

## THE RUSSIAN FEDERAL LAWS ON MEDIATION OF CIVIL DISPUTES IN COURTS AND SEVERAL RECOMMENDATIONS FOR VIETNAM

Van Toan LY

### ABSTRACT

*Amongst many civil dispute resolution methods, the current method of conciliation at the Court which is both voluntary and confidential and has high enforceable legal value is increasingly popular by the parties. Currently, the legal regulations on mediation of civil disputes at Vietnamese courts have developed strongly with strict and specific regulations. However, the process of applying it into practices to mediate civil disputes at the Court is still facing difficulties which lead to low application efficiency. Therefore, it is necessary to study the Russian federal laws on mediation of civil disputes in courts to improve the effectiveness of the application of the law on conciliation of civil disputes in Vietnamese courts contributing to make the legal system on these regulations more and more complete and resolving civil disputes quickly, the business environment is guaranteed to be more secure and stable. In this article, the author analyzes and compares the provisions of the laws of the Russian Federation and Vietnam on the mediation of civil disputes at the Court and the application of these provisions in practice as well as gives some recommendations to improve Vietnamese laws on this issue.*

Keywords: Mediation, conciliation, civil disputes, the Vietnamese Courts, the Russian mediation laws, better solutions.

### INTRODUCTION

Mediation is a dispute resolution method applied by many countries around the world to resolve disputes due to its effectiveness. According to the civil procedure legal system of the Russian Federation in 2003, when submitting an application to the Court for settlement, the Court is responsible for conciliation so that the parties can agree to settle the case. The research objective of this article is to compare the laws of Vietnam and the Russian Federation on the mediation of civil disputes at the Court, thereby making recommendations to improve the Vietnamese law.

The law on conciliation of civil disputes in Vietnamese courts currently has many shortcomings, weaknesses and inefficiencies. Therefore, it is necessary to improve the law basing on the legislation of the Russian Federation which mediates civil disputes at the Court.

To complete this article, the author has applied the following methods: firstly, the analytical method is used by the author to analyze the content of the current legal provisions of Vietnam and the Russian Federation on the reconciliation of civil disputes at the Court. Secondly, the comparative jurisprudence method is used to compare and contrast the provisions of Vietnam and the Russian Federation in order to further clarify the issue of conciliation of civil disputes at the Court. Finally, the synthesis method is used to complete the article on the collected documents.

The scope of this article is that the author has chosen the Russian legal system on the mediation of civil disputes at the Court to research because the Russian law has many advanced points and is quite close to the Vietnamese legal system. Vietnam can also learn to improve the law when its legal system on mediation procedures is still incomplete.

### LAWS OF THE RUSSIAN FEDERATION ON THE MEDIATION OF DISPUTES IN COURTS

Firstly, pursuant to the Civil Procedure Code of the Russian Federation which was approved by the National Assembly (duma) on October 23, 2002 and took effect from February 1, 2003 (hereinafter referred to as the 2003 Code) to settle civil disputes among people, specifically regarding the competence of the conciliation of civil disputes which the adjudicating agencies pay great attention. Besides strengthening the Comrade Court, the civil procedure law of the Russian Federation has established the institution of "The Mediation Judge". According to Article 23 of the Civil Procedure Code of the Russian Federation, the Mediation Judge at the first instance level of the civil cases within the jurisdiction of the Judge including:

*"1. The Mediation Judge at the first-instance level includes the following cases: a/ The case about the issuance of court orders; b) the divorce case if the spouses do not dispute over children; c) The case about division of common property of husband and wife does not depend on the lawsuit price; d). Other disputes arising from the marital relationship, except those related to the identification of father and mother, deprivation of the right to fatherhood or motherhood, and about child adoption; e). Disputes over the property which its worth is not more than 500 times the federal law minimum wage as of the date of submitting the application; f). Disputes arising from labor relations, except disputes over job restoration and collective labor disputes; g). Disputes over determining the order of assets' using". 2. The federal laws may require a Mediation Judge to hear other matters as well. 3. In the case of merging several related requests, or in the case of changing the subject of dispute or suing reverse, if there is a new request which is under the jurisdiction of another District Court that is still within the jurisdiction of the Mediation Judge, all those requests will be handled by the District Court. In the case of the jurisdiction changes during the settlement by the Mediation Judge, he/she shall issue a decision to transfer the case to the District Court for settlement. 4. Disputes over the jurisdiction between the Mediation Judge and the district court are not allowed."*

Compared with the Vietnam's civil procedure law, the Russian law has more specialized differences, it can be seen that the jurisdiction of the mediation Judge is very broad and also regulated in detail.

