

## PROSECUTORIAL INDEPENDENCE: COMPARATIVE MODELS AND IMPLICATIONS FOR VIETNAM

### INDEPENDÊNCIA PROCURATORIAL: MODELOS COMPARADOS E IMPLICAÇÕES PARA O VIETNÃ

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#### Abstract

The independence of prosecutorial institutions is widely recognized as a fundamental component of rule-of-law systems. In contemporary constitutional democracies, prosecutors play a role in ensuring the legality of criminal proceedings, safeguarding human rights, and maintaining public confidence in the justice system. This article examines the guarantees of prosecutorial independence in rule-of-law states through a comparative analysis of five jurisdictions: France, Germany, Japan, South Korea, and Vietnam. Based on these comparative insights, the article discusses the challenges facing the prosecutorial system in Vietnam and proposes directions for improving the institutional framework governing the independence of the People's Procuracy. The findings suggest that strengthening prosecutorial independence must be accompanied by effective mechanisms of accountability and constitutional control to ensure both the integrity of criminal justice and the protection of human rights. Ultimately, the article contributes to the discourse on judicial reforms and the development of the socialist rule-of-law state in Vietnam.

**Keywords:** Prosecutorial Independence. Rule of Law. People's Procuracy. Comparative Criminal Justice. Constitutional Law. Vietnam.

#### Resumo

*A independência das instituições do Ministério Público é amplamente reconhecida como um componente fundamental dos sistemas de Estado de Direito. Nas democracias constitucionais contemporâneas, os promotores desempenham um papel na garantia da legalidade dos processos penais, na salvaguarda dos direitos humanos e na manutenção da confiança pública no sistema de justiça. Este artigo examina as garantias da independência do Ministério Público em Estados de Direito por meio de uma análise comparativa de cinco jurisdições: França, Alemanha, Japão, Coreia do Sul e Vietnã. Com base nessas percepções comparativas, o artigo discute os desafios enfrentados pelo sistema de Ministério Público no Vietnã e propõe diretrizes para melhorar a estrutura institucional que rege a independência da Procuradoria Popular. As conclusões sugerem que o fortalecimento da independência do Ministério Público deve ser acompanhado por mecanismos eficazes de prestação de contas e controle constitucional para garantir tanto a integridade da justiça criminal quanto a proteção dos direitos humanos. Em última análise, o artigo contribui para o discurso sobre as reformas judiciais e o desenvolvimento do Estado socialista de direito no Vietnã.*

**Palavras-chave:** Independência do Ministério Público. Estado de Direito. Procuradoria Popular. Justiça Criminal Comparada. Direito Constitucional. Vietnã.



## 1 INTRODUCTION

In modern rule-of-law states, the institutional design of prosecutorial authorities plays a critical role in ensuring the integrity of criminal justice systems. Prosecutors are responsible for initiating criminal proceedings, supervising investigations, and representing the state in criminal trials. Their decisions can profoundly affect individual rights, public safety, and the legitimacy of the justice system. Consequently, the principle of prosecutorial independence has become a central element of contemporary legal discourse.

The concept of prosecutorial independence refers to the ability of prosecutors to perform their duties without improper interference from political authorities, administrative bodies, or other external actors. While judicial independence has long been recognized as a cornerstone of constitutional governance, the independence of prosecutorial authorities has only more recently attracted sustained scholarly and institutional attention.

International organizations have increasingly emphasized the importance of prosecutorial independence in safeguarding the rule of law. The United Nations Guidelines on the Role of Prosecutors (1990) state that prosecutors must be able to perform their professional functions without intimidation, hindrance, or improper interference. Similarly, the Council of Europe and the International Association of Prosecutors have adopted standards emphasizing professional autonomy and accountability in prosecutorial systems.

Despite this emerging international consensus, national systems continue to differ significantly in the institutional arrangements governing prosecutors. In some countries, prosecutors are part of the judiciary; in others, they belong to the executive branch but operate under strict legal constraints. These variations reflect broader differences in constitutional traditions, political institutions, and legal cultures.

