

# THE LEGAL IMPERATIVE OF ADVERSARIALITY IN CIVIL PROCEDURE: ENSURING FAIR TRIAL STANDARDS IN VIETNAM

## *O IMPERATIVO JURÍDICO DA ADVERSARIALIDADE NO PROCEDIMENTO CIVIL: GARANTINDO PADRÕES DE JULGAMENTO JUSTO NO VIETNÃ*

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### Abstract

This article explores the crucial question of whether Vietnam's 2015 Civil Procedure Code effectively guarantees adversarial proceedings in civil matters. Using the methodology of legal analysis and comparative study, this study examined how the adversarial principle is applied in practice. The guiding approach for the study was informed by the paradox of whether the scales of justice are truly balanced. We scrutinize the current legal provisions, revealing their limitations and shortcomings, as well as areas where the system falls short of its intended purpose. Beyond simply identifying problems, this research sought to offer constructive solutions. We propose concrete recommendations to strengthen the legal framework, ensuring that the rights and interests of those involved in civil disputes are genuinely protected. We strive for a system that promotes fairness and transparency, where justice is done and seen to be done. Ultimately, this work contributes to the ongoing effort to reform legal regulations and refine civil litigation practices in Vietnam, fostering a more equitable and accessible justice system for all. The goal is to bridge the gap between legal theory and practical reality, resolving civil disputes a more just and efficient process.

**Keyword:** Civil Matters. Adversarial Principle. Litigant Rights. Comparative Law. Legal Analysis.

### Resumo

*Este artigo explora a questão crucial de saber se o Código de Processo Civil do Vietnã de 2015 garante efetivamente o contraditório em processos cíveis. Utilizando a metodologia de análise jurídica e estudo comparativo, este estudo examinou como o princípio do contraditório é aplicado na prática. A abordagem norteadora do estudo foi informada pelo paradoxo de saber se as escalas da justiça são verdadeiramente equilibradas. Examinamos as disposições legais atuais, revelando suas limitações e deficiências, bem como as áreas em que o sistema fica aquém do seu propósito pretendido. Além de simplesmente identificar problemas, esta pesquisa buscou oferecer soluções construtivas. Propomos recomendações concretas para fortalecer o arcabouço jurídico, garantindo que os direitos e interesses dos envolvidos em disputas cíveis sejam genuinamente protegidos. Buscamos um sistema que promova justiça e transparência, onde a justiça seja feita e vista como feita. Em última análise, este trabalho contribui para o esforço contínuo de reformar as regulamentações legais e refinar as práticas de litígio cível no Vietnã, promovendo um sistema de justiça mais equitativo e acessível para todos. O objetivo é preencher a lacuna entre a teoria jurídica e a realidade prática, tornando as disputas cíveis um processo mais justo e eficiente.*



*Palavras-chave: Matéria Cível. Princípio do Contraditório. Direitos do Litigante. Direito Comparado. Análise Jurídica.*

## 1 INTRODUCTION

In the quest of fostering equality, Sime notes that in civil procedure, the principle of ensuring adversarial proceedings is fundamental to promoting fairness and transparency within the judicial system. This principle is the backbone of safeguarding the legitimate rights and interests of all parties involved in legal disputes.<sup>1</sup> Adversarial proceedings, or “*tranh tụng*” in Vietnamese, are characterized by a contest between opposing parties, each presenting their case before an impartial judge. This framework not only facilitates a balanced examination of evidence and arguments but also fosters a sense of accountability among the parties, ensuring that each side has the opportunity to advocate for their position. The term “*tranh tụng*” is defined in the Vietnamese dictionary as “*litigation*”.<sup>2</sup> Its significance in the legal context was formally recognized with the issuance of Resolution No. 08-NQ/TW by the Politburo on January 2, 2002. This resolution outlined key judicial tasks for the upcoming period, emphasizing the importance of adversarial proceedings in enhancing the effectiveness and integrity of the judicial process. By establishing a clear framework for litigation, the resolution aimed to strengthen the rule of law and ensure that justice is administered fairly and equitably. Specifically, the resolution stipulates:

*"When adjudicating cases, courts must ensure that all citizens are equal before the law, that proceedings are conducted democratically and objectively... Court rulings must be primarily based on the results of adversarial proceedings at trial, taking into full and comprehensive consideration the evidence, opinions of prosecutors, plaintiffs, defendants, and other individuals with legitimate rights and interests, in order to issue lawful and just decisions. Courts must also facilitate lawyers' participation in*

<sup>1</sup> Sime, S. (2013). *A practical approach to civil procedure*. Oxford University Press, USA.

<sup>2</sup> Phe, H. (2016). *Vietnamese Dictionary*. Hong Duc Publishing House, p. 1298.

*proceedings, allowing them to review case files and engage in democratic debates at trial.*"<sup>3</sup>

The adoption of adversarial proceedings reflects a broader commitment to uphold the principles of due process and equal protection under the law. In this context, Ky observes that the judiciary plays a vital role in mediating disputes, ensuring that both parties are afforded the opportunity to present their cases fully and fairly. This not only enhances public confidence in the legal system but also contributes to the overall legitimacy of judicial outcomes. As such, the principle of adversarial proceedings is not merely a procedural formality, but an essential mechanism for fostering a just and transparent legal environment that respects the rights of individuals and promotes social order<sup>4</sup>.

