defendants in cases involving violations of national security. For defendants, who are under investigation and may be subject to preventive or coercive measures, ensuring and respecting human rights is a key requirement. Their inviolable right to physical integrity, honor, and dignity during the investigation phase of criminal cases demands that all procedural activities of competent authorities be conducted on the basis of respect for individual freedom and dignity.

##### ***2.2.2.3. The right to presumption of innocence***

The presumption of innocence is a crucial principle in protecting human rights and justice within the legal system. This principle aims to safeguard citizens' rights and prevent the imposition of punishments or restrictions on personal freedoms when there is insufficient evidence to prove a crime.

##### ***2.2.2.4. The right to defense of the defendants***

The right to defense is an essential legal means for the defendants to protect their legitimate rights and interests. This right is guaranteed throughout the pre-trial and trial stages of the proceedings, including: the right to access a lawyer; the right to have a lawyer present during pre-trial questioning sessions; and the right of anyone arrested or detained, or facing the risk of detention, to be assisted by a defense lawyer. The right to defense is a fundamental right, playing a crucial role in protecting other rights.

##### ***2.2.2.5. The right to information of the defendants***

The defendant's right to information in criminal cases can generally be divided into the right to receive information and the right to submit information. Along with this, criminal procedure law also provides regulations on the right to present opinions on evidence, objects, and documents related to the case, and to request that competent authorities conduct examinations and evaluations. The defendant can know information about the origin of evidence, documents, and objects, their authenticity, and their relevance to the criminal case; therefore, the defendant's opinions and assessments form the basis for determining the truth of the case.

##### ***2.2.2.6. The right of the defendants to compensation for damages and restoration of honor***

In criminal proceedings, there are cases where the prosecuting authorities wrongfully initiate, investigate, prosecute, and try cases, which not only directly affects the legitimate rights and interests of citizens but also causes public outrage. Therefore, the right to compensation for material and emotional damages and restoration of honor for the defendants is a legitimate right. Accordingly, the accused is entitled to compensation for damages in cases where they are wrongfully accused or suffer damage due to unlawful acts. The law also stipulates the obligations

of competent state agencies in resolving compensation for damages suffered by the defendants during the criminal investigation phase.

**2.2.3. *Methods for ensuring the human rights of defendants during the investigation phase of cases involving violations of national security.***

*2.2.3.1. Ensuring through the recognition by law of the human rights of the defendants during the investigation phase of cases involving violations of national security.*

On the international level, the rights of the defendants have been recognized early and relatively fully in many international and regional legal instruments such as: the Universal Declaration of Human Rights of the United Nations, the European Convention on Human Rights, the United Nations Convention on the Rights of the Child, the Rome Statute establishing the International Criminal Court... These instruments are not only international legal norms, but also serve as a basis for countries to concretize them into regulations in their national criminal procedural legal systems.

At the national level, ensuring the rights of the defendants during the investigation phase - including cases involving violations of national security - is stipulated in the Constitution, laws, and subordinate legislation. These regulations are developed to suit the political characteristics, institutions, and legal systems of each country. Therefore, the legal status and specific rights of the accused in each legal system may differ to some extent, depending on the criminal procedure model applied.

*2.2.3.2. Ensuring the human rights of defendants during the investigation phase of cases involving violations of national security through the actions of competent authorities.*

Accordingly, the human rights of suspects during the investigation phase of national security offenses are not only guaranteed through legal provisions on the content of these rights, but also through the activities of the competent authorities. This stems from the fact that these are the entities that directly exercise the human rights of defendants (courts, procuratorates, investigative agencies, etc.) or indirectly, such as agencies carrying out inspection and supervision activities. Therefore, the regulation and application of laws related to these groups of entities is also one of the methods to ensure the human rights of defendants during the investigation phase of criminal cases in general, and national security offenses in particular.

*2.2.3.3. Ensuring the human rights of defendants during the investigation phase of national security offenses through inspection and supervision mechanisms.*

Besides the activities of competent authorities conducting investigations into criminal cases in general, and cases of violations of national security in particular, the protection of the human rights of defendants is also ensured through mechanisms for checking and supervising criminal proceedings. This measure can be carried out through forms such as supervision by state power agencies; supervision by specialized agencies; supervision by social organizations; supervision by citizens; and internal supervision within the competent authorities conducting criminal proceedings.

*2.2.3.4. Ensuring the human rights of defendants during the investigation phase of national security offenses through mechanisms for handling human rights violations.*

Criminal law clearly defines the rights and obligations of the competent authorities and individuals conducting investigations, as well as the defendants throughout the investigation process. It addresses human rights violations such as coercion, torture, violations of the right to be informed of one's rights and the right to legal representation; and the abuse of power to arrest, detain, and imprison individuals illegally. Criminal law regulations not only address human rights violations but also include sanctions against individuals and organizations responsible for enforcing judgments and protecting the legitimate rights of defendants.

### **2.3. Factors affecting the guarantee of human rights for defendants during the investigation of cases against national security**

#### ***2.3.1. Criminal policy regarding crimes against national security***

In Vietnamese law, Article 12 of the 2004 National Security Law stipulates the policy for handling acts that violate the national security of our State as follows: 1) All acts that violate national security must be dealt with strictly and promptly in accordance with the law. Those who mastermind, lead, command, or stubbornly resist will be severely punished; 2) Those who are coerced, deceived, or lured into working for organizations or individuals to violate national security, but who confess and make honest declarations, will be treated leniently; if they perform meritorious acts, they will be rewarded; 3) Foreigners who violate Vietnam's national security outside Vietnamese territory may be prosecuted under Vietnamese law if international treaties signed or acceded to by Vietnam so provide.

In the face of the task of developing and protecting the country, and building a socialist rule of law state in Vietnam, the Party has put forward many judicial reform policies recorded in important documents such as: Resolution 08-NQ/TW dated January 1, 2002 of the Politburo on some key tasks of judicial work in the coming period; Resolution 49-NQ/TW dated June 2, 2005 of the Politburo on the strategy for judicial reform until 2020; Resolution 48-NQ/TW dated April 24, 2005 of the Politburo on the strategy for lawmaking until 2020... These documents relatively fully reflect the legal policies in the Party's resolutions on judicial reform, as expressed in the 2015 Criminal Procedure Code (amended and supplemented in 2025).

