The issue of human rights protection in international and Vietnamese criminal law

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Abstract Human rights, regarded as fundamental and inalienable entitlements, are delineated and safeguarded through a combination of international legal frameworks and national laws. In this article, we conduct an in-depth analysis of the mechanisms for preserving human rights within both the international legal context and the specific framework of Vietnamese criminal law. We also put forth a set of recommendations designed to augment the effectiveness of human rights protection. In practice, the preservation and realization of human rights can be a complex challenge, and there are instances where these rights may be transgressed within the course of judicial proceedings. To tackle this problem, it is imperative that the provisions pertaining to human rights in both international and Vietnamese criminal law are given the requisite attention and adherence. Moreover, to ensure the comprehensive and effective implementation of human rights protection, it is imperative to establish a clear and robust legal framework. Striking the delicate balance between justice and human rights protection remains an ongoing endeavor, demanding continuous vigilance and adaptability in our legal systems. Ultimately, the harmonious coexistence of legal processes and human rights preservation is essential to fostering a just and equitable society.

Keywords: human rights, criminal Law, legal system

1. Introduction

Human rights are an issue of special concern to many countries and the United Nations (UN). Since its establishment in 1945, the UN has issued hundreds of legal documents on human rights (Henkin, 1965). These documents show that human rights have become a system of universal legal standards, which many countries have committed to respect and implement (Alfredsson, 1997). Human rights filter into many areas of state and social life, including the legislative, executive, and judicial spheres (Scannella & Splinter, 2007).

Human rights are one of the sacred and fundamental aspirations of humankind (Mertus, 2005). It is born and, at the same time, must be done as a natural thing. Therefore, it is not only an important issue in international law but also a basic legal institution in national law. Human rights are one of the highest human values that countries uphold and protect. Protecting human rights is also important to the sustainable development of a country. Each country builds a separate legal system based on its political, socio-economic conditions, and traditional cultural values to ensure human rights are implemented (Eide, 2001). The legal system must be consistent with the basic principles and contents of international law, especially the UN Charter (Freeman, 2022).

After the victory of the August Revolution of 1945, the Democratic Republic of Vietnam was born, and human rights were officially declared and recognized in the constitution. The Vietnamese revolution, with its heavy and glorious tasks, aimed for independence, freedom, and socialism, whose core is to ensure the exercise of human rights. Reflecting these aims, the 1946, 1959, 1980, 1992, and 2013 constitutions institutionalized and gradually expanded human rights (Vu, 2013). The system of legal policies to ensure human rights has been increasingly consolidated and perfected.

In building and perfecting the legal system, Vietnam has transformed many human rights in international declarations and conventions that it has ratified and signed (Jendrzejczyk, 2000). Besides those legislative activities, Vietnam has many policies, measures, and practical activities to ensure the implementation of human rights. As law protection agencies are strengthened and developed, society becomes fairer and more civilized, creating a free and equal environment for everyone to exercise their rights and obligations and simultaneously protecting people from abuse.

However, human rights are always a sensitive and complicated field; ensuring implementation involves not only recognizing human rights but also adopting many synchronous measures approved by all levels and sectors (Chi, 2007). Courts have a particularly important position and role. One of their basic tasks during trials is to act directly to protect the human rights of the victim and the defendant. For many years, in accordance with the law, the courts have actively participated in the fight against violations of law and crimes, protecting the socialist regime and the legitimate rights and interests of the people.
However, in trials, injustice remains. The human rights of the accused are sometimes not respected due to ineffective safeguards (Thuong, 2021). The limitation and lack of synchronization of the law have a significant impact. Therefore, in this article, the authors analyze the protection of human rights recognized in international and Vietnamese criminal law and recommend solutions to improve the effectiveness of human rights protection.

2. The concept of human rights

Human rights are a multifaceted category with many definitions. According to a UN document, nearly 50 definitions of human rights have been published (Donnelly, 2019). Each definition approaches the problem from a certain angle, but no definition covers all attributes of human rights. The relevance of the definitions of human rights depends on the subjective perception of each individual. However, at the international level, researchers often cite the definition from the Office of the UN High Commissioner for Human Rights: human rights are universal legal guarantees that protect individuals and groups against acts or omissions that compromise human dignity, rights, and freedoms. Another oft-cited definition is that human rights are the rights of all members of the human community, regardless of sex, race, religion, or social status, and are present from birth simply because they are human. This definition bears the hallmarks of the doctrine of natural rights.