Resolution No. 49-NQ/TW, issued by the Politburo on June 2, 2005, represents a significant milestone in Vietnam's judicial reform strategy, particularly in the context of ensuring adversarial proceedings within the civil justice system. This resolution was motivated by a recognition of the need to enhance the effectiveness and fairness of judicial processes, aligning them with contemporary legal standards and practices observed in more developed legal systems. The resolution explicitly reaffirmed the principle of ensuring adversarial proceedings, highlighting its critical role in promoting justice and safeguarding the rights of individuals involved in legal disputes. By emphasizing the enhancement of the quality of adversarial proceedings in court trials, the Politburo acknowledged that a robust adversarial system is essential for achieving equitable outcomes in civil cases. This recognition marked a paradigm shift in Vietnam's approach to legal proceedings, moving away from a predominantly inquisitorial system toward a more balanced framework that empowers both parties to actively participate in the litigation process.

The motivation behind this resolution stemmed from several factors. First, there was a growing awareness of the need for judicial transparency and accountability in the face of increasing public demand for a fair and impartial legal system. As Vietnam continued to integrate into the global economy and engage with international legal

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<sup>3</sup> Communist Party of Vietnam. (2002). Resolution No. 08-NQ/TW on a number of key tasks of judicial work in the coming time. Retrieved from <https://vbpl.vn/hanoi/Pages/vbpgen-toanvan.aspx?ItemID=10293>.

<sup>4</sup> Ky, V. M. (2018). The Vietnamese Criminal Justice: The Introduction of Adversarial Elements into the Inquisitorial System. *ALSA*, 97.

standards, the importance of aligning domestic legal practices with these standards became increasingly apparent. The resolution aimed to address these concerns by promoting a judicial environment where adversarial proceedings could flourish, thereby enhancing public trust in the legal system. Moreover, the resolution recognized that adversarial proceedings are not merely procedural formalities but are fundamental to the integrity of the judicial process.<sup>5</sup> By allowing both parties to present their cases, challenge evidence, and engage in meaningful dialogue, adversarial proceedings contribute to a more thorough examination of the facts and legal issues at hand. This, in turn, leads to more informed and just outcomes, reinforcing the rule of law and the protection of individual rights. In practical terms, the resolution called for specific measures to improve adversarial proceedings, including the training of judges and legal practitioners, the development of clearer procedural regulations, and the establishment of mechanisms to facilitate effective legal representation for all parties. These initiatives aimed to create a more comprehensive and progressive judicial system that not only meets the needs of contemporary society but also upholds the principles of fairness and justice.

The 2013 Constitution of Vietnam, Article 103, Clause 5, in alignment with the Party's resolutions, explicitly enshrines the principle of adversarial proceedings in adjudication, stating: "*The principle of adversarial proceedings in adjudication is ensured*".<sup>6</sup> This landmark provision marks the first time a legal document in Vietnam has formally recognized adversarial proceedings in litigation, establishing it as a fundamental procedural principle. The inclusion of adversarial proceedings in the Constitution is significant for several reasons. First, adversarial proceedings are essential for ensuring objectivity, fairness, and democracy within the judicial process. By allowing both parties to present their cases and challenge each other's arguments, the court can arrive at a more balanced and just outcome. This process not only enhances the integrity of the judicial system but also fosters public confidence in the rule of law.

Moreover, the accuracy and objectivity of court judgments and decisions hinge on the adversarial nature of the trial. When both parties are given the opportunity to advocate for their positions, the court is better equipped to evaluate the evidence and arguments presented, leading to more reliable and just outcomes. This dynamic is crucial in a legal

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<sup>5</sup> Trang, T. T. T., & Nhung, D. T. T. (2017). Court reform in Vietnam: Achievements and problems. *Social Sciences Information Review*, 11(2).

<sup>6</sup> Vietnamese Constitution (2013), Article 103, Clause 5.

system that aspires to uphold the principles of justice and equity. Additionally, the guarantee of adversarial proceedings serves to protect the rights and interests of all parties involved in litigation. It ensures that litigants are treated equally, both among themselves and in relation to state agencies.<sup>7</sup> This principle not only reinforces the notion of fairness in legal proceedings but also empowers individuals by affirming their right to a fair trial.

The 2014 Law on the Organization of the People's Courts further reinforces the commitment to adversarial proceedings in the Vietnamese judicial system by explicitly stating: "*The principle of adversarial proceedings in adjudication is ensured. The court is responsible for ensuring that litigants exercise their right to adversarial proceedings during adjudication. The implementation of the principle of adversarial proceedings in adjudication shall comply with procedural law.*"<sup>8</sup> This provision underscores the critical role of the court in facilitating a fair and balanced legal process. By mandating that courts actively ensure litigants can exercise their right to adversarial proceedings, the law places a significant responsibility on judicial authorities to uphold the integrity of the adjudication process. This proactive approach is essential for fostering an environment where both parties can present their cases fully and equitably, thereby enhancing the overall quality of justice. Moreover, the stipulation that the implementation of adversarial proceedings must comply with procedural law highlights the importance of established legal frameworks in guiding judicial conduct. Procedural law serves as the backbone of the legal system, providing the necessary guidelines and standards that govern how cases are managed and adjudicated. By adhering to these procedural norms, courts can ensure that the adversarial process is not only respected but also effectively integrated into the broader judicial framework. The emphasis on adversarial proceedings reflects a fundamental shift towards a more participatory and transparent legal system, where the rights of litigants are prioritized. This principle not only promotes fairness but also empowers individuals by ensuring that their voices are heard and their interests are represented in court. In this context, the law serves as a vital instrument for protecting the rights of citizens and reinforcing the rule of law in Vietnam.