#### ***2.3.2. Organizational factors affecting the operations of law enforcement agencies.***

Currently, there are many different classifications around the world, but generally, the criminal procedure model in most countries is a hybrid model, blending elements of interrogation and adversarial proceedings. In countries with a more inquisitorial model, the truth can and must be discovered through the interrogation and investigation process, and the State must participate early and continuously in the interrogation and investigation. A prominent feature of the inquisitorial investigation model is that the State grants full authority to the competent prosecuting agency to conduct the interrogation, while the procedural rights of the accused are limited, and they are not allowed to independently conduct the investigation. Therefore, the role of the investigation phase is crucial and vital in the entire litigation process, contributing to the objective clarification of the truth of the case.

Meanwhile, adversarial proceedings believe that the truth will be revealed through free and open debate between those who possess accurate documents and information. A characteristic of the adversarial model is its antagonistic nature during the investigation phase, thus enhancing the role and procedural capacity of the defendants, emphasizing equality and antagonism between the accused and law enforcement agencies. Compared to inquisitorial proceedings, the advantages of adversarial proceedings include important guarantees for the protection of citizens' rights, limitations on the application of coercive procedural measures, opportunities for the court to supervise the activities of the prosecuting agency, and assurance of the openness and transparency of the proceedings.

#### ***2.3.3. Human factor***

Human factors have a decisive influence on ensuring the human rights of the accused during the investigation phase of national security violations, such as: (1) the people authorized to conduct investigations have a correct understanding of the nature of human rights, the standards limiting state power, professional skills, professional ethics, and the degree of respect for the rule of law, which directly influences the way procedural measures are applied, thereby determining the risk of human rights violations; (2) other participants in the proceedings have a counterbalancing role, controlling state power in practice, creating a mechanism to protect the accused from the risk of abuse of power; (3) the personal background of the accused in national

security violations affects their own human rights protection in practice. Therefore, ensuring human rights during the investigation phase requires properly handling these three layers of subjective factors, ensuring objectivity, humanity, and the supremacy of law.

#### **2.3.4. International factor**

International factors affecting the human rights of defendants during the investigation phase of national security offenses are manifested through the influence of international legal norms on human rights in general, and the rights of the accused in particular; along with the characteristics of national security offenses, which are crimes with foreign elements, including: international political and social elements; international legal elements; and the foreign element often present in national security offenses.

### **2.4. Ensuring the human rights of suspects during the criminal investigation phase in accordance with international law and the laws of several countries.**

#### ***2.4.1. International law on the guarantee of human rights for the accused in criminal proceedings***

The rights of the accused in general, and of the defendant in particular, are stipulated in international and regional legal instruments on human rights, such as: the 1948 Universal Declaration of Human Rights (UHDR), the 1966 United Nations Convention on Civil and Political Rights (ICCPR), the 1985 Convention Against Torture, Inhuman or Degrading Treatment or Treatment of Human Beings (CAT), and the 1989 United Nations Convention on the Rights of the Child (CRC)... Generally, the criteria and standards in these international instruments are minimum requirements; the rest depends on the socio-economic conditions and criminal policy of each country, which may incorporate methods into its national legal system to align with international criteria and ensure human rights. The rights of the accused, depending on the content of the international treaties, may focus on different groups; however, the author of the thesis believes that they can be broadly summarized as follows: (1) The right to inviolability of the body, honor, and dignity of the accused; (2) The right of the accused to protection from arbitrary arrest and detention; (3) The right to presumption of innocence; (4) The right to defense of the accused; (5) The right to information of the accused; (6) The right to compensation for damages and restoration of honor of the accused.

#### ***2.4.2. Laws in some countries regarding the guarantee of human rights for suspects during the investigation phase of criminal cases***

*2.4.2.1. The laws of some countries following an inquisitorial model prioritize the protection of the human rights of the defendants during the investigation phase of a criminal case.*

The inquisitorial procedural model is the criminal procedural model applied in countries such as the Russian Federation, China, the Federal Republic of Germany, Vietnam, etc. In the legal systems of countries following this model, the role and initiative of competent state agencies (investigating agencies, preliminary agencies, the Procuracy, and the Courts) in procedural activities are still emphasized. Accordingly, the adversarial element adopted in the model of these countries is mainly applied in the trial phase, while in the criminal investigation phase, the characteristics of the inquisitorial model are still implemented. Regarding the issue of ensuring the human rights of the accused in the criminal investigation phase in the laws of the countries following the above procedural model, the author of the thesis has focused on analyzing some prominent points as follows: (1) the content of the system of principles in ensuring human rights; (2) the content of the rights of the accused in the criminal investigation phase; (3) on the activities of competent authorities conducting investigative activities

*2.4.2.2. The laws of some countries following an adversarial procedural model prioritize the protection of the human rights of the defendants during the investigation phase of a criminal case.*

For the criminal procedural laws of countries following the adversarial model such as the

United States, the United Kingdom, Japan, etc., the procedural activities aim to prioritize crime control through a fair process to ensure that the right person is convicted for the right crime while still protecting human rights. In fact, similar to countries following the mixed model leaning towards inquisitorial proceedings, these countries have also adopted elements of the inquisitorial model to improve their criminal procedural model in their national laws. The prominent content in the legal systems of countries following this model regarding the guarantee of the human rights of the defendants during the criminal investigation phase includes: (1) principles guaranteeing the rights of the defendants during the criminal investigation phase; (2) the content of the defendant's rights; (3) the activities of competent authorities conducting investigative activities.

