

# Part One Overview of the Dispute Resolution Mechanism in Vietnam I. Court System in Vietnam

著者	National Centre for Social Sciences and Humanities Vietnam
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**PART ONE**

**OVERVIEW OF THE DISPUTE RESOLUTION MECHANISMS  
IN VIETNAM**

**I. Court System in Vietnam**

**1. Organization of the Court System**

According to the 1992 Law on Organization of People's court (as amended and supplemented in 1993, 1995), the court system consists of Supreme People's court; People's courts of provinces and cities under central authority; People's courts of districts, towns, cities under provincial authority; Military courts; and other courts stipulated by laws. Under special circumstances The National Assembly may decide to set up Special Courts (Article 2).

In terms of structure, apart from courts established under laws promulgated before 1992, the Supreme People's court and People's courts of provinces consist of Economic Courts, Labor Courts, Administrative Courts and other specialized courts, which might be established by National Assembly Standing Committee in necessary circumstances.

According to Article 16 of the Law on Organization of People's courts 1992 (as amended and supplemented in 1993, 1995): "The management of provincial People's courts in terms of organization is in charge of Minister of Ministry of Justice in coordination with President of Supreme People's court".

According to the 1992 Constitution and detailed by the Law on Organization of People's courts 1992 (as amended and supplemented in 1993, 1995) the President, Vice-President, Judges of provincial People's courts and Military courts are appointed, released from duty, dismissed by the President of State, not elected and revoked the mandate by People's Council at the same level as previously provided for by law.

Article 127 of the 1992 Constitution stipulates that: "Supreme People's court, Provincial People's courts, Military courts and other courts established by laws are judicial organs of the Socialist Republic of Vietnam". This means people's courts are organs exclusively exercising adjudicative function. No other agencies but courts can perform this function.

The functions of the people's courts are detailed by the Law on Organization of People's courts 1992 (as amended and supplemented in 1993, 1995) whereby people's courts are competent organs to try criminal, civil, family, economic, labor, administrative cases and to deal with other matters as stipulated by law.

According to Law on Business Bankruptcy dated 31 December 1993, people's courts of provinces and cities under central authority and Supreme Court have also the function of dealing with the requirements to declare bankruptcy.

Regarding Supreme People's court, besides to the functions of trying and dealing with the requirements of enterprises to declare bankruptcy, the 1992 Constitution provided that "Supreme People's court review decisions of provincial people's courts and military courts". This provision is to ensure that courts over the country function correctly and uniformly.

According to the scope of functions and duties provided for by the Law on Organization of People's courts 1992 (as amended and supplemented in 1993, 1995) and the 1994 Ordinance on Organization of Military courts, Supreme People's court provides lower courts with guidance on uniform application of laws; to summarize trying experiences, and prepares drafts of law to be submitted to the National Assembly, drafts of ordinance to be submitted to the National Assembly Standing Committee. Provincial People's courts, Central Military tribunal and military courts of military zones and equivalent have the function of reviewing decisions made by lower courts, which have come into effect under litigation law.

Within scope of their function, people's courts are responsible to "preserve the socialist legality, people's mastery; safeguard the lives, property, freedom, honor, and dignity of citizens" (Article 26, the 1992 Constitution). This can be seen as a key duty of courts in exercising its judicial function. Being one of litigation agencies, courts should ensure that the litigation activities be in conformity with litigation law. When trying cases courts should apply suitable and legal measures to find out the truth of the cases in an objective, comprehensive and adequate way so that to work out lawful decisions.

By exercising adjudicative function, people's courts participate in educating citizens to "live and work in accordance with the Constitution and law", to respect social rules, to fight against crimes; introducing measures to prevent crimes; propagating and disseminating laws. Furthermore, people's courts give advice on drafts of law, ordinance and other legal documents prepared by other agencies.

Speaking generally on present organization, functions and duties of people's courts, it can be said that a number of things have been done at initial steps of renovation process:

- Specialized courts namely criminal courts, economic courts, labor courts, administrative courts have been established in Supreme People's court and People's courts of provinces, cities under central authority;
- Mechanism for appointing judges in 5-year term has been implemented in replace of mechanism for electing judges, which was applied from 1960 to 1992;
- Detailed provisions on standards for judges have been worked out (in order to ensure the correctness and quality of the appointments approvals of selecting committees are required conditions for every case before they are submitted to the President of State for appointment).

- Execution of civil sentences has been conveyed from courts to justice agencies and by doing so courts have been provided with favorable conditions to focus on their main duties which are to try cases and settle other matters in accordance with provisions of laws.
- Along with economic, politic and social renovations, court's scope of functions has been supplemented so as to meet the requirements of those renovations.

However, in order to build up a State of law, it is necessary to renovate the organization as well as expand the jurisdiction of people's courts at every level; to strengthen jurisdiction of courts in trying labor, administrative cases, not limited on some kinds of cases... This, in turn, places on the court system increasingly harder responsibilities. Given its present organization and management structure, to fulfill the function of trying all the cases stipulated by laws seems to be hard mission for courts. Therefore, further renovations in organization, operation and management of court system seems necessary.

## **2. Judges: Mechanism for training and appointing**

As regards structure and quality of trying activities of the court system, it is necessary to give attention to judge-team, as well as mechanism for training and appointing judges, because judge-team is a main component in organization and personnel structure of court system. Methods of training and selecting (by appointing or electing) judges might affect the quality of trial operation by court system.

### **2.1. Development of training judges**

In Vietnam, due to difficulties of different kinds, not until 1979 has the training of legal officials at university level initiated in large scope by the establishment of Hanoi Law University.

