

PROXIMITY BETWEEN WORLD CRIMINAL PROCEDURE MODELS AND VIETNAM`S MODERN CRIMINAL PROCEDURE MODEL

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Abstract:

The criminal procedure model is a high generalization of basic and common characteristics, reflecting the way of organizing criminal proceedings and the way of finding the objective truth of the case, thereby deciding the procedural status of the subjects of the procedure, the nature of the relationship between the subjects of the procedure and the order and processes of resolving criminal cases. The history of world criminal procedure has recorded the existence and development of two main criminal procedure models: the adversarial criminal procedure model and the inquisitorial criminal procedure model. Both of these criminal procedure models aim to find the truth of the case, but the fundamental difference between the two models is the way to find the truth of the case. Vietnam is a country following the socialist legal tradition, originating from the civil law system. Basically, the criminal procedure model in Vietnam is still the inquisitorial criminal procedure model but has absorbed many progressive and positive elements of the adversarial criminal procedure model, which are appropriate with the specific historical, political, economic, social and legal conditions of Vietnam.

Keywords: Model, law, criminal procedure, inquisitorial, litigation, influence.

1. INTRODUCTION

The criminal procedure model is a way of organizing criminal proceedings to find the objective truth of the case, thereby deciding the legal status of the subjects of the proceedings. To identify and classify criminal procedure models, it is possible to base on main criteria such as: conception of the nature of criminal proceedings; determine the goals and ways to achieve the goals of criminal proceedings; awareness of the existence of basic functions of criminal proceedings and determination of the legal status of subjects in performing basic functions of criminal proceedings; evidence and existence of criminal case records.

The Vietnamese criminal procedure model, in the process of its development, has been greatly influenced by the criminal procedure models of the French Republic and the Soviet Union (two criminal procedure models that originate from legal traditions of Continental Europe) and has strongly absorbed elements of the inquisitorial criminal procedure model. The French legal system and judicial system have been present in Vietnam for nearly 100 years - alongside the native feudal legal system and judicial system - which has deeply influenced legal traditions and thinking in Vietnam. The Criminal Procedure Codes promulgated and applied during the French colonial period were basically copies of the French Criminal Procedure Code of that time. After 1945, the organization and operation of the Vietnamese judicial system and legal system were strongly influenced by the Soviet criminal procedure model. This influence is clearly shown in Vietnam's three Criminal Procedure Codes, issued in 1988, 2003 and 2015.

The need for development and deep international integration in the field of criminal procedure has witnessed interactions and mutual absorption in the criminal procedure of countries. In fact, there is almost no longer a model of criminal procedure that originally meant inquisition or litigation. Many research projects suggest that there has been interaction and learning between criminal procedure

models and many countries around the world have chosen a criminal procedure model that blends litigation and inquisition.

The article highlights the influence of the world criminal procedure model on Vietnam's criminal procedure model, especially through 03 times of codification with the adoption of 03 Criminal Procedure Codes (1988, 2003 and 2015); the inheritance of modern Vietnamese criminal procedure law from the world's views, ideas, and knowledge of criminal procedure law in building the Vietnamese criminal procedure model; and the guideline for improving the model of Vietnamese criminal procedure in the near future.

2. THEORETICAL FRAMEWORK

Criminal procedure models around the world

The history of world criminal proceedings has known the existence of many types of criminal proceedings models depending on the approaches to finding the truth of the case (Nguyen Thai Phuc, 2007, p. 2-15).

* If based on the criteria that there is a dispute or conflict between the litigating parties before an independent Court, it is an adversarial criminal procedure model; If there is no dispute between the prosecution and the defense, it is an interrogation model of criminal proceedings; If there is a legal dispute or conflict between the parties but only exists in one or several stages of the proceedings, a mixed criminal proceedings model will be formed.

- The adversarial criminal procedure model believes that criminal proceedings are a process of resolving disputes between the accusing party and the defending party, so both parties have equal procedural positions. The basic functions of criminal proceedings are clearly separated for the subjects to perform. The court only performs the sole function of adjudicating within the scope of the charges.

- The Inquisitorial criminal procedure model does not conceive of criminal proceedings as a process of resolving disputes, so independent parties are not formed in criminal proceedings. State litigation agencies are completely proactive and have an active role in the entire proceedings, including the trial stage. Here there is no clear delineation of the basic functions of criminal proceedings.

- The mixed criminal procedure model is an intersectional form, absorbing elements of both the adversarial criminal procedure model and the interrogatory criminal procedure model. This mix depends on the specific socio-economic conditions and legal traditions in each country.

* If we take the criteria of the goal of criminal proceedings and how to achieve the goal, author Herbert Packer believes that there are two main models of criminal proceedings: the crime control model and the fair proceedings model (Herbert L.Packer, 1968, p. 163-164).

- The crime control model is based on the thesis that crime suppression is the most important goal of criminal proceedings. The investigation stage has a very important position, the next stages of proceedings need to be brief to ensure the speed and finality of this model.

- The fair procedural model is based on the argument of ensuring fairness between parties in criminal procedure. Herbert Packer writes, "First of all, to be effective in placing individuals fairly face to face with the formidable power of the State, the judicial process in this model must be controlled to avoid manipulation with "maximum productivity". The speed and decisiveness that is considered the goal of the crime control model is seen as an abuse of state power.

* In addition, based on the specific signs of the geographical area, ethnic characteristics, religion, and legal system, people distinguish three models of criminal proceedings:

- The Roman-German criminal procedure model, also known as the continental criminal procedure model, is characterized by taking written law as the main source of regulation of criminal procedure.

- The Anglo-American criminal procedure model, also known as the criminal procedure model of the common law system, is characterized by the use of precedent as the main source of regulation of criminal procedure.

- The customary law criminal procedure model is characterized by the use of customs and religion to regulate criminal procedure.

The above approach has the advantage of pointing out the impact of traditional legal and geographic, cultural, and religious factors affecting the movement of the criminal procedure model. However, this approach has a huge limitation in that it does not show how to organize internal criminal proceedings to find the truth of the case. Therefore, there will be no information related to the legal status of the

subjects of the procedure, how to operate the basic functions of criminal proceedings, as well as the order and procedures of the operation process.

From the above presentation, it can be seen that there can be a diversity in approaches and research on criminal procedure models, but synthesizing the core points of that diversity allows drawing the most basic points, also a common point of most schools of thought: research works believe that the criminal procedure model is the way to organize criminal proceedings to find the truth of the case.

3. LITERATURE REVIEW

Currently, the criminal procedure model chosen by most countries around the world is the mixed criminal procedure model. This is a procedural model that involves learning and absorbing positive elements of both the adversarial criminal procedural model and the interrogatory criminal procedural model. Because there is no criminal procedure model that has only advantages or only disadvantages. In Vietnam, too, the current criminal procedure model in Vietnam is an interrogation criminal procedure model that combines progressive and positive points of the adversarial criminal procedure model. This choice is consistent with the economic, political, social and legal conditions of Vietnam today. In particular, the following research projects have mentioned the combination of criminal procedure models in Vietnam: The theoretical research group on the Vietnamese criminal procedure model includes: Nguyen Thai Phuc (2007), "Vietnam criminal procedure model - Theoretical and practical issues"; Dao Tri Uc (2013), "Overview of Vietnam's criminal procedure model"; Le Huu The (2010), "Improving Vietnam's criminal procedure model according to the requirements of judicial reform".

