

Law on collecting evidence through taking statements from the defendant in administrative cases: A qualitative study from Vietnam

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Abstract: *Evidence collection activities in administrative cases aim to clarify relevant details and events in the case. Although the activities of collecting and searching for evidence to serve the trial in the process of resolving an administrative case have been specifically regulated on the rights, obligations, order and procedures that the subjects proceed. However, reality shows that Vietnamese law regulations related to collecting and tracing evidence to serve the trial of an administrative case still face many difficulties (Nguyen Thanh Phuong 2021). Specifically, collecting testimonies from the parties involved in the case right at the trial is an important measure. However, the reality of resolving administrative cases in Vietnam shows that in most cases when an administrative case is tried, the defendant is often absent from the hearing, which affects the collection of fees. Collect evidence for court testimony, as well as possibly prolonging the trial of the case. Thereby, through qualitative analysis method, the authors will focus on clarifying issues related to evidence collection methods through taking testimony from the defendant in administrative cases. , at the same time pointing out the inadequacies in the law through the application process in Vietnam. From there, propose solutions to perfect this mechanism in the future in Vietnam.*

Key word: evidence, evidence collection, testimony, defendant, administrative case

1. INTRODUCE

On the basis of Clause 7, Article 3 of Vietnam's Administrative Procedure Law promulgated in 2015, litigants in an administrative case have been determined to include the plaintiff, the defendant, and people with related rights and obligations. When it comes to the case, these subjects will be directly affected by the court's decisions. From there, taking direct testimony at the trial with these subjects is important evidence for the Court to make a final decision. By nature, these subjects are people who clearly know the details, content, causes, and developments of the case, so the court needs to take their testimonies to clarify related issues. Therefore, taking the litigant's testimony is an important source of evidence, consistent with objective truth. A litigant's testimony is understood as an oral or

written statement about the issues that must be proven in the case, as well as other details necessary for the resolution of the case. Through taking testimonies and listening to the direct presentations of the litigants at the Court, it will help the court grasp specifically the contents related to the dispute and the conflicting issues in the dispute. The case needs to be resolved. In Vietnam, in administrative cases, the subject being sued in all cases is a state agency or working in a state agency, the defendant is the subject who issues administrative decisions or has other actions. Acts that directly infringe upon the rights and legitimate interests of the petitioner; these decisions or acts are determined to be illegal and infringe upon the legitimate rights and interests of the petitioner. From there, the defendant may have to specifically present the basis for issuing an administrative decision being sued before the court and other subjects.

After all, the focus of collecting documents and evidence in an administrative case is to prove the legality or illegality of the administrative decision or administrative act being sued. Conceptually, evidence is considered a central issue when initiating an administrative case. All activities when carrying out the proof process in an administrative case can be assessed based on the evidence collected. Accordingly, on the basis of Article 80 of the 2015 Law on Administrative Procedures, evidence is understood as: "Real things that litigants, other agencies, organizations, and individuals submit and present to the Court during the process of proceedings or collected by the Court according to the order and procedures prescribed by this Law, which the Court uses as a basis to determine the objective facts of the case as well as determine the request or objection of the court. The litigant is well-founded and legal.

From there, in order to have sufficient evidence to make its decision, the Court may have to collect evidence through many different sources, which can be administrative decisions expressed in written form, audio tapes, audio discs, video tapes, video discs, other devices that store sounds, images or oral testimony at trial. Accordingly, one of the most important evidence bases is the testimony of the litigants in Court, although issues related to the methods, order, and procedures for collecting evidence by taking testimonies of litigants on the basis of the 2015 Law on Administrative Procedures with clear and complete regulations. However, the court's current method of collecting evidence and taking testimonies is not really effective, because current testimonies are mainly exploited directly in a one-way direction by the plaintiff and others. subjects have related rights and obligations (National Assembly, 2020). The subject being sued is often absent from court hearings, leading to a lack of objectivity in testimony, as well as a lack of litigation between the parties. According to the supervision report of the National Assembly's Judicial Committee from 2019-2021, up to 32.6% of dialogue sessions and 27.8% of court sessions did not have the participation of the People's Committee or People's Committee representative. The report cited reports of high people's courts stating that in 3 years at the high people's court in Hanoi, the number of cases where the Chairman of the People's

