

# Anti-Corruption and Conflicts Around Sanctions for Removal of their Previous Posts of Retired Civil Servants. The Case of Vietnam\*

## Abstract

The paper commences with an explication of the prevailing understanding of corruption in Vietnam, accompanied by an overview of the legal framework and anti-corruption situation in Vietnam over the years. The authors conduct in-depth research on disciplinary measures to remove the previous posts of retired officials and civil servants found to have committed violations during their working tenure. The study analyses in detail and convincingly the nature and current inconsistencies in the legal provisions of this form of disciplinary measures and proposes several recommendations for improvement. The objective of this paper is to assist in the identification and rectification of shortcomings pertaining to the handling of retired officials and civil servants who have been found to have committed violations during their tenure.

**KEYWORDS:** corrupt; officers; civil servants; retire; Vietnam

**SŁOWA KLUCZOWE:** korupcja; urzędnicy służby cywilnej; emerytura; rzucić pracę; Wietnam

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# 1 | Introduction

According to World Bank statistics<sup>[1]</sup>, developing countries annually produce 20-40 billion USD due to corruption, bribery, and embezzlement of public funds. The consequences of corruption negatively impact economic development and political stability and deprive vulnerable people of the most basic human rights. According to estimates, if recovered, only 1% of the stolen money would be enough to vaccinate 8 million newborns, provide clean water for half a million people suffering from poverty for a whole year, or cure 1.2 million people infected with HIV. These figures illustrate the significant impact that corruption has on each country's economy.

These figures illustrate the significant impact that corruption has on each country's economy<sup>[2]</sup>. Transparency International (2006) supports this assertion to some extent, which argues that national economies open and integrated with world markets, combined with political systems, appear to be less prone to corruption than non-open economies.

In Vietnam, the anticorruption situation has still not progressed well, as in recent years, an increasing number of shocking corruption cases have appeared at home and abroad. The city can be described as the Thu Thiem urban case, Ho Chi Minh City. According to the conclusion in Notice No. 1041/TB-TTCT dated June 26, 2019, of the Government Inspectorate, this corruption case caused a loss of approximately 26,000 billion VND (equivalent to approximately 1 billion 130 million USD)<sup>[3]</sup>. The case of the most recent example is the corruption of Chairperson Van Thinh Phat - Truong My Lan, which caused losses of more than 433,000 billion VND, the largest corruption case in the history of Vietnamese litigation<sup>[4]</sup>. The 2022 Corruption Perception Index of Transparency International

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<sup>1</sup> World Bank-UNODC, *Toward and Global Architecture for Asset Recovery. Stolen Asset Recovery Initiative*. (The World Bank, 2010). <https://star.worldbank.org/publications/towards-global-architecture-asset-recovery>. [accessed: 15.01.2024].

<sup>2</sup> Arthur Goldsmith, „Democracy, property rights and economic growth” *Journal of Development Studies*, No 32 (1995): 167.

<sup>3</sup> Government inspector. *Announcement of inspection conclusions of Thu Thiem New Urban Area*. (Electronic Newspaper, 2019). <https://baochinhphu.vn/cong-bo-ket-luan-thanh-tra-khu-do-thi-moi-thu-thiem-102257919.htm>. [accessed: 15.01.2024].

<sup>4</sup> VOV. VN. *Van Thinh Phat case: How did defendant Truong My Lan withdraw hundreds of trillions of billions?*. (VOV electronic newspaper, 2023). <https://vov.vn/phap-luat/vu-an-van-thinh-phat-bi-can-truong-my-lan-rut-ca-tram-nghin-ty-the-nao-post1060494.vov>. [accessed: 16.01.2024].

indicates that corruption in Vietnam is considered to be of a very serious nature, with a score of 42/100, which places the country in 77th position out of 180 countries in terms of transparency. This score is relatively low in comparison to the standards required for the country's healthy and sustainable development.

The problem of corruption is widespread, with an increasing number of retired civil servants being discovered committing corrupt acts during their working hours. To reassure people, with the goal of not having to retire or quit work but rather „landing safely”, in 2019, the Vietnamese National Assembly issued sanctions to remove previous posts for civil servants who committed violations during the period of work and were officially implemented from the beginning of 2020. Specifically, suppose a civil servant who holds a leadership position after retirement/quit is found to have committed corrupt acts (or other violations) during his working time. In that case, he or she will be stripped of the position previously held.

By the end of November 2023, Vietnam had 30 civil servants whose positions were removed because of corrupt acts before retiring or quitting their jobs. The promulgation of this sanction has, in some ways, demonstrated the efforts of the Vietnamese State to combat corruption. However, the effectiveness of these sanctions is still a matter of contention in academic circles, and a consensus has not yet been reached. The removal of a corrupt civil servant from their position merely entails a change in the manner in which they are addressed, without any adverse legal consequences. A common occurrence in Vietnam is the situation of civil servants who, following their removal from their positions, continue to enjoy the benefits of their corrupt practices. This situation has caused considerable public outrage. It is therefore unclear whether the removal of their previous posts is intended as a sanction to punish or merely a regulation to reassure the public, providing a way out for corrupt civil servants.

In light of this situation, there is a need for in-depth research on the corruption situation in Vietnam, especially the academic debate surrounding sanctions for removing the previous posts. This study begins by presenting Vietnam's shared understanding of corruption. On this basis, the study provides an overview of Vietnam's legal framework and anti-corruption situation. Since then, researchers have focused on disciplinary measures to remove the previous posts. Analyses of this sanction's effectiveness and inconsistencies will be presented thoroughly and convincingly. Finally, the study proposes several solutions that the Vietnamese government should consider when applying this form of discipline to promote the deterrence of sanctions.

This study aims to help the Vietnamese government recognize and overcome shortcomings in developing regulations dealing with corruption. At the same time, the study also provides valuable documents for the international community to learn about the legal and anti-corruption situation in Vietnam. All work towards a common goal of helping Vietnam and other countries further improve anti-corruption regulations.

## 2 | Ways to understand corruption in Vietnam

Along with the birth and development of the State, corruption is a social phenomenon associated with class, a manifestation of the „corruption of State power” and an inevitable disease of regimes<sup>[5]</sup>. Montesquieu noted, „Everyone with power tends to abuse it; the form and content of corruption change according to the economic, political and social context, depending on the relationship between the interests of society on corruption and democracy”<sup>[6]</sup>.

The anti-corruption debate has been ongoing for over three decades, yet a final and widely accepted definition of the term remains elusive<sup>[7]</sup>. This does not imply that the general public is unaware of the issue; rather, it reflects the fact that most people have an opinion on the matter<sup>[8]</sup>. One of the challenges in defining corruption universally is that each country will define it based on its cultural context<sup>[9]</sup>.

Currently, most definitions of corruption involve two approaches. First, being process-based, corruption is defined as somehow changing the normal state of a social process, which could be ethical or legal standards.

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<sup>5</sup> Nguyen Van Kim, Nguyen Huy Hoang, *Anti-corruption laws of countries around the world* (Vietnam: National culture, 2003), 32.

<sup>6</sup> Montesquie, *Spirit of Law* (Vietnam: Education, 1996), 25.

<sup>7</sup> Eleftherios Spyromitros, Minas Panagiotidis, „The impact of corruption on economic growth in developing countries and a comparative analysis of corruption measurement indicators” *Cogent Economics & Finance*, No. 1 (2022): 266.

<sup>8</sup> Richard Recors, *Corruption, good governance and the economic development of Vietnam* (Tokyo: VDF Tokyo Conference on the Development of Vietnam, 2005), 14.

<sup>9</sup> United Nations Office for Drug Control and Crime Prevention. *Global Programme Against Corruption Un Anti-Corruption Policy* (Vietnam: Office of Drug Control and Crime Prevention, United Nations Office at Viennam, 2001), 31. <https://www.unodc.org/pdf/crime/gpacpublications/manual.pdf>.

However, the weakness of this approach is that it is difficult to accurately explain the scope of ethical standards. Therefore, most existing concepts adhere to the objective definition of relying on the process according to the „deviation from legal standards” approach. Typically, corruption is defined as a deviation from the formal rules that govern the allocation decisions of state agencies in response to offers of financial benefits or political support<sup>[10]</sup>. In a different conceptualization, corruption can be defined as the occurrence of behaviors that result in the harm of public interests or the abuse of public offices for private gain. For instance, when discussing corruption in France, the interrelationship between power and money is a salient consideration. In general, corruption encompasses the exploitation of power for the purpose of material gain<sup>[11]</sup>.

