

# **CHAPTER 4**

## **LAWYERS**

### **I. BRIEF INTRODUCTION OF THE DEVELOPMENT OF LAWYERS IN VIETNAM**

In Vietnam, lawyers' organisations were set up in early 1930s when the country was a French colony. On 10 October 1945, State President Ho Chi Minh issued Decree No. 46/SL on the organisation of lawyers' associations. Under this Decree, bar associations which were formed in the previous regime could continue to practise provided any aspects of their activities which were not suitable to the new regime should be wiped out. In this context, some points relating to the organisation and operations of lawyers' organisations were also revised in response to the new conditions of the revolution.

The main objective of maintaining lawyers' organisation of the old regime was to secure the right to defence for the accused in criminal cases. In this period, since the operations of lawyers' organisations were basically centered on defending before provincial courts or higher courts, lawyers' organisations were only created in major cities. During the national resistance against the French colonialists, however, lawyers' organisations ceased to operate.

After the liberation of the North in 1954, there was only a small number of lawyers remaining from the old regime who could practise while a new generation of lawyers have not yet been trained. In other words, there was no lawyers' organisation in Vietnam at that historical point of time. Under these special conditions, in order to observe the democratic principle in procedural activities as stated in the 1946 Constitution of the Democratic Republic of Vietnam, President Ho Chi Minh enacted Decree No. 217 dated 22 November 1945 specifying formalities and conditions

whereby judges may also act as lawyers in efforts to ensure sufficient lawyers [barristers] to defend for the accuseds in criminal cases. Subsequently, Decree No. 69 dated 18 June 1949 further stipulated: “The accuseds may request another citizen other than lawyers to defend for them before the ordinary courts and special courts which are set up to hear criminal cases and misdemeanours”. In elaborating this Decree, the Ministry of Justice has promulgated decree No. 01 dated 12 January 1950 setting conditions for defenders whereby every each provincial administrative committees and the chief justice will make a list of candidates residing in their respective localities who are eligible and willing to act as defenders before the court.

By 1957, together with the regulations on defenders issued in conjunction with Decree No. 01, the Ministry of Justice promulgated Circular 101 dated 29 August 1957 on the organisation of people’s defenders allowing mass organisations to nominate their own members to defend or assist other members who are under criminal prosecutions or who are involved in other proceedings.

Since 1975, bar associations have been established in a number of major cities such as Hai Phong, Hanoi, and Ho Chi Minh City consisting of previous lawyers and defenders who were than named in the courts’ lists.

In further consolidating and improving the quality of defending activities, and setting up a nation-wide network of lawyers’ organisations, on 31 October 1983, the Ministry of Justice issued Circular No. 691 under which potential defenders must have good ethics and necessary legal knowledge. Based on this Circular, associations of people’s defenders have been formed in provinces and cities under central authority which operate under the administration and supervision of provincial Departments of Justice. By the end of 1987, these associations have been set up in 30 provinces with a total of nearly 400 members.

This during 1946-1987, no lawyers’ organisation was in existence in Vietnam, instead defenders' organisations were created to perform an important part of the lawyers’ functions namely defending the accuseds and parties concerned in criminal and civil cases. Throughout this period, defenders’ organisations have made significant contributions to protecting legitimate interests of citizens and providing strong supports to the courts’ hearings, and hence safeguarding and strengthening socialist legality.

The VI Congress of the Communist Part of Vietnam in 1986 worked out an all-sided renovation policy. One of the key orientations raised in the Congress was further broadening of democracy in all areas of the social life, consolidating socialist legality,

and running the country by the law. In this spirit, numerous legislation have been enacted namely the Criminal Code, the Criminal Procedural Code, and the Law on Foreign Investment in Vietnam etc. A large majority of these legal documents, to a direct or indirect extent, relate to the activities of lawyers and have positive impacts on the promulgation of legal documents governing lawyers' organisations.

## **II. OVERVIEW OF THE EXISTING PROVISIONS CONCERNING LAWYERS AND BAR ASSOCIATIONS**

Since the issue of the 1987 Ordinance on the Organisation of Lawyers, lawyers' activities have strongly developed in terms of both quantity and quality. Under this Ordinance:

1. One bar association may be set up in each province. In major provinces which have a large number of lawyers, transaction branches may be established, provided that each branch should have at least two lawyers. The Board of Management of the bar association will appoint the heads of branches. All activities of the branches will be subject to supervision and instructions of the Board of Management of the bar association.

