

CERTAIN LIMITATIONS AND OBSTACLES IN DETERMINING THE TRIAL JURISDICTION OF CRIMINAL CASES INVOLVING FOREIGN ELEMENTS UNDER VIETNAMESE LAW

CERTAS LIMITAÇÕES E OBSTÁCULOS NA DETERMINAÇÃO DA JURISDIÇÃO DE JULGAMENTO DE CASOS CRIMINAIS QUE ENVOLVEM ELEMENTOS ESTRANGEIROS SOB A LEI VIETNAMITA

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Abstract

The article analyzes certain limitations and obstacles in determining the trial jurisdiction of criminal cases involving foreign elements under current Vietnamese law. On the basis of studying the provisions of the 2015 Criminal Procedure Code and relevant legal documents, the article clarifies the legal basis and methods for determining the trial jurisdiction of criminal cases in cases involving foreign elements. Through the method of analyzing legal norms combined with documents, the article points out several inadequacies and legal gaps in the regulations on the trial jurisdiction of criminal cases involving foreign elements. From there, the article proposes a number of recommendations to improve legal regulations and enhance the efficiency of law application in determining the trial jurisdiction of criminal cases involving foreign elements, aiming to meet the requirements of judicial reform and international integration.

Keywords: Trial Jurisdiction. Criminal Cases. Foreign Elements. Criminal Proceedings. International Cooperation.

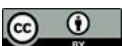
Resumo

O artigo analisa certas limitações e obstáculos na determinação da jurisdição de julgamento de processos criminais envolvendo elementos estrangeiros sob a atual legislação vietnamita. Com base no estudo das disposições do Código de Processo Penal de 2015 e de documentos legais relevantes, o artigo esclarece a base jurídica e os métodos para determinar a jurisdição de julgamento de processos criminais em casos envolvendo elementos estrangeiros. Através do método de análise das normas jurídicas combinado com documentos, o artigo aponta várias inadequações e lacunas jurídicas nos regulamentos sobre a jurisdição de julgamento de processos criminais envolvendo elementos estrangeiros. A partir daí, o artigo propõe uma série de recomendações para melhorar os regulamentos jurídicos e aumentar a eficiência da aplicação da lei na determinação da jurisdição de julgamento de processos criminais envolvendo elementos estrangeiros, com o objetivo de atender aos requisitos da reforma judicial e da integração internacional.

Palavras-chave: *Jurisdição. Processos Criminais. Elementos Estrangeiros. Processos Penais. Cooperação Internacional.*

1 INTRODUCTION

In the context of increasingly deep and wide globalization and international integration, the increase in social relations involving foreign elements has led to many



complex legal issues, including criminal cases in which the suspects, criminal acts, and criminal consequences are related to foreign elements. This reality places increasingly high demands on the criminal justice system in ensuring trial effectiveness, while simultaneously respecting national sovereignty, international treaties to which Vietnam is a member, and standards on the protection of human rights. In the process of criminal proceedings, the trial jurisdiction of the Court is of particularly important significance, not only deciding the legality of judgments and decisions but also directly affecting the legal rights and interests of suspects, defendants, and other procedural subjects. At the same time, the Court's jurisdiction to try criminal cases is also the basis for deciding the jurisdiction for investigation and prosecution, and for determining the system of procedural agencies in resolving criminal cases. For criminal cases involving foreign elements, the correct determination of trial jurisdiction becomes even more complex due to the simultaneous consideration of many factors such as the nationality of the suspect, the location where the criminal act was committed, the place of residence, territorial factors, and international commitments related to criminal jurisdiction.

The 2015 Criminal Procedure Code has established certain regulations on trial jurisdiction for criminal cases involving foreign elements. These regulations create a legal basis for the Court in determining jurisdiction according to the level of trial and territory when resolving cases involving foreign elements. However, through practical application, it shows that the determination of trial jurisdiction in these cases still has many existing limitations and obstacles, manifested in an inconsistent understanding of the criteria for identifying foreign elements and confusion in dividing jurisdiction between Court levels.

