THE FREEDOM TO SUE IN VIETNAM’S CIVIL PROCEDURE

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ABSTRACT

**Purpose:** The purpose of the article research the freedom to sue in Vietnam’s civil procedure, points out several limitations, shortcomings, and propose recommendations to complete the legal system concerned.

**Theoretical framework:** The research employs theories about the freedom to sue in Vietnam’s civil procedure, regulations on the freedom to sue in civil procedure, and mechanisms apply to the freedom to sue in civil procedure in Vietnam.

**Design/methodology/approach:** The research employs three common methods in legal science research: (1) Legal analysis method; (2) Legal efficiency evaluation method; and (3) Comparative legal method. The above research methods help compare and contrast theories of the freedom to sue in Vietnam’s civil procedure and bring out some essential findings.

**Findings:** Some valuable findings have been revealed such as the formulation and development of the freedom to sue in Vietnam’s civil procedure, some theoretical issues, and limitations on regulations on the freedom to sue in Vietnam’s civil procedure.

**Research practical and social implications:** The article proposes some tasks remaining undone, and further tasks will be fulfilled in the future. The article may support many develop future research in Vietnam.

**Originality/value:** The research on he freedom to sue in Vietnam’s civil procedure become more and more urgent and very important in Vietnam.

**Keywords:** Civil Procedure, Human Rights, Law, Civil, Court.

A LIBERDADE DE PROCESSAR NO PROCESSO CIVIL DO VIETNÃ

**RESUMO**

**Objetivo:** O objetivo do artigo é pesquisar a liberdade de processar no processo civil do Vietnã, aponta várias limitações, deficiências e propõe recomendações para completar o sistema legal em questão.

**Estrutura teórica:** A pesquisa emprega teorias sobre a liberdade de processar no processo civil do Vietnã, regulamentos sobre a liberdade de processar em processo civil, e mecanismos se aplicam à liberdade de processar em processo civil no Vietnã.

**Projeto/metodologia/abordagem:** A pesquisa emprega três métodos comuns em pesquisa de ciências jurídicas: (1) método de análise jurídica; (2) método de avaliação de eficiência jurídica; e (3) método jurídico comparativo.

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1 INTRODUCTION

The protection of legitimate rights and interests of the litigants has been identified as one of the important contents recognized in The 2013 Constitution of the Socialist Republic of Vietnam, which is the highest legal value document in the country. On the basis of which, the 2015 Civil Procedure Code (amended and supplemented by the Labor Code No. 45/2019/QH14 and consolidated into the Civil Procedure Code No. 20/VBHN- The Office of the National Assembly on December 16, 2019) stipulates the order and procedures for settling civil cases aiming at not only protecting the socialist laws and legislation, but also the legitimate rights and interests of the involved parties. And among these rights, the freedom to sue is particularly important. It is one of the basic human rights which is respected, recognized and protected by the progressive communities in the world.

Currently in Vietnam, the protection of human rights in civil procedure has been taken more seriously than before. The more civilized and progressive society and the more advanced and modern the judiciary is, the more human rights are concerned, promoted and valued. Human rights are also of affecting many relationships such as economic relations, social relations, political relations, legal relations.... at the national, regional and international levels. Therefore, the study of the freedom to sue and human rights in Vietnam’s civil proceedings become more and more urgent and very important.

2 THEORETICAL FRAMEWORK

The research employs theories about the freedom to sue in Vietnam’s civil procedure, regulations on the freedom to sue in civil procedure, and mechanisms apply to the freedom to sue in civil procedure in Vietnam.
3 LITERATURE REVIEW


4 METHODOLOGY

To fulfill the research objectives, the authors have combined traditional research methods of legal science such as legal analysis method, legal efficiency assessment method and legal comparison method.

Basically, these research methods are remained closely associated and harmonizingly used in order to fulfill the purpose of this article.

