

Comparing Judicial Reforms in Vietnam and China

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Abstract: Vietnam and China are two neighbouring countries with many similarities in economic, political and cultural affairs. In the context that the open door renovation/reform in both countries are underway, the two countries encounter many common issues which are suggestive to each side. Judicial reforms in the two countries have similarities and dissimilarities due to their population sizes and development. Based on the judicial reform context in each country, this paper compares the similarities and dissimilarities of the current judicial reforms in Vietnam and China.

Keywords: Reform, institution, justice, China, Vietnam.

Subject classification: International studies

1. Introduction

Vietnam and China are among the few socialist countries which have implemented renovative reforms and transformations from planned economies to market-based economies quite successfully. In those transformation processes, institutional reforms are a crucial factor in ensuring the reform's success. Together with institutional reforms in legislation and execution, judicial institutional reforms are also among the important tasks of the two countries. Due to numerous similarities in the political institutions, the judicial institutional reforms of each country also

have many things in common. However, the judicial institutional reforms in the two countries have some dissimilarities because of the different population size and development in each state. Researching and comparing these judicial institutional reforms in Vietnam and China will offer us useful lessons and experience for the reform process of each country.

2. Contexts of judicial institutional reforms in Vietnam and China

Judicial reforms are components in the state apparatus having a close relationship with

administrative reforms and are integral parts in the development of a rule-of-law (defined by Vietnam) or rule-by-law (defined by China) socialist state. In addition, a judicial reform needs to be implemented profoundly and comprehensively to meet the requirement that “the state power is unified with the allotment, collaboration and control among state agencies in their implementation of legislative, executive and judicial powers” [9]. Therefore, judicial reforms cannot stray from the development of a “state of the people, by the people and for the people” [11]. Judicial reforms are also tasked with realising regulations, institutions and mechanisms of “power control” [10] in the reform at present and in the following years. In the context that Vietnam sets the target of a “wealthy people, strong, democratic, equitable and civilised country” [5] and China outlines the target of “comprehensively building a moderately prosperous society” [35], based on a “market economy” and the “equitable justice” [20], the judicial reforms in both countries, in conclusion, need to be “very cautious and selective to every single issue to match the socio-economic development in each country’s development phase” [36].

In Vietnam, after nearly 10 years of implementing the renovation process, Resolution No.49-NQ/TW dated 2 June 2005 by the Politburo on the judicial reform strategy to 2020 clearly determined the motto “Judicial reform must originate from the requirement of socio-economic development and strong national defence in close linkage to the legislative work and administrative reform”. The Communist Party of Vietnam set clear requirements for

the connection between the three power branches and synchronous reforms in all those three branches. Legislative reform will not be effective without the accompaniment of executive and judicial reforms. Flying higher on the previous Congresses’ views on judicial reform, the 12th National Congress of the Party (or the 12th Congress) clearly pointed out that the judicial reform in Vietnam remained “slow with instances of harassment, negative phenomena, injustice, misjudgement and untried crime” [2]. The Congress also found the reasons for such downsides, specifically “Building the rule-of-law socialist state is a new issue of our country. The dichotomy between the Party’s leadership role and the state’s management role still has some ambiguous points and is not in line with the rule-of-law state principle. The working of compliance with law and socialist legislation remains insufficiently serious” [2]. Hence, it is necessary to “continuously promote and implement the judicial reform strategy; develop a pure, strong, democratic, strict and gradually-modern justice sector; protect the law, justice, human rights, citizen rights, socialist regime, state’s interest and legitimate rights of agencies, organisations and individuals and delineate administrative management authorities and judicial liabilities as well as rights in the organisation and operation of judicial organs” [2].

The judicial reform in China is tabled for discussions from the 15th Congress (1997), which concluded that it was necessary to “promote the judicial reform and ensure the independent jurisdiction and prosecution of judicial bodies” [37]. Since 1999, the Supreme People’s Court has issued “the fundamentals of the five-year reform” three times. However, not until 2004 did China

“launch its judicial reform in a large scale with the unity in planning and implementation, starting from decisive points, which are prominent issues with strong reactions from Chinese people and impacts on the equitable justice sector, finalising the structuring and planning of the management function and mechanism of judicial bodies based on the sector’s features and strengthening the judicial mechanism with clear responsibilities, collaboration, mutual control and effective operation” [20].

As of 2008, China continued to start a new judicial reform phase with the priority to “deep, focused and systematic judicial reforms. The reform needs to originate from the requirements for the justice sector of the people; prioritise the people’s common interests; target primarily the promotion of a harmonised society; focus on strengthening the power control and supervision; grasp thoroughly key factors which can affect the equitable justice sector and impede the judicial capacity and address institutional, mechanical and assured obstacles. It is also crucial to enhance the judicial contingent and ensure the judicial expenditure” [21].

On 20 October 2014, the 4th plenary session of the 18th National Congress of the Communist Party of China was summoned with the topic “comprehensively promoting the development of a rule-by-law state”. Based on the 3rd plenary session of the 18th National Congress, China continued to carry out intensive reforms to ensure an equitable justice sector with such specific tasks as the Supreme People’s Court established circuit courts (巡回法院), setting up people’s courts and people’s procuracies across different administrative divisions (跨行政区划的人民法院和人民检察

院), exploring and formulating the public litigation mechanism of procuracies (公益诉讼制度), promoting the reform towards an jurisdiction-centred litigation mechanism, etc. Hence, it can be understood that the judicial reform in China after the 18th Congress continued to be deepened with a wide range of specific measures and models applied for the first time.

