

BUILDING ELECTRONIC COURT IN VIETNAM: RECENT DEVELOPMENTS AND CHALLENGES

CONSTRUINDO TRIBUNAL ELETRÔNICO NO VIETNÃ: DESENVOLVIMENTOS E DESAFIOS RECENTES

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países introduzirem a transformação digital no setor judicial. Nos últimos anos, o Vietname também fez esforços significativos para reforçar a sua reforma judicial e construir tribunais eletrônicos para satisfazer a procura da era digital; no entanto, o resultado é modesto. Este artigo tem como objetivo rever e avaliar os recentes desenvolvimentos na construção de tribunais eletrônicos no Vietname, identificar deficiências e desafios que precisam de ser superados. A partir daí, o artigo faz recomendações para que o Vietnã obtenha maior sucesso na construção de tribunais eletrônicos e acompanhe outros países.

Palavras-chave: Justiça civil. Tribunal eletrônico. Transformação digital. Vietnã.

Abstract: Nowadays, building electronic court is a global trend in response to the Covid-19 pandemic and the need to tackle court delays. The Fourth Industrial Revolution has brought great opportunities for countries to introduce digital transformation into the judicial sector. In recent years, Vietnam has also made significant efforts to strengthen its judicial reform and build electronic court to meet the demand of the digital era; however, the result is modest. This article aims to review and evaluate the recent developments in building electronic court in Vietnam, identify shortcomings and challenges that need to be overcome. From there, the article makes recommendations for Vietnam to achieve greater success in building electronic courts and keep up with other countries.

Keywords: Civil justice. Electronic court. Digital transformation. Vietnam.

Resumo: Hoje em dia, a construção de tribunais eletrônicos é uma tendência global em resposta à pandemia de Covid-19 e à necessidade de combater os atrasos nos tribunais. A Quarta Revolução Industrial trouxe grandes oportunidades para os

1. Introduction

The digital age with the explosion of information and communication technology, artificial intelligence, big data, the Internet of things, cloud computing, and blockchain technology is transforming human life in all aspects, including the court system and litigation proceedings. Most civil justice systems in the world today are struggling with delays, excessively high costs, and inefficiency, which results in dissatisfaction of the public and fails to meet the increasing need for access to civil justice (Briggs, 2016, pp. 48-49). With the annual remarkable increase in the number of Internet users and smartphone users globally, the civil justice system must accommodate new demands so that people can access justice at any time and place of their choice. Therefore, courts of every country are urged to reform based on the utilization of modern technology. The justice system, like other institutions of the government and society, is gradually moving from a physical to a virtual or digital environment.

Vietnam is no exception. With the number of Internet users reaching 77.93 million out of nearly 100 million people as of January 2023 (Datareportal, 2023), Vietnam is currently among the 12 “biggest” countries in cyberspace (Statista, 2023). Vietnam’s digital economy contributes to 16.5% of national GDP (VnEconomy Electronic Magazine, 2023). Seizing opportunities brought by the Fourth Industrial Revolution, Vietnam has utilized digital technology to modernize its court system with a goal to complete the building of electronic court (e-court) by 2025 under its commitment with the Association of Southeast Asian Nations (ASEAN) members (Nguyen Hoa Binh, 2020). However, the journey is not smooth. Vietnam faces numerous challenges in building electronic court with respect to the legal framework, technological infrastructure, and human resources.

This article attempts to address the question: What are the recent developments and challenges faced by Vietnam in building electronic court and how to tackle these challenges? Taking Vietnam as a case study, this research will contribute to enriching the existing scholarship on the impact of technology on the court system, particularly on electronic courts.