In fact, there are numerous concepts about corruption in Vietnam. From a legal perspective, corruption is officially defined in the 2018 Anti-Corruption Law as the behavior of individuals in positions of authority who exploit those positions for personal gain (Clause 2, Article 1). From a linguistic perspective, the Vietnamese Dictionary defines corruption as the abuse of power to harass individuals and take property<sup>[12]</sup>. The Vietnam Encyclopedia defines corruption as the behavior of people with positions and powers who take advantage of their positions and powers to harass, accept bribes, or intentionally violate economic and financial policies, regimes, and regulations for personal gain, causing damage to the state, collective and individual property, and violating the proper operation of state agencies and political and social organizations. From an ethical and social perspective, corruption is defined as a historical negative phenomenon that appears and exists in a class-divided society and state formation and is demonstrated by the act of taking advantage of position and power to benefit individuals or others in any form, causing damage to property in the state, collectives, or citizens or threatening the proper operation of state agencies, social organizations or the legitimate rights and interests of citizens. Although expressed differently, in general, views on corruption in Vietnam have commonalities: (i) they are illegal acts that must be committed by people with positions and powers (action or inaction), and

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<sup>10</sup> Joseph S. Nye, „Corruption and Political Development: A Cost-Benefit Analysis” *The American Political Science Review*, No. 2 (1967): 421.

<sup>11</sup> Dinh Van Minh, *Some issues of corruption and basic contents of the 2005 anti-corruption law* (Vietnam: National Politics, 2019), 148.

<sup>12</sup> Assembly, *Vietnamese Encyclopedia* (Vietnam: Encyclopedic dictionary, 2005), 197.

(ii) they must be used for personal gain (illegal appropriation of public authority or collective resources)<sup>[13]</sup>. The benefit might not always be in cash. It could involve favors, holidays, sexual services, inappropriate hospitality, or advancement for oneself or one's family. One example is the admission of a child to a prestigious college when they do not meet the admission standards<sup>[14]</sup>.

### 3 | Factors affecting corruption in Vietnam

Corruption has been a persistent problem in Vietnam for many years and continues to pose significant challenges to the country's economic, social, and political development<sup>[15]</sup>. According to some studies, the factors leading to corruption in Vietnam are diverse. These include a weak legal framework<sup>[16]</sup>, inadequate anticorruption enforcement measures<sup>[17]</sup>, low wages but high social costs, inequality among state officials<sup>[18]</sup>, and cultural and social norms that condone or encourage corruption<sup>[19]</sup>.

**Weak legal framework:** Corruption is a problem that the Vietnamese government has been concerned about since the state's establishment. The death sentence of Tran Du Chau, The Director of the Military Department in 1950, is the clearest evidence of the determination of the Vietnamese Government in preventing and combating corruption from

<sup>13</sup> Gerald E. Caiden, „What truly Is Public Maladministration?” *Public Administration Review*, No. 6 (1991): 486.

<sup>14</sup> Adam Graycar, „Corruption: Classification and analysis” *Policy and Society*, No. 2 (2017): 87.

<sup>15</sup> Scott Fritzen, „The »misery« of implementation: Governance, institutions, and anti-corruption in Vietnam”, [w:] *Corruption and good governance in Asia*, ed. Nicholas Tarling (London: Routledge, 2005), 22.

<sup>16</sup> Christian Bjørnskov, „Combating corruption: On the interplay between institutional quality and social trust”. *The Journal of Law and Economics*, No. 1 (2011): 135.

<sup>17</sup> Zhe Cao, Xianwei Shi, „A systematic literature review of entrepreneurial ecosystems in advanced and emerging economies” *Small Business Economics*, No. 57 (2021): 75.

<sup>18</sup> Jonathan P. Doh, Peter Rodriguez, Klaus Uhlenbruck, Jamie D. Collins, „Coping with corruption in foreign markets” *Academy of Management Perspectives*, No. 3 (2003): 114.

<sup>19</sup> Alina Mungiu-Pippidi, *The quest for good governance: How societies develop control of corruption* (Newyork: Cambridge University Press, 2015), 327.

the very beginning<sup>[20]</sup>. In the early 1990s, the Vietnamese government recognized the need for anticorruption measures and established many organizations to address this problem<sup>[21]</sup>. However, these agencies lack the necessary independent resources to fight corruption<sup>[22]</sup>. In 2005, the Vietnamese Government passed the Anti-Corruption Law, establishing a more comprehensive legal framework for anti-corruption efforts<sup>[23]</sup>. The law established the legal basis for anticorruption agencies and policies. It also provides provisions for punishing corruption and protecting those who denounce corruption<sup>[24]</sup>. In the ten years from 2012 to 2022, the Central Executive Committee, Politburo, and Secretariat issued more than 250 documents on building the Party's political system and preventing and fighting corruption. The National Assembly amended, supplemented, and promulgated more than 300 new laws, ordinances, and resolutions. The Government and Prime Minister issued more than 2,000 decrees and decisions. Ministries, branches, and localities have issued thousands of legal documents to institutionalize and promptly implement the Party's guidelines and policies on socioeconomic management and corruption prevention and combat<sup>[25]</sup>. However, promulgating many legal documents is not a fundamental solution to fight corruption if the content of those regulations is not feasible. According to the 2021 Corruption Perception Index, Vietnam is projected to score 37/100 points, which would place it at 104th among 180 countries. In 2022, the country is anticipated to score 42/100 points, which would place it at 77th among 180 countries. These scores indicate that, despite the aforementioned reforms, corruption in

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<sup>20</sup> Thai Son, *Tran Du Chau case – Valuable lesson on anti-corruption work* (People's Army Newspaper: 2012). <https://www.qdnd.vn/tap-chi-hau-can-quan-doi/nghien-cuu-kinh-nghiem-trao-doi/vu-an-tran-du-chau-bai-hoc-quy-ve-cong-tac-phong-chong-tham-nhung-463320>. [accessed: 1.01.2024].

<sup>21</sup> Sooksan Kantabutra, „Toward a System Theory of Corporate Sustainability: An Interim Struggle” *Sustainability*, No. 23 (2022):159. <https://doi.org/10.3390/su142315931>.

<sup>22</sup> Phung Van Hien, „Public Investment in Education and Training in Vietnam” *International Education Studies*, No. 7 (2018): 106.

<sup>23</sup> Francesca Recanatini, „Anti-Corruption Authorities: An Effective Tool to Curb Corruption?”, [in:] *International Handbook on the Economics of Corruption*, Vol. II, Chapter 19. ed. Susan Rose-Ackerman, Tina Søreide (Cheltenham: Edward Elgar Publishing, 2011).

<sup>24</sup> Edmund Malesky, Jonathan London Malesky, „The political economy of development in China and Vietnam” *Annual Review of Political Science*, No. 17 (2014): 395.

<sup>25</sup> Nguyen Van Tri, „Some legal issues on measures to detect corruption in Vietnam” *Journal of democracy and law*, 6 January (2023).



Vietnam remains at a highly problematic level. The absence of robust legal frameworks can facilitate the pervasiveness of corrupt practices, which can have a profound negative impact on society and the economy<sup>[26]</sup>.

Inadequate anticorruption enforcement measures: Inadequate anticorruption enforcement measures manifest in many different forms, including weak legal frameworks, limited institutional capacity, and lack of political will to tackle corruption<sup>[27]</sup>. Although legal documents are issued in large numbers in Vietnam, many issues still lack regulatory regulations. For example, there is ambiguity and lack of consistency in regulations for detecting corruption through reporting and handling complaints by several agencies, organizations, and individuals<sup>[28]</sup>. The regulations pertaining to the distraint and freezing of assets lack specificity and clarity. Furthermore, the regulations of the Criminal Procedure Code on the handling of physical evidence are inadequate, resulting in the waste and loss of evidence. Another study has also revealed that a lack of political will and enforcement capacity represent Vietnam's primary challenges to anticorruption efforts<sup>[29]</sup>.