Since 1993 after the Ordinance on Judges and People's Jury came into effect, thanks to the diversification of training forms, a large number of people doing judicial work in courts at all levels, who had not acquired yet graduate degree in law, have been trained and equipped with degrees satisfying the standards applied to appointing judges in accordance with the Ordinance. Moreover, since the School of Training Justice Officials has been established, more and more people are qualified for judge post. Particularly, in the first tenure of office of 1994-1999, people having regular graduate degree in law and post-graduate degree in law accounted for merely 9% in total number of judges at district level, and 10% at provincial level. In second tenure of office (1999-2004), a large number of judges at district level have been trained in in-service and special training courses hence lower quality of training compared to regular training. In the second tenure of office, number of judges at district level holding graduate and post-graduate degree increased by merely 7% compared to that of previous tenure, while number of those who acquiring degrees from in-service and special training courses accounted for up to 67%, 5% increase compared to last tenure. As regards judges at provincial level in the second tenure, the situation seems to be brighter. However judges at provincial level acquiring degrees from in-service and special training courses still

account for 50%, 7% rise compared to last tenure. Those having regular graduate degrees and post-graduate degrees in law account for 36%, 26% increase compared to that of last tenure.

At present, compared to number of regular judges which has been approved by the National Assembly, it is still short of 23 judges for the Supreme Court, 135 for provincial courts, 522 for district courts and 23 for military courts.

According to the statistic provided by the Supreme Court, problems facing courts at every level are not only the lack of judges but also unequal quality of judge team, especially in courts at district level, where there are many judges have not yet acquired law degrees. Eventhough some have gained the degrees, most of those degrees are from in-service or special training courses. This is one of the very reasons making the trying process stagnated and a great number of sentences be overturned or corrected.

To raise the quality of judges depends at first on training activities. At the moment, Vietnam has not established yet a Judges Training School. However, initial preparations have been carried out for this specialized training. In 1995, the Justice Officials Training School was established on the basis of a department split from Hanoi Law University. Only 3 annual experimental courses have been conducted so far, mainly for judges, lawyers, and etc.

In the near future, a certificate of participation in a training course for judges is likely to become compulsory for those who would be appointed as judge. And as a standard, this course might be designed not for those who have degrees from in-service or special training courses. Judge post should be offered only to those who acquired regular graduate degrees in law from Law University of Hanoi, Law University of Ho Chi Minh City, and Law department of Hanoi National University.

The second way to raise the quality of judges relates to state regulations. This means the Ordinance on Judges and People's Jury need to be amended, in particular judge standards should be raised. The standards under present regulations seem very low, unsystematic, hence might fail to single out talented people. The principle of **CAO TI** and **HOI TI** should also be applied thoroughly.

Judges are ones who show legal civilization of a nation. Therefore, judges should represent the people's talents and wills, and live up to the declaration of "in the name of people".

## 2.2. Mechanism for appointing judges

The table below shows 3 levels of judges according to effective provisions of Vietnam law:

<b>At supreme level</b>	Supreme Court Judges and Judges of Central Military Tribunal
<b>At provincial level</b>	Provincial People' Court Judges and Judges of Central Military Tribunal
<b>At district level</b>	Judges of Courts district, towns, cities under provincial authority and Judges of Military courts of military areas.

### a. Standards for Judges of every levels:

For the first time, Vietnam law has introduced a definition of judges. Article 1 of the 1993 Ordinance on Judges and People's Jury provided that: "Judges are those who are appointed in accordance with provisions of law to try cases within court's jurisdiction, including criminal, civil, family, labor, economic, administrative cases and other matters as provided for by law".

Standards for being selected and appointed as judge are divided into 2 categories:

General standards include:

- Vietnamese citizen loyal to the country
- To have good quality and moral; honest and earnest;
- To have legal knowledge, strictly observe the laws, and have a sense of determinedly preserving socialist legality;
- To have a good health enough to fulfill his/her duties.

Detailed standards applied to each level of judges are as follows:

For Supreme Court Judges:

- General standards mentioned above;
- To have qualification from Higher School for Court or Law University;
- To have more than 8-year experience working in legal jobs;

For Judges at provincial courts:

- General standards mentioned above;
- To have qualification from Higher School for Court or Law University;
- To have more than 6-year experience working in legal jobs;

For Judges at district courts:

- General standards mentioned above;
- To have qualification from Higher School for Court or Law University;
- To have more than 4-year experience working in legal jobs;

To sum up, judges at various levels are different from each other only in the length of time doing legal works. Other standards are the same.

**b. The selection and appointment of judges at every level:**

The procedures for selecting and appointing judges at every level are applied through Judge Selecting Committees, which are divided in to three independent levels sharing two common responsibilities namely:

- To select qualified persons to be judges to submit to the State President for appointment;
- To consider cases where a judge violates the disciplines, becomes unqualified for the position to submit to the State President for dismissal.

According to present regulations, to select judges at every level, there are three committees including:

*1) Committee for selecting judges at Supreme Court:*

This committee is chaired by the President of Supreme Court working with 4 other members who are representatives of Ministry of Justice, Central Committee of Vietnam Fatherland Front, and Central Standing Committee of Vietnam Lawyer Association.

Up to now (2000), the selecting committee has submitted to the State President for appointment and reappointment of 97 judges at Supreme Court and 17 judges at Central Military courts. According to the official number of judges which has been approved by the National Assembly Standing Committee, it is still short of 23 judges at Supreme court.