5 RESULTS AND DISCUSSION

5.1 Regulations of Freedom to Initiate Lawsuits in Civil Procedure

First of all, it must be affirmed that the right to freedom and the right to sue are very important rights for all involved parties. When their legitimate rights and interests are infringed, they have the right to request protection from the competent authorities. In other words, “when the legitimate rights and interests of the litigants (individuals, agencies, organizations) are violated, they have the right to request competent state agencies to be given a fair trial, also take the necessary measures, in order to protect or restore theirs rights and lawful benefits” (Nguyen Vinh Hung, 2016). At the same time, the freedom to sue also contributes to “the protection of public order, which is necessary for the life of modern society” (Pauzin, N. et al., 2022, p. 02). Therefore in Vietnam, the freedom to initiate lawsuits is clearly defined and it is one of the basic rights of citizens. Furthermore, the right to sue is a basic authority but very important component of human rights. In fact, the role of human rights has always been a great concern by our Party and State since the beginning of the State's foundation and it has been respected in all circumstances of the country. In the Declaration of Independence in 1945, founding the Democratic Republic of Vietnam, the issue of human freedom was solemnly declared by President Ho Chi Minh: “They are endowed by their Creator with certain inalienable rights, among them are Life, Liberty, and the pursuit of Happiness” (Museum History and Culture, 2019). At the same time, “the constitutional history of the Socialist Republic of Vietnam clearly shows that civil rights, including human rights, have always been recognized in the Constitutions from the first one after our country had just gained independence - the 1946 Constitution, up until the following Constitutions such as the 1959 Constitution, the 1980 Constitution, the 1992 Constitution and the 2013 Constitution” (Bui Thi Thanh Hang, 2014).

It can be affirmed that, in Vietnam, “freedom is a fundamental right for each individual” (Nguyen Vinh Hung, 2019). And the freedom of Vietnamese citizens is very widely expressed.
not only in travelling, studying, working or in civil and commercial transactions but also in initiating lawsuits. In which, the civil liberties and the freedom in civil proceedings have been defined “as a private relationship of the parties, decided and resolved by themselves, and when they cannot do it, they determine whether to ask the State for support or not” (Tuong Duy Luong, 2009). “The characteristic of civil proceedings is the right to decide and self-determination of the involved parties” (Justice Newspaper, 2018). Even the law before the unification of the country was also clearly specified the freedom to sue: “It is not enough for the legislator to prescribe the rights of the private interests, it is also necessary to give them the means to protect these rights when being threatened. Among the principles provided by the law, the right to denounce is the freedom to initiate lawsuits, and the right to go to Court for arbitration, which is the most powerful and the most commonly used” (Nguyen Huy Dau, 1962). Current law allows individuals and organizations to have freedom to choose measures to protect their legitimate rights and interests when they are infringed. However, when those procedures such as negotiation, conciliation and even arbitration are not effective, the last choice is the right to initiate a lawsuit to request the Court to protect their legitimate rights and interests. It is considered as “an effective measure to protect civil rights”6. “Civil rights of parties will be meaningless without the right to sue, that is, the right to ask the Court - The representative institution of the State and justice - to intervene when these are violated” (Bui Thi Thanh Hang, 2014). “With its assigned functions, tasks and powers, the Court is a specialized agency tasked with resolving criminal cases or disputes, civil, marriage and family requirements, business, trade and labour to disputes in the administrative field” (Hung, N. V. et al., 2023, p. 03).

The 2015 Civil Procedure Code allows individuals, agencies and organizations to have the right to initiate civil lawsuits to request the Court to protect their legitimate rights and interests when they are infringed. Some agencies and organizations, in specific cases, also have this right to protect other entities that they are representing. In addition, a noteworthy in Vietnam, the Civil Procedure Code concerns about the freedom to initiate lawsuits of all entities, whether they are plaintiffs or defendants or even participants in the proceedings as persons with related interests and obligations. If we consider the defendant's right to counter-claim or the right to independent-claim of persons with related interests and obligations as forms of request to the Court for consideration and settlement, then these rights have the same nature as the right to sue, only different in the name and are applied to different entities. In other words, the freedom to sue is not only for plaintiffs, but also for the defendants or a person with related interests and obligations, which is granted by the Civil Procedure Code, and that is called the defendant's “right to counter-claim”; and ‘the right to independent-claim” of the persons with related interests and obligations. In a broader sense, the right to initiate a civil case also includes the defendant making counterclaims or the persons with related interests and obligations making an independent claim to propose the Court to consider and settle with the plaintiff’s case. Although the names of these rights may be different, they have the same purpose that the parties have the right to make a request to the Court for consideration and settlement. In a narrow sense, initiating a civil case means individuals, agencies, organizations or representatives of the entities send a lawsuit petition requesting the Court to resolve the civil case to protect their legitimate rights and interests or to the ones that they are representing.

