

The Reflection of International Standards for Ensuring the Right to Freedom and Personal Security in Current Vietnamese Criminal Procedure Code

NGUYEN, THI KIM CUC*

ABSTRACT The right to freedom and personal security is a fundamental human right that can be found in a plethora of international and regional instruments. Firstly, this right is enshrined in the Universal Declaration of Human Rights, as articulated in Article 3, which states that everyone has the right to liberty and security of person. Additionally, other treaties have acknowledged the right to freedom and personal security, including but not limited to the ASEAN Human Rights Declaration and the International Covenant on Civil and Political Rights. In addition to the principle of equality, freedom and personal security are widely regarded as values of democracy, and contemporary Vietnamese society has the task of effectively reconciling and striking a balance between these three elements in a rational manner. This article aims to examine Vietnam's implementation of the commitment to ensure the right to freedom and personal security in human rights treaties to which it is a member. This implementation originated from the principle of pacta sunt servanda, which states that governments have a responsibility to comply with international treaties. Using the analysis and synthesis method, this article focuses on studying international standards that guarantee the right to freedom and personal security, as well as the relevant provisions of the current Vietnamese Criminal Procedure Code. This study employs a comparative method to illustrate how the current Vietnamese Criminal Procedure Code reflects international standards for the right to freedom and personal security. As a result, some findings and initial discussions are highlighted to enhance the effective implementation of ensuring and enhancing the right to freedom and personal security, with the aim of building a rule-of-law state.

KEYWORDS *freedom, personal security, international standards, Vietnam, criminal proceedings*

1. Introduction

The right to freedom and personal security is one of the most fundamental human rights, due to the fact that this right belongs to first-generation rights. This generation encompasses civil and political rights, which emerged as a

* PhD student, University of Pécs; Faculty of Law, Doctoral School of Law; lecturer, Ho Chi Minh City University of Law, Vietnam.

theory during the seventeenth and eighteenth centuries¹. At that time, people began to recognize that the all-powerful rulers should not be allowed to do certain things, and that they should have some influence over the policies that affected them². In other words, it is advocated to limit rulers' powers, preventing abuses and injustices. Additionally, the importance of individual rights and freedoms should be emphasized. Therefore, the right to freedom and personal security became a central idea for the generation of this right, aiming to grant every person the freedom to make independent decisions and request others to respect them.

The right to freedom and personal security holds significant relevance not only because of its association with the first generation of human rights, but also because it is a main part of human dignity. Accordingly, human dignity, although there is no unified definition, has been considered one of the moral foundations and legal values. Indeed, human beings cannot live without dignity and the right to freedom and personal security ensures that individuals can live without fear of oppression, violence or arbitrary interference. To put it briefly, this right is acknowledged to prevent arbitrary deprivation since freedom is of human nature³. Individuals have the right to freedom, which prohibits arrest and detention unless legally mandated. Meanwhile, the right to personal security protects individuals from physical and psychological harm, maintaining their safety by requiring the states to take reasonable measures. These rights affirm the inherent worth of every person, contributing to a humane society. In essence, the right to freedom and personal security is integral to ensure that individuals can live with dignity, free from fear and arbitrariness.

Among human rights, the most often raised one in criminal proceedings is the right to freedom and personal security. Interference with this right certainly causes considerable suffering because it is the most serious measure of coercion permitted both by domestic and international criminal procedure laws and by the international human rights instruments⁴. In the context of crime control, the authorities regularly and legitimately refer to this right when implementing some specific measures or penalties, such as detention and imprisonment. Detention, in some criminal proceedings, is taken to ensure that defendants are

¹ Patricia Brander, Ellie Keen, Vera Juhász, Annette Schneider, *COMPASS Manual for Human Rights Education with Young People* (Council of Europe, 2023), 403.

² Patricia Brander, Ellie Keen, Vera Juhász, Annette Schneider, *COMPASS Manual for Human Rights Education with Young People*, 403.

³ Antony Flew, "Freedom and Human Nature," *Philosophy* 66, no. 255 (1991): 53, <https://www.jstor.org/stable/3751141>.

⁴ Stefan Trechsel, *Human Rights in Criminal Proceedings* (Oxford University Press, 2006), 407.

brought to justice⁵ and imprisonment is used as a form of punishment in every country⁶, including Vietnam.

Vietnam, in its pursuit of establishing a rule-of-law state, clearly identifies that freedom and personal security, in addition to equality, are fundamental values of democracy. Therefore, the strategies and policies issued by the Vietnamese government must be based on the requirement of balancing these elements in a reasonable manner. Given that Vietnam is a signatory to numerous international and regional legal documents that recognize the right to freedom and personal security, the primary objective of this article is to examine Vietnam's implementation of the commitment to ensure the right to freedom and personal security. This obligation originates from the principle of *pacta sunt servanda* in international law when any nation decides to become a member of any international treaties. When it comes to the Vietnamese legal framework in criminal proceedings, the provisions of the 2015 Vietnamese Criminal Procedure Code will be the focus. Some findings and initial discussions will be outlined at the end of this article to enhance the effective implementation of this right in Vietnam.

2. Methodology

This article uses a combination of different research methods to examine Vietnam's implementation of the commitment to ensure the right to freedom and personal security in human rights treaties to which it is a member. Firstly, Part III uses the analysis and synthesis method to clarify the international standards that guarantee the right to freedom and personal security. By using the same method, Part IV will present provisions of the current Vietnamese Criminal Procedure Code that protect this right. Using the comparative method, Part V will assess how well the current Vietnamese Criminal Procedure Code complies with the right to freedom and personal security. Consequently, initial discussions to enhance the effectiveness of the enforcement of the right to freedom and personal security will also be presented in this Part.

3. International standards for the right to freedom and personal security

3.1 Prior to the introduction of the Universal Declaration of Human Rights

Being a human right affecting the vital elements of an individual's physical freedom and security, the right to freedom and personal security can be tracked

⁵ Božidar M. Banović, Vince Vari, Dragana S. Čvorović, "Detention in the Criminal Procedure Legislation of Hungary," *Strani pravni život* 66, no. 4 (2022): 431, https://doi.org/10.56461/SPZ_22405KJ.

