

# **THE PRINCIPLE OF TRIAL INDEPENDENCE IN VIETNAM COURT**

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In Vietnam, the court shall be called The People's Court. The system of the People's Court includes the Supreme People's Court and its specialized courts. They are criminal, civil, economic, labor, administrative and central military court.

At localities and central cities, there is a people's court, comprising of the criminal, civil, economic, labor and administrative courts.

At districts (of provincial cities or townships), there is only the people's court without specialized courts. However, it has specialized judges for trying criminal, civil, economic, labor or administrative cases.

Before trial, a collegiate bench shall be set up, comprising of one judge and two people's jurors. Exceptionally, economic court has two judges and one people's juror.

The judges shall be appointed by the Head of State (the President); people's jurors shall be elected by the people's councils of different administrative levels such as provincial and district level.

Vietnam Constitution (adopted in 1946, and revised by the years of 1959, 1980, 1992) states that: during trial, judges and people's jurors are independent and their conducts are pursuant to law only. During deliberations, the collegiate bench shall render decisions by majority of votes in the making - decision room.

Such an important principle is also clearly defined in the code of criminal, civil, economic, labor and administrative procedure.

The principle of the independence of trying is a very important one in which the judges and people's jury decide completely by themselves, could not be influenced by any force or pressure, which are resulted from the investigating conclusions of the police, indictment of the procuracy or opinions of higher court.

Judges are the public servants while people's jurors, who are appointed by the people's council, are the representatives of the people. Both judges and people's jurors attend trial and are called the collegiate bench. The judge will act as a chairman of the court. During considering a case and ruling a verdict in a court, judges and people's jury are equal in right to inquire, argue and vote in public for determining punishment and other judicial measures.

In hearing a case, judges and people's jury shall be independent and their conduct shall be done with freedom of thought and without being subject to or tied with each other.

When judging, the courts at different levels (court of first instance, court of appeal) shall be independent, and be pursuant to law only, not subject to any one, not least with the absence of the concept of inferior and higher court (such as court of district, province and supreme court). However, in reality, if district court first tries a case the court at provincial level will try the appeal; if province court first tries a case the supreme court will try the appeal. Therefore, in any case, lower court shall confer with higher court; and so, the trial independence principle is not frequently ensured and even be violated.

During trial, the principle that judges and people's jurors are independent and only abide by the law is manifested by the fact that the hearings and inquires shall be made in public and be participated democratically by judges, people's jurors, procurators (prosecutors), defence counsel. All of them have the equal right to produce evidence, circumstances related to the case, make claims by applying provisions quoted from laws, and publicly argue to protect their own views and claims.

In Vietnam, with the spirit of renewal, there is a sound and logical concept in popular that during process of considering and passing a verdict, everybody participating in proceedings at court session is equal before the law and a verdict must be passed objectively, pursuant to law, only punishing the one who committed to offence, not allowing criminals go free and not punishing innocent person. Before ruling a verdict, the collegiate bench should heavily base on public and democratic hearings at the trial on the basis of fully and comprehensive consideration of evidences and opinions of prosecutors, defence counsel, accused, plaintiffs, defendants, witnesses, others having legitimate right and lawful interest involved in the case. Thus, the collegiate bench could pass a verdict legally and convincingly; and avoid subjective, imposing, one-sided, unilateral, unjustifiable and inaccurate judgments or cases, which in Vietnam are called "pocket cases" with the meaning that the cases were considered and decided in advance before being tried in public; in such situation the trial is a kind of formalistic one, and opinions of participants at a trial, especially lawyers, would not be heard and respected.

Therefore, at trial, judges and people's jury shall be independent, unbiased, and shall listen comprehensively and scrutinizingly to the opinions of the persons participating in proceedings and shall be entirely independent in rendering decisions on punishment measures.

Another important issue adversely affecting the independence of judges and people's jury in judging in a court in Vietnam is "a limitation of trying a case". Vietnam criminal law has stipulated that the court only tries the behaviours of crime and the accused declared in the indictment of the procuracy and with the decision to try of the court. Thus, in principle, the collegiate bench only tries the behaviors and accused named by the procuracy (institute of investigation) in its indictment and by the court with its decision to try the case. At trial, if new

behaviours and accused are found or the behaviours and accused listed in the previous indictment are inaccurate, the collegiate bench has no authority to try independently the case; otherwise, the collegiate bench has to suspend the case and hand case files back to the procuracy to reconsider.

Obviously, such regulation is against the principle of the independence of judge and people's jury in trying. The regulation imperceptibly deems that what the procuracy does in stating name of the guilty of crime is totally right; and that the collegiate bench only has a task of making a choice of forms and measures of punishment according to provisions and articles of law. Vietnam Constitution defines that only the court has authority to conclude who is committed to offence and charge them, not that of any other such bodies as the police and procuracy. The regulation defining the above judging limitation not only is against the principle of trial independence, but also violates the principle that only the court has authority of attributing a crime.

Another problem detrimental to the principle of independence of the judges and people's jury in trying is the procuracy's right to make a protest against a judgement handed down by the court. As defined by law, the procurator has right to make a protest against a verdict brought in by a court of first instance or court of appeal, reappeal, cassation if he deems that the judgement is not tough enough or too harsh. After that, the court has to retry the case. It's obvious that the right to protest of the procuracy has run counter against the principle of the court's independence in trying.