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**DISCUSS THE PROSECUTION OF THE DEFENDANT  
FOR CRIMINAL PREPARATION UNDER THE PROVISIONS  
OF THE VIETNAM CRIMINAL PROCEDURE CODE**

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***Abstract:** The article focuses on analyzing the theoretical and practical basis for applying the provisions on criminal preparedness under Article 14 of the Criminal Code of 2015, and clarifying the grounds for prosecution of defendants for this act under Article 179 of the Criminal Procedure Code of 2015. Criminal preparation, according to the author, is the pre-practice stage, which demonstrates the transition from criminal intent to objective behaviors such as finding the tools, means, planning or creating the conditions necessary to commit a crime. Although not directly harassing the object protected by law, in some statutory cases, this behavior has a significant degree of danger and is subject to criminal liability. On this basis, the article affirms that criminal preparation may be the basis for prosecuting the defendant if the agency conducting the proceedings collects sufficient evidence proving the intention to commit the crime, the specific preparation Act, the connection between the preparation Act and the intended execution offence, and that the offence is subject to processing from the preparatory stage. At the same time, the author emphasizes the requirement to apply the law with caution, ensuring the*

*principle of innocent speculation, the right to defend and prevent wrongdoing in criminal proceedings.*

**Keywords:** *criminal preparation, prosecution of defendants, criminal liability, criminal proceedings evidence, Criminal Code 2015, Vietnam.*

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**ВОПРОС О ПРИВЛЕЧЕНИИ ОБВИНЯЕМОГО К УГОЛОВНОЙ  
ОТВЕТСТВЕННОСТИ ЗА ПОДГОТОВКУ УГОЛОВНОГО  
ПРЕСТУПЛЕНИЯ В СООТВЕТСТВИИ С ПОЛОЖЕНИЯМИ  
УГОЛОВНО-ПРОЦЕССУАЛЬНОГО КОДЕКСА ВЬЕТНАМА**

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**Аннотация:** *Статья посвящена анализу теоретических и практических основ применения положений о готовности к совершению преступления, предусмотренных ст. 14 Уголовного кодекса 2015 г., и разъяснению оснований для привлечения к ответственности обвиняемых за это деяние в соответствии со ст. 179 Уголовно-процессуального кодекса 2015 г. Подготовка к преступлению, по мнению автора, - это предварительная стадия совершения преступления, которая демонстрирует переход от преступного намерения к объективному поведению, такому как поиск орудий, средств, планирование или создание условий, необходимых для совершения*

*преступления. Хотя такое поведение напрямую не затрагивает объект, охраняемый законом, в некоторых предусмотренных законом случаях оно представляет значительную степень опасности и влечет за собой уголовную ответственность. Исходя из этого, в статье утверждается, что подготовка к преступлению может быть основанием для судебного преследования обвиняемого, если орган, ведущий судебное разбирательство, соберет достаточные доказательства, подтверждающие намерение совершить преступление, конкретное действие по подготовке, связь между действием по подготовке и предполагаемым исполнением преступления, и что преступление подлежит расследованию начиная с подготовительного этапа. В то же время автор подчеркивает требование применять закон с осторожностью, обеспечивая принцип невиновности в спекуляциях, право на защиту и предотвращение правонарушений в уголовном процессе.*

**Ключевые слова:** *подготовка к преступлению, преследование подсудимых, уголовная ответственность, доказательства в уголовном процессе, Уголовный кодекс 2015 года, Вьетнам.*

According to Article 14 of the Criminal Code, Criminal preparation is the period in which the offender seeks, prepares tools, means, or creates other necessary conditions for committing a crime, including the act of establishing or joining a criminal group for the purpose of committing a crime; at the same time, the law only places criminal liability for this act on certain crimes prescribed by the code. Article 15 stipulates that “unattainable crime” is the case when the offender intentionally commits a crime but does not fulfill it to the end because of unintended objective causes of the offender. This difference shows that Vietnamese criminal law sees the criminal process as a process that has developments in the degree of danger to society, from preparation, to practice and can be stopped at unattainable or completed<sup>1</sup>.