Researching further the judicial reform in China, one can conclude that the three main factors impacting the equitable justice in China are “The interference from external factors, the internal intervention of judicial bodies and individual binds of judicial officials” [38]. Accordingly, external factors are associated with the localism in the justice system, while the internal intervention of judicial bodies has a relation to the internal red tape in judicial bodies. The personal binds of judicial officials are closely linked to the finalisation of external monitoring mechanisms such as the Party’s monitoring of judicial bodies or the supervision committee’s monitoring of judicial bodies [38]. Therefore, the most important target of the judicial reform in China is to eliminate the localism and bureaucracy in judicial bodies and continuously enhance the independent monitoring system. In short, the judicial reforms in Vietnam and China both started after the two countries have conducted their open reforms for ten years. Obviously, after transforming from centrally planned economies to market ones, both countries face many institutional issues. Hence, in addition to legislative and executive institutional reforms, the judicial reform is implemented to create synchronicity in the political system reform.

3. Comparing judicial reforms in Vietnam and China at present

The more we learn about the judicial reforms in Vietnam and China, the more similarities we can find in their targets, contents and methods. However, due to the differences in population size and development level, some aspects of the judicial reforms in Vietnam and China are different.

3.1. Reform targets

Vietnam and China have similar political systems, in which the Communist Party leads both countries and forms the socialist rule-of-law model (for Vietnam) and the socialist rule-by-law model (for China). Regarding the state apparatus, the two countries do not recognise the Western state model of “power separation” with three independent bodies, legislative, executive and judicial agencies, which check and balance one another. Therefore, in reforming political institutions to meet the requirement of building a market economy, both countries must work out the most appropriate model to promote economic development, continuously expand the people’s rights as masters in all spheres, avoid drifting away from the socialist orientations and persist with the Party’s unified leadership. In the institutional political reform in general and judicial reform in particular, the two countries have set the following target of building a clean, strong and democratic justice system. In order to fulfil this target, it is necessary to strengthen the external monitoring body continuously. Overarching targets of the judicial reforms in Vietnam and China are thus the same and both aim to build a democratic justice sector,

which protects justice and continuously improves the justice system to better protect human rights for the people. Specific targets of the reform are listed as follows:

- In Vietnam: during judicial reform periods in Vietnam, it can be seen that the main target of the judicial reform in Vietnam is to “build a clean, strong, democratic justice sector which protects justice” [17]. In addition, it aims to gradually build a modern justice sector, which moves towards better serving the people and the socialist development.

- In China, six main targets are identified as followings: building and consolidating the independent jurisdiction and procuracy system; optimising the functions of judicial bodies by strengthening police departments, procuracies, courts and judicial administrative agencies; promoting a strict justice sector based on the development of a judicial assessment mechanism and a system of criteria for case adjudication; persistently building a justice sector for the people and by the people to promote judicial equitability based on the consolidated people’s jury system and public judicial mechanism; continuously ensuring judicial human rights to secure the right to know, report and defend in the course of litigation and strengthening the judicial activity supervision on the basis of finalising the legal system of monitoring bodies [39].

3.2. Reform contents

For Vietnam, Resolution No.49-NQ/TW on the judicial reform strategy to 2020 has emphasised the reform mandates of judicial agency system such as courts, procuracies, investigation agencies or judicial support

organs [13]. Similarly, the judicial reform in China has also witnessed these issues with relatively specific contents to create synchronicity in the reform process [40]. This is also the tendency of judicial reforms in other countries around the world with a view to establishing a system of independent and effective judicial bodies [18]. However, when reviewing the judicial reforms' contents of Vietnam and China, the judicial reform in Vietnam has been conducted in quite a synchronous manner with legislative and executive reforms. In terms of legislation, Vietnam has made a wide range of amendments to its constitution (revising constitutional principles on the functions of a court and procuracy), followed by the amendment of specialised laws. Meanwhile, for China, the functions of judicial bodies such as courts and procuracies are specified in the People's Court Organisation Law [22] and the People's Procuracy Organisation Law [23]. China has recently revised the Chief Prosecutor Law and the Chief Judge Law in 2017 and 2018 towards increasing the liability and independence in the jurisdiction of these positions in the judicial agency system. In addition, there have been important adjustments in the system of agencies involved in judicial activities such as investigation agencies and judicial support organs (lawyers and notaries) [24]. In the court system, China has initially built a number of specialised court models such as circuit courts or administrative courts across different administrative divisions². These efforts are aimed at reducing the administrative burden on the judicial agency system such as courts. The contents of reforms in Vietnam and China are specified as follows:

- In Vietnam:

For the court, "fully specifying the constitutional principles on functions and tasks of the People's Court and adjudication activities, organising the courts based on their jurisdictions, ensuring the principle of independence and adversarial litigation in adjudication and securing the right to defence of the accused, defendants and litigants" [6].

For the People's Procuracy, this reform has been implemented to confirm the legal status of the People's Procuracy in the state apparatus with a dual role: "The People's Procuracy exercises its prosecution power in judicial activities and is organised in consistency with the court's organisational system and strengthens the prosecutor's responsibility in investigation activities" [7].

