

Court reform in Vietnam: Achievements and problems

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Abstract: *Court reform is to realize the major adjustments, bringing about systematic changes on great, profound and radical scale in organizational structure, functions and mandates of the court. After a decade of judicial reform in general and court reform in particular, the organization and activities of the court in Vietnam have made fundamental changes. This paper sheds light on and analyzing the results of court reform in Vietnam in recent years and the problems put for the coming time.*

Keywords: Court reform, Judicial reform, People's court, Vietnam.

1. Overview of court reform in Vietnam

In Vietnam, the line and policy on judicial reform in general and court reform in particular are expressed in the central resolutions of Party, in Constitution and law on court organization and the relevant legal documents. Since the Resolution 49-NQ/TW of Party Politburo on Strategy of judicial reform in perspective for 2020 was promulgated on 2 Jun 2005, the contents of court reform realized in Vietnam consists of: Administrative Procedural Law of 2010 that widened jurisdiction of the court to administrative cases, ensuring the equality between people and public authority in face of the court; Law on Enforcement of Civil

Judgments (2008) and Law on Execution of Criminal Judgments (2010) that were promulgated to ensure the cases and decisions of court to be strictly enforced according to the transparent, democratic and open principles and procedures, corresponding to nature of each kind of case, prescribing clearly the organizational structure, functions and powers of judgment enforcement agencies and management agencies of judgment enforcement, institutionalizing the new guidelines in judgment enforcement, such as changing the formality of enforcement of death penalty, socialization of some parts of civil judgment enforcement, etc...

In December 2013, National Assembly has adopted the 1992 amended Constitution (as 2013 Constitution) with many new regulations on functions and organization of system of people's court; on its operating principles; on judges, etc... These modifications are prescribed specifically in the Law on the Organization of People's Courts (2014), adopted by National Assembly on 24 Nov 2014, replacing the Law on the organization of people's court of 2002. *The Law on the Organization of People's Courts (2014) is considered as a step of radical reform of organizational structure and functions of court system in Vietnam.* The new contents of this renovation are as follows:

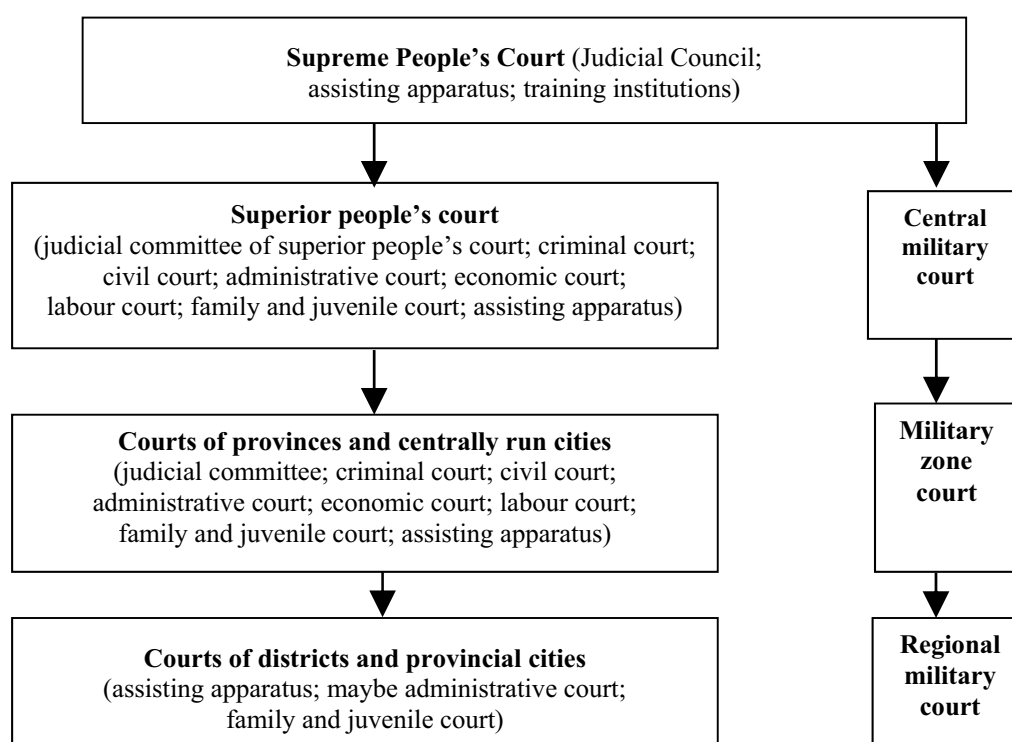
First as for functions of people's court, Article 2 of the Law on the Organization of

People's Courts (2014) has many new and important points which emphasizes that the court itself may check, verify, collect and complete the evidences.