2. Theoretical framework and literature review

E-court or online court is increasingly popular in the world today, especially in countries with advanced digital technology development. Over the last ten years, there has been significant literature studying the development of e-court and the application of digital technology in civil proceedings. E-court is typically understood as a model of court operation

in which courts will conduct proceedings with the support of information technology, such as in receiving the complaint, documents and evidence and holding online trials (Nguyen Thi Hong Nhung et al, 2021, p. 1733). According to Chief Justice Nguyen Hoa Binh of the Supreme People's Court of Vietnam, building an e-court system is a process of gradually moving the court operation from the real space to the digital space in which procedural activities and court governance are conducted through digital platforms (Nguyen Hoa Binh, 2022). Another meaning of e-court is a distinct type of court that fully operates in the digital space with all court proceedings and court activities taking place online through the court's platform. This model is seen in China with three online courts established in Hangzhou, Beijing, and Guangzhou in 2017 and 2018 (Guo, 2021, pp. 2-3). At these online courts, the entire civil process is conducted virtually, from case filing and case acceptance, service of documents, submission and exchange of evidence, to trial and enforcement of judgments (Guo, 2021, p. 2).

Several prominent research on e-court can be mentioned as follows: Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, 2019); Ethan Katsh and Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes* (Oxford University Press, 2017), Miklós Kengyel and Zoltán Nemessányi (eds), *Electronic Technology and Civil Procedure: New Paths to Justice from Around the World* (Springer, 2012); Amy Schmitz (2019), *Expanding Access to Remedies through E-Court Initiatives*, 67 Buffalo Law Review 89. In Vietnam, there has also been an increasing amount of research on electronic court and online trials, such as: Nguyen Hoa Binh, *Building the E-Court System to Step up Implementation of the Judicial Reform Strategy*. Vietnam Law Magazine (2022); Nguyen Bich Thao, *Civil procedure law policy meeting the demand of the Fourth Industrial Revolution* (National Political Publishing House, 2022); Nguyen Thi Hong Nhung et al, *E-Court in resolving civil cases - Foreign experiences and recommendations for Vietnam*, VNUHCM Journal of Economics, Business and Law (2021). These studies have explored different models of e-court in certain countries such as the United Kingdom (Susskind, 2019), the United States, China, Europe (Schmitz, 2019; Guo, 2021; Nguyen Bich Thao, 2022), and make recommendations for Vietnam. However, since e-court develops rapidly, the above-mentioned works are not up-to-date and have not provided an in-depth analysis on the latest developments of e-court in Vietnam during the last three years with both achievements and challenges. This paper fills in this gap and aims to address the research question stated in the Introduction.

3. Research design and methods

The author utilizes traditional doctrinal legal research to achieve the goal of the research. Based on the analysis of primary sources such as Vietnam's legislation and regulations, statistical data officially released by the Supreme People's Court of Vietnam on the court system's performance annually, and reliable secondary sources published in English and Vietnamese, the author examines and evaluates the initial achievements of e-court in Vietnam as well as the difficulties and challenges. From there, the authors make recommendations for Vietnam to boost its construction of e-court.

4. Results

The research reveals the recent developments and challenges in building e-court in Vietnam as follows:

4.1. Recent Developments of Building E-court in Vietnam

Improved Policies and Law Setting the Political and Legal Foundation for E-court

During the last thirty-eight years, the transition of Vietnam from a command economy into a market-based economy and the implementation of the open-door policy has transformed the Vietnamese legal system, including the court system towards the direction of judicial reform and building a socialist rule of law state in Vietnam. Judicial reform is a major policy of the Communist Party of Vietnam since the beginning of the "Doi Moi" (Renovation) period in 1986. At the beginning of the 21st century, the Communist Party has issued a number of important resolutions on judicial reform and improvement of Vietnam's legal system, including Resolution 08-NQ/TW (2002) of the Politburo on "Some key tasks of judicial work in the coming time", Resolution 48-NQ-TW (2005) of the Politburo on the Strategy for building and perfecting the legal system of Vietnam to 2010, with a vision to 2020, and especially Resolution 49-NQ/TW (2005) of the Politburo on "Strategy for judicial reform to 2020".

