

# CIVIL EXECUTION IN VIETNAM (1): FROM THE STAGES OF DEVELOPMENT TO THE CURRENT “FROZEN” STATE

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## 1. Introduction

Civil execution in Vietnam, like elsewhere in the world,<sup>(1)</sup> has been gained very little legal research interests. This does not, however, mean civil execution in Vietnam is not important. In contrast, as the “process of obtaining a judgment is only a stepping stone to the ultimate achievement of justice”,<sup>(2)</sup> or the “success in court without an effective system of enforcement is only a pyrrhic victory”,<sup>(3)</sup> civil execution is a mean to bring justice into reality, therefore, is an important legal instrument. The importance of Vietnamese system derives especially from its only duty to enforce various kinds of judgments rendered by different courts. This is the mechanism to practically and timely recover the damaged rights of individuals, agencies and the state; otherwise, justice can be seen only in the papers-judgments. It is also and therefore a mechanism to assure the dignity of the court and gain public confidence in the judicial system. Thus, the concept of civil execution in Vietnam is important not only for protecting the civil rights of people and developing the economy, but also for realizing the policy and power of the state. Unfortunately, current system has yet to satisfy all the desires of the government and populace.

This article is to analyze the stages of development of civil execution in Vietnam, including the reform in 1993 to see how the current system is build to fulfill the above mentioned tasks and whether the taken reforms are sufficient. It also takes a closer look, through

the statistics, at the reality to discuss the question of effectiveness of current civil execution in Vietnam.

## **2. Civil execution in Vietnam: main features before the reform in 1993**

Since the year 1993 was marked as a biggest landmark for civil execution in Vietnam, its study should be carried out separately, and since 1945 was the year of foundation of the new political regime, which had strong impact on the developments of civil execution system, the history of civil execution can be divided into two: the period before 1945 and from 1945 to 1993.

### **2.1 The period before 1945**

The very first sign of debt collection in Vietnam can be traced back hundreds years ago. During this nascent stage of legal science, when there was no separation of civil or criminal laws, nor civil or criminal procedures, it was natural that no concretely specified procedure for execution, regardless of criminal or civil case, existed. The local governments were empowered of not only carrying out administrative matters but also hearing the disputes and executing judgments. There were only few provisions that mentioned the main principle on how debts between individuals should be collected.<sup>(4)</sup>

In the several decades after 1858, due to the situation of being a colony for nearly one hundred years, the judicial system of Vietnam gradually obtained some new features of the French model. Besides the French Code of Civil Procedure of 1806, Vietnamese Civil Codes, enacted separately in North, Central and South of Vietnam by the General Governor of Indochina, bearing the impact of the French Civil Code of 1806, included only a few but fundamental principles concerning the debts collection.<sup>(5)</sup> The clearest stamp of the French model in Vietnamese civil execution system was the introduction of institution of *Thua Phat Lai*.<sup>(6)</sup> This position with duties of enforcing civil judgments and delivering court documents for commission was

basically applied to big cities in Vietnam. In rural areas, local governments conducted civil execution as a part of their duties.<sup>(7)</sup> As in the previous period, the legal relationships in society were still quite simple, the importance of civil execution, therefore, was not clear.

## 2.2 Period of applying the old laws

Gaining the independence in 1945, the young Democratic Republic of Vietnam soon made an attempt to build its own state machinery. While the establishment of new agencies of the government was completed in a short time, the drafting of the new legal documents was not. Due to the lack of ability to build at once a new legal system, especially new laws, the government decided to apply legal documents of the previous regime with a condition that they would not be contrary to its basic principles.<sup>(8)</sup> That is to say, they should be in conformity with the ideas of a new democratic republic that wished to bring democratic rights for its people. As a result, while the French Code of Civil Procedure was no more effective in Vietnam, other codes and decrees promulgated under former regime were continued to be in force.<sup>(9)</sup> Among the judicial system, the work of civil execution maintained the longest in term of time and the deepest in term of characteristics the influence of French model. This is especially true in case of the South of Vietnam, where *Thua Phat Lai* institution maintained its existence for nearly thirty years more until the unification of Vietnam in 1975. In the North, in some locations, the *Thua Phat Lai* continued their duties. In locations, where such a position was not available, the commune committee,<sup>(10)</sup> specifically the chief, vice chief and secretary,<sup>(11)</sup> was in charge of enforcing court judgments. The ratio of civil execution was still very limited, while the criminal execution was considered more important as the main task of the new government was to struggle with its external as well as internal enemies.

## 2.3 Period of assigning civil execution to judges

The year 1950 was marked by a strong effort of the young republic

to totally put an end to the old and dual system, as well as to strengthen the position of the court. The basic changes were that the duties of *Thua Phat Lai* (and commune committee) in civil execution in the North of Vietnam had been transferred to judges at district courts.<sup>(12)</sup> The assignment to a judge the competence to enforce all the judgments rendered by district courts as well as superior courts can be seen as the desire to ensure the enforceability and compulsoriness of the court judgments. The most noticeable feature of this period is that the state started to take responsibility to automatically initiate civil execution without a need of a petition by a creditor. The role of local government in assisting civil execution was also maintained. These laid down the formations of, on one hand, a habit of creditors (and general people) to rely heavily on the state, that is to say, to think any service organized by state should be free of charge, on the other hand, a practice of civil execution to wait for or be dependent on assistance from local authorities.

