



THE SUPREME  
PEOPLE'S COURT



PROMOTING A FAIR  
BUSINESS ENVIRONMENT  
IN ASEAN



UK Government

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UNITED NATIONS  
DEVELOPMENT  
PROGRAMME



# REPORT

## GOOD PRACTICES IN COURT PROCEDURES TO IMPROVE COURT INTEGRITY

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## ABBREVIATION

Civil Procedure Code	CPC
Decision No. 345/2016/QD-CA on the organizational structure, tasks and powers of the units in the assisting apparatus of the People's Courts of provinces and centrally run cities; People's Courts of districts, communes, provincial cities	Decision No. 345/2016/QD-CA
Directive No. 03/2016/CT-CA on strengthening the implementation of the reform of judicial administrative works at the People's Court	Directive No. 03/2016/CT-CA
International Covenant on Civil and Political Rights 1966	ICCPR
Judicial Development and Grassroots Engagement sponsored by Canadian International Development Agency	JUDGE Project
Resolution No. 03/2017/NQ-HDTP on publication of judgements and decisions on the e-portal of the People's Courts	Resolution No. 03/2017/NQ-HDTP
Resolution No. 04/2016/NQ-HDTP of the Justice Council of the Supreme People's Court guiding the provisions of the Civil Procedure Code 2015, the Law on Administrative Procedures 2015 on sending, receiving the petitions, documents, evidence and issuance, sending, notification of procedural documents via e-filing system	Resolution No. 04/2016/NQ-HDTP
Resolution No. 08-NQ/TW of the Politburo on some key tasks of judicial work in the coming time	Resolution No. 08
Resolution No. 19-2016/NQ-CP of the Government on major tasks and solutions to improve the business environment and national competitiveness in 2016-2017 and orientations to 2020	Resolution No. 19/2016
Resolution No. 19-2017/NQ-CP of the Government on continuing to perform the main tasks and solutions	Resolution No. 19/2017

to improve the business environment and national competitiveness in 2017, orientations to 2020

Resolution No. 19-2018/NQ-CP of the Government on continuing to perform the main tasks and solutions to improve the business environment and national competitiveness in 2018 and the following years

Resolution No. 19/2018

Resolution No. 19/NQ-CP of the Government on major tasks and solutions to improve the business environment and national competitiveness

Resolution No. 19/2014

Resolution No. 19/NQ-CP of the Government on major tasks and solutions to improve the business environment and national competitiveness in 2015-2016

Resolution No. 19/2015

Resolution No. 48-NQ/TW of the Politburo on the Strategy of developing and improving the Vietnamese legal system up to 2010 and orientations to 2020

Resolution No. 48

Resolution No. 49-NQ/TW of the Politburo on the Judicial Reform Strategy to 2020

Resolution No. 49

Supreme People's Court

SPC

United Nations Development Programme

UNDP

United Nations Office on Drugs and Crime

UNODC

USAID Governance For Inclusive Growth Program

GIG Project

## PART I – INTRODUCTION

### 1.1. Background

The Judicial Reform Strategy under Resolution No. 49 dated June 2, 2005 of the Party Central Committee has identified: *"...reform of administrative procedures in judicial agencies to create favorable conditions for people to access justice..."*; *"...to promulgate and implement the Judicial Reform Strategy up to 2020 in line with the process of reforming the legislative and administrative reform program ..."*; and *"... the judicial reform must stem from the requirements of socio-economic development and establishment of an equal, democratic and civilized society; contribute to promoting socio-economic development; be associated with the renovation of legislative work and administrative reform ..."*, *"encouraging the resolution of certain types of disputes through negotiation, mediation and arbitration"*. Thus, it can be concluded that the Resolution has linked the judicial reform activities with the administrative reform, legislative reform and factors of socio-economic development as well.

Since 2005, the courts have identified *"reform of court administrative procedures is undertaken under the way that is open/public, simple and convenient for citizens to exercise their rights to take legal action at courts. When a person takes a legal action at court, this court shall determine the agency which has jurisdiction of settling the case, then transfer the files and notify the petitioners thereof; moreover, courts should publish the procedures for accessing the files, supplying documents and information, extracting the judgements or decisions of courts according to applicable laws"*<sup>1</sup>. Accordingly, People's Courts in some localities have implemented certain measures to reform the judicial administrative works.

The Report *"Good practices in court procedures to improve court integrity"* (**Report**) is conducted in the context where the courts are implementing strong institutional reforms to improve judicial capacity and judicial integrity. In recent years, the SPC has issued some resolutions on publishing the judgements on the e-portal of the Supreme People's Court (**SPC**), performing some judicial administrative works via electronic means, promulgating the Code of Ethics and Conduct of judges, implementing a pilot project of Court Annexed Mediation and Dialogue<sup>2</sup>, etc. At the time of the survey from late 2018 to early 2019, the SPC has synchronized and modernized both its e-portal and 66 websites of Superior People's Courts and People's Courts of provinces and

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<sup>1</sup> Plan No. 122/BCS dated December 26, 2005 of the SPC Party Committee (**Plan No. 122/BCS**)

<sup>2</sup> Resolution No. 04/2016/NQ-HDTP; Resolution No. 03/2017/NQ-HDTP; Decision No. 87/QĐ-HĐTC dated July 4, 2018 of the National Council for judge Selection and Supervision on promulgation of the Code of Ethics and Conduct of judges (<https://www.toaan.gov.vn/webcenter/portal/tatc/chi-tiet-tin?dDocName=TAND050507>); Directive No. 03/2016/CT-CA

cities. In addition, in the spirit of "*increasing the rate of successfully mediated civil cases*"<sup>3</sup>, the SPC has applied the court annexed mediation and dialogue in the pilot projects across 16 provinces/centrally-run cities<sup>4</sup> (from November 2018 to October 2019).

However, in practice, there have not been enough research and surveys to explore good practices in the court system for further enhancing such system and applying it nationwide. By the time the courts had such significant changes, UNDP had conducted some studies related to judicial administrative works of the courts and court management, for example, the Report "The Reality of Local court Governance in Vietnam" (in coordination with the Ministry of Justice and the Secretariat - the Central Steering Committee for Judicial Reforms). This Report has researched several models of receiving civil petitions and judicial administrative works in some localities in 2012. Recently, UNDP and Vietnam Chamber of Commerce and Industry (VCCI) have conducted a study on the integrity of courts in settling commercial disputes. These studies have pointed out some issues originating from one or more activities in a series of judicial administrative works that hinder people and businesses from accessing court proceedings as well as those that affect the integrity of courts<sup>5</sup>.

Due to external circumstances beyond our control, such as the Covid-19 pandemic in early 2020, the consultation workshop to finalize this Study had been postponed until July 2020. Therefore, at the time this Study was completed, the Law on Court Annexed Mediation and Dialogue had been approved by the National Assembly in July 2020<sup>6</sup>. Several issues of mediation and dialogue activities under the Law on Court Annexed Mediation and Dialogue are different from those during the pilot phase of conducting surveys. In addition, the task of "*applying information technology towards building an E-court, associated with promoting judicial administrative reform in courts*" is considered to be one of the key tasks of the SPC in 2020, which is regulated in Directive No. 01/2020/CT-CA of the Chief Justice of the SPC (**Directive 01/2020**)<sup>7</sup>. These factors have strengthened the recommendations of this Study. Moreover, the

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<sup>3</sup> Resolution No. 37/2012/QH13 dated November 23, 2012 of the National Assembly on the prevention and combat of law violations and crimes and the work of the People's procuracy, the People's Courts and the judgement enforcement work in 2013, Article 2, clause 3

<sup>4</sup> 16 provinces/cities including: Hai Phong, Ha Noi, Da Nang, Ho Chi Minh City, Can Tho, Bac Ninh, Vinh Phuc, Quang Ninh, Thai Binh, Thanh Hoa, Nghe An, Quang Nam, Khanh Hoa, Dong Nai, Binh Duong, Long An

<sup>5</sup> UNDP (2014), *The Reality of Local court Governance in Vietnam*, pages 18 and 19; UNDP\_VCCI (2017), *Research report: court Integrity in Settlement of Business and Commercial Cases - A Practical View*, pages 27 and 28

<sup>6</sup> The Law on Court Annexed Mediation and Dialogue was approved on June 16, 2020 and comes into effect on January 1, 2021.

<sup>7</sup> Directive 01/2020 dated January 9, 2020 on the implementation of key task in 2020 of the Courts

findings and recommendations of the Study can be a reference for the courts in the process of performing its key tasks.

## 1.2. Objectives

As mentioned above, the Report “*Good practices in court procedures to improve court integrity*” was conducted to understand the current legal framework and practice of performing judicial administrative tasks in several courts, thereby finding suitable models that are effective in enhancing the capacity and integrity of the court system.

The scope of this Report on judicial administrative works is based on the concept of “judicial administrative works” determined by the courts at the time of research, which is: “*the processes and procedures of an administrative nature that support the trial activities of the courts; handling the people’s requirements before and after trials; management and supervision by court leaders at all levels. Such activities include reception of the people; receipt and settlement of petitions, appellate and protest dossiers, dossiers from the People’s procuracies, receipt of complaints; receipts of official documents; assignment of case settlement; supply of copies of court judgements and decisions; management of input, output and backlog cases; arrangement of the trial hall; and procedures for managing and exchanging information in order to support the supervision and management by court leaders at all levels*”<sup>8</sup>. “*The reform of judicial administrative works of the courts in recent years has mainly focused on a number of contents such as: standardizing the process of task handling associated with the application of information technology; establishing a judicial administrative units at courts; separating administrative management from trial activities; developing a process of random case assignment for judges*”<sup>9</sup>. In Superior People's Courts, the obligations and powers of the Judicial Administrative Unit tend to be greater than the above-mentioned definition of judicial administration under decisions on organizational structure, obligations and powers of units in assisting apparatus of Superior People's Courts<sup>10</sup>.

The Research Team opines that the definition of “integrity of the Court” is a broad term. According to the Bangalore Principles of Judicial Conduct, “integrity” is identified

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<sup>8</sup> Truong Hoa Binh (2013), *Some contents on reforming judicial administrative works in the activities of the People’s Courts (Một số nội dung về đổi mới thủ tục hành chính tư pháp trong hoạt động của Tòa án nhân dân)*, People’s Court Magazine No. 01/2013, pages 1-6

<sup>9</sup> SPC (2019), *Summary report of court work from the beginning of the term to now and 2018, the key task of the coming time (Báo cáo tóm tắt công tác Tòa án từ đầu nhiệm kỳ tới nay và năm 2018, nhiệm vụ trọng tâm thời gian tới)*

<sup>10</sup> Nguyen Hai Bang - Intermediate Judge - Deputy Chief Secretariat of Ha Noi Superior People's Court, *Several comments on the Report “Good practices in court procedures to improve court integrity”*, Document of the Consultation workshop on the draft Report “*Good practices in court procedures to improve court integrity*”, 23/7/2020, page 5



as one of six principles of judicial conduct. This concept is interpreted as follows: *“Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, act honourably and in a manner befitting the judicial office; be free from fraud, deceit and falsehood; and be good and virtuous in behaviour and in character. There are no degrees of integrity as so defined. Integrity is absolute. In the judiciary, integrity is more than a virtue; it is a necessity”*.<sup>11</sup>

In Viet Nam, "integrity of the Court" can be explained by the Ho Chi Minh ideology for Judges in particular and for judicial activities in general, which teaches to “respect and devotedly serve the People, maintain close links with them, listen to their opinions and be under their supervision; resolutely combat corruption, waste, and all manifestations of bureaucratization, arrogance and arbitrariness” and “be close to the People, understand the People, help the People, learn from the People”<sup>12</sup>. Based on this ideology, the "Integrity" of Judges is defined in the Code of ethics and conduct for Judges as follows:

*"1. Judges are obliged to maintain their integrity, unsulliedness, frankness, and honesty;*

*2. Judges must not take advantage of their positions to seek benefits for themselves or for others; must not allow their family member(s), Court officials and employees under their management to demand or receive money, property and other benefits from anyone for reasons related to the work under the Judges' handling;*

*3. Judges are obliged to publicize their personal income according to the provisions of law.”*<sup>13</sup>

In addition to the above definitions of "judicial administration", "integrity" of Judges in particular and the Court in general, this Report is also guided by the Resource Guide on Strengthening Judicial Integrity and Capacity by United Nations Office on Drugs and Crime (UNODC)<sup>14</sup> to determine 4 (four) groups of judicial administrative works to be analyzed as follows:

(i) Petition receipt and case acceptance (including mediation activities of Centers of court annexed Mediation and Dialogue)

(ii) Case assignment;

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<sup>11</sup> UNODC (2007), Commentary on the Bangalore Principles of Judicial Conduct, page 79

<sup>12</sup> Message sent to the national Judicial Conference (February 1948), The Collective of Ho Chi Minh – Volume 5, page 52

<sup>13</sup> The Code of ethics and conduct for Judges 2018, Article 4

<sup>14</sup> See also Resource Guide on Strengthening Judicial Integrity and Capacity by UNODC (2011).

- (iii) Case time management (including publication of process for case settlement; application of simplified procedure; submission, access to and disclosure of evidence and mediation; adjournments); and
- (iv) Judgement delivery and publication.

### **1.3. Methodology**

The Report “*Good practices in court procedures to improve court integrity*” was conducted based on documents, reports, legal regulations of the courts and related agencies and in conjunction with quantitative research by survey and direct in-depth interviews with 18 (eighteen) judges and court staff in 7 (seven) courts at all levels, which include:

- 3 (three) People’s Courts of provinces and centrally run cities: People’s Court of Ho Chi Minh City, People’s Court of Binh Duong Province and People’s Court of Hai Phong City;
- 3 (three) People’s Courts of districts and provincial cities: People’s Court of District 5, Ho Chi Minh City; People’s Court of Thu Dau Mot City, Binh Duong Province; People’s Court of Hong Bang District, Hai Phong City;
- 1 (one) Superior People’s Court: Superior People’s Court in Ha Noi.

The selection of these Courts for survey is not based on the quality of court settlement but on the following criteria: (i) Provincial People’s Courts in localities where several disputes arise in the commercial business space/arena, regardless of economic growth (People’s Court of Ho Chi Minh City, People’s Court of Hai Phong City and People’s Court of Binh Duong Province meet this criterion); (ii) District-level People’s Courts in localities witnessing a diverse array of commercial business cases or provincial economic development (People’s Court of District 5, People’s Court of Thu Dau Mot City, Binh Duong Province; People’s Court of Hong Bang District meet this criterion); (iii) The Courts piloting court annexed mediation and dialogue (People’s Court of Ho Chi Minh City, People’s Court of Hai Phong City and People’s Court of Binh Duong Province, People’s Court of Hong Bang District, People’s Court of Thu Dau Mot City meet this criterion); (iv) The Court has piloted electronic petition receipt (Superior People’s Court in Ha Noi, People’s Court of Hai Phong City meet this criterion). Along with the interviews with judges and court staff, the Research Team also conducted direct in-depth interviews with 16 (sixteen) businessmen and lawyers having experience in court dispute settlement (litigation lawyers) in the surveyed localities and some other localities (for diverse, multi-dimensional information) between late 2018 and early 2019. Businessmen and litigation lawyers’ experience in judicial administrative works will provide multi-dimensional information that honestly

reflect the quality and significance of the judicial reform process of the courts. In order to ensure the objectivity of this Report and to protect information resources, the Report will not specify the name or locality of interviewed persons. In order to maintain the consistency, the Research Team prepared the 2 (two) questionnaires, one for judges and court staff and another for litigation lawyers and businessmen (please find them in Annex III and Annex IV).

The Research Team also conducted the survey by observing the survey site. The subjects of observational research include sites of judicial administrative units, information boards that provide information about the proceedings and are accessible to all people and businesses, electronic kiosks for judicial administrative works, case assignment chart, etc. Observation method assists in collecting information about the actual process of people and businesses implementing the judicial administrative works.

## PART II – LEGAL FRAMEWORK AND GOOD PRACTICES IN IMPLEMENTING JUDICIAL ADMINISTRATIVE WORKS OF COURTS

### 2.1. Petition receipt and case acceptance

According to the regulations of the CPC 2015, petition filing is the first step in gaining access to court judgements to seek justice. Compared to the previous version, the CPC 2015 has made some notable changes in order to create more favorable conditions for people and businesses to file petitions, especially with the regulations that allow petition filing through e-filing system of the court (if any)<sup>15</sup>. In light of the new provisions of CPC 2015, the SPC has provided guidance on applying these provisions and concurrently, the Justice Council of the SPC issued a resolution on sending, receiving the petitions, documents, evidence; and issuance, sending, notification of procedural documents via e-filing system<sup>16</sup>. Although there was a legal basis, in fact, in October 2018, receiving petitions via e-filing system was officially implemented in a narrow scope (*see more information in Section 2.1.3 below*).

Some studies published before and after the application of the CPC 2015 have indicated that receiving petitions is a phase that is likely to facilitate corruption during the provision of public services by court staff<sup>17</sup>. According to a study by The Central Committee of Internal Affairs, in practice, there are cases where the petitioners, although their petitions have already been filed, do not receive the Receipt Slip from the court. This situation makes it difficult for the petitioners to determine the time that they initiated the lawsuit as well as to ensure the integrity of the petition dossiers. Additionally, there are cases where the staff receiving the petitions do not explain or explain unclearly about the issues in the petition that need to be supplemented, adjusted, or issues related to evidence in the petition dossiers. Therefore, petitioners have to keep re-filing the petition, which is time-consuming. Moreover, some staff receiving petition even prolong the time of petition review, threaten, coerce or use other “tricks” that make it inevitable for petitioners to resort to bribery for petition acceptance<sup>18</sup>. In addition, some courts only accept petitions on certain days, posing a threat to the rights and interests of people and businesses<sup>19</sup>.

