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ARTICLE

Diffusing Equality of Arms in the Socialist Criminal Justice System

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Abstract

The principle of equality of arms, originating in common law systems, is a fair trial requirement designed to preserve the adversarial nature of criminal proceedings. Its basic guarantees are enshrined in universal human rights documents, including the International Covenant on Civil and Political Rights. This article examines how Vietnam, as a socialist country, has adopted the principle of equality of arms in its criminal justice system, considering the complex relationship between socialist ideology underlying its legal concepts, and recent procedural reforms. The findings suggest that, despite the inevitable impact of globalisation on legal diffusion processes, the operation of the criminal justice system remains ultimately shaped by its historical and contextual surroundings as it is a system designed by local institutions for local constituencies. With regard to the specific principle of equality of arms, influencing domestic factors include collectivism, a particular crime control model, the substantive truth doctrine, a blurred separation of function among procedural agencies, and the procuracy's judicial supervisory role. Since there has been little research on the principle of equality of arms in the domestic context, let alone in national socialist criminal justice systems, this article contributes to filling a gap in the broader legal scholarship on both equality of arms and socialist criminal justice systems.

Introduction

Criminal procedures revolve around interactions between the prosecution and the defence. These are significantly shaped by long-standing distinctions between adversarial and inquisitorial legal systems.[1] The principle of equality of arms mandates that the parties to a lawsuit be given equal opportunities. It seems to have an innate connection with the adversarial model of the criminal process, which is generally regarded as inherent in common law traditions.[2] In fact, equality of arms constitutes a necessary condition for a proceeding to be regarded as adversarial in its traditional sense within common law criminal justice systems. Therefore, equality of arms is not merely a related concept but is fundamentally integrated into the broader framework of the adversarial model.[3] Federova

[1]Ellen Yaroshefsky, 'The Relationship between Prosecutors and Defenders' in Ronald F Wright, Kay L Levine and Russell M Gold (eds), *The Oxford Handbook of Prosecutors and Prosecution* (Oxford University Press 2021) <https://doi.org/10.1093/oxfordhb/9780190905422.013.18> accessed 1 June 2025.

[2]M Cherif Bassiouni, 'Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions' (1993) 3 Duke Journal of Comparative & International Law 235, 277.

[3]Masha Fedorova, *The Principle of Equality of Arms in International Criminal Proceedings* (Intersentia Uitgevers N V 2012) 47.

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has argued that, by its very nature, the inquisitorial process - which is often associated with civil law and socialist countries - does not readily lend itself to the principle of equality between the parties.[4] However, in recent decades, in the context of globalisation, elements of adversarial systems, including equality of arms, have been diffused into countries that have traditionally maintained inquisitorial systems.[5] The precise process varies based on each nation's historical and cultural context. This article focuses on the case of Vietnam.

Vietnam, being a socialist country led by the Communist Party, possesses a legal system with unique historical and traditional roots. With the initiation of the *Doi Moi* (Renovation) policy, Vietnam transformed its economy from a centrally planned to a market-oriented one, marked by widespread international economic cooperation and influences from both other countries and international organisations.[6] In this context, the criminal justice system of Vietnam introduced adversarial features into its inquisitorial system. However, Vietnamese legal thought is still strongly influenced by the legal tradition of socialist law.[7] These historical and contextual factors of Vietnam's socialist criminal justice system inevitably influence its reception of the principle of equality of arms.

This article adopts Goodman and Jinks' theory, which explains how states receive and apply international law and legal standards from different legal systems.[8] Focusing on Vietnam's case, this article demonstrates that the adoption of external values and standards results from a process involving three mechanisms: coercion, persuasion, and acculturation, with acculturation being the primary mechanism. However, Goodman and Jinks have yet to develop the details of their discussion of domestic impediments that may also impact a country's process of adopting international standards. This article observes that despite deeper engagement with international norms and concepts, Vietnam's adoption of the principle of equality of arms remains largely influenced by the socialist foundations of its criminal justice system and rationalist legal tradition, which is based on collectivist culture, a specific crime control model, the substantive truth doctrine, a blurred separation of function between procedural agencies, and the judicial supervisory role of the procuracy.

The structure of this article is as follows: it first examines the meaning of the principle of equality of arms and its contemporary application. The article then discusses its recognition in the *International Covenant on Civil and Political Rights* (ICCPR)[9] before setting out the mechanisms for internalisation of international norms in Vietnam, the diffusion of the principle of equality of arms in Vietnamese law, and the factors of the socialist criminal justice system that impact the application of this principle. The final section concludes.

Equality of arms – an alien concept?

In common law, criminal proceedings have traditionally been viewed as battles, an idea often traced to ancient Rome, with the parties involved (prosecution and defence) compared to gladiators.[10] Viewing the legal process as a battle between two parties may arise from the view that the adversarial system succeeded private vengeance. According to Feeley, criminal law developed out of tort

[4]ibid 121.

[5]Janet Ainsworth, 'Procedural Justice and the Discursive Construction of Narratives at Trial: Global Perspectives' (2017) 4 Languages Cultures Mediation 79, 82.

[6]Dao Tri Uc, 'Vietnam: Basic Information for Legal Research - A Case Study of Vietnam' (2003) 23 Doing Legal Research in Asian Countries China, India, Malaysia, Philippines, Thailand, Vietnam 195, 198.

[7]Chau Quoc An, 'The Effect of the Legal Tradition on the Law about Public Corporate Governance - Recommendations for Vietnam' (2022) 6 VNUHCM Journal of Economics, Law and Management 2220, 2222.

[8]Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004) 54 Duke Law Journal 621.

[9]International Covenant on Civil and Political Rights (adopted 16 Dec 1966, entered into force 23 Mar 1976) 999 UNTS 171 ('ICCPR').

[10]Annet E Gacsi, 'Study of the Principle of Equality of Arms in particular in Hungarian Criminal Proceedings' (2016) XV Warsaw University Law Review 285, 292.

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law, when the aggrieved party sued as a private complainant.[11] Although crime is now considered an act against the public, it still has remnants of this earlier practice. This manifests in the fact that the prosecutor has the authority to bring or drop charges as a private complainant, and it is these common law remnants that account for allowing or promoting plea bargaining. In private prosecutions, the accuser remains an individual without any formal authority. Like a party in a civil case, the accuser is required to hire their own lawyer; they participate in the proceedings as an interested party in the case. Thus, they have the same rights to enter into an agreement as parties in a civil case.[12]

The equality of arms principle is also known as *audi alteram partem*, which means 'hear the other side'.[13] According to Bingham,[14] a fair opportunity for the prosecutor or complainant as well as the accused to prove their case must be provided. The adversary argument principle is procedural in nature: it indicates how to arrive at a just outcome, instead of providing a substantive definition of a just outcome.[15] Negri emphasises that the principle of procedural equality should be considered a fundamental rule of law, not just a guiding principle, at every stage of the proceedings to effectively protect the rights of the parties, especially the rights of weak litigants.[16] Similar to this approach, Silver contends that in criminal cases, where there is a fundamental inequality between the parties, the concept of equality of arms becomes more important.[17] Consequently, it would be ideal to offer the defence a wide range of advantageous legal alternatives. In addition to the positive element, the principle's actual contents might be more clearly expressed as a negative demand in the form of a prohibition of making the defendant's disadvantage worse.[18]

The principle of equality of arms seems to be intrinsically linked to the adversarial criminal procedural model. Indeed, equality of arms is a necessary condition for a trial to be considered adversarial in the traditional sense associated with common law's criminal justice systems.[19] It is usually assumed that countries with common law traditions adopt an adversarial style in criminal proceedings, but the separation is not as clear as it may seem.[20] Packer asserts that potential adversarial arguments might occur during the procedure, irrespective of the procedural model. The commonality is that the process could, at least in part, turn into an adversarial conflict for anyone involved.[21] The principle of equality of arms, although traditionally related to Anglo-Saxon law as a procedural device to uphold the adversarial nature of proceedings,[22] has acquired an autonomous meaning and is deemed applicable in procedural systems that are both adversarial and inquisitorial.[23]

[11]Malcolm M Feeley, 'Plea Bargaining and the Structure of the Criminal Process' (1982) 7 The Justice System Journal 338, 348.

[12]John H Langbein, 'Controlling Prosecutorial Discretion in Germany' (1974) 41 The University of Chicago Law Review 439, 442.

[13]Ravleen Chhabra, 'Equality of Arms: Difference in Interpretations of the Ad Hoc Tribunals and European Court of Human Rights – Cambridge International Law Journal' (Cambridge International Law Journal, 22 Sep 2019) <https://cilj.co.uk/2019/09/22/equality-of-arms-difference-in-interpretations-of-the-ad-hoc-tribunals-and-european-court-of-human-rights/> accessed 23 Dec 2024.

[14]Tom Bingham, *The Rule of Law* (Reprint edition, Penguin 2011) 107.

[15]Fedorova (n 3) 107.

[16]Stefania Negri, 'The Principle of Equality of Arms and the Evolving Law of International Criminal Procedure' (2005) 5 International Criminal Law Review 513, 570.

[17]Jay Sterling Silver, 'Equality of Arms and the Adversarial Process: A New Constitutional Right' (1990) 1990 Wisconsin Law Review 1007, 1039.

[18]Gacsi (n 10) 305.

[19]Fedorova (n 3) 47.

[20]ibid 94.

[21]Herbert L Packer, 'Two Models of the Criminal Process' (1964) 113 University of Pennsylvania Law Review 1, 9.

[22]Fedorova (n 3) 69.

[23]Vânia Costa Ramos, 'The EPPO and the Equality of Arms between the Prosecutor and the Defence' (2023) 14 New Journal of European Criminal Law 43, 44.

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The global framework of human rights, based on the ideals of equality, dignity, and justice, has inspired and driven the development of today's global legal norms.[24] The ICCPR is the most prominent and important modern human rights treaty.[25] As a universal document, it contains legally binding obligations for its members, coming from all 'geopolitical regions of the world [which] renders it less susceptible to criticism as being found on a Western, individualistic, or alien philosophy'.[26] The Human Rights Committee has expressed that the principle of equality is inherent to the right to a fair trial, ensuring equal access, equality of arms, and treatment without discrimination for all parties involved in proceedings.[27] All parties must have equal procedural rights, unless there is a legal basis stating otherwise, ensuring that the defendant does not face any disadvantage or unfair treatment.[28] The accused must have sufficient time and resources to prepare their defence and must also be guaranteed the right to cross-examine witnesses testifying against them, as well as the right to request the attendance and examination of witnesses in their favour under the same conditions as those for witnesses against them.[29] These are seen as United Nations' efforts to provide guidelines for member states to envision the application of equality of arms in their judicial systems.

Drive for diffusion

Considered as part of the diffusion of law theory, Goodman and Jinks' theory analyses three different mechanisms that influence the behaviour of states in the process of internalising the rules and principles of international human rights law. These mechanisms include coercion, persuasion, and acculturation. Coercion occurs when states are forced to change their behaviour through forms of rewards or punishments.[30] Persuasion occurs when states change their behaviour after being convinced of the correctness and legitimacy of human rights law. In this case, states change their viewpoints through information exchange and debate.[31] Acculturation refers to the process by which states gradually adopt the beliefs, behaviours, and norms of a surrounding culture, primarily through social pressure and assimilation, not necessarily through profound changes in perception.[32] In practice, the integration of international standards rarely occurs through a single mechanism and often involves multiple processes. In the case of Vietnam, the diffusion of international norms, values and principles from other legal traditions appears primarily acculturative, while also incorporating elements of persuasion and inducement through material conditionality via learning, dialogue, and the signing of agreements, respectively.

