

**BACKGROUND** The doctrine on legal precedents has only recently been introduced to Vietnam. In 2014, the National Assembly adopted the Law on the Organization of People's Courts which mandated the Justices Council and the Chief Justice of the Supreme People's Court (SPC) to develop judicial precedents and ensure the uniform application of the law. The development of precedents is expected to improve transparency in the Vietnamese courts.

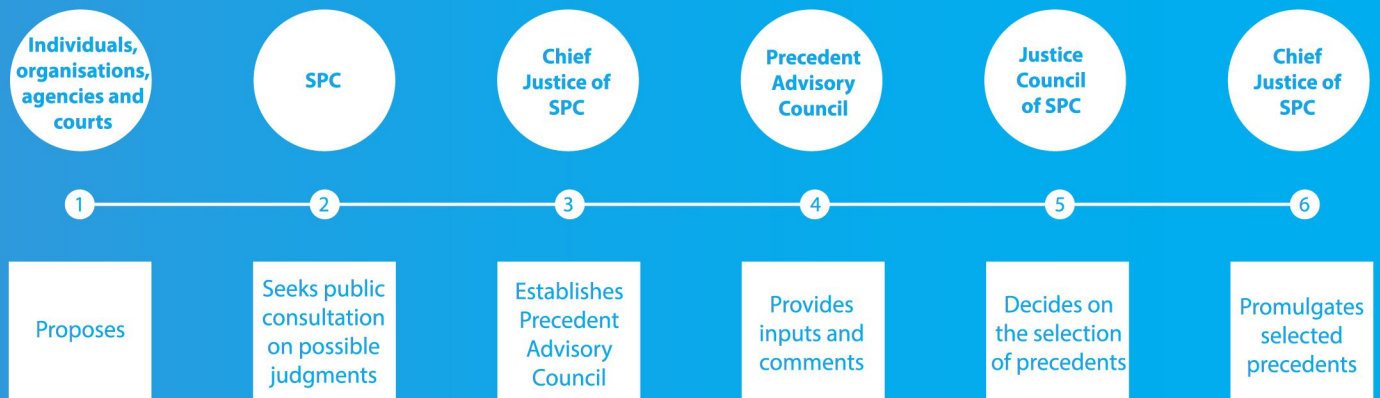
**CURRENT STATUS OF DEVELOPMENT** On 28 October 2015, the Justice Council enacted Resolution No.03/2015/NQ-HDTP which for the first time clarified the concept of precedent, its selection criteria and how it applies to the adjudication process. In the following three years, a total of 26 precedents were selected. During this period, a number of shortcomings were identified, including inefficiencies in the process of developing precedents and a lack of guidance on how to cite precedents in judicial decisions. To overcome these challenges, the EU JULE Programme supported SPC to conduct a thorough review of three years of developing precedents. Based on the review, the Justice Council adopted Resolution No.04/2019/NQ-HDTP, replacing the previous resolution. Since then, more precedents were selected, bringing the total number of precedents published to 37. By December 2019, 602 cases have cited precedents to support their opinions.



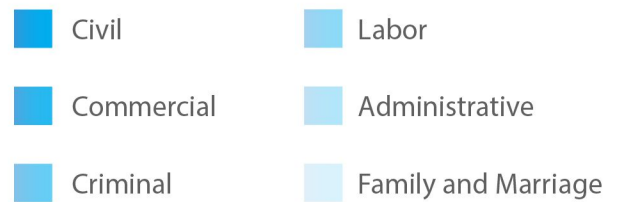
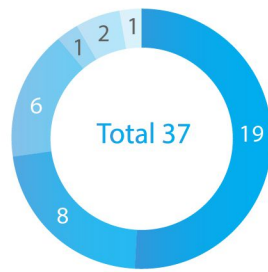
All of the precedents and some commentaries by independent researchers are published online at: <https://anle.toaan.gov.vn/>

Nearly 500,000 court decisions are available at: <http://congbobanan.toaan.gov.vn/>

### OVERVIEW OF THE PROCESS OF ESTABLISHING NEW PRECEDENTS



The Number of Precedents Promulgated by the Supreme People's Court



## CHALLENGES

### **Limited public participation:**

Under Article 3 of the Resolution No.04/2019/NQ-HDTP, any individuals, agencies, or organizations can propose new precedents for consideration. However, currently, only a small number of courts, agencies, experts, and practitioners submitted proposals for review.

### **Inadequate judgement drafting skills:**

The development and application of precedents entail some strict requirements and adjustments for judges in judgement drafting. However, many judges are not fully aware of or trained on the new requirements. More efforts should be made to assist judges in developing legal solutions that can be applied to cases of a similar nature, which can be a good basis for developing precedents.

### **Lack of precedents addressing the most contested legal issues:**

Precedents have been developed in several areas of law including civil, marriage and family, commercial business, labor, criminal, and administrative, but certain legal issues have yet to be clarified through more precedents. Commonly disputed legal issues, such as transactions between family members and aggravating circumstances of crimes, are not resolved in a consistent manner due to overlapping and contradicting legal provisions as well as the absence or lack of specific laws and regulations. Precedent development in these areas is thus urgently needed.

## RECOMMENDATIONS

### **To improve the practice of proposing precedents**

- **STRENGTHEN** the capacity of all relevant units responsible for reviewing the proposals.
- **NOTIFY** beforehand to the interested parties such as the Vietnam Bar Association and Vietnam Lawyers Associations before each phase of precedent development.
- **CREATE** reward systems to encourage greater participation of individuals within and outside of the justice system.

### **To increase the use of precedents in drafting judgments:**

- **ORGANIZE** more interactive trainings for judges to improve their skills on citing precedents and writing judgments that can develop into new precedents.
- **PROMOTE** activities on the Precedent Information Page of the Supreme People's Court and create forums for exchange of experience working with case law.

### **To develop precedents on complex issues arising in specific areas of law and ensure the uniform application of law in similar cases:**

- In the criminal field, it is necessary to research and **DEVELOP** precedents on the aggravating circumstances of crimes such as crimes of a hooligan nature, crimes for despicable motivation, drug-related crimes, economic crimes, and environmental crimes.
- In the civil field, legal issues that need to be **ADDRESSED** include those relating to transactions between minors and their parents, contractual disputes between spouses and property rights as well as the recognition and enforcement of foreign or domestic arbitral decisions.
- In the administrative field, precedents should be **DEVELOPED** for cases related to land acquisition, clearance, compensation and resettlement.