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<sup>15</sup> CPC 2015, Article 190

<sup>16</sup> Resolution No. 04/2016/NQ-HDTP

<sup>17</sup> The Internal Party Committee of Supreme People’s Court (2015), *Project on Practices and Solutions to Prevent and Combat Negative Judicial Activities in the courts*, page 8; UNDP (2014), *ibid.*, page 18-19; UNDP\_VCCI (2017), *ibid.*, page 27-28; The Central Committee of Internal Affairs (2017), *Report on Improving Legal Institutions on Preventing Corruption in Judicial Activities to Promote Business Activities in Viet Nam*, page 8

<sup>18</sup> The Central Committee of Internal Affairs (2017), *ibid.*, page 8-9

<sup>19</sup> Luu Thi Dung (2017), *The courts receive petitions in certain days: Is it in accordance with regulations of law? (Tòa án nhận đơn kiện vào các ngày chẵn lẻ: Có đúng quy định của pháp luật?)*, Vietnam Law Newspaper,

In response to the limitations mentioned above, many courts have implemented solutions to reform the procedures for receiving petitions and to improve the operational efficiency in such procedures, including the establishment of Judicial Administrative Unit<sup>20</sup>. Learning experience from mechanism of ‘One-stop shop’ of administrative agencies, the Judicial Administrative Unit at courts is established with two main characteristics: (i) work progress is standardized; (ii) responsibility of the petition receiving staff is clearly defined. The model of judicial administrative unit is recognized to have certain advantages such as clear and transparent work process; the supervision of people and the court leaders on the quality of work settlement is strengthened; compliance costs for both people and the court staff are reduced<sup>21</sup>. Each court having different structural organization and working process of receiving petition leads to the inconsistency among localities while the ‘One-stop shop’ mechanisms of state administrative agencies are consistently operated nationwide<sup>22</sup>.

**Box 1: Current ‘One-stop shop’ model in handling administrative procedures**

1. The ‘One-stop shop’ mechanism in handling administrative procedures is the method of receiving application files, settling and sending results of administrative procedures, monitoring, supervising and evaluating administrative procedures for organizations, individuals of a competent authority through the ‘One-stop shop’ department specified in Clause 3 of this Article.
2. The inter-agency ‘One-stop shop’ mechanism in handling administrative procedures is a method of coordination among competent agencies in receiving application files, settling and sending results of handling an administrative procedure or a group of administrative procedures related to each other, monitoring, supervising and evaluating the settlement of administrative procedures for organizations and individuals through the ‘One-stop shop’ department specified in Clause 3 of this Article.
3. The ‘One-stop shop’ department is the common name of the Department of receiving application files and sending results of administrative procedure settlement or the provincial-level Center of Public Administration Service, performing tasks and functions to guide, receive and handle or transfer application files for handling and sending results of handling of administrative procedures, monitoring, supervision and evaluation of handling administrative procedure for organizations and individuals.

**Article 3, Decree 61/2018/ND-CP**

<http://www.phapluatplus.vn/toa-an-nhan-don-kien-vao-cac-ngay-chan-le-co-dung-quy-dinh-cua-phap-luat-d34290.html>

<sup>20</sup> The Research Team found different names from the field survey about judicial administrative unit, some courts called this unit as of Judicial Administrative Unit, other court called it as Judicial Administrative Team, a court called it as ‘One-stop shop’. In this Report, we would consistently use the term “Judicial Administrative Unit”.

<sup>21</sup> Thu Hang (2018), *Promote innovation, reform of judicial administrative works at the Court (Đẩy mạnh đổi mới, cải cách thủ tục hành chính tư pháp tại Tòa án)*, the Communist Party of Viet Nam online newspaper, <http://dangcongsan.vn/phap-luat/day-manh-doi-moi-cai-cach-thu-tuchanh-chinh-tu-phap-tai-toa-an-377786.html>

<sup>22</sup> Decision 93/2007/QĐ-TTg of the Prime Minister providing regulations on One-stop shop at the state administrative agencies in localities, dated 22 June 2007.

The following section will analyze the legal framework and practice on directly receiving petitions at district courts, provincial courts, and the Superior People's Court as well as the mechanism for receiving petition via e-filing system which is currently being piloted in some localities. Such analyses will also cover the implementation of pilot mechanism pertaining to court annexed mediation and dialogue before the court accepts the case for judicial settlement.

### **2.1.1. Mechanism for receiving petitions at district courts**

#### **2.1.1.a. Judicial Administrative Unit specialized in receiving petitions**

The mechanism of Judicial Administrative Unit ('One-stop shop') was piloted in 3 (three) provincial courts at localities including: Vinh Long, Thua Thien Hue and Hung Yen. In these provinces, a number of district courts have also voluntarily applied the model of Judicial Administrative Unit, such as Hue city People's Court in Thua Thien Hue province, Vinh Long city People's Court in Vinh Long province. After that, the courts also piloted different models of Judicial Administrative Unit in other localities<sup>23</sup>. Since 2016, the SPC leaders issued a directive on "*reforming judicial administrative works in the operation of the courts of all levels in order to create the most favorable conditions for people conducting procedures at the courts*", setting the goal of applying the 'One-stop shop' mechanism for judicial administrative works nationwide<sup>24</sup>. Many provincial and district courts have built different mechanisms for judicial administrative works in order to tailor such mechanisms to the specific personnel characteristics and the management objectives of each court. The surveyed courts under this Report have established Judicial Administrative Units directly under the court Office to receive petitions in accordance with the provisions of Decision No. 345/2016/QD-CA. The Judicial Administrative Units at these courts are responsible for guiding people on filing petitions; and also guiding State cadres/servants on receiving, studying, handling petitions, and performing other tasks according to the provisions of each locality.

At the People's Court of District 5 of Ho Chi Minh City (**People's Court of District 5**), information in the petitions will be sent to a case management software by the Judicial Administrative Unit. The software will issue barcodes for each petition to facilitate tracking by computers. These barcodes are printed on the Receipt Slip and used throughout the proceedings. The software system together with bar code scanner of the People's Court of District 5 are equipped by the People's Court of Ho Chi Minh City. Only the concerned parties, court staff and procurators can search the case information. Compared with other case management methods in other courts, the method and electronic means of

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<sup>23</sup> UNDP (2014), *ibid.*, page 15-17

<sup>24</sup> Directive No. 03/2016/CT-CA

courts in Ho Chi Minh city have helped the case management in these courts to be more efficient and timesaving. From the perspective of concerned parties or lawyers, electronic searching can help them quickly update the status of petition settlement when they are unable to contact judges or court clerks being in charge of the case. However, in order to gain access to this information, the concerned parties and lawyers can only use the barcode scanners at the courts because they cannot search them online. The People's Court of District 5 does not participate in the Pilot project of Court annexed mediation and dialogue (at the time of implementing this Research), thus this Court's petition settlement procedures for civil, commercial business, labor, administrative cases are not in accordance with mediation and dialogue procedures.

Unlike the People's Court of District 5, the People's Court of Thu Dau Mot City in Binh Duong Province (**People's Court of Thu Dau Mot City**) and the People's Court of Hong Bang District in Hai Phong City (**People's Court of Hong Bang District**) have established the Centers of Court Annexed Mediation and Dialogue under the pilot project of Court annexed mediation and dialogue. Therefore, before receiving the petition, the Judicial Administrative Units of 2 (two) courts will determine the disputing parties' willingness to mediate. If the disputing parties submit

***Box 2: Opinions on the Judicial Administrative Units at the courts***

Some lawyers said that the current model of the Judicial Administrative Unit at the court is useful for the concerned parties when they need to file petitions to the court, receive judgement extracts, or perform other judicial administrative works. Some lawyers also said that the current process of receiving petitions and accepting cases needs to be improved in order to shorten time for case acceptance even if the courts have established the Judicial Administrative Units, e.g.: the concerned parties should be entitled to transfer the court fees to the court instead of going to Civil enforcement agencies and the State Treasury as current; the courts should not require the plaintiffs to prove the address of the defendant or prove that the defendants are active (in case the defendants are businesses), etc.

a written refusal to mediation, the courts will officially receive the case for judicial settlement. If the parties agree to mediate, the Judicial Administrative Units shall transfer the case to the Centers of Court Annexed Mediation and Dialogue to conduct the mediation process. If the mediation is successful, the concerned parties will withdraw the petition or request the court to recognize of the successful mediation results. If the mediation is unsuccessful, the case will be received by the competent court via the Judicial Administrative Unit and settled in accordance with the procedures of the CPC 2015.

Currently, the case management mechanism of the People's Court of District 5, the People's Court of Thu Dau Mot City and the People's Court of Hong Bang District is described to be similar to that of many other courts nationwide that have organized the Judicial Administrative Unit. Petitions will be received by the Judicial Administrative

Unit, recorded in the Petition Receipt Record (So Tiep nhan) and sent to judges or court leaders for consideration of acceptance for settlement. Time bar for receiving and considering acceptance is regulated in the CPC 2015. At these courts, the concerned parties are issued receipts that contain information about the appointment to respond to the petitions. At the appointment, the concerned parties will be notified whether the petitions shall be accepted for settlement or need to be supplemented with additional documents. At the People's Court of Thu Dau Mot City, many petitions are reviewed immediately provided that the case is not too complicated, or the concerned parties reside too far from the court's office. To ensure this, the People's Court of Thu Dau Mot City must always arrange a judge to work in the Judicial Administrative Unit. In other courts, the staff of the Judicial Administrative Units shall record data in the petitions into the information system or the Case management books, and then report to the court leaders for consideration and case acceptance. If the case is eligible for acceptance, the case will be reported to the court leaders and will be assigned a specific judge.

When petitions are accepted, the data in the petitions will be recorded in the Petition acceptance book. From the time of case acceptance, the time-bar to resolve the case shall be tracked and managed in accordance with the regulations of the CPC 2015. All 3 (three) surveyed district courts manage their cases with Excel software, as well as weekly report on mechanism and case management book system. The Judicial Administrative Units of these courts are still the focal point to update case and settlement information and to synthesize the status of case settlement to report to the court leaders.

The surveyed district courts do not have their own websites that enable people and businesses to search for information online. Information on procedural forms, guidelines on procedures, etc. are introduced on the e-portal of provincial court. Information about proceedings is posted on the information board located at the entry of the offices of the courts. However, in several courts, the trial schedule is not updated in a timely manner on the information boards; the procedural guidance is basically the copy of provisions of the CPC 2015. Even though the legal contents in the forms are still valid, their external appearance is not very user-

***Box 3: Comment of businesses  
on the petition receipt in the  
court***

Enterprise X went to a district-level People's Court in city H. to file a petition on Monday. However, the court official receiving petition refuses to accept the petition because that day is not the date of receiving petition (this court only receives petition on Tuesday and Thursday) and requires Enterprise X to come back on Tuesday or Thursday.

However, when the Enterprise X filed a petition at a district-level People's Court of city N., the petition was received quickly by the court official because the court prescribes that court staff must receive petition in all working days of the week.



friendly (not updated, dirty, etc.), which might create skepticism among the readers about the accuracy of these forms.

Some courts have organized a 'One-stop shop' with 'windows' to handle work according to each type of functions which made it quite convenient for people to file petitions, search information and receive judgement extracts (such as the People's Court of Thu Dau Mot City). However, in some courts, Judicial Administrative Units are still located in hard-to-reach areas, which creates certain obstacles for the elder and the disabled. Some courts assign only one or two official(s) with irregular working hours. Therefore, people and businesses have to obtain information through other agencies of the courts or direct meeting with the judges or court clerks settling the case. This practice "creates negative opportunities"<sup>25</sup> or creates obstacles for people and businesses. Explaining the reason why there is no regular Court official at the Judicial Administrative Unit or why the Court has to receive petitions on certain days of the week, some Judges claim that there is a lack of secretaries and officials in courts. If secretaries and officials are regularly assigned to work at the Judicial Administrative Unit, there will be a shortage of secretaries and officials in charge of procedural activities.

#### **2.1.1.b. Court annexed Mediation and Dialogue activities in receiving petitions**

In courts executing the Pilot project of Court annexed Mediation and Dialogue, after receiving the petitions, the Petition Receipt Unit or Judicial Administrative Unit of the courts shall inform the concerned parties of the role of this Center and the benefits if the disputes are resolved through mediation conducted by the Center. If the concerned parties agree, the case files will be sent to the Center of court annexed Mediation and Dialogue for mediation. After sending documents to the Center of court annexed Mediation and Dialogue, the staff of the Judicial Administrative Unit still recognize that the cases are accepted by the courts for mediation but not yet settled in accordance with the procedures under the CPC 2015. Therefore, the statute of limitations has not been applied yet.

The Director of the Center of court annexed Mediation and Dialogue (usually he or she is also the Chief Justice or Deputy Chief Justice of the People's Court) shall assign a Mediator to study the case and conduct mediation. Afterwards, the Mediator will create a case file, study the case, develop a mediation plan and invite the concerned parties to participate in mediation and dialogue processes<sup>26</sup>. If the mediation is successful,

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<sup>25</sup> The Central Committee of Internal Affairs (2017), *ibid.*, page 9

<sup>26</sup> See also Master Ta Dinh Tuyen (2018), *Piloting mediation, dialogue innovation, strengthening in resolving civil disputes, administrative lawsuits and a number of recommendations - Thí điểm về đổi mới, tăng cường hòa giải, đối thoại trong giải quyết các tranh chấp dân sự, khiếu kiện hành chính và một số kiến nghị*, Journal of People's

the concerned parties shall withdraw the petition and request the People's Court to recognize the result of the mediation. If the mediation is unsuccessful, the case shall be returned to the People's Court and settled in accordance with the CPC 2015.

In addition to the efficiency role of the Judicial Administrative Units, mediation activities at the Centers of court annexed Mediation and Dialogue are also recognized to bring many benefits to people and the courts in Hai Phong. Through the survey, the Research Team found that the practice of People's Court of Hong Bang District is a good example with the highest rate of successful mediation of the Center of court annexed Mediation and Dialogue in Viet Nam (85.5%). The judge of the People's Court of Hong Bang District claimed that mediation at the Center of court annexed Mediation and Dialogue would reduce pressure of judges as well as saving costs for people. The preliminary review of the pilot implementation of court annexed mediation and dialogue in Binh Duong province reveals that the People's Court of Thu Dau Mot City is recognized as one of the good practices of this pilot in Binh Duong province with a high number of resolved cases (550/568 cases equivalent to 96.8%), the rate of successful mediation and dialogue is 95.3%<sup>27</sup>.

On the other hand, some judges and lawyers in the localities who have recently piloted the establishment of the Center of court annexed Mediation and Dialogue opined that the model of the Center for Mediation and Dialogue at the court has not reduced the workload of the People's Court. The reason is that even when being successfully mediated, the disputes will still become civil matters for the judges must also review the minutes of successful mediation to validate them in accordance with the conditions of successful mediation agreement recognition, such as: parties of the mediation agreement have full legal capacity, the agreement shall not be contrary to law, not contrary to social ethics nor used to evade obligations towards the State or the third party<sup>28</sup>. Moreover, although the dispute is transferred to the Center of court annexed Mediation and Dialogue for settlement, the Court leaders still assign a judge to follow up and support the Mediator to settle cases. That means, the judge still has to participate in mediation process with the Mediator to ensure that the mediation process is in accordance with the requirements of the SPC, and arises no corruption or professional mistakes, etc. This practice is causing concerns about the confidentiality and independence of the mediation process from the litigation process. The lawyers

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Court online, <https://tapchitoaan.vn/bai-viet/phap-luat/thi-diem-ve-doi-moi-tang-cuong-hoa-giai-doi-thoai-trong-giai-guyet-cac-tranh-chap-dan-su-khieu-kien-hanh-chinh-va-mot-so-kien-nghi>

<sup>27</sup> *The People's Court of Binh Duong province held a preliminary review of the pilot on innovation to strengthen mediation and dialogue at the Court (TAND tỉnh Bình Dương tổ chức sơ kết thí điểm về đổi mới tăng cường hòa giải, đối thoại tại Tòa án)*, Website of the People's Court of Binh Duong Province,

<https://binhduong.toaan.gov.vn/webcenter/portal/binhduong/chitiettin?dDocName=TAND065858>

<sup>28</sup> Civil Procedure Code 2015, Article 417

interviewed said, although the Court informed that all the information and the presentation in the mediation process will not be used in the subsequent proceeding (if any), the lawyers are still worried about the ability of the courts to guarantee the confidentiality and independence in practice.

Some lawyers disclosed that the Court Annexed Mediation process is prolonging the duration of court settlement procedures. Many commercial business disputes have often been negotiated in good faith before they are brought to courts. Therefore, if the negotiation and mediation are repeated at the Court, the dispute settlement will be prolonged. Although the mediator or judicial official explained that the mediation period would take no more than 2 (two) months<sup>29</sup>, some lawyers claim that they are not clearly informed about the process and the time limit for the mediation process.

According to some lawyers and judges interviewed, the legal capacity and experience of some Mediators at the district courts are not equal to those of the Mediators at the provincial courts. District courts (especially, the courts in suburban areas or remote areas) face difficulties in recruiting retired judges and state officials or experienced lawyers for mediation<sup>30</sup>.

Some lawyers are concerned about the role of Mediators for there have been cases where the Mediators refused the lawyers' participation in this process and require working directly with the concerned parties or the authorized representative of the businesses. There are even cases where the Mediator consults the concerned parties that they should change the current lawyer or let the Mediator himself/herself consult about the dispute.

Some lawyers also revealed that, in order to minimize the disadvantageous intervention from Court Annexed Mediation activities to their clients, they advised the clients to refuse mediation process before trial when filing a lawsuit with the Court. On the other hand, some judges are aware of the refusal of the lawyers to the pilot mediation and opine that the above-mentioned point of view and act of the lawyers have reduce the effectiveness of Court annex mediation.

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<sup>29</sup> Official Letter No. 310/TANDTC-PC dated October 11, 2018 of the Supreme People's Court providing guidelines on mediation process in civil and administrative disputes in 16 provinces and cities, including: Ha Noi, Da Nang, Ho Chi Minh City, Can Tho, Hai Phong, Bac Ninh, Vinh Phuc, Quang Ninh, Thai Binh, Thanh Hoa, Nghe An, Quang Nam, Khanh Hoa, Dong Nai, Binh Duong and Long An.

<sup>30</sup> Some reasons have been gathered in the survey, such as: there are not many retired judges or experienced lawyers in the locality, low compensation for mediation...

