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RESEARCH REPORT
Reform and enhancement of performance of Judiciary Committee of National Assembly to meet the requirement of judicial reform

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PART I

NECESSITY, OBJECTIVES AND GUIDANCE

1. Necessity

Over the past few years, in parallel with the comprehensive reform of the political system, the performance of the National Assembly have so far been much improved and reformed, and has made significant progress. Efficiency and effectiveness of the performance of National Assembly's functions and duties in accordance with the Constitution and laws have been enhanced. The oversight of the National Assembly has been further strengthened, better at meeting the requirements of life and people's expectation, hence, making crucial contribution to the improvement of the state management efficiency and the guarantee of the socialist-oriented rules of law. The oversight activities have concentrated on pressing social issues and had a positive impact on the law-making as well as policy-making process with regard to important matters of the country, contributing to the socio-economic development and the maintenance of the national safety and order.

Answering to the demand of the founding and improvement of a rule-of-law State in Vietnam, the National Assembly, pursuant to the Law amending and supplementing several articles of the Law on Organization of the National Assembly, established the Judiciary Committee at its first session of Legislature XII to assist the National Assembly in carrying out its functions and duties in the field of judicial and anti-corruption. One of The Judiciary Committee's key functions and duties is to strengthen the oversight over the activities of judiciary agencies and the anti-corruption combat, thereby contributing to the improvement of the efficiency, effectiveness, appropriateness and law compliance of judicial agencies; maintenance of the political stability and social order, facilitation of the economic development so as to meet with the requirements of the comprehensive national renovation.

The Judiciary Committee, inheriting and upholding of what Committee on Laws of previous Legislatures of the National Assembly already accomplished, has basically worked out and carried out proper performance methods for itself, continuously improved its performance efficiency and quality. Notwithstanding such achievements, there still remained shortcomings in the Committee's performance of its oversight function; e.g. the oversight has yet to cover all judicial and anti-corruption activities; the quality of subject-matter-based oversight has yet to meet with social requirements in reality; the organization of oversight has encountered with scores of obstacles; programming, planning and organizing oversight over the detection and handling of corruption acts have faced loads of difficulties; the oversight over identified cases has yet to be a frequent act, among which are corruption cases, where

conditions for in-depth oversight are lacking - the same goes to oversight over the law compliance in the exercise of prosecution, investigation and adjudication conducted by litigation agencies, especially as for cases of public concern; the collaboration between The Judiciary Committee and anti-corruption agencies has yet to be well-conducted. In addition, The Judiciary Committee's oversight over normative legal documents of the Government, the Supreme People's Court, the Supreme People's Procuracy, ministries and agencies in the fields of the Committee's subject-matter authority remains inadequate; short of in-depth oversight; oversight is limited to evaluation over reports and supervision on the law compliance of competent authorities supervision on the handling of people's complaints and denunciations. Post-oversight requests based on the Committee's findings from the subject-matter-based oversight and assessment report on annual reports on performance of the Government, the Procurator-General of the Supreme People's Procuracy and the Chief Justice of the Supreme People's Court have yet been followed up regularly, thoroughly and strictly. As a result, the Committee has yes to submit any written recommendation to the National Assembly and its Standing Committee when state agencies subject to the oversight do not follow or follow insufficiently recommendations and requests made by the Judiciary Committee without valid reasons.

Considering above-mentioned facts, this Report aims at analyzing the current state of the Committee's oversight, based on which formulating scientific grounds and proposing recommendations to the Committee, other agencies of the National Assembly and MPs for reference in the course of enhancing the law on oversight of the National Assembly as well as presenting practical and feasible solutions to improve efficiency and effectiveness of the Committee's oversight in particular and of sub-bodies of the National Assembly in general so as to meet with requirements of judicial reform and the construction, development of Rule-of-Law Socialist State of Vietnam.

2. Objectives

The making of the report aims at

2.1. Evaluating the status quo of oversight of the Judiciary Committee of the National Assembly over investigation, prosecution, adjudication, court judgment execution/enforcement, judicial assistance and anti-corruption; identifying achievements, shortcomings, causes and lessons learnt in awareness and organization of the oversight;

2.2. Contributing to the formulation of scientific grounds for enhancing the law on the National Assembly's oversight in the judicial field and anti-corruption in such a way that the law in question should be more specific and contain specific sanctions to enforce post-oversight recommendations;

2.3. Proposing practical and feasible solutions to gradually meet the requirements of “Building the National Assembly as the highest-level representative body of the people, the highest organ of state power of the Socialist Republic of Vietnam. Guaranteeing that the National Assembly performs its duties and powers properly and sufficiently, in accordance with the Constitution and law, coming up to the requirements of building a socialist rule-of-law state which is of the people, by the people and for the people”;

2.4. Contributing to the creation of the collaborative and co-operative relations between the Judiciary Committee and the Ethnic Council and other Committees of the National Assembly, departments of the Standing Committee of the National Assemblies, judicial agencies, anti-corruption agencies at central and local levels, provincial and municipal National Assembly delegations, Standing Boards of People's Councils and relevant state agencies in carrying out the Committee's functions and duties.

3. Guidance

3.1. The Report is based on the content and guidance presented in the strategy of constructing and developing the Rule-of Law Socialist State of Vietnam and Judicial Reform Strategy, especially on matters relating to the renovation of organization and performance of the National Assembly.

3.2. On the basis of the reform policy affirmed in the official documents of the Communist Party of Vietnam together with practices in Vietnam; inheriting and upholding the great practice in the past, proposing solutions to overcome shortcomings in the oversight of the National Assembly in the judicial field and to improve the law on oversight in the judicial field.

3.3. Studying selected foreign experience in oversight over investigation, prosecution, adjudication, court judgment execution/enforcement, judicial assistance and anti-corruption so as to propose recommendations on enhancing the legal system of Vietnam and on enforcing law in Vietnam for the purpose of improving efficiency and effectiveness of the Judiciary Committee’s oversight.

PART II

LEGAL FOUNDATION FOR THE DUTIES AND POWERS OF THE JUDICIARY COMMITTEE IN THE OVERSIGHT

1. Legal foundation for the oversight authority over judicial activities

1.1. Oversight of the National Assembly of Vietnam

In doctrines on state over years, oversight over state powers has a reciprocal relationship with the formulation of state powers. Any state in the world endeavors to formulate a most efficient supervisory mechanism to guarantee the best exercise of state powers, to fight against any violation and abuse of power by competent authorities.

The 1992 Constitution of Vietnam stipulates that "the National Assembly exercises the ultimate supervisory power over all activities of the State" (Article 83). This provides the legal base for the National Assembly to affirm its oversight function. That the National Assembly exercises this power demonstrates its fundamental character as the highest representative state agency and which holds the highest state power. All activities carried out by the National Assembly stem from the principle of state power being unity and People are the owner of the state power. The National Assembly is authorized to exercise this power by its people through a direct election.

According to current formal viewpoints, the National Assembly's oversight is characterized as follows:

First of all, the supreme oversight of the National Assembly is the typical power of the State.

This is resulted from the legal status and the nature of the supervisor; that is, the National Assembly exercising the supreme oversight power stems from the principle of the structure of the state power of Vietnam where the state power is unity with the delegation to and coordination among state bodies in exercising legislative, executive and judiciary power, which is different from the theory of "separation of powers". The National Assembly is the highest competent authority, the sole organ to make the Constitution and laws. In order to protect the Constitution and to guarantee the effectiveness of laws enacted by the National Assembly, the National Assembly needs, as a matter of fact, to exercise its ultimate supervisory power over every aspect of state performance. This activity is of state power nature and cannot be isolated from the state power. This helps distinguish the National Assembly's oversight function from the People's oversight in general, the oversight of Vietnam Fatherland Front Committee and its member organizations in particular. Consequently, the National Assembly's resolutions on the result of the oversight has the ultimate legal effect among other official documents including reports, conclusions, examination results

and inspection results; no state agencies, organizations and persons can review the National Assembly's decisions.

Secondly, those who conduct the National Assembly's oversight are the National Assembly itself, the National Assembly's agencies and delegates (MPs) as stipulated in Law. The oversight of the collective of MPs (the National Assembly) at the National Assembly's sessions according to the principles of plenary sessions and decision making by majority vote fully demonstrates the supreme oversight power of the National Assembly.

The oversight at the National Assembly is the most effective form of supreme oversight. The National Assembly works via plenary sessions, most of MPs are part-time hence the supreme oversight power of the National Assembly is also exercised by sub-bodies of the National Assembly. Thus, between the two annual sessions of the National Assembly, other subjects including the Standing Committee of the National Assembly, the Ethnic Committee and other Committees of the National Assembly, the National Assembly's Delegations and delegators (MPs) exercise this power, which is crucial in the sense that it provides the supplementary grounds for the National Assembly to, in its turn, exercises the oversight power at the sessions. In other words, the oversight of other subjects is the preparatory step for the oversight activity at the National Assembly's sessions. As for the nature of these oversight activities, these subjects exercise the oversight power under the "authority" of the National Assembly on the basis of considering and assessing the effectiveness of laws and policies. In such sense, they do not issue the decisions in their own names as the state agencies/persons at any levels. This resulted from the unity of the state power and the objective requirement for frequent, constant oversight over all aspects of state performance.

Thirdly, those who are subject to the National Assembly's oversight are all state activities, which are activities of state agencies to exercise the legislative power, the executive power and the judicial power. However, legislative oversight mainly aims at central-level state agencies because they have the powers to make policies to be submitted to the National Assembly, and to promulgate nationally-applicable normative legal documents which influence all social aspects.

Fourthly, the ultimate supervisory power of the National Assembly is exercised in different forms, which closely connect with one another, such as review of reports, oversight over the promulgation of normative legal documents, inquiry, establishment of interim investigation committees, organization of oversight teams, etc. Each oversight form is conducted through legally-prescribed procedures.

Fifthly, the exercise of the ultimate supervisory power aims at reviewing the decisions made by the National Assembly which have been already complied with in

practice, and shortcomings and feasibility of the legal system to help improving the legal system, including abolishment of law provisions that are no longer proper, revision of the existing laws and regulations, promulgation of new normative legal documents. The National Assembly conducts oversight to guarantee the strict implementation of the Constitution and laws; at the same time, to raise the question of the political responsibility and legal liability of those who are subject to the oversight.

All in all, the supreme oversight power is of the National Assemble, which is expressed through the course of follow-up, inspection and assessment on state activities with regard to the compliance with the Constitution, laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly and through the proposal of measures to determine the political responsibility and legal liability of those who are subject to the oversight for the purpose of warning, detecting, prevention and handling of violations, if any. The exercise of the supreme oversight power of the National Assembly at its sessions has the close relationship with the oversight of the Standing Committee of the National Assembly, the Ethnic Council, Committees of the National Assembly, delegations and delegates (MPs). Accordingly, the oversight activities of the sub-bodies of the National Assembly has to be in harmony under the authority of the National Assembly so as to bring out the best result of the supreme oversight of the National Assembly.

1.2. The system of legal provisions regarding the supreme oversight power of the National Assembly

The supreme oversight power of the National Assembly as stipulated in Article 83 of the 1992 Constitution is then specified in laws and other legal documents – among which are Law on the organization of the National Assembly 2001 (amended and supplemented in 2007); Law on the Oversight of the National Assembly 2003; the National Assembly's resolutions on rules of the National Assembly's sessions, on operational rules of the Standing Committee of the National Assembly, the Ethnic Council and Committees of the National Assembly – so as to guarantee that the National Assembly is actually able to exercise this power. Especially, the promulgation of Law on the Oversight of the National Assembly marks the turning point in the effort of specifying the oversight power of the National Assembly in legal documents whereby the jurisdiction and responsibility of entities who practice oversight power, procedures and forms of oversight are stipulated in details. What is more, related provision of laws and regulations currently in effect have made a remarkable contribution to increase the transparency of the oversight authorities, responsibilities, forms and procedures; have guaranteed the principle of opening to public, objectiveness, within the scope of authority; at the same time have made sure that oversight does not obstruct the performance of agencies, organizations and individuals who are subject to the oversight; have named the powers and

responsibilities of agencies and individuals who are subject to the oversight and measures to guarantee the oversight performance.

Although the law on the supreme oversight power of the National Assembly has been more and more completed, as a matter of fact, the implementation of such law remained lacking, as follows:

First of all, laws on the jurisdiction and object of the National Assembly's supreme oversight have yet to be consistent. As stipulated in Article 83 of the 1992 Constitution, "the National Assembly exercises the right of supreme oversight of all State activities". Article 84 then specifies that who are exposed to post-oversight punishment come down to high-level state officials who are elected or approved by the National Assembly only. With the promulgation of Law on the Oversight of the National Assembly 2003, the magnitude of the National Assembly's oversight is interpreted as being broader; that is, the National Assembly, the Standing Committee of the National Assembly, the Ethnic Council and Committees of the National Assembly can exercise oversight over other agencies, organization and persons, if necessary. Such a broad interpretation nonetheless leads to overlap in jurisdiction among the oversight of the National Assembly and its sub-bodies and the supervision, inspection of other state agencies at central level (i.e. the Government, the Supreme People's Court, the Supreme People's Procuracy) on the performance of state agencies at lower level.

Secondly, the National Assembly's supreme oversight procedure itself is still cumbersome and thus fails to facilitate the National Assembly and its sub-bodies to exercise oversight power; that is:

- The discussion on and evaluation of the work report in the National Assembly's session at the end of the year or at the end of the Legislative reflects the highest level of supreme oversight power since the National Assembly's most important activities take place during its sessions with the engagement of all MPs. Principally, all reports submitted to the National Assembly need to be evaluated in advance by the National Assembly's sub-bodies so as to make sure that the provided information is precise. Through such discussion and evaluation, the National Assembly accumulates information on current state of the implementation of the Constitution, laws and resolutions of the National Assembly. Simultaneously, this activity provides grounds for determining the political responsibility of the state officials who are elected or approved by the National Assembly. However, the current law has yet to stipulate the oversight procedure applied to the Head of the State, the Prime Minister, the Chief of the Supreme People's Court, the Chief of the Supreme People's Procuracy. This lack mirrors the inconsistence among legal provisions on holding the National Assembly's sessions which then leads to the fact that activities

taking place during the session yet to cover all aspects of the National Assembly's oversight as required.

- Law on the Oversight of the National Assembly has also yet to stipulate the procedure of recall or dismissal of state officials who are elected or appointed by the National Assembly as well as recall election procedure as for MPs as the aftermath of the supreme oversight. Even though those procedures have already been laid down in the Regulation of the National Assembly's session, this in some sense undermines the effectiveness and efficiency of the supreme oversight.

- That there are many concurrent oversight teams going to the same province makes it difficult for the local to collaborate when needed, which in turns spares little time for the oversight teams' assessing and evaluation. Moreover, some oversight teams have yet to distinguish oversight and study tour. In addition, some procedures though are stipulated in Law on the Organization of the National Assembly are yet to be specified in Law on the Oversight of the National Assembly (take, the right to request for provision of information and the right to appoint certain member to double check the information, for example).

Thirdly, the Standing Committee of the National Assembly's guidance on the collaboration and coordination with regard to the oversight of the National Assembly and its sub-bodies and delegation needs further specification.

The Standing Committee of the National Assembly plays a major part in guiding the coordination and collaboration with regard to the oversight of the Ethnic Council and Committees of the National Assembly, delegations of MPs and other related state agencies serving as required by the standard of exercising the supreme oversight power of the National Assembly. However, legal provisions on such issue has not specific enough for the Standing Committee of the National Assembly to effectively do its guidance job, especially the relationship between the Standing Committee and other sub-bodies of the National Assembly, delegations in exercising oversight function of the National Assembly has yet been specified.

1.3. Judicial agencies, judicial activities and anti-corruption in Vietnam

Judiciary is one of the state power branches that is organized and functions to guarantee the exercise of the state powers in order to maintain and protect justice. Judicial agencies have, within the scope of their authorities, the duties to protect the socialist law compliance, the socialist regime and the people's power, properties of the State and community, fundamental rights, legitimate rights and interests of citizens, and the life, properties, freedom, honor and dignity of citizens. In Vietnam, judicial

agencies include investigating agencies, People's Procuracies, People's Courts, Court Judgment Execution/enforcement Agencies (civil and criminal judgments)[1].

Under the existing laws and regulations, agencies or organizations have duties to prevent and fight corruption internally and to prevent and fight corruption according to their assigned duties and functions. At the central level, there exists the Anti-Corruption Steering Committee, currently chaired by the Prime Minister. At provincial level, there are Steering Committees chaired by Presidents of province-level People's Councils. consider

1.4. Duties and powers of the Judiciary Committee of the National Assembly

The Judiciary Committee has such main duties as: reviewing draft laws, ordinances and resolutions on judicial work, evaluating the structure of judicial agencies, and others as assigned by the National Assembly and the Standing Committee of the National Assembly; evaluating work reports of the Government on the prevention and fight against violations of law and criminal offenses, on anti-corruption and on the court judgment execution/enforcement; evaluating the work reports of the Chief Justice of the Supreme People's Court, the Procurator-General of the Supreme People's Procuracy; overseeing the implementation of laws and resolutions enacted by the National Assembly, ordinances and resolutions enacted by the Standing Committee of the National Assembly; overseeing the activities of the Government, the Supreme People's Court and the Supreme People's Procuracy in investigation, prosecution, adjudication, court judgment execution/enforcement and judicial assistance; overseeing normative legal documents promulgated by the Government, the Prime Minister, Ministers, Heads of ministerial-level agencies, the Supreme People's Court and the Supreme People's Procuracy, inter-agency normative legal documents promulgated by central state competent authorities or by state competent authorities and central-level agencies of socio-political organizations under the purview of the Judiciary Committee, and issues in the field of criminal, criminal procedure, civil procedure, administrative procedure, court judgment execution/enforcement, judicial assistance and structure of judicial agencies; overseeing the detection and handling of corruption acts; overseeing the settlement on petitions, complaints and denunciations in the field of the Judiciary Committee's subject-matter authority[2].

In accordance with the Law on Organization of the National Assembly and related laws and regulations, the Judiciary Committee, in the course of performing its

[1] At present, there's still disagreement in Vietnam on the question of which agencies are considered "judicial agencies" though all consent that judicial agencies are ones taking judicial actions. In this Report, investigating agencies, People's Procuracies, People's Courts, Court Judgment Execution/Enforcement Agencies are deemed to be "judicial agencies".

[2] Article 27a Law on amendment of and supplement to a number of articles in the Law on the Organization of the National Assembly

assigned duties, has established working groups chaired by a Vice Chairman of the Judiciary Committee to conduct the oversight of investigation, prosecution and adjudication. In particular, Working Group 1 has the duty to assist the Judiciary Committee in studying and reviewing draft laws, ordinances and resolutions; evaluating reports on criminal matters, structure and performance of investigating agencies; evaluating anti-corruption activities and the handling of corruption acts in aforementioned areas. Working Group 2 has the duty to assist the Judiciary Committee in studying and reviewing draft laws, ordinances and resolutions; evaluating reports on criminal procedure matters, structure and staffs of the People's Procuracies; evaluating work reports of the Procurator-General of the Supreme People's Procuracy and the Supreme People's Procuracy activities in general. Working Group 3 has the duty to assist the Judiciary Committee in studying and reviewing draft laws, ordinances and resolutions on civil procedures, administrative procedures and other topics which are submitted by the Supreme People's Court to the National Assembly and the Standing Committee of the National Assembly, evaluating the structure and staffs of courts; evaluating work reports of the Chief Justice of the Supreme People's Court and the Supreme People's Court activities in general. Working Group 4 has the duties to assist the Judiciary Committee in studying and reviewing draft laws, ordinances and resolutions on court judgment execution/enforcement, judicial assistance; evaluating reports of the Government on court judgment execution/enforcement; evaluating the structure of authorized state agencies, the performance of court judgment execution/enforcement and judicial assistance. Since the Legislature XIII of National Assembly, Working Group 5 of Judiciary Committee has been established, with the duty of assisting the Judiciary Committee in the field of the anti-corruption.

2. Areas subject to the oversight by the Judiciary Committee

2.1. Prevention and fight against crimes and investigation

As stipulated in the Law on Organization of the National Assembly and the Law on the oversight of the National Assembly, the Judiciary Committee has the power to oversee the prevention and fight against crimes and violations of law, and investigation. In particular:

- To evaluate the Government's Reports on crimes and violations of law, on the prevention and fight against crimes and violations of law, and on anti-corruption; the reports of the Procurator-General on the oversight results over investigation; thereby, supervise structure and performance of investigating agencies in litigation, the prevention and fight against crimes and the anti-corruption.

- To review the promulgation of inter-agency normative legal documents of agencies in the investigation field, mainly which of the Ministry of Public Security, the Ministry of National Defense and the Supreme People's Court.

- If needed, to request the Ministry of Public Security, the Ministry of National Defense and the Supreme People's Court to make reports on the structure of investigation agencies and on investigators, on training and professional abilities fostering in terms of investigators' skills and on the adjudication of criminal cases; and to hold meetings to respond to several specific questions.

- To organize oversight teams to carry out oversight on the prevention and fight against violations of law and crimes, on investigation and on the handling of specific criminal and corruption cases.

- To study and review the handling of public complaints and denunciations against investigation.