The 2024 Law on the Organization of the People's Courts, which took effect on January 1, 2025, reaffirms the commitment to adversarial proceedings in the Vietnamese

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<sup>7</sup> Ly, P. T. (2022), "The principle of ensuring adversarial proceedings in adjudication as required by the 2013 Constitution." *Vietnam Integration Journal*, (261), p. 11.

<sup>8</sup> Article 13 of the 2014 Law on the Organization of the People's Courts.

judicial system by stating: “*The principle of adversarial proceedings in adjudication is ensured. The court is responsible for ensuring that judicial officers and litigants exercise their right to adversarial proceedings in accordance with the law.*”<sup>9</sup> This provision represents a significant reinforcement of the legal framework governing the conduct of judicial proceedings in Vietnam. By explicitly stating that the principle of adversarial proceedings is ensured, the law underscores the importance of a balanced and equitable legal process, where both parties have the opportunity to present their cases fully and contest the evidence and arguments of their opponents.

The law places a clear responsibility on the courts to facilitate this adversarial process, emphasizing that judicial officers must actively ensure that litigants can exercise their rights within the framework of the law. This proactive role of the court is crucial for maintaining the integrity of the judicial system, as it not only promotes fairness but also enhances public confidence in the legal process. By ensuring that both judicial officers and litigants are aware of and can exercise their rights, the law fosters a more participatory environment in which justice can be pursued effectively. Moreover, the emphasis on adherence to legal standards in the exercise of adversarial proceedings highlights the importance of procedural law as a guiding framework. This adherence ensures that the rights of all parties are protected and that the judicial process remains transparent and accountable. By integrating the principle of adversarial proceedings into the legal obligations of the court, the 2024 law aims to create a more robust judicial environment that prioritizes the rule of law and the protection of individual rights.

The 2024 Law on the Organization of the People’s Courts introduces notable modifications compared to its 2014 predecessor, reflecting an evolution in the legal framework governing judicial proceedings in Vietnam. One significant change is the rephrasing of the provision to emphasize the responsibility of judicial officers by stating, “*ensuring that judicial officers exercise their right to adversarial proceedings in accordance with the law.*” This adjustment underscores the critical role that judicial officers play in facilitating adversarial proceedings, highlighting their obligation to uphold the principles of fairness and equity in the courtroom. By explicitly including judicial officers in this provision, the law aims to reinforce their accountability and ensure that they actively promote an environment conducive to adversarial engagement.

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<sup>9</sup> Article 13 of the 2024 Law on the Organization of the People’s Courts.

Additionally, the 2024 law removes the phrase, “*The implementation of the principle of adversarial proceedings in adjudication shall comply with procedural law.*” This change may reflect a strategic decision to streamline the language and focus on the core responsibilities of the court and its officers. By eliminating this phrase, the law emphasizes the inherent expectation that all judicial actions must align with legal standards without explicitly stating it. This shift could also indicate a move towards a more integrated approach, where adherence to procedural law is seen as an implicit requirement rather than a separate stipulation. These changes collectively signify a commitment to enhancing the effectiveness of adversarial proceedings within the Vietnamese judicial system. By clarifying the roles and responsibilities of judicial officers and streamlining the language, the 2024 Law aims to foster a more dynamic and responsive legal environment. This evolution reflects an ongoing effort to strengthen the rule of law and ensure that the principles of justice are not only upheld but are also actively promoted by those within the judicial system.

To provide greater clarity on the principle of “*Ensuring adversarial proceedings in adjudication,*” the 2015 Civil Procedure Code explicitly delineates the responsibilities of the courts. It states that courts must ensure that litigants and their legal representatives are able to fully exercise their right to adversarial proceedings throughout all stages of the judicial process, including first-instance trials, appellate reviews, cassation, and retrials. This comprehensive approach underscores the judiciary's commitment to fostering a fair and equitable legal environment, where all parties have the opportunity to present their cases and challenge opposing arguments effectively. By emphasizing the courts' role in facilitating adversarial proceedings at every level, the Civil Procedure Code reinforces the foundational principles of justice and due process within the Vietnamese legal system.<sup>10</sup> Additionally, the procedures governing adversarial proceedings at trial are comprehensively outlined in Article 247 of the 2015 Civil Procedure Code.<sup>11</sup>

In contemporary society, despite the variations in judicial systems, whether they are based on common law, civil law, or a mixed approach, elements of adversarial proceedings are present to varying degrees across these procedural frameworks. This adversarial mechanism serves as an effective tool that enables courts to ascertain the objective truth of a case, resolve disputes accurately, uphold fairness, and safeguard the

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<sup>10</sup> Article 24 of the 2015 Civil Procedure Code.