The aforementioned limitations not only affect the progress and effectiveness of trials but also harbor the risk of infringing upon human rights in criminal proceedings, while simultaneously impacting the prestige and effectiveness of the judicial jurisdiction of the Vietnamese State in the context of international integration. Therefore, researching the limitations and obstacles in determining the trial jurisdiction of criminal cases involving foreign elements under Vietnamese law is a necessary requirement, having important significance in both theory and practice. Originating from that requirement, the article focuses on analyzing the provisions of current criminal procedure law on trial jurisdiction, contrasting them with the practical application in criminal cases involving foreign elements, thereby pointing out inadequacies and proposing several

recommendations to improve the law and enhance the effectiveness of determining the trial jurisdiction of the Court in this field.

2 LITERATURE REVIEW

The issue of jurisdiction to resolve criminal cases involving foreign elements, including cases where the suspect is a foreigner, has been and is attracting the attention of scholars, judicial officials, and procedural agencies in Vietnam with many different works and research perspectives, specifically as follows:

From the perspective of textbooks and monographs, one can mention the textbooks on Vietnamese criminal procedure law from many universities specializing in law, but typical is the “Textbook on Vietnamese Criminal Procedure Law” compiled by the School of Law, Vietnam National University, Hanoi. This is a work of important significance as it analyzes all general issues of the criminal proceedings process, especially the trial jurisdiction of the court over criminal cases. Next are typical monographs, notably the work “Practice of the Power of Public Prosecution in the First-instance Trial Stage of Criminal Cases” (2021) edited by Tran Thi Lien. The work presented several theoretical issues regarding the practice of the power of public prosecution in the first-instance trial stage of criminal cases, serving as an important theoretical foundation in determining the law on trial jurisdiction. Besides, there are journal articles such as the article “Certain Experiences in Resolving Criminal Cases Involving Foreign Elements” (2015) by Dr. Mai The Bay, published in the Procuracy Journal; the author points out that the perception of foreign elements in criminal procedural practice is not yet truly thorough and emphasizes the method of selecting the applicable law for criminal cases involving foreign elements. The article “Criminal Jurisdictional Immunity from the Perspective of International Law and Vietnamese Law” (2025) by author Tran Duy Ky, published in the Legal Science Journal. In the article, the author also analyzes issues regarding the jurisdiction for resolution and trial of the Court, the compatibility between international law and Vietnamese law regarding subjects eligible for and the scope of immunity from criminal liability, as well as criminal procedural procedures for cases involving persons entitled to immunity who are offenders...

It can be seen that there have been many research works on the subject of trial jurisdiction of criminal cases involving foreign elements. However, existing studies mainly focus on professional analysis, exchange of skills, and practical experiences, with few systematic scientific works providing deep analysis of the theoretical and legal aspects of this topic. This shows that there still exists a gap in the research on the jurisdiction to resolve criminal cases involving foreign elements under current Vietnamese law. This research contributes to partially filling that gap through a systematic evaluation of legal provisions and practical experiences, and by proposing solutions for improvement.

3 METHODOLOGY

This research is conducted on the basis of combining qualitative research methods with the analysis and synthesis of secondary documents. The main research sources include current legal provisions on the trial jurisdiction of criminal cases involving foreign elements, especially the 2015 Criminal Procedure Code and guiding documents for implementation; documents and resolutions of the Party and State related to judicial reform and international integration; along with scientific research works, monographs, and practical summary reports from procedural agencies related to this field.

On that basis, the research uses methods of analysis and synthesis to clarify the content of regulations on trial jurisdiction; the comparative method to contrast legal provisions with practical application; and simultaneously applies deductive and inductive methods to generalize the limitations and obstacles arising in practice. Through this approach, the article aims to comprehensively evaluate the current legal status of the trial jurisdiction of criminal cases involving foreign elements, thereby proposing solutions to improve the law and enhance the effectiveness of application in the coming time.

