

Protecting Human Rights in Criminal Justice - The Case of Vietnam

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Abstract

The issue of protecting human rights continues to be raised in judicial reform in Vietnam until 2045. To do this, it is necessary to continue to understand human rights in criminal justice fully; the content of judicial rights; a rights-based approach in law-making and implementation; and to perfect the mechanism of power control in implementing judicial rights in criminal justice.

Keywords: Human Rights, Criminal Justice; Judicial Reform, Judicial Proceedings, Power Control

INTRODUCTION

Building a rule-of-law state in Vietnam was initiated in the early years of the 21st century. Based on the perception that a rule of law state is a state in which human rights are respected and protected, the study of human rights, including human rights in the field of criminal proceedings, has received attention in Vietnam in theory and practice. Human rights have become a field of theoretical science and its results have provided scientific arguments for the development of policies and laws in a rule of law state in general and criminal justice laws in particular in Vietnam.

Regarding human rights in criminal justice, research in Vietnam has so far focused on clarifying (i) the need to protect human rights in criminal justice in Vietnam, (ii) the content of human rights in criminal justice; (iii) the legal mechanism to protect human rights in criminal justice; (iv) the adoption of international standards on human rights in the Constitution and the law on criminal justice in Vietnam, (v) the current status of human rights protection in criminal justice in Vietnam... However, human rights are still approached from the perspective of rights restriction. In Vietnam, this issue has not been given due attention in research, and the law has not approached the issue of human rights from the perspective of rights restriction. A series of issues such as principles, grounds, and procedures for restricting human rights in criminal justice are being raised and need to be resolved. In addition, human rights in criminal justice are the resolution of the relationship between the implementation of judicial rights and human rights. Therefore, the correct understanding of judicial rights in a rule of law state is also a topic that Vietnamese legal science is interested in explaining, focusing on clarifying issues such as: What is judicial right? What is the content of this right in a rule-of-law state? Which agency exercises judicial power? What is the relationship between the investigation, prosecution, and trial agencies in exercising judicial power? What is the issue of judicial independence of judges in criminal proceedings to protect human rights in criminal proceedings?

One of the recent trends in Vietnamese legal science is the issue of approaching human rights in the development and implementation of laws, including laws in the field of criminal justice, including criminal law, criminal procedure, and criminal execution. This trend is considered new in Vietnam because, from theory to law, this time the approach to law in criminal justice is purely from the perspective of public law, taking public interests and crime control as the most important thing, leading to the issue of human rights being overlooked. In the context of a rights-based approach aiming at a balance of both content and implementation, human rights, in Vietnam, for many reasons, procedural law still has many barriers, leading to difficulties in implementing rights in practice. To approach based on rights, many issues arise that need to be resolved, such as assessing the risks of law to human rights; the purpose of law-making towards protecting human rights; and the issue of equality in access to rights. These issues are very urgent for the criminal justice sector in Vietnam because this is considered a sensitive field with the risk of violating human rights.

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Perception Of Human Rights in The Field of Criminal Justice

The issue of theoretical awareness of the rule of law state in general and human rights in criminal justice, in particular, is considered one of the limitations in the process of building a rule of law state in Vietnam in recent times. Meanwhile, one of the requirements of the rule of law state is to protect human rights in all areas of social life, including human rights in the field of criminal justice. Perception of human rights in criminal justice needs to start from the big concept of human rights. In the world and in Vietnam, there are different understandings. There is a view that: human rights are rights that individuals simply have because they are human. Another view is that: in the most general sense, human rights are understood as rights belonging to individuals as people, independent of the law. Based on the natural attributes of human beings, Pinghua Sun argues that: Human rights are the rights that people enjoy according to their natural and social attributes. Human rights originate from the inherent dignity and value of human beings, the basic characteristics of human rights are freedom and equality. In Vietnam, human rights are also interpreted differently. Notably, the view that human rights are "dignity, needs, interests, and capacities inherent and unique to humans as members of the human community institutionalized in international law and national law". Thus, it can be said that human rights in Vietnam have approached international standards.

