

Research on the Role of Lawyers in Criminal Proceeding under the Provisions of the Vietnamese Criminal Procedure Code 2015

Cao Thi Tu Anh*, Yingxin Chen

School of Public Affairs & Law, Southwest Jiaotong University, Chengdu, China

Email: *1619898230@qq.com

How to cite this paper: Anh, C.T.T. and Chen, Y.X. (2016) Research on the Role of Lawyers in Criminal Proceeding under the Provisions of the Vietnamese Criminal Procedure Code 2015. *Open Journal of Social Sciences*, 4, 79-85.

<http://dx.doi.org/10.4236/jss.2016.410006>

Received: September 23, 2016

Accepted: October 17, 2016

Published: October 20, 2016

Copyright © 2016 by authors and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

In Vietnam, the role of lawyers in criminal proceeding in general and adversarial in particular, plays an important role in contributes justice, legal rights/benefits protection for the accused or defendants, and assists to solve subjective cases lawfully. Vietnamese Criminal Procedure Code (VCPC) 2015 is established with numerous update regulations, in which they clearly stated and confirmed the upgrade of lawyers' role in criminal proceeding, especially for adversarial one. This article is launched for discussion on lawyers' role, especially in adversarial proceeding as per regulations of VCPC 2015, such as Right to enter Criminal proceeding, Equality with Other parties at court, Function of Plea submission for the accused or defendants. Moreover, the author also stated in this article some requirements for ensuring the upgrade of lawyer's role in criminal proceeding at court.

Keywords

Role of Lawyer, Proceedings, Vietnamese Criminal Procedure Code, Lawyers, Ordinance on Lawyers

1. Introduction

In Vietnam, the role of lawyers in criminal proceeding is slightly faded and did not gain much of attention. Since the launching of Practice Law of Lawyer 1987 [1], Lawyer Law 2006 [2] and Resolution No. 08-NQ/TW dated 02/01/2002 [3] issued by Political Bureau of the Party Central Committee referring to "Some significant missions of justice issues in coming time", has become a very important system of laws and legal docu-

ments that recorded the role and legal status of lawyers in judgment, and that granted a mission to Justice Department in ensuring lawyer's activities in the treatment of criminal proceeding.

Resolution No. 08-NQ/TW dated 02/01/2002 issued by Political Bureau of the Party Central Committee has clearly stated that: "Increase the prosecutor's quality of prosecution at court, ensure the fair proceeding with lawyers, vindicator, and other parties...", "the court decision should be based mostly on the proceeding outcome at court... to conclude and prepare judgment following regulations of Law"; "Justice Department has responsibility to facilitate for lawyers... for a fair proceeding at court". The accused or defendants or their kin had actively asked for the help of lawyers for advisory, right or benefits protection and theirs. Resolution No. 08-NQ/TW dated 02/01/2002 issued by Political Bureau is special attention to the role of lawyers and set tasks for the judiciary in ensuring the activities of lawyers in legal proceedings [4]. Author Ton Thien Phuong in "the right to defense of the accused in the Criminal Procedure Code 2015, Vietnam Procuracy's press 7/2016" [5] confirmed that: Criminal Procedure Code in 2015 has made fundamental changes, fully specified, more power full right to defense of the accused. This is a major effort in the process of judicial reform, which aims to better protect human rights, civil rights, limitations wrongfully convicted in criminal proceedings and improve the accountability of the agencies conducting legal proceedings. It can be said that, the role of lawyer in the criminal proceeding in general and adversarial one in particular has a very special position that contributes to protect justice, legal rights or benefits for the accused or defendants.

Lawyers also help other departments to conduct the proceeding in an objective mode as well as contribute positively in the process of upgrading justice as launched by Political Bureau of the Party Central Committee.

VCPC 2015 is approved by National Assembly of Vietnam, Session 13th, 10th National Party Congress on 27/11/2015, there are a lot of advanced regulations to upgrade the status, roles, and rights of lawyer in criminal proceeding in general and adversarial one in particular many of the shortcomings with the role of the lawyer in criminal proceedings [6].

Within the limitation of this article, the author desires to discuss on some regulations of VCPC 2015, on roles rights of lawyers in criminal proceeding.

