

IN-DEPTH COMPARATIVE ANALYSIS OF THE PRINCIPLES OF LAW ON ADMINISTRATIVE PROCEDURES IN VIETNAM COMPARED WITH THAT IN EUROPEAN LAW

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ABSTRACT

The efficacy and integrity of judicial systems heavily rely on well-crafted administrative procedures, which serve as a framework to support the operational aspects of the judiciary, uphold justice principles, and maintain judicial integrity for a just society. This content analysis of qualitative research aims to analyze, compare and contrast the principles of the two administrative procedure laws, and to harmonize the two different systems of legal sanctions. Furthermore, this qualitative study used a structural approach of comparative law method and the most-similar and most-different systems design to make the systematic comparison and contrast between two legal normative instruments. By comparing the principles of administrative procedural laws of Vietnam and Europe, the research has revealed that while both regions share a commitment to principles such as lawfulness, fairness, and accountability, they differ in their approaches and implementation mechanisms. The comparison has highlighted the strengths and challenges of each legal system, providing a valuable model for policymakers and legal scholars, especially in developing countries like Vietnam, to improve the regulatory framework. The proposed legal framework of harmonising principles contributes to a deeper understanding of administrative procedural law and offers practical recommendations for enhancing the effectiveness and fairness of administrative processes.

Key words: *judicial systems, judicial integrity, just society, administrative procedure, framework.*

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1. INTRODUCTION

The judicial system is the backbone of a society's legal framework, essential for maintaining order, protecting rights, and resolving conflicts. Within this system, administrative procedures play a pivotal role, acting as the arteries through which the rule of law is applied, and justice is delivered to adjudicate disputes, interpret laws, and administer justice itself^{1,2,3}. Its critical role is to govern every aspect of its operation, from minor clerical tasks to the delivery of judgments. As cited in Soloviova⁴, administrative procedures are instrumental in managing the complex logistics that accompany legal proceedings, and they dictate how cases are filed, scheduled, and processed through various stages of the judiciary, reducing case backlogs. The standardized procedures help sort, prioritize, and dispose of cases efficiently⁵. In other words, efficient administrative procedures minimize delays, prevent procedural clutter, and promote quicker resolutions of disputes^{6,7,8,9}. As such, these processes save time and resources, and reduce the psychological and financial strain on the parties involved. In its essence, the core of administrative procedures is their role in safeguarding individuals' legal rights, ensuring that all parties in a dispute are treated fairly and impartially^{10,11}. Administrative procedures ensure that every individual or entity entering the judicial process is given a

¹ Anna, S.: The principles of administrative procedure and the EU Courts: an evolution in progress?, *Review of European Administrative Law*, 4(1) 2011, pp. 45-81.

² Andersson, S., Ekelund, H.: Promoting ethics management strategies in the public sector: rules, values, and inclusion in Sweden, *Administration & Society*, 54(6) 2021, pp. 1089-1116.

³ Siuciński, R.: Administrative procedure as a key factor in development of control over administrative power – a European perspective, *Juridical Tribune Volume*, 10(3) 2020, pp. 427-441.

⁴ Soloviova, O.: Some considerations on the principles of administrative procedure, *Problems of Legality*, (163) 2023, pp. 248-266.

⁵ Bui, V. L.: Factors affecting enterprise's satisfaction towards administrative procedure reform in Vietnam: Case of Thai Nguyen Province, Vietnam, *The International Journal of Business & Management*, 7(9) 2019, pp. 141-145.

⁶ Bastos, B. F.: Doctrinal methodology in EU administrative law: confronting the "Touch of Stateness", *German Law Journal*, 22(4) 2021, pp. 593-624.

⁷ della Cananea, G.: Administrative procedure in Europe, 2022.

⁸ Leino, P.: Efficiency, citizens and administrative culture. The politics of good administration in the EU, *European Public Law*, 20(4) 2014, pp. 681-710.

⁹ See opt. cit. 3.

¹⁰ See opt. cit. 1.

¹¹ Peters, B. G.: Administrative traditions: Understanding the roots of contemporary administrative behavior, *Oxford University Press*, 2021.

fair chance to present their case, they are also endowed with the right to be informed of charges or claims, the right to access legal representation, and the right to appeal decisions¹². Besides, administrative procedures enhance the accessibility of the judicial system. Guidelines that facilitate the participation of marginalized or disadvantaged groups, such as translation services or fee waivers, are necessary in ensuring that justice is truly accessible to all. Such procedures are integral in upholding the principle of fairness, which is central to the legitimacy and ethical foundation of judicial systems^{13,14}. When taking administrative procedures into account, great attention is paid to the transparency of the judicial process as it is important for maintaining public trust and confidence. Administrative procedures contribute significantly to this aspect by ensuring that all actions and decisions are recorded and made according to predefined rules. This transparency helps assure that judicial proceedings are conducted fairly and without undue influence, allowing the public to scrutinize and understand the workings of the judicial system and fostering an environment of accountability^{15,16,17}.

Notably, one of the primary functions of administrative procedures in the judicial system is to provide a standardized method for handling legal processes. These procedures make sure that from the initial filing of a case to its final resolution, every step follows a predetermined protocol. This standardization is crucial as it brings predictability to the legal process, allowing all participants, such as plaintiffs, defendants, or legal professionals, to understand the process and timelines involved clearly^{18,19,20}. Consequently, clearly outlined procedures provide essential guidance to lawyers and the public, helping them to navigate the judicial system effectively. Knowing what is expected at each step of the legal process reduces confusion and assists in preparing adequate legal representation, thereby reassuring the public that the laws shall be applied uni-

¹² García, E. A.: Administrative appeals in the European Union: towards a common model of administrative justice, *Administrative Law and Process*, 2(25) 2019, pp. 87-107.

¹³ See opt. cit. 2.

¹⁴ Falco, D. V.: The ideal type of European administrative procedure and the influences of national legal traditions, *Diritto pubblico comparato ed europeo*, 20(3) 2018, pp. 559-580.

¹⁵ Sever, T., Kovac, P.: EU principles as a guide for modelling timely administrative procedures in Slovenia and Croatia, *Netherlands Administrative Law Library*, 2016.

