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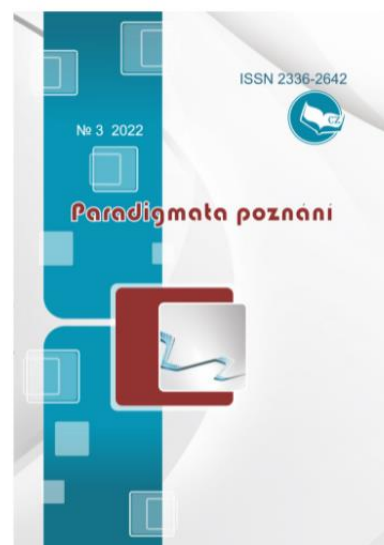
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UDC 32

## PROTECTION OF DENUNCIATORS UNDER THE CURRENT LAW OF VIETNAM

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**Abstract.** The right of denunciation is a fundamental right of citizens enshrined in the Constitution of Vietnam. By means of exercising the right of denunciation, numerous law violations have been clarified and handled, thereby contributing to protecting the interests of the State, lawful rights and interests of agencies, organizations and individuals, improving the effectiveness and efficiency of state management activities and stabilizing the socio-economic situation. However, when a person denounces, he or she may face risks and threats to life, health, property and income, therefore, the law should provide denunciators with the right to protection. The provisions in Vietnamese law on the protection of denunciators has increasingly been enhanced through the 2011 Law on Denunciations and the 2018 Law on Denunciations. In fact, there are still some shortcomings and limitations in the implementation of regulations on protection of denunciators. The article analyses the current Vietnamese legal regulations on the protection of denunciators and propose some solutions to improve them.

**Keywords:** protection; denunciator; right of denunciation; Constitution; law.

### 1. Citizens' right of denunciation is enshrined in the Constitution of the Socialist Republic of Vietnam

A right is something that is recognized by law or society to be allowed of people, owed to people and could be demanded without being prevented or restricted [1, p. 815]. Denunciation means an individual notifying a competent organization or individual of a violation committed by any organization or individual which causes or threatens to cause damage to the State interests or legitimate rights and interests of organizations and individuals [2].

In other words, the right of denunciation *“is the ability of an individual complying with the law to notify a competent organization or individual of a violation committed of any organization or individual which causes or threatens to cause damage to the State interests or legitimate rights and interests of organizations and individuals”*.

In Vietnam, the right of denunciation is a basic right of citizens, which was first recognized in the 1959 Constitution (Article 29). This right was then expanded and stipulated in a more detailed manner in the 1980 Constitutions (Article 73), 1992 Constitutions (Article 74), and especially in

the 2013 Constitution: *“Everyone has the right to lodge complaints or denunciations about illegal acts of agencies, organizations or individuals with competent agencies, organizations or individuals; Competent agencies, organizations or individuals shall receive and resolve complaints and denunciations. Those suffering damages have the right to be compensated material and mental compensation and restoration of honor in accordance with law; Taking revenge on complainants or denunciators, or abusing the right to complaint and denunciation to slander or falsely accuse others, is prohibited [3].*

Compared with the 1992 Constitution, the 2013 Constitution has changed from the concept of the State “determining”, “empowering” the rights for the people to a new concept of natural human rights, the State must recognize and have the obligation to respect, protect and ensure its implementation [4, p. 4]. Therefore, the provisions on the right to complaints or denunciations of citizens in the 2013 Constitution have expanded the subject of the right of denunciations to be “everyone” instead of “citizen” as in the 1992 Constitution. The 2013 Constitution also

clearly stipulates that “*Competent agencies, organizations or individuals shall receive and resolve complaints and denunciations*”; and the person suffering damage has the right to be compensated both materially and spiritually, not only “materially” as in the 1992 Constitution. Like the 1992 Constitution, the 2013 Constitution also stipulates that “*Taking revenge on complainants or denunciators is prohibited...*”.

Thus, on the basis of the provisions on the right of denunciations through the Constitutions of Vietnam, it can be seen that the exercise of the right of denunciations is used to expose violations that may or have taken place in the agency, organizations and outside the society to protect property and interests of individuals and state collectives, protect people's lives and health, and contribute to promoting the common development of agencies, organizations and society. The right of denunciations is then recognized by the State as a basic right of citizens and is increasingly specified in the Constitutions.

