Ensuring adversarial principles in litigation under the Civil Procedure Code 2015 of Vietnam - Limitations and Recommendations

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Abstract:
One of the key features in the civil procedure is to ensure the adversarial principles in litigation. This principle exists from the commencement of the trial in the court of the first instance to higher courts. In Vietnam, the Civil Procedure Code 2015 made a radical change in recognizing the principle of ensuring the right to argue in trial, under which in order to ensure the implementation of adversarial principles in the civil process, there must be several requirements including, ensuring the right to be informed of the claims and evidence of the opposing parties in advance; balance of the relationship between the court and the litigants; public hearing; reasonable litigation duration; the supremacy of the law and how to deal with violations in litigation. Within the scope of the article, the authors address two first aforementioned conditions to ensure adversarial principles in litigation through analyzing the provisions and suggesting some recommendations to complete the law.
Keywords: *adversarial principles; case management; the court; the involved parties; Civil Procedure Code 2015.*

1. Introduction

Building and strengthening the sustainable development of the rule-of-law state has been one of the key functions of Vietnamese government. In order to achieve such aim, Vietnam needs to establish the high standards of the justice system as well as a real cornerstone for the adaptation, implementation and enforcement of the law, which provide an efficient protection of the right to fair trials. In Vietnam, for the past two decades, significant changes have been made in the amendment of a number of Codes towards further restructuring and updating the law, in particular in the area of civil procedure. Re-examining and re-considering the authority of the court in the process of reviewing and resolving civil cases has been urged as one of the evolutionary steps in this direction. Specifically, it concerns the balance of interests of the involved parties through the implementation of the adversarial principles in the civil process. As can be seen that the adversarial principle deemed as one of the fundamental principles of civil justice has been added to the Civil Procedure Code (CPC) 2015 in Vietnam to guarantee the administration of justice and the search for truth in a

dispute. For assuring and improving a real basis for the implementation of such principle, there is a need to conduct the scientific research on the conformity of the CPC and other provisions or guidelines. Therefore, this article aims to revisit and justify the two most crucial conditions that is, the right to be disclosed of the claims and evidence of the opposing parties in advance; and the case management and cooperation between the court and the involved parties in civil proceedings through analyzing the provisions with a view to provide a real effective protection of the rights of the litigants in the proceedings.

2. Assurance of the right to be informed of the claims and evidence of the opposing party in advance

2.1. Assurance of the right to access the claims and evidence of the opposing party in the civil procedure laws of several countries around the world

In order to ensure the courtroom performance of the litigants in the civil procedure, the litigants are entitled to access the claims and evidence of the opposing party. Such regulations have been determined in many jurisdictions.

Under the Civil Procedural Code of the Russian Federation[1], once a claim has been issued, a copy of the petition and the particulars of the case are served on the defendant with a request to present evidence and documents as a basis to defend the claim within the fixed time duration. The involved parties are required to search and collect evidence to protect their legitimate rights and interests and provide such evidence to the court, as well. In case of finding that the evidence presented by the involved parties is not sufficient to settle the case, the judge shall request the involved parties to provide more evidence within a certain time limit. According to Articles 57, 150 and 152 of the Civil Code of the Russian Federation, during the preparatory stage for the first-instance trial, the judge has the right to set a time limit for the involved parties to provide evidence. The litigants may be required to pay damages if he fails to provide evidence for the purpose of hindering trial preparation.

Pursuant to civil procedure law of the People's republic of China[2], within 7 days from the date of receiving the lawsuit petition, the court shall study and consider either accepting the case or issuing a decision not to accept the case. Following the former situation, within 5 days from the date of acceptance, the Court has to serve a copy of the lawsuit petition on the defendant, who shall file a form of defense to the court within 15 days of receiving a copy of the petition. Within 5 days of receiving the defendant's self-defense statement, the court must deliver a copy of that self-defense statement to the plaintiff.

