

**NEW DEVELOPMENTS IN THE LEGAL SYSTEM OF VIETNAM***(2004 – 2009)***- Associate Professor, PhD. Ha Thi Mai Hien -****1. General assessment of the achievements of the legal system of Vietnam in the past 5 years**

The 2004 – 2009 period was characterized by the years before and after Vietnam became the 150th member of WTO, the period after more than 10 years Vietnam became a member of ASEAN and especially the duration after nearly a quarter century of Vietnam Reforms Policy implementation.

After more than 20 years of carrying out the Renovation Process, under the leadership of the Communist Party, along with the formation and development of the market economy, international integration and cooperation, the legal system of Vietnam has been built and perfected and attained great achievements in the reform of the Organization of the State machinery and political system. Law has gradually become the essential instrument of state and social government. The principle of State of Jurisdiction under the leadership of the Communist Party has been heightened and brought into play with concrete results.

The 2004-2009 is confirmed to bring about a turning-point in the process of building and perfecting the status of market economy and international integration and cooperation. New developments in the legal system of Vietnam in this period manifest itself in the following basic lines:

First, developments in awareness of the theories on State and Law in general and the legal system in particular.

The point of view and orientation of building the socialist State of jurisdiction of the people, by the people and for the people have been acknowledged in the Constitution, manifested through the renovation process of thinking, associated with the process of planning and implementing the policy of Vietnam Reforms and based on the economic, political – social premises and the impacts of the international economic integration trend. This point of view becomes the basis for strategic planning to build and perfect the legal system with clearly defined targets such as to build and perfect the legal system in a



synchronous, united, realizable, public and transparent manner; focusing on the status of the market economic with socialist orientation, building the Socialist State of Jurisdiction of the people, by the people and for the people, renovation of basic mechanisms to build and perfect laws, bringing into play the role and impact of law in order to contribute to social management, maintenance of political stability, economic developments, international integration, building transparent and powerful State, implementing human rights, freedom and democracy of citizens.

Awareness of the theories on socialist State of jurisdiction is the developments and creative applications of common principles, general humanity values of State of jurisdiction with the following main characteristics:

- The Communist Party of Vietnam has indicated consistently that the nature of State of jurisdiction is a state of the people, by the people and for the people; all the power of state belongs to the people.
- Organization and operation of the state machine ensure the unification of the state power, assign and combine between state agencies and bodies governing the legislative, executive and judicial powers.
- The rule of law is confirmed and enhanced in the state and social management, ensures the supreme characteristic of the Constitution in social life;
- To ensure freedom, democracy, human rights and to improve liability;
- To acknowledge and realize gradually and adequately the state responsibility in implementation of Treaties in the international and regional integration process.
- To ensure the leadership of the Communist Party of Vietnam in the process of building the socialist State of jurisdiction of the people, by the people and for the people.

Second: Vietnam legal system has become more adequate, practical and ensured the feasibility. For over 20 years' renovation, the State of Vietnam has built, promulgated and perfected gradually the legal system which ensures the national development within the framework of the socialist legal regime, guarantees existing social relations developed properly in each phase, establishes a sustainable legal order, contributes to the appearance of State of jurisdiction today.

In the past time, not only laws on organization and operation of state machine have been perfected, the progress and quality of legislative activities has been increasingly



improved, but also bills and codes on fields of business, trade, finance, credit, investment, land, intellectual property, social issues, education, health, especially the Administrative Procedures and Juridical Codes, have been built, promulgated and have met the legal requirements to regulate the diversified relations in the market economy which has integrated increasingly and significantly to the global and regional economy and established the status of market unified and synchronous.

Third: Vietnam legal system has manifested increasingly and adequately the characteristics of democracy, humanity and humanism, publicity and transparency.