Low salaries but high social costs: if a civil servant has a low salary, they will try to improve their financial situation by accepting bribes. Therefore, the economic situation of civil servants also affects corruption<sup>[30]</sup>. The Vietnamese government determines the salary structure for public sector employees based on various factors, including job duties, experience, and education level<sup>[31]</sup>. The „brain drain” situation in the public sector is very common. Still, civil servant salaries are currently too low to be enough to live on (only ensuring approximately 50-60% of needs), not enough to regenerate labor power and accumulate. According to the Ministry of Home Affairs statistics, from 2020 to the first six months of

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<sup>26</sup> Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy* (New York: Cambridge University Press, 2005), 321.

<sup>27</sup> Johann Graf Lambsdorf, „Making corrupt deals: Contracting in the shadow of the law” *Journal of Economic Behavior & Organization*, No. 3 (2002): 221.

<sup>28</sup> Transparency International. *Corruption Perceptions Index*. 2022. <https://www.transparency.org/en/cpi/2022>. [accessed: 11.01.2024].

<sup>29</sup> May Tan-Mullins, Peter S. Hofman, „The Shaping of Chinese Corporate Social Responsibility” *Journal of Current Chinese Affairs*, No. 4 (2014): 3.

<sup>30</sup> Franklin Allen, Jun Qian, Lin Shen, „Corruption and Competition” *SSRN Electronic Journal*, 4 September (2018): 52.

<sup>31</sup> Tai Anh Vu, Geoff Plimmer, Evan Berman, Pham Ngoc Ha, „Performance management in the Vietnam public sector: The role of the institution, traditional culture, and leadership” *International Journal of Public Administration*, No. 1 (2022): 49.



2022, nearly 40,000 officials, civil servants, and public employees quit their jobs (accounting for 1.94% of the total assigned payroll). There are 7,102 people in ministries and branches, accounting for 17.96%; locally, there are 32,450 people, accounting for 80.04%. The subjective reason leading to the number of officials and civil servants changing jobs and quitting is because salary policy still has many difficulties in the public sector; compared to life's needs, it has not yet kept up<sup>[32]</sup>.

*Societal culture also tolerates corruption:* cultural and social norms in preventing and combating corruption refer to the role of cultural and social factors in shaping related attitudes and behaviors. to corruption, as well as strategies and policies to change these attitudes and behaviours<sup>[33]</sup>. Sociocultural norms may include beliefs about the acceptability of corruption, the importance of loyalty and reciprocity, and the state's role in society<sup>[34]</sup>.

In Vietnam, traditional values such as filial piety, loyalty, and respect for authority have historically been highly valued, and these values continue to influence corruption. For example, giving gifts and favors, considered bribes in other contexts, is often accepted in Vietnamese culture to show gratitude and build gratitude in relationships<sup>[35]</sup>. With the concept that „money first is money wise”, Vietnamese people think that using money to bribe is the fastest and most effective solution to solve problems. Moreover, people also use bribes and gifts as a form of friendship and investment to facilitate their future career paths and those of their relatives. This psychological behavior and level of awareness have unintentionally caused many officials and employees to be passively corrupt. This situation persists, causing the idea of making it difficult for officials and civil servants to

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<sup>32</sup> Thanh Chung. *Nearly 40,000 officials, civil servants and public employees quit their jobs in 30 months, initially determining the cause* (Tuoi Tre Newspaper online, 2022). <https://tuoitre.vn/gan-40-000-can-bo-cong-chuc-vien-chuc-nghi-viec-trong-30-thang-buoc-dau-xac-dinh-nguyen-nhan-20221001163252803.htm>. [accessed February 13, 2024].

<sup>33</sup> Sheheryar Banuri, Catherine Eckel, „Experiments in culture and corruption: A review” *Journal of Economic Surveys*, No. 2 (2012): 185.

<sup>34</sup> Nikolas Bagas Yudhi, „Police Strategy In Establishing Anti-Corruption Attitudes In Communities In The Legal Territory Of The East Java Regional Police” *Airlangga Development Journal*, No. 1 (2022): 18.

<sup>35</sup> Ngoc Cindy Pham, Juehui Shi, Joshua Fogel, Yuanqing Li, Huan Henry Pham., „Motivations for bribery and bribery in business: Vietnam past and present” *Asia Pacific Business Review*, No. 4 (2021): 528,

receive „envelopes” from new people to handle work, as accepting bribes is an inevitable procedure in handling work<sup>[36]</sup>.

## 4 | Overview of anti-corruption policies and work in Vietnam

### 4.1. Overview of Vietnamese law on the prevention and combat of corruption

Immediately after feudal times, the ancients considered „embezzlement” and „corruption” „national disasters”, directly affecting the prosperity and decline of each dynasty. For example, the Early Le Dynasty (1428-1527) considered corruption to be the act of „misusing the public service for private gain”, taking advantage of positions and powers to embezzle, siphon off public funds, and gain personal gain and enrich oneself unjustly<sup>[37]</sup>. Sanctions for corrupt acts are stringent. Under King Ly Thai Tong, corrupt soldiers were beaten 100 times and punished by being tattooed with 30 words. Each word was created using sharp words to poke at bare skin and pour ink directly on it. Officials who collected more than the prescribed amount of tax would have all their fingers and toes cut off<sup>[38]</sup>.

In 1945, the Democratic Republic of Vietnam was born; however, not until 1988 was the Ordinance on Corruption Prevention and Combat promulgated. During that period, the Vietnamese State issued a series of decrees, decisions, and directives to repel corruption.

The following Documents were issued: Decree No. 64/SL dated November 23, 1945; Decree No. 223/SL dated November 27, 1946; Decree No. 138/SL dated December 18, 1949; Decree No. 267/SL dated June 15, 1956; Decree

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<sup>36</sup> Department of Internal Affairs of Yen Bai province, *The true causes of corruption and the problems they pose in Vietnam* (March 22, 2015). <http://yenbai.noichinh.vn/chi-tiet/thuc-chat-nguyen-nhan-cua-tham-nhung-va-nhung-van-de-dat-ra-o-viet-nam-20>. [accessed: 15.01.2024].

<sup>37</sup> Tran Dinh Na, *Early Le Dynasty (1428-1527) with the work of fighting against the problem of people pests, water pests* (Vietnam: Summary of Ho Chi Minh City, 2016), 327.

<sup>38</sup> Truong Huu Quynh, Dinh Xuan Lam, Le Mau Han, *General history of Vietnam* (Vietnam: education publisher, 2008), 529.

No. 01/SL dated April 19, 1957; Decision No. 207/CP dated December 6, 1962; Directive No. 84-CT/TTg/3X dated September 9, 1964; Decision No. 550-QD/TTg dated February 16, 1971; Decree No. 03/SL/76 dated March 15, 1976; Decision No. 240-QD/HDBT dated June 26, 1990; Directive No. 416-CT/HDBT dated December 3, 1990; Directive No. 08-CT/TATC dated December 6, 1990; Decision No. 114-QD/TTg dated November 21, 1992; Directive No. 171-CT/TTg dated December 16, 1992; Resolution No. 176-NQ/UBTVQH19 dated March 16, 1994; Decision No. 35-QD/TTg dated January 19, 1994.

By 1997, investigation agencies discovered and prosecuted 3,856 economic cases in which corruption crimes increased significantly. In 1998, 3,546 economic cases were prosecuted, all related to corruption. Faced with that situation, on February 26, 1998, the National Assembly Standing Committee issued the Anti-Corruption Ordinance. This is the first legal document specializing in preventing and combating corruption in Vietnam. According to the Ordinance, people who commit corrupt acts can be criminally prosecuted or disciplined. With the advent of the Ordinance and other legal documents, the fight against corruption in Vietnam initially flourished. However, this Ordinance also reveals many areas for improvement in the implementation process, such as not specifying the leader's responsibilities when corruption occurs in the agency and lacking specific regulations on asset declaration and income.

In 2005, Vietnam signed the United Nations Convention against Corruption, participating in the Asia-Pacific Anti-Corruption Action Program and the Anti-Corruption Action Program within the APEC framework. In that context, at the seventh session, the 11th National Assembly approved the proposed Law on Prevention and Combat of Corruption in 2005. This Law marks a significant development in the legal thinking and awareness of the Party, State, and People of Vietnam on preventing and combating corruption.