2.2. Supervision over judicial activities and exercise of prosecution

In the field of supervision on judicial activities and exercise of prosecution, Supreme People's Procuracy is the main subject of Judicial Committee's oversight. This is the organ responsible for managing, directing and instructing the organization and operation of People's Procuracies nationwide. Apart from that, Judiciary Committee annually establishes oversight teams to conduct subject-matter-based oversight over local People's Procuracies as a means to oversee the Supreme People's Procuracy activities as well.

With regard to the scope of oversight, the Judiciary Committee oversees the implementation of law on the performance of agencies in exercising prosecution and supervision (over investigation and adjudication of criminal cases); oversees the implementation of law on the investigation of crimes, infringing upon judicial activities, committed by officials of judicial agencies; oversees the implementation of law on supervision on the handling of civil, marriage, family, administrative, economic, labor cases and others in accordance with law; oversees the implementation of law on civil court judgment enforcement; oversees the implementation of law on supervision on temporary custody, temporary detention, management and education of persons who undergo imprisonment sentences; oversees the implementation of law on the handling of complaints and denunciations falling within the scope of authority of People's Procuracies and oversee the supervision on the handling of complaints and denunciations by judicial agencies; oversees the implementation of law on the structure of People's Procuracies; oversees the promulgation of normative legal documents issued by the Procurator-General of the Supreme People's Procuracy; oversees the implementation of law on other matters that fall within the scope of authority of People's Procuracies if it deems necessary.

The Judiciary Committee exercises its authorized powers through different forms of oversight. In particular:

- To chair the examination on work reports of the Procurator-General of the Supreme People's Procuracy; on the proposals and projects submitted by the Procurator-General of the Supreme People's Procuracy to the National Assembly and the Standing Committee of the National Assembly;

- To establish subject-matter-based oversight teams or to oversee specific issues related to the activities of People's Procuracies at all levels;

- To review and assess the promulgation of normative legal documents by the Procurator-General of the Supreme People's Procuracy and to report its findings to the National Assembly and the Standing Committee of the National Assembly for further decision;

- To review and handle complaints and denunciations related to the activities of People's Procuracies at all levels;

- To send its members to People's Procuracies to review and verify issues of Judiciary Committee's concern.

- To request People's Procuracies to present and provide the Ethnic Councils and Committees of the National Assembly with information and documents by request. Additionally, the Ethnic Council and Committees of the National Assembly may organize meetings with leaders of the People's Procuracies and related individuals, organizations and agencies to supplement information in order to evaluate the work quality of People's Procuracies. This is a collaborative activity to explain and clarify issues related to the activities of Peoples' Procuracies. This form of oversight of Judiciary Committee proves to be more and more efficient.

2.3. Adjudication

As for adjudication, all activities of courts are subject to the Judiciary Committee's oversight. Accordingly, the Judiciary Committee exercises its supervisory power over all work of courts, including evaluating work reports of the Chief Justice of the Supreme People's Court, reports of the Supreme People's Court on the handling of complaints and denunciations; organizing oversight teams to oversee the law compliance of the Supreme People's Court and local courts; conducting subject-matter-based oversight and oversight of the promulgation of normative legal documents; studying and supervising the adjudication of specific cases if it deems necessary[3], conducting hearings and responding to the inquiry during the National Assembly's sessions. Through these oversight activities, the Judiciary Committee has made notable recommendations to the Supreme People's Court and local courts, thereby contributing to the improvement of the adjudication quality of the Courts.

[3] Article 5, Working Regulations of the Judiciary Committee of Legislature XII.

- Evaluation on the annual work reports of the Chief Justice of the Supreme People's Court, the reports on the handling of complaints and denunciations is one of important oversight forms that the National Assembly and the Judiciary Committee use to make assessment on the performance of the Chief Justice of the Supreme People's Court in exercising his/her duties and powers. The annual work reports of the Chief Justice of the Supreme People's Court and the annual evaluation reports of the Judiciary Committee are essential in the way that they serve as rounds for the National Assembly delegates to have full understanding of the courts' activities and then to raise proper questions to the Chief Justice of the Supreme People's Court on the performance of the courts. Such documents also help delegates to make appropriate recommendations for better performance of the courts, at the same time help delegates to evaluate the fulfillment of their previous recommendations.

- Together with the evaluation of the work reports, the inquiry against the Chief Justice of the Supreme People's Court is the direct form of the National Assembly's oversight, a powerful and effective supervisory tool of the National Assembly, sub-bodies of the National Assembly and its delegates. The Chief Justice of the Supreme People's Court is responsible for responding questions raised by the National Assembly delegates in the sessions of the National Assembly and the Standing Committee of the National Assembly. Quantity and quality of questions raised by the National Assembly delegates have been much improved as time goes by. Since Judiciary Committee term in Legislature XII, the inquiry against the Chief Justice of the Supreme People's Court has been conducted under the form of hearings on specific issues. The inquiry against the Chief Justice of the Supreme People's Court has proven to be the most effective direct form of oversight. The Chief Justice may personally respond all questions raised by the National Assembly delegates with respect to the court work and cases of great public concern which are put before trial. Thus, the duration for such an inquiry in the National Assembly's sessions should increase and the same should apply to the inquiry against the Chief Justice on specific issues conducted in the Standing Committee of the National Assembly's sessions and Judiciary Committee's hearings. By doing so, more precise and comprehensive assessment on the work of the Chief Justice is possible.

- Subject-matter-based oversight (both in the form of the supreme oversight and the oversight by the Standing Committee of the National Assembly) is considered an indispensible supporting step in the legislation and the important policy making of the country, which guarantees a full and consistent performance with high quality of the National Assembly.

2.4. Judgment execution/enforcement and judicial assistance

To have a good understanding of the supervisory power of the National Assembly over the court judgment execution/enforcement and the judicial assistance,

the prerequisite is to define the scope of such concepts as "*court judgment execution/enforcement*" and "*judicial assistance*".

The court judgment execution/enforcement is subject to two acts promulgated by the National Assembly. That is, from the procedures, organization, duties and powers of competent authorities in terms of court judgment execution, determination of penalties and judicial measures; the rights and obligations of persons who undergo criminal sentences or judicial measures; to the responsibility of individuals, agencies and organizations relating to the execution of criminal sentences and judicial measures - all are stipulated in the Law on Criminal Judgment Execution. In the meantime, from the procedures for enforcement of civil court decisions/judgments, fines, confiscation of property, recovery of illegally obtained money or assets; the handling of material evidence, property, court fees and the civil decision in criminal court judgments; decision on property in administrative court judgments/decisions; decisions made by the Competition Council in competition cases or arbitration awards relating to the handling the property as a part of enforcement of such decisions or awards; system of civil judgment enforcement agencies and executors; the rights and obligations of disputing parties and persons with related rights and obligations; to the duties and powers of individuals, organizations and agencies in the civil court judgment enforcement - all are stipulated in the Law on Civil Judgment Enforcement.

In the judicial assistance, the concept "judicial assistance" embraces activities of organizations established or acknowledged by the state to support judicial agencies for better performance of investigation, prosecution, adjudication and court judgment execution/enforcement[4]. To date, no law or regulation has been made to define and determine clearly the scope of this area. Nonetheless, from the state management perspective, the judicial assistance, as stipulated in Decree No. 93/2008/ND-CP dated August 22nd 2008 of the Government, includes the organization and operation in the field of auction of property; lawyers and legal consultation; notary; judicial expertise; commercial arbitration.

Accordingly, the scope of and those who are subject to the court judgment execution/enforcement and the judicial assistance are identified as follows:

- Supervising the law implementation of competent authorities in the field of court judgment execution/enforcement and the judicial assistance;

- Supervising the implementation of law on the structure of judgment execution agencies, and judicial assistance agencies and organizations.

[4] Tran The Vuong, The role of the National Assembly as for judicial activities. The National Assembly of Vietnam, 60 years of establishment and development, the National Political Publishing House, 2006.

- Supervising the promulgation of normative legal documents of the Government, the Prime Minister, the Minister of Public Security, the Minister of Justice in the field of court judgment execution/enforcement and judicial assistance.

- Supervising the implementation of law on the handling of public complaints and denunciations falling under the sphere of the Government, the Ministry of Justice, the Ministry of Public Security in the field of court judgment execution/enforcement and judicial assistance.

The oversight activities of the Judiciary Committee mainly include:

(1) Examining reports of the Government on court judgment execution/enforcement;

(2) Reviewing the normative legal documents of the Government, the Prime Minister, the Ministry of Public Security, the Ministry of Justice, the inter-agency normative legal documents among state competent authorities or between state competent authorities and central agencies of socio-political organizations in the filed of court judgment execution/enforcement and judicial assistance.

(3) If necessary, requesting the Government, the Ministry of Public Security, the Ministry of Justice to report activities in the filed of court judgment execution/enforcement and the judicial assistance.

(4) Organizing oversight teams to conduct oversight in the field of court judgment execution/enforcement and judicial assistance.

(5) Sending its members to relevant agencies and organizations to examine or verify issues in the field of court judgment execution/enforcement and judicial assistance.

(6) Organizing the research, handling and examination of the settlement of public complaints and denunciations in the field of court judgment execution/enforcement and judicial assistance.

(3) Supervising the implementation of laws and resolutions of the National Assembly and the ordinances and resolutions of the Standing Committee of the National Assembly on court judgment execution/enforcement and judicial assistance, on the structure of judgment execution agencies and judicial assistance agencies/organizations;

As stated above, the oversight of the Judiciary Committee is one of the methods to exercise the supreme supervisory power of the National Assembly. In supervising court judgment execution/enforcement and judicial assistance, those who are subject to the oversight of the Judiciary Committee are relatively plentiful, including:

- State agencies in charge of management over court judgment execution/enforcement and judicial assistance (the Government, the Ministry of Justice, the Ministry of Public Security, the Ministry of National Defense, province-level People's Councils, district-level People's Councils);

- Criminal judgment execution agencies, civil judgment enforcement agencies[5];

- Judicial support agencies and organizations (socio-political organizations of lawyers, law practicing organizations, judicial expertise organizations, notary practicing organizations, etc.).

Moreover, when mentioning the Committee exercising the power of *"overseeing the implementation of the National Assembly's laws and resolutions, the Standing Committee of the National Assembly's ordinances and resolutions on criminal law, criminal procedure, civil procedure, administrative procedure before courts, court judgment execution/enforcement, judicial assistance, organization of judicial agencies"*, it means that all aspects of structural organization and performance of agencies and organizations offering judicial assistance. However, the Judiciary Committee's oversight in reality focuses on state management agencies, state agencies assigned with duties and powers in the field of court judgment execution/enforcement and judicial assistance as stipulated by law. Judicial assistance organizations, in the case of necessity, may be invited to the Judiciary Committee's meetings/hearings to provide supplementary information.

It can be evaluated that in general the Judiciary Committee's oversight in the field of court judgment execution/enforcement and judicial assistance has drawn much attention. The Judiciary Committee has conducted fairly comprehensive oversight over these areas with a step forward in the reform of both oversight methods and subject matters. Through the evaluation on annual reports, the review of normative legal documents, the supervision on the settlement of public complaints and denunciations and subject-matter-based oversights, the performance of the Committee in exercising its oversight function has been much improved in both terms of quantity and quality. Forms and methods of the oversight have been renovated with a combination of regular oversight and subject-matter-based oversight, thereby improving the quality of

[5] Under Article 10 of the Law on Criminal Judgment Execution, judgment execution agencies include detention camps under the Ministry of Public Security, detention camps of the Ministry of National Defense, detention camps of regional military; criminal judgment execution agencies of province-level police; criminal judgment execution agencies of district-level police; criminal judgment execution agencies of regional military or agencies at corresponding level; agencies assigned with a number of criminal judgment execution duties, they are temporary detention camps under the Ministry of Public Security, temporary detention camps under the Ministry of National Defense, temporary detention camps under province-level police, temporary detention camps of regional military; district-level People's Committee; military regiment units or military units at corresponding level.

Under Article 13 of the Law on Civil Judgment Enforcement, civil judgment enforcement agencies include province-level civil judgment enforcement agencies; district-level civil judgment enforcement agencies; civil judgment enforcement agencies of regional military or military agencies at corresponding level.

the oversight. Collaboration amongst relevant agencies has been gradually enhanced. Remarks and observations in the oversight reports have objectively reflected facts and achievements made and especially have detected legal, policy and management shortcomings and then proposed solutions of high feasibility, thereby contributing to the improvement of policy in the field of court judgment execution/enforcement and judicial assistance.

2.5. Anti-corruption

In the field of anti-corruption, the Judiciary Committee has the duty of reviewing draft Law on Anti-Corruption; evaluating the Government's report on anti-corruption. Especially, the Judiciary Committee has the function to oversee the detection and handling of corruption acts (this function is different from the function of the Ethnic Council and the other Committees of the National Assembly, that is overseeing anti-corruption activities only in the areas within the scope of their respective management authority. Meanwhile, the Standing Committee of the National Assembly oversees the anti-corruption activities nationwide[6]); overseeing the normative legal documents of the Government, the Prime Minister, Ministers, Heads of ministerial-level agencies, the Supreme People's Court, the Supreme People's Procuracy, and the inter-agency normative legal documents among state competent authorities or between state competent authorities and central agencies of socio-political organizations in the field of anti-corruption. In the course of oversight over the handling of complaints and denunciations in the field of anti-corruption, the Judiciary Committee may submit proposals to the National Assembly or the Standing Committee of the National Assembly or itself request relevant state agencies subject to the oversight to remedy their violations. It even may make recommendation to the National Assembly to dismiss any person who has committed serious acts of violation in the field of anti-corruption, if such person is elected by the National Assembly; or to approve the discharge or dismissal of any person committing serious acts of violation in the field of anti-corruption if he/she holds a position approved by the National Assembly.

[6] Under Article 74 of the Law on Anti-Corruption, "1. The National Assembly, the Standing Committee of the National Assembly oversee the anti-corruption activities nationwide; 2. The Ethnic Council and Committees of the National Assembly, within their respective authority scope, oversee the anti-corruption activities within the scope of their respective management authority. The Judiciary Committee of the National Assembly, within its duties and powers, oversees the detection and handling of corruption acts; 3. People's Committees at all levels, within their respective duties and powers, have the responsibility to oversee the anti-corruption activities in their areas; 4. National Assembly delegations, delegates and representatives of People's Councils, within their respective duties and powers, oversee the implementation of laws and regulations in the field of anti-corruption".

PART III

CURRENT STATE OF THE JUDICIARY COMMITTEE'S OVERSIGHT

1. On the evaluation on the Government's report on the prevention of and fight against law violations and crime, the Government's report on court judgment execution/enforcement, work reports of the Chief Justice of the Supreme People's Court and the General Prosecutor of the Supreme People's Procuracy, the Government's report on the prevention of and fight against corruption

Pursuant to the Law on the oversight of the National Assembly, at its year-end session, the National Assembly shall consider and discuss the annual work reports of the Government, the Supreme People's Court and the Supreme People's Procuracy.

To help the National Assembly assess such reports, the Judiciary Committee organizes annual plenary sessions to evaluate reports falling within its oversight scope. This is the most frequently used oversight mode of the Judiciary Committee[7]. To best serve such evaluation, the Judiciary Committee conducts supervision activities on certain topics in provinces, municipal cities and military units prior to making a report to the Standing Committee of the National Assembly and the National Assembly[8].

The Judiciary Committee also establish many tasks forces and study tours coming to provinces and cities[9]. It frequently collects information through opinions, petitions of the constituents, mass media, public complaints and denunciations, the supervision of the handling of such complaints and denunciations and practices of each Committee members. Such information are factual grounds for the consideration of and evaluation on those reports.

Absorbing helpful opinions and viewpoints of committee members, the Committee's evaluation reports have assessed aspects of the judicial activities and fully covered the Committee's members opinions on the successes and limitations of the prevention and fight against law violations and crimes. Additionally, the report contains valuable recommendations to the Government, Supreme People's Procuracy and Supreme People's Court.

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[7] Since its establishment in 2007, the Judiciary Committee has organized 06 sessions to evaluate annual reports of the General Prosecutor of the Supreme People's Procuracy on the work of their subordinated agencies and the handling of complaints and denunciations falling within their scope of authority.

[8] Since 2007, the Judiciary Committee has conducted oversight on 5 topics. It took charge of the oversight over a topic subject to the Standing Committee of the National Assembly's oversight, that is the operation of activities of prevention of and fight against corruption; detection and handling of corrupt acts conducted by authorized agencies in the field of prevention of and fight against corruption. It also conducted study on the law compliance law in the field of custody and detention; on the prevention of and fight against corruption; so on and so forth.

[9] Since its establishment, the Judiciary Committee has so far organized 24 oversight teams coming to provinces and cities for oversight with a view to assist the Committee in exercising its function of reviewing draft laws, ordinances, and resolutions of the National Assembly, The Standing Committee of the National Assembly; evaluating work reports of the Government, Chief Justice of the Supreme People's Court, General Prosecutor of the Supreme People's Procuracy.

Through this activity, the Judiciary Committee has made many suggestion for improvement to the judicial bodies at both central and local level, making considerable contribution to the improvement of the quality and effectiveness of the activities of such agencies. Most of recommendations in the Committee's annual evaluation reports have been well received by the Government, the Supreme People's Procuracy, and the Supreme People's Court. They help increase the responsibilities of state officials and civil servants in the performance of their duties and thus ensure the transparency and objectiveness of judicial bodies' performance, the accuracy and legal compliance of the adjudication. In the same manner, law violations causing wrong doings are reduced and redressed, positively contributing to the judicial reform process. Most of the recommendations of the Judiciary Committee proposed in its reports have the National Assembly's consent and hence were incorporated into the Resolutions of the National Assembly with respect to these issues.

Through oversight, apart from the evaluation of achievements of the Government in the field of prevention of and fight against law violations, court judgment execution/enforcement, the performance of the Chief Justice of the Supreme People's Court and the General Prosecutor of the Supreme People's Procuracy, the Judiciary Committee also reports to the National Assembly on challenges of and impediments to the activities of judicial bodies which go beyond their capacity so that the National Assembly and competent agencies could promptly take measures to support the work of judicial bodies.

However, recent evaluation of the Committees on the Government's reports on the prevention of and fight against law violations and crimes, reports on court judgment execution/enforcement of the Government, reports on the current state of the prevention of and fight against corruption, work reports of the Chief Justice of the Supreme People's Court and the General Prosecutor of the Supreme People's Procuracy has pointed out specific shortcomings, among those are:

- As the Government assigns the report preparation work to the Ministry of Public Security, the annual reports have yet to cover all activities of all Ministries, government branches at local levels as for the prevention of and fight against law violations and crimes with respect to all aspects of life and society. Under some circumstances, data reported by different agencies are inaccurate and diverse. The Government's reports on the prevention of and fight against corruption submitted to the National Assembly or the Standing Committee of the National Assembly at certain points of time lacks in terms of quality. Some contents are let pass, many evaluations are vague, cursory, groundless, or fails the expectations of Judiciary Committee, the Standing Committee of the National Assembly and the National Assembly. In many cases, the Judiciary Committee had to "coordinate" with submitting agencies to complete the reports prior to their submission to the National Assembly.

- The evaluation on reports on the prevention of and fight against corruption are mostly based on the report's contents without any information from independent channels to back up the conclusions. There was a lack of a mechanism for the National Assembly delegates to solicit scientists or independent researchers for profound consultations, or to seek for explanation of related agencies. There was also a lack of official information from inspection agencies, audit agencies, investigation agencies, prosecution agencies, and courts with respect to corruption; or from competent agencies in fields where corruptions occurred in large quantities.

- At present, both the oversight agency (the Judiciary Committee) and the reporting agencies (the Government, the Supreme People's Procuracy and the Supreme People's Court) are still confused, passive and unable to come into agreement upon the criteria on timing and contents of the Report, which in turn leads to the situation where the requested time frame for collecting data does not match with the time frame used in the branches' statistics forms. This poses great challenges to the collection of data in the local, and therefore the submitted reports often fail to meet the deadline. It is then a tricky situation for the Committee members to study such reports in due course. There are times when the evaluation session was held, the reporting agencies only managed to collect data of 10 months[10].

- The assessment of the state of corruption each year and the forecast of the corruption landscape in the following year by the Government as well as the evaluation of the Judiciary Committee were still without concrete criteria for evaluation, making it difficult for the identification of specific appropriate methods suitable for each period and meeting with requirements for effective anti-corruption.

- As most of the Judiciary Committee's members are part-time National Assembly delegates (MPs), it is difficult to arrange the schedule for the Committee's activities, especially the plenary sessions or oversight teams which last several days. Many year-end examination sessions of the Committee witnessed absence of some Committee members, affecting the discussion and argument quality. It also affected the principle of collective work and decision by majority votes. Thus, many arguments in the Committee's evaluation reports were mostly based on opinions of full-time members of the Committees. Many members of the Judiciary Committee have been working in central or local judicial bodies or local governments and therefore, in some cases, their opinions related to their branches or local areas were not objective.

- The participation of the Ethnic Council and other committees of the National Assembly in the evaluation process is limited, just in form of personal opinions of National Assembly delegates who are appointed to participate in the Judiciary

[10] At present, the data is collected from 1 October of the previous year to 31 July of the reporting year. The Government, Supreme People's Procuracy, and Supreme People's Court provide data of the remaining 2 months prior to the official submission of report to the National Assembly at its year-end session.

Committee's evaluation sessions, not official opinions by the Ethnic Council and such committees as a whole. Thus it creates obstacles in incorporating these opinions into the report.