Secondly as for the operating principles of people's court, the Law on the Organization of People's Courts (2014) has fully concretized the basic principles that were prescribed by the Article 103 of 2013 Constitution, among which there are important new principles such as: principle of adversary procedure being ensured in the trial; principle of presumption of innocence; principle for people's courts to be independently organized based on their jurisdiction" (Article 5).

Thirdly as for organization of people's court, Article 3 of the Law on the Organization of People's Courts (2014)

Figure 1: Schema of organization of people's court according to the Law on the organization of people's court (2014)



prescribed that the organization of people's court has 4 levels (formerly 3 levels): the Supreme People's Court; superior people's courts; courts of provinces and centrally run cities; courts of rural districts, urban districts, towns, provincial cities and the equivalent; and military courts.

Fourthly as for delimitation of the jurisdiction of people's courts, there is a new prescription that the Supreme People's Court does not effectuate the function of hearing the appeal, but only the function of directing the trial of other courts; reconsidering the trials, reviewing the judgments and decisions of other courts which have taken legal effect and are protested against; summarizing the trial activities; ensuring the uniform application of law in trial; governing the court in the matter of organization (governing the organization of apparatus, of staff, of cadres, expenditure for operation, material facilities,...); making laws given assignation of National Assembly and of National Assembly Standing Committee; at the same time having the additional task to train professional skills of judges, juries and other staffs of the court.

The superior people's court (the level newly prescribed in the Law on the Organization of People's Courts (2014)) has the function to review the judgments, the first-instance decisions of the provincial people's courts which haven't taken legal effect yet and are appealed; to reconsider and review the cases and decisions of the provincial and district courts within their territorial jurisdiction which have already taken legal effect but are appealed.

Fifthly as for the judges, the regulations on criteria, conditions, order and procedure of

judge appointment got many new contents in order to enhance the quality of judges and in accordance with regulations of 2013 Constitution, under which the judges of Supreme People's Court are approved by National Assembly and appointed by President of the state; the judges of other courts are appointed by President of the state; in addition to previous conditions, a person who is to be appointed as judge must meet a condition that he has passed the judge selection examination, has more than 5 years in legal job (instead of 4 years as previously); primary-level judge to be appointed as intermediate-level judge must pass the intermediate-level judge promotion examination; intermediate-level judge to be appointed as high-level judge must pass the high-level judge promotion examination. Judge tenure is extended as: "The initial term of office of judges is 5 years. For judges who are reappointed or appointed to another judge rank, the subsequent term of office is 10 years" (Article 74).

Sixthly as for the jury, the regulations on jury also have been importantly completed in order to overcome the shortcoming and insufficiencies in organization and operation of jury in people's courts; ensuring the participation of assessors in trial as the way for people to implement their judicial power; at the same time enabling the supervision rights of people over trial activities. According to the Law on the Organization of People's Courts (2014), the court does not manage jury but the jury is organized into jury panels. Jury panels operate in accordance with statutes promulgated by National Assembly Standing Committee (Clause 1 of Article 91).

In addition to important above-mentioned renovations, the Law on the Organization of People's Courts (2014) has also new specific prescriptions on titles of court clerk and examiner; on the assurance of operation of people's court, etc.

Thus, we may affirm that the organization and operation of people's court system in Vietnam was and is reformed comprehensively to contribute to build a righteous, potent, democratic, impartial, justice serving, and increasingly modernized judiciary to be in service of people and country.

2. The achievements of court reform in Vietnam

Since applying the Resolution 49 NQ/TW dated 2 Jun 2005 of Politburo on Strategy of judicial reform in perspective for 2020, the operation of court has made the significant improvements.

First as for the trial, the legal regulations were quite seriously implemented in trial time-limit by the courts; the trial quality was ensured, the proportion of judgments and decisions that were annulled or corrected due to subjective faults of judges decreased annually (Politburo, 2014).

