

CHAPTER 2

COURTS AND JUDGES

I. COURTS

Under the 1992 Constitution, the court system in Vietnam is organised by *administrative and territorial units and jurisdiction*. The district courts are placed at the lowest level.

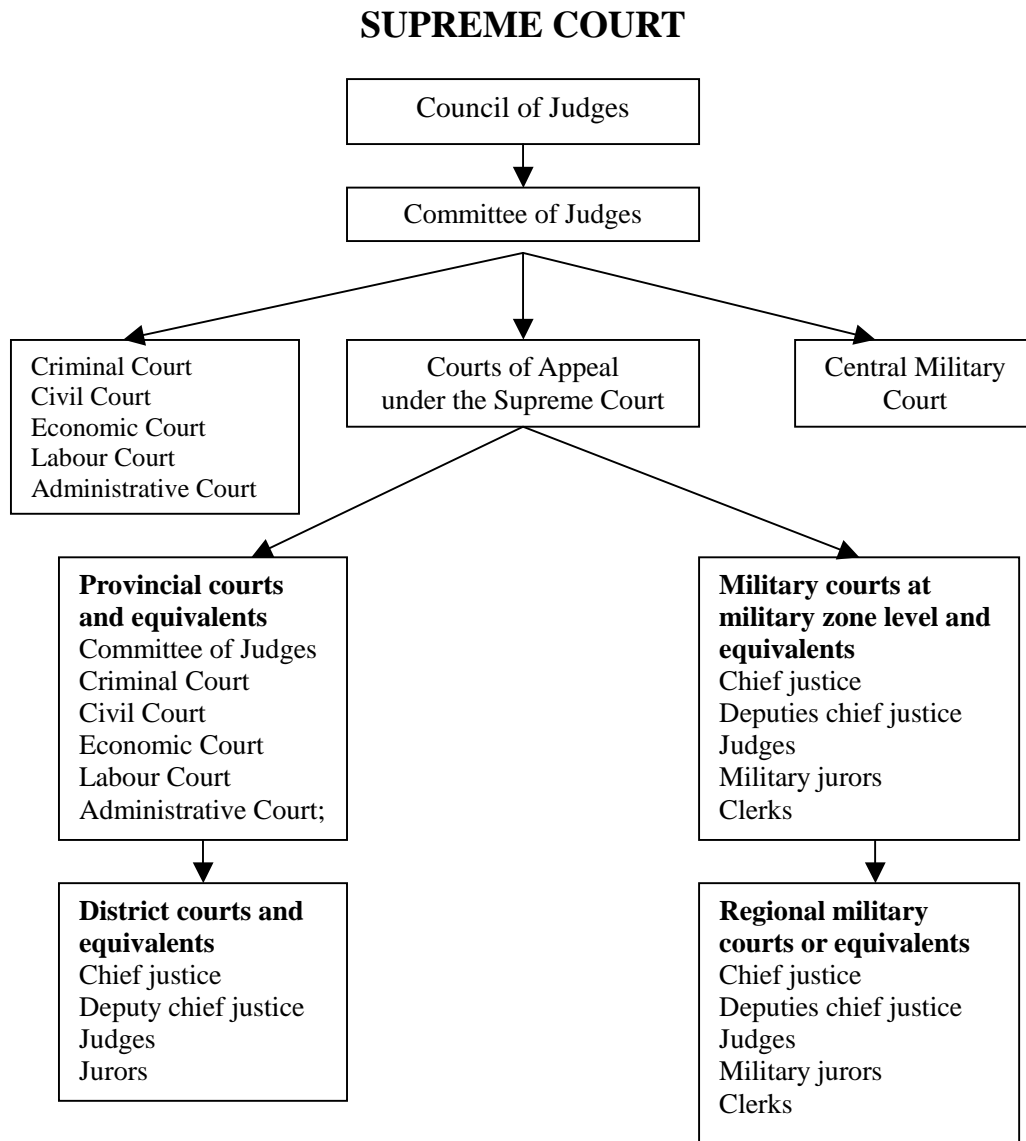
The Supreme Court include in its structure:

- Council of Judges of the Supreme Court;
- Committee of Judges of the Supreme Court;
- Central Military Court, Criminal Court, Civil Court, Economic Court, Labour Court and Administrative Court;
- Courts of Appeal under the Supreme Court;
- In case of necessity, the Standing Committee of the National Assembly may establish other specialised courts on the proposal of the Chief Justice of the Supreme Court; and
- Supporting organ.

