



FAIR APPROACH IN INDIVIDUAL LABOR DISPUTE RESOLUTION IN VIETNAMESE COURTS

Nguyen Nang Quangⁱ

Mien Dong Innovative Technology University – MIT,
Vietnam

Abstract:

This article presents the legal and practical basis for resolving individual labor disputes in Vietnam, from the application of law to conciliation and arbitration practices. Important principles such as respect for the right to self-determination, negotiation, conciliation, and arbitration as well as the principle of the provision of evidence and the burden of proof are discussed in detail. At the same time, the article also highlights the role of courts in ensuring fairness and objectivity in the resolution process, along with challenges and limitations that need to be overcome. This underscores the importance of continuing to improve the labor and procedural legal system in Vietnam.

Keywords: individual labor dispute resolution, Conciliation and labor arbitration, Court and fairness in adjudication, Vietnam labor law, protection of labor rights

1. Introduction

In the context of a country on the verge of strong international economic integration like Vietnam, the fair and effective resolution of labor disputes is not only a legal issue but also an urgent social requirement. Industrial relations, which are the basis of all economic and social activities, often give rise to complex issues that require the intervention of the legal system to resolve in a fair and transparent manner. In the modern economy, where the relationship between workers and employers is becoming increasingly complex and diverse, ensuring a fair, transparent, and effective labor litigation system is extremely important. This not only protects the legitimate rights of workers but also ensures a healthy business environment and fair competition for employers. Vietnam, in the process of integration and development, has and continues to reform its legal system to conform to international standards and meet the development needs of society. In particular, the improvement of labor law, specifically the law on resolving labor disputes, is a top priority. This not only demonstrates Vietnam's commitment to basic labor rights but also contributes to creating a favorable investment environment, increasing the

ⁱ Correspondence: email quangcongnghe818@gmail.com

confidence of the international community and foreign investors in the Vietnamese market.

2. Overview of Individual Labor Dispute Resolution

In the process of exercising labor rights and obligations, the relationship between the employee and the employer does not always develop in a stable and normal manner in accordance with the agreements. Disagreements about rights and interests in labor may arise between them. Some disagreements can be negotiated and resolved by the parties, but there may also be disagreements that cannot be resolved by the two parties' negotiations. If these disagreements and conflicts are well resolved, they will not become contradictions; otherwise, if they are not resolved, they can easily become serious contradictions. At this point, they need a mediator (a third party or a competent agency prescribed by law) to resolve. The laws of most countries in the world set out a mechanism to resolve disagreements and conflicts between the two subjects in the labor relationship.

Due to the specific conditions of each country, the concept of labor disputes varies among countries [2]. Some countries in the world only stipulate a mechanism for resolving all types of labor disputes and only give a general definition of labor disputes. Meanwhile, the laws of many other countries stipulate separate dispute resolution mechanisms for each type of labor dispute. For these countries, they often focus on defining each type of labor dispute. Even the conventions and recommendations of the ILO [3] only mention but do not explain what labor disputes are. Labor disputes include: individual labor disputes and collective labor disputes.

The first official definition of a labor dispute was set out in the UK's Trade Disputes Act 1906, Section 8 of which states [4]: "*A labor dispute means any dispute between an employer and a worker or between workers related to the employment or non-employment or the terms of the labor hire agreement or related to the working conditions of any person*". This definition carries many colors of individual labor disputes. Currently, UK law has introduced a new definition of labor disputes in the Industrial Courts Act 1919 [5]: "*A dispute between an employee and his/her employer and the dispute is entirely or largely related to one or some of the following issues: terms and conditions of engagement or physical conditions that any worker needs to work under; hiring or not hiring, or terminating or suspending the carrying out of the employment relationship or tasks under the contract of employment of one or more workers; allocation of work or tasks under the contract of employment between workers or groups of workers; disciplinary issues; status as a member or non-member of a workers' union organization; support conditions for union officers and negotiation or consultation mechanisms and other procedures related to any of the aforementioned issues, including the recognition by the employer or the employer's representative organization of the rights of the workers' union organization in representing the workers in participating in negotiation or consultation processes or conducting any similar procedures*". The definition has indeed been adopted and incorporated into the legislation of many countries worldwide, especially those that were once under British colonial rule [6]. Today, several countries and territories in Asia, such

as Malaysia, Singapore, among others, still retain this definition within their legal documents [7].