In Vietnam, a number of research institutions and experts have set forth definitions of human rights. These definitions are not the same, but human rights are generally understood as natural and inherent human needs and interests that are recognized and protected in national laws and international legal agreements (Hoang, 2006). Thus, from any angle and at any level, human rights are also identified as standards recognized and adhered to by the international community. These standards crystallize the values of all humanity. Thanks to these standards, each person is protected with dignity and has the opportunity to develop their full potential as a human being. Despite certain differences in views, human rights are noble values that need to be respected and protected in every society and every historical period.

3. The protection of human rights in international and Vietnamese criminal proceedings

3.1. Protecting human rights in international criminal proceedings

As the norms governing the relations between states, international criminal law is directed at individuals. While international human rights law empowers individuals, international criminal law sets forth provisions prohibiting human rights violations and defines penalties for individuals who violate these prohibitions (Kälin & Künzli, 2019).

Therefore, to a certain extent, international criminal law protects human rights (Margueritte, 2010). The purpose of punishing offenders is to protect the common values of human rights that the international community recognizes (Stahn, 2019). Comparing international crimes with basic human rights shows that international criminal law protects human rights and interests.

**War crimes:** These are serious human rights violations because there are natural human rights that must be protected during armed conflict and in peacetime. The International Court of Justice (ICJ) and the UN Security Council have confirmed this principle.

Furthermore, each of the four Geneva Conventions of 1949 contains a provision defining “serious violations.” The Conventions prohibit murder, torture, or inhumane treatment and provide for individual criminal liability. Article 3 has been recognized as custom, prescribing the minimum treatment that should be given to protected persons in armed conflicts. It prohibits “infringement on life and bodily integrity…, especially killing in any form, causing injury, cruel treatment, torture and corporal punishment”; “sentence and enforcement without prior judgment rendered by a duly constituted court capable of judicial guarantee.” Article 3 also reiterates that the right to life, the right to be free from torture or inhumane treatment, and the right to a guaranteed fair trial are fundamental human rights and must not be violated in any circumstances.

**Crimes against humanity:** The international community has recognized crimes against humanity as “a particularly heinous crime, because it is a serious violation of human dignity, humiliation or humiliation dignity of one or more persons.” Due to the inhumanity of the victims, these crimes also negate the victims’ right to be recognized as human. The concept of “crimes against humanity” implies that there are fundamental human rights that must be protected under international criminal law. Therefore, recording crimes against humanity is also protecting basic human rights.

**Genocide:** The 1948 Convention for the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) is “a quintessential human rights treaty.” The CPPCG does not directly regulate human rights but instead provides for the criminal liability of the perpetrators and the adjudication of criminal acts before international courts.

The history of human rights development shows a tendency to protect defendants facing punishment (Basch, 2007). As a result, many fundamental rights were soon recognized by law to achieve such protection. However, the idea of empowering international criminals has met with many objections because of the nature and consequences of this crime. This shows the difficulty in ensuring a fair trial for defendants in international criminal trials.

The Charter of the International Military Tribunal (IMT) recognizes defendants’ right to a fair trial. Subsequently, the basic rights of an individual in criminal proceedings were enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and regional human rights instruments.
In the report on establishing the International Criminal Tribunal for the former Yugoslavia (ICTY), the UN Secretary-General noted that “it is important that the international court fully respects internationally recognized norms” (Shraga & Zacklin, 1994). Article 14 of the ICCPR recognizes the rights of defendants and these standards. On that basis, the statutes of both the ad hoc courts and the 1949 Geneva Conventions provide guarantees and similar rights for the accused, in which fundamental human rights must be respected in all circumstances.

The guarantee of basic human rights has been applied in proceedings at the International Criminal Court (ICC) and in national criminal proceedings. The judge participating in the international court hearing must ensure that a fair trial is conducted for any defendant brought before the court. These guarantees must be interpreted in accordance with the advanced standards that are updated regularly.

