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**LABOUR AMIDST GLOBALIZATION:
A TEXTUAL COMPARISON OF VIETNAMESE AND
GERMAN TRADE UNION LAWS**

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Illustration: FES / Ole; Kawin Tadtiam

Introduction

On the 1st of August 2020, the EU-Vietnam Free Trade Agreement (EVFTA) entered into force since its ratification by the European Commission 6 months before.¹ It marks the second FTA the EU has signed with a Southeast Asian country after Singapore and the most comprehensive agreement so far between the EU and a developing country. The act signifies another step of Vietnam not only into the global market economy, but also into the international labour regime and standards since its historic 1986 'Renovation' reforms that opened the country.² Beyond promises of mutual economic prosperity, questions of labour protections are raised as any free trade agreement comes with possibilities of labour abuses—especially important given the EU's preponderance for human rights and rule of law. It is likely no coincidence that the National Assembly of Vietnam adopted a new Labour Code in the same year in November, with key changes on strikes and union organization provisions.

With upcoming initiatives for economic rebound in a post-pandemic Europe and Vietnam, an examination of existing trade union landscape in Vietnam and effects of the new Labour Code, entered into force since 1st of January 2021, is in order. This article sets out to examine the degree to which Vietnam has adopted greater labour protections and harmonize industrial relations in its rapidly changing socialist-oriented market economy, through comparing its trade union and relevant laws with Germany, a core EU country. While it is intuitive to argue that Vietnam inherited much of its law from its once colonial authority, France, its revolutionary success rendered Vietnamese law today largely absent of genuine French influences. In a socialist state, there was no need for private law (nor labour law), since there were no private corporations and the state was the direct representation of the people.³ Vietnam had to start from scratch in much of its law; its labour law was only formulated in 1992, unquestionably prompted by its opening up of the economy since 1986. Germany emerges therein as a more comparable case, with its unification of East Germany, a socialist state, into West Germany of the Western bloc in 1990—not long after Vietnam opened its economy. The point of departure for comparison is that these instances—of East Germany to West Germany and Vietnam to world trade—both represent assimilations of socialist states to global capitalism with widespread consequences at around the same time. The relevance goes deeper than a surface parallel with Vietnam's unification in 1975: Germany and Vietnam hold more intimate ties in contemporary history, with both cooperating

¹ [EU-Vietnam Trade Agreement Enters into Force.](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1412) *European Commission*, 31 July 2020, available at ec.europa.eu/commission/presscorner/detail/en/ip_20_1412. Last accessed on 8 February 2021.

² [Viet Nam's Lawmakers to Pass Free Trade Deal with EU.](https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_746156/lang--en) *International Labour Organization*, 27 May 2020, available at [ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_746156/lang--en](https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_746156/lang--en). Last accessed on 8 February 2021.

³ Nghia, Pham Duy. "Confucianism and the conception of the law in Vietnam." *Asian socialism and legal change: The dynamics of Vietnamese and Chinese reform*, 2005, pp. 76-90.

on many different fronts, from economy, international relations, to policy and legal training.⁴ Within such historical and political contexts, a comparison of Vietnamese and German trade union laws is well-merited to chart a tentative path forward for Vietnamese labour relations, given the continued cooperation between the two countries.

Trade Union structures: Bottom-up in Germany and Top-down in Vietnam

Likely born in mind the life-altering effects of a fast-track and wholesale embrace of global capital, both countries adopted new Constitutions and laws, wherein the workers featured differently though prominently. Of interest, here is the German Basic Law that guarantees freedom of association,⁵ of choosing occupation, and prohibits forced labour.⁶ Such rights are featured in Vietnam not in its constitution, but its latest Labor Code in 2019.⁷ Workers are consecrated in its constitution, given its revolutionary history: State power belongs to the people—workers, peasantry, and the intelligentsia⁸—who are directly and permanently represented by the Vietnamese Communist Party (VCP),⁹ with one sole Trade Union constitutionally obligated to protect, monitor, participate, mobilize, educate, and develop all manners of working class interests.¹⁰ In both Germany and Vietnam, trade unions are regulated through laws and internal guidelines and mirror the verticality of their states' institution—federal in Germany, provincial in Vietnam.