*2) Committee for selecting judges at provincial courts:*

This committee is chaired by the Minister of Ministry of Justice working with 4 other members who are representatives of the Supreme Court, Central Committee of Vietnam Fatherland Front, and Central Standing Committee of Vietnam Lawyer Association. As a result, the Committee for selecting judges at provincial courts also consist of 5 members, of them 4 members are decided by the National Assembly Standing Committee based on the recommendation made by the Chairman of the Committee.

3) *Committee for selecting judges at district courts:*

This committee is chaired by the Director of Justice Department of People's Committee, working with 4 other members who are representatives of the People's Council - the local representative organ, Provincial Court, Committee of Vietnam Fatherland Front, and Standing Committee of Vietnam Lawyer Association. The list of the committee's members is decided by the Minister of Ministry of Justice based on the recommendation made by the Chairman of the Committee and the consensus endorsed by the President of Court of provinces and cities under central authority.

The number of judges at district level, which has been approved by the National Assembly Standing Committee is 3,515 judges, of them 64% have been submitted by the Committee to the State President for appointment.

**3. The fact of judicial activities of the court system over the last years:**

Market mechanism has affected considerably to all the faces of social life. Its adverse sides seem to be the very reasons causing and wiping out crimes. Economic, civil, family, labor, administrative disputes have been increasingly risen and more and more complicated. On the other hand, our state management has shown a number of shortages, especially in managing, placing and arranging staff in some important state bodies. A number of court staff have been found degenerated, depraved, corrupted, taken bribery, contracted with each others and with dishonest trader carrying out extremely serious cases which bring about very adverse effects to politics, economy and social life, undermine people's belief in Courts and State.

Some kind of serious crimes such as rob, murder, child rape, drug-crimes, prostitution- related crimes, etc. have been in growing tendency with numerous serious cases. Crimes in economic fields such as bribery, corruption, cross-border smuggling, damaging forest and sea resources, commercial deceit have occurred numerous with a great number of serious cases. The number of cases of producing and trading false goods, prohibited goods to earn profit is also in rise.

Civil, family, economic, labor, administrative disputes, as effected also by the market mechanism, have taken place in more complicated and fiercer way. Those problems exert a direct effect to the socio-economy, the production and business of all economic sectors and people's lives.

Against the difficult and complex context, thanks to its efforts, courts have obtained encouraging outputs in their judicial activities over the last past years. The output of their judicial activities from 1995-2000 are shown in the following statistics:

Year	Received	Tried	Proportion (Received/Tried)	Note
1995	113,843	97,183	85.36%	
1996	148,549	132,908	89.5%	
1997	151,690	126,033	83.1%	
1998	189,705	165,233	87.1%	
1999	215,193	167,130	77.6%	48,063 cases remained. The number of cases to be tried has increased by 22,463 cases compared to that of 1998.
2000	191,783	165,048	86.05%	26,735 cases remained. The number of cases to be tried has increased by 2,082 cases compared to that of 1999.

Consequently, in average, in each year from 1995-2000, 202,152.6 cases were in need of courts' settlement, of which 170,707 tried (making up 84,44%) and 31,445.6 remained unsettled.

In particular, from 1995 to 2000, number of criminal, civil, family, economic, labor, administrative cases tried by courts at every level is as follow:

### 3.1. Criminal trial:

In 1995 courts at all levels received to try in first instance 33,143 cases with 55,391 indicters.

As regards reception for appellate trial: provincial courts received 6,930 cases with 10,244 indicters; military courts received 104 cases with 171 indicters.

Supreme Courts of Appeals received and handled 5,060 cases with 8,987 indicters.

In respect of judgment by reviewing:

Provincial courts received and handled 137 cases; the central military court received and handled 19 cases with 33 indicters.

Criminal courts, Committees of Judges and Full courts received and handled by reviewing 308 cases with 478 indicters. The results are as follows:

#### 1. Trial judgment

Trial courts rendered judgments on 31,270 cases with 51,757 indicters, accounting for 94.34 % of cases handled and accordingly 93.43 % of all indicters.

## *2. Appellate judgment*

Provincial courts rendered judgments on 5,951 cases with 8,733 indicters, accounting for 85.8 %.

Military courts of appeals gave judgments on 85 cases with 137 indicters, accounting for 81.73%.

The Supreme courts of appeals passed judgments on 4,324 cases with 7,391 indicters, accounting for 85.45 %.

## *3. Judgment by reviewing*

Provincial courts rendered judgments on 131 cases, counting for 95.6 % of cases subject to certiorari. Regional military courts and the central military court passed judgments on 13 cases with 33 indicters, making up 100 % of cases subject to certiorari.

In Criminal court, Committees of Judges and Council of Judges of People's Supreme Court has judged 276 cases with 339 indicters, accounting for 89.6% of all cases and 79% indicters.

In 1996, courts throughout the country received and handled for trial judgment 43,503 cases with 66,956 indicters.

### **1. Judgment at the trial level**

Courts of all levels rendered judgments on 40,168 cases, making up 92.33 % [of all cases handled].

### **2. Status of handling and judging cases at the appellate level**

a. Provincial courts received and handled 72,294 cases with 10,047 indicters; and rendered judgments on 6,242 cases with 9,728 indicters, accounting for 85.57 % in terms of the number of cases and 93.43 % in terms of the number of indicters. Of which, the number of cases that were handled at the appellate courts and on which the trial judgments were kept in tact accounted for 66.05 %.

b. Regional military courts received and handled 142 cases with 168 indicters, and passed judgments on 115 cases with 130 indicters, accounting for 88.46 % in terms of the number of cases and 84.52 % in terms of the number of indicters.

c. Three Supreme courts of appeals received and handled 6,078 cases with 10,006 indicters, and made judgments on 5,092 cases with 8,661 indicters, making up 83.78 % of cases and 86.6 % of indicters.