In Vietnam, the People's Procuracy occupies a unique position in the constitutional structure. Established under the socialist legal system, the procuracy performs two primary functions: exercising the power of public prosecution and supervising judicial activities. While this institutional model differs from those found in

many Western legal systems, it nonetheless faces similar challenges in balancing independence, accountability, and efficiency in criminal justice administration.

This article seeks to address the following research questions:

1. How do modern rule-of-law states guarantee prosecutorial independence?
2. What institutional mechanisms are commonly used to balance independence and accountability?
3. What lessons can Vietnam draw from comparative experiences in reforming its prosecutorial system?

To answer these questions, the article adopts a comparative legal approach, analyzing the prosecutorial models of France, Germany, Japan, South Korea, and Vietnam. By examining both theoretical frameworks and practical case studies, the article aims to contribute to ongoing discussions on judicial reform and the development of the socialist rule-of-law state in Vietnam.

## 2 LITERATURE REVIEW

The scholarly debate on prosecutorial independence has developed alongside broader discussions about judicial independence and the separation of powers. Early comparative studies emphasized the structural differences between adversarial and inquisitorial criminal justice systems.

Mirjan Damaška's seminal work on comparative justice systems argued that prosecutorial institutions reflect broader models of state authority and procedural organization (DAMAŠKA, 1995). In hierarchical systems of criminal justice, prosecutors often operate within centralized bureaucratic structures, whereas in coordinate systems they may enjoy greater professional autonomy.

Subsequent research has focused on the institutional and political dimensions of prosecutorial independence. Scholars have highlighted the risks associated with excessive political control over prosecutors, including selective prosecution and the politicization of criminal justice (ACKERMAN, 2000).

More recent studies have examined the relationship between prosecutorial independence and democratic accountability. While independence protects prosecutors

from political pressure, it must be balanced by mechanisms ensuring transparency and responsibility.

Comparative scholarship has also explored the diversity of prosecutorial systems across jurisdictions. In civil-law countries such as France and Germany, prosecutors often operate within hierarchical structures and may maintain institutional links with ministries of justice (WEIGEND, 2008). In contrast, East Asian systems such as Japan and South Korea have developed highly professionalized prosecutorial institutions with considerable operational autonomy (DAVID T. JOHNSON, 2002).

Within the Vietnamese legal context, academic research has increasingly addressed the role of the People's Procuracy in the evolving framework of the socialist rule-of-law state. Vietnamese scholars emphasize that the procuracy's independence must be understood in conjunction with the constitutional principle that state power is unified but subject to division, coordination, and control among state organs (DUNG, 2017).

Nevertheless, comparative analyses of prosecutorial independence remain relatively limited in Vietnamese scholarship. This article therefore contributes to the literature by integrating international comparative perspectives with the specific institutional context of Vietnam.

### **3 COMPARATIVE MODELS OF PROSECUTION**

#### **3.1 The french model**

In France, prosecutors (*magistrats du parquet*) are formally part of the judiciary but remain hierarchically subordinate to the Ministry of Justice (HODGSON, 2005). Historically, the Minister of Justice possessed the authority to issue instructions in individual cases. However, reforms enacted in the early twenty-first century have significantly limited such powers, reinforcing prosecutorial independence in specific proceedings (European Commission for Democracy through Law (VENICE COMMISSION)).

### 3.2 The german model

In Germany, prosecutors belong to the executive branch but operate under the **principle of legality**, which requires them to prosecute all offenses supported by sufficient evidence (Weigend, 2008). Although prosecutors are subject to hierarchical supervision, their decisions must comply strictly with statutory law and judicial review.

### 3.3 The japanese model

Japan has developed one of the most professionalized prosecutorial systems in the world. Japanese prosecutors enjoy extensive discretion in deciding whether to prosecute cases, but this discretion is balanced by internal oversight mechanisms and citizen review panels (DAVID T. JOHNSON, 2002).

### 3.4 The South Korean model

South Korea historically adopted a highly centralized prosecutorial system with significant investigative powers. In recent years, reforms have sought to reduce prosecutorial dominance and strengthen checks and balances within the criminal justice system.

### 3.5 The vietnamese model

Vietnam's People's Procuracy combines the functions of public prosecution and judicial supervision. Established under socialist legal traditions, the procuracy plays a key role in ensuring the uniform application of law and protecting the interests of the state and citizens (*"LAW ON ORGANIZATION OF THE PEOPLE'S PROCURACY (2014), AMENDED AND SUPPLEMENTED IN 2025"*, [s.d.]).