From the concept of human rights, the question is what are human rights in the field of criminal justice? At the international level, there are not many views on this concept but only focus on certain aspects of human rights in criminal proceedings. Typically, Stephanos Stavros in his work: "The Guarantees for Accused Persons Under Article 6 of the European Convention on Human Rights" pointed out that the human rights of the accused include the right to be criminally processed within a reasonable time, the right to receive procedural documents related to the criminal charge, the right to know the reasons for being accused, the right to legal aid. The issue of human rights of the accused is discussed in the study on the right to a fair trial. Accordingly, the right to a fair trial is broad and includes many basic rights of suspects, defendants, and accused in criminal proceedings. Fair trials must be guaranteed from the time of investigation of the accused and throughout the criminal proceedings until the appeals have been resolved.

In Vietnam, legal science has built the concept of human rights in criminal proceedings based on the general concept of human rights and pointed out the important characteristics of human rights in this field. Accordingly, in essence, human rights in criminal procedure are a synthesis of rights belonging to civil and political groups. Civil and political rights are closely related to individual freedom. Implementing and ensuring civil and political rights well means satisfying the rights, freedoms and interests of individuals. Also affirming that human rights in criminal justice are a manifestation of civil and political rights, another viewpoint holds that: Human rights in criminal justice are a synthesis of civil and political rights reflecting the noble values generally recognized by human civilization, are inherent natural characteristics that need to be respected and cannot be deprived of, guaranteed by the recognition and enforcement of laws in the field of criminal justice by countries and the international community. Another viewpoint in Vietnam holds that: Human rights in criminal justice are natural rights inherent to any person that cannot be divided, are universal and specific, international and inviolable. In addition, the study also focuses on explaining the human rights of different subjects in criminal justice, especially the accused, or clarifying specific human rights such as: the right to defense, the right to inviolability of life, health, honor, dignity, the right to be presumed innocent, the right to be tried promptly, etc. However, to build a rule of law state and continue judicial reform, the issue of human rights in the field of criminal justice needs to continue to clarify the following issues:

Human rights in criminal justice are different from human rights in other fields because they are often considered in two aspects: (i) protecting violated human rights by judicial mechanisms and (ii) ensuring and protecting human rights in the process of the court exercising judicial power.

In the first aspect, it requires that human rights when violated need to be protected by judicial mechanisms: anyone whose human rights are violated has the right to request the Court to protect them and the state must build a mechanism capable of ensuring the implementation of this right of the people. In the field of criminal justice, it is necessary to ensure the principle of responsibility is unavoidable, all criminal acts must be strictly handled. Montesquieu in his book *L'esprit des Lois* published in 1748 said: Punishment is not

based on severity but on its certainty. Lenin wrote similarly: *"Punishment does not depend on how heavy or light it is, but on the fact that no crime can escape punishment."* In the field of civil justice, the principle of "affirmative acceptance" must be ensured - the court cannot cite the absence of a law as a reason to refuse to try a case. This aspect also requires the establishment and operation of a mechanism to ensure human rights through the judiciary, including a system of specialized agencies and a system of related rules, procedures and guarantees to protect human rights while the court exercises judicial power.

In the second aspect, as a type of state power, the process of exercising judicial power (trial) always presents the risk of abuse of power in various forms and the logical consequence is the violation of human rights of the subjects participating in the litigation process. Human rights in this respect are divided into two categories: universal human rights that need to be protected when participating in criminal proceedings and human rights arising from their legal status in criminal proceedings.

The first group of rights, human rights are limited in the process of litigation. When talking about human rights in general and especially human rights in criminal procedure, it is necessary to mention its second aspect, which is the limitation of rights or the limitation of rights. In theory, the theoretical basis for the limitation of human rights has been formed. Right from the first concept of human rights, the issue of limiting human rights has been mentioned. John Locke affirmed that people have the freedom to not control the arrangement of their people or property but still do not have the freedom to destroy themselves and even any living thing they own. According to the current popular understanding, the limitation of a certain human right is understood as the state not allowing the subjects enjoying the right to exercise that right at an absolute level. In reality, there are very few absolute rights, but the vast majority of human rights can be limited. That has formed the principle of "freedom may be limited" expressed in the 1948 Universal Declaration of Human Rights. Accordingly, "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely to secure due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". This principle is also widely shared and expressed in the Constitutions of many countries. For example, Article 4 of the Constitution of the French Republic stipulates that freedom is the ability to do anything that does not harm others. Therefore, the exercise of natural rights is only limited to ensuring that members of society also enjoy those rights. The issue of limiting rights is also expressed in the Basic Law of Germany, the Constitution of South Africa, Canada, etc. The theory of limiting rights focuses on explaining issues such as why human rights must be limited. What is the principle of limiting human rights? The method of determining the limitation of rights... In the first issue, the reason for limiting rights is not only the relativity of rights but also the prevention of individual abuse of power that can infringe upon the rights of other individuals or of society. An equally important reason is that limiting human rights is to better protect human rights. The reasons for limiting human rights specified by Aharon Barak include: the existence of the state as a democracy, national security, public order, crime prevention, child protection, public health, tolerance, and protection of human feelings.

