Legal system of free Viet Nam*

The establishment of the administrative courts in Viet Nam constitute a really democratic reform, an asset to the national government. Indeed, neither prior to nor under the French domination, did Viet Nam have an Administrative Jurisdiction. The first administrative courts were created by Ordinance No. 5, October, 10, 1949, completed some months later by Ordinance No. 2, January 1, 1959.

Prior to the establishment of the French Protectorate, prior to June 6, 1884, the absence of administrative courts was perfectly comprehensible. Viet Nam was an independent and absolute monarchical country where the King through a divine mission had in his grasp all powers and was the sole source of Justice.

The situation did not change much under the French protectorate, during the 80 year period of French domination. In 1910, under an ordinance dated June 16, the French Protectorate Administration established two administrative Tribunals named "Council of the Administrative Judiciary in Indo-china" located in Hanoi and in Saigon, the former having territorial jurisdiction over the Centre, North Viet Nam and the territory of Kouang-Tcheou-Van and the latter over Laos, Cambodia and Cochinchina.

Twenty years after, another ordinance dated May 25, 1937, merged these organisms and located them in Saigon with jurisdiction over the whole Indo-chinese territory. All these administrative reforms had little effect on the improvement of the administrative relationships between the Vietnamese governed and the Vietnamese rulers, since the Court was not competent to hear claims involving the Vietnamese authorities.

The end of the French Protectorate and the proclamation of the independence of Viet Nam marked the beginning of an era in which there has been a change in the application of administrative law. On October 18, 1949, some months after the return of the ex-emperor Bao-Dai who took power in July first, 1949, two ordinances were issued. The former was concerned with the judicial organization of Viet Nam and the latter dealt with the safeguarding of the people's interests

*Contributed by the Consulate General in India for the Republic of Viet Nam.

against discretionary administrative powers, through the creation of an administrative judiciary.

The system, largely drawn from the French system is intricate due to the limitation brought by the Treaty of Elysee of March 8, 1949, to the judicial sovereignty of Viet Nam. This intricacy disappeared only with the disappearance of the limitations, through the complete transfer to Viet Nam of the judicial jurisdictions still held by France.

Accordingly, the shift in the control of the administrative law was achieved in two phases:

(1) From 1949 to September, 1954;

(2) Since September 16, 1954.

During the first period, there were two kinds of administrative tribunals: Vietnamese administrative tribunals and French-Vietnamese administrative tribunals.

These had been established in the Elysee Accords by the French primarily for international prestige and secondarily because of the lack of confidence in the newly created Vietnamese administrative judiciary.

1. A French-Vietnamese tribunal—a joint tribunal—located in Dalat, had an original jurisdiction and was composed of French and Vietnamese magistrates.

2. A French-Vietnamese higher tribunal located in Paris, under the denomination of a "Commission Superieure d' Appel du Tribunal administratif mixte" (The Superior Council of Appeal of the Joint Tribunal) had an appellate jurisdiction.

The joint administrative cases were those involving either a French individual or a French legal entity, regardless of whether or not the opponent in the case was a Vietnamese individual or legal entity.

Thus, the Vietnamese administrative Tribunals had exclusive jurisdiction only over cases which were essentially Vietnamese, *i.e.*, those involving Vietnamese parties, either Vietnamese individuals or legal entities.

The second phase was marked by radical reforms:

(a) First, the abolition of joint administrative court was achieved through a French-Vietnamese judicial Treaty, dated

September 16, 1954, granting the Vietnamese administrative courts full jurisdiction over administrative cases.

(b) The establishment of a Council of State (Council d' Etat) (Tham Chinh Vien) which took the place of the Administrative Division of the Supreme Court of Justice. The organization and jurisdiction of the Council of State were similar to those of the French Council of State.

(c) The creation of a special corps of administrative magistrates separate from judicial magistrates. This corps embodied the separation between the "Active Administration" and the "Administrative Judiciary".