- The implementation of post-evaluation recommendations and conclusions has yet to be fully followed up, frequently updated, closely supervised and adequately urged. Reports were not made to the Standing Committee of the National Assembly and the National Assembly when judicial bodies, without valid reason, did not follow or failed to fully comply with the recommendations and conclusions of the Committee. Some problems already addressed in the reports have not been redressed for years afterwards, such as suspended cases, wrong classification of cases, the implementation of laws regarding the detention, so on and so forth.

To increase the quality and effectiveness of the evaluation of reports made by the people's courts, after the National Assembly makes comments on work reports of the Supreme People's Court, the Supreme People's Procuracy, and the Government as well as the evaluation reports of the Judiciary Committee with respect to such reports, it is suggested that the National Assembly should issue a separate Resolution on the subject matter. This Resolution, which points out criteria and set the requirements for the performance of reporting agencies, is binding and thus serves as the meter based on which the Judiciary Committee can evaluate work reports of the following years.

2. Review of legal normative documents falling in the supervision scope of the Judiciary Committee

Since its establishment, the Judiciary Committee has spent quite a lot of time on overseeing the implementation of laws and resolutions of the National Assembly, the ordinances and resolutions of the Standing Committee of the National Assembly, the Government, the Prime Minister, Ministers, Heads of ministerial agencies, the Chief Justice of the Supreme People's Court, and the General Prosecutor of the Supreme People's Procuracy. It has yet to pay enough attention to the assessment and review of the issuance of legal normative documents by such agencies. This activity is mainly conducted in combination with subject-matter-based oversight, evaluation of surveys, handling public complaints and denunciations as well as supervision on specific cases.

However, through its activities, the Judiciary Committee has detected and made recommendations on many issues relating to the Government's issuance of legal normative documents, such as the promulgation of guiding documents for laws and ordinances regarding the prevention of and fight against law violations and crimes is sadly often behind schedule, unsystematic and incomplete (many contents of which is relating to the criminal law and criminal procedure law); the guiding documents were out of date and in some cases even contrary to the existing laws and ordinances but the amendment and supplementation were belated; the documents were not promulgated

by the right authority or the documents include provisions contravening constitutional citizens' basic rights, to name a few.

With respect to legal documents issued by the Supreme People's Procuracy, for the past years, the Judiciary Committee has stopped at reviewing legal document falling under the promulgation authority of the General Prosecutor of the Supreme People's Procuracy only and yet to have detailed oversight agenda. This, in some sense, has resulted in the Supreme People's Procuracy and other judicial bodies' belated promulgation of guiding documents for laws and ordinances in judicial field as well as belated remedy for deficiency in the contents of already promulgated documents.

With respect to legal documents issued by the Supreme People's Court, in 2010, the Judiciary Committee requested the Supreme People's Court to provide information on the promulgation of legal normative documents but the Court did not follow up the implementation of this request frequently. The Supreme People's Court has also yet to report regularly to the Judiciary Committee about the promulgation of the status of legal normative documents. Considering the quantity of documents in need to provide sufficient implementation guidelines for laws and ordinance, the Supreme People's Court is still in arrears (though there still lack precise statistics, by February 2011, there were around 28 documents falling under the responsibility of judicial bodies – among which is the Supreme People's Court – in need of promulgation). From the aspect of progress of promulgation, many documents were promulgated behind schedule, making it hard for many local courts to conduct the trials. From the aspect of quality of legal documents, there exist in many documents inappropriate and legally inconsistent provisions; the promulgation authority in some cases is not in accordance with law; some provisions are infeasible, not realizable or troublesome and hence need amending, so on and so forth. Thanks to the review of the promulgation of legal normative documents, the Judiciary Committee of the National Assembly - Legislature XII recommended the Supreme People's Court to issue Resolution No. 01/2010/NQ-HDTP dated October 22nd 2010 providing more detailed guidelines for Article 248 and Article 249 of the Penal Code, including the money threshold for crimes of gambling.

Regarding court judgment execution/enforcement and judicial assistance, review of law compliance in the civil court judgment enforcement has found some weaknesses in the guiding document promulgation. However, the Judiciary Committee's oversight of legal normative documents in the field of court judgment execution/enforcement and judicial assistance in recent years has yet to be paid due attention. The Judiciary Committee's oversight of legal normative documents in the field of court judgment execution/enforcement and judicial assistance make little achievement. There was no profound subject-matter-based oversight on the issue. It

was combined with other oversight activities only, such as evaluation on reports, oversight over competent agencies' law observance, oversight over the handling of complaints and denunciations, so on and so forth. The oversight contents only extended to such issues as responsibility in guaranteeing the progress of the promulgation of legal normative documents, number of legal normative documents which has yet to be promulgated in accordance with law, among others. Not many documents are detected to contain provisions which contravene the Constitution, laws, ordinances, resolutions of the National Assembly, the Standing Committee of the National Assembly; or are overlapped and contradictory. The oversight was not conducted frequently, so the legal documents promulgated by competent agencies which are contrary to the Constitution, laws, and resolutions of the National Assembly or ordinances, resolutions of the Standing Committee of the National Assembly have yet to be uncovered in time.

As for the prevention of and fight against corruption, the Judiciary Committee gave comments on such issues as the validity, on the contents which are not compatible with Vietnamese laws, on the approval authority, to name a few, in the course of endorsement of the UN Convention on anti-corruption and evaluation of the implementation of this Convention. Some legal documents which are contrary to the law or inappropriate to the practice were also recommended for amendment or abrogation by the Judiciary Committee in its review reports or evaluation reports. (The Judiciary Committee has yet to issue any particular document to request such agencies to abrogate or amend the legal normative documents).

In general, the oversight of legal normative documents guiding and implementing the Law on anti-corruption of the Judiciary Committee has been conducted frequently. The oversight was mostly performed through evaluating the Government's annual reports, document studying, handling denunciations with respect to corruption acts and subject-matter-based oversight. The contents of some documents which were not realizable have been exposed and requested for amendment by competent agencies[11].

However, it should be frankly admitted that the review of the promulgation of legal normative documents for the sake of implementation or guiding the implementation of Law on anti-corruption has not yet been comprehensively conducted. The oversight only extends to take the forms of subject-matter-based oversight, survey over other topics or evaluation of year-end reports where Law on anti-corruption was mentioned. There was no specific subject-matter-based oversight over legal normative documents relating to Law on anti-corruption. Thus, the

[11] For instance, Decree 158/2007/ND-CP on the alteration of position and time for alteration of position of cadres, civil servants is not appropriate in cases where person in question holds judicial titles; there is only one position in the agency, organization, unit, to name a few; or Decree 107/2006/ND-CP of the Government on the responsibility of the leader of units where corruption occurs...

recommendation for promulgation, amendment, or abolition of legal documents in some cases was not in time, partly obstructing the application and causing inconvenience to the implementing agencies. There was no effective mechanism in requesting competent agencies to promulgate legal normative documents for the purpose of guiding the implementation of Law on anti-corruption in time. Though the Law on anti-corruption was promulgated 7 years ago, some guiding documents have not yet been issued, resulting in difficulties in implementation thereof.

The oversight results have shown that, legal normative documents issued by the Government, the Supreme People's Procuracy, the Supreme People's Court are on the whole qualified and in line with the Constitution, laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly. Such documents satisfy basic requirements of state management activities. There was no case where the Judiciary Committee had to recommend the Standing Committee of the National Assembly to abolish or bring to a halt parts or the whole documents.

However, it can be seen that the oversight of the promulgation of legal normative documents of the Government, the Prime Minister, the General Prosecutor of the Supreme People's Procuracy, the Chief Justice of the Supreme People's Court is a weak link in the Judiciary Committee's whole chain of activities. The evaluation and recommendations with respect to this activity were not comprehensive. The provisions in laws which cause difficulties to the application process have not been deeply assessed. The oversight has not yet pointed out the subjective reasons. The oversight contents mostly focused on issues such as responsibilities in guaranteeing the progress of promulgation of legal normative documents, the number of legal normative documents need to be promulgated as provided. The uncovering of documents with provisions in contrary to the Constitution, Laws, Ordinances, and Resolutions or documents which are overlapped and contradictory is sparing.

In the coming time, to oversee the promulgation of legal normative documents of the Government, the Prime Minister, the General Prosecutor of the Supreme People's Procuracy, the Chief Justice of the Supreme People's Court, and to meet the requirements of the judicial reform in the new context, the following should be implemented:

- Continue to apply the provisions of Resolution no 241/NQ-UBTP13 dated November 18th 2011 of the Judiciary Committee on the assignment of follow-up responsibility with regard to the promulgation of legal normative documents in the adjudication field.

- Make specific plan to request the Government, the Prime Minister, the General Prosecutor of the Supreme People's Procuracy, the Chief Justice of the

Supreme People's Court to submit periodical reports one or two times a year on the promulgation of legal normative documents; assign state officials to make statistics and monitor the judicial bodies' promulgation of legal normative documents.

- In cases where agencies in charge of promulgating legal normative documents encounter difficulties, they should hold sessions to work out the solutions in time.

- Continue to monitor judicial bodies' promulgation of legal normative documents through subject-matter-based oversights, survey, handling of complains and denunciations, evaluation on reports of government branches and other information sources.

- Organize subject-matter-based oversight over the promulgation of legal normative documents falling under the scope of Judiciary Committee's oversight authority.

- At present, there remain a number of documents which have yet to be promulgated in time. However, following the judicial reform strategy up to 2020 and the amendment of the 1992 Constitution, some laws and ordinances concerning the adjudication activities need to be amended and supplemented. In the short term, agencies responsible for promulgation of legal normative documents should perform their duties to meet with practical requirements of adjudication.

3. Organization of oversight teams (subject-matter-based oversight)

In the implementation of the Law on Organization of the National Assembly and the Law on the oversight of the National Assembly, the Judiciary Committee's subject-matter-based oversight has been conducted on the basis of annual agenda of the Committee or as assigned by the Standing Committee of the National Assembly. Prior to conducting the oversight, the Judiciary Committee designed the plan, made clear the purposes, requirements, objects, contents, and timing of the oversight. The Committee also coordinated closely with the National Assembly delegations and the People's Councils where the oversight teams visited and requested the National Assembly delegations and the People's Councils to prepare documents and arrange meetings. The working method used by oversight teams include listening to the reports, holding Q&A sessions to make clear concerned issues, and directly working with the grassroots[12]. The topics selected by the Committee are pressing issues,

[12] In the Legislature XII of the National Assembly, the Judiciary Committee conducted 3 topics and helped the Standing Committee of the National Assembly oversee 1 topic in judicial field and anti-corruption. To this end, the Judiciary Committee organized 05 oversight teams to oversee the implementation of National Assembly's Resolution on expanding jurisdiction for 15 district courts at provincial and municipal level and 1 military court; organized 4 oversight teams to oversee the observance of law in the field of criminal judgment execution in 5 provinces, municipal cities, 1 military zone and 7 detention camps under the authority of the Ministry of Public Security; organized 4 teams to oversee the law observance in civil judgment enforcement in 13 provinces, municipal cities and 4 military zones. Since the beginning of Legislature XIII of the National Assembly, the Judiciary Committee has organized the oversight of 1 topic on the observance of criminal procedure law in the investigation, prosecution and adjudication.

directly relating to the basic rights and obligations of the citizens or relating to the implementation of the Party's outlines, policies on judicial reform. The subject-matter-based oversight has made clear the responsibility of related agencies, investigation quality and promptly detected and corrected mistakes and removed impediments. The results has made an important contribution to the policy making, improve the organization and operation of judicial bodies, and provide the MPs and Standing Committee of the National Assembly with necessary information for evaluation of the performance of duties. The results of subject-matter-based oversights also serve as basis for the consideration and approval of related draft Law, Resolutions. Many of the Judiciary Committee's recommendations made in the subject-matter-based oversight were well received. They helped to remedy shortcomings in the implementation of the Penal Code, Criminal Procedure Code, among others.

To meet with the increasing demand of the current judicial reform, the Judiciary Committee selected the oversight contents which are expected by the constituents, and of public concern; stick close to the annual oversight agenda of the National Assembly. The oversight methods match with contents, objects, and time of oversight. The members of oversight teams have professional knowledge and high sense of responsibility, enjoy years of practical experience. Members are encouraged to identify shortcomings and challenges. The oversight focused on pivotal issues of renovating the organization and operation of judicial bodies. The oversight conclusion pointed out weaknesses, causes, specific addresses, and solutions so that responsible agencies or individuals could implement. Agencies subjected to the oversight actively cooperated and come up to the expectation of the overseeing agency. The oversight was closely connected with the mass media and associations, organizations to draw attention form the people; therefore the effectiveness of the subject-matter-based oversight has been obviously increased.

As for the oversight over judicial assistance, the Judiciary Committee organized the survey on judicial assistance with respect to the field of lawyers and judicial expertise. The Judiciary Committee has organized oversight teams to survey the organization and operation of Bar Associations, law-practicing organizations, judicial expertise organizations and People's Court's state management activities in these two fields in 12 provinces and municipal cities. The Judiciary Committee also conducted survey in central judicial expertise organizations such as the National Institute of Forensic Medicine and the Central Institute of Forensic Psychiatry (Ministry of Health), the Institute of Criminal Sciences (Ministry of Public Security), the Military Institute of Forensic Medicine, the Department on Criminal Investigation Technique Expertise (Ministry of National Defense). The Judiciary Committee organized a meeting with the leadership of the Ministry of Justice and related Ministries and government branches, leaders of expertise organizations at central level,

representatives of the leaders of the Vietnam Bar Federation to hear reports of the Ministry of Justice and other ministries and branches on the lawyer's activities, reports on the performance of state management within the authority scope of each Ministry and reports on the organization and operation of Vietnam Bar Federation.

After the hearing, the Judiciary Committee pointed out many impediments and weaknesses in the activities of lawyers and law-practicing organizations, in the lawyer training and professional abilities fostering, shortcomings in the state management of lawyers and law-practicing organizations. With respect to judicial expertise, the Judiciary Committee has pointed out many shortcomings in the activities of judicial expertise organizations, judicial assessment experts and state management of judicial expertise, especially shortcomings in law provisions on judicial expertise. The improvement of the institution and organization in judicial expertise is still at slow rate. Many Ministries did not issue or even draft guiding documents on the organization and operation of the judicial expertise under their respective authority, including important fields such as finance, transport, industry and trade, culture, natural resources and environment, agriculture. Some Ministries already issued guiding documents detailing their respective judicial expertise activities. However such guiding documents has just focused on the organizational structure, duties and authority of judicial expertise organizations. The standard procedures for conducting judicial expertise have not yet been stipulated specifically. Some contents of the Ordinance on Judicial expertise such as judicial expertise service at the request of individuals or organizations, the re-assessment have not yet been detailed for implementation. Identifying of such shortcomings and impediments as the result of the observation related activities in practice, the Judiciary Committee has recommended many solution on improvement of the legal system, reorganization of the state management work, formulation of suitable treatment policies for state officials and staffs in agencies relating to law practicing and judicial expertise. These recommendations were seriously received by competent agencies. They are basis for the Judiciary Committee to review the Law on Judicial expertise, Law on amendment and supplementation of certain articles of the Law on Lawyer.

However, there are still weaknesses as follows:

- The oversight and survey were not distinguished. Some oversight authorities of the Judiciary Committee stipulated in the Law on Organization of the National Assembly were not detailed in the Law on the oversight of the National Assembly (for instance, the right to request for submission of documents, the right to assign people to participate in the oversight), bringing up difficulties in the implementation.

- Grounds for the establishment of oversight teams were too simple, the oversight activities were overlapped in contents and dispersed as there exist close connections between procedural stages such as investigation, prosecution and

adjudication. Thus, the subject-matter-based oversight should examine all stages of a litigation process in order to have precise evaluation of the effectiveness of judicial bodies.

- Time and financial resource for the oversight was sparing. The subject-matter-based oversights by the National Assembly, the Standing Committee of the National Assembly, or the Judiciary Committee with respect to anti-corruption were conducted between two National Assembly sessions and reported to the National Assembly in its year-end session. It is impossible to conduct profound oversight methods (examining specific cases (matters) where the Judiciary Committee found law violation signs) within the above time period. On the other hand, the expenses allocated for oversight was deficient. It is difficult to solicit experts acting as advisor for the Committee in overseeing profound fields, such as corruption acts in the field of construction, finance, banking, so on and so forth.

- Responsibilities of agencies, organizations which are subject to the oversight obstructing or failing to perform the requests of the overseeing agency are stipulated in Article 45 of the Law on the oversight of the National Assembly. Based on the violation nature and extent, such actors shall be disciplined, subjected to an administrative fine or penal liability. However, Article 46 of the Law on the oversight of the National Assembly allows agencies, organizations, and individuals subject to the oversight to refuse to give feedbacks or provide information of State secrets while, in reality, many contents relating to the prevention of and fight against law violation and crime, relating to the investigation are of National secrets. Consequently, the agencies, organizations or individuals subjected to the oversight do not provide information or provide inadequate information to the oversight teams. This stipulation thus lessened the effectiveness and efficiency of the Judiciary Committee's oversight.

- Notably, the implementation of post-oversight recommendations, conclusions and proposals was not upheld by those who are subject to the oversight. The following up and supervision on the results of carrying out post-oversight recommendations remain marginal. Therefore, the oversight was conducted as it was; the executive and judicial bodies still followed their own ways of implementation which is out of the National Assembly and the Judiciary Committee's knowledge; it is impossible to identify the precise number of post-oversight recommendations which were already implemented.

4 Oversight through the handling of complaints and denunciations

4.1. Oversight through the receipt of complaints and denunciations

The oversight which was conducted through the handling of complaints and denunciations with respect to the prevention of and fight against law violations and crimes, prosecution, and adjudication was a frequent activity performed by the

Judiciary Committee. The source of information for this oversight is complaints and denunciations forwarded by competent State agencies or by the mass media. The Judiciary Committee assigns its working groups to be in charge of handling complaints and denunciations according to the respective given tasks, ensuring the timely classification and handling of complaints and denunciations, avoiding overlapping work[13].

Regarding the handling procedure, after receiving the public complaints and denunciations, full-time members of the Judiciary Committee review and classify according to subject matter and attaching documents. After classifying, full-time members of the Judiciary Committee follow procedures as follows:

- The Judiciary Committee keeps record of the complaints and denunciations and monitors the handling of complaints and denunciations in such cases as such complaints and denunciations have already been forwarded to the competent agencies and the statute of limitations has yet to run; the complaints and denunciations without addresses of the complainants or denouncers; the complaints and denunciations are without clear content, to name a few.

- The Judiciary Committee forwards the complaints or denunciations to the competent person (agency) if such complaints or denunciations contain content which has yet to be considered and handled by the courts at all levels or such complaints or denunciations have not yet been forwarded to the right person (agency) in charge and they are complicated cases/ matters which need to be forwarded to the competent person (agency) to review the handling process.

As for the complaints and denunciations which yet to meet with requirement for forwarding, the Judiciary Committee monitors the case/matter to see if the citizens continue to lodge complaints or not. In cases of lengthy and acute complaints, the Committee requests citizens to provide sufficient dossiers and supplementary documents for further examination.

As for the complaints and denunciations which have already been forwarded to competent agencies or persons, the Judiciary Committee monitors, urges, and supervises the settlement, partly on the basis of time limitation for handling such complaints and denunciations. Among 3,862 official correspondences already forwarded to competent agencies by the Judiciary Committee of the National Assembly - Legislature XII, most of them deal with content in the field of adjudication, among which are those relating to complaints against civil, criminal

[13] The Judiciary Committee of the National Assembly of Legislature XIII received, studied, classified and handled 28,583 complaints and denunciations including 15,663 complaints and denunciations falling within the scope of the Committee's scope. After studying and examining, the Committee issued 3,862 official dispatches and sent to competent agencies to request the consideration, following-up, and oversight of the handling by competent agencies and organized the oversight of certain cases (from Report no 4684/UBTP12 dated 14 February 2011 on the performance of the Judiciary Committee of 12th National Assembly (2007-2011)).

judgments or decisions. Many of them are lengthy, incessant complaints and which are subject to high-level authority in terms of subject matter jurisdiction. In the field of court judgment execution/enforcement and judicial assistance, the Judiciary Committee holds meetings to directly listen citizens' complaints an denunciations; receives, reviews and handles complaints and denunciations. It also oversee the handling of citizens' complaints and denunciations by competent agencies. Since its establishment, the Judiciary Committee have received 2,359 complaints and denunciations with respect to court judgment execution/enforcement and requested competent agencies to handle 272 cases/matters.

In the course of studying complaints and related documents, the Judiciary Committee selects certain complicated, lengthy cases/matters with pressing issues and requested competent agencies to provide information, dossiers and supplementary documents for consideration; organizes meetings with the presence of competent persons and related agencies for report and explanation[14].

Through the handling of complaints and denunciations, the Judiciary Committee selects specific cases with imperative issues as topics for oversight. The oversight over these cases/matters is carried out in the order and procedures provided for by the Law on the oversight of the National Assembly.

Through the oversight of complains and denunciations, the Judiciary Committee has helped to protect the legitimate rights of citizens, heighten the sense of responsibility of the cadres and civil servants working in judicial field in general, and of the investigators in particular; contributed to the correction and guarantee of the soundness and law observance in performance of investigation bodies. The Committee also promptly detected the weaknesses of the regime, policies, and laws to make recommendations for reparation and improvement.

