

Acting beyond Authority in Performance of Official Duties under Criminal Law of Vietnam

Vu Hai Anh

Faculty of Criminal Law, Hanoi Law University, Hanoi, Vietnam

Email: haianhdhl.hs@gmail.com

How to cite this paper: Anh, V. H. (2023). Acting beyond Authority in Performance of Official Duties under Criminal Law of Vietnam. *Open Journal of Social Sciences*, 11, 150-163. <https://doi.org/10.4236/jss.2023.118010>

Received: July 8, 2023

Accepted: August 6, 2023

Published: August 9, 2023

Copyright © 2023 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

Acts of a person holding a position beyond his/her assigned powers to perform illegal duties for personal gain or for other personal motives, causing property damage or other damage to the interests of the State, lawful rights and interests of organizations and individuals is one of the corruption crimes specified in the 2015 Penal Code. This behavior in recent times has tended to increase, which has greatly affected the correct and reputable operation, credit of agencies and organizations. Purpose: This article analyzes and evaluates the provisions of the Penal Code 2015 on the crime of abuse of power while on official duty, and at the same time evaluates the application of these provisions to make recommendations to improve the current law on the crime of abuse of power while on official duty. Methodology: Designed as a qualitative research, this study focused on the provisions of the Penal Code 2015 on the crime of abuse of power while on official duty. The data analyzed are provisions of the Penal Code 2015 on the crime of abuse of power while on official duty and the application of these provisions.

Keywords

Abuse, Abuse of Power, Public Authority, Official Duties, Exercirse of Public Authority, Penal Code

1. Preamble

In the past time, the anti-corruption work has been led by the Vietnamese Party and State with drastic and methodical direction, going into depth, making strong strides, achieving many important and comprehensive specific results, clearly, leaving a good impression, creating a positive effect. This was spread strongly throughout society and really has become a movement and trend that is agreed and supported by cadres, party members and people highly appreciated, interna-

tionally recognized. Corruptions have been gradually curbed and prevented, making an important contribution to maintaining political stability, socio-economic development, and strengthening the confidence of cadres, party members and people in the Party and State. One of the corrupt acts discovered and handled in Vietnam in recent years is the abuse of power while performing official duties. In order to further improve the effectiveness of the fight against corruption crimes in general, and abuse of power while performing official duties in particular, the overall study of legal signs as well as practical assessment of the application of this law on crime will contribute to providing solutions to improve relevant laws on the crime of abuse of power while performing official duties in the current period.

Abuse of power while performing official duties is one of the crimes in the group of corruption crimes specified in Section 1, Chapter 23 of the Penal Code 2015. This is a crime committed by a person who, for personal gain or other self-seeking purposes, acts against his/her official duties beyond his/her authority and as a result causes property damage of or infringes upon state interests, lawful rights and interests of another organization or individual.

2. Contents

2.1. Concept of Abusing Power While Performing Official Duties

The study and clarification of the concept of Crime of Abuse rights while performing their official duties not only have theoretical significance but also have important practical significance, helping law enforcement agencies to properly apply the criminal law provisions on this crime.

The concepts of “abuse of power” and “abuse of power while in the exercise of public authority” have so far been mentioned in many scientific studies or in monographs and reference books in the field of criminal law (Yen & Khuyen, 2021; Ninh, 2021). According to the Vietnamese Dictionary, “abuse” is understood as going beyond the scope and limits prescribed and allowed, and “abuse of power” is doing things beyond one’s authority (Phe, 2018). According to the Dictionary of Jurisprudence, “abuse of power” is an act of a person with a position, authority, self-interest or personal motive that intentionally exceeds the permissible limit of power, beyond the powers assigned by law while performing official duties, causing damage to the interests of the State, the society, the legitimate rights and interests of citizens. Abuse of power while in the exercise of public authority is the act of a person in position, powers beyond their assigned powers to act against their official duties for personal gain or other personal motives (Institute of Legal Science, 2006). In general, the viewpoints on abuse of power and abuse of power while in the exercise of public authority mentioned above are also used in scientific textbooks and comments of the Penal Code. These views all agree that abuse of power is doing things beyond their powers and when the subject exceeds his/her powers (Chau, 2019). He violates his official duties for personal gain or other personal motives, it is called abuse of power

while on duty.