Acculturation

In the early twenty-first century, Vietnam's heightened involvement in global affairs, together with its membership in international organisations and human rights regimes, contributed to a profound shift in the legislative philosophy of the Vietnamese government. Vietnam, seeing itself as a small state, has become more receptive to international human rights norms and increasingly

[24]Stephen P Marks, 'The Human Rights Framework for Development: Seven Approaches' in Arjun Sengupta, Archna Negi and Moushumi Basu, *Reflections on the Right to Development* (SAGE Publications India Pvt Ltd 2005) 24 <https://sk.sagepub.com/books/reflections-on-the-right-to-development/n1.xml> accessed 24 Dec 2024.

[25]Jack L Goldsmith and Eric A Posner, *The Limits of International Law* (Oxford University Press 2005) 127.

[26]Dominic McGoldrick and Ian Brownlie, *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights* (Reprint, Clarendon Press 1994) 20.

[27]UN. Human Rights Committee (90th sess.: 2007: Geneva) (ed), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial* (UN 23) para 8 <https://digitallibrary.un.org/record/606075> accessed 2 Jun 2025.

[28]ibid para 13.

[29]ibid para 39.

[30]Goodman and Jinks (n 8) 633.

[31]ibid 635.

[32]ibid 638.

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willing to actively participate in multi-level dialogue.[33] Vietnam has ratified or acceded to seven out of nine core United Nations human rights conventions and twenty-five International Labour Organization (ILO) conventions, including seven out of eight core conventions. Through these ratifications, Vietnam seeks to demonstrate that, compared to many countries in the region as well as developed nations, it is not lagging behind in terms of being a member of international human rights conventions.[34] Vietnam has also made efforts to become a member of the United Nations Human Rights Committee for the 2001–2003 term and the Human Rights Council for the 2014–2016 and 2023–2025 terms. It has been a member of the Executive Board of United Nations Women for the 2025–2027 term and seeks candidacy for the Human Rights Council for the 2026–2028 term.[35] Improving its international image and affirming its role in international fora is a motivating factor for Vietnam to adopt international legal standards. In this context, reforms in criminal procedural law and increased protection of human rights help position Vietnam as a developing country progressing toward modernisation and integration. This illustrates status maximisation through the acculturation mechanism, a process that has diminished the statist nature of constitutional rights. When combined with economic reform and international standards, this mechanism fosters a modern approach to human rights within the Vietnamese legal framework.

Cultural exchange and globalisation across various domains have led to a positive evolution in Vietnam's criminal procedure model. After the 1986 Renovation, and especially when the doctrine of 'socialist rule of law' was incorporated into the 1992 Constitution, liberal constitutionalism has increasingly influenced Vietnam.[36] While the current Constitution still reinforces socialism, Vietnam has transitioned from a Soviet-style state to a broader understanding of human rights.[37] Since the 2013 Constitution was enacted, many legal documents have been amended to improve the protection of human rights. A key imperative arising from this transformation is the need for judicial reform, with a specific focus on safeguarding human rights within legal proceedings. *Resolution 49-NQ/TW dated 2 June 2005 of the Politburo on the Strategy for Judicial Reform to 2020* (Resolution 49-NQ/TW) assessed that 'the law on judicial proceedings still has many shortcomings and is slow to be amended and supplemented'.[38] Consequently, judicial reform included improving judicial proceedings by enhancing the quality of adversarial debate at trial and clarifying the responsibilities of procedural participants, ensuring greater uniformity of the legal framework and judicial operations as well as strengthening democracy, openness, transparency, and respect for and protection of human rights. In this context, the values of the adversarial system, a hallmark of common law[39], have been gradually incorporated into Vietnamese law.

[33]Thiem Bui, 'Liberal Constitutionalism and the Socialist State in an Era of Globalisation: An Inquiry into Vietnam's Constitutional Discourse and Power Structures' (2013) 5 The Global Studies Journal 43, 43.

[34]Tuong Duy Kien, 'Thành tựu về bảo đảm quyền con người tại Việt Nam trong tiến trình xây dựng Nhà nước pháp quyền XHCN [Achievements in Ensuring Human Rights in Vietnam in the Process of Building a Socialist Rule-of-Law State]' (XaydungDang, 29 Nov 2022) <https://www.xaydungdang.org.vn/nhan-quyen-va-cuoc-song/thanh-tuu-ve-bao-dam-quyen-con-nguoi-tai-viet-nam-trong-tien-trinh-xay-dung-nha-nuoc-phap-quyen-xhcn-18098> accessed 10 Jan 2025.

[35]Dang Hoang Giang, 'Quan hệ Việt Nam - Liên Hợp Quốc: Khởi đầu hợp tác mới vì một tương lai tốt đẹp của nhân loại [Vietnam - United Nations Relations: Beginning a New Cooperation for a Better Future of Humanity]' (TapchiMattran, 21 Sep 2024) <https://tapchimattran.vn/the-gioi/quan-he-viet-nam-lien-hop-quoc-khoi-dau-hop-tac-moi-vi-mot-tuong-lai-tot-dep-cua-nhan-loai-58420.html> accessed 20 May 2024.

[36]Bui (n 33) 46.

[37]Ngoc Son Bui, 'The Global Origins of Vietnam's Constitutions: Text in Context Symposium: Constitutional History: Comparative Perspectives' (2017) 2017 University of Illinois Law Review 525, 561.

[38]Politburo of the Communist Party of Vietnam, 'Nghị quyết số 49-NQ/TW về Chiến lược cải cách tư pháp đến năm 2020 [Resolution No 49-NQ/TW on the Strategy for Judicial Reform to 2020]' (2 Jun 2005).

[39]Steve E Barkan, *Law and Society: An Introduction* (1st edition, Pearson 2008) 50.

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Persuasion

Although persuasion and acculturation are conceptually related, they are distinct concepts. Persuasion depends on conscious belief in a norm or practice,[40] whereas acculturation requires only the perception that a major reference group accepts a norm or practice. Persuasion involves positive evaluation, whereas acculturation is often implicit.[41] In the context of legal diffusion, internal factors can drive the need for international integration as described through the acculturation mechanism. In addition, external influences from United Nations organisations' and other countries through persuasion mechanisms can also play an important role in promoting the acceptance of universal values related to human rights and fair procedures in the legal system of Vietnam. In the area of criminal justice, international push has come from multiple directions. For example, Vietnam's 2015 criminal law reforms coincided with its second Universal Periodic Review before the United Nations Human Rights Council, and dialogues with Western states on rule of law.[42] United Nations recommendations, acting as a form of persuasion, together with Vietnam's desire to project a modern international image led to the rapid integration of adversarial elements into the legal system. This process illustrates how external normative pull and internal status-seeking motivations combined accelerated legislative reform.[43] United Nations organisations often promote human rights standards by facilitating legal and policy reforms. They do this through various means, including policy advocacy, providing technical assistance, sharing knowledge among stakeholders, and capacity building.[44] During the process of revising the 2015 Criminal Code and the 2015 Criminal Procedure Code, to support Vietnam's efforts in complying with international standards, the United Nations conducted research to assess the compatibility of these codes with international human rights conventions.[45] After the promulgation of these two codes, the United Nations continued to publish a report highlighting provisions inconsistent with Vietnam's international human rights obligations. Recommendations included measures to uphold the principle of equality of arms, such as adding provisions prohibiting torture, implementing stricter regulations on pre-trial detention, and speeding up the trial process.[46] In addition, within the framework of bilateral legal cooperation, countries share domestic experiences and promote human rights elements through regular dialogues on human rights, organising educational programs, and sending experts for experience exchanges.[47] In this context, even single government-led legal aid initiatives can be considered international, if they aim to promote the implementation of international legal standards, including human rights.[48] Furthermore, global advances in information technology facilitate and promote the process of learning and adopting

[40]Goodman and Jinks (n 8) 635.

[41]ibid 643.

[42]Scott Ciment, 'How the 2015 Criminal Procedure Code Changes Vietnam's Criminal Justice Legal Framework' (vietnamlawmagazine.vn, 7 Jan 2016) <https://vietnamlawmagazine.vn/how-the-2015-criminal-procedure-code-changes-vietnams-criminal-justice-legal-framework-5420.html> accessed 2 Jun 2025.

[43]UNDP Vietnam, 'Supporting Adversarial Principles of Criminal Justice in Viet Nam' <https://www.undp.org/vietnam/news/supporting-adversarial-principles-criminal-justice-viet-nam> accessed 2 Jun 2025.

[44]UN Vietnam, 'Delivering as One: 2012-2016 Results Report' (United Nations Vietnam, 14 Nov 2017) <https://vietnam.un.org/en/4128-delivering-one-2012-2016-results-report> accessed 2 Jun 2025.

[45]'Hội thảo tham vấn dự thảo Báo cáo 'Nghiên cứu đánh giá mức độ tương thích của Bộ luật hình sự, Bộ luật tố tụng hình sự với các Công ước quốc tế về quyền con người mà Việt Nam là thành viên' [Consultation Workshop on the Draft Report 'Research on Assessing the Compatibility Between the Penal Code, the Criminal Procedure Code and International Conventions on Human Rights to which Vietnam is a member'] (MOJ Vietnam, 3 Dec 2013) <https://moj.gov.vn/tctccl/tintuc/Pages/tin-tuc-hoat-dong.aspx?ItemID=226> accessed 30 May 2024.

[46]UN Vietnam, 'UN Recommendations on the 2015 Penal Code and Criminal Procedural Code of Viet Nam' (United Nations Vietnam, 23 May 2017) <https://vietnam.un.org/en/14681-un-recommendations-2015-penal-code-and-criminal-procedural-code-viet-nam> accessed 2 Jun 2025.

[47]Lan Anh, 'Hợp tác quốc tế toàn diện về bảo đảm vấn đề nhân quyền của Việt Nam [Comprehensive international cooperation on ensuring human rights issues in Vietnam]' (XaydungDang, 17 Mar 2020) <https://xaydungdang.org.vn/nhan-quyen-va-cuoc-song/hop-tac-quoc-te-toan-dien-ve-bao-dam-van-de-nhan-quyen-cua-viet-nam-13654> accessed 31 May 2024.

[48]Ngoc Son Bui, 'Vertical Law and Development' (2021) 54 Cornell International Law Journal 1, 4.