Surprisingly, Germany has no consolidated Labour Code despite its civil law traditions, leaving workers' status and rights to be clarified through disparate legislations and jurisprudence. There is no specified trade union law in Germany, but influential to their organization is the Works Constitution Act adopted in 1972 which regulates employers-employees relationships.¹¹ The union landscape set forth by this Act is a dualist one, analogous to the German federal regime: While trade unions and employers are responsible for collective bargaining and key national legislations' lobbying, work councils, organized democratically by workers within individual firms or units, handle daily employees-employers relations.¹² Trade unions have no state funding, financed solely by their members through monthly subscription fee, set at generally 1% of gross monthly income by the umbrella German Trade Union Confederation (DGB) for 8 other sector-specific unions. Workers do not have to be trade union members

⁴ "Forty Years of German-Vietnamese Ties." *Deutscher Welle*, 27 March 2015, available at [dw.com/en/forty-years-of-german-vietnamese-ties/a-18345170](https://www.dw.com/en/forty-years-of-german-vietnamese-ties/a-18345170). Last accessed at 8 February, 2021. This article draws more from German *Stiftung* sources and generally does not find much literature on French-Vietnamese comparative law, beyond colonial history, in which labour law is entirely absent from the discussion.

⁵ Article 9, paragraph 3 of the German Basic Laws.

⁶ Article 12 of the German Basic Laws.

⁷ Article 3 of the Vietnamese Labor Code 2019 (2019 Viet LC).

⁸ Article 2, paragraph 2 of the 2013 Constitution of the Socialist Republic of Vietnam (SRV)

⁹ Article 4, paragraph 1 of the 2013 Constitution of the SRV

¹⁰ Article 10 of the 2013 Constitution of the SRV

¹¹ The Works Constitution Act (*Betriebsverfassungsgesetz, BetrVG*) amended in 2020 of the Federal Republic of Germany.

¹² Dribbusch, Heiner and Birke, Peter. "Trade Unions in Germany: Challenges in a Time of Transition." April 2019. *Friedrich Ebert Stiftung*

to be work councillors. Here, employers are forbid by the Act from reducing their wages to deter council activities; they have to enable and facilitate these councillors to work by providing proper resources (a room, Internet, etc.).¹³ Employee-employers relations are governed by a principle of codetermination and consultation, in which decisions are jointly discussed and agreed upon by employers and employees in most work life matters, from overtime, monitoring, to notification of fundamental change like closure or relocation of the plant.¹⁴ Conciliation boards, consisting of equal members from both sides and an external consultant, can be consulted when negotiations failed. When these measure fails, the labour court can be involved, and exceptionally the Federal and Constitutional courts.¹⁵

Vietnam, on the other hand, is much more top-down and heavy-handed with its Labour Code and Trade Union Law adopted in 2012. Workers' representation is monopolized by the Vietnam General Confederation of Labour (VGCL), whose structure and organization are determined by their internal decisions and guidelines.¹⁶ The VGCL develops its own agenda to satisfy its constitutional obligation to the workers under the leadership and purview of the VCP.¹⁷ Previous to 2019, the VGCL in the 2012 Labor Code has the sole prerogative to bargain at both enterprise or grassroots and sector level.¹⁸ Much like the prevailing governance structure, the VGCL devolves its central power to 63 provincial authorities, and from them to lower administrative divisions.¹⁹ Compared to the German unions, the VGCL is significantly more institutionalized with wide-ranging discretionary powers, owing to its state/party-affiliated and constitutional status, which lends it more legislative influences: It can participate in ensuring and monitoring labour protections,²⁰ can initiate and submit law or ordinance projects to the Vietnamese unicameral National Assembly (NA),²¹ its central and administrative presidents have the right to sit in meetings of the NA and relevant government agencies,²² and must be consulted by the government in drafting laws and policies directly relevant to its (working class) duties.²³ The VGCL is financed not only by its members, but also enterprises and the government as assistance allowances.²⁴ In this respect, the VGCL resembles a branch of the government, which is a mixed blessing: While the VGCL has direct access to critical political connections and state resources, it depends on the government to enact its mandate. Like the German case, a labour mediator can be involved if