The number of cases on which trial judgments were kept in tact by the Supreme courts of appeals accounted for nearly 80%.

In 1997, courts through out the country received and handled for trial judgment 48,664 cases of all kinds with 76,495 indicters. The courts passed judgments on 42,058 cases with 65,339 indicters, accounting for 86.42 % of cases and 89.44 % of indicters.

The Supreme courts of appeals passed judgments on 5,138 cases with 9,145 indicters, making up 83.62 % of cases. Of which the number of cases on which trial judgments were kept in tact accounted for 73.41 %.

In respect of judgment by reviewing, provincial courts judged 260 cases with 385 indicters, accounting for 86.66 %; the Central military court heard 19 cases with 32 indicters, making up 88.8 %; and the Supreme Court heard 288 cases with 467 indicters, accounting for 52.29 %.

In 1998, courts through out the country made trial judgments on 48,291 cases with 74,428 indicters, out of 50,509 cases handled with 78,634 indicters, accounting for 95.61 % of cases and 94.71 % of indicters, an increase of 1845 cases (or 3.8 %) and 2,143 indicters (or 2.8 %) comparing with 1997.

Provincial courts rendered judgments on 7,004 cases with 10,324 indicters, accounting for 93.08 % in terms of the number of cases received and handled and 95.05 % in terms of the number of indicters. Of which, the number of cases that were handled at the appellate courts and on which the trial judgments were kept in tact accounted for 63.26 %, compared to 69.9 % in 1997.

The Supreme courts of appeals passed judgments on 6,719 cases with 11,351 indicters, out of 8,845 cases to be judged with 15,583 indicters, or a making-up of 76 % (compared with 83,26 % in 1998). Of which the number of cases on which trial judgments were kept in tact accounted for 72.5 %.

In respect of judgment by reviewing, provincial courts judged 279/290 cases, accounting for 96.43 %.

During 1999, courts through out the country has handed first-instance of 50,461 cases with 77,461 indicters, out of 54,159 cases handled with 83,069 indicters, accounting for 93.17 % of cases and 93.46 % of indicters. Of which, Provincial People' courts and military courts heard 18,562 cases with 30,682 indicters; County People' courts and regional military courts heard 31,899 cases with 47,009 indicters, an increase of 1,791 cases (or 3.6 %) and 2,361 indicters (or 3,1 %) in comparison to 1998.

Provincial courts rendered judgment by reviewing on 7,153 cases with 10,779 indicters, out of 7,725 cases handled with 11,706 indicters, accounting for 92.3 % of cases and 92 % of indicters. The number of cases on which the trial judgments were kept in tact were 592 cases with 927 indicters, accounting for 64.09 %, compared to 63.26 % in 1998.

The Supreme courts of appeals passed judgments on 5,222 cases with 8,466 indicters, out of 7,784 cases to be judged with 12,249 indicters, or a making-up of 67.08 % in terms of cases (compared with 83,26 % in 1998), and 69.1 % in terms of the number of indicters. Of which the number of cases on which trial judgments were kept in tact accounted for 80.3 %, compared with 72.5 % in 1998. There were 2,562 cases left over with 3,783 indicters.

In respect of judgment by reviewing, provincial courts judged 217 cases, accounting for 94.37 %; the central military court rendered judgments on all 9 cases it

handled with 12 indicters; the Supreme Court gave judgments on 198 cases with 255 indicters, out of 206 cases with 271 indicters, or a making up of 96.1 %.

During 2000, first instance trial at all levels had to handle 49,192 cases with 72,904 indicters. Of which, 45,497 were new cases with 67,476 indicters and 3,698 were leftover cases with 5,428 indicters. Courts of trial had made decision on 46,946 cases with 69,133 indicters. Of which, the number of cases on which judgments were given was 41,942 cases with 60,072 indicters, accounting for 94.4 %; 4,229 cases with 7,856 indicters were returned to the Organ of Prosecution.

Compared to 1999, the number of new cases handled by courts reduced by 10,510 cases with 2,776 indicters.

Provincial courts of appeals rendered judgments on 5,921 cases with 8,420 indicters, out of 6,939 cases handled with 9,787 indicters, accounting for 93.33 % of cases and 93.39 % of indicters. The number of cases on which the trial judgments were kept in tact accounted for 63 %, compared to 64.09 % in 1998.

The Supreme courts of appeals passed judgments on 6,520 cases with 11,496 indicters, out of 8,357 cases with 15,345 indicters, or a making-up of 83.13 % in terms of cases, and 78.61 % in terms of the number of indicters. There were 1,409 cases left over with 3,281 indicters.

The central military court gave judgments on 101 cases with 144 indicters, out of 106 cases with 155 indicters or a making up of 95.28 % of cases and 92.90 % of indicters.

In respect of judgment by reviewing, provincial people's courts had rendered judgments on 248 indicters, accounting for 94.9 %; the central military court rendered judgments on 11 cases with 15 indicters, accounting for 91.6 %; the Supreme Court had judged 164 cases with 206 indicters under reviewing level, out of 212 cases with 236 indicters that the court handled, or a making up of 77.35 %.

On balance, over the last few years, courts at all levels had made efforts to meet and go beyond the judgment goals in general, and criminal judgment goals in particular set at the beginning of every year. This remark is supported by the statistics provided by the Supreme Court over last years.

