



## Principle of presumption of innocence in Vietnamese criminal proceedings

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### Abstract

An overview of the basic content of the principle of presumption of innocence in criminal proceedings has been recognized in a number of international and national legal documents. Propose and evaluate the compatibility between Vietnamese law and international law on the right to presumption of innocence. Clarifying the limitations of Vietnamese law on the issue of ensuring the principle of presumption of innocence in criminal proceedings. Proposing some basic solutions to ensure the principle of presumption of innocence in criminal proceedings.

**Keywords:** right to be presumed innocent; international law; law of Vietnam; guarantee the principle of presumption of innocence

### Introduction

The right to a presumption of innocence against the accused is one of the aspects of the right to a fair trial (The right to a fair trial includes: The right to equality before the courts and to a trial by an independent court). established, impartial and public; Right to a presumption of innocence; Right to defence, not retroactively; Right to a juvenile offender's own due process trial; Right to appeal, to be redressed when wrongly convicted) has been widely recognized and recognized in many international and national legal documents. The idea of presumption of innocence dates back to ancient Rome when it was assumed that the burden of proof rested on the accuser and was only applicable in civil proceedings<sup>[2]</sup>. This idea only really becomes a legal principle when the victory of the French bourgeois revolution marks a milestone in mankind's ceaseless struggle to protect human rights, along with the demand for increasingly harsh society: It is necessary to take measures to limit and oppose the autocracy and arbitrary violation of human rights in criminal proceedings from the state.

The French Declaration of the Rights of Man and of the Citizen (1789) affirms that everyone is presumed innocent until declared guilty (Article 9). In the US Constitution, although not directly mentioned, it can be inferred from the 4th, 5th and 14th amendments. Universal Declaration of Human Rights (1948) in Article 11 and European Convention on Human Rights (ECHR) in paragraph 2 of Article 6 provides that the right to a presumption of innocence is guaranteed to the accused.

Article 14/2 of the ICCPR has recognized the right to presumption of innocence of the accused and defendants, in addition, paragraph 7 of General Comment No. 13 emphasizes the relationship of this right with the burden of proof of the prosecution, The prosecution has the burden of proof throughout the trial. The accused or defendants must be presumed innocent when the fault of the accused or defendants has not been proven according to a procedure prescribed by law and determined by a court judgment that has entered into force. the law. The principle of presumption of innocence affirms that in all stages of the proceedings, the suspect, the accused and the accused are not criminals.

Therefore, it requires that criminal procedure activities not only comply with criminal procedure law so that determining the truth of the case achieves the most accurate results as a basis for concluding that a person is guilty or not. also emphasized the requirement that "any doubt about the fault of the accused or the accused must be explained in favor of the accused and the accused". Regarding the presumption of innocence, factors that can create prejudice should also be avoided, such as requiring the accused, the accused to wear handcuffs, to wear prison uniforms or to be forced to shave their heads.

### Method of Research

The work is researched on the basis of Marxism - Leninism, Ho Chi Minh Thought, the views of the Communist Party of Vietnam and the State of Vietnam on the state and law, on human rights and assurance. Human rights, civil rights. In addition, the Vietnamese Communist Party's viewpoint on building a socialist rule of law state of the people, by the people and for the people, and international integration is also the theoretical basis of this research work.

The author uses the methodology of dialectical materialism and historical materialism to study issues related to the content of the article. Theory and practice of ensuring the right to presumption of innocence in criminal proceedings in Vietnam are studied in relation to the laws of some countries as well as international law in the field of ensuring the principle of presumption. Presumption of guilt in criminal proceedings; study the movement in development, thereby discovering the trends of change and transformation in the matter of ensuring the principle of presumption of innocence in criminal proceedings in Vietnam. The specific historical perspective also requires paying due attention to the specific historical circumstances, the birth and development of the principle of presumption of innocence in Vietnam in order to assess and identify the impacts both objectively and objectively. both subjectively to ensure the principle of presumption of innocence in Vietnam today.