¹⁶ See opt. cit. 3.

¹⁷ See opt. cit. 4.

¹⁸ Carausan, V. M.: Towards an administrative procedure of the European Union: Issues and prospects, *Acta Universitatis Danubius. Administratio*, 8(2) 2016, pp. 79-90.

¹⁹ See opt. cit. 5.

²⁰ See opt. cit. 15.

formly to all. Like other sectors, judicial systems are not static, which requires administrative procedures in the judicial system to evolve in response to societal changes, technological advancements, and shifts in legal paradigms^{21,22,23,24}. Regular reviews and reforms of the administrative procedures ascertain that the system remains relevant and capable of addressing new challenges effectively. Current innovations in judicial administration constantly reshape how justice is administered, leading to more accessible and less costly judicial processes that accommodate the needs of a 21st-century society²⁵. Therefore, the continuous development and refinement of the administrative frameworks are essential for sustaining judicial integrity and promoting a just society.

Currently, the terms “global economy in the age of 4.0” have been commonly mentioned to indicate that a globalized economy requires a widely-acceptable legal unity²⁶. Different jurisdictions might conduct their judicial powers to meet their socio-politic economic development. So, the ununified polities sometimes lead to potential conflicts due to the inequivalent judicial competence, which poses challenges to harmonizing the diversity of legal frameworks into acceptable points²⁷. This can be achieved by comparing different legal frameworks to avoid potential judicial conflicts. When studying a well-established European administrative procedural framework, developing countries like Vietnam can adopt best practices that have been successful in enhancing efficiency, fairness, and transparency in administrative proceedings²⁸. This European framework can help modernize the Vietnamese legal system to satisfy contemporary stan-

²¹ See opt. cit. 1.

²² Barnes, J.: Three generations of administrative procedures, in: R. A., Peter, L. L., Emerson, B. (eds.): *Comparative Administrative Law* (pp. 302-318), Northampton: Edward Elgar Publishing, 2017.

²³ della Cananea, G.: The Development of Administrative Procedure Legislation, in: della Cananea, G. (ed.): *The Common Core of European Administrative Laws* (pp. 71-88), Leiden: Koninklijke Brill, 2023.

²⁴ Demchyk, N. et al.: Features of the development of administrative legal relations in European countries, *Lex Humana*, 15(2) 2023, pp 170-191.

²⁵ See opt. cit. 6.

²⁶ Ana, D., Tunjica, P.: Lack of one common administrative procedure? Is regulation on the EU administrative procedure necessary in the EU?, *Balkan Social Science Review*, 15(1) 2020, pp. 93-117.

²⁷ See opt. cit 6.

²⁸ Bradford, A.: *The Brussels effect: How the European Union rules the world*, New York: Oxford University Press, 2020.

dards and societal needs^{29,30,31}. European models often incorporate streamlined procedures that can help reduce bureaucracy, improve the efficiency of administrative processes, enhance transparency and accountability to reduce corruption and increase public trust in government institutions^{32,33}. Besides, European laws often emphasize the protection of individual rights and ensure fair treatment in administrative processes, which can help Vietnam strengthen its commitment to human rights and justice, making it easier for them to challenge unfair or illegal administrative decisions³⁴. Thus, aligning with European administrative procedural standards helps Vietnam harmonize its laws with global standards such as the ASEAN region or European countries regarding legal reciprocity and cooperation in cross-border legal matters and administrative assistance to strengthen Vietnam's bilateral and multilateral relations with those of its international partners^{35,36,37}. Comparative analysis encourages innovation and adaptation to global challenges, such as the digitalization of administrative processes and addressing new forms of administrative disputes, because learning from diverse legal systems helps build a more resilient and sustainable administrative and legal framework. Accordingly, comparing Vietnamese administrative procedural law with European counterparts provides a pathway for continuous improvement and adaptation to global standards, benefiting the legal system and society³⁸.

²⁹ Nghia, P. D., Ha, D. H.: The Soviet legacy and its impact on contemporary Vietnam, in: Fu, H. et al. (eds.): *Socialist Law in Socialist East Asia* (pp. 97-132), Cambridge: Cambridge University Press, 2018.

³⁰ Pham, T. H., Tong, T. P. T.: Solutions to enhance the effectiveness regarding the implementation of law on the right to access information on administrative procedure, *Vietnam Trade and Industry Review*, 23(9) 2020, pp. 36-41.

³¹ Phan, T. L. H.: Reforming law on administrative procedures towards a rule-of-law state in Vietnam, *Gdansk Journal of East Asian Studies*, (16) 2019, pp. 152-163.

³² Batalli, M., Fejzullahu, A.: Principles of good administration under the European Code of good administrative behavior, *Pécs journal of international and European law*, (1) 2018, pp. 26-35.

³³ Hofmann, H. C. H.: The research network on European Administrative Law's project on EU Administrative procedure – its concepts, approaches and results, *Review of European Administrative Law*, 7(2) 2014, pp. 45-64.

³⁴ The Organization for Economic Co-operation and Development (OECD): Administrative simplification in Viet Nam: supporting the competitiveness of the Vietnamese economy, *Cutting Red Tape*, OECD Publishing, 2011.

³⁵ See opt. cit. 5.

³⁶ See opt. cit. 34.

³⁷ See opt. cit. 31.

³⁸ Nguyen, V. Q.: Judicially Reviewable Administrative Actions: The development of Vietnamese administrative justice, *Law and Politics in Africa, Asia and Latin America*, 46(4) 2013, pp. 367-387.

Although Vietnam has become a member of the World Trade Organization (WTO) and other economic collaborations worldwide³⁹, there are yet studies to be conducted to compare and contrast the similarities and differences between the two judicial competencies relating to administrative procedural laws. This study aims to compare and contrast the two legal systems to help avoid potential conflicts in administrative procedure and propose a harmonized framework for both legal entities. The following questions are set forward to orient the research paths:

1. What are the similarities and differences of the two principles of administrative procedure laws?
2. What harmonized models should be followed to propose a common legislative framework?