⁶ "Module 6: Prison Reform – Introduction and learning outcomes," E4J University Module Series: Crime Prevention and Criminal Justice, United Nations Office on Drugs and Crime, accessed August 17, 2024, <https://www.unodc.org/e4j/zh/crime-prevention-criminal-justice/module-6/key-issues/1--introducing-the-aims-of-punishment--imprisonment-and-the-concept-of-prison-reform.html>.

back to the 1215 Magna Carta, which is known as the Great Charter of Liberties⁷. As considered the UK's most precious gift to mankind when creating a strong inspiration for the US Constitution and many other countries' constitutions in the world⁸, Art. 39 of this Charter states that no free person can be imprisoned or arrested except under the law of their equals and the law of the state.⁹ This implies that the king and his government was not above the law any longer.¹⁰ In other words, the Charter prevented the king from exploiting his power and granted rights and liberties to "free men". In this case, free men refer to freeholders of feudal law who were those further up the social scale such as the barons, knights, churchmen and merchants.¹¹ Although the Magna Carta only granted rights and liberties to a limited group of people, it required that arrest or detention must be lawful and safeguarded the individuals against the excesses of their governor. This is seen as the first foundation of the right to freedom and personal security.

The 1679 Habeas Corpus Act further established protection against arbitrary arrest and detention in the 17th century, following the Magna Carta. "Habeas Corpus" in Latin signifies "you may have the body" and serves as a safeguard against unlawful imprisonment and determines the legality of a person's detention.¹² Anyone, including officials, who detained a prisoner, had to show that this detention was legal. As stated by Amanda L. Tyler, this Act accomplished two very important things: it not only imposed substantial limitations on the scope of lawful detention by the executive, but it also dramatically curtailed judicial discretion.¹³

The right to freedom and personal security was further developed, and its scope of application widened after the French Revolution. Accordingly, the 1789 Declaration of the Rights of Man and of the Citizen, inspired by the 1776

⁷ The Preamble, Magna Carta 1297.

⁸ Do Trong Tuan, "Magna Carta Libertatum and its value," *Industry and Trade Magazine*, January 25, 2021, <https://tapchicongthuong.vn/magna-carta-va-gia-tri-doi-voi-lich-su-nhan-loai-78180.htm#:~:text=Magna%20Carta%20l%C3%A0%20m%E1%BB%99t%20v%C4%83n,nh%C3%B3m%20qu%C3%BD%20t%E1%BB%99c%20n%E1%BB%95i%20lo%E1%BA%A1n.>

⁹ Valeriy Dmytrovych Pcholkin, Olena Valeriivna Fedosova, Liubov Vyacheslavna Kotova, Valentina Alexandrovna Merkulova, "International Standards for Ensuring the Right to Liberty and Personal Security in Criminal Proceedings of Ukraine," *Amazonia Investiga* 9, no. 29 (2020): 252, <https://doi.org/10.34069/AI/2020.29.05.28>.

¹⁰ "Magna Carta", UK Parliament, accessed August 19, 2024, <https://www.parliament.uk/magnacarta/>.

¹¹ William Cox, "Magna Carta and the Law," *The Western Australian Jurist* 6 (2015): 211, <https://classic.austlii.edu.au/au/journals/WAJurist/2015/7.pdf>.

¹² "Habeas Corpus Act of 1679," Produce the body, SLP, accessed August 9, 2024, <https://blog.umd.edu/slaverylawandpower/habeas-corpus-act-of-1769/>.

¹³ Amanda L. Tyler, "A Second Magna Carta: The English Habeas Corpus Act and the Statutory Origins of the Habeas Privilege," *Notre Dame Law Review* 91 (2016): 1972, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2849615.

American Declaration of Independence,¹⁴ was released and the right to freedom and personal security was referred to in Art. 7. In this case, the guarantee of this right is of a higher order. Initially, similarly to the previous documents, liberty and personal security was explained by stating that no man may be accused, arrested or detained except in the cases determined by the law and following the procedure that it has prescribed. Following this statement, Art. 7 outlines the consequences of such arbitrariness. Anyone who solicits, expedites, carries out or causes arbitrary orders to be carried out must be punished.

In summary, the right to freedom and personal security is a natural and fundamental right for every person. Prior to its enshrinement in various international and regional legal documents related to human rights, some legal documents that played a significant role in the development of human rights perceived this right as a basic human right.

3. 2 International and regional legal documents

The first legal reference to the right to freedom and personal security, at the international level, is found in Art. 3 of the 1948 Universal Declaration of Human Rights (UDHR). Accordingly, everyone has the right to freedom and security of person. To understand more details, Art. 3 should be seen in the context of Art. 9 of the UDHR, which states that no one shall be the subject of arbitrary arrest, detention or exile.¹⁵ Despite the brief description of Art. 9, this provision serves as the initial legal articulation of the right to freedom and personal security. To ensure that individuals enjoy the right to freedom and personal security, Art. 9 prohibits arbitrary arrest, detention, or exile. In addition to Art. 9, when it comes to the right to freedom of human body, Art. 10 (right to fair public hearing), Art. 11 (right to be considered innocent until proven guilty) and Art. 13 (right to free movement in and out of a country) also can be referred to as the extended description.

Even though the right to freedom and personal security is described by means of a short provision, it has since been further elaborated upon by a number of human rights instruments at the international and regional levels, such as the 1966 International Covenant on Civil and Political Rights (ICCPR),¹⁶ the 1950 European Convention on Human Rights (ECHR),¹⁷ the 1969 American Convention on Human Rights (ACHR),¹⁸ the 1981 African Charter on Human

¹⁴ “The Declaration of the Rights of Man and of the Citizen,” Élysée, accessed August 15, 2024, <https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen#:~:text=In%20its%20preamble%20and%20its,principle%20of%20separation%20of%20powers.>

¹⁵ Gudmundur Alfredsson and Asbjørn Eide, *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Kluwer Law International, 1999), 89.

¹⁶ Art. 9, ICCPR.

¹⁷ Art. 5 ECHR.

¹⁸ Art. 7 ACHR.

and Peoples' Rights (Banjul Charter),¹⁹ the 1998 Asian Human Right Charter (AHRC)²⁰ and the United Nations General Assembly Resolution 43/173 of 9 December 1988 on the Principles for the Protection of All persons under any forms of Detention or Imprisonment and others (the UN General Assembly Resolution 43/173). These documents serve as the foundation for comprehending the essence and scope of the right to freedom and personal security, playing a crucial role in safeguarding and advancing this fundamental human right. Depending on the nature of these legal documents, they may or may not be legally binding for countries, including Vietnam.