In interpreting a defendant’s rights, the International Criminal Tribunal for Rwanda (ICTR) has stated that the courts must apply the ICCPR as part of general international law. However, the court is not required to apply regional international treaties or case law developed by regional human rights bodies because they are not binding on the court. The ICTY also rejected the application of precedent of the European Court of Human Rights (ECHR) and said that “in certain respects, ICTY is comparable to a military court which has limited powers on proceedings and more lenient rules of evidence” (O’sullivan & Ackerman, 2021).

Unlike the ICTY and ICTR, the ICC statute (Rome Statute) provides more detail on the rights of suspects and defendants (Othman, 2020). The Rome Statute does not recognize any international human rights instrument as a source of law applicable at the ICC but merely states that “the application and interpretation of the law under Article 21 must be consistent with internationally recognized human rights. recognized economy.” The fact that the Rome Statute does not refer to a specific instrument creates a situation similar to that of other international criminal courts. The ICC often interprets human rights using teleological methods and invokes the precedents of the ECHR and the Inter-American Court of Human Rights to support its rulings. Thus, it is difficult to say that international courts can provide the highest protection to the accused because these courts are free to choose which provisions of human rights law they apply.

3.2. Protecting human rights in Vietnamese criminal proceedings

Due to the general influence of the socialist system, the issue of human rights and citizens’ rights in Vietnam is given great attention by the Party and the State (Chi, 2007). The content of human rights and citizens’ rights was set out long ago and maintained throughout the country’s development. However, only under the leadership of the Communist Party of Vietnam can the issue of human rights—Vietnamese citizenship—be fully and comprehensively implemented. That view was stated in the Declaration of Independence on September 2, 1945, which declared the birth of the Democratic Republic of Vietnam.

On September 24, 1982, Vietnam acceded to two international conventions on human rights: the ICCPR and the International Covenant on Economic, Social, and Cultural Rights. This is a great determination of the Party, the State, and the people of Vietnam. In joining these two international conventions, “The State of Vietnam recognizes the noble values of human rights and fundamental freedoms.” At the same time, Vietnam has gradually internalized the legal provisions of these two Conventions into its legal system (Mcdorman & Young, 1998). Civil rights are recognized and regulated in the constitutions of 1946, 1959, 1980, 1992, and 2013. The chapter on civil rights stipulates the “Basic rights and obligations of citizens” in all versions of the constitution (1964 Constitution: 18 articles, 1959 Constitution: 21 articles, 1980 Constitution: 29 articles, 1992 Constitution: 34 articles, and 2013 Constitution: 36 articles). This stipulation shows that during the revolutionary period of Vietnam, the Party and the State were concerned with human rights. The regulations are increasingly richer in content, more in number, and more responsive to the socio-cultural, economic, and political values of the Vietnamese ethnic community (Kvanvig, 2022).

It can be said that clearly and specifically recognizing human rights and taking measures to ensure human rights are important achievements of constitutional activities in Vietnam. The provisions on the human rights, basic rights, and obligations of citizens were included in Chapter II of the 2013 Constitution, following Chapter I on “Political regime.” The 2013 Constitution also contains provisions to ensure the implementation of human rights. The human rights and guarantee of human rights in the 2013 Constitution can be summarized as follows.

First, the Constitution recognizes human rights and stipulates the guarantees and responsibilities of the State for those rights to be exercised. The rights covered are the right to life, where human life is protected by law so that no one is deprived of their life illegally. The right to be protected by law in terms of health, honor, and dignity. The right to inviolability of the body, free from torture, violence, coercion, corporal punishment, or any other form of treatment that infringes upon the body, health, honor, or dignity. No one shall be arrested without a decision of the People’s Court, a decision or approval of the People’s Procuracy, except in the case of a red-handed crime. The inviolability of private life, where personal and family secrets and information about private life are safe under the law. The right to secrecy of correspondence, telephone, telegram, and other forms of private communication. No one shall illegally open, control or seize correspondence, telephone, telegram, and other forms of communication private information of others.

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Second, the Constitution clearly and fully stipulates the rights of the accused. Based on the presumption of innocence, the accused is considered innocent until proven guilty and the court’s conviction has taken legal effect. The accused has the right to a timely trial by the court within the time limit prescribed by law, fairly and openly. No one shall be convicted twice for the same crime. The accused has the right to defend themself or ask a lawyer or other person to defend them. The presumption of innocence has great significance in criminal proceedings and requires research carefully to be concretized in criminal procedure law and procedural practice.