<sup>11</sup> Article 247 of the 2015 Civil Procedure Code.

rights and interests of litigants.<sup>12</sup> By incorporating adversarial elements, legal systems enhance their ability to deliver just outcomes and maintain public confidence in the rule of law.

At trial, adversarial proceedings are defined as "*procedural activities conducted in court by both litigating parties to defend their arguments and refute the opposing party's claims, under the direction and decision-making of the court, which acts as an intermediary and arbitrator.*"<sup>13</sup> This definition is significant for several reasons, as it encapsulates the essence of the adversarial system and its role in promoting justice. Firstly, the definition highlights the active participation of both litigating parties in the judicial process. By emphasizing that each party is responsible for defending their arguments and challenging the claims of the opposing side, it underscores the fundamental principle of equality in litigation. This ensures that both sides have an opportunity to present their case fully, which is crucial for achieving a balanced and fair outcome. The adversarial nature of these proceedings fosters a competitive environment where the strengths and weaknesses of each party's arguments can be thoroughly examined, ultimately leading to a more informed and just decision by the court.

Secondly, the role of the court as an intermediary and arbitrator is pivotal in this definition. While the parties engage in their respective procedural activities, the court's function is to maintain order, ensure adherence to legal standards, and facilitate the fair exchange of information. This dual role of the court not only helps to prevent potential abuses of power by either party but also reinforces the integrity of the judicial process. By acting as an impartial adjudicator, the court ensures that the proceedings are conducted in a manner that upholds the rule of law and protects the rights of all participants. Furthermore, the definition reflects the broader significance of adversarial proceedings in the pursuit of truth and justice. The structured nature of these proceedings allows for a rigorous examination of evidence and arguments, which is essential for uncovering the objective truth of a case. In this way, adversarial proceedings serve as a mechanism for dispute resolution that prioritizes fairness and accountability, ultimately contributing to public confidence in the legal system.

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<sup>12</sup> Trinh, L. V. (2014). "Research on supplementing the principle of adversarial proceedings in the Civil Procedure Code." *Journal of Law Studies*, (4), p. 41.

<sup>13</sup> Institute of Legal Science, Ministry of Justice. (2006). *Legal Dictionary*. Encyclopedia Dictionary Publishing House & Judicial Publishing House, p. 807.

Another perspective characterizes adversarial proceedings as "*a procedural format in which parties collect and present evidence, argue based on legal grounds, and provide proof to defend their legitimate rights and interests.*"<sup>14</sup> This view emphasizes that the adversarial process commences with the initiation of legal action and concludes only when the case is lawfully resolved through a court judgment or decision. Throughout this process, the court functions as an impartial adjudicator, remaining independent from the parties involved and issuing rulings based on the case files and the outcomes of direct adversarial proceedings at trial.

This perspective is significant as it highlights the procedural dynamics of adversarial proceedings, emphasizing the active roles of the parties in gathering evidence and articulating their arguments. By framing the adversarial process in this manner, it underscores the importance of each party's responsibility to advocate for their rights and interests, which is a cornerstone of a fair judicial system. This active engagement not only empowers litigants but also enhances the overall quality of the judicial process, as it encourages thorough examination and debate over the evidence presented. Moreover, this interpretation of adversarial proceedings has implications for how legal provisions in Vietnam are understood and applied. Historically, Vietnamese legal frameworks have been influenced by civil law traditions, which often emphasize inquisitorial processes where the judge plays a more active role in investigating the facts of a case. The shift towards recognizing adversarial proceedings reflects a significant evolution in the legal landscape, aligning more closely with principles found in common law systems.

This perspective encourages a more nuanced understanding of the procedural rights of litigants, reinforcing the notion that they are not merely passive participants but active contributors to the pursuit of justice. It also suggests that the role of the court is not to direct the proceedings but to ensure that the process remains fair and impartial, allowing for a balanced presentation of evidence and arguments. In relation to previous legal provisions in Vietnam, this interpretation may lead to a more robust application of adversarial principles in practice. It encourages courts to adopt a more hands-off approach, allowing parties to take the lead in presenting their cases while ensuring that the court remains a neutral arbiter. This shift could enhance the effectiveness of the

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<sup>14</sup> Binh, T. H. (2014). "Improving the quality of adversarial proceedings in courts: A breakthrough solution for the People's Court to effectively fulfill its mission of protecting justice, human rights, and the legitimate rights and interests of organizations and individuals." *People's Court Journal*, (21), p. 3.

judicial process, promote greater transparency, and ultimately lead to more equitable outcomes.