## **2.1.2. Mechanism for receiving petitions at the surveyed provincial courts**

### **2.1.2.a. Judicial Administrative Unit specializing in receiving petitions**

Similar to the Judicial Administrative Unit specializing in receiving petitions of district courts, currently, there has not been any legal document on the establishment conditions and operation of the Judicial Administrative Units of the provincial courts. Based on the policy of "reforming judicial administrative works", the model of Judicial Administrative Unit is being implemented notably in many localities such as People's Court of Ho Chi Minh City, People's Court of Quang Binh Province, People's Court of Thua Thien Hue Province, People's Court of Vinh Long Province, People's Court of Hai Phong City, People's Court of Bac Ninh Province, People's Court of Nam Dinh Province, People's Court of Khanh Hoa Province, People's Court of Hung Yen Province<sup>31</sup>, etc. So far, the SPC has not published the quantity of local courts with Judicial Administrative Unit.

According to the Study, People's Court of Ho Chi Minh City has been implementing and operating efficiently the model of Judicial Administrative Unit ('One-stop shop' Unit) since 1997<sup>32</sup>. In 2016, People's Court of Ho Chi Minh City issued the 'One-stop shop' and 'Inter-agency One-stop shop' Implementation Process. Accordingly, the Judicial Administrative Unit is divided into sections with 2 (two) main tasks: receiving petitions and returning results; profession processing (including inputting data into software, providing bar-codes for cases), which is similar to the process implemented at the People's Court of District 5<sup>33</sup>. In addition to computers, photocopiers, scanner machines, judicial administration software to assist the staff, the Judicial Administrative Unit is also equipped with automatic queue number ticket printers and electronic kiosk for information research on judicial administrative works or the results of judicial administrative works for citizens<sup>34</sup>.

By interviewing several representatives of businesses, lawyers who have experienced the services at the People's Court of Ho Chi Minh City, the Research Team has

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<sup>31</sup> Nguyen Hung Quang (2018), *The Report of The Aspiration of Businesses towards courts' Activities in Enforcing Contracts*, page 11, GIG Project

<sup>32</sup> Cam Van (2013), *Multiply the 'One-stop shop' model of courts to enhance the possibility of access to justice of people (Nhân rộng mô hình "một cửa" tại Tòa án để tăng khả năng tiếp cận công lý cho người dân)*, Ministry of Justice website, <http://moj.gov.vn/qt/tintuc/Pages/ngghien-cuu-trao-doi.aspx?ItemID=1583>

<sup>33</sup> See the 'One-stop shop' and 'Inter-agency One-stop shop' Implementation Process of People's Court of Ho Chi Minh City, Section A – Petition,

<http://www.tand.hochiminhcity.gov.vn/web/quest/quy-che-thuc-hien-cai-cach-hanh-chinh-tu-phap-voi-co-che-mot-cua-mot-cua-lien-thong>

<sup>34</sup> Regulation on the implementation of judicial administrative reform with the 'One-stop shop', 'Inter-agency One-stop shop' of People's Court of Ho Chi Minh City dated 5 May, 2016, Article 8, clause 3, <http://www.tand.hochiminhcity.gov.vn/web/quest/quy-che-thuc-hien-cai-cach-hanh-chinh-tu-phap-voi-co-che-mot-cua-mot-cua-lien-thong>

received positive feedbacks, which prove the efficiency of the petition receipt implemented by Judicial Administrative Unit of the People's Court of Ho Chi Minh City. Through a comparative survey of the model of the Judicial Administrative Unit of provincial courts, the Research Team found that the Judicial Administrative Unit of the People's Court of Ho Chi Minh City operates quite efficiently thanks to the application of information technology and a clearly laid out workflow process. This operation reduces the petition processing time of Administrative Unit and improves the quality of the court's file management as well.

Different from many courts in other localities, People's Court of Binh Duong Province has standardized the entire process of judicial administrative works in accordance with the CPC 2004 (out of date) and the current-effective CPC 2015 according to the evaluation method ISO 9001:2000 since 2008 and applied the quality management system ISO 9001:2008 since 2012<sup>35</sup>. In 2016, in order to update the new provisions of the CPC 2015, the People's Court of Binh Duong province issued processes for resolving cases in specific fields (including the process of first-instance trial of solving commercial cases, process of appellate trial of resolving commercial cases, process of resolving the request of businesses, cooperatives for bankruptcy, etc.). Through the application of assessment method ISO 9001:2008, the working process in the People's Court of Binh Duong province has been standardized and become more transparent, clearly defining the responsibilities of the court staff in handling judicial procedures. Therefore, this method can save compliance costs for both people and the court staff. Moreover, people can easily supervise the settlement process while the court leaders can manage the number of cases being resolved, as well as review performance of the court staff.

People's Court of Binh Duong Province has mapped and publicly posted the entire administrative procedure in accordance with CPC at the court's head-office. This process was disseminated to train the judges with specific requirements on the duration of each step, each stage. Currently, People's Court of Binh Duong Province is applying the model of court annexed mediation and dialogue. As a result, the process is being supplemented with the step of dispute settlement by court annexed mediation before the petition is accepted by People's Court of Binh Duong Province. In order for the petition receipt and acceptance to be processed quickly, the Judicial Administrative Unit of People's Court of Binh Duong Province has assigned 1 (one) judge responsible for advising the head of the Judicial Administrative Unit in reviewing the petitions to determine whether a petition is (i) eligible for court annexed mediation

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<sup>35</sup> The website of People's Court of Binh Duong province,

<https://binhduong.toaan.gov.vn/webcenter/portal/binhduong/gioithieu?dDocName=TAND018807>

to transfer to the Center of court annexed Mediation and Dialogue or (ii) accepted for settlement or (iii) returned because of being not eligible.

This model is similar to the model of Judicial Administrative Unit of People's Court of Vinh Long Province, People's Court of Thua Thien Hue Province during the pilot period of 2010-2012. In addition, the evaluation and monitoring methods of ISO 9001:2008 are applied in evaluating and monitoring the implementation of judicial administrative works and the duration of judicial activities. As a result, this process has shortened the petition processing time from 8 (eight) business days as provided by law to 3 (three) business days. However, the ISO method has only been applied in People's Court of Binh Duong Province. District courts in Binh Duong have not yet applied this model due to frequent changes in personnel and lack of staff.

The Judicial Administrative Unit is also being applied in the People's Court of Hai Phong City but on a larger scale which is relatively similar to the 'One-stop shop' mechanism in many State administrative agencies. Accordingly, the Judicial Administrative Unit here has 2 (two) windows: (i) the window to receive the documents, and (ii) the window to receive the petitions. The Judicial Administrative Unit is divided into 3 (three) working groups: (i) the criminal case working group (3 persons in charge), (ii) the civil, commercial, labor and administration case working group (3 persons in charge), (iii) statistics, information technology application and documentary working group (4 persons in charge). In order to ensure the efficiency of the petition receipt and acceptance, members of the Judicial Administrative Unit are qualified clerks of specialized People's Courts who are capable of guiding the citizens on the procedures.

As summarized before, the model of Judicial Administrative Unit has been piloted for nearly 10 (ten) years in some local People's Courts, such as People's Courts of Hung Yen Province, Thua Thien - Hue Province, Vinh Long Province and Bac Ninh Province. These are local People's Courts which received technical support from international cooperation projects<sup>36</sup>. Success from such pilot activities has helped other courts to improve the petition receipt, citizen reception, document and official letter receipt as well as build a storage system of the courts. According to the evaluation of the JUDGE Project, the application of the 'One-stop shop' mechanism has contributed to the reduction of compliance costs of both the courts and citizens, e.g. in the People's Court of Hung Yen Province, the reductions are respectively by 62% and 51%. In the People's Court of Thua Thien – Hue Province, the reductions are respectively by 62%

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<sup>36</sup> People's Court of Hung Yen Province, Thua Thien - Hue Province, Vinh Long Province was supported by JUDGE Project funded by the Government of Canada, People's Court of Bac Ninh Province was supported by the Government of Japan

and 50% and in the People's Court of Vinh Long Province, the reductions are respectively by 63% and 50%<sup>37</sup>.

### **2.1.2.b. The Center of court annexed Mediation and Dialogue activities in the stage of receiving petitions**

All 3 (three) provincial courts in the survey scope (including People's Court of Ho Chi Minh City, People's Court of Binh Duong Province and People's Court of Hai Phong City) are piloting the Center of court annexed Mediation and Dialogue. Court annexed mediation activities at these Centers have similarities with the activities of the Center of court annexed Mediation and Dialogue of district courts as mentioned in section 2.1.1.b. According to the comments of judges at the People's Court of Hai Phong City, People's Court of Binh Duong Province and People's Court of Ho Chi Minh City during the survey, the operation of the Center of court annexed Mediation and Dialogue has reduced the work pressure for the judges, helped citizens save costs for trial as well as shortened the time of case settlement once the court annexed mediation is successful.

**Box 4: Practice at the Center of court annexed Mediation and Dialogue in the People's Court of Ho Chi Minh City**

From November 1, 2018 to March 15, 2019, the Center of court annexed Mediation and Dialogue of People's Court of Ho Chi Minh City received 465 petitions, of which 166 cases were resolved, 50 cases were recognized as being successfully mediated (the rate of successful mediation and dialogue is 30.12%).

According to the Study and a report of the Chief Justice of the People's Court of Ho Chi Minh City, there are still obstacles in the Court Annexed Mediation and Dialogue Center's operation in Ho Chi Minh city, such as the methods to handle the results of successful mediation have not yet been unified, some forms related to mediation and dialogue have to be amended to be appropriate with civil, administrative proceedings. In addition, there are also some external circumstances affecting the Centers' operations, for example, the funding for the Centers have not been timely supported; the number of Mediators and clerks working at the Centers do not meet the requirements; the Centers' facilities are still lacking in equipment such as desks, printers, photocopiers, etc..<sup>38</sup>

The comments of lawyers on mediation activities at the provincial courts are similar to those at district-level ones. Only 3 out of 16 lawyers and businessmen interviewed had experience in conducting mediation activities at courts of 2 (two) levels. According to

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<sup>37</sup> Cam Van (2013), *ibid*.

<sup>38</sup> LL.M. Ung Thi Xuan Huong (April 12, 2019), former Chief Justice of People's Court Ho Chi Minh City, Presentation on the Draft Law on Mediation and Dialogue at the Court, the International Conference on the Project of the Law on Mediation and Dialogue at the Court

them, the facilities at the provincial court annex mediation and dialogue centers are often better than those of district courts. However, some lawyers also said that they had advised their clients to refuse court annex mediation when filing petition to the Court for fear of prolonged dispute settlement and other reasons mentioned in Section 2.1.1.b. Practice of the piloted Court annexed Mediation and Dialogue in receiving petitions.

### **2.1.3. Mechanism for receiving petitions at the surveyed Superior Courts**

#### **2.1.3.a. Judicial Administrative Unit**

Unlike other inferior courts, the Superior Court in Ha Noi is responsible for (i) conducting appellate trial of cases in which first-instance judgements or decisions of provincial courts (not entering into effect yet) are appealed or protested, and (ii) conducting trial according to cassation or reopening procedure of cases in which the effective judgements or decisions of provincial courts, district courts (of territorial jurisdiction) are protested against<sup>39</sup>. Within its scope, the Report only mentions the activities of receiving appeals and protests of Superior Court in Ha Noi. Survey results show that Superior Court in Ha Noi is currently accepting appeals and protests according to appellate procedures or petition for cassation or reopening trial through the Unit of appeals and protests receipt under the Judicial Administrative Unit (**Petition Receiving Unit**). The Petition Receiving Unit consists of 3 (three) persons, who are in charge of receiving appeals and protests, arranging and numbering the documents and papers of cases and drafting documents (e.g.: the Decision on application of interim measures) and submitting those documents to the leaders of Superior Court in Ha Noi for approval, accepting and responding to the requests of concerned parties on judgments and judgement copies, etc. After receiving the petition, the Petition Receiving Unit inputs the petition data into the case management software and conducts the procedures in accordance with the CPC 2015. The goal of establishing the Judicial Administrative Unit is to resolve the judicial administrative issues related to the cases so that the judges can focus on the trial activities.

According to the statistics of the Superior Court in Ha Noi, since its establishment on June 1, 2015 to March 2020, the Superior Court in Ha Noi has received a total of 39,462 complaints, among which 29,988 were duplicate, out-of-jurisdiction, or non-qualified petitions; 9,474 were accepted cases that follow cassation or reopening procedures. Accordingly, 8,355 cases have been resolved with following results: 6,661 cases have no grounds for appeal, 909 protests have been accepted, 785

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<sup>39</sup> Law on Organization of People's Court 2014, Article 29



complaints/other petitions have been handled<sup>40</sup>. It can be seen that on average, the Superior Court in Ha Noi receives about 30 complaints of various kinds per day, excluding cases transferred by inferior courts according to its competence. This workload is quite heavy. Through direct interviews, the judicial administrative officer of the Superior Court in Ha Noi said that the handling of the above-mentioned workload would require a reasonable job handling process with the support of information technology.

In the Superior Court in Ha Noi, information on the trial schedule is updated in the software. According to the interviewees, information on the trial schedule for the week is shown on 2 (two) TV screens in the lobby of the Court for people to see and also is updated on the website of Superior Court in Ha Noi. At the time of the survey (late 2018), the Research Team observed that in the first floor lobby of the Superior Court in Ha Noi, there were 2 (two) TV screens to provide information about the trial schedule; on the website of Superior Court in Ha Noi, there was also information about several cases.

#### ***2.1.3.b. Court annexed Mediation and Dialogue activities in the Superior Court in Ha Noi***

At the time of survey at the Hanoi People's Court (2018), this court was not of the pilot project of Court annexed mediation and dialogue, thus these activities were not performed in this Court.

#### ***2.1.4. Petition e-filing system***

CPC 2015 and the Law on Administrative Procedures have established a framework that allows the receipt of petitions, evidence and sending procedural documents via e-filing system. In 2016, The Justice Council of the SPC also issued Resolution No. 04/2016/NQ-HDTP guiding the implementation of some provisions of the CPC 2015, the Law on Administrative Procedures on sending and receiving petitions, documents and evidence; issuance, sending, notification of procedural documents via e-filing system.

According to Resolution No. 04/2016/NQ-HDTP, in order to file a petition via e-filing system, the petitioner must meet the following conditions<sup>41</sup>:

- Having an e-mail address to send and receive electronic data messages to and from the e-portal of the court;

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<sup>40</sup> Nguyen Hai Bang - Intermediate Judge - Deputy Chief Secretariat of Ha Noi Superior People's Court, *ibid*, page 6-7

<sup>41</sup> Resolution No. 04/2016/NQ-HDTP, Article 5, Article 16

- Having an electronic signature authenticated by a valid e-certificate which is issued and recognized by competent agency(ies) or organization(s);
- Successfully registered an electronic transaction account under the Procedure of sending and receiving electronic messages with the People's Court<sup>42</sup>.

In October 2018, the SPC officially piloted the information technology system to receive petitions via e-filing system on the basis of the above conditions<sup>43</sup>. According to the process of receiving petitions via e-filing system, after receiving the petition, attached documents and evidence, the court shall print out the petition and documents received, record the data in the receipt book and process the petition in accordance with regulations on legal proceedings. The court shall send a notice of receipt of petition, documents and evidence to the petitioner(s) via the e-portal of the court to the registered email address of the petitioner(s)<sup>44</sup>. This e-filing system is piloted at the Superior Court in Ha Noi and Provincial Court of Ha Noi, Provincial Court of Hai Phong and Provincial Court of Quang Ninh<sup>45</sup>.

However, until the survey was conducted (November and December 2018), there had been only 1 (one) petition filed via e-filing system to Provincial Court of Hai Phong City, but this submission failed due to electronic signature error. Meanwhile, other courts have not yet received any petitions via e-filing system. At the time of this Report's completion (July 2020), there had not been any petitions or requests for documents sent via e-filing system from individuals, agencies and organizations to the piloting courts<sup>46</sup>. Through surveys conducted at courts and with lawyers, the method of sending petitions, evidence and documents via e-filing system is rather difficult to implement because the requirement for electronic signatures – a type of services which is relatively costly and unpopular to the citizens. Currently, the procedures and costs for obtaining electronic signatures are only suitable for businesses - which regularly conduct administrative procedures that require electronic signatures (such

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<sup>42</sup> Resolution No. 04/2016/NQ-HDTP, Article 12

<sup>43</sup> Vinh Ha (2018), *Since November 2018, piloting the petition receipt via e-filing (Từ tháng 11-2018, thí điểm nhận đơn kiện qua phương tiện điện tử)*, Tuoitre News, <https://tuoitre.vn/tu-thang-11-2018-thi-diem-nhan-don-kien-qua-phuong-tien-dien-tu-20181022113346795.htm>; Mai Dinh (2018), *Launching ceremony of the new display of e-portal of the SPC (Lễ ra mắt giao diện mới của Cổng thông tin điện tử TANDTC)*, Congly News, <http://congly.vn/hoat-dong-toa-an/cai-cach-tu-phap/le-ra-mat-giao-dien-moi-cua-cong-thong-tin-dien-tu-tandtc-273060.html>

<sup>44</sup> Resolution No. 04/2016/NQ-HDTP, Article 17

<sup>45</sup> Huy Vu (2018), *Towards establishing smart court in Viet Nam (Hướng tới xây dựng Tòa án thông minh tại Việt Nam)*, e-portal of SPC, <https://www.toaan.gov.vn/webcenter/portal/tatc/chi-tiet-tin?dDocName=TAND048331>

<sup>46</sup> Phan Thi Thu Ha – Legal and Scientific Management Department of SPC, *Comments on the Report "Good practices in court procedures to improve court integrity"*, Document of the Consultation workshop on the draft Report "Good practices in court procedures to improve court integrity", 23/7/2020, page 3

as tax procedures, export - import procedures) but not reasonable for individual citizens. The website of the People's Court of Ho Chi Minh City had a section of online petition receipt but this system did not work at the time of the survey (December 2018) and at the time of this Report's completion (July 2020).