Besides stipulating human rights, the Constitution provides important guarantees for protecting human rights in general and in criminal proceedings in particular. The Constitution stipulates the State’s responsibility to respect and protect human rights. Article 3 (Chapter I) affirms that the State guarantees and promotes the people’s right to mastery; recognize, respect, protect and guarantee human and citizen rights. There are always provisions on the responsibility of the State or the protection of the law to exercise those rights in practice.

The Constitution stipulates that the task of protecting justice and human rights is the responsibility of the People’s Court and the People’s Procuracy. It stipulates that the People’s Courts shall be organized according to trial levels, not special courts; the People’s Court is the only agency that exercises judicial power, judges a person guilty, and applies penal liability and punishment to offenders; the first task of the People’s Court is to protect justice and protect human rights; and the operating principles of the People’s Court, such as a public trial, independent judges and jurors, two levels of trial, and litigation in trial, are significant in protecting human rights in general and those of the accused in particular.

At the same time, the Constitution stipulates that the main function of the People’s Procuracy is to exercise the right to prosecute and supervise judicial activities to protect the law and human rights. It also stipulates that the principles of relative independence in the organization and operation of the People’s Procuracy concretize criminal procedure to ensure the Procuracy can prosecute the case criminal responsibly to ensure and protect human rights. The 2013 Constitution on human rights has made a remarkable development in thinking and ensuring human rights in Vietnam align with trends (Vu, 2013).

The constitutional provisions on human rights and the guarantee of human rights are important for building the legal system and law enforcement in Vietnam. The provisions of the Constitution are important because criminal procedure is the act of ruling on the criminal acts of the accused and applying criminal liability. It is the most severe state coercive measure against an individual, accompanied by activities that can greatly affect human rights in general and the rights of the accused in particular.

The 2015 Criminal Procedure Code (CPC) contains provisions that express the spirit of the 2013 Constitution to ensure human rights in three ways. First, the 2015 CPC stipulates basic principles related to the protection of human rights. Among them are important principles such as respecting and protecting human rights, legitimate rights, and interests of individuals (Article 8); ensuring equality before the law (Article 9); ensuring the inviolability of the body (Article 10); protecting the life, health, honor, dignity, and property of individuals (Article 11); ensuring the inviolability of residence, private life, personal secrets, family secrets, safety, and secrecy of personal correspondence, telephone, and telegrams (Article 12); presuming innocence (Article 13); not being convicted twice for the same crime (Article 14); ensuring the right of defense of persons temporarily accused and protecting the legitimate rights and interests of victims and litigants (Article 16); and adjudicating principles of the People’s Court, including principles such as independent trial and two levels of trial (Article 12-27).

Second, the 2015 CPC has regulations on measures for criminal proceedings, especially arrest, custody, and temporary detention. These regulations also specify jurisdiction, grounds, and time limits for application according to the principle of ensuring effective procedural activities and limiting human rights when necessary and at a minimum.

Third, the 2015 CPC stipulates the procedural status of criminal procedure subjects, especially the procedural status of the participants in the proceedings in general and of the accused in particular. It also stipulates the procedural rights of persons held in custody, the accused and defendants, especially the right to defend; litigation rights (proof, cross-examination); and the right to complain and denounce illegal acts of agencies and procedure-conducting persons. The procedures ensure objective and democratic activities, the enhancement of the litigation element in the interrogation procedure model, and the full exercise of procedural rights and obligations.

4. Practice of protecting human rights in international and Vietnamese criminal proceedings
4.1. Practice of protecting human rights in international criminal proceedings

A defendant’s rights are rooted in a fundamental principle of criminal law: the presumption of innocence (De Jong & Van Lent, 2013). This principle is stated in Article 14 (2) of the ICCPR and is recognized in Article 66 of the ICC Regulations, Article 20 (3) of the ICTR Regulations, and Article 21 (3) of the ICTY Regulations. Under this principle, public authorities are obliged to eliminate “prejudice about the outcome of a trial.” The ECHR has ruled that public officials must not “formally declare someone guilty” unless a court decides.

