INSTITUTIONAL REFORM ON ENVIRONMENT AND TRAINING INSTITUTES

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After a long period of implementation of its economic strategies, Vietnam is gradually becoming one of the countries with rapidly and sustainably growing economies in the area. However, the consequences of massive economic development is the severe environmental pollution and its serious consequences.

Recognizing this problem, Vietnam is now applying different tools and methods to protect the environment including the improvement of legislation on environment, strengthening capacity of environmental law protection and enforcement agencies.

In fact, environmental legislation expects to provide solutions for all potential violations and disputes which may arise in practice, however with the development of the society, there are always issues and disputes which have not yet been covered by environmental law. The settlement of environmental disputes, therefore, has not always been effective and appropriate. The question is how the current environmental institution of Vietnam is and why we should reform environmental institution? How the application of the law by the judiciary in addressing environmental issues in general and the training of environmental law in the judiciary in particular have impact on environmental protection activities?

To address these above mentioned questions, we shall now look at each particular issue as follow:

1. Environmental institution.

   Environmental protection is one of the vital problems of each country and of all mankind, therefore, our country has also issued many legal normative
documents in most of the areas in order to create a legal framework for the protection of the environment and to fight against environmental offences.


Depending on the nature and extent of violations of environmental law, administrative or criminal sanctions can be applied against offenders. In case of any dispute, such dispute may be resolved through civil proceedings or administrative proceedings in the court.

The content of and procedure for applying administrative sanctions against environmental violations have been provided in the law. However, given the particular characteristics of environmental violations, it is a complicated and challenging task to handle such violations. Judicial officials, therefore, have to be well qualified and capable and the judiciary itself has to adapt to new changes to meet practical requirements accordingly.

2. Challenges in deciding environmental cases and solutions

2.1. Challenges

- In deciding environmental crimes:
  + Criminal law only provides for personal criminal liability other than that for legal entities. In fact, violations committed by factories, companies and organizations account for the majority.
  
  + It is difficult to determine consequences caused by environmental violations since they are not immediate and it takes time to comprehensively assess environmental damages.

  + It is difficult and there is no consistent rules to determine what is “massive” or “extremely massive” consequences.

- In deciding request for compensation for damages caused in environmental cases:
  + There are no consistent provisions on the definition of environmental dispute and signs for identification of environmental disputes.
+ Many claims and requests are not well founded due to the limited awareness of the public.

+ In a number of cases, alike disputes are decided inconsistently by competent officials due to the limited professional capacity.

+ It is a difficult and challenging task to settle claims for compensation.

2.2. Solutions

- Legislative solutions: revising the Law on environmental protection and Criminal Code to provide more specific provisions which are in line with the social development and international integration, to include legal entities as subject of environmental offences, to add new offences and provide stricter punishment against a number of environmental offences.

- Organizational solutions: since environmental cases are normally complicated and challenging, the number of environmental disputes are increasing, therefore, in order to ensure the adjudication quality, there is a need to establish environment courts in Vietnam.

- Capacity-building solutions: given the specific nature of environmental cases which involve economic, social and community benefits on a large scale, in addition to the general expertise and skills, judges and court officials are required to have special knowledge and experience in deciding environmental cases. Judicial training in this area of law, therefore, must be strengthened to meet practical requirements.

- The Judge Training School of the Supreme People’s Court is the only training institute of the judiciary of Vietnam having the function of providing initial and continuous training for judges, court clerks, judicial examiners and other judicial positions of the judiciary. Environmental law is a new area of law and Judge Training School has given certain priority in providing different courses on this topic for judges and officials. The following part is an overall introduction of judicial training in the area of environment law by our Judge Training School.

3. The need for providing initial and continuous training on environmental adjudication:

In recent years, there has been more violations of environmental law which cause adverse consequences to the society. One of the measures to protect the environment is the legal framework; in which the judiciary plays the role of an
adjudication body deciding environmental crimes and resolving environmental disputes. The legal system of Vietnam has provided specific provisions in different areas of law to protect the environment such as in the areas of civil, criminal and administrative law. However, the number of environmental cases decided by the court remains limited, therefore there has not been effective deterrent effect and prevention of alike environmental disputes. Environmental adjudication can be evaluated through the two following categories of cases:

- Adjudication of criminal cases: there are in total 11 environmental offences provided in Chapter XVII of the Criminal Code of Vietnam. Statistics for the period from 1 January 2012 to 30 May 2014 reveal that the whole judiciary of Vietnam only decided 3 types of environmental offences including:

  + Deforestation (Article 189 of the Criminal Code): total number of cases registered by the courts was 556 cases with 1079 defendants, out of which, 476 cases with 910 defendants were decided by the courts, one case was suspended, and 185 case files were returned to the Supreme People’s Procuracy.

