

Resolution of Individual Labor Disputes by Court Method – Theory and Practice

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Abstract

Individual labor disputes are objective issues of industrial relations and the labor market. The more diverse and rich industrial relations are, the more labor disputes arise and increase in number. Understanding this, in recent years, our Party and State have always paid attention to improving the legal institutions on labor in order to create a harmonious, developed and modern labor market, especially the issue of building and improving the law on resolution of labor disputes in general and individual labor disputes in particular.

Keywords: individual labor disputes, court method, theory and practice

I. Theoretical basis for resolution of individual labor disputes by people's court method

Concept: Labor dispute resolution at the Court is a method conducted by the People's Courts - the state's authoritative body - following a strict sequence and procedures to safeguard the legal rights and interests of disputing parties (Vu, 2014). Resolving individual labor disputes can take various forms, including the judicial method. Resolving these disputes through the Court is linked to judicial authority and closely associated with the adjudicatory function of the Court (Tran, 2019). This involves "the Court's activity to examine evidence, rely on the law, and adjudicate cases by issuing judgments and decisions" (Nguyen, 2001).

Approach: The law on individual labor dispute can be approached as a regulatory legal field or as a procedural form. Regarding its role as a regulatory legal field, *the laws on the resolution of individual labor disputes at the Court encompass the amalgamation of legal norms that regulate the legal status, rights, and obligations of entities involved in resolving these disputes at the Court to safeguard the legal rights and interests of disputing parties and the common interests of society and the state.* Therefore, the content falling within the scope of regulation by the laws on the resolution of individual labor disputes at the Court includes: the Court's jurisdiction in resolving these disputes; the time limit for filing lawsuits, and the

procedures for resolving individual labor disputes. As a procedural form, the laws governing the resolution of individual labor disputes at the Court constitute a system of legal norms governing the relationship between the Court, the Prosecutor's Office, and participants in the litigation arising during the Court's resolution of individual labor disputes (Pham, 2015).

Significance: As the ultimate method of resolving individual labor disputes within the system of dispute resolution methods - an exclusive resolution method conducted by the state's authoritative body following strict legal procedures - the resolution of these disputes at the People's Courts holds various significances. *Firstly*, resolving individual labor disputes in court significantly impacts production stability, social stability, and economic development. Ensuring harmony and stability in labor relations is essential for the stability and growth of businesses. Failure to reconcile the interests of the involved parties in labor relations can lead to disputes that directly affect the harmony and stability of labor relations, thus impacting production stability and development. *Secondly*, resolving these disputes at the People's Courts is carried out by trained and experienced specialized officials, guaranteeing objectivity, accuracy, and adherence to the law. *Thirdly*, efficient resolution contributes to enhancing the judicial system's trial quality, thereby ensuring social justice and socialist rule of law (Le, 2015).

The process of resolving individual labor disputes ensures the uniform application of legal norms while assessing the practicality of labor laws, identifying limitations and shortcomings. This facilitates timely amendments, supplements, and enhancements to labor laws, aligning them with the realities of life. This has been evident through the continuous amendments and supplements to labor laws for the past time.

Principles: The principles governing the resolution of individual labor disputes at the People's Courts constitute the core principles and guiding ideologies adhered to by all participants involved in the resolution process (Tran, 2015). These include: *Firstly*, the principle of ensuring the parties' decision-making and autonomy in dispute resolution; *Secondly*, ensuring equality among disputing parties; *Thirdly*, adherence to principles regarding evidence provision and proof; *Fourthly*, the principle of reMediation in dispute resolution; *Fifthly*, the principle of publicly, transparently, objectively, timely, and lawfully resolving individual labor disputes.

Jurisdiction: In the theoretical aspect, determining the court's jurisdiction involves the following issues: *Firstly*, the jurisdiction to review and resolve labor cases held by the Court. This jurisdictional group encompasses: i/ Jurisdiction based on case types; ii/ Jurisdiction based on the Court's hierarchy; iii/ Jurisdiction based on territorial resolution by the Court. *Secondly*, the jurisdiction to decide on resolving the content of labor cases by the Court. Based on legal provisions, the Court will determine the correctness, incorrectness, and legal consequences resolution of individual labor dispute cases. This jurisdictional group of the Court is influenced by: the legal system applied by the country (civil law or common law); the legal norms of the substantive law built on qualitative or quantitative foundations.