The concept of crime is fully specified in Clause 1, Article 8 of the Penal Code 2015 and is understood as an act that is dangerous to society, guilty, prescribed in the criminal law, and performed by a person with criminal capacity, present and subject to punishment. It can be said that this concept of crime is a scientific concept that has shown the most focused view of our State on crime. It is not only a unified scientific basis for determining specific types of crimes in the criminal section of the Penal Code, but it is also a basis for the proper awareness and application of the laws regulating each crime, specific crimes, including the crime of abuse of power while on official duty. This crime is specified in Article 357 of the Penal Code 2015.¹

On the basis of the concept of crime in general prescribed in Clause 1, Article 8 of the Penal Code 2015 and on the basis of specific provisions on the crime of abuse of power while on official duty described by the legislator in Clause 1, Article 2. 357 Penal Code 2015 as well as referring to the concept of this crime in the above-mentioned studies, the author of the article can introduce the concept of Crime of abuse of power while performing official duties as follows: Crime of abuse of power while on duty official duty performance is an act for self-interest or another personal motive that intentionally exceeds one's powers to violate official duty, causing property damage or other damage to the interests of the State, rights and interests of the State, lawful organizations and individuals.

2.2. Legal Signs of the Crime of Abuse of Power While Executing Tools in the Penal Code 2015

The crime of abusing power while performing official duties is specified in Article 357 of the Penal Code 2015. Accordingly, this crime is understood as an act of a person for personal gain or other personal motives that exceeds his or her powers to do wrong. Public service causes damage to property or causes other damage to the interests of the State, the lawful rights and interests of organizations and individuals.

1) The objective sign of the crime

Like other position crimes, abuse of power while performing official duties infringes upon the proper operation of agencies and organizations. To ensure the proper and synchronous operation of the State apparatus, the State has promulgated legal documents stipulating the competence, functions, tasks and powers of all levels, branches as well as branches, functions and duties of each State employee. The good performance of the functions, tasks and powers of these people is a condition and a premise for others to operate. In other words, if each State cadre and employee performs well and properly with his/her functions, duties and authority, the State apparatus in general and State agencies in

¹Article 357. Crime of abuse of power while performing official duties: "1. Any person who, for personal gain or other self-seeking purposes, acts against his/her official duties beyond his/her authority and as a result causes property damage of from VND 10,000,000 to under VND 100,000,000 or infringes upon state interests, lawful rights and interests of another organization or individual shall face a penalty of 01 - 07 years' imprisonment..."

particular operate well and effectively fruit. On the contrary, each State cadre and employee who does not properly perform and does not perform well his/her functions, duties and powers will affect the working efficiency of the State apparatus, which in particular each agency in the State apparatus.² Therefore, a number of State officials and employees, while on official duty, have taken advantage of or abused their positions and powers to violate the law, which will have a certain degree of influence on proper operations integrity and prestige of the State apparatus in general and each agency and organization in particular. These acts need to be handled promptly and strictly according to the provisions of law.

Proper operation of agencies and organizations is a general, abstract concept. In fact, in order to determine the correct behavior of a person performing official duties infringing upon the proper operation, it must depend on the functions and tasks of the agency or organization of which he or she is a member. Therefore, the proper operation of agencies and organizations is identified as the category of crimes related to position in general and the crime of abuse of power while performing official duties in particular, but the direct object of this crime will be specific areas of operation of agencies and organizations that are infringed by specific criminal acts.