Provincial courts include:

- Committee of Judges;
- Criminal Court, Civil Court, Economic Court, Labour Court and Administrative Court;
- In case of necessity, the Standing Committee of the National Assembly may establish other specialised courts on the proposal of the Minister of Justice subject to an agreement with the Chief Justice of the Supreme Court; and
- Supporting organ.

Chart of the court system under the existing laws (H-3)



District courts include:

- One chief justice, one or two deputy chief justice;
- Judges;
- Jurors; and
- Clerks.

The sub-system of military courts consists of:

- The Central Military Court;
- Military courts at military zone level and equivalents;

- Regional military courts and equivalents.

Apart from the courts, the 1992 Law on the Organisation of the Courts also states: “Appropriate organisations may be formed at the grass-root level to handle minor offences and small disputes among the population. The status and operations of these organisations shall be stipulated by the Standing Committee of the National Assembly” (Clause 2 of Article 2). In reality, these organisations took the form of conciliatory teams or groups representing residents of a given residential quarter. Of these autonomous entities, the former seems to be most popular and accounts for the largest number.

The 1992 Constitution and the 1992 Law on the Organisation of the Courts affirmed that the courts are the only body in Vietnam which has jurisdiction to hear cases. The court system in Vietnam is structured in the principle of double level of trial which is laid down to ensure that courts’ judgements and decisions are properly rendered and to avoid possible mistakes. The courts’ jurisdiction is determined by territory, level of trial and nature of the case in question. In particular:

The Supreme Court has jurisdiction to:

- Provide guidelines to lower courts on the uniform application of laws; generalise hearing practices; review the trials at the lower courts, special court and other tribunals (except where otherwise provided by the law); submit draft laws to the National Assembly and draft ordinances to the Standing Committee of the National Assembly;
- Hear certain cases under first-cum-final trial procedures as may be required by procedural laws;
- Hold appellate trials of cases where judgements and decisions rendered by the lower courts at the first instance sessions have not yet taken effect and have been appealed against;
- Review and rehear (or retry) cases where the rendered judgements and decisions have taken effect and have been appealed against under procedural laws;
- Handle other issues as may be designated by the laws.

Provincial courts and the equivalents have jurisdiction to:

- Hold first instance trials of cases that fall under their jurisdiction as may be determined by procedural laws;
- Hold appellate trials of cases where judgements and decisions rendered by the lower courts at the first instance trials have not yet taken effect and have been appealed against;
- Review and rehear (or retry) cases where the rendered judgements and decisions have taken effect and have been appealed against.
- Handle other issues as may be designated by the laws.

District courts and the equivalents have jurisdiction to hold first instance trials of cases prescribed by procedural laws.

In addition to initial achievements recorded over the past time, during the courts' trials and hearings, a number of errors and shortcomings have been reported, in particular:

As regard the structure of jurisdiction: The current determination of jurisdiction and competence to hear cases between courts of different levels is proven irrational resulting to a paradox whereby some courts are overloaded with cases while the others could only operate at half-length. In accordance with the applicable laws and regulations, district courts and regional military courts handle about 47,000 criminal cases (making up ½ of the total criminal cases) each year. Furthermore, the district courts also deal with and hear nearly 50,000 civil and marriage-family cases. Up to 90% of these cases have been completely handled by the district courts. The remaining number of cases (representing approximately ½ of the total criminal cases) were handled by provincial courts through first instance trials. On the other hand, each year, provincial courts have to handle and hear under appellate trial procedures about 60% of cases which have been dealt with by the district courts at first instance trials. Finally, it is these provincial courts that are required to judge a certain number of cases under reviewing and re-hearing procedures. Such a situation has worsened the already heavy burden of hearing by the provincial courts.