#### **2.4 Period of first attempt to specialize civil execution work**

The legislators soon realized that the dual position of a judge affected heavily the efficiency of both trial and execution. As a result of one more effort to improve the situation, the function of carrying out civil execution was changed<sup>(13)</sup> from the judges to a group of enforcement staffs<sup>(14)</sup> in the local courts, whose the only duty was to execute judgments. Thus, it was the first attempt of legislation to specialize the civil execution work. This system was attached to the court system and had lasted for more than 30 years until reformed in 1993. In addition, to ensure the legality in civil execution, this work was subject to supervision by people's procuracy.<sup>(15)</sup>

In 1979, a set of provisional rules for civil execution procedure was also issued to guide the executors in their work.<sup>(16)</sup> This is the first time the procedure for civil execution were drafted and regulated separately from other legal issues. It is an indication that the civil execution gained more attention from the government. Further, though the independence of the executor was recognized, the role of local government in coordinating civil execution activities continued to

be emphasized.<sup>(17)</sup>

In 1981, the function of management over local courts (including civil execution) was transferred from the Supreme Court to the Ministry of Justice.<sup>(18)</sup> This big change is said aimed to avoid the possible unfairness within the judiciary. The fact that the local courts were subject to management by the Supreme Court not only in terms of professional but also material and personnel matters may cause the doubt of the populace that it may easily lead to the infringement of the principle "independence of adjudication". What concerned the management over civil execution by the Ministry of Justice (and the Supreme Court in the previous period), however, was that it was still limited with general management. The actual role was that of the locality. The local governments played an important role in providing material benefits for, as well as, managing the staffs of the local courts. The chief judge at the local courts was responsible, as before, for management over, instruction to and organization of the civil execution work. Within each provincial court there had been established an execution division to assist the chief judge in managing the civil execution in the locality.<sup>(19)</sup>

It can be said that, up to the second half of 1980's, the primary attention of the state was focused on recovery of the economy that suffered from the long war history, not yet for strengthening of the judicial system. Since 1986, when the open door policy was first initiated in Vietnam, in order to attract foreign direct investment, more attention was paid to a commitment to build a transparent legal system, efficient institutions, and clear procedures for the protection of civil rights. As a result, among other things, civil execution got one more big improvement in 1989. It was marked by the first ever-adopted high effect legal document in civil execution history-the Ordinance on Civil Execution.<sup>(20)</sup> For concrete implementation of the Ordinance, inter-ministries also issued some necessary circulars.<sup>(21)</sup> The Rules on Executors regulating the duties and competence of executors, were also enacted.<sup>(22)</sup>

By the enactment of the Ordinance 1989, it was the first time the status of executor as the only person assigned by the state the power

to execute court judgments was officially recognized.<sup>(23)</sup> Similarly, for the first time, the free will of parties, which is the famous character of litigation, was introduced into civil execution.<sup>(24)</sup> It recognized, for example, the right of a creditor to petition or not to petition, the right of both parties to negotiate the concrete method or specific time for enforcement of a particular judgment. Nevertheless, the Ordinance 1989 still maintained the active role of the state in civil execution, that is to say, the commencement of enforcement of some judgments was done by an initiative of a chief judge, not by a petition of a creditor.<sup>(25)</sup>

### **3. Civil execution system: The needs of a fundamental reform in 1993**

The 1992 Constitution of the renovation period laid down basic principles for reform of state agencies in general and judicial agencies in particular. The long time practice of electing judges by the same level of local people councils as well as material funding for court staffs through local governments had caused doubt among the public on the independence of the judiciary. The court's dual function of adjudication and civil execution also had affected the efficiency of both. As the civil execution belonged to the court, all the important questions of personnel of execution staff and their appointment were of the discretion of the chief judge of the provincial court.<sup>(26)</sup> In operation, the executor was required to obey strictly the instructions of the chief judge of the respective court. Even the powers to issue necessary orders concerning civil execution also were those of the chief judge.<sup>(27)</sup> With this position, on one hand, the executor, though was recognized as independent, was seen in fact as no more than an assistant to the court, on the other hand, the overall effectiveness of civil execution in each locality depended heavily on the attention of a particular chief judge. Due to the backlog of hearing, the first concern of the chief judge was paid for adjudication and court management works rather than organization of civil execution.

Similarly, as hearing was considered much more important than civil execution, potential candidates among court staff often were likely to be appointed as judges, not as executors.<sup>(28)</sup>

As a result, civil execution was left behind and had been strongly criticized by the populace. The critical picture of 1992 was that, only 28% of court judgments had been successfully enforced.<sup>(29)</sup> “Many effective judgments and decisions have not been seriously enforced. Ineffectiveness of enforcement of court judgments had undermined the reputation of the law and court, affected heavily the social order and civil rights of organization and citizen, and caused the reaction and doubt of public in justice”.<sup>(30)</sup>

Once again, the question of efficiency of civil execution became a topic of intensive discussion among legal professionals and policymakers. Unreasonableness in organization of court functions was considered as the main cause of inefficiency in civil execution. Eventually, 1993 was marked by the decision of National Assembly,<sup>(31)</sup> which gave birth to a separate system of civil execution agencies.

#### **4. Reform in 1993: a big effort to improve the civil execution in Vietnam**

The reform in 1993 was fundamental, for at least three reasons. First, it created for the first time a separate system of state agencies for civil execution and a system of agencies for management over their operation. Second, it improved not only the quantity but also the quality of executors. Lastly, it led to enactment of the new ordinance on civil execution.

##### **4.1 A creation of a separate system of civil execution agencies and agencies for management over civil execution operation**

By the reform in 1993, civil execution has been established as a separate system pursuant to administrative structure.<sup>(32)</sup> A civil execution agency, having a status of legal entity and using a seal with the national emblem is organized at two levels, provincial and

district.<sup>(33)</sup> Currently, there are a total of 61 civil execution agencies at the provincial level and 628 at the district level.<sup>(34)</sup> This is clear evidence of how important the civil execution has developed at this stage for Vietnam and is of a truly big effort by the Vietnamese government to give preference to civil execution.

