**CASELAW NO. 19/2018/AL**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 17 October 2018 and promulgated under Decision No. 269/QD-CA dated 6 November 2018 by the Chief Justice of the Supreme People’s Court.*

## Source of the case law:

Cassation Decision No. 09/2015/HS-GDT dated 23 April 2015 of the Criminal Court of the Supreme People’s Court on the *“Embezzlement”* case with respect to the defendant: Vo Thi Anh N, born in 1981 and having resided at No. 17, A Street, B Ward, C City, Binh Dinh Province.

In addition, in the case, Phan Thi Q was convicted of the crime of *“Lack of responsibility causing serious damage”*; Vo Thi Kim T was convicted of the crime of *“Lack of responsibility causing serious damage to the State’s property”*.

**Location of contents of the case law** Paragraph 3 of the *“Findings of the Court”*. **Overview of the case law:**

### Background of the case law:

The defendant abused gaps in the management of the bank to repeatedly and directly carried out procedures to withdraw and pay out savings deposit monies from the funds of the bank’s branch that the defendant managed but in actuality he did not pay out anyone and used such monies for himself.

During the investigation process, the defendant remedies a part of monies unlawfully appropriated.

### Legal resolution:

In this case, the defendant must bear criminal liability for the crime of

*“Embezzlement”.*

The value of assets unlawfully appropriated by the defendant must be determined as the total amount that the defendant falsely carried out the procedures for withdrawing and paying out the savings deposit monies from the funds of the bank’s branch (including the amount remedied by the defendant during the investigation process).

## Applicable provisions of laws relating to the case law:

Article 46.1(b), Article 46.1(p), Article 46.2; Article 47; Article 60; Article 278.2(c) of the Criminal Code 1999 (corresponding to Article 51(b), Article 51(s); Article 54; Article 65, Article 353.2(c) of the Criminal Code 2015).

## Key words of the case law:

*“The crime of embezzlement”, “Value of the assets unlawfully appropriated”, “To remedy part of the consequences”, “Infringements of property ownership”.*

## CONTENTS OF THE CASE

Transaction Office D was the unit attached to the branch of the Bank for Agriculture and Rural Development in C City, established under Decision No. 1667/QD/NHNN-TCCB dated 2 March 2007 by the General Director of the Vietnam Bank for Agriculture and Rural Development, who was responsible for mobilizing savings deposits of the people.

From May 2008 to April 2010, Transaction Office D was a transaction counter jointly working in the same office with the Accounting and Treasury Department of Bank for Agriculture and Rural Development in C City. Transaction Office D had 02 employees as follows:

* Phan Thi Q was the accountant who was responsible for transacting with customers, making documents pertaining to receipt and payment, keeping records of cash journals, accounting the receipts and payments into transaction program on the computer, printing and issuing passbooks and making savings cards.
* Vo Thi Kim T was the treasurer who was responsible for managing the unissued blank passbooks for the benefit of customers; managing receipts and payments.

Vo Thi Anh N was the bank teller of the Accounting and Treasury Department of Bank for Agriculture and Rural Development in C City, who was responsible for managing payments towards non-resident customers, transferring amounts of money, mobilizing capital, accounting the amounts of debt and interest collected in cash.

On 12 April 2010, the Director of the branch of the Bank for Agriculture and Rural Development in C City discovered the violations of the bank teller currently working at the branch and reported to the branch of the State Bank in Binh Dinh Province. On 7 June 2010, the Director of the branch of the Bank for Agriculture and Rural Development in Binh Dinh Province issued the Official Letter No. 486/NHNNBD-HCNS to request the Investigation Agency to clarify that the payment of savings deposit monies at Transaction Office D towards 02 passbooks, namely passbook No. NA 222040 under the name of Dang Thi Bich D and passbook No. NA 1297720 under the name Ngo Thanh V, which caused damage to the Bank with the total amount of VND774,403,300. It was determined in the investigation process as follows:

* As to Phan Thi Q and Vo Thi Kim T, they had directly carried out procedures and paid out monies from the funds of Transaction Office to passbook No. NA 222040

under the name of Dang Thi Bich D with the amount of VND200,100,000 and passbook No. NA 1297720 named as Ngo Thanh V with an amount of VND102,870,600; which amounted to VND302,970,600 (VND200,100,000 plus VND102,870,600 equals VND302,970,600) without checking the identity cards of customers for discrepancies, causing damages to the Bank for the aforementioned amount.

* As to Vo Thi Anh N, she had directly carried out the procedures and paid out monies from the funds of the branch of the Bank managed by Vo Thi Anh N into passbook No. NA 1297720 under the name of Ngo Thanh V with the total amount of VND471,432,700, including:

On 31 July 2009, Vo Thi Anh N paid out the amount of VND23,124,400, which includes the principal of VND20,000,000 and the interest of VND3,124,400.

On 3 November 2009, Vo Thi Anh N paid out the amount of VND448,308,300, which includes the principal of VND375,000,000 and the interest of VND73,308,300.

As to the payment on 3 November 2009, the Investigation Agency identified that Vo Thi Anh N had transferred the amount of VND251,000,000 into the ATM account under the name of Vo Thi T (this card was managed, used and transacted by Vo Thi Anh N many times). After that, Vo Thi Anh N withdrew the amount of VND251,000,000 from the ATM account of Vo Thi T many times for the purpose of unlawfully appropriating such amount.

As to the balance remaining from the payment to the step-up interest passbook No. NA 1297720 under the name of Ngo Thanh V, since Vo Thi Anh N did not conclusively prove the identity of the recipient involved, it caused damages to the Bank in the amount of VND220,432,700. Having considered that during investigation process the defendant Vo Thi Anh N remedied such amount, the People’s Procuracy of Binh Dinh Province did not prosecute her for the crime.