Since its promulgation, the 2005 Anti-Corruption Law has been amended and supplemented twice—once in 2007 and once in 2012— and was replaced by the 2018 Anti-Corruption Law. The 2018 Anti-Corruption Law is an essential basis for anticorruption activities in Vietnam. In addition, the issue of handling corruption is also regulated by other legal documents, such as the Penal Code 2015, the Law on Cadres and Civil Servants 2008, and related decrees.

According to the current law, a civil servant who commits corrupt acts may be subject to two types of sanctions: (i) disciplinary responsibility and

(ii) criminal liability (the two sanctions may be applied simultaneously or not simultaneously).

Under the Law on Cadres and Civil Servants 2008 (amended and supplemented in 2019) (starting now referred to as Law 2019) and Decree No. 112/2020/ND-CP, disciplinary measures for civil servants positions are defined as follows:

**Table 1: Forms of disciplinary action against nonretired civil servants**

Civil servants do not hold leadership or management positions	Civil servants hold leadership and management positions
<ul style="list-style-type: none"> <li>- Reprimand;</li> <li>- Caution;</li> <li>- Salary reduction;</li> <li>- Sack.</li> </ul>	<ul style="list-style-type: none"> <li>- Reprimand;</li> <li>- Caution;</li> <li>- Demotion;</li> <li>- Removal from office;</li> <li>- Sack.</li> </ul>

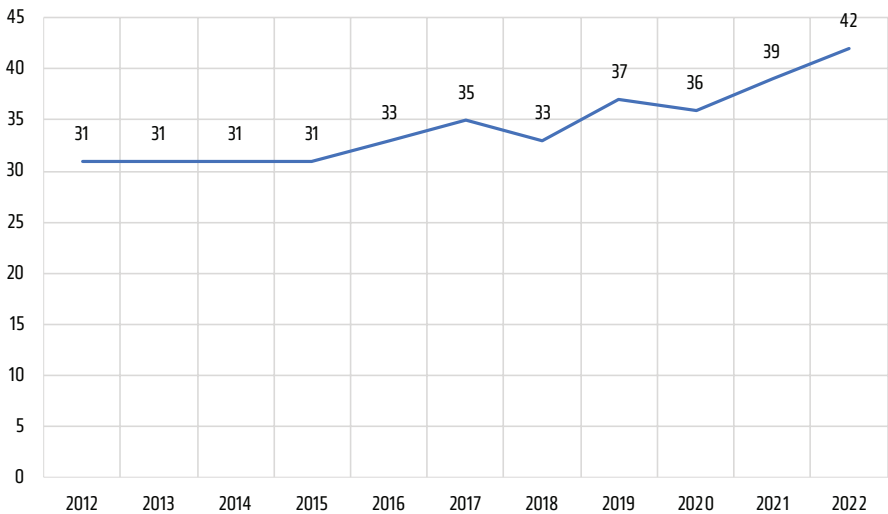
In addition, if a civil servant who has quit or retired is discovered to have committed a violation during his/her working time, he/she may be subject to the following disciplinary measures: reprimand, caution, or removal of their previous posts. In particular, the form of disciplinary action to remove their previous posts only applies to civil servants who, before quitting or retiring, held leadership or management positions.

In addition to disciplinary responsibility, corrupt people can also be prosecuted for criminal liability according to the provisions of the 2015 Penal Code (amended and supplemented in 2017). Crimes related to corruption include property embezzlement, accepting bribes, and bribery; crime of abusing position and power to appropriate property; abuse of power while performing official duties; crime of taking advantage of positions and powers to influence others for personal gain; crime of forgery at work; crime of irresponsibility causing serious consequences; crime of intentionally disclosing work secrets; crime of appropriating, trading or destroying confidential work documents; crime of unintentionally disclosing work secrets; crime of losing confidential work documents; crime of defection; and crime of taking advantage of influence over people with positions and powers for personal gain.

## 4.2. Results of anticorruption efforts in Vietnam in 2022

According to the 2022 Corruption Index Report, Vietnam is one of six countries in the Asia-Pacific region with outstanding progress, with 42 points, an increase of 9 points since 2018. In 2022, compared to 2021, Vietnam will increase its CPI by 3 points, from 39 to 42 points on a 100-point scale. Within ten years since 2012, Vietnam's CPI score has increased significantly, from 31 to 42 points.

**Figure 1: Vietnam's corruption perception index from 2012-2022**



According to the results of assessing anti-corruption work<sup>[39]</sup> in 2022, the average score for assessing Vietnam's anti-corruption work reached 66.06/100 points, the highest average score since an assessment of anti-corruption work from 2016 to the present.

<sup>39</sup> Government Inspectorate, The results of assessment of provincial-level anti-corruption work in 2022 (Ha Noi, 2023).

**Table 2: Average scores on the anticorruption assessment from 2016–2022**

No		2016	2017	2018	2019	2020	2021	2022
1	National average score	58.34	61.28	59.57	61.78	63.86	62.12	66.06
2	Highest score	77.67	77.96	80.37	77.40	76.18	75.97	77.95
3	Lowest score	43.53	37.10	32.16	41.81	42.03	49.93	50.02
4	Satisfactory rate	58.34%	61.28%	59.57%	61.78%	63.86%	62.12%	66.06%

### Part A – Evaluation of leadership and direction in preventing and combating corruption and building and perfecting legal policies on anticorruption

Most localities in Vietnam have well-implemented leadership and direction in building and perfecting legal policies for preventing and combating corruption.

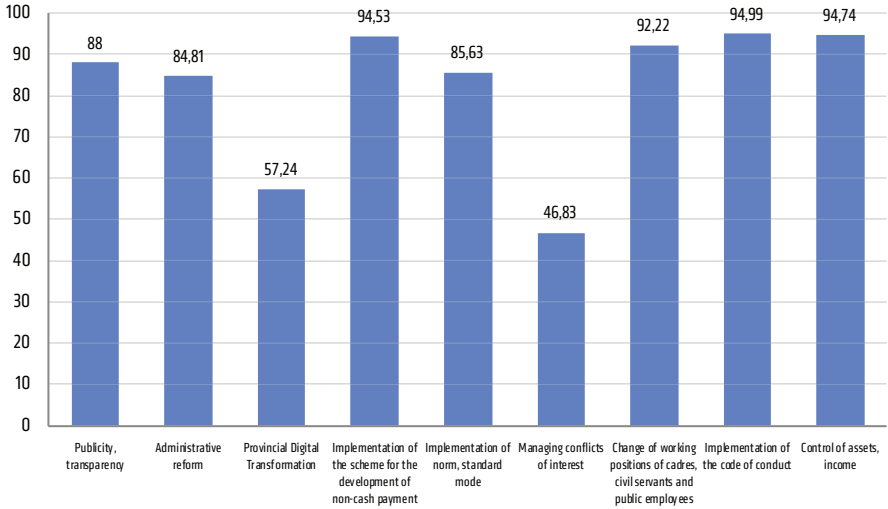
**Table 3: Assessment scores for leadership, direction, building, and completing policies and laws on anticorruption in 2022**

No	Criteria	Scoring scale	Lowest – highest score	National average	Response rate
1	A – Leadership and direction in preventing and combating corruption, building and perfecting legal policies on anti-corruption	20	9.44 – 20	18.61	93.05%
2	A1 – Evaluation of leadership and direction	5	0.00 – 5.00	4.90	97.94%
3	A2 – Evaluation of the implementation	15	9.31 – 15.00	13.72	91.44%

### Part B – Evaluation of the Implementation of Preventive Measures

The content of the implemented anticorruption measures reached 74.06% of the requirements, an increase of 9.96% compared to 2021. However, anti-corruption work for businesses and organizations in the nonstate sector is uncommon, reaching 45.90% of the requirement.

**Figure 2: Summary of corruption prevention work in agencies, organizations, units, and the state sector (unit: %)**



**Part C – Evaluation of detecting and handling corruption**

Research on detecting corruption in the past three years (2020, 2021, 2022) has not made much progress. The most effective are investigations, prosecutions, and trials, the main channels for detecting corruption.