The courts of all levels deployed wide and deep the enhancement of quality of adversary procedure in trial; ensured the participants' rights and duties to be implemented fully in procedural process; gave importance to evaluating new evidences. The renovation of interrogation and debate procedures was implemented not only in criminal cases, but also in civil and administrative trials (Supreme People's Court, 2016). The trial of criminal cases essentially ensured the right legality to person and guilt, limiting to minimum the wrong sentences for the innocents. Many

major and particularly serious cases or public attention triggered ones, as well as the economic corruption cases, were promptly investigated and strictly tried in time. The penalties were applied legitimately and legally. Annually, the courts organized an average of more than 9,000 travelling trials, thus contributing to enhancement of the law awareness of the public and to crime deterrence (Supreme People's Court, 2013).

As for the cases that were tried wrongly long ago, when they were detected, the court promptly made public apologies and compensated the victims according to laws, such as the cases of Mr. Nguyễn Thanh Chấn in Bắc Giang; Mr. Lương Ngọc Phi in Thái Bình; Mr. Huỳnh Văn Nén in Bình Thuận, ect.

Secondly, the supervision of trial and criminal judgment enforcement was more and more intensified. Besides supervising the file of criminal case and of judgment enforcement, Inspector Committee of Supreme People's Court also give advices to its leaders to hold some review conferences to draw the lessons on insufficiencies in trial, sharing the experiences and skills in solution of concrete problems of court activities, contributing to enhance the quality of problem solution under the jurisdiction of the court.

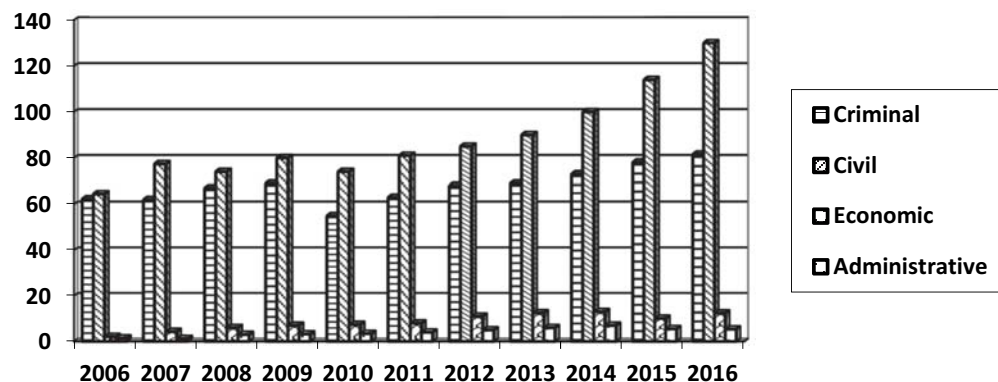
Thirdly as for making laws and guiding the uniform application of laws, implementing the Resolution on the choice, announcement and application of judicial precedent, Supreme People's Court organized the workshops to consult the opinions of legal specialists, of the social activists, on primary choice of some sentences and

decisions of reconsideration trials to be presented as judicial precedents. On 6 Apr 2016, the first judicial precedents of Vietnam were approved by Judicial Council of Supreme People's Court and were promulgated by Chief Justice of Supreme People's Court with the Decision 220/QĐ-CA, requiring all people's courts and military courts nationwide to have to study and apply the judicial precedents in trial. At the same time, on 30 May 2016, Chief Justice of Supreme People's Court promulgated the Directive 04/2016/CT-CA to direct the people's courts and military courts of all levels to intensify the

XIIIth National Assembly, according to 2013 Constitution and to the Law on the Organization of People's Courts (2014), for the first time the National Assembly officially adopted Resolution on the proposal by Chief Justice of Supreme People's Court for approval of appointment of 15 judges of Supreme People's Court. On 31 Jul 2015, President of the state Trương Tấn Sang issued the decision of appointment to 15 judges of Supreme People's Court.

On 30 March 2016, Supreme People's Court held an examination to select primary and intermediate-level judges; on 18-31 Jul

Figure 2: The data of first-instance trials of court for the period 2006 - 2016



Source: Statistical data of Supreme People's Court,
<http://toaan.gov.vn/portal/page/portal/tandtc/5901712>.

development, announcement and application of judicial precedents in trial. Since 1 Jun 2016, the people's courts and military courts have officially applied judicial precedents in trial. This is a great progress in trial of court in the process of judicial reform, resolving in time the difficulties of trial activities.

