



**REFORM OF JUSTICE IN VIETNAM -
OVERVIEW OF RESULTS AND EXPERIENCES**

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For many nations in the world, "Justice" is the "court" and the conception of justice is associated with the implementation of the three branches of the State's power: the legislature – the executive - the judiciary. Therefore, when mentioning the judicial reform, it is understood in many countries is to reform the court system. Whereas in Vietnam, the concept of "Justice", "judicial" and "judicial activities" is still the subject for argument which has not yet defined clearly under the legal point of view of science. From many different reasons, including reasons of history, legal traditions and the State power's assignment¹, and from the contents recorded in many official documents, it is said that "judicial" bodies in Vietnam, including: investigating body, procuracy body, courts and other executive bodies; besides, other "supplementary judicial bodies" include: notary, inspection, lawyer .v.v.. Judicial reform in Vietnam; therefore, should be understood with a very ambitious meaning, including reform of the organization and operation of judicial bodies and other complement judicial bodies. However, it should be noted that, although the concept of "justice" is understood in connotation meaning and fairly complicated, but in Vietnam it has been determined that "the court plays a centered role and make judgment activities as the focus². In other words, judicial reform in Vietnam refers to the reform of the court and it is considered the improvement in the quality of the trial as goal-oriented, and is also the starting point to proceed to the renovation, improvement of the judicial and other judicial complement bodies.

1. Objectives, views and tasks of judicial reform

Judicial reform is the policy of the Vietnamese Party and Government, associated with the renovation in the legislative activities and administrative reform in the process of building law-governed socialist government of the people, by the people and for the people. Some reforms of the organization and operation of judicial bodies have been recorded in some government's documents but the Judicial Reform only really become

¹ In Vietnam, "State power is unified, with the assignment and coordination among state agencies in implementing the legislative, executive, judicial"

² Resolution 49-NQ/TW on June 2nd 2005 issued by the Ministry of politics on strategy of judiciary reform up to 2020



synchronization is since the Ministry of Politics issued Resolution 08-NQ/T on January 2nd 2002 on some key tasks of judiciary activities in the near future; and followed by Resolution 49-NQ/TW on judicial reform strategy toward 2020.

Judicial reform strategy toward the year 2020 to identify targets of judicial reform in Vietnam is “building a clean, strong, democratic, strict Justice regime, protecting the justice, gradually modernizing the justice regime, serve for the people and serve Vietnamese Socialist Motherland; and implementing the judicial activities considered as the focus are conducted efficiently and highly effective.

Also, determine judicial reform is carried out under the following five points of view:

- Judicial Reform is closely put under the leadership of the Party , ensure political stability, the nature of Vietnamese legitimate socialist of the people, by the people and for the people, the power of the government is unity which there are assignment and the coordination among state agencies in implementing the legislative, executive, judicial.
- Judicial reform must derived from the requirements of eco-socio development, construction of a fair society, democracy, civilization and contribute to promoting the eco-socio development, firmly defend the Motherland sovereign; attached to innovation of the legislative, administrative reform.
- Promote the synergy of the whole society in the process of judicial reform. The judicial bodies, complement judicial bodies must be put under the supervision of the elected bodies and Vietnamese people.
- Judicial reform must inherited from the nation’s legal tradition and the achievements achieved from the judiciary regime of socialist republic of Vietnam; selectively absorb the experiences from the foreign countries in accordance with the circumstances of our country and the requirements for active international integration; meet the development trend of the society in the future.
- Judicial Reform must be carried out urgently, synchronously, with focus and the firmly key steps.

Based on the above viewpoints, judicial reform in Vietnam is implementing with the following eight task groups:

- Improve the policy, criminal law, civil law and judicial proceedings.



- Clearly define the functions, duties, authority and perfect the organization, apparatus and judicial bodies. The focus is on building and perfecting the organization and operation of the people's courts.
- Improve the processing of supplementary justice.
- Develop staff and complement staff of Justice and the judiciary system to be strong and clean.
- Perfect the mechanism of supervision of the elected bodies and promote ownership and the rights of the people
- Strengthen international cooperation on justice.
- Ensuring the facilities for judicial activities.
- Perfect the mechanism of the Party leadership in justice

2. Overview of the results of judicial reform in recent years

For years³, the implementation of judicial reform has brought positive changes, achieving several main results as follow:

- *Firstly, the work of the judicial in general and judicial reform in particular have been implemented in accordance with the orientation and the policy of the Party and the government of Vietnam; ensure principles of the state power organization ; promote democracy, contribute to building law-governed socialist republic of the people, by the people and for the people; and promoting eco – socio development of the country.*
- *Secondly, the reform has made certain changes in perception and different level committee, leaders of ministries, locality as well as the staff of the judicial bodies on position, role and the importance of justice in terms of building the law-governed socialist republic and in the context of international economic integration, promoting industrialization and modernization of the country. Since the political determination of the Party and the government issued a Resolution 08-NQ/TW and Resolution 49-NQ/TW, it has led to synchronous changes and the high appreciate the role and responsibility of the political system and of the authorities for justice. The guidelines and proper orientation toward the judicial reform have affected directly to the results*

³ Calculated since the year of 2002, the first year the Ministry of Politics issued the Resolution on Justice



for solving each specific case, contributing to improving the quality of judicial activities.

- *Thirdly, the reform has created the basis for judicial reform synchronously with the strategic and long term vision.* The implementation of some works for judicial reform has been conducted for many years under the direction recorded in some official Party's documents and the institutionalization of the various legal documents of the State. However, only in 2002 the Ministry of Politics issued Resolution 08-NQ/TW on *some key tasks in the work of justice in the coming time*, the judicial reform would have been approaching the comprehensive points. The Resolution 08-NQ/TW has focused not only on solving the urgent tasks, but also the immediate tasks and at the same time laying the foundation for the promulgation of Resolution 49-NQ/TW on reform strategy of the judiciary toward 2020. Currently, the implementation of Resolution 49-NQ/TW is actually to reform the judiciary into a new phase in which judicial reform is considered and executed toward a macro and long term vision.
- *Fourthly, the judicial bodies, both central and local departments has had a tight coordination, consistently and thoroughly* implement the Party's policy, the law of the State on judicial Reform. Coordinated relationship between the judiciary sectors was initially institutionalized by law and by the coordination on the basis of the functions and duties of each law branch.
- *Fifthly, on the basis of emphasized program on annual justice work of the central management board, the central judicial bodies has timely issued and focused on the direction of consistent programs and the implementation of its plans.* All level of local committee, administration and judicial bodies in some localities on the basis of the assigned judicial reform tasks has taken the initiative in organizing the creation and implementation, consistent with the local characteristics and situation; and there are many good models and many typical judicial officers devoting for the sake of the judicial reform.

The above general assessment is mentioned on a number of specific content as follows:

- Regarding the formulation of laws on justice and improvement of the quality of judicial activities

The formulation of legislation on the judiciary sector in recent years has been timely institutionalized the Party's viewpoints on judicial reform in the context of international



economic integration, especially the policies on criminal and criminal procedure. Notably the criminal law has been supplemented and amended several provisions aimed at institutionalization of the expanded policy of “litigation at the trial” and the first time in the Vietnamese judicial history has set progress and democracy at a higher level when the Standing Committee of the National Assembly issued Resolution 388 in compensation for being unfair judged people caused by the competent authorities in criminal activity. Recently, Congress also passed the Law on the State’s compensation liability (effective from January 1st 2010), regulated the State’s compensation liability for individuals and organizations having loss caused during the management and implementation of proceedings

The annual Program formulation of laws and ordinances have been found in many National Assembly’s documents on justice⁴, creating legal basis in all aspects of justice activities, and assisting the tasks of judicial reform to ensure proper progress of time. In recent years, many important legal documents on the judiciary has been passed, such as the Law on Organization of People's Procuracy, Law on Organization of the court, the Law on National Security, the People's Police Law, criminal laws, the civil Code, ordinances organizing criminal investigation, the Ordinance on the Procurator of People's Procuracy, the Ordinance on Organization of the Procuracy of the military, judicial examination Ordinance, Law Attorneys, legal assistance law, Civil procedure Law, judicial law ...

Thanks to the uniform legal framework and institutional orientation, the quality of judicial works in recent years in the stages from investigation, arrest, detention, prosecution, take trial, has had good changes in the direction toward respecting the democracy, human rights and ensure follow the proper regulations of the law. The rate of arrest, detention, prosecution was high; the trials were reviewed carefully in accordance with law and the unsolved reconsidered cases has basically resolved. The rate of discovery case, investigation, prosecution, taking trial is higher than last year. The special reprieve granting, civil and criminal judgment has reached much more progress than previously.