¹³ Däubler, Wolfgang. "Industrial Actions in Germany-Realistic in an International Context?" (2015). pp.38-41.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Articles 5-7 of the 2012 Vietnamese Trade Union Law (2012 Viet TUL).

¹⁷ Article 1 of the 2012 Viet TUL.

¹⁸ Article 188 of the 2012 Vietnamese Labour Code (2012 Viet LC).

¹⁹ Article 7 of the 2020 VGCL Regulations.

²⁰ Article 11 of the 2012 Viet TUL.

²¹ Article 12 of the 2012 Viet TUL.

²² Article 13 of the 2012 Viet TUL.

²³ Article 21 of the 2012 Viet TUL.

²⁴ Article 26 of the 2012 Viet TUL.

negotiation breaks; and if the mediation fails, the People's Court can be, though with stringent time limits to receive request and reference, typically less than a week.²⁵ What differs here is the presence of the Chairman of the People's Committees (the executive of the corresponding administrative region) in all negotiations and to countersign agreements.²⁶

Unions and the Limited right to Strike

To an extent, both Vietnam and Germany have been successful in attracting union membership: Estimates show German union members standing at 7.7 million members (5.9 million of whom is in the GDB),²⁷ while Vietnamese VGCL members stand at 10.3 million members.²⁸ Yet while union density in both countries are high, cleavages exist along different lines for their respective unions. Perhaps due to the democratic and federal nature of German unions that hampers effective national lobbying, its union's collective bargaining coverage continues to decline (the minimum wage was introduced very late in 2017) and polarize the West-East Germany gap, with the East coming out more conservative politically and less well-off economically.²⁹ The VGCL, on the other hand, faces cleavages along the management line: While state-owned enterprises have significant VGCL membership, its presence in domestic private and foreign-own enterprises is minimal or even disregarded despite initiatives to expand therein.³⁰ At one point, the institutionalization becomes a disadvantage as it turns into bureaucratization and prevents VGCL from truly reaching and absorbing workers' complaints. The VGCL has a conflict of constitutionalized interests: To both guarantee workers' rights *and* increase productivity. Accounting for these issues requires some insight into how the unions mobilize—or *demobilizes*—the right and the capacity to strike. Clarifying this is particularly important, given that the right to strike is limited and unmentioned in both German and Vietnamese constitutions.

Unlike some of its European neighbours, strikes in Germany are only legal when the trade unions call for and organize them.³¹ The jurisprudence by both state and federal courts interprets strikes as the last resort, underlaid by the principle of proportionality and its interest in balancing the employers' interests.³² It is only when strikes are legal that the workers are protected from their employers' victimization; and even then workers lose their salaries proportional to the amount of time on strike. To avoid violating the law, workers have demonstrated before through less severe strategies of lockouts

²⁵ Article 200 to 208 of the 2012 Viet LC.

²⁶ Article 203 to 206 of the 2012 Viet LC.

²⁷ Dribbusch and Birke. "Trade Unions in Germany."

²⁸ Collins, Ngan, Shuang Ren, and Malcolm Warner. "The changing role of the state in industrial relations since Vietnam's reform." *Asia Pacific Journal of Human Resources* 58.3 (2020). pp. 450-468.

²⁹ XUAN HIEU, DONG et al. "Trade Unions in Transformation: Enhancing and Mobilizing Structural and Organisational Power to Better Protect the Rights and Interests of Workers in Vietnam." Friedrich Ebert Stiftung (2017)

³⁰ Collins, Ngan, Shuang Ren, and Malcolm Warner. "The changing role"

³¹ Däubler, Wolfgang. "Industrial Actions in Germany," pp. 44-48.