Lawsuit: Through theoretical and practical research of some countries, the author found that initiating an individual labor dispute case involves the following main issues:

First, the litigant must have legal status and capacity of the subject. In order to determine the legal status of an entity entitled to initiate an individual labor dispute case, that entity must have rights and interests that need to be protected. In other words, if there are no rights and interests, there is no right to sue (Jolowicz, 2000). However, there are exceptions for cases where there are no legal rights and interests but the entity still has right to sue. It is a case where the legal representative initiates a lawsuit to protect the legitimate rights and interests of underage employees, individuals who are limited, have lost civil act capacity or have difficulties in perception and behavior control. At that time, these people participate in the proceedings as legal representatives and in case the representative organization as prescribed by law initiates lawsuits for the purpose of protecting the interests of the employees they represent. In addition to the legal status factor, the entity entitled to initiate lawsuits must have labor law capacity and labor behavior capacity. The provision of conditions on behavioral capacity so that the litigant can carry out the lawsuit on his/her own is to ensure that the person with the interests can express his/her true will in protecting his/ her interests in front of the Court.

Secondly, initiating an individual labor dispute lawsuit must fall within the jurisdiction of the Court

In civil proceedings, jurisdiction based on case types refers to a Court's capability to adjudicate and resolve specific civil cases. In other words, jurisdiction based on case types delineates the Court's scope of adjudication [12, tr169]. The Court accepts a litigant's lawsuit when the dispute falls within the jurisdiction stipulated for that case type. If the dispute does not fall within the jurisdiction defined by law for that case type, the Court will either reject the lawsuit or transfer it to another competent authority for resolution.

Thirdly, regarding the content, form of the lawsuit, and the method of submitting an individual labor dispute lawsuit: Through a certain form, the Court must ascertain the litigant's intent regarding bringing the dispute to court for resolution. According to the perspective of the scholar, on one hand, the law necessitates provisions concerning the form of the lawsuit and methods of submitting it, aiming to assist the Court in clearly defining the litigant's claims, specific information about the plaintiff, defendant, involved rights, obligations, thereby determining the legal relationships requiring resolution, the parties' participation status in the litigation, and the legal provisions applicable. Simultaneously, this facilitates favorable conditions for citizens when exercising their right to file a lawsuit in court. On the other hand, to keep pace with the convergence trend between adversarial and inquisitorial litigation models worldwide, ensuring effective and expeditious access to the Court for litigants, the law also needs to specify cases where litigants can directly present their lawsuit requests to the Court.

Sequence and procedures for resolution: The sequence and procedures for resolving individual labor disputes at the People's Courts constitute a comprehensive, closed process from inception to conclusion. Both general procedural law and specific laws governing the resolution of individual labor disputes are structured with a complete, cohesive framework, encompassing a system of regulations that delineate the rights and obligations of each party,

as well as the procedures for exercising these rights and obligations. Compared to general civil litigation procedures, the main differences and specifics in the procedures for resolving individual labor disputes in court lie primarily in the legal content of distinct regulations. For instance, regulations on conditions and procedures for court-mandated dispute resolution, mediation procedures within the court, procedures for examination and judgment pronouncement, and mechanisms ensuring the enforcement of judgments are distinctive features of these regulations.

II. Practice of resolving individual labor disputes through People's Court method

Jurisdiction to review and resolve labor cases at the Court:

Firstly, jurisdiction based on case types: Pursuant to Article 32 of the CPC 2015, the determination of jurisdiction is currently established based on identifying the types of legal issues arising from labor legal relations and the disputable nature of these issues. Clause 1, Article 32 of the CPC 2015¹ stipulates that individual labor disputes between employees and employers must go through the Mediation procedure of labor conciliators, but if the parties fail to comply or incorrectly execute the Mediation, or if the Mediation does not conclude or expires according to labor law provisions without the labor conciliator initiating the process, the law also outlines cases where individual labor disputes are not obligated to undergo Mediation. In instances where both parties in an individual labor dispute agree to opt for resolution through a Labor Arbitration Council but fail to establish the Council within the legally specified time frame or if the Council fails to make a decision on dispute resolution, or if one of the parties fails to enforce the Council's decision, they have the right to request the Court to resolve the dispute.