## **2. Risks faced by denunciators when making denunciations and the obligation of state agencies to protect denunciators**

The nature of law-breaking acts is to infringe upon social order and state management; personal, collective and state property; human life and health. Some violations are often performed in a discreet and sophisticated manner while some are done blatantly, but the common point is the disregard for the law and avoidance of legal responsibility. When a denunciator stand up to denounce, he/she is putting himself/herself in a position against his colleagues and leaders, so he/she may even be considered as an “*opposer*” and face reprisals. In another aspect, denunciators are shunned, isolated, and punished to avoid “*further consequences*”, or to “*make an example*” for those who wish to denounce in order not to affect the reputation and achievements of the agency or unit.

The main purpose of a person standing up to denounce is to protect the interests of the community, the collective, the state and other people instead of their own interests, and in some specific cases, it is also an obligation and duty. In Decree No.76/2001/ND-CP dated October 3, 2012 of the Government, denunciators will be protected “*when there is evidence that the denunciations may cause harm to the life, health, property, honor, dignity, prestige...*” [10]. The above regulation points out the risks that the denunciators may face, such as being harmed to life, health, property, reputation, honor, dignity, ... In fact, there are many cases of reprisals against denunciations, such as the case in Ky Son district, Hoa Binh province, when state agencies leaked out the denunciators’ identities when they denounced village and commune officials for violating the law, loose land management, as a result, the denunciator’s family were subjected to acts of terrorism in the locality [6]. In many cases, the denunciators are retaliated against, infringed upon their bodies and lives, or are even dismissed from their jobs. However, there are acts of revenge and punishment that are difficult to identify, in fact, there are cases where the denunciator is an official or civil servant, they are transferred to an unfavorable job, not in accordance with their profession and are not assigned any work [7].

Practice also shows that not only denunciators but also journalists, complainants, or even critics and commenters who expose wrongdoings, can also be retaliated against. Therefore, the law must protect the denunciators when they face risks and threats to their life, health, property, and income. Moreover, protecting denunciators is to protect a “*culture of denunciations*”, where everyone has a sense of fighting against evil, wrongdoings, law-breaking acts, supporting positive and beneficial deeds to the community, towards a civilized and safe society. Theoretically, all of these subjects facing risks should be

protected. However, on the basis of the role of the denunciator, as well as the nature of the danger of the possible retaliation against the denunciator, the denunciator is the object that should be given priority to protection by law.

In short, protecting denunciators is the responsibility and duty of the State, organizations and society. On the one hand, it will encourage all subjects to participate in the fight against crime, wrong-doings, and negativities; on the other hand, it shows the nature of the rule of law in respecting and protecting human rights and citizens' rights; protects social order and the supremacy of the law.

### **3. The right to be protected of denunciators under the 2018 Law on Denunciations**

#### **- The right to be protected**

*“The right to be protected of denunciator”* is understood as the right of the denunciator to enjoy, to exercise, and to require relevant protections whenever having grounds to believe that he/she or his/her relatives fall into an unfavorable situation at work, at risk of being abused, and being or have been abused in terms of life, health, honor, dignity or reputation; or being interfered or made more difficult in their exercising of civil rights, as a result of the exercise of their right of denunciation; or having liability risks. In other words, the right to be protected of denunciator is the assurance that they can *“request the authorized agencies, organizations, and people to protect in cases of being intimidated, taken revenge on or repressed”*. It also means the denunciator's right to *“be kept confidential”*.

According to the 2018 Law on Denunciations, protected denunciators have the following rights: *“To be aware of protection measures; To be provided with explanation for their rights and obligations when protection measures are adopted; To request revisions to or termination of adoption of protection measures; To refuse to apply protective measures; To be compen-*

*sated as prescribed by the law on State compensation liability in case the denunciator has requested the denunciation handler or another competent authority to adopt protection measures but they fail to adopt protection measures or fail to adopt them in a timely manner or adopt them against the law, causing damage to his/her life, health, property or spiritual life”* [2]. From the above provisions, it can be seen that the right to be protected of denunciators is concretized through the provisions on: (1) Protected persons, scope of protection; (2) Protection contents (or protection measures); (3) Procedures for receiving and applying protection measures. The details are as follows:

#### **- Protected persons and scope of protection**

In Clause 1, Article 47 of the 2018 Law on Denunciations, *“protection of a denouncer means the protection of his/her information; protection of his/her position, job, life, health, property, honor and dignity and his/her spouse, natural parent, adoptive parent, stepfather, stepmother, natural child, adopted child (collectively referred to as ‘the protected person’)”*.