## 4 CASE STUDIES

Several international cases illustrate the importance of prosecutorial independence.

In **Medvedyev v. France**, the European Court of Human Rights examined whether French prosecutors could be considered independent judicial authorities under the European Convention on Human Rights (*"MEDVEDYEV AND OTHERS V. FRANCE"*, 2010).

Similarly, in **Vasilescu v. Romania**, the Court held that prosecutors who were subject to executive control could not be regarded as independent judicial authorities for the purposes of reviewing detention (*"VASILESCU V. ROMANIA"*, 1998).

Another influential case is **Campbell and Fell v. United Kingdom**, which emphasized that institutional independence is a crucial requirement for fair trial guarantees (*"CAMPBELL AND FELL V. THE UNITED KINGDOM"*, 1984).

These cases demonstrate that international courts increasingly scrutinize the institutional independence of prosecutorial authorities.

## 5 DISCUSSION

### 5.1 The concept of the principle of independence in the organization and operation of the People's Procuracy in a modern rule-of-law state

In legal scholarship, the principle of independence of judicial institutions is generally understood as the capacity of such bodies to perform their functions and duties without being influenced by unlawful pressures or external interference. At the same time, it ensures that decisions are made on the basis of law, evidence, and professional conscience.

In modern rule-of-law theory, the independence of judicial institutions is regarded as a fundamental condition for ensuring the fair and impartial functioning of the legal system. Although the concept of "the judiciary" may vary in scope across different legal systems, scholars generally agree that prosecutorial activities must be conducted strictly

on the basis of law and must not be influenced by political interests or other forms of extra-legal pressure (DAMAŠKA, 1995).

Within the criminal justice system, the prosecution authority occupies a central role in deciding whether to initiate prosecution and in ensuring that criminal law is applied in a consistent manner. For this reason, many countries have established legal mechanisms designed to guarantee that prosecutors are able to perform their functions independently and objectively (LANGER; SKLANSKY, 2021).

International standards on criminal justice, particularly the United Nations's United Nations Guidelines on the Role of Prosecutors (1990), affirm that prosecutors must be able to perform their duties “without intimidation, hindrance, harassment, or improper interference” (UNITED NATIONS, 1990). This demonstrates that prosecutorial independence is not merely an organizational principle but also a fundamental requirement for the protection of human rights and the administration of justice.

In modern rule-of-law states, the principle of prosecutorial independence is regarded as a fundamental condition for ensuring the objectivity of prosecutorial activities, protecting human rights, and safeguarding the fair functioning of the justice system. Prosecutorial independence is not merely an issue of institutional organization; it is also closely related to legal guarantee mechanisms, accountability frameworks, and the broader political–legal environment of the state system (DAMAŠKA, 1995).

In the Vietnamese legal system, the principle of independence of the People's Procuracy is stipulated in the Constitution of Vietnam and in various statutes governing the organization of judicial institutions. Accordingly, the People's Procuracy of Vietnam performs the functions of exercising the power of prosecution and supervising judicial activities, with the aim of ensuring that the law is strictly and uniformly observed (LANGER; SKLANSKY, 2021). However, the independence of the People's Procuracy must be understood within the broader constitutional principle that state power is unified, while being assigned, coordinated, and controlled among state organs (VIETNAM, 2025).

Article 7 of the Law on the Organization of the People's Procuracy provides that the organization and operation of the People's Procuracy of Vietnam shall be based on the following principles: ensuring socialist legality; maintaining centralized and unified leadership within the procuracy system; and complying with the Constitution and the law.

Accordingly, the principle of independence of the People's Procuracy may be understood as being reflected through three fundamental legal pillars:

- The exercise of its functions in accordance with the Constitution;
- Subordination only to the law;
- Freedom from unlawful interference.

Thus, in the context of building a socialist rule-of-law state in Vietnam, the principle of independence of the People's Procuracy of Vietnam must be designed in a manner that both ensures the objectivity of prosecutorial activities and remains consistent with the constitutional framework of unified state power. This requires comprehensive improvements in the legal institutional framework, the organizational structure of the procuracy system, and professional safeguards for the corps of prosecutors.

