

ORDINANCE

Amending and supplementing a number of articles of the Ordinance on procedures for the settlement of administrative cases

(No. 29/2006/PL-UBTVQH11)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

This Ordinance amends and supplements a number of articles of the May 21, 1996 Ordinance on Procedures for the Settlement of Administrative Cases, which was amended and supplemented under the December 25, 1998 Ordinance Amending and Supplementing a Number of Articles of the Ordinance on Procedures for the Settlement of Administrative Cases.

Article 1. To amend and supplement a number of articles of the Ordinance on Procedures for the Settlement of Administrative Cases as follows:

1. Article 2 is amended and supplemented as follows:

"Article 2.

1. Individuals, agencies and organizations shall have the right to initiate lawsuits before the court for the settlement of administrative cases with regard to lawsuits specified from Clause 1 to Clause 16, Article 11 of this Ordinance in the following cases:

a. They have lodged complaints with the persons competent to settle complaints for the first time but their complaints remain unsettled past the time limit for complaint settlement in accordance with the provisions of law on complaints and denunciations and they do not further lodge their complaints with the persons competent to settle complaints for the second time;

b. They have lodged complaints with the persons competent to settle such complaints for the first time in accordance with the provisions of law on complaints and denunciations but they disagree with the decisions on the first-time settlement of their complaints and do not further lodge their complaints with the persons competent to settle complaints for the second time;

c. They have lodged complaints with the persons competent to settle complaints for the first time but their complaints remain unsettled past the time limit for complaint

settlement in accordance with the provisions of law on complaints and denunciations or their complaints have been settled but they disagree with the decisions on the first-time settlement of their complaints in the case it is prescribed by law that they are not entitled to lodge complaints with the persons competent to settle complaints for the second time;

d. They have lodged complaints with the persons competent to settle complaints for the second time but their complaints remain unsettled past the time limit for complaint settlement in accordance with the provisions of law on complaints and denunciations or their complaints have been settled but they disagree with the decisions on the second-time settlement of their complaints.

2. Individuals, agencies and organizations shall have the right to initiate lawsuits before the court for the settlement of administrative cases with regard to lawsuits specified in Clause 17 Article 11 of this Ordinance in the following cases:

a. Their complaints about administrative decisions or administrative acts related to land management have been settled for the first time by the presidents of the People's Committees of urban districts, rural districts, townships or provincial cities but they disagree with such decisions and do not further lodge complaints with the presidents of the People's Committees of provinces or centrally run cities;

b. Their complaints about administrative decisions or administrative acts related to land management have been settled for the first time by the presidents of the People's Committees of provinces or centrally run cities but they do not agree with such decisions.

3. Individuals, agencies and organizations shall have the right to initiate lawsuits before the court for the settlement of administrative cases with regard to lawsuits specified in Clause 18, Article 11 of this Ordinance if they have lodged complaints with the voter list-making bodies but they disagree with the latter's way of settlement.

4. Cadres and public employees holding the post of department director, equivalent or lower post as stipulated by the law on cadres and public employees shall have the right to initiate lawsuits before the court for the settlement of administrative cases with regard to lawsuits specified in Clause 19, Article 11 of this Ordinance if they have lodged complaints with the persons who have issued the disciplinary decisions but they disagree with the complaint settlement decisions and do not further lodge complaints with the persons competent to further settle complaints.

5. Individuals, agencies and organizations shall have the right to initiate lawsuits before the court for the settlement of administrative cases with regard to lawsuits specified in Clause 20, Article 11 of this Ordinance if they have lodged their

complaints with the presidents of the People's Committees of provinces or centrally run cities but they disagree with the latter's settlement decisions.

6. Individuals and organizations shall have the right to initiate lawsuits before the court for the settlement of administrative cases with regard to lawsuits specified in Clause 21, Article 11 of this Ordinance if they have lodged their complaints with the Competition Council or the Minister of Trade but they disagree with the latter's settlement decisions.

7. Individuals, agencies and organizations shall have the right to initiate lawsuits before the court for the settlement of administrative cases with regard to lawsuits specified in Clause 22, Article 11 of this Ordinance in accordance with the provisions of Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party concerning such lawsuits."

2. Article 4 is amended and supplemented as follows:

"Article 4.

In this Ordinance, the terms below are construed as follows:

1. Administrative decision is a written decision issued by a state administrative agency or a competent person therein, applicable once to one or a number of specific subjects regarding a specific matter in administrative management activities.

2. Administrative act is an act taken by a state administrative agency or a competent person therein to perform or not to perform its/his/her public task or duty as prescribed by law.

3. Disciplinary decision on dismissal is a written decision of the head of an agency or organization to dismiss a cadre or public employee who holds the post of department director, equivalent or lower post under his/her management in accordance with the provisions of law on cadres and public employees.

4. Concerned parties mean individuals, agencies and organizations in the capacity as plaintiff, defendant or person(s) with related rights and obligations.

5. Plaintiff may be individual(s), agency(ies) or organization(s) that deem their legitimate rights and interests are infringed upon by an administrative decision or administrative act; or a cadre(s) or public employee(s) who deem that their legitimate rights and interests are infringed upon by a disciplinary decision on dismissal, which prompts them to initiate an administrative lawsuit before a competent court.