Currently, “the right to initiate civil lawsuits is one of the basic civil rights, a right that the law acknowledges for entities in civil transactions” (Dam Thi Hoa, 2016) and it is also one of the fundamental principles of Vietnam’s Civil Procedure Code7. Notably, this principle prescribes formally specified, detailed and completed, which is firstly ranked with more than 20

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6 Article 12 of the 2015 Civil Code
7 Article 4 of the 2015 Civil Procedure Code
The Freedom to Sue in Vietnam’s Civil Procedure

principles of this Law\(^8\). In addition, Article 186 of the 2015 Civil Procedure Code clearly dictates the right to initiate civil lawsuits: “Agencies, organizations and individuals have the right to initiate a lawsuit on their own or through their legal representatives in a competent Court to request protection of their legitimate rights and interests”. Compared with the provisions in the 2004 Civil Procedure Code (amended and supplemented in 2011)\(^9\), the 2015 Civil Procedure Code has been specified in greater detail on the right to initiate civil lawsuits. Accordingly, the freedom to initiate lawsuits has been extended not only to individuals but also to agencies such as State management agencies in charge of families, children, Women’s Union, organization of representatives of the labor collective, social organizations, agencies and organizations….., within the scope of their duties and powers, they have the right to initiate civil lawsuits to protect public interests and that of the State in the fields they are in charge. It shows that Vietnam’s Civil Procedure Code has been intensively aware of the protection the rights and legal interests of all entities, and those who have the right to sue are more and more diverse and constantly expanding.

It can be seen that the freedom to initiate civil lawsuits is very important to the parties. With this, individuals, agencies and organizations can request the Court to protect their legitimate rights and interests when they are infringed. Moreover, with the provisions allowing the freedom to sue, the State has given the petitioners the right to act as well as the right to make their own decisions as a basis for conducting and participating in civil proceedings. On the basis of proceeding initiation, the judicial offices such as the Court and the People's Procuracy can take actions to protect the legitimate rights and interests of the plaintiffs.

In addition, a remarkable point compared to the previous regulations is that for the first time, the 2015 Civil Procedure Code implements the principle that the Court cannot refuse to settle a civil case for the reason that there is no provision to apply to (the principle of non-repudiation)\(^10\). This is a great progress which marks a significant step in the history of civil procedural law in Vietnam. In the past, the Court might refuse to settle a civil case with the reason of having no applicable principles, now it has to resolve all legitimate and lawful claims of the plaintiffs. With this provision, the right to initiate lawsuits has been further consolidated, expanded and protected more comprehensively. This is also consistent with the current trend of strengthening and protecting human rights of progressive communities around the world.

However, in reality, the exercise of the freedom to sue by agencies, organizations and individuals is not really simple and easy. This is limited by the conditions in initiating a civil case. In Vietnam, these conditions are the basic screening criteria either the mandatory requirements of the civil procedural law for the plaintiffs. In principle, only when the litigants fully satisfy the conditions for initiation will the civil case be accepted and resolved by the Court. Therefore, if the conditions are too difficult and complicated, they will become the first invisible barriers in the process of legal proceedings of the litigants.