However, applying the ECHR’s interpretation to the international order is difficult (Sliuter, 2002). First, who is considered a “public official” in international law? Even assuming that the main UN organs can be considered “public servants,” the next issue that arises is the consideration of a Security Council resolution that asserts the responsibility of one or more members of
the UN Security Council for international crime. For example, in Resolution No. 1034, “it should be noted that the ICTY has issued an indictment against the Bosnian Serb leaders Radovan Karadžić and Ratko Mladić” for their direct and personal responsibility for violations committed crimes against Bosnian Muslims in the town of Srebrenica (Khan & Bhuiyan, 2022). This Resolution is considered to violate the presumption of innocence because it does not use the term “defendant” when referring to the two Bosnian Serb leaders. Preventing prejudice against these types of crimes is quite difficult. States, victims, and the press often specify who is responsible before any court can rule on the case. At the national level, defendants can sue to rectify claims violating the presumption of innocence. However, such a remedy does not exist at the international level.

During ICC trials, most of the discussion about the presumption of innocence centers on the issue of provisional release and detention for investigation. Human rights documents allege that defendants have the right to be released pending trial (Zappalà, 2003). Compulsory detention before trial is, therefore, contrary to international human rights law. The Rules of Procedure and Evidence (RPE) of the international criminal courts operate on the idea that detention is the rule and release is the exception. Although some judges opposed to this practice have stated that provisional release should be the rule and detention should be maintained only in cases of extreme necessity, it seems that when defendants are tried in international criminal courts, they remain in custody for the duration of the trial. Provisional release is granted only in exceptional circumstances.

Temporary detention may be justified in certain circumstances, such as when the defendant is likely to flee or tries to interfere with investigations by altering evidence or intimidating witnesses (Goldstein, 1959). Temporary detention is available only in the absence of other measures (e.g., bail or probation). In international criminal courts, the main argument against temporary release is the lack of cooperation by states and the risk that the accused will escape trial by fleeing to an unsuitable country. However, the basis for temporary detention evolves over time, and justifiable detention can become arbitrary when the justification ceases to exist. For this reason, temporary detention must be reviewed regularly. If the detention is to avoid interference in the investigations by the accused, for example, then pretrial detention will no longer be justified once the investigations have ended.

Time is a significant issue in international criminal proceedings. Articles 9(3) and 14(3)(c) of the ICCPR both require a trial without delay, especially when the accused is temporarily detained. Article 14 of the ICCPR does not specify a time limit for the trial, but the overall length of time should be reasonable. Reasonableness is assessed on a case-by-case basis, taking into account the complexity of the case, the defendant's conduct, and the efforts of the authorities. Cases resolved in international courts are particularly complex, so international courts may require more time than domestic courts. In reality, the total trial time in international courts appears to exceed the requirements set forth by international human rights law. Some delays may be due to the defendant’s conduct, but in some cases, the delay is caused by the prosecutor or the court, such as delays in the appointment of judges and hearings due to the Christmas break. As a result, most of the defendants were detained for several years, and some even died before a final verdict.

The *ad hoc* international courts' finalization strategy did not improve the situation. The fact that international courts refer a case to a national jurisdiction under Article 11 of the RPE of the *ad hoc* courts has increased the length of the proceedings and created a disadvantage only for the detained defendants transferred to a national court. For example, the Mejakic case was moved to Bosnia & Herzegovina. All defendants were detained for several years at ICTY, but when examining the rationale of their detention, the national court refused to consider the length of time they were detained before the case was transferred. Article 11 is fundamentally inconsistent with human rights interpretations, which state that the period considered to assess the reasonableness of the defendant’s detention is from the date of arrest. Furthermore, the argument of the Constitutional Court of Bosnia & Herzegovina based on the risk of the defendant absconding is inadequate because national courts have the means to ensure the defendant's presence at trial (Khan & Bhuiyan, 2022). As a result, most of the defendants spent many years in detention at ICTY without trial; some gave up voluntarily and did not have the opportunity to be released when their cases were transferred to the international court. Even if this time spent in detention is deducted from the final sentence, the extension of the detention still violates the basic rights of the accused.

Another issue concerns the sentencing process. A principle of criminal law is that defendants are not required to testify against themselves but must be guaranteed the opportunity to present all evidence so that their liability may be waived or reduced. The judgment and sentencing are not separate hearings, which seems to violate the second principle mentioned above. Originally, separate hearings were held at ICTY, but the RPE was modified to allow the determination of offense and conviction in a single judgment. The Rome Statute provides for a single award but permits a separate hearing on sentencing if the respondent or Special Counsel requests it. However, the choice between a single hearing or separate hearings depends primarily on the legal tradition. Common law countries generally favor separate hearings, while the courts of civil law countries often hold convictions and sentencing together. For the ICC, both legal traditions are relevant.