3. 3 Vietnam and relevant international standards for the right to freedom and personal security

Vietnam is considered an Asian country with positive strategies and actions in the recognition, protection and promotion of human rights as it is a member of many core human rights treaties and other human rights legal instruments.²¹ Within the scope of the right to freedom and personal security, some legal documents should be taken into account, including ICCPR, AHRC, the UN General Assembly Resolution 43/173 and the ASEAN Human Rights Declaration (AHRD). Among these documents, the ICCPR is the only document which is legally binding on Vietnam due to the fact that Vietnam has been a member state of the ICCPR since 1982.²² Regarding AHRC, despite expectations that this document would be a landmark document in the advance of human rights in the Asian Pacific region,²³ this document is not legally binding.²⁴ It appears that countries in this region have forgotten the existence of this document since its introduction in 1998, as observed. Similarly, the AHRD, adopted by ASEAN in 2012, does not contain a commitment binding on ASEAN States.²⁵ This implies that ASEAN members are not required to

¹⁹ Art. 6 Banjul Charter.

²⁰ Art 14.2 AHRC.

²¹ "Vietnam deserves to be an active and responsible member of United Nations Human Rights Council", Nhandan, accessed August 16, 2024, <https://special.nhandan.vn/vietnam-deserves-en/index.html>.

²² "Enhancing the effective implementation of the International Covenant on Civil and Political Rights", Foundation Office Vietnam, accessed August 18, 2024, <https://www.kas.de/en/web/vietnam/veranstaltungsberichte/detail/-/content/enhancing-the-effective-implementation-of-the-international-covenant-on-civil-and-political-rights>.

²³ "Asian Human Rights Charter (1998)", Resources, UCLG Committee, accessed August 20, 2024, [https://www.uclg-cisdp.org/en/documents/asian-human-rights-charter-1998#:~:text=Landmark%20document%20in%20the%20advance,\(South%20Korea\)%20in%201998](https://www.uclg-cisdp.org/en/documents/asian-human-rights-charter-1998#:~:text=Landmark%20document%20in%20the%20advance,(South%20Korea)%20in%201998).

²⁴ "Legal protection of human rights," Council of European Portal, accessed August 17, 2024, <https://www.coe.int/en/web/compass/legal-protection-of-human-rights>.

²⁵ Nicholas Doyle, "The ASEAN human rights declaration and the implications of recent Southeast Asian Initiatives in Human Rights Institution – Building and Standard-

guarantee the rights mentioned in the text. However, the AHRD could be a significant development for human rights in this region as a source of soft law,²⁶ and it could be the basis for legally binding human rights instruments in the future of the ASEAN.²⁷ This is the same as what the UDHR has accomplished for the international and regional human rights instruments since its introduction in 1948.

The ICCPR elaborates on Art. 9 of the UDHR's right to freedom and personal security in Art. 9, 10, 11, and 12.4. While Art. 10 and 11 serve as further clarification of Art. 9 of the ICCPR, Art. 12.4 reaffirms a partial content of Art. 9 of the UDHR. It is particularly important to pay attention to Art. 9 since it establishes certain procedural guarantees and minimum standards for protection against arbitrary arrest and detention. Accordingly, the liberty of the individual is not absolute. In other words, Art. 9 of the ICCPR is not an international legal basis that protects individuals from arrest or detention in all cases, and the deprivation of liberty for individuals who have seriously violated the laws and regulations has always existed. These deprivations will remain a legitimate means for states to control individuals within their jurisdiction.

Art. 9 of the ICCPR ensures the lawfulness and non-arbitrariness of arrest and detention, both in content and procedural perspectives. This provision requires state members, including Vietnam in this case, to uphold a set of standards to safeguard and advance the right to freedom and personal security. These standards include: (i) ensuring lawfulness and prohibiting arbitrariness in arrest and detention; (ii) providing information to the arrested persons; (iii) protecting the rights of those arrested and detained; (iv) reviewing the lawfulness of detention; and (v) providing compensation for unlawful arrest and detention. Each paragraph of Art. 9 of the ICCPR presents the aforementioned standards in turn.

3. 3. 1 Ensuring lawfulness and prohibiting arbitrariness in arrest and detention

As mentioned above, the right to freedom and personal security is not an absolute right. Paragraph 1 clearly states the two premissible limitations on this right: (i) the deprivation of liberty should be in accordance with procedures as are established by law, and (ii) the nature of law and its enforcement should not be arbitrary. This means that arrest and subsequent detention must be authorized and fully regulated by law. To do this, the law shall state clearly both the grounds for arrest and detention and the procedure for carrying them out.

setting,” *International And Comparative Law Quarterly* 63, no.1 (2014): 81, <https://doi.org/10.1017/S0020589313000390>.

²⁶ Nicholas Doyle, “The ASEAN human rights declaration and the implications of recent Southeast Asian Initiatives in Human Rights Institution”, 81.

²⁷ Edmund Bon Tai Soon and Umavathni Vathanaganthan, *A Decade of the ASEAN Human Rights Declaration- The AHRD in Disuse and ASEAN's Inability to Take Human Rights Seriously* (Friedrich Naumann Foundation, 2023), 6.

Within the ICCPR, while the following paragraphs of Art. 9 outline the criteria for the legality of the arrest and detention procedure, the grounds for arrest and detention are not regulated.

There has been debate over the definition of "arbitrary," with no support for ideas such as "illegal," "unjust," or "both illegal and unjust."²⁸ While an illegal arrest or detention is almost always arbitrary, an arrest or detention that is in accordance with the law may nevertheless be arbitrary.²⁹ After considering many proposals, the following definition of the term "arbitrary" has been adopted by the Committee, which was appointed to prepare a study on the right of everyone to be free from arbitrary arrest, detention, and exile.³⁰ An arrest or detention is arbitrary if it is (a) on grounds or in accordance with procedures other than those established by law or (b) under the provisions of a law, the purpose of which is incompatible with respect for the right to liberty and security of person.³¹ Obviously, "arbitrary" is not synonymous with "illegal" and the former has a broader meaning than the latter. In other words, the scope of arbitrariness is understood more broadly than just being limited to the scope of legal regulations.