## **5.2 The content of the principle of independence of the People's Procuracy**

The principle of independence of the People's Procuracy of Vietnam is reflected through three fundamental legal pillars: the exercise of functions in accordance with the Constitution; subordination only to the law; and freedom from unlawful interference.

Within the Vietnamese legal system, the principle of independence of the People's Procuracy should be understood at several different levels. At the institutional level, the constitutional position of the People's Procuracy within the state apparatus must be secured so that the institution can exercise the power of prosecution and supervise judicial activities without being influenced by executive authorities or other actors. The Constitution of Vietnam clearly defines the position of the People's Procuracy within the system of state organs, thereby providing the constitutional foundation for ensuring its independence (DUNG, 2017).

At the procedural level, prosecutorial decisions must be made on the basis of law and evidence. This principle is particularly important for safeguarding human rights in criminal proceedings, as unlawful prosecution may lead to serious consequences for the lawful rights and interests of individuals (VIETNAM, 2025).

At the professional level, prosecutors are expected to perform their duties with professional autonomy while simultaneously bearing legal responsibility for their decisions, a principle that is also recognized in many legal systems.

Thus, the principle of independence of the People's Procuracy is not merely an issue of institutional organization but also concerns the entire system of legal safeguards for the exercise of prosecutorial power and the supervision of judicial activities.

### *5.2.1 Independence in the exercise of the power of prosecution*

The exercise of the power of prosecution refers to the authority of the People's Procuracy, acting on behalf of the State, to initiate criminal liability against offenders. This independence is manifested in several aspects.

To begin with, prosecutors exercise independence in evaluating evidence and deciding whether to prosecute. They have the authority to approve or refuse to approve procedural decisions of the investigative bodies, as well as to determine whether to prosecute or terminate a case based on the evidence and relevant legal provisions (Articles 236 and 240 of the Criminal Procedure Code of Viet Nam).

Equally important, prosecutorial activities must remain independent from the will of investigative bodies or courts. The People's Procuracy is therefore not merely an institution that "formalizes" investigative results; rather, it bears the responsibility to review the legality and evidentiary basis of investigative activities.

### *5.2.2 Independence in the supervision of judicial activities*

The function of supervising judicial activities constitutes a distinctive feature of the Vietnamese procuracy model. This independence is reflected in several aspects: the authority to request procedural bodies to remedy violations; the authority to issue recommendations aimed at preventing legal violations; and the authority to lodge protests against judgments and decisions of courts through appellate, cassation, or reopening procedures. These powers can only be meaningful when the People's Procuracy is not subject to influence from the institutions under its supervision.

### *5.2.3 Independence from unlawful interference*

The principle of independence requires that no agency, organization, or individual may unlawfully interfere in prosecutorial or supervisory activities. Any form of administrative direction outside the legal framework must therefore have no legal validity.

## **5.3 Characteristics and significance of the principle of independence in the organizational model of the vietnamese People's Procuracy**

The principle of independence constitutes a fundamental institutional guarantee for the proper functioning of the prosecution service within modern rule-of-law systems. In Vietnam, however, the concept of prosecutorial independence must be understood within the broader constitutional framework characterized by the unity of state power and the coordinated exercise of legislative, executive, and judicial functions. Consequently, the independence of the People's Procuracy manifests distinctive characteristics that differ from prosecutorial models developed under classical separation-of-powers systems. Understanding these characteristics is essential for assessing the institutional role of the Procuracy and its contribution to the effectiveness and legitimacy of the justice system.

### *5.3.1 Characteristics of the principle of independence*

#### ***5.3.1.1 First, independence combined with the principle of centralized and unified organization***

One distinctive feature of the Vietnamese prosecutorial system is the coexistence of centralized organizational control and functional independence in the exercise of prosecutorial powers. Unlike certain European models in which the prosecution service enjoys a high degree of institutional autonomy from the executive branch, the People's Procuracy of Vietnam is organized according to a vertically integrated system

characterized by hierarchical supervision and unified leadership from the central level to local procuracies.