For investigation agencies, stressing the task of "consolidating the organisation of investigation agencies with clearly delineated functions, tasks and powers of each agency and improved the quality and efficiency of investigation agencies" [12]. Accordingly, the system of investigation agencies needs to be organised in accordance with the investigation assignment, empowerment, decentralisation and authority. First of all, the investigation authority is distributed by administrative divisions, which means that an investigation agency at the locality where a crime occurs shall deal with the case; secondly, by the criminal areas; thirdly, by the types of crime and finally, by the offenders [8]. The investigation department of the Supreme People's Procuracy generally carries out its authority in all fields, while the investigation bodies of the people's public security force have a clearer decentralisation [16]. However, the assignment and decentralisation are sometimes implemented differently.

For activities of lawyers and other judicial support organs, two fundamental factors are emphasised, namely “improving the quality and efficiency of lawyers and other judicial support organs” [3] and “continuing to mobilise resources of social strata for some eligible judicial and judicial support activities” [4].

- In China:

For the court sector, establishing a judicial management system that is separate from the administrative sector; setting up an adjudication-centered litigation system; optimising the internal functions and authorities of people’s courts; consolidating the jurisdiction operating mechanism; finalising the open and transparent judicial mechanism to create favourable conditions for the people; promoting the professionalisation, professionalism and specialisation of the courts’ personnel and ensuring the impartial and independent jurisdiction of people’s courts based on the laws [41].

For people’s procuracies, finalising the institutional mechanism to ensure the independent prosecution right based on the laws; formulating the procurator management system in line with their functions and tasks; consolidating the mechanism for exercising the prosecution right; strengthening the monitoring mechanism of anti-corruption law to improve the rule by law in the prevention and control of crimes in which one abuses his/her working positions; enhancing the legal supervision function and completing the legal system in order to ensure the procuracy’s supervision right; strengthening the legal supervision of criminal, civil and administrative proceedings and enhancing the cross supervision of the prosecution right operating mechanism [25].

With regard to the reform in public security agencies, there are seven areas that need reforms and more than 100 reform implementing measures to strengthen the working mechanism of public security forces, creating a mechanism for managing the public order and security, comprehensively reforming the administrative management mechanism of public security forces, consolidating the mechanism for exercising the law-enforcement power, finalising the mechanism of public security agency management, perfecting the mechanism of people’s police management and legally managing the people detention by the police [26].

3.3. Gained results

First, through certain times of judicial reform, Vietnam and China have gained some initial achievements. The two countries have initially set up a system of judicial bodies with a relatively independent role in the state apparatus. Functions and tasks of these judicial agencies are clearly stipulated. In Vietnam, the judicial reform has been implemented in a relatively synchronous manner from the legislation to administrative reform in judicial bodies.

For Vietnam, its judicial reform in the previous period has yielded remarkable and synchronous results such as revisions of the constitution and some provisions in the Law on Organisation of People’s Courts and People’s Procuracies. The 2013 Constitution defines tasks of the people’s courts as protecting justice, human rights, civil rights, the socialist system, state’s interests and legitimate rights and interests of organisations and individuals. In terms of judicial power exercising methods, the 2013

Constitution contains new provisions in comparison with the 1992 Constitution (revised in 2001). While Article 132 in the 1992 Constitution states “The right of the defendant to be defended is guaranteed. The defendant can either conduct his own defence or ask someone else to do it”, the 2013 Constitution further stipulates the right to defend of the internee: “The right of the accused or defendants to a defence, and the right of involved parties to protect their lawful interests, shall be guaranteed” (Clause 7 of Article 103). In addition to the procedural principles set out in the 1992 Constitution such as “The People's Courts shall hold their hearings in public, except in cases determined by law”, “Trials before People's Courts with the participation of people's assessors shall be conducted in conformity with the provisions of the law”, “During a trial, the judges and assessors are independent and shall obey only the law”, “The People's Courts shall try their cases collegially, and their decisions shall be in conformity with the will of the majority”, the 2013 Constitution additionally defines “The adversarial principle shall be guaranteed in trials” (Clause 5 of Article 103) and “The first-instance and appellate hearing system shall be guaranteed” (Clause 6 of Article 103). In order to ensure the Court's independence, the 2013 Constitution does not stipulate that the chief judge of a local court shall be responsible for reporting the court's work before the People's Council regulated in the 1992 Constitution. Implementing the policy of jurisdiction-based court organisation and concretising provisions of the 2013 Constitution, the 2014 Law on Organisation of People's Courts has established Superior People's Courts in the system of People's

Courts. Superior People's Courts are authorised to retry judgements of provincial People's Courts under their territorial jurisdictions which have not yet taken legal effect and were protested and appealed against. In addition, they will conduct cassations and retrials for legally enforceable judgements of the People's Courts of provinces, centrally-run cities, districts, cities under provinces and equivalent levels within the jurisdictions of protested territorial units in compliance with provisions of the procedural law. Due to the establishment of Superior People's Courts, the Supreme People's Court will no longer have the jurisdiction to review judgements of provincial People's Courts, which are also no longer competent to conduct the cassation and retrial for judgements of the People's Courts of districts, towns or cities under provinces. The authorities mentioned above under the 2014 Law on Organisation of People's Courts are transferred to Superior People's Courts. In order to strengthen the protection of human rights and citizen rights, especially ones of women and children, the law has further established the Family and Juvenile Courts under provincial People's Courts and Superior Courts and may establish this kind of court under the People's Courts of districts, towns or provincial cities. In order to enhance the occupational independence and stability of judges, the 2014 Law on Organisation of People's Courts has also extended the duration from the second term of a judge onwards from five to ten years (Article 74 of the 2014 Law on Organisation of People's Court).