According to Article 132 of the Civil Procedure Code of France 2007[3], the litigants who present certain documents as a basis are obliged to exchange such documents with other litigants in the lawsuit. Along with the decision to handle the case, the chief judge convenes a meeting to review the particulars with the participation of the lawyers representing the involved parties. As long as it is found that the case file is complete and can proceed to trial, the judge declares the end of the

[1] Civil Procedural Code of the Russian Federation No. 138-Fz Of November 14, 2002. https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_62.pdf

[2] Civil Procedure Law of the People's Republic of China, http://www.asianlii.org/cn/legis/cen/laws/cpl179/

[3] The French Code of Civil Procedure in English, Oxford University Press, 2007

examination phase and sets the date for the opening of the trial (Article 758 of the French Code of Civil Procedure). Accordingly, it can be seen that during the investigation of the case, the parties are requested to barter their views in the conclusion of evaluation and summarize those views in the summary conclusion. Obviously, the judge does not consider conclusions that are not aggregated.

Subject to Article 161 of the Code of Civil Procedure of Japan[4], during the preparation for litigation, the involved parties shall deliver each other a summary of the case, including details, evidence, legal grounds, and arguments as a legal basis for either admitting or defending the claim. In addition, during this phase, the Court also conducts "work placement procedures", including preparatory proceedings, and preparatory written proceedings. The purpose of these procedures is to clarify the facts to be proved and to consider effective evidence. Therefore, at the trial, in principle the parties shall not present new evidence or new assertions that they did not make in the preparation phase.

In the adversarial system, such as the U.S or the U.K, the procedures at the first-instance court consist of two stages, that is, pretrial and trial activities. The pre-trial procedure includes the activities of initiating a case (pleading), the step of bringing a lawsuit and returning a lawsuit, in which the involved parties present their requirements, views and stances. After the Federal Rules of Civil Procedure (enacted in 1938, amended in 2022) was promulgated, adversarial system in the United States has gone fundamental reforms with the addition of "discovery" phase - an important tool to assist the parties gather evidence before the first- instance court hearing.[5]

Currently, "discovery", the key stage of civil litigation in the U.S and other countries following the adversarial system, and is viewed as the most time-consuming and money-consuming stage of civil litigation. During this stage, the involved parties actively collect evidence from different sources (witnesses, the opposing parties or a third party). The law confers the lawyers presenting the parties the right to require the holder of documents related to the evidence of the case to provide them without a court order. This regulation aims to provide the parties with the opportunity to obtain a clear understanding of all the details and events of the case, thereby grasping their own and the other party's strengths and weaknesses, creating favorable conditions for the agreement, mediation to resolve disputes[6].

The Civil Procedure Rules of the U.K (enacted 1998, amended in 2023) share several similarities with Federal Rules of Civil Procedure of the U.S. Procedures for settling civil cases at the High Court [7]are carried out as follows: After accepting to handle the case, a subpoena, which is drafted by the plaintiff's lawyer and officially announced by the court is issued. This warrant must be served on the

[4] The Code of Civil Procedure of Japan (No. 109). https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=46010&p_country=JPN&p_count=851

[5] Federal Rules of Civil Procedure (2022). https://www.uscourts.gov/sites/default/files/federal_rules_of_civil_procedure_december_1_2022_0.pdf

[6] BICH-THAO NGUYEN, Comparative Civil Procedure in Completing the Laws on Civil Procedure in Vietnam to Meet the Requirements of International Integration, Scientific Research, School of Law, Hanoi National – Scientific Research, No. KL.17.02, Hanoi, 11/2018, p. 39.

[7] The Civil Procedure Rules. https://www.legislation.gov.uk/uksi/1998/3132/contents

defendant. Within a certain period of time, the respondent is obligated to respond to the plaintiff's requests. If the defendant opts to defense the claim, the involved parties shall exchange documents called pleadings, in which the parties summarize their respective facts and particulars. After the defendant responds, the plaintiff is required to file a reply. Through the minutes of defense and evidence, the specific details of the civil case could be clarified. The collection of evidence is carried out by the lawyers of the parties with the assistance of the court through forcing the other party to answer, to swear, to confront and clarify the evidence, as well as to present the necessary documents determined. In case either party fails to fulfill the obligation to submit the evidence or respond questions of the other party in accordance with the provisions of law, the judge shall decide to settle the case completely according to the evidence presented by the litigants before the court.