6. Defendant may be individual(s), agency(ies) or organization(s) that has(have) made the administrative decision, taken the administrative act or issued the disciplinary decision on dismissal which is appealed.

7. Person(s) with related rights and obligations may be individual(s), agency(ies) or organization(s) that has(have) their rights and obligations involved in the settlement of the administrative lawsuits initiated by the plaintiff against the defendant.

8. Agencies, organizations include state agencies, political organizations, socio-political organizations, social organizations, socio-professional organizations, economic organizations or people's armed force units."

3. Article 5 is amended and supplemented as follows:

"Article 5.

1. The plaintiff shall be obliged to provide copies of the administrative decision or disciplinary decision on dismissal and complaint settlement decision (if any), and furnish other evidences to protect his/her/its legitimate rights and interests.

2. The defendant shall be obliged to provide the court with the complaint settlement dossiers (if any) and copies of papers and documents in the dossiers on the settlement of administrative matters or discipline consideration dossiers which have served as the basis for them to issue the administrative decision or disciplinary decision on dismissal or to take the administrative act.

3. Person(s) with related rights and obligations shall have the right to participate in the proceedings either on the plaintiff's side or the defendant's side or independently and be obliged to give evidences to protect his/her/their legitimate rights and interests.

4. The court may verify and gather evidences in the cases specified in this Ordinance.

5. Individuals, agencies and organizations shall, within the scope of their respective tasks and powers, have to provide concerned parties and the court with evidences which they are keeping and managing upon the latter's request; if they are unable to do so, they must reply in writing to concerned parties or the court, clearly stating the reason therefor."

4. Article 11 is amended and supplemented as follows:

"Article 11.

The court has jurisdiction to settle the following lawsuits:

1. Lawsuits against decisions on sanctioning administrative violations;
2. Lawsuits against decisions on applying preventive measures to secure the handling of administrative violations;
3. Lawsuits against administrative decisions on or administrative acts in applying measures to force execution of decisions on sanctioning administrative violations;
4. Lawsuits against administrative decisions on or administrative acts in applying or taking administrative measures in one of the following forms: re-education in communes, wards or townships; putting into re-education schools, reformatories or medical establishments; administrative probation;
5. Lawsuits against administrative decisions on or administrative acts in applying measures to force the dismantlement of dwelling houses, constructions or other firmly structured objects;
6. Lawsuits against administrative decisions or administrative acts concerning the grant or withdrawal of permits in the fields of capital construction, production and business; business registration certificates and certificates of practice, or lawsuits against other administrative decisions or administrative acts related to traders' business and financial operations;
7. Lawsuits against administrative decisions or administrative acts related to international or domestic trade in goods;
8. Lawsuits against administrative decisions or administrative acts related to domestic and international financial transfer, services and service provision;
9. Lawsuits against administrative decisions or administrative acts related to requisition, acquisition or confiscation of properties;
10. Lawsuits against administrative decisions or administrative acts related to taxation, collection of taxes and tax arrears;
11. Lawsuits against administrative decisions or administrative acts related to the application of charges, collection of charges and fees; or collection of land use levies;
12. Lawsuits against administrative decisions or administrative acts in the state management of intellectual property and technology transfer;
13. Lawsuits against administrative decisions or administrative acts in the state management of investment;

14. Lawsuits against administrative decisions made or administrative acts taken by customs offices or officers;
15. Lawsuits against administrative decisions or administrative acts related to civil status management;
16. Lawsuits against administrative decisions on or administrative acts of refusing to give notarization or authentication;
17. Lawsuits against administrative decisions or administrative acts related to land management in the cases of land assignment, land lease, land recovery, land requisition, permission for change of land use purposes; compensation, support, ground clearance, resettlement; grant or withdrawal of land use right certificates; and extension of land use duration;
18. Lawsuits related to lists of voters to elect National Assembly deputies or lists of voters to elect People's Council deputies;
19. Lawsuits against disciplinary decisions on the dismissal of cadres or public employees who hold the post of department director, equivalent or lower post;
20. Lawsuits against decisions of presidents of People's Committees of provinces or centrally run cities on settling complaints about decisions of the directorates or commendation or disciplinary councils of lawyers' associations;
21. Lawsuits against decisions on settling complaints about decisions on handling competition cases;
22. Other lawsuits as prescribed by Vietnamese law and treaties to which the Socialist Republic of Vietnam is a contracting party."

5. Article 12 is amended and supplemented as follows:

"Article 12.

1. The People's Courts of urban districts, rural districts, townships or provincial cities (hereinafter referred to collectively as district-level People's Courts) shall settle according to first-instance procedures the following lawsuits:
 - a. Lawsuits against administrative decisions made or administrative acts taken by state agencies of the district or lower level on the same territory with the courts or by public employees of such state agencies;

b. Lawsuits against disciplinary decisions on dismissal imposed by the heads of the agencies or organizations of the district or lower level on the same territory with the courts on cadres or public employees under the management of such agencies or organizations;

c. Lawsuits related to lists of voters to elect National Assembly deputies or lists of voters to elect People's Council deputies made by voter list-making bodies on the same territory with the courts.