In interviewing in-house lawyers and independent lawyers on how to submit petitions via e-filing system under the instructions on the e-portal of SPC<sup>47</sup>, the lawyers had a shared opinion that the SPC has fairly complete instructions for the account registration procedure, the petition filing procedure and the registration procedure for receiving documents from the court. However, for the *account registration procedure*, there is no instruction on the duration for the courts to receive and process petitions. Additionally, the instructions on the *petition filing procedure* are not detailed, requiring the petitioner to have a certain understanding of the procedural law (such as legal relationship determination, other concerned party identification, etc.). According to the instructions on the *update of documents, evidence*, the maximum document size to be uploaded is only 2MB, so it may be an obstacle to the petitioner when there are many important documents and evidence having larger size than the limit. Some also opine that petition receipt system of the courts should pay attention to "network congestion", which leads to situations where the concerned parties cannot access the portal for petition filing; or the Petition Receiving Unit cannot receive and process data as a number of ministries and sectors do<sup>48</sup>. Moreover, the pilot of e-filing system needs to be implemented in the district courts, such as district courts of Ha Noi, Hai Phong and Quang Ninh because these are the main level of first-instance civil case trial settlement with greater needs for e-filing system than that of the current-piloting provincial courts.<sup>49</sup>

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<sup>47</sup> The system of sending, receiving the petitions, documents, evidence and issuance, sending, notification of procedural documents via e-filing system, <https://nopdonkhoikien.toaan.gov.vn/ChiTietTin.aspx?tID=21&cID=5>

<sup>48</sup> In addition to the opinions gained by interviews, there are a number of similar opinions related to the stability of the system also included in the Report of Administrative Procedure Compliance Index 2018 (APCI Report), i.e. for the tax administrative procedure group, persons who implement procedures of this group often encounter Java errors, software errors that prolongs the time to file tax documentation (APCI Report, page 39).

Nguyen Thi Thu Hoa - People's procuracy of Quang Ninh province, *About petition e-filing in accordance with Civil Procedure Code 2015 (Bàn về vấn đề gửi đơn khởi kiện trực tuyến trong Bộ luật tố tụng dân sự năm 2015)*, The website of People's procuracy of Quang Ninh province, <http://www.vksquangninh.gov.vn/index.php/Cac-dao-luat-tu-phap-moi/ban-v-v-n-d-g-i-don-kh-i-ki-n-tr-c-tuy-n-trong-b-lu-t-t-t-ng-dan-s-nam-2015.html>

<sup>49</sup> Nguyen Thi Thu Hoa, *ibid*.

However, the lawyers also claim that although the courts have regulations on receiving petitions via e-filing system and the provincial courts have already launched the websites, these websites do not meet the requirements of a level-1 online public service (see **Box 5**). There is a large gap between the requirements stipulated in CPC 2015 and the reality of information infrastructure at the courts. As mentioned above, there has been no district court that has its own website. Meanwhile, there are many public administrative agencies from central level to commune level that are providing level-2 and level-3 online public services. Some are even providing level-4 online public services<sup>50</sup> according to Resolution 36a/NQ-CP of the Government on e-Government<sup>51</sup>.

**Box 5: Online public service levels**

- a) Level-1 online public service: a service which provides full information on an administrative procedure and documents related to that procedure;
- b) Level-2 online public service: a level-1 online public service which allows users to download forms of documents and make declarations on those forms to complete dossiers as required. Completed documentation may be submitted directly or by post to the service provider;
- c) Level-3 online public service: a level-2 online public service which allows users to make online declarations on forms of documents and send these forms online to the service provider. Transactions in the processing of documentation and provision of the service are made in the network environment. Payment of fees (if any) and notification of results shall be made directly at the service provider.
- d) Level-4 online public service: a level-3 online public service which allows users to make online payment of fees (if any). Results may be notified to users online, directly or by post.

**(Article 3, Decree No. 43/2011/ND-CP)**

Some staff of the surveyed courts opine that with the current number of cases settled, the courts only need to establish the operation model of the Judicial Administrative Unit and should not focus too much about establishing an e-filing system for each local court given the high costs. If possible, the SPC should establish a petition receipt system that has nationwide application scope.

### **2.1.5. Some analyzes on the judicial administrative works**

The 'One-stop shop' model has been applied in the system of Vietnamese State agencies since the early years of the 21<sup>st</sup> century with the goal of "*building the administration sector which is democratic, transparent, stable, professional, modernized and effective-working complied with the principles of the socialist rule-of-law state under the leadership of the Party; establishing a team of cadres and civil servants with qualities and capabilities that meet requirements of the mission to*

<sup>50</sup> Decision No. 846/QĐ-TTg of the Prime Minister promulgating the list of level-3 and level-4 online public services implemented in ministries, sectors and localities in 2017 dated June 9, 2017. The Decision requires 354 administrative procedures in ministries, sectors and 353 administrative procedures in localities to implement level-3 and level-4 online public services in 2017

<sup>51</sup> Resolution 36a/NQ-CP dated October 14, 2015 of the Government on e-Government

construct and develop country. By 2010, the administrative system was basically reformed in accordance with the requirements of market economy management<sup>52</sup>. So far, the 'One-stop shop' model has been remarkably improved in order to satisfy the needs of people and businesses and to ensure for its compatibility with the reality of Viet Nam. 'One-stop shop' model in administrative agencies is built quite consistently in forms and procedures, thus it could create the consistency of people's awareness (avoiding people's grievances on the administrative forms and procedures) across different localities or levels<sup>53</sup>.

At present, the Government is making its efforts to improve the business environment. This includes efforts to require governmental agencies to innovate proactively under the principles of publicity and transparency. Such requirements aim at creating the most favorable conditions so that all social classes could improve their productivity, hence enrich themselves and contribute more to the country development<sup>54</sup>. Currently, the Vietnamese Government is in the process of building an e-government and in the future with a vision of establishing digital government and digital economy<sup>55</sup>. The Government has just launched a National Axis of inter-agency documents to promote the development of the e-government model to assist people and businesses<sup>56</sup>. Success and experiences of the Government and governmental agencies in the construction and operation of the 'One-stop shop' model as well as application of digital means in handling administrative procedures would create favorable conditions for the courts in building and developing its 'One-stop shop' for judicial administrative works and building its own E-court model.

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<sup>52</sup> Decision No. 136/2001/QĐ-TTg of Prime Minister dated 17/9/2001 on approving the Master Plan of Reforming State Administration in the period from 2001 to 2010; see further UNDP (2014), *ibid.*, page 15

<sup>53</sup> Decision No. 30c/NQ-CP of the Government on issuing the Master Plan of Reforming State Administration in the period from 2011 to 2020; Observation of the Research Team during the survey process in localities

<sup>54</sup> Resolution No. 02/NQ-CP of the Government dated 1/1/2019 on continuing to perform the main tasks and solutions to improve the business environment and national competitiveness in 2019 and orientations to 2021 (**Resolution No. 02/NQ-CP**); the collection of Resolutions No. 19/NQ-CP of the Government from 2015 to 2018.

<sup>55</sup> Mai Tien Dung, *Building an e-Government towards the Government and economy run on digital-base (Xây dựng Chính phủ điện tử hướng tới Chính phủ số và nền kinh tế số ở Việt Nam)*, News of the e-Government website, <http://egov.chinhphu.vn/xay-dung-chinh-phu-dien-tu-huong-toi-chinh-phu-so-va-nen-kinh-te-so-o-viet-nam-a-newsdetails-37599-14-186.html>; Ha Chinh (2019), *The remarkable advance from the "electronic button" of the Prime Minister (Bước tiến dài từ nút bấm điện tử của Thủ tướng)*, Online Newspaper of the Government, <http://baochinhphu.vn/Tin-noi-bat/Buoc-tien-dai-tu-nut-bam-dien-tu-cua-Thu-tuong/361143.vgp>

<sup>56</sup> Hoang Anh (2019), *National Axis of inter-agency documents: The basic step for the digital transform of the Government (Trục liên thông văn bản quốc gia: Bước cơ bản cho quá trình chuyển đổi số của Chính phủ)*, Online Newspaper of the Government, <http://baochinhphu.vn/Khoa-hoc-Cong-nghe/Truc-lien-thong-van-ban-quoc-gia-Buoc-co-ban-cho-qua-trinh-chuyen-doi-so-cua-Chinh-phu/360932.vgp>; Online Newspaper of the Government (2019), *Prime Minister inaugurates the National Axis of inter-agency documents (Thủ tướng khai trương Trục liên thông văn bản quốc gia)*, <http://www.baochinhphu.vn/Tin-noi-bat/Thu-tuong-khai-truong-Truc-lien-thong-van-ban-quoc-gia/361065.vgp>

The World Bank's Doing Business Report shows that the length of time required to enforce a contract in Vietnam is shorter than countries with equal levels of economic development and countries in East Asia region (e.g.: China, Malaysia, Philippines and Indonesia) yet longer than countries of higher development level, such as Singapore (See Table 1 below). On the global scale, the Enforcing Contract index of Viet Nam ranked 62 out of 190 economies in 2019<sup>57</sup>. If Viet Nam wants to promote economic development, the Enforcing Contract index of the country needs further improvement<sup>58</sup>.

**Table 1: Time required to enforce a contract by countries  
Doing Business (2019)**

2018	China (Beijing)	India	Singapore	Thailand	Malaysia	Philippines	Indonesia	Viet Nam
<b>Time for handling cases (days)</b>	<b>510 (100%)</b>	<b>1.445 (100%)</b>	<b>164 (100%)</b>	<b>420 (100%)</b>	<b>425 (100%)</b>	<b>962 (100%)</b>	<b>403,2 (100%)</b>	<b>400 (100%)</b>
Case acceptance	30 (6%)	45 (3%)	6 (4%)	60 (14%)	35 (8%)	58 (6%)	60 (15%)	50 (12,5%)
Trial and judgement	240 (47%)	1.095 (76%)	118 (71%)	260 (62%)	270 (64%)	700 (73%)	220 (55%)	200 (50%)
Enforcement of judgement	240 (47%)	305 (21%)	40 (25%)	100 (22%)	120 (28%)	204 (21%)	180 (30%)	150 (37,5%)

The long period of time required to accept a case will negatively affect the awareness and belief of parties in the integrity and competence of the judicial authorities as well as the guarantee of the right to petition. Regarding time required to accept a case and time required to handle a case in Viet Nam, the former is still long, accounting for 12.5% of the total time for settling cases (see details in Table 1). As a result, it is possible to shorten the time of case settlement in courts generally through reforming the judicial administrative works. As expected by the Government, this index should be increasingly improved to enhance Vietnam's business environment<sup>59</sup>. This issue requires the SPC to create a master plan to manage the time of dispute settlement

<sup>57</sup> World Bank (2019), the Report of Doing Business 2019

<sup>58</sup> Central Economic Commission (CEC) – U.S Agency for International Development (2017), *The Diagnosis of Vietnam Economic Growth*, page 229-230

<sup>59</sup> Resolution No. 02/NQ-CP; the collection of Resolutions No. 19 /NQ-CP of the Government from 2015 to 2018



and the General Department of Judgment Enforcement also must establish its own plan to reduce the time for enforcement of judgement.

Experience from other jurisdictions that have seen a significantly rise in Enforcing Contract rankings show that improving the time of filing a petition, applying e-filing and paying court fees via digital means would help to improve this issue. Until 2018, there were 31 economies that had applied e-filing for petition<sup>60</sup>.

Currently, the establishment of the Judicial Administrative Unit is only mentioned in guidance documents of the SPC leaders on reforming judicial administrative works as a general requirement with the People's Courts at all level. The SPC assigned the SPC's Office to take the prime responsibility in coordinating with the Department of Personnel and Organization, the Department of Legal and Scientific Management, and the Department of General Affairs to promptly build up the organizational structure and functions of the Judicial Administrative Unit at each level. This establishment would be based on the good practices in reforming judicial administrative works. During this process, relevant information will also be posted on the e-portal of the SPC to gather opinions of courts before submitting the documents to the SPC leaders who will decide whether to proceed<sup>61</sup>. Model of judicial administrative works can learn from the experience of 'One-stop shop' model in handling administrative procedures and take advantage of available infrastructure, such as information technology infrastructure, software, etc.

Presently, de facto, some provincial courts are still receiving the petition through the specialized courts. Some opined that filing a petition through the specialized courts would lack a mechanism to control the acceptance and settlement of the case. The judge who is assigned to directly receive the petition is also the one who resolves the case later. This practice would easily lead to non-transparent or negative activities<sup>62</sup> affecting the independence and objectivity of the judges in the trial. Simultaneously, the court leaders could not overview the petition acceptance<sup>63</sup>.

### **Summary box 1: Receiving and accepting the petition**

1. The model of Judicial Administrative Unit has shown certain advantages in receiving petitions, such as improving transparency, integrity, shortening the time to accept the cases. It is also suitable for the 'one-stop shop' model, which is applicable in performing current administrative procedures, thus, it has a certain impact on people's awareness and beliefs in

<sup>60</sup> World Bank (2018), *Doing Business 2018*, page 108; see further Nguyen Hung Quang (2018), *ibid.*, page 63

<sup>61</sup> Directive No. 03/2016/CT-CA

<sup>62</sup> UNDP (2014), *ibid.*, page 15 and 16.

<sup>63</sup> The People's Court of Vinh Long Province (2012), Preliminary Report on 3-year piloting judicial reforms in the People's Court of Vinh Long Province

courts. All surveyed courts have applied the model of Judicial Administrative Unit; however, they apply this model with specific characteristics, which are suitable to their cases, personnel or existing facilities. Nevertheless, this model has only been applied in some localities (with some certain differences among each model applied) that have not yet been legalized into a mandatory mechanism. Therefore, the application of the Judicial Administrative Unit should be synchronized and soon implemented nationwide in accordance with the requirements of Directive No. 01/2020 of the Chief Justice of the SPC, that is *“the courts continue to improve the organizational model and operation of the Judicial Administrative Unit or Judicial Administrative Office, in which focusing on completing the process to implement the one-stop shop mechanism and simplifying the receipt and guidance of handling requests of agencies, organizations and citizens before and after trial”*<sup>64</sup>.

2. E-filing is an inevitable trend in the process of digitalizing the court in the context where Viet Nam is in the transformation period to catch up with the trend of the 4.0 industrial revolution. E-filing is not only convenient, compliance cost-saving for ordinary people, businesses and the courts but also greatly enhances the transparency in the court system. Directive No. 01/2020 of the Chief Justice of the SPC also requests: *“Strengthening the application of information technology towards building an Electronic court in association with the reform of judicial administrative works at the courts”*. The Directive also focuses on *“urgently completing and applying the management software for types of cases; effectively organizing and exploiting the application software and online television systems”*. The courts need to find solutions to overcome current limitations found in this Report to ensure that the development level of the information system at the provincial courts must reach at least Level-2 of the online service in public administration.

3. The application of court annexed mediation and dialogue has made some certain contributions to settling civil and commercial cases as well as reduced the pressure of trial for the courts. However, mediation and dialogue procedures also need effective mechanisms and measures to avoid the possibility that this procedure will increase the time to accept petitions in particular and the total time to settle a case at court in general. In addition, the courts should take measures to ensure that the mediation activities in accordance with the principles of court annexed mediation and dialogue set out by the Law on Court Annexed Mediation and Dialogue 2020<sup>65</sup> as well as guarantee the integrity and independence of the Court.

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<sup>64</sup> Directive 01/2020 dated January 9, 2020 on the implementation of key tasks in 2020 of the Courts

<sup>65</sup> The Law on Court annexed Mediation and Dialogue 2020, Article 3



## 2.2. Judicial assignment for case settlement

CPC 2015 requires that the judicial assignment must ensure the principle of impartiality, objectivity, and randomness<sup>66</sup>. CPC 2015 does not clearly stipulate on the details of the judicial assignment in 2 (two) stages including case acceptance and case settlement. Previously, Resolution No. 05/2012/NQ-HĐTP prescribes that the judge who has reviewed and accepted the petition shall be assigned to continually resolve the case<sup>67</sup>. However, this process is recognized as being lack of transparency, which would cause corruption in trial by creating a closed loop system - from receiving petition, accepting case and assigning judges to settle cases<sup>68</sup>. Currently, the courts have different methods of assigning judges. The following section will analyze the legal framework and practices of assigning judges at the district-level and provincial courts as well as the assignment by digital means, which is being piloted in some localities.

### 2.2.1. Judicial assignment at district courts

Judges of the district courts normally settle a wide range of cases including administrative cases, labor cases, commercial cases and criminal cases<sup>69</sup>. The court leaders regularly assign judges based on 2 (two) major criteria. The first criterion is the "workload" of judges; this criterion aims at ensuring that judges will take an equal volume of work. The second criterion is "expertise or experience" of judges in resolving cases. In addition, there are some other criteria that the court leaders may apply in the process of assigning judges such as position, seniority, health, gender, ethnicity, characteristic of case (e.g. assigning cases under the method that alternates one complicated case and the uncomplicated one, and so on), etc.<sup>70</sup>.

All the surveyed courts confirmed that in general, the cases are randomly assigned to judges, but there are also particular cases assigned by the court leaders due to special reasons. At the Court of District 5, the court leaders assign judges based on the capacity of the judges and the complexity of the case. Meanwhile, the District Court of Thu Dau Mot assigns judges not only based on these factors but also based on the judges' experience with similar cases (e.g.: if the judge has already settled a

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<sup>66</sup> CPC 2015, Article 197

<sup>67</sup> Resolution No. 05/2012/NQ-HĐTP, Article 11, clause 2 – This Resolution currently expired

<sup>68</sup> Pham Hong Linh (2017), *Improving the procedures for assigning judges to settle cases to meet the requirements of reforming administrative procedure (Hoàn thiện thủ tục phân công Thẩm phán giải quyết vụ án đáp ứng yêu cầu đổi mới thủ tục hành chính)*, Magazine of the People's Court 13 (1 - 7/2017), page 11-12

<sup>69</sup> UNDP (2014), *ibid.*, page 22

<sup>70</sup> JUDGE Project\_NHQuang&Associates (2012), *Assessment Report of the Component 2: Judicial Administrative Reform - Experience from the Three Pilot courts of the Project of Judicial Reform Support from local-level (Báo cáo đánh giá hợp phần 2: Cải cách hành chính tư pháp – Kinh nghiệm từ ba Tòa án thí điểm của Dự án hỗ trợ cải cách tư pháp từ cơ sở)*; UNDP (2014), *ibid.*, page 22; see further at Nguyen Hung Quang (2018), *ibid.*, page 16; Pham Hong Linh (2017), *ibid.*, page 11-12

bankruptcy case, he will be assigned to resolve cases pertaining to bankruptcy). Particularly, the District Court of Hong Bang is applying random method by rotation to assign judges. Accordingly, each judge is granted a separate code, this code is changed once a year. Judges with a small number of backlog cases will have a higher probability of being assigned the new case. As stated in the section of petition acceptance, all the surveyed courts have case management system that is run by information technology system and/or traditional statistics books so that the court leaders could have an overview of the practice on how judges are accepting and settling cases at their courts. From that overview, the court leaders could have the basis for assigning cases as well as monitoring and promoting the case settlement.