#### ***2.4.3. International experience regarding the guarantee of human rights for defendants during the investigation phase of criminal cases.***

*Firstly, regarding the principles guaranteeing the human rights of the accused (defendants) during the criminal investigation phase.* Besides the general principles in the criminal procedural laws of various countries concerning the guarantee of the human rights of the defendants during the criminal investigation phase, countries also stipulate several principles such as the principle of the right to remain silent (UK, USA, Russia), the principle of freedom of assessment of evidence (Russian Federation and Federal Republic of Germany), and the principle of transparency of evidence between the prosecution and the defense (Japan).

*Secondly, regarding the rights of the defendant in criminal proceedings.* Along with stipulating procedural principles and the criminal procedural rights of the defendants, international criminal procedural law and the laws of various countries also provide very complete and specific regulations on procedural steps and procedures, as well as other legal guarantees for the exercise of the defendants' procedural rights, such as the right to defense; regulations on the application of preventive measures, etc.

### **CHAPTER 3**

#### **THE CURRENT SITUATION REGARDING THE GUARANTEE OF HUMAN RIGHTS FOR DEFENDANTS DURING THE INVESTIGATION PHASE OF CASES AGAINST NATIONAL SECURITY AND ITS PRACTICAL IMPLEMENTATION IN VIETNAM TODAY**

##### **3.1. The current state of Vietnamese law regarding the guarantee of human rights for defendants during the investigation phase of cases involving violations of national security**

###### ***3.1.1. The current state of legal regulations regarding fundamental principles in criminal proceedings related to ensuring the human rights of the defendants.***

Regarding the fundamental principles in criminal procedure related to ensuring the human rights of the defendants, Vietnamese law has stipulated a system of basic principles such as: the principle of respecting and protecting human rights, the legitimate rights and interests of individuals (Article 8); the principle of ensuring equality before the law (Article 9); the principle of ensuring the inviolability of the body (Article 10 of the 2015 Criminal Procedure Code (amended and supplemented in 2025) and Article 10 of the 2013 Constitution); the principle of protecting the life, health, honor, dignity, and property of individuals, and the honor, reputation, and property of legal entities (Article 11)...

###### ***3.1.2. The current state of legal regulations regarding the human rights of defendants during the investigation phase of criminal cases.***

The human rights system of defendants in cases of violating national security can be classified into the following groups: (1) The group of inviolable rights to body, honor, and dignity; (2) The group of rights to information of defendants; (3) The right to be presumed innocent; (4) The group of defense rights of defendants; (5) The group of rights to complain, denounce, and request the change of competent persons conducting proceedings, experts, property valuers, interpreters, and translators; (6) The group of rights to compensation for

damages and restoration of honor.

***3.1.3. The current state of legal regulations regarding the obligations and responsibilities of agencies and individuals conducting legal proceedings in ensuring the human rights of defendants in cases involving violations of national security.***

The human rights of defendants during the investigation phase of national security offenses are closely linked to the obligations of the prosecuting authorities. According to the provisions of the 2015 Criminal Procedure Code (amended and supplemented in 2025), the 2015 Law on the Organization of Criminal Investigation Agencies (amended and supplemented in 2021), and Circular No. 11/2025/TT-BCA dated February 27, 2025, regulating the organization, structure, tasks, and powers of the Investigation Agency; the assignment of Heads and Deputy Heads of the Investigation Agency; and the criminal investigation authority within the People's Police... the authority and obligations of the agencies and individuals conducting the proceedings in carrying out procedural activities during the investigation phase are stipulated to ensure the human rights of defendants in national security offenses. The responsibilities of these entities include taking legally binding actions to facilitate the defendant's exercise of their procedural rights and human rights.

***3.1.4. Current regulations regarding specific procedural activities during the investigation phase of cases involving violations of national security***

When competent authorities discover violations of the law or infringements of the human rights of the defendants, Vietnamese criminal procedure law has established mechanisms to annul the unlawful decisions or procedural actions and remedy the consequences caused by these actions. After the investigation phase is completed and the case moves to the next stages of proceedings, if serious legal violations are discovered during the investigation phase, the Criminal Procedure Code also has mechanisms to remedy these violations, such as: the Procuracy returning the case file for further investigation, the Appellate Court returning the case file for reinvestigation, and the Supreme Court returning the case file for reinvestigation. These serious procedural violations are specified in Article 6 of Circular 02/2017/TTLT-VKSNDTC-TANDTC-BCA-BQP, which regulates the coordination between prosecuting agencies in implementing certain provisions of the Criminal Procedure Code regarding the return of case files for further investigation.

***3.1.5. The current regulations regarding the mechanisms for inspecting and monitoring the implementation of human rights for defendants during the investigation phase of cases involving violations of national security.***

In the mechanism for ensuring the human rights of defendants during the investigation phase of cases involving violations of national security, the Procuracy plays a central role. According to Articles 41-43 of the 2015 Criminal Procedure Code (amended and supplemented in 2025) and the 2014 Law on the Organization of the People's Procuracy (amended and supplemented in 2025), with its function of exercising the power of prosecution and supervising investigation activities, the Procuracy simultaneously carries out the task of accusing and supervising the legality of the entire investigation process. Expanding the authority and responsibilities of the Procuracy has contributed to improving the effectiveness of controlling investigation activities, especially in cases related to national security – where ensuring the human rights of defendants is paramount.

***3.2. The current practice of ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam.***

***3.2.1. An overview of the situation and personal characteristics of defendants in national security offenses in Vietnam today.***

***3.2.1.1. General situation regarding crimes against national security in Vietnam***

According to statistics from the Supreme People's Procuratorate, from 2015 to 2024, there

were 218 cases involving 538 defendants charged with crimes against national security that were investigated and prosecuted. Crimes against national security account for a small proportion compared to other crime groups such as drug-related crimes, economic crimes, crimes against the body, and crimes against property. According to research results, the proportion of crimes against national security in the total number of crimes is relatively low, accounting for only about 0.035%.

Over the years, the situation regarding crimes against national security has been unstable, with uneven trends of increase and decrease. The number of cases of crimes against national security prosecuted between 2015 and 2018 showed a steady increase each year. From 2018 to the present, the number of crimes against national security has gradually decreased. The trend in the number of defendants in crimes against national security is essentially similar to the trend in the number of cases. However, during the study period, a notable point emerged in 2023, when a sharp increase in the number of individuals committing crimes against national security was observed.

