







UK GOVERNMENT

PROMOTING A FAIR BUSINESS ENVIRONMENT IN ASEAN

GOOD PRACTICES IN COURT PROCEDURES TO IMPROVE COURT INTEGRITY

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Background and Objectives of the Research (1)

The Judicial Reform Strategy under Resolution No. 49 dated June 22, 2005 of the Party Central Committee has identified:

- Undertake the reform of administrative procedures in judicial agencies to facilitate People to access to justice;
- Reform Strategy must in line with the process of reforming the legislative and administrative reform program;
- ➤ The judicial reform must stem from the requirements of socio-economic development and establishment of an equal, democratic and civilized society; contribute to promoting socio-economic development, firmly defend the Fatherland; be associated with the renovation of legislative work and administrative reform; and
- > Encouraging the resolution of certain types of disputes through negotiation, mediation and arbitration.

Background and Objectives of the Research (2)

Plan No. 122/BCS dated December 26, 2005 of the SPC Party Committee have identified:

- ➤ Reform of court administrative procedures is undertaken under the way that is open/public, simple and convenient for citizens to exercise their rights to take legal action at courts;
- ➤ When a person takes a legal action at court, this court shall determine the agency which has jurisdiction of settling the case, then transfer the files and notify the petitioners thereof;
- Publish the procedures for accessing the files, supplying documents and information, extracting the judgements or decisions of courts according to applicable laws.

RECEIVING AND ACCEPTING THE PETITIONS



Methods of receiving the petitions

Receiving via Judicial
Administrative
Agency/Department

Receiving petitions directly or by post.

Piloting e-filing

 Receiving petitions via the System of sending, receiving the petitions, documents, evidence and issuance, sending, notification of procedural documents.

'One-stop shop' Judicial Administrative Agency/Department



As per the People's Court of District 5 of Ho Chi Minh City, the data in the petitions will be input into a case management software by the officials of the Judicial Administrative Agency. The software will issue a barcode/code for each petition to facilitate tracking with computer equipment. Such barcode/code are printed on the Receiving Slip and will be used throughout the proceedings.

'One-stop shop' Judicial Administrative Agency/Department



At the People's Court of Thu Dau Mot City, many petitions are reviewed immediately to respond to the involved persons if the case is not too complicated or the involved persons are living too far from the court's office. To ensure this, the People's Court of Thu Dau Mot City must always arrange a judge to work in the Judicial Administrative Agency.

The model of Judicial Administrative Agency/Department

Showing certain advantages in receiving petitions, such as improving transparency, integrity, shortening the time to accept the cases.

Only being applied in some localities (with some certain differences among each model applied) and has not yet been legalized into a mandatory regulation.

The application of the Judicial Administrative Agency/Department should be synchronized and soon implemented nationwide.

E-filing

- In October 2018, the SPC officially piloted the information technology system to receive petitions via efiling system (High People's Court and People's Court of Ha Noi City, People's Court of Hai Phong City and People's Court of Quang Ninh Province); this system has not been piloted at district-level courts yet.
- Until December 2018, there had been only 1 (one) petition filed via e-filing system to People's Court of Hai Phong City, but this submission failed due to electronic signature error.

- The method of sending petitions, evidence and documents via e-filing system is quite difficult to implement because the requirement of having electronic signatures is still difficult be met by citizens. The procedures and costs for obtaining electronic signatures are only suitable for enterprises.
- The instructions on the petition filing procedure are not detailed, requiring the petitioner to have a certain understanding of the procedural law. the maximum document size to be uploaded is only 2MB, so it may be an obstacle to the petitioner when there would be many important documents and evidence having larger size than the limit given.

Receiving petitions via e-filing system



Địa chỉ: 48 Lý Thường Kiệt, Hoàn Kiếm, Hà Nội. Bản quyền thuộc Tòa án nhân dân tối cao



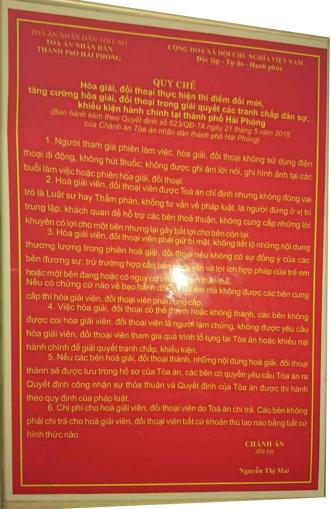




Receiving petitions via e-filing system



The establishment of the Center of court annexed Mediation and Dialogue in the courts



The court annexed Mediation and Dialogue in the courts would reduce pressure of judges as well as saving costs for people.