The study results shall contribute an in-depth understanding and knowledge relating to the descriptive comparison between administrative and procedural laws for those who are concerned with doing business transactions or innovative policy reforms. More importantly, the findings of the research shall help law-makers in Vietnam to conduct administrative and legal reform thoroughly to integrate the globalized socio-economy comprehensively.

2. MATERIALS AND METHODS

This qualitative study employed a structural approach of comparative law, which was introduced by Samuel⁴⁰, and Hoecke⁴¹. The research used mainly two legal normative documents, namely the recommended principles of Law of Administrative Procedure of the European Union (2012/2024(INL)) and Law on Administrative Procedures in Vietnam, together with secondary quantitative data to generalize, reanalyze, compare and contrast the principles of the two aforementioned judicial instruments to provide referential frameworks. Furthermore, the most-similar and most-different systems design based on the theory cited by Anckar⁴² pointed out the systematic comparison and contrast between two legal normative instruments.

³⁹ Government targets to promote international economic integration, sustainable economy.

⁴⁰ Samuel, G.: *An introduction to Comparative Law Theory and Method*, Oxford: Hart Publishing, 2014.

⁴¹ Hoecke, V. M.: Methodology of comparative legal research, *Pravovedenie*, pp. 1-35, 2015.

⁴² Anckar, C.: The most-similar and most-different systems design in comparative policy analysis, in: Peters, B., Fontaine, G. (eds.): *Handbook of research methods and applications in comparative policy analysis* (pp. 33-48), Cheltenham: Edward Elgar Publishing, 2020.

3. DISCUSSION

3.1. BRIEF DEVELOPMENT OF ADMINISTRATIVE PROCEDURAL LAW IN VIETNAM AND THE EUROPEAN UNION

3.1.1. THE EUROPEAN UNION

The brief remark on the development of administrative procedure law in the EU is summarized from the previous studies, e.g.,^{43,44,45,46} to sketch a pathway of its evolution as follows. The process of modifying statutory laws in Europe has been a subject of interest since the beginning of the 19th century. In 1804, France established a formal system for its private law. However, the field of public law believed that the codification of administrative procedure needed to be revised. As a result, Spain and Austria enacted legislation that established limited regulations for administrative procedures in 1958 and 1925, respectively. Nevertheless, the efficacy of this legislation was compromised because every central department formulated its regulations, resulting in a chaotic set of restrictions. The Austrian codification of 1925 had a twofold impact on several States that were part of the former Habsburg Empire, which collapsed in 1918. Specifically, Czechoslovakia and Poland followed the new Austrian legislation in 1928, while Yugoslavia abandoned it in 1930. Furthermore, it indirectly impacted other legal systems, such as Italy, where legal experts progressively acknowledged the increasing significance of administrative procedure, which is separate from administrative activities and conclusions. After the Administrative Procedure Act (APA) was adopted in the USA in 1946, many European countries accepted the Austrian model and carried out comprehensive legislation on administrative processes. Yet, these nations did not adhere to the principles of liberal democracy. Spain implemented its new legislation in 1958 during the authoritarian rule of Francisco Franco. Hungary enacted comprehensive legislation on administrative processes in Central and Eastern Europe following the suppression of the nationwide revolution by the Soviet army in 1956. Accordingly, Poland promulgated comprehensive legislative reforms in response to the events in 1956. In the mid-1960s, liberal democracies like Norway (1967), Germany (1976), Denmark (1985), and Sweden (1986) reformed comprehensive administrative procedure laws. These Nordic countries legislated similar laws, showcasing shared aspects.

⁴³ Andrijauskaitė, A., Stelkens, U.: *Good Administration and the Council of Europe: Law, Principles, and Effectiveness*, Oxford: Oxford University Press, 2020.

⁴⁴ See opt. cit. 23.

⁴⁵ See opt. cit. 18.

⁴⁶ See opt. cit. 11.

However, the German codification significantly impacted other legal systems and sparked discussion in other countries, including Italy. The objectives of administrative procedural legislation might vary. The legislative objective is to bolster the safeguarding of individual rights, improve the effective execution of administrative responsibilities and authorities, and promote transparency and citizen engagement. These varying rationales have yielded distinct consequences in various circumstances. Before 1989, the legal systems of the UK, France, Italy, and the Netherlands, which have a long history of codification in private law, did not have administrative procedure legislation. Nonetheless, there was a significant change after 1990 when the “movement for administrative procedure legislation” became widespread across Europe. Particularly, Italy implemented its first APA in 1990, Portugal followed in 1991, the Netherlands joined in 1994, and Spain comprehensively reformed its APA in 1992. Afterwards, other European Member States introduced their APAs, including Finland (2003). After the collapse of socialist democracies, Central and Eastern European countries such as Lithuania (1999), Latvia and Estonia (2001), the Czech Republic (2004), and Bulgaria (2005) enacted APAs, often through institutional reforms. Hungary also established a new legislative framework in 2016. After Yugoslavia’s dissolution, all nations gained independence from the old federation that adopted APAs, with Ukraine and Moldova being the most recent countries to rectify general procedural principles. France recently recognized its ranks of the states approving general procedural norms (2015).

The principles of administrative procedure in the European Union incorporated in the primary EU legislation, including the Treaty on the Functioning of the European Union⁴⁷, the Principles of Public Administration⁴⁸ and the Charter of Fundamental Rights of the European Union⁴⁹, and the secondary legislation involving regulations and directives^{50,51}. Although the EU has been considering codifying its administrative procedures since 2012, it has yet to be put into force. The European Parliament has already called for the codification of this legislation at least two times so far⁵². Besides, ReNEUAL members⁵³

⁴⁷ Treaty on the Functioning of the European Union (EUR-Lex-12012E/TXT-EN).

⁴⁸ OECD, *The Principles of Public Administration*, OECD, 2017.

⁴⁹ Charter of Fundamental Rights of the European Union.

⁵⁰ Recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL)).

⁵¹ The ReNEUAL: *Draft Model Rules on EU Administrative Procedure*, 2014.

⁵² Law of Administrative Procedure of the EU.

⁵³ ReNEUAL comprises senior and junior scholars of national and EU administrative law from leading institutions throughout Europe and beyond.

argue that the 2016 Draft Model Rules⁵⁴ are most effectively designed using a method of ‘innovative codification’ and their novel concepts have been incorporated into many legal normative documents. Thus, it is time for the EU administration to address its procedural rights of citizens by officially codifying the comprehensive EU administrative procedure.