2. Lawyers' Roles in Criminal Proceeding as Vietnamese Criminal Procedure Code 2015

Lawyers—with the role to act on behalf of the accused or defendants to do the rights of defend; acquit, to be on favor of the accused or defendants to prove by sentences to evidence the aggravating circumstances. Meanwhile, during the proceeding, lawyers are required to provide additionally the exhibits that are used for proceeding by Justice Department.

VCPC 2015 contains a lot of advanced provisions that confirmed the roles of lawyers in criminal proceeding in general and adversarial one in particular. One significant

example is the regulation on the fact that lawyers have right to join in the proceeding such as: present to get the words of arrested or in-hold persons, during interrogation, and then if agreed by the authorized persons, they can carry out the conduction of getting words or process the interrogation to arrested or temporarily arrested persons, or defendants. After each time of words collection or interrogation ended by the authorized persons, then the vindicators might start to queries the arrested or in-hold persons, or defendants, meet up with the accused or defendants to collect and present documents, exhibits or study the case profile [7]. However, not at anytime, anywhere, lawyers could be facilitated to execute their rights as regulated by law.

VCPC 2015 also records the equality between lawyers and other parties at court for a case of criminal proceeding which is much clearer than the VCPC 2003 [8]. The court should have obligation to facilitate for prosecutor, the accused, vindicators, or others to execute their duly own rights, responsibilities, and fair proceeding before the court.

As per VCPC 2015, the authorization and position of lawyers in criminal proceedings are upgraded, and lawyer has an equal position to other conductive authorities: "Board of Judgment should listen, record duly of all sayings from prosecutor, accused, vindicator, or other parties joining at court for an objective evaluation, covering the whole truth of the case. In the case of disagreement of their opinions, Board of Judgment should clearly declare the reasons and state them on the record [9], this is one of new aspect comparing to VCPC2003 [10].

VCPC 2015 also regulates that lawyers should have one in many rights that relates to the case study, read, take notes, or get copies of documents that in relevant to their client. However, as the actual situation, the conduction body of criminal proceeding not yet really facilitate for them to execute this own right, due to the limitation of cases, lawyers should not be allowed to interact, or take the relevant documents of such case and restriction of taking photos should be done perfectly to ensure that no confidential information of such cases might be leak.

In criminal proceeding, lawyers has function to acquit the accused, or defendants that always conflicts to the function of criminal proceeding conduction bodies, but in legal meaning. Lawyers always have to ensure to solve the case at the highest objective spirit, following the law, avoid to look in one side of a matter and accused by these bodies. The rule on Record, or Decisions of Court should be based on exhibits evaluation report and criminal proceeding outcome at court. All exhibits define ones' crime or not, or aggravating circumstances for criminal liability, apply sections, sub-articles, articles of Criminal Law for definition of crime, penalty, or compensation rate to the defendants, handle of exhibits, and other items that are meaningful to the solution of cases should be represent, discuss and clear up at court. The record, decisions of court should follow the evaluation, exhibits checking and proceeding outcomes at court". Lawyers during the criminal proceeding, might have equal position to other criminal proceeding bodies, to provide exhibits, explanations, speculation with lawful and legal pursuance to make the truth clear, in order for using aggravating circumstances to low down the penalty or acquit for the accused or defendants. The judge who is the court executive office should be at the center of exhibits evaluation, comparing between join-

ing parties fairly, democratically, that is also one of core principle in VCPC 2015 on recording of “ensuring the defend of the accused or defendants”. Lawyers play a role based on a principle that to respect the defend of the accused and defendants, whilst, lawyers is the one who join in the criminal proceeding and act on behalf of the accused or defendants and contribute to head to objective solution for cases in duly with no wrong records for innocent people.

It can be confirmed that, the role of lawyers is shown clearly via the criminal proceeding at court. This ensures the publicity, democratic, fairness and independence from subjective opinion of criminal conduction bodies, with no prejudice as before that “apply judgment as document” and then all decisions shall be made under the documents by such bodies. The truth determination of cases states that: “The responsibility to prove a crime belongs to the governmental authority to conduct the proceeding. The accused might have right but not compelled to prove that he is innocent [11].