Therefore, it can be concluded that the before-trial stage requires the involved parties to exchange requests, evidence and documents, collect evidence and agree on issues to be argued in court (that is, issues that need to be argued in court, or issues where the involved parties are still in conflict and there are inconsistent evidence), as well as demands the one to appear before the court, etc. Such is an important procedure to ensure adversarial principles in the civil procedure.

2.2. Ensuring the right to be informed of the claim in advance and evidence of the opposing party pursuant to civil procedure law of Vietnam

With the aim of expanding the adversarial principles in trial, the Civil Procedure Code 2015 of Vietnam was amended and updated to assure the involved parties' rights to argue in litigation.

2.2.1. The right to be informed of the claim of the opposing party

In order to ensure the right to be informed in advance about the claim of the opposing party, Article 196 of the CPC 2015 stipulates that within 03 working days from the date of acceptance to handle the case, the judge shall deliver the prior written notice to the plaintiff, the defendant, agencies, organizations and individuals with interests and obligations related to the settlement of the case, the procuracy of the same level about the aforementioned. The practice of the court's notice of acceptance of the case as well as the issuance and notification of procedural documents in general shows that there still exists several errors in civil procedures such as in the case of the recipient's absence, a record must be made and delivered to the relative, who are not required to commit to delivering the served documents to such person.[8]

In addition, while researching on the regulations on the notice of the case-handling acceptance and the practical application, the authors identify a number of problems and limitations as follows:

Firstly, the time limit for notifying the acceptance of handling the case is not reasonable for cases with the involvement of several parties, especially when the involved parties are located in different areas or areas with difficult access. On the other hand, the CPC 2015 also does not clearly stipulate the responsibility of the judge if the notice of acceptance of the case is overdue. Accordingly, such situation leads to negative effects on the time limit for settling the case, and the legitimate rights and interests of the involved parties, as well.

[8] The Supreme People's Court, *Summary Report on Limitations and Shortcomings in the Professional Work of Courts in 2017 – Proceedings of Online Conference on Implementing Court Work in 2018,* Hanoi, 1/2018, p.6.

Secondly, the People's Court has not yet published a response pack, which includes a form for the response of the litigants, either to admit the claims, defend the claim or counter-claim of the opposing party's petition, and the accompanying particulars of the case[9]. Moreover, the CPC 2015 also does not specifically prescribe sanctions for the parties' failure to submit their response leading to the fact that the involved parties failed to fulfill this obligation, which requires the court law to take more time and cost to collect evidence. It can be seen that the fact that the involved parties respond by using written statement of their opinions on the plaintiff's claim and the accompanying documents and evidence helps the court to grasp the details of the claims, the cause of the dispute, the necessarily added original documents and evidence. Such requirement proves to be greatly time and money saving, simplifying the procedure for taking the litigants' testimonies.

Thirdly, the CPC 2015 and the practice directions do not construe the meaning of "counterclaim" leading to the distinctive perception and application of the law[10]. Particularly, that the time when the defendant and the person with related rights and obligations are entitled to make a counterclaim is not specified under the law. Clause 3, Article 200 of the CPC 2015 stipulates that the defendant has the right to claim against the plaintiff's petition prior to the opening time of the examination of the inspection, disclosure of evidence and case management conference to conciliate. However, the CPC 2015 does not clarify the number of times to open such meetings or conciliation while in fact, to settle civil cases, the Courts may conduct several sessions to inspect, to disclose the necessary evidence and give the opportunities to review the process and make decisions. The inefficiency between regulations and practice would cause the vagueness and inequality if it were not to specify more clearly when the defendant has the right to make a counterclaim, and the persons with the related rights and obligations may make an independent claim. Point 14, part IV, Answer No. 01/2017/GD-TANDTC, dated April 7, 2017 on some professional issues of the People's Court states that: "If the Court conducts conciliation many times, the first time of conciliation shall be conducted in accordance with procedure of the meeting to inspect, disclose the evidence and conciliation as prescribed in Article 210 of the CPC 2015. In the following conciliations, the Court shall only proceed with the inspection, disclosure in case of new available documents and evidence, which are recorded in the minutes of conciliation".