The research group on litigation elements in the Vietnamese criminal procedure model includes: Le Van Cam (2011), "Improving the principles of litigation in Vietnamese criminal procedure law in the spirit of judicial reform"; Nguyen Ngoc Chi (2011), "Characteristics of the adversarial criminal procedure model and directions for perfecting Vietnamese criminal proceedings"; Vo Minh Ky (2020), "Litigation elements in Vietnam's traditional interrogation procedure model"; Nguyen Thi Thuy (2014), "Vietnam's criminal procedure model and the issue of applying adversarial proceedings".

The research team on the interrogation element in the Vietnamese criminal procedure model includes: Nguyen Manh Khang (2012), "Characteristics of the interrogation criminal procedure model and directions for perfecting the criminal procedure model Vietnam"; Luong Thi My Quynh (2011), "Characteristics of the interrogation procedure model and recommendations to improve the Vietnamese criminal procedure model".

The research team in comparison with criminal procedure models in some countries around the world includes: Elisabeth Pelsez (2002), "Adversarial proceedings and interrogation proceedings - Some contents on principles of interrogation proceedings and litigation - France's experience in selecting, training, appointing and managing judges"; Richard S.Shine (2009), "Organizational model, functions and tasks of the US prosecutor's office." , compared with the Russian Federation"; Byung-Sun Cho (2012), "Japanese criminal procedure model"; Fabi Marco (2012), "Italian criminal procedure model"; Jean Philippe Rivaud (2012), "The French Republic's Judicial System", Proceedings: Project on the Vietnamese Criminal Procedure Model".

The above studies focus on the elements of litigation and interrogation in Vietnamese criminal proceedings, in comparison and learning from the criminal procedure models of the US, Russia, France, Italy and Japan. At the same time, propose solutions to perfect the Vietnamese criminal procedure model in the future in the direction of mixing and selecting progressive and positive elements of both the adversary and interrogation criminal procedure models.

4. METHODOLOGYS

In this article, the author used a combination of traditional research methods of social science and legal science such as the method of understanding historical origins, the method of legal analysis, and the comparative method legal, refer to the research works of domestic and foreign scientists to analyze different perspectives on choosing a criminal procedure model.

In particular, qualitative research methods with documentary and legal approaches are used in research on inadequacies in the criminal procedure model in the world and in Vietnam. Qualitative research methods aim to gain an in-depth understanding of a specific phenomenon by exploring its subjective experiences, perspectives, and meanings. In the context of studying the inadequacies of the

Vietnamese criminal procedure model, this method allows for a comprehensive analysis of existing documents and relevant legal regulations. The literature approach includes reviewing and analyzing existing documents such as academic documents, books, articles, reports and other publications related to the Vietnamese criminal procedure model. This approach helps researchers identify and understand the problems and debate the shortcomings of the current criminal justice model. By reviewing the literature, researchers can better understand the historical context, theoretical perspectives, and practical implications of the shortcomings of the criminal procedure model. The statutory approach includes analysis of laws, regulations and legal frameworks relevant to the Vietnamese criminal procedure model. This approach allows for a detailed examination of theoretical and practical aspects, including the historical development, legal context and implementation challenges associated with the criminal procedure model. In addition, qualitative research methods allow researchers to explore the perspectives of relevant parties, such as whether the criminal procedure model is mixed, mixed with litigation bias or mixed with bias about interrogation. In general, the qualitative research method with a documentary and legal approach allows researchers to critically analyze the inadequacies in the Vietnamese and world criminal procedure models, clarifying the shortcomings capabilities that need to be improved and propose recommendations to perfect the criminal procedure model in a way that both ensures timely detection and handling of criminals and respects the rights of the accused.

In general, the above research methods are used in a strict and harmonious way to achieve the research goal of the article, which is to confirm that the mixed criminal procedure model is the best choice of criminal procedure criminal cases of countries around the world, including Vietnam.

5. RESULTS AND DISCUSSION

5.1. Main characteristics, advantages and limitations of the adversarial criminal procedure model

Main characteristics of the adversarial criminal procedure model

* The history of birth, development and nature of the adversarial criminal procedure model

This type of criminal procedure first appeared in ancient Greece, then was brought to Rome under the name "*continuous question-and-answer procedure*".

Initially, people believed that crime was an individual category, a substitute for personal revenge, so the State did not intervene. As society develops more highly, and at the same time people's awareness is raised to a certain level, criminal acts are seen to not only affect each individual but are also considered to affect the whole community. social community. Therefore, the State has the right and responsibility to handle crimes, punish criminals, and the function of initiating proceedings and bringing accusations gradually shifts to the State.

Litigation is considered the resolution of disputes between parties, so the criminal procedure model operates on the principle "*without denunciation, there is no trial*". All crimes are brought before the Court by the individual victim or those involved in the case for judgment. The trial procedure at the trial takes place in the form of "*continuous question and answer*", the disputing parties behave in an argumentative manner, so the trial process takes place in an adversarial style, also known as adversarial proceedings.

* The goals of adversarial criminal procedure and how to achieve them

Like other criminal procedure models, the adversarial criminal procedure model aims to find the objective truth of the case by creating a truly fair process and procedure so that the Litigating parties have equal conditions, opportunities, rights and obligations in proving their points of view. It is also from the way to achieve the goal of criminal proceedings as above that legal science has introduced concepts to describe the results of two models of criminal proceedings, interrogation and litigation, which are "*factual crime*" and "*legal crime*", "*objective truth*" and "*formal truth*" (Ministry of Justice, 1999, p. 128).

* The basic functions in criminal procedure and the determination of the legal status of subjects in performing basic functions

The adversarial criminal procedure model is clearly aware of the existence of the three basic functions of criminal proceedings: accusation, defense and trial. Each function is performed by only one subject. Subjects of indictment include the prosecution agency, investigation agency, and the victim. The defense subjects include the person suspected of committing the crime, the accused, the defendant

and their defense counsel. The subject of trial is the Court (judge, jury). Proving a crime is the responsibility of the accusing party. The defense party is given maximum conditions to perform the defense function well, prove innocence, reduce guilt or reduce punishment. Throughout the proceedings, the prosecution and the defense are determined to be parties with equal rights to use all resources and means permitted by law to carry out their procedural functions. Both sides conduct evidence collection activities, interview witnesses and create their own criminal records to serve their own purposes. Thus, the burden of proof in litigation proceedings is shared by all litigating parties; The judge and jury are only responsible for proving their verdict: why they accept the evidence of the prosecution but not the evidence of the defense and vice versa. The judge in litigation proceedings is like a referee, the person who holds the rules and ensures that the match between the two sides takes place fairly and lawfully (James Diehm, 2001-2002, p. 151-152).

Due to the characteristics of fierce and fair litigation, especially at trial, therefore, the proceedings at trial are very strictly regulated, while the law on investigation is regulated quite loosely, except for regulations related to human rights protection. In the United States, there are no laws regulating how federal investigators conduct criminal investigations. The promulgated Federal Rules of Criminal Procedure apply only to court proceedings, not to investigative activities (Richard S.Shine, 2009, Hanoi).