5.2 Specific Requirements on the Conditions for Initiating Lawsuits in Vietnam’s Civil Proceedings

According to the provisions of the Civil Procedure Code 2015 on cases where lawsuit petitions are returned, the current lawsuit conditions include: (i) The petitioner must have the right to initiate a lawsuit and must have civil procedure act capacity; (ii) The case must fall under the jurisdiction of the Court; (iii) The case must be settled by another state agency first (if this prescribed by law); (iv) The case has not been resolved by a legally effective judgment or decision of the Court or a legally effective decision of a competent state agency; (v) The

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\(^8\) Article 4 of the 2015 Civil Procedure Code  
\(^10\) Clause 2, Article 4 of the Civil Procedure Code 2015.
petition must be comply exacted according to the regulations in form; (vi) The petitioner must fulfill the obligation to pay the court fee advances as prescribed by law (except for the case that is exempt from payment); (vii) The petitioner fails to amend and supplement the petition at the request of the judge; and (viii) The petitioner withdraws the petition.\(^\text{11}\) In which, each condition of lawsuit has its own requirements.

5.2.1 The petitioner must have the right to initiate a lawsuit and must have civil procedure act capacity

This is the first but also the decisive condition to determine whether an entity is really allowed to exercise his or her right to sue or not. Because the right to sue is the basis for the Court to make an examination and decide whether the legitimate rights and interests of the petitioner have really been infringed. In other words, only when the plaintiff’s legitimate rights and interests have actually been illegally infringed, do they have the right to initiate a lawsuit. In addition, the determination of the right to initiate a lawsuit is also “to avoid the situation that individuals without related rights and interests can also initiate lawsuits against the wishes of the subjects whose civil rights are infringed” (Bui Thi Thanh Hang, 2014) and “not to allow a person who is not a subject of a legal relationship to take advantage of the right to initiate a lawsuit and then infringed upon the legitimate rights and interests of others” (Hanoi Law University, 2018). At the same time, it is also necessary to clearly distinguish the concept of “plaintiff” with “petitioner”. These two categories are completely different and not identical while the civil plaintiff is supposed to have been infringed by the “civil defendant” upon his legitimate rights and interests, the “petitioner” may also include the person whose legitimate rights and interests are not directly infringed, but he sues to protect the rights and interests of the one he represents. Therefore, “the petitioner” in the Vietnam’s civil procedure can be an individual, agency or organization (Nguyen Vinh Hung, 2022).

To meet this condition, in case the petitioner is an individual, these two mandatory conditions must be satisfied: The individual must have full civil procedure act capacity and at the same time, must have legitimate rights and interests infringed or disputed. “For individuals who do not have litigation act capacity but have interests to be protected, they cannot initiate lawsuits by themselves, so they must have a representative to sue the case” (Hanoi Law University, 2018). In Vietnam, litigation act capacity is determined on the basis of civil act capacity. Civil Law determines that persons aged 18 years or older have full civil legal capacity and civil act capacity\(^\text{12}\). Subjects of individuals in Vietnam can only be “complete and independent when they have the full civil act capacity, besides the factor recognized by law in each individual about the civil legal capacity” (Hanoi Law University, 2014). Therefore, in principle, a person from the age of 18 can file a lawsuit by himself to ask the Court to protect his legitimate rights and interests when they are infringed. In addition, there are exceptions that persons under 18 years of age still have this right or ask someone else to make a petition for them, but they have to sign or fingerprinted dây không phải đồng tử in the petition when they are from full 15 years old to under 18 years old, who have been employed under labor contracts or civil transactions with their own property (Nguyen Vinh Hung, 2022).

In case the plaintiff is an agency or organization, the following conditions must be satisfied: The agencies or organizations initiate a lawsuit to protect its own infringed legitimate rights and interests; they do it to protect the rights of the others (only some agencies and organizations have this right and in only a number of cases prescribed by law); and they do it to protect the public interest and the State’s\(^\text{13}\) interests. That means, agencies and organizations

\(^{11}\) Article 192 of the Civil Procedure Code 2015.

\(^{12}\) Article 20 of the Civil Code 2015.