Pursuant to this guideline, the defendant is entitled to make a counterclaim, the person with related interests and obligations has the right to make an independent claim only prior to the opening of the first session to examine the submission, inspection and disclosure. This view is based on the argument to ensure the speedy settlement of the case, simultaneously, the defendant and the person with related rights and obligations shall be responsible for their requests.

Actually, legal practice in Vietnam indicates different views on this issue[11]. In several cases, after the session of access, disclosure of evidence and conciliation, the court find it necessary to call up

[9] Civil Procedure Form issued in the Resolution No. 01/2017/NQ-HĐTP dated 13/01/2017 of Civil Case Council of the Supreme People's Court.

[10] T. HUYEN, BUI 2020, Right to counter claim of the defendants in the preparatory hearing pursuant to Civil Procedure Code 2015, Law Review, 4/2020, p.43-56

[11] NGOC-SON, NGUYEN. The *time to exercise the defendant's right to request counter-claims in accordance with the Procedure law of Vietnam* http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=210622, accesssed on 20/4/2022.

persons with related rights and obligations in the proceedings, therefore, the requirement of making counter-claims and independent claims of such concerned persons before the opening time of the first meeting as stipulated proves to be unreasonable. Article 244 of the CPC 2015 demonstrates that at the first-instance court hearing, the litigants may change or supplement their claims if the change or addition of their claims does not exceed the scope of their claims, counterclaim or original claim of independence. However, in order to ensure equal rights between the involved parties, the Supreme People's Court provides the guideline: "The Court accepts the changes and additions of the claims of the plaintiff if such changes or additions are made before the opening time of the submission, inspection, disclosure and conciliation sessions. After that, the change of the claim shall only be approved if the change of their claim does not go beyond the scope of the original claim."[12]

It can be seen that the above-mentioned guidance of the Supreme People's court restricts the right to litigate which leads to the possibility that the first-instance court may not fully settle the litigants' claims. From the above arguments, the authors believe that it is necessary to amend and supplement the following provisions:

+ Clause 1, Article 200 of the 2015 CPC may be amended as follows: In addition to submitting to the Court a written opinion on the petitioner's claim, the defendant has the right to make a counter-claim against the plaintiff, the person with the related interests and obligations have the right to make claims of independence.

+ Articles 200 and 201 of the CPC 2015 shall be added as follows: The defendant is entitled to make a counter-claim, the person with related interests and obligations is entitled to make an independent claim until the prior time of opening of the last meeting to access, disclose the evidence.

2.2.2. The right to be informed of the evidence of the opposing party

In order to ensure the right to be informed in advance about the evidence of the opposing party, the CPC 2015 has added two important issues, including: (i) Limitation of the time for the submission of evidence of the involved parties; (ii) Regulations on meeting sessions to access, disclose evidence and conciliation.

(i) Limitation of the time limit for the submission of evidence by the litigants

To ensure adversarial principles, Article 96 of the CPC 2015 stipulates the time limit for the involved parties to submit evidence, and the legal consequences of the litigants' failure to submit evidence or to provide evidence within the time limit set by the judge. As a result of the legal background knowledge of the involved parties as well as the practice of storing, managing and providing evidence of individuals, agencies and organizations in Vietnam, the CPC 2015 also clarifies cases of evidence collection by the court to support the litigants' burden of proof. However, the provisions of Clause 4, Article 96 of the CPC 2015 defines the responsibility of the court in determining the evidence that the involved parties need to submit, which is deemed to be unreasonable. This provision is in conflict with Article 6 of the CPC 2015 and does not clearly identify the litigants' burden of proof and the court's responsibility to assist them in their performance

[12] Supreme People's Court, Official Dispatch No. 1/2017/GD-TANDTC, dated 07/4/2017, *Answering a number of professional issues, point 7, section IV.*

of burden of proof. To ensure equal rights between the involved parties, the CPC needs to set the time limit for the judge to collect evidence.