Similarly, first instance trials consumed a lot of time and human resources of the Supreme Court. This is obviously contrary to the functions and responsibilities of the Supreme Court which is empowered not only to hear cases (under first instance, appellate, reviewing and rehearing procedures) but also generalise hearing practices of

the entire court system, provide guidelines on uniform application of laws and technical aspects of the court system; research and prepare projects with a view to drafting, improving and enforcing laws. Because of that reason, the Supreme Court is also overloaded with cases.

Under these circumstances, an expanded jurisdiction for district courts may help to ease the burden of accumulated first instance trials at provincial courts and dedicate more time for these courts to handle appellate cases, review and rehear other cases and by that way making the hearing activities of provincial courts less tense.

The court system will be organised by levels of trial, namely courts of first instance, courts of appeal and the Supreme Court (including courts of review and retrial). In other words, the courts should not necessarily be organised by administrative units but by population density or socio-economic importance of each geographical region.

In recent years, courts have generally well performed their functions and duties as in indispensable instrument in securing public order and social justice. The courts have received and promptly handled cases of different natures ranging from criminal, civil, marriage and family proceedings to administrative claims and complaints. Judgements and decisions rendered by the courts are basically in strict compliance with the laws and capable of meeting public demands. In 1999 alone, courts throughout the country dealt with 50,461 criminal cases and 77,671 accuseds at first instance trials from the total number of 54,159 cases filed and 83,069 accuseds accounting for 93,17% of the total number of cases and making an increase by 1,791 cases (3.6%) as compared to that in 1998. In the areas of marital and family affairs, of the total 129,215 cases filed in 1999, courts handled 92,441 cases (representing 71.57%). In respect of administrative cases, in 1999, courts heard 319 cases of the total 408 cases filed (or 78.1%). In respect of labour cases, in 1999, courts handled 358 cases of the total 422 cases filed (or 84.83%). In respect of economic cases, in 1999, local courts received 1,280 cases and handled 1,010 cases (or 78.9%).

Generally speaking, courts have strictly complied with operational principles as provided by the law. Notably, the courts have successfully pursued principles of democracy and socialist legality and social justice during their performance.

II. JUDGES AND OTHER JUDICIAL PROFESSIONALS OF THE COURTS

The following chart illustrates 3 levels of judges as classified under the existing laws of Vietnam:

At national level	Judges of the Supreme Court and Central Military Court
At provincial level	Judges of the provincial courts and military courts at military zones and equivalents
At district level	Judges of district courts and regional military courts

As regard criteria of courts judges at all levels

For the first time in Vietnam’s legal history, a definition of judge has been provided in Article 1 of the 1993 Ordinance on Judge and People’s Jurors whereby “a judge shall be appointed under the law to hear cases which are subject to the court jurisdiction”, i.e. deal with criminal, civil, marriage and family, labour, economic and administrative cases and handle other matters as may be required by the laws.

Under the applicable laws, criteria for recruitment and appointment of judges may be categorised into two groups:

General criteria including:

1. Being Vietnamese citizens and loyal to the Fatherland;
2. Having good qualifications and ethics, integrity and honesty;
3. Having legal knowledge, law obedience and high spirit of safeguarding socialist legality; and
4. Having good health to fulfil the assigned tasks and duties.

Specific criteria which are applicable to each level of judges are prescribed as follows:

In respect of judges of the Supreme Court:

1. General criteria as mentioned above;
2. Having graduated from court colleges or law university; and
3. Having 8 years or more serving in the legal sector.

In respect of judges of provincial courts:

1. General criteria as mentioned above;
2. Having graduated from court colleges or law university;
3. Having 6 years or more serving in the legal sector.

In respect of judges of district courts:

1. General criteria as mentioned above;
2. Having graduated from court colleges or law university;
3. Having 4 years or more serving in the legal sector.

Thus criteria for appointment of judges are only different in seniority of legal service and hearing capacity while other criteria are the same.