The issue of the principle of limiting human rights is clarified by a series of principles generally recognized in the world such as the principle that limiting human rights must not infringe upon human dignity, the principle of legality, the principle of the rule of law, the principle of proportionality, the principle of prohibiting abuse of state power, etc. In addition, the issue of limiting rights will be implemented through which methods? The first method is to limit human rights by provisions in the Constitution, typically in Germany, Canada, and South Africa. The second method, typically in Italy or the United States, is that there is no provision limiting rights in the Constitution, but in reality, there is a mechanism to protect rights through the interpretation of the law by the Court. The Court will determine the nature and scope of the protected right. For example, the Court will explain what is meant by "violating public order".

In Vietnam in general and in the field of criminal procedure in particular, the problem today is not the regulation of what rights people have but the mechanism for protecting human rights and the issue of restricting human rights. Its constitutional basis is Clause 2, Article 14 of the 2013 Constitution: Human rights and civil rights can only be restricted according to the provisions of law in necessary cases for reasons

of national defense, national security, social order and safety, social morality, and public health. This is a new provision of the 2013 Constitution and is highly appreciated. From legal practice, the highest is the Constitution as well and legal science, shows that in Vietnam, the perspective of the relative right of human rights is accepted. According to the provisions of Clause 2, Article 14 of the 2013 Constitution, human rights can also be restricted in certain cases. In essence, human rights cannot resolve the balance between personal rights and the rights of others and society.

The second type of rights, which is a privilege only available to those participating in the proceedings, is sometimes identified with procedural rights. The rights included in the "group of rights" are called "right to fair trial". Which procedural rights arise in criminal procedure (human rights only in the criminal procedure) such as the right to presumption of innocence, the right to defense, the right to litigation, the right not to be forced to present evidence against oneself, the right not to be tried late... According to our statistics, international documents on human rights stipulate 24 human rights in criminal procedure. Some rights have been fully recognized and expressed relatively specifically in the Constitution and criminal procedure law of Vietnam. The problem in Vietnam today is the mechanism to implement the above rights, especially the right to defense. Currently, Vietnamese law has stipulated that the defense attorney has the right to collect evidence. However, documents that the attorney has not collected must be submitted to the investigation agency and this agency will evaluate them as new evidence, and only when included in the case file will they be considered evidence.

Correct Perception of Judicial Rights from The Perspective of Protecting Human Rights

On the world level, judicial power is "the authority given to courts and judges to consider and decide cases and issue judgments that are binding on those cases; the power to interpret and apply the law when a dispute arises over whether something is by the law governing that matter or not. In countries that organize power according to the principle of separation of powers, judicial power is perceived as the right to adjudicate of the Court, separate from the legislative and executive systems. The generally accepted concept is that in the organization of the state apparatus, the Court is the agency that exercises judicial power, the judicial agency of the country. Meanwhile, in China, people believe that: "judicial power includes the right to adjudicate and the right to supervise; the agency that exercises judicial power in addition to the Court is the procuracy"; "The agencies that exercise judicial power include the trial agencies, the prosecution agencies, the investigation agencies, the judicial administrative agencies, and lawyers, notaries, and arbitrators." However, the common point that can be found in the concepts of judicial power is: This is a type of state power, expressed in the authority to judge and conclude right or wrong about cases, thereby maintaining justice in society. Judicial power is independent but relatively independent even in a centralized government, because the highest state power agency does not have the right to deeply intervene in the trial process, does not have the right to cancel or change the judgment of the judicial agency (Court) that has come into legal effect. The judgments and decisions of the Court that have come into legal effect must be strictly complied with by relevant agencies, organizations, and individuals.