In addition, Article 96 of the CPC 2015 and guiding documents haven't provided clear interpretation of what is considered as a "reasonable reason" for the litigant to be entitled to provide overdue evidence. On the other hand, the CPC 2015 merely sets out the time limit for the submission of documents and evidence by the involved parties, not for the court to collect evidence. Therefore, the limitation on the time limit for submitting documents and evidence of the involved parties may create inequality between the parties if the judge or the court is not objective. Therefore, it is necessary to provide a clear guidance to the cases where legitimate and reasonable reasons are allowed for delayed submission of the documents and evidence. Accordingly, the similar application of the Article 156 of the CPC 2015 in interpreting force majeure events and objective obstacles to construe the case of "reasonable reason". At the same time, the court should not specify the documents and evidence that the involved parties are required to submit.

In addition, the CPC 2015 stipulates on copying and delivering such documents and evidence to other litigants or other litigants' lawful representatives to ensure the right to be informed in advance about the claims and evidence in civil litigation[13]. However, the regulations on the obligation to send other litigants the copies of the claim form and the documents and evidence of the CPC 2015 are not really consistent and do not clearly specify the time of implementation, leading to the fact that this provision has not really brought into effect in practice. The CPC 2015 does not have a mechanism to ensure that the involved parties are obliged to perform this obligation, either. Article 192 of the CPC 2015, Resolution No. 04/2017/NQ-HDTPTATC provide the guideline on a number of provisions in Clauses 1 and 3, Article 192 of the CPC No. 92/2015/QH13 on returning the petition dated May 5, 2017 and , Official Dispatch No. 01/2017 on answering some professional issues of the Supreme Court dated April 7, 2017 did not mention sanctions for cases of breach of this obligation by the involved parties. In order to ensure adversarial principles in trial, the CPC 2015 needs to supplement regulations on conditions for accepting to handle civil cases, including the condition that the involved parties "have sent to other litigants or their legal representatives a copy of the claim form, documents and evidence, except documents and evidence that other involved parties already have, or those documents and evidence specified in Clause 2, Article 109 of this Code"[14]. Where the involved parties do not send other involved parties or their lawful representatives a copy of the claim form, documents and evidence, the courts will only accept the cases when the involved parties pay expenses for photocopying the petitions, documents and evidence of civil matters for involved parties.

(ii) Regulations on the meeting session to access and disclosure of evidence.

The CPC 2015 stipulates the meeting session with the aim to disclose evidence, which exists a number of problems[15]. Particularly, the regulations on "related individuals, agencies and

[13] T. HUYEN, BUI, Ensuring oral argument in litigation pursuant to the regulations of CPC 2015 of Vietnam, Law Review, No.4/2016, p.50-60. .

[14] The National Assembly, Civil Procedure Code 2015 (2015)

[15] VAN-TOAN, LY. Meeting session to Examine, Access, Disclose Evidence and Conciliations: Several issues needed to be addressed. https://tapchitoaan.vn/bai-viet/phap-luat/phien-hop-kiem-tra-viec-giao-nop-tiep-can-cong-khai-chung-cu-va-hoa-giai-mot-so-noi-dung-can-lam-ro.
accessed on 12/2/2023

organizations" attending the meeting to examine, access and publicize the evidence have not been clearly explained. From the authors' point of view, the aforementioned terms are not referred to as the litigants of civil cases, yet are the subjects whose participation in the meeting and conciliation are likely to help the judge to conduct the settlement of the case easily, to grasp the facts of the case, as well as the psychology of the disputing parties. Accordingly, flexible and appropriate methods for each case may be applied to achieve positive conciliation results. The author is in line with the view that "related individuals, agencies and organizations" are relevant individuals, agencies and organizations with specialized knowledge, as experts, or mediators... for the purpose of helping the judge in resolving the disputes effectively.[16]

Additionally, Article 209 of the CPC 2015 does not specifically provide the legal consequences when the involved parties, their representatives, and the defense counsels of their legitimate rights and interests who are duly summoned by the court are absent from the mediation session. It is believed that in order to enhance the responsibility of the defense counsel of the legitimate rights and interests of the litigants, as well as avoiding abusing the right to be summoned to participate in a case management session to prolong the time for settling the case, the resolution guiding the implementation of the CPC 2015 should stipulate that if the defense counsels of the legitimate rights and interests of the involved parties are absent, the meeting to access and publicize the evidence still proceed as planned. In that case, the same principle applies to Article 227 of the CPC 2015 .