3.1.2. VIETNAM

Concerning the development of Administrative Procedure Law in Vietnam, it has basically gone through four historical periods generated from some previous studies, e.g.,^{55,56,57} as follows:

a) *The period from the birth of the Democratic Republic of Vietnam in 1945 to the liberation of the South and national reunification in 1975*

After the birth of the Democratic Republic of Vietnam on September 2, 1945, Vietnam went through a fierce period of struggle for national liberation that lasted for the next 30 years. During this period, the country was temporarily divided into two regions led by two political regimes. The North was led by the provisional government of the Democratic Republic of Vietnam, and the South was ruled by the government of the Republic of Vietnam. Due to the existence of two different political regimes, administrative adjudication activities also had different developments; however, administrative adjudication activities had yet to be standardized and specifically legalized (Ha, 2021).

b) *The post-liberation period – the transitional period of building and developing the country toward the socialist orientation from 1975 to 1995*

Right after the country’s reunification in 1975, Vietnam was heavily impacted by the legal ideology of the Soviet Union, which did not support the establishment of an independent administrative judicial model⁵⁸. Therefore, for a long time in Vietnam, an administrative adjudication model was not established, but the settlement of administrative disputes was still under the control of the judicial court system. During this period, administrative activities were scattered and regulated by chaotic provisions in different legal documents. They did not conform to any general principle recognizing administrative adjudication activities as an independent institution under a broad legal framework regulated by the Civil Procedure Code.

⁵⁴ See opt. cit. 52.

⁵⁵ See opt. cit. 29.

⁵⁶ See opt. cit. 38.

⁵⁷ See opt. cit. 31.

⁵⁸ See opt. cit. 29.

c) *Vietnam's administrative adjudication activities during the 1996-2010 period*

Vietnam enacted the first judicial review of administrative law in 1996, leading to the comprehensive development of substantive and procedural administrative law. Since July 1, 1996, the method of resolving administrative disputes at the People's Court had been officially in effect to endow the legal person's right to choose the method of resolving administrative disputes⁵⁹. If individuals' legitimate rights and interests were violated by the issuance of administrative decisions or the implementation of administrative activities by the competent entities in the state administrative management, they would resolve the issues at the administrative courts accordingly. Any party involved in administrative litigation had two options; they could choose either administrative courts or the self-control mechanism by a respective tribunal. In practice, the establishment of administrative courts had unique principles of organization and operation, following separate procedural proceedings, which was a strict guideline for protecting the legitimate rights and interests of organizations and individuals⁶⁰. However, the settlement of administrative cases was extremely complicated, stemming from the nature of administrative legal binding. It was necessary to continue to build and reform the organizational mechanisms so that the administrative courts could meet the requirements of fast societal changes in the integration of global socio-economy⁶¹.

d) *The period from 2010 to present*

The year 2010 marked a significant milestone in the completed institution of administrative adjudication. That is, the event that the Ordinance on procedures for settling administrative cases issued in 1996 (amended and supplemented in 1998 and 2006) was replaced by a document with the promulgation of the 2010 Law on Administrative Procedures⁶². Notably, the fifth promulgation of the Constitution of Vietnam in 2013⁶³ paid particular attention to recognizing, respecting, and ensuring human rights and civil rights.

⁵⁹ The Judicial Council of the Supreme People's Court: *Resolution 04/2016/NQ-HDTP on application of the Civil Procedure Code, the Law on Administrative Procedures on sending and receiving the lawsuit petitions, documents, evidence and issuing, serving and notifying procedural documents by electronic means.*

⁶⁰ *See opt. cit.* 5.

⁶¹ *See opt. cit.* 38.

⁶² Tran, V. D.: Vietnam's New Administrative Procedural Rules—An Analysis from Judicial Reform Perspective, *Chonnam National University Law Review*, 34(1) 2014, pp. 29-45.

⁶³ The National Assembly of Vietnam: The 2013 Constitution of the Socialist Republic of Vietnam.

It required the re-regulation of procedural normative documents (including administrative procedures) to be consistent. Consequently, along with some other procedural laws in 2015, the 2015 Law on Administrative Procedure was issued to replace the antecedent 2010 Law with more concrete regulations on settling administrative disputes at the People's Court. Currently, the Consolidated Text 30/VBHN-VPQH dated December 12, 2019⁶⁴ of the Law on Administrative Procedure is the latest administrative procedural law in effect. Similar to the previous versions of the law on administrative procedures, the consolidated law (2019)⁶⁵ included 23 Chapters and 372 Articles. In addition, its principles were presented as recitals in Chapter I General Provisions, not arranged in one separate article thereof.

3.2. COMPARISON OF KEY PRINCIPLES BETWEEN ADMINISTRATIVE PROCEDURAL LAW IN VIETNAM AND THE EUROPEAN UNION

With the far-reaching on-going global economy, the disparity in judicial systems could fade into insignificance because of the need for a common sense in collaboration. There have been many studies, e.g.,^{66,67,68} concerning the integration of the principles on EU administrative procedure law into the local law in common legal system, but there is no research that could provide insight into the harmonization of the principles between one law in Common law and another in Civil law. To propose a practical framework of harmonization for the purpose of regulatory reform and administrative simplification, the following comparative issues shall be taken into consideration.

Concerning the lawfulness, it is specified that the principle of lawfulness, often referred to as the rule of law, is a fundamental concept in legal and political theory that dictates that all actions undertaken by the government or any public authority must be based on and conform to established laws. It ensures that no individual, government entity, or institution is above the law, and that laws are applied equally, fairly, and consistently. The principle of lawfulness in Vietnam emphasizes strict adherence to the law, ensuring that administrative measures are conducted within the legal framework prescribed in Article 4⁶⁹.

⁶⁴ The Office of the National Assembly: Consolidated Text 30/VBHN-VPQH dated December 12, 2019 of the Law on administrative procedure.

⁶⁵ Ibid.

⁶⁶ See opt. cit. 2

⁶⁷ See opt. cit. 14

⁶⁸ See opt. cit. 15

⁶⁹ See opt. cit. 65.