The practice of People's Court of Hong Bang District is among of the good ones in the activities of the Center of court annexed Mediation and Dialogue with the highest rate of successful mediation of the Center of court annexed Mediation and Dialogue in Viet Nam (85.5%).

The process of the Center of court annexed Mediation and Dialogue in the courts

In some localities, the model of the Center for Reconciliation and Dialogue at the court has not truly reduced the workload pressure for the People's Court because even when being successfully mediated, the disputes will still become civil matters because the judges must also review the minutes of successful mediation to validate them.

In case of mediation fails or the parties do not choose the mediation plan, it is necessary the effective mechanisms and measures to avoid the possibility that the process of mediation and dialogue increases the time to accept the case in particular and the total the time to resolve the case in general at the Court.

Because mediation and dialogue are conducted mainly by people outside the court sector (retired officials, lawyers, reputable people, etc.); specific measures should be taken to reduce the risk of negative influence. to the integrity, impartiality, objectivity and independence of the Court arising from activities of mediation and dialogue.



JUDGE ASSIGNMENT

An important issue in managing court proceedings

Remarkably influencing on issues including: the time to settle cases, the integrity and independence of the courts, and people's beliefs in the judicial system.

The Civil Procedure Code 2015 solely provides the rules of assigning judges and scenarios that require change judges; and lacks specific instructions on the method of judge assignment. Judge assignment at district-level courts normally based on the "workload" or the "expertise or experience" of judges in resolving cases and some other factors such as position, seniority, health, gender, ethnicity, characteristic of case (e.g. assigning cases under the method that alternates one complicated case and the uncomplicated one, and so on), etc. All the surveyed courts confirmed that the case assignment is mainly based on the method of random assignment, but there are also cases assigned by the court leaders standing on a number of specific factors.

 The court leaders set out the assignment based on the capacity of the judges and the characteristics of the case to assign judges.

People's Court of District 5

 The case assignment is also based on the judges' experience with cases having similar essence/factors with the case on assignments.

People's Court of Thu Dau Mot City

 Application of a random rotation method to assign judges via code granted for Judges.

People's Court of Hong Bang District

CASE TIME BAR MANAGEMENT



Case time bar management

Time for enforcing contract in some countries - Doing Business (2019)

2018	China (Beijing)	India	Singapore	Thailand	Malaysia	Philippine	Indonesia	Viet Nam
Time for handling cases (days)	510	1.445	164	420	425	962	403,2	400
Case acceptance	30	45	6	60	35	58	60	50
Trial and judgement	240	1.095	118	260	270	700	220	200
Enforcement of judgement	240	305	40	100	120	204	180	150

Case time bar management

 The Supreme People Court has made considerable effort and conducted several measures for managing the time of case settlement. On this basis, the Civil Procedure Code 2015 remarkably reformed the management of time for settlement of civil cases in and business, commercial general cases in particular.



Good measures for management of case settlement time

The Quality Management
System under
Vietnamese standard ISO
9001:2008 by the
People's Court of Binh
Duong Province.

Developing specific software for time management or based on excel platform or using software piloted by the Supreme People Court.

The management of time and case files by proceedings software or code/bar code checking equipment, such as at the People's Court of Ho Chi Minh City or District 5.

Note: Developing the specialized software requires great investment in terms of human resources, time, effort, costs, and especially the requests of procedural standardization.

Some issues about case settlement time

Applying the simplified procedures: the surveyed courts have not settled any commercial business case under simplified procedure.

Meetings for submission of, access to, and disclosure of evidence and mediation: The number of adjourned Meetings within a case has not yet been stipulated. In some circumstances, the involved persons or lawyers make abuse of this provision to delay the case settlement. The repeated postponement and re-opening of Meeting certainly prolongs the time for case settlement.

Adjourning hearings: In reality, the adjourning hearings happens repeatedly. To restraint this, the PC of Binh Duong Province has cooperated with the Department of Planning and Investment of the province to verify the address of defendants being enterprises or enterprises' representative to delivery necessary documents timely in accordance with provisions of procedural laws.

Publicizing information about procedure of resolving cases

Publicizing information plays an importance role in courts' activities so that all relevant parties can, along with the courts, control the time and process of case settlement. It also greatly enhances the transparency in courts' activities.



Methods of publicizing information





The display of all information boards of the surveyed courts is not very clean or eligible. Information on judicial administrative procedures or proceedings procedures is mainly copied from legal provisions (except the information board of People's Court of Binh Duong Province with a proceedings diagram, which facilitate the people to get the information). Information on cases is not fully updated and involved persons usually have to contact the Judicial Administration Department directly to get information.