As can be seen, not only denunciators but also their relatives are protected by law. This stems from the fact that in many cases, not only the denunciators are threatened, law violators even threaten the life, health and honor of the denunciator's relatives in order to put pressure on the denunciators not to denounce or to withdraw their denunciations. The purpose of this regulation is to minimize the factors that affect the denunciators' psychology or prevent them from denouncing.

The scope of protection includes protecting the confidentiality of the denunciators' information (except the case in which they reveal it on their own); protecting the position, job, life, health, property, honor and dignity of the protected persons. The denunciation handler or another competent authority shall decide to adopt necessary protection measures on its/his/her own or at the request of the denouncer when there are grounds to believe that position, job, life,

health, property, honor and dignity of the protected person are being infringed or threatened to be immediately infringed or such persons are victimized due to the denunciation.

At first, the authorized agencies, organizations, and people need to protect the personal rights of denunciators. These are the inalienable rights to human life, health, honor and dignity, and are natural human rights enshrined in the Constitution. The protection of life, health, honor and dignity of the protected persons is one of the important tasks to be promoted as these are the most important things for each person. In practice, threatening to infringe upon the life, health, honor and dignity of denunciators often takes place under the form of beatings, sending threatening letters and messages, launching untrue rumors about denunciations... From such practical shortcomings, inheriting the provisions of the 2011 Law on Denunciations and related documents, the 2018 Law on Denunciations has stipulated the protection of life, health, honor and dignity.

In addition, the 2018 Law on Denunciations also has provisions on protecting the confidentiality of denunciators and their position and jobs. Thus, the Law on Denunciations has provisions on the scope of protection to ensure the safety and normal life of denunciators.

#### **- Protection contents**

Protection contents of denunciators, his/her spouse, natural parent, adoptive parent, natural children and adopted children are specified in Articles 56 to 58 of the 2018 Law on Denunciations, including protecting the confidentiality of information, positions and jobs, life, health, property, honor and dignity of the denunciators. In particular, measures to protect information confidentiality are specified in Article 56 of the Law on Denunciations 2018.

In order to protect the confidentiality of information for denunciators, when receiving and settling denunciations, competent agencies, organizations and individuals shall

study and determine the content of the case, information if disclosure is made would be detrimental to the denunciators to apply appropriate measures to keep the information in confidentiality for the denunciators. Measures to protect positions and jobs are specified in Article 57 of the Law on Denunciations in 2018, including protecting positions of cadres, civil servants, public employees and people working under an employment contract. For each different protected object, there will be different measures based on the nature and position of their work. Measures to protect life, health, property, honor and dignity are prescribed in Article 58 of the Law on Denunciations 2018. The purpose of these measures is to prevent as well as to take actions against any infringement upon or threat to the life, health, property, honor and dignity of the protected persons.

#### **- Procedures for protection**

If there are grounds to believe that position, job, life, health, property, honor and dignity of the persons are being infringed or threatened to be immediately infringed or such persons are victimized due to the denunciation, the denunciation handler or another competent authority shall decide to adopt necessary protection measures on its/his/her own or at the request of the denouncer.

Upon receipt of the protected person's request for adoption of protection measures, if the denunciation handler considers that the request is reasonable or during the process of settling the denunciation, it/he/she finds that there are grounds to believe that position, job, life, health, property, honor and dignity of the persons are being infringed or threatened to be immediately infringed or such persons are victimized due to the denunciation, the denunciation handler shall promptly decide to adopt protection measures within its/his/her jurisdiction or request a competent authority to do so. In case the denunciator's written request is unreasonable or protection measures do not have to be adopted, the

competent authority shall provide written explanation to the denunciator or request the denunciation handler to clearly explain the reason to the denunciator. During the application of protection measures, the agency applying the protection may change the protection measure to suit the actual situation.

In a nutshell, a denunciator's right to be protected is the right to request the authorized state agency to take measures to protect himself/herself, his/her relatives or other persons prescribed by law when there are grounds to believe that they may or have been harmed in terms of life, health, honor, dignity, reputation and property; or to be subjected to repression, punishment or unwarranted dismissal; or may face risk liability arising from the exercise of the right of denunciations.