This is somewhat equivalent to that in the recommended European principle⁷⁰. It stipulates that decisions made or actions conducted shall always be subject to the law and for the sake of the public interest, without any arbitrary or unlawful justifications, but this characterizes suggestive not mandatory point in policy making in Europe. Many studies^{71,72,73,74} emphasize that it is time for the principles of the European administrative procedure to be codified lawfully.

When considering the principle of proportionality, it serves as a check on the exercise of power by public authorities, ensuring that their actions are justified, appropriate, and not excessively restrictive. It is a key concept in various fields of law, particularly in administrative, constitutional, and international law, and it requires that any action taken by a public authority must not be more restrictive than necessary to achieve the desired objective. This principle ensures that there is a balance between the means used and the ends sought, preventing excessive or undue measures^{75,76,77}. In this aspect, in Vietnam, as set the 2015 administrative procedural law prescribes that the court shall determine the way to settle the disputes (Arts. 5 & 7⁷⁸). In contrast, the principle of proportionality in Europe⁷⁹ focuses on ensuring that administrative actions are proportionate to the objectives pursued, preventing excessive or arbitrary measures. Thus, both principles aim to ensure lawful and fair administration, they reflect different approaches to balancing state power and individual rights.

Another comparative principle is fairness and equality, which serve as essential guidelines for implementing administrative procedures in the context of administrative law. It is crucial for guaranteeing fair and non-discriminatory treatment of individuals and entities in their dealings with administrative authorities. Specially, fairness is the requirement for administrative authorities to act impartially and equitably when making decisions that impact the rights, obligations, or interests of individuals or entities. Equality refers to the principle that all individuals and entities are treated equally before the law, without

⁷⁰ European Parliament: Law of Administrative Procedure of the European Union (2012/2024(INL)).

⁷¹ *See opt. cit.* 22.

⁷² *See opt. cit.* 6.

⁷³ *See opt. cit.* 18.

⁷⁴ *See opt. cit.* 12.

⁷⁵ *See opt. cit.* 22.

⁷⁶ *See opt. cit.* 23.

⁷⁷ *See opt. cit.* 11.

⁷⁸ *See opt. cit.* 65.

⁷⁹ *See opt. cit.* 3.

discrimination based on race, gender, religion, nationality, or any other irrelevant factor⁸⁰. Fairness and equality are fundamental principles of administrative law in Vietnam, these are set out in Articles 14 & 17⁸¹. These principles mandate that administrative decisions be made impartially and without discrimination. In this aspect, Tran⁸² asserts that the Law on Administrative Procedures and other relevant legislation provide mechanisms to protect the rights of individuals and ensure that administrative actions are conducted fairly. It is imperative that the principle of fairness be respected as a fundamental legal principle, as it is essential in establishing an atmosphere of confidence and predictability in the relationships that exist between individuals and the administration. This feature has been reported in some previous studies^{83,84,85}. Consequently, this principle in Europe emphasizes equality, whereas the law of administrative procedures in Vietnam mainly focuses on fairness.

Regarding the matter of consistency, it is a principle in public administration governing decisions and actions to be conducted at the lowest practicable level of government or organization, and it is capable of solving the issue efficiently⁸⁶. This suggests that higher levels of government should only intervene when the objectives of an activity cannot be sufficiently realized by the lower levels, and, therefore, require coordination or support from a higher authority. In particular, subsidiarity is a key principle guiding the allocation of powers between the EU and its member states. It ensures that decisions are made at the most appropriate level, promoting efficiency and responsiveness in public administration⁸⁷. Besides, the principle of consistency is established in the TFEU⁸⁸ and guides the legislative and administrative actions of the EU. As a result, it emphasizes decision-making at the most appropriate level, promoting efficiency and responsiveness in European administrative law^{89,90,91}. In

⁸⁰ See opt. cit. 6.

⁸¹ See opt. cit. 65.

⁸² See opt. cit. 63.

⁸³ See opt. cit. 24.

⁸⁴ See opt. cit. 3.

⁸⁵ See opt. cit. 4.

⁸⁶ The Principles of Public Administration, OECD, 2017.

⁸⁷ See opt. cit. 32

⁸⁸ Treaty on the Functioning of the European Union (EUR-Lex-12012E/TXT-EN).

⁸⁹ See opt. cit. 6.

⁹⁰ See opt. cit. 32.

⁹¹ Friedery, R.: Good administration through the lens of the CJEU: Direction for the administrative bodies, *Bratislava Law Review*, 2(1) 2018, pp. 116-122.

Vietnam, the consistency is empowered by the State as set forth in Article 2(3)⁹² of the 2013 Constitution. As such, this principle in both legal systems develops the effectiveness and fairness of administrative actions, and it also addresses different aspects of public administration administering the two legislative mechanisms.

The principle of transparency in Europe aims to foster a culture of openness, where citizens can access information, understand decision-making processes, and hold public authorities accountable. Leino⁹³ claims that the principle is crucial for maintaining trust and legitimacy in the democratic process. This regulation is partially similar to the regulation in Vietnam as it is essential for promoting accountability and public trust in administrative processes by implementing a transparent policy. Nevertheless, the law on administrative procedure in Vietnam requires that administrative decisions and actions be made public, allowing citizens to access information and participate in decision-making processes⁹⁴. Moreover, these requirements are enforced precisely by the Law on Access to Information and the Anti-Corruption Law. Compared with European law, Vietnam law is more specific in this aspect⁹⁵.

With regard to the principle of efficiency in administrative procedure law, it emphasizes the importance of public administration conducting its operations in a manner that maximizes resource use, reduces waste, and ensures timely and effective decision-making^{96,97,98}. In Vietnam, this principle intends to enhance the overall performance and responsiveness of public authorities while maintaining fairness and transparency according to specific timeframes for various administrative procedures as stipulated in Articles 11-16⁹⁹. It is done to ensure that decisions are made without undue delay. Accordingly, this principle is thought to improve the efficiency of public administration and reduce bureaucratic delays. Whereas, in the context of the EU, it focuses on ensuring that public administration is conducted in a way that maximizes productivity, effectiveness, and quality of service delivery to citizens, so it is a cornerstone

⁹² See opt. cit. 12. Article 2(3) “*The State powers are unified and delegated to state bodies, which shall coordinate with and control one another in the exercise of the legislative, executive and judiciary powers.*”

⁹³ See opt. cit. 8.