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international values. As individuals become more aware of their human rights, international organisations and foreign countries contribute views and standards to guide Vietnam in better protecting these rights.[49] The human rights standards are considered the minimum requirements for a state to be able to participate effectively in international relations.[50] As a result, the human rights discourse is shaped by universal values and principles of liberal constitutionalism.[51] Without support in terms of experience, and knowledge from international organisations and other countries, as well as shifts in thinking about human rights, international human rights standards in Vietnam will risk deviating from international standards. The Vietnamese Government also recognises that international cooperation and dialogue is necessary to promote and protect human rights and, consequently, supports international exchanges and cooperation to improve the effectiveness of protecting and promoting human rights.[52]

Coercion

While acculturation targets a state's social identity and relationships, using social reorganisation to achieve conformity with group norms and expectations, coercion targets a state's material interests and alters its cost-benefit analysis to induce compliance.[53] Driven by instrumentalism,[54] states change behaviour because they perceive it to be in their material interest to do so, based on a calculation of costs and benefits associated with rewards and sanctions.[55] This is evident in international economic and trade cooperation agreements. The EU-Vietnam Comprehensive Partnership and Cooperation Agreement[56] affirms respect for democratic principles and human rights as essential elements of the agreement. The *EU-Vietnam Free Trade Agreement* (FTA) also uses an inductive approach to embed international legal norms in Vietnam's legal system. It required Vietnam to ratify core ILO conventions and improve enforcement.[57] Under intense pressure to join new-generation FTAs, Vietnam took stepwise action. It ratified ILO C98 (*Right to Organise and Collective Bargaining Convention 1949*) in 2019 and passed a new Labour Code which broadened the right to organise.[58] The ILO and United Nations provided technical support to help Vietnam realise this obligation. Here, both persuasion (ILO/United Nations advocacy and training) and coercion (trade deals) play a role in accelerating the internalisation of international standards, thereby reinforcing the process of acculturation. A United Nations report notes the new Labour Code as a major step 'reflecting the United Nations' great technical support'[59] but also implicitly in response to FTA commitments. However, Vietnam has delayed ratifying ILO C87 (*Freedom of Association and Protection of the Right*

[49]Thomas B. Pepinsky, 'Plea Bargaining in Authoritarian Regimes' (2024) 34 Duke Journal of Comparative & International Law 235, 258.

[50]Nguyen Thi Hong Van and others, 'Vietnam and the Implementation of International Commitments and Obligations on Human Rights' (2021) 24 Journal of Legal, Ethical and Regulatory <https://www.abacademies.org/articles/vietnam-and-the-implementation-of-international-commitments-and-obligations-on-human-rights-12032.html> accessed 21 Feb 2026.

[51]Ngoc Son Bui, 'Vietnam's Mixed Constitution and Human Rights' (2022) 16 The Law & Ethics of Human Rights 295, 310.

[52]'Việt Nam ủng hộ tăng cường trao đổi, hợp tác quốc tế lĩnh vực nhân quyền [Vietnam Supports Strengthening International Exchanges and Cooperation in the Field of Human Rights]' (VOV, 18 Oct 2023) <https://vov.vn/chinh-tri/viet-nam-ung-ho-tang-cuong-trao-doi-hop-tac-quoc-te-linh-vuc-nhan-quyen-post1053255.vov?jskey=gublNUPY44PQ4jSxWF3XqvgLXhilmX08Ag%3D%3D> accessed 2 Jun 2025.

[53]Goodman and Jinks (n 8) 645.

[54]ibid 655.

[55]ibid 633.

[56]Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part, OJ L 329/8 (signed 27 Jun 2012, entered into force 1 Oct 2016) ('EU-Vietnam PCA'), art 1.

[57]European Commission, 'EU-Vietnam Free Trade Agreement | Access2Markets' <https://trade.ec.europa.eu/access-to-markets/en/content/eu-vietnam-free-trade-agreement> accessed 2 Jun 2025.

[58]UN Vietnam, 'One UN Results Report 2019' (United Nations Vietnam, 8 Jul 2020) <https://vietnam.un.org/en/52299-one-un-results-report-2019> accessed 2 Jun 2025.

[59]ibid.

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to Organise Convention 1948) despite its pledge. These moves reflect Vietnam's cautious implementation: independent unions remain prohibited (only one official union federation is allowed). Thus, Vietnam's response to FTA coercion has been partial acceptance rather than outright resistance or wholehearted embrace.

Moreover, the effectiveness of the coercion mechanism in the socialisation of human rights standards lies not only in successfully adopting international standards but also in preventing human rights violations. The provision of a non-execution clause on human rights establishes a form of negative conditionality, posing a risk of material sanctions for breaches of essential elements, such as human rights. These sanctions could involve measures like suspending market access or reducing development aid. For example, the Voluntary Partnership Agreement on Forest Law Enforcement, Governance and Trade between the EU and Vietnam establishes certification mechanisms and funding commitments from the EU and its Member States. Article 23(2)(c) of the agreement states that 'either Party may suspend the application of this Agreement in the event that the other Party… acts in a way that poses significant risks to the environment, health, safety or security of the people of the Union or Vietnam'. The European Commission has also stated that '[the human rights clause] gives the EU a clear legal basis for raising human rights issues and it makes it impossible for both parties to claim that human rights are a purely internal matter'.[60] This soft form of coercion incentivises the Vietnamese government to balance the need to comply with internationally recognised standards while maintaining economic benefits.[61]

Diffusion manifestation

Although some fundamental concepts of criminal procedure are mentioned in the Vietnamese Constitution, these clauses are still vague and undeveloped. Consequently, the primary source is the Criminal Procedure Code itself. The term 'equality of arms' is neither formally recognised nor explicitly used in the Vietnamese legal system. However, the evolution of criminal procedure codes demonstrates an increasing emphasis on the principle of equality between prosecution and defence. While article 20 of the 1988 Criminal Procedure Code and article 19 of the 2003 Criminal Procedure Code each mentioned 'equality' between prosecution and defence only once in relation to evidence presentation, claims, and arguments before the court, the 2015 Criminal Procedure Code significantly expanded this concept by incorporating the term 'equality' four times throughout its provisions by reaffirming equality in the evidence presentation and evaluation, and in making requests to clarify the objective truth of the case (article 26); requiring courts to create conditions for all parties to exercise their rights and participate in democratic and equal proceedings (article 26); mandating equality in courtroom arrangements (article 257); and obligating judges to facilitate equal argument presentation by all parties in cassation procedures (article 386). This legislative progression reflects a deliberate shift toward more robust procedural equality in Vietnamese criminal justice. This is due to the trend of increasing adversarial elements and protecting human rights to align with international human rights standards. Both aspects are connected. Protecting human rights also serves to strengthen the adversarial elements in legal procedures, and ensuring the adversarial process also helps defend the accused's rights.

Improve adversarial proceedings

The issue of improving adversarial proceedings has received special attention from Vietnam's Party and State. The concept of adversarial proceedings first officially appeared in the Party's Resolutions

[60]Commission Staff Working Document, 'Human rights and sustainable development in the EU-Vietnam relations with specific regard to the EU-Vietnam Free Trade Agreement' (2016) 21 final. <https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154236.pdf> accessed 30 Apr 2024.

[61]Tien-Duc Nguyen and Pasquale Viola, 'Constitutional Rights in Socialist East Asia' (2022) 40 Nordic Journal of Human Rights 306, 320.

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on judicial reform and was later enshrined in the Constitution and subsequent laws. *Resolution 08-NQ/TW dated 2 January 2002 of the Politburo on Some Key Tasks of Judicial Work in the Coming Time* (Resolution 08-NQ/TW)[62] clearly states the task to improve the quality of prosecution by procurators at court sessions, ensure democratic adversarial proceedings with defence lawyers and other participants. Subsequently, Resolution 49-NQ/TW affirmed the need to renew the organisation of court hearings, clarify the position, powers and responsibilities of procedural officers and participants towards ensuring openness, democracy, and solemnity; improve the quality of adversarial proceedings at court hearings, regarding these as a breakthrough stage of judicial activities.

In the current context of globalisation, national legislation tends to reduce local elements, resulting in an integration of inquisitorial and adversarial models in order to meet the increasingly high requirements of crime prevention and control and ensuring human rights. Vietnam's current procedural system is a hybrid model leaning toward the inquisitorial, rather than a purely traditional inquisitorial system as in the past.[63] The requirement to strengthen adversarial elements stated in Resolution 08-NQ/TW and Resolution 49-NQ/TW of the Politburo should not be understood as a requirement to change the procedural model, from an inquisitorial model to an adversarial model.[64] Adversarial proceedings are understood not as a procedural model but as the practice of debate between participants in criminal proceedings, particularly during the trial stage.[65] Vietnam does not seek a full transition to an adversarial system; instead, it retains core inquisitorial features such as the judge's active role and the central importance of the case file to remain consistent with the goal of finding objective truth. The gradual adoption of appropriate adversarial elements mainly revolves around ensuring equality between the prosecution and the accused, such as establishing the adversarial principle during the debate in court, presenting evidence, and maximising the conditions under which parties can protect their legitimate rights and interests.

The Party's viewpoint and policy on adversarial proceedings were institutionalised in the 2013 Constitution. The Constitution prescribes that principles of adversarial proceedings at trials are guaranteed,[66] whereas previous constitutions did not have this provision. The principle of adversarial proceedings reflects principles of democracy, transparency, and equality in criminal proceedings, especially during the trial phase where both sides can argue their case before a court in accordance with a set of guidelines that permit the defence to submit independent evidence and separate arguments.[67] The idea of equality of arms, which guarantees that the prosecution and defence can defend their respective positions under the same procedural and evidentiary laws, is probably the most fundamental feature that characterises adversarial aspects of a justice system. In other words, to enhance adversarial elements in any procedural system, it is essential to strengthen guarantees for the principle of equality of arms, and vice versa.

Vietnam has undertaken reforms that changed the conception of the trial phase, giving it a more adversarial character.[68] The 2014 Law on Organization of People's Courts prescribes that adversarial principles in trials must be guaranteed. Courts are responsible for ensuring that procedural participants exercise their adversarial rights in trials. The implementation of adversarial principles in trials

[62]Politburo of the Communist Party of Vietnam, 'Nghị quyết số 08-NQ/TW về một số nhiệm vụ trọng tâm công tác tư pháp trong thời gian tới [Resolution No 08-NQ/TW on Some Key Tasks of Judicial Work in the Coming Time]' (2 Jan 2002).

[63]Minh Do Pham, 'Một số đánh giá về mô hình tố tụng hình sự tại Việt Nam [Some Assessments of the Criminal Litigation Model in Vietnam]' (Vietnam Lawyer Magazine, 2 Apr 2024) <https://lsvn.vn/mot-so-danh-gia-ve-mo-hinh-to-tung-hinh-su-tai-viet-nam-1711986487-a142371.html> accessed 2 Jun 2025.

[64]ibid.

[65]'Tranh tụng và giải pháp nâng cao chất lượng thực hành quyền công tố của Kiểm sát viên tại phiên tòa hình sự đáp ứng yêu cầu cải cách tư pháp [Adversarial Proceedings and Solutions to Enhance the Quality of Procurators' Performance in Criminal Trials to Meet Judicial Reform Requirements]' (Supreme People's Procuracy) <https://vksndtc.gov.vn/thong-bao/Pages/dsthongbao.aspx?ItemId=140> accessed 2 Jun 2025.

[66]Constitution 2013, art 103.3.

[67]Ciment (n 42).

[68]Ciment (n 42).