* Evidence and existence of criminal case files

The adversarial criminal procedure model has very complex and strict regulations on the evidence presented for use at trial, which does not allow the use of indirect evidence (heard-back evidence), evidence intended to appeal to the jury's emotions... Litigation proceedings are conducted verbally, openly at trial. Parties use cross-examination to confirm or refute witness testimony. The court only bases its decision on the evidence presented at the trial without knowing the evidence that took place before the trial. Because it is entirely done verbally, any written evidence, including judicial police records, is not recognized as evidence (Elisabeth Pelsez, 2002, Hanoi).

In the adversarial model of criminal procedure, a "case file" does not exist in the sense used in the inquisitorial model of criminal procedure. During the pre-trial stage, the accusing party and the defense party have the right to prepare a dossier including the evidence and documents each side has collected. When going to trial, the evidence in the file has no probative value; only the evidence presented and examined in oral form at the trial can be used as evidence to determine whether the act constitutes a crime or not (Mirjan Damaska, 1973, p. 517).

Advantages and limitations of the adversarial criminal procedure model

Advantages of the adversarial criminal procedure model

First, adversarial proceedings meet the requirements of ensuring fairness and democracy in criminal proceedings. At the pre-trial stage, the litigating parties have equal rights in investigating and collecting evidence. At the trial stage, all parties' evidence must be examined at trial to have probative value and the evidence verification process must be conducted fairly and democratically. The court is responsible for ensuring that the proceedings are conducted democratically and lawfully, acting as an intermediary as an arbitrator to make an objective and fair decision on the case.

Second, with the fairness of the proceedings, adversarial proceedings demonstrate a higher level of respect for basic human rights. The promotion and absolute compliance with the principle of presumption of innocence requires prosecution agencies to always respect human rights and civil rights throughout the process of resolving the case, and to treat The accused person is the same as the innocent person, creating all conditions for the accused person to prove his innocence.

Third, fairness also brings positive impacts to the quality of case resolution. Because lawyers can fully participate in the proceedings, the Court has an additional source of information to discover the objective truth of the case. The court has access to a rich source of evidence from both the prosecution and the defense. The collision of these two lines of evidence helps the process of finding the objective truth of the case.

Fourth, by mandating the participation of lawyers throughout the case resolution process, promoting and ensuring the right of defense of the accused party, ensuring a fair and principled procedural process. The Court's ruling was based solely on the results of democratic litigation at the trial, minimizing cases of wrongful conviction of innocent people.

Fifth, litigation requires the parties involved in the litigation to have a deep understanding of the law in order to win for themselves, and this process, lasting hundreds of years, has contributed to forming and promoting awareness the law and legal culture in the country applying this criminal procedure model (Nguyen Ngoc Chi, 2011, Hanoi).

Limitations of the adversarial criminal procedure model

First, the possibility of missing criminals is high compared to the interrogation model of criminal proceedings. The court passively participates in the proceedings, the jury is usually people without legal knowledge but is given the authority to decide whether the defendant is guilty or not guilty; Both the prosecution and the defense have no obligation to find the objective truth of the case but only focus on performing their prosecutorial functions. Both litigating parties will only use evidence that is beneficial to the performance of their procedural functions, so the task of detecting crimes or finding the objective truth of the case is at risk of being affected.

Second, due to the concept that proceedings only officially begin at the first instance trial, the focus of the entire proceeding seems to be on the first instance trial with the participation of the jury, so the proceedings Litigation at trial is often very time consuming and costly. At the same time, due to the thorough use of the adversarial method, the accusing and defending parties are not limited in calling witnesses, presenting evidence, and making arguments that lead to time for a trial in the proceedings. Litigation often lasts two or even three times longer than a trial in interrogatory proceedings. In history, people have witnessed the International Criminal Court resolving a case that had to hear up to 600 witnesses summoned by the parties to the trial and the trial time had to be measured in months or years (Vietnam - France Law House, 2002, Hanoi).

Third, overemphasizing personal interests makes litigation proceedings fail to fully reflect the importance of protecting public interests in criminal cases. This has led to the practice of resolving criminal cases in some countries applying the adversarial criminal procedure model, which has raised alarm over the excessive abuse of the form of plea bargaining (John Hatchard, Barbara Huber and Richard Vogler, Comparative criminal procedure, B.I.I.C.L published, London, 1996).

5.2 Main characteristics, advantages and limitations of the inquisitorial criminal procedure model

Main characteristics of the inquisitorial criminal procedure model

* The history of the birth, development and nature of the inquisitorial criminal procedure model

This litigation model is a combination of elements of ancient Roman law with the legal principles of the Catholic church, commonly applied in European countries since the 16th century (Stephan Landsman, 1983, p. 713-714). In the early stages, this model was associated with torture trials, torture, and secret interrogations, which were popularly applied in dictatorial and militaristic states and were used as one of the tools to suppress forces and individuals opposing the ruling class. During the Napoleonic reforms, torture and corporal punishment were abolished and public trials were introduced, but proceedings based on case records continued to be used in countries with a legal tradition civil law. Following this, reforms in the interrogation criminal procedure model in many countries have brought about remarkable progress in this model in meeting the goals and requirements of criminal proceedings.

The inquisitorial model believes that a crime has violated the common interests of society, so the State must be responsible for solving it, completely eliminating the element of personal revenge from the victim. The victim was removed from the role of private accuser, and instead, a public official assumed the role of accuser (Robert Strang, 2008, p. 188-193).

* The goal of the interrogation procedure is to determine the absolute objective truth of the case. The State's professional litigation agencies (including the police, the Procuracy and the Court) all participate in proving crimes. *Plea bargaining* does not exist in both theory and practice.

Investigation and interrogation are the main procedural methods applied in all stages of the case resolution process, including at trial (Nguyen Manh Khang, 2012, Hanoi). The trial in interrogation proceedings is essentially a continuation of the continuous investigation process, not a competition between opposing parties in the case, and the key moment is the interrogation and examination process at the court. The judge continues to judge based on the records, proactively asking questions to check and verify the evidence collected in previous stages of proceedings, as a basis for making a judgment without based only on direct evidence presented orally by witnesses before the Court.



* The interrogation criminal procedure model does not pay too much attention to clearly delineating the basic functions of criminal proceedings and clearly determining the legal status of subjects according to these basic functions. One subject can still be assigned to perform two procedural functions simultaneously (for example, establishing an investigating judge).

The investigation agency and prosecution agency are assigned to carry out the function of indictment in criminal proceedings. The prosecutor's office has the authority to approve the prosecution of the case, directly conduct the investigation, direct the investigation activities of the police, decide on procedural measures during the investigation phase, decide whether to investigate, prosecute criminals or not, be accountable to the public for the performance of the prosecutorial function (Roberta. K. Flowers, 2000, p. 251-264).

Courts and judges proactively conduct their own investigations and collect evidence. The participation of the investigating judge at the pre-trial stage is also a method for the Court to have early information about the case, and also to monitor investigation activities. At trial, the judges (not the opposing parties) will directly call and question witnesses, victims, and examine evidence. In interrogation proceedings, the Court is considered the agency that implements criminal justice policy and is responsible for finding the truth of the case, so the Court cooperates closely with the prosecution agency.