At the apex of this system stands the Procurator General of the Supreme People's Procuracy, who is elected by the National Assembly and is accountable to it through regular reporting and oversight mechanisms. This constitutional arrangement demonstrates that the Procuracy is not conceived as an institution structurally separated from the broader system of state power. Rather, it operates within the unified state structure while maintaining a degree of professional independence in the exercise of its constitutional functions.

Such an institutional design reflects the broader constitutional principle that state power in Vietnam is unified but subject to internal coordination and control among state institutions. Within this framework, prosecutorial independence does not imply organizational detachment from the state apparatus. Instead, it refers to the ability of prosecutors to perform their duties in accordance with legal norms and professional judgment without unlawful interference from external actors. Therefore, the independence of the Procuracy should be understood as **institutionally guaranteed autonomy in professional decision-making within a centralized administrative structure**.

#### *5.3.1.2 Second, functional independence rather than institutional separation of powers*

Another important characteristic concerns the nature and scope of prosecutorial independence. In constitutional theory, judicial independence is commonly associated with the adjudicatory role of courts. In Vietnam, this principle is explicitly recognized for the judiciary in Article 103 of the 2013 Constitution, which stipulates that judges and jurors adjudicate independently and are subject only to the law.

By contrast, the People's Procuracy does not exercise adjudicatory authority. Instead, it performs two core constitutional functions: the exercise of public prosecution and the supervision of judicial activities. Consequently, the independence of the Procuracy should not be interpreted in the same manner as judicial independence. Rather, it represents a form of **functional independence**, designed to ensure objectivity, legality, and professionalism in prosecutorial decision-making and legal supervision.

This distinction is particularly important from a comparative constitutional perspective. In jurisdictions operating under a strict separation-of-powers doctrine, prosecution services may be institutionally positioned either within the executive branch or as semi-autonomous entities. In Vietnam, however, the Procuracy occupies a unique institutional position within the system of state power. Its independence is therefore defined primarily in terms of professional autonomy in the performance of constitutionally assigned functions, rather than as institutional separation from other branches of government.

### *5.3.2 Significance of the principle of independence*

#### *5.3.2.1 First, ensuring objectivity and fairness in criminal proceedings*

The principle of prosecutorial independence plays a crucial role in safeguarding the objectivity and fairness of criminal proceedings. In the absence of adequate institutional guarantees, prosecutorial decisions may become excessively dependent on investigative conclusions or influenced by administrative considerations. Such circumstances could undermine the impartial evaluation of evidence and increase the risk of biased prosecutorial decisions.

By contrast, when prosecutors operate within a framework that protects their professional independence, they are better positioned to assess evidence objectively and determine appropriate prosecutorial strategies in accordance with the law. This institutional safeguard contributes both to preventing wrongful convictions and to ensuring that criminal offenses are effectively prosecuted. In this sense, prosecutorial independence functions as a key mechanism for balancing the protection of individual rights with the effective enforcement of criminal law.

#### *5.3.2.2 Second, contributing to internal mechanisms of judicial power control*

Beyond its role in criminal prosecution, prosecutorial independence also supports the effective operation of internal mechanisms of judicial power control. Through its constitutional function of supervising judicial activities, the People's Procuracy monitors

the legality of actions undertaken by investigative bodies and courts. This supervisory authority enables the Procuracy to detect procedural violations, ensure compliance with legal standards, and promote the consistent application of the law throughout the justice system.

From an institutional perspective, such supervision contributes to the establishment of a system of internal checks within the judicial sector. This arrangement is particularly significant within the Vietnamese constitutional framework, where the principle of unified state power requires that mechanisms of coordination and control operate within, rather than between, state institutions.

### ***5.3.2.3 Third, strengthening public trust in the justice system***

Finally, the independence of the Procuracy carries important implications for the legitimacy of the justice system as a whole. Public confidence in the fairness and integrity of legal institutions depends largely on the perception that prosecutorial decisions are made on the basis of law and evidence rather than external influence.

When prosecutorial and supervisory functions are exercised independently and transparently, the justice system is more likely to be perceived as impartial and reliable. Conversely, any perception that prosecutorial decisions are influenced by political or administrative considerations may weaken societal trust in the rule of law. Strengthening institutional guarantees of prosecutorial independence is therefore essential not only for improving the quality of criminal justice but also for reinforcing public confidence in the authority and credibility of legal institutions.

