



VIETNAM LAWYERS ASSOCIATION



THE XVII<sup>th</sup> IADL CONGRESS



INTERNATIONAL ASSOCIATION  
OF DEMOCRATIC LAWYERS

## Democracy in the court's functions

*Associate Prof., PhD Nguyen Van Huyen,  
Deputy Director, Legal Academy*

1. Democracy in the court's litigation has always been a concern for many countries. However, the concept of democracy is different from country to country. Such difference stems from the awareness the authority, the litigators, the judicial participants and legislative system of each country. In most countries, the examination of whether there is democracy or not in judicial activities depends largely on the enabling conditions of the lawyer's involvement and the defendants' defenses. Some countries are interested to get a case resolved through court's proceedings...Nevertheless, despite differences in the interpretation of democracy in national litigation, the most essential factors are reflected in the following:

- Assurance of stakeholders' equal participation
- Transparency and publicity of the case resettlement
- Enabling the best conditions for lawyers
- Highest assurance of the right of self-defense
- Court's decisions are transparent and accountable
- Ensuring defendant's rights to appeal

2. In Vietnam, litigational democracy is always one of issues concerned by the Government. How to ensure democracy in the litigation procedures? What are the forms of litigational democracy? What are the laws and regulations which assure and allow judges and council of judges to apply democratic principles in their work?. I can assert that laws of Vietnam has provided legal principles to be the background for the democratisation in all activities undertaken by legal authorities, and litigators including judges and people's council of judges.

In the past years, the judicial sector has taken steps to create new development in the litigation process, especially in criminal charges. It is the promotion of democracy in all litigation process, providing favourable conditions for the participation of the litigators, individuals and organizations, and for the assurance of equal litigation.



VIETNAM LAWYERS ASSOCIATION



THE XVII<sup>th</sup> IADL CONGRESS



INTERNATIONAL ASSOCIATION  
OF DEMOCRATIC LAWYERS

Thanks largely to this, the judicial activities have been to protect properly the rights and interests of defendants, the plaintiffs, relevant participants, and the legal rights of individuals and organizations when dispute arise. Such results have made significant contributions to the building of people's trust in the state's legal authorities.

To provide for legal bases for democracy practice in all legal activities, various legal documents have been approved including Criminal prosecution laws, the Civil prosecution law providing the rights and obligation of prosecuting agencies, prosecutors; and providing transparent legal procedures to enable and assure the right and interests of relevant stakeholders. Democracy spirit embedded in the prosecuting process is essential to the protection of 'discipline and nation's order', limiting dictatorial and negative attitudes in the society, especially in the judicial sector. Such provisions emphasising democracy principles has enabled prosecuting agencies, litigators, lawyers, and the court's subjects are entitled to the practice of their rights and obligations during the litigation process, contributing to finding the facts and truths related to a case.

Democracy issues stipulated in the legal system of Vietnam show specific concerns and guidance to the respect of human rights asserted by the Communist party of Vietnam. Such spirit has been stressed in the Resolution No. 08/NQ-TW issued on January 2, 2002 of the Politburo on some central tasks to the legal sector: it is important to maintain the nature of our State which is Socialist-oriented, of the people, for the people and by the people; assure and respect democratic rights, legal rights of organizations and citizens...following this line, the tasks and objectives of the judicial sectors were defined: "*..renovate one step the investigation procedure and hearing at court in accordance with Resolution No. 08/NQ-TW of the Politburo, renovate and improve quality of civil, economic, administrative and labour court proceedings at all levels*". To undertake such reformist strategies, democratic spirits in the Court's functions are reflected in the following aspects:

- *First, assurance of democracy in the practice of litigating agencies and litigators.*

The principle of democracy for litigating agencies and litigators are not just mentioned in specifically defined principles, but also clearly defined in the *Civil prosecution Law and the Criminal prosecution law* under the title: *Basic principles* are



VIETNAM LAWYERS ASSOCIATION



THE XVII<sup>th</sup> IADL CONGRESS



INTERNATIONAL ASSOCIATION  
OF DEMOCRATIC LAWYERS

recognised in all phases of the prosecution process. These are provisions mandatory to all procedures within the process of civil, criminal and administrative prosecution.

Civil and criminal prosecution process is undertaken under the principle *all citizens are equal before law*, in which, the court shall show no discrimination to race, religion, sex, social status and social class of the court's participants. All organizations are equal regardless of type of organizations, type of ownership, and other issues. Such principles are guided to the process of courts, litigators, legal representatives and lawyers and other stakeholder.