However, there were many shortcomings in the oversight of the handling of complaints and denunciations, among which are difficulty in defining criteria for forwarding complaints, lack of grounds for organizing review of certain cases/matters, the overload of complaints with respect to the procedure of reviewing legally effective court judgments and time-consuming handling of overlapped complaints. Objective cause for these weakness is the inadequate and partly contradictory legal system of Vietnam. Especially, the stipulation on handling complaints with respect to the procedure of reviewing legally effective court judgments are unclear, making it difficult for procuracies, the courts and oversight agencies as well.

[14] Since 2007, the Judiciary Committee organized 22 meetings with leadership of central judicial bodies (Ministry of Public Security, Supreme People's Court, Supreme People's Procuracy) on noticeable and pressing cases/matters, such as PMU 18, the case of Nguyen Van Chuong and accomplice committing the crimes of murder and robbery in Hai Phong, the case of Nguyen Van Nen in Tien Giang province, the case of Tran Thi Tien in Da Nang...

In addition, complaints sent to the Judiciary Committee are in a large number while the staff of the Judiciary Department, assistant body of the Judiciary Committee, are modest in number. Since 2010 the Judiciary Committee has used a software for complaints management, the work of building database was still lacking. Many complaints stay for many years, in spite of the fact that adequate replies from competent agencies have been made, citizens still lodge complaints but such handling of complaints was not promptly updated and monitored.

Thus, to increase the effectiveness of the oversight over the handling of complaints, from now on, the Judiciary Committee needs to closely monitor the process of the handling of cases/matters conducted by competent person (agency); organize more survey teams on the complaints, denunciations and the handling thereof in provinces and cities. The Committee should select certain pressing and lengthy cases/matters to conduct subject-matter-based oversights; follow mass media and other information sources including meetings with citizens to have the big picture of current situation; hold hearings on the handling of complains conducted by the Supreme People's Court and the Supreme People's Procuracy.

4.2. Oversight through the evaluation on annual reports of the Chief Justice of the Supreme People's Court, the General Prosecutor of the Supreme People's Procuracy on the handling of complaints and denunciation

Evaluation on the annual reports of the Chief Justice of the Supreme People's Court, the General Prosecutor of the Supreme People's Procuracy on the handling of complaints and denunciations is the second method of oversight of the Judiciary Committee regarding the handling of complaints and denunciations in the field of investigation, prosecution, and adjudication. To effectively perform this task, Committee members have to actively collect related information through oversight teams, survey teams and from other sources such as mass media, meetings with citizens and constituents. What is more, the Judiciary Committee together with the Supreme People's Court and the Supreme People's Procuracy exchange information among themselves every July to prepare for the report of the Chief Justice of the Supreme People's Court, the General Prosecutor of the Supreme People's Procuracy.

Reports of the Chief Justice of the Supreme People's Court and the General Prosecutor of the Supreme People's Procuracy on the handling of complaints and denunciations are evaluated by the Judiciary Committee at its plenary session prior to being submitted to the Standing Committee of the National Assembly at its session every September. After taking in opinions of the Standing Committee of the National Assembly, the Chief Justice of the Supreme People's Court and the General Prosecutor of the Supreme People's Procuracy complete their reports, the Judiciary Committee completes its evaluation report and make submission of such reports to the National Assembly at the year-end session of the National Assembly.

In the evaluation process, the Judiciary Committee evaluate subsequent aspects: the preparation for report-making; current state of the complaints and denunciations submitted to courts and procuracies; observation and assessments of the Chief Justice of the Supreme People's Court and of the General Prosecutor of the Supreme People's Procuracy; current state of the handling of requests for reviewing legally-effective judgments; current state of the handling of complaints against litigation decisions and ligation acts of Judges, Vice-Chief Judges, Chief Judges of People's Courts at all levels, procurators, Directors of the People's Procuracies at all levels. The Committee also examines the handling of complaints and denunciations of the courts and procuracies at all levels as well as resolutions and recommendations for better performance. During the consideration and evaluation process, the Committee compares the implementation of recommendations made by the Judiciary Committee and MPs in the previous year, helping the courts and procuracies handle the complaints and denunciations better.

In general, for the past few years, the evaluation on the Report of the Chief Justice of the Supreme People's Court, the General Prosecutor of the Supreme People's Procuracy has helped Standing Committee of the National Assembly, the National Assembly in profound evaluation of the complaints and denunciations and the handling of the complaints and denunciations in the judicial field. Even though the evaluation is conducted with the date of 10 months per year, the comments and evaluation of the Judiciary Committee were comprehensive and objective, helping the Supreme People's Court and the Supreme People's Procuracy handle the complaints and denunciations better. However, the evaluation on reports of the Chief Justice of the Supreme People's Court and the General Prosecutor of the Supreme People's Procuracy on the handling of complaints and denunciations still has following weaknesses and shortcomings:

- Evaluations and comments on reports of the Chief Justice of the Supreme People's Court and the General Prosecutor of the Supreme People's Procuracy on the handling of complaints and denunciations and evaluation report of the Judiciary Committee are impractical as the data reflected in reports submitted to the National Assembly is inaccurate. Supplementary data should be additionally collected for the remaining 2 months or count on the basis of the data of preceding months[15].

- Reports of the Chief Justice of the Supreme People's Court, the General Prosecutor of the Supreme People's Procuracy are submitted to the Judiciary Committee too late, September session of the Standing Committee of the National Assembly. Therefore, the Committee members have little time to review. The

[15]Performance report of the Chief Justice of the Supreme People's Court and report on the handling of complaints and denunciations shall be based on the data from 01 October of the previous year to 31 July of the next year. The Supreme People's Court, the Supreme People's Procuracy shall report about the remaining months before the Committee officially submits to the year-end session of the National Assembly.

preparation of the plenary sessions of the Judiciary Committee to examine the reports is in a limited time frame. It is due to the fact that the Supreme People's Procuracy and the Supreme People's Court also encounter difficulties in collecting information and making their reports.

Thus, from now on, to achieve better evaluation on such reports, it is recommended that the National Assembly conduct oversight activities over the contents of the work reports of the Chief Justice of the Supreme People's Court and the General Prosecutor of the Supreme People's Procuracy on the handling of complaints and denunciations at first session of the next year so that concerned agencies have enough time to collect adequate and precise data of the year. Moreover, the Judiciary Committee also has more time to examine and evaluate the handling of complaints and denunciations conducted by these bodies.

5. Oversight through explanatory session (hearing)

Oversight through hearings is a new method of oversight first introduced to the Ethnic Council and Committees of National Assembly since Legislative XII, following the conclusion of the Party Caucus of the National Assembly on the Project for improving the effectiveness and efficiency of the oversight of the National Assembly. The Judiciary Committee of National Assembly - Legislature XII organized 01 hearing on the training and professional abilities fostering for persons holding judicial titles.

Hearing is a concept frequently used in parliamentary activities around the world and is stipulated in laws so that Parliamentary Committees can collect and analysis information at the beginning stages of legislative process or in making decision on important issues of the country. In a hearing, members of parliament make questions to the persons being subjected to the hearing.

From the linguistic aspect, "hearing" means a meeting at which different opinions and points of view are presented and discussed - are "heard". It is the activity where witnesses and parties relating to a certain issue are called on the make such presentation, which then provides supplementary information for the Parliament's legislation and oversight. In the Vietnamese Dictionary (Published by Linguistics Institute), "điều trần" ("hearing" in Vietnamese) means "*officially make presentation before a state agency to explain, justify, etc. certain issues that they are responsible for".* With this concept in mind, "hearing" can be understood as giving facts and explanation about something. In fact, Vietnam's National Assembly bodies called this kind of parliamentary activity "explanatory session". The nature of hearing or explanatory activity is to make clear about the issue which representative bodies or constituents pay much attention to. The National Assembly bodies take the lead in this activity. As for each selected topic, certain concerned agencies are invited to give explanation and provide facts. The selected issues, from the National Assembly of

Vietnam's viewpoint, are normally burning ones, which are of public concern; are controversial, where state management agencies, citizens in general and who being affected by policies in question in particular are torn between available options as a result of disparate standpoints; are ones obstructing the implementation of the law or policy or affecting legitimate rights and interests of the citizens.

Hearing has yet to be stipulated in any legal document of Vietnam. However, as stated in the Project "Improving the effectiveness and efficiency of the oversight of the National Assembly" developed by the Party Caucus of the National Assembly that one of the solutions is "*The Ethnic Council and Committees of the National Assembly conduct hearings"*[16]. When implementing such a solution, to increase the effectiveness of the performance of the National Assembly, the Ethnic Council and Committees of the National Assembly conducted hearings on issues causing lengthy pressure and eventually made positive changes. The main purpose of hearings is to collect information so that National Assembly bodies have more grounds to solve the problem of public concern. Furthermore, hearings help to increase the transparency in the National Assembly's activities as they are often open to the public, with the presence of one who are concerned and mass media. Participants discuss directly to clarify controversial issue. Many disputations were settled down.

To prepare for the hearing, the Judiciary Committee organized survey teams coming to judicial bodies in local and military zone. The survey teams worked in the branch of the Institute for training and professional abilities fostering for procurators in Ho Chi Minh City, heard the reports and analyzed current state of professional abilities fostering for cadres and procurators in the branch. That formed the basis for evaluation on the work of training and professional abilities fostering for the sake of conducting such hearing.

In the explanatory session, the Ministry of Public Security, the Supreme People's Procuracy, the Supreme People's Court, the Ministry of Justice and the Ministry of National Defense reported on their respective achievement in the training and professional abilities fostering for persons holding judicial titles. The Judiciary Committee members and other MPs attending the explanatory session made questions to spell out responsibilities of concerned agencies; timely detect and correct mistakes, shortcomings and thus making significant contribution to enhance the effectiveness and efficiency of the work of training and professional abilities fostering for persons holding judicial titles; provide necessary information on the quality of judicial titles to Committee members.

The Judiciary Committee recognizes that hearing is a useful method of

[16] As stipulated in Resolution No. 27/2012/QH13 on renovation and enhancement of the National Assembly's performance, hearings on issues falling under the oversight jurisdiction of the Ethnic Council and Committees of the National Assembly will be held more frequently

information collection. Concerned agencies can openly and frankly express their opinions. The information is not unilateral, the Committee thus has more impartial grounds for its evaluation and recommendations with respect to policies in question. After the hearing, many recommendations have been proposed to the Central Party, the National Assembly, the Government, the Ministers, branches and related agencies. The hearing puts certain pressure on responsible executive and judicial bodies and prompts them to seek for more critical thinking and "make a move" in their activities.

In practice, the explanatory sessions, at least up to now, have proven to be effective. However, the effect of post-hearing recommendations is still limited and they are not binding. At this experimental stage, the Judiciary Committee had to follow up to see if it is really suitable and acceptable. Many MPs concern that the hearing may cause tension and severe arguments or conflicts between the Committee and persons being questioned. This concern is, from Judiciary Committee's viewpoint, is not groundless. Still, without comparison, investigation, debates, arguments and even severe arguments, it is difficult to identify who will be held responsible and what is the solution.

To attain positive results in the following years, the Judiciary Committee needs to continue to focus on major and pressing issues of public concern. The Committee, together with experts, needs to pay due attention to the investigation, prosecution, and adjudication; avoid wrongdoings and keep close watch on the settlement of repeals against already legally effective court judgments or decisions; evaluate adequately and objectively strong points, weaknesses and causes thereof, address the responsibilities of judicial bodies, sketch out orientation and solutions for reparation of shortcomings in order to choose a topic worth holding hearings. Most recent chosen topic for possible upcoming hearing, among other, is to increase the quality of legal normative documents on criminal procedure law, including the amendment of the Criminal Procedure Code, the Penal Code; to improve the investigation, prosecution and adjudication of criminal cases to satisfy requirements of judicial reform in current period.

PART IV

EXPERIENCE FROM BELARUS IN THE OVERSIGHT OF INVESTIGATION, PROSECUTION, COURT JUDGEMENTS, COURT DECISION ENFORCEMENT, JUDICIAL SUPPORT AND PREVENTION AND FIGHT AGAINS CORRUPTION

1. The allocation of power to fulfill the function of protecting the law with regard to the legislative, executive and judicial branches in the Republic of Belarus

1.1 Principles of power division, state regime and laws in the Republic of Belarus

Section 6 of the Constitution:

"State power in the Republic of Belarus shall be exercised on the principle of its separation into legislative, executive and judicial powers. State bodies within the confines of their powers, shall be independent: they shall interact among themselves, check and balance one another."

The separation of power seems to be among the complicated, controversial and multi-faceted issue in different constitutions.

For the first time though not strictly following the original, this doctrine is mentioned in the 1787 U.S. Constitution and later in the French Constitution (1792), Belgian (1931) and Weimar (1919).

The theory of power separation has stood the test of time and has become a foundation for the organization of state power, including effective measures to prevent the evolution into dictatorship of different types, thus contributing to strengthening the effect and the supremacy of the law. The separation of power into legislative, executive and judicial powers is the basis for the power system in the Republic of Belarus.

In the preparation for the passage of the 1994 Constitution at the Council of the Republic (the upper house), there were a number of debates and discussions (with the participation of international experts) on how to ensure the highest effectiveness of state power. Most of the opinions were that the regime should be a presidential republic.

1.2 The principle of coordination of powers and the power of the State President

Section 79 of the Constitution:

"The President of the Republic of Belarus shall be the Head of the State, the guarantor of the Constitution of the Republic of Belarus, the rights and freedoms of man and of the citizen.

The President shall personify the unity of the nation, guarantee the implementation of the main guidelines of the domestic and foreign policy, represent the Republic of

Belarus in relations with other states and international organisations. The President shall take measures on protection of sovereignty of the Republic of Belarus, its national security and territorial integrity, ensure its political and economic stability, continuity and interaction of the bodies of state power, maintain the intermediation among the bodies of state power".

The separation of power into legislative, executive and judicial powers (under section 6 of the Constitution) does not mean that the coordination of powers is not necessary. In other countries, normally the head of state (the king or president) is the one holding a high position in the system of state bodies.

Following the analysis of the constitutions of various countries, we can see that the head of state or the head of all the power branches is either the head of the legislative and the executive or just the executive body.

In the constitutions of many countries, the head of state is the president (sometimes other terms may be used instead of president). The president is the highest representative of the country, taking a symbolic role representing a state and a symbolic role as the unity of different nationalities of the country.

The President of the Belarusian Republic holds a special position in the state body system, is the head of state, the guarantor of the Constitution, the rights and freedom of man and the citizen. The president symbolizes the unity of the nation, takes measures to defend the sovereignty of the Republic of Belarus, national security, territorial integrity, political and economic stability, ensures the coordination of different state power bodies, and play an intermediary role for state power bodies.

The theory of the role as an arbitrator of the president has a monarchical origine when the head of state has an important function of ensuring the coordination among state power bodies and acting as an intermediary among these bodies. At the same time, the president takes the leading positions of all state power bodies although the power of the head of state in each state depends on the regime of that state. Sometimes heads of state only take the nominal role as king or queen in Britain, but in many other countries, the heads of state have substantial power like in the United States, France, Russia and Kazakhstan. The legal status as well as the real power of the head of state depends largely on the political conditions and historical tradition of each country.

The intermediary role of the president is more for political stability than for a legal nature. In reality the Belarusian Constitutional Court has a very broad range of power, including the right to settle disputes over the power to examine the constitutional compatibility of legal documents.

Standing higher than the president, there is only one supreme arbitrator which is the people. The people are the original source of power and they have their sovereignty. In case of unresolvable conflicts among different state bodies, the president may propose a referendum to the people. In necessary cases, the president can also order a referendum upon his or her own initiative.

A special feature of the legal basis of the Presidency in the Republic of Belarus is that the President may play the role as an arbitrator for different power branches and at the same time the President directs the Government and Government agencies – agencies of the executive branch.

However the President does not have such rights with regard to the legislative and judicial bodies. The President can not impose his or her will over decisions which just belong to the areas of responsibilities of these bodies.

1.3 Legislative power of the President

The legislative power of the President depends on the National Assembly and is clearly provided for by the Constitution (Section 101).

The House of Representatives and the Council of the Republic with the concurrent votes of the majority of members, following the proposal of the President pass laws which may give the President legislative power to issue orders which may take effect as a piece of law. The laws must clearly define the subject of governance and the time of the presidential mandate to issue orders.

The President shall not be given the power to issue orders relating to matters of constitutional amendment, constitutional interpretation, amendment of the law making program; approval of central budget and budget implementation reports; changes in the elections of the President or the National Assembly; and restriction to the citizen's rights as recognized by the Constitution. The law giving legislative power to the President shall not allow the President to either amend this law itself or the power to issue orders with retrospective effects.

In very necessary cases, the President on his or her own initiative or on the proposal of the Government issues temporary orders with effects as a law. If these orders are made upon the proposal of the Government, they must be signed by the Prime Minister. Within a period of three days, the orders must be submitted to the House of Representatives and then to the Council of the Republic for consideration. These orders shall keep their effects if they are not amended with the concurrent votes of at least two thirds of the total number of the members of each chamber. The National Assembly may govern relations or issues arising from the presidential orders which have been removed by other laws.

1.4 Judicial power of the President

The role of the President with regard to judicial power is defined by his or her constitutional power in formulating major guidelines for legal and judicial policies as well as the exclusive power of the President in the formation of the judicial apparatus.

Regarding the power to give guidelines, as the guarantor for legal rights and interests of the citizen and legal person, in the annual address before the National Assembly, the President makes assessment of the performance of the judiciary with regard to the handling of criminal, civil, economic and administrative problems in the complaints and communications sent directly to the President and other state bodies by citizens. Although the assessment is made by the President and has practical significance in the formulation of judicial policies (in the future), they absolutely do not either influence the operation of the judicial system or the judgments of the courts whose operation is based on the law only and on the compliance with rules and procedures provided for by the law.

Recently, prominent among the important documents directly giving guidelines for the improvement of legal and judicial policies in the fight against crime and protection of the citizen's rights are national programs against crime approved by

presidential orders.[17] These programs are mainly about the operation of judicial bodies in the protection of legal interests of the citizen, society and state.

The President play an important role in the organization and development of the pool of judges.

The Constitutional Court of the Republic of Belarus has 12 judges with 6 of them being appointed by the President and the other 6 appointed by the Council of the Republic. The Chief Judge of the Constitutional Court is appointed by the President with the approval of the Council of the Republic. The maximum working age of a judge is 70.

Judges of the Constitutional Court[18], the Chief Judge and Deputy Chief Judges are appointed by the President with the approval of the Council of the Republic.

Judges of lower courts are appointed by the President upon the proposal of the Minister of Justice and the Chief Judge of the Constitutional Court. Except for the chief judges and deputy chief judges, all other judges are appointed for a term of 5 years. They can be reappointed for a new term or for an open ended term.

Upon the proposal of the Chief Judge of the Constitutional Court, the President of the Republic of Belarus decides on the number of the judges of the Constitutional Court, the number of deputy Chief Judges of the Constitutional Court; the membership and appointment of the Constitutional Court Presidium.

Upon the joint proposal of the Minister of Justice and the Chief Judge of the Constitutional Court, the President appoints for a term of 5 years the chief judges of provinces, the Chief Judge of Minsk city; judges of districts and provincial cities; the number of permanent staff members of provincial courts, the court of Minsk city, courts of district and provincial cities; appoints members of the presidium of provincial courts and the court of Minsk city; establishes, reorganizes and dissolves district and provincial city courts.

The Chief Judge and other judges of the Supreme Economic Court are appointed by the President with the approval of the Council of the Republic (section 84 of the Constitution, sections 79 and 90 of the organic Code of courts of laws). Judges of lower economic courts are appointed by the President upon the joint proposal of the Minister of Justice and the Chief Judges of the Supreme Economic Court. Except for the chief judges and deputy chief judges, all other judges are appointed for a term of 5 years. They can be reappointed for a new term or for an open ended term (section 99).

Upon the proposal of the Chief Judge of the Supreme Economic Court, the President appoints the first Deputy Chief Judge and other judges of the Supreme Economic Court; decides on the number of deputy chief judges of the Supreme Economic Court, the number of judges of Supreme Economic Court. In necessary cases, the President may establish councils of judges to decides on special issues. The

[17] In the Republic of Belarus a Masterplan for the completion of criminal measures and the procedures for the use of these measure approved by a Presidential order in 2010 is being implemented. In 2011, the President approved an Address to judicial bodies on "measures to improve the operation of courts in the Republif of Belarus".

[18] The Supreme Court is the highest adjudicating body, reviewing decisions and supervising operation of first instance courts (Section 46 of the organic code of courts of law).

President decides on the number and appoints members of the Presidium of the Supreme Economic Court. Upon the joint proposal of the Minister of Justice and the Chief Judge of the Supreme Economic Court, the President appoints chief judges of provincial economic courts and Minsk city economic court for a term of 5 years.

1.5 Legislative power

The National Assembly of Belarus is the representative and legislative body (section 90 of the Constitution), comprising of two chambers – the House of Representatives (lower house) and the Council of the Republic (upper house). The House of Representatives consists of 110 members. Members of the House of Representatives are elected on a free, equal, direct and secret basis. The Council of the Republic represents the local interests at the National Assembly. On the basis of secret basis, each province and the city of Minsk elects 8 members to the Council of the Republic. The remaining 8 members of the Council of the Republic are appointed by the President of the Republic of Belarus.

1.6 The Power of the National Assembly and of each House

Power of each House:

House of Representatives: 1) takes into consideration of draft law on constitution amendment, supplementation and interpretation upon the proposal of the President or the initiative of more than 150 thousands of Belarusian citizens who have the right to vote; 2) draft laws on the organization of courts, operation of courts and the legal basis of judges; laws on criminal responsibility; on special reprieve; on the declaration of war and agreement of peace; on the legal regime during the declaration of war and emergency; on the conferment of state wards; and on the interpretation of laws. No other power branch, including the President has such power.