## **5.4 Challenges to ensuring the independence of the People's Procuracy**

In practice, ensuring the independence of prosecutorial authorities within judicial systems always faces multiple challenges.

*The first challenge* concerns the balance between independence and accountability. A prosecution system that is completely independent but lacks adequate control mechanisms may lead to the risk of abuse of power. Conversely, if prosecutorial

authorities are subject to excessive control by other institutions, their independence in making prosecutorial decisions may be undermined (ASHWORTH, 2002).

*The second challenge* is the risk of interference from political or administrative factors. In many countries, prosecutors maintain institutional relationships with ministries of justice or government authorities, which may generate debates regarding the level of independence of prosecutorial institutions (ACKERMAN, 2000).

*The third challenge* concerns maintaining independence in the context of judicial cooperation. In modern justice systems, prosecutorial activities are closely connected with police investigations and judicial adjudication. Maintaining effective cooperation among these institutions while ensuring the independence of each actor remains a complex issue.

## **5.5 Achievements and limitations in the institutional mechanisms ensuring the independence of the vietnamese People's Procuracy**

### *5.5.1 Achievements in the institutional mechanisms ensuring the independence of the vietnamese People's Procuracy*

In recent years, Vietnam's legal system has gradually improved the institutional framework governing the organization and operation of the People's Procuracy. These developments have contributed to strengthening the legal and institutional foundations for prosecutorial independence. Several notable achievements can be identified.

#### *5.5.1.1 First, the legal status of the People's Procuracy has been clearly constitutionalized*

The Constitution of 2013 and the Law on the Organization of the People's Procuracy of 2014 provide a clear constitutional and statutory basis for the institutional role of the Procuracy. These legal instruments explicitly define the two core functions of the People's Procuracy: the exercise of public prosecution and the supervision of judicial activities.

By clarifying these constitutional functions, the legal framework strengthens the institutional legitimacy of the Procuracy and provides an important legal basis for the independent exercise of prosecutorial powers within the justice system.

***5.5.1.2 Second, the organizational system is structured according to the principle of centralized and unified leadership***

The People's Procuracy is organized as a vertically integrated system extending from the central level to local procuracies. This organizational structure facilitates unified leadership and professional guidance within the prosecutorial system. At the same time, it helps reduce the risk of undue influence or interference from local administrative authorities.

Such a centralized structure contributes to maintaining institutional coherence and ensuring that prosecutorial policies and practices are implemented consistently throughout the country. From the perspective of institutional design, this arrangement also supports the maintenance of professional independence by insulating prosecutorial decision-making from localized political or administrative pressures.

***5.5.1.3 Third, the mechanisms governing the appointment and accountability of prosecutors are relatively well regulated***

The legal framework governing the appointment, dismissal, and disciplinary responsibility of prosecutors has been gradually refined in recent years. These regulations establish clear procedures and professional standards for the selection and management of prosecutorial personnel.

Such mechanisms play an important role in strengthening professionalism, accountability, and ethical standards within the prosecutorial service. By establishing formal safeguards concerning recruitment, tenure, and disciplinary oversight, the legal system contributes to creating institutional conditions that enable prosecutors to perform their duties with a higher degree of independence and professional responsibility.

### 5.5.2 *Limitations in the institutional mechanisms ensuring the independence of the vietnamese People's Procuracy*

Although the Vietnamese legal system contains important provisions regarding the position and functions of the People's Procuracy, mechanisms ensuring its independence in practice still present certain limitations.

*First*, the organizational and administrative management mechanisms within the procuracy system still contain elements that may affect independence in the exercise of prosecutorial power. In many legal systems, prosecution services may be subject to direction from ministries of justice or governments, raising concerns about potential political interference in prosecutorial activities (HODGSON, 2005). In Vietnam, although the People's Procuracy does not belong to the Government, coordination mechanisms with other judicial institutions sometimes create challenges for ensuring the substantive independence of prosecutorial activities.