To litigating agencies, democracy is most reflected in the principle of *collective judgment and the involvement of council of judges*. According to this principle, the Court will collectively examine and decide on criminal, civil, commercial, labour, administrative cases and based on majority vote. Depending on levels of prosecution, judicial components can be defined. For example, at the court of hearing, Council of judges will consist of one judge and two people's jurists. But at the court of appeal, council of jury will consist of three judges...Yet, despite the level of prosecution, the principle of *collective judgment and decision by majority* is dominant in all cases. Democracy shall only be realised when such court is carried by a council of judges rather than a single person who judges. Therefore, despite differential legal standing, when it comes to making decisions, people's council of jurists are equal to judges, and the verdict is delivered based on majority consensus. Apart from this, collective decisions shall ensure the litigation be a transparent, objective and accurate process.

With the above-mentioned principle, transparency is essential to the protection of the democracy regime. Transparent prosecution allows people's supervision, at the same time enable the court to exercise its advocacy, dissemination and education of legal issues. When it becomes transparent, everyone has the right to participate. This is a necessary condition for people's supervision. Under special circumstance, the Court can proceed in closed doors. Although it might be decided under closed doors, the court's final verdict shall have to be publicised especially such verdict shall have to be made public for a certain period of time. People's direct supervision and the media have contributed to the promotion of democracy and socialisation of the judicial proceedings.

Democracy in the litigation process is not meant that court proceeding and decisions can be and only be made by the competent authority. In relation to general



VIETNAM LAWYERS ASSOCIATION



THE XVII<sup>th</sup> IADL CONGRESS



INTERNATIONAL ASSOCIATION  
OF DEMOCRATIC LAWYERS

prosecuting principles, beside the assurance of democratic principles, the enforcement of law shall have to be applied to make sure court's proceedings are equal and appropriate to the existing context via the review of materials, hearings and public testimony. No government agencies and/or individuals can force the judges and people's council of jury to direct illegal decisions.

Democracy also is shown in the provisions relating to prosecutors. Prosecutors are government officials whose tasks and assignments are practice laws. However, if there are reasons, which find their work partial and subjective, they can be denied or replaced. The democracy principle is also acknowledged through the right to appeal and submit civil and criminal claims.

*- Second, assurance of democracy for the involving participants*

Prosecutors during the course of practicing provisions provided by the Civil and Criminal Prosecution Laws, shall have to ensure democratic procedure applied to all other participants. Such principle is clearly defined for the participation of lawyers, and protectors of defendants' rights and interests. Together with the law's provisions, the role and importance of lawyers have been fostered. However, in general, the role of lawyers is not yet fully taken advantage of in the protection of their defendants; in some cases, lawyers are just nominal rather than being an active actor.

Expanding the rights of lawyers in the prosecution process is the clearest illustration of democracy, reduce limitation in providing true information about the case. Lawyers are knowledgeable about laws, with high level of profession, therefore their involvement is an important condition to shed light on the case, and thus protecting the law and order. Expanding prosecution and testimony and debates with lawyers' participation shall help resolve the case more accurately and objectively. Lawyers' involvement is apart from exercising the democracy institutions, an important factor for the court to give consideration before making any decisions and to help ensure accuracy and social equality.

For democracy to be maintained, it is not just necessary to expand lawyers' participation, but to improve capacity for the prosecuting members. They are judges and jurists whose knowledge needs to be continually improved with new knowledge and new grasp of legal principles and eventually the enable the fact that they are the one who control the scale of justice, and practitioners of justice. As the court's controller,



VIETNAM LAWYERS ASSOCIATION



THE XVII<sup>th</sup> IADL CONGRESS



INTERNATIONAL ASSOCIATION  
OF DEMOCRATIC LAWYERS

chief judges need to be knowledgeable, and flexible in all circumstances. Only by doing it, should the judge take to the democracy principle, and to achieve the best resolutions. With such abilities combined, it is not possible for judges to control and facilitate the proceedings and debates in a scientific and convincing manner, and thus democracy in the courtroom. Today, the quality of our members of the jury has been gradually improved, meeting the demands of reality and the needs of legal reforms. This also means, democracy in the court procedures has been assured just like the right to defense is assured in civil and criminal cases, and various other rights are so too such as the rights to debate, making additional testimony, the right to change judges, the right to appeal and to go against decisions made by court; the right of lawyers to access materials, making recommendations in the preparation for hearings, investigations, interviews, and debates at courtrooms; making it a transparent process through means of media ...

Given the above results and successful case resettlements, we believe that continual improvements in prosecution proceedings toward more democracy is necessary. Vietnam is striving to realise legal principles in all process of prosecution and to improve its democracy. This is to ensure stakeholders to the process are given equal legal standing; are given the rights to proceed according to the law's regulations and towards ensuring defendants, lawyers, protectors of rights and legal interests of participants are equally treated at courtroom. At the same time, the prosecuting agencies shall carry the best obligations in their prosecution tasks to ensure stakeholders enjoy relevant rights.

With these analyses, we affirm that the laws of Vietnam have enabled the work of judges and people's councils of jurists in the all stages of prosecutions (including preparation for hearing and decision making process) and the performance of litigation in a case is to protect democracy in all stages of the judgment.