### **2.2.2. Judicial assignment at provincial courts**

Since the structure of the provincial courts includes specialized courts, the judicial assignment at provincial courts is generally different from that at the district courts. Normally, judges in specialized courts of the provincial courts will settle cases in accordance with the expertise of their courts. Similar to the case assignment at district courts, the criteria for assigning judges at provincial courts are not consistent among localities because they are adjusted to suit the actual operation of each court. However, there are certain commonalities in the criteria for assigning judgements among the surveyed courts which include: (i) *quantity* and (ii) *complexity* of the case. In fact, the number of commercial cases, labor cases and administrative cases is much less than criminal cases, civil cases and family case. Hence, judges at Economic Court, Labor Court and Administrative Court are often additionally assigned to settle criminal cases, civil cases and family cases. Specially, there are provincial courts that assign their cases under the criteria of equal and random assignment to judges and do not take the specialization of judges as a criterion for assignment. The objective of this method is to ensure that judges have the equal volume of case to settle and motivate judges to enhance their capacities of settling various types of cases<sup>71</sup>.

Similar to the judicial assignment at the Court of Hong Bang District, the Provincial Court of Hai Phong is applying a random rotation mechanism and also considers the 2 (two) factors mentioned above (quantity and the complexity of cases) for judicial assignment. For the Provincial Courts of Hai Phong, the purpose of applying the random method is to ensure fairness in judicial assignment and to train judges to

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<sup>71</sup> JUDGE Project\_NHQuang&Associates (2012), *ibid.*; UNDP (2014), *ibid.*, page 22

improve themselves by acquiring professional knowledge in various fields. Random judicial assignment has also been applied in some other provincial courts<sup>72</sup>.

Some courts have applied the random assignment software for judges, such as Provincial Courts of Ho Chi Minh or Da Nang<sup>73</sup>, to ensure the randomness and avoid subjective intervention in the case assignment. Software for assigning judges at the Provincial Court of Ho Chi Minh complies with the following priority order<sup>74</sup>:

- The first priority is assigning new cases to judges who have the fewest backlog cases and settle a large number of cases in which, there are few temporarily suspended cases and revoked cases. This priority order shall generally be based on the total number of backlog cases of each judge;
- The second priority is assigning a new case to judges who have few backlog cases, however, in the settled cases there are still a number of temporarily suspended cases and revoked cases;
- The last priority is pausing the case assignment to the judge who has a large number of backlog cases and temporarily suspended cases.

As per special cases, the court leaders directly assign cases to judges (e.g. special cases need to be assigned judge(s) having specialized professional knowledge and experiences, or simple cases need to be assigned for novice judges) without applying judicial assignment software.

However, the random case assignment by a software has exposed disadvantages, for example, when it comes to complicated cases, the quality of settlement may be compromised due to uneven capacity of judges. For this reason, the Provincial Court of Ho Chi Minh has stopped the application of judicial assignment software.

### **2.2.3. Some analyses on the judicial assignment for case settlement**

Practical study shows that there are several different judicial assignment methods in the court system. There are 2 (two) courts applying the random process of case assignment completely with the support of information technology system (the Provincial Court of Hai Phong and the Court of Hong Bang District). Others apply conditional random method with the participation of court leaders. Each method has

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<sup>72</sup> Nguyen Ngoc, *People's Court in district-level and provincial-level of Nam Dinh Province and Ha Nam Province exchange experiences on reforming judicial administration (Tòa án nhân dân hai cấp tỉnh Nam Định và Hà Nam trao đổi kinh nghiệm về cải cách hành chính tư pháp)*, Viet Nam court Academy website, [http://hvta.toaan.gov.vn/portal/page/portal/hvta/27676662/27676824?pers\\_id=1751931&folder\\_id=&item\\_id=178362000&p\\_details=1](http://hvta.toaan.gov.vn/portal/page/portal/hvta/27676662/27676824?pers_id=1751931&folder_id=&item_id=178362000&p_details=1)

<sup>73</sup> Kha Mien (2017), *Reforming the judicial administrative works (Đổi mới thủ tục hành chính tư pháp)*, Da Nang News, <http://baodanang.vn/channel/5399/201707/doi-moi-thu-tuc-hanh-chinh-tu-phap-2562477/>

<sup>74</sup> Pham Hong Linh (2017), *ibid.*, page 11-12

its own goals, advantages and disadvantages. All surveyed courts, however, confirmed that their court's methods aim to ensure the independence, impartiality, transparency and efficiency of the court system.

Courts that have adopted random case assignment with certain conditions, such as the judges' specialization, probably have better trial quality but may cause the imbalance in the number of cases solved by each judge. If the assignment is based on specialization and experience, which is based on the subjective discretion of court leaders, such mechanism may pose a risk to the transparency, integrity and independence of the courts during the settlement process. If the conditional random assignment uses transparent and objective criteria, such risks would be reduced<sup>75</sup>.

Automated random assignment with the support of information technology is recognized to be a good practice for dispute resolution in courts of many countries. According to research by the World Bank, there are 33 developing countries applying case management methods, including case assignment activities, by electronic means to ensure the transparency. There are 6 other countries applying their own automatic case assignment with the support of information technology<sup>76</sup>. According to the European Network of Councils for Judiciary (ENCJ), ensuring the quality of random assignment will increase public confidence in the independence, the objectivity, and the impartiality of the judicial system, and the effectiveness and accountability of the courts and Judges. With this aim, many transition countries in Europe have applied automatic random assignment with the support of information technology, such as Bulgaria, Rumania, Slovakia, and Montenegro<sup>77</sup>. It should also be noted that conditional random assignment without objective and independent criteria may lead to the nature of "randomness" no longer being respected.

There is an opinion that in order to guarantee the quality of case settlement during the implementation of conditional random assignment, the courts could establish a consultative mechanism among judges or between case judges and the court leaders during the process of case settlement. This mechanism is currently widely applied in Vietnamese courts, however there are some concerns about guaranteeing the independence of judges<sup>78</sup>.

In terms of the overall policies of improving the trial quality such as: strictly managing the time of case settlement so that it will not be overdue, managing the quality of the

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<sup>75</sup> Nguyen Hung Quang (2018), *ibid.*, page 15; UNODC (2011), *ibid.*, page 41

<sup>76</sup> World Bank, Business Reform in Enforcing Contract (2020), last accessed on 30/07/2020, <https://www.doingbusiness.org/en/reforms/overview/topic/enforcing-contracts>

<sup>77</sup> European Network of Councils for Judiciary (ENCJ), *ENCJ Report 2013-2014*, Minimum Judicial Standards IV, Allocation of Cases

<sup>78</sup> UNDP (2014), *ibid.*, page 22

case settlement so that the case will not be cancelled or amended, etc., the implementation of automatic random assignment will require the Judges to improve their capacity to ensure the case settlement. The Implementation of conditional random assignment may reduce the pressure on the Judges yet does not create pressure for capacity building.

Judicial assignment based on random method with strict control and transparent mechanism shall enhance the integrity of the court system and the confidence of people and businesses in the judicial system, and simultaneously reduce the risk of corruption<sup>79</sup>. A number of studies by multilateral international organizations recommend and encourage the use of random case assignment, such as the United Nations Office on Drugs and Crime (UNODC), and the United Nations Development Program (UNDP). The World Bank also mentions this method for assessment of Enforcing Contract of the Doing Business Report<sup>80</sup>.

### **Summary box 2: Judicial assignment**

Judicial assignment is an important issue in management of the court proceedings. It also remarkably influences to several matters, such as: the time to settle cases, the integrity and independence of the courts, and people's confidence into the judicial system. Directive 01/2020 of the Chief Justice of the SPC has set out the task of "*perfecting the process of assigning and settling cases, ensuring objectivity and randomness in the settlement process*". This task requires SPC and People's courts of all levels to develop transparent and normative criteria for this matter in order to ensure the transparency, and integrity of the courts and Judges. Moreover, the SPC should study and apply the automatic random assignment of cases that the People's Court Hai Phong City or People's Court of Hong Bang District are applying or can refer to international experiences on this issue.

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<sup>79</sup> UNODC (2011), *ibid.*, page 41

<sup>80</sup> UNODC (2011), *ibid.*, page 41; UNDP (2014), *ibid.*, page 22; World Bank (2018), *ibid.*, page 108; see further Nguyen Hung Quang (2018), *ibid.*, page 13

## 2.3. Time management

The time management in case settlement has a close relationship with the time bars for petition receipt and judicial assignment. Good time management in the case settlement will reduce the backlog of case as well as support the allocation of time and resources at courts, thereby contributing to the efficiency of dispute settlement at courts<sup>81</sup>. According to the World Bank, the time for case settlement is one of the important factors to measure the efficiency of the courts' dispute settlement. Case management, including time management, is one of the elements to evaluate the quality of proceedings<sup>82</sup>. Compared to countries in ASEAN and East Asia, Viet Nam's time for dispute settlement is relatively good, ranked after Singapore (see Table 1<sup>83</sup>) and remains unchanged in the last 10 (ten) years. However, the time for settling contract disputes in Viet Nam is relatively long, falling below the average of the countries with the same level of economic development<sup>84</sup>.

### 2.3.1. Methods for managing proceedings time

“Petition receipt” is a new mechanism of CPC 2015. This mechanism has significant impact on the time management in case settlement by reducing the corruption and delays in dispute settlement<sup>85</sup>. In addition, CPC 2015 stipulates the timeline for procedural steps (for instance, time limit for examining petitions<sup>86</sup>, time limit for trial preparation<sup>87</sup>). The Chief Judge is responsible for judicial assignment, such as judge(s), People’s Jurors and court clerk(s)<sup>88</sup>. The CPC 2015 requests the courts to follow the principle of assurance of timely trial<sup>89</sup>. However, it is argued that the current regulations on civil procedure are still in lack of specific regulations/guidelines on the time management to prevent backlog<sup>90</sup>.

Before CPC 2015, the SPC regulated the criterion of competition and assessment among courts and judges in order to improve the capacity of case settlement and reduce overdue cases. The courts had many different methods for time management

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<sup>81</sup> UNOCD (2011), *ibid.*, page 44

<sup>82</sup> See further the Enforcing Contracts Methodology, <http://www.doingbusiness.org/en/methodology/enforcing-contracts>

<sup>83</sup> World Bank (2018), *ibid.*, Part of Enforcing Contracts, Data, Section of Time, <http://www.doingbusiness.org/en/data/exploretopics/enforcing-contracts>

<sup>84</sup> Central Economic Commission - United States Development Cooperation Agency (2017), *ibid.*, page 229-230

<sup>85</sup> CPC 2015, Article 191, clause 1; JUDGE\_NHQuang&Associates Project (2012), *ibid.*; UNDP (2014), *ibid.*, page 18-19

<sup>86</sup> CPC 2015, Article 191, clause 3

<sup>87</sup> CPC 2015, Article 203, clause 3, point d

<sup>88</sup> CPC 2015, Article 47; Article 191, clause 2; Article 197, clause 2

<sup>89</sup> CPC 2015, Article 15, clause 1

<sup>90</sup> The Party Civil Affairs Committee of the Supreme People's Court (2015), *ibid.*, page 9

to limit backlog, including manual management with case reception books, case receipt books, information technology, and periodic reports, etc..<sup>91</sup>. In 2012, the SPC developed a unified system of management software (for criminal; civil; marriage and family; commercial; labor; administrative cases) for common use at People's Courts at all levels. However, for some reasons, the software was only applied asynchronously at the local courts for a short period of time<sup>92</sup>. Currently, the SPC is developing a new case management software to handle the work quickly and improve productivity, management efficiency and standard user interface<sup>93</sup>.

According to the Study, 4 (four) proceedings time management trends are currently applied at the courts internally as follows:

*Firstly*, some courts are applying the method of proceedings management by developing clear criteria in accordance with the CPC 2015, which is programmed into a specialized software. The Superior People's Court in Ha Noi and the Provincial Court of Ho Chi Minh City are 2 (two) courts with good practices in developing time management software for litigation proceedings. In particular, Superior People's Court in Ha Noi developed its own software for time management, which is based upon the SPC's professional guidelines but adapted to conform to the internal procedures of the Superior People's Court in Ha Noi. Court staff are granted access code to log in to the system where they can access case information. The software operates in real-time; it can realize the settlement timeline of each case. It has a function to warn judges about the time limit for case settlement. However, the development of this software requires standardization of internal process at the court and close coordination among court staff in updating information on the software.

Similar to the Superior People's Court in Ha Noi, the Provincial Court of Ho Chi Minh City developed the software of case time management for application at the court. This software is developed upon the SPC's professional guidelines and revised to conform to the Provincial Court of Ho Chi Minh City's internal procedures. Through the software, Judges at the provincial Court of Ho Chi Minh City are informed of the quantity of the cases that they are handling and the case process. This software is updated and revised in accordance with the changes of procedural laws.

*Secondly*, similar to the first one, the time management by Excel, a common and popular software in personal computers, is managed by the Judicial Administrative Units. The Court of District 5, Provincial Court of Binh Duong, District Court of Thu Dau

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<sup>91</sup> JUDGE\_NHQuang&Associates Project (2012), *ibid*.

<sup>92</sup> Tran Quang Huy (2017), *Learning experience of the Korean courts in applying information technology*, Justice Newspaper, <http://congly.vn/hoat-dong-toa-an/nghep-vu/hoc-tap-kinh-nghiem-cua-toa-an-han-quoc-ve-ung-dung-cong-nghe-thong-tin-207952.html>

<sup>93</sup> Tran Quang Huy (2017), *ibid*.

Mot, Provincial Court of Hai Phong City and District Court of Hong Bang are using Excel for time management. The contents of the software are developed based on criteria and regulations on the time limit for legal proceedings and professional guidelines of the SPC. Some courts have added a function of warning the deadlines in excel sheets for the court leaders and judges' acknowledgment (such as Provincial Court of Binh Duong, Provincial Court of Hai Phong and District Court of Hong Bang).

*Thirdly*, a time management software developed by the SPC was piloted in 2018. The Judicial Administrative Units input case information in the software. The judges and clerks will continuously update the case progress information during settlement process. Only the court staff who inputs the information may have the right to edit. This software is still limited by the absence of user access rights (such as different rights between judges and court clerks). Moreover, the access system may be in risk of overloading if too many people access this system at the same time.

*Fourthly*, the time management by paper books is still maintained in many courts nationwide. At the surveyed courts, the Judicial Administrative Units still update case information, such as petition receipt, case acceptance, case assignment, and proceedings time management into a paper book.

A good practice is found at the Provincial Court of Binh Duong with the application of quality management system ISO 9001:2000 in time management for all criminal, administrative, civil, commercial, labor cases; settlement of complaints for cassation review and revised trial since 2008. In August 2012, this quality management system was converted to TCVN ISO 9001:2008 version. Currently, the Provincial Court of Binh Duong is continually maintaining and improving the system to facilitate organizations and individuals when they contact the court to settle their problems<sup>94</sup>. This model is quite specific and unique around the country.

The pre-eminence of the courts that have applied information technology in time management is that they have standardized the process, the steps and the timeline for case settlement in accordance with procedural regulations and professional guidelines of the SPC and relevant laws. As a result, the time management is closely monitored.

In addition to the internal supervision of the court on the time management of civil cases in general and commercial cases in particular, the supervision of the case settlement time remains under the jurisdiction of the People's Procuracy<sup>95</sup>. This

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<sup>94</sup> Website of the People's Court of Binh Duong Province,

<https://binhduong.toaan.gov.vn/webcenter/portal/binhduong/gioithieu?dDocName=TAND018807>

<sup>95</sup> CPC 2015, Article 13; Article 21, clause 2; Article 58



mechanism contributes to improving the quality of time management. Moreover, CPC 2015 also supplements a number of new regulations for lawyers and concerned parties to prompt the case settlement, such as the provisions of meetings for submission of, access to and disclosure of evidence and mediation (to be analyzed in detail below).

### **2.3.2. Publication of process for case settlement**

One of the methods for managing the proceedings time is to publicize the process of case settlement for the concerned parties, other people involved in the proceedings (such as lawyers) and judges as well as the court staff to be informed of the status of case settlement. In the context of business development, the needs of the businesses to be provided with information about the legal framework on protection of commercial activities, including information on the dispute settlement at the courts, are increasing. Currently, the information of case settlement process may be publicized mainly in 2 (two) channels: (i) courts' e-portal; (ii) information boards at the court buildings.

From the Study, although the court system has determined to “*publicize the procedures for accessing dossiers, providing documents, information, judgement excerpts and decisions of courts in accordance with legal provisions*” since 2005, the Research Team finds that there are currently no specific regulations on public disclosure of the process of case settlement, but only regulations/guidelines for each independent step in the settlement process (for instance, filing a petition or an appeal)<sup>96</sup>. However, so far, the method for publication or the criteria, contents of publicizing the information of progress for civil, commercial and business cases have not been defined clearly and consistently nationwide.

According to the survey, most courts have information boards that display legal normative provisions on proceedings, information on cases (all types), petition forms, trial schedules, court's work schedules and other internal operational information.

#### **Box 6: Information kiosk at courts in Ho Chi Minh City**

Information kiosks at the headquarters of the People's Court of Ho Chi Minh City is extracted from the case management software from the time a petition is filed. People and businesses only need to enter their names and year of birth or scan the bar code in the Confirmation of Petition Receipt at the scanner to know whether the case is accepted or not and which judge is responsible for their case. People and businesses should contact judges and court clerks for other relevant information about the case. Those who are not involved in the case cannot look up the information.

The district-level courts in Ho Chi Minh City also organize and maintain these information kiosks. The expenditure for this activity is supported by Ho Chi Minh City People's Committee.

<sup>96</sup> Plan No. 122/BCS

Having observed all information boards of the surveyed courts, the Research Team found that these boards are not very clean or readable. Information on judicial administrative works or proceedings procedures is mainly copied from legal provisions (except the information board of People's Court of Binh Duong Province with a proceedings diagram). Information on cases is not fully updated and concerned parties usually have to contact the Judicial Administration Unit directly to get information (except Provincial Court of Ho Chi Minh City, District Court of District 5 that uses electronic kiosks)<sup>97</sup>.