\(^{13}\) Articles 186 and 187 of the Civil Procedure Code 2015.
can only initiate civil lawsuits when their rights are infringed or to protect the entity’s that they are in charge. Normally, an agency or organization initiates a lawsuit through its legal representative (either a representative by law or an authorized representative)\textsuperscript{14} (Nguyen Vinh Hung, 2022).

5.2.2 The case must fall under the jurisdiction of the Court

The characteristics that Civil Courts in Vietnam are organized in accordance with territorial administrative units and hierarchical levels (district courts established in all districts, towns and cities are directly under the management of the Provincial Court; the Provincial Court (of city/province directly under the central government) under the management of the High Court in the three regions of the North, the Central and the South; and the People's Supreme Courts uniformly manages all courts in Vietnam). At the same time, with the principle of two level jurisdiction regime (first instance and appellate), the People’s Court system in Vietnam is relatively diverse and complex. The determination of a lawsuit claim is based on the jurisdiction of the Court in order to avoid overlapping and to clearly distinguish the functions, tasks and authority among the Courts. In accordance with those conditions, the party who has the right to bring the claim before the Court must file a petition to the appropriate Court to settle the case (the Court jurisdiction is successively determined by type of case, by level and by territory (or by agreement of the parties in some cases). In addition, since The 2014 Law on Organization of People’s Courts in 2014 allows district courts to organize a number of specialized courts such as Civil Courts, Family Courts and Juvenile Courts... in order to improve the quality and adjudication efficiency\textsuperscript{15}. In sum, the screening to accept settlement of civil cases can be simpler, more convenient and faster for the litigants (Nguyen Vinh Hung, 2023).

5.2.3 The case must be resolved by another state agency in advance (if this is prescribed by law)

Dispute settlement in Vietnam is quite diverse and in order to minimize all disputes, it is necessary to go to the Court and there was the time, for some disputes such as labor disputes, disputes concerning who had the right to use the land, the law stipulated that the subject was only allowed to initiate a lawsuit when it had been conciliated by competent agencies at the grassroots level or at the commune – level People’s Committee and then had the right to bring a dispute to the Court. However, the practice and effectiveness of grassroots conciliation has shown that many cases have delayed and extended the time to resolve disputes which always required urgency, speed and timeliness. Therefore, in order to be more suitable with socio – economic development, the 2013 Land Law has allowed to extend the jurisdiction of the Court and the right to choose a dispute settlement agency of the disputing subject. They can either choose to settle it at the People’s Committee or initiate a lawsuit directly to the Court\textsuperscript{16}. This is a great progress because it has simplified and shortened the settlement process for litigants when they have no need to settle through pre-litigation procedures at the grassroots conciliation (Nguyen Vinh Hung, 2023).

\textsuperscript{14} Clause 5, Article 2 of Resolution No. 05/2012/HDTTP-TANDTC dated December 3, 2012 guiding the implementation of a number of provisions in the second part "Procedures for settlement of cases at first-instance courts" of The Civil Procedure Code has been amended and supplemented according to the Law amending and supplementing a number of articles of the Civil Procedure Code.

\textsuperscript{15} Article 45, Law on Organization of People’s Courts 2014.

\textsuperscript{16} Clause 2, Article 203 of the Land Law 2013
5.2.4 The case has not been settled by a legally effective judgment or decision of the Court or a legally effective decision of a competent state agency

In practice, there have been many cases where after the Court or a competent state agency has issued the judgment or settlement decision and has taken legal effect, the litigant still finds ways to bring the case to other Courts to request the re-settlement. Therefore, a case can be tried many times and there will be many different judgments and decisions if there is no limitation of trial. Moreover, each Court or competent state agencies may have different arguments and views on the case, so the settlement results may also be different. This may affect the prestige and sanctity of the law and disturb the adjudication process to settle civil disputes. Therefore, Vietnam’s Civil Procedure Code has set the compulsory principle of civil case, (in Vietnam, it may include disputes and requirements in the fields of civil, business, commercial, labor, marriage and family) if the case is to be settled by the Court, the case mustn’t have been settled by a legally effective judgment or decision of the Court or a legally effective decision of a competent state agency permission. In other words, civil cases must never be resolved by any competent state agency with a judgment or decision in advance. The regulation is to avoid the waste of resources of the Court and society in solving a case many times. This regulation also aims to ensure the validity of legally effective judgments and decisions and the credibility of the agencies that have issued those judgments and decisions (Nguyen Vinh Hung, 2022).