The participation of defense attorneys is not mandatory in the criminal inquisitorial model. During the proceedings, lawyers have the right but do not have the obligation to present evidence as in the litigation system. The role of lawyers is seen as supplementing the Court's search for the truth and to ensure that proceedings take place lawfully and that the suspect's legitimate rights and interests are not violated. violation.

The victim is almost eliminated from the role of the accusing party, has no right to sue, or choose how to resolve the case (except for a few cases prescribed by law). When a crime occurs, the victim only has the right to report to the competent authorities (denounce the crime), but it is entirely under the State's jurisdiction to decide to prosecute the case and have the case resolved according to criminal procedure or not.

From the analysis of how to organize the implementation of procedural functions in the inquisitorial criminal procedure model mentioned above, the author of the article agrees with the comment that the regulations in the inquisitorial criminal procedure model often inclined to facilitate the performance of the accusatory function. In theory, the judicial function must be carried out independently, however, the procedural method used at the trial is also the investigative method (interrogation, questioning), so the judge's activities are not very different from the act of accusation.

* Evidence and the existence of criminal case records

The use of case files with written evidence for trial is a basic feature of the interrogatory criminal procedure model. Only investigators, prosecutors, and judges can collect evidence. In criminal proceedings, case files always exist that are created, supplemented, and completed by prosecution agencies through stages. All documents in the file are important evidence, serving as a basis for the Court to adjudicate. At the trial, the judge, based on the evidence and documents in the file, proactively asks questions of the defendant to check the validity and probative value of the information and documents in the file case.

Advantages and limitations of the inquisitorial model of criminal procedure

Advantages of the inquisitorial model of criminal procedure

First, the conduct of legal proceedings is not biased, the proceedings are not heavy on accusation or exculpation, thus avoiding the tendency to hide the truth or find ways to facilitate the accusation guilt or exculpation of the litigating parties. The method of investigation and interrogation is applied throughout all stages of the proceedings (including at trial), so the truth is discovered more quickly and the State can control the crime situation better.

Second, because the entire responsibility of proving the crime is assigned to the prosecution agencies, in cases where the victim does not have the ability and conditions to protect his or her legitimate rights and interests, the inquisitorial criminal procedure model has an advantage in protecting the victim.



Third, trials in inquisitorial criminal proceedings take place more quickly and are less expensive. The judge participates in the proceedings before the trial stage, researches the case file in advance, plans in advance and follows the plan at the trial, so the trial time is basically shortened compared to the trial in the trial model. Criminal litigation, at the same time, other costs are also saved, for instance no jury costs.

Fourth, the judge is not limited by the evidence chosen by the opposing parties. If they want, the judge can find evidence themselves (even in cases where the parties do not wish to present it). The judge has the authority to develop evidence at trial, proactively call and interrogate defendants, witnesses, and victims.

Limitations of the inquisitorial model of criminal procedure

Firstly, due to overemphasizing the role of state agencies in the process of finding the truth of the case; The victim's role is almost exclusively a witness in the case; The accused and defendants are almost considered subjects of the prosecution and cannot prove their innocence, thus lacking the element of fairness and equality. Also from this, Herbert Packer believes that the criminal procedural system of interrogation establishes the principle of "presumption of guilt" instead of "presumption of innocence" and he believes that the basic difference between the interrogative criminal procedural model and adversarial criminal procedural model is that, in the adversarial criminal procedural model, the suspect is considered innocent until proven guilty, while in model of criminal procedure in which the suspect is presumed guilty until proven innocent.

Second, the inquisitorial model of criminal procedure easily leads to violations of human rights and civil rights, especially the rights of the accused. The investigation phase is conducted secretly, suspects and their defense counsel are restricted from participating in the investigation phase. Police investigations can place significant pressures on witnesses and those who must appear before them.

Third, the active participation of judges in the pre-trial phase leads to the fact that progressive principles such as speedy and oral trials, discovery of facts at trial, and trial proceedings are at times just a formality. The judge's deep participation in the investigation phase often creates prejudices for the judge during the trial phase. The Court's decision seems to be already in the judge's mind before trial.

Fourth, in inquisitorial criminal procedure, there is no clear division between basic functions in criminal procedure; one subject can undertake many procedural functions.

Fifth, due to the way this procedural model is conducted, the risk of unjustly injuring innocent people is higher than that of the adversarial criminal procedural model.

5.3. The trend of combining procedure models and criminal procedure reforms in the world

The history of world criminal procedure has recorded the existence and development of two main criminal procedure models: the adversarial criminal procedure model and the inquisitorial criminal procedure model with their own advantages and disadvantages. The criminal procedure model in each country is the result of long-term development of the crystallization of historical factors, culture, socio-economic conditions, crime situation and the current state of the judicial apparatus.

The need for interaction and mutual learning between criminal procedure models occurs in many countries and regions around the world. Accordingly, in France there are more and more requests to consider applying the fair procedural mechanism of the adversarial criminal procedure model; The investigative judge mechanism (considered the heart of the inquisitorial proceedings) established in 1808 under the Napoleonic Act - was abolished in Germany in 1975, in Italy in 1988 or became an optional procedure forced in Portugal in 1987. Meanwhile, in the UK, there is a trend of establishing an "investigative judge mechanism". In the United States, since the 1930s, there have been many views that it is necessary to evaluate and reconsider the adversarial criminal procedure model. In particular, after a series of famous cases such as W Kennedy Smith (1991), Mike Tison (1992), Rodney King (1992), and O.J Simpson (1995) raised issues with the American people. It's time to recognize the values of the interrogation procedure system. In an article criticizing the Simpson trial in Newsweek in 1995, scholar Langbein wrote: "How do European democracies work so well? The answer is simple, they have modernized." Their litigation system while ours does not. Trials in Europe are an activity to find the truth, not a place for parties to fight, distort, and distort the truth." (Institute of Procuracy Science, 2008, p. 6).



In Eastern Europe, after the collapse of the Soviet Union, there were also many major changes in the criminal procedure model of the former Soviet bloc countries. In Eastern European countries, people have summarized three factors influencing the change in the criminal procedure model here: 1) the strong influence of the European Court of Human Rights; 2) the pressing need for cooperation to combat transnational crime; 3) the weakening of the countries in the zone of influence of the former Soviet Union. And a noticeably clear point in the movement of the criminal procedure model in these countries is the tendency to absorb elements of the adversarial criminal procedure model.

The intersection and adoption of positive and progressive elements between criminal procedure models in the world has the following main manifestations:

Firstly, aiming to build the best criminal procedure model capable of optimally solving two tasks: both thoroughly handling crimes and ensuring basic human rights in criminal proceedings.

Second, combine the positive elements of the interrogation criminal procedure model and the adversarial criminal procedure model on the basis of the specific historical, political, economic, and social conditions of each specific country.

Third, despite absorbing positive elements of other criminal procedure models, countries still retain the most basic and characteristic contents of the currently applied criminal procedure model, rather than abandoning its traditional criminal procedure model to completely switch to another criminal procedure model.

Fourth, this revolutionary reform happens more in countries that are applying the interrogation model of criminal proceedings, which tends to favor the prosecution and emphasizes the State's responsibility to fight crime to absorb elements of the adversarial criminal procedure model, which emphasizes fairness, equality, and democracy in criminal proceedings.