From a linguistic standpoint, the term '*adversarial proceedings*' in Sino-Vietnamese is a fusion of the concepts of '*debate*' and '*litigation*'. These proceedings encompass litigation debates, where opposing parties with conflicting rights or interests seek resolution through court adjudication. To ensure a fair adjudicative process, the law empowers litigants with the right to initiate lawsuits, present evidence, and advocate for their positions in support of their claims.<sup>15</sup>

Furthermore, adversarial proceedings can be viewed as “*a series of procedural activities undertaken by litigants who possess equal rights to gather and present evidence, defend their arguments, and challenge opposing viewpoints. This dynamic process is designed to uncover the objective truth of a case, commencing with the initiation of legal action and culminating in a final, legally binding judgment or decision. Throughout this journey, litigants engage in a rigorous exchange of evidence, legal arguments, and reasoning before the court, all in accordance with civil procedural law.*”<sup>16</sup> This framework not only upholds the principles of fairness and justice but also empowers individuals to actively participate in the legal process, ensuring that their voices are heard and their rights are protected.

From a legal perspective, “*adversarial proceedings in civil litigation represent a structured framework of legal provisions that govern the actions of litigating parties. This includes the formulation of claims, responses to those claims, acceptance or rejection of requests, and the collection and presentation of documents, evidence, legal grounds, arguments, and debates. These activities unfold from the acceptance of a case through the various stages of trial, including both first-instance and appellate levels, culminating in a legally binding judgment or decision.*”<sup>17</sup> The significance of this legal framework lies in its role in promoting transparency and accountability within the judicial process. Courts are tasked with directing the adversarial process, ensuring that each party's right to a fair trial is upheld. By basing judgments on the outcomes of these adversarial proceedings, the legal system not only seeks to ascertain the truth but also reinforces the principles of justice and equity. Understanding this framework is essential for

<sup>15</sup> Trinh, L. V. (2014). *ibid.*, p. 42.

<sup>16</sup> Ly, P. T. (2022). *ibid.*, p. 11.

<sup>17</sup> Ha, P. T. T. (2023). *Adversarial proceedings in Vietnam's civil procedure*. Doctoral dissertation, Hanoi Law University, p. 39.

comprehending how legal disputes are resolved and how the rights of individuals are protected within the judicial system. Thus, it can be affirmed that in civil trials, adversarial proceedings play a vital and fundamental role in ensuring that court judgments are objective, transparent, and fair. Therefore, adherence to the principle of "*Ensuring adversarial proceedings in adjudication*" serves as a guiding principle that enhances the effectiveness and accuracy of case resolution while safeguarding the legitimate rights and interests of litigants in civil proceedings.

However, in civil procedure, besides adjudicating civil cases, there is also the resolution of civil matters, which are often considered to lack elements of dispute. The application of the principle of "*Ensuring adversarial proceedings in adjudication*" to the resolution of civil matters remains a legally contentious issue. According to the 2015 Civil Procedure Code, "*a civil matter is a case in which an agency, organization, or individual has no dispute but requests the Court to recognize or not recognize a legal event as the basis for establishing civil, marriage and family, business, commercial, or labor rights and obligations for themselves or for other agencies, organizations, or individuals; or requests the Court to recognize their civil, marriage and family, business, commercial, or labor rights...*"<sup>18</sup> From this definition, it is evident that civil matters only involve requests for resolving the rights and obligations of the parties without conflicts arising between them. However, in practice, disputes may still implicitly occur between the parties during the resolution of civil matters. This leads to ambiguity regarding the application of the principle of "*Ensuring adversarial proceedings in resolution*" to civil matters, raising the question of whether it should be applied and, if so, to what extent.

This article aims to analyze current legal provisions and practical applications to identify existing limitations. It employs comparative and legal analytical methods to propose solutions for improving procedural law in general and the resolution of civil matters in particular. The research not only contributes to clarifying theoretical issues but also plays a role in the ongoing reform of Vietnam's civil procedure law.

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<sup>18</sup> Article 361 of the 2015 Civil Procedure Code.

## 2 PRACTICAL LEGAL PROVISIONS ON COMPLIANCE WITH THE PRINCIPLE OF ENSURING ADVERSARIAL PROCEEDINGS IN THE RESOLUTION OF CIVIL MATTERS

Currently, the 2015 Civil Procedure Code lacks explicit provisions regarding the application of the principle of adversarial proceedings in civil matters. This ambiguity can lead to inconsistencies in the handling of civil cases, as the absence of clear guidelines may result in varying interpretations and applications of the law across different judicial levels and stages of civil proceedings, including first-instance, appellate, and cassation review. In practice, civil matters often involve complex conflicts that require careful consideration of the rights and interests of all parties involved. The principle of adversarial proceedings is fundamental to ensuring fairness and transparency in the judicial process, as it allows each party to present their case and challenge the evidence presented by the opposing side.<sup>19</sup> Without clear regulations, there is a risk that the adversarial nature of civil proceedings may be undermined, potentially leading to unjust outcomes and eroding public confidence in the legal system. The following case illustrates this issue:

*Mrs. S and Mr. H cohabited, held a wedding ceremony according to local customs, and registered their marriage at the People's Committee of Commune (now Ward) P, U City, Quang Ninh Province, on November 23, 1980. In April 1981, the couple moved to Hong Kong and later immigrated to Canada. In 2008, they returned to Vietnam and resided in a house in U City, Quang Ninh Province (household registration number 5002964xx dated November 3, 2014, household head: Pham Ba H; relationship with the household head: wife, Nguyen Thi S). During their marriage, they had three children: Mr. K, Ms. H1, and Ms. H2, all of whom currently reside in Canada.*