Meanwhile, in Vietnam, there are still many different views on judicial power. For example, the view that judicial power is understood in a broad sense, in which judicial power is exercised by the system of judicial agencies, which is also understood very broadly, in addition to the trial agency (People's Court), the Investigation Agency, the Procuracy, and the judicial support agency or organization. Thus, in Vietnam, judicial power is only approached in terms of organization and operation of courts and judicial agencies, the law in which emphasizes judicial procedural law, but has not yet comprehensively approached judicial power, including approaching judicial power from the perspective of power. Because, in a state governed by law, judicial power is as important and as responsible as the functions undertaken by other powers. That allows us to conclude the same meaning, equality, and parity of all scopes and areas of State power...

From the perspective of power, the content of judicial power includes the authority to try all types of cases: (i) trial (criminal, civil, administrative, economic, labor, marriage and family, ...) (ii) judgment on disputes and conflicts in society; (iii) interpretation of law; (iv) summary of trial practice and guidance on law application; (v) construction and development of precedents; (vi) inspection of the legality and validity of decisions and

activities of State agencies and persons holding positions and powers; ensuring the enforcement and execution of judgments and other decisions. In addition, the general trend of judicial power is to expand its content to include the rights to handle administrative violations; consider the proposals of state management agencies, and decide to apply administrative measures related to human rights; basic rights of citizens as prescribed by law; the right to inspect or cancel the application of State coercive measures restricting human rights and citizens' rights; the right to interpret the Constitution and protect the Constitution; the right to control the remaining rights. In addition, judicial power also includes the right to conduct inspections of the legality and validity of the activities of law enforcement agencies, responsible for detecting and investigating crimes, first of all in cases where there are restrictions on citizens exercising their rights and freedoms. The content of judicial power needs to determine the authority of the court to fully and properly implement judicial power; expand the authority of the court in trying administrative violations, deciding on several issues related to human rights and citizens' rights. In the coming period, with this trend, it is necessary to study and assign the Court the right to examine the legality and basis of the arrest of people suspected of committing crimes, being detained, temporarily detained, extending the period of detention, temporary detention in the performance of acts related to the restriction of the right to confidentiality of correspondence, telegrams as well as the right to inviolability of residence, the legality of the suspension of criminal cases, etc. We believe that such a broad concept of the content of judicial power is in line with the general trend of the world, and will enhance its capabilities, including the ability to protect people.

Rights-Based Approach in Law Making and Implementation Related to Justice

Perfecting policies and laws related to the judiciary to ensure respect and protection of human rights and civil rights is one of the tasks outlined in the coming time. From the perspective of protecting human rights, the development of laws in the judicial field needs to be based on rights. A rights-based approach is to take human rights standards as the goal to be achieved and, "not only pay attention to achieving goals but also pay due attention to the process and methods are chosen to achieve those goals". This concept of a rights-based approach is most fully expressed in the field of criminal justice. There, the goal is to protect human rights in criminal law (substantive law) and the method of achieving that is criminal procedural law (formal law). Vietnam is building a rule- of- law state - a state in which human rights are recognized, guaranteed, and protected. Therefore, the trend of building and implementing laws based on rights is completely appropriate.

First: It is necessary to re-understand the purpose of punishment in the practice of building and applying criminal law and executing criminal sentences. The purpose of punishment is what the state wants to achieve when prescribing punishment in the Penal Code. Execution of criminal sentences (execution of punishment in criminal judgments) is the means to achieve that purpose. In terms of positive law, the Vietnamese Penal Code has always stipulated. Punishment is not only to punish criminals but also to educate them to obey the law and the rules of life, prevent them from committing new crimes; educate others to respect the law, and prevent and fight against crime. With such an interpretation, it is clear that the view of Vietnamese legislators is that punishment has the purpose of punishment in addition to the purpose of education and reform.