⁹⁴ See opt. cit. 65. Arts 9, 10, 16, 18, & 20.

⁹⁵ See opt. cit. 30.

⁹⁶ See opt. cit. 44.

⁹⁷ See opt. cit. 15.

⁹⁸ See opt. cit. 3.

⁹⁹ See opt. cit. 65.

of good governance and aims to enhance trust in public institutions and to promote good governance. From the aforementioned contrastive point, this principle indicates that the steps to solve one administrative matter in Vietnam are fixed in compliance with the pre-determined timelines, while in Europe, the right to be heard ensures that individuals have the opportunity to present their case before an administrative decision is made.

The principle of respect for privacy in European administration is a fundamental aspect of ensuring that individuals' personal data and privacy rights are protected in all dealings with public authorities. In Europe, this principle sets out stringent rules on how personal data must be collected, processed, and stored by both public and private entities in accordance with Regulation (EC) No 45/2001¹⁰⁰. It maintains public trust and certifies that individuals' fundamental rights are protected. Moreover, this principle ensures transparency, implements strong security measures, and respects the rights of data subjects so that public authorities can uphold privacy standards and foster a culture of respect for personal data. However, this feature is not legalized and needs to be integrated into the principle of respect for privacy in the 2015 law. The Law on Data Privacy Protection, which has not been legislated, only Decree 13/2023/ND-CP on the protection of personal data¹⁰¹ is in effect currently, together with other relevant legislation, provide mechanisms for respect for privacy, including provisions for disciplinary actions and sanctions that have been enforced and handled with the utmost care.

Lastly, as for the principle of impartiality, it is considered a foundational concept that ensures fairness and justice in the actions and decisions of public authorities. This principle prescribes that administrative bodies, officials, and courts act without bias or favoritism when making decisions which affect individuals, businesses, or other entities. Impartiality is crucial in maintaining the legitimacy and trustworthiness of the administrative process, as it ensures that decisions are made based on objective criteria rather than personal interest, prejudice, or external influence. In Europe, this principle is a fundamental aspect that assures fairness and justice in the administrative decision-making process. It is also enshrined in various legal frameworks across European countries and is often emphasized in the jurisprudence of the European Court of Human Rights (ECHR)¹⁰² and the Court of Justice of the European Union

¹⁰⁰ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

¹⁰¹ Decree 13/2023/ND-CP on protection of personal data.

¹⁰² The European Court of Human Rights.

(CJEU)¹⁰³. In addition, it includes the right to challenge and request the recusal of a biased judge or decision-maker, the right to a fair hearing, and transparency in the administrative process. Similarly, the principle of impartiality in Vietnam stipulates that judges and courts must be unbiased and neutral when handling administrative cases. They should not have any personal interest in the outcome of the case and shall treat all parties equally, basing their decisions solely on the evidence and legal arguments presented (Arts. 13&14)¹⁰⁴. Furthermore, this principle grants procedural rights to parties, such as the right to be heard, the right to present evidence, and the right to appeal decisions¹⁰⁵. These rights are crucial for maintaining impartiality, as they regulate that all parties have a fair chance to participate in the procedure and challenge any biased decisions. In general, this principle in Vietnam is more specific than that in Europe.

3.3. PROPOSED HARMONIZED STEPS IN IMPROVING THE REGULATORY ADMINISTRATIVE FRAMEWORK

Administrative and legal reforms are essential for the growth and development of any nation, especially in developing countries like Vietnam. These reforms play a crucial role in enhancing governance, promoting economic development, ensuring social justice, and facilitating international cooperation. The necessity for such reforms in developing countries arises from many challenges these nations face, including corruption, inefficiency in public administration, inadequate legal frameworks, and lack of transparency and accountability. In many developing countries, bureaucracies are plagued by inefficiency, red tape, and a lack of responsiveness. Reforms can streamline administrative processes, reduce unnecessary bureaucracy, and improve service delivery. This is particularly important in sectors such as health, education, and infrastructure, where efficient administration can significantly impact citizens' quality of life. Besides, administrative reforms can help combat corruption by promoting transparency, accountability, and ethical behavior among public officials. Measures such as the establishment of anti-corruption agencies, the implementation of e-governance systems, and the strengthening of internal controls can reduce opportunities for corrupt practices. Decentralization is a key aspect of administrative reforms, involving the transfer of authority and resources from central to local governments. This can lead to more responsive and accountable governance, as local authorities are often better positioned to

¹⁰³ Court of Justice of the European Union (CJEU).

¹⁰⁴ *See opt. cit.* 65.

¹⁰⁵ *Ibid.*

understand and address the specific needs of their communities. Decentralization can also promote political stability and social cohesion by empowering local populations and reducing regional disparities. Thus, comprehensive legal reforms can strengthen legal frameworks, ensure the independence and impartiality of the judiciary, and enhance the accessibility and fairness of the legal system. They shall address human rights and social justice by enacting and enforcing laws that protect the rights of marginalized groups, promote gender equality, and ensure access to justice for all citizens. Typically, legal reforms solve issues, such as intellectual property rights, labor laws, and environmental regulations, promoting sustainable and inclusive economic growth. Overall, the necessity of administrative and legal reforms in developing countries is essential for creating efficient, transparent, and accountable systems of governance that can respond to the needs and aspirations of citizens. In other words, the legal reforms help renovate governance, promote economic development, protect human rights, and ensure social justice to achieve sustainable and inclusive growth, ensuring a better quality of life for all citizens.

The choice of model for harmonizing different legislative systems depends on various factors, including the desired level of harmonization, the legal traditions of the countries involved, political considerations, and the specific legal areas targeted for harmonization. In reality, the harmonization model seeks to align laws across different legal systems by modifying existing laws to achieve consistency in key areas while allowing for national variations. The laws in each jurisdiction retain their unique characteristics but are adjusted to ensure compatibility and coherence with one another. The proposed template for harmonizing the general principles of EU Administrative Procedural Law with Law on Administrative Procedures in Vietnam is based on the OECD's conceptual framework for regulatory quality developed by the OECD organization¹⁰⁶. There are six stages for conducting the harmonization model as follows.