***Box 7: Comments of businesses on information disclosure and sending procedural documents of the court***

Company A, after studying the process of filing a petition in the People's Court of the province X, said that the information board at this court was developed in the form of white boards with the information presented in A4 size paper, small font size. Moreover, the guidelines are only copied and pasted from laws without specific guidance or presented in the diagram.

The Company A also commented that sending of the case documents or summons from the court is usually done in a short time, close to the date of the meeting or hearing. This practice caused difficulties for the Company's preparation before the Court.

As mentioned above, the Provincial Court of Ho Chi Minh City and the People's Court of District 5 represent good practices in applying electronic means in publicizing information such as using kiosk screens, bar codes for people to look up information easily and keep information confidential. Besides, Superior People's Court in Ha Noi also publishes information about case settlement by extracting information from the management software of case settlement to display on 2 (two) electronic screens installed at the court lobby. In addition, people can look up information on the website of Superior People's Court in Ha Noi<sup>98</sup> or by communication with the staff

of the Petition Receiving Unit. The staff of the Petition Receiving Unit also relies on the information of cases stored in the software to inform people.

As mentioned above, compared to the previous time, the information provided on courts' websites has been improved. 63 (sixty-three) provincial Courts and 03 (three) Superior Courts have websites already. However, the Research Team found that many websites of local courts have not provided comprehensive guidelines on judicial administrative works, litigation process, document forms for different types of cases in accordance with procedural and relevant laws yet. The quality of information disclosure is unequal among the courts. Most websites do not have fully updated information or have not updated information on trial schedules or working schedule of

<sup>97</sup> See further the survey report of Central Institute for Economic Management - GIG Project, Survey on the implementation of Resolution 19 of the Government, 2017 - 2018

<sup>98</sup> E-portal of the Superior People's Courts in Ha Noi:

<https://capcaohanoi.toaan.gov.vn/webcenter/portal/capcaohanoi/home>

the court leaders and procedural guidelines. Some published forms have very poor information. If we make a comparison of the levels of online public administration services (**Box 5**), many websites of provincial Courts have not met the requirements of Level-2<sup>99</sup>.

Recently, on October 22, 2018, the SPC launched the new display of the SPC's e-portal that links to 66 websites of the provincial Courts and the Superior Courts. This portal also has an English version, linked to the ASEAN e-Portal<sup>100</sup>. Compared to the past, the current SPC's e-portal is relatively smart and easier to use.

### **2.3.3. Application of measures for shortening time for case settlement**

As analyzed above, the time for case settlement is one of the most important factors affecting businesses' awareness of justice and judicial quality<sup>101</sup>. CPC 2015 has supplemented a number of methods aiming at shortening the time for case settlement, including (i) applying the simplified/fast track procedure in proceedings and (ii) holding meetings for submission of, access to and disclosure of evidence and mediation. However, in practice, there still exists many factors that prolong the time for case settlement.

#### **2.3.3.a. Application of simplified/fast track procedure**

The simplified/fast track procedure in proceedings is aiming at shortening the time for case settlement and distributing the courts' resources appropriately and efficiently. In Viet Nam, commercial cases can be settled under simplified procedure when they meet **all** conditions as follows<sup>102</sup>:

- The case has simple details, clear legal relationship and the concerned parties have admitted their obligations; materials and evidence are sufficient, ensuring the sufficiency of grounds for the settlement of the case and the court does not have to collect materials, evidence;

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<sup>99</sup> The Research Team conducted a survey over the portals of some provincial People's Courts such as Ho Chi Minh City, Ha Noi, Vinh Long, Thua Thien - Hue, Binh Duong, Hai Phong, Da Nang, Bac Ninh, Hai Duong and 03 Superior People's Courts including Superior People's Court in Ha Noi, Superior People's Court in Ho Chi Minh City, Superior People's Court in Da Nang for comparing the quality of public information disclosure of surveyed courts and courts at the same level.

<sup>100</sup> Huy Vu (2018), *ibid.*

<sup>101</sup> According to *the Research Report on court's Integrity in the Settlement of Commercial Business Disputes - A Practical Perspective of VCCI in 2017*, the time to settle a case is the most important factor when considering selecting/not selecting dispute settlement method at the court (See Chart 12. The reason why businesses do not choose dispute settlement method in the court - comparison between businesses have and have not used the dispute settlement method at the court)

<sup>102</sup> CPC 2015, Article 317

- Address of residence or headquarters of all concerned parties are clearly identified;
- None of the concerned parties reside overseas and there are no properties in dispute in foreign countries, unless the concerned parties residing overseas and those residing in Viet Nam have reached an agreement to request the courts to settle the cases under simplified procedure or the concerned parties have presented evidence proving the legitimate right of ownership towards the properties and have reached agreements about handling the properties.

It can be seen that the conditions for applying the simplified procedure are the requirements of judicial administration (administrative work in support of judicial activities at courts), such as collecting evidence and determining concerned parties' addresses, asset verification, etc.

According to CPC 2015, after accepting the cases which will be settled under simplified procedure, within no more than 1 (one) month, the judge who is assigned to settle the case must make decision to bring the case to trial under simplified procedure and shall hold the trial within 10 (ten) days from the day on which the decision is issued<sup>103</sup>. The time limit for making decisions and opening a trial under the simplified procedure is shorter than the corresponding time limits when the trial is held under normal procedures (respectively maximum 3 (three) months from the date of case acceptance<sup>104</sup> and maximum 2 (two) months from the date of the decision to bring the case to trial<sup>105</sup> for commercial business cases). The first-instance trial under simplified procedure will be held by one judge<sup>106</sup>. The court fees for cases under simplified procedure equals to 50% of the court fees applied to normal procedures<sup>107</sup>.

Despite several advantages, in fact, simplified procedure is not often applied in case settlement. According to some judges and lawyers, even when it is eligible to conduct the dispute settlement under simplified procedure, the judge still chooses to settle the case under normal procedures, for some causes such as:

*Firstly, CPC 2015 stipulates that judges must "carry out case acceptance under normal procedures or simplified procedure, if the case is eligible for settlement under simplified procedure"*<sup>108</sup>. It means that the judge must determine whether to accept the

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<sup>103</sup> CPC 2015, Article 318, clause 1

<sup>104</sup> CPC 2015, Article 203, clause 1

<sup>105</sup> CPC 2015, Article 203, clause 4

<sup>106</sup> CPC 2015, Article 65

<sup>107</sup> Resolution No. 326/2016/UBTVQH14 stipulating the level of collection, exemption, reduction, submission, management and use of court fees and charges, Article 6, clause 2

<sup>108</sup> CPC 2015, Article 191, clause 3, point b

case under normal procedure or simplified procedure immediately from the notice on acceptance of the case<sup>109</sup>. Thus, the judge must determine whether the case is eligible to apply simplified procedure **before accepting the case**. However, it is extremely difficult to determine exactly whether a case could meet such conditions as: "*the concerned parties have admitted their obligations*", "*address of residence or headquarters of all concerned parties is clearly identified*" when the judge has yet to send the notice on case acceptance to the defendants, persons with related rights and interests for their acknowledgement and response. Even the condition of "*none of concerned parties reside overseas*" is not easy to determine right after the petition is received<sup>110</sup>. It can be seen that these issues are entirely derived from the ability to perform the task of judicial work support or in other words, the judicial administrative works.

*Secondly*, in the case that the trial under simplified procedure has been notified in the Notice on acceptance of the case and in the Decision to bring the case to trial under simplified procedure, the case can still be transferred to trial under normal procedures as a result of the concerned parties' complaint or the recommendation of the People's Procuracy at the same level<sup>111</sup>. CPC 2015 currently has no regulations on the transfer of case settlement from normal procedures to simplified procedure. There are also no specific regulations on complaints against the Decision to bring the case to trial under normal procedures if the case is eligible for trial under simplified procedure<sup>112</sup>. This has a significant impact on the interests of the concerned parties when their case is eligible for simplified procedure, but the judge does not apply this procedure in practice<sup>113</sup>.

*Thirdly*, the court can also transfer the settlement of a case from simplified procedure to normal procedures if new details are discovered during trial preparation. In practice, the application of the interim measures usually prolongs the time for case settlement and increases the complexity of the case, which may lead to the judge's decision to transfer the case from simplified procedure to normal procedures. This has created

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<sup>109</sup> CPC 2015, Article 196, clause 2, point dd

<sup>110</sup> Mai Thoa (2015), *Proposing mechanisms and models for settling civil cases according to simplified procedures*, Justice Newspaper, <https://congly.vn/hoat-dong-toa-an/tieu-diem/de-xuat-co-che-mo-hinh-giai-quyet-vu-viec-dan-su-theo-thu-tuc-rut-gon-105338.html>;

Nguyen Huy Hoang (2018), *Problems of simplified procedures*, *Electronic People's Court Journal*, <https://tapchitoaan.vn/bai-viet/phap-luat/vuong-mac-ve-thu%25cc%2589-tu%25cc%25a3c-rut-go%25cc%25a3n>

<sup>111</sup> CPC 2015, Article 319, clause 2, point a

<sup>112</sup> Article 499 of CPC 2015 has regulations on complaints and denunciations in general but no specific provisions for the above case

<sup>113</sup> Nguyen Huy Hoang (2018), *ibid.*

apprehension of the concerned parties when requesting for application of the interim measures when their case is applied with simplified procedure.<sup>114</sup>

Through the survey, the Research Team found that the surveyed courts have not settled any commercial business case under simplified procedure. All the lawyers interviewed said they had not had any civil case or commercial business case applied with simplified procedure even though they requested to apply this procedure in their cases.

### **2.3.3.b. Meetings for submission of, access to, and disclosure of evidence and mediation**

Meetings for submission of, access to, and disclosure of evidence and mediation (**Meetings**) is a new procedure recognized in CPC 2015. Meetings are conducted in preparation of the first-instance trial (unless the case is accepted under simplified procedures), aiming to re-identify requests of the concerned parties, problems agreed and not yet agreed, to submit, access and disclose the evidence and to conduct the mediation.

Provisions on the Meetings has partially enhanced the publicity and transparency during the process of civil case settlement, assured that all evidence is disclosed during proceedings, increased the responsibility of related individuals, agencies, and organizations in civil procedure, generated fairness in the concerned parties' access to evidence so that they can make necessary preparation for litigation in civil proceedings, shortening the time for dispute settlement. It will, accordingly, improve litigation quality at hearings as well as the settlement quality of civil cases, satisfying the demand for judicial reform<sup>115</sup>. Meetings for submission of, access to, and disclosure of evidence and mediation are regarded as a break-through of civil proceeding procedures, acquiring and incorporating the advantages of debating litigation model into cross-examination litigation model. If the Meetings are well executed, it will significantly reduce the judicial administrative works supporting the trial, such as submitting and exchanging evidence, verifying evidence, etc., and also improve the court's capacity to reduce the time needed for case settlement. However,

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<sup>114</sup> Ho Nguyen Quan (2017), *A number of issues about the simplified procedure in the Civil Procedure Code 2015 (Một số vấn đề về thủ tục rút gọn trong Bộ luật TTDS năm 2015)*, E-portal of Ministry of Justice, <http://www.moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=2139>

<sup>115</sup> Doan Thi Som (2018), *Some entanglements and shortcomings in the regulations on the Meeting for submission of, access to, and disclosure of evidence and mediation under the Civil Procedure Code 2015 ("Một số vướng mắc, bất cập trong quy định về phiên họp kiểm tra việc giao nộp, tiếp cận, công khai chứng cứ và hòa giải theo quy định của Bộ luật tố tụng dân sự 2015)*, E-portal of Thai Binh People's procuracy, <http://vksndthaibinh.gov.vn/Article/2203/Mot-so-vuong-mac-bat-cap-trong-quy-dinh-ve-phiên-hop-kiem-tra-viec-giao-nop-tiep-can-cong-khai-.html>

our interviews with judges and lawyers revealed some shortcomings of this process, namely:

*First*, the concerned parties' rights to present counterclaim or independent claim has not yet been fully ensured. Accordingly, CPC 2015 provides that concerned parties must raise their counterclaims or independent claims *before* the Meetings are held by the court for discussing such claims<sup>116</sup>. Therefore, in the case where the judge holds only one Meeting right after accepting the case, the time for the concerned parties to consider and exercise their right to counterclaim and independent claim will be much limited. However, in several cases in practice, only after accessing to evidence, the concerned parties and lawyers could obtain sufficient information to decide whether to make counterclaims or independent claims or not. Thus, unexpectedly, this regulation has, to some extent, become an obstacle to exercising their right to present claims and protecting their interests.<sup>117</sup>

*Secondly*, CPC 2015's regulations on adjourning the Meetings are unclear. This has an indirect effect on the time for case settlement. As explained earlier, in a case with more than one concerned person, if any of the concerned persons is absent and the other concerned persons propose to postpone the Meetings due to the absence, the judge will adjourn the Meetings<sup>118</sup>. CPC 2015 does not provide the number of cases adjourned. In some circumstances, the concerned parties or lawyers abuse this mechanism to delay the settlement.

### **2.3.3.c. Adjourning hearings**

In reality, repeated or prolonged adjournment of hearings has seriously affected the time for settlement of civil, business or commercial cases. This practice results in difficulties in the work of courts and also related parties, undermining people and businesses' trust in the courts' activities. In recent years, the court system has been making efforts to avoid arbitrary postponement of hearings<sup>119</sup>. In this regard, CPC 2015 only permits the Trial Panel to postpone a hearing when (i) the judges, People's Jurors, investigators, court clerks, procurators, examiners, surveyors, interpreters are changed; or (ii) the concerned parties, representative of the concerned parties, the person protecting legitimate rights of the concerned parties are absent *when the court calls for the hearing duly for the first time* or are absent due to force majeure event or

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<sup>116</sup> CPC 2015, Article 210, clause 2, point a; Article 200, clause 3; Article 201, clause 2

<sup>117</sup> See further in Doan Thi Som (2018), *ibid*.

<sup>118</sup> CPC 2015, Article 209, clause 3

<sup>119</sup> Official Letter No. 240/TH of the Supreme People's Court dated July 27, 1992 on hearing adjournment.

objective problems with no application for trial without their presence *when the court sends the second summon duly for the second time*<sup>120</sup>.

However, these regulations still have some shortcomings in judicial practice. According to some judges and lawyers interviewed by the Research team, CPC 2015 provides hearing adjournment in the case that the court duly summons the concerned parties for the second time but has yet to address adjournment in further summons. No limit is set forth for times of valid summon and times of hearing adjournment, especially in cases with numerous concerned parties and persons participating proceedings might lead to the situation where involved persons or lawyers, in turn, request for hearing adjournment due to force majeure events. Consequently, case settlement will certainly be prolonged, affecting legitimate rights and interests of other concerned parties<sup>121</sup>.

Regarding adjournment hearings of business and commercial cases, in order to avoid situations where the court cannot identify the defendant's address, the provincial Court of Binh Duong has cooperated with the provincial Department of Planning and Investment of Binh Duong to verify the address of defendants who are businesses or businesses' representative and ensure timely delivery of necessary documents in accordance with the provisions of procedural laws. However, local courts, especially district courts, still find it difficult to cooperate with the provincial Department of Planning and Investment in their locality as well as other provinces to verify the defendants' address.

According to the surveyed lawyers, this is a widespread reality. In recent civil, business and commercial cases, the concerned parties or lawyers are usually the ones who have reasons for adjournment, such as: supplementing evidence, adding related parties, absence of the representatives or lawyers (in spite of the application of new provisions on the Meeting to prevent the parties from intentionally prolonging the time by evidence supply). Judges still provide opportunities for concerned parties to supplement evidence, ensuring their litigation rights, which might lead to hearing adjournment.

At the present, the SPC is piloting a court annexed mediation and dialogue project to further shorten the time for case settlement, saving remarkable costs for both concerned parties and courts. Directive No. 04/2017/CT-CA of the Chief Justice of the SPC has set forth the target of successful mediation under this mechanism: "*To strive*

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<sup>120</sup> CPC 2015, Article 56, clause 2; Article 62, clause 2; Article 84, clause 2; Article 227; Article 229, clause 2; Article 230, clause 2; Article 231, clause 2 and Article 241

<sup>121</sup> Bui Trang (2016), *Prolonged settlement by court, a must for an institution upon judges*, Investment Review, <https://tinnhanhchungkhoan.vn/phap-luat/toa-xu-keo-dai-phai-co-che-tai-cho-tham-phan-142589.html>



*so that the quantity of successfully mediated civil, marriage and family, business, commercial, and labor cases reaches at least 60% of the quantity of the civil, marriage and family, business, commercial, and labor cases settled by first instance courts within a year” as well as initiated a campaign of electing competition titles towards highly evaluated mediation work, in which “one successfully mediated case obtains the same competition target with two adjudicated cases”.*

#### **2.3.4. Some analyses on the time management**

The time management to ensure prompt but comprehensive and fair trial has been always studied for improvement<sup>122</sup>. Strict control of time for dispute settlement or shortening the time for dispute settlement is a priority of many countries in improving the quality of the business environment. More than 90 countries around the world have clear and strict legal provisions on the time for case settlement<sup>123</sup>.

Although CPC 2015 has made some changes to permit the involvement of the procurators and lawyers in the process of controlling case settlement time, this supervision role still largely depends on the court system. An effective time management mechanism, whether in paperwork or information technology, will assist the judges more efficiently. The experience of the provincial Court of Binh Duong is a typical example of mapping the legal proceedings steps and the evaluation of the judges’ capacity in legal proceedings, which are implemented under the method of the quality management system under TCVN ISO 9001: 2008 in settlement management. Our Study has found that other courts have similar activities, for instance, court leaders ask the judges and the Judicial Administrative Unit to post weekly updates on case settlement so as to motivate judges to settle their cases within the statutory time limit. The use of information technology (software) to manage case settlement in particular and the use of information technology application in trial operation in general are now prevalent in many countries<sup>124</sup>.