Comparing the authorization of Vietnamese lawyers and others countries’ lawyers with an advanced and developed justice system existing in such a long time, such as: Article 30 In the Criminal Procedure Code of Japan [12], the right to defense belongs only to the accused and suspects, namely: “The accused or suspect can choose any lawyer at any time”. Article 30 In Criminal Procedure Code of Bulgaria [13], has provided for the right to defense belongs to the accused and the accused’s right to counsel where the accused is limited because they only have the right to defense counsel in the regulations as: The accused is a minor; The accused had physical defects or mental, can not defend themselves; When the consent of the Procuracy, if the participation of defense counsel is not difficult to determine the objective truth about the case. Article 30 in Criminal Procedure Code of Russian [14], stipulates: “The defense counsel is participating in the proceedings after receiving the decision to prosecute the accused, for the case of suspected offenders carried out in custody or apply detention preventive measures before departure from the time the accused received the minutes of the arrest or the decision to apply preventive measures to detention”. We can see clearly the differences between them in criminal proceeding.

In fact, the activeness of lawyers to participate in the words collection from the accused or defendants together with the conduction bodies did not reach any outcome. In fact, the qualification of lawyers in Vietnamese contains many disadvantages, in which there are many cases that lawyers yet duly understand their missions or rights during the proceeding process, and are positive in such activity, and rarely lawyers go against to the benefits of the accused, defendants that they take for the defend as clients. The capability of lawyers in criminal proceed is ineffective, and not insight into objective points, as well as yet qualified enough for the requirements of the judgment according to the new trend now. The ethics of lawyers in working also gain lots of attentions, but in fact, there are many situations that lawyers act to protect their client at this side, but whilst they also provide information or documents to the other side for gaining personal benefits. Therefore, it is truly necessary to regulate the compensation for clients once lawyers acts against their rights and benefits during the defend process.

3. Solutions and Requirements to Enhance the Role of Vietnamese Lawyers in the Criminal Proceedings at the Court

3.1. The Solution Needed to Promote the Role of Lawyers in Litigation

In recent years, from actual practice, especially since litigation has been recorded in the resolutions of the Political Bureau. They proceed to build up Vietnam criminal proceedings into two models: proceedings litigation and legal proceedings interrogations in order to ensure that defendant's lawyer engaged litigation more effectively and they should be conducted the following solutions:

- 1) Should be aware and determine the role and position of defendant in criminal proceedings;
- 2) Need to complete criminal proceedings by enhance defendant's rights in proceedings;
- 3) Promote mechanisms to ensure the provisions of law about lawyer's right could be carried out in actual practice;
- 4) Strengthen training, retraining and coaching in order to improve the qualifications and skills for litigation defense attorney.

3.2. The Necessary Requirements to Promote the Lawyer's Role in Litigation

Adversarial proceeding of lawyers at court is a very significant rule in criminal proceeding. VCPC 2015 continuously to record, and promote the role of adversarial proceeding at court. In order to ensure the effectiveness of proceeding, and convince other to protect the rights and best benefits for their clients, we believe that lawyers should guarantee some below requirements.

- 1) they need to carefully study the case: by study of the indictment sheet, conclusions of Investigation authorities, relevant legal documents, defend documents, other relevant documents, or inspections, other documents which are the accused/defendant's exhibits, or others documents, or other similar sphere. Lawyers should understand clearly and sum up all the points of such cases, with their own objective evaluation, analysis in every detail, to find out the conflict into the declaration that should be the pursuance for their protection of client at court later.
- 2) they need to meet up and discuss preliminarily with the accused and defendants, give questions to lead the accused or defendants so that the accused or defendants to remember, and report the case occurred to them and then answer honestly, objectively;; moreover, also need to have knowledge or experience in giving questions, getting words during the interaction with the accused or defendants; they also should have experience on using facilities for achieving of information provided by the accused or defendants.
- 3) Lawyers need to collect all the documents or exhibits that relates to the case, especially they should hold the significant evidence in or to acquit or aggravate in the spirit to follow the legal regulations and not to go against their career ethics; also need to have experience in summary and preparation of joining the proceeding at court like important points to protect their clients; prepare questionnaire, and asking way to join in the

proceeding; prepare all relevant documents relating to such cases; and lawyers do need a good ethics in their career and presentation skill to attract, and convince listeners' attention by firm declaration, and evidences in favor of their clients.

4) During the time at court, lawyers need to have strategies in asking and giving questions to the objective aspects with evidences that benefit to their clients. They should have a forecast on what to be asked, what the conversation with the accused/defendants and other sides are. They really need to be flexible and adapt to all situations might be happened at court; and they shall have suitable strategies in giving questions to the witness so that they can provide information at an accurate, objective way and also focus on confliction reasonably to protect their clients.