The People's Court of Ho Chi Minh City and the People's Court of District 5 publicizes information via kiosk screens, codes/bar codes for people to look up information easily and keep information confidential. Ha Noi HPC also extracts information from the management software of case settlement to display on 2 (two) electronic screens installed at the court lobby. Besides, people can look up for information through the website of Ha Noi HPC.



JUDGEMENT DELIVERY AND PUBLICATION

Judgement delivery and publication

The provision of judgement delivery and publication has remarkable changes compared with that in the past, ensuring that this procedure at all courts complies with the time limit under legal regulations; and regarding courts with strong judicial administrative reforms this procedure is even earlier than the time limit under legal regulations.

The provision of judgement delivery and publication by electronic means has not been applied at any court.

The publication of judgements on the Supreme People Court's electronic portal



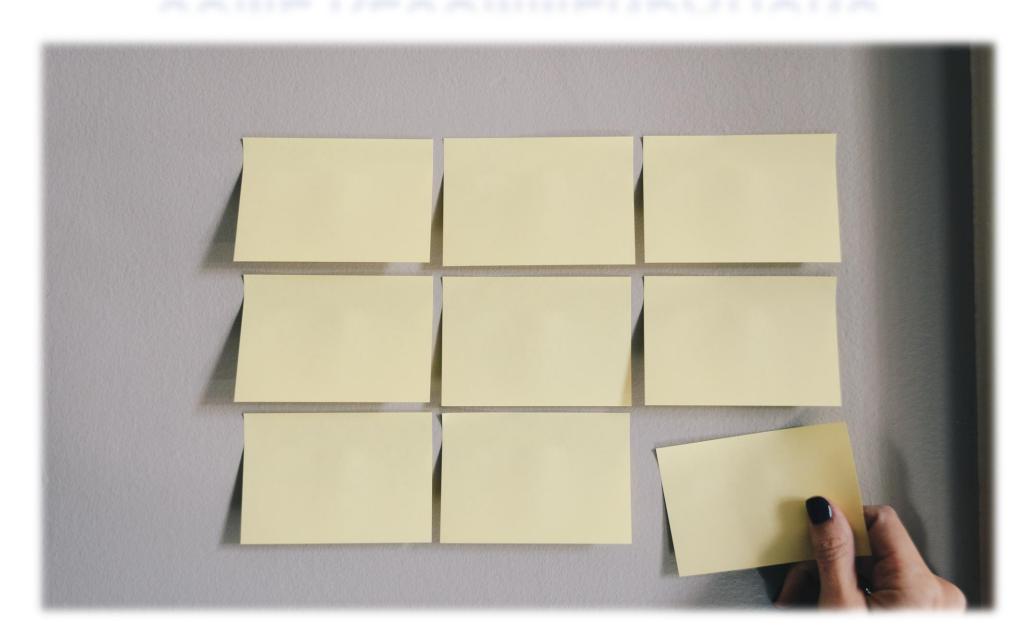
The publication of judgements on the Supreme People Court's electronic portal

Promoting integrity and transparency of courts, strengthening the enforcement of justice.

The quality of judgement drafting has recently improved, possibly a result of the publication of judgements.

A number of judges are afraid that publicizing judgements so that there exists suggestion not to disclose judgements, reasoning that it would not be advantageous for the involved persons.

SOME RECOMMENDATIONS



1. Receiving petitions and accepting cases



Consistently implementing the model of 'One-stop shop' Judicial Administrative Agency/Department nationwide in the near future.

1. Receiving petitions and accepting cases

The court annexed mediation, dialogue also requires effective operation mechanisms and measures to avoid increasing the time for case acceptance in particular and the total time for case settlement in general at courts; therefore it would decrease the influence on the integrity, independence, partiality in court sector.

The courts need to implement petition and procedural evidence e-filing system to meet the practical needs. The courts need to find solutions to overcome current limitations, such as the method to ensure that the development level of the information system at the provincial-level People's Courts must reach at least level-2 of the online service in public administration.

2. E-filing





Strengthening the integrity of judicial activities and the Court could be "one more step closer to the People" in the 4.0 era.

Convenient, compliance cost-saving for both People and the courts.

E-filing is an inevitable trend in the process of digitalizing the court in the context where Viet Nam is in the transformation period to catch up with the development trend of the 4.0 industrial revolution.

3. Judge assignment at courts

Assignment of judges for case settlement needs to ensure the combination between random assignment and the specialization of the judges assigned to handle different kinds of cases, such as commercial cases. Therefore, judges at the Economic court of provincial-level courts should focus on improving their expertise in handling with commercial cases and the assignment of cases at the Economic court must be random.

The courts need to develop specific and normative criteria for this work.