In addition to policies and strategies on judicial reform, the top leaders of Vietnam have issued a number of resolutions to boost the digital transformation and promote the use of information technology in the government and society. For example, Resolution 52-NQ/TW (2019) of the Politburo setting policies for the active participation of Vietnam in the Fourth Industrial Revolution, Decision No. 749/QD-TTg of the Prime Minister (2020)

approving the National Program on Digital Transformation until 2025 and toward 2030. These important policies lay the solid foundation for moving all government bodies, including courts, into digital space.

For the first time, the phrase “building electronic court” appears in a landmark resolution of the Politburo - Resolution 27-NQ/TW dated November 9, 2022 on continuing to build and complete the socialist rule-of-law state of Vietnam in the new period. This comprehensive resolution emphasizes the task of “building electronic court” among other tasks of court reform from now to 2030. In fact, not until the release of Resolution 27-NQ/TW did Vietnam start to build electronic court, but this process had begun earlier with the gradual utilization of information technology in the court operation. In June 2021, the Supreme People’s Court of Vietnam formulated and released a master plan on building e-court to meet the demand of judicial reform by 2030, with a vision to 2045 (Supreme People’s Court of Vietnam, 2021). This is also a signal of the Supreme People’s Court of Vietnam to the ASEAN member countries that Vietnam is seriously committed to completing the building of e-court by 2025. The master plan sets forth directions for building the e-court system in Vietnam with three pillars: legal infrastructure, technological infrastructure, and human resources (Nguyen Hoa Binh, 2022). The goals of building e-court in Vietnam are to improve court governance and court efficiency to tackle backlogs, enhance access to justice and public legal services for the people, raise the quality and effectiveness of judges’ work, improve court transparency and publicity, thus contributing to the overall digital transformation of the Vietnamese government, economy and society (Nguyen Hoa Binh, 2022).

Based on the above-mentioned policies, in the past years, the legal framework for e-court in Vietnam has also been improved. The Civil Procedure Code of 2015 officially recognized electronic data as a source of evidence in civil proceedings. The Civil Procedure Code also embrace digital technology in certain stages of the civil process, allowing a number of procedural activities that can be carried out by electronic means such as filing of complaints and responses, submission of documents and evidence, and service of process. These new provisions in the 2015 Civil Procedure Code are detailed by a resolution issued by the Council of Judges of the Supreme People’s Court in 2016.

Facing the severe Covid-19 pandemic in 2021, like other courts in the world, courts in Vietnam were necessitated to move hearings and trials online to avoid delays due to social distancing and pandemic control policies. It was essential to have an official legal basis for

courts to conduct online hearings and trials. The urgency of the pandemic context made it impossible to amend the 2015 Civil Procedure Code immediately to recognize online trials. Therefore, in November 2021, the National Assembly – the legislature and the highest state power body in Vietnam – swiftly issued a resolution on the organization of online court hearings, which took effect from January 1, 2022 (National Assembly of Vietnam, 2021). According to this Resolution, the People's Courts may hold online court sessions for first-instance trials, appellate trials of criminal, civil and administrative cases. Cases eligible for holding online court sessions must be simple cases with clear and available evidence. To implement this resolution, a Joint Circular detailing and guiding the implementation of online court hearings by the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice was issued in December 2021 (Supreme People's Court et al, 2021). With the National Assembly's Resolution and Joint Circular, courts in Vietnam had sound legal basis to conduct online court hearings and trials.

At present, the Supreme People's Court of Vietnam is also drafting the amended Law on the Organization of People's Courts, which embraces electronic court and online hearings (Supreme People's Court of Vietnam, 2023b). The Draft Law contains a new provision on building e-court, which states that "People's Courts are responsible for building and implementing electronic court to improve court efficiency and enhance publicity and transparency in court operation". (Supreme People's Court of Vietnam, 2023b, Art. 149). In the near future, the Civil Procedure Code is going to be revised to formalize online litigation – the new mode of procedure that is increasingly popular in the world today (Nguyen Hoa Binh, 2023).

Given the foregoing policies and law, it can be said that the political and legal framework for building e-court in Vietnam have been in place, setting the stage for e-court to be realized in practice.