2. The People's Courts of provinces or centrally run cities (hereinafter referred to collectively as provincial-level People's Courts) shall settle according to first-instance procedures the following lawsuits:

a. Lawsuits against administrative decisions made or administrative acts taken by ministries, ministerial-level agencies, Government-attached agencies, the Office of the State President, the Office of the National Assembly, the Supreme People's Court or the Supreme People's Procuracy or by the heads of such agencies, which are initiated by individuals whose places of residence or work are located on the same territory or by agencies or organizations which are headquartered on the same territory with the courts;

b. Lawsuits against administrative decisions made or administrative acts taken by functional bodies of one of the state agencies specified at Point a of this Clause or by cadres or public employees of such functional bodies, which are initiated by individuals whose places of residence or work are located on the same territory or by agencies or organizations which are headquartered on the same territory with the courts;

c. Lawsuits against administrative decisions made or administrative acts taken by provincial-level state agencies located on the same territory with the courts or by cadres or public employees of such state agencies;

d. Lawsuits against disciplinary decisions on dismissal imposed by the heads of agencies or organizations located on the same territory with the courts on cadres or public employees under the management of such agencies or organizations, except for lawsuits specified at Point b, Clause 1 of this Article;

e. Lawsuits against decisions made by the presidents of provincial-level People's Committees on the same territory with the courts to settle complaints about decisions of the directorates, commendation or disciplinary councils of lawyers' associations;

f. Lawsuits against decisions on settling complaints about decisions on handling competition cases, which are initiated by individuals whose places of residence or

work are located on the same territory or by agencies or organizations which are headquartered on the same territory with the courts;

g. Lawsuits against administrative decisions made or administrative acts which fall under the jurisdiction of district-level courts as stipulated in Clause 1 of this Article but are picked up by provincial-level courts for settlement."

6. Article 13 is amended and supplemented as follows:

"Article 13.

1. In case a complaint about an administrative decision, administrative act or disciplinary decision on the dismissal of cadre or public employee is not settled or it has been settled for the first time but the complainant disagrees with the settlement decision and further lodges the complaint with a person competent to settle complaints for the second time and initiates an administrative lawsuit before a competent court, the jurisdiction for the settlement thereof shall be determined as follows:

a. For cases involving only one individual who simultaneously initiates an administrative lawsuit before a competent court and lodges a complaint with a person competent to settle complaints for the second time, the settlement of these cases shall come under the jurisdiction of the court. The agency which has received the dossier of the case shall have to forward the whole dossier to the competent court;

b. For cases involving many persons who simultaneously initiate an administrative lawsuit before a competent court and lodge a complaint with a person competent to settle complaints for the second time, or some of whom initiate an administrative lawsuit before a competent court, while the others lodge a complaint with a person competent to settle complaints for the second time, the settlement of these cases shall come under the competence of the person competent to settle complaints for the second time. The court which has accepted the dossier of the administrative case shall have to forward the dossier to the person competent to settle complaints for the second time right after finding that the settlement of such case is beyond its jurisdiction;

c. For cases stated at Point b of this Clause, if past the time limit for settlement of complaints for the second time as prescribed by the law on complaints and denunciations the complaint remains unsettled, or it has been settled but the complainant disagrees with the second-time settlement decision, the complainant may initiate an administrative lawsuit according to general procedures, unless otherwise provided for by law.

2. The court which has accepted the administrative lawsuit shall issue a decision to forward the dossier of the case to the competent court and delete the name of the case from the case receipt register if finding that the case is beyond its jurisdiction. Such decision must be immediately forwarded to concerned parties and the procuracy of the same level.

Concerned parties shall have the right to lodge a complaint or the procuracy of the same level shall have the right to file a protest against such decision within three working days as from the date of receipt of thereof. Within three working days as from the date of receipt of such complaint or protest, the president of the court which has issued the decision to transfer the administrative case shall have to settle the complaint or protest.

3. Any dispute over the jurisdiction to settle administrative cases between district-level courts located in the same province or centrally run city shall be settled by the president of the provincial-level court.

Any dispute over the jurisdiction to settle administrative cases between district-level courts located in different provinces or centrally run cities or between provincial-level courts shall be settled by the president of the Supreme People's Court."

7. Article 14 is amended and supplemented as follows:

"Article 14.

1. Administrative proceeding-conducting bodies

include: a. People's Courts;

b. People's Procuracies.

2. Administrative proceeding-conducting persons include:

a. Court presidents, judges, people's assessors, court

clerks. b. Procuracy chairmen, procurators."

8. Article 15 is amended and supplemented as follows:

"Article 15.

1. The first-instance trial panel is composed of one judge and two people's assessors. In special cases, it may be composed of two judges and three people's assessors.

2. The appellate trial panel is composed of three judges.
3. The supervisory trial or re-trial panel of a provincial-level court shall be the judges' committee of the provincial-level court. The supervisory trial or re-trial of a case involving a legally effective judgment or ruling conducted by the judges' committee of a provincial-level court must be participated by at least two-thirds of the total members of the committee.
4. The supervisory trial or re-trial council of the Administrative Tribunal of the Supreme People's Court is composed of three judges.
5. The supervisory trial or re-trial council of the Supreme People's Court shall be the Judges' Council of the Supreme People's Court. The supervisory trial or re-trial of a case involving a legally effective judgment or ruling conducted by the Judges' Council of the Supreme People's Court must be participated by at least two-thirds of the total members of the Council."
9. Article 16 is amended and supplemented as follows:

"Article 16.