4 RESULTS AND DISCUSSION

4.1 General overview of trial jurisdiction in criminal cases involving foreign elements

In the Vietnamese legal system, the term “foreign element” has been officially and relatively comprehensively recorded in several legal fields, especially civil law. According to Clause 2, Article 663 of the 2015 Civil Code, a civil relation involving foreign elements is determined when there is at least one of the following signs: the subject is a foreign individual or legal entity; the relation arises, changes, or terminates abroad; or the object of the relation is located abroad. However, in the field of criminal law and criminal procedure law, current Vietnamese law has not yet provided an official definition of a “criminal case involving foreign elements”. Nevertheless, the foreign element in the criminal field is still indirectly expressed through regulations on the scope of validity of the Criminal Code, particularly in Article 5 and Article 6 of the 2015 Criminal Code, amended and supplemented in 2025 (Tran Duy Ky, 2025). These regulations establish the legal basis for the exercise of criminal jurisdiction by the Vietnamese State over criminal acts related to foreign elements, based on the principles of territory, nationality, protection of national interests, and compliance with international treaties to which Vietnam is a member.

According to a common linguistic understanding (Mai The Bay, 2015), a criminal case involving foreign elements is a criminal case in which at least one of the components constituting the case involves a foreign element: the criminal act; the offender; the location; the physical evidence; the infringed object; etc. According to the perspective of author Mai The Bay published in the Procuracy Journal, the term “criminal case involving foreign elements” refers to a case with the following signs: A foreigner commits a crime abroad and flees to Vietnam or commits a crime in Vietnam (whether fleeing abroad or not); A Vietnamese person commits a crime abroad and flees back to Vietnam or commits a crime in Vietnam and flees abroad; A foreigner and a Vietnamese person jointly commit a crime abroad and flee back to Vietnam or jointly commit a crime in Vietnam (whether fleeing abroad or not); The victim, witness, expert witness, or person with related rights and obligations (who may be a foreigner or a Vietnamese person); Assets (money) obtained through crime and related to a foreign party; Instruments or means of crime

related to a foreign party (Mai The Bay, 2015). Also viewing the foreign element in criminal cases according to the elements constituting a crime, author Le Manh Hung argues that a criminal case involving foreign elements is a case having: “(i) The place of residence of the defendant, involved parties, or witnesses is abroad; (ii) The location of assets related to the criminal act is abroad; (iii) The location where the criminal act occurred is abroad or on a Vietnamese aircraft or sea vessel operating outside the aerial or maritime borders of Vietnam; (iv) The nationality of the defendant” (Le Manh Hung, 2020). On that basis, a criminal case involving foreign elements can be understood as a criminal case falling into one of the following instances: a crime occurring on Vietnamese territory committed by a foreigner or a foreign commercial legal entity; a crime occurring outside Vietnamese territory committed by a Vietnamese citizen or a Vietnamese commercial legal entity; or a crime committed by a foreigner or a foreign commercial legal entity outside Vietnamese territory but infringing upon the legal rights and interests of Vietnamese citizens or the interests of the Socialist Republic of Vietnam. This approach reflects the combination of national law and the basic principles of international criminal law.

According to the aforementioned understanding, the trial jurisdiction of criminal cases involving foreign elements can be understood as the sum of criminal procedure legal regulations determining which Vietnamese Court has the right to try a criminal case when that case involves the participation of a foreign subject, the criminal act occurs outside Vietnamese territory, or it is related to the criminal jurisdiction of another nation. From this viewpoint, the trial jurisdiction of criminal cases involving foreign elements bears distinct characteristics compared to ordinary criminal cases:

Firstly, the determination of trial jurisdiction for this type of case is simultaneously governed by national criminal procedure law and the principles of international law. Beside the provisions of the 2015 Criminal Procedure Code on jurisdiction according to the level of trial, territory, and type of matter, the determination of jurisdiction must also be placed in relationship with international treaties to which Vietnam is a member, as well as the principle of respecting the sovereignty and jurisdiction of other nations.

Secondly, the determination of the trial jurisdiction of criminal cases involving foreign elements is often associated with international cooperation activities in criminal proceedings. In criminal cases, trial activities cannot be separated from activities such as

extradition, mutual legal assistance in criminal matters, transfer of persons currently serving prison sentences, or collection of evidence abroad. This makes the determination and exercise of trial jurisdiction more complex, requiring close coordination between domestic procedural agencies and the competent authorities of foreign countries.