Secondly, the Article 39 of the 2003 Code clearly states that the parties have the right to end the lawsuit by conciliation. Thus, the Russian law encourages the parties to conduct conciliation in order to resolve the case quickly which can end the case by conciliation with each other.

Thirdly, during the trial preparation stage, the Court has the duty to mediate between the parties. The Article 148 of the 2003 Civil Procedure Code stipulates the Court's responsibility to conciliate between the parties to resolve the case. It can be said that the conciliation procedure is a mandatory responsibility of the Court, which must be carried out in order for the mediating parties to reach an agreement on the settlement of the case. The provision that the Court is responsible for conducting mediation of civil cases is similar to the Vietnamese civil procedure law, specifically in the Article 10 of Vietnam's 2015 Civil Procedure Code, which stipulates: *"The Court is responsible for conducting conciliation and creating favorable conditions for the involved parties to reach agreement on the settlement of civil cases in accordance with the provisions of this Code"*.

In addition, the activities of the Judge during the trial preparation process also clearly stipulate that the Judge must be responsible for applying conciliation measures between the parties and explaining to them about the right to request the comrade Court to settle and the legal consequences of such acts. The Russian Civil Procedure Law emphasizes the mediation role of the Judge and considers it as the responsibility of the Court to create conditions for the parties to reconcile with each other.

The mediation is not only regulated at the trial preparation stage, but also at the beginning of the trial and handling of the case, the Court must also conduct conciliation; specifically, the presiding judge or judge announces the start of the trial, then the presiding judge asks the plaintiff about the re-affirmation of the request, asks if the defendant acknowledges the plaintiff's request and whether the parties agree to end the case with the mediation.

Article 173 of the 2003 Code of Russia stipulates that the plaintiff withdraws the application, the defendant acknowledges the lawsuit and mediates

*"1. The plaintiff withdraws the lawsuit petition, the defendant admits the lawsuit, and the mediation are recorded in the court session minutes, signed and acknowledged by the plaintiff, defendant or both parties.*

*In case of the withdrawal of the petition, the admission of the lawsuit and conciliation which are presented in writing to the Court, those documents are included in the case file and in the minutes of the trial.*

*2. The Court explains to the plaintiff, the defendant or both parties about the consequences of the withdrawal of the petition, the admission of the lawsuit or conciliation.*

*3. In case of issuing a decision to accept the withdrawal of the lawsuit petition or conciliation by the Court, the Court shall suspend the case simultaneously.*

*The decision must specify the conditions for the mediation of the parties that have been recognized by the court. In the case of accepting the defendant's admission of the lawsuit, the Court issues a judgement to accept the plaintiff's request.*

*4. In case of not accept the plaintiff's withdrawal of the lawsuit petition, the defendant acknowledges the lawsuit and does not recognize the conciliation, the Court shall issue a decision on this issue and continue to hear the case."*

By the mentioned-above law, people can clearly see that the conciliation procedure is quite strictly regulated when the mediation is presented in writing to the Court, those documents are included in the case file and this is recorded in the minutes of the hearing. The Court explains to the parties the consequences of the mediation and suspends the case, and if the Court does not recognize the mediation, the Court will issue a decision on this matter and continue to hear the case.

Fourthly, about the effective judgment of the court: In principles, the judgment has its legal effect if it is not appealed within the time limit for the appeal according to the appeal or appellate procedure. In the case of the appeal under the appeal procedure, the judgment of the the mediation judge becomes legally effective after the district court hears the appeal, if the appealed judgment is not cancelled. If the district court rescinds or changes the judgment of the Mediation Judge and issues a new one, the judgment takes effect immediately.

It can be said that the conciliation authority in civil cases has been specified in a wide and specific way, facilitating the quick settlement of civil disputes on the basis of respecting the right of the parties to self-determinate<sup>1</sup>. However, according to the Article 209 of the Civil Procedure Code of the Russian Federation, the judgments of the mediation judge are still appealed. In the event that there is an appeal but the judgment of the mediation judge is not cancelled by the district court, the judgment of that mediation judge shall take effect immediately after the District Court settles the appeal. Thus, in the current developed conditions of the Russian Federation economy, the formation of the institution "the Mediation Judge" has created conditions to shorten the proceedings in the process of settling civil cases, improve the adjudication efficiency of the courts.