**Table 4: Assessment of detecting coronary breaks in 2022**

Criteria	Scoring scale	Average score	Response rate
C.1. Detection of corrupt acts	12	4.45	37,11%
C.1.1. Results of detecting corrupt acts through inspection and supervision	4	0.24	6%
C.1.2. Results of detecting corrupt acts through reporting and denunciation	4	0.66	16,5%
C.1.3. Results of detecting corrupt acts through investigation, prosecution, and trial	4	3.55	88,75%

Handling corrupt acts had positive results, with a rate of up to 65.41%, nearly twice as high as detecting corrupt acts. It means that individuals who commit corrupt acts are sanctioned and that the heads and deputies of the heads of organizations and units that allow corruption to occur must also take responsibility.

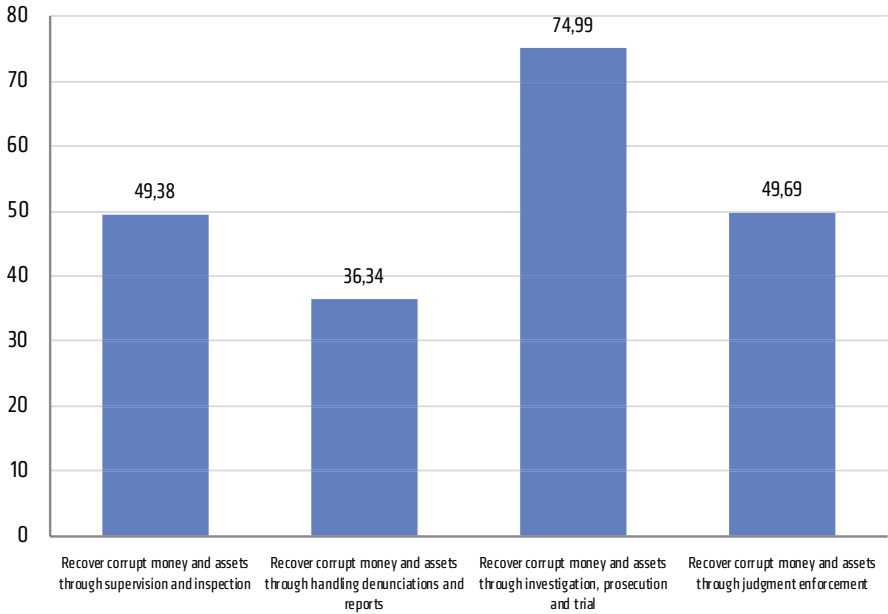


**Table 5: Corruption Handling Assessment Score in 2022**

Criteria	Scoring scale	Average score	Response rate
C.2. The handling of corruption	20	13.08	65.41%
C.2.1. Results of disciplinary action against organizations and individuals leading to corruption	5	3.12	62.32%
C.2.1.1. Results of party disciplinary measures and administrative sanctions against organizations leading to corruption	2.5	1.05	41.83%
C.2.2.2. Results of administrative disciplinary action against individuals committing corrupt acts	2.5	2.06	82.52%
C.2.2. Results of criminal handling of people who commit corrupt acts	7.5	6.45	85.97%
C.2.2.1. Results processed through investigation	2.5	2.11	84.33%
C.2.2.2. Result of prosecution	2.5	2.30	91.07%
C.2.2.3. Results handled through trial	2.5	2.04	81.60%
C.2.3. Results of the responsibilities of heads and deputies of agencies, organizations, and units handled based on the level of corruption	7.5	3.52	46.92%
C.2.3.1. Form of reprimand	2.5	1.26	50.50%
C.2.3.2. Form of caution	2.5	1.05	42.06%
C.2.3.3. Form of demotion	2.5	1.21	48.21%

### Part D – Assessing the recovery of corrupt assets

In general, measures to recover corrupt money and assets have not been very effective for many years in Vietnam. In 2022, the asset recovery result achieved an average score of only 5.33/10, equivalent to 53.30% of the requirement.

**Figure 3: Assessment of the recovery of corrupt assets in 2022 (unit: %)**

## 5 | Conflicts surrounding sanctions for removal of their previous posts for civil servants who have quit or retired and are newly discovered to have committed violations during their working time

Removal of their previous posts is a disciplinary sanction applied to officials and civil servants who, after quitting or retiring, are discovered to have committed violations during their working time. This sanction has been legalized since 2019 in the Law, amending and supplementing several articles of the Law on Cadres, Civil Servants, and Public Employees (this Law takes effect on July 1, 2020). Previously, when it was not clearly and officially stipulated in the Law, this sanction was still flexibly applied in some agencies and units with the name „remove original status”. As of November 30, 2023, Vietnam had 30 civil servants whose previous posts were removed, as follows:

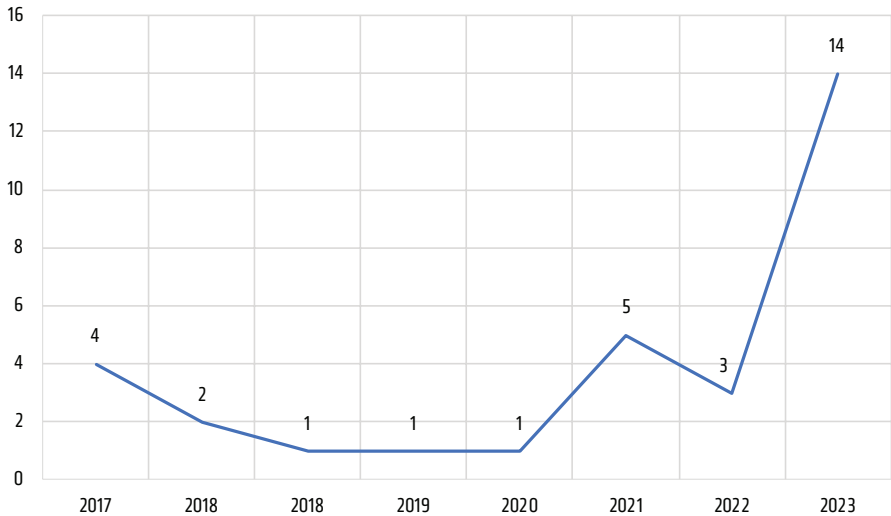
**Table 6: Lists civil servants whose position status has been removed as of November 30, 2023**

No	Date of removal of their previous posts	The name of the civil servant has his previous posts removed	Previous posts removed
1	November 22, 2023	Tong Duy Manh	Chairperson of People's Committee of Tien Thanh Commune for the 2014-2021 term
2	November 22, 2023	Dang Huy Hau	Vice Chairperson of the People's Committee of Quang Ninh Province for the 2015-2020 term
3	November 22, 2023	Vu Thi Thu Thuy	Vice Chairperson of the People's Committee of Quang Ninh Province for the 2015-2020 term
4	November 16, 2023	Nguyen Van Doc	Chairperson of the People's Council of Quang Ninh Province for the 2011-2016 term and the 2016-2021 term
5	November 16, 2023	Nguyen Duc Long	Chairperson of the People's Council of Quang Ninh Province for the 2011-2016 term
6	September 10, 2023	Nguyen Dinh Xung	Chairperson of People's Committee of Thanh Hoa Province for the 2015-2020 term, Vice Chairperson of People's Committee of Thanh Hoa Province for the 2012-2014 term
7	September 13, 2023	Pham Dang Quyen	Vice Chairperson of People's Committee of Thanh Hoa Province for the 2011-2020 term
8	September 13, 2023	Le Thi Thin	Vice Chairperson of People's Committee of Thanh Hoa Province for the 2015-2020 term
9	September 8, 2023	Nguyen The Nghia	Chairperson of People's Committee of Yen Phong District for the 2004-2009 term
10	July 14, 2023	Dinh Quoc Thai	Chairperson of People's Committee of Dong Nai Province for the 2011-2016 term and the 2016-2021 term
11	June 22, 2023	Nguyen Van Vinh	Chairperson of People's Committee of Lao Cai Province for the 2010-2013 term
12	June 22, 2023	Doan Van Huong	Chairperson of People's Committee of Lao Cai Province in the 2014-2015 term; Vice Chairperson of People's Committee of Lao Cai Province for the 2010-2013 term
13	June 22, 2023	Nguyen Thanh Duong	Vice Chairperson of People's Committee of Lao Cai Province for the 2011-2019 term
14	June 22, 2023	Le Ngoc Hung	Vice Chairperson of People's Committee of Lao Cai Province for the 2014-2020 term
15	October 21, 2022	Nguyen Duong Thai	Vice Chairperson of People's Committee of Hai Duong Province for the 2016-2021 term