The aforementioned provisions are in line with the requirements of dispute resolution practices and the provisions of labor law. However, in terms of civil procedure law in general, the jurisdiction based on case types at the Court is outlined in Articles 26 to 33 of the Civil Procedure Code 2015. Nevertheless, *"certain provisions of the Civil Procedure Code cannot cover all types of cases regulated within thousands of legal articles encompassing civil, family, commercial, and labor law. Moreover, in reality, there are cases not specifically addressed by the law but are still resolved by the Court"* (Tong, 2007). For instance, disputes related to non-compete agreements in labor (conflicts regarding working for a competing party after terminating an employment contract), disputes concerning ride-sharing drivers and technology platform providers, or disputes concerning pre-contractual relationships (disputes over handout money, support fees, etc.). These instances illustrate limitations in accessing justice for litigants. To address the shortfall of specifying case types through listing, the Civil Procedure Code supplemented an article stating, *"The Court shall not reject the resolution of civil cases due to the lack of applicable laws"* (Clause 2, Article 4 of the Civil Procedure Code 2015). Broadly speaking, civil cases lacking applicable laws mean that at the time of resolving the civil case, there are no specific legal provisions directly regulating that particular civil case, requiring reliance on legal customs, fundamental principles of civil law, precedents, or principles of fairness to resolve the case. However, there are still varying

¹ Amended and supplemented by Clause 2, Article 219 of the Labor Code in 2019.

opinions on the application of this provision. For example, concerning social insurance disputes involving surrogacy for commercial purposes, separation, etc., where there are no applicable laws, can the Court have jurisdiction to resolve them? Additionally, interpreting what constitutes "fairness" is highly subjective, somewhat speculative, and seems to introduce an alternative method to resolve civil cases in general and individual labor disputes in particular.

Secondly, the jurisdiction of Court based on hierarchical level: The formulation of regulations on the jurisdiction of courts at all levels must be consistent with regulations on the organization of the court system. Article 35 of the Civil Procedure Code (CPC) has expanded the jurisdiction of district-level courts at the first instance. However, considering the complexity of certain case types that require specialized expertise and the demand for impartiality in litigation, Article 35 of the CPC specifies that district-level courts do not have first-instance jurisdiction over certain specific cases. Instead, this jurisdiction falls within the province-level courts. Accordingly, disputes or claims involving parties or assets abroad or those requiring legal representation by Vietnam's diplomatic representative office abroad, or for courts or authorities of foreign countries, fall under the first-instance jurisdiction of provincial-level courts.

Thirdly, the jurisdiction of the Court based on territory: The core of determining the jurisdiction to settle the labor disputes is to resolve the correlation between the requirement to ensure that the Court settles the case in due process and ensures the right of the parties to participate in the proceedings and the right to self-determination. The establishment of criteria and the order of priority of the criteria for determining jurisdiction based on territory must be based on this foundation.

The criteria for determining the jurisdiction to settle the labor disputes in general and the dispute over unilateral termination of the labor contract in particular based on territory include criteria for the court where the defendant resides, works if the defendant is an individual or where the defendant's head office is located if the defendant is an agency or organization (Article 39 CPC 2015). If the involved parties have an agreement with each other in writing, the plaintiff has right to initiate a lawsuit to request the Court where the plaintiff resides and works to settle the case (Point b, Clause 1, Article 39 of the CPC 2015). The Court's jurisdiction to settle the labor disputes based on territory is determined by the court where the labor contract was concluded or executed. Compared to Civil Procedure Code 2004 (amended and supplemented in 2011), Civil Procedure Code 2015 has added provisions stating that the court's jurisdiction remains unchanged even if there are changes in the places of residence, head offices or business addresses of the involved parties during the proceedings of a case.

Fourthly, jurisdiction of the Court based on the plaintiff's choice: In some cases, the plaintiff has right to choose the Court to initiate a lawsuit without the consent of the defendant. Specifically, according to Point dd, Clause 1, Article 40 of the CPC 2015: "*If there is a dispute over compensation for damages, allowances upon termination of the labor contract, social insurance, unemployment insurance, rights and interests related to*

employment, wages, income and other working conditions for the employee, the plaintiff, who is the employee, may request the court where they reside or work to settle the dispute".

Therefore, the regulations regarding the jurisdiction of the People's Courts in the Civil Procedure Code are quite clear. They inherit and develop from the practices of resolving individual labor disputes from the past to the present. However, there still exist disputes across various court levels regarding jurisdiction determination, leading to prolonged resolution time.

The decision-making jurisdiction of the Court in resolving individual labor disputes: The decision-making power of the Court in resolving individual labor disputes is manifested in two aspects: procedural litigation and the content of the dispute. Typically, procedural litigation relies on the provisions of procedural law, while the content of the dispute is based on the provisions of substantive law.

From a procedural perspective, the Court has right to make decisions related to all stages from case acceptance, trial preparation, first-instance trial, appeal, retrial such as: accepting or not accepting the case, returning the lawsuit petition, applying temporary emergency measures, suspending the resolution of the case, recognizing the agreement of the parties, suspending trial, appeals and objections...