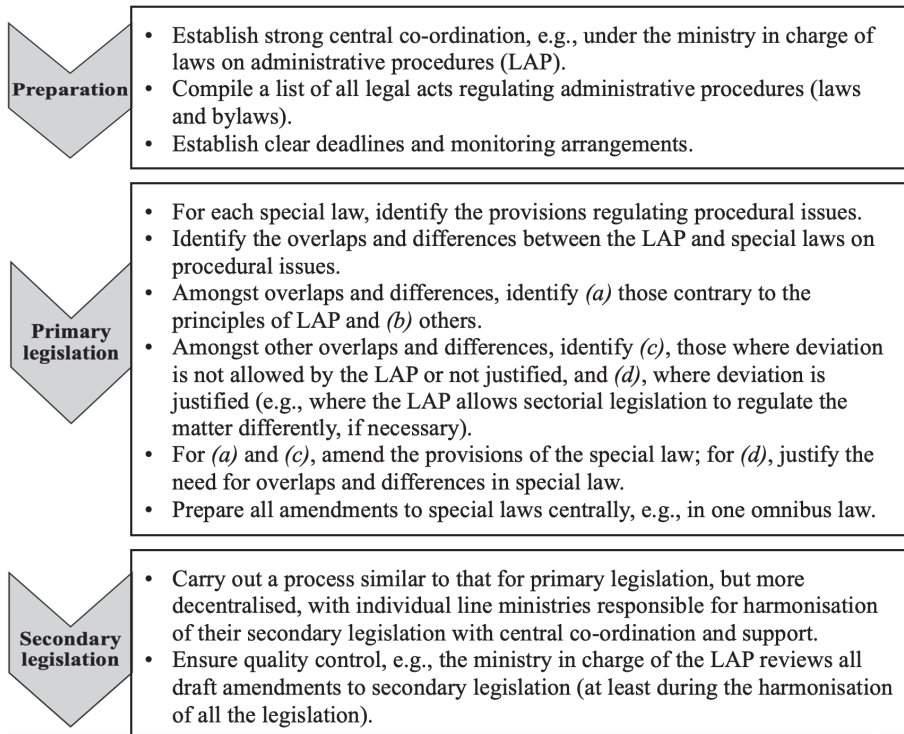
Step 1. Comprehensive Legal Analysis Preparation

Lawmakers must first determine specific parts of administrative law that need to be reformed. This could include rule-making processes, administrative adjudication, enforcement procedures, transparency measures, and public participation protocols. Therefore, they have to establish clear, achievable goals. When setting good objectives, lawmakers shall enhance transparency and accountability in administrative processes, improve efficiency, reduce delays in administrative decision-making, and ensure fair and equitable treatment of individuals and businesses. Additionally, they can determine the extent of the reform – whether it is a comprehensive overhaul or targeted amendments – as

¹⁰⁶ The Organisation for Economic Co-operation and Development (OECD).

well as how to make administrative law more in line with international standards and best practices. Legal reformers need to know and fully grasp the core principles of EU Administrative Procedure Law, such as legality, proportionality, transparency, the right to be heard, reasoned decisions, and access to justice. Also, they have to compare and contrast these against the principles currently embedded in Vietnam’s Law on Administrative Procedures, such as lawfulness, transparency, fairness, timeliness, and participation. Furthermore, they shall conduct a comparative analysis to identify similarities and differences between the two legal frameworks. This involves understanding how each principle is applied and implemented within their respective jurisdictions. As such, they need to highlight areas where Vietnam’s administrative procedures align with EU principles and where they diverge. It is necessary to engage with legal experts, policymakers, administrative officials, and other relevant stakeholders from both Vietnam and the EU. This consultation process helps to gather insights, identify potential challenges, and ensure that the harmonization process considers the perspectives of all relevant parties (see Fig. 1).

Figure 1. Key steps for harmonizing all the legislation



Source: SIGMA Paper No. 62 (p. 62)

Step 2. Development of a Harmonization Strategy

In this step, lawmakers need to identify specific goals for the harmonization process, such as enhancing legal certainty, improving transparency, and ensuring fair administrative processes in Vietnam. These aims should be aligned with Vietnam's wider legal and administrative reform goals. Based on the comparative analysis, legislators shall prioritize the EU principles that should be adopted into Vietnam's administrative procedure law. They should concentrate on principles that give the most substantial advantages, such as openness and proportionality, and those that can be more effectively adapted to the Vietnamese legal system. After that, they should prepare draft amendments or new legal provisions incorporating the prioritized EU principles into Vietnam's Law on Administrative Procedures. Notably, these drafts must be consistent with Vietnam's legal system and current laws, which can include suggesting modifications to institutional structures to institutional frameworks to support the implementation of these principles.

Step 3. Legislative process and adoption

This phase is required to submit the preliminary legal reforms to the relevant governmental bodies, such as the Ministry of Justice and the National Assembly, to get their official support and approval. The designated group should collaborate closely to policymakers to address any concerns or challenges arising during the legislative process. To gather a comprehensive perspective, it is essential to include the general public and civil society in the consultation process. This measure guarantees the transparency of the proposed legislative adjustments and ensures that individuals comprehend the modifications and their implications. Therefore, it is important to use feedback from these consultations to scrutinize and refine the legal drafts before final submission. After the reforms have passed through the necessary legislative channels, it is time to adopt and enact the revised laws formally. It is necessary to lay out the schedule for the implementation and the precise modifications that shall take effect.

Step 4. Implementation and capacity building

To ensure that the revised law is implemented effectively, it is essential to develop and implement comprehensive training programs for administrative officials, judges, and other relevant personnel. This will ensure that they comprehend the legal requirements and how to apply them in practice. Training should concentrate on key areas such as proportionality, reasoned decisions, and the right to be heard. Likewise, it is compulsory to conduct public awareness campaigns to educate citizens and businesses about their rights under the new administrative procedures. To achieve this objective, the revised law must

be based on a variety of media channels, seminars, and educational materials to reach a wide audience. In addition, it is a must to strengthen or reform existing administrative institutions to support the implementation of harmonized procedures. This process may involve improving the infrastructure for record-keeping, enhancing communication channels, and ensuring that administrative bodies have the resources needed to comply with the new legal standards.