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complies with the provisions of procedural law.[69] The 2015 Criminal Procedure Code added the principle of adversarial proceedings in trials as one of the fundamental principles[70] to concretize the spirit of the 2013 Constitution. This Code also stipulates that the defendant has the right to question the victim, civil plaintiff, and witnesses if the presiding judge agrees. Here, the defendant's rights in the questioning procedure at trial have been expanded compared to the previous codes. That is, the defendant has the right to directly question other defendants, victims, and participants in the proceedings about the crimes without having to communicate questions through the presiding judge.[71]

To guarantee that both sides of the prosecution and the defence have equal rights to gather and assess evidence, documents, and case details to ascertain objective truth of the case prior to engaging in debate, the principle of equality of arms extends beyond the trial stage and encompasses all proceedings from investigation, prosecution, and trial. The accused must have access to information as soon as it becomes available, to the extent that it does not jeopardise the investigations, to prepare for their case while the prosecution prepares theirs. This is one of the requirements to guarantee that arguments in court become feasible and is also a key component of the adversarial principle. If both sides can use equality of arms as a foundational element for justice, then this argument ought to be credible. It stipulates that the accused must be given the same opportunities to cross-examine prosecution witnesses and summon her own witnesses under the same guidelines as those governing prosecution witnesses. When the accused is imprisoned without legal representation and without resources, it becomes imperative that the right to call witnesses be realised. In such a case, the accused lacks the state's resources to summon and present witnesses in court. In this sense, if the accused does not have the resources, the court must help her. Only by preserving a certain level of procedural balance between the accused and the prosecution can fairness be achieved. Previously, the collection of evidence was mainly carried out by procedure-conducting agencies. The 2015 Criminal Procedure Code is the first law which stipulates that suspects, defendants, and defence lawyers have the right to present evidence and evaluate evidence collected by the prosecution agency or request the court to collect it:

> In the process of initiating, investigating, prosecuting and adjudicating criminal cases, investigators, procurators, other persons having the jurisdiction to conduct criminal procedure, the accused, defenders and other persons participating in criminal procedure are all equal in presenting evidence, assessing evidence, making requests to clarify the objective truth of the cases. Documents and evidence from the case file, brought by the procuracy to the court for trial, must be sufficient and legitimate… All evidence of guilt and innocence, aggravation and mitigation of criminal liabilities, citation of points, sections, or articles in the Criminal Code for determination of defendants' crimes, sentences, compensations, and handling of proofs, and other facts essential to the lawsuit must be presented, argued, and clarified in court.[72]

Prescribing principles of adversarial proceedings as a fundamental principle in criminal procedure contributes to improving the quality of trials at all court levels, preventing wrongful convictions, and protecting human rights. At the same time, it was said to demonstrate the determination of Party and State in continuing the judicial reform process with the goal of building a transparent, strong, democratic, and solemn judicial system that protects justice, gradually modernises, serves the people, and serves the socialist Vietnamese Fatherland.[73]

[69]Law on Organization of People's Courts 2014, art 13.

[70]Criminal Procedure Code 2015, art 26.

[71]ibid art 309-311.

[72]ibid art 26.

[73]Hoang Van Bac, 'Từ quan điểm chỉ đạo của Đảng đến cụ thể hóa nguyên tắc tranh tụng trong tố tụng hình sự theo quy định của pháp luật Việt Nam hiện hành [From the Party's Guidance Viewpoint to Specificizing the Principle of Adjudication in Criminal Procedure according to the Provisions of Current Vietnamese Law]' (TruongChinhtriPhutho, 28 Apr 2018)

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In addition, legal procedures must be adhered to when conducting an individual's inquiry, prosecution, and trial. This highlights the necessity of due process, which is an essential component of the rule of law. The protection of human rights against arbitrary treatment is primarily dependent on open and transparent procedures. The ethos 'no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law' in article 9(1) of the ICCPR is upheld by the 2015 Criminal Procedure Code, which emphasises stringent procedural requirements as a basic tenet of criminal proceedings. The Code stipulates that all criminal proceedings must be conducted in accordance with the provisions of this Code. Information on crimes, initiation, investigation, prosecution and trial must not be handled outside the grounds and procedures specified by this Code. Any evidence which is true but not collected according to the procedures defined by this Code has no legal value and cannot be used as a basis for resolving criminal cases.[74] This regulation aligns with the due process requirement by emphasising the legality of evidence, also known as the principle of exclusion of evidence.[75] If procedural violations are detected during the proceedings, evidence shall become void,[76] records shall be returned for supplementary investigation,[77] judgments shall be annulled for retrial during appellate proceedings,[78] and in the cassation procedure.[79]

Improve accused's human rights

Recognising the inherent inequality between the accuser and the accused, where the accuser holds a superior position in terms of resources and power, it is crucial to address the potential abuse of state power that can overwhelm the accused or lead to violations of legal proceedings. Therefore, one of the measures to restore balance and ensure equality of arms is to strengthen the rights and protection measures for the accused.

In recent years, the amendment of criminal procedural law has paid more attention to defining the task of protecting human rights in criminal justice activities. Therefore, investigative measures have been prescribed not only to clarify the truth but also to expand and ensure human rights in different fields. In particular, the accused is guaranteed the inviolable rights to body integrity, protection of their life, health, honour, dignity, and personal property. The 2015 Criminal Procedure Code established various new measures to help competent procedural bodies innovate their thinking and practical actions on human rights protection to prevent wrongful convictions. The clearest evidence is that nineteen out of twenty-seven fundamental principles prescribed in this Code contain content to guarantee and protect the human rights of the accused and procedural participants. At the same time, there is increasing expansion and emphasis on certain rights. Below is an analysis of some typical rights.

Right to defence. The full and effective exercise of the right to defence contributes to realising the principle of equality of arms by balancing resources and capabilities between the two sides, creating conditions for the accused to counterbalance and defend their stance. Vietnamese regulations on the right to defence have been improved in accordance with the spirit of this principle, ensuring timely

<http://truongchinhtritinhphutho.gov.vn/khoa-nha-nuoc-va-phap-luat/tu-quan-diem-chi-dao-cua-dang-den-cu-the-hoa-nguyen-tac-tranh-tung-trong-to-tung-hinh-su-theo-quy-dinh-cua-phap-luat-viet-nam-hien-hanh.html> accessed 11 Jul 2024.

[74]Criminal Procedure Code 2015, art 7.

[75]Dinh The Hung, 'Về tố tụng công bằng trong tố tụng hình sự Việt Nam [On fair proceedings in Vietnamese criminal proceedings]' (TapchiToaan, 13 Aug 2020) <https://www.tapchitoaan.vn/ve-to-tung-cong-bang-trong-to-tung-hinh-su-viet-nam> accessed 11 Jul 2024.

[76]Criminal Procedure Code 2015, art 87.

[77]ibid art 236, 280.

[78]ibid art 358.

[79]ibid art 371, 388.

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implementation without unreasonable restrictions. The 2013 Constitution solidifies the accused's right to defence as a fundamental human right, broadening the scope to encompass not only suspects and defendants but also arrestees and detainees as subjects of this right. To concretise these provisions, the 2015 Criminal Procedure Code dedicates an entire chapter to 'defence', laying the groundwork for the effective exercise of this right. It elaborates on the concept of defender, broadening the pool of individuals who can participate as defender, including people's advocates, legal representatives, and legal assistants, thereby diversifying the avenues through which individuals can access legal aid. The Code allows defender to engage from the moment the arrested person is present at the investigation agency's headquarters. This grants the defender the right to intervene early in the proceedings, safeguarding the accused's rights from the initiation of the investigative process.

The rights and obligations of defender are also explicitly outlined, with the 2015 Criminal Procedure Code introducing new rights such as the right to question the accused, be present during statements, and collect evidence. By incorporating these adjustments, the 2015 Criminal Procedure Code establishes mechanisms that empower individuals with the right to defence and their defenders, ensuring equality in evidence collection, opinion expression, and requests during proceedings. This comprehensive approach binds procedural agencies to uphold the right to defence, fostering fair and just criminal investigations, prosecutions, and adjudications, thus preventing miscarriages of justice.

Right to presumption of innocence. In addition to being the accused's fundamental right, the presumption of innocence is a concrete manifestation of the equality of arms principle. By imposing the burden of proof on the prosecution and using the principle of explaining uncertainties and contradictions in the accused's favour to shield them from adverse circumstances, this levels the playing field between the two parties. In keeping with the spirit of the equality of arms principle, strict enforcement of this right helps to create an impartial procedural environment that allows all parties to advocate equally throughout proceedings.

In chapter II on Human Rights, Basic Rights, and Obligations of Citizens, the 2013 Constitution for the first time in Vietnam's constitutional history, lays out the following provisions: 'Until a person is proven guilty in accordance with the legal process and the judge's verdict of guilt has taken effect, they are presumed innocent'.[80] This is what the presumption of innocence idea is all about. The 2015 Criminal Procedure Code specifies the following content to uphold the Constitution:

> The burden of proof belongs to criminal procedural agencies. The accused has the right but is not required to prove their innocence; they can use this right to defend themselves but do not have the obligation to prove it. The procedural agencies must clarify these doubts. If it is not possible to clarify the doubt, the unclear evidence should be interpreted in favour of the accused. When it is insufficient and impossible to clarify the grounds for accusation or conviction, the procedural agency or person must conclude that the accused is not guilty.[81]

This regulation counters the tendency to accuse with the mindset of 'better to be wrong than to let go,'[82] when there is ambiguity in determining the criminal liability and the circumstances related to the crime. These doubts must be addressed to the advantage of the accused. This represents a crucial component of the presumption of innocence, which effectively protects the accused's legal safety by representing the human aspect of democratic criminal processes and the rule of law.[83]

[80] Constitution 2013, art 31(1).

[81] Criminal Procedure Code 2015, art 13.

[82] Dao Tri Uc, 'Nguyên tắc suy đoán vô tội trong BLTTHS năm 2015 [Principle of Presumption of Innocence in the 2015 Criminal Procedure Code]' (Kiemsat, 6 May 2018) <https://kiemsat.vn/nguyen-tac-suy-doan-vo-toi-trong-bltths-nam-2015-47100.html> accessed 12 Jul 2024.

[83] ibid.

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Right to remain silent. The 2013 Constitution, the 2014 Law on Organization of the People's Court, the 2014 Law on Organization of the People's Procuracy, the 2015 Criminal Code, and the 2015 Criminal Procedure Code all recognise the accused's right to silence, even though it is not specifically mentioned as an independent right. Regarding the burden of proof and establishing the truth of the case, the 2015 Criminal Procedure Code stipulates that the procedural agencies bear the responsibility of proving the offense.[84] The accused is not compelled to testify against themselves or confess to their guilt; they have the right, but not the duty, to establish their innocence.[85] At trial, the defendant has the right to testify, to present opinions, and not to be forced to testify against themselves or admit guilt.[86] If a defendant does not respond to queries, the trial panel, procurators, and defenders will interrogate other people and review case-related exhibits and papers.[87] These regulations help to balance the relationship between the prosecuting agency and the accused by exempting the accused from the obligation to declare and prove. There have been landmark cases related to the right to remain silent. On 16 May 2018, cases of 'Lack of responsibility causing serious consequences' and 'Inadvertently causing death' that occurred at Hoa Binh Provincial General Hospital, were brought to trial.[88] The defendant in the case was Hoang Cong Luong, a thirty-two year old doctor in the intensive care unit of the Hoa Binh Provincial General Hospital. He was prosecuted for the crime of irresponsibility causing serious consequences. During the questioning, Luong asked to remain silent and authorised a lawyer to prove his innocence. Previously, on 22 June 2017, the People's Court of Ho Chi Minh City tried the case of Truong Ho Phuong Nga on the crime of fraudulent appropriation of property. At the questioning session, when answering a question from a representative of the Procuracy, Phuong Nga said: 'The defendant is not obliged to prove the crime, this obligation belongs to the procurator'. During the trial, Phuong Nga resolutely used the right to remain silent to not testify against herself or admit any guilt.[89] These cases have shown that awareness of the right to remain silent has increased and accused actively use it to protect themselves.