4. Case time bar management



Specialized software supporting case time bar management:

- ➤ Ha Noi High People Court and People's Court of Ho Chi Minh City are good practices in effectively establishing and applying effectively software for proceedings time bar management.
- ➤ The development of this specialized software for proceedings time bar management requires a great amount of time, human resources, funding, standardization of internal processes and the internal consensus of each court as well.
- The experience in using Microsoft Excel software to manage cases at People's Court of Binh Duong Province will be suitable for courts which have not had enough budgets to use specialized software.

4. Case time bar management

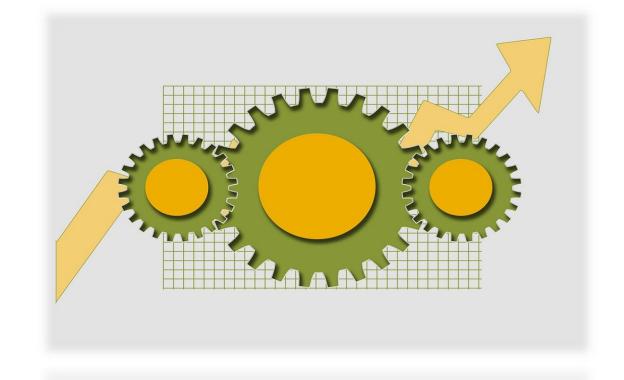


Application of information technology in publicizing case settlement process:

- ➤ The courts' websites (except the electronic portal of the Supreme People Court) should be managed by specialized officials, including technical staff and court secretaries to regularly update information on case settlement, proceedings procedures, legal forms used in litigation.
- ➤ At some courts that have not been able to publicize the case settlement process electronically, information publication shall be implemented in the traditional manner, such as via information board located at entry of the court office. Publicizing via information board requires that such board would always be updating and clean so that people and enterprises will have good impressions with the courts' activities.

4. Case time bar management

The Supreme People Court should strongly enhance the application of simplified procedures and the Meetings for submission, access to and disclosure of evidence and mediation, which are new regulations of the Civil Procedure Code 2015.



5. Judgement delivery and publication

The judgement delivery and publication by electronic means need to be applied nationwide.

It is required to improve the quality of the publicized judgments and limit the situation of avoiding judgment publication.



TÒA ÁN NHẬN DÂN TỐI CAO

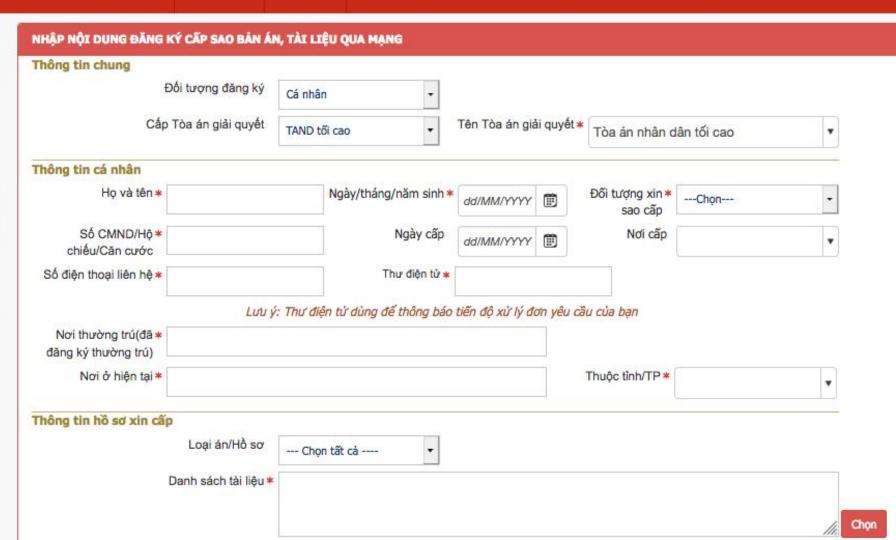
HỆ THỐNG ĐĂNG KÝ TRỰC TUYẾN CẤP SAO BẢN ÁN, TÀI LIỆU TRONG HỒ SƠ VỤ ÁN

Trang chủ Đăng ký cấp sao - Trích lục Khảo sát Tra cứu Hướng dẫn đăng Ký

★ Thống kê số lượng đẳng ký cấp sao bản án, tài liệu trong hồ sơ vụ án Tổng số yêu cầu: 6358 Tổng số yêu cầu được giải quyết: 3140 Tổng số yêu cầu bị từ chối: 303

🖈 Thông báo

Công văn 109/TANDTC-TH về tập huấn sử dụng phần mềm đăng ký cấp sao bản án, tài liệu trong hồ sơ vụ án cho tòa án nhân dân các cấp







THANK YOU!

Kindly send the comments/opinions to quang@nhquang.com

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