5.2.5 The petition must strictly completed with the mandatory regulations in formed

The unification form of the lawsuit petition, in principle, the petitioner must base on the provisions of Article 189 of the Civil Procedure Code 2015 and the leading resolutions of the Judges’ Council of the Supreme People's Court in the form of the petition. In addition, in case the petitioner is an individual, this person will have to directly sign or fingerprinted to the petition. If the petitioner is an agency or organization, the legal representative of that agency or organization must sign, seal at the end the form. In cases a person initiates a lawsuit to protect the legitimate rights and interests of a minor or a person who has lost his/her civil act capacity, the petition will be signed or fingerprinted by his/her legal representative (Nguyen Vinh Hung, 2022). In addition to the petition, the plaintiff must also enclose documents and evidence to prove that the claim is lawful and grounded. However, the Civil Procedure Code in Vietnam has not yet allowed the plaintiff to authorize another person to sign the petition on his/her behalf (Nguyen Vinh Hung, 2022). This is different from the one in common law countries (UK - USA), “where most lawsuit petitions are drafted and signed by the plaintiff’s lawyer” (Bui Thi Thanh Hang, 2014).

5.2.6 The petitioner must fulfill the obligation to pay the court fee advances as prescribed by law (except in the case of being exempted from payment)

On the basis that “civil matters must be from both side”, the Court must settle civil disputes entirely on the basis of the desires of the involved parties. Of course, the long, stressful, strenuous and expensive dispute settlement process causes a huge burden on the state budget. In order to harmonize and ensure that the involved parties do not abuse their freedom to initiate lawsuits, the involved parties will have to pay for the court fee. The court fee can be understood as a sum of money that the involved parties must pay when participating in the settlement of the civil case. This is quite reasonable with the current conditions and circumstances of civil
case settlement in Vietnam. Therefore, according to Article 146 of the 2015 Civil Procedure Code on the obligation to pay the court fee advances, the plaintiffs and defendants who have counter-claims against the independent request or persons with related interests and obligations in civil cases will first have to pay first-instance civil court fee advances. Those above will not have to pay in case they are exempted or not required to do so. However, the current practice of solving civil cases in Vietnam shows that in many cases, the plaintiffs can’t afford the court fee advances (while they are not exempted), they have to waive the lawsuits. The current first-instance court fee advances in Vietnam is considered quite high compared to the average income of the people. In many civil cases, it may be up to several hundred million VND. For example, according to regulations, if the value of the dispute was calculated over 4 billion VND, the court fee would be 112 million plus 0.1% of the value of the disputed property exceeding 4 billion VND; and the first-instance civil court fee advances must be 50% of the first-instance civil court fee. Therefore, this is also a big barrier for the plaintiffs (Nguyen Vinh Hung, 2022).

5.2.7 The petitioner does not amend or supply the petition at the request of the judge

Compared to the 2004 Civil Procedure Code (amended and supplemented in 2011), this is a new condition prescribed by the 2015 Civil Procedure Code. Basically, this is the petitioners’ mistake because the petition is the basis for the Court to examine and settle, in order for the process of resolving to take place in accordance with the law, it is essential that the petition must be appropriate in both content and form. Therefore, in cases that the Judge has been allotted to examine the petition in detail and has requested the plaintiffs to amend and supplement within a certain time limit, but the plaintiffs fail to implement the requirement, the judge is entitled to return the lawsuit petition with its documents and accompanying evidences (Nguyen Vinh Hung, 2022).