1. A proceeding-conducting person shall either refuse to conduct legal proceedings or be replaced, if:
 - a. He/she is concurrently a concerned party or a concerned party's representative or relative;
 - b. He/she has participated in the same case in the capacity as defense counsel of the concerned party's legitimate rights and interests, as witness, expert or interpreter;
 - c. He/she has participated in making the appealed administrative decision or been involved in taking the appealed administrative act;
 - d. He/she has taken part in making the decision on the settlement of the complaint against the administrative decision or administrative act concerned;
 - e. He/she has taken part in making the disciplinary decision on the dismissal of cadre or public employee or in making the decision on the settlement of the complaint about such disciplinary decision;
 - f. He/she has taken part in making the decision of the president of the People's Committee of the province or centrally run city on settling a complaint about the

decision of the directorate or commendation or disciplinary council of a lawyers' association;

g. He/she has taken part in making the decision on the settlement of complaints about decisions on handling competition cases;

h. He/she has taken part in making lists of voters to elect National Assembly deputies or lists of voters to elect People's Council deputies;

i. There are obvious grounds that he/she may not be impartial while performing his/her duty.

2. A judge or people's assessor shall either refuse to conduct legal proceedings or be replaced, if:

a. He/she falls into one of the cases specified in Clause 1 of this Article;

b. A judge and a people's assessor in the same trial panel are relatives;

c. He/she has taken part in the first-instance trial, appellate trial, supervisory trial or re-trial of the same case in the capacity as a judge or people's assessor, except for members of the Judges' Council of the Supreme People's Court or members of the judges' committee of a provincial-level court, who are entitled to participate in more than one trial of the same case according to supervisory trial or re-trial procedures;

d. He/she has participated in the proceedings of the same case in the capacity as procurator or court clerk.

3. The procurator and the court clerk shall either refuse to participate in the proceedings or be replaced, if:

a. They fall into one of the cases specified in Clause 1 of this Article;

b. He/she has participated in the proceedings of the same case in the capacity as judge, people's assessor, procurator or court clerk."

10. Article 17 is amended and supplemented as follows:

"Article 17.

1. Before a court session, the replacement of a judge, a people's assessor or the court clerk shall be decided by the president of the court; the replacement of the judge who

is the president of the court shall be decided by the president of the immediate superior court.

Before a court session, the replacement of the procurator shall be decided by the chairman of the procuracy of the same level; the replacement of the procurator who is the chairman of the procuracy shall be decided by the chairman of the immediate superior procuracy.

2. At a court session, the replacement of a judge, a people's assessor, the court clerk or the procurator shall be decided by the trial panel after hearing opinions of the person requested to be replaced. The trial panel shall discuss in the judgment deliberation room and make decision by majority vote.

In case of replacement of a judge, a people's assessor, the court clerk or the procurator, the trial panel shall make decision to postpone the court session. The president of the court shall decide to appoint a new judge, people's assessor or court clerk; if the replaced person is the president of the court, the president of the immediate superior court shall decide on the replacement. The chairman of the procuracy of the same level shall decide to appoint a new procurator; if the replaced procurator is the chairman of the procuracy, the chairman of the immediate superior procuracy shall decide on the replacement.

3. Within three working days from the date the court session is postponed, the president of the court or the chairman of the procuracy shall have to appoint a replacement."

11. Article 18 is amended and supplemented as follows:

"Article 18.

The procuracy of the same level shall have to participate in court sessions to try administrative cases.

For administrative decisions or administrative acts related to the legitimate rights and obligations of minors or persons who have lost their civil act capacity, if nobody initiates the lawsuit, the procuracy shall have the right to institute the administrative case and have the responsibility to provide evidences."

12. Article 19 is amended and supplemented as follows:

"Article 19.

1. Participants in administrative proceedings include the concerned parties, their lawful representatives, defense counsels of the concerned parties' legitimate rights and interests, the witness, the expert and the interpreter.

2. A concerned party who is an individual may him/herself exercise or mandate in writing another person to exercise his/her proceeding rights and obligations in the process of settling the administrative case.

3. A concerned party that is an agency or organization shall exercise its proceeding rights and obligations through a lawful representative."

13. Article 27 is amended and supplemented as follows:

"Article 27.

The expert or the interpreter shall have to either refuse to participate in the proceedings or be replaced if he/she falls into one of the circumstances specified in Clause 1, Article 16 of this Ordinance. The replacement of the expert or the interpreter prior to a court session shall be decided by the president of the court, and, at a court session, by the trial panel, after hearing opinions of the person requested to be replaced."

14. Article 30 is amended and supplemented as follows:

"Article 30.

1. The statute of limitations means a time limit within which an entity may initiate a lawsuit to request a court to settle the administrative case to protect the entity's legitimate rights and interests which are infringed upon; past this time limit, the entity shall lose the right to initiate a lawsuit, unless otherwise provided for by law.