Thirdly, the determination of trial jurisdiction in these cases has a direct impact on ensuring the human rights and citizenship rights of suspects and defendants who are foreigners. Rights such as the right to a fair trial, the right to use one's language, the right to legal aid, and the right to consular protection need to be fully considered during the process of determining jurisdiction, thereby ensuring compliance with the international legal standards that Vietnam has committed to.

Correctly determining the trial jurisdiction of criminal cases involving foreign elements is of particularly important significance, ensuring the uniform application of the law, respect for national sovereignty, and the legal rights and interests of procedural subjects. Specifically:

First of all, correctly determining trial jurisdiction is a condition to ensure the legality of the entire criminal proceeding process. If trial jurisdiction is incorrectly determined, it will lead to incorrect jurisdiction for investigation and prosecution; procedural decisions will face the risk of being annulled or having no legal validity, prolonging the case resolution time and giving rise to disadvantageous legal consequences.

Secondly, correctly determining trial jurisdiction contributes to enhancing the effectiveness of the fight against and prevention of crimes in the context where crimes involving foreign elements are increasing and becoming complex.¹ Clear jurisdiction helps procedural agencies be more proactive in investigation, prosecution, and trial, while avoiding situations of shifting responsibility or overlapping jurisdiction between multiple agencies.

Thirdly, correctly determining trial jurisdiction also contributes to ensuring the legal rights and interests of foreigners participating in proceedings, thereby demonstrating the responsibility of the Vietnamese State in implementing international treaties and conventions on human rights and international judicial cooperation in criminal matters. At the same time, this also contributes to consolidating the prestige of the Vietnamese

¹ Law School - Vietnam National University, Hanoi (2023), Textbook on Vietnamese Criminal Procedure Law, Vietnam National University, Hanoi Publishing House.

judicial system and affirming the effectiveness of national criminal jurisdiction in the context of increasingly deep and wide international integration.

4.2 Current status of legal provisions on trial jurisdiction of criminal cases involving foreign elements

4.2.1 Provisions on the trial jurisdiction of criminal cases involving foreign elements

The 2015 Criminal Procedure Code has initially established a relatively comprehensive legal framework for determining trial jurisdiction over criminal cases involving foreign elements. The approach of Vietnamese legislators in this field is based on the general principle that the Court's trial jurisdiction plays a foundational role, serving as the basis for determining the investigative and prosecutorial jurisdiction of other procedural agencies. On that basis, correctly determining trial jurisdiction not only ensures the legality of the entire procedural process but also has direct significance for the effectiveness of case resolution and the guarantee of human rights and citizenship rights in criminal proceedings.

In terms of legal structure, the 2015 Criminal Procedure Code determines the trial jurisdiction of the Court based on three criteria, including jurisdiction by subject matter, territory, and person.² These criteria are designed to ensure reasonable assignment and decentralization between Court levels, while simultaneously fitting the nature and degree of complexity of each type of case. For criminal cases involving foreign elements, the foreign element is not stipulated as an independent criterion but is integrated with specific signs associated with the three aforementioned criteria, such as: procedural participants being abroad, assets related to the case being located outside Vietnamese territory, the criminal act being committed outside Vietnamese territory, or the case being related to subjects who are foreigners or foreign commercial legal entities.

On that basis, Points (d) and (dd), Clause 3, Article 268 of the 2015 Criminal Procedure Code stipulate that criminal cases in which the crime was committed outside the territory of the Socialist Republic of Vietnam; or where the defendant, victim, or involved parties are abroad, or assets related to the case are abroad, fall under the first-

² University of Procuracy (2016), *Textbook on Vietnamese Criminal Procedure Law*, National Political Publishing House – Truth.