Committee or the representative of the People's Committee did not participate trials were 782/1,784 cases, accounting for 43.8%. The corresponding data of the High People's Court in Ho Chi Minh City is 963/1,572 cases, accounting for 61.3%, of the High People's Court in Da Nang is 97/598 cases, accounting for 16.2%. Notably, in many localities, although the number of cases is not many, the Chairman of the People's Committee or his representative is still often absent. Of which, Soc Trang was absent in 78/88 dialogue sessions; Lang Son was absent from 46/65 court sessions; Yen Bai missed 47/59 court sessions; Da Nang was absent from 67/88 court hearings. In some localities, the People's Committee or representatives are absent 100% of dialogue sessions or court sessions, such as the absence of the Chairman of the People's Committee or representatives of the People's Committees at all levels in Khanh Hoa province of Vietnam. present 100% of dialogue sessions. The Chairman of the Hanoi People's Committee (or the person authorized to participate in the proceedings) is 100% absent at dialogue sessions and trials (T. Chung, 2022). The explanation for this problem can come from many different reasons, but mainly because Vietnam's Administrative Procedure law still exists and has not been strictly specified, leading to difficulty in understanding and applying it. Laws related to collecting evidence from the defendant still have many difficulties.

2. Current status of Vietnamese law on taking statements from defendants in administrative cases

Taking statements from the parties in an administrative case is a means that plays an important role in the process of finding evidence to serve the resolution and trial of an administrative case. Therefore, determining which subjects have rights and obligations in proof activities is a prerequisite before going through the order and procedures for collecting evidence. Because these are important legal bases that the law gives to each individual subject, helping agencies, organizations and individuals protect their legitimate rights and interests, and are also the basis Help the Court thoroughly resolve an administrative case. When delving deeper into the inadequacies that hinder the process of collecting evidence from the defendant, it is necessary to clarify a number of issues as follows:

Firstly , on the basis of Clause 3, Article 60 of the 2015 Law on Administrative Procedures, it is determined: "If the defendant is an agency or organization, the defendant is authorized to be represented by his or her deputy." Accordingly, in the trial of an administrative case in Vietnam, the law allows the defendant to authorize a deputy to represent him or her to participate in the trial; Compared to the 2010 Law on Administrative Procedures, it can be seen that the scope of authorization of the defendant has been narrower, because previously the law allowed the defendant to authorize all of his subordinates to Participating in the trial, through the application process, it was found that the scope of authorization is too broad, which can lead to the authorized subjects not having expertise and not being related to the issuance of administrative decisions. may participate

in a trial, which affects the questioning and evidence collection process. Therefore, the 2015 Administrative Procedure Law only allows the defendant to authorize his or her deputy. However, according to the authors' argument, allowing authorization of the defendant's representation in administrative cases in Vietnam is unnecessary. Because when evaluating the issue objectively, the only person being sued is the subject who can specifically explain the issuance of an administrative decision or administrative act being sued. If another entity is allowed to represent it, it may lead to information and evidence provided to the Court being inaccurate and requiring the information to be checked and verified. In case the authorized person cannot provide evidence or the testimony is inconsistent, the trial may be postponed to investigate and verify information, leading to a prolonged trial affecting the rights and legitimate interests of the plaintiff.