Freedom from torture. Vietnam has implemented several legislative changes to guarantee adherence to the United Nations Convention against Torture[90] in 2015. The prevention of abuse of power by procedural agencies, the protection of human rights, and the preservation of the balance of power between the parties are all achieved through regulations that forbid torture, forced confessions, the requirement that audio and video recordings of testimony sessions be made, and the strict handling of those who engage in torture. Any actions that violate the legitimate rights and interests of agencies, organisations, and individuals are forbidden, including coercing people into testifying against their will, using corporal punishment, torturing them, or subjecting them to any cruel, inhuman, or humiliating treatment.[91] If procedural officials engage in such behaviour, their titles may be revoked,[92] and can be subject to criminal liabilities under the Criminal Code.[93] The 2014 Law on

[84] Criminal Procedure Code 2015, art 15.

[85] ibid art 58-60.

[86] ibid art 61(2)(h).

[87] ibid art 309(3).

[88] Danh Trong, 'Bác sĩ Hoàng Công Lương bị tuyên phạt 30 tháng tù [Doctor Hoang Cong Luong Was Sentenced to 30 Months in Prison]' (Tuoitre, 19 Jun 2019) <https://tuoitre.vn/bac-si-hoang-cong-luong-bi-tuyen-phat-30-thang-tu-20190619083216811.htm> accessed 12 Jul 2024.

[89] Binh Nguyen, 'Vụ Hoa hậu Phương Nga: Quyền im lặng giúp Phương Nga ra sao? [Miss Phuong Nga Case: How Does the Right to Remain Silent Help Phuong Nga?]' (Thanhnien, 26 Jun 2017) <https://thanhnien.vn/vu-hoa-hau-phuong-nga-quyen-im-lang-giup-phuong-nga-ra-sao-1851211788.htm> accessed 12 Jul 2024.

[90] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85 (adopted 10 Dec 1984, entered into force 26 Jun 1987) ('UNCAT')

[91] Law on Temporary Custody and Detention 2014, art 8(1), Law on the Organization of Criminal Investigation Bodies 2014, art 14(2).

[92] Criminal Procedure Code 2015, art 56(4)(b).

[93] ibid art 183(5), crimes that they can be charged under the Criminal Code include murder (art 123), causing death while performing official duties (art 127), involuntary manslaughter due to misconduct in professional practice or administrative

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Temporary Custody and Detention also stipulates the principle of ensuring humanity, which forbids torture, coercion, physical punishment, or any other treatment that violates the rights and interests of the person in temporary detention or custody.[94] Furthermore, the 2015 Criminal Procedure Code includes clauses that provide the accused's protection through procedural guarantees, such as mandatory audio or video recording during the accused's interrogation;[95] mandatory information of the defence attorney beforehand of the time and location of the activities so that they can attend;[96] Procurators are required to interrogate suspects to evaluate case evidence or verify allegations of torture and forced confessions in specific circumstances, namely, when suspects assert their innocence, complain of investigative misconduct, or when there are indications of legal violations.[97] In such instances, the trial panel shall decide whether to play audio or video recordings of the interrogation in court.[98] At the same time, abusing positions and powers to commit crimes is considered an aggravating circumstance.[99]

Impediments

While Vietnam has acquired new insights through intercultural exchange and the adaptation of global values, its socialist past continues to influence present experiences.[100] Therefore, although recognised in international law, and arguably applicable in any domestic procedural model, the full realisation of the principle of equality of arms in Vietnam's socialist criminal justice system is shaped by distinctive factors.

Collectivism

During the approximately thousand-year Chinese rule (111 BC-938 AD), Vietnamese legal principles were significantly shaped by the Chinese Confucian legalist tradition, an influence that persisted beyond the extended period of Chinese dominance. In both Vietnam and China, emperors emphasised virtue-based governance while utilising legal rules to promote positive conduct. Both virtue-based governance and legal regulations upheld the supremacy of the state.[101] Following the 1945 August Revolution, the Confucian worldview began to give way to Marxism-Leninism. However, the influence of Confucianism continued to exist, because it had always been intertwined with the Vietnamese Legalist philosophical tradition. Therefore, Vietnamese law is classified as a socialist legal system that combines elements of Confucian and Legalist philosophy.[102]

The interaction between the private and the public, as well as between the individual and the communal, has been influenced by Confucianism for more than 2,000 years.[103] The concept of the

rules (art 129), coercing suicide (art 130), threat of murder (art 133), deliberate infliction of bodily harm by a law enforcement officer in performance of official duties (art 137), maltreatment (art 140), insults (art 155), illegal arrest, detention or imprisonment of another (art 157), corporal punishment (art 373), obtainment of testimony by duress (art 374).

[94]Law on Temporary Custody and Detention 2014, art 4(3).

[95]Criminal Procedure Code 2015, art 183(6).

[96]ibid art 79.

[97]ibid art 183(4).

[98]ibid art 313.

[99]Criminal Code 2015, art 155.

[100]Hualing Fu and others (eds), *Socialist Law in Socialist East Asia* (Cambridge University Press 2018) 18.

[101]Faculty of Law Chiang Mai University, 'The Research of Vietnam Law and Vietnam Trade and Investment Laws' <https://lawforasean.krisdika.go.th/File/files/Law%20relating%20to%20Economics%20Issues%20in%20Vietnam(1).pdf> accessed 15 July 2024.

[102]Pham Duy Nghia, 'Confucianism and the Conception of the Law in Vietnam' in John Gillespie and Pip Nicholson (eds), *Asian Socialism and Legal Change* (ANU Press 2005) 84.

[103]Lan Chi Le, 'Does an Evasion of Criminal Procedure Exist in the Traditional Legal Culture of Vietnam?', *Combating Torture in Asia: Law and Practice* (Social Science Publishing House 2021) 126 <https://law.unimelb.edu.au/centres/alc/news-and-events/combating-torture-in-asia-law-and-practice-online-conference/papers> accessed 11 May 2024.

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wulun (Five Relationships) exemplifies the hierarchical system in Confucian-influenced states. By adopting the concept of *ren* (human) and *li* (rituals), community members behave in a proper manner by performing duties associated with their roles through a complex network.[104] Each individual has a limited freedom to act outside their sphere.[105] Confucianism views humans as social beings, part of a larger community and responsible for contributing to the common good of society and the state. Therefore, individuals are considered as 'potential resources for the state's ends'.[106] Similarly, Marxist view of humans as a 'species'[107] holds that each individual is intimately linked to the society, with their rights dependent on this social context for their realisation.[108] Marxist philosophy posits that through education, communist morality should become so deeply ingrained in the masses that social pressure supplants law as the primary means of social control.[109]

One apparent influence of socialism and Confucianism in the Vietnamese legal system can be seen in the 2013 Constitution, which emphasises that citizens have rights associated with their duties and responsibilities towards the country and society.[110] The 2015 Criminal Procedure Code also provides that its goal is to educate everyone to be conscious of following the law.[111] Punishment is not only aimed at punishing the person or legal entity that commits a crime, but also meant to educate the offender and others to be conscious of following the law and the rules of life.[112] This function of punishment is considered a common trait shared by all socialist jurisdictions.[113] With the aim to educate both defendants and society, judges in socialist criminal procedures are expected to be impartial but not detached, pursuing outcomes that align with socialist principles.[114] Socialist trials have to uncover the root causes of social conflicts that lead to crime, thereby promoting public morality and addressing societal issues. Each case is analysed in its social context to identify disturbances to socialist harmony. Resolutions often involve engaging individuals and collectives rather than relying solely on judicial proceedings. When determining a sentence, the court shall decide based on not only the laws, but also the offender's personal characteristics and aggravating or mitigating circumstances.[115]

The ideological nature of criminal procedure is evident both in political statements contained in the legislation and in the values it promotes or ignores. Criminal procedural law and agencies often prioritise the community's common good over individual rights. The legal autonomy of the individual is expressed vaguely, since the main purpose of Vietnamese procedural law is to promote a collectivist society and maintain socialist morality rather than to resolve individual disputes. The 2015 Criminal Procedure Code also clearly states that its goal is to maintain a socialist public order.[116] Consequently, despite the recognition of individuality and personal interests in the context of modern criminal proceedings, these aspects encounter challenges in being duly respected and fully realised in the practical resolution of criminal cases. Suspects often experience a diminished sense

[104]Klaus Nielsen, 'Background and History of Confucianism – A Literature Review' Project Report. 2016. <http://eprints.bbk.ac.uk/12459/> accessed 11 May 2024.

[105]NIU Geping, 'Liberalism and Confucianism: Rights and Virtues' (2011) 7 Core Ethics 235, 240.

[106]Nguyen and Viola (n 61) 310.

[107]Karl Marx, 'Economic & Philosophic Manuscripts of 1844' <https://www.marxists.org/archive/marx/works/download/pdf/Economic-Philosophic-Manuscripts-1844.pdf> accessed 11 May 2024.

[108]Nguyen and Viola (n 61) 311.

[109]Gordon B Smith, 'The Impact of Socialism on Soviet Legal Institutions and Procedures' (1984) 23 Columbia Journal of Transnational Law 315, 329.

[110]Constitution 2013, art 15.

[111]Criminal Code 2015, art 2.

[112]ibid art 27.

[113]Harold J Berman, Susan Cohen and Malcolm Russell, 'A Comparison of the Chinese and Soviet Codes of Criminal Law and Procedure' (1982) 73 The Journal of Criminal Law and Criminology (1973-) 238, 238.

[114]Regina Rauxloh, *Plea Bargaining in National and International Law* (1st edition, Routledge 2014) 117.

[115]Criminal Code 2015, art 50(1).

[116]Criminal Procedure Code 2015, art 2.