<b>Year (whole country)</b>	<b>Number of cases to be judged</b>	<b>Number of cases judged</b>	<b>Ratio (%)</b>	<b>Remarks</b>
	(1)	(2)	(1)/(2)	
1998	67,407	62,664	92.96	An increase of 1,845 in comparison with 1997, or 3.8 %
1999	80,104	63,230	78.93	An increase of 1,791 in comparison with 1998, or 3.6 %
2000	65,012	59,839	92.04	

### **3.2. In respect of civil, family and marriage cases**

In 1995, local People's courts of trial had rendered judgments on 26,921 civil cases, out of 38,065 cases they handled, or a making up of 70.72 %. Compared to 1994, the number of cases to be judged increased by 7,532 cases, and the number of cases judged increased by 2,597 cases. Cases brought to courts fell into several types of disputes, as follows: real estate disputes, loan contract disputes, group credit disputes. As regard to family and marriage disputes, courts gave judgments on 28,185 cases, out of 36,974 cases handled, or a making up of 76.22 %, and an increase of 2598 cases handled compared to 1994.

Provincial courts of appeals rendered judgments on 5,057 cases, out of 7,336 cases (or 68.93 %). Of which, the number of cases on which trial judgments were kept in tact accounted for 46.21 %; the number of cases on which trial judgments were revoked accounted for 10.40 %; the number of cases on which trial judgments were revised accounted for 40 %.

The courts had also judged 2,472 family and marriage cases, accounting for 74.55 % of all cases handled. Of which, the number of cases on which trial judgments were kept in tact accounted for 38.19 %; the number of cases on which trial judgments were revoked accounted for 10.40 %; the number of cases on which trial judgments were revised accounted for 47.14 %.

Three Supreme Courts of Appeals judged on 488 cases, out of 691 cases handled, or a making up of 70.62 %. Of which, the number of cases on which trial judgments were kept in tact accounted for 49.68 %.

In respect of judgment by reviewing, provincial courts had judged 121 civil cases of all types, out of 135 cases, accounting for 89.63 %. Of which, the courts denied to judge by reviewing 5 cases, revoked judgment and returned for further investigation 5 cases, and revoked judgments returned to trial courts 70 cases. The Supreme Court had resolved 598/691 civil, family and marriage cases (accounting for 86.54 %).

In 1996, people's courts at all level gave judgments on 80,708 cases, out of 104,643 cases handled, accounting for 77.12 %. The number of cases handled by trial courts increased by 18,815 cases, and by courts of appeals increased by 87 cases, compared to 1995. Conciliation had successfully applied for 47 % of civil cases, 7.19 % of family-marriage and contractual cases.

At the appellate level, the number of cases on which trial judgments were kept in tact by provincial courts accounted for 42.55 %, on which trial judgments were revoked accounted for 10.73 %, and on which trial judgments were revised were 45 %. The Supreme Court kept in tact 38.49 %, revoked 12.7 % and revised 22.5 % of trial judgments.

In 1997, people's courts at all levels gave judgments on 70,832 cases, out of 87,652 cases handled, accounting for 80.13 %. Conciliation had successfully applied for 17,606 cases (44.05%). The number of cases on which trial judgments were kept in tact accounted for 50 to 60 %.

In 1998, people's courts at all levels rendered judgments on 93,226 cases, out of 111,562 civil and family-marriage cases to be judged. Of which, the number of cases that had been successfully conciliated accounted for 93,266 cases (accounting for 83.73%). The number of cases on which trial judgments were kept in tact by provincial courts accounted for 47.2 %. The Supreme Court kept in tact 61 %, revoked 9.10 % and revised 80 % of trial judgments.

In 1999, people's courts at all levels passed judgments on 101,919 cases, out of 142,064 cases handled, or a judgment ratio of 71.4 per cent. Of which, the number of cases that had been successfully conciliated accounted for 27,519 cases (3,295 divorce cases were successfully conciliated, concerned parties withdrew from the cases). Provincial courts kept in tact trial judgments of 35.3 % civil cases, 35 % of family-marriage cases; revised trial judgments of 37 % civil cases, 42 % of family-marriage cases; revoked partly or completely 8.75 % of civil cases and 11.3 % of family-marriage cases.

Supreme courts of appeals kept in tact trial judgments rendered by provincial courts of 64 % civil cases, 54 % of family-marriage cases; revised trial judgments of 15.4 % civil cases, 34 % of family-marriage cases; revoked partly or completely 17 % of civil cases and 4 % of family-marriage cases.

In 2000, people's courts at all levels judged 102,847 cases, out of 123,923 cases handled, or a judgment ratio of 82.99 per cent. Of which, the number of cases that had been successfully conciliated accounted for 24,047 divorce cases. Of which, 3408 divorce cases were successfully conciliated to reunite; concerned parties withdrew from the cases.

Provincial courts of appeals kept in tact trial judgments of 45.47 % civil cases, 39.78 % of family-marriage cases; revised trial judgments of 11.62 % civil cases, 45.57 % of family-marriage cases; revoked partly or completely 11.7 % of family-marriage cases.

Supreme courts of appeals kept in tact trial judgments rendered by provincial courts of 47.82 % civil cases, 46.25 % of family-marriage cases; revised trial judgments of 30.62 % civil cases, 26.25 % of family-marriage cases; revoked partly or completely 12.28 % of civil cases and 10 % of family-marriage cases.

In terms of judgment by reviewing, provincial courts denied to handle 3.23 %, and revoked trial judgment of 68.6 %; the Supreme civil court denied to handle 4.92 % of civil cases, revoked trial judgments and appellate judgments and returned to court of appeals 24.64 % of cases, revoked appellate judgments to restore trial judgments 5.48 % of cases, revoked appellate judgments and halted the proceedings of 17.9 % of cases, and revised appellate judgments of 12 % cases.