Second, in principle, the person representing the defendant participating in a trial will have all the rights and obligations of the defendant in an administrative case. Pursuant to Clause 3, Article 60 of the 2015 Law on Administrative Procedures, it is stipulated that the authorized person must participate in the process of resolving the entire case, fully exercising the rights and obligations of the defendant according to regulations. When the deputy receives authorization, he will have to send documents to the court to present his opinions and views in response to the requests of the plaintiff. However, there are many cases in Vietnam where the authorized person will provide an application for trial in absentia to the Court, which means that the defendant and the defendant's representative are both absent throughout the court process of resolving the case. This leads to cases where administrative cases cannot take steps to meet between the parties to conduct a dialogue process before opening a trial because the defendant is absent. Because the defendant was absent, the court could not take direct testimony, the court only relied on the statement or written explanation submitted by the defendant as a basis for resolving the case.

The defendant's request to be absent when the court conducts a dialogue or trial of the case is not contrary to the law and is allowed by law, so when the defendant applies for a trial in absentia, is legal and should be accepted by the court. Although the defendant's request for absence from court is not against the law, it makes it difficult to resolve the case, affecting the quality of inspection, access, disclosure of evidence, and dialogue and debate to resolve the case. clarify the details of the case. The evaluation of evidence at trial is greatly affected when the defendant is absent. Many cases have to postpone the trial or temporarily suspend the trial to verify and collect additional documents and evidence, leading to lawsuits. The settlement time must be extended, the resolution rate of administrative cases is low. In this case, the authors can cite the case in the capital Hanoi of Vietnam, in the first 6 months of 2023, from October 1, 2022 to March 30, 2023, Hanoi Two-level Court. Handling 832 administrative cases but currently only resolving 143 cases, leaving more than 80% unresolved, reaching a rate of 17.38%, the defendant is absent

throughout the court process of resolving the administrative case. This will make it difficult to collect evidence for testimony so that the court can use it as a basis to quickly resolve the case. From the above issue, it is required that Vietnamese law needs to be adjusted, not allowing the defendant to authorize another subject to replace him/her to attend trial in administrative proceedings, and at the same time not allowing Allow the defendant to apply for trial to be absent from the trial and the dialogue session.

Third, in Clause 1, Article 9 of the 2015 Administrative Procedure Law, it is stipulated: "Litigants have the right and obligation to proactively collect and submit documents and evidence to the Court and prove that their request is valid." basis and law". This proves that providing evidence in some cases is the right and possibly also the obligation of the litigants. However, when implementing the activity of proving and providing evidence in Article 78 of the 2015 Law on Administrative Procedures, proving and providing evidence by litigants is a mandatory obligation that litigants need to comply with. Retrieving issues specified in the 2015 Administrative Procedure Law has not clearly defined any cases where proving activities and providing evidence to the Court are the rights of the litigants, but are only integrated in Article 259 Law on Administrative Procedures 2015, in case of review according to cassation procedures, the litigant has the right to supplement evidence and documents. From there, when implementing, there will be many difficulties when the litigant does not clearly understand the procedures for exercising this right, in the case of first instance trial and appeal, which cases are entitled to provide documents, evidence and Of course, when refused to exercise the right to provide evidence, does the litigant have any means to protect his or her rights? Hereby, the 2015 Law on Administrative Procedures needs to have provisions that clearly delineate which cases collecting and submitting evidence and documents to the Court are rights and which cases are obligations.

3. Recommendation to complete measures to collect evidence and take statements from the defendant in administrative proceedings

From the presented issues, the legal mechanism for collecting evidence through taking testimony from the defendant in administrative cases is more complete. Vietnamese lawmakers need to amend the law in the following direction:

Firstly , in order to overcome the fact that the defendant's side is absent and does not participate in the proceedings, it is still possible to take testimony from the defendant's side to clarify relevant issues in the case. Necessary, omit the provisions in Clause 3, Article 60 of the 2015 Law on Administrative Procedures: "In case the defendant is an agency, organization or the head of the agency or organization, the defendant is only authorized to be represented by his deputy". Accordingly, it is necessary to amend the direction that the defendant in an administrative case cannot authorize anyone to represent him or her in the

administrative case. This will be objective and fair in Vietnamese society at the present stage. now.