From a content perspective, for individual labor dispute cases, the Court primarily focuses on addressing the plaintiff's claims and counterclaims from the defendant, pertaining to commonly disputed issues such as: Dispute over unilateral termination of the labor contract; Dispute over labor discipline leading to dismissal; Dispute over compensation for training costs; Insurance dispute in labor management... In practice, the primary demands may differ in actual cases, many arise from similar underlying concerns such as compensation, severance pay, job-loss pay, salary, social insurance, annual leave, etc. In order to make a ruling to decide the content of the dispute with the above requirements, the Court needs to rely on legal documents on substantive law such as the Labor Code 2019 and implementation guiding documents as well as a number of relevant specialized legal documents such as the law on social insurance, Employment Law, Health Insurance Law ...

Provisions on initiating an individual labor dispute lawsuit

In order to initiate an individual labor dispute lawsuit, the plaintiff must have right to initiate a lawsuit and the entity entitled to initiate a lawsuit must have full capacity for civil proceedings. According to Articles 186 and 187 of the CPC 2015, the entity initiating the lawsuit in civil matters can do so for their own interests, for the interests of others, or for public or state interests. Hence, the plaintiff, in case of the defendant, the person with relevant rights and obligations involved in the same case between the plaintiff and defendant (counterclaimant, persons with relevant rights and obligations making independent claims), must comply with these regulations. Additionally, the defendant's counterclaims must adhere to Article 200 of the Civil Procedure Code, while claims by persons with relevant rights and obligations must comply with Article 201 of the CPC 2015

In addition, according to Article 179 of the Labor Code 2019, entities entitled to initiate

individual labor dispute lawsuits include: employees and employers whose legitimate rights and interests regarding legal contract termination have been infringed, and labor collective representative organizations in cases where employees delegate authority in accordance with the law.

According to Clause 3, Article 190 of the Labor Code 2019, the statute of limitations for initiating individual labor dispute lawsuits is 01 year from *the date when each disputing party becomes aware that their legal rights or interests have been violated*. However, the issue of the statute of limitations does not limit the plaintiff's right to initiate a lawsuit because, despite the expiration of the statute of limitations, the Court still accepts and settle the plaintiff's claim; The court shall apply the statute of limitations only upon the request of a party or parties to apply the statute of limitations provided that this request must be made before the court of first instance issues a judgment or decision on the case. The person who benefits from the application of the statute of limitations has right to refuse to apply the statute of limitations, unless such refusal is for the purpose of evading performance of obligations (Article 149 of the Civil Code 2015).

Determining the precise starting point for calculating the statute of limitations is crucial as it defines the expiration of the time limit for resolving disputes, establishes the entitlement to make a claim, and identifies whether the authorized organization, institution, or individual can address the individual labor dispute. The regulations in the Labor Code of 2019 regarding the commencement of the statute of limitations for resolving individual labor disputes inherit provisions from the 2012 Labor Code. The "date of discovery of the act" (in other words, the starting point for the statute of limitations for resolving individual labor disputes), as stipulated in Section 3 of Article 190 of the Labor Code of 2019 (Section 2 of Article 202 of the Labor Code of 2012), is determined case by case for specific individual labor dispute cases. For instance, in a scenario where an employee voluntarily quits their job and doesn't return to work, if the employer requests the Court to settle the dispute by declaring the employee's unilateral termination of the employment contract illegal, demanding compensation, and reimbursement of training costs, the commencement of the statute of limitations (the initiation period) in this case will be calculated from the date the employee stopped working. If, before requesting the Court's intervention, the parties have asked a labor conciliator to conduct Mediation, the commencement of the initiation period will still be calculated "from the date each disputing party becomes aware that their legal rights or interests have been violated" without considering the date of the unsuccessful Mediation agreement by the labor conciliator or the expiration date of the Mediation without action by the labor conciliator. Similar considerations apply when determining the initiation period for individual labor dispute resolution through the Labor Arbitration Council.

Despite clear regulations, some Courts face uncertainty when reviewing whether the statute of limitations for labor dispute cases is still valid (establishing the starting point or restarting the initiation period), leading to prolonged case acceptance and resolution time.