Latest Achievements of Implementing E-Court Initiatives in Vietnam

With the strong political will, during the last three years, the building of e-court in Vietnam has achieved notable progress compared to the previous period. In addition to the improved legal framework, the technological infrastructure of the court system has been significantly upgraded.

First, the Supreme People's Court has developed and put into use its electronic information portal and 67 webpages of the people's courts at all levels (Nguyen Hoa Binh,

2023). The Supreme People's Court's portal has published more than one million judicial decisions and 70 precedents. It also functions as an information platform for exchanging ideas and opinions of judges, scholars, and legal practitioners on developing case law – a newly-recognized source of law in Vietnam. It also facilitates people's access to information about judicial activities and contributes to improving the quality of legal education and legal research in Vietnam. On average, about 20 thousand people access the portal and the court's website to harvest useful information.

Second, the Supreme People's Court has introduced several online judicial services and integrated them on the National Public Service Portal, including registering to receive copies of judgments and documents online, filing complaints and responses online, submitting evidence online, serving court documents by electronic means, and paying court fees and litigation fees online. These online services have helped people easily handle litigation matters anytime, anywhere without having to go to the court (Nguyen Hoa Binh, 2023).

Third, the Supreme People's Court has constructed the People's Court Data Center, the Center for monitoring and operating court activities, and the WAN network infrastructure to initially meet the requirements of calculating and processing while ensuring security of information at level 3 (Nguyen Hoa Binh, 2023).

Fourth, the Supreme People's Court has procured an online video conferencing system for the people's courts with over 800 connecting points, connecting to courts at all levels. Through this system, courts can hold online meetings, training sessions, and seminars within units in the Court or with other courts and institutions at any time, so it is especially useful for sharing experience and advance professional knowledge and skills. On average, this video conference system serves more than 1,200 sessions annually, saving millions of US dollars for the state budget (Nguyen Hoa Binh, 2023).

Fifth, a case management system has been deployed to help courts manage and monitor the entire process of accepting and handling complaints, petitions, and other requests from beginning to end. In addition, the Supreme People's Court has also put into use internal management software to save labor and improve work efficiency of the courts, such as electronic office software, human resource management software, public asset management software, key financial management software, and case statistics software.

Another important progress is that in 2021, to speed up the building of e-court and to respond to the Covid-19 pandemic, the Supreme People's Court strengthened the use of

information technology and artificial intelligence to support judges and judicial staff. The Court introduced an online trial system to implement the National Assembly's Resolution on organizing online hearings and trials. This is seen as a breakthrough in judicial reform because it significantly enhanced access to justice during the pandemic and prevented lengthy postponement of hearings and trials because of absent litigants. As of May 2023, the entire court system has tried 7,278 cases online, of which there were 5,799 criminal cases, 348 civil cases, 500 administrative cases, and 134 family cases (Nguyen Hoa Binh, 2023). According to the initial assessment of the Supreme People's Court of Vietnam, online hearings facilitated people's access to justice, reduced costs and time of traveling to attend hearings, and mitigated court delays. The Supreme People's Court also utilized the Virtual Assistant software, which can interact with judges in spoken or written language through mobile phone applications and personal computers, helping judges research relevant laws and cases, manage online case records, and draft procedural documents. To date, 11,000 accounts to use this virtual assistant software have been granted to judges, court clerks, and other court staff with over 10,000 accesses per day (Nguyen Hoa Binh, 2023).

4.2. Challenges

Although the building of e-court in Vietnam in recent years has achieved certain positive results as presented above, there remain numerous challenges. The process of digital transformation in the judicial sector was sluggish in practice. It took 10 years after the Judicial Reform Strategy was released and 10 years after the 2005 Law on Electronic Transactions was enacted for the Civil Procedure Code of 2015 to be passed by the National Assembly, embracing certain elements of digital technology in civil proceedings. Although the Civil Procedure Code of 2015 has officially recognized electronic data as a source of evidence and permits a number of procedural activities that can be carried out by electronic means such as filing a complaint, submitting documents and evidence, and serving court documents on the parties, it has not explicitly recognized online trials and hearings or remote evidence-taking (Nguyen Bich Thao, 2022).