The House of Representatives has the power to consider draft laws, approve the appointment of the Prime Minister by the President; listens to reports of the Prime Minister on the action program of the Government and approve or disapprove that program (the disapproval of the program of the Government for the second time means a vote of no confidence to the Government); upon the proposal of the Prime Minister, considers the matter of confidence in the Government; upon the request of more than one thirds of the members of the House, takes a vote of no confidence over the Government; accepts the resignation of the President; upon the vote of a majority of the members of the House impeaches the President for disloyalty to the motherland or other serious crime; based on the decision of the Council of the Republic and with at least two thirds of the votes of the total number of the members of the House, dismiss the President from office; repeals documents issues by the Speaker of the House of Representatives..

Council of the Republic (section 98 of the Constitution):

1) Approves or disapproves draft laws on constitutional amendment or supplementation passed by the House of Representatives; interprets the Constitution and other laws;

2) Approves the Presidential appointment of the Chief Judge of the Constitutional Court, Chief Judge and other judges of the Supreme Court; Chief Judges and other judges of the Supreme Economic Court; Chairperson of the Central

Committee on elections and referendums; the Chief Prosecutor, the Chairperson and other members of the State Bank Council;

3) Elects six judges of the Constitutional Court;

4) Elects six members of the Central Committee on elections and referendums;

5) Repeals decisions made by the Council of Local Representatives in case these decisions violate the law in a systemic and serious manner and in other cases as provided for by law;

6) Approves the decision to dissolve the Council of Local Representatives in case these decisions violate the law in a systemic and serious manner and in other cases as provided for by law;

7) Consider the accusation of the House of Representatives against the President for disloyalty to the country or other serious crime; approves the decision to investigate the President; approve the decision to dismiss the President based on a concurrent vote of two thirds of the members of the Council;

8) Reviews the orders of the President on the declaration of emergency or war; repeals in part or in full the declaration of emergency or war, and within no more than 3 days must make suitable decisions.

The supervision of the National Assembly over the enforcement of laws

With legislative power, the National Assembly supervises the enforcement of laws passed by itself. The supervision of the enforcement of the law is a strict process which needs the regular attention from the state apparatus, including the specialized bodies of the National Assembly. On the other hand, the presence of specialized bodies in the National Assembly may make it likely that the National Assembly does the work which may not belong to the functions of the National Assembly, thus creating an imbalance in the fulfillment of the main task of the National Assembly, which are to create a firm legal foundation for the governance of social relations.

The oversight function of the National Assembly can be performed in the following forms:

a) Hearings before both Houses of the National Assembly or before standing committees of the National Assembly;

b) Interpretation of laws;

c) Under sections 5 and 6 of the Law on the Constitutional Court of the Republic of Belarus of April 30 1994, each House of the National Assembly has the right to ask the Constitutional Court to check the constitutionality of:

- Decrees and Orders issued by the President of the Republic of Belarus;
- International agreements and duties of the Republic of Belarus;
- Resolutions made by the Council of Minister of the Republic of Belarus;
- Documents issued by the Supreme Court of the Republic of Belarus, the Supreme Economic Court of the Republic of Belarus (resolutions of general guidance made by the Presidiums of these Courts), and by the Supreme Prosecution Body of the Republic of Belarus.

The oversight of the enforcement of laws made by the National Assembly in the state body system of the Republic of Belarus is assigned to specialized bodies based on the provisions of the Constitution (sections 125 - 131). First among these oversight bodies are the State Oversight Committee and the Prosecution Body. These bodies belong to the judiciary, but they perform oversight function independently and they are not dependent on any other power branches.

With the above mentioned relationships and division of power among different branches, the Republic of Belarus avoided serious chaos during the period of economic and political transition, firmly protected national sovereignty; balanced economic reform and thus preventing any attempts to usurp power when issues of the interest of the people such as property rights were being addressed. The relationships and division of power in the field of oversight also helps avoiding the risks of illegal privatization to make illegal profit for those who can abuse power in the area of ownership management.

1.7 Executive power

The executive power in the Republic of Belarus is performed by the Government – the Council of Ministers – the central administrative body.

Followings are the major features of the power of the Government:

- Reports to the President of the Republic of Belarus and is accountable before the National Assembly of the Republic of Belarus;

- Resigns from office when a new President is elected;

- Consists of a Prime Minister, Deputy Prime Ministers and ministers. Members of the Government may include leaders of administrative bodies at central level.

The Prime Minister is appointed by the President of the Republic of Belarus with the approval of the House of Representatives. The appointment must be approved by the House of Representatives within 2 weeks since the submission of the appointment of the Prime Minister. In case the House of Representatives twice refuses to approve the appointment of Prime Minister, the President of the Republic has the right to appoint an acting Prime Minister, dissolve the House of Representatives and order a new election;

- Each Government member can submit a resignation proposal to the President when such person on his or her own sees that he or she can not continue assuming responsibility. The Government submit resignation proposal to the President when the House of Representatives passes a vote of no confidence in the Government;

- The Prime Minister may request the House of Representatives to take a vote of confidence in the Government with regard to specific programs or issues. Within 10 days, the President shall approve the decision to dismiss the Government or dissolve the House of Representatives and order a new election. When the Government is not dismissed, it continues its tasks.

The President has the power to make decisions on the dismissal of the Government or removal of any Government members from office.

The Government of the Republic of Belarus:

- Directs lower administrative bodies and other executive bodies;

- Formulates domestic and foreign policy guidelines and measures to implement those policies;

- Prepares and send to the President to submit to the National Assembly draft state budget and reports on state budget implementation;

- Ensures an unified implementation of economic, financial, banking and monetary policies, other state policy in science, culture, education, health care, environment, social welfare and salary;

- Takes measures to ensure rights and freedom of the citizen, protects the interests of the state, national security and defense, protects ownership regime, social order and combats crime;

- Manages assets under the ownership of the Republic of Belarus;

- Ensures the implementation of the Constitution and laws; decrees and orders of the President;

- Repeals documents issued by ministries and administrative bodies at central level;

- Fulfill other mandates as provided for by the Constitution, laws and other presidential documents.

The Government of the Republic of Belarus makes resolutions which take effect across the entire territory of Belarus.

The Prime Minster within his or her area of responsibility issues decrees.

2. Major features of the legal system and judicial body system

2.1. The court system (organizational structure, functions and tasks, power, and mechanism for appointment and dismissal)

Under section 109 of the Constitution in the Republic of Belarus the courts has judicial power. The organization of the courts in the Republic of Belarus is governed by the Law 139-3 of June 29, 2012 on the organization of courts and legal status of judges (the organic law of the courts). The court system is organized under the principle of functional tasks and territory. The law does not allow for the establishment of extraordinary courts.

In the Republic of Belarus there are three types of courts: the Constitutional Court, general courts and economic courts.

Tasks of the courts:

The Constitutional Court of the Republic of Belarus has the task of ensuring the supremacy of the Constitution and the direct effect of the Constitution across the entire territory of Belarus; the constitutional compatibility of legal documents made by state bodies; strengthening law making and law enforcement, and decisions on matters as provided for by the Constitution.

General courts and economic courts in the Republic of Belarus has the tasks of protecting rights and freedom of the individual, social, economic and political rights of

the citizen as provided for by the Constitution and other laws; protecting state regime, state and social interests, rights of organizations and private businesses; and ensuring proper application of law in the adjudicating process; strengthening legislation and preventing violations of the law.

The Constitutional Court: Under the Constitution (section 116), upon the proposal of the President, the House of Representatives, the Council of the Republic, the Supreme Court, the Supreme Economic Court, and the Council of Ministers, the Constitutional Court issues conclusions on constitutional compatibility of laws, presidential orders and decrees, international agreements and other agreements. The Constitutional Court also has the task of ensuring the compatibility of documents issued by state bodies to the Constitution, laws, orders and ratified international agreements. Upon the proposal of the President and under the provision of the Constitution, the Constitutional Court issues conclusions on serious and systemic wrongdoings of National Assembly Houses.

The General Court system, ruling criminal, civil and administrative cases, includes:

The Supreme Court with the following organs: the General Assembly of the Supreme Court of the Republic of Belarus; the Presidium of the Supreme Court of the Republic of Belarus; the council of civil judges of the Supreme Court of the Republic of Belarus; the council of criminal judges of the Supreme Court of the Republic of Belarus; the council of intellectual property judges of the Supreme Court of the Republic of Belarus; and the council of military judges of the Supreme Court of the Republic of Belarus.

Provincial courts and Minsk city Court (courts which rule appeal and cassation cases, and in some specific circumstances act as first instance courts) with the following organs: general assembly, council of criminal case adjudication and council of civil case adjudication).

Provincial city courts and district courts (are trial or first instance courts).

Military courts (belonging to specialized court type) include military regional courts acting as trial or first instance courts. The Military Court of the Republic of Belarus is the court of appeal and court of cassation, having a Presidium and council of criminal case adjudication and council of civil case adjudication.

The Supreme Court is the highest judicial body adjudicating cases like as general courts, supervising the operation of general courts and military courts. The Supreme Court supervises lower courts with regard to the implementation of resolutions made by the General Assembly of the Supreme Court (section 46 of the Organic Code of the courts).

The economic court system includes:

- Provincial economic courts (including Minsk city Court);
- The Supreme Economic Court of the Republic of Belarus.

Thanks to the general court system, Belarusian citizens enjoy the protection by the courts against violations of life, health, dignity, freedom and individual properties, other rights and freedom as provided for by the Constitution and other legal document as well as protection against violations of state bodies, organizations and officers.

Thanks to the economic court system organizations and private businesses are protected against the violations of their legal rights and interests as recognized by the law as well as violations by state bodies, organizations and officers.

Foreigners and persons without a nationality enjoy the same protection by the courts as Belarusian citizens except otherwise provided for by the Constitution, laws and international agreements of the Republic of Belarus.

In the Constitutional Court, the Supreme Court and Supreme Economic Court, scientific advisory boards are established.

Appointment of judges:

Belarusian citizens aged 25 or over, having university education in law and at least three years of work experience in related field can be appointed judges of general courts and economic courts.

Candidates for the posts of judge must never have been convicted and must pass an professional examination (section 94 of the Organic Code of the courts). The Supreme Court and Supreme Economic Court organize professional examinations (section 96 of the Organic Code of the courts). Decisions on recruitment of new staff are made by a professional council. In case a post is vacant, the professional council may propose a candidate to that post and requests the candidate to undertake a professional training course. Conditions, procedures and training contents for judges of general and economic courts are regulated jointly be the Ministry of Justice, the Supreme Court and Supreme Economic Court (section 98). All judges must pass regular and unplanned examinations. For judges appointed for an open ended term, they must pass examinations every 5 years (section 103).

The Code of Ethics for judges

The Code of Ethics for judges was approved at the first Congress of judges of the Republic of Belarus on December 5, 1997. Under this Code and the Constitution, judges can not make use of their post to make personal profit or in the interest of other individuals. Actions of judges can not create an impression that judges have been influenced by a third party.

Disciplinary actions against judges

Under the Code on organizations of courts and legal status of judges, the following disciplinary actions can be taken against judges: warning, reprimand for not fulfilling their responsibility; removing to lower professional degrees for up to 6 months, removing to a lower post. The right to take disciplinary actions against a judge belongs to the President and the Chief Judge of the Supreme Court (for judges of general courts), the Chief Judge of the Supreme Economic Court (for economic courts), Ministry of Justice for judges of general and economic courts, except for the Chief Judge and deputy chief judges of the Supreme Court and Supreme Economic Court), chief judges of provincial courts (and Minsk city Court) and the Military Court of Belarus (for judges of provincial courts, including Minsk city Court, district and provincial city courts, specialized courts, the Military Court of Belarus and regional military courts), Directors of Provincial Department of Justice (for judges of district and provincial city courts and other specialized courts) (section 115 of the Organic Code of courts). The Chief Judge of each court is responsible for making final decision on disciplinary actions (section 119). Appeal against a disciplinary decision can be

made to the Chief Judge or the Presidium of the Supreme Court and the Supreme Economic Court (section 121).

Among the constitutional provisions on judicial power and the exercise of judicial power, the followings are important:

1. During a criminal process, judges are independent and only abide by the law. All acts interfering in the work of judges are strictly prohibited and are subject to responsibility before the law (sections 388-392 of the Criminal Code). Besides, the Criminal Code also provides for responsibilities for making unlawful judgments or verdicts – section 392 of the Criminal Code. Procedures for starting a criminal case is very precisely provided for in the Criminal Procedures Code. A decision to start a criminal case against a judge can only be made by the Prosecutor General of the Supreme Prosecution Body of the Republic of Belarus, the Chairperson of the Inspection Committee of the Republic of Belarus, the Chairperson of the National Security Committee of the Republic of Belarus or other people with public responsibility with prior consent of the one who appointed the judge (the President) – paragraph 5, section 468-2 of the Criminal Procedures Code.

2. Judges can not be involved in business activity or other paid jobs, except for teaching and research activities.

3. Judges carry out their tasks on the basis of the Constitution and other legal documents made in accordance with the Constitution.

When ruling a specific case, a judge may make a conclusion on the constitutional incompatibility of a legal document, the judge shall rule the case according to the Constitution and raise the issue of considering the legal document not constitutional.

4. Cases before a court (first for criminal procedures) will be ruled by a adjudicating council of one judge and two jury members. In some instances, cases are ruled by only one judge.

Adjudicating Council of only one judge:

1) Dealing with issues relating to a case and preparing for the hearing of the case;

2) Hearing cases with punishment of maximum of 10 years imprisonment, except for crime committed by minors;

3) Dealing with issues relating to the enforcement of the verdict.

Adjudicating Council of one judge and two jury members rules case in which:

1) Crime which under the criminal laws has the punishment of more than 10 years imprisonment or death penalty;

2) Crime committed by minors.

Appealed cases are ruled by a Council of three judges; for cassation cases, the Councils must consist of at least 3 judges (section 32 of the Criminal Procedures Code).

Hearings at courts are open. Criminal cases can only be heard in camera when national secret and other secrets to be protected by the law are involved, or persons

committing a crime is minor, under 16 years of age, or the crime is sexual violations so that sensitive information is not made public; or in order to ensure the safety of violated persons or witnesses, other persons involved in the criminal process, family members or relatives of the violated persons.

Hearings in camera must comply with provisions of legal procedures. For cases heard in camera, only the conclusion of the verdict, court decision or court resolution is made public (section 26 of the Criminal Procedures Code).

Adjudication is conducted on the basis of adversary proceedings and equality between the plaintiff and the defendant.

The functions of prosecution, defense and adjudication are separate. No single body can have the power to take all those functions.

Parties in a case has equal rights in providing and studying evidences, proposals and opinions on any issues relating to the case and the adversary process before the court.

Courts have responsibility to create conditions for the parties to exercise their rights and duties during the legal process.

Judgments of the court are binding to all related citizens and authorities.

Parties and individuals taking part in the legal process have the right to appeal against a verdict, decision or resolution of the court under provisions of the Criminal Procedures Code and following the levels of adjudication.

Issues relating to the improvement of the court system and judicial system organization:

1. Expanding the oversight of judicial work with regard to legality of the activities and decisions of criminal prosecution body.

2. When making decisions, judges shall not follow any orders or directions of any third party (section 64, Conclusion 1 (2001) of the Consultative Council of European Judges on the independence of judicial bodies). The Consultative Council points out threats to the independence of the court system, which emanate from the hierarchical order of the court system itself. The independence of the court system not only depends on external factors, but in many cases also on the individual opinions/positions of other judges. Judges must be totally free to rule a case impartially and in a manner suitable with their conscience and actual facts and existing legal provisions[19].

The chief judge has the power to supervise the quality of ruling by other judges if the independence during the ruling process has not been ensured. The principle here is that during the hearing process, judges does not serve anyone. They fulfill the very function entrusted to them by the state. They only rely on the law and are responsible before the law. With those above mentioned issues and according to international standards, chief judges of district and provincial city courts, and regional military courts should be deprived of some power.

3. Judicial appeal and levels of judicial appeal. In the Republic of Belarus there

[19] Conclusion No. 1 (2001) Consultative Council of European Judges on the independence of judidical bodies and office terms of judges.

is no appeal system or courts of appeal. There are only some factors of appeal nature during the legal process (section 386-396 of the Criminal Procedures Code).

4. Regarding prosecution against minor people. The judgment is directed to the application of recovery and preventive measures for minor people in their criminal cases.

5. In case criminal procedures are not observed in the judgment of a case, the verdict of the court will be repealed unconditionally.

2.2. Criminal investigation and prosecution bodies (organizational structure, functions, tasks and power)

Under item 48 of section 6 of the Criminal Procedures Code, prosecution of criminal violations is the prosecution conducted by investigation body, individual investigators, procurators or private prosecutor to decide whether events and contexts of an act pose threat to society as stipulated by criminal laws, to identify persons taking that act, and to ensure sanctions or other criminal, security or health measures against such persons.

Under section 27 of the Criminal Procedures Code, criminal prosecution bodies within their area of responsibility have the following obligations:

- Prosecuting criminally in case signs of crime are discovered. All measures as provided for the law shall be taken to decide whether an act is dangerous to society, to identify the person committing the crime and to punish the violating person and compensate for violated persons.

- Ensuring that violated persons can access judicial services and taking measures of compensation for violated persons.

Criminal prosecution bodies exercise their rights independently from any other bodies or individuals and must strictly observe provisions of the Criminal Procedures Code.

Any influence of any forms on the work of criminal prosecution bodies with the aim to hindering a comprehensive and objective research of information related to the case. Persons causing such influence shall be subject to prosecution of responsibility under the law (see Chapter 34 of the Criminal Code – crime against judicial work).

Legal requests of a criminal prosecution body shall be binding to all organizations, individual officers and citizens.

Individual accuser – player of criminal prosecution

In reality individual accusers are not in all cases able to submit necessary evidences to the court. Sometimes they can’t even show evidences. For this reason, the judge may become an independent investigator and prepare the file of the case (requesting for necessary documents…) and later it is the judge who makes the judgment of the case. This reality is a violation of the principle of equality among related parties and the court is thus given some functions which does not belong to its mandate. We think that the refusal of preliminary investigation of the case to some extent inevitably decreases the right of violated person during the collection of evidences without the help of criminal prosecution bodies. For this reason the provisions in the Criminal Procedures Code relating to criminal prosecution deprive

the access to judicial services of many citizens and the judicial protection of their violated rights.

Therefore there should be a single process for criminal prosecution of crime as listed in section 33 of the Criminal Code when denunciation letter of violated person is sent to criminal prosecution body, not to the court and the case should be investigated following common procedures. In addition a comprehensive and objective research of the facts necessary for the proper judgment of the case at the court must be ensured.

Reform in investigation in the Republic of Belarus

A new criminal prosecution body has just been established under a Presidential Order No. 409 dated September 12, 2011 "Establishment of the Investigation Committee of the Republic of Belarus" by separating the investigation section from prosecution and internal affairs bodies and the Financial Investigation Department of the National Inspection Committee. The Investigation Committee started its work on January 1, 2012.

According to the on-going reform program, the investigation sections remain intact in the system of the National Security Committee of the Republic of Belarus (KGB). The National Security Committee has the power to investigate cases and crimes as provided for by sections 124-126, 228, 229, 289-209-1, 356-361, 371 and 373-375 of the Criminal Code[20].

Law No. 403-3 dated June 13, 2012 of Belarus on the "Investigation Committee of the Republic of Belarus" has provided for the legal basis and organization of the Committee, its tasks and power as well as responsibility and protection and insurance by law to staff of the Committee.

Major tasks of the Committee include:

- Investigate crime in a comprehensive, full, objective and timely manner and in accordance with the process provided for by criminal procedures law;

- Protect lawful rights and interests of the citizen, protect the interests of the state and society; comply with the law when considering denunciation letters and reports of crime, criminal prosecution and initial investigation;

- Improve the quality of investigation, apply scientific and technical research outcomes, advanced forms of initial investigation in practice;

- Find out violations of the law, causes and conditions of the crime committed and measures of recovery.

Before the reform, the investigator – a player in the prosecution process, was just an independent indivisual prosecutor. The problem was that investigation organizations were units under the Procuracy; internal affairs bodies, financial investigations belonging to the State Inspection Committee of the Republic of Belarus, and thus the investigator depends directly on the leaders of these bodies.

[20] During an investigation, if the crime discovered belongs to another investigation body, the investigation will be continued by the body which is doing it or be decided by the procurator.
In case different bodies are involved in the investigation of a crime, the first (in terms of time) body will carry out prosecution or the case will be decided by the procurator (section 182 of the Criminal Procedures Code).

As such, it can be said that in Belarus, a single unified system of criminal investigation bodies before the hearing of a case has been established.

Due to the fact that investigators belong to different bodies, a unified practice of application and approach to initial investigation has not been put in existence, and controversy among the bodies has arised, decreasing the effectiveness and quality of investigation of criminal cases. Due to the fact that the performace index of an investigation body is based on the outcomes of investigation and seize, indicated in specific prosecution decisions by investigators, therefore heads of an investigation body often decide in favor of their subordinate units. In 2011, among 10 cases of acquittal, one is in violation of the "Law on investigation" of the Republic of Belarus.