- Function and tasks completion and strengthening and consolidating the organization of judicial bodies, judicial assistance bodies

⁴ XII National Assembly has put the 24 draft laws, 06 draft ordinances on the field of justice, from 23.43% of 128 draft laws and ordinances. Effective from June 1st 2005 till the end of 2008, the congress adopted 14 laws and laws; 05 ordinances and 08 resolutions in the field of Justice (Report 01-BC/CCTP on February 18th 2009 by the Steering Committee of preliminary 03-year implementation of Resolution 49-NQ/TW on judicial reform strategy toward 2020)



For years, although the functions, duties, authority and organization and the State judicial apparatus has a little improved contributing to improving the quality of legal activities.

The supreme people's Court has received and taken control of the local courts in terms of organization; perfecting the mechanism in the help for the military court; established judge committee for the provincial People's Court. Until now, all the courts at district level have increased jurisdiction and criminal cases in accordance with the routines. It is considered as a preparation for the establishment of the local magistrate courts in particular areas and innovation of the entire organization of the court system in general. Although the annual number of cases that courts have solved has increased by 10,000 but the settlement and the trial of criminal & civil cases as well as administrative procedures has ensured the judgment of the right people and true crime in according to law. Average each year, the proportion of conciliation cases accounted for over 40% of resolved civil cases. The goal for "improving the quality of litigation at the trial" was required for deployment, creating democratic atmosphere at the trial.

Procuracy sector has dissolved units in Prosecution of observance in economic and administrative sector ... and the investigation and prevention office at the provincial Procuracy, consolidating the organization of department of investigation at the Supreme people's in accordance with the new organization model. The Supreme people's Procuracy has issued a new regulation of the practice of prosecution and control of criminal trial, directing the Supreme Procuracy at all level to increase staff for the practice of the judicial prosecution right and control of criminal ; focusing on Prosecution judgments and decisions handling the civil courts at all levels; considering carefully the evidence and documents by the investigating agencies to provide and ensure the ratification and approval of all cases of extended custody or non-extended custody in order to have the evidence and the lawful base. In addition, Prosecution sector also fully inform to the procurators to meet the requirements of the guidelines and improve the quality of litigation at the trial.

System of police investigation agencies together with the Police investigation Office has been allocated the special responsibility for each crime: crimes of social order, crime of economic management and positions order and crime of drug violation; the Criminal Investigation Departments at the provincial military commander as well as at city level and other equivalent level are dissolved to organize the local criminal investigation body ... Relatively more clearly defined the relationship between the investigating agencies with



other agencies assigned to investigate a number of activities; there is coordination between reconnaissance and investigation proceedings, particularly in the expanded investigation cases. Police for protection and judicial assistance force have been established from the Ministry of Public Security level to provincial and district levels, based on the functions, tasks and organizational structure of the available police for protection force, with functions involved to implement the death penalty, support the implementation of projects, protection of the trial, the accused escort...

The Ministry of Justice has established the Institute of Justice, along with other relevant agencies to promote the establishment of national Institute of forensic inspection. Organizations of lawyers, legal advisors, notaries, inspections, legal assistance ...have been continuously developed in the direction of socialization and better response to the needs of society. Currently, the establishment of the Office for notary has overcome the shortage of staffing and funding to develop a team of notaries. The overloaded notary condition which has existed for many years has decreased permanently. On May 5th 2009, the Vietnam lawyer Union was established which marked a new development of lawyer career in Vietnam, confirming the growth and strong solidarity of Vietnamese lawyers. As a result, the role of law profession is seen more positively. On July 24th 2009, the Government issued the Decree on organization and operation of the form of private judicial execution, firstly experimenting in Ho Chi Minh.

- For strengthening the capacity for judicial officers, facilities investment for judicial agencies and promoting international cooperation in the field of justice

In general, planning, training, selection and appointment of judicial officer works has been executed in accordance with the provisions of law, initially focused on construction of staff force at the request of international integration. After the Resolution 08-NQ/TW, judicial staffs have been reviewing, initially evaluate the situation and propose specific solutions for construction, training the staff force. In the period after Resolution 49-NQ/TW was issued, the central judiciary sectors has focused on training, retraining the staff both in the judiciary profession, political theory, foreign languages and special knowledge in solving international disputes. The judiciary sectors has also issued professional standards, regulations of professional ethics, conducting the renewal process of selection and appointment procedures for each judicial title and at the same time focusing on payroll addition, personnel alternation to the newly established units and the increased competence units.