Second. The penal system can be understood as the level of response of the state to the different nature and level of danger of crimes. In addition to the classic penalties such as the death penalty, fixed-term imprisonment, life imprisonment, and fines, the proposed trend is that the penal system in countries needs to diversify the types of penalties in the penal system to ensure the principle of differentiation and individualization in the execution of criminal sentences more thoroughly, especially the system of additional penalties that do not deprive freedom in addition to the main types of traditional penalties such as fixed-term imprisonment, life imprisonment or death penalty. Looking at the current Vietnamese penal system, includes seven main types of penalties, and seven additional types of penalties are applied to all specific crimes, leading to the situation that all types of crimes committed by specific people in society are ultimately only subject to one of the above types of penalties, which is rigid and does not ensure the maximum principle of individualization of penalties in criminal law and leads to individualization in the execution of criminal sentences. With the diversity and richness of crimes in reality, it is required that the penal system must have specialized penalties suitable for each specific type of crime. From that trend, we propose that the penal

system of Vietnam also needs to be amended and supplemented in the direction of further diversifying the types of penalties in the penal system, especially additional penalties.

Third, amend and supplement the Penal Code in the direction of expanding the sources of criminal law, meaning that crimes and penalties are not only regulated in the Penal Code but can also be regulated in specialized laws. One of the reasons leading to the shortcomings of the Penal Code is that it regulates all crimes in all areas of social life, including relatively stable areas but many areas with high volatility such as the economic and scientific fields, so it has not kept up with practical requirements. Whenever a field changes, the Penal Code must be amended and supplemented, otherwise shortcomings will arise. This creates significant pressure on the process of amending and supplementing the provisions of the Penal Code, which is one of the most important codes in the legal system in our country. Therefore, it is necessary to study the possibility of expanding the sources of criminal law to overcome the above shortcomings.

Fourth, it is necessary to perceive to “soften” the criminal procedural relationship instead of the nature of common law, meaning the inequality between the state and the repressive tools to repress crime in the direction of criminal procedure, which is the process of resolving based on law conflicts between the state and the person who is accused of committing a crime. In the US, people often say: *New York State v. Quarles*, *Colorado State v. Spring*... In this process, an arbitrator is always needed, which is the court. In which, the human rights of the accused must always be the first concern. “Softening” the criminal procedural process begins with determining: when the criminal procedure end Like the state suing the criminal, the procedure will end at one of two points: the parties reach an agreement or end with a court judgment. This awareness will serve as the basis for studying the issue of plea bargains in Vietnamese criminal proceedings.

Judicial Procedure and Human Rights Protection

Building a judicial procedure system with trial as the center, and litigation as a breakthrough; ensuring democratic, fair, civilized, rule of law, modern, strict, accessible judicial procedures, ensuring and protecting human rights and citizens' rights is an important orientation in judicial reform in Vietnam in the coming time. In other words, Vietnam is on the trend of adopting the principle of "due process". Only by adopting this principle can the goal of protecting human rights in criminal justice be realized. This is also an issue that raises the issue of theory in Vietnam that needs to be clarified.

The doctrine of due process appears in the Magna Carta. In Chapter 29 of this Charter it is written: No one shall be imprisoned or deprived of his property, liberty or customs, or subjected to any other cruel, inhuman or degrading treatment, nor shall any person be compelled to do so, except based on a lawful judgment of the members of the community or by the law of the country. Due process is the standard of modern proceedings which is translated into many meanings: the principle of fair trial, standard procedural process, the principle of fair procedure, due procedure... If "Process" is "method", then "due process" can be understood as the correct procedure to handle a legal issue affecting human rights. Regardless of how it is translated, its content is the standard (norm) set for procedural proceedings that the law and law enforcement practice must prescribe by specifying and complying with when carrying out criminal procedure activities. Fair litigation, in addition to the requirements for objectivity and impartiality, also emphasizes the legitimacy and legality of the litigation procedure. In other words, the results of the litigation process are only recognized when they ensure legality. This is related to substantive justice and procedural justice. For a long time, criminal procedure in Vietnam has focused on substantive justice without paying attention to procedural justice. This is reflected in two aspects: (1) paying too much attention to substantive law while ignoring procedural law; (2) paying attention to the results of criminal procedure, which is the detection and handling of crimes, without paying attention to whether those results come from legal procedures or not? For a long time, we have focused mainly on reforming substantive law without paying attention to procedural law. In criminal procedure, attention is focused on regulating the system of rights of the accused without designing a set of procedures to exercise those rights, especially sanctions if the procedures are violated.

Failure to pay adequate attention to the role of procedural law will inevitably result in criminal procedure not only failing to achieve its purpose but also failing to protect human rights. The reason for this reality may be that Vietnamese criminal procedure recognizes the principle: of determining the truth of the case.