instance trial jurisdiction of Provincial-level People's Courts. This regulation clearly demonstrates the legislative orientation of centralizing the jurisdiction to resolve cases involving foreign elements in the highest-level Courts during the first-instance trial stage (Tran Xuan Thien An, 2021). This approach stems from the fact that cases involving foreign elements often possess a more complex nature than purely domestic cases, not only in legal aspects but also in terms of collecting evidence, verifying identities, handling assets, and coordinating with foreign competent authorities through the mechanism of international cooperation in criminal matters. Entrusting trial jurisdiction to Provincial-level People's Courts is expected to ensure the professional expertise, practical experience, and necessary organizational conditions to effectively resolve these cases. Besides, Clause 2, Article 269 of the 2015 Criminal Procedure Code stipulates trial jurisdiction for cases where the defendant committed a crime outside Vietnamese territory but is prosecuted and tried in Vietnam. According to this regulation, the Provincial-level People's Court of the defendant's last domestic place of residence has jurisdiction. In cases where the defendant's last place of residence cannot be determined, the Chief Justice of the Supreme People's Court decides to assign one of the three People's Courts of Hanoi, Ho Chi Minh City, or Da Nang to try the case. This provision shows a certain flexibility of criminal procedure law in handling specific situations arising when criminal acts occur outside the national territory, while still ensuring uniformity in the trial system through the coordinating role of the central judicial authority.

Simultaneously, the 2015 Criminal Procedure Code also determines the trial jurisdiction of criminal cases involving foreign elements through a method of exclusion. Accordingly, cases that do not fall under the trial jurisdiction of Regional-level People's Courts (District-level), such as crimes infringing upon national security or crimes committed outside the territory of the Socialist Republic of Vietnam, automatically fall under the trial jurisdiction of Provincial-level People's Courts. This method of regulation contributes to ensuring uniformity in the demarcation of jurisdiction, while avoiding situations where lower-level Courts must resolve cases that exceed their legally prescribed capabilities, conditions, and authority. The 2015 Criminal Procedure Code also dedicates Article 270 to separately regulate trial jurisdiction for cases where crimes occur on Vietnamese aircraft or sea vessels operating outside Vietnamese airspace or territorial waters. This is a specific type of case governed simultaneously by national law and the principles and practices of international aviation and maritime law. The separate

regulation of trial jurisdiction in this case shows the effort of Vietnamese legislators to approach modern criminal jurisdictional principles, while affirming the criminal jurisdiction of the Vietnamese State over means of transport carrying Vietnamese nationality operating outside the territory.

Furthermore, for Regional-level (District) Courts, based on the scope of criminal cases involving foreign elements under the jurisdiction of Provincial-level Courts as mentioned above and based on the spirit of Article 268, Clause 1 of the Criminal Procedure Code, Regional-level Courts have the jurisdiction to resolve criminal cases involving foreign elements that possess the following basic characteristics: First, the crime is committed in Vietnam; Second, it is a "less serious crime, serious crime, or very serious crime" that does not fall under the jurisdiction of the Provincial-level Court; Third, there are defendants, victims, or involved parties who are individuals with foreign nationality residing legally in Vietnam as permanent residents or granted temporary residence cards according to law, or there are involved parties who are foreign organizations with headquarters in Vietnam; Fourth, during investigation, prosecution, and trial, the investigative agency, the procuracy, and the court do not have to establish a dossier requesting foreign mutual legal assistance for the service of procedural documents or collection of evidence (Le Manh Hung, 2020).

Thus, it can be seen that the provisions of the 2015 Criminal Procedure Code on the trial jurisdiction of criminal cases involving foreign elements have been stipulated and have become an important legal basis for the activities of procedural agencies. However, these regulations still reveal certain gaps and limitations, requiring continued research and improvement to meet the requirements of the fight against crime in the context of increasingly deep international integration.

Despite the fact that the 2015 Criminal Procedure Code has built a relatively complete legal framework on the trial jurisdiction of criminal cases involving foreign elements, practical application shows that determining trial jurisdiction for this type of case still faces many limitations, difficulties, and obstacles. According to reports from Police units and localities, from the beginning of 2023 to September 2024, there were 343 cases nationwide with 461 foreign subjects committing criminal acts on Vietnamese territory. The criminal acts of foreign subjects are very diverse, mainly in major cities and localities with many industrial parks, famous tourist spots, and many foreigners living and doing business (Tran Thuy, 2024). It can be seen that the characteristic of cases

involving foreign elements is their complexity when the offender is a foreigner, requiring interpreters, mutual legal assistance to verify identities, service of documents, and determination of consequences and damages... However, the current Criminal Procedure Code still has some limitations and inadequacies in identifying the foreign element in criminal cases; determining jurisdiction and guiding the procedural sequence for specific criminal cases involving foreign elements, such as:

Firstly, current criminal procedure law has not yet established an official and unified legal definition of a “criminal case involving foreign elements”. Unlike the civil field, the criminal field has only approached the foreign element through fragmented regulations on jurisdiction and the scope of application of criminal law. Guiding the identification of the “foreign element” in a criminal case is extremely important in demarcating procedural jurisdiction in general and trial jurisdiction in particular, limiting the unnecessary transferring of criminal cases back and forth between procedural agencies. The absence of these principled regulations leads to the consequence that procedural agencies must interpret and identify cases involving foreign elements based on perception and practical experience, thereby giving rise to inconsistency in law application. In many cases, just the appearance of one factor related to a foreign country, even if that factor is not decisive for resolving the case, still results in the case being identified as involving foreign elements and being transferred to the trial jurisdiction of the Provincial-level Court. This leads to the underutilization of the “procedural powers” of first-instance Courts, especially when forming Regional-level Courts to replace the old District-level People's Courts.

Secondly, the regulation in Point (b), Clause 2, Article 268 of the 2015 Criminal Procedure Code uses the term “defendant, victim, or involved parties are abroad” but has not clarified the legal criteria to determine the status of “being abroad” (Tran Xuan Thien An, 2021). In reality, this concept can be understood in many different ways. The first type of view argues that the phrase “being abroad” is used to refer to the permanent and primary place of residence of the defendant, victim, or involved parties in the criminal case before they were present in Vietnam. This means that before committing the crime, the defendant might have had a period of short-term temporary residence in Vietnam or illegal residence in Vietnam (entering Vietnam illegally; expired visa without extension due to failure to meet legal requirements...). The same method is applied to determine whether the victim or involved parties are truly “abroad”. Conversely, the second type of

view argues that the suspect, defendant, victim, or involved parties “abroad” are those who have foreign nationality or have Vietnamese nationality but are not present in Vietnam during the Court’s trial process (Le Manh Hung, 2020). The lack of specific guidance has led to inconsistent application among procedural agencies. There are cases where a procedural participant only exits the country for a short term for purposes of study, work, or tourism but is still considered “abroad”, thereby changing the trial jurisdiction of the case. This lack of clarity causes confusion for procedural agencies right from the prosecution stage, affecting the timely and accurate determination of jurisdiction for investigation, prosecution, and trial.

Thirdly, determining trial jurisdiction for cases where the criminal act occurs outside Vietnamese territory but is tried in Vietnam still faces many difficulties in practice. Although Clause 2, Article 269 of the 2015 Criminal Procedure Code has stipulated quite specifically the trial jurisdiction in this case, the application of this regulation in reality is not always favorable. For Vietnamese citizens living and working long-term abroad, determining the last domestic place of residence often encounters many obstacles due to the lack of complete information or fluctuations in residence over a long period. For foreigners, this issue is even more complex when they do not have a stable place of residence in Vietnam. In cases where the last place of residence cannot be determined, having to seek the opinion and wait for the decision of the Chief Justice of the Supreme People's Court, while ensuring uniformity in the trial system, also prolongs the procedural process, affecting the effectiveness of case handling and the requirement for timeliness in the fight against crime.

Fourthly, in the context where transnational criminal cases are increasingly rising, the relationship between determining trial jurisdiction and international cooperation activities in criminal proceedings is becoming increasingly close. However, the 2015 Criminal Procedure Code still has gaps in linking jurisdiction regulations with mechanisms for mutual legal assistance, extradition, and the transfer of persons serving sentences. In many cases, although the Vietnamese Court legally has trial jurisdiction, the enforcement of this jurisdiction depends greatly on the ability to cooperate with foreign competent authorities. When the international cooperation mechanism is not operated effectively or encounters obstacles, the determination and exercise of the trial jurisdiction of Vietnamese Courts become formalistic and lack feasibility in practice.