### 4.2. Practice of protecting human rights in Vietnamese criminal proceedings

Criminal procedure activities are investigating, prosecuting, adjudicating, and executing criminal judgments, in which the accused and defendants are vulnerable to violations of the basic rights of citizens from criminal procedure (Trinh, 2013). This violation is shown at all stages of criminal proceedings with many different aspects and contents.
The provisions of the 2015 CPC are an important legal basis for respecting, protecting, and ensuring the implementation of the defendant’s procedural rights and obligations in the trial practice in Vietnam in recent years (Hanh, 2018). It must be said that, in general, the procedure-conducting agencies have thoroughly grasped and well implemented the provisions of the 2015 CPC in ensuring the defendants perform their rights and obligations:

- First, the basic human rights of the accused (e.g., the right to inviolability of the body; the right to life, health, honor, dignity, and property; the right to equality before the law and before the court) has been guaranteed good performance from the agencies and persons conducting the proceedings. Violations in criminal proceedings are gradually overcome.

- The procedural rights and obligations of the accused specified in the 2015 CPC are respected and are guaranteed to be fully implemented. Defendant’s rights and obligations are explained; receive the indictment, decide to bring the case to trial; be guaranteed to participate in proceedings, participate in interrogations, and present documents, evidence, and requests; and ensure the exercise of their procedural rights at the trial with increasing litigation.

In particular, the defendant’s right to defense is relatively well exercised. The percentage of defendants with defense counsel is increasing. The court has focused on asking bar associations to appoint defense counsel in cases prescribed by law. The rights of defense counsel are respected, and the court has created conditions for the defense counsel to perform their duties. The quality of defense has been improving and has contributed to the correct and objective settlement of a case, protecting the legitimate rights and interests of the accused. The right to complain in criminal proceedings, especially the defendant’s right to complain, has been respected. Every year, courts at all levels receive a large, growing number of judicial complaints. In addition to the request for cassation, the complaints settled by the competent judicial authorities are basically satisfactory.

Along with the above advantages, we believe the implementation of legal proceedings in the settlement of criminal cases has the following limitations and inadequacies in ensuring the human rights of the accused. First, there are still cases of criminal prosecution of people who are not guilty or have not yet reached the level of criminal responsibility. The court unjustly convicts a person who is not guilty or convicts them of a crime more serious than the crime committed by the defendant in fact.

Second, there are also violations in ensuring the defendant’s right to defense, especially the right to ask others to defend. Violation of the defendant’s right to defense is a serious procedural violation. This violation manifests in many forms, such as:

- Although the 2015 CPC has specified the defense’s right to collect evidence, it does not stipulate the order and procedure for such collection; therefore, it is difficult for defense counsel to collect evidence in particular and prove it in general;

- The investigating agency and the Procuracy do not request the appointment of defense counsel for juvenile suspects or defendants prosecuted for crimes punishable by 20 years in prison, life imprisonment, or death;

- The procedure-conducting agency refuses to legally appoint defense counsel. There is a judge to persuade the accused to make a record of refusing defense counsel in a number of cases specified in Clause 1, Article 76 of the 2015 CPC. There are cases where the court does not require the appointment of defense counsel for the accused: when the defendant is a person under 18 years of age when that person alone is not legally required to refuse. According to the provisions of Clause 3, Article 77 of the 2015 CPC, in cases where it is mandatory to have defense counsel, only when both the accused and the defendant and the representative of the accused and defendant refuse defense counsel will the court not require the appointment of defense counsel. If only the accused or defendant or only the representative of the accused or defendant refuse, the court must still request the appointment of defense counsel in the case;

- A trial in the absence of the defense is also a problem. Clause 1, Article 291 of the 2015 CPC stipulates that “if the defense councils are absent due to force majeure or objective obstacles, the court shall postpone the trial.” However, the reasons for force majeure and objective obstacles have not been unified.