5) Lawyers should be trained professionally in major, skills, or proceeding skill; Government should have reasonable policy to treat the training program for young lawyers in order to change the current prejudice to lawyers, create a fair balance between lawyers to other bodies, so that it is objective, fair and should avoid all incorrect/wrong judgments as public recently on media.

In order for the role of lawyers to be promoted highest in judgment, the governmental authorities should as soon as practical to build up and launch instructions documents in detailed for the VCPC 2015 on adversarial proceeding, in which they should also regulate the facilitation for lawyers to execute their duly rights as Law.

4. Conclusions

In terms of the judicial reform strategy is being researched in Vietnam, the research role of lawyers in litigation activities are extremely practical. Especially when judicial reform is focused on innovative judgment activities so the role of lawyers in litigation activities needed to considerate in a comprehensive manner as well as the factors to ensure the lawyer could promote their role in practice.

Throughout the research, the author has stressed the role of lawyers in litigation is extremely important. Furthermore, 4 solutions to enhance the role of lawyers in litigation at the trial and 5 essential requirements in order to promote the role of lawyers in litigation has given above. It contributes the improvement of the lawyers' role, as well as represents a democratic process in court proceeding. Nevertheless, the lawyer must be aware self-development to improve themselves, enhance professional ethics in order to fulfill their duties.

References

- [1] National Assembly of Vietnam, Ordinance on the Vietnamese Lawyers 1987.
http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=2789
- [2] National Assembly of Vietnam, Vietnam's Law on Lawyers in 2006.
http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=15094
- [3] Political Bureau Vietnam, Resolution No. 08-NQ/TW of Vietnam in 02/01/2002.
<http://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Nghi-quyet-so-08-NQ-TW-2002-nhiem-vu-trong-tam-cong-tac-tu-phap-165169.aspx>
- [4] Information Lawyers, Vietnam, 2016.

- <http://btp.moj.gov.vn/qt/tintuc/Pages/thong-tin-luat-su.aspx>
- [5] Phuong, T.T. The Right to Defense of the Accused in the Criminal Procedure Code 2015, Vietnam Procuracy's Press 7/2016.
- [6] The Role of Lawyers in Criminal Proceeding.
<http://www.luatdaiviet.vn/xem-tin-tuc/vai-tro-cua-luat-su-trong-hoat-dong-to-tung>
- [7] National Assembly of Vietnam, Article 73 of the Criminal Procedure Code of Vietnam in 2015.
<http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-2-96884.aspx>
- [8] National Assembly of Vietnam, Article 26 of the Criminal Procedure Code of Vietnam in 2015.
<http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-2-96884.aspx>
- [9] National Assembly of Vietnam, Paragraph 4 of Article 322 of the Criminal Procedure Code of Vietnam in 2015.
<http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-2-96884.aspx>
- [10] National Assembly of Vietnam, Criminal Procedure Code of Vietnam in 2003.
http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=19431
- [11] National Assembly of Vietnam, Article 15 of the Criminal Procedure Code of Vietnam in 2015.
<http://thuvienphapluat.vn/van-ban/Trach-nhiem-hinh-su/Bo-luat-to-tung-hinh-su-2015-2-96884.aspx>
- [12] Japan, Code of Criminal Procedure (Act No. 131 of July 10, 1948, as Last Amended by No. 26 of April 27, 2010).
- [13] Bulgaria, Code of Criminal Procedure, Amending Text(s): 2003-06-11 (BGR-2003-L-64713) Act of 11 June 2003 to Amend and Supplement the Criminal Procedure Code.
- [14] Russian, Code of Criminal Procedure, No. 174-FZ OF DECEMBER 18, 2001 (with the Amendments and Additions of November 6, 7, 21, December 6, 7, 2011, February 29, March 1, 2012).



Submit or recommend next manuscript to SCIRP and we will provide best service for you:

Accepting pre-submission inquiries through Email, Facebook, LinkedIn, Twitter, etc.
A wide selection of journals (inclusive of 9 subjects, more than 200 journals)
Providing 24-hour high-quality service
User-friendly online submission system
Fair and swift peer-review system
Efficient typesetting and proofreading procedure
Display of the result of downloads and visits, as well as the number of cited articles
Maximum dissemination of your research work

Submit your manuscript at: <http://papersubmission.scirp.org/>

Or contact jss@scirp.org