2) *Signs of the objective side of the crime*

The objective behavior of the crime of abuse of power while on duty is an act of violating official duties. This act is construed as an act that is contrary to the functions, tasks and purposes of the assigned work, violates the proper operation of the agency where the person has the position and authority to work, or obstructs the performance of the work functions and duties of agencies, organizations or other persons (Vinh, 1996). Forms of work contrary to official duties are also very diverse, which can be performed in a number of forms such as: Such behavior objectively contradicts the functions, duties and general requirements of agencies and organizations. the position in which the subject is working; acts of violating the principles and forms of operation of the State apparatus, violating legal principles; acts are performed in cases where the subject does not properly understand the interests of his agency or organization, but performs acts contrary to his/her official duties and interests in general; acts contrary to the legitimate rights and interests of citizens (Van Dat, 2002). Therefore, it can be understood that acts contrary to official duties are acts contrary to the interests of the whole society, agencies and organizations, and legitimate rights and interests of citizens.

However, the sign of illegal acts in the crime of abuse of power while on official duty is distinguished from this sign in other crimes (such as the crime of abusing position and power while on duty) by signs of abuse. Abuse of power while performing official duties is beyond one's powers, which means performing acts that are not within the assigned functions and powers. These acts can be as: Chairman of communes, wards order to demolish people's houses for ground

²See Clause 1, Article 352 of the 2015 Penal Code.

clearance, order to temporarily hold people who commit illegal acts; market managers confiscate goods from illegal traders; traffic police impose fines on drivers who violate the fines beyond the amount permitted by law; Heads and deputy heads of investigating bodies shall issue orders to arrest persons in temporary detention without the approval of the procuracies; the procurator approves the order to extend the detention, which should have been approved by the new director; the judge signs a decision on temporary detention of the accused that should have been signed by the Deputy Chief Justice or the Chief Justice, etc. (Van Que, 2006). Although Article 357 of the Penal Code 2015 does not stipulate the forms that exceed the rights of the subject, based on practice and theory, it is possible to determine the forms of the acts that exceed the powers, including: doing a job belonging to the subject. functions and powers of persons with superior positions and powers; do a job within the functions and powers of a person holding a position or authority in another branch; do a job within the function and authority of the collective; doing a job while lacking the required conditions; do something that no one, no collective, no level has the right to do (Vinh, 1996). Tasks, functions and powers of subjects with positions and powers of each level and branch are specified in legal documents. Therefore, in order to assess whether the subject has signs of abuse of power or not, it is necessary to base and rely on specific documents specifying the functions and powers of the person whose behavior exceeds his/her authority. According to the provisions of Clause 1, Article 357 of the Penal Code 2015, the subject of the crime of abuse of power while on official duty commits acts that exceed his/her powers and violates his/her official duties. This means that the subject's abuse of power is only considered a crime while on duty. If the offender commits acts of abuse of power but not while on official duty, it is not the case specified in Article 357 of the Penal Code 2015, but depending on the case, the offender may be examined for penal liability for respective crimes. Therefore, when determining the crime of abuse of power while on official duty, it is necessary to determine the relationship between the acts performed by the offender and the functions and powers that he or she is assigned. Regarding the form of behavior, the crime of abuse of power while performing official duties can only be performed in the form of criminal actions.

Another mandatory sign belonging to the objective side of the crime of abuse of power while on official duty is the sign of damage consequences. Abuse of power while performing official duties only constitutes a crime when causing property damage or other damage to the interests of the State, the legitimate rights and interests of organizations and individuals. In other words, the crime of abuse of power while performing official duties is a crime that constitutes a material crime. Therefore, this crime is only considered completed when the offense causes one of the above-mentioned damaging consequences. By exceeding the powers permitted by law and acting in contravention of official duties for a certain period of time, the State, organizations and citizens lose the ability to use property, cannot obtain material profits or do business, damage, loss or loss of

property. According to the provisions of Clause 1, Article 357 of the Penal Code 2015, the abuse of power while performing official duties only constitutes a crime when causing property damage of 10 million VND or more. If the damaged property is worth less than 10 million VND, the subject may not be examined for penal liability for this crime. In addition to the case of property damage, abuse of power while on official duty may also constitute a crime when causing other damage to the interests of the State, the lawful rights and interests of organizations and individuals core. Proper operations of agencies and organizations are activities in accordance with the interests of society, the State, and organizations and in accordance with the legitimate rights and interests of citizens. Therefore, acts of violating official duties infringe upon the proper operation of agencies and organizations, affect the reputation of agencies and organizations in front of the people, and contravene the guidelines and lines of the Party. The laws of the State thereby infringe upon the legitimate rights and interests of organizations and individuals. Therefore, causing damage to the legitimate rights and interests of organizations and individuals is also a form of harmful consequences of crime such as causing damage to political, social and cultural rights. Determining these damages must be based on the rights provided for by the Constitution.