  + Violations of the provisions on protecting endangered and rare species under Article 190 of the Criminal Code: total number of cases registered by the courts was 170 cases with 281 defendants, out of which, 160 cases with 268 defendants were decided by the courts, one case was suspended, and 10 case files were returned to the Supreme People’s Procuracy.

  + Violations of provisions on the protection of natural reserve provided in Article 191 of the Criminal Code: total number of cases registered and adjudicated by the courts was 01 case with 01 defendant.

  From the above statistics, it can be seen that the number of cases prosecuted and adjudicated only accounts for a small portion compared to the increasing number of environmental crimes committed. The adjudication of and fight against environmental crimes remain limited.

- Adjudication of civil cases: the legal grounds for deciding environmental civil cases include provisions of the Civil Code, Law on environmental protection and other related provisions. According to the reports of the courts at all levels, the number of environmental cases only account for a small portion of the total number of cases adjudicated by the courts as environmental disputes are new disputes recently. Most of provincial courts did not receive any environmental disputes during 1 January 2012 to 30 May 2014. According to a report of the People’s Court of Ho Chi Minh city, during the mentioned period, the Court received 9 environmental cases but only 3 of them which are case related to foreign factors were decided.
- **Adjudication of administrative cases**: Although the procedures for resolving administrative complaints at the courts have been improved than they used to be, there have not been many environmental cases adjudicated under administrative procedure. According to the statistics for period from 1 January 2012 to 30 May 2014, there were only 2 environmental cases decided in the whole judiciary.

From the above data, it is proved that the number of cases prosecuted and adjudicated only accounts for a small portion compared to the increasing number of environmental crimes committed. This is still considered a new area of law where judges do not have much adjudication experience. There is, therefore, an urgent need for strengthening capacity of judges and court officials in deciding environmental cases given that environmental cases are normally related to socio-economic benefits of the whole community with long-term consequences.

4. **Judicial training at the Judge Training School and recommendations:**

4.1 **Judicial training at Judge Training School**

In recent years, pursuant to its established functions and duties, Judge Training School has organized different initial and continuous training courses for judges, court clerks and judicial examiners on an annual basis. Annual continuous training courses for judge cover key areas of law including criminal, civil, administrative, labor, labor and commercial law.

Since 2014, all training programs for judges are conducted in line with Conclusion No.116-TB / TW dated 27 December 2012 of the Politburo on judicial training for judges. These programs aim at providing learners with fundamental skills to decide all kinds of criminal, civil, business, commercial, administrative and labor cases. The curricula focus on two main sections including procedural management by judges and legal analysis to decide cases and disputes within their jurisdiction.

In the initial and continuous training courses conducted, we always allocate proper time for separate environmental law sessions such as adjudication of environmental crimes, or it is integrated into other topics such as compensation in civil cases. The curriculum on environmental law is developed on the basis of practical needs and are in line with time allocated for the whole training course. Lecturers always provide learners with practical skills and experiences in deciding environmental cases. However, given the complicated issues in such cases, there is a need for developing an intensive...
continuous training programs for active judges and a comprehensive, basic initial training programs for candidates to be appointed as judges.

Lecturers of Judge Training School are mostly senior judges with demonstrated adjudication experiences to ensure training quality of the School.

We also have a close cooperation with Korean International Cooperation Agency in building infrastructure for the School and training lecturers by organizing study tours to Korea. Such activities have provided the School with valued experiences in adjudication skills and judicial training.

With the results achieved in recent years, it shall be a sustainable ground for the School to continue to improve training quality and extend its training scope including initial and continuous training in environmental law.

4.2. Recommendations:

Below are a number of our recommendations in order to further improve quality of judicial training in environmental law in Vietnam:

Firstly, there should be a Bench Book on international laws, laws of other countries and case law which are classified into different areas including environmental law. International integration in judicial sector is an inevitable trend and our judiciary looks forward to learning adjudication experiences from other systems, particularly from ASEAN countries. Such Bench Book, once developed, shall be a reliable source of reference materials in judicial training for judges, court clerks and officials of the judiciary.

Secondly, Judge Training School highly appreciates all the technical supports from international experts and through this Roundtable, we look forward to cooperating with experts from different judiciaries and organization representing here in the area of environmental law and adjudication of environmental cases.

Thirdly, given the need for training of trainers, particularly in environmental law and adjudication, we suggest that there should be, at regional level, training courses for ASEAN judges who are active lecturers at their respective system to contribute to improve the training quality of judges in the area of environment.

Fourthly, we look forward to further promote the cooperation with other judicial training institutes in ASEAN to share information, experiences and training methodology.
Judge Training School has paid due attention and will continue to develop training programs for judges, court clerks and officials in environmental law and adjudication. The School shall select lecturers on a merit basis and invite well-established experienced, senior judges to give lectures on environmental law. In the near future, the School shall have special training courses for specialized judges who decide environmental cases.