2. Conditions for admission to the bar association are provided in Article 11 of the Ordinance on the Organisation of Lawyers and Article 6 of the bar association's Charter as follows:

- a) Being a citizen of the Socialist Republic of Vietnam;
- b) Having good ethics and political qualifications, honesty, impartiality and courage to fight for the truth;
- c) Graduating law universities or having equivalent legal knowledge;

People considered as having the equivalent legal knowledge are those who serve in the legal sector for 5 years and more and experienced legal training for at least one year.

Apart from the above-listed conditions, potential candidates of the bar association should be in good health conditions to fulfill their duties as a lawyer.

Legal researchers who are working in research institutes, lectures of law, or retirees who used to serve as judges, investigators, procurators, inspectors, arbitrators (of the economic arbitration), and legal experts in legal departments of ministries may

be admitted to the bar association should all statutory requirements are met.

The following individuals are prohibited from practising as lawyers: persons who are working in courts, procuracies, police, judiciary bodies, State Inspectorate, Economic Arbitration Agency, customs offices, and Party's interior bodies; rectors, vice rectors, directors and deputy directors of departments of universities, professional high-secondary schools, or professional re-training centres; directors, deputy directors, and heads of the departments of legal research institutes which are affiliated to the above described bodies and institutions.

### **Probation of lawyers**

Articles 10, 11, 12 and 13 of the Bar Association's Charter stipulate on legal trainees [or para-legals] and their probationary period.

Lawyer's certificates are issued by the Board of Management of the bar association to their lawyers, provided that certificates of the first lawyers of a bar association will be granted by a relevant provincial People's Committee.

Lawyer's certificates will only be used in performing duties assigned by the Board of Management of the bar association and its internal meetings for not for other purposes. The lawyer's certificates are to be circulated and supervised by the Ministry of Justice.

Members of the bar association include both lawyers and legal trainees. To be admitted to a bar association, a candidate should meet all conditions as prescribed under Article 11 of the Ordinance on the Organisation of Lawyers and Article 6 of the Bar Association's Charter as mentioned above. Probationary period for graduates of law universities without legal experience will last for two years. Probationary period for graduates of law universities with certain legal experience will be between 6 - 18 months. Those candidates who met all conditions for admission to the bar association and acted as defenders for two consecutive years and more will be exempt from probationary period.

Legal trainees enjoy the same rights and obligations as other [qualified] lawyers, except the right to elect or to be elected to the Board of Management or Board of Control of a bar association.

Both legal trainees who complete the probationary period or who are exempt from probationary period are required to take an exam on legal knowledge and professional skills which is organised by the Board of Management of the bar

association under guidance from the Ministry of Justice. Only legal trainees who pass the exam may be recognised as lawyers and be granted lawyer's certificates by the Board of Management. Any legal trainee who fails the exam may be granted an extension of the probationary period for no more than 6 months by the Board of Management. Upon the expiry of such an extension, the legal trainee is also required to take the exam.

After the promulgation of the Bar Association's Charter, in 1989 alone, bar association were established in 16 provinces and cities under central authority. Subsequently, bar associations were formed in other provinces and cities. By May 1998, there have been 60 bar associations and 992 lawyers including 595 full-time lawyers and 397 part-time lawyers (according to figures released by the Ministry of Justice). Through their operations, bar associations have, to a significant extent met demands for legal supports and made considerable contributions to the protection of legitimate rights and interests of the accused, convicts and other relevant parties, and strengthened socialist legality.

At present, in facilitating the provisions of legal supports to organisations and individuals, branches of bar associations have been set up a some major provinces with a large number of lawyers as affiliates to provincial bar associations. By January 1999, 47 such branches of bar associations have been opened throughout the country, of which up to 30 branches are based on Ho Chi Minh City.