3) *Signs of the subject of a crime*

Like other corruption crimes, the crime of abuse of power while performing official duties is a crime with a special subject. The subject of this crime, in addition to meeting the usual conditions of all subjects of the crime, of having penal liability, also requires other relevant signs. Specifically, Clause 1, Article 357 of the 2015 Penal Code stipulates: “Whoever, for personal gain or other personal motives, exceeds his or her powers, violates his official duties...”. Accordingly, the subject of the crime of abuse of power while on official duty must be a person with certain powers, or in other words, the subject of this crime must be a person with a position. These are persons who, by appointment, by election, by contract or by other means, with salary or without salary, are assigned to perform a certain task and have certain powers while performing the work duty, task.³ Holders of positions are always given certain powers by agencies or organizations in order to have conditions to perform their tasks and thus be able to commit acts of abuse of power. The Criminal Composition out positions are not given certain powers, so these people cannot meet the sign of “exceeding their powers” described in the criminal composition of the Crime of Abuse of Power While Executing equipment. The persons holding this position are those specified in Clause 2, Article 3 of the Law on Anti-corruption, including:

- Officials and civil servants.
- Officers, professional soldiers, workers and defense officers in agencies and units of the People’s Army; officers, professional non-commissioned officers, officers, professional and technical non-commissioned officers, public security workers in agencies and units of the People’s Public Security.

³See Clause 2, Article 352 of the 2015 Penal Code.

- The representative of the state capital share in the enterprise.
- Persons holding managerial titles and positions in enterprises or organizations.
- Other persons assigned to perform tasks or official duties and have powers while performing such tasks or official duties.

However, not every person with a position can become the subject of the crime of abuse of power while on official duty. The subject of this crime, in addition to meeting the sign of being a person in position, also requires a person on duty. Because the subject is a person on official duty, it is possible to perform the objective act described in the criminal composition as the act of violating official duty. Those who hold positions but do not satisfy the sign of being on duty are not the subject of this crime and their behavior does not have enough elements to constitute the crime of abuse of power while on duty. For example: A procurator who is not assigned the task of investigating investigation but has arbitrarily intervened with the investigating officer to falsify the case file order in favor of the offender for his own profit, this procurator Although he is a person in position, he is not a person on official duty, so his behavior does not constitute the crime of abuse of power while on duty.

4) *Signs of the subjective side of the crime*

The subjective side of the crime is the internal psychological development of the offender, including the guilt, the motive for committing the crime and the purpose of committing the crime. For the crime of abusing power while on official duty, the offender's fault is always intentional. Subjects are well aware that their acts are beyond the powers assigned by agencies or organizations, well aware that their acts are illegal but still do them for various reasons.

Along with the crimes specified in Articles 356 and 359 of the Penal Code 2015 in the group of corruption crimes, the crime of abuse of power while on official duty with signs of criminal motives is a mandatory sign in the constituency of the crime. Specifically, the criminal motive of this crime is described as "for profit or other personal motive". In which, committing a crime for self-interest is understood as a case where the offender has abused his or her power to gain unwarranted material or immaterial benefits for himself or for other agencies, organizations or individuals who still commit crimes because Other personal motives are understood as cases where the offender has abused his/her power in order to assert, consolidate, and enhance his/her position, prestige and power in an unwarranted manner.

The correct understanding of the mandatory characteristic signs of the crime of abuse of power while on official duty is one of the important prerequisites for the correct criminalization in particular, the correct determination of the criminal responsibility of the said subject common in practice.