### ***3.2.1.2. Personal characteristics of defendants in cases involving violations of national security.***

*Firstly, regarding the religious and ethnic background of the defendants in cases involving violations of national security.*

A study of the number of offenders violating national security during the period from 2015 to 2024 shows that those with religious affiliations account for 39.14%. These individuals often exploit religion to gather forces, entice, and incite people to participate in criminal acts.

Regarding ethnic composition, among offenders violating national security, ethnic minorities account for a relatively high percentage, at 69.9% of the total number of offenders violating national security. Those of Kinh ethnicity who commit crimes against national security often engage in criminal acts such as activities aimed at overthrowing the people's government; producing, possessing, distributing, or propagating against the Socialist Republic of Vietnam; and terrorism against the people's government.

*Secondly, regarding the educational background and social class of the defendants in cases involving violations of national security.*

Overall, the occupations of those who commit crimes against national security are quite diverse, belonging to all social strata. However, the number of those who commit crimes against national security who are farmers or self-employed accounts for a large proportion, at 75.05% of the total number of offenders; the number of defendants who are officials or civil servants accounts for a small percentage. Furthermore, many defendants are doctors, artists, and lawyers who, due to misguided perceptions and disgruntled ideologies, were lured, bribed, and incited by reactionary and terrorist organizations abroad to carry out acts against the Party and the State.

The educational level of those who commit crimes against national security in Vietnam is relatively low and uneven, with: 7.6% of defendants having a university degree or higher, 54.9% having a high school diploma, and 37.5% being illiterate or having only completed primary or secondary school. The proportion of individuals with an education level of lower secondary school or below is 70.86%.

*Thirdly, regarding the gender and age of the defendants in cases involving violations of national security.*

The perpetrators of crimes against national security in the period from 2015-2024 were all over 18 years old. Of these, the number of people aged 18-30 accounted for 24%; from 31-45 years old accounted for 46.1% and over 45 years old accounted for 29.9%[92]. Research on the gender of perpetrators of crimes against national security in the past shows that: male defendants account for the majority. This is because men often have more political ambitions and greater desires than women in achieving a certain position in society. The scope and level of participation

in social activities of men are also greater than that of women, so they are easily drawn into illegal activities, including activities against national security.

### ***3.2.2. The current state of ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam.***

*3.2.2.1. The current state of implementing specific procedural activities in protecting the human rights of defendants during the investigation phase of cases involving violations of national security.*

Regarding the number of defendants prosecuted, during the period 2015-2024, the percentage of defendants whose investigations were concluded and prosecution recommended by the investigating agency, out of the total number of defendants handled, consistently averaged over 97%, demonstrating the accuracy and completeness of the investigation files and evidence. These figures reflect a stable and positive trend in handling cases of violations of national security, showing the effectiveness of the prosecuting agencies in the investigation phase.

*3.2.2.2. The current state of human rights protection for defendants during the investigation phase of national security offenses.*

*Firstly*, regarding the guarantee of the defendant's right to information. During the investigation of cases involving violations of national security, ensuring the defendant's right to access information is always a priority for the investigating security agency.

*Secondly*, regarding the guarantee of the defendant's right to self-defense. According to Article 74 of the current Criminal Procedure Code, in cases involving crimes against national security, due to the serious and complex nature of this type of crime, confidentiality in the investigation is always highly valued.

*3.2.2.3. The current state of inspection and supervision regarding the protection of the human rights of defendants during the investigation phase of cases involving violations of national security.*

*Firstly*, the supervisory role of the People's Procuracy in the investigation of national security infringement cases. From 2015 to 2024, the Security Investigation Agency and the People's Procuracy actively coordinated in the investigation of national security infringement cases.

*Secondly*, the inspection and supervision activities of the National Assembly delegations and committees have contributed to ensuring the thorough implementation of the provisions of the Constitution and laws.

*Thirdly*, the coordination between the Security Investigation Agency and other agencies and organizations in investigating cases of violations of national security has been carried out fully, promptly, and in accordance with the law.

### **3.3. Overall assessment of the protection of human rights for defendants during the investigation phase of national security offenses in Vietnam today.**

#### ***3.3.1. The achieved results***

*3.3.1.1. Lawmaking activities aim to ensure the human rights of defendants during the investigation phase of cases involving violations of national security.*

*Firstly*, the provisions in Vietnamese law regarding the human rights of defendants during the investigation phase of cases involving violations of national security are consistent with international legal standards.

*Secondly*, Vietnamese law has relatively complete and clear regulations on the obligations and responsibilities of agencies and individuals conducting legal proceedings in ensuring the human rights of defendants in cases involving violations of national security, specifically: the 2015 Criminal Procedure Code (amended and supplemented in 2025), the 2015 Law on the Organization of Criminal Investigation Agencies (amended and supplemented in 2021), Circular No. 11/2025/TT-BCA dated February 27, 2025, regulating the organization, structure, tasks, and

powers of the Investigation Agency; the assignment of Heads and Deputy Heads of the Investigation Agency; and the authority to conduct criminal investigations within the People's Public Security...

*Thirdly*, regulations concerning preventive and coercive measures against suspects during the investigation phase of national security offenses have received attention and emphasis to ensure the human rights of defendants when applied.

*Fourthly*, regulations concerning investigative activities that may affect the inviolability of the defendant's person during the investigation of national security offenses are strict and reasonable.

*3.3.1.2. Implementing the human rights of defendants during the investigation phase of national security offenses in practice.*

*Firstly*, the investigation essentially identified the right person and the right crime, contributing to ensuring the human rights of the defendants during the investigation phase of cases involving violations of national security.

*Secondly*, the application of preventive measures was fundamentally justified and in accordance with the law. Accordingly, the basis for applying preventive measures was ensured and balanced between the requirement to protect national interests and the guarantee of the human rights of the defendants.