In addition, it is recognized that the person protecting the legal rights and interests of the defendant when participating in the proceedings must be responsible for answering questions to the Trial Council, the Procuracy, and the litigants. , for the person protecting the legitimate rights and interests of the parties in the case, is also the subject who can apply the method of collecting evidence by taking the testimony of the litigants in an administrative case. Therefore, Clause 6, Article 61 of Vietnam's 2015 Administrative Procedure Law needs to be supplemented and amended in the direction: "The protector of the litigants' legitimate rights and interests has the following rights and obligations: h) If the defendant is absent at the trial, the person protecting the legal rights and interests of the defendant is responsible for answering the questions of the person conducting the proceedings and the participants in the proceedings on behalf of the defendant.

Second , in order for the court to take the litigant's testimony electronically in the form of a legal online trial, it is required that evidence in the form of the litigant's testimony be taken. through measures such as audio and video recording, requiring the law to stipulate the order and procedures to prove the legality of this type of evidence. However, currently Vietnamese law still does not have regulations on preparing written presentations or determining the transparency of this type of evidence. From the above issue, the authors believe that the Supreme People's Court needs to have regulations or instructions on this, so that the courts can apply it in practice consistently and accurately when adjudicating a case. Administrative cases through online court hearings. The Supreme People's Court may stipulate the preparation of written statements or written confirmation of the origin of audio and video tapes of the litigant's testimony when the court conducts online trials as follows: when conducting trials If the testimony of the litigants is recorded or video recorded online, immediately after the end of the trial, the judge or court clerk must make a record of the audio and video recording of the litigant's testimony. The minutes must contain the start and end time of the audio and video recording; location where audio and video recording will take place; the location where the litigant presents his testimony; Data storage device for audio and video recording. The minutes must be signed by the secretary and the judge presiding over the trial.

Third , the Court promoted online trials for administrative cases when the defendant is absent. Currently, the court has deployed and applied online trials for cases including administrative cases. An online trial is a trial held in the courtroom, using electronic devices connected to each other through the network environment, allowing litigants and other participants in the proceedings to participate in the trial at the location. The location outside the courtroom is decided by the court but still ensures full direct monitoring of images and sounds and participation in the proceedings and proceedings of the trial through

words and continuous proceedings. publicly, at the same time. If the administrative case falls into a case where the defendant is absent, this case requires the Court and People's Committees at all levels to coordinate in conducting online trials to create favorable conditions for the defendant. The lawsuit may be present at the trial.

Accordingly, the bridgehead is the headquarters of the defendant's agency. The defendant, along with his/her advisory and consulting department, can stay at his/her agency and participate in the trial through an online trial. gland. Currently, the provision of machinery and equipment that can use internet connection is relatively complete, common and widespread in state administrative agencies, so online trials are completely possible. can be done. In practice, the local representative of the defendant, the Vice Chairman of the Provincial People's Committee, was present and participated in the trial when the administrative case was conducted online, so the quality of resolving the administrative case is improved. guaranteed (H Hai, 2023). If this is done regularly, it can contribute to overcoming the situation where the defendant is often absent when resolving administrative cases, helping the court to collect evidence through the testimony of the defendant. the defendant and at the same time also to achieve the purpose and meaning of the court hearing the case with all litigants present.

3. Conclude

One of the key contents in an administrative case that both participants in the proceedings and the person conducting the proceedings must collect evidence to prove is the legality of the subject of the lawsuit, mainly the The administrative decisions and administrative acts being sued were issued by the defendant. Because the defendant is the party that proactively issued the subject of the lawsuit, they fully know the basis, grounds, documents, records, and papers as a basis for issuance. Therefore, the testimony of the defendant also plays a very important role in providing information and evidence for the court to accurately and quickly determine the legality of the subject being sued and further clarify the value of the defendant. proof of other evidence in the case. Therefore, in the Law on Administrative Procedures, there needs to be specific, clear regulations that can be applied appropriately in practice in obtaining statements from the defendant when resolving administrative cases, to contribute part to improve the efficiency of courts in resolving administrative cases.

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