Fifthly, the Civil Procedure Code of the Russian Federation 2003 stipulates the grounds for suspending the settlement of the case, according to which the Court suspends the settlement of the case in the situation that *"the parties have reconciled with each other and are accepted by the court"*. This is the basis for the Court to suspend the settlement of the case (Article 220). When the involved parties reconcile with each other and are accepted by the Court, the case is considered to have been resolved, which helps the parties reach a high agreement and the settlement of the case is faster.

## **LAWS OF VIETNAM ON DISPUTE MEDIATION IN VIETNAMESE COURTS**

Like the Russian civil procedure law, and many countries in the world, the Vietnamese law also dignifies the role of mediation procedures in resolving disputes.

Firstly, compared with the 2003 Russian Code, the Vietnamese Procedural Code stipulates that the jurisdiction of the mediation is of the Judge, without the distinction between the adjudicating judge or the mediation judge, which is generally prescribed (Articles 26, 28, 30 of the Civil Procedure Code 2015), when a dispute occurs, the Court shall accept it and the judge accepting the settlement of the case is responsible for conciliation for the disputing parties.

Secondly, according to the provisions of Clause 11, Article 70 of the 2015 Vietnam Civil Procedure Code, the involved parties have the right to reach the agreement among themselves on the settlement of the case; participate in mediation conducted by the Court. Compared with Article 39 of the 2003 Russian Code that clearly stipulates that the parties have the right to end the

<sup>1</sup> David Spencer, Michael Brogan (2006), *Mediation Law and Practice*, Cambridge University Press, p.101.

case by conciliation. It can be seen that the laws of Russia and Vietnam are similar. It is completely reasonable for the parties to have the right to conciliate each other.<sup>2</sup>

Thirdly, the principle of conciliation at the Court under Vietnamese laws is considered a mandatory procedure when the Court accepts the case in Article 10 of Vietnam's 2015 Civil Procedure Code, which stipulates that the Court has the responsibility for conducting conciliation and creating favorable conditions for the involved parties to reach the agreement on the settlement of civil cases in accordance with this Code. The courts are responsible for conciliating most of civil cases, except for those that cannot be reconciled and those that cannot be reconciled or that are accepted and resolved by the abridged procedure.

On the other hand, Clause 1, Article 205 of the 2015 Civil Procedure Code stipulates: *"During the time limit for preparing for the first-instance trial of the case, the Court will conduct conciliation so that the involved parties can reach an agreement on the settlement of the case, except those that are not conciliated or not conducted the ediation under the provisions of Articles 206 and 207 of this Code or the cases are settled according to the abridged procedures"*. Like Article 148 of the 2003 Code of Russia, the Vietnamese law also stipulates that during the time limit for preparing for the first-instance trial of the case, the Court shall conduct the mediation so that the involved parties can reach an agreement on the settlement of the case. This is completely reasonable in order to take advantage of the waiting time during the trial to solve the case. Thus, both Russian and Vietnamese laws focus on the conciliation and determine the Court's responsibility for the conciliation as mandatory.

Following the Article 209 of the 2015 Civil Procedure Code, participants in meetings for checking the handover of, access to and disclosure of evidences and mediating shall include (a) The meeting presiding Judge; (b) Court clerks in charge of writing up meeting minutes; (c) Involved or lawful representatives of involved parties; (d) Representatives of employee collective's representative organizations, applicable to labor cases, at the request of employees, excluding labor cases where employee collective's representative organizations or defense counsels of rights and interests of employees' collectives/employees attend as representative organizations of employees' collective. If the representatives of employee collective's representative organizations do not attend the meeting for mediating, written opinions must be submitted; (đ) Defense counsels of rights and interests of involved parties (if any); (e) Interpreters (if any). When it is deemed necessary, the Judges shall request relevant individuals, agencies and organizations to participate in the meetings; for cases pertaining to marriage and families, the Judges shall request representatives of family affair authorities, children affair authorities and/or Vietnam Women's Union to participate in the meetings; if they are absent, the meetings shall be still conducted. In Vietnam, there is no distinction between the mediation judges while it is very clear in Russia. Therefore, Vietnam should assign the mediation judges in the coming time to enhance specialized knowledge and have more efficiency in conciliation.<sup>3</sup>