In Vietnam, bills and laws have become numerous, played the decisive role, regulated directly social relations, overcome gradually the abuse of the documents under the law. Law on Process of building, promulgation and publication of legal documents has been increasingly completed. Such law has ensured democracy in the law initiative and process and attracted the participation of the people and experts in the process of building, evaluation and criticism of the legal documents. Publicity and transparency of the legal system facilitates the people's accession to legal service and laws which becomes faster, simpler and cheaper. The State of Vietnam has carried out the regime of public paper, published the legal documents (law, draft, bills etc.) on the mass media. The Supreme People's Court has disclosed the judicial council's decisions of the Judges' Chambers of the Supreme Court etc. The State of Vietnam has simplified administrative procedure, enhanced bills on procedure and the mechanisms to enforce the law application – strengthened laws on ensuring social security, implemented criminal policy to the direction of reduction of the punishment etc.

Fourth: Vietnam legal system has been significantly perfected, harmonized, unified with common legal values of the international and regional law.

All legal documents issued by the State of Vietnam in recent years have presented the principle of respect for the international commitments and treaties. On the other hand, the international cooperation and reception of humanity values in legislation process, based on the harmonization between cultural tradition and modernity, have become a principal requirement in the process of legislation, execution and jurisdiction. It is reflected clearly in the coherence between the targets and principles of Vietnam legal system with the targets and principles of ASEAN Charter as well as other international legal documents. Vietnam has been perfecting the legal system in accordance with its WTO commitments on intellectual property, tax system, investment law, business law etc., reform the administrative procedure system, judicial procedures, arbitration system, lawyer



etc., competition law against monopoly, Law on Consumer Protection, Bankruptcy Law etc. Vietnam enacted Law on Gender Equality, Law on Domestic Violence Prevention and Control, Law on Prevention and Against Corruption and many other legal documents.

(See Attached list of main legal documents from 2004 to 2009 on page 9 - Appendix).

2. Achievements of Vietnam legal system in specified domains in the 2004 – 2009 period

About the quantity, in the 2004 – 2009 period, the National Assembly has promulgated 103 legal documents and bills. Besides, many other legal documents have been enacted by the Standing Committee of the National Assembly, Government and other state bodies. Compared with the previous period, from 1946 to 1986, merely 32 legal documents (Constitution, Bills and Code) were issued by the National Assembly. During the Renovation Process, from 1987 to 1992, the National Assembly VIII enacted 32 legal documents; the National Assembly IX (1992 - 1997) promulgated 41 legal documents.

The legal documents in the 2004 – 2009 period have manifested the specific contents as following:

Build and perfect laws on organization and operation of the institutions in political system in accordance with the requirements of building the socialist State of Jurisdiction of Vietnam of the people, by the people and for the people.

Along with the renewal and improvements without cease of methods of leadership, ensuring the accordance of Party operation with the Constitution and Law has become the process of building and perfecting laws on organization and operation of state machine, Fatherland Front and other People's union, institutions, social organizations.

Law on Organization of the National Assembly, Government, People's Court, People's Procuracy, Law on Organization of People's Council and People's Committee etc. has been perfected without cease.

Law on Promulgation of Legal Documents was amended on 03 June 2008 and Law on Promulgation of Legal Documents of People's Council and People's Committee (2004); Law on Prevention and Against Corruption (2007); Law on Cadre and Civil Servants.

According to the legislation strategy, the State of Vietnam carried out building and perfecting laws on cadre organization and operation of state administrative agencies in



accordance with the targets and requirements of state administrative reform, the Government focuses on the function of macro management, plays the role of the highest state administrative agency. By 2010, the role of management of administrative agencies towards enterprises will be eliminated in order that these agencies focus on their legal function of state management, enhanced and encouraged the socialization of some public services (Ho Chi Minh city is implementing the institution “usher”). The reform of administrative procedures is an important content in the overall program of state administrative reform.

Scheme No. 30 on simplification administrative procedures issued by the Prime Minister, along with the Decision No.30/QĐ – TTg dated on 10 January 2007, has been implemented and finished the first phase which result is the publication of the administrative procedures of the ministries, provinces and municipality directly under the Central Government. It is an important scheme impacted significantly to production and business activities and the life of the people and enterprises.