The management work over civil execution nationwide has been assigned to the General Department for Management of Civil Execution.<sup>(35)</sup> The same task at locality is vested to the Departments of Justice at provincial and district level.<sup>(36)</sup>

The most noticeable feature is that, from now on, financial service for the civil execution system is provided from the central budget,<sup>(37)</sup> avoiding the interference of local government on civil execution due to the dependence of the latter on budget provided by the former.

#### **4.2 A drastic improvement of the status, quality and quantity of executors**

At a civil execution agency, besides a certain number of executors, there are also other staffs whose work is to ensure a smooth operation of civil execution, such as researchers, assistants, accountants, and stenographers.

The total number of staffs working in civil execution agencies currently has largely increased by as much as triple compared with that of 1993. The number of executors has also increased by more than double. (See **Table I** below). On average, each civil execution agency at the provincial level has thirteen to fifteen staff members; at district level has four to six.<sup>(38)</sup>

The increase in human resources is due to, at least, to two facts. First, it is due to the enlargement of the competency of civil execution agencies in enforcing judgments rendered by newly established courts, including decisions on bankruptcy, and on recognition of foreign arbitration awards. The growing competency in civil execution has in this way meant the more judgments needed to be enforced, and this therefore required an increase in human resources.

Second, the number of judgments rendered by various courts has climbed every year. This tendency can be explained by process of



**Table I: Number of executors and execution staffs in Vietnam (1993 – 2002)**

Year	Total number	Among them, the number of executors
1993	1,126	700
1994	2,922	1,336
1995	3,330	1,418
1996	3,440	1,453
1997	3,796	1,582
1998	4,048	1,615
1999	4,229	1,684
2000	4,320	1,725
2001	4,212	1,778
2002	4,450	1,900

Sources: *Statistics Section, General Department for management of civil judgment execution, Ministry of Justice of Vietnam*

transformation from a central planed to a socialist-oriented market economy, characterized by enlargement of rights and freedom in all areas. In a situation as uneven between given rights and undeveloped system to ensure it's implementation, specifically, the lack of a clear legal system, an inefficient institutional mechanism, and a low level of legal consciousness of people, a boom of disputes and wrongdoing cannot be avoided. Only in the first six months of 2001, the number of judgments to be executed by civil execution reached 352,056, nearly the total number for the entire year of 1998.<sup>(39)</sup> This tendency requires an increase in human resources to cope with the changing situation.<sup>(40)</sup>

The executor in Vietnam has the status of civil servant, receiving a salary from the state budget. The appointment, exemption and dismissal of executors and chief executors, including executors at district level, which was at discretion of the chief of each provincial justice department,<sup>(41)</sup> became the competency of the Minister of Justice.<sup>(42)</sup> This is another attempt to avoid dependency of the executor on the local government.

Unlike before 1993, when it might have been the case that a person worked as a staff in the court for one or two years, they might be

appointed as an executor, regardless of having had any legal background. Similarly, a person could have been appointed as an executor first and then obtained the necessary decree.<sup>(43)</sup> Under the new system, an emphasis is paid for the improvement of the quality of executor.<sup>(44)</sup> The executor must have in advance certain level of legal knowledge and must be trained in the professional skills. In order to operate civil execution smoothly, executors are expected to master well not only the Ordinance on Civil Execution, but also other related laws.

To be an executor, an applicant should meet four general requirements as below: 1) being a Vietnamese citizen, 2) being faithful to the homeland, honest, impartial, and having good moral qualities, 3) having the necessary legal knowledge and 4) having good health.<sup>(45)</sup> Besides these general requirements, there are more concrete requirements concerning the legal knowledge for a person to be appointed to the position of an executor or a chief executor at both the provincial level and district level. An executor at the provincial agency<sup>(46)</sup> is supposed to have more experience, and be more qualified than an executor at the district level.<sup>(47)</sup> Similarly, the requirements for an applicant to the post of a chief executor at district level and provincial level are also different. The above requirements meant that the reform in 1993 saw in structure the cause of the problems and therefore, set stricter requirements to improve the quality of the executors. As a result, the number with a bachelor degree or higher drastically increased among civil execution staff from 1,625 in 1997, and to the present number of 2,817.<sup>(48)</sup>

The position of executor continued to be strengthened. The competency of the chief judge in civil execution, which was set forth in Ordinance 1989, was transferred to the chief executor.<sup>(49)</sup> From now on, only the executor has the competency to have the compulsory power of the state to enforce court judgments and decisions. In affecting duties, the executor shall obey the law and be protected by law.<sup>(50)</sup> It can be said that, the executor has gained a relatively higher independence than it did in the past.

### **4.3 The Ordinance on Civil Execution as a basis for civil execution work in Vietnam**

The other important change that the reform in 1993 brought in was the enactment of the Ordinance on Civil Execution. This Ordinance prescribes the procedure for civil execution, which is basically similar to that of the other countries. Nevertheless, some important features of civil execution in Vietnam that are in more or lesser degree different from many other systems can be figured out.

First, only judgments and decisions of the courts are subject to civil execution. According to Ordinance 1993, these are judgments and decisions on civil cases, on marriage, family and labor matters as well as judgments and decisions rendered by criminal court on property, including fines, and other judgments or decisions provided for by law.<sup>(51)</sup> Recently, with the promulgation of some new legal documents, civil execution is no longer limited by this provision, but expanded to judgments on bankruptcy,<sup>(52)</sup> administrative,<sup>(53)</sup> and economic disputes,<sup>(54)</sup> judgments of foreign court,<sup>(55)</sup> and awards of foreign arbitration<sup>(56)</sup> recognized by the Vietnamese court.

