

Integrity in Judiciary

“The people and society are becoming increasingly demanding with the judicial agencies, in the sense that they must be a place for the people to turn to for the protection of justice and human rights, as well as being efficient tools to protect the laws and socialist legality, fighting against crime and offense effectively.”

Resolution No. 49-NQ/TW dated 2 June 2005 of the Politburo on the Judicial Reform Strategy to 2020

Judicial integrity is basic need of the citizens of each nation for a clean judiciary where judicial officials commit to integrity for strong maintenance and protection of rights and justice. However, it is reflected by both reality and studies that in Vietnam, integrity of the judiciary has not really been guaranteed.

Therefore, Towards Transparency (TT) in collaboration with Institute of Public Policy and Law (IPL) held the workshop **“Integrity in Judiciary: International Standards and Implications for Vietnam”** to share international experiences and practices as well as discuss solutions to enhance judicial integrity in Vietnam.

The workshop was held on October 10 2014, with the participation of representatives from the National Assembly, the Central Commission of Internal Affairs Committee , the Central Steering Committee for Judicial Reform, the Supreme People’s Court, Ministry of Justice and relevant agencies. The workshop received a number of valuable contributions from leading experts and interested audiences.



Court administration and the independence of judges in Vietnam

At present, Vietnam has participated in a number of international conventions, agreements such as the ASEAN Human Rights Declaration, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Beijing Statement of Principles of the Independence of the Judiciary, the United Nations Convention against Corruption (UNCAC).

Although Article 103, clause 2 of 2013 Constitution states that *"Judges and jurors conduct trials independently and obey the law only; any interference with the trials of the judges and the jurors by bodies, organizations, and individuals is strictly prohibited."*, findings from draft of the **National Integrity System Study in Vietnam** shows that the legal framework securing independence of the court is not completed, and independence of the judges is not assured, showcased by following significant facts:

- The judge's decisions depend on the relevant agencies such as the Procuracy, the police and local authorities
- The issue of exchanging, assigning and reporting cases (meetings among the investigation agency, the procuracy and the court before the trial) limits the independence of the judge. Especially, those meetings are against independence in judicial activities. In fact, they have been decreasing responsibility of judges at individual level, destroying the independence of judges and other members of the trial panel:
 - Assigning cases according to the judge's proposal is subjective, which should be eliminated from the court system. When cases are assigned according to the court leaders' decisions, clearer criterias need to be in place to prevent abuse of power.
 - For prior-trial-meeting, when judges are influenced by Chief Justice or Deputy Chief Justice, their integrity and independence cannot be guaranteed.

- The current process of selection and appointment of judges is discrete and affected by various external factors, creating pressure on the judge and impacting their independence in adjudication.
- Court management has to comply with internal regulations: because of lack of clear policies, important decisions are still being made during internal meetings.
- Publicity of the court's decisions is limited: only the litigants are aware of the judge's decisions, while interested people have very limited access to this kind of information.

✖ *“During examination, litigation; even though having sufficient evidences to announce the innocence of the defendant, the judge still has to request re-investigation, while they are supposed to make decision themselves through the trial, supported by laws and their self-belief, which is the only way to assure judicial integrity.”*

Assoc. Prof. Le Hong Hanh – Director of Institute for Law and Economics

Director of Institute of Public Policy and Law, Prof. Dao Tri Uc, shared his similar opinion: *“If the trial is proceeded with integrity, investigation agencies shall agree. If the court announce innocence, do the investigation agencies dare to affirm accuracy of their investigation?”*

Assoc. Prof. Le Hong Hanh also added that there are people appointed to be judges without substantial experience of trials. Their qualifications to make decisions in accordance with the law is a question. In addition, the tenure of 5 years makes judges worries about the reappointment.

Besides, the citizens have rare opportunities to monitor the operation of the court. Judgment and the court's decision was

publicly announced only at the trial; other documents such as case files, trial minutes, detailed information about adjudication, appointment, dismissal, displacement of judges and data on activities of the judiciary are not published. Only the Supreme People's Court and a handful of provincial courts own electronic portals.



Enhance participation and monitoring of citizens in order to guarantee Integrity in the Judiciary

Prof. Dr. Dao Tri Uc argued that there are various legal and social reasons preventing judges from being independent in adjudication. Therefore, social measures are required to ensure the independence of judges.

Making an oath when coming into judiciary is a way to remind judicial officials of requirements on professional ethics. Legal sanctions and social pressures found the basis for objective assessment of judges' quality.

“Almost 100% of judgments gets appealed. However, high-level courts make “half way” retrial, paving the way for complaints and corruption. Indeed, a mistrial should have led to immediate removal of the judge to ensure integrity.”

Ta Thi Minh Ly, President of Vietnam Judicial Support Association for the Poor

More importantly, citizens engagement in monitoring needs to be strengthened.

“Independence without accountability and proper monitoring may result in abuse of power. Therefore, a mechanism to control the judicial power at the macro level and citizen participation in monitoring are needed. If all decisions of the judge are exposed in transparent manners for everyone to

access, the judge will consider their decision carefully.”

Dr. Lawyer Luu Tien Dzung, Chairman of the Committee for International Co-operation of the Vietnam Bar Federation

 **The appointment of judicial officials must be objective and transparent**

In the workshop, the experts recommended that the relevant authorities should place **a objective and transparent** process for appointment of judges at all levels, ensuring that only candidates with qualified professional are selected. The judge will not feel indebted to any politician or senior judge for the appointment.

“It is not a hollow promise, judicial officials must uphold conscience and professional ethics. Without these factors, no one should work in the judiciary. Judges must be those who are not influenced by and immunized to bribery.”

Prof. Dr. Dao Tri Uc, Director of Institute of Public Policy and Law