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of self-worth and adopt a submissive stance toward procedural agencies. The above-mentioned elements enhance the flexibility and effectiveness of procedural agencies in tackling criminal activities, but also highlight the gap between those involved in the proceedings and the procedural agencies.[117]

Crime control model

Packer contrasted a due process model with a crime control model of criminal justice policy. The former is a liberal ideal that emphasises formal legal procedures that limit public power to protect the individual. The latter, by contrast, emphasises the repression of crime in the interest of the individual freedom of law-abiding citizens whose everyday life is threatened by lawbreakers.[118] It is clear that socialist societies come closer to the crime control model. However, crime is suppressed to further the development of socialism rather than individual freedom.[119] In the socialist system, a criminal act is characterised as a 'socially dangerous act' that disrupts the order created by the working class and peasants in the shift toward communism.[120] Since socialism is supposed to eliminate the causes of crime and antisocial conducts, criminal activity raises both pragmatic and ideological issues because it undermines the system's legitimacy.[121] Criminals who undermine the system and disturb societal order are not tolerated, and it is justified to punish them with crime control measures, and the courts and other legal institutions have an obligation to ensure socialist values.[122] Similarly, the Vietnamese criminal justice system views crime as a dangerous behaviour for society.[123] Crime is not just a matter of private affairs between individuals; it also violates the social order established by the state. When a crime occurs, it violates public order and social interests, making the state responsible for resolving it. A core principle of the Criminal Procedure Code is the prompt and comprehensive detection of crimes. Competent authorities must initiate criminal proceedings upon discovery of a crime and take necessary measures to identify the crime and deal with the offender.[124] The fact that the state is the main subject of initiation and handling criminal cases also demonstrates its social responsibility. Becoming a responsibility, the state (through authorised agencies within its machinery) must initiate and handle criminal cases and offenders – this is no longer an arbitrary activity. Initiating a criminal case is an obligation, a requirement that must be carried out actively, comprehensively, and timely; otherwise, it will lead to a situation of allowing crimes to go unchecked, and the interests of the state, society, and individuals will not be guaranteed. Prioritising crime control to achieve the ultimate goal of criminal proceedings often makes the protection of citizens' rights a secondary consideration during the prosecution of crimes. Specifically, this is shown in the 2015 Criminal Code which prioritises the protection of national sovereignty, security of the country, and the socialist regime over human rights and civil rights.[125] Therefore, Vietnam inevitably foregrounds the goal of protecting the socialist regime. This emphasis on crime repression often results in procedural advantages for the prosecution, as the system is designed to efficiently detect and punish crime rather than ensuring a balanced adversarial process, which can lead to an imbalance in procedural opportunities between the prosecution (representing the state) and the defence (the accused). Meanwhile, as participants in the proceedings rather than primary agents, the defenders' role is inherently constrained. Defenders have limited access to case files. They may only view documents relevant to the defence, and the

[117]Le (n 103) 128.
[118]Packer (n 21) 5.
[119]David Shichor and John W Heeren, 'Social Control in Socialist Societies: An Analysis of Five Major Characteristics' (1989) 13 Legal Studies Forum 215, 220.
[120]Harold J Berman, 'Principles of Soviet Criminal Law' (1946) 56 Yale Law Journal 803, 811.
[121]Smith (n 109) 325.
[122]ibid.
[123]Criminal Code 2015, art 8.
[124]Criminal Procedure Code 2015, art 2.
[125]Criminal Code 2015, art 1.

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documents they collected may only be considered as evidence if they are submitted to and certified by the competent authorities.[126]

Substantive truth doctrine

The goal of both adversarial and inquisitorial criminal procedure models is to discover the truth of a case. However, the former seeks legal truth, while the latter aims for objective truth.[127] The methods of truth-finding also differ. The adversarial model relies on the initiative of both parties in collecting evidence, focusing on debate between the parties at the trial with the judge playing a passive role.[128] The inquisitorial model, on the other hand, relies on the initiative and coverage of state agencies, pre-trial investigation records, giving the court more power to control evidence and proactively question.[129] Although the adversarial model's emphasis on 'legal truth' upholds procedural justice and limits the authority of the state, factual accuracy is not always guaranteed. On the flip side, the inquisitorial search for objective truth may be consistent with the principles of factual justice; it could compromise due process protections. The issue is not to choose which model is better, but to recognise the tension between truth-seeking and ensuring fairness in each specific context. In Vietnam's context, the principle of establishing objective truth is a cornerstone of criminal proceedings. Competent authorities are tasked with employing lawful measures to objectively, comprehensively, and adequately determine the truth of the case, including evidence of guilt and innocence, as well as aggravating and mitigating circumstances.[130] Criminal procedural law entrusts these authorities with full control over the criminal procedure process, including the collection and assessment of evidence. Agencies involved in later stages rely on earlier findings and verify their accuracy and legality.[131] From the initiation of a case, the investigation agency establishes a case dossier, which is central to subsequent proceedings.[132] When the investigation concludes, the dossier is sent to the procuracy to continue the investigation and eventually forward the case file to the court for trial. The judge also actively studies case files, poses questions, and verifies evidence, reflecting the inquisitorial model's interrogatory features. This focus on substance over due process allows procedural irregularities to be overlooked if the crime is proven. This approach was evident in the controversial and well-known *Ho Duy Hai* case. In this case, the defendant was sentenced to death in 2008 for allegedly killing two female postal workers in Long An province. The sentence was based largely on Hai's confession. The Supreme People's Procuracy determined that the procedural agencies committed various serious procedural violations, such as not requesting an examination of the blood stains immediately after collection but waiting four months; examining the crime scene but not confiscating important evidence bearing traces of the crime; not determining the time of death of the victims. Furthermore, some minutes of the testimony and interrogation were corrected but did not have the signature of confirmation from the declarant. Most notably, Hai's first statement, in which he did not admit guilt, was not included in the case file but, together with certain witness statements were filed

[126]Criminal Procedure Code 2015, art 81.

[127]Jacqueline Hodgson, 'Conceptions of the Trial in Inquisitorial and Adversarial Procedure' in A. Duff and others (eds) *The Trial on Trial: Vol. 2 Judgment and calling to account* (Hart Pub 2006) 3 <https://papers.ssrn.com/abstract=1503969> accessed 25 Dec 2024.

[128]JD Jackson, 'Two Methods of Proof in Criminal Procedure' (1988) 51 The Modern Law Review 549, 555.

[129]ibid 560.

[130]Criminal Procedure Code 2015, art 15.

[131]Van Do Tran, 'Mô hình tố tụng và vấn đề tranh tụng trong tố tụng hình sự Việt Nam [Procedure Models and Litigation Issues in Vietnamese Criminal Proceedings]' (Thi hành pháp luật trong lĩnh vực tư pháp hình sự hiện nay – Những vấn đề lý luận và thực tiễn [Implementing the Law in the Field of Criminal Justice Today – Theory and Practice], 2022) <https://hul.edu.vn/upload/phong-khcn-htqt/KHCN/2-K%E1%BB%B6%20Y%E1%BA%BEU%20H%E1%BB%98I%20TH%E1%BA%A2O%20(T%C3%93M%20T%E1%BA%AET).pdf> accessed 25 Dec 2024.

[132]Criminal Procedure Code 2015, art 37.

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in the archives of the investigation agency.[133] Despite a recommendation for a review by the Supreme People's Procuracy and a 2015 supervision report by the National Assembly's Judicial Committee, the Supreme People's Court's Judicial Council upheld the sentence in 2020, claiming that procedural violations in crime scene examination and evidence seizure were insufficient to necessitate a re-investigation.[134] In June 2020, Vietnam's National Assembly took the rare step of questioning the court verdict at a meeting of the National Assembly, and Chief Judge Nguyen Hoa Binh reaffirmed the death sentence, citing Hai's 25 written statements admitting his guilt.[135]

Another landmark case is the case of *Huynh Van Nen*, who was convicted in two murder cases in 1993 and 1998 in Binh Thuan province. Nen claimed that, in both cases, he was tortured during the investigation and forced to confess. It was not until 2015, when the real perpetrator in one of the two cases surrendered, that Nen was exonerated and released after nearly seventeen years of wrongful imprisonment. He later received a public apology and compensation from the state.[136] The case of Nguyen Thanh Chan followed a similar course. Sentenced to life in prison in 2004 for a murder in Bac Giang, Chan said he was forced to confess and was not given proper protection for his right to defence. After ten years, the real perpetrator surrendered, leading to his exoneration and release in 2014.[137] Both of these cases exposed the failure of the procedural agencies to verify the legality and accuracy of confessions – especially when the defendants alleged that they were forced to confess. In 2015, the National Assembly's Standing Committee's supervision report about Miscarriages of Justice in the Application of Criminal Law, Criminal Procedure Law, and Compensation for Wrongfully Convicted Persons in Criminal Proceedings acknowledged that there were instances of coercive interrogation and torture during investigations, constituting serious legal violations and infringements of human rights, including the rights of the accused. In some cases, these practices were the direct cause of wrongful convictions.[138]

Cases such as *Ho Duy Hai, Huynh Van Nen*, and *Nguyen Thanh Chan* show that the Vietnamese judicial model – despite reforms in human rights and the adversarial principle – is still strongly influenced by the 'objective truth-seeking' mindset of the inquisitorial model. In the name of objective truth, the collection of evidence and testimony might be done at the cost of forgoing due process guarantees. In a procedural environment where the investigation file is considered central and the testimony collected by the investigating and procuratorate agencies has default value, procedural rights such as the right to remain silent, and the right to defence might be set aside. The sidelining of procedural safeguards undermines the principle of equality of arms between the prosecution and defence. In practice, this imbalance creates a paradox: while the system proclaims a commitment to substantive truth, it may tolerate or even facilitate the use of confessions obtained under duress to be treated as decisive, while constraining the defence's capacity to contest such evidence. As such, the

[133]Supreme People's Procuracy, 'Quyết định số 15/QĐ-VKSTC-V7 Kháng nghị giám đốc thẩm đối với Bản án sơ thẩm và Bản án phúc thẩm vụ án Hồ Duy Hải [Decision No 15/QĐ-VKSTC-V7 Casation Appeal against the First-instance and Appellate Judgments of the Ho Duy Hai Case]' (22 Dec 2019)

[134]Supreme People's Court, 'Quyết định giám đốc thẩm vụ án Hồ Duy Hải [Decision on Cassation of Ho Duy Hai case]' (TapchiToaan, 13 May 2020) <https://tapchitoaan.vn/toa-an-nhan-dan-toi-cao-cong-bo-quyet-dinh-giam-doc-tham-vu-an-ho-duy-hai> accessed 10 Jul 2024.

[135]'Chánh án TAND tối cao trả lời trước Quốc hội câu hỏi Hồ Duy Hải có oan sai hay không? [Chief Justice of the Supreme Court Answers the Question Before the National Assembly: Was Ho Duy Hai Wrongly Convicted?]' (VTV, 15 Jun 2020) <https://vtv.vn/phap-luat/chanh-an-tand-toi-cao-tra-loi-truoc-quoc-hoi-cau-hoi-ho-duy-hai-co-oan-sai-hay-khong-20200615111200079.htm> accessed 2 Jun 2025.

[136]'Huỳnh Văn Nén - vụ oan sai chưa từng có trong tố tụng [Huynh Van Nen - an Unprecedented Wrongful Conviction]' (TuoiTre, 3 Dec 2015) <https://tuoitre.vn/huynh-van-nen-vu-oan-sai-chua-tung-co-trong-to-tung-1013980.htm> accessed 2 Jun 2025.