*Thirdly*, the procedural rights of defendants during the investigation phase of national security offenses have been respected and fully ensured according to proper procedures, such as guaranteeing the defendant's right to information and the right to defense.

*Fourthly*, the inspection and supervision of ensuring the human rights of defendants during the investigation phase of national security offenses has been ensured.

### **3.3.2. Limitations and the causes of limitations**

#### **3.3.2.1. Limitations**

*Firstly, limitations in legal regulations.*

The work of explaining and guiding the application of the law has not been given sufficient attention, leading to differences in perception and understanding among prosecuting agencies.

*Secondly*, there are limitations in the enforcement of the human rights of the defendants during the investigation phase of cases involving violations of national security.

*Firstly*, there are limitations and obstacles in the evidence-gathering process during the investigation phase. The investigation progress in some cases is slow, and the investigation period for most cases involving violations of national security is often extended.

*Secondly*, limitations exist in the application of preventive measures, especially the provisional detention of defendants accused of crimes against national security. While these measures are always implemented correctly, the duration of provisional detention is sometimes prolonged, and most defendants have their detention extended, rarely being replaced by other preventive measures.

*Thirdly*, there are limitations in monitoring and handling violations of the rights of defendants during the investigation phase of national security offenses.

#### **3.3.2.2. Causes for the limitations**

*Firstly, the causes stem from the political, economic, and social context.*

Vietnam faces numerous risks of falling behind economically compared to the region and the world; the risk of "peaceful evolution" carried out by hostile forces; the decline in political ideology, morality, and lifestyle among a segment of officials; corruption and waste; and increasing social stratification and the widening gap between rich and poor...

*Secondly, the cause stems from the incompleteness of the criminal procedure legal system.*

- Regulations regarding the procedural rights of defendants during the investigation phase

of criminal cases are incomplete, lacking consistency and uniformity.

- There is a lack of comprehensive regulations to ensure the human rights of defendants in the application and modification of preventive measures.

- There are no specific regulations establishing the basis for the application of coercive escort measures. The Criminal Procedure Code provides fairly comprehensive regulations on the authority, subjects, order, and procedures for implementation to ensure the effectiveness of proceedings and protect human rights.

*Thirdly, the cause stems from human factors*

Currently, the number of staff in the prosecuting agencies is relatively sufficient, but there is still an uneven distribution of professional quality and experience.

The unique nature of cases involving violations of national security requires defense lawyers not only to have a deep understanding of and strict adherence to legal regulations but also to possess sound political awareness. In some cases, defense lawyers, driven by personal motives or incited by malicious individuals, have acted beyond permissible limits, hindering the investigation process.

The root cause stems from the personal background of the defendants in national security offenses. Many defendants in these cases exhibit deep-seated political opposition, fierce resistance, and a lack of remorse, leading to a consistently uncooperative attitude towards the Security Investigation Agency. This creates difficulties in implementing mechanisms to ensure the rights of the defendants themselves.

## **CHAPTER 4**

### **ORIENTATIONS AND SOLUTIONS TO ENSURE THE HUMAN RIGHTS OF DEFENDANTS DURING THE INVESTIGATION PHASE OF CASES AGAINST NATIONAL SECURITY IN VIETNAM IN THE COMING PERIOD**

**4.1. Orientation regarding ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam in the coming period.**

***4.1.1. Ensuring the human rights of defendants during the investigation phase of cases involving violations of national security must be closely linked to the Party's policy on human development strategy.***

The protection of the human rights of defendants must be carried out in conjunction with the Party's guidelines and policies, and effectively serve the political tasks in each stage of the country's development. Ensuring human rights in general, and the rights of defendants during the investigation of cases involving violations of national security in particular, is one of the important goals set by the Party and State in the socio-economic development strategy.

***4.1.2. Ensuring the human rights of defendants during the investigation phase of cases involving violations of national security must meet the requirements of a socialist rule of law state regarding the guarantee of human rights.***

Ensuring the human rights of defendants must be closely linked to the building of a socialist rule of law state, which must meet the most fundamental requirements of guaranteeing legality and strengthening the State's responsibility to its citizens.

Resolution No. 66-NQ/TW dated April 30, 2025, on reforming the work of lawmaking and law enforcement to meet the requirements of national development in the new era, also affirmed the need to ensure the comprehensive and direct leadership of the Party in lawmaking, strengthen the Party's leadership over law enforcement, and strengthen the control of power; promote the supervisory and social critique role of the Vietnam Fatherland Front, and the broad and substantive participation of people, organizations, and businesses in lawmaking and law enforcement.

***4.1.3. Ensuring the human rights of defendants during the investigation of national security offenses must be considered within the context of a thorough assessment of the influencing factors from the domestic and international political, economic, and social situation.***

Vietnam, with its important geopolitical and geoeconomic position in the Asia-Pacific region, continues to be a target of increased subversive activities by hostile forces through strategies of "peaceful evolution," exploiting ethnic, religious, democratic, and human rights issues to destabilize political and social stability. The instability in policies and laws, and limitations in state management in some areas, can erode public trust, becoming an intrinsic cause of acts that violate national security. Under these circumstances, ensuring the human rights of suspects during the investigation phase requires careful, rigorous, and lawful implementation.

***4.1.4. Ensuring the human rights of defendants during the investigation of cases involving violations of national security must be consistent with international human rights standards and geared towards international integration.***

Ensuring the human rights of the defendants must conform to the human rights criteria recognized in international law, as this is a common achievement of humanity and the result of thousands of years of struggle between progressive ideas and authoritarian forces. Transmitting international criteria on human rights in general, and human rights in criminal procedure in particular, into national law demonstrates a progressive and lawful understanding of the times. Each country, based on its economic, political, and legal development, decides on the roadmap and methods for incorporating international legal provisions into its national law. Therefore, the provisions of criminal procedure law regarding the guarantee of the human rights of the defendants must be built on the basis of international human rights criteria.