Clause 2, Article 291 of the 2015 CPC also stipulates that in cases where defense counsel is appointed, the court may adjudicate in the absence of the defense counsel if the defendant or their representative agrees. This provision contradicts the provisions of Clause 3, Article 77: if both the accused, the defendant, and the representative refuse, the new trial does not require defense counsel.

Third, the trial procedure still contains provisions that limit or do not guarantee the exercise of the defendant’s procedural rights. Common violations are:

- Explanation of procedural rights and obligations to participants is incomplete or unclear. The guarantee for the accused to exercise their procedural rights, especially the rights to request, question, and argue, in many cases, is still formal;

- During the interrogation, the accused has not yet created conditions for the defendant to fully express their opinions on the circumstances of the case. There are still cases of supply and lure; expressed displeasure when the defendant declared that he did not follow the judge’s will. In particular, due to the administration of the presiding judge, defendants rarely exercised their right to question at the trial. Documents and evidence used as the basis for the issuance of judgments and decisions are not made public at court hearings, so procedure participants do not express their opinions on documents and
evidence. The courts are still confused about questioning because the 2015 CPC does not specify the order in which to be questioned, considering that the procedure for questioning is the same;

- There are still cases where the presiding judge has not yet promoted the spirit of democratic litigation at the trial, such as limiting the time to present opinions of the accused and defense counsel, and has not guided or encouraged the defendant to conduct the argument to protect their legitimate rights and interests. The procurator has not yet asked the procurator to argue or respond to all opinions of the participants in the proceedings;

- The procedural culture, especially at trial, is still limited. Addressing is inconsistent, even in many cases infringing upon the dignity and honor of the accused; the bossy attitude, belittling the participants in the proceedings of the person conducting the proceedings, especially the procurator, still exists.

Fourth, in many cases, the law has not yet provided for or the regulations are unclear, leading to adverse procedural results, even causing damage to the detained person and the accused. For example:

- The summary procedure is a criminal procedure institution with important practical significance, helping to quickly settle a case of a person held in custody. However, in practice, this procedure is rarely applied. We believe that one reason for its low application is that the 2015 CPC does not stipulate the requirement or at least the consent of the accused and defendants as a condition for applying this procedure, so the competent authority (Procuracy) is afraid to apply it due to fear of complaints;

- The 2015 CPC does not stipulate a confession procedure, while the Criminal Code does not stipulate a guilty plea as a special case of criminal liability mitigation (just one of the usual extenuating circumstances), so offenders did not have the opportunity to show repentance, responsibility to compensate, restore damaged social relations, save costs, time and effort for legal activities, and improve the efficiency of legal proceedings;

- The 2015 CPC stipulates the rights of the accused, but it does not specify the responsibilities of the agency or the person conducting the proceedings to ensure the exercise of those rights and the sanctions for violations. From the agency’s side, the person conducting the proceedings has been remedied.

5. Solutions to improve the effectiveness of protecting human rights in international and Vietnamese criminal proceedings

5.1. Solutions to improve the effectiveness of protecting human rights in international criminal proceedings

Protecting human rights is important in international criminal proceedings to ensure fairness and transparency. Several concrete solutions can be implemented to improve the protection of human rights in international criminal proceedings, as discussed below.

**Strengthening the role of human rights in international criminal law**: Developing a clear and comprehensive human rights framework for international criminal law and ensuring that human rights are integrated into all aspects of international criminal proceedings.

**Training and capacity-building**: Ensuring all actors involved in international criminal proceedings, including judges, lawyers, prosecutors, and investigators, have the necessary training and capacity-building to uphold human rights standards.

**Strengthening victims’ rights**: Ensuring victims have access to legal representation and participation in the proceedings and the right to reparations and compensation.

**Strengthening the independence and impartiality of the judiciary**: Ensuring that judges are selected based on their qualifications and experience and are free from political interference and external pressures.

**Improving detention conditions**: Ensuring detention facilities meet international human rights standards and detainees have access to adequate medical care, food, water, and other basic necessities.

**Increasing transparency and accountability**: Ensuring international criminal proceedings are transparent and accountable by providing regular updates to the public and allowing independent monitoring and reporting.

**Strengthening the role of international human rights mechanisms**: Ensuring international human rights bodies such as the ICC are adequately resourced and empowered to carry out their mandate and their decisions are respected and implemented.