From the trend of interference and learning between the above mentioned criminal procedure models, it has contributed to the formation of a mixed criminal procedure model. Based on the level of interference, it can be divided into a mixed criminal procedure model that favors interrogation or a mixed criminal procedure model that favors litigation. We can see the interference and mixing between criminal procedure models in some specific countries as follows:

In the United States

The US federal criminal procedure model is the litigation model. The evolution of American criminal procedure has also adopted some elements of the inquisitorial model of criminal procedure. The prosecution agency no longer only acts as a lawyer advising the police. In some cases, the prosecution agency has recruited investigators to directly investigate the case. State and regional prosecution agencies also conduct recruitment of investigators for their respective level prosecution agencies (Richard S.Shine, 2009, p. 84).

The US criminal procedure model has a clear delineation of the rights and obligations of the subjects participating in the proceedings. The accusing party includes the investigation agency and the prosecution agency (however, the prosecutor does not have any supervisory powers over the investigation agency or the Court). The exculpation party includes the person suspected of committing the crime, the accused, the defendant and the defense attorney.

The characteristic of the US criminal procedure model is that priority is given to crime control and ensuring that the proceedings are carried out fairly. During the investigation phase, the Court approves search warrants, arrests and searches using legal electronic devices. The court selects the jurors in the grand jury; enforcement of subpoenas; issue an order requiring witnesses to testify; Order the temporary detention of witnesses who deliberately refuse to testify and accept immunity from prosecution for the defendant in exchange for this person testifying as a witness. In addition, the Court will appoint lawyers to represent witnesses in difficult circumstances; Sets forth rules by which attorneys for witnesses or criminal suspects may make objections to grand jury proceedings. Once the case file and defendant have been turned over to the court, the defense attorney's participation is mandatory in the court proceedings, and the attorney must attend all court hearings, unless the defendant exercises his right to defend himself.

Before trial, the Court reviews petitions and may dismiss indictments for errors in the indictment or procedural errors; Reject illegally collected evidence and require witnesses to appear. Judges and juries often do not receive and study case files before the trial takes place. However, if the charges

clearly have no legal basis, then at the request of the defendant and his attorney, the court may immediately dismiss the charges (Irving R. Kaufman, 1980). The judge and jury do not collect evidence but only listen and consider which side provides more legitimate evidence and arguments to make a convincing verdict.

During the trial, the Court plays a neutral role, both protecting the defendant's right to a fair trial and ensuring that the trial is carried out in accordance with the order and procedures prescribed by law. They stand between the prosecutor on one side and the defendant as well as their attorney on the other to listen, review the evidence and decide on the applicable law. The jury, not the judge, is the one who makes the final decision based on the circumstances and objective evidence of the case. The judge has no authority to order further investigation or return the case to the investigative agency or to a grand jury. During the deliberation process, after resolving all controversies about the facts of the case and deciding on the facts of the case, the jury will apply which law according to the judge's instructions to those facts and make their decision. The verdict must be unanimous (Alan B. Morrison, 2007).

** Evidence exclusion rule*

US case law has recognized that, if evidence illegally obtained by prosecution agencies violates the defendant's constitutional rights, that evidence will be excluded from the trial process and cannot be used against the defendant (Robert M. Bloom and David H. Fentin, 2010, p. 47).

** Federal Rules of Evidence*

This rule is understood to mean that, before information or any object can be used as evidence against the accused/defendant, that information or those objects must first be presented in court by the prosecutor during a trial in the form of testimony by a competent witness and before a jury. Furthermore, such testimony and those mentioned above must meet the (legal) evidence admissibility requirements set forth in the federal rules of evidence; oral testimony must be cross-examined by the defendants; and these testimonies or objects must be officially recognized by the court as evidence of the case (Alan B. Morrison, 2007).

** Potential evidence rule*

US case law has recognized that the prosecutor has a duty to disclose to the accused/defendant upon request any potential evidence that the prosecutor possesses. That evidence may benefit the accused/defendant in terms of crime or future punishment (sentence) afterwards (Brady v. United States, 1970, p. 397).

** Plea bargaining*

This is an agreement between the prosecution and the defense in which the defendant admits his crime in exchange for a more humane sentence and avoids trial in court (Black's Law Dictionary, 1990, p. 1152). Between the prosecutor and the accused there is a plea bargain, the prosecutor will conduct criminal proceedings in favor of the accused in exchange for a guilty plea. If the accused violates the agreement (pleads not guilty or pleads guilty not in accordance with the agreement), the prosecutor will not be bound by the responsibilities under the agreement. If the prosecutor fails to keep their end of the bargain, the accused person can ask the judge to let them back out of the plea deal.

In the Russian Federation

Before 1917, Tsarist Russia applied the adversarial criminal procedure model (from the time of the major judicial reform in 1864 using the rules of Tsar Ekaterina the Second) (Le Van Cam, 2011, p. 28-38). After 1917, the reformed Soviet Union State favored applying the inquisitorial model of criminal procedure. However, after the collapse of the Soviet Union, the development of Russia's criminal procedure model tended to absorb many elements of the adversarial criminal procedure model, specifically as follows:

First, the Criminal Procedure Code emphasizes the need to ensure fairness in addition to the need to control crime. Article 6 clearly stipulates two main goals of criminal proceedings: "1) protect the legitimate rights and interests of individuals and organizations damaged by crimes; 2) protect individuals from unlawful and baseless accusations that violate or restrict their fundamental rights and freedoms" (Institute of Procuracy Science, 2013, Hanoi). At the same time, it recognizes a number of typical principles of the adversarial criminal procedure model such as: presumption of innocence (Article 14), adversarial principles (Article 15) ...



Second, the provision for trials to be conducted by jury since 1993 (for cases that meet the legal conditions).

Third, classify the roles of the subjects of the proceedings according to the basic functions of criminal proceedings, accordingly in Chapter II of the Criminal Procedure Code with the title subjects participating in the criminal proceedings, 4 groups are specified. Subject: Court (section 5); subjects belonging to the accusing party (section 6); subjects belonging to the defense side (section 7); other subjects participating in the proceedings (section 8). Adding many rights of the accused party and the mechanism to ensure the rights of this subject: The accused has the right to know what crime he is being charged with, to object to the accusation, to remain silent, to present evidence, to meet privately with the defense counsel... (Article 47); The defense attorney is allowed to participate in the proceedings very early (from the time the defendant is prosecuted, in the case of arresting the suspect, he/she participates from the time of arrest), and has the right to collect evidence and prove it, which is mandatory. with the participation of the defense, the Criminal Procedure Code stipulates many cases (7 cases) (Articles 49, 51)... The court has the authority to decide on coercive measures affecting the rights to freedom. due to human basics.

Fourth, the proceedings at the trial are quite similar to the adversarial procedures. The prosecutor and the defense have a proactive and positive role at the trial. However, the Court does not play the role of a neutral, passive arbitrator as in the trial of the adversarial model. The court still conducts interrogation of the defendant and witnesses after the prosecution and lawyers have interrogated them (Article 275 of the Criminal Procedure Code) and has the right to decide on its own or at the request of the parties to request for appraisal (Article 283) ...