3. Balance of adversarial principles and cooperation between parties and court in the process of civil cases litigation

Obviously, the roles of the court and the litigants in the civil procedure vary depending on its justice system. In countries that follow the adversarial system, litigants and their lawyers play an active role in the proceedings. Specifically, the lawyer is a person who determines the legal issues to be solved in the case and the issues to be proved, directly collects evidence through procedural measures such as taking witness statements, requesting the opposing party to provide documents and evidence they are holding, etc.,. while the judge has the power to control and limit the scope of a request for information if the request is unreasonably inconvenient, costly or cause difficulty to the requested party, or if the information falls within the scope of confidentiality exempted from provision by law[17].

On the other hand, in the inquisitorial system, the judge playing a more active role in determining the truth of the case, has the right to examine witnesses, conduct measures to collect evidence by himself, or appoint an inspector. In other words, the judge has both the role of determining the controversial facts in the case (matter of fact) and dealing with the applicable law to resolve the dispute (points of law). Before opening the trial, all the facts, evidence and documents are collected

[16] VAN-TOAN, LY. Meeting session to Examine, Access, Disclose Evidence and Conciliations: Several issues needed to be addressed. https://tapchitoaan.vn/bai-viet/phap-luat/phien-hop-kiem-tra-viec-giao-nop-tiep-can-cong-khai-chung-cu-va-hoa-giai-mot-so-noi-dung-can-lam-ro accessed on 12/2/2023

[17] BICH-THAO NGUYEN, Comparative Civil Procedure in Completing the Laws on Civil Procedure in Vietnam to Meet the Requirements of International Integration, Scientific Research, School of Law, Hanoi National – Scientific Research, No. KL.17.02, Hanoi, 11/2018, p. 30-39.

and reflected in the case file[18]. For example, in the German Civil Procedure Code, depending on the case, the judge is likely to resolve the dispute after having a discussion with the lawyer and the litigants and proposing the case management to settle the dispute, or if there are many controversial points which requires to take witness statements, the judge will determine the order of taking witness statements. After the judge has questioned all of the witnesses, the lawyer representing each party may ask additional questions, yet act the role as the primary questioner[19]. In China, where the approach seems effective and fair, however, the burden on the judges in gathering evidence is too great which is supposed to threaten neutrality and fairness of the judge. To avoid this risk, strengthening the possibility of the litigants to collect and access evidence is highly recommended in China[20]. Although modern civil procedure codes in the majority of continental European countries recognize the principle of the right to self-determination of the parties, yet is limited by the power of the judge to supervise and control the evidence collection process[21]. According to articles 8, 13, 442 of the French Civil Procedure Code, the judge has the right to interpret the necessary facts of the case and to request the involved parties to provide requisite statutory interpretation for the settlement of the dispute. Moreover, the judge board may demand the litigants to supply with vague matters or evidence that needs clarifying. Consequently, it is obvious that in the inquisitorial system of justice, the judge plays a much more active role than the litigants and lawyers. In other words, the role of the litigants and lawyers are limited in comparison with that in adversarial system.

It can be seen that each model of civil procedure has its own advantages and limitations. Specifically, the interrogative system assumes an active function of the judge in collecting evidence, setting case files, clarifying the objective truth of the case through research and evaluation activities. However, such functions can lead to the abuse of power, impartiality and subjectivity of the judge in the settlement of the civil case. On the contrary, the adversarial system is likely to better ensure equal rights between the involved parties, the right to self-determination of the involved parties, which may be attributed through the fact that the judge only make a decision after fully listening to the parties' requests, arguments, legal grounds and evidence at the direct, public hearing. Nevertheless, this procedural model is effective with the participation of lawyers representing the litigants in the proceedings. Also the litigation period may be prolonged due to a lengthy and expensive pre-trial discovery phase.[22]

[18] BICH-THAO NGUYEN, Comparative Civil Procedure in Completing the Laws on Civil Procedure in Vietnam to Meet the Requirements of International Integration, Scientific Research, School of Law, Hanoi National – Scientific Research, No. KL.17.02, Hanoi, 11/2018, p. 30-39.