*Since 2011, when Mr. H had an extramarital affair with Ms. L, he and Mrs. S frequently had conflicts and disputes. Mrs. S was subjected to physical abuse and was expelled from their home by Mr. H, prompting her to travel to Canada to visit her children. A few months later, upon returning to Vietnam, Mrs. S found that Mr. H had moved Ms. L and their child into their marital home and refused to allow Mrs. S to enter, despite her appeals to local authorities for intervention. Mrs. S later discovered that Mr.*

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<sup>19</sup> Cavallini, C., & Cirillo, S. (2022). Reducing disparities in civil procedure systems: towards a global semi-adversarial model. *Fla. J. Int'l L.*, 34, 99.

*H and Ms. L had registered their marriage under Marriage Certificate No. 09, issued on April 17, 2017, by the People's Committee of M City, Quang Ninh Province. Consequently, Mrs. S requested the Quang Ninh Provincial People's Court to annul the unlawful marriage between Mr. H and Ms. L.*

*According to First-Instance Civil Matter Resolution Decision No. 01/2018/QĐDS-ST dated February 2, 2018, the Quang Ninh Provincial People's Court ruled in favor of annulling the unlawful marriage. However, in Appellate Decision No. 12/2019/QĐPT-DS dated September 18, 2019, the High People's Court in Hanoi rejected Mrs. S's request. Subsequently, on February 6, 2020, Mrs. S filed a petition for cassation review. On April 27, 2021, the Chief Justice of the Supreme People's Court issued Cassation Protest Decision No. 05/2021/KN-HNGĐ against the aforementioned appellate decision. During the hearing, the Judicial Council of the Supreme People's Court accepted the protest and issued a decision to annul the appellate decision of the High People's Court in Hanoi, reinstating the first-instance decision of the Quang Ninh Provincial People's Court<sup>20</sup>.*

The practical application of this case highlights several limitations in law enforcement and the protection of the legitimate rights and interests of the parties involved. These limitations include lack of clarity regarding the scope of application of the principle of ensuring adversarial proceedings in civil procedure; lack of consistency between legal provisions and judicial practice; limitations in ensuring the procedural rights of involved parties in the resolution of civil matters; and lack of objectivity, transparency, and fairness.

For the limitation of lack of clarity regarding the scope of application of the principle of '*ensuring adversarial proceedings in civil procedure*' is evident in the 2015 Civil procedure. This piece of legislation specifies that this principle applies exclusively to civil cases, which involve disputes between parties that require judicial resolution.<sup>21</sup> However, the Code does not clearly delineate whether this principle extends to civil matters, which may encompass a broader range of legal issues, including non-dispute

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<sup>20</sup> Supreme People's Court Judicial Council (2021). Cassation Decision No. 04/2021/HNGĐ-GĐT dated July 7, 2021, on the request for annulment of an unlawful marriage. Retrieved from <https://anle.toaan.gov.vn/webcenter/portal/anle/chitietnguonanle?dDocName=TAND199021> on March 15, 2025.

<sup>21</sup> Article 24 of the 2015 Civil Procedure Code

situations such as the administration of estates or the enforcement of legal rights.<sup>22</sup> This ambiguity creates difficulties in practice, as judges, adjudicating councils, litigants, and legal representatives may struggle to determine whether adherence to the principle of ensuring adversarial proceedings is required to uphold the procedural rights of litigants. These rights may pertain to the process in which the parties present, question, and debate each other's evidence during hearings to assess the objectivity, relevance, and legality of such evidence. Additionally, the parties engage in presenting and debating legal issues to evaluate the reasonableness of arguments and viewpoints. This process ultimately aids the judges and the adjudicating councils in making objective, accurate, and fair decisions when resolving civil matters.

Lack of consistency between legal provisions and judicial practice is also another major limitation in law enforcement and the protection of the legitimate rights and interests of the parties involved. According to the provisions of civil procedure law on the procedure for conducting a meeting to resolve civil matters under Article 369 of the 2015 Civil Procedure Code:

*"1. The meeting to resolve a civil matter shall be conducted in the following order:...*

*(c) The legal representative or the person protecting the legal rights and interests of the petitioner shall present specific issues requiring the court's resolution, including the reasons, objectives, and grounds for the request; (d) The legal representative or the person protecting the legal rights and interests of individuals with related rights and obligations, as well as such individuals themselves, shall present their opinions on issues related to their rights and obligations in resolving the civil matter;..."<sup>23</sup>*

The meeting procedure includes provisions for presenting specific issues, such as the purpose and basis for the court's resolution, followed by a review of documents and evidence by the judge or panel. However, this regulation falls short in addressing adversarial proceedings, as it does not encompass critical elements such as questioning,

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<sup>22</sup> The 2015 Civil Procedure Code, when stipulating adversarial proceedings, only refers to "trial," implying its application to civil cases. In contrast, for civil matters, the Code uses the term "resolution." As a result, although Article 361 of the 2015 Civil Procedure Code, regarding the Scope of Application of Provisions on the Resolution of Civil Matters, states that "In cases where this Part does not provide regulations, other provisions of this Code shall be applied to resolve civil matters," the use of different terminology, combined with the prevailing perception that civil matters do not involve disputes, can lead to the interpretation discussed in the analysis above.