Judicial Procedure Codes (civil and criminal) have identified the premises of organization and operation of judicial bodies, whose center is the Court, ensured that the Court judges independently, legally, promptly and strictly; delimited the jurisdiction competence of the Court of First Instance and Court of Appeal in accordance with the two-tier hearing principle, enhanced the rights to disposal and self-determination of the parties concerned in civil procedure and the litigation principles in judicial procedure in general. Civil Procedure Code 2004 has been characterized initially the civil procedure codification, contributed to overcome the limitations of civil procedure law in particular.

Law on Enforcement of Civil Judgment issued on 13 November 2008 has enhanced legal basis for mechanisms to ensure the ownership, freedom to do business of citizens and enterprises. Civil Procedure Code 2004 has not only recognized and enhanced the rights to disposal and self-determination of the parties concerned but also redefined the position and judicial role of the People’s Court, the People’s Procuracy and other subjects in civil procedure such as lawyer, notary, assessor, etc.

Strengthen and perfect laws ensuring the human rights, freedom and democracy of citizens

In the process of building legal documents, issues of ensuring gender equality have become an important requirement. Law on Gender Equality, Law on Domestic Violence Prevention and Control are ratified and promulgated.



Legal documents such as Law on Intellectual Property, Law on Real Estate Business, Housing Law etc. are promulgated in order to perfect the state protectorate towards the rights and legal interests of citizens, the responsibility of state agencies and bodies, especially the Courts in the protection of freedom and democracy. Law on Legal Assistance (21 December 2007), Law on State Responsibility towards Compensation (18 June 2009), Law Amending and Supplementing a Number of Articles of the Penal Code, Law on Intellectual Property (2005) amended on 19 June 2009 have strengthened the legal basis of ensuring human rights, freedom and democracy of citizens.

Bills and Codes of the 2004-2009 period have concentrated on building and perfecting the civil and economic law, focused on perfecting the status of market economy with socialist orientation, especially property law, the freedom to do business according to the principle that said anything which is not prohibited by the law may not be prevented.

Enterprise Law 2005, Investment Law 2005, Housing Law 2005, Law on E-transactions (29 November 2005) etc. have created the basis for the synchronous establishment of the markets. Laws on Natural Resources and Environment are promulgated, based on the principle of close control, sustainable development, ensuring the harmonization of use with protection of natural resources.

Perfect without cease the laws on Education and Training, Science and Technology; Health, Culture and Information, Sports, Ethnicity, Religion, Population, Family and Children and Social Policy.

Perfect legal documents on National Defense and Securities, Social Order and Safety.

Process has demonstrated through perfecting the Law on Prevention and Against Crime based on bringing into play the social strength in detecting, preventing crimes; perfecting criminal policy to direction of the limitation of death penalty, reduction of termed imprisonment, expansion of the application of fine, non-custodial reform for offenders of less serious crimes.

Build and perfect law on international integration through the fields of economy, trade, investment, international credit, intellectual property, tariffs, environmental protection etc.

In recent years, bills have concentrated on building the legal documents and institutions protecting the independence and self control of Vietnam economy in the

international economic integration process; Vietnam has promptly completed bills in requirements of its WTO accession, implemented the ASEAN commitments, adequately participated in AFTA 2006, ratified the ASEAN Charter towards East Asian Economic Community 2020.

Accomplishment of law on Dispute Resolution accords with the international trade customs (to strengthen arbitration, mediation). Vietnam is carrying out the Law on Commercial Arbitration, has promulgated the Law on Legal Assistance (12 December 2007) which came into effect on 1st July 2008 etc.