There have been systemic mistakes in the initial investigation bodies, including:

- The dependence without a procedural nature of investigators on the heads of ministries, bodies and thus manipulated accusition and charge have been made.
- The quality of initial investigation is not ensured. The causes of this is that the investigator besides investigation tasks needs to do other tasks in his or her ministry, body.
- There have not been unified methods and forms for the organization of initial investigation, especially with regard to managerial crime. There has not been an oversight over the observation of legal process, and trainingfor investigators.
- The pool of staff has been fragmented.
- Controversy among ministries and bodies over the mandate to investigate cases.
- The respect for investigators has decreased.
- The administrative size of the bodies has been in continued increase and the number of law protecting bodies has been in increase as well.
- A set of indicator for the assessment of performance of investigation unites of ministries and bodies has not been put in place.

In recent years, due to the dependence of investigators on the heads of ministries and bodies, investigators have made many decisions without a legal basis, which are in the interest of the ministries and bodies and thus they have violated the law on the independence of investigators.

The mandate of procurator as a player of the criminal prosecution needs to be widened.

Although investigation bodies have been separated from procuracy system, procurators have been the central player in the prosecution process before the case is heard in a court. Procurators have the following special mandates:

First, procurators can take in full initial investigation. Under item 4, section 34 of the Criminal Procedures Code, "before the hearing of a case, based on the file of the case, procurator can take criminal prosecution; accept the case for consideration and investigation within their mandate or delegate the case to subordinate procurators or investigation bodies to investigate the case; and refuse the prosecution of the case"

Second, procurators supervise the legality, basis and evidences of a criminal prosecution and charge against a person committing a crime. It should be noted that only the procurator is responsible for his or her decision on refering the case to a court, complete the initial investigation and take the prosecution responsibility before the

court. As such a procurator supervise the prosecution process, ensuring that initial investigation, forms and methods of investigation before hearing are in accordance with procedural and enforcement law. Also under item 4 of section 34, "procurators supervise the investigation of criminal cases, the work of investigation bodies and investigators; direct and supervise the investigation work of subordinate procurators".

Functions of investigation bodies (heads of investigation bodies) and persons with investigation mandate.

Under section 37 of the Criminal Procedures Code, state bodies and persons with mandate to investigate include:

1) The Internal Affairs Ministry of the Republic of Belarus[21], and local internal affairs bodies;

2) National Security bodies[22] - with regard to criminal acts that need to be investigated under the law;

3) Chiefs of military regions, chiefs of military border units – with regard to crime committed by military officers, and staff working for military organizations;

4) Chiefs of units/organizations enforcing criminal verdicts of imprisonment, temporary arrest or custody – with regard to violations of public work process committed by staff of these units/organizations, and other crimes committed in the area under the management of the units/organizations;

5) The National Border Committee and its local organizations – with regard to crime committed during the fulfillment of the work of border protection bodies;

6) The customs authority – with regard to trafficking, illegal export and tarrif fraud;

7) The financial investigation under the State Inspection Committee[23] - with crimes under sections 224-227, 233-235, 237-245, 247-261-1 of the Criminal Code.

8) The Fire Prevention Authority – with regard to violations of fire and explosion prevention regulations;

9) Skippers of sea and river ships, captains of airplanes operating outside Belarusian territory – with regards to problems arising at the ships or airplanes;

10) Head of diplomatic and consular missions of Belarus in foreign countries – with regard to crime committed within the diplomatic and consular missions.

Depending on the nature of the crime, investigation bodies and persons with investigation mendate have the right to:

1) Accept, register and handle denunciation letters and report on crime committed, being committed or to be committed;

2) Verify denunciation letters and report on crime and make decisions in accordance with section 174 of the Criminal Procedures Code;

[21] The operation of the police force is governed by Law No. 263-3 dated July 17, 2007 on "internal affairs bodies of the Republic of Belarus".

[22] The operation of the National Security Committee (KGB) is governed by Law No. 102-3 dated December 3, 1997 on "national security bodies of the Republic of Belarus".

[23] The operation of the State Inspection Committee is governed by Law No 142-3 dated july 4, 2012 on "the State Inspection Committee of the Republic of Belarus".

3) Conduct investigation and other prosecution activities;

4) Use professional investigation methods to investigate and pursue criminals and other measures to identify crime, those who commited crime as well as prevent and combat crime (item 2, section 37 of the Criminal Procedures Code).

Operation of criminal investigation and prosecution bodies

1. Based on denunciation letters and reports on crimes, the chief of the investigation body authorises persons to verify the information, and for prosecuted cases, to investigate, appraise files and documents related to the case; diects the use of professional investigation and prosecution methods; passes the files/documents of the case to others to investigate; or investigates on his or her own; passes the denunciation letters and information on the crime and all verification documents to the initial investigation body.

2. The chief of the investigation body accepts the decion to prosecute the case or not to prosecute the case or on temporary arrest made by the investigator, and decides to extend the time for the handling of the denunciation letter and information on the crime.

The volume, scope and procedures for prosecution is specifically provided for by section 186 of the Criminal Procedures Code:

1. When signs of crime are discoverd, the investigation body passes the denunciation letters and related verificatin documents according to procedures provided for by section 182 of the Criminal Procedures Code or decides to prosecute the case.

2. Under the Criminal Procedures Code, investigators of already prosecuted cases need to concurrently conduct other prosecution activities to track crime signs, including: check and seize of property, correspondences, audio recording, interviews of suspectd persons; interviews of violated persons, witnesses; temporary arrest of suspected persons; taking samples for comparison and assessment.

In this case, the investigation body need to immediately inform the procuracy.

3. After completing prosecution procedures and quick investigation of prosecuted cases, within 10 days, the investigation body must pass the cases to investigators.

4. After when the case has been passed to an investigator, the investigation body can only conduct other investigation and prosecution procedures as authorized by the investigator. If the case has been passed to an investigator but the person commited the crime has not been identified, the investigation body needs to conduct pursue procedure and needs to inform the investigator of the outcome of the pursue.

2.3 Prosecution activities and the system of procuracy bodies (organization, functions and tasks, mandate and mechanism for the appointment and dismissal of procurators)

Genral requirements

In the world today there exist two models of prosecution bodies with their funtions defined by unique characteristics of the legal system and state apparatus in each country. In one model, a prosecution body is first a body to criminally charge

persons committing a crime and keep prosecution right. In the other model, it is a body to supervise the compliance with the law.

In the first model, the prosecution body has the functions of starting a criminal charge against persons with criminal acts, acting as the prosecuting party before the court, supervising the compliance with the law by investigation bodies an the imprisonment of criminals in prisons. This model is used in most of the coutries following the civil law system. In the United States it is the public prosecution body while in the United Kingdom it is the royal investigation committee.

In the second model, the procuracy has many different functions with the major one being to supervise the enforcement of the law. Besides, the procuracy still conducts investigation, criminal prosecution and other legal procedures; supervises investigation activities and act as prosecutor before the court. This model is used in Belarus, Russia, Kazakhtan, Bungary, Sweden, Rumania, China, Cuba, Brazil, Colombia, Venezuela and others including Vietnam.

In a recommendation of the European Parliament "on the role of prosecution in a democratic and rule of law society"[24], it reads: "the power and responsibilities of prosecution bodies needs to be limited to the task of criminal prosecution and a gerneal role in protecting public interests. They must be organized efficiently and independently from other state bodies".

The European Council of Ministers does not agree with such a recommendation but emphasizes that the diversity in the models of prosecution bodies is closely linked with the legal tradition of each country, and the difference in the organization of the criminal judicial system. Each system has its own check and balance mechanism, so its not easy to take into consideration each factor separately like separating the function of prosecution from other factors of the system. Besides the Council of Ministers does not see any ground to ask those European countries to abolish the prosecution functions.

By analysing provisions of international documents, the following features in the development of prosecution bodies can bee seen:

- Efforts to affirm common criteria for prosecution activities;

- The diversity in the organizational models and functions of prosecution bodies which manifest the diversity and uniqueness of the national legal systems in different countries.

In accordance with the common development trend and existing traditions, the prosecution bodies of the Republic of Belarus on behalf of the state supervise the precise and unified enforcement of legal documents across the territory of Belarus, fulfils the function of criminal charge and acts as the prosecution party before the court.

Operation of prosecution bodies is provided for in chapter 7 (sections 125-128) of the Belarusian Constitution. The system of prosecution bodies is unifiedly organized. Lower prosecution bodies must comply with higher prosecution bodies and the Supreme Procuracy.

[24] Passed by the European Parliament on May 27, 2003

The Prosecutor General of the Supreme Procuracy and prosecutors of lower levels supervise the compliance with the laws, orders... the enforcement of civil, crimial, and administrative decisions of the court; supervise the compliance with the law of investigation activities, the legality of civil, crimial, and administrative decisions of the court. Under the provisions of the Criminal Procedures Code, prosecution bodies have the functions of criminal charge, initial investigation and prosecution before the court.

Under the Law on "procuracies of the Republic of Belarus" No. 220-3 dated May 8, 2007, prosecution bodies coordinate the protection of the law by state bodies, prevent crime and corruption as well as prevent crimes of the very crime prevention bodies.

Under the Presidential Order No. 644 dated December 17, 2007, prosecution bodies are state bodies with responsibility to combat corruption.

The Prosecutor General of the Supreme Procuracy and local prosecutors and specialized prosecutor have the responsibility to coordinate the operation of all state body taking part in crime prevention and corruption prevention. This includes central level coordination, provincial level (Minsk city) and district level coordination. The coordination includes the following activities: collection of facts, analysis of the effectiveness of the methods used, cooperation of related state bodies and supervised bodies, preparing of draft laws, prevention of corruption and crime[25].

In the Supreme Procuracy there are a department specialized in corruption prevention with two divisions (one with 9 prosecutors and the other with 7 prosecutors). This department has the task of investigating corruption and the responsibility to prevent and combat corruption as well as coordinates anti-corruption efforts of other state bodies[26].

According to the Program for crime and corruption prevention and combat for 2010-2012, agencies with specific tasks must report on their performance to the Prosecutor General of the Supreme Procuracy. The Prosecutor General annually reports to the President on the implementation of anti-corruption programs.

Major agencies in charge of preventing and combatting corruption in Belarus includ:

- The Supreme Procuracy;

- The Internal Affairs Ministry (police);

- The National Inspection Committee (financial investigation);

- The National Security Committee (KGB).

Under section 126 of the Constitution, the Prosecutor General is appointed by the President with the approval of the Council of the Republic. Prosecutors of lower levels

[25] The concept "corruption" is defined in the "Law against corruption" of the Republic of Belarus dated July 20, 2006. Under item 2, paragraph 1 of this section, corruption is: 91) "intentional illegal acts of a person holding a position who make use of their position to get properties and other interests for himself or herself or a third party"; (2) "the act of bribery on a person holding a position by giving properties or other interests to this person to take or not to take an action while performing his or her public tasks.

[26] Among important documents against corruption are "Law on civil services in the Republic of Belarus" (2003), "Law on measures to prevent the validation of incomes from comiting crimes and funding for terrorists" (2000), and "Law on personal income and property declaration" (2003).

are appointed by the Prosecutor General. Under section 127 of the Constitution, prosecutors are independent while performing public tasks. The Prosecutor General is responsible before the President.

Recruitment and training of prosecutors

Appointment as prosecutors can be made to those having a university degree, from 25 years of age and having worked for a prosecution body for over 3 years (section 48 of the Law on Procuracies). For those who work for a procuracy for the first time, they need to pass an examination about the profession and undergo training under the Regulations on the work at prosecution bodies in the Republic of Belarus. In some circumstances, those conditions can be exempt (section 49). The School for training and strenthening capacity of judges, prosecution bodies and court staff, and other judicial bodies are in charge of training and strenthening capacity for prosecution body staff (section 57).

Issues relating to the improvement of functions of prosecution bodies and the principle of prosecution in compliance with the law due to the supremacy of the law.

1. The task of prosecution bodies of Belarus is to ensure the supremacy of the law, legislation and legal order; protect the lawful rights and interests of the citizen and organizations as well as interests of the state and society (item 1, section 4 of the Law on prosecution bodies). To fulfill this task, prosecution bodies of Belarus take part in law making and improving the enforcement of the law. The Prosecutor General of the Republic of Belarus, chiefs prosecutors of local prosecution bodies and specialized prosecution bodies and their deputies send their proposals to the law making body to pass, amend, interprete or declare null and void a legal document (section 13). The capacity to fulfill the legislative power depends largely on the initiatives of prosecution bodies. In the past, this power was given to prosecution bodies but now it is not.

2. The illegal collection of evidences is strictly prohibited. The Criminal Procedures Code does not provide for procedures to define an unaccepted collection of evidences and the abolition of these evidences during the legal process as well as the power of the involved prosecutor. So far, the court has the power to decide whether a collection of evidence is not accepted by pointing out the violations. These violations are often the basis for a decision of acquital.

3. The suspension of criminal charge when the violated person reconciles with the defendants needs to be applied to criminal cases as provided for by section 33 of the Criminal Procedures Code following the request of the violated person regardless of the fact that the case was prosecuted based on the earlier request of the violated person.

4. The violated person has the prosecution right in cases prosecuted based on the request of the very violated person with the following conditions:

a) The defendant pleads guilty completly;

b) The prosecutor or the one who passed the case to the court has no other opinions than the fact that the defendant has plead guilty.

This provision does not apply to cases in which the criminal is a minor person or when the defendant does not plead guilty.

2.4. Legal aid organizations (lawyer organizations, function and duties, power, appointment and relief from duty of titles)

Legal aid on criminal, civil cases, the cases arising from economic disputes, and cases on administrative offenses in the Republic of Belarus shall be rendered by professional lawyers. The lawyer activities on legal aid are regulated by the Law no. 334-3 dated December 30, 2011 "About legal profession and lawyer activities in the Republic of Belarus".

This Law also provides the lawyer's organization, function and duties, appointment and discharge of lawyers.

In criminal proceedings, lawyers represent parties, protect and act for the rights and interests of the accused (defendants). Lawyers also have some procedural powers as procedure participants.

Under Section 44 of the Criminal Procedure Code, the involved parties' defense counsels in criminal proceedings shall be individuals who protect the legitimate rights and interests of the suspects, the accused and render legal aid to them in compliance with the procedures set forth in the Criminal Procedure Code.

Defense counsel of the involved parties in criminal proceedings may be Belarusian citizens or citizens of other countries in accordance with the international treaties of the Republic of Belarus.

Based on the written request of the accused, the court may decide to permit one of the accused's relatives or his lawful representative to act as defense counsel before the court. A person should not defense two suspects or accused at the same time if the protection of interests of one person goes against the interests of the other person.

The defense counselor the interests of involved parties is allowed to participate in the proceedings from the moment of issuance of the decision on introduction of criminal case against the involved parties, as well as the moment of arrest or application of provisional measures, suspect identification, and issuance of indictment.

The defense counsel must notify the procedure-conducting bodies without any delay of the fact that he/she accepted to protect the involved parties' rights.

Suspension of the participation of the defense counsel in following cases:

1) The suspect or the accused cancels the contract with the defense counsel, that is, the power of the defense counsel terminates;

2) The procedure-conducting bodies shall dismiss the defense counsel if finding facts that forbid such person from participating in the proceedings under the provisions of the Criminal Procedure Code.

3) The procedure-conducting body receives the refusal by the suspect or the accused to accept the defense,

Besides, the suspect or the accused cannot terminate the rights of the defense counsel appointed to participate in the proceedings in cases where the participation of the defense counsel is compulsory or where the procedure-conducting body does not receive the refusal by the defense counsel.

Obligation to participate in the proceedings of the defense counsel of the interests of the involved parties:

The defense counsel must participate in the criminal proceedings if:

1) It is requested in writing by the suspect or the accused;

2) The suspect or the accused is a juvenile;

3) The suspect or the accused does not know the language used in the legal proceedings or is an illiterate;

4) The suspect or the accused cannot defense his/her rights by him/herself due to bad health or psychological situation.

5) The person is suspected or charged with especially serious crimes;

6) The rights and interest of the suspect and the accused conflict, and any of them has a defense counsel of the interest of involved parties.

In the abovementioned cases, the defense counsel of the interests of the involved parties shall participate in the proceedings from the moment of issuance of the decision to institute criminal case, as well as the moment of arrest, application of provisional measures, identification of the suspect, and issuing the indictment.

In cases satisfying the conditions for the compulsory participation of the defense counsels of the interests of the involved parties, but such persons are not invited by the suspect, accused, or their lawful representatives, the procedure-conducting bodies and the court shall ensure their participation in the proceedings. In such cases, decisions issued by investigating bodies, investigation conducting persons, investigators, procurators, judges and court decisions on the participation of the defense counsel of the interests of the involved parties shall be compulsory to the territorial bar (Section 45 of the Criminal Procedure Code)

Inviting the defense counsel of the interests of the involved parties, appointing the defense counsel of the interests of the involved parties (Section 46 of the Criminal Procedure Code)

Persons participating in the criminal proceedings as a defense counsel:

1) Shall be invited by the suspect, the accused, or their lawful representatives, or by other persons at the request of, or with the consent from, the suspect, the accused. The procedure-conducting bodies shall not have the right to recommend any one as defense counsel of the interest of the involved parties.

2) Shall be appointed by the territorial bar at the request of the procedure-conducting bodies.

The appointment of the defense counsel of the interests of the involved parties at the request of the procedure-conducting bodies shall be made as follows:

1) At the written request of the suspect, and the accused;

2) To provide legal advice to the suspect, the accused by the local budget until the first interrogation in cases of temporary custody or application of the provisional measures of temporary detention;

3) Where it is compulsory to have the participation of the defense counsel of the interests of the involved parties in the proceedings while the suspect or the accused does not have any defense counsel.

4) Where the defense counsel of the interests of the involved parties selected by the suspect or the accused cannot participate in the first interrogation within 24 hours after being permitted to act as defense counsel; or if such defense counsel of the interests of the involved parties cannot appear within such time limit to participate in the proceedings; or the defense counsel of the interests of the involved parties cannot participate in the proceedings more than 3 days while the suspect, the accused request the participation of the defense counsel of the interests of the involved parties. In such cases, the procedure-conducting bodies shall request the suspect, the accused to invite other defense counsel of the interests of the involved parties.

In cases where several defense counsels of the interests of the involved parties participated in the proceedings process which is provided to compulsorily have the participation of the defense counsels; it is not illegal if the defense counsels of the interests of the involved parties fail to participate fully.

The fact that the defense counsels of the interests of the involved parties fail to appear at the right time in the right place of the proceedings with the participation of the suspect, the accused shall not affect the proceedings if having written consent of the suspect, the accused except for following cases:

- The suspect or the accused is the juvenile;
- The suspect or the accused does not know the language used in the legal proceedings or is an illiterate;
- The suspect or the accused cannot defense his/her rights by him/herself due to bad health or psychological situation.
- The person is suspected or charged with especially serious crimes;

The defense counsel of the interests of the involved parties who wish to confirm his/her power should submit the following papers to the procedure-conducting bodies:

1) Lawyer–Legal profession practicing certificate and certificate of criminal proceedings participation

2) Relative of the accused–paper proving the relative relationship with the accused;

3) Lawful representative–Paper proving the right to representation of the interests of the accused.

Within 24 hours upon the reception of the request, the Head of legal advice bureaus or the chairman of the territorial bar must appoint a lawyer to act as defense counsel of the suspect or the accused.

The head of the legal advice bureau or the territorial bar, procedure-conducting bodies shall have the right to exempt the suspect or the accused from a part or the whole of the legal advice fees as stipulated by legal procedures. In such cases, the remuneration for the defense counsel of the involved parties shall be paid by the territorial bar or local budget, depending on cases.

The remuneration for the lawyer appointed to participate in the investigation and adjudication without a contract with the client shall be paid by the local budget under the orders stipulated by the Council of Ministers of the Republic of Belarus. The reimbursement of expenses in such case shall be made by the defendant or the lawful

representative of the defendant, except for the remuneration paid to the advice lawyer by the local budget before the first interrogation (Section 46 of the Criminal Procedure Code).

Refusal of acting as defense counsel of the interests of the involved parties (Section 47 of the Criminal Procedure Code)

The suspect, the accused shall have the right to refuse the defense counsel of the interests of the involved parties at any time during the proceedings process. The procedure-conducting bodies receive the refusal of the defense counsel of the interests of the involved parties in cases where the suspect, the accused submit written voluntary refusal in accordance with their wish. In cases where the temporary custody or detention is applied, the presence of the contracted or appointed defense counsel of the interests of the involved parties is a must.

Refusal of defense counsel shall not be accept for the reason of having no money to pay the legal advice fees or other reasons like being forced to refuse.

The procedure-conducting bodies shall not accept the written refusal for defense counsel of the interests of the involved parties in following circumstances:

- The suspect or the accused is a juvenile;

- The suspect or the accused does not know the language used in the legal proceedings or is an illiterate;

- The suspect or the accused cannot defense his/her rights by him/herself due to bad health or psychological situation.

- The person is suspected or charged with especially serious crimes;

- The rights and interest of the suspect and the accused conflict, and any of them has a defense counsel of the interest of involved parties.

The refusal of the defense counsel of the interests of the involved parties shall not take away the suspect or the accused's right to request for the participation defense counsel of the interests of the involved parties after that. The request shall be accepted if the written request is sent before the commencement of the adversarial procedure at the trial,

Rights and obligations of the defense counsel of the interests of the involved parties*(Section 48 of the Criminal Procedure Code)*

The rights and obligations of the defense counsel of the interests of the involved parties shall be based on the equality between the accusing party and the defending party and shall be ensured by full proceedings procedure for the sake of ensuring and protecting the legitimate rights and interests of the accused.