³² Ibid.

or go-slows to decrease productivity, which are recognized as 'industrial action' rather than strikes that completely stop productivity.³³ Civil servants, their wages decided by law, are forbidden to go on strike. What could be gleaned herein is a clear preference in mediatory and harmonizing relations and a general avoidance to disruptive actions, especially with the establishment of the work councils to absorb daily grievances. However, the rise of alternative unions not affiliated with the GDB, with specific demographics (airport or medical workers), demonstrates to a certain inflexibility to special workers and changing labour conditions in Germany.

The limited right to strike in Vietnam is incongruent with the reality of widespread wildcat strikes. Like Germany, strikes in Vietnam have to be permitted by authorities, but unlike Germany, there are overbearing hurdles on the road to permission: That only when the numerous and time-consuming options are exhausted, can strikes be authorized, which must be led by the party affiliated VGCL.³⁴ Despite their preference for mediation like Germany, their mediatory mechanisms are ineffectual. While VGCL internal rules prevent those who act on behalf of management, VGCL representatives have at times been implicated and influenced by management, resulting in a conflict of interest where they are disincentivized to promote or organize strikes.³⁵ There is another conflict of interest in mediation as well: One party in mediation is the regional or provincial executives, who benefit from drawing investment and approving regional development projects and thus often side with management, except for cases of clear and undeniable violations by employers or managers.³⁶ Resulting wildcat strikes are therefore mostly spontaneous and illegal, which can possibly spread to other firms' and provinces. However—perhaps an incidental virtue of the VGCL proximity to the government—these wildcat strikes tend to be responded quickly by state-sanctioned union and officials. Except for exceptional cases where escalating actors were criminalized, striking workers are largely compensated for their grievances and even time being strikes, while enterprises who created strike-prone conditions face reprimands and penalties. Indeed, before 2019, worker activism was the key motive for the Labour Code and Trade Union reforms.³⁷

Though these reforms were historically only band-aid to larger structural issues, the new Labour Code, adopted in November 2019 and in force since January 2021, represents new prospects for worker organization with the entirely novel introduction of 'worker representative organizations at the

³³ Ibid.

³⁴ Chi, Do Quynh, and Di van den Broek. "Wildcat strikes: A catalyst for union reform in Vietnam?." *Journal of Industrial Relations* 55.5 (2013): 783-799.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Clarke, Simon, and Tim Pringle. "Can party-led trade unions represent their members?." *Post-Communist Economies* 21.1 (2009): 85-101.

enterprise level' (WROs) in Chapter XIII. This new legal instrument will be discussed in the following section.

The Labour Code in 2021 and the WROs: Panacea or Aspirin?

Though the laws are too new with the trade union reforms still in discussion, a cursory glance at the modest Chapter of 8 articles gives off a striking resemblance with the German work councils. First, WROs are enterprise-level, grassroots organizations not affiliated with the trade unions and reserve the right to join them, upon which they would follow trade union laws and rules.³⁸ They must be registered with the corresponding authority, likely the executive at the corresponding administrative area (the procedures yet to be clarified);³⁹ in this regard they differ with the work councils concerned only with their employers. Second, heads of the WROs are elected by the labour collective,⁴⁰ and the WROs themselves can decide their own internal rules and finances,⁴¹ though the law leaves further details to governmental regulation and likely these will be scrutinized during the registration process. Third, WROs' members and heads are protected by law from management's victimization—deterrence, unilateral dismissal, wage discrimination, and obstruction of WRO's functions are forbidden.⁴² Fourth, WROs' heads are bound by law to the workers they represent, with their wages not deducted if they participate in WROs.⁴³ Employers have to approach the heads of WROs and reach a written agreement when unilaterally terminating the contract of their workers, reassigning or dismissing their workers.⁴⁴ Finally, WROs have the right to bargain and negotiate with—and must be consulted upon policy change by—their employers.⁴⁵