The mediation of civil disputes at the first-instance trial: like Article 172 of the 2003 Code of Russia, Vietnamese law also affirms that the conciliation procedure is shown throughout the adjudication process, one of the basic principles of conciliation is the principle of the court's responsibility for conciliation, which is stipulated in Article 10 of the Civil Procedure Code 2015. Accordingly, the conciliation is the responsibility of the court during the first instance trial preparation stage. When the dispute cannot be resolved by the mediation procedure before opening the court session, the judge must issue a decision to bring the case to trial. However, that does not mean that the possibility of resolving the dispute by mediation is closed. In the first-instance trial, the trial panel still creates conditions for the involved parties to express their views and aspirations right in the court hearing. Specifically, during the interrogation phase, through the way of questioning the parties, the trial panel may continue to raise the possibilities or options for resolving disputes between the parties without waiting for a judgment of the Court. Thus, for the coming stages of the trial preparation stage, the Court is not required to conduct conciliation, the Court only encourages and creates conditions for the involved parties so that they can reconcile themselves on the resolution of the case.<sup>4</sup>

Fourthly, the effect of decisions to recognize the involved parties' agreements specified in Article 213 of Vietnam's 2015 Civil Procedure Code *"1. The decisions to recognize the involved parties' agreements shall take effect immediately after they are issued and are not appealed against according to the appellate procedures; 2. The decisions to recognize the involved parties' agreements may be appealed against according to the cassation procedures only if there are grounds to believe that such agreements were reached as a result of mistakes, deceptions, intimidation, force or they contravene law or social ethics."*

The Vietnam's 2015 Civil Procedure Code does not raise the issue of reconsidering the decision to recognize the involved parties' agreement according to appellate and reopening procedures. There is an opinion that this recognition is also considered as "the effective decision of the Court". Accordingly, Article 351 of the 2015 Vietnam Civil Procedure Code stipulates: *"Reopening means the review of legally effective judgments/decisions which are appealed against due to the appearance of newly detected details which may substantially change the contents of the judgments/decisions and about which the Courts and the involved parties did not know when the Courts rendered such judgments or decisions"*. This opinion should be understood that the Vietnam's 2015 Civil Procedure Code has left the involved parties free to decide to get to a final agreement.<sup>5</sup> The current legislative perspective of Vietnam does not allow the parties to appeal the decision to recognize the agreement of the involved parties according to the appellate and reopening procedures because it is said that the responsibility is also placed on the litigants who have to anticipate all possible circumstances related to the case. Moreover, this provision is also logical to avoid cases where one of the parties after reaching the agreement, realizes that maintaining the implementation of the commitment is not beneficial to himself/herself, he/she tries to bring out *newly detected details* to hinder the implementation of the decision to recognize the agreement that the Court has

<sup>2</sup> Le Huong Giang (2019), *"Improving the law on commercial mediation in Vietnam in the context of international economic integration"*, Doctoral Thesis in Jurisprudence, Hanoi Law University, p.26.

<sup>3</sup> Pham Nhu Hoang Hai (2018), *Session to examine the handover, access, disclosure of evidence and conciliation*, Master's Thesis in Jurisprudence, Faculty of Law, Hanoi National University, p.57.

<sup>4</sup> Vu Gia Truong (2020), *"Procedures for settling business and commercial disputes in Vietnam's first instance courts today"*, Doctoral Thesis in Jurisprudence, Institute of Social Sciences – Vietnam Academy of Social Sciences, p.138.

<sup>5</sup> Alexander Bevan (1992), *Alternative dispute resolution: A lawyer's guide to mediation and others forms of dispute resolution*, Sweet & Maxwell Press, p.15.

issued leading to a series of consequences that affect the quality of the case trial<sup>6</sup>. However, in the author's opinion, the decision to recognize the agreement of the parties should be allowed to appeal according to appellate and reopening procedures to ensure the objectivity, fairness, and avoid the case that the parties for some reason have the agreement which is not in accordance with their wishes, leading to the unfairness. From the above provisions, it can be seen that in Vietnam, the decision to recognize the agreement of the involved parties is not appealed according to the appellate procedure while according to Article 209 of the Civil Procedure Code of the Russian Federation, the judgments of the mediation judge are still being appealed. This is the difference between the laws of Vietnam and the Russian Federation, so Vietnam can learn from Russia's experience on this issue.