Recruitment and appointment of court judges at all levels:

This process is undertaken through a Council for Selection of Judges which is organised at three separate levels, although their responsibilities are the same, namely:

- a) Selecting qualified and capable judges to be submitted to the State President for his appointments; and
- b) Reviewing cases where judges commit disciplinary violations and are no longer qualified to serve as judges and submit to the State President for his dismissals.

In selecting judges of all levels, three types of councils have been set up under the existing laws, namely:

The Council for Selection of Supreme Court's Judges

This body is chaired by the Chief Justice of the Supreme Court and consists of

4 other members from the Ministry of Justice, Central Committee of Vietnam Fatherland Front and Central Committee of Vietnam Lawyers' Association.

By 2000, the Council has submitted to the State President for his appointment and reappointment of 97 Supreme Court judges and 17 Central Military Court judges. Thus the Supreme Court still falls short of 23 judges given the total number of judges approved by the Standing Committee of the National Assembly.

The Council for Selection of Provincial Courts' Judges

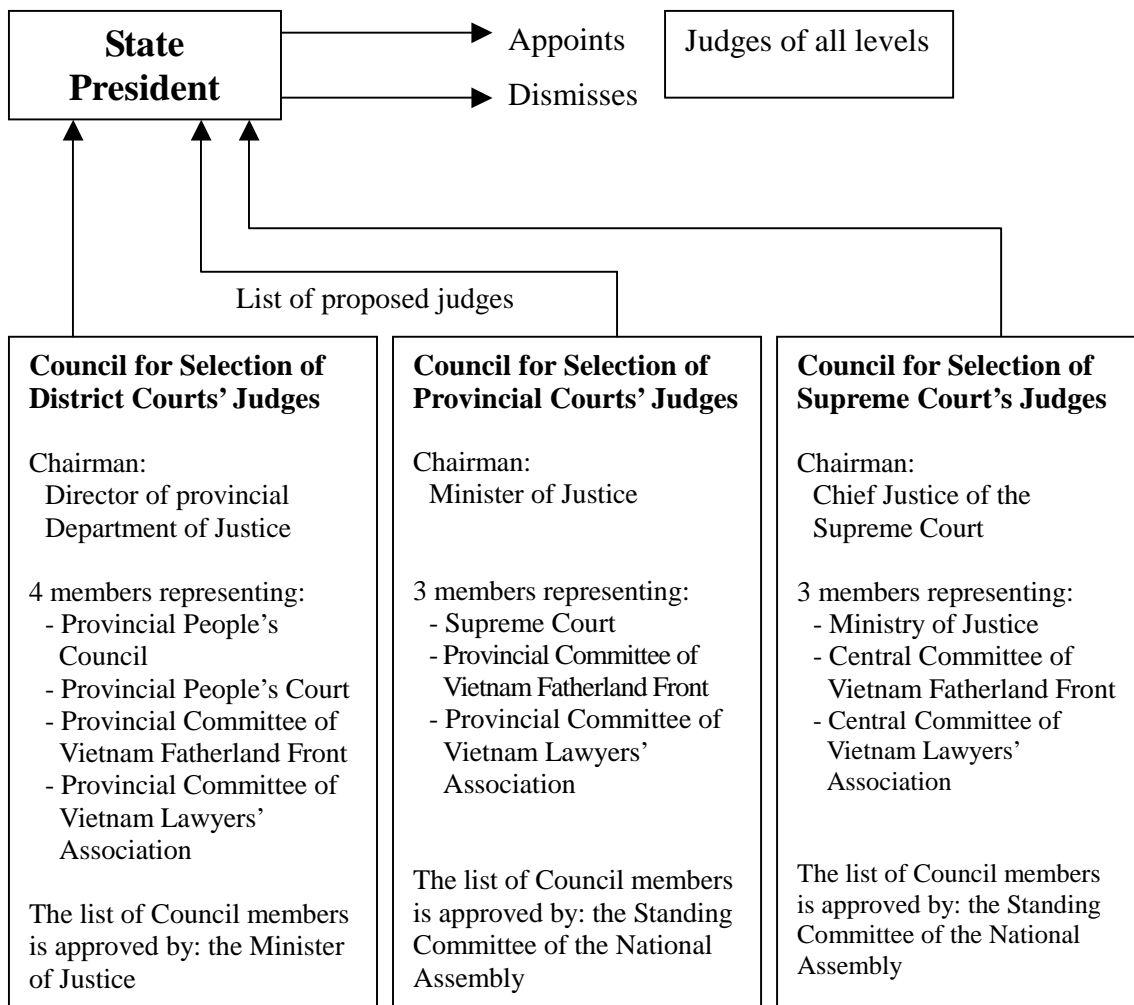
This body is chaired by the Minister of Justice and consists of 4 other members from the Supreme Court, Central Committee of Vietnam Fatherland Front and Central Committee of Vietnam Lawyers' Association. The list of 4 Council members other than the chairman will be decided by the Standing Committee of the National Assembly at the request of the Council chairman.