Determining the truth is the highest purpose of criminal procedure, which easily leads to people being more interested in the outcome of the proceedings than in complying with procedural procedures, even though this principle requires that measures to determine the truth must be legal. The requirement of criminal procedure in a state of law is to protect human rights in criminal procedure. Criminal procedure aims to find the truth of the case using proof, but it is different from other fields in that it cannot be proven at all costs but must protect human rights. Because criminal procedure is an activity with the most obvious state power. There is always an imbalance in position and power between the powerful prosecution agency backed by state power on one side and the weaker side, the accused. Abuse of power by the state is inevitable and criminal procedure is no exception. Fair proceedings with strict, reasonable, scientific, and legal requirements will protect human rights in criminal procedure. The new 2015 criminal procedure code has a very good provision that reflects the spirit of the principle of fair procedure regarding evidence by affirming: "Anything true but not collected by the order and procedures prescribed by this Code has no legal value and cannot be used as a basis for resolving a criminal case". This provision approaches due process by emphasizing the legality of evidence, also known as the principle of exclusion of evidence. The principle of exclusion of evidence was applied in the case of *Weeks v. United States*. On December 21, 1911, the police in Kansas City, Missouri arrested Fremont Weeks for illegally transporting invoices. The police then went to Weeks's house to search and seize many objects, and importantly, without a warrant. Weeks sued the police for using illegal documents to convict him. The US Supreme Court ruled in favor of Weeks and that ruling became the "exclusionary evidence" principle applied in US criminal procedure: If a piece of evidence presented by the state to convict was illegally obtained in violation of the defendant's constitutional rights, that evidence will be excluded from the trial and cannot be used as evidence against the defendant.

The Issue Of Internal Control Over The Implementation Of Judicial Power In Criminal Justice

As a type of state power, the judiciary also tends to abuse its power and violate human rights, especially in the field of criminal proceedings. Therefore, the issue of controlling judicial power also needs to be raised from two aspects: external control and internal control. This is also the issue raised by Resolution 27/NQ-TW. However, the issue is how to control judicial power so as not to affect the independence of the Court and judges. Control of judicial power is considered based on three mechanisms: First, the internal supervision mechanism of the judicial system; Second, the external supervision mechanism of the judicial system; Third, the external supervision mechanism is social supervision.

Here we would like to discuss the first mechanism: internal control of judicial activities (control by procedure). The rule of law state is a state in which state power is limited by promoting the power of law, thereby protecting human rights. To limit the abuse of power by the state, the rule of law requires that state power must be limited and bound by law, including procedural law. In criminal proceedings, it is required that criminal proceedings design a mechanism to avoid such abuse of power. In terms of criminal proceedings, the rule of law in detecting and handling crimes requires the state to comply with the law in criminal proceedings. This is found in the adversarial model. There, the functions of prosecution, defense, and trial are independent of each other in both nature and organization. The adversarial model is based on the view that litigation is a struggle in court between the State (through its representatives) and the citizen suspected of committing a crime; and in a struggle, both sides are entitled to use the same legal rights and obligations in collecting, examining and evaluating evidence, analyzing and drawing conclusions on specific matters. The language used in litigation requires great precision and litigation plays such a special role that many people believe that litigation is a system that values procedural law over substantive law. It is this independence, together with the impartiality of the Court and the impartiality of the defense that will limit the abuse of power by the prosecution in the litigation process.

Therefore, the litigation model itself contains the element of power control. The litigation model is known for its value in protecting human rights because it is designed based on the mutual control between the functions of accusation, exoneration, and trial, which is reflected in the detection and denial of violations by the other functions. The current litigation model of Vietnam is an inquisitorial litigation model with

adversarial elements. By placing the entire burden of proof on the State, which is the agency conducting the litigation. The current criminal litigation model of Vietnam has many positive points, most clearly demonstrated by the ability to detect crimes (control crimes) at a very high level. However, it still shows the vagueness and passivity of other subjects outside the litigation agency in finding the truth of the case, leading to a "monopoly on determining the truth" that truth cannot monopolize. That is the first limitation of the current Vietnamese procedural model. This limitation shows that it not only limits the ability to determine the truth of a case but also affects other principles of criminal procedure, for example, ensuring human rights in criminal proceedings.