To implement the policy of judicial reform, the capital for the head office investment will be arranged for judicial agencies has been increasing over the years which have been considered a great effort of the government. The central judicial agencies has conducted the surveys, evaluating the facilities and the construction of basic industry to build the facilities investment scheme for the industry and have been approved by the Prime Minister. The Ministry of Finance has submitted to the Prime Minister for implementing mechanisms to advance payment of capital; regularly coordinate with the governing bodies to remove difficulties. The localities has paid much attention and support in terms of funding, especially for issuing the land to build new headquarters and office expansion projects, supplement the fund for equipment and working facilities for the judicial bodies. Currently, the central judicial agencies together the authorized bodies has established and step by step implemented the plan for wage reform, compensation for judicial officers and renewal fund allocation method for judicial bodies to suit the particular justice, better meet the increasing requirements of justice in the new situation.

In recent years, international cooperation in the field of justice has been enhanced and positively contributed to the implementation of the task of judicial reform, focusing on the following key areas: building institutions and improving the Justice institution; enhancing the capacity of law enforcement institutions in popular activities and legal education, legal assistance in training the staff in justice. Many international treaties on state-level criminal judicial cooperation have been negotiated and signed.⁵ Vietnam has strengthened overall coordination in the prevention and combating foreign crime with INTERPOL, with the police of neighboring countries and regions and with many other countries where many Vietnamese people are living, working and studying; signed several agreements to cooperate with other countries' security agencies and police on prevention and fighting against organized crime, transnational criminal sale of women and children, drug crime, corruption, money laundering. In addition, other mandated international justice activities is also promoted. From 2006 up to present, many countries have submitted request letter for judicial mandating to Vietnam.⁶

⁵ Example: Agreement on judicial assistance in criminal and extradition agreements with India, the Agreement on extradition with Philippines, Cambodia, Agreement on transfer of sentenced imprisonment with the Czech Republic, South Korea, Thailand, Russia, Australia, United Kingdom and Northern Ireland; organization the implement of the Agreement on judicial assistance among ASEAN criminal.

⁶ In 2005, South Korea sent nearly 100 requests, in 2006: 156 requests was; Poland in 2006 sent 40 requests, in 2007: 78 requests...



- *On strengthening the leadership of the Party for justice and the monitoring work of elected bodies, civil society and people to judicial bodies*

In the process of leading to the judicial reform strategy, the authorized bodies at all level has been complied the principles of democratic centralism, respecting the functions and duties of the judicial bodies, ensuring independence, compliance of the laws of the judicial titles prescribed by law. The leadership of the Party Committees has primarily been presented through the setting out the guidelines, opinions, rules for solving the major problems with the important political significance which not include the Pooth-bah action and making changes or intervening specifically to the process of performing the functions and duties of the judicial bodies.

Through the promulgation of the Law on Monitoring of the National Assembly and formation of the Justice Committee of the National Assembly, the monitoring of the National Assembly, the People's Council in particular and of social organization in general toward the judicial agencies has been clearly factual and effective. The people contribute ideas directly to the operation of judicial bodies on the forums, through the mass media has been increasing more, expressing the great interest of the society for justice. In particular, in recent years, the press agency has played a very important role in supervising the operation of judicial bodies. On one hand it has helped the judicial agencies improve their judicial profession, on the other helped people and organizations have much more opportunity to reach justice in accordance with law.

3. Limitation, causes and lessons of judicial reform in recent years

3.1. Limitation

- The institutionalization of a number of guidelines, the Party's viewpoints on judicial reform has still remained slow, particularly such as criminal policy; the institutionalization of the policy to improve the quality of litigation at the trial and step by step socialize some judicial activities; the clear delineation of authority of administrative management together the responsibilities and powers of the judicial proceedings operation; the coordination of building legal guideline documents between the judicial bodies in the central.

- The Requirement for "minimizing the clue of investigation the agencies" has not been implemented yet, the crime prevention is less interested than before due to reconnaissance officials have to take time for the resolution of the case, the cases temporarily suspend the investigation are still quite a lot. Some of the Procuracy officer has not made full authority and responsibility by law to resolve the information, denounce



the crime and prosecute petitions; number of cases have not conducted proceedings for extra investigation are at the high rate. Quality of resolution, giving judgment has make many progress but the rate of judgments and canceled decisions do not strongly reduce. Results of the implementation of the civil trial are not high, the number of the unfinished implementation is still large and tends to increase; the coordination among concerned agencies in implementation of civil cases is not yet closely effective.