Even though the definition of the term "arbitrary" was released, the exact meaning of "arbitrary" should be established on a case-by-case basis, taking into account all relevant circumstances. For example, in *Taright v. Algeria*, it is agreed that arbitrariness should not be synonymous with breaking the law, but rather requires a broader interpretation that encompasses elements of inappropriateness, injustice, lack of predictability and illegality.³² Similarly, in *Van Alphen v. the Netherlands*, arbitrariness is not to be equated with against the law.³³ However, the UN Human Rights Committee clarifies arbitrariness in this case by mentioning three elements: inappropriateness, injustice, and lack of predictability.³⁴ In conclusion, no matter the number of factors involved, it is evident that lawful detention must be reasonable in all aspects. This reasonableness should be evaluated based on the necessity of the detention, to prevent situations where the person detained, if not detained, would engage in activities that could disrupt the case handling process, such as flight, interference with evidence or the recurrence of crime.³⁵ Furthermore, in any

²⁸ UN Commission on Human Rights, *Study of the right of everyone to be free from arbitrary arrest, detention and exile* (Department of Economic and Social Affairs, 1964), 6.

²⁹ UN Commission on Human Rights, *Study of the right of everyone to be free from arbitrary arrest, detention and exile*, 7.

³⁰ UN Commission on Human Rights, *Study of the right of everyone to be free from arbitrary arrest, detention and exile*, 1.

³¹ UN Commission on Human Rights, *Study of the right of everyone to be free from arbitrary arrest, detention and exile*, 7.

³² Abdelhamid Taright et al. v. Algeria, Communication No. 1085/2002, U.N. Doc. CCPR/C/86/D/1085/2002 (2006), para 8.3.

³³ Van Alphen v. the Netherlands (Communication No. 305/1988), para 5.8.

³⁴ Van Alphen v. the Netherlands (Communication No. 305/1988), para 5.8.

³⁵ Van Alphen v. the Netherlands (Communication No. 305/1988), para 5.8.

case, detention shall not be continued beyond the period for which the state can provide appropriate reasons. To ensure this, every decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In *A v. Australia*, despite the illegal entry, the state has not advanced any grounds particular to the A's case, which would justify his continued detention for a period of four years; therefore, detention for over four years was arbitrary.³⁶ It seems that Australia could have avoided this arbitrariness if it had carried out the periodic review process.

3. 3. 2 Providing information to the arrested persons

Paragraph 2 of Art. 9 imposes an obligation to provide information. Accordingly, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. This provision specifies two different times for providing information, namely (i) the time of arrest and (ii) the reasonable but prompt time. The former will be applied to guarantee individuals the right to understand the precise reason for their arrest. In other words, there will be a connection between the announcement of reasons for arrest and the actual arrest. Meanwhile, the announcement of charges is requested to be released promptly due to the fact that the criminal proceedings necessitate a period of time to investigate and formulate a charge, making it impossible to disclose the charges immediately upon arrest. Therefore, it is important to note that Art. 9.2 of the ICCPR only guarantees the right to know the charges against the arrested without specifying the precise timing of this announcement.

3. 3. 3 Protecting the rights of those arrested and detained

The rights of those arrested and detained will be guaranteed when judicial control is established. Judicial control of arrest and detention in criminal proceedings is presented in paragraph 3 of Art. 9, which states that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. The judicial control imposes two basic requirements, namely (i) the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power and (ii) the right to be tried within a reasonable time or to be released.

Regarding the first requirement, the term "other officer authorized by law" has been discussed in many cases brought to the European Court of Human Rights. In *Schiesser v. Switzerland*, the Court established the criteria for distinguishing an "other officer" from a "judge." These criteria include: (i) institutional guarantees: independence vis-à-vis the executive and the parties; (ii) procedural guarantees: obligation for the official concerned to hear the accused brought

³⁶ *A v. Australia*, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (30 April 1997), para 9.4.

before him personally; (iii) substantive guarantees: decision on the continuation of detention or release to be taken by reference to legal criteria, after the circumstances militating for and against the detention have been examined; power to order release if there are insufficient reasons to justify the detention.³⁷ Judge Matscher also referenced this criterion in *Huber v. Switzerland*, raising some contentious issues. He posited that the definition of an officer should meet all the aforementioned requirements, except for the one concerning independence from the parties.³⁸ It could be seen that the vague nature of the term “other officer” makes it difficult to determine its exact meaning. Furthermore, it should be considered within the context of cases. However, the “other officer,” at the very least, should not be dependent on or controlled by the administration to ensure the judiciary's independence.

As for the request being brought promptly, The UN Human Rights Committee states that each country's laws determine how quickly a person can appear before a judge or other officer authorized by law.³⁹ However, the Committee believes that delays should not exceed a few days.⁴⁰ Owing to the lack of specificity in this explanation, the Committee has made several related comments during the handling of the cases that have been brought before it. For instance, in the Concluding Observations: Gabon, the Committee stated that the state should take action to ensure that detention in police custody never lasts longer than 48 hours and that detainees have access to lawyers from the moment of their detention.⁴¹ In this case, the Committee's perspective on the term “a few days” is clearer with precise time. This will serve as a note for member states when establishing relevant provisions in domestic law.

Concerning the duration of pre-trial detention, it is recommended that pre-trial detention should be an exception and as short as possible, according to the Committee.⁴² This provision aligns with Art. 14.3, which mandates the prompt trial of the accused following charges. It could be seen that while Art. 9.3 deals with pre-trial detention, Art.14 refers to the entire pre-trial period. Both of these articles require countries to ensure a reasonable period of time. Especially, when mentioning that pre-trial detention should be an exception, this provision grants individuals the right to be released pending trial. In other words, detention pending trial could not be created as a general rule. It should be a measure in some circumstances, if necessary. Furthermore, bail should be permitted, except in situations where there is the likelihood that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the state.⁴³ While encouraging bail, the Committee maintains that

³⁷ *Schiesser v. Switzerland*, para 31.

³⁸ *Huber v. Switzerland*.

³⁹ CCPR General Comment No. 8: Article 9, para 2.

⁴⁰ CCPR General Comment No. 8: Article 9, para 2.

⁴¹ UN Human Rights Committee: Concluding Observations: Gabon, para 13.

⁴² CCPR General Comment No. 8: Article 9, para 3.