Generally, judgments should be final to be executed by civil execution procedure. However, Vietnamese law, as an exception, also provides for some kinds of judgments, for which appeals still available can be enforced by civil execution.<sup>(57)</sup>

Second, the voluntary enforcement by a debtor is strongly encouraged by Vietnamese law.<sup>(58)</sup> Notwithstanding the period before a petition, when a creditor shall request directly to a debtor to voluntarily comply with judgment, if the party fails to do so, compulsory execution still can not applied right after issuance of enforcement order unless a period at most of thirty days for voluntary execution has expired. This principle gradually becomes the main principle of carrying out civil execution in Vietnam,<sup>(59)</sup> though the efficiency of its application should be subject to an intensive discussion.

Third, as the role of the state is emphasized, the property of the state is highly protected. One can easily notice this point by observing the procedure when the state acts either in the role of a creditor or

a debtor. In Vietnam, civil execution can be commenced only by issuance of enforcement order, which is based on either a motion of the creditor (execution by motion)<sup>(60)</sup> or on an initiative of the execution agency itself when the law so prescribes (execution by initiative of execution agency).<sup>(61)</sup> It is required by the Ordinance 1993 that the civil execution agency has the duty to initiate compulsory execution of the judgments, which are in favor of the state. Nevertheless, it is very rare to find in Ordinance 1993 a clear procedure for compulsorily enforcing a judgment when the state or a state agency acts in the position of a debtor.

Fourth, in the process of distribution of proceeds, the principle of priority closely relates to social policy is applied. In case proceeds are not sufficient to satisfy all the demands of all creditors, the allocation shall be based on the priority orders according to the nature of the payments, which reflect the humanitarian principle of a socialist society. Aliment, compensation for loss of life, health, payment of salary and the like in character are in the first three orders of priority.<sup>(62)</sup>

Lastly, there is not much relation between the court and the civil execution agency in organization and operation of civil execution. The executor is the sole person granted the power of executing court judgments. The judge or the court rendered the judgment or the court which has the same jurisdiction with a civil execution agency has no power to instruct civil execution operation. All the questions related to civil execution, including the claims on illegal civil execution acts, are generally solved by the administrative method. The court shall only act as the court of first instance in some cases. They are the cases, when a suit is initiated by a third party claiming the ownership on the attached property.<sup>(63)</sup> Or, a suit that is initiated by a party claims for compensation for damage caused, for instance, by a civil servant (civil execution agency, executor) to citizen, when the law so allows. That is to say, the claim first should have been gone through the administrative method before having taken to the court.

#### 4.4 The improvement of the efficiency of operation of civil execution agency

So, how much does the reform in 1993 satisfy the expectation of the government and the public in the improvement of civil execution? Since 1994, the ratio of successfully enforced judgments in relation to enforceable judgments has passed the 80% mark.<sup>(64)</sup> (See **Table II** below).<sup>(65)</sup>

Especially in the years 1997 – 1999, the success rate was marked with the highest ratio, over 90%, and the year 1997 even reached 94%. Compared to 1993, the rate of successful enforcement in 1999 was more than double. Thus, this picture exhibits that with the creation of a new mechanism, the overall efficiency of civil execution has improved.

**Table II: Rate of successfully enforced judgments in relation to enforceable judgments (1992 – 2002)**

<b>Year</b>	<b><i>Number of enforceable judgments</i></b>	<b><i>Number of judgments successfully enforced</i></b>	<b><i>Rate</i></b>
1992	154,398	42,744	28%
1993	129,646	48,742	38%
1994	106,027	85,148	80%
1995	174,306	149,206	86%
1996	175,624	150,428	86 %
1997	193,438	181,269	94%
1998	266,957	244,955	92%
1999	277,061	248,886	90%
2000	283,774	252,699	89%
Jan.-July 2001	200,607	169,287	84%
2002	276,749	160,061	58%

Sources: *Statistics Section, General Department for management of civil judgment execution, Ministry of Justice of Vietnam*

## **5. Unenforceable and unsuccessfully enforced judgments: a look at reality of “frozen” state of civil execution in Vietnam**

As above presented, currently there have been in Vietnam 61 at the provincial and 628 at district level civil execution agencies as a separate and comprehensive system with 1,900 executors. With such a comprehensive system, one might expect that the rights of creditors would be much easier, quicker, and better protected. Unfortunately, it is not always so.

The rate of successfully enforced judgments in relation to the number of enforceable judgments nationwide has gradually declined since 1998. The highest rate in 1997 was 94%, but declined to 84% in 2001, and even to 58% in 2002 (*See Table II* above).

The reasons why not all enforceable judgments were successfully enforced can be explained, for example, due to a lack of a procedure for realizing a debtor's property in the form of property-related rights, failure of auction of property, claims of ownership on attached property, or there remains a difference on opinions of various related agencies and so forth.<sup>(66)</sup> All possible ways of intervention by those who have interests in civil execution also might explain why judgments to be delayed.<sup>(67)</sup> All these reasons, among others, cause the delay or inefficiency of a successful civil execution.

The rate of unenforceable judgments has also gradually increased in recent years. Since 1994, approximately one third of the annually rendered judgments are for one reason or another, unenforceable. For the first six months of 2001, the rate of unenforceable judgments rose to 43%; nearly half of the rendered judgments. (*See Table III* below). That is to say, nearly half of the creditors, though having in hand a promise of the judiciary to protect their rights, are hopeless to see them practically recovered by the state power.