In Japan

The first phase of criminal procedure reform in Japan was carried out during the Meiji Restoration period. With the promulgation of the Meiji Criminal Procedure Code in 1880, Japan introduced the French procedural system (the 1880 Code was based on the French Code of 1808). But later, this Code was replaced by a new Criminal Procedure Code in 1922 based on the German law model. Thus, it can be seen that Japanese criminal procedure reforms during this period completely followed the continental European law system. The second phase of criminal procedure reform took place after World War II with a fairly basic adoption of the US criminal procedure model. US advisors, together with Japanese scholars, judges, and lawyers, drafted the Criminal Procedure Code promulgated in 1948, which was later amended and supplemented with a number of new regulations. consistent with the development of each period (Byung-Sun Cho, 2012, Hanoi). Although the Japanese Criminal Procedure Law has quite basically absorbed the American criminal procedure model, many provisions of criminal interrogation procedures continue to be maintained, specifically:

First, the Public Prosecutor's Office plays an important role in the investigation phase: directing investigation activities, supervising police investigation activities, directly conducting investigation of the case when necessary, and having the right to dismiss judicial police when they do not follow the prosecutor's investigation direction, which is similar to the prosecution agencies of countries applying the inquisitorial criminal procedure model (Articles 191, 193, 194...).

Second, the Criminal Procedure Law stipulates that the Court and judges have a quite active and proactive role in criminal proceedings: interrogating witnesses (Article 143) or soliciting expertise (Article 165). The judge can point out incomplete points in the parties' evidence and allow the parties to investigate further evidence before opening the trial (Article 316-5) ...

In the French Republic

Research on the Criminal Procedure Code of the French Republic (amended in 2012) shows that, in the process of operating the criminal procedure model, France has absorbed many new points from the adversarial criminal procedure model, specifically as follows:

First, the agencies conducting the procedure (police agency, Prosecutor's Office, Court) are responsible for finding the truth of the case (David Turns, 2003, p. 747-752). The judicial police agency conducts a preliminary investigation to identify the offender, confirm signs, and evaluate the criminal's behavior. During the pre-trial investigation stage, the Court's examination procedures are aimed at determining the truth of the case. This procedure has the following meanings: (i) to ensure that cases with weak evidence or insufficient evidence do not need to be brought before the Court; (ii)



to carefully investigate the evidence to ensure the court's final decision on the crime with clear evidence (Edward.A.Tomlinson, 1983, p. 131-165).

Second, suspects and defendants are given more rights (Jean Philippe Rivaud, 2012, Hanoi). Detainees have four groups of rights: to be informed about crimes under investigation; required medical examination; discuss with a lawyer; to ask the prosecutor about the results of the investigation of the case (Articles 63, 77 of the Criminal Procedure Code). The accused has 6 groups of rights: request release; be notified of the conclusion of the investigation; receive indictment; to complain about jury composition; be asked questions through the judge; can complain about translation issues (Articles 148, 312, 344). Defendants have 13 groups of rights: request release; be informed of the trial date and the conclusion of the investigation; be provided free of charge copies of records certifying criminal acts, records of witnesses' testimonies and expert conclusions; free contact with lawyers; submit conclusions; ask witnesses; be defended; have the last word; appeal the verdict; request the Court to conduct any investigation to discover the truth regarding the alleged facts; requested to be tried in absentia; request the Court to examine the scene and return the seized objects (Articles 148, 274, 278, 279, 380, 407, 159, 460, 478, 489, 497).

Third, lawyers participate in proceedings earlier (right from the time of arrest activities) and many rights of defense lawyers are stipulated, including 6 main groups of rights: to study records, to have private contact with the defendant; receive assessment conclusions; be notified of the end of the investigation and the date of the trial; complain about jury composition; participate in questioning at trial; request the Court to order investigative activities to clarify the truth of the case (Articles 113, 393, 417, 442 of the Criminal Procedure Code).

Fourth, during the investigation stage, both parties have the right to request the judge to conduct some investigative activities that they consider necessary to clarify the truth of the case. The investigating judge no longer has the right to decide to temporarily detain a suspect but transfers this authority to the judge in charge of freedom and detention to better ensure the objectivity of the case resolution process.

Fifth, at the trial litigation procedure, prosecutors and defense attorneys have the right to directly ask questions of the defendant and witnesses.

Sixth, the parties (charge and defense) have the right to present an unlimited number of witnesses.

In Italy

The first Italian Criminal Procedure Code was promulgated in 1807. After the unification of the Italian nation, the Criminal Procedure Code promulgated in 1847 was applied to the entire Italian territory (when newly promulgated, it applied only to the small kingdoms of Sardinia and Piedmont). The Criminal Procedure Code of 1847 was heavily influenced by the Napoleonic Code. After that, the Criminal Procedure Code was amended and a new Criminal Procedure Code was issued in 1913, which reduced the influence of the Napoleon Code and had a more liberal ideology. When the fascist party came to power, it issued a new Criminal Procedure Code, which took effect in 1930 with the idea of tightening freedom. The 1930 Criminal Procedure Code stipulates the principle of investigative secrecy, with the investigation conducted in private before trial. The investigating judge controls the investigation by the police and prosecutor before trial. Defense attorneys have no right to participate in proceedings and are not even informed about investigation activities. Written documents obtained during the investigation phase are an important basis for determining the sentence... The Criminal Procedure Code promulgated in 1988 (effective in 1989) is considered a transformation changed the Italian criminal procedure model from inquisition to adversary (the preparation process for this Code began in 1965). This criminal procedure code has the following basic new points (Fabi Marco, 2012, Hanoi):

First, there is a fundamental change in the evidence regime, proof and trial procedures at trial; recognition of the principle of oral trial at trial; limited recognition of written evidence. Witnesses must be confronted and cross-examined in front of a judge. Only in very special cases can witnesses' statements at an earlier stage be considered evidence (for example, the witness is threatened or bribed; the judge no longer has jurisdiction to interrogate).

Second, the prosecution must call witnesses before the judge and the defense has the right to confront and cross-examine witnesses and also has the right to call witnesses.

Third, case investigation is the activity of the police and prosecutors. Prosecutors play the role of directing investigations and supervising police investigation activities (this is also recognized in the Constitution, Article 109). The decision to detain people during the pre-trial stage is within the judge's authority.

Fourth, the addition of a number of new rights and mechanisms to ensure suspects' rights such as: right to information; the right to be detained only after the approval of the Court; the right to silence; the right to be presumed innocent until officially convicted by court verdict.

Fifth, the application of the plea-bargaining procedure (limited to cases of crimes with a penalty of up to 5 years in prison) (according to Law No. 136, amended in 2003). Two sets of documents exist in parallel at the trial: the prosecutor's file and the defense's file...

The promulgation of the Criminal Procedure Code in 1988 was expected to solve two problems of Italian criminal justice: 1) resolving the excessively large volume of outstanding sentences, 2) shortening proceedings. However, after two years of applying the new criminal procedure model, the above goals have not been resolved, even causing shock to the criminal justice system, and are evaluated and commented as follows: "A procedural reform that is not properly designed, tested, and carefully managed will make the functioning of criminal proceedings even worse... Legal formalism is dominating the Italian criminal justice system, covering the 1988 Criminal Procedure Code and its ineffective amendments in practice..."

