

Vietnamese legal system

1. Professional Legal Organisations

1.1. Lawyers' Association

The Vietnamese Lawyers' Association is the broadest and largest vocational organization of law-related professionals in the country. According to its charter, the Association is a social and political organization of Vietnamese citizens who are working or have been working as lawyers. The Association is an affiliated member of the Fatherland Front.

The main functions of the Association are:

- to participate in the dissemination, education and information on law, both to members and others, which should lead to "the strengthening of the sense of socialist law among citizens"
- to supervise the implementation of law and recommend State agencies on law-making and law implementation,
- to protect "legitimate interests" of its members,
- to encourage Vietnamese lawyers living overseas to make their contribution to the development of the country, and,
- to participate in social and political activities.

It shall also promote Vietnam's external economic relations, create favourable conditions for foreign investment, and help to integrate Vietnamese law with international law¹. The Association participates in the

¹ Phung Van Tuu in Vietnam Law & Legal Forum, December 1994 pp. .22-23.

drafting of new laws and regulations and comments on drafts prepared by the Government and other authorities.

The Association carries out its function of disseminating legal information in several ways, among them, publishing journals and newspapers and organizing talks, seminars and workshops. The Association publishes two journals, the Vietnamese Law Journal (in English and French) and Law (in Vietnamese), and a newspaper, Business and Law (in Vietnamese). The Association also maintains a Law Club, a forum for lawyers and interested people to share their opinions and experiences on legal matters. It is also engaged in international cooperation with lawyers and lawyers' organizations in other countries such as the Law Societies of Australia, Thailand, France, China, the United States, Great Britain and Singapore.

Applicants who want to become members of the Association must be Vietnamese citizens, working or having worked as lawyers, and agree to the Charter of the Association. The number of members in 1996 amounted to about 8,000².

The National Congress of Representatives is the highest body of the Association. It convenes once every five years and may decide most issues concerning the organization and activities of the Association. The Central Executive Committee of the Association is the highest body between the meetings of the Congress. Its members are elected at National Congress. The Committee elects a Standing Board, which consists of the President,

² Applications for membership are considered by the Standing Board of the Provincial Executive Committee of the Association. Applications from lawyers who work in central agencies or in provinces in which a branch of the Association has yet not been established are considered by the Standing Board of the Central Executive Committee of the Association.

a vice president, a General Secretary and other members. The Board administers the Association's affairs between the meetings of the Central Executive Committee. The Association has branches in central agencies and at provincial and district levels.

1.2. Bar Associations

The establishment of Bar Associations is considered to be a step on the way to a state governed by the rule of law and is officially encouraged. The Constitution stipulates that the Bar Associations shall protect the legitimate rights and interests of citizens and organizations, ensure that cases are settled objectively and accordance with the law, and assist in upholding equitable rights of citizens. They shall also promote social goals in that they are expected to uphold socialist legality and teach citizens to obey the Constitution³. Lawyers who are members of the Association shall see too the interests of their clients within the boundaries of the law. They shall also take into consideration what is morally right.

Almost all provinces host a Bar Association⁴. Provincial Associations are established after consideration by the Ministry of Justice and a decision by the People's Committee. They are also subordinate to the central government and equivalent administrative units in administrative matters. The Association has to be a member of the Fatherland Front Committee in the province. The Committee, together with the People's

³ 1992 Constitution, Art.132.

⁴ Ordinance on the Organisation of Bar Associations, promulgated December 30,1987. In December 1996 there were more than 700 lawyers in 52 Bar Associations in Vietnam. The Hanoi Bar Association had about 70 members and Ho Chi Minh City had approximately 120 members.

Council and Committee, "supervise" the activities of the Association.

The Ministry of Justice has a specialised department for the administration of the Bar Associations. It supervises that the activities of the Associations are in conformity with the law and controls that new applicants have the necessary qualifications. The Ministry also handles complaints and denunciations regarding the Associations and their members. Most common are complaints from applicants who have not been accepted as members.

A lawyer who applies for membership must have a law degree or possess equivalent legal skills, he must be a Vietnamese citizen, display "good qualities and ethics" and pass an exam⁵. An applicant has to undergo a probationary period of 6 to 24 months, depending on his previous professional experience, before he is accepted as a full member. Members who violate the rules of the Association may be debarred.

Lawyers who appear in court as counselors must be members of the Bar Association. Other lawyers may only "advise" individuals and organizations⁶. Persons who need legal advice are therefore supposed to contact the Bar Association, which then acts as intermediary. The consultation fee is also paid to the Association, which in turn pays the counsel. The fact that the Association distributes the mandates and collects the fees could mean a risk for conflict of interests when two lawyers who belong to the same association represent opposing

⁵ The exam is constructed by the Department of Justice and the leadership of the Bar Association with the assistance of experienced judges and lawyers.

⁶ A defendant in a criminal case can also be represented e.g. by a representative of the Fatherland Front or the Women's Union.

clients. However, representatives of the association do not seem to consider this a problem⁷. It is stressed that lawyers are independent in professional matters, but may turn to the Board of the Association for advice.

Lawyers are formally equal to the other parties in a court proceeding, and may e.g. meet in private with the accused and other parties, participate in cross examination, debate during the session, etc⁸.

The numbers of members in Bar Associations is still very small. The Hanoi Bar Association, for example, has about 70 members⁹. This may pose a problem if the need for lawyers increases as a result of the economic renovation.

Foreign law firms may still not advise on Vietnamese law, form joint ventures or other partnership with Vietnamese law firms, or hire experienced Vietnamese lawyers. Foreign lawyers and law firms are only entitled to advise clients about foreign and international laws and must therefore sign separate agreements with Vietnamese counterparts for each case which involves advising on Vietnamese law. Foreign law firms are also required to have a minimum of two foreign lawyers per branch office, each with more than five years experience. The law firms are required to report annually about their organizations and operations to the Ministry of Justice and the

⁷ For example the former Chairman of the Hanoi Bar Association, Vu Khac Tuan, December 1993.

⁸ Ordinance on the Bar Associations, Art. 14.

⁹ A private law firm in Ho Chi Minh City, Elcons, had 16 lawyers in 1993. Eight of these were members of the Bar Association. The firm undertook counseling in a wide range of matters, but economic matters dominated, for example to complete application dossiers for licenses for different sorts of enterprises and joint ventures, to assist in economic disputes, and handle purchases of land use-rights and houses.

People's Committee of the province or city where they are located¹⁰.

¹⁰ The Vietnam Economic Times, December 1996, p. 8, and Circular No.791/TT/LS-TVPL of September 8, 1995 Guiding the Implementation of the Regulations on Legal Consultancy of Foreign Lawyers.