Fifthly, the current 2015 Civil Procedure Code of Vietnam, in the provisions on suspending the settlement of cases (Article 217), there is almost no provision regarding the grounds for suspending the case when the parties reconcile with each other and are accepted by the Court, compared with the Civil Procedure Code of the Russian Federation in 2003, perhaps Vietnam should apply according to the experience of Russia to expedite the settlement process and less difficult, because there is currently a lack of regulations about the parties conciliate with each other and are accepted by the Court which is in the case where the Court suspends the settlement of the case, leading to the application of the Vietnam law encountering many difficulties.

### **SOME RECOMMENDATIONS TO IMPROVE THE LAW ON CONCILIATION OF CIVIL DISPUTES IN VIETNAMESE COURTS**

Firstly, Vietnam's civil procedure law nowadays stipulates for most of the mediation by the judges in the first-instance court is mainly done without the specialization in the mediation judge like Russian laws that does not bring high efficiency, so Vietnam should have the assignment of the mediation judge to get more efficiency.

Secondly, according to the Civil Procedure Code of the Russian Federation 2003, specifically in Article 209, the judgment of the mediation judge is also appealed against according to the appellate procedure; however, in Vietnam, the decision to recognize the agreement of the involved parties shall not be appealed according to the appellate procedure which is only applied under the cassation procedure if there are grounds to believe that such agreement is coerced, threatened or mistaken. Therefore, it is more reasonable to expand the rights to allow the litigants to appeal against the decision to recognize the agreement of such parties.

Thirdly, it can be seen that the Russian Civil Procedure Code 2003 stipulates that when the involved parties reconcile with each other and are accepted by the Court, the Court will suspend the settlement of the case. Currently, Vietnam's civil procedure law does not stipulate this, so this is also one of the regulations that Vietnam can inherit to improve the law. Thus, the Vietnamese procedural law should supplement the provision that the parties conciliate with each other and are accepted by the Court as a basis for the Court to suspend the settlement of the case, which will help the case settlement process faster.

### **CONCLUSIONS**

In short, after studying and comparing the law on conciliation at the courts of the Russian Federation and Vietnam, it can be seen that the procedural law of Russia has several points that Vietnam can absorb to improve the Vietnamese legal system. Mediation is a good institution to help the Court quickly resolve the case and bring high efficiency. Through the conciliation, the parties can find a common voice, completely resolve the conflict, when the conciliation is successful, the parties can reduce the travel time and save travel costs. Therefore, it is absolutely necessary to learn from the legal experience of the Russian Federation.

### **REFERENCES**

- Le Huong Giang (2019), *"Improving the law on commercial mediation in Vietnam in the context of international economic integration"*, Doctoral Thesis in Jurisprudence, Hanoi Law University, p.26.
- Pham Nhu Hoang Hai (2018), *Session to examine the handover, access, disclosure of evidence and conciliation*, Master's Thesis in Jurisprudence, Faculty of Law, Hanoi National University, p.57.
- Nguyen Thi Thuy Linh (2018), *Recognition of the parties' agreement in civil proceedings and the reality at the People's Courts of Lang Son province*, Master's Thesis in Jurisprudence, Hanoi Law University, p.40.
- Vu Gia Truong (2020), *"Procedures for settling business and commercial disputes in Vietnam's first instance courts today"*, Doctoral Thesis in Jurisprudence, Institute of Social Sciences – Vietnam Academy of Social Sciences, p.138.
- Alexander Bevan (1992), *Alternative dispute resolution: A lawyer's guide to mediation and others forms of dispute resolution*, Sweet & Maxwell Press, p.15.
- David Spencer, Michael Brogan (2006), *Mediation Law and Practice*, Cambridge University Press, p.101.

Van Toan LY  
University of Economics and Law,  
Vietnam National University Ho Chi Minh City, Vietnam.  
Email: toanlv18710@sdh.uel.edu.vn

<sup>6</sup> Nguyen Thi Thuy Linh (2018), *Recognition of the parties' agreement in civil proceedings and the reality at the People's Courts of Lang Son province*, Master's Thesis in Jurisprudence, Hanoi Law University, p. 40.