5.4. Influence of the world criminal procedure model on the Vietnamese criminal procedure model:

Vietnam is a country following the socialist legal tradition, originating from the Civil law system. Before 1945, because Vietnam was a French colony, the Vietnamese legal system was deeply influenced by French law. Vietnam's criminal procedure law is a basic copy of the French Criminal Procedure Code. Since gaining independence in 1945, the Vietnamese legal system as well as the organization and operation of the judicial system have been greatly influenced by the laws of the former Soviet Union. There was a strong absorption from the Soviet criminal interrogation model, which also originated from the continental European legal tradition. The influence of the Soviet criminal procedure model is clearly shown in Vietnam's first Criminal Procedure Code issued in 1988 and continues to influence in the 2003 Criminal Procedure Code and the Criminal Procedure Code. criminal proceedings in 2015. However, the operation of the inquisitorial criminal procedure model in Vietnam bears different marks through each period of the country's history.

Vietnamese criminal procedure model from 1945 to the promulgation of the 1988 Criminal Procedure Code

* *Nature and goals of the criminal procedure model*: During this period, the field of criminal proceedings is not regulated by a unified law, but is scattered in many documents to guide the process of resolving criminal cases. The goal of the criminal procedure model is to focus on protecting national security and strictly handling all acts of opposition to the state. State prosecution agencies are considered an important tool to effectively fight and punish counter-revolutionary crimes and maintain political security and social order.

* *Basic functions of criminal procedure and the legal status of subjects participating in it*: Due to the country's historical conditions in this period, there is no clear delineation in the implementation of basic functions of criminal procedure by subjects participating in it.

The police force was established under Decree No. 131/SL dated July 20, 1946 to investigate cases and was under the direction and supervision of the Public Prosecutor's Office during the investigation process.

The prosecutor's office was established to perform the function of supervising compliance with the law and exercising prosecutorial power in criminal proceedings.

The People's Court performs the function of trial with many progressive trial principles stipulated in the 1946 Constitution such as: The court judges independently of administrative agencies, when judging, judges only obey the law. According to the law, other agencies are not allowed to intervene.

* *Evidence and criminal case files*: Criminal case files are prepared by the police, continue to be checked and consolidated by the prosecution and transferred to the Court for research and trial. Documents and evidence collected by prosecution agencies from the investigation and prosecution

stages are important evidence for examination and proceedings at trial (Nguyen Thi Thuy, 2014, p. 65-67).

Vietnam's criminal procedure model since the promulgation of the 1988 Criminal Procedure Code, the 2003 Criminal Procedure Code and the 2015 Criminal Procedure Code

Through 3 times of promulgation of the Criminal Procedure Code, although it has absorbed the progressive and positive elements of the adversarial criminal procedure model, in accordance with historical, political, economic and social conditions. Vietnam's specific society, but basically the Vietnamese criminal procedure model is still the interrogation criminal procedure model with the following basic characteristics:

* *Nature of the criminal procedure model*: Vietnamese criminal procedure does not consider criminal cases as disputes or legal conflicts between the parties like the adversarial criminal procedure model. When public order, the interests of the state and society are harmed by a criminal case, the agencies conducting procedure on behalf of the state are responsible for resolving the matter according to the will of the state. The agencies conducting the procedure and the people conducting the proceedings with an active and proactive role are given the authority to find the objective truth of the case. The accused, defendant, defense counsel, and victim play a passive role and have no right to choose how to resolve the case.

* *The goal of the criminal procedure model*: It is to find the absolute objective truth of the case. This goal governs all processes, procedures, as well as the authority of subjects in criminal proceedings. The goal of determining the objective truth of the case is identified as one of the basic principles of criminal proceedings, specifically stipulated in Article 1 of the 1988 Criminal Procedure Code, Article 10 of the Criminal Procedure Code 2003 and Article 15 of the Criminal Procedure Code 2015. Litigation agencies and litigators apply investigation and interrogation methods in their responsibility to find evidence and determine the truth of the case as well as throughout the entire process of resolving the case from prosecution, investigation, prosecution and trial.

Absorbing the advantages of the adversarial criminal procedure model, the adversarial element at trial has been additionally regulated in the 2003 Criminal Procedure Code (Article 217 and Article 218) and is affirmed as a Criminal procedure principle in Article 26 of the 2015 Criminal Procedure Code. Thus, in addition to the investigation and interrogation method, the adversarial procedure method is also applied in trial activities at trial.

* *The case resolution process is divided into procedural stages*: Initiation, investigation, prosecution and trial stages with different subjects participating at each different stage. The specific division of stages of criminal proceedings is an important condition for creating effective proceedings to meet the requirements of investigating and handling crimes in accordance with the conditions and circumstances of Vietnam limit violations of the rights of accused persons and other participants in proceedings (Le Huu The, Nguyen Thi Thuy, 2010, p. 5-11).

* *Basic functions of criminal procedure and legal status of subjects participating in it*: No matter which model of criminal proceedings is applied, three basic functions always exist in criminal proceedings: accusation, defense and trial. The roles of the subjects are delineated according to procedural functions.

- *Carrying out the function of accusation*: Vietnamese criminal procedure has stipulated responsibilities as well as given authority to the Investigation Agency and the Procuracy in performing the function of accusation such as: Deciding to prosecute cases, approving Approve the decision to prosecute the case, prosecute the suspect, ratify the decision to prosecute the suspect, decide to prosecute; directly take statements from arrested people, interrogate suspects, take statements from witnesses, victims, and cross-examine; question and impeach the defendant at trial; argue with each opinion of the participants in the proceedings.

- *The defense function* is performed by the accused (including arrested, detained, accused, and defendants) and the defense counsel. The accused person has the right to present documents and objects and to complain about the procedural actions of the agency or person with procedural authority. The defense attorney participates in the proceedings from the moment the defendant is prosecuted, having the right to be present when taking statements from detainees, to see the minutes of proceedings with their participation and the procedural decisions related to the person they defend,

to request the Investigation Agency to notify in advance the time and place of interrogation of the suspect in order to be present when questioning the suspect, and to photocopy documents in case files related to the defense...

- *Judicial function*: Vietnamese criminal procedure stipulates that the Court is the only agency with adjudicative function. The Court plays a proactive and positive role, closely coordinating with the Procuracy in the process of finding the objective truth of the case. Like the Investigation Agency and the Procuracy, the Court is assigned the responsibility of proving the crime, ensuring the trial of the right person, the right crime, and the law.

At the trial, the Trial Council plays an active and proactive role in examining the evidence and fully, objectively and comprehensively reviewing documents and evidence collected during the proceedings. Based on the evidence of the case file and the results of the argument at the trial, it issues a verdict, deciding whether the accused is guilty or not and whether penalties and judicial measures are applied or not.