5.2.8 The petitioner withdraws the petition

This is also a new case regulated by the 2015 Civil Procedure Code. Based on the principle of freedom to sue and the right of self-determination in civil procedure legal relations, the petitioner has the right to withdraw the lawsuit petition. However, the act of withdrawing the lawsuit petition means that the civil case will not be considered and resolved by the Court (Nguyen Vinh Hung, 2023).

In addition, since the 2020 Law on Conciliation, Dialogue at Courts took effect from January 1, 2021, when initiating civil cases, depending on each case, the litigator may also have to undergo pre-proceedings mediation before being considered by the Court to resolve the civil case. Even the pre-proceedings conciliation fails in the proceedings at the Court of First Instance, the involved parties still have to go through the mediation procedure. This also lengthens the time to settle the civil case and is not really efficient and convenient for the parties and the Court. In fact, this has caused inadequacies in the process of settling cases (Nguyen Vinh Hung, 2023).

Thus, even though the plaintiffs have the right to freely initiate a lawsuit, in order to be accepted by the Court for settlement, they have to meet the requirements on the conditions for it. It can be seen that the provisions for the conditions for initiating lawsuits of the 2015 Civil Procedure Code have partly limited the freedom of lawsuits of the plaintiffs. When they

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18 Article 7, Resolution No. 326/2016/UBTVQH14 dated December 30, 2016 “on collection, exemption, reduction, collection, payment, management and use of court fees and charges”.

19 Clause 2, Article 193 of the Civil Procedure Code 2015.

20 Law on Mediation and Dialogue at Court 2020.
encounter difficulties and complications in accessing the Court, the human rights of the plaintiffs will certainly be limited (Nguyen Vinh Hung, 2023).

6 RECOMMENDATIONS

“In the context of judicial reform in Vietnam, the issue of complete law system, etc, has always been paid special attention by the Party and Vietnam State” (Hung, N. V, et al., 2022). On the other hand, “initiating lawsuits and participating in dispute settlement proceedings at the Court is an effective method to help parties protect their legitimate rights and interests” (Nguyen Thi Hoai Phuong, 2011). From the actual reality, many petitioners want to sue when their legitimate rights and interests are infringed, however, as analyzed, the conditions for initiation are causing many difficulties for them. Therefore, many petitioners have thought that they do not want to sue in Court for many reasons such as “the process of dispute settlement at the Court takes a lot of time, expense, effort along with the difficulty and complexity of having to go through many different legal proceedings” (Nguyen Vinh Hung, 2020). So the more complicated the conditions are, the less desire to initiate a lawsuit the petitioners have. Consequently, at present, in many cases, even in the process of drafting a commercial contract, the parties have agreed to choose the method of dispute settlement through commercial arbitration instead of through the Court to avoid difficulties, troubles and complications.

With the international integration, on the one hand, Vietnamese legislators must constantly research, develop and expand dispute settlement measures. On the other hand, it is necessary to determine the methods of civil dispute settlement by the Court, which will still be a very important method. In addition, it is necessary to consider the issue that at present, the civil procedure laws of many countries around the world rarely stipulate strictly the conditions for initiating lawsuits. That enables the petitioners to access justice agencies easier. Since then, according to the authors, in the upcoming amendment and supplement of the Civil Procedure Code, it is necessary to extend a number of conditions for lawsuits to make it easier for the litigants to access the Court. Among them, the following important issues should be examined:

6.1 Firstly, it is Necessary to Allow Lawyers to Directly Sign the Petition to Represent the Lawsuit on Behalf of the Clients