LIST OF LAWS PROMULGATED BY NATIONAL ASSEMBLY FROM 2004 TO 2009

No.	LEGAL DOCUMENT NAMES	DATE OF RATIFICATION
21/2004/QH11	Bankruptcy Law	15 June 2004
20/2004/QH11	Law Amending and Supplementing a Number of Articles of the Law on Credit Institutions	15 June 2004
22/2004/QH11	Law on Inspection	15 June 2004
23/2004/QH11	Law on Inland Waterway Navigation	15 June 2004
24/2004/QH11	Civil Procedure Code	15 June 2004
25/2004/QH11	Law on Child Protection, Care and Education	15 June 2004
26/2004/QH11	Law Amending and Supplementing a Number of Articles of the Law on Complaints and Denunciations	15 June 2004
27/2004/QH11	Competition Law	3 December 2004
28/2004/QH11	Electricity Law	3 December 2004



29/2004/QH11	Law on Forest Protection and Development	3 December 2004
30/2004/QH11	Law on Publication	3 December 2004
31/2004/QH11	Law on Promulgation of Legal Documents of People's Councils, People's Committees	3 December 2004
32/2004/QH11	Law on National Security	3December 2004
33/2005/QH11	Civil Code	14 June 2005
34/2005/QH11	Law on Pharmacy	14 June 2005
35/2005/QH11	Railway Law	14 June 2005
36/2005/QH11	Commercial Law	14 June 2005
37/2005/QH11	Law on State Audit	14 June 2005
38/2005/QH11	Education Law	14 June 2005
39/2005/QH11	Law on National Defense	14 June 2005
40/2005/QH11	Vietnam Maritime Code	14 June 2005
41/2005/QH11	Law on Conclusion, Accession to and Implementation of Treaties	14 June 2005
42/2005/QH11	Law Amending and Supplementing a Number of Articles of the Customs Law	14 June 2005
43/2005/QH11	Law Amending and Supplementing a Number of Articles of the Law on Military Service	14 June 2005
44/2005/QH11	Law on Tourism	14 June 2005
45/2005/QH11	Law on Import Tax and Export Tax	14 June 2005



46/2005/QH11	Law Amending and Supplementing a Number of Articles of the Law on Minerals	14 June 2005
47/2005/QH11	Law Amending and Supplementing a Number of Articles of the Law on Emulation and Commendation	14 June 2005
48/2005/QH11	Law on Thrift Practice and Waste Combat	29 November 2005
49/2005/QH11	Law on Negotiable Instruments	29 November 2005
50/2005/QH11	Law on Intellectual Property	29 November 2005
51/2005/QH11	Law on E-transactions	29 November 2005
52/2005/QH11	Law on Environmental Protection	29 November 2005
53/2005/QH11	Youth Law	29 November 2005
54/2005/QH11	Law on People's Public Security Forces	29 November 2005
55/2005/QH11	Anti-corruption Law	29 November 2005
56/2005/QH11	Housing Law	29 November 2005
57/2005/QH11	Law Amending and Supplementing a Number of Articles of the Special Consumption Tax Law and the Value Added Tax Law	29 November 2005
58/2005/QH11	Law Amending and Supplementing a Number of Articles of the Law on Complaints and Denunciations	29 November 2005
59/2005/QH11	Investment Law	29 November 2005
60/2005/QH11	Enterprise Law	29 November 2005



61/2005/QH11	Bidding Law	29 November 2005
62/2006/QH11	Cinematography Law	29 June 2006
63/2006/QH11	Law on Real Estate Business	29 June 2006
64/2006/QH11	Law on HIV/AIDS Prevention and Control	29 June 2006
65/2006/QH11	Law on Lawyers	29 June 2006
66/2006/QH11	Vietnam Civil Aviation Law	29 June 2006
67/2006/QH11	Law on Information Technology	29 June 2006
68/2006/QH11	Law on Standards and Technical Regulations	29 June 2006
69/2006/QH11	Law on Legal Aid	29 June 2006
70/2006/QH11	Law on Securities	29 June 2006
71/2006/QH11	Law on Social Insurance	29 June 2006
72/2006/QH11	Law on Vietnamese Guest Workers	29 November 2006
73/2006/QH11	Law on Gender Equality	29 November 2006
74/2006/QH11	Law Amending and Supplementing a Number of Articles of the Labor Code	29 November 2006
75/2006/QH11	Law on Donation, Removal and Transplantation of Human Tissues and Organs and Donation and Recovery of Cadavers	29 November 2006
76/2006/QH11	Law on Vocational Training	29 November 2006
77/2006/QH11	Law on Physical Training and Sports	29 November 2006