3. Practical Legal Basis for Fair Approach in Resolving Individual Labor Disputes in Vietnamese Courts

3.1. Principles of Respect for the Parties' Right to Self-determination in Labor Disputes

This principle originates from the nature of civil relations, which emphasizes voluntariness, self-agreement, equality, and self-responsibility of the parties in establishing, changing, and terminating civil relations. In proceedings, the right to decide and self-determine of the parties includes: the right to decide whether to sue or not to sue, the right to withdraw the lawsuit, the right to change, supplement, withdraw the lawsuit petition, and the right to voluntarily agree with each other. According to this principle, the court only accepts to resolve the case when the parties have a lawsuit; after the court has accepted the case, if the parties change, or supplement the lawsuit petition, then the court only resolves within the scope of the request that has been changed. During the process of resolving the case, if the parties voluntarily agree with each other and that agreement does not violate the law and social ethics, then the court will record the agreement of the parties and terminate the resolution of the case. In case the parties withdraw the lawsuit, the court will issue a decision to suspend the resolution and the case will also be terminated. The principle of respecting the self-determination rights of the parties is recognized in Clause 1, Article 180 of the Labor Code 2019, Article 5 of the Labor Dispute Resolution Law 2015. However, all self-determining acts of the parties must not violate the law (do not violate the prohibition) and are the voluntary will of the parties.

3.2. Principles of Negotiation, Conciliation, and Arbitration of Labor Disputes

The principle of conciliation in civil proceedings is recognized in Article 10 of the Labor Dispute Resolution Law 2015, Clause 2, Article 180 of the Labor Code 2019. In addition, according to labor law, the resolution of labor disputes must prioritize and put first the methods of negotiation, conciliation, and arbitration. If through these methods the dispute between the parties cannot be resolved or the parties do not agree with the resolution result, they have the right to use the next method, which is to sue in court. Conciliation is a principle throughout the dispute resolution process, a mandatory procedure at all levels and stages. For labor disputes, the Labor Code 2019 for the first time stipulates that the parties have the right to choose labor arbitration to resolve disputes (Article 189). This provision is completely consistent with the regulations of the International Labor Organization (ILO) and the laws of many countries around the world. The purpose of conciliation, arbitration is to make the parties understand each other, understand the law so that the parties choose the appropriate resolution direction, ensuring the maintenance of labor relations after the dispute. For conciliation and arbitration to be effective, the parties must know how to respect the interests of each

other, the interests of society, and have an appropriate conciliation method (Clause 2, Article 180 of the Labor Code 2019).

3.3. Principles of Evidence Provision and the Burden of Proof

The parties have the right to decide and self-determine in initiating a lawsuit to request the court to protect their legitimate rights and interests, and at the same time have the duty to provide evidence to prove that their request is based, except for some cases prescribed by law, the court collects evidence to prove. This principle, on the one hand, ensures compliance with the principle of respecting the decision and self-determination of the parties, on the other hand, avoids the abuse of power, adjudication not in accordance with the law, not objective of the court (if allowing the court to collect evidence itself in all cases will create a closed mechanism in the process of dispute resolution at the court from the time of evidence collection to trial)[8].

3.4. Principles of Resolving Labor Disputes in a Public, Transparent, Objective, Prompt, Quick and Lawful Manner

This principle is stipulated in Clause 3, Article 180 of the Labor Code 2019, and Article 15 of the CPC 2015.

This principle originates from the specificity of labor relations with the participation of two parties with opposing interests. Because labor relations have a significant impact on the lives of workers, production, and society as a whole, it requires quick and timely resolution of labor disputes. To do this, competent agencies must be objective, public, and lawful. Publicity and transparency speak to the way disputes are resolved. Labor disputes must be resolved publicly, anyone interested can attend court sessions, and the resolution results must be publicly announced, not considered confidential information. To ensure objectivity in resolving labor disputes, organizations and individuals with jurisdiction must collect evidence, study files, and evaluate evidence objectively, stand in a neutral position, maintain an objective attitude, not biased, not prejudiced in the process of resolving labor disputes and base on the objective circumstances of the case to make effective resolutions, ensuring the rights and interests of the disputing parties. Labor disputes, in addition to positive impacts, also have many negative impacts on employers, workers, and society, such as causing production to stagnate, workers' income to be interrupted... Moreover, in many cases, after resolving labor disputes, the labor relations of the parties must continue to be maintained. Therefore, labor disputes need to be resolved promptly and quickly to prevent and remedy the above negative impacts.