Ensuring the human rights of defendants is based on inheriting the traditions of Vietnamese law, while selectively adopting foreign regulations that are appropriate to Vietnam's practical situation. The refinement of regulations on this matter must be linked to the specific characteristics of Vietnam's criminal procedure model, ensuring stability and avoiding disruptions to criminal proceedings.

***4.1.5. Ensuring the human rights of defendants during the investigation phase of national security offenses requires overcoming limitations in investigative practices.***

Ensuring the human rights of defendants during the investigation phase of criminal cases not only aims to prevent and promptly and strictly handle all types of crimes, but also contributes to maintaining social order and discipline, protecting democratic rights, and safeguarding the legitimate interests of organizations and citizens. This means that suspects must be fully equipped with their legal rights and obligations as prescribed. This responsibility is closely linked to the activities of the competent authorities and individuals conducting the investigation, requiring them to strictly adhere to criminal procedural law with a high sense of responsibility. As a result, abuse of power, arbitrariness, or violations during the investigation process will be limited, while simultaneously affirming the strictness of the law, protecting the interests of the State, and maintaining the socialist legal order.

**4.2. Some solutions to improve the effectiveness of ensuring the human rights of defendants during the investigation phase of national security offenses in Vietnam in the future.**

***4.2.1. Solutions to strengthen the Party's leadership and the State's management in ensuring the human rights of defendants during the investigation phase of cases involving violations of national security.***

Our Party has issued a number of guiding documents on the implementation of the task of protecting the Fatherland and safeguarding national security, in accordance with each stage and period of the country's development, such as Resolution No. 28-NQ/TW dated October 25, 2013,

Resolution No. 51-NQ/TW dated September 5, 2019 of the Politburo on the strategy for safeguarding national security, Directive No. 46-CT/TW of the Politburo dated June 22, 2015 on strengthening the Party's leadership over security and order in the new situation, Directive No. 48-CT/TW of the Politburo dated October 22, 2010 on strengthening the Party's leadership over crime prevention and control in the new situation, Conclusion No. 05-KL/TW dated July 15, 2016 of the Secretariat on continuing to promote the implementation of Directive No. 48, Conclusion No. The Politburo's Directive No. 48 on strengthening the Party's leadership over crime prevention and control, dated August 16, 2021, on continuing to implement the Party's leadership over crime prevention and control, identifies objectives, viewpoints, and solutions related to addressing the causes and conditions of crime and protecting security and order. During investigations into cases of national security violations, prosecuting agencies in general, and the Security Investigation Agencies at all levels in particular, always prioritize ensuring the human rights of defendants in conjunction with the Party's policy on human development strategy, considering this as a guiding principle in all their activities.

**4.2.2. Solutions to improve the legal framework for guaranteeing the human rights of defendants during the investigation phase of cases involving violations of national security.**

**4.2.2.1. Perfecting some provisions of the Criminal Procedure Code regarding fundamental principles in criminal procedure**

*Firstly*, we propose amending the principle of presumption of innocence to state: “An accused person is presumed innocent until proven guilty according to the procedures and processes stipulated in this Criminal Procedure Law and until a final conviction is issued by a court. The burden of proof rests with the competent prosecuting authorities; the accused has the right, but is not obligated, to prove their innocence. When there is insufficient evidence and it is impossible to clarify the grounds for accusation and conviction according to the procedures and processes stipulated in this Criminal Procedure Law, the competent prosecuting authority must conclude that the accused person is not guilty.”

The author proposes separating the content “the burden of proving guilt rests with the competent prosecuting authority; the accused has the right, but is not obligated, to prove their innocence” from the principle of determining the truth of the case and adding it to the principle of presumption of innocence. This addition, on the one hand, ensures the scientific and complete content of the principle of presumption of innocence, and on the other hand, better guarantees the human rights of the accused in criminal proceedings.

*Secondly*, the principle of inspection and supervision in criminal proceedings in Article 33 of the 2015 Criminal Procedure Code is amended as follows: “State agencies, the Vietnam Fatherland Front Committee and its member organizations, elected representatives and individuals have the right to supervise the activities of agencies and individuals with the authority to conduct proceedings, and to supervise the handling of complaints and denunciations by agencies and individuals with the authority to conduct proceedings...”.

**4.2.2.2. Perfecting the provisions of the Criminal Procedure Code regarding the human rights of defendants during the investigation phase of cases involving violations of national security.**

*Firstly*, the right to gather evidence for the accused should be added, as it would be unreasonable to stipulate that defense lawyers have the right to gather evidence to protect the legitimate rights and interests of the accused while the accused themselves, the subject of the right to defense, do not have this power. Therefore, the right to gather and present evidence, documents, and requests for the accused should be added to point d, clause 2, Article 60 of the 2015 Criminal Procedure Code (amended and supplemented in 2025).

*Secondly*, amend the regulations on meetings between the accused and their defense counsel in Article 80 of the Criminal Procedure Code as follows:

*Article 80. Meetings and exchanges between arrested persons, detained persons, suspects, and defendants who are being held in custody.*

*“1. The defense counsel may communicate with the arrested person, the detained person, the suspect, or the defendant who is being held in custody through direct meetings and written correspondence. To meet with the arrested person, the detained person, the suspect, or the defendant who is being held in custody, the defense counsel must present a written notification of their appointment, a lawyer's card or legal aid card, or a national identity card or citizen identification card...”*

*3. In cases where it is necessary to monitor the meeting and examine the content of written correspondence between the defense lawyer and the arrested person, detained person, suspect, or defendant, the head or authorized person of the agency handling the case shall coordinate with the detention facility to organize the monitoring and inspection. If the detained person, the person in custody, or the defense lawyer violates the regulations of the detention facility or obstructs the resolution of the case, the authorized person supervising must immediately stop the meeting, draw up a report, report to the head of the detention facility, and notify the agency handling the case in writing for appropriate action. ”*

*Thirdly, amend and supplement the right of the defendants to file a complaint.*

Although there are relatively comprehensive regulations regarding the rights of complainants (including defendants) in Clause 1, Article 472 of the 2015 Criminal Procedure Code (amended and supplemented in 2025), the above regulation is still incomplete. In particular, when participants in the proceedings, especially defendants, submit complaints, there are instances where complainants send their complaints to agencies without jurisdiction, or the complaints contain errors in form or content, rendering them ineligible for processing. In such cases, the agencies receiving the complaints must promptly inform the complainants whether or not their complaints have been accepted so that they can submit their complaints to another competent agency within the legally prescribed time limit. This notification ensures the full right of complaint of the participants in the proceedings.