In summary, concrete solutions to improve the protection of human rights in international criminal proceedings include strengthening the role of human rights in international criminal law, training, and capacity-building, strengthening victims’ rights, improving detention conditions, increasing transparency and accountability, strengthening the role of international human rights mechanisms, and strengthening the independence and impartiality of the judiciary. These solutions are crucial to ensuring that human rights are respected and protected in international criminal proceedings.

5.2. Solutions to improve the effectiveness of protecting human rights in Vietnamese criminal proceedings

We propose analyzing the provisions of the current 2015 CPC with its shortcomings, studying procedural practice, and referring to international criminal procedure law to meet the requirements of construction (Hanh, 2018). Reforming the rule of law and judiciary reform in our country and completing the provisions of the 2015 CPC to create a legal basis to ensure the human rights of persons held in custody and defendants in criminal proceedings are urgent requirements. We believe it is
necessary to guide the implementation of the provisions of the 2015 CPC to ensure the human rights of detainees, accused, and defendants in the following directions.

First, guide the awareness and implementation of procedural principles related to guaranteeing human rights in criminal proceedings, such as the presumption of innocence and determining the truth of the case. The principle of litigation and the enhancement of the litigation element in the interrogation procedure model are important guarantees for the correct and objective settlement of a case based on ensuring the human rights of the complainant’s proceedings, especially of persons held in custody, accused, and defendants.

Second, perfecting regulations on rights and obligations of persons held in custody, accused, and defendants. Guidelines are needed to ensure the exercise of a number of important rights of persons held in custody, the accused, and defendants, such as the right to silence and not to consider silence as a lack of goodwill of the detained person or the accused; the right to be informed of accusations and incriminating evidence; the right to collect evidence, prove, be questioned and confront witnesses, victims, and other participants during the investigation process and the court hearing.

Third, expand the scope of defense counsel to attract a large number of qualified people to participate in criminal proceedings. Defense counsel should not be prescribed for a person held in custody, and thus the procedure for a detainee to ask someone to protect their interests will be simpler in the context of limited detention time.

Fourth, shorten the procedure by considering requests or consent of the accused or defendants as a condition for applying summary procedures in criminal proceedings.

Fifth, supplement confession procedures in criminal proceedings. At the same time, in the Penal Code, it is necessary to add a provision that admitting guilt is a special extenuating circumstance, significantly reducing criminal liability.

Sixth, ensure the good implementation of human rights of persons held in custody, the accused and defendants in criminal proceedings, in our opinion, along with the addition and completion of regulations on rights and obligations. This is necessary to complete the following provisions: regulations on responsibilities and obligations of procedure-conducting agencies, procedure-conducting persons, and other organizational regulations to ensure that such regulations are taken seriously in practice; regulations on procedural sanctions and discipline to be applied in case the provisions on the rights of persons held in custody, accused, and defendants are violated.

6. Final considerations

Under international human rights law, if a state fails to enforce human rights at both the domestic and international levels (including failing to comply with its obligations to prosecute and adjudicate criminals), it is responsible before international human rights bodies. This means the person who commits a human rights violation and is considered an international criminal may go unpunished. In this regard, international criminal law complements and strengthens the protection of human rights by providing for individual criminal liability and establishing the ICC to ensure that justice is done for the victim.

Furthermore, some human rights are absolute and cannot be taken away under all circumstances. Therefore, the fundamental rights of individuals prosecuted before the ICC should be protected. However, the above analysis shows that it cannot be affirmed that the ICC is capable of protecting the human rights of the accused because these courts are free to choose which provisions of human rights law they must apply. Furthermore, because of prejudice against international crimes or the lack of cooperation of states, the accused is likely to have their right to a presumption of innocence violated or to be detained without basis, prolonging the period of detention with no opportunity to present evidence that can reduce liability or exonerate them.

Improving the efficiency of criminal proceedings to protect human rights is an urgent and long-term requirement. It is not only within the scope of activities of criminal procedure-conducting agencies but also requires synchronous coordination between legislative, executive, and judicial agencies and the participation of state agencies, social organizations, and citizens. Therefore, solutions to improve the efficiency of criminal proceedings and effectively protect the basic rights of citizens must be organized and implemented synchronously and must be implemented by all state agencies interested in participating and respecting implementation.

Ethical considerations

Not applicable.

Conflict of Interest

The authors declare no conflicts of interest.

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