In practice, the provisions on online filing of complaints, online submission of evidence, and electronic service of process were hardly implemented due to lack of adequate infrastructure. As of the end of 2018, there was no case where the Court received and accepted online complaints according to the provisions of the Civil Procedure Code because technological infrastructure had not been built, including physical infrastructure (hardware)

and online platform (software). On October 22, 2018, the Supreme People's Court officially launched the Online Service and Records System for pilot application in some courts and then replicated it nationwide. However, as of December 2018, only one complaint was sent by electronic means, but it was not received due to a digital signature error (UNDP et al, 2020, p. 26). The result did not meet the goal as expected. Filing complaints and submitting evidence and documents by electronic means is challenging because the requirement for electronic signatures is still difficult for individual citizens. The procedure and cost to have an electronic signature are only suitable for businesses, and the maximum document size that can be uploaded is only 2MB (UNDP et al, 2020, p.27). Besides, people are not familiar with filing complaints electronically. Online filing is not yet regulated by law as the “default” method which is prioritized by the court over traditional methods such as filing in person or sending by post.

In summary, from 2015 to 2019, even though certain legal provisions concerning the use of electronic technology in court had been in place, very limited progress was achieved in practice. As Vietnam’s legal system increasingly integrates regionally and globally, it is under growing pressure to modernize its court system and transform the courts into electronic or smart courts. Building e-court is an irreversible trend of the court system in Industry 4.0 era. However, there remained a big gap between idea and action in Vietnam during this period.

Since 2021, with the National Assembly’s Resolution on online hearings and trials, the building of e-court has been accelerated. However, the number of online court sessions held by local courts nationwide remains limited. Many local courts were not able to hold online sessions due to a lack of necessary infrastructure. Compared to the total number of cases handled by all courts in 2022 (567,521 cases) (Supreme People’s Court of Vietnam, 2022), the number of cases tried online is very small (7,278 cases, including the figure of 2022 and the first five months of 2023), which reveals a strikingly low level of adoption of online proceedings (around 1%). Furthermore, online proceedings in Vietnam are mainly used for trials and hearings, which means a case typically proceeds in a traditional mode from pleadings, exchange of evidence, and mediation. When other stages of the civil process are still based on the traditional mode, it will not ensure synchronism and consistency, thus making e-court less attractive to litigants as well as other stakeholders (Pham Hoai Ngan et al, 2023)

Several challenges derive from the inadequacy of the current legal framework, and others result from practical difficulties.

First, the current rules on online case filing, online submission of evidence, and online service of documents remain burdensome and inconvenient for litigants. The current regulation requires litigants to have a registered electronic signature certified by a competent organization in order to conduct online communication with the court, while they are not familiar with and do not frequently use electronic signatures. Moreover, the only permissible method of electronic service of documents is through the court's online platform, while emails, text messages, and other means of online communication are not allowed.

Second, the current rules on online hearings and trials are inconvenient and inflexible. The court is required to arrange a central point, which is usually the physical courtroom, and no more than three local connecting points. A local connecting point is a physical space to hold the court hearing, which is prepared or accepted by the court, with the participation of the concerned parties, and is compliant with the law (Supreme People's Court et al, 2021). Litigants must be present at the local connecting point designated by the court (for example, another court's building or a government agency's building) to connect with the central point, instead of being able to participate from anywhere and connect with the court through their own devices. This requirement drastically reduces the attractiveness and efficiency of online hearings and explains why online hearings in Vietnam have been predominantly applied to criminal cases rather than civil cases even though the number of civil cases is much higher than the number of criminal cases.

Third, most individual litigants and even some court officers are unaware of or do not fully understand the current rules on online proceedings. Courts' IT human resource is very limited; court IT staff is usually assigned other unrelated tasks while their salary is modest, thus making it difficult for local courts to attract high-quality IT human resource to implement e-court initiatives (Supreme People's Court of Vietnam, 2021).