In Vietnam, research shows that, “the process of settling a civil case at the Court is a difficult, complicated and lengthy one” (Nguyen Vinh Hung, 2017). A lot of plaintiffs are worried that they would have to go through a lengthy legal process, which would significantly affect their work, family and time. And as analyzed, this has limited the desire of the litigants to sue even though their legitimate rights and interests have been infringed. Although Vietnam's current Civil Procedure Law allows lawyers to participate in civil proceedings as defenders of legitimate rights and interests or authorized representatives of involved parties but it does not allow them to directly sign the client’s petition when initiating a lawsuit to protect the client's legitimate rights and interests. In other words, lawyers cannot sue on behalf of their clients. Therefore, the assistance of lawyers to the petitioners is also quite limited and the petitioners also have to face with more difficulties and complexities when conducting lawsuits. Because, there is no other way, the petitioner must sign the petition himself and then, all issues during the proceedings, the procedure-conducting agencies will directly contact, exchange and work with the person named in the petition. In addition, there are cases where the petitioners want to keep their identity and information confidential to avoid the lawsuits’ impacts on their reputation, work and family. In contrast to Vietnam, in countries with advanced and modern legal systems such as the United States and the United Kingdom, most petitions are drafted and signed by the lawyers on behalf of the clients. It is very useful and solves many problems for
The clients such as the confidentiality during the proceedings, saving effort and time in complicated, lengthy proceedings. On the other hand, it also has a positive impact on the process of settling civil cases at the Court. Because, compared to the petitioner, the lawyer is the one with higher knowledge, experience and legal understanding. Therefore, the settlement of civil cases by the Court will also be more convenient, faster, simpler and easier. On that basis, according to the authors, from the perspective of freedom of decision in civil proceedings as well as ensuring the efficiency and convenience of the parties involved in the proceedings, it will be more effective for the petitioner to authorize the petition to initiate a lawsuit on their behalf and sign it directly in the petition. Of course, the lawyers will have to try and fully implement all provisions of the law for the benefit of their own clients. As a result, it is both convenient and fast for lawyers, petitioners and the Court in the process of settling civil cases. In addition, it also contributes to strengthening, facilitating and easier for the exercise of the right to freedom to sue.

6.2 Secondly, it is Necessary to Consider and Reduce the First-Instance Civil Court Fee Advances

As analyzed, civil court fees are currently one of the big barriers for petitioners. According to current regulations on legal fees and charges, it is the amount of money that the involved parties must pay when requiring the Court to settle a civil case and is determined by the value of the dispute. It is worth mentioning that the court fees and charges are generally quite high compared to the average income or the annual base salary of the state. The authors believe that this needs to be considered and adjusted to be more suitable with the socio-economic development situation in Vietnam. Especially during the covid-19 epidemic causing a serious deterioration in the global economy and Vietnam's economy, the regulation of too high civil charges will cause more obstacles and great difficulties for petitioners when they want to ask the Court to resolve their disputes. Therefore, according to the authors, there should be a flexible, appropriate adjustment and possibly in the direction of adjusting the annual civil court fee based on the rate of inflation and the actual growth of GDP in Vietnam. The rate of court fee and charge advances may be reduced in times of economic difficulties. For example, the current court fee advances can be reduced from 50% to 25% or other rates for the benefit of the petitioners. It will enable them to access the Court and the freedom to initiate lawsuits in Vietnam to be guaranteed.

7 CONCLUSION

The freedom to sue is a fundamental part of civil rights and human rights. Vietnam's Civil Procedure law allows parties to have the right to sue when their legitimate rights and interests are infringed. Therefore, it is recommended that the Lawyers are allowed to directly sign the petition to initiate lawsuits on behalf of the clients and the first-instance civil court fee advances should be reduced. These are useful and enhance proposals to improve the efficiency and quality of the civil dispute settlement process in Vietnam. At the same time, it also enhances the freedom to sue and human rights in Vietnam’s civil proceedings and make it more and more consistent with the world standards.

21 Law on Fees and Charges 2015; Resolution No. 326/2016/UBTVQH14 dated December 30, 2016 "on collection, exemption, reduction, collection, payment, management and use of court fees and charges".
LIMITATIONS

However, having too many conditions to sue is difficult, complicated, and complicated for the petitioners and contributes to hindering the guarantee of freedom to sue and human rights in Vietnam.

FUTURE SCOPE

Many areas are not covered in this research article such as the history of the freedom to sue, the basis for forming the freedom to sue or practical application of the freedom to sue in Court etc. Therefore, the above discussed uncovered area of this article is known as the future scope.

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