[137]'Hành trình đi tìm công lý từ một lá đơn kêu oan [The Journey to Find Justice from a Petition]' (Kiemsat, 22 Apr 2020) <https://kiemsat.vn/hanh-trinh-di-tim-cong-ly-tu-mot-la-don-keu-oan-57140.html> accessed 2 Jun 2025.

[138]'Quốc hội thảo luận về án oan sai và bồi thường oan sai trong tố tụng [The National Assembly Discusses Wrongful Convictions and Compensation for Wrongful Convictions in Proceedings]' (VTV, 5 Jun 2015) <https://vtv.vn/chinh-tri/quoc-hoi-thao-luan-ve-an-oan-sai-va-boi-thuong-oan-sai-trong-to-tung-20150605091633181.htm> accessed 2 Jun 2025.

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above cases reflect a deep conflict between the 'objective truth' model and the principle of procedural fairness.

Blurred separation of function

Socialist law is underpinned by a fundamentally different normative commitment to 'democratic centralism' compared to the separation of powers adopted in many civil law countries.[139] In Marxist theory, the socialist state is conceptualised as:

> a transitional arrangement whose sole purpose is to prepare society for full communist society, specifically the general orchestration of the national movement towards the stateless and lawless society known as communism. To achieve this, all functional subdivisions of the state must necessarily work together.[140]

In the Socialist Republic of Vietnam, the state apparatus is organised according to the principle of centralised power. State power is unified, with centralised assignment, coordination and supervision among state agencies exercising legislative, executive, and judicial powers.[141] Organising the state apparatus according to the principle of the separation of powers, with the legislative, executive, and judicial branches counterbalancing and restraining each other, is considered contradictory to the essence of people's power.[142] Therefore, the exercise of judicial power in the socialist rule of law state of Vietnam also aims to ensure the unity of state power; this unity is understood as all powers (including judicial power) belonging to the people. In the criminal justice system, three essential components — the investigative police, the procuracies, and the courts — form the foundation for combating criminal activities.[143] They share a relationship as procedure-conducting bodies of the state tasked with pursuing criminal liability against the accused. Under this framework, investigative agencies are responsible for identifying crimes and criminals. The procuracy exercises prosecution rights and supervises judicial activities, while the court wields judicial power. To handle complex criminal cases, a joint meeting mechanism among the leaders of these three procedure-conducting agencies is often established as an ad-hoc steering committee, known as the 'three-internal-affairs round-table'.[144] This serves as the most important pillar in investigation, prosecution, and trial, while defenders and accused persons have a weak position, dependent on the procedure-conducting agency. Consequently, the functions between these agencies are not distinctly separated, and a single entity may be assigned to perform two procedural functions. The investigation agency and the procurator's office are the accusing entities, with the procuracy playing a significant role in the investigative stage by directly conducting investigations and directing investigative activities. The court may establish the objective truth of the case by actively examining case files, questioning procedural participants, and guiding parties gathering evidence.

Regarding judicial independence, in countries that organise state power according to the principle of the separation of powers, the court acts as an arbitrator between the prosecution and the defence, without cooperation with either side in judicial proceedings. The 2013 Constitution first

[139]Ngoc Son Bui, 'The Socialist Precedent' (2019) 52 Cornell International Law Journal 421, 467.

[140]Chris Osakwe, 'The Common Law of Constitutions of the Communist-Party States' (1977) 3 Review of Socialist Law 155, 162.

[141]Constitution 2013, art 2.

[142]Vu Dinh Hoang, 'Xây dựng nền tư pháp trong Nhà nước pháp quyền xã hội chủ nghĩa Việt Nam [Building a judicial system in the socialist rule-of-law state of Vietnam]' (KhoahocPhaply, 23 Jul 2024) <https://phaply.net.vn/xay-dung-nen-tu-phap-trong-nha-nuoc-phap-quyen-xa-hoi-chu-nghia-viet-nam-a257493.html> accessed 30 Jul 2024.

[143]Vo Khanh Vinh, 'Về quyền tư pháp và chế độ tư pháp ở nước ta [About judicial rights and judicial regime in Vietnam]' (TapchiToaan, 1 Jul 2019) <https://tapchitoaan.vn/ve-quyen-tu-phap-va-che-do-tu-phap-o-nuoc-ta> accessed 15 Jul 2024.

[144]Lan Chi Le and others, 'Understanding Causes for Wrongful Convictions in Vietnam: A View from the Top and the Bottom of the Iceberg' (2022) 17 Asian Journal of Criminology 55 <https://link.springer.com/article/10.1007/s11417-022-09390-7> accessed 25 Dec 2024.

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declared that People's Courts 'exercise judicial power'. This mandate emphasises the Court's essential role in ensuring justice through independent trials, requiring judges and assessors to adhere solely to the law.[145] Vietnam adopted the language of 'independent judiciary' and even introduced adversarial proceedings into courtrooms. Domestic commentators praised these steps as raising the courts' 'prestige' and learning 'rationalities of the…adversarial model'.[146] Despite this formal recognition, the concept of judicial independence has yet to be fully achieved in practice. In a unified political system like Vietnam's, judicial power is a component of political power. The Communist Party of Vietnam leads the judicial power.[147] Courts, as entities that exercise judicial authority, are situated inside a political institution in which the agencies that exercise legislative, executive, and judicial power are assigned, coordinated, and supervised rather than having their powers separated. The court's role in controlling and balancing the authority of agencies that exercise legislative and executive power is insufficient. Vietnamese judges are not yet important leading figures like their counterparts in other countries under the inquisitorial system because their activities are monitored or controlled by the procuracy, where judicial officials hold prosecutorial power in trials over which they preside. They share a similar background in training and in fact, there are frequent transfers of leadership between the procuracy and the court.[148] This rotation between judicial agencies further illustrates the lack of distinction between roles. The United Nations Human Rights Committee's 2019 Concluding Observations also explicitly expressed concerns regarding the political influence on the judiciary, which undermines their independence, and urged Vietnam to ensure judges and prosecutors can operate 'without interference'.[149]

The close and overlapping relationship between procedural agencies affects the way criminal cases are handled in the criminal justice system. Decisions on the prosecution of cases and defendants are issued when there is relatively clear evidence of guilt. There are relatively few (discovered) wrongful convictions, and only a handful of cases are suspended following prosecution. This situation stems from a prioritisation of crime control, where procedural efficiency is focused primarily on securing criminal convictions. It also reflects, to some extent, the high level of consensus between courts and investigative and procuracy agencies, and the lack of independence of the court itself.[150] In cases of insufficient or lacking evidence, depending on the extent, the procuracy may decide not to prosecute or to dismiss the case immediately but gather evidence itself or return case files to the investigation agency for additional evidence. Similarly, facing such cases, the court may not decide to acquit or dismiss the case immediately but return case files to the procuracy for additional evidence. The mechanism of returning case files may play an important role in assisting the prosecution not to let criminals slip through the net. However, is not fair to the accused and, to some extent, does not fully uphold the presumption of innocence.

[145]Constitution 2013, art 102(3).

[146]'Renovating the Organizational Apparatus of People's Courts for Improvement of a Socialist Law-Ruled State of Vietnam' (vietnamlawmagazine.vn, 31 Mar 2023) <https://vietnamlawmagazine.vn/renovating-the-organizational-apparatus-of-peoples-courts-for-improvement-of-a-socialist-law-ruled-state-of-vietnam1-69743.html> accessed 2 Jun 2025.

[147]Vo (n 143).

[148]The two most recent leaders of the Supreme People's Court are former leaders of the Supreme People's Procuracy, see 'Tiểu sử Chánh án Tòa án nhân dân tối cao Lê Minh Trí [Biography of Chief Justice of the Supreme People's Court Lê Minh Trí]' (xaydungchinhsach, 4 Sep 2024) <https://xaydungchinhsach.chinhphu.vn/tieu-su-dong-chi-le-minh-tri-119240816100104084.htm> accessed 15 Oct 2024; 'Tiểu sử Phó Thủ tướng Chính phủ Nguyễn Hòa Bình [Biography of Deputy Prime Minister Nguyễn Hòa Bình]' (xaydungchinhsach, 4 Sep 2024) <https://xaydungchinhsach.chinhphu.vn/tieu-su-dong-chi-nguyen-hoa-binh-119240812114803631.htm> accessed 15 Oct 2024.

[149]Human Rights Committee, 'Concluding Observations on the Third Periodic Report of Viet Nam' (Human Rights Committee CCPR/C/VNM/CO/3, 2019) para 34 <https://docs.un.org/en/CCPR/C/VNM/CO/3> accessed 2 Jun 2025.

[150]Lan Chi Le, 'The Principle of Presumtion of Innocence in the History of Criminal Procedure in Vietnam' in Sarah Biddulph and others (eds), *The Presumption of Innocence International Workshop Proceedings* (Hong Duc Publishing House 2021) 493.

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Supervision role of procuracy

The procuracy is responsible for prosecuting crimes while simultaneously supervising the activities of the state agencies as part of its regular duties. It is for these roles that the procuracy is considered a bastion of socialist legality.[151] This system, together with various procedural functions, represents a significant consolidation of power. The unique socialist ideology, contrary to the principle of separation of powers, justified this concentration. Therefore, the public prosecutor in socialism is considered the most powerful public prosecutorial agency due to its supervisory role.[152]

The history of the Soviet procuracy dates back to the chaos following the 1917 Revolution, when it was established to ensure uniform implementation of central directives and to control local courts that were influenced by Soviet councils.[153] Vietnam's adoption of this model in the late 1950s also stemmed from a similar need: to unify the decentralised local administrative system and compensate for the weak capacity of the judiciary.[154] According to this model, the procuracy is under the direct leadership of the National Assembly, organised vertically from the central to local levels, and is independent of administrative agencies at the same level.[155] In addition to the goal of ensuring unified legality, in the debates on constitutional reform in the 2010s, the procuracy was also emphasised for its role in protecting human rights and preventing wrongful convictions, due to its presence at all stages of the proceedings and its professional capacity to handle cases quickly.[156]

Specifically, Vietnam's procuracy's judicial activity oversight is to supervise the legality of actions, decisions of agencies, organisations, and individuals in judicial activities, carried out immediately upon receiving and resolving reports, denunciations of crimes, proposals for prosecution, and throughout the process of resolving criminal cases to ensure objectivity and the truth of the case.[157] The supervisory role allows the procuracy to participate in all important stages of the criminal proceedings, including initiating criminal cases, investigating, trying, executing criminal sentences, reviewing death penalty cases, implementing coercive measures, and compensating victims to ensure the legality of the activities of criminal justice agencies.[158] The criminal procedure outlines various measures for the procuracy to carry out its supervisory function over investigative activities. Procurators have the authority to issue investigation requests with predetermined content for investigative agencies to follow and issue recommendations, objections, and requests to rectify legal violations committed by investigative agencies. Despite disagreements, certain powers of the procuracy, such as approving indictments, managing preventive and coercive measures, initiating criminal cases, and appointing or changing investigative personnel, must be adhered to. The procuracy also performs supervisory functions over the trial activities of the court in general and the trial council in particular to ensure the proper application of trial procedures by the trial council, avoiding errors that

[151]George Ginsburgs, 'The Soviet Procuracy and Forty Years of Socialist Legality' (1959) 18 The American Slavic and East European Review 34, 41.