#### **4. Ensuring the right to be protected of denunciators**

The law to protect denunciators would not be possible if it does not stem from guaranteed conditions for its implementation. Such guarantee conditions include: political, economic, socio-cultural, ideological and legal.

\* *Political guarantee:* Protection of denunciators is the protection of human rights and citizens' rights, including political rights, hence, the exercise of the denunciator's right to protection requires political guarantees. Political guarantees in the implementation of denunciator protection is ensuring the democracy of a country, which recognizes, upholds and ensures the implementation of the people's role in participating in the management of the state, the inspection and supervision of all activities of the apparatus and activities of state officials and civil servants; upholding socialist legislation, legal discipline; promoting with an aim to fully protect human rights and citizens' rights. Those guarantees are reflected in the leadership and direction of the Communist Party of Vietnam on the protection of denunciators. Directive 50-CT/TW dated December 15, 2015 of the Politburo on

strengthening the leadership of the Party in detecting and handling corruption cases emphasized that *"Brave corruption denunciators must be protected and rewarded and at the same time any acts of repressing or taking revenge on corruption denunciators or taking advantage of corruption denunciation to undermine internal unity, slander or harm others must be strictly punished"* [1]. Directive No. 27-CT/TW dated January 10, 2019 of the Politburo on strengthening the Party's leading role in protecting denunciators and individuals who participate in the fight against corruption, wastefulness and wrongdoings clearly defined: *"The Party committees, Party organizations and the administration, first and foremost, the leaders must uphold the responsibility of leading and directing the implementation of the protection of denunciators within their scope"* [2].

\* *Economic guarantee:* The level of economic development will be an important guarantee that determines the exercise of the denunciator's right to protection. This factor directly and regularly affects the quality and effectiveness of law enforcement to protect denunciators. The state shall invest heavily in the protection of denunciators from researching and formulating legal policies; training human resources to propagate, disseminate and raise the legal awareness among the people, especially the contingent of cadres and civil servants. Additionally, the state shall develop and implement protection plans; manage, monitor, summarize and evaluate the law and law enforcement on the protection of denunciators; praise and reward denunciators.

\* *Social-cultural, and ideological guarantee:* Social-cultural, and ideological factors including ethics, psychology, awareness, customs, habits, lifestyle, attitudes, way of thinking, capacity, level of knowledge... have a direct and strong impact on the effectiveness of the denunciator's right to protection. The effective implementation of the law to protect denun-

ciators requires support from the society; the correct and complete recognition of the denunciation and its role by all classes of people. There is an unfavorable fact when ensuring the exercise of the denunciator's right to protection, which is that the stigma and negative perception towards denunciators is still "hidden" among a large number of cadres and civil servants, especially those with power, authority and law enforcement. It is very difficult to get people to protect those who are receiving "hatred", or are even condemned. Therefore, it can be said that ensuring the culture – society and ideology in law enforcement to protect denunciators is a rather complicated, sensitive and difficult issue to improve at the present time unless there is a strong and decisive political stance.

\* *Legal guarantee:* Legal guarantee for the observance of the law of protecting denunciators or the exercise of the denunciator's right to protection is the responsibility and duty of the State.

The goal of a legislator when promulgating legal provisions to protect denunciators is to encourage all individuals to actively participate in the detection, prevention and handling of law violations without fear of reprisals. The responsibility of the State is to protect the safety of life, health, property, position and jobs for denunciators; creating a "culture of denunciation" in which all wrongful, illegal and negative acts are condemned and brought to light, and the denunciators are appreciated and respected.

To ensure the legal protection of denunciators according to the Constitution and laws, many laws and sub-law documents on the protection of denunciators have been promulgated such as the 1998 Law on Complaints and Denunciations, the 2011 Law on Denunciations, the 2018 Law on Denunciations, the 2015 Criminal Procedure Code... These legal regulations have formed a current mechanism to protect denunciators in Vietnam, contributing to the protection of

denunciators. However, the current law protecting denunciators and the law enforcement mechanism protecting denunciators are not really effective. Firstly, the law to protect denunciators has not achieved the desired results because the situation of denunciators getting revenge is still high, while the denunciators are not protected in a specific and timely manner. Secondly, the law is not strictly implemented, or implemented grudgingly or passively, because of the fact that denunciators are still discriminated against, especially in agencies, organizations and units in the state apparatus. This shows that the exercise of the right to protection has not really been legally guaranteed.