At the 5th Conference of the Council of ASEAN Chief Justices (CACJ)<sup>125</sup> in Brunei (March 2017), Malaysian and Singaporean courts committed to continuing sharing experience in enhancing the application of information technology with the member

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<sup>122</sup> The World Bank (2018), *ibid.*, page 108; UNOCD (2011), *ibid.*, page 45; See further Nguyen Hung Quang (2018), *ibid.*

<sup>123</sup> The World Bank (2018), *ibid.*, page 108; See further Nguyen Hung Quang (2018), *ibid.*, page 15

<sup>124</sup> The World Bank (2018), *ibid.*, page 108; UNOCD (2011), *ibid.*, page 45; See further Nguyen Hung Quang, (2018), *ibid.*

<sup>125</sup> CACJ was previously ASEAN Chief Justice Meeting. It was formed and the first conference was held in Singapore (23/08/2013). CACJ was established to create a forum for Chief Justices within ASEAN region to present and discuss matters of judicial sector as well as the common development and cooperation among countries. CACJ Conference is held annually. Viet Nam hosted the 4<sup>th</sup> Conference in 2016 (4<sup>th</sup> Conference). Find further details of CACJ at <https://cacj-ajp.org/>

courts<sup>126</sup>. Currently, many courts in the world are applying case management software to support the judges and the human resources in courts in controlling and allocating case settlement time reasonably and efficiently, improving the overall efficiency of dispute settlement processes<sup>127</sup>.

In order to shorten the case settlement time, CPC 2015 introduces a simplified procedure in civil proceedings as mentioned above. The criteria for applying simplified procedure in CPC 2015 only focus on the complexity of cases and do not address the minor value cases (e.g. small claims); for instance, in EU countries (except Denmark), disputes in which the concerned parties' claim does not exceed 5,000 Euro are eligible for simplified procedure<sup>128</sup>; in Singapore, if maximum value of the claim is between SGD 10,000 to 20,000, the dispute is handled by the court specializing in minor value cases<sup>129</sup>. According to World Bank, 133 out of 181 economies surveyed by World Bank have specialized mechanism for civil dispute settlement, small claim courts or simplified procedures for commercial business dispute settlement<sup>130</sup>.

Publicizing information about ongoing trials as well as information related to the settlement of a case is important because by doing so, people, businesses and lawyers can control the case settlement time along with the court, enhancing trial integrity and transparency<sup>131</sup>. As analyzed above, if the courts have their own website, it is necessary to disclose information on the status of the petition acceptance, trial schedule and information related to the case settlement for the concerned parties to access from afar without going to the courts themselves. This is especially relevant in case of natural disasters, epidemics or force majeure events or the cases where travelling to the courts is challenging. Moreover, in the course of the industry 4.0 revolution, providing information on settlement status can also be understood as a means for the courts to be "close to the People, help the People." in the information technology era.

However, before information technology may be applied nationwide, courts can still maintain traditional information boards. If the boards are well-presented and updated

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<sup>126</sup> HTQT, Chief Justice of the SPC attending the 5th Conference of the Council of ASEAN Chief Justices in Brunei, [http://hvt.a.toaan.gov.vn/portal/page/portal/tandtc/299083?p\\_page\\_id=1753011&pers\\_id=11723751&folder\\_id=&item\\_id=193985437&p\\_details=1](http://hvt.a.toaan.gov.vn/portal/page/portal/tandtc/299083?p_page_id=1753011&pers_id=11723751&folder_id=&item_id=193985437&p_details=1)

<sup>127</sup> Website of Korean Supreme People's Court, E-court System, Case Management Systems – CMS, <https://eng.scourt.go.kr/eng/judiciary/ecourt/case.jsp>; The World Bank (2018), *ibid.*, page 108; UNOCD (2011), *ibid.*, page 45; See further Nguyen Hung Quang (2018), *ibid.*

<sup>128</sup> European Small Claims procedure, [https://europa.eu/youreurope/business/sell-abroad/resolving-disputes/small-claims/index\\_en.htm](https://europa.eu/youreurope/business/sell-abroad/resolving-disputes/small-claims/index_en.htm)

<sup>129</sup> The World Bank (2018), *ibid.*, page 108; See further Nguyen Hung Quang (2018), *ibid.*

<sup>130</sup> The World Bank (2018), *ibid.*, page 108; See further Nguyen Hung Quang, (2018), *ibid.*

<sup>131</sup> The Central Commission for Internal Affairs (2017), *ibid.*, page 16, 17; UNOCD (2011), *ibid.*, page 45

regularly and clearly, it will be helpful for people and businesses, reduce the workload of court staff relating to information provision and enhance transparency in the court's activities. Many of the 'One-stop shop' units of the administrative agencies are currently doing this work quite well.

Regarding the confidentiality of individuals and businesses' information, the system of checking case information by bar codes at the People's Court of District 5 and People's Court of Ho Chi Minh City, is an example of good practice.

### **Summary box 3: Time management**

1. In recent years, the SPC has taken several measures to manage the time of case settlement. Based on these efforts, CPC 2015 has remarkably reformed the management of time for settlement of civil cases in general and business, commercial cases in particular. Examples of successful efforts include the Quality Management System under Vietnamese standard ISO 9001:2008 by the People's Court of Binh Duong Province. Courts are also aware of managing the time bar of special cases, developing specific software for time management, using Excel or software piloted by the SPC. The management of time and case files by proceedings software or code/bar code checking equipment has showed remarkable advantages at the Provincial Court of Ho Chi Minh City or People's Court of District 5. However, the formulation of specialized software requires great investment in terms of human resources, time, effort, costs, and especially procedural standardization.

2. It is of great significance to publicize information about courts' activities so that all relevant parties can, along with the courts, manage the time and process of case settlement and enhance transparency in courts' activities. Providing information on the status of the settlement can also be understood as a means for the courts to be "close to the People, help the People" in the information technology era.

3. Information boards placed at court headquarters should be regularly updated and cleaned to create good impressions of courts on people and businesses. This requires specialized staff to manage courts' websites (apart from SPC's), including a technical official and court clerks to keep website updated with the latest information about case settlement, proceeding procedures, petition forms to be used in proceedings, etc. The Provincial Court of Ho Chi Minh City is an example of good practice in applying information technology in publicizing case settlement process (through kiosk screens).

4. It is required to have measures to apply simplified procedures and Meetings for submission of, access to and disclosure of evidence and mediation in order to shorten the time for case settlement.

## 2.4. Judgement delivery and publication

### 2.4.1. Judgement delivery

Provision of judgement excerpts and delivery of judgements and decisions of the courts is one of the rights of concerned parties when participating in civil procedures<sup>132</sup>. Within 3 (three) business days after the end of the trial, the concerned parties, agencies, organizations and plaintiffs shall be *provided with judgement excerpts* by the court; within 10 (ten) days from the date of judgement declaration, the court shall *deliver or send the judgement* to the concerned parties, agencies, organizations or plaintiff and the Procuracy of the same level<sup>133</sup>.

According to the interviews, the excerpt and judgement delivery of the surveyed courts are performed mainly by direct delivery or by post in accordance with relevant laws. To ensure there would be no delay in judgement delivery, the Provincial Court of Hai Phong City sends judgements earlier than the deadline stipulated in CPC 2015<sup>134</sup>. After trials, the specialized units must hand over the judgements to the Office Department (it is also called as “Admin Department”) before the time limit (5 (five) days) expires. At the Provincial Court of Ho Chi Minh City which handles various complicated cases, especially commercial ones, the court does not set any time limit shorter than that provided in CPC 2015 due to a great number of judgements promulgated as well as their length and complexity, which require careful and thorough review.

According to several lawyers, there are still some cases where courts deliver effective judgements and decisions to the concerned parties past the time limit, which affects the legitimate rights and interests of the people businesses. Or there are cases where the judgements that the concerned parties receive and the information of the concerned parties such as their names, addresses are not correct. There could also be misspellings in the judgements, or the judgements would not be in accordance with the prescribed format.

All courts can issue excerpts of newly declared judgement or within the time limit stipulated by CPC 2015<sup>135</sup> since these judgements are now drafted on computer. In the past, the issuance of judgement extracts usually took a much longer time.

Judgement delivery by electronic means under the provisions of Resolution No. 04/2016/NQ-HDTP has not been implemented in practice for many reasons. In

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<sup>132</sup> CPC 2015, Article 70, clause 21; Article 71, clause 1

<sup>133</sup> CPC 2015, Article 269, clause 1, clause 2

<sup>134</sup> CPC 2015, Article 269, clause 2

<sup>135</sup> CPC 2015, Article 269, clause 1

accordance with provisions of laws, the concerned parties must meet certain requirements. Accordingly, if the concerned parties choose to *send and receive* electronic data messages to/with the court (including receiving court judgements or decisions), they have to meet all the same requirements applied to the case of petition e-filing mentioned in section 2.1.3 of this Report. If the concerned parties choose to *only receive* electronic data messages issued, delivered or notified by the court (including receiving judgements or decisions of the court), they only need to satisfy the following conditions<sup>136</sup>:

- Having an e-mail address to send and receive electronic data messages to and from the court's e-portal.
- Successfully registering for an electronic transaction account. In order to register for an account, the concerned parties must directly submit the registration application to the court with the form posted on the court's e-portal.<sup>137</sup>

Similar to the petition e-filing, judgement delivery via electronic means are still in pilot phase (at Superior People's Court in Ha Noi, the Provincial Court of Ha Noi City, Provincial Court of Hai Phong City and Provincial Court of Quang Ninh Province<sup>138</sup>). In fact, in the survey period (late 2018), the surveyed courts which are piloting e-filing mechanism (including Superior People's Court in Ha Noi, Provincial Court of Hai Phong City) have not implemented judgement delivery by electronic means. However, at the time of this Report completion (July 2020), the online registration system for the issuance of judgments and documents in the cases of the SPC (<https://capsaobanan.toaan.gov.vn/>) had had a total of over 6000 requests, of which more than 3000 had been resolved and over 300 had been rejected<sup>139</sup>.

#### **2.4.2. Judgement publication**

In 2017, the SPC's Justice Council issued Resolution No. 03/2017/NQ-HDTP on publication of judgements and decisions on the e-portal of the courts. Except for judgements related to State secrets, fine traditions and customs, occupational secrets, business secrets, personal secrets, family secrets at the legitimate request of the

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<sup>136</sup> Resolution No. 04/2016/NQ-HDTP, Article 5, Clause 2

<sup>137</sup> Resolution No. 04/2016/NQ-HDTP, Article 15. Within 3 (three) business days from the date of petition receipt, the court shall issue a written notice on accept/not accept the petition for the petitioner. If the petition is not accepted by the court, the petitioner shall base on the court's notice to revise the petition. In case of petition accepted by the court, the petitioner shall base on the court's notice about the transaction account to change the account password first granted to ensure safety and security.

<sup>138</sup> Huy Vu (2018), *ibid*

<sup>139</sup> SPC (2020), the online registration system for the issuance of judgments and documents in the cases, <https://capsaobanan.toaan.gov.vn/11tatc/dang-ky-cap-sao-trich-luc>

concerned parties<sup>140</sup>, the Chief Judge is responsible for publicizing the judgements on the e-portal of the court<sup>141</sup> after 30 (thirty) days from the effective date of the judgements.

Online publication of judgements and decisions of courts will allow people and businesses to monitor the trial quality of the court system and for legal research activities. The SPC has developed and launched the e-portal for courts' judgements and decisions publication in July 2017<sup>142</sup> (<http://congbobanan.toaan.gov.vn>).

The surveyed courts have implemented the policy of judgement and decision publication on the courts' e-portals in accordance with laws. The Courts' Office Department or Judicial Administrative Unit is usually responsible for monitoring the judgement publication and warning judges about the time limit for publicizing judgements to avoid late publication of judgements.

However, the interviewees claim that publication of judgements would increase the workload for judges and clerks due to the time-consumption of information encryption as well as the pressure of judgement publication time limit, especially at year-end or at the end of a statistical period when the workload is already abundant. Some interviewed judges have proposed that each court should set up a judgement editorial team to assist the judges in publicizing judgements, which will also enhance the quality of publicized judgements. Also, it is recommended to eliminate the provision that includes judgement publication as one of the evaluation criteria of judges; instead, this criterion should be used to evaluate the courts.

According to the surveyed lawyers, judgement publication is a significant part of judicial reform. Publicized judgements are valuable and useful source of legal information, knowledge, and expertise for law practitioners. Judgement publication has also impacted the quality of the adjudication in courts and functioned as a source for developing case law in Viet Nam. The surveyed lawyers all opine that the quality of judgement drafting has recently improved, possibly a result of the publication of judgements. However, some of them claim that a number of judges are afraid that publicizing judgements may reveal their lack of capacity or other problems in their trials. Therefore, according to the interviewed lawyers, some judges and court clerks suggest the concerned parties and lawyers in civil cases and commercial business cases not to disclose judgements, reasoning that it would not be advantageous for the concerned parties. However, in reality, the publication of judgements may only be

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<sup>140</sup> CPC 2015, Article 109, clause 2

<sup>141</sup> CPC 2015, Article 269; Resolution 03/2017/NQ-HDTP, Article 6

<sup>142</sup> Supreme People's Court (2017), *Enhancing publicity and transparency in court activities*, [http://toaan.gov.vn/portal/page/portal/tandtc/299083?p\\_page\\_id=1753011&pers\\_id=1751940&folder\\_id=&item\\_id=208401320&p\\_details=1](http://toaan.gov.vn/portal/page/portal/tandtc/299083?p_page_id=1753011&pers_id=1751940&folder_id=&item_id=208401320&p_details=1)

disadvantageous for the judges themselves. The surveyed lawyers also insisted on the need for the measures to prevent this kind of behavior by judges.

### **2.4.3. Some analyses on the judgement delivery and publication**

In Viet Nam, handing over judgements to the concerned parties is the bridge between trial process and judgement enforcement. If the concerned parties receive the judgement late, it will cause delay of judgement enforcement, and consequently affect the total time of dispute settlement from the moment of petition filing to the completion of judgement enforcement in general<sup>143</sup>. As a result, this service should be improved as analyzed<sup>144</sup>. However, the successful implementation of the online registration system for the issuance of judgments and documents (in the cases of the SPC applied to the courts nationwide) is a testament to the need of electric method application in judicial administrative works and E-courts application in the future.

Judgement publication has meaningful impact on the transparency of trial activities, as well as the promotion of justice and human rights<sup>145</sup>. Judgement publication will also increase people and businesses' confidence in trial activities as well as business environment<sup>146</sup>. Experiences from high-ranking countries in Contract Enforcement show that in these countries, judgments are published in various forms, whether in hardcopy or by electronic means. Judgement publication also shows the integrity of judicial activities. According to the report by the Central Committee of Internal Affairs of Communist

#### **Box 8: Judgement publication at the People's Court of Vinh Long Province (2012)**

In the period of 2011-2012 (prior to Resolution 03/2017/HDTP), People's Court of Vinh Long Province gathered appellate judgements, cassation review or revision decisions issued by People's Court of Vinh Long Province or the SPC (for judgements, decisions modifying or cancelling other judgements and decisions of People's Court of Vinh Long Province) into volumes for each area: criminal, civil, administrative, commercial and labor area. The objectives of such collection included: (i) assist judges and court staff to have materials to understand the application of laws, analyze cases and trial operations; (ii) help local agencies understand the trial work; (iii) enhance the propagation and raise awareness of laws at the locality. Those judgement collections were printed and distributed to the courts and State administrative agencies. This activity is highly appreciated in Vinh Long. The trial quality has been improved. A number of administrative agencies have supported trial activities, restricting interventions in trial activities.

*(Evaluation Report part 2: Judicial Administrative Reform - Experience from the three pilot Courts in the Project of Judicial Reform Support from grassroots, 2012.)*

<sup>143</sup> World Bank (2018), *ibid*, page 108; see further Nguyen Hung Quang (2018), *ibid*, page 13

<sup>144</sup> World Bank (2018), *ibid*, page 108; see further Nguyen Hung Quang (2018), *ibid*, page 13

<sup>145</sup> Resolution No. 49/NQ-TW of the Politburo dated June 2, 2005 on the Judicial Reform Strategy to 2020, Preface; UNOCD (2011), *ibid*, page 85. Refer to ICCPR, clause 1 Article 14.

<sup>146</sup> World Bank (2018), *ibid*, page 108; see further Nguyen Hung Quang (2018), *ibid*, page 13



Party, publication of judgements aims to improve the transparency in judicial activities, enhance the court's capacity, reduce complaints relating to court activities, increase the trial quality, disseminate and educate legal knowledge in the society, as well as contribute to strengthening the trust of people and businesses in the courts' mission to protect legitimate rights and interests of individuals and organizations<sup>147</sup>. The experience of Vinh Long province (see **Box 8**) is a vivid demonstration of the effectiveness of judgement publication.

The World Bank's Doing Business Report has also raised the issue of online publication of judgements as an important element in the court automation indicator. Korea (civil law system) and Singapore (common law system) which are ranked as one of the top countries in contract enforcement are applying the E-court model and online judgement publication<sup>148</sup>. Currently, the SPC is applying information technology under the project "Enhancing the transparency and the quality of trials in Viet Nam" supported by the Korean International Cooperation Agency (KOICA). The SPC also sets out the central task of "studying and developing mechanisms and methods for applying computerization in legal proceedings and judicial administrative works in courts as the basis for the development of E-court"<sup>149</sup>.

Judgement publication is the fundamental condition for the trial system to develop case law and promote the consistent application of regulations in accordance with the provisions of law and resolutions of the SPC's Justice Council<sup>150</sup>.

Despite certain limitations in the initial implementation of judgement publication, it can be affirmed that the publication of judgements and decisions on the courts' e-portals is an important reform of the courts' system and one of the effective mechanisms for the people to inspect and supervise the trial activities, thus enhances the integrity of courts. From a broader perspective, it contributes greatly to improving trial quality, developing case law and judicial responsibilities.<sup>151</sup>

#### **Summary box 4: Judgement delivery and publication**

1. The delivery of judgement delivery and publication have remarkable changes when compared with that in the past, ensuring this procedure is implemented within the time limit of this procedure at all Courts and even earlier for courts with strong judicial administrative reforms. The provision of judgement delivery and publication by electronic means was not

<sup>147</sup> Central Commission of Internal Affairs (2017), *ibid*, page 24, 25; UNOCD (2011), *ibid*, page 45

<sup>148</sup> World Bank (2018), *ibid* page 108; see further Nguyen Hung Quang (2018), *ibid*, page 13

<sup>149</sup> Directive 01/2020 dated January 9, 2020 on the implementation of key tasks in 2020 of the Courts;

<sup>150</sup> Plan No. 122/BCS; UNDP (2014), *ibid*, pages 73 - 77; Resolution No. 03/2015/NQ-HDTP of Justice Council of Supreme People's Court on the Procedure of selection, publication and application of case law

<sup>151</sup> Plan No. 122/BCS; UNDP (2014), *ibid*, pages 73 - 77



applied at any court at the survey period (December 2018) but have been implementing with certain results in the Report's completion time (July 2020).