- Judicial staff, especially staff with job title is lacking, the quality is limited; a number of judicial officers did not meet mission requirements; the violations of state civil service discipline, professional ethics still exist; there are individual cases heavily violated the disciplines and some handling criminal justice; officials to resign or move the work tends to continue to rise. Training of justice still faces many difficulties, not prepared in time for human resources serve for international integration; there is not a strong innovation in the selection and appointment of staff; the decision to widening the human source to appoint judicial officials have not been implemented; the appointment of the staff of the judiciary to strengthen the lower level still have many obstacles due to the difficulties in regulations and policies.

- Number of current lawyers compared to the population is very low (averagely one lawyer/20.700 residents) especially in rural, plains and mountainous areas, midland; which has not met the demand for Legal growing services for agencies, organizations, individuals, only about 20% of criminal cases nationwide with the participation of lawyers; the quality of the lawyers still limited and weak. Judicial examination also met many difficulties; judicial team has lacked in both quantity and qualification many of whom feel not really comfortable with remuneration; profession subsidy level is too low; the implementation of the socialization of judicial examination activities attracting agencies, professional organizations, experts in and out of public sector participation in assessment activities has not been paid much attention; number of notaries organizations and public notaries calculated by percentage of the population remains very low, the quality of professional training, skills notary still has gaps compared with the practical requirements.

- Facilities, working facilities of the judicial bodies is limited which has not met the requirements of their tasks; equipment and information technology and the application of information technology is still slow compared to some industries in other civil system; the approval of investment projects in a number of agencies does not guarantee the progress, sometimes not close to reality; the capacity evaluation, approval and management of investment projects do not match the requirements of development of the situation; staff



managing the project of the judicial bodies is unqualified in the field of construction investment.

3.2. Basic case of the limitations

- General awareness of the branches and levels toward judicial reform still incomplete. The role of judicial bodies and judicial activities in the process of building the rule of law, promoting eco-socio development and international economic integration has not been aware yet. Some of the staffs in the judicial bodies have hesitated to innovation.

- Some advocate and opinions of the judicial reform strategy, particularly on the model and the new solution has no unity in terms of the perception and action which would cause mood of lack of confidence in each judiciary sector while implementing the tasks assigned.

- The staff, policies, facilities of the judicial bodies for a long time has lack of interest, the eco-socio condition of our country still has some difficulties, the incentive policies for judicial officers is not reasonable; the working environment has not ensure the correct assessment and promotion of personal capability which also causes negative impacts to the attitude of the staff and civil servants work toward the judicial reform.

- The judicial agencies still lack the activeness in implementing some of the content of the judicial reform strategy; the coordination among judicial bodies to each other and between judicial authorization and the government at all levels in some cases lack the close cooperation which has caused many obstacles and difficulties to overcome and remove. The organization and implementation of the programs, judicial reform proposals of the central judicial bodies are often slow compared to the plan and the routine set out; the work of the guidance and management lacks specific including the request for a breakthrough nature of judicial reform.

3.3. Some lessons and experiences

- Firstly, the right-directed awareness and proper leadership of the authorities is a key determinant of the effectiveness of the judicial reform. The reality has shown that where authorization and local government fully recognize of the insight into the requirements, content and judicial reform and leaders closely pay much attention to the justice, that place will show many positive changes. Particularly, organizational structure is strengthened, the staff is enhanced, the facilities are focused, then the judicial activities are supported and making the position, social prestige of the judicial bodies are highly improved.



- Secondly, arouse and maintain the initiative and creativity of staff and the civil servants, but first and foremost is of the leader, and the head of the judicial bodies which is the fundamental driving force to promote implementation process of judicial reform. Reform objectives are achieved or not will depend on perceptions and actions of personnel forces , civil servants and judicial bodies, the role pioneers, led by the head, the leader of each branches, each agency and key unit. It should have the policy of encouragement both in mental and material to maintain a positive, sense of responsibility and qualification in each of officers and civil servants of the judicial sector during the implementation of the reform tasks.

- Thirdly, during implementing judicial reform strategy, it should have focus, the key emphasize on the direction, close and timely supervision of the Steering Committee at all levels of judicial reform and coordination among the branches. Judicial reform related to many issues, areas and industries; therefore, it should select key issue for each period to focus the organization, then assessment and get the experience for the next step.

- Fourthly, Highly appreciate the feasibility in plan and the content's design as well ass the implementation of the routine of the judicial reform; strengthening the inspection of the Party Committees and the supervision of the people in the process of stimulating the implementation tasks of judicial reform. Inspection of the Party Committees, the Steering Committee for Judicial Reform and the direct supervision of the people or the supervision of the agencies representing people in the process of implementing the judicial reform, the role and importance are especially located, . /.