Fourthly as for examination and appointment of judges, at 9th session of

2016 to promote high-level judges. These are the first judge selection examinations under the regulations of the Law on the Organization of People's Courts (2014).

Fifthly as for the establishment of Family and Juvenile Court, on 4 Apr 2016, Supreme People's Court announced the decision of establishing the Family and Juvenile Court, being the new specialized court within the organization framework of

court system of Ho Chi Minh City. Youssouf Abdel-Jelil, Chief Representative of UNICEF in Vietnam, commented: “The birth of Family and Juvenile Court is an important landmark in the protection of children’s rights in Vietnam and is an achievement after a long itinerary... This is actually a wonderful achievement, continuously confirming the pioneer position of Vietnam in safeguarding the children’s rights in the region and in the world” (Trần Minh Giang, 2016).

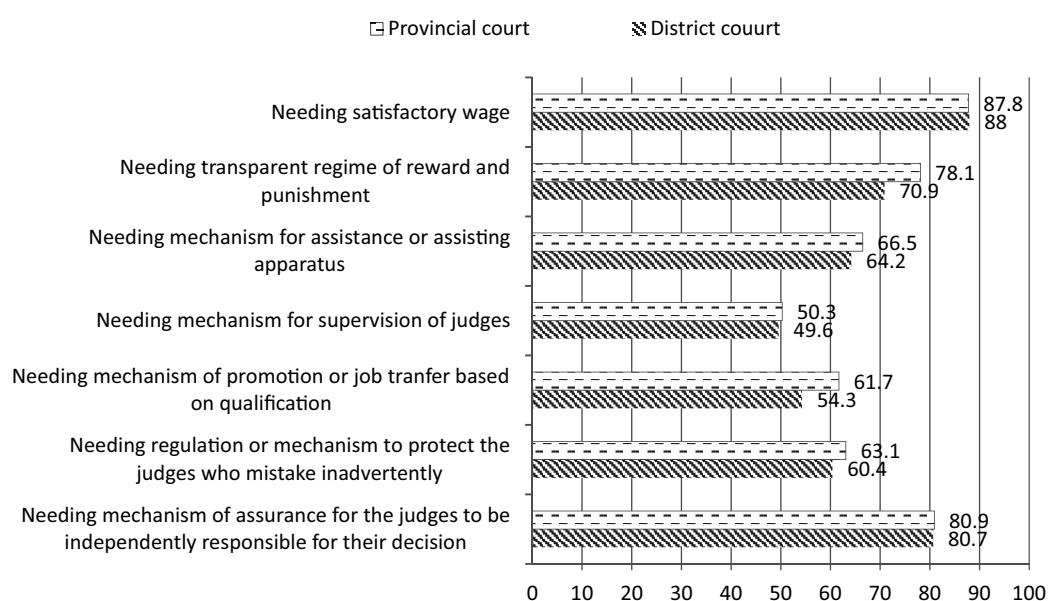
Sixthly as for the Academy of Court, this is a training and scientific research centre of Supreme People’s Court that has officially come in operation. On 28 March 2016, Supreme People’s Court held the presentation ceremony of Academy of Court, and on 6 Dec 2016, Academy of Court started the academic year of the first course for the future law graduates.

It can be said that the court reform in Vietnam has achieved the important results, contributing to strengthening organization and enhancing the trial efficiency of the court. However, there are still various problems of organization and operation of the court that need to be studied and reformed conforming to the line of Strategy of judicial reform in perspective for 2020.

3. Problems put for court reform in the coming time

Besides the achievements, the court reform still has the limitations such as: i) the effectuation of certain tasks was not comprehensive, not systematic, not corresponding to requirements; ii) the perfection of system of criminal, civil, economic and labour laws, of judicial procedure and organization of court activities, was somewhat slow and not comprehensive; iii) the use of information

Figure 3: Opinions of judges on independent trial (%)



Source: UNDP (2014), *Survey report on reality of local people's court administrative governance in Vietnam*, http://www.vn.undp.org/content/vietnam/vi/home/library/democratic_governance/reality_of_local_court_governance_in_viet_nam/

technology in court activities, as well as the supervision of people's and social organizations still are formalistic, not effective; iv) somewhere the lead of local party organization on certain tasks of court reform was neglected, lacking the control and supervision; v) the coordination between judicial organizations and Party committees was not actually close; coordination mechanism between branches and between levels was not effective, not only it couldn't generate the overarching power of the whole system, but in many cases was the main cause making the righteous policies slowly or not deployed in reality. For example, the policy on placing the court in the core of judicial system was step by step institutionalized in the legal regulations, but was not manifested clearly yet before, during and after trial of the court (Supreme People's Court, 2013).