No	Date of removal of their previous posts	The name of the civil servant has his previous posts removed	Previous posts removed
16	July 21, 2022	Le Tien Phuong	Chairperson of the People's Committee of Binh Thuan Province for the 2004-2011 term, 2011-2016 term
17	July 21, 2022	Nguyen Van Hai	Chairperson of the People's Committee of Binh Thuan Province for the 2011-2016 term, 2016-2021 term
18	October 22, 2021	Nguyen Van Son	Commander of the Coast Guard
19	October 22, 2021	Hoang Van Dong	Commissar of the Coast Guard
20	October 22, 2021	Bui Trung Dung	Deputy Commander of the Coast Guard
21	October 20, 2021	Tran Thanh Liem	Chairperson of the People's Committee of Hai Duong Province for the 2016-2021 term
22	July 21, 2021	Nguyen Van Hien	Deputy Minister of Defense
23	October 10, 2020	Lam Quang Minh	Director of Da Nang City Investment Promotion Center for the period 2006-2015
24	September 25, 2019	Nguyen Hong Truong	Deputy Minister of Transport for the term 2011-2015, 2016-2017
25	October 22, 2018	Nguyen Bac Son	Minister of Information and Communications for the 2011-2016 term
26	August 16, 2018	Bui Van Thanh	Deputy Director General of the General Department of Logistics and Technology, Ministry of Public Security
27	August 16, 2017	Nguyen Thai Lai	Deputy Minister of Natural Resources and Environment for the 2011-2015 term
28	August 16, 2017	Bui Cach Tuyen	Deputy Minister of Natural Resources and Environment for the 2011-2015 term
29	August 16, 2017	Vo Kim Cu	Vice Chairperson of the People's Committee of Ha Tinh Province for the 2005-2010 term; Chairperson of the People's Committee of Ha Tinh Province for the 2010-2015 term
30	January 23, 2017	Vu Huy Hoang	Minister of Industry and Trade for the 2011-2016 term

Source: Statistical authors

**Figure 4: Fluctuations in the number of civil servants whose position status was removed from 2017–2023**



Source: Statistical authors.

Before July 1, 2020, the sanctions for the removal of previous posts were not specified in legal documents. However, some agencies and organizations have arbitrarily applied this sanction to remove the original status. The application of this sanction during that time caused many problems, specifically:

On the legal basis, before July 1, 2020, the 2008 Law on Cadres and Civil Servants and Decree No. 34/2021/ND-CP—the most important legal documents regulating the issue of disciplinary action—did not stipulate any regulations on the removal of previous posts or the removal of the original status. Therefore, the imposition of sanctions is not legal because a fundamental principle to observe is non-punishment without the law<sup>[40]</sup>. In this case, it cannot be argued that state agencies have the flexibility to apply for sanctions because citizens are allowed to do all that the law does not prohibit. In contrast, state agencies can only do what the law permits. Therefore, the lack of regulation or prohibition does not mean that state agencies can arbitrarily apply this measure, given its nature as a form of discipline<sup>[41]</sup>.

<sup>40</sup> Pietro Pustorino, *Introduction to International Human Rights Law* (The Hague: TMC Asser Press, 2023), 223. <https://www.asser.nl/asserpress/books/?rId=14014>.

<sup>41</sup> Cao Vu Minh, „Disciplinary action for people who have quit their jobs or retired and have recently discovered violations during their working time” *Vietnamese Journal of Legal Science*, No. 8 (2021): 13.

About legality: The disciplinary decision to remove previous posts is different in each case. Therefore, decisions must be made based on law and specific legal provisions<sup>[42]</sup>. It means that these decisions must have a clear legal basis (they must be legal)<sup>[43]</sup>, and when promulgating, the legal basis must be clearly defined. It must specify on what basis and in which legal documents the competent entity applies to each case<sup>[44]</sup>. However, because the Law has not recognized the sanctions for removing previous posts held, related issues such as procedures and competence to issue have not yet provided specific guidance. The study involved decisions to remove previous posts issued before July 1, 2020, specifically cited as the legal basis of the 2013 Constitution, the 2014 Law on the Organization of the National Assembly, the 2015 Law on Government Organization, and the Party's guiding document. It is worth mentioning that these documents do not sanction the removal of previous posts. Therefore, all disciplinary decisions to remove previous posts before July 1, 2020, do not cite a clear and accurate legal basis.

To fill the above legal gaps, Law 2019 stipulated the use of a sanction to remove previous posts, which officially took effect on July 1, 2020. However, trying to "legalize" this sanction has also posed many contradictions, specifically:

Regarding the regulation's source: Sanctions for removing previous posts are prescribed in Law 2019 and are elaborately instructed in Decree No. 112/2020/ND-CP. Article 1 of the 2019 Law stipulates that the scope of regulation and the subjects of application of this law are cadres and civil servants; elections, recruitment, employment, and management of cadres and civil servants; obligations and rights of cadres and civil servants; and conditions to assure public-duty performance. Thus, the 2019 Law applies only to officials and civil servants. Moreover, civil servants who had quit or retired were once civil servants, but when they quit or retired, they were no longer civil servants. Therefore, they are no longer on the payroll and receive salaries from the state budget<sup>[45]</sup>. Therefore, stipulating sanctions

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<sup>42</sup> Nguyen Cuu Viet, *Textbook of General Theory of State and Law* (Vietnam: Hanoi National University Publishing House, 2003), 501.

<sup>43</sup> Hanoi Law University, *Textbook of Theory of State and Law* (Vietnam: Justice Publishing House, 2006), 103.

<sup>44</sup> Hoang Thi Kim Que, *Textbook of General Theory of State and Law* (Vietnam: Hanoi National University Publishing House, 2015), 46.

<sup>45</sup> Cao Vu Minh, „Disciplinary action for people who have quit their jobs or retired and have recently discovered violations during their working time” *Vietnamese Journal of Legal Science*, No. 8 (2021): 13.

to remove previous posts for people no longer civil servants, according to the 2019 Law, is inappropriate.

Regarding legal consequences: In theory, any sanctions aim to force violators to fulfil their legal obligations<sup>[46]</sup>. Therefore, if a sanction does not force the violator to suffer any legal consequences, it is unnecessary to prescribe such a sanction. The enforcement of sanctions to remove previous posts for civil servants who have quit or retired is only to erase “reputation” without entailing any loss of “benefits”. The details are as follows:

First, removing previous posts does not affect social insurance benefits. The 2014 Social Insurance Law and Decree No. 115/2015/ND-CP do not have any regulations allowing state agencies to deduct pensions and social insurance benefits of people subject to disciplinary measures to remove them from their previous posts. Even Clause 6, Article 17 of the 2014 Law on Social Insurance prohibits state agencies from obstructing or harming employees’ or employers’ lawful and legitimate rights and interests in paying pensions and social insurance benefits.

Second, removing previous posts does not mean denying achievements or revoking rewards given in that position. The 2022 Law on Emulation and Commendation stipulates that decisions on awarding emulation and commendation titles can be cancelled, and rewards and bonuses can be revoked. However, removing previous posts is not the case listed in the Law.

Third, removing previous posts does not invalidate the legal documents promulgated based on the deleted position. The Law on the Promotion of Legal Documents of 2015 (amended and supplemented in 2020) stipulates that legal documents may expire in whole or in part in cases prescribed by law. However, removing previous posts is not the case listed in the Law.

Thus, the sanction of removing previous posts does not cause any damage to the benefits associated with individuals quitting or retiring, such as pensions and social insurance benefits. Instead, this sanction only erases the name of a civil servant, which is no longer critical. This regulation of sanctions is an “innocuous” issue that is ineffective.

Research on the issue of disciplinary action against civil servants reveals two questions: (i) Do not apply disciplinary sanctions when you are no longer a public servant? As at Stormont: No public employee may be disciplined after ceasing to be a public employee. Therefore, no disciplinary action can

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<sup>46</sup> Richard D. Schwartz, Sonya Orleanz, „On Legal Sanctions” *University of Chicago Law Review*, No. 2 (1967): 274.



be taken against any civil servant after retirement or (ii) discipline retired civil servants with specific sanctions, as in the Federal Republic of Germany.