2.3. Practical Application of the Provisions of the Penal Code on the Crime of Abuse of Power While Performing Official Duties and Directions for Improvement

In order to properly and comprehensively evaluate the practical application of

the provisions of the Penal Code on the crime of abuse of power while on official duty, we must base trial data on this type of crime to study the trial situation.

According to statistics of the Supreme People's Court, from 2015 to 2020, the People's Court system at all levels has tried 67 first-instance cases with 244 defendants guilty of abusing power while on official duty. Thus, on average, every year there are about 11.2 cases of abuse of power while performing official duties with 40.7 offenders being tried (see **Table 1**). However, these are only numbers that reflect the number of cases that have been tried, but do not cover the entire situation (level) of the situation of Abuse of power while on official duty because these numbers do not include cases that are suspended at the proceeding agencies, or cases that are not yet eligible for trial.

To clarify the trend (increase or decrease) of the crime of abuse of power while on official duty from 2015 to 2020, the author uses the year-by-year comparison method, is taking 2015 as the year. Based on the original setting, fixed at 100%, the results show that the rate of increase and decrease in the following years based on the number of cases is: 28.6% increase in 2016; in 2017 increased by 85.7%; in 2018 increased by 114.3 percent; in 2019 increased by 85.7%; 2020 will increase by 42.98%. And if calculated on the number of defendants, the rate of increase and decrease is in 2016 increased by 173.3 %; in 2017 increased 200%; in 2018 increased 246.73%; in 2019 increased by 266.7%; in 2020 increase by 140%. Thus, by comparison, the situation of abuse of power in the performance of official duties in recent years has been relatively complicated and in general has tended to increase in both the number of cases and the number of defendants.

A study of the data on punishments applied to defendants who commit crimes of abuse of power while on official duty in the past 6 years can see that the main punishments applied to defendants are prison terms.

Of the 244 defendants who were tried for the crime of abuse of power while on official duty from 2015 to 2020 in the whole country, 01 defendant was exempted from the penalty in 2016. The main penalty applies to the crime of abuse. The right to perform official duties as prescribed in Article 357 of the Penal Code

Table 1. Number of cases and number of defendants who were tried at first instance for abuse of power while on official duty nationwide from 2015 to 2020.

Year	Number of cases	Number of defendants
2015	7	15
2016	9	41
2017	13	45
2018	15	52
2019	13	55
2020	10	36
Total	67	244

(Source: Statistics Department - Summary of the Supreme People's Court.)

2015 is a term of imprisonment, with a minimum penalty of 1 year and a maximum of 20 years. Although non-custodial reform is not specified as the main punishment for the crime of abuse of power while on official duty, there are still 09 defendants (in 2015, 2017 and 2019) who are subject to this penalty. To explain this case, only the defendant can apply Article 54 of the 2015 Penal Code (or Article 47 of the 1999 Penal Code) on deciding the penalty below the lowest level of the applicable penalty frame. Accordingly, if the offender satisfies the conditions specified in Clauses 1 or 2, Article 54 of the 2015 Penal Code (or Article 47 of the 1999 Penal Code) and commits the crime in the cases specified in Clause 1, Article 357 of the 2015 Penal Code, (or Clause 1, Article 282 of the Penal Code 1999). When deciding the penalty, the Court may have switched to another penalty of a lighter type. From **Table 2**, it can be seen that the common term of imprisonment applied to offenders who abuse power while on official duty is a prison term of 3 years or less, with 169 defendants, accounting for nearly 69.3% of the total number of defendants brought to trial, of which 62 defendants were granted a measure of exemption from serving the sentence of conditional imprisonment - suspended sentence. Followed by imprisonment from over 3 years to 07 years with 48 defendants, accounting for nearly 19.7% of the total number of defendants brought to trial. Prison sentences from over 07 years to 15 years are applied to 9 defendants, accounting for nearly 3.7% of the total number of defendants brought to trial. The highest prison sentence applied is a prison term of over 15 years to 20 years applied to 3 defendants, accounting for more than 1.2% of the total number of defendants brought to trial. In addition, according to statistics of the Supreme People's Court, among the defendants tried for the crime of abuse of power while on official duty, there were 5 cases where fines were applied. However, according to the provisions of the Penal Code, the fine applied to offenders who abuse power while on duty can only be an additional penalty. If an additional penalty of a fine is imposed, the offender must be subject to another principal penalty because the additional penalty cannot be imposed independently without a principal penalty. However, according to the statistics in **Table 2**, the main penalties applied to offenders who abuse their power while on official duty, and if not counting 5 cases where fines are applied, the total number of defendants punishments that are not in line with the total number of defendants being tried. The author of the article is considering the possibility of offenders being transferred to another type of punishment lighter than prison with a term of fine, but this possibility is unlikely in practice.