<sup>1</sup> Đinh Văn Quế. Tìm hiểu chế định chuẩn bị phạm tội trong BLHS năm 2015 // Tạp chí Kiểm sát. 16.06.2018. URL: <https://kiemsat.vn/tim-hieu-che-dinh-chuan-bi-pham-toi-trong-blhs-nam-2015-49017.html> (дата обращения: 15.03.2026).

Theoretically, criminal preparation is the pre-practice stage of crime. At this stage, the person who intends to commit a crime has not directly impacted the subject protected by the criminal law in the manner of the complete objectivity of the Constitution of the crime, but has exposed outside the criminal will through specific material acts such as finding weapons, preparing means, arranging places, enticing the person to do the same, examining the laws of the victim's life, or establishing other conditions under which the crime may take place. Therefore, criminal preparation is no longer a state of “pure criminal thought” that is not criminally processed, but a move from internal intent to objective behavior that is capable of posing a real danger to society. This approach is consistent with the principle that only criminal handling of dangerous behavior for society has been manifested outwardly, and not merely punishing thought guilty<sup>2</sup>.

In other words, criminal preparedness is a stage where the danger to society has emerged but has not yet reached the level of direct abuse of the object. Therefore, the lawmaker does not consider all preparatory acts a crime to be dealt with, but only criminalized with limits. This is an important criminal policy option, which represents a reconciliation between the two requirements: on the one hand, early prevention of particularly dangerous crimes is required; on the other hand, the extension of criminal punishment to new cases stops at the stage of facilitating crimes.

Clause 2 of Article 14 BLHS provides for criminal liability for the preparation of certain crimes. This category mainly focuses on crimes with a particularly large level of danger such as violations of national security (article 108-121), some crimes of life, health (Article 123, 134), robbery (Article 168, 169), terrorism (article 299-303), piracy (Article 302), destruction of important works on national security, crime of making, possession, transportation, circulation of counterfeit money (article 299-303), piracy (Article 302), destruction of important works on national security, crime of making, possession, transportation, circulation of counterfeit money (Article 207)

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<sup>2</sup> Đinh Văn Quế. Cấu thành tội phạm và các giai đoạn thực hiện tội phạm: Những vấn đề lý luận và thực tiễn // Tạp chí Luật sư Việt Nam. 05.01.2021. URL: <https://lsvn.vn/cau-thanh-toi-pham-va-cac-giai-doan-thuc-hien-toi-pham-nhung-van-de-ly-luan-va-thuc-tien-a14612.html> (дата обращения: 15.03.2026).

and money laundering (Article 324). Notably, paragraph 3 of Article 14 also provides for criminal liability for persons aged 14 to under 16 preparing to commit crimes specified in Article 123 (murder) and Article 168 (robbery). Such limitations clearly reflect legislative thinking: only when preparation poses a very high risk to the core interests of the state, society or people will it be necessary to intervene with criminal law at an early stage.

To identify a person who has “prepared to commit a crime” in the sense of Article 14 BLHS, it is necessary to clarify simultaneously three groups of signs.

First, is a sign of subjective will. Criminal preparation only exists when the person making a deliberate error towards a identified crime or at least a defined offense group. If they do not prove their intention to commit a crime, then their search for tools or create conditions cannot be taken for granted as criminal preparedness. It is at this point that criminal preparation is fundamentally different from normal life activities, although there is a similar appearance, but a lack of criminal purpose<sup>3</sup>.

Second, is a sign of objective behavior. Article 14 states the basic forms of expression: finding, preparing tools, means; creating other conditions for committing crimes; and establishing and joining a criminal group for the purpose of committing crimes (except in some cases specified separately). Such open regulation allows for application to many new methods of crime that arise in practice. But also because the rules are open, when applied should be especially cautious, it must indicate that the prepared behavior is substantially related to the implementation of the intended crime, can not stop at the general judgment<sup>4</sup>.

In the third, is a sign of the level of progress of the criminal process. Criminal preparation is the stage before the commencement of criminal practice. The new offender stops at “making the crime capable of being committed”, rather than

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<sup>3</sup> Mai Bộ. Trách nhiệm hình sự của hành vi chuẩn bị phạm tội theo quy định của Bộ luật Hình sự năm 2015 // Tạp chí Tòa án nhân dân điện tử. 03.10.2024. URL: <https://tapchitoaan.vn/trach-nhiem-hinh-su-cua-hanh-vi-chuan-bi-pham-toi-theo-quy-dinh-cua-bo-luat-hinh-su-nam-201512044.html> (дата обращения: 20.03.2026).