In respect of family-marriage cases, the Supreme court denied to handle 1 case, revoked trial judgments and appellate judgments to return to trial court 40 % of cases, revoked appellate judgments to return to appellate courts 44.4 % of cases, revoked appellate judgments to restore trial judgments 6.6 % of cases, and revised appellate judgments of 6.6 % cases.

### **3.3. In respect of economic cases**

In 1995, people's courts at all levels rendered judgments on 441 cases, out of 539 economic cases to be judged, or a judgment ratio of 81.8 %. Of which, the number of cases that had been successfully conciliated accounted for 165 cases, accounting for 44.66% of all resolved cases. The number of cases on which trial judgments were appealed accounted for 13 % of resolved cases.

In 1996, people's courts at all levels resolved 575 cases, out of 633 economic cases handled, or a judgment ratio of 90.83 %. Of which, the number of cases that had been successfully conciliated accounted for 38.3 % of all resolved cases. The number of cases on which trial judgments were appealed accounted for 12.09 % of resolved cases. Economic courts also resolved 11/12 requests to declare businesses bankrupt.

In 1997, people's courts at all levels resolved 572 cases, out of 701 economic cases handled, or a judgment ratio of 81.59 %. Of which, the number of cases on which trial judgments were appealed accounted for 14.9 % of resolved cases. Economic courts also resolved 11/12 requests to declare businesses bankrupt. Supreme courts of appeals canceled 8 cases, revised lower courts' judgments of 16 cases, and denied appeals on 50 cases.

In 1998, people's courts at all levels resolved 1,081 cases, out of 1,289 economic cases handled, or a judgment ratio of 83.86 %. Of which, the number of cases that had been successfully conciliated accounted for 543 cases, or 43 % of all resolved cases.

In 1999, people's courts at all levels resolved 1,143 cases, out of 1,495 economic cases handled, or a judgment ratio of 76.45 %. Of which, the number of cases that had been successfully conciliated accounted for 552 cases, or 54.6 % of all resolved cases. The number of cases on which trial judgments were appealed accounted for 23.16 % of resolved cases. The Supreme courts of appeals, the Supreme economic court, Supreme Court's Judge Committee kept in tact lower courts' judgments on 39 cases (accounting for 34.8%), revised trial judgments on 36 cases (32.1%), revoked lower courts' judgments on 36 cases (34.8%), and halted the proceedings of 9 cases.

In 2000, people's courts at all levels resolved 990 cases, out of 1,177 economic cases handled, or a judgment ratio of 84.11 %. The Supreme courts of appeals, the Supreme economic court, Supreme Court's Judge Committee kept in tact lower courts' judgments on 67 cases, accounting for 34.8% of all cases they resolved, revised trial judgments on 11 cases (17.7%), revoked lower courts' judgments on 24 cases (19.3%).

### **3.4 In respect of labour cases**

Over last few years, labour disputes brought to courts principally concentrated in big cities.

Many provincial and district courts did not receive and handle labour disputes, despite of the fact that labour disputes were quite prevalent in localities. Some courts

had received and handled labour cases, but such cases did not represent the real picture of labour disputes in reality.

Among all labour cases received and handled by courts, there were generally two main types of disputes, namely unilateral termination of labour contracts (there were 163 cases of this type in 2000, accounting for 28.8 %), dismissal of workers (there were 31 cases of this type in 2000, accounting for 5.9 %), and claims on compensation, wage disputes, social security disputes. That is, disputes were mostly individual disputes (there were 110 cases in 2000), and few collective disputes (there was only 1 case in 2000).

In 1997, there were only 20 provincial courts and 9 district courts heard 391/406 labour cases, a judgment ratio of 96.23 %.

Most of labour disputes were brought to courts by workers. Of which, 50 cases were related to dismissal of labour as a disciplinary measure, 272 cases were related to unilateral termination of labour contracts, 56 cases were concerned with compensation for employers, and 12 labour disputes of other types.

In 1998, people's courts at all levels resolved 432 cases, out of 495 cases handled, or a judgment ratio of 87.27 %. Of which, the number of cases that had been successfully conciliated totaled 202 cases, or 46.75 % of all resolved cases. Labour disputes brought to and handled by courts mainly concentrated on two types of disputes, namely unilateral termination of labour contracts (accounting for 52 %) and dismissal of labour as a disciplinary measure (accounting for 18.38 %). Courts had collaborated with concerned bodies, and hence enhanced the conciliation ratio.

In 1999, local courts resolved 358 cases, out of 422 cases handled, or a judgment ratio of 84.83 %. Of which, the number of cases that had been successfully conciliated totaled 110 cases, or 31 % of all resolved cases. Courts halted the proceedings in 103 cases due to the withdrawal of claims by claimants, (accounting for 28 %), and gave judgments on 145 cases, accounting for 41 %.

Labour disputes brought to and handled by courts mainly concentrated on two types of disputes, namely unilateral termination of labour contracts (accounting for 239 cases, or 56 %) and dismissal of labour as a disciplinary measure (accounting for 69 cases, or 16.3 %). The rest were disputes regarding compensation, wages, and social security. Courts had collaborated with concerned bodies, and hence enhanced the conciliation ratio.

In 2000, local courts handled 472 new cases, and 75 leftover cases, or a total of 547 cases. The courts resolved 475 cases, or a judgment ratio of 86.2 %. Compared to 1999, new labour cases handled increased by 132 cases. Of resolved cases, 212 cases (or 44.9 %) had been successfully conciliated. Courts temporarily halted the proceedings in 24 cases (5 %), halted proceedings in 141 cases (or 29.8 %) due to the withdrawal of claims by claimants, and gave judgments on 95 cases, accounting for 20.2 %.