In order to determine the crime of a person whose act exceeds his/her authority and violates official duties; the competent agency or person must accurately answer whether the act satisfies the signs of criminal constituency public service specified in Article 357 of the Penal Code or not. In fact, the judges all know the theoretical issues of the determination of crimes and perform this activity well, so in the trial cases, the determination of crimes is done to ensure the right person, the right crime, not the right person harm innocent people. The fact that

Table 2. Main penalties applied to defendants at first instance trial for abuse of power while on official duty in Vietnam from 2015 to 2020

Year	Number of defendants	Exemption from criminal responsibility or Exemption from punishment	Probation	Fine	Community sentence	Determinate imprisonment for 3 years or less	Determinate imprisonment from over 3 years to 7 years	Determinate imprisonment from over 7 years to 15 years	Determinate imprisonment from over 15 years to 20 years
2015	15		4		1	7	2	1	
2016	41	1	9	2		14	8	6	1
2017	45		8		2	16	17	1	1
2018	52		6	3		31	12		
2019	55		23		6	18	7		1
2020	36		12			21	2	1	
Total	244	1	62	5	9	107	48	9	3

(Source: Statistics Department - Summary of the Supreme People's Court.)

there are appeals and protests against these crimes is mainly the offenders asking for a reduction in the punishment. The convictions for these types of crimes are almost guaranteed to be consistent with the signs of criminal constituency.

Example 1: At the first-instance criminal judgment No. 43/2020/HS-ST dated August 10, 2020 of the People's Court of district N, Nam Dinh province, trialing Nguyen Van M for the crime of abuse of power while on official duty with acts committed the following crimes: Mr. Nguyen Duc Th is the Party cell's Secretary and Mr. Nguyen Van M is the Party cell's deputy secretary, the head of hamlet 11 of N commune, N district, Nam Dinh province. Due to the need for money to build a village cultural house, Mr. Nguyen Duc Th chaired the meeting of the Party Committee - the Party cell of hamlet 11 proposed a resolution and agreed to assign it to hamlet 11 (led by Nguyen Van M - the head of the hamlet) to organize the meeting. Long-term lease of land plot No. 96 with an area of 447 m² has been approved by the People's Committee of District N to become residential land. Implementing the resolution of the cell, Nguyen Van M held a meeting with some other members of the hamlet and decided to lease land to three households for a long time, plot 96 with a total rental amount of VND 360,000,000. Nguyen Van M collected and used all this money to build a cultural house in the village.

Nguyen Van M was declared guilty of abusing power while on official duty by the Trial Panel under Point c, Clause 2, Article 357 of the Penal Code 2015 with a penalty of 4 years and 6 months in prison. This judgment is in accordance with the provisions of the law because Nguyen Van M is the head of the hamlet but has arbitrarily leased the land for a long time. This act violated regulations on land lease authority. The fact that M leased land to three households was beyond his powers, contrary to his assigned duties because he wanted to have money to build a cultural house in the village in order to improve his prestige and position in the hamlet.