From the above analyses, it can be seen that the limitations, difficulties, and obstacles in the practice of determining the trial jurisdiction of criminal cases involving foreign elements are not merely issues of legislative technique but also reflect the systemic challenges of Vietnamese criminal proceedings in the context of international integration. This is also the important practical basis that sets the requirement to continue improving the law and enhancing the effectiveness of law application in this field.

4.2.2 *Certain causes*

Firstly, it originates from the fact that Vietnamese criminal procedure law has not yet established a unified and orienting concept of a “criminal case involving foreign elements.” The absence of this concept causes the foreign element in criminal proceedings to be recognized only through fragmented and scattered signs in specific articles on jurisdiction and the scope of application of criminal law. Consequently, in practice, procedural agencies have to rely heavily on subjective interpretation to determine whether or not a case involves foreign elements, especially in cases where many factors overlap between domestic and foreign aspects. This creates a lack of consistency in law application, reducing the predictability and stability of the mechanism for determining trial jurisdiction.

Secondly, some provisions of the 2015 Criminal Procedure Code on the trial jurisdiction of criminal cases involving foreign elements are still general, primarily stopping at listing cases that fall under the trial jurisdiction of Provincial-level People's Courts. These regulations have not clarified the criteria for evaluating the degree of the foreign element in the case, nor have they distinguished between cases where the foreign element is of decisive significance and cases where it is merely auxiliary. This lack of specificity makes identifying the case right from the prosecution stage difficult, leading to situations where trial jurisdiction must be adjusted or changed during the procedural process, affecting the progress and effectiveness of case resolution.

Thirdly, limitations in determining trial jurisdiction are also significantly influenced by the practice of international cooperation in criminal proceedings. Activities such as mutual legal assistance, extradition, transfer of persons serving sentences, and collection of evidence abroad depend largely on differences in legal systems, procedural sequences, and perspectives on sovereignty among nations. In many cases, delays or the

inability to fulfill mutual legal assistance requests have disrupted the procedural process, placing Vietnamese procedural agencies in a difficult position in determining and exercising trial jurisdiction in a substantive manner. This shows that determining trial jurisdiction is not only an internal issue of national law but is also closely tied to the effectiveness of international cooperation mechanisms.

Besides, the causes of the limitations and obstacles also stem from human factors and the conditions for organizing law enforcement. The professional capacity, practical experience, and ability to handle cases involving foreign elements of a portion of procedural officers are currently still not high. While criminal cases involving foreign elements often require comprehensive knowledge of international law, foreign law, foreign languages, and interdisciplinary coordination skills, intensive training and fostering in this field have not yet fully met practical requirements. This increases confusion in applying regulations on trial jurisdiction, especially for complex cases with many participating subjects and multiple different crime locations.

From the above analyses, it can be seen that the limitations, difficulties, and obstacles in determining the trial jurisdiction of criminal cases involving foreign elements are the consequence of both legal factors and organizational factors in implementation. Correctly and fully identifying these causes is of important significance, serving as a scientific basis for proposing solutions to improve the law and enhance the effectiveness of law application in the coming time.

4.3 Certain recommendations to improve the law on trial jurisdiction of criminal cases involving foreign elements

Firstly, it is necessary to supplement and complete the legal concept of a “criminal case involving foreign elements” in criminal procedure law. Stemming from the lack of a unified and orienting concept, the Criminal Procedure Code needs to officially record the concept of a “criminal case involving foreign elements,” on the basis of inheriting the approach of the Civil Code with adjustments suitable to the specifics of the criminal field (Tran Xuan Thien An, 2021). This concept needs to clarify basic groups of foreign elements, such as subject factors (foreign individuals, foreign legal entities), spatial factors (criminal acts occurring outside Vietnamese territory), and object factors (related assets, legal rights, and interests abroad), while simultaneously distinguishing between

decisive foreign elements and auxiliary foreign elements to demarcate trial jurisdiction between Court levels; regulations in the legal system must be capable of responding to social relations arising in the future, ensuring there are sufficient necessary institutions (Vo Khanh Vinh, 2023). Establishing this concept will not only contribute to unifying perception but also limit the mechanical determination of trial jurisdiction, which leads to the unnecessary transfer of cases to Provincial-level Courts.