Two reasons can be discovered to explain why judgments are unenforceable. First, approximately 60% of the unenforceable judgments are reported as due to the lack of assets.<sup>(68)</sup> It includes the case a debtor actually has no assets for enforcement, which means nothing

**Table III: The rate of unenforceable judgments (1993 – 2002)**

<b>Year</b>	<b>Number of judgments to be executed</b>	<b>Number of unenforceable judgments</b>	<b>Rate</b>
1993	139,398	9,752	7%
1994	181,613	75,786	42%
1995	217,877	43,571	20%
1996	230,891	55,267	24%
1997	253,992	60,554	24%
1998	361,962	95,005	26%
1999	405,082	128,021	32%
2000	426,667	142,893	34%
Jan.-Jun.2001	352,056	150,475	43%
2002	450,971	173,078	38%

Sources: *Statistics Section, General Department for management of civil judgment execution, Ministry of Justice of Vietnam*

can be done except to wait with a hope that the debtor shall have a brighter future. It is also true that there are some inherently unenforceable judgments at the time of their issuance by the courts.<sup>(69)</sup> However, it also may be the case that the debtor in fact has assets but by various ways has successfully conveyed or hidden them from compulsory execution. Here, the law needs to have more muscles to deal with stubborn debtors. Second, the knowledge of the whereabouts of the debtor is also a reason for judgments to be unsuccessfully enforced.<sup>(70)</sup> These judgments can only be enforceable if information on the assets or whereabouts of the debtor becomes available and sufficient to locate.

The study of the statistics of the total number of the judgments that to be enforced every year by civil execution agencies, and the rate of actually enforced judgments shows that the picture is really pessimistic.

Thus, the real picture that only 35% of judgments nationwide have been successfully enforced in 2002 indicates that two out of three winners in litigation become the losers in the stage of civil execution or only one third of the notion of violated civil rights has actually

been protected. A comparison of the success in 2001 and that in 1992 shows that there are only 20% difference in the success. The year 2002 was even worse with only 7%. (See **Table IV** below)

If we have a look at the rate of efficiency in particular locations, we will see even more critical reality. Taking Hai duong province as a typical example, it was learned that for the last six months of 2001, only 18% of judgments were successfully enforced.<sup>(71)</sup> Another example is Danang City with only 11.3% of judgments successfully enforced, and only 6.1% of the money successfully collected.<sup>(72)</sup>

Though it is unrealistic to expect all rendered judgments to be enforced quickly or completely, the awesomely low rate of successful enforcement recently does matter and becomes a big concern in Vietnamese society today.<sup>(73)</sup>

**Table IV: The rate of successfully enforced judgments in relation to the judgments to be enforced (1992 – 2002)**

<i>Year</i>	<i>Number of judgments to be executed</i>	<i>Number of judgments successfully enforced</i>	<i>Rate</i>
1992	154,398	42,744	28%
1993	139,398	48,742	35%
1994	181,613	85,148	47%
1995	217,877	149,206	68%
1996	230,891	150,428	65%
1997	253,992	181,269	81%
1998	361,962	244,955	68%
1999	405,082	248,886	61%
2000	426,667	252,699	59%
Jan.-Jun. 2001	352,056	169,287	48%
2002	450,971	160,061	35%

Sources: *Statistics Section, General Department for management of civil judgment execution, Ministry of Justice of Vietnam*



## 6. Sub-Conclusion

Civil execution was and is always at the center of attention for the Vietnamese government. All the efforts, mainly organizational, as above analyzed, have sought to improve the efficiency of civil execution. The most noticeable was the reform in 1993 that totally changed the structure of civil execution, which was lasted for a half of a century. The overall efficiency of civil execution in Vietnam has improved to a certain extent, though recently the rate of unenforceable and unsuccessfully enforced judgments has gradually increased to a critical level.

The development of the system over the last decade has demonstrated that the movement from bureaucracy policy to principle of rule of law in the market economy is not necessarily an easy and fast one. Sometimes, the discrepancy between the system that is hoped for and the system that is in existence is obvious. It is clear from the last fifty years of historical developments, as above discussed, many changes in organization, including the structural reform in 1993, though fundamental did not basically solve the problems of unenforceable and unsuccessfully enforced judgments or, in other words, inefficiency in civil execution. It was argued at the time of reform in 1993 that the system was ineffective due to the fact that civil execution was a part of the court's duties. So why is the current system, despite being a separate structure, still ineffective?

The paper has found that among the judgments, which were unenforceable or unsuccessfully enforced, many of them are due to the fact that the debtor's assets are not identified, or have not successfully converted into money due to various reasons, or have been successfully conveyed or hidden from compulsory execution or the whereabouts of debtors are not clear. This situation means the law is not strong enough to have violated civil rights recovered. If that, the truth is the structural reform alone cannot help. The reality demands us to rethink the way to look at the real roots of the problems, to carefully study the main cause of the situation and seriously reconsider the way to solve it for a better improvement.