Fourth, the lack of budget and facilities for implementing online proceedings remains one of the major challenges. Many local courts were unable to hold online hearings and trials due to a lack of digital infrastructure. District courts, especially in rural areas, are not adequately equipped with the necessary facilities to conduct online hearings as required by the law. Some of them had to lease facilities from third parties and incurred a large amount of cost, while the state budget for this cost has not been allocated to the courts. (VnExpress Electronic News, 2023). Courts are required to use a distinct judicial online platform for

online hearings developed by the Supreme People's Court instead of Zoom or other popular video conference platforms because of security concerns, but this judicial online platform has not been fully developed and is not yet available for mobile devices.

After the pandemic was controlled in Vietnam in the first half of 2022, there seemed to be a recession and a lack of motive to advance online proceedings. In fact, some online hearings were held for the mere purpose of meeting the targets set by the Supreme People's Court. According to some court officers and lawyers, the burden and cost of conducting online case filing or online hearings in Vietnam are even higher than those of traditional proceedings.

5. Discussion and Recommendations

This research affirms that Vietnam has made efforts to building e-court to modernize its judicial system and enhance access to justice. The country's leaders are determined to implement court reform towards e-court with strong commitments in the ASEAN community to harmonize the judicial system in the region and improve judicial efficiency to enhance access to justice. The building of e-court in Vietnam has gained momentum during the last five years and was sped up under the pressure of pandemic control. Nevertheless, many challenges need to be overcome, such as inadequacies of the legal framework for e-court, lack of infrastructure and resources, limited awareness and skills, and reluctance to change by the courts and litigants.

From the real experience of Vietnam, a number of lessons can be drawn to move forward the cause of building e-court in Vietnam in the coming years:

First, the role of the Supreme Court is essential in the building of e-court in Vietnam, as in any country. The Supreme People's Court of Vietnam has been active in taking initiatives, conducting pilot programs, making rules, and procuring infrastructure for building e-court, but one problem identified by the authors is that the Supreme People's Court's approach is a top-down, paternalistic approach and sometimes received reluctance from local courts.

Second, using e-court platforms should be made the default option, especially for court staff. As common sense, court staff and litigants are reluctant to change their conventional mode of litigation (face-to-face) because they feel safer in their comfort zone. If there are available options, they have a tendency to choose the traditional mode.

Experience in the e-commerce, banking, and education sectors shows that when going online is made a default option, the adoption rate increases remarkably when users truly recognize and enjoy the benefit of efficiency and convenience. There should be certain incentives for litigants to use the online platform to file complaints, responses, receive notice and documents from courts, and to submit evidence. When they are familiar with the platform and realize the benefits, they will stick to it and may not want to go back to the face-to-face option.

Third, the e-court system should be comprehensive and not only focuses on certain activities such as e-filing, e-service, or remote hearings. There should be an integrated platform that provides comprehensive online services from beginning to end. However, this platform should be user-friendly and cannot cost the courts and litigants more than the face-to-face litigation mode. There should be less burdensome requirements on infrastructure, electronic signatures and identity recognition by utilizing and trusting digital technologies.

Fourth, it is crucial to raise awareness about e-court and provide adequate training for court officers, litigants and other stakeholders. Regular and updated training programs for court staff and court users, instructional video clips, and virtual assistant software should be developed to educate the courts and the public about e-court.

6. Conclusion

This article is one of the first essays to explore in-depth the recent developments and challenges of building e-court in Vietnam. It has addressed the question of why e-court in Vietnam has not gained rapid successes and progress as expected even though notable efforts have been made. The paper has analyzed the characteristics of building e-court in Vietnam, identified achievements and challenges coming from the inadequacies of the legal framework, the paternalistic approach taken by the Supreme People's Court, the lack of infrastructure, and limited awareness and digital capacity of court staff and litigants. The research has contributed to the existing literature on the latest development of the courts in Asia in the digital age. This study focuses on Vietnam but in the future, more comprehensive comparative research on building e-court in the ASEAN region and Asia should be conducted.

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Any errors or omissions are our own.