Will the WROs-VGCL take on the German dualist synergy? While posing a promising venue, it is too early to tell. Workers have compelling reasons to continue with wildcat strikes because these are met with more immediate responses, often to better favours than their German counterparts. There is however less flexibility than the German case, as workers can only choose to follow either WROs or VGCL rules and it remains unclear whether WROs can benefit from VGCL's institutionalized leverage. Arguably, allowing workers more independence means that they would have to take care of themselves more: WROs might counterintuitively slow down reforms as responsibility to improve working conditions is partially shifted to the workers, diluting the responsibility traditionally vested in the government and VGCL. Bottom-up organizing requires time, resources and experience, so the new

³⁸ Article 172 of 2019 Viet LC.

³⁹ Clarke and Pringle. "Can party-led trade unions represent their members?"

⁴⁰ Article 173 of the 2019 Viet LC.

⁴¹ Article 174 of the 2019 Viet LC.

⁴² Article 175 of the 2019 Viet LC.

⁴³ Article 176 of the 2019 Viet LC.

⁴⁴ Article 177 of the 2019 Viet LC.

⁴⁵ Article 178 of the 2019 Viet LC.

WROs might not show an immediate effect. Yet grounds can be laid for better WROs-VGCL synergy, in which WROs absorb local grievances while the VGCL represents interests better addressed provincially or nationally. If VGCL willingly cooperates, assists, and mobilizes workers to form WROs, the resulting synergy could be more effective than the German situation, where collective bargaining is in decline with gradually fracturing unions. Indeed, the VGCL has larger prerogatives than the German unions and at times more responsive, able to push for reforms such as an annually adjusted minimum wage. Given that Vietnam has ‘transplanted’ many progressive laws from the U.S. and Europe,⁴⁶ it is often enforcement, rather than legislation, that is more pertinent. Utilizing the WROs, in the end, likely requires endeavours that go beyond the realm of laws, such as education and information-sharing. The WROs is nonetheless a welcome addition to the workers’ arsenal to push for their interests, signalling a heightened reception of international labour laws and standards by the VCP. They are poised to organize from the grassroots without significant disruption, provided they possess organizational knowhow and legal awareness.

Conclusion

This article compares Vietnamese and German unions in two aspects, their structures and relation to strikes. It finds that German dualist system is generally more democratic but are slowing down in their change given existing federal and regional divides, while the Vietnamese are much more bureaucratic, centralized, with larger leverage. The right to strike in both countries are similarly limited and considered as a last resort, in that German jurisprudence puts strong ceilings on the right to strike, while mediatory and legal mechanisms in Vietnam remain ineffective and relatively inaccessible to those most needing them. Perceived as lacking any other effective options, Vietnamese workers seeking relief will often see strikes as the most direct method to express their grievances to employers and relevant authority. This results in a disproportionately strike-prone Vietnam compared to Germany. A final analysis and recommendation finds the WROs favourable for Vietnamese workers, though it remains to be seen whether the WROs-VGCL synergy manages to take on the dualist nature of German unions and councils. Comparatively, the VGCL has greater institutionalization and leverage, yet its intimate association to the state might mean more supervision, thus less freedom.

This strictly textual analysis has not exhausted the comparative potential of German and Vietnamese labour law, especially as both Vietnam and Germany take further steps towards economic integration—e.g., the supra-nationalization of law in the European Union as for Germany, and internationalization of labour law and standards as for Vietnam. On a baser level, there are resemblances between Germany and Vietnam in their legislative tugs-of-war along the vertical axis power—the international/European,

⁴⁶ See Gillespie, John Stanley. *Transplanting commercial law reform: developing a 'rule of law' in Vietnam*. *Ashgate Publishing, Ltd.*, 2006.

the central, the provincial, and the local—as they balance domestic sovereignty with international integration and workers’ rights with the penetration of global capital. Future research in a comparative direction with regards to Vietnam labour reforms and trade unions appears promising—perhaps even needed, as Vietnam in fact internalized many of Western laws but faces issues in enforcing them.

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