## ENDNOTES

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- (1) See, for example, Brent Patrick, *Civil Practice: The Collection and Enforcement of Money Judgments in Tennessee*, 2 Tennessee Journals of Practice and Procedure 3, 3 (1998) (*hereafter* Brent Patrick) (pointing out that despite its importance to the Tennessee civil practitioner, this topic has not received much coverage); Jan Hoogmartens, *Taking and Enforcing Mortgages in China: A Lender's Perspectives*, 30 Hong Kong Law Journal 520, 531 n.72 (2000) (noticing that so far there is only little literature on enforcing civil judgments in China; most literature on mortgage does not cover this important questions at all); Ulla Jacobsson & Jack Jacob, TRENDS IN THE ENFORCEMENT OF NON-MONEY JUDGMENTS AND ORDERS, xi (1988) (stating that problems and questions concerning the enforcement only seem to have been discussed occasionally as the consequence of the proceduralist's tendency to pay attention to the trial only, and to consider questions concerning enforcement as being of less judicial interests).
- (2) John Gillespie, *Private Commercial Rights in Vietnam: A Comparative Analysis*, 30 Stanford Journal of International Law 325, 370 (1994).
- (3) Brent Patrick, *supra* note 1, at 3.
- (4) Quoc Trieu Hinh Luat [The Le Code] art. 591 (1483) (providing the sanction applied to creditors in case of self-taking debtor's assets excessive the debts without reporting to authority); Hoang Viet Luat Le [The Nguyen Code] art.134 (1815) (prohibiting creditors of self seizure of debtor's cattle or assets for collecting debts). More on these Codes, see Vu Thi Phung, LICH SU NHA NUOC VA PHAP LUAT VIETNAM [HISTORY OF STATE AND LAW OF VIETNAM], 90 – 106 (1997).
- (5) See, for example, Bac Ky Dan Luat [Civil Code of North] arts. 815 – 818 (1931) (stating that debtors shall give consent to or the court shall decide to convert the assets if debtors can not pay the debts); Hoang

- Viet Trung Ky Ho Luat [Civil Code of Central] art. 883 (1936) (providing the debtors shall liable for debt until it fully paid).
- (6) This word is in Vietnamese language. It is originated from and similar to the French word “Huissier”. For a detailed description of institution of Thua Phat Lai, *see* Nghi dinh cua Toan quyen Dong duong [Decree of the General Governor of Indochina], March 16, 1910.
  - (7) Nguyen Thanh Thuy, *Lich su hinh thanh va phat trien to chuc va hoat dong thi hanh an dan su tu nam 1945 den nay* [History and development of civil execution since 1945 to present] 3 (2000) (unpublished research paper) (on file with Nguyen Thanh Thuy) (*hereafter* Nguyen Thanh Thuy).
  - (8) Sac lenh so 47 cua Chu tich Chinh phu Lam thoi [Order No 47 of President of Interim Government], Oct. 10, 1945, arts.1, 12.
  - (9) *Id.* at art. 11. *See* also Sac lenh so 60 cua Chu tich Chinh phu Lam thoi [Order No 60 of President of Interim Government], Nov. 16, 1945, art.1 (amending the said Order).
  - (10) Sac lenh so 63-SL cua Chu tich Chinh phu Lam thoi [Order No 63-SL of President of Interim Government], Nov. 23, 1945, art. 74.
  - (11) Sac lenh so 130 cua Chu tich Chinh phu Vietnam dan chu Cong hoa [Order No 130 of President of Democratic Republic of Vietnam], July 19, 1946, art. 3.
  - (12) Sac lenh so 85 cua Chu tich nuoc Vietnam dan chu Cong hoa [Order No 85 of President of Democratic Republic of Vietnam], May 22, 1950, art. 19.
  - (13) Luat To chuc Toa an nhan dan [Law on Court Organization], July 14, 1960, art. 24.
  - (14) Since 1972, the enforcement staff got the official title as “executor”. *See* Quyet dinh so 186/TC cua Chanh an Toa an nhan dan toi cao ve to chuc, nhiem vu, quyen han cua Chap hanh vien [Order No 186/TC of Chief Justice on organization, duty and competency of executor], Oct. 13, 1972.
  - (15) Luat To chuc Vien Kiem sat nhan dan [Law on Procuracy Organization], July 15, 1960, art. 17 (d).
  - (16) Dieu le tam thoi ve cong tac thi hanh an cua Toa an nhan dan toi cao [Interim Rules of Supreme Court on Civil Execution], Oct. 23, 1979.
  - (17) Nguyen Thanh Thuy, *supra* note 7, at 8.
  - (18) *See* Luat to chuc Toa an nhan dan [Law on Court Organization], July 3, 1981, art.16; Nghi Dinh so 43-HDBT cua Hoi dong Bo trung ve

Chuc nang, Nhiem vu, Quyen han cua Bo Tu phap [Decree No 43-HDBT of the Council of Ministers on the functions, duties and powers of Ministry of Justice], Nov. 22, 1981 (providing that the Ministry of Justice responsible for management over local courts, including civil execution).

- (19) Thong Tu Lien nganh so 472 ve Quan ly cong tac Thi hanh an trong thoi ky truoc mat [Circular No 472 on the management over civil execution for present period], July 18, 1982 (*hereafter* Circular No 472). For management work over court system nationwide (including civil execution), within the Ministry of Justice, the Department for Management of Local Courts was established. The coordination in management over court system between the Ministry of Justice and the Supreme Court had been clearly specified by this Circular.
- (20) Ordinance on Civil Execution was enacted by the State Committee (now the Standing Committee) of National Assembly, Aug. 28, 1989 and became effective from Jan. 1, 1990. It consisted of 43 articles regulated both organizational matters and procedure for civil execution (*hereafter* Ordinance 1989).
- (21) *See* Thong Tu lien nganh so 05-89/TTLN cua Toa an nhan toi cao, Bo Tai chinh, Uy ban vat gia Nha nuoc huong dan thuc hien quy dinh cua Phap lenh Thi Hanh An Dan Su ve Hoi dong Dinh gia [Inter-ministerial Circular of Supreme Court, Ministry of Finance, State Pricing Council on implementing provisions of Ordinance on Civil Execution concerning the Appraisal Committee], Dec. 6, 1989; Thong Tu lien nganh so 06-89/TTLN cua Toa an nhan dan toi cao, Vien Kiem sat nhan dan toi cao, Bo Tu phap huong dan thuc hien mot so quy dinh cua Phap lenh thi hanh an dan su [Inter-ministerial Circular of Supreme Court, Supreme Procuracy, Ministry of Justice guidelineing of implementation of some provisions of Ordinance on Civil Execution], Dec. 7, 1989; Thong Tu lien nganh so 07-89/TTLN cua Toa an nhan dan toi cao, Bo Noi vu huong dan viec bao ve cuong che thi hanh an [Inter-ministerial Circular of Supreme Court, Ministry of Interior guidelineing the assistance for compulsory execution], Dec. 10, 1989.
- (22) Quy che Chap hanh vien [Rules on Executors] were promulgated on March 6, 1990 by the Decree No 48/HDBT of the Council of Ministers (*hereafter* Rules on Executors).
- (23) Ordinance 1989, *supra* note 20, at art. 9; Rules on Executors, *id.* at art. 1.