Provincial courts of appeals resolved 42/45 cases, accounting for 93.3 %. The courts kept in tact trial judgments on 17 cases (or 40.4 %), halted the proceedings in 3

cases (or 7.1 %), revised trial judgments on 19 cases (or 45.2 %), and revoked trial judgments on 3 cases (or 7.1 %).

The Supreme courts of appeals resolved 96/134 cases, accounting for 71.6 %. The courts kept in tact trial judgments on 53 cases (or 55.2 %), revised trial judgments on 11 cases (or 11.4 %), halted the proceedings in 31 cases (or 32.2 %), and temporarily halted the proceedings in 1 case (or 1 %).

### **3.5 In respect of administrative cases**

The Ordinance on the resolution of administrative cases took effect as from July 01, 1996. Over 6 months as from the effective date of the Ordinance, courts had received more than 500 administrative claims. Yet, the courts had to returned most of the claims under the provisions of Article 31 of the Ordinance.

Local courts received and handled 36 cases and resolved 17 cases, decided to halt the proceedings in 9 cases, and temporarily halt the proceedings in 1 case.

In 1997, local courts resolved 97 cases, out of 117 cases handled, or 82.9 %. The fact that should be concerned was that despite of small number of administrative cases brought to and handled by courts, the courts had to return claims to the claimants or temporarily halt the proceedings as required by the provisions of the Ordinance.

In 1998, trial courts at all levels resolved 201/327 cases, or 61.46 %. Among them, the most common claim was related to administrative decisions on land administration and decisions on administrative penalties.

In 1999, courts at all levels resolved 319 cases, out of 408 cases handled, or a ratio of 78.1 %.

After the resolution of such cases, the Supreme Court received 63 appeals requesting the cases to be handled again by reviewing. Considering the claims, the Supreme Court decided that only 12 appeals out of 63 were grounded.

In 2000, local courts received and handled 539 case, resolved 419 cases, or a ratio of 77.7 %. Among them, 37 cases were temporarily halted, 214 were heard at the courts, and the proceedings of 168 cases were halted.

Provincial courts of appeals received and handled and resolved 123/147 cases, a ratio of 83.6 %. The courts kept in tact trial judgments on 73 cases (or 59.3 %), revised trial judgments on 25 cases (or 20.3 %), revoked trial judgments on 16 cases (or 13 %) and halted trial judgments (7.3 %).

The Supreme courts of appeals received and handled and resolved 76/121 cases, or a ratio of 62.8 %. The courts kept in tact trial judgments on 44 cases (or 57.8 %), revised trial judgments on 13 cases (or 17.1 %), revoked trial judgments on 15 cases (or 9.7 %). The courts also resolved 25/26 cases by reviewing, of which they revised lower courts' judgments on 15 cases, revoked lower courts' judgments on 9 cases, and denied handling 1 case.

### **3.6 Brief remarks on judgment activities of the court system over last few years**

The credibility and the effectiveness of the court system can be measured by the perception and attitude of people in general and of concerned parties towards the court system. That is, whether or not concerned parties can choose courts as a way to solve problems they face?

Through analysis of organizational structure and operations of the court system, we can have some brief remarks as follows:

The court system of our country has been increasingly developed and effective, well deserving the central position in the judicial system, being an effective tool to protect the regime, the State, to maintain justice, and protect rights and legitimate interests of citizens.

The court system had achieved noteworthy results from its judgment operations, particularly:

The court system has become an effective tool to protect the socialist regime, maintain the socialist rule of law, protect rights and legitimate interests of citizens.

In reality, People's courts at all levels had been able to resolve most cases correctly under provisions of laws and regulations, fairly, justly and judiciously. The number of cases subject to appeals had increasingly reduced.

Reputation, professionalism and capability of judges have improved, and hence attracted more people come to courts as a way to solve their disputes.

Nonetheless, organization and practical operations of the court system still had certain shortcomings and impediments as follows:

Organization of the court system has yet to be convenient to people and concerned parties.

The delineation of judgment jurisdiction, especially that of district courts, is still inappropriate. Provincial courts, special courts of the People's Supreme court, the Supreme Courts of Appeals, and the Supreme Court as a whole had taken a huge number of cases, but paid a little attention to the more important mission – that is, to administer the judgment operation, to provide judgment guidelines for lower courts. Hence, the number of cases left over increased, and the handling of cases at the appellate level often was lengthened. That the Supreme Court had failed to provide judgment guidelines promptly caused the lack of unification in the judgment operation of lower courts, or even illegal judgment, decisions of lower courts.

To date, regulations on judicial operations are still far from comprehensive, with many contradictions and overlaps. Judicial procedures, especially economic, labour and administrative judicial procedures are complicated and prolix, impeding the judgment operation of the court system as well as causing troublesome to concerned parties to litigation. Many judges, courts' officers have weak professionalism and capability,

resulting in many mistakes. More seriously, many judges, court's officers, due to various reasons, have become degenerate, taking advantage of shortcomings, contradictions, overlaps of certain regulations to further complicate the cases, and even to ask for bribes or other illegal benefits.

The credibility and the effectiveness of the court system can be measured by the perception and attitude of people in general and of concerned parties towards the court system. That is, whether or not concerned parties to disputes wish to choose courts as a way to solve their problems?