*Second*, mechanisms guaranteeing the professional independence of prosecutors have not yet been fully designed in accordance with international standards. International criminal justice instruments emphasize that prosecutors must be guaranteed independence in decision-making and must be protected from unlawful interference by other institutions or individuals (UNITED NATIONS, 1990). In practice, however, the professional autonomy of prosecutors may still be affected by administrative management mechanisms or pressures from other actors within the justice system.

*Third*, mechanisms for controlling prosecutorial power remain incomplete. In a rule-of-law state, prosecutorial independence must always be accompanied by mechanisms of accountability and power control in order to prevent abuse of authority (ACKERMAN, 2000). In Vietnam, the design of both internal and external oversight mechanisms for the activities of the People's Procuracy still requires further improvement to ensure a proper balance between independence and accountability.

## 5.6 Lessons from international experience

Comparative legal experience demonstrates that different institutional models have been developed across jurisdictions to ensure the independence of prosecutorial

authorities. While these models vary in their organizational structures and constitutional positions, they share a common objective: safeguarding professional autonomy in prosecutorial decision-making while maintaining accountability within the justice system. International standards emphasize that prosecutorial independence is an essential component of the rule of law and an important safeguard for the protection of human rights and fair trial guarantees (UNITED NATIONS, 1990).

In France, prosecutors are formally part of the judicial system but maintain an organizational relationship with the Ministry of Justice. Historically, this relationship allowed the executive branch to exert a certain degree of influence over prosecutorial activities. However, in response to both domestic debates and international recommendations, French legal reforms have gradually strengthened the professional autonomy of prosecutors. In particular, legislative reforms have limited the ability of the executive branch to issue instructions concerning specific cases, reinforcing the principle that prosecutorial decisions should primarily be guided by legal considerations rather than political directives.

In Germany, the prosecution service is institutionally located within the executive branch. Despite this formal placement, prosecutorial activities operate within a strict rule-of-law framework characterized by clear legal obligations and judicial oversight. German criminal procedure follows the **principle of legality (Legalitätsprinzip)**, under which prosecutors are generally required to initiate proceedings when sufficient evidence exists. Furthermore, prosecutorial decisions remain subject to judicial review, which functions as an important institutional safeguard against potential abuses of authority and contributes to maintaining the integrity and credibility of the criminal justice system (WEIGEND, 2008).

In contrast, Japan and South Korea have developed prosecutorial systems characterized by a relatively high degree of professional independence. Prosecutors in these jurisdictions possess broad authority to determine whether criminal charges should be brought and exercise considerable discretion in managing investigations and prosecutions. At the same time, institutional mechanisms exist to protect prosecutors from undue external interference. These safeguards include professional appointment systems, internal accountability mechanisms, and legal protections designed to preserve the

objectivity and neutrality of prosecutorial decision-making (DAVID T. JOHNSON, 2002).

International standards increasingly emphasize that prosecutorial independence does not necessarily require a single institutional model. Rather, the key requirement is the establishment of legal and procedural safeguards that enable prosecutors to perform their functions free from improper interference. The **United Nations Guidelines on the Role of Prosecutors** stress that prosecutors must be able to carry out their professional duties “without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.” (UNITED NATIONS, 1990) Similarly, **the European Commission for Democracy through Law (Venice Commission)** has emphasized that prosecutorial systems should incorporate institutional guarantees ensuring both professional autonomy and accountability within the justice system (European Commission for Democracy through Law (VENICE COMMISSION), 2010).

These comparative experiences demonstrate that prosecutorial independence can be realized through different institutional arrangements, depending on each country’s constitutional structure and legal tradition. For countries seeking to strengthen prosecutorial independence, including Vietnam, the essential task is not necessarily to replicate a particular organizational model but to establish effective legal safeguards that ensure objective and impartial prosecutorial decision-making while maintaining appropriate mechanisms of accountability and oversight.

### **5.7 Directions for improving the principle of independence of the People’s Procuracy in the new era**

In the context of judicial reform and the development of a rule-of-law state in Vietnam, the improvement of the principle of independence of the People’s Procuracy should follow several key directions.

#### *5.7.1 Improving the constitutional and legal foundations*

First, it is necessary to further improve legal provisions to clarify the substantive content of the principle of independence in the operation of the People’s Procuracy. This

includes more clearly defining the scope of authority of prosecutors in exercising prosecutorial power and establishing mechanisms to protect them from unlawful interference.