The article uses a number of different research methods depending on the content to be researched. Specifically: Analytical and synthesis methods are used throughout the

article to analyze some theoretical issues about the right to presumption of innocence in criminal proceedings. Analyze the basic contents of the principle of presumption of innocence in criminal proceedings in the international legal system, the laws of a number of countries, as well as Vietnam's views, policies and laws on ensuring uphold the principle of presumption of innocence; Analyze the provisions of Vietnamese law as well as the actual operating status of institutions in the state apparatus in ensuring the principle of presumption of innocence in criminal proceedings in Vietnam; Analysis of some causes affecting the guarantee of the principle of presumption of innocence in criminal proceedings in Vietnam in order to propose and recommend some solutions to ensure the principle of presumption of innocence in criminal proceedings. the better. The comparative method is used to compare a number of provisions of international law and Vietnamese law on the right to presumption of innocence and ensure the principle of presumption of innocence in criminal proceedings, clarifying the similarity between the two. Differences in the right to presumption of innocence and ensuring the principle of presumption of innocence in criminal proceedings between the international legal system, the laws of some countries and the laws of Vietnam

## Research Result and Discussion

### Principle of presumption of innocence in Vietnamese criminal proceedings

In Vietnam, before the Criminal Procedure Code 1989, the idea of this principle was mentioned in a number of legal documents. Circular No. 2252/HCTP dated October 29, 1953 guided: "There should be no prejudice that every person being prosecuted is definitely guilty and treated like a guilty person; The accused before sentencing is considered innocent so that the court can have a completely objective attitude. Circular No. 16/TATC dated September 27, 1974 of the Supreme People's Court gave principled guidance in the court's adjudication activities as follows: "The questioning at the court session is aimed directly at and publicly re-examine the evidence of the case. Therefore, the Trial Panel must examine in a full and objective manner, avoid thinking too much about the file and underestimating the effect of questioning at the court hearing, or thinking that the interrogation is only for the purpose of accusing the accused. must accept the words that they have testified at the investigating agency". In the 2001 revised and supplemented Constitution, the content of the principle of presumption of innocence provided for in Article 72, Chapter V of the Constitution with the title of the chapter is "Basic rights and obligations of citizens": "No one shall be considered guilty and subject to punishment before the court's judgment of conviction has taken legal effect. Persons who are unlawfully arrested, detained, prosecuted or tried shall have the right to compensation for material damage and restoration of honor. Those who violate the law in arresting, detaining, prosecuting or adjudicating causing damage to others must be dealt with severely. On the basis of the provisions of the 2001 Constitution, the 2003 Criminal Procedure Code of Vietnam, there are provisions expressing the principle of presumption of innocence: No one shall be considered guilty until a conviction has been issued. judicial power and the burden of proof rests with the authorities conducting the proceedings. Although the presumption of innocence is not directly recorded, the spirit

of this principle has been expressed in Vietnamese criminal proceedings. However, due to the failure to fully recognize the principle of presumption of innocence in the criminal procedure law, criminal proceedings in Vietnam have been conducted for a long time in the direction of "presumption of guilt". i.e. "A person is presumed guilty until he is found not guilty". With such awareness, not only the prosecuting agencies and persons conducting criminal proceedings do not fulfill the task of detecting and handling all criminal acts, but they also unjustly unjustly innocent people, infringing upon human rights. Persons in criminal proceedings<sup>[2]</sup>. By the 2013 Constitution, the spirit of the principle of presumption of innocence was clearly expressed in Clause 1, Article 31, "the accused person is considered not guilty until proven according to the statutory procedures and the The judgment of the Court has taken legal effect". Concretizing the 2013 Constitution, the 2015 Criminal Procedure Code of Vietnam has officially recognized the principle of presumption of innocence with its full content in Article 13: "The accused person is considered not guilty. Until proven in accordance with the order and procedures prescribed by this Code and the court's conviction has entered into force. When it is not enough and it is not possible to clarify the grounds to charge or convict according to the order and procedures prescribed by this Code, the agency or person competent to conduct procedures must conclude that the accused person is not guilty. sin". Thus, the 2015 Criminal Procedure Code is the first legal document that officially recognizes the principle of presumption of innocence. The above provisions are intended to ensure compliance with the 1966 United Nations Convention on Civil and Political Rights to which Vietnam is a member. This principle is closely related to the principle of guaranteeing the right to defence, as well as ensuring the right of persons arrested, detained, accused and defendants to present testimonies, express opinions, not force must testify against himself or be forced to admit guilt. This provision has the advantage that the rights of the accused are basically guaranteed, and the responsibility of the proceedings-conducting agency is raised. The recognition of the principle of presumption of innocence in criminal proceedings is consistent with the view of building a socialist rule of law state that Vietnam is pursuing, which is most clearly reflected in the 2013 Constitution of Vietnam. Has specified very new points in line with the standards of the rule of law such as: affirming that the rule of law must fully recognize and commit to protecting human rights, including human rights in criminal proceedings; Courts exercising judicial power have the duty to protect justice, protect human rights, etc.