⁴³ *Michael and Brian Hill v. Spain*, Communication No. 526/1993, U.N. Doc. CCPR/C/59/D/526/1993 (2 April 1997), para 12.3.

detention may be required for those charged with horrific offences, where there is a high risk that they will flee and pose a danger to society if released on bail. For example, in *Thomas v. Jamaica*, even though the period from arrest to trial was nearly fourteen months, the Committee considered that this delay did not, in the overall circumstances of the case, constitute a violation of paragraph 3 of Art. 9.⁴⁴

3. 3. 4 Reviewing the lawfulness of detention

Paragraph 4 of Art. 9 provides for the request to review the lawfulness of detention. Accordingly, the arrested and detained persons shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and may order his release if detention is not lawful. There is no specific regulation on the period of time without delay, therefore, it will be determined on a case-by-case basis. In *Hammel v. Madagascar*, the detention lasted for three days (72 hours) and during this time, Hammel was unable to approach the court to request a review of the lawfulness of the detention, therefore, the Committee concluded that this action violated the right to a review of the lawfulness of the detention⁴⁵. Meanwhile, in *Portorreal v. Dominica*, although Portorreal was detained for 50 hours and had no opportunity to access the court, the Committee concluded that there was no violation of paragraph 4 of Art. 9 here.⁴⁶ Obviously, the duration of these two cases is quite similar; however, the conclusions are different. Consequently, the violation regarding the delay in accessing the court to get the review of the lawfulness of detention will be determined based on the specific circumstances.

3. 3. 5 Providing compensation for unlawful arrest and detention

Under paragraph 5 of Art. 9, because of the legality of arrest and detention, if these actions are illegal, the right to seek compensation could be raised. In *A v. Australia*, the Committee agreed that the granting of compensation for detention that is unlawful, is either under the terms of domestic law or within the meaning of the ICCPR.⁴⁷ Therefore, the legality of arrest and detention should be in accordance with domestic law and ICCPR. This means that compensation could occur when the arrest and detention are unlawful under domestic law but permitted under Art. 9 of the ICCPR, and vice versa.

⁴⁴ Samuel Thomas v. Jamaica, Communication No. 614/1995; U.N. Doc. CCPR/C/65/D/614/1995 (31 March 1999), para 9.6.

⁴⁵ Eric Hammel v. Madagascar, Communication No. 155/1983, U.N. Doc. Supp. No. 40 (A/42/40) at 130 (1987), para 20.

⁴⁶ Ramon B. Martinez Portorreal v. Dominican Republic, Communication No. 188/1984, U.N. Doc. Supp. No. 40 (A/43/40) at 207 (1988), para 10.2.

⁴⁷ A v. Australia, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (30 April 1997), para 9.5.

4. Right to freedom and personal security in current Vietnamese Criminal Procedure Code

The right to freedom and personal security, or, in other words, ensuring lawfulness and non-arbitrariness in arrest and detention, is specified in the current Vietnam Constitution. Accordingly, Art. 20.2 of the 2013 Constitution states that arrest, holding in custody, or detention of a person shall be prescribed by law. The current Constitution, a document with the highest legal value in the Vietnamese legal system, has established the general principle of arrest and detention to guarantee individuals' right to freedom and personal security. In line with this fundamental principle, the 2015 Vietnamese Criminal Procedure Code (VCPC) and other pertinent documents establish measures to safeguard the freedom and personal security outlined in the 2013 Constitution. Among these documents, the 2015 VCPC plays a leading role in detailing the relevant aspects of arrest and detention.

Given that both arrest and detention result in deprivation of an individual's liberty and can potentially affect many fundamental human rights, the Vietnamese criminal procedure law pays significant attention to regulating their relevant aspects. First, Art. 10 of the 2015 VCPC states that (i) no person is arrested without a court's warrant or procuracy's decision or approval, except for acts in flagrante, and (ii) emergency custody, arrest, temporary detainment or detention must abide by this Code. Obviously, this provision reaffirms the spirit of the 2013 Constitution in Art. 20.2 about the preservation of bodily integrity. This is one of the fundamental principles in criminal proceedings to ensure human rights, and it is consistent with Vietnam's orientation in the judicial reform process. In other words, the recognition of this principle demonstrates the state's responsibility to ensure bodily integrity by establishing effective mechanisms to protect the right of not to be subjected to arbitrary arrest or detention. Following this principle, some main aspects of arrest and detention have been regulated in Chapter VII of the 2015 VCPC when stating that arrest and detention are on the list of preventive measures of criminal procedure, including (a) the goals of arrest and detention, (b) arrest and relevant aspects, (c) temporary detainment and relevant aspects (d) detention and relevant aspects. These other relevant aspects can include (i) the grounds for applying measures, (ii) the subjects of application, (iii) the jurisdiction of application, (iv) the procedure, and (v) the duration of application. Furthermore, rights of subjects in arrest and detention are also stipulated in some other provisions of this Code, such as right to compensation (Art. 31), right to be informed and explained (Art. 58-61).

4. 1 The goals of arrest and detention

Art. 109.1 of the 2015 VCPC clearly states the goals of the preventive measures. These goals are: (a) to preclude crime; (b) to prevent accused persons from evidently obstructing investigations, prosecution, and adjudication; (c) to prevent accused persons from committing other crimes; and (d) to assure the

enforcement of sentences. Given the variety of arrest and detention methods, along with other listed preventive measures such as bail, surety, residential confinement, and exit restriction, it's important to acknowledge that arrest and detention cannot ensure all the aforementioned goals. Additionally, each type of arrest and detention serves to fulfil one or more of these listed goals. For example, the arrest of those who commit crimes in flagrante delicto, also known as a case of arrest, occurs when someone catches them in the act of committing a crime and pursues them.⁴⁸ If a person is caught committing a crime, the criminal act has been completed, but the dangerous consequences may not have been caused yet. As a result, arrest could serve to deter crime. Meanwhile, a person who is detected immediately after committing a crime and chased is most likely to hide or destroy evidence. In this scenario, the application of arrest could prevent accused individuals from obstructing investigations, prosecution, and adjudication. Hence, arrest of perpetrators of crimes in flagrante delicto is applied to ensure two goals, including (a) to preclude crime and (b) to prevent accused persons from evidently obstructing investigations, prosecution, and adjudication.