### **5. Some solutions to exercise the protection of denunciators**

To ensure the exercise of the denunciator's right to protection under the Constitution and laws, the following solutions should be applied simultaneously:

*Firstly, raising awareness and responsibility of the Party, Party committees and citizens about making denunciations and protecting denunciators.*

The protection of denunciators should be paid more attention in political organizations through the promulgation of Documents and Resolutions of the Communist Party of Vietnam. This is the basis and line of the Party on ensuring the right to protection of denunciators. The role of the denunciations and the denunciators should be correctly recognized and protected through the documents and directives of the Party.

Practice shows that efforts to protect denunciators are often not carried out separately, but in joint efforts to prevent and combat corruption, crime or other violations. In order to well-protect the denunciators, political will should not be half-hearted, general, movement-based, and exhorted to the masses. It must be drastically implemented by means of specific enforcement mechanisms (in terms of laws and regulations, human resources,

technology, finance...), otherwise the law will become counter-productive as people believe that they are really protected by the state but in reality still face reprisals after bravely denouncing.

It is necessary to raise awareness of all levels, sectors, organizations, units, enterprises inside and outside the political system and the whole society about the role of denunciators and the importance of protecting them against all acts of revenge and repression. The provisions on the denunciation law in general and the protection of denunciators in particular need to be viewed objectively, especially in terms of its social meaning and role. The reality of the past years has shown that the issue of denunciator protection has not been properly and fully recognized by agencies, organizations and the whole society. In state agencies, there is still a negative perception of denunciation and discrimination against denunciators. It is common for state agency leaders not to respect denunciators or to be indifferent to reprisals for denunciators. The accused person after receiving the official conclusion of the competent state agency, has not been dealt seriously and sufficiently so he/she turns to seek revenge against the denunciators. In addition, the current status of legal provisions on the protection of denunciators also has shortcomings in terms of content and mechanism. Statistical work and tracking of cases of denunciators suffering retaliation so far has not been done. The evaluation and summary to complete solutions have not yet been noticed and paid attention. This clearly shows that the awareness of denunciators protection is not really commensurate with its significance and important role in social reality, in the fight against wrongful manifestations and law-breaking violations.

Therefore, the organization, mastery and dissemination to raise the awareness of all levels, branches and the whole society about the Party's viewpoints and leadership lines on building and perfecting the legal system for denunciators protection has practical

significance in social life. Accordingly, in Vietnam, it is necessary to thoroughly grasp the views and policies of the Party on building and perfecting the law in general and the law on protection of denunciators in particular, to thoroughly grasp the objectives, orientations, tasks and measures on the formulation and improvement of the law, from which to develop appropriate programs and plans for implementation.

***Secondly, strengthening the propaganda, dissemination and education of the law on denunciation and the protection of denunciators.***

The protection of denunciators will be effective if all citizens have the right level of understanding and use of the law in the fight to eliminate all wrongdoings and law violations; the denunciation is agreed upon by the whole society; denunciators are recognized and appreciated by society. To do that, it is necessary to strengthen the propaganda, dissemination and education of the law on denunciations and denunciators protection; propagate the positive contributions of those who stand up against the wrongdoings. Propagating, educating and disseminating the law will create a change in awareness and increase understanding of the law, raise the sense of respect and observance of the law among the masses, cadres, civil servants, public employees and employees on the law to protect denunciators. It will create a positive change in awareness of the meaning and importance of denunciation, the sacrifice and courage of the denunciator, from which the denunciator can be perceived objectively and positively, encouraged without fear of being discriminated against or isolated. This is one of the best and most effective forms of protection.

***Thirdly, strengthening public service ethics in receiving and dealing with denunciations and protecting denunciators.***

The current law on denunciations does not have any provisions on the code of conduct and rules of professional ethics of officials and civil servants when receiving



and handling denunciations and requests for protection of whistleblowers. Practice shows that during the process of protecting the denunciators, the contingent of cadres and civil servants plays a very important role, especially those who process the denunciators' information and conclude the denunciation contents. Many cadres and civil servants accidentally or intentionally reveal information about the denunciator's identity and denunciation contents; or deliberately cover up and protect the accused. This has affected directly the denunciators and the trust of citizens. Hence, while Vietnam is completing the legal framework on the protection of denunciators, there is a need to strengthen public professional ethics. To do this, the law on denunciations should also have specific regulations on the code of conduct and rules of professional ethics of officials and civil servants; simultaneously, the heads of competent state agencies responsible for receiving and handling denunciations should heighten the responsibility of their officials and civil servants, and increase oversight and supervision of the implementation of their ethical standards.