### Limitations in ensuring the principle of presumption of innocence in criminal proceedings in Vietnam

#### About the criminal procedure model in Vietnam

In the world before and today, there are many different types of procedural models, in which there are two main procedural models, which are interrogation proceedings and litigation proceedings, which some people call control proceedings. Crime and fair proceedings<sup>[3]</sup>. Each procedural model has certain advantages and disadvantages. If the interrogation (criminal control) procedure model takes the suppression of crime, the effectiveness of crime detection and handling is an important function of criminal proceedings (catch mistake rather than omission), then

Litigation (fair procedure) values the balance between detecting crimes and protecting human rights in criminal proceedings with the view that sometimes it is better to omit than to catch the wrong... Vietnam's criminal procedure model in the development process has been greatly influenced by the criminal procedure model of France and the Soviet Union and has strongly absorbed the elements of the interrogation criminal procedure model. Currently, Vietnam has absorbed some cores of the criminal procedure model, which is suitable for the specific socio-economic development conditions of Vietnam, but the criminal procedure model in Vietnam is still basically the interrogation criminal procedure model. This model has several defects that affect the following presumption of innocence: Firstly: In Vietnamese criminal proceedings, there is no clear formation of the parties in the criminal procedure as in the model of criminal litigation: the accuser and the acquitted. Criminal procedure in Vietnam divides the procedural subjects into two categories: the subject conducting the proceedings and the subjects participating in the proceedings. The subject conducting the proceedings is given full authority by the law to prove in a criminal case, and has the exclusive right to collect evidence. The participants in the proceedings do not have the right to collect evidence of the case, only the right to provide documents and objects and make requests. In the whole process of settling criminal cases, the procedure-conducting agency is always in an active position, from collecting, examining and evaluating evidences to making procedural decisions related to the criminal proceedings. solve the case. Contrasting with the active and active role of the proceedings-conducting agencies is the passive role of the detainee, the accused and the accused. The person held in custody, the accused, the defendant is not considered a party to the procedural relationship as in the litigation model and in fact, in many cases is almost the subject of review by the conducting agencies. procedural. The victim does not have the right to choose how the case should be resolved. To prosecute or not to prosecute the case does not depend on the will of the victim, but completely depends on the decision of the proceedings-conducting agency (except for a few cases as prescribed by law). In Vietnam's criminal proceedings, there is no "optional prosecution" or "bargaining confession" as in the model of criminal litigation. The detection and handling of crimes is mandatory. [4]

The law lacks mechanisms for defense counsels to fully and effectively exercise their statutory procedural powers and for defense counsels to protect their rights against violations by other subjects, especially is a violation on the part of the prosecuting agencies. Both legally and practically, the defense has not been guaranteed opportunities to become an equal party to the accuser in the exercise of his or her defense function.