In Germany, the disciplinary procedure for civil servants follows the Federal Disciplinary Act 2001 (most recently amended in 2020). Article 1 stipulates that the scope of this Law applies to civil servants and retired civil servants. Thus, in the first article of the Law, the Law of the Federal Republic of Germany is more lucid than the Law of Vietnam when affirming that the subjects of regulation of the Law include retired civil servants. Accordingly, disciplinary measures for retired civil servants found to have committed violations during their working hours include (i) pension reduction and (ii) deprivation of pension (clause 5, Article 5). The pension reduction is partial in the monthly pension of retired civil servants; the maximum reduction is 1/5 of the three-year salary (Article 11). Deprivation of a pension means that a retired civil servant will lose the right to receive a pension, including the pension, while the civil servant is still alive. Moreover, the deprivation of pensions also removes the right to use official titles and titles awarded in connection with the previous position (Article 12). Thus, it can be seen that the Law of the Federal Republic of Germany and the Law of Vietnam have similarities, as they both recognize that if a retired civil servant is found to have committed a violation during his/her working time, he/she can be stripped of previously held positions. However, the difference is that in Vietnam, removing the status of a position held does not entail any adverse legal consequences for the disciplined person.

Moreover, in Germany, the sanction of revocation of the position held is associated with the adverse consequence that the person subject to the application will revoke their pension. This adverse consequence causes the violator to suffer economic losses. This issue determines the effectiveness of sanctions because the core factor when applying a sanction to violators is to force them to bear adverse legal liability. The regulation becomes meaningless and impractical if the sanction does not fulfil this purpose.

In North Korea, images of some civil servants who committed serious corrupt acts can be removed from newspaper documentaries in which they appeared, typically in the case of Jang Song-Thaek in 2013. After being convicted of a series of crimes, including corruption, Jang Song-Thaek's images were removed from the websites of state news agencies and documentary videos in North Korea. This action represents the government's drastic and strict response to Jang Song-Thaek's violation. It is no longer an „innocuous” sanction to erase a „name”, as in Vietnam.

In China, civil servants who have retired, resigned, or passed away and are discovered to have committed violations while performing official duties will no longer be disciplined because they no longer have this status. However, supervisory authorities may investigate and handle them. For example, Chen Xiao—a civil servant—was retired in 2018. In 2020, the supervisory agency investigated Chen Xiao for corruption of 100,000 yuan from 2013 until his retirement. In addition, in 2017, Chen Xiao caused damage of 200,000 yuan. No disciplinary action was taken because Chen Xiao no longer had civil servant status. However, the supervisory authority confiscated his illegal profits under Article 27 of the Law on Punishment of Civil Servants.

In addition, retired civil servants who commit violations during their working hours may also have their retirement benefits canceled according to Article 52 of the Law on Sanctions of Civil Servants in Administrative Agencies. For example, Solang Qunpei is a civil servant of the Department of Transportation of the Tibet Autonomous Region who retired in November 2018. In May 2019, Solang Qunpei reviewed and investigated acts related to accepting bribes. In September 2019, he was expelled from the Party, and his pension benefits were cut.

In summary, the punishment for civil servants who have retired or quit their jobs varies between countries. However, in other countries, any sanction entails severe legal consequences for punished civil servants, causing significant material and honor losses.

Returning to the case of Vietnam, it is clear that the sanctions for removing previous posts have not been as effective as those for removing other countries. Many civil servants were involved in corruption cases that caused severe damage during working hours. However, when discovered at retirement, violating civil servants will only be removed from their previous posts instead of being subject to more severe and appropriate sanctions. For example, in the case of Formosa, a violation had severe consequences, and the marine ecosystem was seriously affected<sup>[47]</sup>. Regarding the violation, Mr. Vo Kim Cu, a chairperson of the People's Committee of Ha Tinh Province, committed several violations, such as directly signing many documents contrary to regulations, granting investment certificates and leasing sea surfaces outside economic zones; agreeing on the policy of allowing Formosa to self-clear land to build waste discharge pipelines; and lacking responsibility for the direction, inspection, and supervision of the

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<sup>47</sup> Johann Graf Lambsdorff, „Making corrupt deals: Contracting in the shadow of the law” *Journal of Economic Behavior & Organization*, No. 3 (2002): 221.

implementation process. With the above violations, it is clear that Mr. Vo Kim Cu needs to be investigated to determine whether he is involved in corruption because, as the chairperson of the Provincial People's Committee, Mr. Vo Kim Cu cannot justify that his violation was due to negligence but must have stemmed from some intentional move. However, no investigative decision was issued against Mr. Vo Kim Cu. Instead, he was removed only from the former chairperson of the People's Committee of Ha Tinh Province for the 2010 – 2015 term.

In addition to Mr. Vo Kim Cu, other former civil servants involved in the violation, Mr. Nguyen Thai Lai and Mr. Nguyen Cach Tuyen, were also removed from their previous posts. In fact, after being removed from office, the former civil servants mentioned above stayed unharmed without facing any legal consequences. Even more information shows that Mr. Vo Kim Cu left Vietnam to settle in Canada because Mr. Vo Kim Cu was granted a permanent resident card (Canada Permanent Resident Card – PRC) with ID No/No ID 0519 – 5719<sup>[48]</sup>. To protect privacy, Canadian Law stipulates that government agencies cannot confirm or deny a person's status in Canada without that person's signature. Because of information limitations, the authors cannot determine whether Mr. Vo Kim Cu resides in Vietnam or Canada. However, no matter what, the above incident has caused much fury among people and shows the ineffectiveness and even meaninglessness of the sanction in removing previous posts.

When discussing the legalization of sanctions for removing previous posts, many opinions from legal researchers have stipulated that these sanctions are unnecessary and less feasible. According to Mr. Nguyen Van Hien, a National Assembly of Lam Dong Province member, this sanction is unreasonable, disrupting the unity and synchronization between legal documents<sup>[49]</sup>. According to Dr. Cao Vu Minh, this form of discipline for retirees is meaningless. The benefit associated with them, which is their pension, is not affected, so this sanction does not have practical meaning<sup>[50]</sup>.

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<sup>48</sup> Pham Tuan Anh, Pham Manh Hung, „Singapore's anti-corruption policy” *Internal Affairs Journal*, No. 99 (2022): 58.

<sup>49</sup> Dang Minh, Tran Phu, „It is not easy to ‘remove of their previous posts’ or ‘cut pension’” *Ho Chi Minh City Law Newspaper*, (2019). <https://plo.vn/khong-de-xo-a-tu-cach-chuc-vu-cat-luong-huu-post546558.html>. [accessed February 10.10.2024].

<sup>50</sup> Minh Vuong, „Inadequacies in disciplining officials” *Ho Chi Minh City Law Newspaper*, (2020). <https://plo.vn/bat-cap-trong-xu-ly-ky-luat-can-bo-post581638.html>. [accessed: 09.01.2024].

However, after many discussions, sanctions for the removal of previous posts are still officially prescribed, without any changes or additions to overcome or limit the problems that legal researchers have pointed out about this sanction. As a result, to date, sanctions for removing previous posts still cause much controversy and do not promote effectiveness or feasibility in the fight against corruption.

## 6 | Some solutions related to sanctions to remove their previous posts of retired civil servants

Since its promulgation, the sanction of removal of their previous posts has raised many debates about the effectiveness and deterrence of this sanction. In the opinion of the Institute of Legislative Research Director, the above form of discipline is unnecessary. We can agree with this view, but there is an opinion that „Why spend time on disqualification when retired? Because what’s the point of deleting?”<sup>[51]</sup>. However, on the contrary, there is also a view that the provision of sanctions to remove their previous posts is a new step in Vietnam’s sanctions regulation system, ensuring that all violations are handled, avoiding the case of a „safe landing”. Mr. Nguyen Hanh Phuc – General Secretary of the National Assembly, said this form of discipline is also effective and meets the wishes of the majority of people<sup>[52]</sup>. Therefore, whether to continue to apply disciplinary action to retired cadres/civil servants is a big question to be addressed in Vietnam’s anti-corruption policy.