The Council for Selection of District Courts' Judges

This body is chaired by the Director of provincial Department of Justice and consists of 4 other members from the provincial People's Council – a local representative body, provincial court, provincial Committee of Vietnam Fatherland Front and provincial Committee of Vietnam Lawyers' Association. The list of 4 Council members other than the chairman will be decided by the Minister of Justice at the request of the Council chairman and after reaching an agreement with the Chief Justice of the provincial court.

To date, some 3,515 district court judges have been approved by the Standing Committee of the National Assembly of whom 64% were submitted by the Council for Selection of District Courts' Judges to the State President for his appointments.

Bellows is a modeled diagram summarising the process of selection and appointment of judges:



Training of judges in Vietnam

Due to lingering wars, education and training are in general less developed given many other countries. In legal sector alone, until 1979, training of legal professionals at tertiary level has been officially started under a Government's decision to set up Hanoi Law University.

Thank to tremendous efforts and diversification of training models, by the time when the 1993 Ordinance on Judges and People's Jurors took effect, a majority of cadres who had not, although dealing with court trials at all levels undergone law university education could manage to graduate from a law education institution and meet criteria set by the Ordinance to be appointed as judges. In the first tenure, the number of judges having bachelor of law or higher degrees through regular training courses accounted for only 9% of the district courts' judges and 10% of the provincial

courts' judges. In the second tenure (1999-2000), since many district court judges underwent in-service training, their training quality is found poorer in comparison with those who took regular training courses. The number of district court judges who have obtained bachelor of law or higher degrees through regular training courses rose by only 7% given that in the previous term, while those district court judges having bachelor of law degrees through in-service training courses soared by 50% and made up 67%. Although in the second tenure, the picture seems to be brighter in respect of provincial court judges, the number of provincial court judges having bachelor of law degrees through in-service training courses still represented 50% or an increase of 7% as compared with the previous term while number of judges having bachelor of law or higher degrees through regular training courses accounted for 36% marking a growth of 26%.

It is currently in the beginning of the second tenure. The number of judges who are appointed by the State President are, though in short of the figure approved by the Standing Committee of the National Assembly, capable of meeting increasingly high demands for court trials.

The problem Vietnam is facing now lies not in the quantity but in the quality of judges.

In order to improve the quality of judges, more attention should be paid to training. So far, a separate institution which is specifically designed for judge training purpose has not yet available in Vietnam although preparatory works are undergoing toward this target. In 1995, a school for training of legal professionals was set up from a faculty that was split from the Hanoi Law University. Up to date, only two training courses have been organised on an experimental basis for judges and lawyers etc.

In a near future, the participation in a certified judge training course must be compulsory to any judge candidates. To ensure the quality of such a professional training, persons having law degrees through in-service training courses should not be eligible to attend. In other words, judgeship should only be open to graduates of Hanoi Law University, Ho Chi Minh City Law University and Faculty of Law of Hanoi National University.