Corresponding to the People's Court system organisation, the 2014 Law on Organisation of People's Procuracies has

established Superior People's Procuracies in the organisational system of the People's Procuracy. The procuracy's organisation will continue to be strengthened to match the court organisation system for a better implementation of judicially prosecutorial functions which have already been recognised by the constitution. Moreover, the procuracy has also increased prosecution responsibilities during the investigation period, such as the investigating information, denunciations of crimes and prosecution requests of investigation agencies, which requires officials and procurators to actively and proactively bring into full play their roles and responsibilities when exercising the prosecution right. In each case, procurators must promptly and proactively request to help investigators orient the investigation of each case to ensure the quality and efficiency of the investigation and its supervision. Besides, to enhance the sense of responsibility and raise the awareness of each official or procurator in supervising the investigation and case file development to detect timely cases where the investigation agency misses crimes, documents or evidence to avoid the situation that the evidence collected by investigation agencies during their investigations does not ensure objectivity; so that no offenders can shun punishment, and no wrongful judgement is made against innocent people.

Since the 18th Congress up to now, China has enacted a wide range of reforms to ensure that judicial agencies and judicial personnel exercise their functions equitably and impartially according to the laws. This is demonstrated through the establishment of several new models which are applied for the first time in China. Specifically, (1) the

Supreme People's Court has set up circuit courts. This is similar to the U.S model [42], which differs from the other ordinary courts in the fact that the judge of a circuit court is not fixed and does not work regularly at court. The mobility of judges in this model is relatively considerable to ensure the fairness of circuit courts and remove the orientation in case hearing [42]. A circuit court, which does not have the chief judge and is only heard by judges, has abolished the administrative nature of a court. Judges are more independent and far less influenced by the Party and local authority than the local people's court system [42]. So far, China has built up a system of circuit courts under the Supreme People's Court in major cities such as Shenzhen (Guangdong), which mainly covers the following areas: Guangdong, Guangxi, Hainan; and Shenyang (Liaoning), which mainly covers the following areas: Liaoning, Jilin, Heilongjiang. It is expected that six circuit courts will be established to cover the following areas: Hua Dong (East China), Hua Zhong (Central China), Hua Nan (South China), Bei Xi (Northwest China), Nan Xi (Southwest China) and Hua Bei (North China) [42]. (2) China has also established a system of People's Courts and People's Procuracies across different administrative divisions (interregional). This is one of the important measures to reform the judicial management institution adopted in the 4th plenary session of the 18th National Congress. China has decided to pilot the establishment of the People's Court and People's Procuracy across different administrative divisions in the two largest cities of China, Beijing and Shanghai. The establishment of a judicial agency system across different administrative

divisions is to mainly deal with administrative cases across different administrative divisions and key cases. Since its establishment in April 2004, the 4th Intermediate People's Court in Beijing has handled 458 cases, of which 286 cases have been related to "people taking legal actions against officials" (only administrative cases). In 2014, at Beijing People's Court, the number of cases in which the "accused" are the district governments, did not exceed 216. However, just four months ago, the number of cases accepted by this court exceeded the total number of administrative cases in 2014, reflecting this court's significance in terms of administrative intervention after it got out of the local auspice. By the end of December 2015, the 4th Intermediate People's Court in Beijing had dealt with 1,892 cases, among which there were 1,396 administrative lawsuits (73.8%), 379 commercial civil cases (20%) and 30 criminal cases (1.6%) [27]. By the end of 2015, the 3rd Intermediate People's Court in Shanghai had accepted 1,370 cases, including 610 administrative cases [28]. (3) China has established Intellectual Property Courts, a reform task initiated since the 3rd plenary sessions of the 18th National Congress. Since November 2014, the Intellectual Property Courts have been established in Beijing, Shanghai, and Guangzhou [43]. Despite their short time of establishment, the Intellectual Property Courts established in these three cities have operated efficiently. In one year of operation, the Intellectual Property Court of Beijing has addressed 7,918 cases and sentenced 3,250 cases [29]. (4) In terms of improving the management of judicial personnel classification, on 15 September 2015, the 16th working session of the Steering Committee on Comprehensive Reform of the

Central Committee of the Communist Party of China passed the "Measure to pilot reforms on positions and titles of chief judges and chief procurators". Accordingly, cities would pilot the classification of court and procuracy personnel. For example, Shanghai classified its court personnel into three categories, including judges, judge assistants and judicial administration personnel with the respective proportions of 33%, 52% and 15%. After the reclassification, the proportion of judges fell from 49% to 33%. Procuratorates of the cities were also rearranged towards consolidating the classification of personnel [30]. (5) In terms of strengthening the judicial interference prevention, in March 2015, the Party Central Committee's Office, the General Office of the State Council and the Political and Legal Commission of the Central Committee of the Communist Party issued the "Regulations on disciplinary actions against officials and leaders interfering in judicial activities and participating in specific cases, prosecuting their offences and informing units that they are working for" and "Regulations on prosecuting and taking disciplinary actions against staff in judicial agencies involved too deeply in cases" to ensure the independent and fair exercise of judicial rights according to the laws [31].