<sup>4</sup> Bộ luật Hình sự số 100/2015/QH13 ngày 27 tháng 11 năm 2015 của Quốc hội, được sửa đổi, bổ sung bởi Luật số 12/2017/QH14 ngày 20 tháng 6 năm 2017 và Luật số 86/2025/QH15 ngày 25 tháng 6 năm 2025 // Công Thông tin điện tử Chính phủ. URL: <https://vanban.chinhphu.vn/?classid=1&docid=214583&orggroupid=1&pageid=27160> (дата обращения: 20.03.2026).

switching to the act of directly impacting the object or object of the crime. This is the core criterion to distinguish from unattainable crime.

In accordance with Clause 1, Article 179 of the Criminal Procedure Code of 2015, when there are sufficient grounds to identify a person or legal entity who has committed an act that the Criminal Code prescribes as a crime, the investigating body makes a decision to prosecute the defendant against that person. This provision represents the basic principle of criminal proceedings: the charge against an individual is carried out only with legal grounds and evidence that determines the person committed the offense<sup>5</sup>.

From the above provision, the issue to be clarified in case of criminal preparation is: whether the criminal preparation is considered an offence to serve as a basis for prosecution of the defendant. This is an important rational and practical issue, because in many cases, the new offense stops at the preparatory stage, has not yet moved to the stage of committing a crime.

According to Article 14 of the Criminal Code of 2015 (amendment, supplement 2017), the person who prepares to commit a crime is only subject to criminal liability in certain cases prescribed by the code. In these cases, criminal preparedness is no longer considered a mere premise, but has been determined by law as an independent form of offence in the course of committing a crime. Therefore, when the proceeding body has sufficient grounds to identify a person who has committed criminal preparation under the case of criminal liability, the Act satisfies the sign “the Act which the Criminal Code prescribes as a crime” under Clause 1, Article 179 of the Criminal Procedure Code<sup>6</sup>.

From this it can be asserted that the act of criminal preparation in statutory cases is quite possible to be the basis for prosecution of the defendant, although the crime has not yet been carried out to the completion stage.

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<sup>5</sup> Lưu Thanh Hùng. Những điểm mới của chế định miễn trách nhiệm hình sự theo Bộ luật Hình sự năm 2015 // Tạp chí Dân chủ và Pháp luật. URL: <https://tcdepl.moj.gov.vn/qt/tintuc/Pages/xay-dung-phap-luat.aspx?ItemID=228> (дата обращения: 25.03.2026).

<sup>6</sup> Bộ luật Tố tụng hình sự số 101/2015/QH13 ngày 27 tháng 11 năm 2015 của Quốc hội // Thư Viện Pháp Luật. URL: <https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-296884.aspx> (дата обращения: 25.03.2026).

Although the law allows the prosecution of the defendant from the stage of preparation for a crime for several crimes, due to the peculiarities of this period, proving the offense is often more difficult than in cases where the crime has been committed or has caused consequences. The proceeding body should clearly demonstrate the following factors<sup>7</sup>: (i) the criminal intention of the person to commit the act, expressed through testimony, documents, electronic data or other evidence; (ii) specific acts intended to prepare for the execution of a crime, such as preparing tools, means, planning, establishing or joining a criminal group, assigning roles between those who are involved; (iii) the connection between the preparatory Act and the intended criminal act, ensuring that such preparatory acts are directed towards the execution of a particular crime; (iv) the intended criminal offence falls under the circumstances in which the Penal Code provides for criminal liability at the stage of preparation.

If these factors are not fully proven, the prosecution of the defendant can lead to the risk of criminalizing behaviors that are not really criminal in nature, affecting the legitimate rights and interests of the individual.