3.5. Principles of Ensuring the Participation of Representatives of the Parties in the Process of Labor Dispute Resolution

This principle is stipulated in Clause 4, Article 180 of the Labor Code 2019: "*Ensuring the participation of representatives of the parties in the process of labor dispute resolution*".

Representatives of the parties in the process of resolving labor disputes are typically individuals well-versed in the law and knowledgeable about the conditions of

the involved parties. Their involvement aids competent authorities in more accurately assessing the disputes, facilitating appropriate resolution strategies. However, currently, the involvement of employer representatives isn't distinctly defined. When employee disputes arise, employees often engage in the dispute resolution process without representation. These principles offer overarching guidelines for resolving labor disputes, applicable across mediation, arbitration, and adjudication methods. However, labor dispute resolution in court constitutes a distinct legal process from other dispute resolution methods. Apart from adhering to general dispute resolution principles, court-based labor dispute resolution must also comply with the general principles of litigation activities as stipulated in the Law on Mediation and Dialogue at the Grassroots Level. Adhering to civil procedural law principles in civil proceedings facilitates efficient case resolution and execution, prevents negative issues during proceedings, and ensures parties can lawfully defend their rights and interests in court.

Currently, Vietnam's civil procedure code does not specify the mandatory participation of representatives from both sides in the composition of the trial council when resolving disputes (except for mandatory representation for employees). Typically, when inviting People's Court judges to participate in labor court sessions, the Court will proactively select representatives for the involved parties [9]. However, not all labor court sessions can ensure the full participation of representatives from both sides. Meanwhile, in the legal regulations of many countries, the involvement of representatives from both parties in resolving labor disputes is mandatory.

4. Practical Implementation of the Principle of Fair Approach in Labor Dispute Resolution in Vietnam

4.1. Application of Law and Procedural Process

In practice, Vietnam has applied regulations from the Labor Code and the Civil Procedure Code in resolving labor disputes. This ensures that both employees and employers have the right to present their issues fairly before the law. Vietnam's 2019 Labor Code underwent extensive reforms, aligning with international labor standards. It amended and supplemented provisions concerning labor disputes (LD), aiming to establish a clear and effective labor dispute resolution system, safeguarding the rights and interests of both employees and employers. [10] According to Article 180 of Labor Code 2019, the principles of labor dispute resolution include respect for the parties' right to self-determination through negotiation, dispute resolution through conciliation and arbitration on the basis of respect for the rights and interests of two disputing parties as well as ensuring openness, transparency, and timeliness in dispute resolution. [11] In practice, there is a considerable number of individual labor disputes, yet the number seeking resolution through labor mediators and labor arbitration boards is relatively low. This indicates certain limitations in the application of the law. Challenges such as limited human resources, a shortage of skilled labor mediators, and the tendency for hasty and superficial resolution of labor disputes persist. This highlights that despite the establishment of laws, improvement is needed in their application and enforcement.

4.2. Practice of Mediation in Individual Labor Disputes

Mediation of labor disputes at the grassroots level, through organizations representing Mediation of labor disputes at the grassroots level through representative organizations for employees and employers, is often conducted before resorting to court, as an effort to resolve conflicts peacefully and fairly. In the process of resolving labor disputes in Vietnam, as stipulated by law, mediation at the grassroots level is an important and usually initial step. Representative organizations for employees (such as labor unions) and employers participate in this process with the goal of resolving conflicts and disputes through dialogue and negotiation before the need for court intervention.

Mediation helps minimize tension and fosters mutual understanding between employees and employers. The objective is to seek a peaceful and fair solution for both parties, safeguarding their rights and interests without requiring court resolution, thereby maintaining stable labor relationships. Although mediation is an effective method, in practice, the number of cases resolved definitively through labor mediators is not significant compared to the number of disputes that arise. This might be due to employees feeling reluctant to access justice through state authorities or employers being unwilling to engage in mediation.

4.3. The Role of the Court in Ensuring Fairness in the Individual Labor Dispute Resolution

Vietnamese courts play an important role in ensuring fairness in labor dispute resolution, through fair and impartial adjudication, strictly complying with the law. They serve as the ultimate authority in adjudicating and resolving labor disputes. Fair and impartial trials demand strict compliance with legal provisions, ensuring that all decisions are based on a proper interpretation of the law and relevant evidence. This safeguards the rights of both employees and employers while ensuring that judgments are based on objective, fair, and unbiased criteria.