The organization and function of the Vietnamese administrative judiciary includes: (1) The Administrative Tribunal, and (2) The Council of State. It must be stated that the most prominent characteristic of the organisation is the separation of the (Active Administration) and the (Administrative Judiciary).

The Tribunal whose jurisdiction covers the whole territory of Viet Nam, is located in Saigon and includes four members; one President; two Assistant Judges; one Commissioner of the government. In addition, the Secretariat of the Tribunal consists of a Secretary General.

The President, the two judges and the Commissioner of the Government are appointed from among the magistrates of the administrative cadre. The Secretary-General may be a civil servant of the administrative cadre. The President, the two judges and the commissioner of the government are appointed by the Secretary of State, head of the Department of Justice.

Similar to the procedure of the inter-department prefectoral council in France the procedure is a written and investigatory one. The procedure includes; institution of formal proceedings, investigation and trial.

In every case to be heard, the reporter has to make a report. The parties may be present, or represented by their delegates. If the parties file new claims, the Tribunal has to make a new investigation. Then the Commissioner of the Government proposes his decision on the matter. The Tribunal discusses the matter outside of the presence of the parties. Its decisions are determined according to a majority vote and are announced publicly. The decisions of the Tribunal are enforceable once they are made known to the parties.

However, they are subjected to the appellate reviews; Appeal, Arrest in judgment by a defaulter; Annulment.

The Council of State, as a newly established agency, is similar to the French Council of State, as regards the organisation and function. It has two divisions: the administrative division (Ban Hang-Chanh); the judiciary division (Ban Tai Phan). The former has legislative powers and the latter, exclusively judicial prerogatives. The Judiciary Division is the highest Administrative Court.

The Judiciary division includes: The President, two assistant Magistrates, a Commissioner of the Government and an assistant Commissioner.

The presidency of the Judiciary Division is taken up by the President or Vice-President of the Council of State, or by a Counsellor of the Council.

The functions of assistant magistrates and Commissioner of the Government are performed exclusively by the Counsellors.

The separation between the active Administration and the judiciary Administration is not clear, since at the beginning of every semester, the President of the Council of State, after consultation with the Vice-President, sets up a list of rotative transfer of the members of the two divisions. This measure is profitable to the training of all the magistrates who can gain an insight into the problems as to both the active administration and the administrative judiciary.

In so far as the problem of jurisdiction is concerned, the Council of State in Viet Nam, like the French Council of State, is a Tribunal of annulment, of appeal jurisdiction and original jurisdiction.

As an appellate Court, the Council of State readjudicates cases tried by the Administrative Tribunal. These cases are concerned with the suits for damage claims or for annulment.

Finally, the Council of State plays the role of the Supreme Court and as such is entitled to invalidate all cases tried by the Administrative Tribunal.

As regards the procedure before the Council of State is concerned, there are four stages; institution of formal proceedings; investigation; trial; means of appellate review.

Since the Council of State operates as an appellate and cassation Court, the unique means of review, provided by ordinance 1954, of

its decisions, is the process of arrest in judgment by a defaulter. A defaulter is defined as the defender who has not submitted his written pleadings before the deadline. The defaulter has to submit to the Council of State a petition mentioning the reasons of the arrest in judgment. If the petition is considered valid, the Council of State re-examines the case.

The system is not without certain imperfections. One such is the lack of independence of Magistrates of the administrative cadre, since the Council of State is under the direct control of the Department of Justice and the administrative judges are nominated by the Secretary of State of the Department of Justice.

Nevertheless, the institution is rightly considered as a guarantee of the enforcement of the administrative law, in a country afflicted by long period of war and in which administrative authorities arguing the necessity of an efficient and fast decision-making power, have been inclined to by-pass or violate the law.

It is hoped that this institution, whose creation was expected for a long time ago, will be able to perform efficiently its role as the safeguard of the administrative law against the discretionary powers of the administrative authorities.