78/2006/QH11	Law on Tax Administration	29 November 2006
79/2006/QH11	Law on Dikes	29 November 2006
80/2006/QH11	Law on Technology Transfer	29 November 2006
81/2006/QH11	Law on Residence	29 November 2006
82/2006/QH11	Law on Notarization	29 November 2006
83/2007/QH11	Law Amending and Supplementing a Number of Articles of the Law on Organization of the National Assembly	02 April 2007
84/2007/QH11	Law Amending and Supplementing the Article 73 of the Labor Code	02 April 2007
01/2007/QH12	Law Amending and Supplementing a Number of Articles of the Anti-corruption Law	04 August 2007
02/2007/QH12	Law on Domestic Violence Prevention and Control	21 November 2007
03/2007/QH12	Law on Prevention and Control of Infectious Diseases	21 November 2007
04/2007/QH12	Law on Personal Income Tax	21 November 2007
05/2007/QH12	Law on Product and Goods Quality	21 November 2007
06/2007/QH12	Law on Chemicals	21 November 2007
07/2007/QH12	Law on Special Amnesty	21 November 2007
08/2007/QH12	Law on Legal Assistance	21 November 2007
09/2008/QH12	Law on Management and Use of State-owned Assets	03 June 2008



10/2008/QH12	Law Amending and Supplementing a Number of Articles of the Petroleum Law	03 June 2008
11/2008/QH12	Law on Red Cross Activities	03 June 2008
12/2008/QH12	Law Amending and Supplementing a Number of Articles of the Law on Publication	03 June 2008
13/2008/QH12	Law on Value Added Tax (amended)	03 June 2008
14/2008/QH12	Law on Corporate Income Tax (amended)	03 June 2008
15/2008/QH12	Law on Compulsory Purchase and Requisition of Assets	03 June 2008
16/2008/QH12	Law Amending and Supplementing a Number of Articles of the Law on Drug Prevention and Fight	03 June 2008
17/2008/QH12	Law on Promulgation of Legal Documents (amended)	03 June 2008
18/2008/QH12	Atomic Energy Law	03 June 2008
19/2008/QH12	Law on Vietnam People's Army Officers (amended)	03 June 2008
20/2008/QH12	Law on Bio-diversity	13 November 2008
21/2008/QH12	Law on High Technology	13 November 2008
22/2008/QH12	Law on Cadres and Civil Servants	13 November 2008
23/2008/QH12	Land Road Traffic Law (amended)	13 November 2008
24/2008/QH12	Vietnam Nationality Law (amended)	13 November 2008



25/2008/QH12	Law on Health Insurance	13 November 2008
26/2008/QH12	Law on Enforcement of Civil Judgment	13 November 2008
27/2008/QH12	Law on Special Consumption Tax (amended)	13 November 2008
28/2009/QH12	Law on Judicial Records	17 June 2009
29/2009/QH12	Law on Public Debt Management	17 June 2009
30/2009/QH12	Law on Urban Planning	17 June 2009
31/2009/QH12	Law Amending and Supplementing a Number of Articles of the Cinematography Law	18 June 2009
32/2009/QH12	Law Amending and Supplementing a Number Articles of the Law on Cultural Heritage	18 June 2009
33/2009/QH12	Law on Vietnamese Representative Offices Abroad	18 June 2009
34/2009/QH12	Law Amending and Supplementing the Article 126 of the Housing Law and the Article 121 of the Land Law	18 June 2009
35/2009/QH12	Law on State Responsibility towards Compensation	18 June 2009
36/2009/QH12	Law Amending and Supplementing a Number of Articles of the Law on Intellectual Property	19 June 2009
37/2009/QH12	Law Amending and Supplementing a Number of Articles of the Penal Code	19 June 2009
38/2009/QH12	Law Amending and Supplementing a	19 June 2009



	Number of Articles of the Laws Governing Capital Construction Investment	
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