4. 2 Arrest and relevant aspects

Recognizing that arrest has a direct impact on individual liberty, the 2015 VCPC clearly defines the circumstances under which a person can be arrested. Accordingly, the apprehension of persons refers to (a) emergency custody, (b) arrest of perpetrators of crimes in flagrante, (c) arrest of wanted fugitives, (d) arrest of suspects and defendants for detention, and (e) arrest of persons for extradition.⁴⁹ Among them, arrest of persons for extradition is carried out under the regulations of arrest of suspects and defendants for detention.

4. 2. 1 Emergency custody

Art. 110 of the 2015 VCPC provides the grounds for emergency custody, the jurisdiction of its application, and the procedure of application.

Regarding the grounds, emergency custody can be applied when: (i) there is substantial evidence that the individual is committing a horrific or extremely serious felony; or (ii) the accomplice committing the crime or the perpetrator of the crime who was identified by the crime victim or a person at the crime scene must be obstructed from escape; or (iii) a person carrying criminal traces or a suspect whose residence, workplace, or tools contain criminal traces must be obstructed promptly from escaping or disposing evidence. Each ground is requested to be understood clearly to ensure that emergency custody will be applied properly. For instance, in the first ground, substantial evidence can be documents, evidence collected by the investigation authorities about which such a person is looking for, preparing tools, means, or creating other necessary

⁴⁸ Art. 111.1, The 2015 Vietnamese Criminal Procedure Code.

⁴⁹ Art. 109.2, The 2015 Vietnamese Criminal Procedure Code.

conditions for committing a crime, which, if not arrested immediately, crime may occur, causing damage to the interests of the state, society, and the legitimate interests of others. Similarly, there are two requirements that must be met in the second ground. Firstly, there must be a statement from the accomplice or perpetrator of the crime, who was identified by the crime victim, or a person present at the crime scene. Secondly, the investigating authorities must issue a document confirming the accuracy of the aforementioned statement and providing a basis for considering the necessity of preventing the perpetrator's escape.

As regards the jurisdiction of application, Art. 110.2 of the 2015 VCPC clearly states that individuals, such as the head and vice heads of investigation authorities, commanding pilots and captains of aircraft and ships departing airports or seaports, and heads of authorities assigned to conduct certain investigative activities, are entitled to issue an order of emergency custody. The assigned authorities in this case are border protection units, the maritime police force, and bureaux of fisheries resources surveillance. These authorities have been playing an important role in the practice of fighting crime.

Due to the urgency of this measure in preventing crime, the application procedure for the order of emergency custody does not require the approval of procuracy prior to execution. However, all individuals entitled to issue an order of emergency custody must comply with all provisions in Art. 110 to prevent any acts of abuse or arbitrary arrest that infringe upon the legitimate rights and interests of citizens. The procuracy, in particular, must strictly administer relevant issues, including the grounds for detainment.⁵⁰ If necessary, the procurator will meet with the emergency detainee before approving or denying the order of emergency custody. If the order is denied, both the individual issuing the order and the investigating authority receiving the detainee must immediately release the detainee.

4. 2. 2 Arrest of perpetrators of crimes in flagrante

Art. 111 of the 2015 VCPC provides the grounds for arrest of perpetrators of crimes in flagrante, the jurisdiction of its application, and the procedure of application.

The grounds for arresting perpetrators of crimes in flagrante include: (i) a person is discovered while committing a crime; (ii) a person is discovered immediately after committing a crime; or (iii) the offender who was discovered while committing the crime or immediately after committing the crime fled and was chased.⁵¹ In the first scenario, the offender is committing one or more prescribed crimes under the Penal Code but has not yet completed the crime when discovered. On the other hand, the second scenario involves an offender who has already committed all the crimes listed in the Penal Code and has just come to light. The offender may be discovered while escaping from the scene,

⁵⁰ Art. 110.6, The 2015 Vietnamese Criminal Procedure Code.

⁵¹ Art. 111.1, The 2015 Vietnamese Criminal Procedure Code.

while hiding, concealing the tools and means of committing the crime, or while erasing traces of crime before fleeing and being discovered. The time of discovery and the time of committing the crime must be consecutive or close together. In the third ground scenario, the pursuit must begin immediately after the offender has fled. A time gap between the chase and the escape prevents the arrest of the person in flagrante.

All citizens have the authority to arrest a person in flagrante, according to the 2015 VCPC. This provision originates from the urgency of preventing criminal acts and the evasion of the law by criminals, as well as promoting the active and proactive role of the masses in the fight against crime.

Citizens have the right to search an arrested person in flagrante to disarm them, ensure the safety of citizens, and prevent the arrested person from suddenly using a weapon to attack, continue committing a crime, or evade the law. The nearest police station, procuracy, or people's committee will then receive the arrested person. These authorities, when taking the detainee, must make a written record of the incident and delivery by forcing the detainee or reporting to competent investigation authorities in a prompt manner.

4. 2. 3 Arrest of wanted fugitives

Competent authorities issue a wanted notice for those who have committed crimes and are considered wanted. These individuals include suspects or defendants who have fled or whose whereabouts are unknown; those sentenced to deportation and those serving deportation sentences who have escaped; those sentenced to prison who have escaped; those sentenced to death who have escaped; those serving prison sentences, those whose prison sentences have been temporarily suspended and those whose sentences have been postponed who have escaped.

The authority to arrest a wanted person and the process after arresting are the same as those prescribed for arresting a person in flagrante.⁵²

4. 2. 4 Arrest of suspects and defendants for detention

As clearly identified in the term, the arrested persons in this case are suspects and defendants. In other words, a person who has committed a crime or whose behavior shows signals of a crime but has not yet been prosecuted by a competent authority cannot be subject to this preventive measure.

Even though this preventive measure is prescribed to apply to suspects and defendants, not all suspects and defendants can be arrested for detention. This measure will be applied to suspects and defendants who have committed a horrific or extremely severe felony.⁵³ Furthermore, it can also apply to those who have committed a felony or misdemeanor if they meet the requirements described in Art. 119.2 and 119.3 of the 2015 VCPC. Particularly, it should be

⁵² Art. 112.2 and Art.112.3, The 2015 Vietnamese Criminal Procedure Code.

⁵³ Art. 119.1, The 2015 Vietnamese Criminal Procedure Code.

noted that in the case of suspects and defendants who are pregnant, raising a child less than 36 months of age, or suffering from senility or serious diseases, arrest will be applied with certain conditions listed in Art. 119.4.