Secondly, it is necessary to specify the criteria for identifying foreign elements associated with trial jurisdiction in the 2015 Criminal Procedure Code. To overcome limitations from regulations that are still general, the law needs to supplement specific instructions on the degree and legal significance of the foreign element in determining trial jurisdiction. Regarding the regulation in Point (b), Clause 2, Article 268 of the 2015 Criminal Procedure Code, it is necessary to clarify the criteria for determining the status of “being abroad,” in the direction of specifically distinguishing between stable, long-term residence and temporary, short-term exit; and between absence from Vietnam throughout the entire procedural process and cases of absence only at a certain point in time. Specifying these criteria will contribute to overcoming inconsistent application, while ensuring that the demarcation of trial jurisdiction is carried out accurately right from the prosecution stage.

Thirdly, improve the regulations on trial jurisdiction for cases where the criminal act occurs outside Vietnamese territory in a more flexible and feasible direction. Facing difficulties in determining the last domestic place of residence of the defendant according to Clause 2, Article 269 of the 2015 Criminal Procedure Code, the law needs to research and supplement alternative or supporting criteria, such as the place of permanent residence registration, the place with the closest personal relationships, or the place most favorable for collecting evidence and ensuring the right to defense. Simultaneously, a more reasonable decentralization mechanism in deciding the Court with trial jurisdiction should be considered, limiting the need to seek opinions from multiple levels and prolonging procedural time, while still ensuring uniformity in the trial system.

Fourthly, strengthen the link between regulations on trial jurisdiction and the mechanism for international cooperation in criminal proceedings (Nguyen Thi Ly, 2018). To overcome the gap between trial jurisdiction on a legal level and the possibility of enforcement in practice, it is necessary to continue reviewing and completing the provisions of the 2015 Criminal Procedure Code and the Law on Mutual Legal Assistance

in the direction of clarifying the relationship between trial jurisdiction and activities of mutual legal assistance, extradition, and the transfer of persons serving sentences. Parallel to that, it is necessary to promote the negotiation and signing of specialized international treaties on extradition, transfer of sentenced persons, and cooperation in criminal proceedings, especially with countries having frequent economic, political relations, and people-to-people exchanges with Vietnam. This is an important condition to ensure that the trial jurisdiction of Vietnamese Courts does not only exist in name but can be effectively implemented in practice.

Fifthly, enhance the capacity of the team of procedural officers in resolving criminal cases involving foreign elements. Associated with the cause from human factors, emphasis should be placed on intensive training and fostering for procedural officers regarding international law, comparative law, international cooperation skills, and legal foreign languages. At the same time, strengthen the summarization of trial practice, and issue case laws and professional guidelines related to determining the trial jurisdiction of criminal cases involving foreign elements, thereby creating a unified reference basis for procedural agencies throughout the country.

Thus, solutions to improve the law on trial jurisdiction of criminal cases involving foreign elements need to be built on the basis of correctly and fully identifying the causes of current limitations and obstacles. Only when these solutions are deployed synchronously in both legislation and organization of implementation will the determination of trial jurisdiction truly become unified, effective, and meet the requirements of Vietnamese criminal proceedings in the context of international integration.

5 CONCLUSION

Determining the trial jurisdiction of criminal cases involving foreign elements plays an important role in ensuring the effectiveness of case resolution, exercising national sovereignty, and meeting the requirements of international integration. Vietnamese criminal procedure law has initially formed a legal framework regulating this issue, but practical application still reveals certain limitations, especially the lack of consistency in identifying foreign elements, the criteria for determining jurisdiction, and the connection with international cooperation activities in criminal proceedings.

Improving the law on trial jurisdiction of criminal cases involving foreign elements in a clear, synchronous manner and in accordance with international practices is a necessary requirement to enhance the feasibility of the law, ensure human rights, and contribute to enhancing the effectiveness of the fight against crime in the context of globalization.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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