2. The publication of judgements on the SPC's e-portal is an important reforming step of the courts' system, promoting integrity and transparency of courts, strengthening the enforcement of justice, human right respect. In addition, judgement publication also enhances the development of case law and consolidates the application of law nationwide. However, it is necessary to improve the quality of the judgements that are publicized, limiting the situation of avoiding judgement publication, etc.

## **PART III – CONCLUSION AND RECOMMENDATIONS**

As analyzed at the beginning of the Report, the Report “*Good practices in court procedures to improve court integrity*” is conducted to learn about the applicable legal provisions on judicial administrative works at courts and practice of implementing these procedures, thereby identifying the models that are operating effectively and proposing for a wide application of these models in the court system. Through the Study, the Research Team selects and hereby proposes several good practices relative to 4 (four) groups of judicial administrative works in the scope of study with the specific suggestions as follows:

### **1. Receiving petitions and accepting cases (including mediation by Center of court annexed Mediation and Dialogue)**

*Good practice 1: Model of Judicial Administrative Unit and receipt of petitions and evidence via electronic means*

The Study recognizes the advantages of Judicial Administrative Unit model in receiving petitions and accepting cases, helping judges focus on case settlement. This model is currently applied in all of the 7 (seven) surveyed courts.

The Study suggests it is necessary to implement this Model nationwide in the near future, as follow:

- The SPC should make a summary of five-year implementation of the Directive No.03/2016/CT-TA of the Chief Justice on strengthening the reform of judicial administrative works in the People’s Court and perform the key tasks of improving the organizational and operational model of Judicial Administrative Unit or Judicial Administrative Department in accordance with the Directive 01/2020. The SPC should select a suitable model and methods for judicial administrative works towards the effectiveness and transparency of the trial process;
- The SPC should “implement the one-stop shop mechanism and simplify the receipt and guidance of the request settlement of agencies, organizations and citizens before and after trial” set out by the Directive 01/2020. ‘One-stop-shop’ mechanism should be implemented consistently throughout the trial system for the convenience of people and businesses. The ‘One-stop-shop’ model developed by the Government<sup>152</sup> is a good model for application to the trial system;

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<sup>152</sup> Decision No. 93/2007/QĐ-TTg of the Prime Minister promulgating the Regulation on implementation of the one-stop shop and one-stop mechanism at the local state administrative agencies, on June 22, 2007

- Courts at all levels should establish process on judicial administrative works, map out this process and the case settlement process of each court in accordance with the organizational structure, personnel characteristics of the Court and publicize it on the websites or information boards at the Court's buildings. This work will help people and businesses to meet the requirements of law and practice of the Court. If a court could not utilize electronic means for publishing information, then information can be published by traditional means of communication, such as information boards located at the Court's buildings but these boards should be kept up to date and clean so that people and businesses have a good impression of the Court's activities;
- The SPC and local courts need to implement online petition and evidence filing system to meet the practical needs, the key tasks in 2020 according to the Directive 01/2020, as well as harmonize the comprehensive e-government program. Courts at all levels may apply electronic method to commercial cases because the concerned parties of such cases can meet the conditions of this method easier than other parties, for instance, most businesses have electronic signatures. With the successful application of online petition and evidence filling system in commercial cases as a starting point, the courts can continue to apply this method to other types of cases. At the same time, the courts can research alternative methods for requesting electronic signatures of individuals and organizations that are not businesses. The application of level 4 in public services of state administrative agencies, which does not require people, organizations and businesses to have digital signatures is a good practice that the courts can apply.

#### *Good practice 2: Court annexed Mediation and Dialogue*

The establishment of the pilot court annexed mediation and dialogue activities since 2018 has made certain contributions to the settlement of civil, business and commercial disputes as well as to the reduction of the trial workload for the courts as surveyed. Information from the Study has not enough evidence to identify a good practice in terms of mediation and dialogue to apply this module on a large scale. However, the Study suggests, based on the on-desk study and field survey, some following issues relating to the court annexed mediation and dialogue:

- Court annexed mediation and dialogue is a voluntary activity of the disputing parties. If either party or all parties disagree with the mediation and dialogue or the parties have held mediation at other independent mediation organizations, the Court must immediately accept the case under the procedural laws. The Court should not consider the court annexed mediation and dialogue as a

compulsory step before accepting the case under the procedure laws because it will prolong the time of the case settlement.

- The court annexed mediation and dialogue also requires effective managing mechanisms and measures to avoid prolonging the time for case acceptance in particular and the total time for case settlement at courts. Through the Study, a number of measures can be considered, such as: determining the time bar for mediation, the procedure for mediation, the relationship between mediation, dialogues before the proceedings and the mediation during the proceedings and so on.
- The Courts should take effective measures to protect the integrity of the Court when employing Mediators who are not Court's officials to perform court's tasks. These measures may include: establishing strict process of recruiting Mediators, developing code of ethics and professional conduct for Mediators, and developing standard processes for court annexed mediation and dialogue activities, organizing training sessions on mediation and dialogue and developing regulations on supervision of court annexed mediation and dialogue activities.

## **2. Judicial assignment at courts**

The survey in 7 (seven) courts shows that courts apply different methods of case assignment, including automatic random assignment and conditional random assignment. The Study shows that judicial assignment is an important issue of the court administration and has great significant effect on case settlement time, integrity and independence of courts and judges as well as the trust of people and businesses in the judicial system.

Hence, the Study suggests that in the near future, judicial assignment should apply the model of conditional random assignment, combining random criterion and the criterion of judges' specialization. However, to ensure the transparency, accountability as well as the independence, objectivity and impartiality of the Judges in implementing conditional random assignment, the Courts need to develop specific and normative criteria for the conditions. The Courts should aim at applying automatic random assignment at all levels to ensure the transparency, accountability, independence, objectivity and impartiality of the Judges. The application of automatic random assignment will exert pressure on Judges to improve their capacity.

### **3. Case time management (including case settlement process publicizing; simplified procedure applying; submitting, accessing to and disclosing evidence and mediation; adjournment)**

#### *Good practice 3: Specialized software supporting time management*

Superior People's Court in Ha Noi and Provincial Court of Ho Chi Minh City are good practices in establishing and effectively applying the software for managing settlement time. It should be noted that the development of the time management software requires a great amount of time, human resources, funding, standardization of internal processes and the internal consensus of each court as well. On the other hand, the Microsoft Excel software used by Provincial Court of Binh Duong will be suitable for courts which do not have enough budgets to develop their own specialized software.

Based on good practice in time management software, this Study suggests the SPC to develop common software for all Courts in the country to enhance their time management or to develop criteria for software development. This way, the courts can develop their own software with available resources and in the future, this software can be integrated with the software developed by SPC to avoid waste of resources and improve the efficiency of the Court administration.

#### *Good practice 4: Application of information technology in publicizing case settlement process*

The publication of the courts' activities is of critical importance to the related parties, because it helps them to manage the time and process of case settlement together with the courts and enhance judicial transparency. The Study has recognized the courts' efforts in upgrading the display of the SPC's e-portal as well as the website of 63 (sixty-three) provincial courts and 3 (three) Superior Courts. These websites publicize the activities and case settlement process of the courts.

This Study demonstrated that the courts' websites (except the e-portal of the SPC, Superior People's Court in Ha Noi, People's Court of Ho Chi Minh City) should be managed by specialized staff, including technical staff and court clerks to regularly update information on case settlement, proceeding procedures, legal forms used in litigation. Provincial Court of Ho Chi Minh City is the good practice in applying information technology to publicize the case settlement process (via kiosk screens at the court buildings).

### **4. Judgement delivery and publication**

The Study shows that at present, more progress has been found in judgement delivery and publication to ensure that this procedure is implemented within the time limit at all courts and even earlier for courts with strong judicial administrative reforms. The

judgement delivery and publication by electronic means currently (July 2020) implemented in the web portal of SPC is seen as good practice and contributes significantly to the development of electronic court model and automatic court model.

The study also shows that announcement of judgments on the SPC's e-portal is an important step toward court reform as it is closely related to promoting integrity and transparency of the courts as well as enforcing justice and respecting human rights. In addition, the announcement of judgments also contributes to the development of case law and promotes uniform application of law across the country.

Finally, judges and court officials from Viet Nam can also benefit from the participation of Viet Nam judiciary in the Judicial Integrity Network in ASEAN<sup>153</sup>. Established in 2018, with Indonesia, Malaysia, Philippines and Thailand as founding members, the Network welcomed on board Viet Nam in 2019. The Network is a means for sharing knowledge, good practices and tools to enhance judicial integrity, transparency and other aspects of court excellence which will build public trust. The Network connects judicial experts from ASEAN and beyond, providing support where the courts want to organize knowledge exchange on topics of common interest, or undertake self-assessments facilitated by peers and expert members of the Network, using the International Framework for Court Excellence and UNDP Judicial Integrity Checklist<sup>154</sup>./.

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<sup>153</sup> Please see the link [Judicial Integrity Network in ASEAN](#)

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## PART IV – ANNEX

### ANNEX I – REFERENCES

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## ANNEX II – LEGISLATION

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2. Resolution No. 48-NQ/TW of the Politburo on the Strategy of developing and improving the Vietnamese legal system up to 2010 and orientations to 2020
3. Resolution No. 49-NQ/TW of the Politburo on the Judicial Reform Strategy to 2020
4. Civil Procedure Code 2015
5. The Law on Court Annexed Mediation and Dialogue 2020
6. Law on Organization of People's Courts 2014
7. Law on Administrative Procedures
8. Resolution No. 03/2015/NQ-HDTP of Justice Council of Supreme People's Court on the Procedure of selection, publication and application of case law
9. Resolution No. 03/2017/NQ-HDTP on publication of judgements and decisions on the e-portal of the People's Courts
10. Resolution No. 04/2016/NQ-HDTP of the Justice Council of the Supreme People's Court guiding the provisions of the Civil Procedure Code 2015, the Law on Administrative Procedures 2015 on sending, receiving the petitions, documents, evidence and issuance, sending, notification of procedural documents via e-filing system
11. Resolution No. 05/2012/NQ-HDTP of the Justice Council of the Supreme People's Court guiding the implementation of a number of provisions in the second part "Procedures for settling cases in the first-instance civil case trial" of the amended and supplemented Civil Procedure Code under the Law on amendments and supplements to a number of articles of the Civil Procedure Code
12. Resolution No. 326/2016/UBTVQH14 stipulating the level of collection, exemption, reduction, submission, management and use of court fees and charges
13. Decision No. 345/2016/QD-CA on the organizational structure, tasks and powers of the units in the assisting apparatus of the People's Courts of provinces and centrally-run cities; People's Courts of districts, communes, provincial cities
14. Decision No. 136/2001/QD-TTg of Prime Minister dated 17/9/2001 on approving the Master Plan of Reforming State Administration in the period from 2001 to 2010
15. Decision No. 846/QD-TTg of the Prime Minister promulgating the list of level-3 and level-4 online public services implemented in ministries, sectors and localities in 2017 dated June 9, 2017

16. Directive No. 03/2016/CT-CA on strengthening the implementation of the reform of judicial administrative works at the People's Court
17. Directive No. 04/2017/CT-CA of the Chief Justice of the SPC on strengthening mediation at People's Courts
18. Directive 01/2020/CT-CA dated January 9, 2020 on the implementation of key tasks in 2020 of the courts
19. Official Letter No. 240/TH of the Supreme People's Court of 27/7/1992 on the Adjourning hearings
20. Plan No. 122/BCS dated December 26, 2005 of the SPC Party Committee
21. Resolution No. 02/NQ-CP of the Government dated 1/1/2019 on continuing to perform the main tasks and solutions to improve the business environment and national competitiveness in 2019 and orientations to 2021
22. Resolution No. 19/NQ-CP of the Government on major tasks and solutions to improve the business environment and national competitiveness
23. Resolution No. 19-2015/NQ-CP of the Government on major tasks and solutions to improve the business environment and national competitiveness in 2015-2016
24. Resolution No. 19-2016/NQ-CP of the Government on major tasks and solutions to improve the business environment and national competitiveness in 2016-2017 and orientations to 2020
25. Resolution No. 19-2017/NQ-CP of the Government on continuing to perform the main tasks and solutions to improve the business environment and national competitiveness in 2017, orientations to 2020
26. Resolution No. 19-2018/NQ-CP of the Government on continuing to perform the main tasks and solutions to improve the business environment and national competitiveness in 2018 and the following years
27. Resolution 36a/NQ-CP dated October 14, 2015 of the Government on e-Government
28. Decision No. 30c/NQ-CP of the Government on issuing the Master Plan of Reforming State Administration in the period from 2011 to 2020; Observation of the Research Team during the survey process in localities
29. Code of ethics and conduct for Judges 2018

## **ANNEX III – IN-DEPTH QUESTIONNAIRES FOR JUDGES**

**Objective:** Investigating the practice of handling judicial administrative works at courts from the perspective of Judges.

**Subject:** Judges of Superior People's courts, provincial-level People's Courts and district-level People's courts at the surveyed localities.

### **SECTION I. PROCEDURES FOR FILING A PETITION**

1. Identifying the department receiving petitions at the Court where the Judge works at (the Administrative office/Office/Judicial Administrative Unit or specialized court)
2. Describe the procedure of receiving petitions being applied at the Court. Please comment on the opportunity of multiplying such model in localities.
3. Practical application of receiving petitions via e-filing system

### **SECTION II. JUDICIAL ASSIGNMENT**

4. Describe and evaluate the method of judicial assignment for settling commercial cases being applied at the Court where the Judge works at (especially the criteria for assignment).
5. Practical application of judicial assignment software at the Court.

### **SECTION III. MANAGEMENT OF CASE SETTLEMENT TIME**

6. Describe the method of managing case time bar of the judge and the court leaders (for instance, through internal reporting mechanisms) in settling cases.
7. Practical application of software of managing case time bar. Evaluate the opportunity of multiplying the model in localities.

### **SECTION IV. PUBLICATION OF CASE SETTLEMENT PROCEDURE**

8. Practice of publicizing information on general case settlement procedure (via the e-portal/website of the court, Information boards at the Court's Head office). Evaluate the efficiency of the information publication method being applied.

### **SECTION V. METHODS AIMING AT SHORTENING TIME FOR CASE SETTLEMENT**

9. Practice of case settlement under simplified procedures
10. Practice of meetings for submission, access to and disclosure of evidences and mediation pursuant to the CPC 2015.
11. Practice and difficulties related to hearing adjournment in the settlement of commercial cases.

### **SECTION VI. PROCEDURES JUDGEMENT DELIVERY AND PUBLICATION**

12. Identify the method for providing excerpts of, delivering, sending judgments (in person, by post or by electronic means). What are the difficulties related to implementation of regulations judgement delivery and publication? (if any)
13. Describe the method of judgments publication on the website for publication of courts' judgments and decisions. What are the difficulties in the current process of judgment publication?

**SECTION VII. ACTIVITIES OF THE CENTER OF COURT ANNEXED MEDIATION AND DIALOGUE**

14. Describe the process of settling a case at the Center of court annexed Mediation and Dialogue (if any)? (especially the relationship between petition filing and mediation at the Center). Identify grievances in operation of the Center of court-annexed Mediation and Dialogue (if any).

## **ANNEX IV – IN-DEPTH QUESTIONNAIRS FOR LAWYERS, BUSINESSES**

**Objective:** Investigating the practice of performing judicial administrative works at Courts from the perspective of lawyers and businesses.

**Subject:** Lawyers in settling commercial case sector and businesses involved in commercial cases settled at the courts within the surveyed localities.

### **SECTION I. PROCEDURES FOR FILING A PETITION**

1. Describe and comment the procedure for filing petitions at Courts.
2. Describe the procedure and time for filing petition via e-filing system (if any).

### **SECTION II. QUALITY OF ASSIGNED JUDGES**

3. Evaluate the specialization, capacity and objectiveness of the Judge(s) assigned to settle the case(s).

### **SECTION III. LEVEL OF COMPLIANCE WITH PROCEEDINGS TIME**

4. Evaluate the timeliness of the notices sent by Courts (such as the Receiving Slip, Notice for petition amendment or supplementation, notice of case acceptance) in the stage of petition filing and case acceptance.
5. Evaluate the timeliness of the notices sent by Courts (such as Notices of the meetings for submission, access to and disclosure of evidences and mediation; Notices on adjourning the meeting for submission, access to and disclosure of evidences and mediation; Decision first-instance case trial) in the stage of preparation for trial.

### **SECTION IV. PUBLICATION OF CASE SETTLEMENT PROCEDURE**

6. Describe and evaluate the methods for updating information on case settlement procedure (contacting court staff, searching information on the court's information boards, searching information on the Internet, etc.)
7. Practical experience of access to the provincial court's electronic website. Evaluate the information publication on such website (platform, convenience of use, accuracy and sufficiency of the published information).

### **SECTION V. METHODS AIMING AT SHORTENING TIME FOR CASE SETTLEMENT**

8. Practical experience and evaluation of case settlement on simplified procedures (if any).
9. Practical experience and evaluation of the quality of the meetings for submission, access to and disclosure of evidences and mediation in the stage of trial preparation (the seriousness of Judges and court Clerks, the accuracy of the Minutes of Mediation, etc.).

10. Practical experience regarding hearing adjournment. Describe the manner and timeliness of hearing adjournment notices (by post, via email/fax or other means).

#### **SECTION VI. PROCEDURES FOR PROVIDING EXCERPTS, ASSIGNING, SENDING JUDGMENTS AND PUBLICIZING JUDGMENTS**

11. Identify and evaluate the method of receiving judgment excerpts, judgments (in person, by post or by electronic means).
12. Practical experience and evaluation of the access and search for court judgments and decisions on the website for publication of courts' judgments and decisions (<https://congbobanan.toaan.gov.vn/>).

#### **SECTION VII. ACTIVITY OF COURT-ANNEXED MEDIATION AND DIALOGUE CENTER**

13. Describe the mediation process at the court annexed Mediation and Dialogue Center (if any)
14. Comment the manner of operation of the Center of court annexed Mediation and Dialogue, and qualifications of mediator(s) conducting mediation of the case(s).