- (24) Ordinance 1989, *supra* note 20, at art.14.
- (25) *Id.* at art 15 (providing that the Chief Judge shall have judgments on return of property or recovery of damage caused to socialist property, fine, confiscation of assets, court fees and so on, or the judgments that have not yet effective but can be enforced immediately, such as judgments on payment of salary, reinstatement, or payment of alimony and so on enforced by initiative of him/herself).
- (26) *See* Thong Tu cua Bo Tu phap so 394/QLTA Huong dan thuc hien tieu chuan Chap hanh vien va bo nhiem Chap hanh vien, Chap hanh vien truong [Circular of Ministry of Justice No 394/QLTA guide-lining the implementation of requirements of an applicant of executor, the appointment of executor and chief executor], May 22, 1990, sec. II (2) ( providing that by a proposal of the district court's chief judge, a chief of a provincial justice department shall appoint executors at a district court, and by a proposal of the provincial court's chief judge, the Minister of Justice shall appoint a chief executor and executors of a provincial court; and by a proposal of the district court's chief judge and the chief of provincial justice department, a chief executor of a district court) (*hereafter* Circular No 394/QLTHA).
- (27) Ordinance 1989, *supra* note 20, at art. 4.
- (28) *See* Nguyen Thanh Thuy, *supra* note 7, at 8 – 10.
- (29) *See* Bao cao cua Chanh an Toa an nhan dan toi cao tai Ky hop thu 2 Quoc hoi Khoa IX ve cong tac xet xu va thi hanh an [Report of Chief Justice at the 2<sup>nd</sup> session of National Assembly IX on the adjudication and civil execution work], Dec. 1992.
- (30) Chi thi cua Thu tuong Chinh phu so 226/Ttg ve viec trien khai viec ban giao va tang cuong cong tac thi hanh an dan su [Directive of Prime Minister on the transfer and enhance the capacity of civil execution], June 2, 1993, at 1.
- (31) *See* Nghi quyet so 01/NQ-QH9 cua Quoc hoi nuoc Cong hoa Xa hoi chu nghia Vietnam Quy dinh mot so diem ve thi hanh Luat to chuc Toa an nhan dan [Resolution No 01/NQ-QH9 of National Assembly of Socialist Republic of Vietnam on some issues of implementation of Law on Court Organization], Oct.6, 1992 (requiring civil execution be transferred to Government in June 1993 as the latest)
- (32) Phap lenh Thi hanh an Dan su [Ordinance on Civil Execution], April 21, 1993, art. 17 (2). Ordinance on Civil Execution was enacted by the Standing Committee of National Assembly X on April 21, 1993 and

became effective from June 1, 1993 (*hereafter* Ordinance 1993).

- (33) Nghi dinh so 30/CP ve Co quan Quan ly thi hanh an, Co quan Thi hanh an va Chap hanh vien [Decree No 30/CP of Government on Civil execution management Agencies, Civil execution Agencies and Executors], art. 7 (*hereafter* Decree No 30/CP).
- (34) *See* Bao cao so 488/THA cua Bo tu phap ve cong tac thi hanh an dan su nam 2002 tai ky hop thu 2, quoc hoi XI ngay 12. 10. 2002 [Report of the Ministry of Justice on civil execution in 2002 to National Assembly XI, 2<sup>nd</sup> session], Oct. 12, 2002, at 1 (*hereafter* Report No 488/THA). There are still 3 districts, where civil execution agencies have not yet been established due to the disadvantageous geographical condition. Moreover, there are also other 9 civil execution agencies in the army to enforce the judgments rendered by military court system.
- (35) Decree No 30/CP, *supra* note 33, at art. 2 (1).
- (36) *Id.* at arts. 4 – 6.
- (37) *Id.* at art. 12.
- (38) Bao cao so 702/THA cua Bo tu phap ve cong tac thi hanh an dan tu nam 1998 den nam 2000 [Report No 702/THA on the civil execution from 1998 to 2000], Dec. 11, 2000 at 3 (*hereafter* Report No 702/THA).
- (39) *See* Bao cao so 602/TP-THA cua Bo tu phap ve cong tac thi hanh an [Report No 602/TP-THA of the Ministry of Justice on civil execution], Sep. 21, 2001, at 6. (*hereafter* Report No 602/TH-THA).
- (40) At present time, the amount of money that shall be enforced through civil execution is as much as equally ten percent of State budget, but affected by only 1900 executors. Therefore, more investment into civil execution should be considered. *See* Speech of Deputy Nguyen Van Nhuong, Discussion at National Assembly XI, session 2, Nov. 21, 2002, available online at <http://vnexpress.net/Vietnam/Phapluat/2002/11/3B9C2A07/> (last visited Nov. 22, 2002).
- (41) Circular No 394/QLTHA, *supra* note 26, at II (2).
- (42) Ordinance 1993, *supra* note 32, at art. 15.
- (43) Circular No 394/QLTHA, *supra* note 26, at II (2).
- (44) *See* Report No 602/TP-THA, *supra* note 39, at 2 (reporting that since 1997, annually approximately 150 executors have been re-trained). The attention is also paid for training for the staff going to be appointed as executors. In 2002, 150 staffs have undergone this kind of training. *See* Report No 448/THA, *supra* note 34, at 1.
- (45) Decree No 30/CP, *supra* note 33, at art. 13 (1).