The defense counsel of the interests of the involved parties shall have following rights:

1) To know which crime his client is charged or accused of;

2) Be free from having private meetings with the involved parties and the quantity and duration of such meetings are not limited;

3) Be present when the indictment is handed;

4) To participate in the questioning of the suspect or the accused and other proceedings activities participated by the suspect or the accused;

5) To have access to all decisions on institution of criminal case, temporary custody, institution of the criminal procedure against the accused, application of provisional measures, minutes on temporary custody, minutes on questioning and other proceedings activities participated by the suspect or the accused and the defense counsel of the interests of the involved parties is absent and to take note of necessary information;

6) To make questions to the suspect, the accused, the victims, witnesses, expert witnesses with the consent of the procedure-conducting bodies;

7) To send written remarks on the accuracy and adequacy of the contents written in the minutes of proceedings activities participated by the defense counsel of the interests of the involved parties;

8) To make written protest to protect the interests of the suspect, accused;

9) To give evidence;

10) To collect information related to the criminal facts and send to the investigating body, investigation conducting persons, investigators, to participate in the investigation and proceedings activities related to such information.

11) To have access to the case files from the moment of receipt of the notification on the termination of the primary investigation and to take note of the information got from the case files with the consents of the investigators, to be able to make copies of the case files, except for circumstances stipulated in Clauses 8 of Section 193 of the Criminal Procedure Code[27].

12) To participate in the first instance trial session, including the research of evidence and appellate trial sessions in cases where the case is re-tried when there are new circumstances

13) To request the insertion of information on new circumstances which the defense counsel of the interests of the involved parties deem necessary to the minutes of trial session; to have access to the minutes of trial session and to have the right to make remarks.

14) To participate in the argument at the trial by making statement and remarks;

15) To receive a copy of the decisions on the application of provisional measures and other procedural measures, on the extension of the time limit for temporary detention and out of bail, copy of the decision on the suspect, institution of the criminal procedure against the accused, copy of the court judgment, copy of the appellate or cassation court's decision or other final court decisions;

16) To lodge complaint about the acts and decisions of the procedure-conducting

[27]In case it is necessary to protect the safety of the victims, their representatives, witnesses, members of their families, relatives or other persons deemed as their relatives, the investigators or the investigation conducting persons shall have the right not to state personal information of the abovementioned persons in the minutes of investigation with their participation. In such cases, the investigator, or the investigation conducting persons must make a document clearly stating the reasons for protecting the secret of personal information for the persons participating in the investigation, stating the putative information and the samples of signatures such persons used in the investigation minutes.

bodies including the complaint about court judgment or other final decisions;

17) To participate in the court settlement of the complaint about temporary detention, temporary custody letting the suspect or the accused out of bail, or complaint about the court decisions;

18) To make petition to the indictment of the procurator, prosecutor, and complaints of other procedure participants and notify the procedure-conducting bodies of the results of such.

19) To reply to the opinion, petition, proposal made by other procedure participants at the trial session, to answer the questions with the consent of the court panel.

20) To object to the acts of the other party or of the presiding judge.

The defense counsel of the interests of the involved parties who is foreigner, person without a nationality or Belarusian citizens who resides abroad shall only have the right to have access to the case files with information of national secretes if having consents as stipulated by the laws.

The defense counsel of the interests of the involved parties shall be obliged to use all protecting measures and methods as provided by the laws to make clear the circumstances to defense the suspect, the accused, to reduce the liability of the accused and to provide legal aid to the accused.

Relating to this issue, the defense counsel of the interests of the involved parties is not permitted to:

1) Conduct the acts against the interests of the client and obstruct the client from exercising this right.

2) To admit that the client has acts dangerous to the society and the client is at fault in the criminal act;

3) To pronounce the conciliation with the victim or accept the civil lawsuits without the authorization of the client or to incite the client to refuse the right of appeal.

4) Not to perform his/her power at his/her will or transfer the power of defense to others.

Besides, the defense counsel of the interests of the involved parties must:

1) Appear when it is requested by the procedure-conducting bodies to protect the legitimate rights and interests of the suspect, the accused and provide legal advice to them; if he/she cannot appear, within 24 hours, he/she must notify the procedure-conducting body and the court thereof;

2) Obey law provisions provided by procedure-conducting bodies;

3) Not to disclose the information he/she knows from the provision of legal advice, primary investigation data and information of the in-camera trial sessions.

The disclosure of the abovementioned information without the consent of the procedure-conducting bodies, the defense counsel of the interests of the involved parties shall bear liability under Section 407 of the Criminal Code, if having warned once by the procedure-conducting bodies or the court.

Issues given to the improvement of the lawyer's activities

1. At present, the lawyer profession practicing certificate is issued by one executive agency in Belarus (the Ministry of Justice) and this agency also has the right to revoke lawyer profession practicing certificate. This creates favorable conditions to the restriction of the principle of independence of lawyers' activities. The revocation of the lawyer profession practicing certificate must undergo the court's procedure.

2. With an aim of developing the principle of independence of the lawyers, it is recommended to reconsider to provide that 50% of the members of the lawyer professional Council in the Republic of Belarus must be lawyers.

3. The existing laws of the Republic of Belarus allow the lawyer to have private meeting with the client. However, there is no provision stipulating the liability of the law protecting bodies' staff in cases of violating such regulation, and therefore, have bad effect on the implementation of this provision in practice.

4. There is no procedure for specialized investigation in cases where these activities affect or relate to the lawyers, such as the lawyers take voice record of the phone call with the suspect or the accused. Besides, there is no barrier for the use of such materials as evidence at the trial session.

5. There is provision on censoring mails of the suspect, the accused who are kept in the custody and of the defendant in the existing laws but there is no provision on the exceptional cases of the mails between such persons and their defense counsel.

6. It is necessary to reconsider the procedure for meeting with the client who is in the custody, thereby the lawyer must have permission of the law protecting bodies and it is necessary to reconsider the possibility of notification of the permission procedure.

7. At present, the law protecting bodies have considerable power in the determination of cases where it is possible to request for the protection of the witnesses. The "protected" witnesses are able to be absent from the court, the lawyers are not permitted to ask the "protected" witnesses but the testimonies given by such witnesses are considered in the trial. The broad power of the law-protecting bodies in the use of testimonies given by the "protected" witnesses sometime leads to the situation of counterfeit testimonies and even counterfeit witnesses. There are real cases where the court render judgments based on the testimonies of such "protected" witnesses. It is necessary to provide more strictly the circumstances of protection of witnesses and the lawyer may have the right to ask the "protected" witnesses at the court using voice record.

8. With an aim of ensuring the principle of equality between parties, it is recommended to consider the participation of the lawyers in appellate and cassation trial, as well as the issue relating to judgment enforcement.

9. The Criminal Procedure Code allows the defense counsel of the interests of the involved parties to participate in the collection of information related to the case's circumstances and send to procedure-conducting bodies and participate in the investigation to verify such information (point 10, clause 1, Section 48 of the Criminal Code). To exercise this right, the defense counsel of the interests of the involved parties may ask individuals, request for the confirmation, provision of document, copies; consult experts with the consents of the client to make clear the related issues when it is necessary to consult the expert's knowledge. The defense counsel of the

interests of the involved parties is not permitted to create pressure on the individuals to get information for the interests of his/her client (clause 3 of Section 103)

When the lawyer exercises this right, he/she encounters certain difficulties in the inconsistent understanding and application of the procedure-conducting bodies and the court. Some issues including which procedure-conducting bodies shall receive the information provided by the lawyer? The answer may be found in clause 2 of the Resolution No. 6 of the Plenary Meeting of the Supreme Court of the Republic of Belarus on 26/9/2002 "about some issues on application of the criminal procedure laws at the first instance court", which provides, "materials collected by the defense counsel of the interests of the involved parties shall be included in the case file at the defense counsel of the interests of the involved parties". Thus, this regulation is compulsory not only to the court but also to any procedure-conducting bodies and this provision should be included in clause 3, Section 103 of the Criminal Procedure Code.

To enable the defense counsel of the interests of the involved parties to exercises this right, on 29/10/2004 the Plenary Meeting of the National Bar Federation of the Republic of Belarus issued Resolution on the issuance of Professional Guidance for the lawyers to participate in collection of evidence as stipulated in clause 3, Section 103 of the Criminal Procedure Code. This Guidance is developed based on the experiences of Belarusian lawyers as well as Russian lawyers in application of new points in the Criminal Procedure Code with an aim of improving the effectiveness of the application of the Code.

In accordance with the above professional Guidance, the explanations the lawyers received in the questioning of individuals as stipulated in clause 3, Section 103 of the Criminal Procedure Code shall be included in the opinions petitioned to the procedure-conducting bodies on the questioning of individuals. These materials shall be included in the case files, regardless of if the lawyer's petitions are satisfied or not.

In cases where the individuals to be questioned cannot appear for plausible reasons (serious illness, death, taking business trip for many days and so on), the explanations the lawyer received under provision of clause 3, Section 103 shall be significant as document evidence stipulated in Section 100 of the Criminal Procedure Code and shall be appraised, evaluated together with other evidence included in the case file. Explanations of individuals collected by the lawyer under clause 3, Section 103 of the Criminal Procedure Code shall be significant as evidence even if the questioned person give answer totally different with what the lawyer recorded in the explanations such person gave before (point 11 in the professional Guidance).

The written opinions given by experts also has value same as document evidence as stipulated in Section 100 of the Criminal Procedure Code and shall be included in the case file. In cases where it is necessary to make clear or make supplementary to such opinion, the experts may be asked as a witness and the procedure-conducting bodies may authorize the expert to conduct expertise assessment again or conduct additional expertise assessment (Point 16 in the professional Guidance)..

Thus, the information the lawyer collected shall be evidence only after being put into the case files by the procedure-conducting bodies. The court, the prosecutor, or the investigator must not refuse to include the information collected by the lawyer into the case files, if:

- The lawyer is permitted to as the defense counsel of the interests of the involved parties in the case;

- The information is collected by methods listed in clause 3, Section 103 of the Criminal Procedure Code;

The strict provision of this issues and the serious obedience of the provision in practice shall create favorable conditions for the lawyer activities and ensure the equality in the competition between the parties in getting justice.

3. Regimes for overseeing judicial bodies' activities (oversight forms, subject, object, volume and legal consequence of the oversight)

Basic features of the regimes for overseeing judicial bodies' activities were mentioned in the part "Judicial powers".

5. Judicial power and justice – are constitutional values the implement of which in the division of powers is not interfered. The legislators and the society need to achieve the target of getting justice on the legal basis, under statutory procedures in an open manner, ensuring the issuance of just verdicts at the highest extent.

First of all, the court system and the court organization including the division of jurisdiction in vertical line (different trial levels must ensure the maximum right to be protected by the court, the right to request for re-trial of the whole case as it is in practice. There should be a more completed system of appellate courts.

It is recommended to supplement into the criminal proceedings a regulation that the accused must participated in the settlement of any issues, regardless of the application of provisional measures of temporary detention or the complaints about the application of this measure, or the adjudication of the case under appellate or cassation level.

It is necessary to restrict (with law provisions) the possibility of higher court adjudicate the fist instance cases/matters.

The overall review and improvement of the legal system with respect to justice in such a direction must be focused tasks of the legislators.

6. Constitutional oversight. This form of oversight is common and not only the oversight of the legitimacy of the court verdicts, the constitutionality of legal normative documents used as basis for the court to render its verdicts. The following legal acts are proposed:

If, during the trial, the court suspects the constitutionality of a legal normative document and thereby unable the court to depend on such document to reach a verdict, the court shall have the right to suspend the trial and request the Constitutional Court to make conclusion on this issue.

In cases where the Constitutional Court concludes that such legal normative document is unconstitutional, the court may continue its trial and give verdict based on the legal basis in accordance with the opinion of the Constitutional Court and based on the principle of the supremacy of the law. In the Republic of Belarus, the oversight system of the Constitutional Court is currently deemed as a general scientific proposal.

7. The supervision of judicial activities is strictly performed in accordance with the procedural laws (The Criminal Procedure Code). The object of this form of

oversight is not the judicial activity itself but the court's compliance with requirements of procedural to ensure the announcement of legitimate verdict. Thus, the supervision oversees the legitimacy of court verdicts and ensures that the protest shall be made when there are violations of substantial and procedural laws.

In the Republic of Belarus, we have recommendation as follows:

1. The confirmation (in Belarus, the investigator shall make a confirmation, not an indictment) on the results of the primary investigation (Section 262 of the Criminal Procedure Code) should be accepted by the prosecutor, handed to the accused and included in the case files.

2. It is recommended to provided in Section 293 of the Criminal Procedure Code that in cases where the prosecutor withdraw a part or the entire indictment, he/she must send a written document stating the basis for their opinions. This document must include the consent and signature of the prosecutor, persons prosecuting the case and must be included in the case files.

3. To supplement to clause 3, Section 103 of the Criminal Procedure Code the provision that the information collected by the defense counsel of the interests of the involved parties must be included in the case files at the request of such person.

4. To supplement to Section 290 of the Criminal Procedure Code the court's obligation to support parties in giving evidence at their requests;

5. To remove point 2, clause 1, Section 389 of the Criminal Procedure Code on the possibility to cancel the judgment when the investigation is not sufficient in cases where the court, at its own subjective will, did not study the evidence significant to the precise consideration of the case/matter.

6. To enumerate in Section 333 of the Criminal Procedure Code the list of circumstances where the victims and witnesses cannot participate in the trial session and to provide that in all cases where they do not appear at the trial session, the disclosure of evidence and figure investigated before the trial session must be consented by parties;

7. To provide that in the period of bringing the case to a trial and preparation for a trial, only the court has the right to decide who can be absent at the trial session based on the request of the prosecutor, person prosecuting the case. This provision should be added to Sections 65, 266 and 281 of the Criminal Procedure Code.

8. To supplement to clause 1, Section 66 of the Criminal Procedure Code the provision on procedural measure to ensure the safety of the questioning of the "protected" person in the in-camera trial in the absence of the accused and with the appearance of the defense counsel of the interests of the defendant;

9. To supplement to point 2, clause 1, Section 328 of the Criminal Procedure Code the provision that the disclosure of the accused's testimonies and the figure collected before the trial session, which the defendant refuses to provide at the trial session, must have consents of the accused and the defense counsel of the interests of the accused.

10. To reject evidence, testimonies of the suspect or the accused, the figure collected before the trial session if the defense counsel of the interests of the involved parties is absent; including the circumstance of rejecting the defense counsel and

circumstance where the evidence is not verified by the accused at the trial session. This provision should be added to Section 105 of the Criminal Procedure Code;

11. To consider Section 308 of the Criminal procedure Code on the obligation of the court to include the voice record and video record of the trial session provided by parties.

12. To amend Section 126 of the Criminal Procedure Code, considering the application of the deterrent measure of temporary detention and providing that the extension of the time limit must be by a court decision at the request of the prosecutor;

13. In the procedure to check the legitimacy of the temporary custody, detention and extension of the time limit for temporary detention (Section 144 of the Criminal Procedure Code) the rights of the arrestee who directly participate in the trial session to consider his/her complaint should be stipulated;

14. To supplement to part XI of the Criminal Procedure Code "Judgment enforcement" a separate Section on the procedure to consider and settle complaints of the persons subjected to imprisonment penalty about the application of certain penalties by the detention camp manager.

15. To consider the supplementation to Chapter 16 of the Criminal Procedure Code the right to lodge complaints to the court about the acts or decisions of criminal investigating bodies which obstructing the right to access to justice or which violating the citizens' constitutional rights and freedom;

16. In the stage of bringing the case to a trial and preparation for the trial session (Chapter 33 of the Criminal Procedure Code), to consider if the judge can hear parties' opinions on the settlement of following issues or not: non-acceptance of the evidence; return of the case to the prosecutor to remove what obstructs the consideration at the trial session; return of the case for additional investigation; consideration of the petitions made by parties; consideration of the possibility to apply summary investigation procedure in the case;

17. To amend clause 2, Section 382 of the Criminal Procedure Code on the compulsory participation of the accused being kept in detention at the appellate trial session if it is so requested by the accused;

18. To re-consider Section 410 of the Criminal Procedure Code on sending a copy of the protest to the parties in cassation procedure, notifying the time and venue of the cassation trial session, the right to participate in the trial session, and the right to make petition and explanation on the protest attached with necessary documents. These amendments should be put into Section 411 of the Criminal Procedure Code.

19. Together with keeping the appellate level, it is necessary to supplement the procedure for reviewing the appeals and protest against judgments which have not acquired legal force, and to supplement a Chapter to Part X of the Criminal Procedure Code. Beside, the review of judgments under cassation procedure shall be conducted by the Supreme Court of the Republic of Belarus in cases strictly provided for by the laws.

4. The oversight power of the National Assembly of Belarus

In a system of power division, the National Assembly – the collective representative body of the people is the root of the power of a people's state.

Thererfore, decsions made by the National Assembly has higher legal value than those of other state bodies. However, this does not mean that the National Assembly has the ruling power and oversight over other branches of power. And state bodies are established under the provisions of the Constitution.

1. The National Assembly represents the people's power in the sense that only the National Assembly (the representative body of the people) has the power to make documents of highest legal values, namely Constitution and laws. The operation of other power branches (the government, courts, investigation bodies, etc.) must be bound within the laws made by the National Assembly. Legal documents and decisions made by other state bodies must not be contrary to laws.

As such, the National Assembly:

First, supervise the work of other state bodies by making laws of highest legal value for society, citizens and state;

Second, by enacting laws (governing by laws), the National Assembly provides for the power and characteristic operation of other power branches (state bodies) and the limits to legal documents made by these state bodies (documents issued by the Government, guidances of ministries, authorities).

2. To ensure the implementation of the principle of power division and the check between the legislative and executive powers, the Constitution stipulates that all laws must be signed by the Presidetn. The President has the right to return the law or part of the laws to the National Assembly with his objections. In other words, the President has the right to veto laws which has already been passed by the House of Representatives.

In case the law returned by the President is passed again by the House of Representatives without any change, the Council of the Republic has the right: not to discuss but vote to pass the law which has been passed by the House; or to discuss the draft law.

The law is passed if more than two thirds of the total number of the members of the Council of the Republic vote for it. The law after passing the two Houses again despite the earlier veto by the President, the President shall sign the law within 5 days. In case the President does not sign the document within such period, the law is still effective.

3. Oversight of the compliance with the law by local state bodies and local autonomous bodies.

The President directly or via agencies established by himself or herself supervises the compliance with the law by local state bodies and local autonomous bodies. The President has the right: to suspend decisions made by the council of local representatives and decisions made by local executive and administrative if these documents are not in compliance with the law.

From the analysis of the Constitution, it can be seen that, the supervision of local state bodies and local autonomous bodies is the work of bodies with functions of inspection and supervisions such as the State Inspection Committee, the Procuracies of the Republic of Belarus and the system of their local bodies.

The President does not have the right to repeal decisions made by local councils (representative bodies of provincial and district levels). In case these documents are contrary to the law, the President can suspend these documents from taking effect.

The National Assembly has the right to repeal decisions of local representative bodies (the council of local representatives) in case these documents are not in compliance with the law.

4. The exercise of the legislative power makes the National Assembly unable to become both a law making body and a law enforcing body

At present, besides power provided for by section 97 and 98 of the Constitution, the National Assembly only has the right to decide on matters provided for by other sections of the Constitution, which belong to unique features of the highest representative body of the people. The clear distinction of matters for legislation is to avoid controversy over the scope and power of legislative and executive bodies.

5. Consideration of draft laws on constitutional interpretation. This is a special form of the oversight power of the National Assembly related to the avoidance of different understanding of constitutional provisions by state bodies and courts. The House of Representatives can only consider those draft laws upon proposals of the President or initiative of over 150 thousands Belarusian citizens who have the right to vote. The National Assembly's constitutional interpretation is made in the form of a law.

The right to interpret other laws also belongs to the National Assembly. In necessary case, upon requests of state bodies and individual citizens, the National Assembly can interpret the law. Different from constitutional interpretation which is in the form of a law, the interpretation of law are in the form of a resolution of the National Assembly.

Laws on constitutional interpretation and resolutions on law interpretation have binding effects to all state bodies and other stakeholders.

6. Accept the proposal of Prime Minister appointment by the President.

7. Listen to reports of the Prime Minister on the agenda of the Government. One of the forms of oversight by the House of Representatives is to listen to reports of the Prime Minister on the agenda of the Government. The right of the National Assembly is to accept or refuse the agenda. The refusal of the Government agenda twice means a non confidence in the Government. In this case, the Government may be dissolved or it needs to resign. The decision on the dissolution or resignation of the Government is made by the President.

8. Consider the confidence in the Government. The Prime Minister has the right to ask the House of Representatives to consider the confidence in the Government. In reality, this proposal can be considered by the House with other important matters (such as a draft laws).

9. Take a vote of no confidence in the Government. A proposal for a vote of no confidence in the Government must be agreed by over one thirds of the total number of House of Representatives members (more than 37 members). Under the operational Regulations of the House of Representatives, a proposal of this kind must be in written form. The Speaker or deputy Speaker of the House of Representatives refers this

proposal to a standing committee before it can be included in the agenda of the coming session (section 223 of the Regulation).