2. Unless otherwise provided for by law, the statute of limitations shall be specified as follows:

a. For cases stated at Points a, b and c, Clause 1, Article 2 of this Ordinance, it shall be thirty days from the expiration of the time limit for settlement of complaints for the first time during which the complaints are not yet settled or from the date of receipt of the decisions on the first-time settlement of complaints but the complainants disagree with such decisions;

b. For cases stated at Point d, Clause 1, Article 2 of this Ordinance, it shall be thirty days from the expiration of the time limit for settlement of complaints for the second time during which the complaints are not yet settled or from the date of receipt of the

decisions on the second-time settlement of complaints but the complainants disagree with such decisions;

c. For cases stated in Clause 2, Article 2 of this Ordinance, it shall be forty-five days from the date of receipt of the decisions on the first-time settlement of the complaints but the complainants disagree with such decisions;

d. For cases stated in Clause 3, Article 2 of this Ordinance, it shall be at least five days before the election date if the complainants disagree with the way of settlement of the voter list-making bodies;

e. For cases stated in Clause 4, Article 2 of this Ordinance, it shall be thirty days from the date of receipt of the decisions on the first-time settlement of the complaints but the complainants disagree with such settlement decisions;

f. For cases stated in Clause 5, Article 2 of this Ordinance, it shall be thirty days from the date of receipt of the complaint settlement decisions of the presidents of the People's Committees of provinces or centrally run cities, but the complainant disagree with such settlement decisions;

g. For cases stated in Clause 6, Article 2 of this Ordinance, it shall be thirty days from the date of receipt of the complaint settlement decisions of the Competition Council or the Minister of Trade, but the complainant disagree with such settlement decisions;

h. For cases stated in Clause 7, Article 2 of this Ordinance, it shall be as prescribed for these cases by the Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party; if it is not prescribed by the Vietnamese law or treaties to which the Socialist Republic of Vietnam is a contracting party, it shall be thirty days from the expiration of the time limit for the first-time or second-time settlement or from the date of receipt of the decisions on the first-time or second-time settlement of complaints.

3. For deep-lying, remote areas where travel is difficult, the statute of limitations for lawsuit initiation stated at Points a, b and e, Clause 2 of this Article shall be forty-five days.

4. If due to illness, natural calamity, enemy sabotage, working mission or study in a far-off place or due to other objective difficulties the plaintiff cannot initiate a lawsuit within the time limit specified in Clause 2 or Clause 3 of this Article, the duration of existence of such difficulties shall not be counted in the statute of limitations for lawsuit initiation.

5. The plaintiff shall make a lawsuit petition within the time limit specified in Clause 2, 3 or 4 of this Article. A lawsuit petition shall contain the following principal contents:

- a. The date of making;
- b. The name of the court requested to settle the administrative case;
- c. The names and addresses of the plaintiff and the defendant;
- d. The contents of the administrative decision or the disciplinary decision on the dismissal of cadre or public employee or the brief description of the administrative act;
- e. The contents of the decision on the settlement of the complaint (if any);
- f. Claims requested to be settled by the court.

6. The plaintiff who is an individual must sign or press his/her finger print in the lawsuit petition; if the plaintiff is an agency or organization, its lawful representative must sign and affix a stamp at the bottom of the petition; if the lawsuit is to protect the legitimate rights and interests of a minor or a person who has lost his/her civil act capacity, the lawsuit petition must be signed by his/her parent or guardian or pressed with such person's finger print; if the case is instituted by the procuracy, the chairman of the procuracy or a vice chairman authorized by the chairman shall sign and affix a stamp in the lawsuit petition. Enclosed with the lawsuit petition shall be documents and evidences proving that the plaintiff's claim or the institution of the case is grounded and lawful."

15. Article 31 is amended and supplemented as follows:

"Article 31.

1. The court shall return a lawsuit petition in the following cases:

- a. The plaintiff is not entitled to initiate a lawsuit;
- b. The statute of limitations for lawsuit initiation has expired but the plaintiff cannot give any plausible reasons;
- c. There are insufficient conditions for initiating an administrative lawsuit stated in Article 2 of this Ordinance;

- d. The case has been settled by means of a legally valid court judgment or ruling;
- e. The subject matter falls beyond the court's jurisdiction.

2. When returning a lawsuit petition, the court shall enclose therewith a document stating the reason for the return.

3. Within three working days from the date of receipt of the lawsuit petition and enclosed documents and evidences returned by the court, the plaintiff shall be entitled to lodge a complaint with the president of the court which has returned the lawsuit petition.

Within three working days from the date of receipt of a complaint about the return of a lawsuit petition, the president of the court shall issue one of the following decisions on:

- a. Upholding the return of the lawsuit petition;
- b. Receiving back the lawsuit petition and enclosed documents and evidences in order to accept the case for settlement."

16. Article 33 is amended and supplemented as follows:

"Article 33.

1. After the court accepts the case, the concerned party may request in writing the court to take temporary urgent measures to protect his/her/its pressing interests or to ensure the enforcement of the judgment; the concerned party shall take responsibility before law for his/her/its request and shall have to compensate for any damage caused due to his/her/its fault.

2. In the course of settling the case, the court may on its own or at the written request of the procuracy issue a decision on the application of temporary urgent measures and shall take responsibility for such decision; and shall have to compensate for any damage caused by its unlawful application of temporary urgent measures.

Temporary urgent measures may be taken at any stage of the process of settling the case.