Second, China has stepped up its reform in the judicial right exercising mechanism. Since the 18th National Congress of the Communist Party of China up to now, reforms in the judicial right exercising mechanism have been quite effective, shown through the following points: (1) Improving the judicial accountability mechanism for the People's Courts and People's Procuracies. In August 2015, the 15th working session of the Steering

Committee on Comprehensive Reform of the Central Committee of the Communist Party of China passed “Some comments on completing the judicial liability system of the People’s Courts” and “Some comments on completing the judicial liability system of the People’s Procuracies”. These two documents were developed to clarify that “The jurisdiction shall be undertaken by competent individuals” and “who accept the case shall be responsible for its jurisdiction and who make decisions shall take the responsibility”. (2) Actively promoting public justice, especially the publicity of hearing procedures. In China, there are currently 25 provinces having a unified system of publicising hearing procedures. In addition, it is necessary to promote the judgement publicisation continuously. In November 2013, the Supreme People’s Court of China launched a network that contains public information about judgements of courts throughout the country. In addition, China has continued to promote public information on judgement enforcement through the provision of a unified network of judgement enforcement information across the country. By November 2015, there had been 50.68 million pieces of information in total on the enforcement of judgements, provided to more than 33 million people [32]. (3) Improving the people’s jury and people’s supervision systems. By 2015, the people’s jury staff had participated in more than two million cases [32]. (4) Procuracies pilot the public procedure reform, thereby promoting law-based administrative affairs, strictly complying with the laws and protecting the respectfulness of the constitution and laws.

For Vietnam, reform has also been particularly emphasised and promoted in

the operation of judicial bodies such as courts to increase the accountability of their judges. In addition, “the adversarial litigation has been boosted. Some proceeding procedures have been renovated. Many wrongfully-convicted cases have been vindicated, and the legitimate rights and interests of citizens have been restored. Judicial work has made contributions to handling “big” cases being criticised, denounced and reflected by the public at large and underpinned the trust of people and voters in the justice system...” [14].

Third, China has achieved positive results in terms of ensuring human rights in judicial activities. That “human rights are thoroughly respected and guaranteed” is one of the key goals in deepening the reform and building a moderately prosperous society [33]. Since the 18th National Congress of the Communist Party of China, this issue has indicated positive changes in some aspects: (1) Strengthening the system of wrongfully-convicted case prevention and control and slapping charges in such cases. In 2013 and 2014, the Court declared 1,603 defendants innocent [44]. (2) Ensuring the professional interests of lawyers in accordance with the laws. On 15 September 2015, the 16th working session of the Steering Committee on Comprehensive Reform of the Central Committee of the Communist Party of China passed the “Comments on the lawyer system reform”, then the Supreme People’s Court and the Supreme People’s Procuracy issued the “Regulations on securing the professional interest of lawyers” [34]. (3) Reducing the death penalty step by step, China has abolished the death penalty for crimes such as weapon and ammunition trafficking, nuclear material trafficking, counterfeit money trade, counterfeit money

production, fraud, prostitution arrangement and hindering persons carrying out military tasks. At present, 46 crimes can be charged with death penalty in China. (4) Developing the standard judicial procedure in handling assets of a case. The Central Committee of the Communist Party of China passed the “Comment on increasingly standardising the asset handling in criminal procedure cases” to ensure the legitimate rights and interests of litigants and the principle of unified judicial procedure in case handling [45].

For Vietnam, the compensation for wrongfully-convicted cases has recently attracted public attention. According to a report by the Standing Committee of the National Assembly, “from 1 October 2011 to 30 September 2014, the procedure-conducting bodies prosecuted and investigated 219,506 cases with 338,379 defendants and left 71 wrongfully-convicted cases (0.02%)” [19]. According to the report of reviewing the six-year implementation of the Law on the State Compensation Liability issued by the Ministry of Justice, since the law came into force on 31 December 2015, the courts at all levels “have accepted and dealt with 38 cases, successfully addressed 32 cases, with the compensation of VND 37,772,742,000” [19]. Therefore, together with activities to promote judicial reform, Vietnam has also paid special attention to holding judicial bodies accountable, which is especially important in the context of judicial reform and in order to create people’s confidence in the Party and state.

Fourth, China has enacted reform measures which aim at creating a favourable and beneficial justice system for the people. In order to fully grasp the principle of justice for the people, protecting the people’s legitimate rights and interests, from the 18th National

Congress up to now, China has implemented many reform policies such as promoting the reform in the case registration system, consolidating the legal support system and improving the state judicial assistance system [46]. In addition, China has also made efforts to apply information technology to the operation of the justice system’s administrative apparatus in order to create favourable conditions for people to access information about courts, legal foundations...

For Vietnam, one of the top 10 achievements in the people’s court system in 2017 is the release of court judgements and decisions on their web portals [15]. This shows that Vietnam is also trying to apply information technology to the justice system reform process in order to create favourable conditions for people as well as make concerted efforts to enhance the transparency in trial activities. Recently, some mass media have also directly accessed to adversarial litigation activities such as the case where Miss Phuong Nga was sued for asset appropriation. In this case, for the first time, the defendant was entitled to keep silence. This case has attracted great public interest in Vietnam and shows a reform tendency of courts in Vietnam which is applying information technology and the freedom of press to monitor the court’s hearing in order to ensure the fairness for procedure participants [1].

4. Conclusion

Institutional reform and refinement, as well as judicial reform, are important tasks in the reform process of Vietnam and China. Judicial reforms in Vietnam and China are

similar in terms of their targets and contents. Although the reform results achieved in each country are different, it is obvious that the judicial reforms in both countries are not smooth processes but progressive efforts to explore and develop appropriate judicial agency models. Through comparative studies of judicial reforms in Vietnam and China, the following lessons can be drawn:

First, the judicial reforms should be carried out by high political will from the central to local levels. The judicial reform process needs to be linked to a unified leadership and stewardship of the Party. This is also the reform method that both Vietnam and China have applied.