Second: Criminal procedure in Vietnam divides the process of settling criminal cases into procedural stages (stages of prosecution, investigation, prosecution and trial). At each different stage, there are different components of the subject, but they all aim at a common goal of clarifying the objective truth, finding the truth of things. In each procedural stage, there is a relatively clear delineation of the rights, obligations and responsibilities of each procedure-conducting agency, specific and strict regulations on the time limit of each procedural activity and the time limit for

applying the procedure. use of coercive proceedings. The procedural stages are carried out in close proximity to each other, the previous stage of the proceedings serves as a premise for the subsequent proceedings, and the post-procedural phase re-examines the results achieved in the previous procedural stage. The specific division of the stages of criminal proceedings, the association of tasks and powers of each subject and the setting of a time limit for each procedural activity enables the subjects to conduct the proceedings professionally. procedural activities, is an important condition to create effective procedural activities to meet the requirements of investigating and handling crimes in accordance with the conditions and circumstances of Vietnam, limiting the violation of the rights of the accused. Defendants, defendants and other participants in the proceedings. In particular, the participation of the Procuracy at all stages of the proceedings with the two functions of exercising the right to prosecution and supervising judicial activities has made an important contribution to ensuring compliance at all stages of the proceedings. Comply with the law, protect human rights in the process of settling criminal cases. However, the mechanism to ensure the coordination and cooperation relationship between the Procuracy and the investigating authority has not been strictly regulated, and many requests of the Procuracy have not been implemented by the investigating authority, but not by the investigating authority. Take punitive measures to deal with it. This fact leads to the situation of returning files between the procedural agencies, prolonging the time limit for proceedings, affecting the implementation of the goal of fighting injustice and preventing falling in criminal proceedings. [5] Third: The performance of basic functions of criminal proceedings. Similar to the criminal procedure model of many countries in the world, Vietnam's criminal procedure stipulates that the investigating agency and the Procuracy perform the function of charging; defense functions performed by detainees, accused, defendants and their defense counsels; Judgment is a function of the Court. However, in the specific regulations on the competence, order, and procedures of criminal proceedings and the practice of solving criminal cases in our country, there are contradictions and overlaps between the basic functions of the criminal justice system. criminal litigation. The development trend of democratic proceedings requires that the proceedings-conducting agencies, especially the Court, be the embodiment of justice, and must be objective in making judgments. However, the courts in Vietnam play an overly active and active role in the trial and are being assigned to exercise a number of jurisdictions that are not suitable for adjudicating functions. The competent court shall return the file to the Procuracy for additional investigation when it finds that there is a lack of important evidences or when there are grounds to believe that the defendant has committed another crime or has other accomplices; The trial panel is prescribed as the main questioner and the first questioner at the procedure for questioning and asking about all issues of the case; have the right to prosecute the case; has the right to adjudicate the accused beyond the prosecution's limit of the Procuracy; has the right to continue the trial in case the Procuracy has withdrawn the entire decision to prosecute at the court session, etc. Fourth: about the procedural methods used in the settlement of the case. Criminal procedure in Vietnam

determines the search for the truth of the case by the method of investigation and interrogation. During the investigation phase, the investigator implements all investigative measures prescribed by law to collect evidence. When the case file is transferred to the Procuracy for prosecution, the Procuracy continues to examine the case file to make a decision to prosecute or not to prosecute the offender. At the court hearing, the method of investigation and interrogation is still the main method applied, but not the confrontation and competition between the accuser and the defense. The survey method was carried out in the form of questioning. The trial panel asks questions about each detail of the case in order to verify the truthfulness and correctness of the evidences contained in the case file; examine witnesses; examine relevant evidences... After questioning by the Trial Panel, the law prescribes the questioning competence of procurators, defense counsels and defenders of interests of involved parties.

The overemphasis on the investigative method, especially with the continued bold recognition of this procedural method at the trial stage, by stipulating the Trial Panel as the main questioner, the first questioner and the first questioner. on all issues in the case has led to the Procurator's passivity in proving his accusations, fundamentally limiting the defense's activeness in arguing the evidences. exonerate the guilt and refute the point of view of the accusing party; limit the friction between the evidence and arguments of the accuser and the defense.