The second alternative for enhancing the judge's quality gives its stress on statutory requirements. In particular, the Ordinance on Judges and People's Jurors must be amended and revised with focus on raising the judge's qualifications. Under the existing provisions, the criteria for selection and appointment of judges are proven too

simple, unsystematic and incapable of selecting outstanding individuals. The principle of declining to act as a judge or taking exceptions [to a witness or evidence] must be strictly observed.

In sum, since a judge is expected to represent a legal civilisation of a nation, he should represent the mind and the will of the people in solemnly announcing: “On behalf of the people...”.

Jurors

Unlike judges, people’s jurors and military jurors are not required to have a legal specialty or expertise. Instead, they work in different areas and represent the mass people to participating in court hearings. This is the underlying idea determining the organisation and operations of the court system in Vietnam since 1946 which has been institutionalised in a legal principle whereby: “Trials before the courts shall be conducted with the participation of jurors in conformity with provisions of the law”. Thus, the conduct of court hearings in presence of the jury serve as an unchangeable and well established principle in Vietnam.

Clerks of the courts

Clerks, as a secretary of the trial are also considered conductors of the proceedings like judges and jurors.

Under legal documents concerning the organisation of court system in Vietnam since 1946, clerks are always treated as a permanent personnel of the courts at all levels with duties to assist the hearings.

Any change of a clerk of trial must be subject to a decision of the hearing panel. The nomination of another substitute clerk will be determined by the chief justice.

In court practices, clerks maintain a direct contact with the parties concerned before, during and after the hearings.

It is ironically, however, no legislation has been issued so far to stipulate on the functions and specific duties of clerks. The allocation of responsibilities between the clerk and the presiding judge and statutory criteria and qualification requirements of clerks are also absent.

As a result, clerks of courts who account for 15% of the total staff of courts have different levels of education and working capacity. Many clerks have graduated law universities while a considerable number of clerks have not yet taken any basic

legal training courses. On the other hand, these clerks are assigned to different positions. Exceptionally, in some courts, clerks are considered as a judge assistant but not one of the conductors of proceedings.

Currently, various proposals and suggestions are under review in remedying these weaknesses ranging from developing training curricula to standardising the clerks' duties and responsibilities and qualifications.

A brief overview of the current situation of court judges in Vietnam

As regard the Supreme Court's judges

Analyzing the list of the Supreme Court's judges who were appointed by the State President during 1994-2000 shows the following distribution:

- Judges holding managerial positions of the Supreme Court account for 4.2%
- Judges of the Hanoi-based Court of Appeal account for 30.8%
- Judges of the Ho Chi Minh City-based Court of Appeal account for 13.8%
- Judges of the Da Nang-based Court of Appeal account for 7.3%
- Judges of the Criminal Court account for 4.2%
- Judges of the Civil Court account for 9.4%
- Judges of the Economic Court account for 3.1%
- Judges of the Administrative Court account for 3.1%
- Judges of the Labour Court account for 2.1%
- Judges of the Central Military Court account for 16.8%
- Judges of the bodies account for 5.2%

As far as the levels of legal education are concerned, 95.8% of the Supreme Court obtained Doctor, master and bachelor of law degrees as compared with only 4.2% having law college degrees.

The average age of the Supreme Court's judges stand at 48 of who the eldest judge is 59 years old and the youngest is 38 years old.

Every year, judges of the Supreme Court handled about 5,000 criminal cases and 1,000 civil cases which are equivalent to over 80% of the demand for trial of criminal cases and approximately 50% of the demand for trial of civil cases. The quality of hearing activities may be assessed from different angles including the number

of citizens' complaints which is reported to reach about 4,000 a year.

As regard the judges of local courts

Quantity

There is currently a severe shortage of judges in district courts which is worst in mountainous and remote provinces. In these localities, although the number of cases to be heard is as low as 2-3 cases a month, it is still necessary to strengthen the judging staff.

Professional skills and legal knowledge

Of the total number of local court judges appointed by 1999, there are 2 doctors of law, 30 masters of law and about 80% graduating from law universities or court colleges. The remaining 20% of local court judges still fall short of the statutory requirements as regard law degrees as prescribed under the 1993 Ordinance on Judges and Jurors.