<sup>23</sup> Article 369 of the 2015 Civil Procedure Code

evidence debate, legal arguments, and the legal perspectives of the parties involved in civil matters, contrasting sharply with the protocols established for civil case trials. This oversight may stem from the perception that civil matters are non-disputative, leading lawmakers to assume that simplified procedures without detailed regulations or strict adherence to adversarial principles would be adequate. However, this approach can result in significant errors in resolving civil cases. For instance, in the example mentioned, the appellate court failed to uphold the principle of adversarial proceedings by not thoroughly assessing the evidence or accurately and comprehensively evaluating the legal arguments presented by the parties involved.

Limitations in ensuring the procedural rights of involved parties in the resolution of civil matters are also evident in the law enforcement and the protection of the legitimate rights and interests of the parties involved. Although civil matters inherently do not involve direct disputes between parties, the rights and obligations of the involved parties must still be fully protected, especially in cases where disputes arise during the resolution process. The absence of specific procedural rights in civil matters may result in parties being unable to fully present their evidence and arguments or lacking the opportunity to challenge evidence and debate legal arguments during the proceedings. In the practical case of the civil matter "*Request for annulment of an illegal marriage*", the appellate court did not apply the principle of "*Ensuring adversarial proceedings in the resolution process.*" As a result, the requesting party may not have had the opportunity to fully present, question, or debate the evidence and legal arguments necessary to protect their legitimate rights and interests. This can lead to court decisions that do not fully consider the opinions of all parties, directly affecting the legal rights of those involved.

Finally, there is lack of objectivity, transparency, and fairness in the law enforcement and the protection of the legitimate rights and interests of the parties involved. In the resolution of civil matters, if the involved parties are not allowed to participate in presenting, questioning, and debating evidence, legal issues, arguments, and perspectives, the decision-making process may lack objectivity, transparency, and fairness. This negatively impacts public trust in the judiciary and the civil procedure system.

The above limitations indicate that to ensure consistency, objectivity, transparency, and fairness in resolving civil matters, it is necessary to amend and supplement the provisions of civil procedure law to clearly define the scope and extent of

applying the principle of ensuring adversarial proceedings in civil procedure. Doing so will not only protect the legitimate rights and interests of the involved parties but also strengthen public confidence in the judicial system.

### **3 RECOMMENDATIONS FOR STRENGTHENING ADVERSARIAL CIVIL JUSTICE**

To address the limitations in the current legal framework and enhance the effectiveness of law enforcement in resolving civil matters, specific amendments and supplements to the 2015 Civil Procedure Code are necessary. Below are some proposals and recommendations to improve the legal framework regarding the application of the principle of ensuring adversarial proceedings.

First, it is essential to amend and supplement the 2015 Civil Procedure Code to clearly define the specific cases in which the principle of ensuring adversarial proceedings should apply in civil matters. In situations where the rights and obligations of the involved parties are conflicting or may lead to potential disputes, this principle should be fully applied to ensure objectivity, transparency, and fairness. Specifically, Clause 3 should be added to Article 369 of the Civil Procedure Code:

Clause 3: *“In cases where there is a lack of consensus regarding the rights and obligations of the involved parties, the principle of ensuring adversarial proceedings must be followed in the resolution of civil matters.”*

Furthermore, to establish a consistent understanding of adversarial proceedings, Article 24 of the Civil Procedure Code should be amended. The title of Article 24 should be changed from *“Ensuring Adversarial Proceedings in Trials”* to *“Ensuring Adversarial Proceedings in Civil Procedure”*. The content of Article 24 should be revised and supplemented into two clauses: Clause 1 should focus on ensuring adversarial proceedings in civil trials, while Clause 2 should address ensuring adversarial proceedings in civil matters. The revised Article 24 should read as follows:

*“Article 24. Ensuring Adversarial Proceedings in Civil Procedure*

*1. Ensuring Adversarial Proceedings in Civil Trials:*

*a) Courts are responsible for ensuring that involved parties and their legal representatives exercise their procedural rights in first-instance trials, appellate trials, cassation, and retrial procedures as prescribed by this Code.*

*b) Involved parties and their legal representatives have the right to collect and submit documents and evidence from the moment the court accepts the civil case. They must also notify each other of the submitted documents and evidence, present arguments, and debate legal issues regarding evidence assessment and applicable law to protect their claims, rights, and legitimate interests or to refute the claims of others as stipulated by this Code.*

*c) During the trial process, all documents and evidence must be examined comprehensively, objectively, and publicly, except in cases where disclosure is prohibited under Clause 2, Article 109 of this Code. The court shall facilitate the presentation, questioning, and debate of unclear issues and base its judgment on the results of the debate.*

*2. Ensuring Adversarial Proceedings in the Resolution of Civil Matters: If a dispute arises in a civil matter, the resolution process must adhere to the same principles, procedures, and rights and obligations of involved parties as in civil trials”.*

Second, it is essential to enhance the role of judges in ensuring the procedural rights of the involved parties. Judges and judicial panels tasked with resolving civil matters should adopt a more proactive approach in applying the principle of ensuring adversarial proceedings to uphold the right of all parties to be heard. This can be institutionalized by mandating that courts conduct hearings with the participation of all relevant parties in civil cases. During these hearings, all parties should be permitted and required to present, question, and debate evidence, legal issues, legal arguments, and viewpoints to clarify the matters at hand.