#### **About evidence, proof**

In principle, all evidences collected by competent persons in the correct order and procedures are of equal legal value, so they must be evaluated and used equally, but the Vietnamese Criminal Procedure Code has not yet shown get this. There are still inequalities in the collection and evaluation of evidence. The Criminal Procedure Code stipulates that lawyers have the right to collect documents and objects, but does not specify the order and procedures for collecting evidence by lawyers. The legal value of documents and objects collected by lawyers is not high, even not accepted by the agency conducting the proceedings. The Criminal Procedure Code 2015 does not quantify evidence to prove in a criminal case, but only stipulates that "the collected evidence must be sufficient to solve the criminal case", so in each specific case The procedure-conducting agency has the right to determine the amount of evidence needed and sufficient to settle the criminal case.

The Criminal Procedure Code 2015 stipulates that the competence to evaluate and use evidence in criminal cases belongs entirely to the procedure-conducting person, but this Code does not specifically provide for the assessment and use of evidence. Evidence is not collected by the proceeding agency, but only makes a general request that "all evidence must be identified and evaluated with full responsibility, after comprehensively and objectively researched". Comprehensive and complete with all the details of the case". Such a general rule is difficult to avoid the imposition, only will, only attaching importance to the evidence collected by the procedure-conducting agency, leading to one-sidedness and injustice.

#### **Solutions to ensure the principle of presumption of innocence in Vietnamese criminal proceedings**

Firstly, continue to perfect the criminal procedure model in Vietnam in the direction of absorbing the reasonable kernels of the litigation criminal procedure model. Specifically:

One is: Create a mechanism to ensure real equality between the accuser and the defense in the exercise of the functions of accusation and defence. Emphasize the role of the defense counsel in the proceedings. econd: To fully prescribe rights and build a mechanism to ensure the exercise of rights of persons held in custody, accused and defendants in criminal proceedings; create legal and practical conditions for the accused, defendants and their defense counsel to exercise the right to prove innocence or reduce crime or mitigate punishment; take punitive measures to promptly and strictly handle violations of the rights of procedure participants, especially violations by procedure-conducting agencies and persons.

Thirdly: Clearly define the basic functions of criminal procedure: accusation, defense and trial. Bring the subjects to their right positions and procedural roles.

Fourth: Improve the proceedings at the court hearing to ensure democratic and equal litigation between the accuser and the defense. To promote the role and responsibilities of the Procuracy and Procurator in the performance of the prosecution function by clearly defining the proof of crime as the obligation of the accusing party (Procuracy, Procurator). The defense party is given equal opportunities as the Procuracy in performing the defense function, proving that the accused or defendants have not committed crimes or reduced the crime or reduced the penalty level. The court must really embody justice, objectivity and impartiality in the process of adjudicating the case. The court only performs the adjudication function, not the accused. Any jurisdiction of the Court that conflicts with the judicial function, affecting the objectivity of the Court must be eliminated. Courts have the responsibility to create conditions for the parties to argue democratically at court sessions; fully respect and listen to the opinions of the parties, make judgments on the basis of democratic litigation results at the court hearing.

Second, researching and building the Law of Proofs and Evidence

The Criminal Procedure Code 2015 has made important amendments and supplements related to the regulations on evidence and proof such as fully stipulating the concept of evidence, adding more sources of evidence, strictly stipulating the submission of evidences. procedures, the subject of collecting and evaluating evidence in criminal proceedings ... However, it is still necessary to have a separate governing law on the issue of evidence and proof in criminal proceedings to overcome the shortcomings that have been and hindering the practice of criminal proceedings.

It is necessary to study and develop a Law on Evidence and Evidence in Criminal Procedures to overcome the shortcomings that have been hindering in the practice of criminal proceedings. The Law on Evidence and Evidence in Criminal Procedures needs to adjust the following contents:

One is: Implement the principle of "all evidence is equal", regardless of whether or not they are "formally" entered into the record. The guilty party may collect evidence and present it at trial.