In First-instance Criminal Judgment No. 106/2013/HSST dated 14 August 2013, the People’s Court of C City, Binh Dinh Province applied Article 278.2(c); Article 46.1(b), Article 46.1(p), Article 46.2; Article 47 of the Criminal Code to sentence Vo Thi Anh N to 03 years of imprisonment for the crime of *“Embezzlement”*.

On 27 August 2013, Vo Thi Anh N submitted an appeal requesting a suspended sentence.

In Appellate Criminal Judgment No. 30/2014/HSPT dated 24 February 2014, the People’s Court of Binh Dinh Province applied Article 248.2(b), Article 249.2(dd) of the Criminal Procedure Code to accept the appeal requesting a suspended sentence of the defendant Vo Thi Anh N, and applied Article 278.2(c) and Article 46.1(b), Article 46.1(p), Article 46.2, Article 47 and Article 60 of the Criminal Code to sentence Vo Thi Anh N 03 years of imprisonment for the crime of *“Embezzlement”* but allowing her to serve probation of 05 years.

In Cassation Protest No. 02/2015/KN-HS dated 09 February 2015, the Chief Justice of the Supreme People’s Court requested the Cassation Council of the Criminal Court of the Supreme People’s Court to set aside Appellate Criminal Judgment No. 30/2014/HSPT dated

24 February 2014 of the People’s Court of Binh Dinh Province and First-instance Criminal Judgment No. 106/2013/HSST dated 14 August 2013 of the People’s Court of C City, Binh Dinh Province as to Vo Thi Anh N in order to reinvestigate in accordance with the law.

At the cassation hearing, the representative of the Supreme People’s Procuracy agreed with the Cassation Protest of the Chief Justice of the Supreme People’s Court.

## FINDINGS OF THE COURT

1. Vo Thi Anh N had no task given by the managers of the Bank for Agriculture and Rural Development in C City to make payment of savings deposit money however she abused gaps in the management of the Bank many times to directly carried out procedures to withdraw and pay out savings deposit monies from the funds of the Bank’s branch that Vo Thi Anh N managed into the passbook No. NA 1297720 under the name of Ngo Thanh V with the total amount of VND471,432,700. During the investigation process, the Investigation Agency determined that there was no customer named Ngo Thanh V and Vo Thi Anh N herself did not prove conclusively who received the amount.
2. After carried out procedures to pay to customer Ngo Thanh V, Vo Thi Anh N transferred VND251,000,000 held in the Bank's funds that Vo Thi Anh N managed into the ATM account under the name of Vo Thi T, which was directly opened, managed and used by Vo Thi Anh N; then withdrew such amount many times for the purpose of unlawfully appropriating the monies of the Bank for Agriculture and Rural Development in C City. The first-instance court and the appellate court sentenced Vo Thi Anh N for the crime of *“Embezzlement”* as to the amount of VND251,000,000, which had basis and were correct under the law. However, due to the fact that Vo Thi Anh N unlawfully appropriated from the Bank the amount of VND251,000,000, Vo Thi Anh N’s crime falls under Article 278.3(a) of the Criminal Code with respect to *“Unlawfully appropriating property with value in the range of VND200,000,000 to VND500,000,000”,* which has a sentencing framework of between 15 to 20 years of imprisonment. The first-instance Court’s application of Article

278.2 of the Criminal Code to sentence the defendant Vo Thi Anh N to 03 years of imprisonment was too light and not in accordance with the law. During the appellate hearing, the appellate Court failed to detect the mistake of the first-instance Court, upheld the sentence, and allowed the defendant to serve probation, which were serious mistakes and failed to properly assess the seriousness of the crime committed by the defendant.

[3] As to the remaining amount of VND220,432,700 (VND471,432,700 - VND251,000,000 = VND220,432,700) paid out by Vo Thi Anh N for the step-up interest passbook No. NA 1297720 under the name of Ngo Thanh V, Vo Thi Anh N remedied the consequences, the Bank for Agriculture and Rural Development C City recovered the total amount lost. Given the fact that the People's Procuracy of Binh Dinh Province considered that the defendant remedied the consequences and then decided not to prosecute this crime, the Procuracy omitted to prosecute all crimes committed.

*For the reasons mentioned above, pursuant to Article 279.2; Article 285.3, Article 287 of the Criminal Procedure Code,*

## RULES

1. To set aside Appellate Criminal Judgment No. 30/2014/HSPT dated 24 February 2014 by the People's Court of Binh Dinh Province and First-instance Criminal Judgment No. 106/2013/HSST dated 14 August 2013 of the People’s Court of C City, Binh Dinh Province as to Vo Thi Anh N to reinvestigate in accordance with the law.
2. To transfer the case to the Supreme People's Procuracy for settlement according to its authority.

Other decisions of the above-mentioned appellate and first-instance judgments which were not protested according to cassation procedures shall continue to be legally effective.

**CONTENTS OF THE CASE LAW**

*“[3] As to the remaining amount of VND220,432,700 (VND471,432,700 - VND251,000,000 = VND220,432,700) paid out by Vo Thi Anh N for the step-up interest passbook No. NA 1297720 under the name of Ngo Thanh V, Vo Thi Anh N remedied the consequences, the Bank for Agriculture and Rural Development C City recovered the total amount lost. Given the fact that the People's Procuracy of Binh Dinh Province considered that the defendant remedied the consequences and then decided not to prosecute this crime, the Procuracy omitted to prosecute all crimes committed”.*