Second, the judicial reform needs to proceed with cautions as it involves in regulating the structure of interests among different groups in society. Experimental models should be conducted in some conditionally feasible localities. From these models, lessons can be drawn for widespread application throughout the country. Vietnam and China have implemented judicial reforms in the context that they are countries with economies in transitional periods and follow the leadership of the Communist Party (the only ruling party). It is thus impossible for them to apply the Western model of “separation of powers”. Nevertheless, they are still required to establish an independent justice system under the Communist Party’s leadership. While the institution is being transformed to fit the reality, it is crucial to sum up the practice or exchange lessons learned between the two countries.

Third, Vietnam can study China’s experience in setting up circuit courts with increased jurisdiction and judicial

independence due to the absence of a chief judge in this court model. Currently, Vietnam is also working on a model of courts across different administrative divisions. Vietnam can also study and review what the more experienced countries like China has done and encountered to apply where possible.

Notes

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² In October 2014, the report of the 4th plenary session of the 18th National Congress pointed out that it was necessary to optimise the arrangement of judicial functions and authorities to promote the institutional reform piloting of, which separated the executive authority from the adjudication authority, the Supreme People’s Court established circuit courts (巡回法院), setting up people’s courts and people’s procuracies across different administrative divisions (跨行政区划的人民法院和人民检察院), exploring and formulating the public litigation mechanism of procuracies (公益诉讼制度), promoting the reform towards an adjudication-centered litigation mechanism, etc.

References

- [1] Báo Thanh niên (2017), *Những bất ngờ qua ‘vụ án Phương Nga’: Quyền im lặng của bị can, bị cáo*, <https://thanhnien.vn/thoi-su/nhung-bat-ngo-qua-vu-an-phuong-nga-quyen-im-lang-cua-bi-can-bi-ca-cao-851222.html>, truy cập ngày 15 tháng 7 năm 2018. [Thanh Nien Newspaper (2017), *Surprises through ‘Case of Ms. Phuong Nga’: The Right to Keep Silent of Defendants and the Accused*, <https://thanhnien.vn/thoi-su/nhung-bat-ngo-qua->

- vu-an-phuong-nga-quyen-im-lang-cua-bi-can-bi-cao-851222.html, retrieved on 15 July 2018].
- [2] Báo Điện tử Đảng Cộng sản (2017), *Báo cáo chính trị của Ban Chấp hành Trung ương Đảng khóa XI tại Đại hội đại biểu toàn quốc lần thứ XII của Đảng*, <http://dangcongsan.vn/tu-lieu-van-kien/tu-lieu-ve-dang/sach-chinh-tri/books-4331201610454246/index-23312016104606464.html>, truy cập ngày 25 tháng 6 năm 2018. [Communist Party of Vietnam online newspaper (2017), *Political Report of 11th Central Committee of Communist Party of Vietnam at its 12th National Congress*, <http://dangcongsan.vn/tu-lieu-van-kien/tu-lieu-ve-dang/sach-chinh-tri/books-4331201610454246/index-23312016104606464.html>, retrieved on 25 June 2018].
- [3] Đinh Duy Bằng và Hoàng Thanh Hoa (2018), *Nâng cao chất lượng luật sư - Góc nhìn từ giải pháp*, <http://www.moj.gov.vn/qt/tintuc/Pages/ngghien-cuu-trao-doi.aspx?ItemID=2322>, truy cập ngày 20 tháng 10 năm 2018. [Dinh Duy Bang and Hoang Thanh Hoa (2018), *Improving Quality of Lawyers - From Perspective of Solutions*, <http://www.moj.gov.vn/qt/tintuc/Pages/ngghien-cuu-trao-doi.aspx?ItemID=2322>, retrieved on 20 October 2018].
- [4] Bộ Tư pháp (2016), *Vai trò của hoạt động Bổ trợ tư pháp trong tiến trình cải cách tư pháp*, <http://stp.bacninh.gov.vn/news/-/details/57408/vai-tro-cua-hoat-ong-bo-tro-tu-phap-trong-tien-trinh-cai-cach-tu-phap>, truy cập ngày 24 tháng 5 năm 2018. [Ministry of Justice (2016), *Role of Judicial Support in Judicial Reform Process*, <http://stp.bacninh.gov.vn/news/-/details/57408/vai-tro-cua-hoat-ong-bo-tro-tu-phap-trong-tien-trinh-cai-cach-tu-phap>, retrieved on 24 May 2018].
- [5] Công thông tin điện tử Chính phủ, *Báo cáo chính trị của Ban Chấp hành Trung ương Đảng khóa IX tại Đại hội đại biểu toàn quốc lần thứ X của Đảng*, <http://www.chinhphu.vn/portal/page/portal/chinhphu/NuocCHXHCNVietNam/ThongTinTongHop/noidungvankiendaihoi?categoryId=10000715&articleId=10038386>, truy cập 25 tháng 6 năm 2018. [Vietnam Government Web Portal, *Political Report of 9th Central Committee of Party at Party's 10th National Congress*, <http://www.chinhphu.vn/portal/page/portal/chinhphu/NuocCHXHCNVietNam/ThongTinTongHop/noidungvankiendaihoi?categoryId=10000715&articleId=10038386>, retrieved on 25 June 2018].
- [6] Điều 5 Luật Tổ chức Tòa án nhân dân Việt Nam. [Article 5 in Law on Organisation of People's Courts in Vietnam].
- [7] Điều 1 Luật Tổ chức Viện kiểm sát nhân dân Việt Nam. [Article 1 in Law on Organisation of People's Procuracies in Vietnam].
- [8] Điều 163 Bộ luật Tố tụng hình sự Việt Nam. [Article 163 of Criminal Procedure Code in Vietnam].
- [9] Trần Ngọc Đường (2014), *Quyền lực Nhà nước là thống nhất, có sự phân công, phối hợp, kiểm soát giữa các cơ quan nhà nước trong việc thực hiện các quyền lập pháp, hành pháp và tư pháp trong Hiến pháp nước Cộng hòa xã hội chủ nghĩa Việt Nam*, <http://www.tapchicongsan.org.vn/Home/Nghien-cuu-Traodoi/2014/27784/Ve-quyen-luc-nha-nuoc-va-su-phan-cong-phi-hop-kiem.aspx>, truy cập ngày 10 tháng 9 năm 2018. [Tran Ngoc Duong (2014), *State Power is Unified with Division, Coordination and Control among State Agencies in Implementing Legislative, Executive and Judicial Powers in Constitution of Socialist Republic of Vietnam*, <http://www.tapchicongsan.org.vn/Home/Nghien-cuu-Traodoi/2014/27784/Ve-quyen-luc-nha-nuoc-va-su-phan-cong-phi-hop-kiem.aspx>, retrieved on 10 September 2018].
- [10] Đoàn Thị Ngọc Hải (2016), *Quan niệm về kiểm soát và cơ chế kiểm soát quyền lực nhà nước ở nước ta hiện nay*, <http://moj.gov.vn/>

- qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=1929, truy cập ngày 25 tháng 6 năm 2018. [Doan Thi Ngoc Hai (2016), *View on Control and Current Mechanism of State Power Control in our Country*, <http://moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=1929>, retrieved on 25 June 2018].
- [11] Hiến pháp nước Cộng hòa xã hội chủ nghĩa Việt Nam các năm 1946, 1959, 1980, 1992, 2013. [Constitution of Socialist Republic of Vietnam in 1946, 1959, 1980, 1992 and 2013].
- [12] Lê Thị Huệ, *Nâng cao trách nhiệm và chất lượng hoạt động của các cơ quan và cán bộ tư pháp hình sự*, <http://tcdcpl.moj.gov.vn/qt/tintuc/Pages/dien-dan-cong-tac-tu-phap.aspx?ItemID=84>, truy cập ngày 20 tháng 10 năm 2018. [Le Thi Hue, *Improving Responsibilities and Working Qualities of Criminal Justice Agencies and Officials*, <http://tcdcpl.moj.gov.vn/qt/tintuc/Pages/dien-dan-cong-tac-tu-phap.aspx?ItemID=84>, retrieved on 20 October 2018].
- [13] Nguyễn Đình Lục, *Sau ba năm thực hiện chiến lược cải cách tư pháp*, <http://moj.gov.vn/tctccl/tintuc/Pages/tinh-hinh-trien-khai.aspx?ItemID=1>, truy cập ngày 25 tháng 10 năm 2018. [Nguyen Dinh Luc, *After Three Years of Implementing Judicial Reform Strategy*, <http://moj.gov.vn/tctccl/tintuc/Pages/tinh-hinh-trien-khai.aspx?ItemID=1>, retrieved on 25 October 2018].
- [14] Lưu Bình Nhưỡng (2018), *Tòa án nhân dân đã có nhiều thành tựu trong cải cách tư pháp*, <http://congly.vn/thoi-su/ts-luu-binh-nhuong-tand-da-co-nhieu-thanh-tuu-trong-cai-cach-tu-phap-252626.html>, truy cập ngày 25 tháng 10 năm 2018. [Luu Binh Nhuong (2018), *People's Courts Have Had Many Achievements in Judicial Reform*, <http://congly.vn/thoi-su/ts-luu-binh-nhuong-tand-da-co-nhieu-thanh-tuu-trong-cai-cach-tu-phap-252626.html>, retrieved on 25 October 2018].
- [15] Tòa án Nhân dân tối cao (2018), *10 sự kiện tiêu biểu nổi bật của hệ thống Tòa án nhân dân trong năm 2017*, <https://tapchitoaan.vn/bai-viet/van-de-thoi-su-thoi-su/10-su-kien-tieu-bieu-noi-bat-cua-he-thong-toa-an-nhan-dan-trong-nam-2017>, truy cập ngày 25 tháng 5 năm 2018. [The Supreme People's Court of the Socialist Republic of Vietnam (2018), *10 Prominent Events of the People's Court System in 2017*, <https://tapchitoaan.vn/bai-viet/van-de-thoi-su-thoi-su/10-su-kien-tieu-bieu-noi-bat-cua-he-thong-toa-an-nhan-dan-trong-nam-2017>, retrieved on 25 May 2018].
- [16] Lê Hồng Thanh, *Địa vị pháp lý và thẩm quyền của cơ quan điều tra Viện Kiểm sát nhân dân tối cao*, <http://tks.edu.vn/thong-tin-khoa-hoc/chi-tiet/79/241>, truy cập ngày 20 tháng 10 năm 2018. [Le Hong Thanh, *Legal Status and Authority of Investigation Agency of Supreme People's Procuracy*, <http://tks.edu.vn/thong-tin-khoa-hoc/chi-tiet/79/241>, retrieved on 20 October 2018].
- [17] Chiến Thắng (2016), *Xây dựng nền tư pháp dân chủ, nghiêm minh, bảo vệ công lý*, <http://www.qdnd.vn/chinh-tri/tin-tuc-su-kien/xay-dung-nen-tu-phap-dan-chu-nghiem-minh-bao-ve-cong-ly-467818>, truy cập ngày 25 tháng 7 năm 2018. [Chien Thang (2016), *Developing a Democratic and Strictly Fair and Impartial Justice Sector to Protect Justice*, <http://www.qdnd.vn/chinh-tri/tin-tuc-su-kien/xay-dung-nen-tu-phap-dan-chu-nghiem-minh-bao-ve-cong-ly-467818>, retrieved on 25 July 2018].
- [18] Thái Vân (2013), *Cải cách tư pháp một số nước trên thế giới- Một số gợi mở cho quá trình cải cách tư pháp ở Việt Nam*, <http://noichinh.vn/nghien-cuu-trao-doi/201311/cai-cach-tu-phap-mot-so-nuoc-tren-the-gioi-mot-so-goi-mo-cho-qua-trinh-cai-cach-tu-phap-o-viet-nam-293052/>, truy cập ngày 20 tháng 10 năm 2018. [Thai Van (2013), *Judicial Reforms of Some Countries in*