In our opinion, in the near future, the disciplinary form of removal of their previous posts for officials/civil servants who have quit or retired should be maintained for the following reasons:

First, ensure the stability of the law. Legal theorists standardly hold that stability is one of eight necessary conditions for legal guidance<sup>[53]</sup>. One of

<sup>51</sup> Dang Huan, „Reader’s lens: What is the purpose of removing the status of retired officers?” *Thanh Nien Magazine*, (2019). <https://thanhnien.vn/lang-kinh-ban-doc-xoa-tu-cach-can-bo-nghi-huu-de-lam-gi-185857604.htm>. [accessed: 26.01.2024].

<sup>52</sup> Huan. *Reader’s lens*.

<sup>53</sup> Adam Hill, „Stability, Assurance, and the concept of Legal Guidance” *Law and Philosophy*, No. 34 (2015): 151.

the criteria for demonstrating the stability of law is that there must be stability in the policy content pursued by the legal system, and a reasonable lifespan of legal documents must be ensured. Of course, it is difficult to determine how many years a document's lifespan is considered long<sup>[54]</sup>. Still, careful consideration is needed when promulgating/ removing a legal document or a specific regulation.

The form of discipline to remove the previous posts of officials/civil servants who have quit/retired was only regulated in 2019 and officially took effect on July 1, 2020. Therefore, this discipline has only been implemented in practice briefly. Encountering some inadequacies and shortcomings when the regulations are not complete and comprehensive is unavoidable. However, that cannot make lawmakers rush to remove this sanction from the Vietnamese legal system. The hasty removal of this sanction also shows a change in the State's policy compared to before, when it no longer believes that all violations must be handled seriously, avoiding the case of a „safe landing”. Changing policies and methods of addressing law violations is not advisable, especially in the context of severe corruption crimes in Vietnam.

Second, this sanction still has a mental effect, helping to calm the anger among the people. Public opinion often strongly condemns cases of violations by retired civil servants/officials (especially corruption) during their working time. Most people must be more concerned about fairness in detecting and handling violations. They often resented violators and wanted violators to be punished with any sanctions. Therefore, applying disciplinary action to remove the previous posts of retired/retired cadres/civil servants is also a positive signal, valuable in terms of morale, and helps to calm the anger among the people. Thereby, it indirectly expresses the clear view of the State that it will tolerate and not accept any behavior that affects the interests of the country and the people's community.

In short, removing the previous posts of retired/retired cadres/civil servants is a somewhat useful sanction. However, for this sanction to be deployed effectively and have long-term practical application, it needs to be researched and perfected so that it is not simply a sanction with only spiritual value. On that basis, the authors propose some recommendations as follows:

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<sup>54</sup> Nguyen Van Cuong, „Ensuring the stability of the legal system – an important requirement in developing and drafting legal documents” *Journal of Legislative Studies*, No. 18 (2018): 11.

First, officials/civil servants who have quit/retired and have their previous posts removed must suffer the legal consequences of having their pension and social insurance benefits reduced.

Currently, pensions of officials/civil servants are calculated according to the following formula<sup>[55]</sup>:

$$\text{Monthly pension} = (\text{Monthly pension rate}) \times \text{Average monthly salary for social insurance contributions}$$

Thus, the monthly pension that cadres/civil servants enjoy will depend on the salary they have paid social insurance premiums during their working time. To be clear, the monthly pension received by retirees will be directly proportional to their salary during their employment. Currently, Vietnam is in the stage of salary reform for cadres and civil servants. But whether before or after the reform, there is still a consensus that cadres/civil servants holding leadership positions will have higher salaries than cadres/civil servants who do not hold leadership positions, and the higher the position, the higher the salary. For example, the Ho Chi Minh City People's Council Chairman's wages range from 17,460,000 VND/month to 18,540,000 VND/month. The salary of the Vice Chairman of the Ho Chi Minh City People's Council is 10,847,200 VND/month.

Therefore, to ensure fairness and promote the value of removing the previous posts, legislators should consider directly affecting the pension level of the disciplinary person. For example, a retired Chairman of the People's Council who finds a violation and is disciplined for removing the Chairman of the People's Council should only allow a pension in office before assuming the post of Chairman of the People's Council. If the pension has already been paid, the disciplined person is responsible for refunding or deducting from the pension amount in the following months.

This reform is reasonable, consistent with the nature of discipline, and, more importantly, satisfies widespread expectations for the deterrence of sanctions. The removal of their previous posts already held shows that the disciplined person does not meet the ethical criteria and capacity to assume that office. Therefore, they are also not eligible for the pension rate applied to that leadership position.

Similarly, the calculation of social insurance benefits also depends on the salary of social insurance contributions. Therefore, the author

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<sup>55</sup> Article 7 Decree 115/2015/ND-CP detailing some articles of the social insurance law on compulsory social insurance.

recommends reducing social insurance benefits should accompany disciplinary action. The disciplined person is only entitled to an allowance calculated on the salary paid for social insurance premiums when he has yet to hold the removed position.

Second, officials/civil servants who have been removed from their previous posts will not be entitled to the privileges of the positions that have been removed. The Vietnamese State shall stipulate privileges for cadres and civil servants holding leadership positions after retirement. For example, the Chairman of the People's Council, the Chairman of the People's Committee of the province or centrally-run city, after retirement, will enjoy the privileges of health care and protection such as comprehensive health examination and examination every six months with a team of highly qualified medical staff/staff. On the one hand, this regulation expresses the gratitude of the Party, the State, and the people for the long-term contributions of cadres and civil servants to the country's development. On the other hand, it creates conditions for them to continue contributing their experience to the nation-building process. At the same time, this is also a policy to retain talents and attract people with leadership abilities.

Removing the previously held posts does not affect the enjoyment of the above privileges. It is an unreasonable point because they commit violations that affect the rights of the country and the people with whom they are disciplined. The disciplinary removal of the previous posts has expressed strong condemnation from the State and the people, who disagree and firmly expose their violations. Therefore, when disciplined, they should not enjoy privileges inherently reserved only for those devoted to their country.

Third, annulment/revocation of awards and titles awarded in connection with deleted positions. Merits, titles, and commendation decisions are expressions of personal achievements and testimony to the trust of the Party, State, and people in the rewarded individual. When disciplinary action is removed from the previous posts, it shows that the cadre/civil servant no longer has sufficient values and does not receive trust from the State and the community. Therefore, deleting and revoking titles, certificates of merit, and award decisions based on the deleted position is reasonable. Doing so creates a strong message that the State will not tolerate violations.

In short, if viewed objectively, the disciplinary form of disqualification from the position already held also has specific values. However, the legal provisions of this form of discipline have not been thoroughly studied, so



this sanction has not been effective when applied in practice. Therefore, the State must consider using the above legal consequences when enforcing the disciplinary form. This reform will help promote the deterrence of sanctions, gaining consensus from many people.

## 7 | Conclusion

Corruption is an affront to justice, thereby alienating citizens from the State. Corruption does not promote social consolidation. The alliance of the State, represented by officials and citizens, does not work; there is no common bond between them. When the rule of law and its meaning are devalued, national security is a real threat<sup>[56]</sup>.

However, despite many negative attitudes, corruption is difficult to fight worldwide<sup>[57]</sup>. Certain factors can limit corruption but cannot be eliminated. After over 35 years of innovation, Vietnam has attempted to minimize corruption problems and reassure people that the law is appropriate for fighting corruption. Unfortunately, the process of promulgating Vietnam's property regime has forgotten attention to the connotations of the financial regime, leading to a situation where sanctions are meaningless and have no deterrent or punitive value. Sanctions to remove previous posts for retired civil servants discovered to have committed corruption during their working time are a typical example. To date, Vietnamese scientists have yet to perform in-depth studies or commentary on sanctions to remove previous posts of retired civil servants; therefore, the Vietnamese State has not focused on solutions to remove the barriers of these sanctions. This article addresses the issues presented, especially the contradictions and impracticality of removing previous posts, and proposes complete solutions. Furthermore, we hope neighboring countries can use Vietnam as a research model when conducting thorough research on a similar problem.

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<sup>56</sup> A.A. Abdikalykov, S.R. Zhumagulova, „Bor'ba s korruptsiyey – glavnoye usloviye natsional'noy bezopasnosti” *Nauka i Zhizn' Kazakhstana*, No. 1. (2020): 200.

<sup>57</sup> Elena Mitskaya, „Fighting Corruption in Kazakhstan by Force of Criminal Law” *Cosmopolitan Civil Societies: An Interdisciplinary Journal*, No. 2 (2023): 1.

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