*4.2.2.3. Perfecting the provisions of the Criminal Procedure Code regarding the duties of competent authorities conducting proceedings to ensure the human rights of defendants during the investigation phase of cases against national security.*

*Firstly*, it is necessary to specifically regulate the obligation to inform and explain the reasons for arrest to the defendants. The right to be informed of the reasons for arrest and detention is a fundamental human right recognized in international human rights documents, as well as in the criminal procedure laws of several countries.

*Secondly*, the chapter on Complaints and Denunciations in Criminal Procedure should include provisions regarding the withdrawal of complaints and the legal consequences arising from the withdrawal of complaints by the defendant.

*“Article 474b. Withdrawal of complaint*

*If the complainant withdraws their complaint in writing at any stage, the competent authority responsible for resolving the complaint at that stage must issue a decision to terminate the complaint resolution process. The competent authority issuing the decision to terminate the complaint resolution process is responsible for sending the decision to terminate the complaint resolution process to the complainant”.*

*Thirdly*, Clause 1 of Article 175 specifically stipulates the time limit for prosecuting authorities to handle requests from participants in the proceedings as follows: *“When a participant in the proceedings makes a request or proposal regarding matters related to the case, the investigating agency, the agency assigned to conduct certain investigative activities, or the procuracy shall receive the request or proposal. Within 2 days from the date of receiving the request, the investigating agency, the agency assigned to conduct certain investigative activities,*

*or the procuracy must respond to whether or not the request is accepted and state the reasons. If the request is accepted, the investigating agency, the agency assigned to conduct certain investigative activities, or the procuracy, within their scope of responsibility, must respond to the proposal within 10 days and inform them of the result.”*

**4.2.2.4. Perfecting the provisions of the Criminal Procedure Code regarding the order and procedures of investigation.**

*Firstly, amend the grounds for applying the measure of temporary detention in Article 119 as follows: 1. Temporary detention may be applied to suspects and defendants who have committed crimes for which the Criminal Procedure Law prescribes a prison sentence of more than 2 years when there are grounds to determine that the person falls into one of the following cases: a. Having been subjected to other preventive measures but violating them; b. Having no clear place of residence or whose identity cannot be determined; c. Having absconded and been arrested pursuant to a warrant or showing signs of absconding; d. Continuing to commit crimes or showing signs of continuing to commit crimes; e. Having acts of bribery, coercion, incitement of others to make false statements, provide false documents, destroy or falsify evidence, documents, or objects of the case, conceal assets related to the case, threaten, coerce, or retaliate against witnesses, victims, crime informants, and their relatives.”*

*Secondly, the regulations on the authority to apply the preventive measure of temporary detention need to be amended. Therefore, the authority to decide on temporary detention of the Head or Deputy Head of the Investigating Agency should be abolished. In necessary cases, the Investigating Agency has the right to propose the issuance of a temporary detention order, while the authority to issue the order belongs to the Chief or Deputy Chief of the Procuratorate.*

*Thirdly, amend the regulations on the duration of temporary detention in cases of supplementary investigation in Clause 4, Article 174 as follows: “4. When resuming investigation, conducting supplementary investigation, or re-investigating, the investigating agency has the right to change, apply, or revoke preventive measures and coercive measures in accordance with the provisions of this Criminal Procedure Law. If there are grounds in accordance with the provisions of this Criminal Procedure Law to detain a defendant during supplementary investigation, the total duration of temporary detention shall not exceed the duration of temporary detention stipulated in Article 173 of this Criminal Procedure Law. The duration of temporary detention and extension of temporary detention in cases where the case is re-investigated shall be carried out in accordance with the provisions of Article 173 of this Criminal Procedure Law.”*

*Fourth, it is necessary to clarify and specify the grounds for personal searches, and to transfer the content of the grounds for personal searches in Article 192 and the provisions in Article 194 regarding personal searches: 1. Personal searches shall only be conducted when there are grounds to believe that a person is carrying instruments or means of committing a crime, objects, documents, or property obtained through crime, or other objects, electronic data, or documents related to the case. A personal search may be conducted without a warrant in cases of arrest or when there are grounds to believe that a person present at the search is concealing weapons, dangerous objects, evidence, objects, or documents related to the case.*

**4.3.3. Enhancing the capacity of officers in investigating cases of national security violations.**

*Firstly, strengthen professional and technical training for officers and soldiers of the Security Investigation Agency at all levels; organize courses and training on human rights and ensuring human rights in criminal proceedings, and training on the contents of legal regulations and guiding documents.*

*Secondly*, strengthen activities to summarize difficulties in investigation and prosecution activities, research and issue notices on lessons learned from cases that have been dismissed for reinvestigation, and cases that have been returned for supplementary investigation multiple times.

***4.3.4. Strengthen the dissemination and popularization of laws on ensuring the human rights of defendants during the investigation phase of cases involving violations of national security.***

*Firstly*, regarding the content of propaganda, dissemination, and legal education for the people, it is necessary to focus on content related to the Party and State's guidelines and policies to raise public awareness; strengthen the struggle on the ideological and cultural front, consolidate unity and ideological consensus in society; focus on clarifying the conspiracies, methods, tactics, and reactionary nature of criminal activities that go against the common interests of the nation and infringe upon the legitimate rights and interests of the people and violate national security.

*Secondly*, regarding the form of propaganda, it is necessary to constantly improve the forms and methods of propaganda and education to raise people's awareness and responsibility in crime prevention and control; combine various forms of propaganda, both widespread and targeted; focus on developing and improving the quality of self-governing, self-preventive, self-protective, and self-mediation models of mass organizations in security and order; regularly organize reviews and summaries to draw lessons learned, replicate highly effective models, and research and develop new models suitable to the situation and characteristics of each locality.