- the World - Some Suggestions for the Judicial Reform in Vietnam*, <http://noichinh.vn/nghien-cuu-trao-doi/201311/cai-cach-tu-phap-mot-so-nuoc-tren-the-gioi-mot-so-goi-mo-cho-qua-trinh-cai-cach-tu-phap-o-viet-nam-293052/>, retrieved on 20 October 2018].
- [19] Khánh Vân, *Vấn đề oan, sai và trách nhiệm bồi thường của Nhà nước trong hoạt động tố tụng hình sự*, <http://tcdclp.moj.gov.vn/qt/tintuc/Pages/thi-hanh-phap-luat.aspx?ItemID=358>, truy cập ngày 25 tháng 10 năm 2018. [Khanh Van, “Wrongful Judgement and State’s Compensation Responsibility in Criminal Procedures”, *Democracy and Law Review (online version)*. <http://tcdclp.moj.gov.vn/qt/tintuc/Pages/thi-hanh-phap-luat.aspx?ItemID=358>, retrieved on 25 October 2018].
- [20] 江国华 (2016) 司法立宪主义与中国司法改革, 法制与社会发展2016年第一期.
- [21] 高一飞 (2008) 司法改革的轻与中, 司法2008年第3期.
- [22] 中华人民共和国人民法院组织法第三条.
- [23] 中华人民共和国检察院组织法第四条.
- [24] 中华人民共和国律师法、中华人民共和国公正法.
- [25] 李响 (2017) 检察员机构改革探讨, 现代商贸工业2017年33期.
- [26] 常磊、刘煜等 (2013) 浅析司法体制改革对公安司法签定的影响, 中国法医学学会第十次法医临床学学术研讨会; 中国法医学学会第十次法医临床学学术研讨会论文集 (2009 / 02), pp.163-164.
- [27] 光明日报 (2015) 北京四号中级法院一年成立后已受理1900案件, 12月31日.
- [28] 人民日报 (2016) 首家跨行政区划法院上海市三中院成立一年多跨区审案屏蔽“打招呼”, 2016年01月19日02:48.
- [29] 光明日报 (2015) 北京知识产权法院成立一周周年: 收案近8000件审判去行政化, 2015年11月14日 03版.
- [30] 人民日报 (2015) 上海: 法官员额制激荡一江春水 (鉴政·司改进行时2015年05月20日 17 版).
- [31] 人民日报 (2016) 治国理政新实践 (让公平正义的阳光普照十八大以来司法体制改革述评2016年02月24日07:14.
- [32] 人民日报 (2016) 最高人民法院工作报告全文, 3月14日, 人民日报网.
- [33] 光明日报 (2015) 我国司法体制改革具有突破口进展, 9月22日.
- [34] 中华人民共和国律师法2017年9月1日修改.
- [35] <http://news.sina.com.cn/o/2017-10-18/doc-ifymyyxw3516456.shtml>, retrieved on 25 June 2018.
- [36] <http://theory.people.com.cn/n/2013/0821/c40531-22639373.html>, retrieved on 23 July 2018.
- [37] http://news.ifeng.com/mainland/special/zhonggong18da/content-4/detail_2012_11/04/188213630.shtml, retrieved on 25 June 2018.
- [38] <http://www.hebeicourt.gov.cn/public/detail.php?id=15490>, retrieved on 25 June 2018.
- [39] <http://news.ruc.edu.cn/archives/47085>, retrieved on 25 July 2018.
- [40] <http://news.ruc.edu.cn/archives/47085>, retrieved 25 July 2018.
- [41] http://ex.cssn.cn/fx/201711/t20171110_3738738.shtml, retrieved on 25 July 2018.
- [42] <https://baike.baidu.com/item/%E5%B7%A1%E5%9B%9E%E6%B3%95%E5%BA%AD/6309189?fr=aladdin>, retrieved on 25 May 2018.
- [43] <http://www.court.gov.cn/zixun-xiangqing-13655.html>, retrieved on 15 May 2018.
- [44] http://www.sohu.com/a/128301399_267857, retrieved on 25 July 2018.
- [45] http://www.sohu.com/a/128301399_267857, retrieved on 25 July 2018.
- [46] <http://finance.sina.com.cn/sf/news/2015-11-27/100311750.html>, retrieved on 25 May 2018.