Step 5. Monitoring, evaluation, and continuous improvement

The efficacy of any new legal normative document is difficult to achieve in the absence of a monitoring mechanism. As a result, it is imperative to establish specialised bodies or mechanisms to oversee the implementation and effectiveness of the harmonized laws. These bodies should regularly assess whether administrative bodies adhere to the new procedures and principles. The new legislative law mandates that administrative bodies submit reporting requirements on a regular basis to ensure transparency and accountability in the implementation of the new regulations. These reports should be reviewed by oversight bodies, and the results should be disclosed to the public. In addition, it is imperative to implement a feedback mechanism that endows citizens, businesses, and other stakeholders to express concerns or offer recommendations regarding the new administrative procedures. The feedback should be carefully examined by lawmakers to make continuous improvements and adjustments to the legal framework. More importantly, it is essential to conduct regular evaluations of the harmonised laws to ascertain their continued effectiveness and relevance. New developments, emergent challenges, and any unintended consequences of the reforms should be given consideration during this review process. Based on the findings, legislators shall make necessary adjustments to further refine and improve the legal framework.

Step 6. International cooperation and knowledge sharing

Vietnamese legal reformers shall engage in continuous discussions with EU institutions and legal experts to ensure that Vietnam's administrative law remains in line with EU principles and best practices. To enable the exchange of information and the development of skills, it is necessary for them to participate in collaborative workshops, conferences, and study trips. Furthermore, legislators are recommended to examine how other nations, particularly those in South-east Asia, have aligned their administrative processes with EU principles. This would enable them to implement effective strategies and adapt successful methods from other jurisdictions. Legal reformers should actively cultivate collaboration with international organisations and legal professional collaborations to facilitate and bolster the harmonisation process. The legal assistance may include technical assistance, funding for capacity-building initiatives, and collaborative research projects.

By following these detailed key steps, Vietnam can successfully harmonize its administrative procedures with EU principles, leading to a more transparent, fair, and effective administrative law system.

4. CONCLUSION

Administrative law serves as a critical component of governance, establishing the framework within which public administration operates. The principles underpinning administrative procedural law ensure that administrative actions are conducted fairly, efficiently, and transparently. While the fundamental objectives of administrative law may be consistent globally, the principles and their implementation can vary significantly between jurisdictions. Administrative procedural law has evolved to support greater cross-border cooperation between governments and regulatory bodies. This cooperation is essential for tackling global issues such as tax evasion, environmental protection, and public health. Harmonized procedures facilitate information sharing, joint investigations, and coordinated enforcement actions, leading to more effective governance. The general principles of EU administrative procedure play a significant role in shaping administrative procedural laws through the EU and other countries in the world. They provide guidelines, standards, and technical assistance to countries, helping to align their administrative procedures with global norms. This influence ensures that countries adopt practices that are conducive to international cooperation and economic development. These principles promote regulatory convergence and the concept of mutual recognition, where countries acknowledge and accept each other's regulatory standards and administrative decisions. Moreover, they also influence policy-making in administrative procedural law for developing countries by exposing policymakers to diverse perspectives and practices from one well-established administrative law system. This exposure can lead to the adoption of innovative approaches and reforms that improve administrative efficiency and effectiveness. Policymakers from developing countries can learn from the successes and challenges faced by other developed nations, leading to more informed and effective governance. In order to ensure that the principles of EU administrative procedure law are incorporated into another one, it is necessary to use a structured approach that aligns with EU standards while also taking into account the local legal framework.

Regulatory reform programs in many developing nations have placed a significant emphasis on administrative simplification for recent decades. Now that governments are looking for methods to re-boost economic development, the significance of this issue is much more apparent than it was before. Over the last several years, the Socialist Republic of Vietnam has seen remarkable

advancements in the realm of administrative and legal reform. These advancements have been achieved via the implementation of policies, the development of capabilities, and the training of civil servants in order to enhance the quality of regulation. As is the case in a great number of nations, administrative simplification has already made significant contributions to the enhancement of public governance and regulatory quality, as well as to the stimulation of competitiveness and equitable development. To improve the effectiveness, efficiency and transparency of regulatory systems, regulatory reform and international regulatory co-operation promote administrative simplification in developing countries like Vietnam. In reality, the principles of administrative procedures in Vietnam and the European Union reflect different legal traditions and levels of development. While the principles of European administrative procedural law are listed in the recitals thereof, these principles in Vietnam are implicitly provided in Chapter I General Provisions. Although both systems emphasize legality, transparency, and accountability, the EU's approach is more mature, with well-established mechanisms for public participation, proportionality, and legal certainty. Vietnam is gradually aligning its administrative procedures with international standards, but challenges remain in terms of implementation and enforcement. The EU's legal framework provides a more robust system for protecting individual rights and ensuring that administrative actions are fair, reasonable, and transparent.

To improve the regulatory framework, harmonizing EU administrative procedure law principles with Vietnam's law on administrative procedures can enhance legal certainty, transparency, and efficiency in administrative processes. By adopting best practices from the EU and tailoring them to the local context, Vietnam can improve its administrative procedures, benefiting both citizens and businesses. This harmonization process requires careful planning, collaboration, and commitment to achieving the desired outcomes. Consequently, this reform requires developing a legislative and policy framework incorporating harmonized principles, ensuring consistency and coherence in administrative procedures. Based on a detailed comparative analysis of EU administrative procedure principles and Vietnam's administrative laws, the study proposed to choose the OECD's conceptual framework for regulatory quality for legal reforms and adaptations in Vietnam's administrative procedure laws to align with EU principles. The OECD's conceptual framework includes six steps for harmonized principles, and this suggestive regulatory reform shall enable Vietnam to maintain its expected high levels of growth in the market and remain competitive in the age of global integration. Accordingly, the government needs these transformations to enhance infrastructure, improve productivity, attract investment, and sustain rapid growth.

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