In practice, determining the basis for prosecuting the defendant in the case of criminal preparation should be especially cautious because the line between criminal preparation and normal preparatory acts in social life is sometimes fragile. For example, the act of buying a knife, finding out where or contacting others does not always indicate a criminal intention. Only when these acts are placed in the totality of evidence proving the purpose of a particular crime can it be considered as criminal preparation in the sense of criminal law. In addition, proceedings agencies also need to ensure strict adherence to the principles of criminal proceedings such as the principle of innocent speculation, the principle of determining the objective truth of the case and the principle of guaranteeing the right to defense of the accused. The proceeding body should: (i) clearly identify the specific offence for which the person is preparing to commit whether or not the Criminal Code provides for criminal

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<sup>7</sup> Mai Bộ. Trách nhiệm hình sự của hành vi chuẩn bị phạm tội theo quy định của Bộ luật Hình sự năm 2015 // Tạp chí Tòa án nhân dân điện tử. 03.10.2024. URL: <https://tapchitoaan.vn/trach-nhiem-hinh-su-cua-hanh-vi-chuan-bi-pham-toi-theo-quy-dinh-cua-bo-luat-hinh-su-nam-201512044.html> (дата обращения: 20.03.2026).

liability; (ii) gather sufficient evidence proving the intention to commit the crime and specific preparatory acts; (iii) distinguish between criminal preparation and thought-only, intentional behavior that has not been expressed outwardly by objective behavior.

Thus, from the above analysis, it can be asserted that: in the case of persons whose acts of criminal preparation are subject to criminal liability under the provisions of the Criminal Code, if the authorities carrying out the proceedings have sufficient grounds for determining that such acts have occurred, the investigating authorities have the right and must make a decision to prosecute the defendant in accordance with Clause 1, Article 179 of the Criminal Procedure Code of 2015. The proper application of this regulation not only ensures the strictness of the law, but also contributes to improving the effectiveness of fighting crime in the early stages, preventing dangerous consequences for society can occur.

### References

1. Bộ luật Hình sự số 100/2015/QH13 ngày 27 tháng 11 năm 2015 của Quốc hội, được sửa đổi, bổ sung bởi Luật số 12/2017/QH14 ngày 20 tháng 6 năm 2017 và Luật số 86/2025/QH15 ngày 25 tháng 6 năm 2025 // Cổng Thông tin điện tử Chính phủ. URL: <https://vanban.chinhphu.vn/?classid=1&docid=214583&orggroupid=1&pageid=27160> (дата обращения: 20.03.2026).
2. Bộ luật Tố tụng hình sự số 101/2015/QH13 ngày 27 tháng 11 năm 2015 của Quốc hội // Thư Viện Pháp Luật. URL: <https://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-296884.aspx> (дата обращения: 25.03.2026).
3. Đinh Văn Quế. Cấu thành tội phạm và các giai đoạn thực hiện tội phạm: Những vấn đề lý luận và thực tiễn // Tạp chí Luật sư Việt Nam. 05.01.2021. URL: <https://lsvn.vn/cau-thanh-toi-pham-va-cac-giai-doan-thuc-hien-toi-pham-nhung-van-de-ly-luan-va-thuc-tien-a14612.html> (дата обращения: 15.03.2026).

4. Đinh Văn Quế. Tìm hiểu chế định chuẩn bị phạm tội trong BLHS năm 2015 // Tạp chí Kiểm sát. 16.06.2018. URL: <https://kiemsat.vn/tim-hieu-che-dinh-chuan-bi-pham-toi-trong-blhs-nam-2015-49017.html> (дата обращения: 15.03.2026).

5. Lưu Thanh Hùng. Những điểm mới của chế định miễn trách nhiệm hình sự theo Bộ luật Hình sự năm 2015 // Tạp chí Dân chủ và Pháp luật. URL: <https://tcdcpl.moj.gov.vn/qt/tintuc/Pages/xay-dung-phap-luat.aspx?ItemID=228> (дата обращения: 25.03.2026).

6. Mai Bộ. Trách nhiệm hình sự của hành vi chuẩn bị phạm tội theo quy định của Bộ luật Hình sự năm 2015 // Tạp chí Tòa án nhân dân điện tử. 03.10.2024. URL: <https://tapchitoaan.vn/trach-nhiem-hinh-su-cua-hanh-vi-chuan-bi-pham-toi-theo-quy-dinh-cua-bo-luat-hinh-su-nam-201512044.html> (дата обращения: 20.03.2026).