Second: The accused, defendants and defense counsel have the right to seek evidence by any lawful means; evidences and proofs are only valid after they are presented and argued in court. That means concurrently admitting the evidence contained in the file and outside the case file.

Third: The interrogation and argument at the court hearing must ensure the equality of the parties and the ability of the parties to present their views and evidences.

Third, supplement regulations on investigative measures

Investigative measures are one of the very important methods of determining the truth of a case, mainly carried out by investigative agencies at the investigation stage and before the prosecution of the case. According to the Reference Report to the Criminal Procedure Code of some countries in the world by the People's Procuracy, most countries prescribe measures to monitor and block phone conversations and other means of communication. Telecommunications (Russia, UK, USA, France, Germany) and intrusion measures (using secret scouts or secret collaborators to monitor, infiltrate investigations) (China, UK, Germany, France) Criminal Procedure Code 20105 Vietnam has its own Chapter on special investigative measures. However, on the basis of the experience of the above countries as well as the reality of fighting crime in the new situation, it is necessary to study and supplement other special investigative measures. Special investigation, specifically as follows: Additional investigative measures Judicial supervision. This measure allows investigative agencies, and investigators to organize surveillance of conversations, communications, and financial records of suspects, accused, and defendants, including those showing signs of crime. Particularly dangerous crimes infringing upon national security.

Additional investigative measures to trap: Allows investigating agencies and investigators to use traps to detect criminals. This measure is only allowed to be applied in some special crimes such as drugs, crimes infringing upon national security and in some special cases.

However, the special investigative measures mentioned above affect very basic human rights such as honor, dignity, confidentiality of correspondence and privacy... Therefore, special procedures need to be designed when authorizing them. Investigating agencies apply these measures. For example, the above measures are only applied with the permission of the Court. The next proposal concerns determining the facts of the case before the prosecution of the case or the so-called initial investigation.

Along with the process of building the rule of law in Vietnam, the criminal procedure in Vietnam has been drastically reformed. In particular, the progressive values of humanity in the protection of human rights, including the principle of presumption of innocence, have been recognized and expressed relatively fully and complied with in criminal procedure practice. . However, for this principle to be implemented, there needs to be a stronger reform of Vietnam's criminal procedure from the procedural model, to its basic principles as well as specific regulations.

## Conclusion

Ensuring the principle of presumption of innocence is one of the important goals in the judicial reform process that the Politburo of Vietnam has set out. A number of Resolutions of the Politburo of the Central Committee of the Communist Party of Vietnam mentioned the viewpoint and direction of

strongly reforming judicial proceedings in the direction of democracy, equality, openness and transparency. Transparent, tight. Along with the process of building the rule of law in Vietnam, the criminal procedure in Vietnam has been drastically reformed. In particular, the progressive values of mankind in the protection of human rights, including the principle of presumption of innocence, have been recognized and expressed relatively fully and complied with in criminal procedure practice. .

On November 28, 2013, the 13th National Assembly approved the Constitution of the Socialist Republic of Vietnam (Constitution 2013). Along with the identification of the People's Court as the judicial organ exercising judicial rights, the mission of the People's Court is determined to be to protect justice, protect human rights, citizens' rights, and protect the socialist regime. Protect the interests of the State, the legitimate rights and interests of organizations and individuals. These are important new points in the constitutional history of Vietnam, affirming the principles of modern judiciary, including the principle of presumption of innocence.

On the basis of the 2013 Constitution, Article 13 of the Law on Organization of People's Courts dated November 24, 2014 and the Law on Criminal Procedures dated November 25, 2015 both stipulate the principle of presumption of innocence in criminal proceedings. Vietnam is secured; The regulation of the principle of presumption of innocence in the above legal documents is an important legal basis to ensure the trial of the right person, the right crime, and the law. However, in practice, the implementation of this principle still has shortcomings from the legislative to the practical aspects. Therefore, it is necessary to continue researching and proposing from researchers and practitioners so that this constitutional principle can be effectively implemented in the process of building the State House. Rule of law in Vietnam

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