3. Any request for the application of temporary urgent measures must be considered by the court within three days from the date of receipt of the request; if there are sufficient legal grounds and it deems necessary to accept the request, the court shall immediately issue a decision on the application of temporary urgent measures.

4. The validity duration of the decision on the application of temporarily urgent measures must be stated clearly therein but shall not exceed the time limit for the settlement of the case as prescribed by law.

5. In emergency cases where it is necessary to outright protect evidences and prevent the possible occurrence of serious consequences, individuals, agencies or organizations shall be entitled to file with a competent court a written request for the application of temporary urgent measures stated in Article 34 of this Ordinance and, concurrently, submit the lawsuit petition to such court.

In this case, temporary urgent measures shall be taken in accordance with relevant provisions of the Civil Procedure Code."

17. Article 37 is amended and supplemented as follows:

"Article 37.

1. Within five working days from the date of receipt of the case, the court shall notify its receipt of the case to the defendant, person(s) with related rights and obligations, and the procuracy of the same level.

2. A written notice shall contain the following principal contents:

a. The date of making the notice;

b. The name and address of the court receiving the case;

c. The name and address of the plaintiff;

d. Specific matters which the court is requested to settle;

e. The list of documents and evidences enclosed by the plaintiff with the lawsuit petition;

f. The time limit for the notice recipient to submit to the court written opinions on the plaintiff's claims, together with enclosed documents and evidences (if any);

g. Legal consequences of the notice recipient's failure to submit his/her/its written opinions on the plaintiff's claims to the court.

3. Within fifteen days from the date of receipt of the notice, the notice recipients shall submit to the court their written opinions on the plaintiff's claims, together with enclosed documents and evidences (if any).

If wishing to have more time, the notice recipients send a request for extension to the court, clearly stating the reason therefor; if the requested extension is grounded, the court shall permit the extension which shall, however, not exceed ten days.

4. The notice recipients shall have the right to request the court to let them see, take notes of or duplicate the lawsuit petition, the document on the institution of the case, and enclosed documents and evidences.

5. Within two months from the date of receipt of the case, the judge assigned to chair the court session shall issue one of the following decisions:

- a. To bring the case for trial;
- b. To suspend the settlement of the case;
- c. To stop the settlement of the case.

With regard to complicated cases or cases where exist objective obstructions, the above-said time limit shall not exceed three months.

6. Within twenty days from the date of issuance of the decision to bring the case for trial, the court shall open a court session; if there are plausible reason(s), this time limit shall not exceed thirty days.

7. The decision on bringing the case for trial shall be forwarded to concerned parties and the procuracy of the same level right after it is issued.

Together with the decision on bringing the case for trial, the court shall send the dossier of the case to the procuracy of the same level for consideration. Within fifteen days from the date of receipt of the dossier of the case, the procuracy shall consider and return it to the court."

18. Article 41 is amended and supplemented as follows:

"Article 41.

1. The court shall decide to stop the settlement of an administrative case in the following cases:

- a. The concerned party is an individual who has died and his/her rights and obligations are not inherited; or an agency or organization which has been dissolved or declared bankrupt without any individual, agency or organization to inherit its proceeding rights and obligations;

- b. The plaintiff withdraws his/her lawsuit petition; the procuracy withdraws its prosecution decision;
 - c. The plaintiff has been lawfully summoned for the second time but still fails to show up;
2. The decision on the stoppage of the settlement of the case may be appealed or protested against, except for cases stated at Point b, Clause 1 of this Article.
 3. The court shall issue a decision on the stoppage of the settlement of the case, delete the name of the case from the case receipt register and return the lawsuit petition and its enclosed documents and evidences to the plaintiff, if the case falls into the circumstances where the lawsuit petition is returned under Article 31 of this Ordinance."

19. Article 43 is amended and supplemented as follows:

"Article 43.

1. The procurator of the procuracy of the same level must participate in the first-instance trial session; if not, the session shall be postponed.
2. The plaintiff must be present at the court session in response to the summons of the court; the court session shall be postponed if the plaintiff is absent for the first time for plausible reasons.

The plaintiff shall be deemed to have abandoned the lawsuit if he/she/it is still absent in spite of having been duly summoned for the second time, and the court shall issue a decision to stop the settlement of the case. In case the court has issued a decision to stop the settlement of the case, the plaintiff shall be still entitled to initiate another lawsuit, provided that the statute of limitations for lawsuit initiation does not expire yet.

3. The defendant must be present at the court session in response to the summons of the court; the court session shall be postponed if the defendant is absent for the first time for plausible reasons.

If the defendant has been duly summoned for the second time but is still absent, the court shall proceed with the trial in his/her absence.

4. Persons with related interests and obligations must be present at the court session in response to the summons of the court; the court session shall be postponed if such persons are absent for the first time for plausible reasons.

If persons with related interests and obligations are still absent in spite of having been duly summoned for the second time, the court shall proceed with the trial in their absence.

Persons with related interests and obligations that have independent claims shall be deemed to have abandoned their independent claims if they are still absent in spite of having been duly summoned for the second time, and the court shall issue a decision to stop the settlement of the case with regard to their independent claims if it is agreed by both the plaintiff and the defendant. In case the court has issued a decision to stop the settlement of the case with regard to their independent claims, persons with related interests and obligations shall still be entitled to initiate another lawsuit with regard to such independent claims, provided that the statute of limitations does not yet expire.