Currently, people can have several ways to solve their disputes. That could be mediation, conciliation, and resolution of disputes by local conciliation groups, arbitration, and courts. Even when a dispute is brought to arbitration or court, the concerned parties can still solve it by mediation. So, the court system is just a way among several ways that people can choose to solve their disputes. The selection of the court system really depends on two things: One, credibility, and capability to solve disputes of the court system; Two, legal consciousness, habits and customs of the people.

Studying practices showed that people in our country seem to have two contradict tendencies in terms of perception and selection of the court system.

The first tendency is the fact that many people, especially parties to disputes, have increasingly had confidence in the court system. These people often opt courts as a way to solve their disputes, especially criminal, civil and land disputes. The tendency is evidenced by the increasing number of claims received by courts. Courts' statistics showed that each year courts at all levels received and handled about 200,000 cases, and correspondingly about 400,000 complains/grievance regarding these cases.

In 2000, the Supreme Court alone received 11,648 complains/grievances of all types. Most of these complains/grievances submitted by citizens are related to particular cases to which they are concerned parties or relatives thereof. In many instances, citizens came to Courts to request explanation on legal issues in which they are interested. Quite a few came to state queries or suspicion or to denounce judges and/or courts' officers of unfair, unjust activities in judgment.

The second tendency, many people and concerned parties were still reluctant and unwilling to have their disputes resolved by courts. To them, dispute resolution by courts was difficult, complex and hardly satisfactory because judicial procedures were complicated, prolix and time-consuming. Furthermore, the bearing of fees officially set the State and unofficial fees paid to lawyers, courts' officers, judges and other officials also significantly affected the option of courts as a way to solve disputes. People's confidence in the court system and those working for the system was more or less affected by officiousness, red-tape, dishonesty, harassment and bribery of quite a few judges, court's officers. With such a perception of the court system, many did not want to have their disputes resolved by courts. Rather, they tried to resolve disputes by themselves (which is very good), by "the law of the jungle", by mediation, or through the administrative way. As shown by surveys, we found that most of people to economic, labour, and real estate disputes selected the administrative way as to solve the disputes. For that purpose, they may lodge complaints or denouncement letters to

the administrative agencies. Annually, there are about 50,000 to 60,000 complaints and/or denouncement letters regarding administrative, labour, real estate disputes lodged to administrative agencies to request for resolution. In the mean time, administrative courts, labour courts at all levels received and handled only about 1,000 administrative and labour cases. A survey on options of dispute resolution among 300 businesses, including State-owned enterprises and private ones, showed that upon the occurrence of an economic dispute, 72 % of surveyed businesses selected economic arbitration, and only 33.3 % opted lodging a litigation at courts as a way to solve the dispute.

On balance, the credibility of the court system is not up to the expectation in terms of being a judicial organ specialized in solving disputes among people.

### **3.7 Orientation and solutions to reform organization and operation of the court system in out country**

Some people argued that the reform of the people's court system should be carried out only at provincial level; district courts, they argued, should be grouped into regional courts based on the number of cases handled. This view could not explain the leading role of the Party, the administrative jurisdiction of district authorities, the supervision by people over "regional" courts' operation. Another shortcoming of this view is that, in sparsely-populated yet large areas with small number of cases, and difficult transportation conditions, it is very hard for people to rely on courts whenever they want to; and on the contrary, courts also face many difficulties in investigation, mediation of civil, family-marriage litigation.

Based on the nature, functions and duties of the State, and by observing practical operation of the court system over years, we realize that the organization structure of the People's court system as of this time is appropriate, ensuring the leading role of the Party, the supervision of people over operations of the court system, and the collaboration among state agencies in general and among judicial agencies in particular, promoting the discretion rights of people, providing convenience for people to participate into judgment operation of the court system. Nonetheless, at each level of the system, it is needed to reorganize to suit the function, duties and to ensure judgment operations done promptly and legally. For instance, if district courts are given more judgment jurisdiction, then more capable people are needed for these courts to establish special courts, such as criminal, civil, economic, labour, administrative courts. At the provincial level, consideration should be taken into of establishment of trial courts and appellate courts. And as for the Supreme court, its duties should be limited to provision of judgment guidelines as to ensure unified application of laws and regulations by courts; it should not handled cases by reviewing; judgment by reviewing of cases that had been judged by the courts within the Supreme court shall be done by a special Committee (as explained more later).

**In respect of criminal cases**, some suggested that district courts should be given jurisdiction to handle cases to which the maximum applicable sentence is of 10 years. Some suggested that district courts should be given jurisdiction to handle non-serious cases and certain serious ones to which the maximum applicable sentence is of

10 years. Some others argued that it is needed to list criminals provided for in the Penal Code and assign them to district courts, etc.

All above ideas have their reasons. However, in our opinion, district courts should be assigned judgment jurisdiction to handle non-serious, serious and extremely serious cases, except for crimes prejudicial to national security and crimes committed by foreigners within Vietnamese territory.

As for civil cases, most people agreed that district courts should be given jurisdiction to handle all civil, family-marriage disputes of all types, except for intellectual property, marine and aviation disputes. We regard this view as appropriate, but want to add that if necessary, provincial courts may take the case to handle.

**In regard to economic cases**, district court should be given authority to handle in the first instance economic disputes with value up to 500 million dong in stead of 50 million dong as currently provided by laws.

**As for administrative and labour cases**, we agree with current provisions on judgment jurisdiction.

The extension of judgment jurisdiction of district courts as suggested above will be fundamental changes in organization and operations of the court system, significantly reducing the number of cases handled by the Supreme courts of appeals, so as enable “The Supreme Court to focus on reviewing judgment operations, providing guidelines for lower courts so as to have unified application of laws and regulation, and well executing the function of administering judgment operations”, as prescribed by the third Central Party Plenum Resolution.