10.One of the oversight functions of the National Assembly over the Government and Government agencies is that the National Assembly annually considers and passes state budget laws for the following year as well as considers and passes laws on state budget implementation of the past year.

11. Consider the resignation of the President.

12. Consider the release and dismissal before the end of the term of the President of the Republic of Belarus.

13. Another form of National Assembly oversight is hearings conducted in a joint session of both Houses of the National Assembly with the participation of government members, other related state body members, representatives from civil society organizations and scientific researchers. Hearings before the National Assembly are organized upon decision of both Houses on major issues or in urgent cases to deal with urgent issues. Normally, they are controversial issues in society. After a hearing, recommendations will be made (action program of related state bodies for issues under hearing). The recommendations are made in the form of a resolution of the National Assembly.

Hearings can also be conducted by standing committees of the National Assembly. However, after a committee hearing, no resolutions are made but occlusions on each issue under hearing[28].

[28] On other functions of the National Assembly relating to oversight, see section 1.6 of this report.

PART V

ORIENTATIONS AND SOLUTIONS TO IMPROVE THE QUALITY AND EFFICIENCY OF THE OVERSIGHT OF THE JUDICIARY COMMITTEE

1. Orientations to improve the quality and efficiency of the oversight of the Judiciary Committee

The Judiciary Committee of the National Assembly was established and has operated for the second term. Though its authority covers a wide range of complex areas, the Judiciary Committee has performed with success most statutory duties, hence affirming its position and roles in performing the National Assembly's missions. In the future, to keep on with the purpose of improving the oversight quality, the Judiciary Committee will continue to proactively prepare annual work plans and programs, plans and programs for the whole Legislature XII of the National Assembly in a systematic manner. The Judiciary Committee's activities are always carried out with creativity, democratic approach guarantee, ensuring the principle of plenary session and decision making by majority voting. The Judiciary Committee is a consolidated body whose members give constructive recommendations, the role of whom is highly respected. The oversight of the Judiciary Committee has been proactively conducted, in accordance with law and with a focus on issues of public concern, such as the issue of law compliance in the activities of judicial agencies, in the field of anti-corruption, handling of complaints and denunciations and protection of legitimate rights and interests of citizens. Oversight methods have been much improved. The Judiciary Committee has proposed to litigation agencies and relevant agencies solutions to overcome shortcomings to improve the quality of investigation, prosecution, adjudication, court judgment execution/enforcement and anti-corruption activities. Many proposals of the Judiciary Committee have been well accepted, thereby contributing to the building of a sound and strong judiciary.

In the course of performing its duties and powers, the Judiciary Committee has established close collaborative relations with the Ethnic Council and other Committees of the National Assembly, the Standing Committee of the National Assembly, National Assembly delegations, Standing Boards of local People's Councils and other relevant state agencies; strictly and adequately complies with the direction and instruction of the Party Caucus of the National Assembly, the Standing Committee of the National Assembly and the leaders of the National Assembly whereby Judiciary Committee's performance efficiency has been improved.

On the basis of a comprehensive assessment on the achievements and shortcomings in Judiciary Committee's performance during the Legislature XII of the National Assembly, the Judiciary Committee needs to continue:

1. Following the guidance and directions stated in the Resolutions of the Party, conclusions of the Politburo, the Party Caucus of the National Assembly, especially directions for reforming the operation of judicial agencies as set forth in the Judicial Reform Strategy.

2. Organizing its agenda more scientifically and in a planned manner.

3. Guaranteeing principles of consolidation, collective working, democracy and heightening of responsibility of every members of the Judiciary Committee and its Standing Board; encouraging the sense of community-based responsibility of the Judiciary Department staff – a subordinate unit assisting the Judiciary Committee.

4. Guaranteeing the close collaboration between the Judiciary Committee and other National Assembly's bodies as well á other relevant agencies in the course of executing its duties.

2. Proposals and solutions

2.1. Improvement the quality of laws and regulations on the structure of oversight agencies and on the oversight of the National Assembly, the Ethnic Council and Committees of the National Assembly in general and the Judiciary Committee in particular

At present, the oversight of the National Assembly is stipulated in the Constitution, 2003 Law on the oversight of the National Assembly and a number of other normative legal documents in such a way that the oversight should be further improved. However, these laws merely provide general principles of the oversight, therefore the legal basis is still lacking, reducing the oversight efficiency. Practically speaking, there still remain a certain number of shortcomings in the existing laws and regulations on oversight. The liability of agencies and persons subject to the oversight and the legal consequences of non-compliance with proposals in the evaluation reports of the National Assembly or the Judiciary Committee have yet to be specified in Law; there is not clear distinction between the evaluation on and review of reports as a means to exercise the oversight function and the evaluation on reports as a part of document submission procedure to the National Assembly at its sessions.

In that sense, to deal with such shortcomings in the existing laws and regulations of the oversight of the National Assembly, the Judiciary Committee needs to execute the following solutions:

(1) Amendment of the Constitution and Laws on the organization of state agencies

- Provisions relating to the oversight in the 1992 Constitution should be reviewed to propose proper amendments. A number of provisions relating to the structure of judicial agencies in the Constitution should be amended under the light of

Resolution No. 08-NQ/TW dated January 2nd, 2002 and Resolution No. 49-NQ-TW dated June 2nd, 2005 of the Politburo; such as:

+ Organizing courts to the system including trial courts, provincial courts, high courts and Supreme court. Adjudication takes the central role. Court take the central position. Systems of investigation agencies, procuracies, court judgment enforcement/execution agencies will be re-organized accordingly.

+ Reconsidering the vote of confidence mechanism with regard to judges of the Supreme People's Court and procurators of the Supreme People's Procuracy.

+ Chief of Courts and Chief of Procuracies shall have be accountable to representative state agencies.

- In Belarus, the President is the one who is responsible for guaranteeing the Constitution and citizen rights. However, in Vietnam, the state power is unity without separation. The National Assembly is the highest organ of state power and has the legislative function. The constitutional design of the Head of State in Vietnam bears no similarity to the constitutional design of the President in Belarus. Hence, reference can be made to the constitutional design of the President, Senate and Representative Chamber of the Belarus Parliament as for the judicial power of the parliament; such as:

+ The issuance of judicial policy.

+ Methods to enhance the effectiveness of judicial activities.

+ Critical contribution to the formation and training of judge staff.

- The Law on Organization of the National Assembly, the Law on Election of Delegates of the National Assembly and other laws relating to the aforesaid provisions in the Constitution should be amended accordingly.

Such amendments will improve the effectiveness and efficiency in performance of state agencies. At the same time, the Judiciary Committee can be more efficient at expediting its activities.

(2) Amendment of the Law on the oversight of the National Assembly

The Law on the oversight of the National Assembly is an important legal document that specifies the oversight methods, oversight jurisdiction, objects of the oversight, oversight content and procedure, oversight authority and responsibility of the National Assembly, the Standing Committee of the National Assembly, sub-bodies of the National Assembly. The amendment of this Law thus is an urgent call and directly affect the quality and efficiency of the National Assembly's oversight in general and of the Judiciary Committee in particular. Thereby, this Law should be amended as follows:

- Reasonably amending and supplementing the provisions on the scope, forms,

methods and content of the oversight, and legal consequences afterwards as for the oversight conducted by the National Assembly, the Standing Committee of the National Assembly or the Judiciary Committee; the liability of agencies that fail to fully comply with the Law; conditions to establish oversight teams of the Standing Committee of the National Assembly, the Judiciary Committee and Delegations; the procedures for presentation of reports before the sessions of the National Assembly, the Standing Committee of the National Assembly or the evaluation sessions of the Ethnic Council and Committees of the National Assembly whereby all reports that are submitted to the National Assembly for review and discussion must be pre-evaluated, except for reports of the National Assembly; responsibility to make a report, to coordinate and collaborate among state agencies in the course of oversight conducted by the National Assembly or its agencies;

- Stipulating the procedure for vote of confidence in the sessions of the National Assembly in such a manner that guarantees the feasibility of the procedure; the procedure for dealing with the aftermath of the vote of confidence; the subject-matter-based oversight as a method of the oversight of the National Assembly, the Standing Committee of the National Assembly or sub-bodies of the National Assembly; procedures and methods for the organization of a hearing for the Ethnic Council and Committees of the National Assembly; post-hearing legal consequences; procedure, time limit and methods for conducting the oversight as requested over normative legal documents; responsibility of issuers of normative legal documents and post-oversight legal consequences; those who are subject to the oversight has the right to request the protection of information classified as state secret in accordance with law and other related contents.

- Abrogating provisions stipulating the right of not responding or providing information classified as state secret of those who are subject to the oversight.

Research on the Belarusian Parliament shows that there are differences between the structural organization of the two parliaments thus parliamentary oversight function of the two are not the same. Nevertheless, reference can be made to several issues of the Belarusian mechanism of oversight over judicial activities, such as: the mechanism of oversight over the implementation of legal provisions on court procedure and on guaranteeing citizen’s rights and interests, on guaranteeing the right of being equally protected by courts; the norm of preventing the tendency that higher courts end up dealing with cases falling under the jurisdiction of trial courts – in case the Court finds it difficult to interpret the laws owing to the inconsistence of such laws with the Constitution, the Court can make a request to the Standing Committee of the National Assembly or Constitutional Committee (if there is such a committee after the amendment to the Constitution) to interpret the Constitution and laws.

2.2. Structure of the Judiciary Committee and its assisting units

At present, the Judiciary Committee of the National Assembly - Legislature XIII has 30 members, 09 of whom are full-time members working at the central level (in the Standing Board of the Judiciary Committee), the rest work at local agencies. To organize a Committee's plenary session to evaluate reports of relevant agencies in accordance with law and the Operational Regulation of the Judiciary Committee, it requires the presence of at least a half of the total members at the session. However, in some plenary sessions, the presence requirement is not met; in some circumstances, some part-time members working at local agencies avoid imposing questions on and filing petitions with agencies who are subject to the oversight. Therefore, there should be regulations and penalties imposing on part-time members of the Committee working at local agencies in order to guarantee their performance (Under the Law on Organization of the National Assembly, a delegate of the National Assembly shall spend at least one-third of their work time on performing delegate's duties) and to highlight the role of the National Assembly delegates as persons representing the will and expectation of constituents and of all the people in the country as a whole.

In addition, the structure of the Judiciary Department, subordinate unit serving as direct assistant to the Judiciary Committee, should be strengthened; the professional skill of the Department's staff should be further enhanced so that the Judiciary Department can conduct more in-depth study of judiciary activities. At the same time, independent experts and researchers should be employed to give their comments on draft laws, ordinances and resolutions that are subject to the oversight or review of the Judiciary Committee.

Reference can be made to several legal design options of the structural organization of the Parliament around the world, whereby each full-time delegate has 1-2 assistants who are qualified and experienced with regard to the oversight field.

2.3. Renovation of methods of performing oversight duties

To guarantee and improve efficiency of the oversight of the Judiciary Committee, the following methods are recommended:

2.3.1. To apply systematically all 5 methods alongside so that they are supplementary to one another. As for each method, there should be suitable way of performance to bring out its best, that is:

- As for subject-matter-based oversight

+ *Content:* Selected issues should be expected by the constituents, and of public concern; specific enough to be adequately analyzed so that both subjective and objective causes are identified. A specific case might be chosen to be subject to the oversight, for instance, the substitute of temporary detention as for a certain number of

crimes where temporary detention is not really necessary where it is a crime of little seriousness or there is clear personal record...

+ *Component of the oversight team:* Emphasis should be put on the standards applied to the members of the oversight team whereby they should be specialists, researchers who participate right at the beginning stage of the oversight and get access to files and reports since early. Team meetings should also be held right after the content of the oversight is decided.

+ *Oversight conclusion:* if there is no post-oversight team meeting, post-oversight report should be sent to the members of the oversight team for further comments. After the issuance of post-oversight report, there should be allocation of duties to each work group in terms of following up the compliance with the oversight conclusion. One who is assigned with such follow-up duty should have an detailed plan of action and report on the progress to the Judiciary Committee. Based on the content and characteristics of the oversight, there should be a timeline of follow-up. If necessary, there might be supplementary oversight or re-oversight. The procedure to conduct supplementary oversight or re-oversight basically stays the same.

- *As for review of legal normative documents:* the Committee can organize a subject-matter-based oversight following the above-mentioned procedure on this subject or asks state agencies in charge to submit periodical reports to the Committee; request for report whenever a new legal normative document is issued – after that, the Committee does some research in a specific time-frame to make an official conclusion on the legality and constitutionality of that document. More time and further effort should be spent on this method of oversight.

- *As for the evaluation on the Government and judicial agencies' reports:* request of in-time report should be made to reporting agencies so that members of the Committee have fair time to do their own research. If necessary, the Committee assigns members to double check the information. If possible, magnitude and time-frame of oversight can be extended (that is, half-year report can be used for another purpose of evaluation).

- *As for the handling of complaints and denunciations:* computer program supporting the management of complaints and denunciations should be upgraded. Reference can be made to European Court of Human Rights, whereby the oversight of a specific case leads to the oversight on a bigger scale or the oversight of specific cases results in the subject-matter-based oversight or request for report on issues of concern can be made to related state agencies. From such oversight, the Committee has more grounds to evaluate the implementation of laws in the sense that shortcomings and drawbacks in legal documents and of judicial agencies are timely identified, allowing timely solutions. This oversight tool should be also reformed to further promote

dialogues between the Standing Board of the Judiciary Committee and leaders of judicial agencies. In case where a consent on settlement of a specific complaint or denunciation is impossible, they are obliged to seek for instruction from higher competent authorities on such matter in order to avoid any wrong or unjust doings and not to let crimes go unpunished. At the same time, the handling of cases that are subject to the oversight should also be regularly followed up and monitored.

2.3.2. Enhancing the use of methods to request local agencies to report and provide information of their law compliance status, especially as for laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly; to monitor, review and self-evaluate their compliance of the Constitution, laws, ordinances and resolutions of the National Assembly and the Standing Committee of the National Assembly in areas where they operate.

2.3.3. Assisting the National Assembly delegations in performing their duties in the oversight, especially oversight over issues subject to the supreme oversight at the sessions of the National Assembly and issues subject to the oversight of the Ethnic Council and the Committees of the National Assembly.

2.3.4. Holding more hearings of the Judiciary Committee on issues relating to activities of judicial agencies; inviting provincial judicial agencies to make a report instead of organizing oversight teams to the local to save local authorities from being overwhelmed with oversight teams in a short span of time. On the one hand, the Judiciary Committee needs to select proper topics for the hearing (issues of public concern or issues falling under the scope of oversight of the Judiciary Committee or issues relating to the promulgation of normative legal documents) to provide opportunity for judicial agencies, both at central and local levels, to present reports… On the other hand, the hearing should be well-prepared (in terms of contents, expected questions, facilities, experts, witnesses, stakeholders...).

2.3.5. Improving the quality of post-oversight recommendations and proposals and enhancing the execution of such after the oversight. In case where any agency subject to the oversight fails to comply with the oversight conclusions, the Judiciary Committee needs to report to the Standing Committee of the National Assembly or the National Assembly to make an inquiry or ask for further report on such failures.

2.4. Guaranteeing conditions for the oversight

To improve the oversight capacity of the National Assembly in general and the Judiciary Committee in particular, it is necessary to strengthen the oversight over adjudication. Therefore, it requires sufficient conditions and resources, such as financial, human, facility, and sufficient information relating to those who are subject to the oversight and oversight subject-matter. In particular:

2.4.1. Guarantee of information

Promulgating consistent laws and regulations on statistics in the judicial field which comprehensively govern criteria in terms of contents and time-frames for the preparation of reports and tables of figures; classify types of information as confidential and non-confidential; identify the responsibility of judicial agencies in submitting sufficient documents (reports and supplementary documents) to delegates of the National Assembly in due course in accordance with the Law on the Promulgation of Legal Documents. By doing so, delegates of the National Assembly should have full access to any information. Reference can be made to the system of standards based on which evaluation of the state agencies' performance is made.

Guaranteeing the right of the delegates of the National Assembly to be provided with information from relevant agencies at delegates' request. The Committee's members may collect information from different sources: constituents, advisory bodies of the National Assembly, such the Departments under the Office of the National Assembly, or Offices of the National Assembly delegations; from the Government; experts, researchers, universities; associations, enterprises; press agencies... Each source of information has its own advantages and disadvantages. An efficient mechanism in providing information is one that can collect all the needed information, including information from independent experts. All sources of information must be processed and prove to be reliable.

Information exchange between the Judiciary Committee and judicial agencies should be enhanced to overcome the delay in submission of reports, which then results in belated provision of information to the delegates of the National Assembly to serve the evaluation of annual reports.

2.4.2. Guaranteeing an adequate number of supporting and assisting units

Since a majority of the Committee's members are part-time MPs, there should be supporting and assisting units to ease the burden on the delegates and to save time for the delegates. Therefore, it is necessary to increase the number of staffs and units that provide support and assistance to delegates in the way that each full-time delegate will be provided with an expert to assist him/her in terms of professional aspect; attention should be paid to the improvement of qualifications and knowledge of experts working in the Office of the National Assembly and of the National Assembly delegations; opinions from experts in independent institutions or organizations should be referred. Supporting units should be established in the Departments which assist the Ethnic Council and Committees of the National Assembly as well as Offices of the National Assembly delegations. Especially, there should be sufficient number of qualified and capable personnel in the Office of the National Assembly to serve the oversight of the National Assembly and the Standing Committee of the National

Assembly, with a focus on the direction and co-ordination in oversight activities conducted by the National Assembly's bodies and other related activities.

To guarantee efficiency of the oversight of the Standing Committee of the National Assembly, the role and position of the Judiciary Department - the advisory agency, should be strengthened further. In the short term, the Judiciary Department needs to have its personnel and organizational structure further enhanced in the way that specialized sub-units are established in the Department, and heads of such sub-units should be titled to have adequate status when working with local government bodies and relevant agencies.

2.4.3. Adequate funding

There should be further study on the formulation of financial regime for the oversight of the National Assembly, its agencies, the National Assembly delegations and delegates of the National Assembly. The financial regime should be in conformity with expense rates set for the National Assembly's activities; fully cover, among others, expenses for recruiting experts by delegates of the National Assembly to serve the legislative making and oversight activities.

The Judiciary Committee needs to take a more proactive role in spending on its activities on the basis of the balance between regular spending and unexpected spending. Additionally, its spending must be within the annual state budget allocated to the Standing Committee of the National Assembly.

2.4.4. Guaranteeing efficient usage of oversight tools

In 2011, the Judiciary Committee had several meetings with the Ministry of Public Security, the Supreme People’s Court, the Supreme People’s Procuracy, the Governmental Inspectorate and the State Auditor to discuss collaboration in information exchange between the Committee and those agencies. Afterwards, the Judiciary Committee finds it necessary to draft and enact Operational Regulations on the collaboration between the Judiciary Committee and the Ministry of Public Security, the Supreme People’s Court, the Supreme People’s Procuracy, the Governmental Inspectorate, the State Auditor and other relevant agencies to heighten their responsibility in the course of the oversight of the Judiciary Committee; to avoid the tendency of the Committee in some sense doing certain tasks which should have been done by judicial agencies.

Responsibility of press agencies, the Fatherland Front Committee and constituents to regularly take part in the oversight of the National Assembly should be further heightened.

2.5. Other recommendations and solutions

The Judiciary Committee may conduct research, publish reference and training

materials on training on oversight skills to improve the skills of the delegates of the National Assembly. The National Assembly delegates' self-training and self-learning should be also encouraged.

Regulations for hiring, recruiting and co-operating with experts to collect information and gather experiences relating to the oversight subject-matter; regulations on the information provision and guarantee of quality of information should be developed to meet with requirements of oversight activities of the Committee's members.

2.6. International co-operation

External relations and international co-operation between the Judiciary Committee and corresponding agencies of foreign Parliaments or National Assemblies should be strengthened to help boost mutual understanding through, among others, organizing study tours to accumulate appropriate experience in the context of international integration.

CONCLUSION

Oversight of is one of three core functions and duties of the National Assembly in general and of the Judiciary Committee in particular. The Judiciary Committee's oversight has so far made a number of achievement, making significant contribution to guarantee the proper compliance with the Constitution and laws in the field of judicial activities and anti-corruption. Through oversight, the Judiciary Committee has gathered helpful information based on which other functions of the Committee are exercised fruitfully, especially in terms of participating in making macro policy in terms of judicial activities and anti-corruption; contributing to improve the pracilitcality and efficiency of the judicial activities and the prevention and fight against corruption.

This Research Report has fundamentally assessed and fully covered the current state of the Judiciary Committee's oversight for the past years on investigation, prosecution, adjudication, court judgment enforcement/execution, judicial assistance and anti-corruption on the basis of theoretical research on the structural organization of the State, the National Assembly as well as on the oversight of representative state agencies; analysis of the Judiciary Committee's activities in practice and comments of the Judiciary Committee's members, especially of the Standing Board of the Committee, delegates and both foreign and national experts joining the Conference to discuss and collect comments on the draft report from December 10th-11th 2012 in Hai Phong city.

From above-mentioned research result and comments along with reference to Belarusian experience (as presented at the Conference), further comments of UNDP experts and UNDP research on "Court Management in Vietnam: information and proposals from survey on judges nationwide", Research Team has completed the Report. In this Report, Research Team has proposed logic, practical solutions to the Judiciary Committee and related state agencies in an attempt to improve the efficiency of the Committee's oversight, contributing to guarantee the Socialist Rule-of-Law and legitimate interest of citizens.