#### **Fourthly, improving the legal provisions on the protection of denunciators**

The current reality in Vietnam shows that, in order to effectively protect denunciators, it is necessary to perfect legal provisions in accordance with relevant international treaties and practical requirements.

In order to improve the legal provisions on the protection of denunciators, the current legal provisions on denunciation, denunciation settlement, and denunciator protection must be systematized and coded into a separate law on the protection of denunciators.

The development of a law on the protection of denunciators will play an important role in propagating, disseminating and enforcing the law on denunciation and

protecting denunciators. It enhances the important role of denunciators and encourages people to report without fear of negative perception, threats and retaliation. It also helps to facilitate the implementation and application of the law. To do that, it is necessary to conduct a study of international experiences on this issue; develop a plan to review and evaluate the role of denunciations in the fight against crime and other law violations, especially in the fight against and prevention of corruption; perfect the legal system on denunciations and settlement of denunciations.

The development of a separate and independent law on denunciations and protecting denunciators or a separate and independent law on the protection of denunciators is a long step that shows many advantages, comprehensiveness and effectiveness. The content of the governing law covers general issues, all areas of social life, and is principled and oriented. Specific issues regarding denunciators and denunciator protection will be covered by specialized statutes. The provisions of the denunciation law in general and the protection of denunciators in particular will form a unity with a clear delineation of content to facilitate the application and enforcement of the law.

#### **6. Conclusion**

In order to realize the current goal of building a socialist rule-of-law State of the people, by the people, for the people, it is necessary to strengthen the implementation of measures to attract and promote the participation of the people in the state management. To become a good state, it is necessary to perform efficient, transparent, and anti-corruption public activities, and in order to achieve these good results, the protection of denunciators' safety to encourage people to participate in detecting and denouncing illegal acts is an urgent requirement.

The protection of denunciators is a common responsibility of the whole society, in which the State has the main role and

responsibility for adopting laws to ensure the safety of denunciators. In Vietnam, the legal provisions on the protection of denunciators are increasingly being improved through the 2011 Law on Denunciations, the 2018 Law on Denunciations and have an important meaning in ensuring the legitimate rights and interests of denunciators, helping the state agencies deal with many violations and improve management efficiency. However, the implementation of regulations on the protection of denunciators still face some shortcomings and limitations, requiring the State to continue studying and perfecting legal provisions to ensure their feasibility in practice in order to encourage people to voluntarily and actively participate in the fight against wrongdoings that are harmful to the safety and development of the state itself and the whole society.

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## СРОЧНОЕ ИЗДАНИЕ МОНОГРАФИЙ И ДРУГИХ КНИГ



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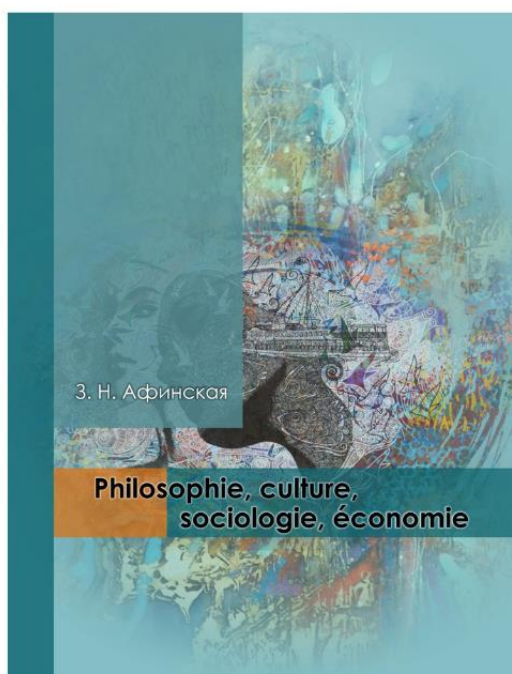
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