Example 2: In the first-instance criminal judgment No. 66/2015/HSST dated December 8, 2015 of the People's Court of Bac Giang province, trialing Pham Van L for the crime of abuse of power while on official duty with the following offenses: Pham Van L is the head of village S. On March 30, 2007, the village S branch held a mid-term Party cell meeting that approved a resolution on the construction of village welfare works such as: building clusters, kindergarten, football field, cultural house, hard ditch, concrete road to the communal house; to mobilize the people in the village to accumulate fields and change plots of agricultural land in accordance with the general policy of the State. In May 2007, implementing the Resolution of the Party cell, the management board of village S led by Pham Van L as the village head agreed with 23 households whose farming land has been allocated by the State for 20 years to change to another position in the village has the corresponding arable land area and has been agreed to by the households; this agreement is made in writing and certified by the Commune People's Committee. The total land area of 23 households has been converted into the village's public land funded by the Village Management Board. At the end of 2007, in order to have funds to build welfare and public works of the village such as: making concrete roads within the village, building village cultural houses...; Pham Van L arbitrarily divided this land area into land plots, each plot has an area of 150 m² to sell to people as residential land and collect their money. In order to serve the inventory and economic financial reporting to the people, L directed to write a receipt with the content "Land mortgage loan" or "Land bid" to conceal the allocation of land and collection of money illegal. From the end of 2007 to November 2010, L illegally allocated 37 land lots to 28 households with a total amount of VND 1,605,000,000.

Pham Van L was declared guilty by the trial panel of abusing power while on official duty with a penalty of 6 years in prison. This sentence is in accordance with the provisions of the law because during the time L was elected as the village head, taking advantage of the loose management of the competent State agency in charge of land management, L committed illegal acts, exceeding their assigned authority, violating the State's regulations on land management, arbitrarily dividing plots, valuing land and then selling it to households to get money to use for the construction of village welfare works. Acts that fully satisfy the signs of a crime Constituting a crime of abuse of power while on official duty.

Through the study of the judgments, the author found that most of the cases tried for the crime of abuse of power while on official duty were village or commune officials who committed acts of improper allocation of land in order to obtain funding building village welfare works. The author of the article believes that these court cases are judged by the right people, the right crimes, and the law. However, there is a view that arbitrarily leasing public land to get money to build a neighborhood cultural house is wrong but does not have enough elements to constitute the crime of abuse of power while on official duty (Minh, 2020) because in these cases there is no "for profit" sign. Those who hold this view believe that the village, village and commune cadres, although acting

beyond their assigned powers, are for the common good of the whole collective. They themselves even put in a lot of effort, supervising the workday and night as well as contributing more to the construction cost. However, the author of the article believes that it is not appropriate to argue that these cases have no signs of “self-seeking”, so there are not enough elements to constitute the crime of abuse of power while on official duty. One of the defining signs of the crime of abuse of power while on duty is the sign “for profit or other personal motives”. According to the guidance in Resolution No. 03/2020/NQ-HDTP dated December 30, 2020 of the Judicial Council of the Supreme People’s Court, guiding the application of a number of provisions of the Penal Code in adjudicating corruption and other crimes against position, the sign “for self-interest” is understood as the case where the offender has abused his/her power in order to gain unwarranted material or immaterial benefits for himself or for other agencies, organizations or individuals who still commit the crime. Crime because of “other personal motives” is understood as the case where the offender has abused his/her power in order to assert, strengthen, and enhance his/her position, prestige and power in an unwarranted manner. With this guide, it can be seen that, in the cases of land allocation not according to the above authority, although the individual offenders do not receive material benefits for themselves, the violation of regulations on management the land has brought a certain source of profit to the hamlet where they live. This to a certain extent can also help improve their prestige and status among the people. Therefore, the People’s Court’s handling of these subjects for the crime of abuse of power while on official duty is completely consistent with the provisions of law.