Practice in Vietnam: According to information from a report 2021 by the Supreme People's Court, the success rate of mediation in individual labor disputes reached a high level, at 79%. This shows the important role of the court in resolving disputes efficiently and fairly. The team of judges responsible for mediation work possesses good skills and mediation methods, alongside the enhanced willingness of the disputing partiesⁱⁱ. Despite the high success rate of mediation in court, there are challenges such as a lack of resources, limited capacity of some labor mediators, and a sketchy resolution process in some cases. This indicates that improvements in training and skill development are needed for mediators, and arbitrators so they can perform their duties more effectively.

5. Conclusion

This article has analyzed the legal basis and practice of resolving individual labor disputes in Viet Nam, thereby shedding light on a fair approach to this process. Viet Nam,

in the context of international economic integration, has been making efforts to reform labor laws, especially regulations on labor dispute resolution, to meet international standards and social development needs. This process not only demonstrates Vietnam's commitment to basic labor rights but also creates a favourable investment environment and trust for the international community. In practice, the application of the Labor Code and the Code of Civil Procedure has contributed to ensuring fair rights for both employees and employers. However, challenges and limitations also exist, particularly in the application of conciliation and arbitration procedures as well as in the capacity and resources of the courts. Vietnamese courts play an important role in ensuring fairness in dispute resolution, through fair and impartial adjudication. The high success rate of mediation indicates the court's efforts in resolving cases effectively. At the same time, it also indicates that there is a need for improvement in training and skill development for mediators and arbitrators.

Conflict of Interest Statement

The author declares no conflicts of interest.

About the Author

Nguyen Nang Quang is currently working at Mien Dong Innovative Technology University - MIT. I am a PhD student at Hanoi Law University, Vietnam. The study major is Economic Law. The topics I am interested in are individual labor dispute resolution, labor conciliation and arbitration, court and fairness in adjudication, Vietnam labor law, protection of labor rights.

References

- [1]. Vietnam Civil Procedure Code 2015.
- [2]. <https://lsvn.vn/tranh-chap-lao-dong-ca-nhan-thuc-tien-va-giai-phap-han-che1661868568.html>
- [3]. Industrial Courts Act 1919
- [4]. International Labor Office, Conciliation and Arbitration Procedures in Labor Disputes: A Comparative Study, 1980.
- [5]. Trade Dispute Act 1961 of Brunei
- [6]. Trade Unions Ordinance 1971 of Hong Kong
- [7]. Industrial Relations Law 1967 of Malaysia
- [8]. Trade Dispute Act 1941 of Singapore
- [9]. Pham Thi Thu Phuong, Thesis: *Resolving disputes over unilateral termination of labor contracts under Vietnamese law from the practice of the People's Court in Ho Chi Minh City*, Graduate Academy of Social Sciences, 2019, p.78
- [10]. Trade Dispute Act 1906.

[11]. Vu Thu Hien, "*Labor disputes and labor dispute resolution*", Legal Propaganda Special Issue (Coordination Council for Legal Dissemination and Education), Issue 02/2014, p.5.

Creative Commons licensing terms

Author(s) will retain the copyright of their published articles agreeing that a Creative Commons Attribution 4.0 International License (CC BY 4.0) terms will be applied to their work. Under the terms of this license, no permission is required from the author(s) or publisher for members of the community to copy, distribute, transmit or adapt the article content, providing a proper, prominent and unambiguous attribution to the authors in a manner that makes clear that the materials are being reused under permission of a Creative Commons License. Views, opinions and conclusions expressed in this research article are views, opinions and conclusions of the author(s). Open Access Publishing Group and European Journal of Social Sciences Studies shall not be responsible or answerable for any loss, damage or liability caused in relation to/arising out of conflicts of interest, copyright violations and inappropriate or inaccurate use of any kind content related or integrated into the research work. All the published works are meeting the Open Access Publishing requirements and can be freely accessed, shared, modified, distributed and used in educational, commercial and non-commercial purposes under a [Creative Commons Attribution 4.0 International License \(CC BY 4.0\)](https://creativecommons.org/licenses/by/4.0/).