Regarding the jurisdiction of application, pursuant to Art. 113.1, the following individuals are entitled to order and decide the apprehension of suspects and defendants for detention, namely (i) heads and vice heads of investigation authorities, (ii) head and vice heads of procuracy, (iii) court presidents, vice court presidents and trial panel. While the trial panel renders an arrest decision, other authorities issue an arrest warrant. The arrest warrant issued by the investigation authorities should be approved by the procuracy.

Regarding the procedure of arrest, enforcers of an arrest warrant must read out the warrant, explain its content, the arrestee's duties and rights, make a written record of the arrest, and serve the warrant upon the arrestee. It should be noted that apprehension must not occur at night,⁵⁴ in other words, from 22 pm to 6 am in the next morning.⁵⁵

4. 3 Temporary detainment and relevant aspects

Art. 117 of the 2015 VCPC prescribes temporary detainment. Accordingly, temporary detainment may apply to persons held in emergency custody or arrested for crimes in flagrante, malefactors confessing or surrendering, or persons arrested as per wanted notices. Listing five categories of subjects of application reveals that temporary detainment serves as the next preventive measure for certain arrest cases. Investigation authorities carry out temporary detainment to establish favorable conditions for gathering initial evidence, which clarifies details about the crime and the identity of the detainee. According to the collected documents and evidence, the investigation authorities decide whether to initiate a case, prosecute the accused, apply detention or other necessary preventive measures, or release the arrested person. In other words, not all cases of emergency custody, arrested for crimes in flagrante, malefactors confessing or surrendering, or persons arrested as per wanted notices can be temporarily detained. After being arrested, if it is determined that there is insufficient evidence, or the nature of the crime is not serious, or there is no basis for that the arrested person will continue to commit crimes, evade the law and obstruct the investigation, temporary detainment is not applied.

According to Art. 117.2, individuals have the authority to issue an emergency custody order that determines temporary detainment. They are (i) the head and vice heads of investigation authorities, (ii) commanding pilots and captains of aircraft and ships departing airports or seaports, and (iii) heads of authorities assigned to conduct certain investigative activities, namely border protection units, the maritime police force, and bureaux of fisheries resources surveillance.

⁵⁴ Art. 113.3, The 2015 Vietnamese Criminal Procedure Code.

⁵⁵ Art. 134.1, The 2015 Vietnamese Criminal Procedure Code.

Regarding the procedure of temporary detainment, this preventive measure is carried out when a written decision on temporary detainment is made by the competent authority. In 12 hours upon making such decision, the individual issuing the decision on temporary detainment must send the decision and supporting documents to the equivalent procuracy or a competent procuracy. If the temporary detainment is found unjustified or unnecessary, the procuracy issues a decision on annulling the decision on temporary detainment. Following that decision, the individual issuing the decision on temporary detainment must immediately discharge the person on temporary detainment.⁵⁶

In regard to the duration of temporary detainment, Art. 118 of the 2015 VCPC allows the time limit for temporary detainment to be 3 days. If necessary, the duration of temporary detainment can be extended for at most 3 additional days. Furthermore, special events allow for a second extension of the temporary detainment duration, up to a maximum of 3 more days. As a result, the duration of temporary detainment, including the maximum extension, shall not exceed 9 days. It should be noted that the time spent in detainment shall be subtracted from the time spent in detention. One day spent in detainment gives one day's credit towards the time passed in detention. Additionally, the time spent in detainment shall be subtracted from the time spent in imprisonment⁵⁷ and community sentence.⁵⁸ These deductions are quite suitable for ensuring the detainee's legitimate rights as temporary detainment has deprived the right to personal freedom.

4. 4 Detention and relevant aspects

Detention is the most severe preventive measure because it deprives personal liberty for a relatively long period of time, compared to temporary detainment and other preventive measures that do not deprive personal liberty. Art. 119 of the 2015 VCPC specifies the grounds for applying detention and the jurisdiction of its application, which bear similarities to the grounds and jurisdiction of apprehension of suspects and defendants for detention outlined in Art. 113.

Regarding the procedure of detention, detention orders made by authorized individuals must be approved by the equivalent procuracy prior to the enforcement of such orders. The procuracy must approve or deny such request within 3 days upon receipt of a detention order, written request for approval and relevant documents. The procuracy must return documents to investigation authorities upon the former's completion of the ratification process.⁵⁹ When implementing detention, investigation authorities must inspect identity papers of persons in detention and inform their family members, workplace,

⁵⁶ Art. 117.4, The 2015 Vietnamese Criminal Procedure Code.

⁵⁷ Art. 38, The 2015 Vietnamese Penal Code.

⁵⁸ Art. 36, The 2015 Vietnamese Penal Code.

⁵⁹ Art. 119.5, the 2015 Vietnamese Criminal Procedure Code.

educational facility or local authorities in the commune, ward or town where they reside.⁶⁰

The 2015 VCPC divides the duration of detention into three categories: detention for investigation, detention for prosecution, and detention for trial. In the first category, the maximum period of detention will be 20 months for extremely severe felony crimes against national security.⁶¹ Meanwhile, when applying for an aggravated severe felony, the maximum period of detention for prosecution is 60 days.⁶² In cases of detention for trial, the duration of detention depends on the stage of trial, such as first instance trial, appeal, or cassation proceedings. It can be seen that Vietnam clearly understands the severity of detention and the deprivation of personal liberty when implementing detention measures. Therefore, the 2015 VCPC has divided many cases of detention with different detention periods suitable for each purpose and nature of each case in detention.

5. Current Vietnamese Criminal Procedure Code: Complete or partial compliance?

The 2015 VCPC essentially recognizes and prescribes the fundamental standards for ensuring the right to freedom and personal security in a detailed manner. Accordingly, as mentioned above, there are five standards based on Art. 9 of the ICCPR: (i) ensuring lawfulness and prohibiting arbitrariness in arrest and detention; (ii) providing information to the arrested persons; (iii) protecting the rights of those arrested and detained; (iv) reviewing the lawfulness of detention; and (v) providing compensation for unlawful arrest and detention.

Regarding the first standard, to ensure the lawfulness of arrest and detention, the 2015 VCPC has detailed the grounds and procedures for each category of arrest and detention, which are presented in Section IV. Each category will have distinct grounds and procedures, with detailed requirements depending on the nature of each arrest and detention type. Furthermore, this Code specifies the goals of preventive measures, including arrest and detention, to avoid arbitrariness. These goals have proven Vietnam's stance on recognizing and ensuring human rights in criminal proceedings. As a result, Vietnam always respects and carefully considers measures that directly affect basic human rights before prescribing and implementing them. The 2015 VCPC emphasizes that the application of arrest and detention, despite their deprivation of freedom and personal security, serves to uphold social order and other legitimate rights and interests of individuals.