For the crime of abuse of power while on official duty, although there is a document guiding the Supreme People’s Court’s Judiciary Council on some signs of the crime, the author believes that there is one sign that is not very clear, easily lead to different interpretations in the process of applying the law to determine crime, which is a sign of damage consequences. One of the signs to examine for penal liability for a person who abuses power while on duty is to cause property damage or cause other damage to the State’s interests, legitimate rights and interests. laws of organizations and individuals. For the first type of damage, the law already has a quantitative regulation to determine the boundary of criminal prosecution as causing property damage of 10 million VND or more. However, with the second form of damage, which is causing other damage to the interests of the State, the legitimate rights and interests of organizations and individuals, up to now there has not been any specific guiding document on this case and the provisions of this article. The law also does not stipulate a limit on the extent of damage for criminal prosecution. With this provision of Clause 1, Article 357 of the Penal Code 2015, researchers and applicators will understand that in all cases where a person acts in excess of his/her powers, violates his/her official duties for personal gain or other personal motives that cause serious harm to him. Other damage to the interests of the State, the legitimate rights and interests of organizations and individuals shall all be examined for penal liability

for the crime of abuse of power while on official duty. It is thought that this sign should be guided specifically by the competent authority in order to have a uniform perception in the application of the law.

3. Conclusion

The study and clarification of the concept of Crime of Abuse rights while performing their official duties not only have theoretical significance but also have important practical significance, helping law enforcement agencies to properly apply the criminal law provisions on this crime. In the past time, the anti-corruption work has been led by the Vietnamese Party and State with drastic and methodical direction, going into depth, making strong strides, achieving many important and comprehensive specific results, clearly, leaving a good impression, creating a positive effect. Corruptions has been gradually curbed and prevented, making an important contribution to maintaining political stability, socio-economic development, and strengthening the confidence of cadres, party members and people in the Party and State. In order to further improve the effectiveness of the fight against corruption crimes in general, and abuse of power while performing official duties in particular, the overall study of legal signs as well as practical assessment of the application of this law on crime will contribute to providing solutions to improve relevant laws on the crime of abuse of power while performing official duties in the current period. The study found out that for the crime of abuse of power while on official duty, although a document guides the Supreme People's Court's Judicial Council on some signs of the crime there is one sign that is not very clear, easily leading to different interpretations in the process of applying the law to determine crime, which is a sign of damage consequences. The law also does not stipulate a limit on the extent of damage for criminal prosecution. So, this sign should be guided by the competent authority in order to have a uniform perception in the application of the law.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Chau, T. T. M. (2019). Recognizing Acts of Abuse of Power, Abuse of Power and Abuse of Power in Our Country Today. *Political Theory, No. 11*, 92. (In Vietnamese)
- Institute of Legal Science (2006). *Law Dictionary*. Publishing House. Encyclopedia and Publisher. (In Vietnamese)
- Minh, P. N. (2020). *The Case of Abuse of Power While on Official Duty in Nam Dinh: For the People to Forget Themselves, for the People to Go to Prison*. Legal Knowledge Sharing Page. (In Vietnamese)
<http://phaptri.vn/vu-an-lam-quyen-trong-khi-thi-hanh-cong-vu-tai-nam-dinh-vi-nhan-dan-quen-minh-vi-nhan-dan-di-tu/>
- Ninh, N. D. (2021). *Crime of Abuse of Power While Performing Official Duties in the*

- Penal Code 2015*. MSc. Thesis, Hanoi Law University. (In Vietnamese)
- Phe, H. (2018). *Vietnamese Dictionary*. Hong Duc. (In Vietnamese)
- Van Dat, T. (2002). *Crimes Related to Position in Vietnam's Criminal Law*. MSc. Thesis, Hanoi Law University. (In Vietnamese)
- Van Que, D. (2006). *Scientific Commentary on the Criminal Code—Part of Crimes* (Volume 5). Ho Chi Minh City. (In Vietnamese)
- Vinh, V. K. (1996). *Understanding Criminal Responsibility for Crimes of Position*. National Politics Truth. (In Vietnamese)
- Yen, H. H., & Khuyen, N. Q. (2021). Distinguishing the Crime of Abusing Position and Power While Performing Official Duties from the Crime of Denouncing Crimes While on Official Duty. *Prosecutorial Magazine, No. 4*, 47-52, 59. (In Vietnamese)