CONCLUSION

Criminal justice reform in Vietnam is moving towards the common standards of modern justice in the world, which the most prominent is the transformation of the criminal justice system towards fair proceedings, making the protection of human rights an important goal. To do this, a series of theoretical issues on the protection of human rights in criminal justice need to be clarified. This study focuses on explaining the most necessary issues for Vietnam in protecting human rights in criminal justice such as a more complete awareness of the issue of human rights in criminal justice, emphasizing the issue that Vietnam still leaves open, which is the limitation of human rights; a mechanism to realize the right to fair trial of the accused; a correct awareness of judicial rights in a state of law as an important factor in protecting human rights; innovation of criminal justice procedures, control of power in the implementation of judicial rights by international standards to better protect human rights in criminal justice.

REFERENCES

- Aharon Barak, *Proportionality: Constitutional, Rights and Their Limitation*, translated by Donron, Cambridge University Press, 2012.
- Bryan A. Garner (ed.): *Black's Law Dictionary*, 9th ed. (St. Paul, MN: 2009) at 924
- Nguyen Ngoc Chi (editor), *Human rights in the field of criminal justice*, Hong Duc Publishing House, Hanoi, 2015
- Nguyen Dang Dung, Pham Hong Thai, *Questions and Answers on Human Rights*, People's Police Publishing House, Hanoi, 2010
- Dawood Ahmed and Eliot, *Limitation Clauses*, International IDEA Constitution- Building, Prime 11, 2017
- D. W. Carrithers, *The philosophy of Montesquieu*, *Revue Montesquieu*, 1, 1997
- Communist Party of Vietnam, *Resolution 27/NQ-TW On continuing to build and perfect the socialist rule-of-law state of Vietnam in the new period*, 2022
- Nguyen Linh Giang (editor), *Theoretical and practical basis for human rights restrictions in Vietnam today*, Social Sciences Publishing House, 2022
- Jack Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press, 2013
- John, *Second Treatise on Government - Civil Government*, Tri Thuc Publishing House, Hanoi, 2013.
- Nathan S. Chapman and Michael W. McConnell: *Due Process as Separation of Power*, 121 *Yale Law Journal* 1627- 1681, 2012
- Lawyers Committee for Human right, *What is a fair trial?*, Washington DC, 2000
- Wu Lei (ed.), *China's Judicial System*, People's University Press, 2009
- Raija Hanski and Markku Suksi, *An introduction to the international protection of human rights*, Institute for Human rights, Abo Akademi University, 2000
- Longman Dictionary of Contemporary English (PC version 2009)
- P. Reichel, *Comparative Criminal Justice*, Institute of Legal Sciences, Ministry of Justice, 1999
- Pinghua Sun (2014), *Human Rights Protection System in China*, Springer, 2014
- Nguyen Van Quyen, Nguyen Tat Vien, *Judicial Rights in The Socialist Rule of Law State of Vietnam: From Theory to Practice*, Justice Publishing House, Hanoi, 2018
- Stephanos Stavros, *The Guarantees for Accused Persons Under Article 6 of the European convention on human rights*, Martinus Nijhoff Publishers, 1993
- Center for Human Rights Studies, Ho Chi Minh National Academy of Politics), *Human Rights Theory Textbook*, Hanoi, 2000.
- Dao Tri Uc, *Criminal Procedure In what direction should Vietnam be reformed and improved?* *Journal of Legislative Studies*, No. 15 (200), 2011
- http://www.un.org.vn/images/stories/pub_trans/HRBA_Toolkit-Vietnamese.pdf 232 U.S. 383.
- V. I. Lenin, *Complete Works*, Volume 3, Progress Publishing House, Moscow, 1987
- Institute of Political Public Policy and Law, *Judicial reform for an honest judiciary*, Hanoi National University Publishing House, 2014
- Vo Khanh Vinh, *Textbook of law enforcement agencies*, People's Public Security Publishing House, Hanoi, 2004

- X. Philippe, The clauses of limitation and interpretation of the conditions of the Constitution in Africa of 1996, in Liber Amicrum J-C Escarras, Bruylant, Brussels, 2005
- Weeks v. United States, 232 U.S. 383 (1914), Weeks v. United States No. 461 Argued December 2, 3, 1913 Decided February 24, 1914, <https://supreme.justia.com/cases/federal/us/232/383/>