Third, it is crucial to improve regulations that guarantee the participation rights of relevant parties in civil matters. To ensure that parties can fully exercise their procedural rights—including presenting arguments, submitting evidence, and engaging in cross-examinations and legal debates regarding their rights and legitimate interests—Clause 4 should be added to Article 369 of the Civil Procedure Code. This clause should state: "*Clause 4: When necessary for the proper resolution of a civil matter, the court must summon the involved parties to participate in the hearing to ensure compliance with the principle of ensuring adversarial proceedings in civil procedure.*"

Fourth, training and enhancing the competence and responsibility of judges, judicial panels, and legal representatives is vital. A key factor in effectively applying the principle of ensuring adversarial proceedings in civil matters is the training of judges and

legal representatives on how to organize presentations, questioning, and debates in cases where clear disputes exist. This training will empower involved parties to better protect their rights while enabling judges and judicial panels to make more objective, accurate, and fair decisions based on solid legal foundations and comprehensive evidence.

### 3 CONCLUSION

The proposals and recommendations outlined above are designed not only to enhance legal regulations but also to significantly improve the practical effectiveness of resolving civil disputes in Vietnamese courts. By fostering objectivity, transparency, and fairness, these reforms aim to better safeguard the legitimate rights and interests of all parties involved, thereby strengthening public trust in the judicial system. In light of our exploration of the 2015 Civil Procedure Code and its application of the adversarial principle, it is clear that addressing the identified limitations is essential for achieving a balanced and equitable legal framework. Our recommendations seek to bridge the gap between legal theory and practical reality, ensuring that adversarial proceedings are not merely a theoretical ideal but a lived experience in civil litigation. Ultimately, this work contributes to the ongoing reform of legal regulations and the refinement of civil litigation practices in Vietnam, promoting a justice system that is not only fair and transparent but also accessible to all. By implementing these changes, we aspire to create a judicial environment where justice is not only done but is also perceived to be done, thereby fostering a more just and efficient process for resolving civil disputes.

### REFERENCES

- Communist Party of Vietnam. 2002. "Resolution No. 08-NQ/TW on a Number of Key Tasks of Judicial Work in the Coming Time." Accessed [2 April, 2025]. <https://vbpl.vn/hanoi/Pages/vbpqen-toanvan.aspx?ItemID=10293>.
- Communist Party of Vietnam. 2005. "Resolution No. 49-NQ/TW on the Judicial Reform Strategy until 2020." June 2.
- Constitution of the Socialist Republic of Vietnam (2013).
- Law on Organization of People's Courts (2014).
- Law on Organization of People's Courts (2024) (Effective from January 1, 2025).

- Supreme People's Court Judicial Council. 2021. "Cassation Decision No. 04/2021/HNGĐ-GĐT on the Request for Annulment of an Unlawful Marriage." July 7. Accessed March 15, 2025. <https://anle.toaan.gov.vn/webcenter/portal/anle/chitietnguonanle?dDocName=TAN D199021>.
- Binh, T. H. 2014. "Enhancing the quality of adversarial proceedings in court: A breakthrough solution for the People's Court to effectively fulfill its mission of protecting justice, human rights, and legitimate rights and interests of individuals and organizations." *Journal of the People's Court*, (21).
- Cavallini, C., & Cirillo, S. 2022. "Reducing disparities in civil procedure systems: towards a global semi-adversarial model." *Fla. J. Int'l L.*, 34, 99.
- Ha, P. T. T. 2023. "Adversarial Proceedings in Vietnam's Civil Procedure (Doctoral dissertation)". *Hanoi Law University*.
- Ky, V. M. 2018. "The Vietnamese Criminal Justice: The Introduction of Adversarial Elements into the Inquisitorial System." *ALSA*, 97.
- Institute of Legal Science, Ministry of Justice. 2006. "Legal Dictionary." *Encyclopedia Publishing House & Judicial Publishing House*.
- Ly, P. T. 2022. "The principle of ensuring adversarial proceedings in trials as required by the 2013 Constitution." *Vietnam Integration Journal*, (261).
- Phe, H. 2016. "Vietnamese Dictionary." *Hong Duc Publishing House*.
- Sime, S. 2013. "A practical approach to civil procedure." *Oxford University Press*, USA.
- Trang, T. T. T., & Nhung, D. T. T. 2017. "Court reform in Vietnam: Achievements and problems." *Social Sciences Information Review*, 11(2).
- Trinh, L. V. 2014. "Research on supplementing the adversarial principle in the Civil Procedure Code." *Journal of Law Studies*, (4).

### Authors' Contribution

Both authors contributed equally to the development of this article.

### Data availability

All datasets relevant to this study's findings are fully available within the article.

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