5. The court shall still proceed with the trial of a case in the following cases:

a. The plaintiff, the defendant or persons with related interests and obligations who are absent from the court session have filed a written request for the court to try the case in their absence;

b. The plaintiff, the defendant or persons with related interests and obligations are absent from the court session but their lawful representatives are present at the court session;

c. The plaintiff, the defendant or persons with related interests and obligations are absent from the court session without plausible reasons though having been duly summoned for the first time;

d. Cases stated in Clause 3 and Clause 4 of this Article.

6. The defense counsels of the concerned parties' legitimate rights and interests must participate in the court session in response to the summons of the court; the court session shall be postponed if they are absent therefrom for the first time for plausible reasons.

If the defense counsels of the concerned parties' legitimate rights and interests are absent for the first time without plausible reasons or are absent in spite of having been summoned for the second time, the court shall still proceed with the trial of the case; in this case, the concerned parties shall protect by themselves their legitimate rights and interests.

7. Witnesses shall be obliged to participate in the court session in response to the summons of the court to help clarify circumstances of the cases. In case the witness is

absent but previously he/she gave testimonies directly or send his/her written testimonies to the court, the court shall announce such testimonies.

If the witness is absent, the trial panel shall be entitled to decide to postpone the court session or to proceed with the trial; in case the witness is absent from the court without plausible reason and his/her absence hinders the trial, he/she may be escorted to the court session under the trial panel's decision.

8. Experts shall be obliged to participate in the court session in response to the summonses of the court to help clarify matters related to the expertise and expertise conclusions.

If the expert is absent, the trial panel shall be entitled to decide to postpone the court session or to proceed with the trial.

9. Interpreters shall be obliged to participate in the court session in response to the summons of the court.

If the interpreter is absent and there is no person replacing him/her, the trial panel shall decide to postpone the court session, unless the concerned parties still request the trial panel to proceed with the trial."

20. Article 45 is amended and supplemented as follows:

"Article 45.

The trial panel shall postpone a court session in the following cases:

1. The cases stated in Article 43 of this Ordinance;
2. The members of the trial panel, the procurator, the court clerk, the expert witness or the interpreter is to be replaced but a substitute is not yet available at the moment;
3. It is necessary to conduct verification and collection of additional documents and evidences."

21. Article 58 is amended and supplemented as follows:

"Article 58.

1. Before or at an appellate court session, the appellant shall have the right to change or supplement his/her/its appeal, and the protesting procuracy shall have the right to change or supplement its protest, provided that the changed or supplemented appeal

or protest does not fall beyond the scope of the original one, if the time limit for lodging an appeal or protest has expired.

2. Before or at an appellate court session, the appellant shall have the right to withdraw his/her/its appeal, the protesting procuracy shall have the right to withdraw its protest; and the immediate superior procuracy shall have the right to withdraw the protest of the subordinate procuracy.

The appellate court shall stop the appellate trial of parts of the case related to the appeal which has been withdrawn by the appellant or to the protest which has been withdrawn by the procuracy.

3. The change, supplementation or withdrawal of the appeal or protest before a court session must be expressed in a document which shall be sent to the appellate court. The appellate court shall notify the procuracy and concerned parties of the change, supplementation or withdrawal of the appeal or protest.

The change, supplementation or withdrawal of the appeal or protest at a court session must be recorded in the minutes of the session."

22. Article 63 is amended and supplemented as follows:

"Article 63.

1. The procurator of the procuracy of the same level shall have to participate in the appellate trial session; if he/she is absent, the court session shall be postponed.

The court shall forward the dossier of the case to the procuracy for consideration. Within ten days as from the date of receipt of the dossier of the case, the procuracy shall consider and return the dossier to the court.

2. The appellant, persons with rights and obligations related to the appeal or protest shall be summoned to participate in the court session; if any of them is absent, the court may still proceed with the trial.

3. The court shall summon the expert, the interpreter or the witness only when it is so requested by the concerned parties or it is deemed necessary for the settlement of the appeal or protest; if such a person is absent, the court shall decide to proceed with the trial or to postpone the court session on a case-by-case basis.

4. For cases where the presence of the proceeding participants in the first-instance trial is not required or where the proceeding participants do not file a request for

participation in the appellate court session, the court shall conduct the appellate trial session in their absence."

23. Article 68 is amended and supplemented as follows:

"Article 68.

1. The president of the Supreme People's Court, the chairman of the Supreme People's Procuracy shall have the right to protest according to supervisory trial or re-trial procedures against legally valid judgments or rulings of the courts of different levels, except for supervisory trial or re-trial rulings of the Judges' Council of the Supreme People's Court.

2. The presidents of provincial-level courts, chairmen of provincial-level procuracies shall have the right to protest according to supervisory trial or re-trial procedures against legally valid judgments or rulings of district-level courts."

24. Article 69 is amended and supplemented as follows:

"Article 69.

1. The time limit for lodging protests according to supervisory trial procedures is one year, counting from the date the court judgment or ruling takes effect.

2. The time limit for lodging protests according to re-trial procedures is one year, counting from the date the person competent to protest becomes aware of the grounds for lodging a protest according to re-trial procedures prescribed in Clause 2, Article 67 of this Ordinance.