[152]Yu Mou, 'Overseeing Criminal Justice: The Supervisory Role of the Public Prosecution Service in China' (2017) 44 Journal of Law and Society 620, 624.

[153]Ginsburgs (n 151) 36.

[154]Lan Phuong Pham, 'The Procuracy as a Subject of Constitutional Debate: Controversial and Unresolved Issues' (2016) 11 Asian Journal of Comparative Law 309, 317.

[155]In the early 2000s, to promote dynamism and autonomy among economic sectors, the procuracy's function of supervising legality in the fields of administration, economy, and society - referred to as "general supervision" - which was previously considered an important tool for participating in power control and ensuring uniform socialist legality, was narrowed to focus solely on supervising legality in judicial activities. See: 'Vai trò và yêu cầu đối với Viện kiểm sát nhân dân trong Nhà nước pháp quyền xã hội chủ nghĩa Việt Nam [Role and Requirements for the People's Procuracy in the Socialist Republic of Vietnam's Rule of Law State]' (Kiemsat, 13 May 2024) <https://kiemsat.vn/vai-tro-va-yeu-cau-doi-voi-vien-kiem-sat-nhan-dan-trong-nha-nuoc-phap-quyen-xa-hoi-chu-nghia-viet-nam-68916.html> accessed 2 Jun 2025.

[156]Pham (n 154) 318.

[157]Law on the Organization of the People's Procuracy 2014, art 4(1).

[158]Criminal Procedure Code 2015, art 163(3).

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could adversely affect the rights of participants in legal proceedings. For instance, if the trial council overlooks fundamental rights and obligations of a participant in the legal proceedings or omits questions about a person or issue that needs examination, the procurator has the right to request action. The procurator also has the authority to request changes to members of the trial council and other individuals conducting legal proceedings, as well as the right to request a trial postponement. The procuracy also has the authority to protest or petition against rulings (e.g. via cassation or reopening proceedings) if legal errors are found as shown in the example of the *Ho Duy Hai* cases above. Official reports show that the procuracy has actively identified irregularities in criminal cases.[159]

While international standards emphasise the importance of maintaining a clear distinction between the functions of the prosecutor and the judge,[160] in Vietnam's criminal justice system, court proceedings are subjected to the procuracy's supervision,[161] which can exert pressure on the trial council and influence court hearings. In addition, the trial council often has a natural inclination to favour the procurator due to the cooperative and mutually controlling relationship between the court and the procuracy.[162] The procurator, together with the judge, is considered a conductor in the proceedings, placing the procurator, representing the prosecution, on an equal footing with the judge. This creates an imbalance between the prosecution and the defence in achieving fair outcomes.[163] With the judge and the court as allies, the procurator almost certainly ensures victory. In other words, the defence must confront not only the procurator but also the entire criminal justice system. Thus, the combination of the supervisory and prosecutorial roles in one agency has raised concerns about the procuracy's ability to ensure the principle of equality of arms and coordinate its duties with other procedural bodies. This shows the potential contradiction between the requirement to protect the unity of state power, according to the principle of democratic centralism, on the one hand, and the requirement to enhance adversarial proceedings and judicial independence according to modern rule of law standards, on the other. Criticisms focused on the procuracy's overly influential position, which was likened to a 'national inspector general'.[164] Former Deputy Minister of Justice Hoang The Lien emphasised that assigning the procuracy both tasks of prosecution and supervision in court causes inequality between the procurator and the defence lawyer. If the court is the centre of

[159]In 2020, the procuracy sector promptly identified numerous violations by judicial agencies during investigation, prosecution, trial, and enforcement activities, issuing 14,657 protests and recommendations for rectification and prevention, an increase of 2.3%. Notably, in 2020, the Supreme People's Procuracy submitted multiple recommendations to the Prime Minister, the Minister of Public Security, and the Minister of Health proposing solutions to rectify legal violations in detention, temporary custody, and criminal sentence enforcement. The resolution of complaints and denunciations achieved a high rate of 98.4%, and the proportion of cassation and retrial petitions with completed case files reached 74.4%. See 'Quốc hội nghe Báo cáo công tác năm 2020 của Viện trưởng Viện kiểm sát nhân dân tối cao [National Assembly Listens to 2020 Work Report of the Supreme People's Procuracy]' (quochoi.vn, 26 Oct 2020) <https://quochoi.vn/pages/tim-kiem.aspx?ItemID=49441> accessed 3 Jun 2025.

[160]The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 'Guidelines on the Role of Prosecutors' (1990) <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors> accessed 3 Jun 2025.

[161]Criminal Procedure Code 2015, art 42(1).

[162]Nguyen Anh Hoang, 'Bảo đảm nguyên tắc tranh tụng trong xét xử theo pháp luật tố tụng hình sự Việt Nam [Ensuring Principles of Adversarial Proceedings in Trials According to Vietnamese Criminal Procedure Law]' (2022) 478 Tạp chí Nhà nước và Pháp luật [State and Law Journal] 20, 22.

[163]Hoang Thuy Linh, 'Đảm bảo yếu tố tranh tụng trong Bộ luật Tố tụng hình sự năm 2015 [Ensuring Principles of Adversarial Proceedings in Trials According to the 2015 Criminal Procedure Code]' (LuatsuVietnam, 18 Mar 2025) <https://lsvn.vn/dam-bao-yeu-to-tranh-tung-trong-bo-luat-to-tung-hinh-su-nam-2015-a155089.html> accessed 25 Mar 2025.

[164]Pham (n 154) 315.

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the trial, there cannot be any agency 'standing above' it.[165] To address this problem, Resolution 49-NQ/TW once proposed to abolish the procuracy's judicial supervisory role. This proposed change, to a certain extent, is associated with a shift towards adversarial proceedings, ultimately moving toward equality of arms between defence lawyers and procurators.[166] However, this proposal has so far not been implemented. The task of supervising judicial activities is still considered a very urgent task and 'cannot be assigned to other agencies'.[167] On 9 November 2022, the thirteenth Party Central Committee issued Resolution 27-NQ/TW on continuing to build and perfect the Socialist Republic of Vietnam's rule of law state. This resolution aims to improve legal institutions so the procuracy can effectively prosecute and supervise judicial activities, while ensuring that such supervision remains consistent with the independence of judges and jurors.[168] Institutional design solutions are needed to allow the supervisory role of the procuracy to go hand in hand with strengthening a fair and effective judiciary, and ensure human rights. The specific measures so far, however, are mainly proposals to enhance the political and moral responsibility of the staff and procurators in performing their duties.[169]

Conclusion

This article has analysed the diffusion of the equality of arms principle and the factors influencing its socialisation in the Vietnamese socialist criminal justice system. The findings of this article have twofold implications. For the literature on diffusion of law, and, second, for ensuring procedural fairness in Vietnam and other socialist jurisdictions or those with similar institutional characteristics. First, for diffusion of law, the article shows that one common feature of the spread of international values is the interplay of local and global factors. Both in and out forces interact during the diffusing process. Cultural and legal traditions can create a solid foundation that resists rapid change resulting from external influences. In the case of the equality of arms principle, the article shows that in the context of the Vietnamese socialist criminal justice system, the main factors influencing its implementation include collectivism, the crime control model, and the doctrine of seeking objective truth. Another important factor is democratic centralism in the organisational structure of, and coordination between, procedural agencies in Vietnam, specifically the special role of the procuracy in judicial supervision. These findings are valuable for examining the internalisation of this principle in jurisdictions with similar characteristics. At the same time, every principle or norm may face their own set of influencing factors in different jurisdictions. Therefore, further research could investigate how other procedural guarantees, such as the presumption of innocence or the right to silence, interact with different jurisdiction's legal ideology and procedural practices.

Secondly, regarding the prospects for procedural fairness in socialist regimes, the pursuit of justice and truth necessitates the principle of equality of arms. Only when opposing parties are able to formulate and make their strongest arguments from positions of approximate equality, does the

[165]MOJ Vietnam 'Phiên họp thứ 3 Ban Chỉ đạo Cải cách tư pháp Trung ương: Hướng tới mô hình tố tụng phù hợp với thực tiễn [3rd Meeting of the Central Steering Committee for Judicial Reform: Towards a Procedural Model Suitable for Practice]' (MOJ Vietnam, 23 Dec 2011) <https://www.moj.gov.vn/qt/tintuc/Pages/thong-tin-khac.aspx?ItemID=1802> accessed 19 Nov 2024.

[166]Pham (n 154) 315.

[167]ibid 315.

[168]Central Committee of the Communist Party of Vietnam, 'Nghị quyết số 27-NQ/TW về tiếp tục xây dựng và hoàn thiện Nhà nước pháp quyền xã hội chủ nghĩa Việt Nam trong giai đoạn mới' [Resolution No 27-NQ/TW on Continuing to Build and Perfect the Socialist Republic of Vietnam's Rule of Law State in the New Period]' (9 Nov 2022)

[169]'TS. Trần Công Phàn: Không thể chuyển Viện kiểm sát thành Viện Công tố [Dr. Tran Cong Phan: It Is Impossible to Convert the Procuracy into the Public Prosecution Office]' (Baovephapluat, 26 Jul 2022) <https://baovephapluat.vn/kiem-sat-24h/van-de-su-kien/ts-tran-cong-phan-khong-the-chuyen-vien-kiem-sat-thanh-vien-cong-to-125948.html> accessed 3 Jun 2025.

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adversarial process run well.[170] As analysed above, a state's procedural model greatly impacts the implementation of the principle of procedural fairness in general, and the principle of equality of arms in particular. Vietnam has discussed and implemented certain reforms regarding its procedural model, including measures to assign roles to agencies according to the division of functions in criminal proceedings (the prosecution, the defence, and the adjudication), establish measures to ensure equality between prosecution and defence, and remove any court authorities that interfere with the adjudication function.[171] However, in practice, the results of these reforms have stopped at the level of gradually installing some adversarial elements into the system as the system remains anchored by inquisitorial foundations. Specifically, the heavy reliance on pre-trial case files as the primary basis for judgments, and the continued coordination between the judiciary and the procuracy often undermine the procedural parity required for a truly adversarial trial. The policy of strengthening adversarial proceedings aims at ensuring objective and impartial case resolution, guaranteeing accurate prosecution and sentencing. This policy does not entirely abandon the inquisitorial model but tries to balance the two approaches. Ultimately, what matters is finding the right balance between the search for truth, the protection of rights, and the effectiveness of institutional safeguards in preventing abuse and error. Up to now, these core issues have not been fundamentally reformed in Vietnam, which affects the reception of the principle of equality of arms. The socialist criminal justice system considers crime control as a priority task; the accused is still considered a passive subject; the procuracy and other agencies still seem to be an alliance; and the court still cannot be completely independent. Since the system's fundamental ideals and cultural and legal traditions constitute a strong foundation, outside views and experiences cannot quickly alter the system's deeply ingrained custom. Ultimately, the actual realisation of the principle of equality of arms in Vietnam's criminal justice system is more dependent on procedural participants' readiness and willingness to participate voluntarily in open and fair proceedings than it is on the form and content of legislation.

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[170] Silver (n 17) 1034.
[171] MOJ Vietnam (n 165).

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