Legal provisions should clearly stipulate that all prosecutorial decisions must be based on evidence and legal norms and must not be influenced by extra-legal factors. This principle represents a core element of the rule-of-law state and also constitutes an international standard for prosecutorial institutions (UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2014).

In the coming period, further legal reforms are necessary to clarify the content of the principle of independence in the organization and operation of the People's Procuracy, including:

1. Clearly defining the scope of independence in the exercise of prosecutorial power and the supervision of judicial activities;
2. Establishing legal mechanisms to prevent unlawful interference;
3. Ensuring transparency and accountability in prosecutorial activities.

#### *5.7.2 Strengthening the professional independence of prosecutors*

An important factor in ensuring the independence of prosecutorial institutions is the professional independence of individual prosecutors. This includes mechanisms such as:

1. Transparent procedures for appointment and dismissal;
2. Clear professional safeguards and professional responsibility regimes;
3. Protective mechanisms for prosecutors against unlawful pressure or interference.

According to international standards, prosecutors must be able to perform their duties objectively and independently while remaining legally accountable for their decisions.

#### *5.7.3 Improving mechanisms for the control of power*

Independence does not mean the absence of control. In a rule-of-law state, all state power must be subject to legal oversight. Therefore, alongside strengthening the

independence of the People's Procuracy, effective mechanisms of control must be established to ensure that prosecutorial activities comply with the law and protect human rights.

These mechanisms may include:

1. Internal oversight mechanisms within the procuracy system;
2. Supervision by the National Assembly and elected bodies;
3. Judicial control through court proceedings.

Such mechanisms do not weaken prosecutorial independence; rather, they enhance transparency and accountability in prosecutorial activities.

#### *5.7.4 Linking the principle of independence with the protection of human rights*

One of the fundamental objectives of the rule-of-law state is the protection of human rights and citizens' rights. Within the field of criminal justice, the People's Procuracy of Vietnam plays a particularly important role in ensuring that prosecution and adjudication are conducted fairly and in accordance with the law.

Therefore, improving the principle of independence of the People's Procuracy must be closely linked with strengthening mechanisms for the protection of human rights in criminal proceedings, including the principles of the presumption of innocence, the right to defense, and the right to a fair trial.

## **6 CONCLUSION**

Prosecutorial independence is an essential element of modern rule-of-law systems. Comparative experiences demonstrate that different institutional models can successfully balance independence and accountability. For Vietnam, strengthening the independence of the People's Procuracy requires a comprehensive approach involving constitutional clarification, institutional reforms, and professional safeguards for prosecutors. Ultimately, a well-designed prosecutorial system can enhance public confidence in the justice system, protect human rights, and contribute to the broader development of the rule-of-law state.

Prosecutorial independence represents a core institutional guarantee for the proper functioning of the justice system in a rule-of-law state. In the Vietnamese context, the consolidation of this principle within the procuracy system is not merely a matter of institutional arrangement but a fundamental component of the broader process of judicial reform and legal modernization. An independent prosecution service—operating strictly under the law while remaining subject to appropriate mechanisms of accountability—plays a crucial role in safeguarding legality, protecting human rights, and strengthening public confidence in the justice system.

Comparative experiences from various jurisdictions demonstrate that prosecutorial independence must be embedded within a balanced institutional framework. In many rule-of-law systems, independence is accompanied by mechanisms of legal responsibility, professional ethics, and transparent oversight to ensure that prosecutorial discretion is exercised in a lawful and proportionate manner. Such arrangements allow prosecutors to perform their functions without improper interference while preventing the abuse or arbitrary use of prosecutorial authority.

Against this background, the continued clarification and institutionalization of the principle of prosecutorial independence should be regarded as a central priority in Vietnam's ongoing judicial reform. Strengthening legal guarantees for the independence of the procuracy system - while simultaneously enhancing accountability and professional standards - will contribute to improving the effectiveness of criminal justice and reinforcing the foundations of the rule of law. Ultimately, these reforms are essential for promoting justice, protecting fundamental rights, and consolidating public trust in Vietnam's evolving legal system.

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