- (46) *Id.* at art. 13 (3, c) (prescribing that to be an executor at the provincial level, a person must have been an executor at the district level for at least two years, or have the experience in the legal profession for at least three years).
- (47) *Id.* at art 13 (2) (providing that an applicant of an executor at the district level is required to have a bachelor degree of law or the equivalent, and to have attended the training course on the professional skills of civil execution).
- (48) Report No 602/TP-THA, *supra* note 39, at 2.
- (49) *See*, for example, Ordinance 1989, *supra* note 20, at arts. 4, 18 – 21; Ordinance 1993, *supra* note 32, at arts. 4, 24 – 27.
- (50) Ordinance 1993, *supra* note 32, at art. 12.
- (51) *Id.* at art 1.
- (52) Luật Pha San Doanh Nghiep [Law on Bankruptcy of Enterprises], Dec. 22, 1993, art. 42.
- (53) Pháp lệnh Thủ tục Giải quyết các Vụ án Hành chính [Ordinance on Litigation of Administrative Cases], May 21, 1996, art. 74.
- (54) Pháp lệnh Thủ tục Giải quyết các Vụ án Kinh tế [Ordinance on Litigation of Economic Cases], March 16, 1994, art. 88.
- (55) Pháp lệnh Công nhận và Thi hành Bản án, Quyết định của Tòa án Nước ngoài [Ordinance on Recognition and Enforcement of Judgments of Foreign Courts], April 17, 1993, art. 20 .
- (56) Pháp lệnh Công nhận và Thi hành Quyết định Của Trọng tài Nước ngoài [Ordinance on Recognition and Enforcement of Foreign Arbitration Awards], Sept. 14, 1995, art. 20.
- (57) Ordinance 1993, *supra* note 32, at art. 3 (2).
- (58) *Id.* at arts. 19, 22.
- (59) This principle recently is repeatedly confirmed by the Ministry of Justice. *See* Báo cáo số 782/THA về công tác thi hành án dân sự [Report No 782/THA on civil execution], Oct.16, 2000. (*hereafter* Report No 782/THA). It is also discussed by legal researchers. *See* Nguyen Thanh Thuy, *Dispute resolution and enforcement of economic judgments in Vietnam*, 23 (1996) (unpublished research paper) (on file with Nguyen Thanh Thuy)
- (60) Ordinance 1993, *supra* note 32, at art 19.
- (61) *Id.* at art. 20
- (62) *Id.* at art. 37.
- (63) *Id.* at art. 29 (1).

- (64) For the sake of statistics analyses, judgments are sorted by civil execution agencies into enforceable and unenforceable judgments. Judgments shall be deemed enforceable if assets of debtor have been discovered sufficient to satisfy the claims. Enforceable judgments are expected to be completely and successfully enforced. Judgments which have yet enforceable are those when the assets or the address of the debtors are not yet identified. Judgments which are unenforceable are those, for example, when the debtors have no assets for enforcing the judgments. Unsuccessfully enforced judgments are those, which due to this or that reason can not be enforced, though they are in the list of enforceable and they should be successfully enforced.
- (65) Due to the practice of data report at that time, that judgments were not sorted into enforceable and unenforceable, there was no relevant information on the number of enforceable judgments in 1992. Only the information on the total number of judgments that need to be enforced are available: 154,398 judgments.
- (66) See Report No 602/TP-THA, *supra* note 39, at 7 – 8.
- (67) This practice is noticed by foreign observers and has been strongly criticized, for instance, by Brian J.M Quinn. See Brian J.M. Quinn, *Legal reform and its context in Vietnam*, 15 Columbia Journal of Asian Law 219, 246 – 249 (2002).
- (68) Report No 702/THA, *supra* note 38, at 9.
- (69) Due to the need to struggle with increasing drug violations, the criminal policy became stricter and severer in terms of sanctions, including capital punishment, with a fine up to VND500,000,000. The economical situation of an accused often cannot afford this huge sum. The accused may be already executed, left no assets or insufficient assets for civil execution or may serve in prison for a long time without any remarkable income. For an understanding of current criminal policy on drugs abuse in Vietnam, see Bo luật Hình sự [Criminal Code], art. 193, 194, 197 (1999).
- (70) Report No 702/THA, *supra* note 38, at 9.
- (71) See PHÁP LUẬT [THE LAW], *Hai duong: So ket cong tac thi hanh an dan su 6 thang dau nam [Hai duong: Review of civil enforcement in the first 6 months]*, July 27, 2001, at 5.
- (72) See THANH NIÊN [THE YOUTH], *Da Nang: Hon 6000 an dan su chua duoc thi hanh [Danang: More than 6000 judgments have not yet enforced]*, July 14, 2002, available online at <http://vnexpress.net/Vietnam/>



Phap-luat/2002/07/3B9BE25A/ (last visited March. 14, 2003).

- (73) The President of Vietnam recently criticized that civil execution is now in the “frozen state”, that civil execution work is “extremely unusual”. *See* Speech of President of Vietnam at the Annual National Conference on Judicial works on January 7, 2003, available online at <http://www.vnn.vn/452/2003/1/1426/> (last visited February 18, 2003).