Some legal experts suggest that, the staff in judicial branch is still weak today, not satisfying the new requirements. There is even the question: "Why are there still many cases not tried, many wrongly tried, even the cases that were modified or annulled? Why is it still not transparent in procedure that makes people do not actually believe yet in the responsibility of judicial branch? All of these insufficiencies are due to the ability, competence, responsibility of judges or to mechanisms of management?" (Đoàn Đức Lương, 2008).

There are some opinions that the Resolution 49-NQ/TW has paved the way for express renovation in the 2013 Constitution, but it seems the policy on renovation in the Law on the Organization of People's Courts (2014) is still reserved, facing many challenges, leaving many

points open, demanding the comprehensive renovation of other mechanisms and other laws in order for the court to complete the mission of bringing the justice to people. There are two points in reform that could contribute the most to enhancement of quality of trial: i) the term of judge is prolonged to 10 year for those who are reappointed in the subsequent term; ii) the Supreme People's Court is assigned to select judicial precedents. But perhaps these two changes are not potent enough to overcome the old challenges in order to ensure the independence of the court in trial (Võ Trí Hào, 2014). When being asked about what factors that impact on the independence of judges in trial, most of judges suggest that, for the provincial and district courts, there needs the mechanism of assurance for the judges to be independently responsible for their decision, without any intervention from inside and outside the court, and the judges must receive a satisfactory wage (Figure 3).

Besides that, the independence of court suffers the very major impacts of mechanism of inter-branch session, mechanism of asking the high-level organ for advice on the case, and mechanism of asking opinion of the same-level leading organ before trying those cases that are foreseen with the death penalty or the cases that have the relation to national security. Such an establishment of trinity mechanism is justified by various reasons and existed in parallel with the history of Vietnamese court. The fact that the Law on the Organization of People's Courts (2014) continues not to regulate in direction to

strengthen or abolish this trinity, but keeps leaving it outside the law, shows that the independence of the court continues to face many challenges.

In sum, the contents of court reform that were realized in Vietnam and the results that were achieved for the period 2006-2016 have represented the great efforts of the whole political system, of the judicial branch in general and the court system in particular. At the same time, the strategy of court reform also received the consensus, the supervision and opinion contribution of nationwide people. However, here there are still problems and challenges of court reform that Party, State and Central Judicial Reform Board must continue to resolve □

References

1. Trần Minh Giang (2016), *Remarkable achievements in judicial reform of people's court*, <http://vov.vn/chinhtri/thanh-tuu-cai-cach-tu-phap-noi-bat-cua-toa-an-nhan-dan-497270.vov>
2. Võ Trí Hào (2014), *How does the new law interact with old mechanism*, <http://tiasang.com.vn/Default.aspx?tabid=116&News=8243&CategoryID=42>
3. Đoàn Đức Lương (2008), "The factors impacting on trial and the need to enhance the efficiency of trial in our country today", *Review of Science of Vietnam National University*, Hanoi, No. 47.
4. Politburo, (2014), *Conclusion 92-KL/TW dated 12 March 2014 on continuing to implement the Resolution 49-NQ/TW dated 2 Jun 2005 of IXth Politburo on Strategy of judicial reform in perspective for 2020*.
5. Chief Justice of Supreme People's Court, Prosecutor General of People's Supreme Procuracy and State Auditor General report the term activities, <http://baochinhphu.vn/Tin-noi-bat/Chanh-an-toa-an-nhan-danTC-Vien-truong-VKSNDTC-Tong-KTNN-bao-cai-cong-tac-nhiem-ky/250311.vgp>
6. Supreme People's Court (2013), *Summarizing report on application of the Law on the Organization of People's Court (2002), Decree-law on judges and assessors of Supreme People's Court (2002), Decree-law on the organization of military court (2002)*.
7. Supreme People's Court (2016), *Summarizing report on court activities of 2016*.