Together with a rapid expansion of bar associations, lawyers are growing up quantitatively and qualitatively as shown in the table below.

| <b>Year</b>      | <b>Total of lawyers</b> | <b>LLBs</b> | <b>Equivalent s</b> | <b>Full-time lawyers</b> | <b>Part-time lawyers</b> |
|------------------|-------------------------|-------------|---------------------|--------------------------|--------------------------|
| <i>1989</i>      | 186                     | 110         | 76                  | 101                      | 85                       |
| <i>1990</i>      | 322                     | 178         | 144                 | 179                      | 143                      |
| <i>1991</i>      | 369                     | 221         | 158                 | 226                      | 143                      |
| <i>1992</i>      | 484                     | 281         | 203                 | 295                      | 185                      |
| <i>1993</i>      | 551                     | 318         | 233                 | 332                      | 219                      |
| <i>1994</i>      | 570                     | 335         | 235                 | 340                      | 230                      |
| <i>1995</i>      | 668                     | 389         | 279                 | 423                      | 245                      |
| <i>1996</i>      | 727                     | 419         | 308                 | 453                      | 274                      |
| <i>May 1998</i>  | 992                     | 714         | 278                 | 595                      | 397                      |
| <i>July 2000</i> | 1471                    | 1253        | 218                 | 919                      | 552                      |

It is obvious from the foregoing table that the professional skills of lawyers in

Vietnam are increasingly improving. The number of lawyers soared from 186 in 1989 to 1,471 in July 2000.

Since the establishment of bar associations under the 1987 Ordinance on the Organisation of Lawyers up to now, 38,662 cases (including 22,331 criminal cases and 16,331 civil cases) have been heard with the participation of lawyers. In 1995, 46 bar associations reported lawyers' participation in 38,068 criminal cases, 23,091 civil-family-marriage cases and 338 economic cases. In 1997, reports from 44 bar associations showed that lawyers have participated in 12,503 criminal cases, 6,413 civil-family-marriage cases and 8,674 legal consultancies. Early 2000, 51 bar associations reported lawyers' participation in 15,168 cases (including 6,782 legal consultancies). In respect of criminal cases where lawyers are called for by the courts to defend the accuseds as required by the law, bar associations could manage to meet over 90% of the total calls.

### **III. SOME ISSUES RELATING TO THE RENOVATION OF LAWYERS' ORGANISATIONS**

To date, many provisions of the Ordinance on the Organisation of Lawyers which were issued in the first years of reform are proven no longer responsive to the reality of the social life and leaving lawyers incapable of meeting the increasingly high demands for legal supports. These weaknesses may be revealed as seen from the following perspectives:

1. For many years, some bar associations did not admit new members. In a number of localities, particularly in Hanoi and Ho Chi Minh City, many persons, although eligible and willing to practise under the 1987 Ordinance on the Organisation of Lawyers, could not become lawyers as a result of such a close-door policy pursued by these bar associations.
2. The 1987 Ordinance on the Organisation of Lawyers only provides for legal knowledge as one of the conditions for admission to the bar associations, while it is still silent on professional training or entry examinations for potential lawyers. In addition, professional ethics were also underweighted. These legal loopholes have undoubtedly negative impacts on the professional quality of lawyers.
3. The 1987 Ordinance on the Organisation of Lawyers was almost silent on

the lawyers' code of conducts as well as severe sanctions to be imposed on violations of the code of conducts. Because of that reason, in some cases, certain lawyers who violated the code of conducts at the losses of relevant citizens and organisations and hence tarnished the image of the lawyers, and caused adverse affects to the society, but are not properly dealt with.

4. Under the 1987 Ordinance on the Organisation of Lawyers (i.e. the existing Ordinance), bar associations are treated as both a professional organisation and a corporate form through which lawyers practise law. It is therefore necessary to distinguish lawyers' offices as a form of legal practising from association as a from of lawyers' professional organisation. On the other hand, in order to better meet the increasingly high demands of the society, the forms of legal practising must be flexible enough to lay legal foundations for lawyers to expand their network of legal service suppliers.
5. The State of Vietnam has licensed foreign lawyers' organisations to practise in Vietnam. Such a liberalisation of the legal service market requires the country's existing lawyer statutes to get closer to international practices on legal practices. However, these seem to be a wide gap between the current Ordinance on the Organisation of Lawyers and other relevant laws governing lawyers and legal practices in the world.