***4.3.5. Enhancing the role of inspection and supervision over investigations into cases of national security violations to ensure the human rights of defendants.***

It is necessary to raise awareness of the coordinated relationship between the Procuracy and the Security Investigation Agency at all levels in supervising the investigation of crimes against national security; strengthen the leadership, direction, and inspection of this activity and regularly organize lessons learned from the relationship between the Procuracy and the Security Investigation Agency at all levels in investigating crimes against national security; and improve some documents regulating the relationship between the Procuracy and the Security Investigation Agency at all levels during the investigation phase of cases against national security.

In the oversight of ensuring the human rights of defendants during the investigation phase of criminal cases, it is necessary to continue to innovate and improve the quality of questioning by National Assembly deputies, strongly reform the mechanisms and methods of operation, and improve the quality of deputies; and to have reasonable mechanisms and policies to promote the supervisory role of individual National Assembly deputies over the activities of the Procuracy and other judicial agencies.

Effectively handle complaints and denunciations regarding the supervision of investigations into crimes against national security.

***4.2.6. Modernizing equipment, facilities, and technology to support investigative work***

Strengthening infrastructure, technical equipment, and means to ensure mobility and speed in carrying out certain investigative measures such as crime scene investigation, autopsy, search, etc., to promptly meet the requirements of combating and preventing crimes against national security in the current situation. In particular, the recording of suspect interrogations under the 2015 Criminal Procedure Code needs to be implemented comprehensively and synchronously, including the size of interrogation rooms, the type of cameras; soundproofing systems need to be ensured to improve the quality of audio and video recordings; additional lapel microphones should be equipped to ensure clear sound recording; mobile audio and video recording equipment should be provided; refrigerated and dehumidifying cabinets should be supplied for storing and preserving DVDs; and research should be conducted on installing warning systems for errors or failure to meet audio and video quality requirements.

#### ***4.3.7. Solutions to ensure the genuine right to defense of defendants during the investigation phase of national security offenses***

It is necessary to allow lawyers access to essential case documents directly related to the prosecution, defense, and application of preventive measures. This does not mean disclosing investigative secrets, as a mechanism for classifying documents by level of confidentiality can be applied, allowing lawyers to access documents that serve to ensure the right to defense. Granting reasonable access helps lawyers be proactive in their defense strategy and promotes the principle of equal adversarial proceedings between the prosecution and the defense. In addition, the use of information technology in managing electronic case files can increase transparency and reduce the risk of information leakage.

### **CONCLUSION**

Ensuring the human rights of defendants during the investigation phase of national security offenses encompasses all activities of competent authorities in establishing the necessary prerequisites and conditions in criminal procedure law, organizing the implementation and monitoring the enforcement of those legal provisions throughout the investigation phase. This activity aims to ensure that the human rights of individuals criminally charged with offenses against national security are not only legally recognized but also implemented and protected in practice. This enables suspects to enjoy and exercise their rights, while establishing corresponding obligations for the prosecuting authorities in the process of resolving the criminal case.

Ensuring the human rights of defendants during the investigation of national security offenses should not be limited to merely recognizing these rights in legal documents, but must be implemented through specific and effective methods. This study surveys and compares the experiences of several representative countries in ensuring the human rights of defendants during criminal investigations to clarify similarities and differences in the methods used. From this, valuable insights can be drawn to improve legislation and enhance the effectiveness of ensuring the human rights of defendants during investigations of national security offenses in Vietnam.

In practice, although criminals often employ sophisticated and cunning schemes, methods, and tactics, and receive external interference and support, investigations have generally been conducted within the proper jurisdiction, following legal procedures and processes, ensuring that the right person is prosecuted for the right crime, in accordance with the law, while also guaranteeing the basic rights of the accused as stipulated in the Criminal Procedure Code. However, alongside these achievements, the practical implementation of ensuring the human rights of accused persons during the investigation phase of national security offenses still faces certain limitations. In the future, to enhance the effectiveness of ensuring the human rights of accused persons during the investigation phase of national security offenses, it is necessary to implement a comprehensive set of key solutions, such as strengthening the leadership of the Party and the unified management of the State; and continuing to improve the law on the rights of accused persons during the investigation phase. Simultaneously, it is necessary to improve the effectiveness of law enforcement, promote the dissemination of legal information, and strengthen inspection and supervision of investigative activities to ensure the human rights of defendants during the investigation phase for this type of crime.

**LIST OF RELATED RESEARCH WORKS**  
**PUBLISHED BY THE AUTHOR ON THE TOPIC**

1. Do Bao Liem, Le Thi Thu Mai (2025), “*Ensuring Human Security in Vietnam*”, Vietnam Journal of Social Sciences, No. 2/2025.
2. Do Bao Liem (2024), “*Ensuring the Human Rights of Suspects During the Investigation Phase of Cases Infringing on National Security in Vietnam Today*”, Journal of Human Resources in Social Sciences, No. 10/2024.
3. Do Bao Liem (2022), “*Vietnam Promotes the Guarantee of Women's Equal Rights in Responding to Climate Change by Participating in the Human Rights Council*”, Journal of Political Theory, No. 9/2022.
4. Do Bao Liem (2022), “*Improving the Effectiveness of Protecting the Party's Ideological Foundation in Cyberspace*”, Journal of State Organization, No. 9/2022.
5. Do Bao Liem (2022), Collective authors, “*Expanding forms of people's political participation in Vietnam today*”, Political Theory Publishing House, 2022.
6. Do Bao Liem (2022), “*Refuting false and hostile viewpoints on the internet today*”, Website: vietnamthinhvuong.
7. Do Bao Liem (2022), “*Khanh Hoa develops marine economy in conjunction with the task of firmly protecting maritime and island sovereignty*”, Website: vietnamthinhvuong.
8. Do Bao Liem (2022), “*Preventing and combating ideological sabotage activities of hostile forces*”, Website: vietnamthinhvuong.