3. A protest shall be sent to the court which has issued the protested judgment or ruling, the court which is to conduct the supervisory trial or re-trial, the concerned parties and person(s) with rights and obligations related to the protest's contents. In case the protest is lodged by the president of the Supreme People's Court or a provincial-level court, the court which is to conduct the supervisory trial or re-trial shall send the protest together with the dossier of the case to the procuracy of the same level for consideration within fifteen days after the date of receipt of such protest and dossier of the case.

4. The protester requesting the supervisory trial or re-trial may change or supplement his/her protest decision, provided that the time limit for lodging protests stated in Clause 1 or Clause 2 of this Article has not yet expired.

5. Before or at a court session, the protestor may withdraw the protest. The withdrawal of a protest before a court session must be expressed in a document which shall be sent in accordance with the provisions of Clause 3 of this Article.

The withdrawal of a protest at a court session shall be recorded in the minutes of the session. If the protestor withdraws the whole of his/her protest, the supervisory trial or re-trial panel shall issue a decision to stop the supervisory trial or re-trial.

6. Persons competent to lodge protests against legally valid court judgments or rulings shall have the right to postpone or suspend the execution of such judgments or rulings for no more than two months for consideration and decision on making a protest according to supervisory trial or re-trial procedures.

7. The protestor shall have the right to postpone or suspend the execution of the protested judgment or ruling which is already legally valid till the time when the supervisory trial or re-trial decision is issued."

25. Article 70 is amended and supplemented as follows:

"Article 70.

1. The supervisory trial or re-trial panel shall only have the right to review the parts of the case related to the protested ruling.

2. The judges' committee of a provincial-level court shall conduct the supervisory trial or re-trial of the cases in which the legally valid judgments or rulings of district-level courts are protested against.

3. The Administrative Tribunal of the Supreme People's Court shall conduct the supervisory trial or re-trial of the cases in which the legally valid judgments or rulings of provincial-level courts are protested against.

4. The Judges' Council of the Supreme People's Court shall conduct the supervisory trial or re-trial of the cases in which the legally valid judgments or rulings of the Appellate Court or the Administrative Tribunal of the Supreme People's Court are protested against.

5. For legally valid judgments or rulings applicable to the same administrative case falling under the jurisdiction of the courts of different levels stated in Clauses 2, 3 and 4 of this Article, the competent superior court shall conduct the supervisory trial and re-trial of the whole case.

6. Within one month from the date of receipt of the protest together with the dossier of the case, the Court shall have to open a supervisory trial or re-trial court session."

26. Article 71 is amended and supplemented as follows:

"Article 71.

1. The concerned parties and person(s) with rights and obligations related to the protest shall not be summoned to the supervisory trial or re-trial court session, except where the court needs to hear their opinions before making decision.

A representative of the procuracy of the same level shall be obliged to participate in the supervisory trial or re-trial court session.

2. At the court session, a member of the supervisory trial or re-trial panel shall present the contents of the case and the protest. In case the proceeding participants are summoned to the court, they shall express their opinions on the protest decision. The representative of the procuracy shall give the procuracy's opinions on the protest decision.

3. The members of the supervisory trial or re-trial panel shall discuss and express their opinions on the settlement of the case. The representative of the procuracy shall give the procuracy's opinions on the settlement of the case.

4. The supervisory trial or retrial panel shall vote on the settlement of the case.

The supervisory trial or re- trial ruling of a judges' committee of a provincial -level court or the Judges' Council of the Supreme People's Court must be approved by more than half of the total members of the judge's committee of the Judges' Council.

The judges' committee of a provincial -level court or the Judges' Council of the Supreme People's Court shall vote on the protest in the order of approval and disapproval, followed by other opinions; if neither case is approved by more than half of the total members of the judges' committee of a provincial-level court or the Judges' Council of the Supreme People's Court, the court session shall be postponed. Within thirty days after the date of issuance of the decision on the postponement of the court session, the judges' committee of a provincial-level court or the Judges' Council of the Supreme People's Court shall have to open a new session with the participation of all of its members."

27. Article 72 is amended and supplemented as follows:

"Article 72. The supervisory trial and re-trial panel shall have the right:

1. To reject the protest and uphold the legally valid judgment or ruling;
2. To uphold the lawful original judgment or ruling of the subordinate court, which has been canceled or modified;
3. To cancel the legally valid judgment or ruling and conduct a new first-instance trial or appellate trial;
4. To cancel the legally valid judgment or ruling and suspend the settlement of the case in the circumstances stated in Article 41 of this Ordinance."

28. Article 28 is amended and supplemented as follows:

"Article 73. The provisions of this Ordinance shall also apply to the settlement of administrative cases involving parties that are foreign individuals, agencies or organizations, unless otherwise provided for by treaties to which the Socialist Republic of Vietnam is a contracting party."

29. The phrase "court session clerk" in Articles 39, 41, 44, 49 and 52 of the Ordinance on Procedures for the Settlement of Administrative Cases shall be replaced with the phrase "court clerk."

Article 2. This Ordinance takes effect as from June 1, 2006.

Article 3. The Government, the Supreme People's Court and the Supreme People's Procuracy shall, within their functions, have to guide the implementation of this Ordinance.

CHAIRMAN
Nguyen Van An