* *Evidence and criminal case files*: Vietnam's interrogation criminal procedure model recognizes the existence of a written evidence system with a prominent, almost exclusive role of prosecution agencies in collecting and using evidence. This criminal case file begins with the Investigation Agency and is strictly controlled by the Procuracy. At the end of the investigation, the Investigation Agency must send the case file along with the corresponding procedural decisions to the Procuracy. During the prosecution stage, the case file is the most important data for the Procuracy to research and issue procedural decisions under its authority. Even if the file does not have enough evidence, the Procuracy has the right to Return documents requesting additional investigation. The trial period is calculated from the time the Court receives the case file and decides to prosecute the defendant (indictment) from the Procuracy. The court researches, reviews and decides whether to bring the case to trial or not. In case of lack of evidence or unclear evidence for the performance of judicial functions, the Court has the right to return the file to the Procuracy to request additional investigation. At the trial, the evidence and documents in the case file serve as an important basis for the trial panel to interrogate the defendant and witnesses. Thus, the criminal case record regime is created and completed by the agency conducting the proceedings and exists throughout the stages of criminal proceedings (Nguyen Thi Thuy, 2014, p. 79).

5.5. Advantages and limitations of the current Vietnamese criminal procedure model:

Advantages:

First, the division of the criminal case resolution process into procedural stages clearly delineates the rights, obligations, and responsibilities of each proceeding agency at each respective procedural stage. It also strictly regulates the procedural time limit of each procedural activity to work towards the goal of finding the objective truth of the case, improving the professionalism and objectivity of procedural activities and preventing wrongful prosecution, investigation, prosecution and trial.

Second, the stipulation of the active and proactive role of litigation agencies in searching, collecting evidence, and determining the objective truth of the case has contributed to controlling the crime situation, ensuring social order and safety in accordance with Vietnam's current socio-economic conditions, and fundamentally restricting the evasion of criminals and offenders.

Third, the participation of the Procuracy in all stages of proceedings with the two functions of exercising prosecutorial power and supervising judicial activities has made an important contribution to ensuring proper compliance of all stages of proceedings and better ensuring the rights of accused persons in the process of resolving criminal cases.

Fourth, the provision of additional litigation elements has greatly impacted the accusation and trial activities at trial. The Procuracy and the Court must pay attention to litigation and developments at trial rather than based only on case files. This significantly contributes to enhancing the position of the defense attorney in relation to the Procurator and establishing a trial that ensures democracy and fairness between the accusing party and the defending party, avoiding bias on the accusatory side as before.

Fifth, the compensation mechanism for injustice and wrongdoing in criminal procedure is established and guaranteed to be implemented. The mechanisms for supervising litigation activities have been supplemented and strengthened, contributing to enhancing the responsibility of litigation agencies,

limiting violations of the law in the professional activities of those conducting proceedings, improving the quality of legal proceedings, raising the sense of respect for the rights of the accused.

Limitations:

Besides the above advantages, the current Vietnamese criminal procedure model also reveals the following basic limitations:

Firstly, the organization of criminal proceedings shows that there are conflicts and overlaps between the basic functions of criminal proceedings. The same legal subject is assigned to perform many different procedural functions at the same time.

Second, there is a lack of regulations to ensure superior performance of the defense function. Both on the legal and practical level, the defense has not been guaranteed for opportunities to become an equal party with the prosecution in performing its defense function. The defense is still passive and dependent on the agencies conducting the proceedings in activities such as participating in testimony, interrogation, accessing case files, collecting evidence, and opposing incriminating evidence.

Third, the requirement to improve the quality of litigation at court hearings and to use the results of litigation in court as an important basis for making judgments has not been seriously implemented in many places. The litigation opinions of lawyers in some court cases have not really been considered and recorded satisfactorily. In all cases, if the Prosecutor is absent, the trial must be postponed. But if the defense counsel, defendant or other participants in the proceedings are absent, the trial can still proceed.

Fourth, the maximum use of investigation and interrogation methods in the procedural stages, including the trial stage at trial, is one of the reasons of restricting debate, litigation, and the participation of the defense. This leads to a lack of democracy and fairness in judicial activities, the subjectivity and irresponsibility of the prosecution agency, and the negative impact on protecting the legitimate rights and interests of the accused.

5.6. Orientation for improving the Vietnamese criminal procedure model in the coming years

The practice of applying criminal procedure models shows that each model has reasonable elements and inevitable limitations. The application of the criminal procedure model of interrogation in Vietnam over the past time has helped the State control the crime situation and ensure social order and safety, gradually meeting the requirements of ensuring democracy and protecting the rights and interests of those participating in the procedure. But in the current national conditions, the political, economic, and social security situation has developed dramatically, and the demands of citizens and society on criminal justice agencies are increasingly high. Criminal justice agencies must truly be a solid support for the people in protecting justice and human rights and must also be an effective tool to protect socialist law and legislation, combating all types of crimes and violations of the law. These changes require reforms in the construction and application of new criminal procedure models.

To realize the goals and tasks of criminal procedure, judicial reform requires further strengthening the ability to detect and handle crimes; respecting, ensuring and protecting human rights and civil rights; reasonably delineating the rights and obligations of the subjects in accordance with the basic functions of criminal proceedings; ensuring equality between the accusing party and the defense throughout the process of resolving the case; raising high quality of litigation at trial; enhancing openness, transparency, democracy, and access to justice; ensuring the effectiveness and efficiency of mechanisms for inspection and supervision of criminal proceedings. To implement these requirements, it is necessary to revise the Vietnamese criminal procedure model in the direction of learning positive elements of adversarial criminal proceedings, that is, maintaining and promoting positive elements of the current criminal procedure model while absorbing the advantages of the adversarial criminal procedure model in accordance with the specific conditions of Vietnam. This has been affirmed in Resolution 27-NQ/TW dated November 9, 2022 of the Communist Party of Vietnam, which has oriented the criminal procedure model in Vietnam in the coming time as follows: "Building judicial procedural institutions with trial as the center and litigation as a breakthrough; Ensuring democratic, fair, civilized, rule of law, modern, rigorous, accessible judicial proceedings, ensuring and protecting human rights and citizens' rights.



6. CONCLUSION

In the world today, there is no longer a purely criminal litigation model of litigation or interrogation, but in the process of development, countries have learned and absorbed the positive elements of litigation models to perfect its national criminal procedure model. There is no criminal procedure model that has only advantages or only disadvantages.


The current criminal procedure model in Vietnam is a mixed procedural model that favors inquisition. In recent times, it has promoted positive effects in the fight against crime and ensuring the order and security of society, gradually meeting the requirements of ensuring democracy and protecting the legitimate rights and interests of citizens. In the current economic, political, social, and legal conditions of Vietnam, choosing an inquisitorial criminal procedure model that combines the advances of the adversarial criminal procedure model is reasonable. Choosing this combined criminal procedure model also ensures consistency in the organization of the system of proceedings - conducting agencies, state administrative agencies and the entire political system. This combined criminal procedure model is consistent with Vietnam's current conditions in terms of the capacity of the team conducting the proceedings, the conditions of facilities and equipment of the agencies conducting the proceedings, the legal level of society as well as international integration. The choice of the inquisitorial criminal procedure model to selectively absorb the most reasonable and progressive elements of the adversarial criminal procedure model has also been affirmed in the 2013 Constitution¹ and the Procedural Code Criminal case in 2015².

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¹ Article 103, Clause 5 of the 2013 Constitution: The principle of litigation in trial is guaranteed.

² Article 26 of the 2015 Criminal Procedure Code: The principle of litigation in trial is guaranteed.

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