As for providing information to those who have been arrested, even though the 2015 VCPC does not have a separate provision on this standard, the fact that arrested persons are informed and explained about their rights and obligations

⁶⁰ Art. 119.6, the 2015 Vietnamese Criminal Procedure Code.

⁶¹ Art. 173, the 2015 Vietnamese Criminal Procedure Code.

⁶² Art. 240.1, the 2015 Vietnamese Criminal Procedure Code.

has been clearly mentioned in this Code. Accordingly, persons held in emergency custody and arrested for criminal acts in flagrante and wanted notices, temporary detainees are entitled to be informed of reasons for their temporary detainment and arrest.⁶³ Meanwhile, suspects are entitled to be informed of reasons for charges against them.⁶⁴ All these individuals also receive information and clarification regarding their responsibilities and rights.⁶⁵ Ensuring the provision of information to arrested persons plays an important role in ensuring transparency and fairness in arrest and detention, avoiding cases of arrest and detention without reason, leading to arbitrary arrest and detention.

In regard to protecting the rights of those arrested and detained and reviewing the lawfulness of detention, the 2015 VCPC has guaranteed by providing for detailed regulations on the grounds, procedures, jurisdiction, and duration of temporary detainment and detention, which are presented above in Section IV. Recognizing that the implementation of arrest and detention will impact fundamental human rights, this Code has meticulously categorized various arrest and detention scenarios with pertinent provisions. This approach contributes to maintaining a balance between crime prevention effectiveness and safeguarding the rights and legitimate interests of individuals.

The 2015 VCPC clearly states the right to compensation in Art. 31. This provision places an obligation on the state to guarantee compensation for crime victims in criminal cases. Accordingly, the state shall compensate persons held in emergency custody, arrested, temporarily detained, or held in detention incorrectly or illegally for physical and spiritual damage and the restoration of their dignity. Vietnam has clearly defined the types of damage that require compensation in this case, namely physical and spiritual damage. Additionally, due to the fact that human dignity is essential for each individual, competent authorities should consider human dignity. And in case of violation, it will be restored appropriately.

The VCPC fully complies with the standards outlined in Article 9 of the ICCPR, ensuring the right to freedom and personal security. Nevertheless, in the specific provisions on related issues, there are still some unreasonable contents that need to be discussed, further researched, and clarified. For instance, if there is sufficient evidence to suspect that the individual is preparing to commit a horrific or extremely severe felony, the measure of emergency custody can be applied. However, at the preparation stage, it is very difficult to determine what type of crime an act may constitute. In other words, the basis for determining that the person is preparing to commit a horrific or extremely severe felony will depend largely on the subjective assessment of the competent procedural persons. This will lead to a lack of objectivity and fairness for the arrested person. Or, in the event of detention, other preventive measures should take the place of those suffering from senility or serious diseases, according to

⁶³ Art. 58.1.b, Art. 59.2.a, the 2015 Vietnamese Criminal Procedure Code.

⁶⁴ Art. 60.2.a, the 2015 Vietnamese Criminal Procedure Code.

⁶⁵ Art. 58.1.c, Art. 59.2.b, Art. 60.2.b, the 2015 Vietnamese Criminal Procedure Code.

the 2015 VCPC. However, the definition of “the persons suffering from serious diseases” lacks clarity. Meanwhile, in some other documents, such as the 2015 Vietnamese Penal Code, the term “people having fatal diseases” has been used.⁶⁶ Neither of the terms have clarified definitions, and there is no basis stating that they can be used interchangeably. When concepts lack unity and clarity, the competent procedural authorities may make inaccurate assessments. In short, it can be briefly commented that compliance with a provision mentioned in a relevant international treaty is not only demonstrated by the existence of specific provisions and regulations in domestic law but also by the appropriateness of these provisions. In this case, Vietnam has recognized and prescribed the standards set out in the ICCPR for ensuring personal freedom and security. At the same time, Vietnam must continue to improve relevant regulations, particularly the 2015 VCPC, to ensure that the implementation of standards on freedom and personal security in criminal proceedings is effective in practice.

6. Conclusion

The right to freedom and personal security is one of the most fundamental human rights. This right is acknowledged to prevent arbitrary deprivation since freedom is of human nature. In criminal proceedings, the right to freedom and personal security is the most frequently raised issue because, in the context of crime control, the authorities regularly and legitimately refer to this right when implementing some specific measures or penalties, such as detention and imprisonment. Detention in some criminal proceedings is taken to ensure that defendants are brought to justice and imprisonment is used as a form of punishment in every country, including Vietnam.

Vietnam, in its pursuit of establishing a rule-of-law state, clearly identifies that freedom and personal security are fundamental values of democracy. Furthermore, Vietnam is considered an Asian country with positive strategies and actions in the recognition, protection, and promotion of human rights when being a member of many core human rights treaties and other human rights legal instruments. Within the scope of the right to freedom and personal security, the ICCPR is the only legally binding document for Vietnam. According to ICCPR, arrest and detention should be lawful and non-arbitrary, both in content and procedural perspectives. This provision requires state members, including Vietnam in this case, to uphold a set of standards to safeguard and advance the right to freedom and personal security, namely ensuring lawfulness and prohibiting arbitrariness in arrest and detention; providing information to the arrested persons; protecting the rights of those arrested and detained; reviewing the lawfulness of detention; and providing compensation for unlawful arrest and detention.

The 2015 VCPC essentially recognizes and prescribes the fundamental standards for ensuring the right to freedom and personal security, as detailed in

⁶⁶ Art. 36.4, the 2015 Vietnamese Penal Code.

Art. 9 of ICCPR. However, in the specific provisions on related issues, some unreasonable content still remains. It should be noted that compliance with a provision mentioned in a relevant international treaty is demonstrated not only by the existence of specific provisions and regulations in domestic law, but also by the appropriateness of these provisions. As a result, it is not enough for Vietnam to recognize and regulate standards on personal freedom and security. Vietnam needs to improve current relevant regulations so that the implementation of these standards is effective in practice.