[19] BICH-THAO NGUYEN, Comparative Civil Procedure in Completing the Laws on Civil Procedure in Vietnam to Meet the Requirements of International Integration, Scientific Research, School of Law, Hanoi National – Scientific Research, No. KL.17.02, Hanoi, 11/2018, p. 31.

[20] ELIZABETH FAHEY & ZHIRONG TAO, The Pre-trial Discovery Process in Civil Cases: A Comparison of Evidence Discovery Between China and the United States, Boston College International and Comparative Law Review, Volume 37, Issue 2, 2014.

[21] JAMES G. APPLE& ROBERT P. DEYLING, A Primer on the Civil Law System, Federal Judicial Center, 1995, p.26

[22] ELIZABETH FAHEY& ZHIRONG TAO, The Pre-trial Discovery Process in Civil Cases: A Comparison of Evidence Discovery Between China and the United States, Boston College International and Comparative Law Review, Volume 37, Issue 2, 2014.

The justice system in Vietnam is basically based on civil law tradition, which addresses the features of interrogative principles. The CPC 2015, thus, is supposed to have made a radical change in enhancing the role of the litigants through regulations on procedures for conducting first-instance court hearings including removing the principle of continuous trial, renewing the "questioning" procedure in court[23]. However, strengthening the measures by which the court has the right to proactively collect evidence in the proceedings (Articles 98-106) leads to the more important role of the judge, simultaneously the role of the litigants is overshadowed. On the other hand, Clause 1, Article 310 stipulates that the appellate trial court is entitled to cancel the first-instance judgment for a re-trial if, "the collection of evidence and proof is not in accordance with the provisions of Chapter VII of this Code or has not been fully implemented but cannot be supplemented at the appellate court session."[24] This provision does not clearly define the obligation of the involved parties to provide evidence and the responsibility of the court to assist. Therefore, it is recommended that the CPC needs to clearly define "necessary" cases in which the court has the right to actively collect evidence.

Moreover, Clause 1, Article 97 of the CPC 2015 stipulates that the involved parties have the right to request the court to collect documents and evidence if the involved parties are unable to collect them. However, the 2015 Civil Code and guiding documents also do not specify any cases where the involved parties cannot collect documents and evidences, leading to the fact that only a petition of the litigants that the court collects evidence. Therefore, in order to clearly define the litigant's obligation to provide evidence and the court's responsibility to support, it is essential to clearly define the case where the involved party cannot collect documents and evidence.

4. Conclusion

Judicial reform has unquestionably changed the requirements of rights and obligations of the litigants and the function of the court in the trial. Undoubtedly, the judicial system in Vietnam follows inquisitorial systems, the laws has been amended to ensure the implementation of adversarial systems with the active assistance of the courts, that is on the terms of their cooperation with the litigants to effectively deal with the case. Undeniably, the adoption of appropriate new measures and the improvement of existing procedures aims at a more efficient administration of justice regarding the possibilities for involved parties to exercise their right to judicial protection. Yet, the progressive changes to the CPC of Vietnam are supposed to face significant obstacles as well as some limitations in the process of new law enforcement. Such challenges could be partly dealt with through the additions and amendments in terms of the improvement of the regulations on the right to be informed of the evidence of the opposing parties in advance and the cooperation between the roles of courts and the involved parties to maintain the parties' adversarial power and to achieve a fair, impartial and timely consideration and resolution of civil cases.

[23] T. HUYEN, BUI. Ensuring oral argument in litigation pursuant to the regulations of CPC 2015 of Vietnam, Law Review, No.4/2016, p.50-60.
[24] Civil Procedure Code 2015, (art.310)

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13. The National Assembly, Civil Procedure Code 2015 (2015)
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