Regulations on sequence and procedures for resolving individual labor disputes at People's Courts

According to the provisions of Vietnam's CPC 2015, it is necessary to take note a number of sequence and procedures for resolving individual labor disputes as follows:

- ***Procedures for resolving individual labor dispute cases:*** Labor case acceptance is the Court's receipt of the lawsuit petition filed by the plaintiff (either submitted directly to the Court by the litigant involved or sent through postal services) and entering them into the case acceptance registry. The time of case acceptance marks the initial starting point of the judicial process. Subsequent activities of the Court are carried out in accordance with Article 191 of Vietnam's Civil Procedure Code in 2015, which specifies the procedures for receiving and processing the initiating documents. The defendant's right to file a counterclaim is explicitly outlined in the Civil Procedure Code 2015 when the defendant has the right to counterclaim against both the claimant and other related parties independently. This stems from trial practice and ensures the defendant's rights, enabling the Court to thoroughly, comprehensively, specifically, and objectively consider the case by gathering complete opinions from all parties. This also provides a proactive approach for the trial council as they have prior knowledge of the information and requests provided by the involved parties.

One of the conditions for accepting a case is to ensure the conditions for initiating it (as stipulated from Article 186 to Article 190 of the Civil Procedure Code in 2015). The Civil Procedure Code 2015 only recognizes one form of initiation, which is the initiation document expressed in written Vietnamese. It does not recognize verbal initiation or any other form that is not written and expressed through symbols or languages other than Vietnamese. The initiation document is understood as a form of expressing intent in written form, allowing the entities with the right to initiate cases to draft and bring disputes to the Court for resolution. Based on legal standards derived from the guidance of the Supreme People's Court on the form of initiation documents, Article 189 of the Civil Procedure Code 2015 was amended and supplemented to specify the manner of preparing initiation documents for each entity and the accompanying documents and evidence. This helps the entities initiating the case proceed more easily and uniformly, ensuring consistency in the application by the prosecuting authorities. Principally, when submitting an initiation document to the Court, the plaintiff must attach the necessary documents and evidence to prove their right to initiate the case and the legitimacy of their claims (Clause 5, Article 189). However, if, due to objective reasons, the plaintiff cannot immediately gather all the required documents and evidence upon initiating the case, they must submit the existing documents and evidence to prove their legal rights and interests that have been infringed upon. The plaintiff can supplement or submit additional documents and evidence as requested by the Court during the case resolution process. This regulation aims to maximize the exercise of the right to initiate cases by the entities in reality, preventing excessive difficulty and inconvenience for the plaintiffs and avoiding arbitrary rejection of initiation documents by the Court. However, some argue that requiring the plaintiff to submit accompanying documents and evidence proving their legal rights and interests infringed upon remains a significant barrier for people to access justice, not aligning well with the principle that "people submit petitions to the Court, and the Court is responsible for receiving and handling them." (Le, 2015). The author personally agrees with the viewpoint that the current Civil Procedure Code stipulates the submission of

accompanying documents and evidence by the plaintiff to ensure the legitimacy and legal grounds of their petition. This regulation aims to save social time and effort, including that of the plaintiff and those making requests, and to educate individuals, institutions, and organizations about law compliance in civil proceedings (Pham, 2015). However, specific and clear guidelines are necessary to ensure uniformity in practical implementation.

In practice, in many cases, the Employer does not issue a written statement on the termination of the Labor Contract without allowing the Employee to enter the workplace by specific action, therefore, when employees file a lawsuit, they may fail to prove unilateral termination of the labor contract. Or some enterprises do not sign formal employment contracts with their employees, or if they do, it might be for a brief period. Despite this, the employees continue working, and the company pays them in cash. When informing the employee about taking time off, the company only communicates verbally and stops assigning tasks without allowing the employee to continue working. These situations make it difficult to determine the type of employment contract or the wage level as the basis for compensating employee's rights in case of labor disputes.

Regarding procedures for resolving individual labor dispute cases: The CPC 2015 stipulates very specific and clear procedures for receiving applications and accepting civil cases. Accordingly, if the plaintiff fulfills the necessary conditions for filing and for the court's jurisdiction, the court must accept the case filing and proceed with the case acceptance procedure (Article 191). In cases where the case filing lacks certain required information as per legal provisions, the court must notify and request the plaintiff to amend or supplement the filing (Article 193). Should the case filing not meet the conditions for filing or jurisdiction, the court will transfer or return the case filing (Articles 191, 192). Failure to deposit advance court fees, except in cases where it's unnecessary or exempt, will lead to the court returning the case filing (Article 192). *"The specificity of the CPC 2015 regarding the steps involved in the court's reception and acceptance procedure ensures transparency in the court's operations. This allows plaintiffs to verify whether the court correctly follows the legal procedures for receiving and accepting case filings, thereby safeguarding the plaintiff's right to sue"*².

From the perspective of labor proceedings, the limitations of the legal provisions regarding this issue for individual labor disputes lie in the complexity of the initiation procedures. For employees, the initiation process needs to be more flexible, straightforward, and easily executable since they are mostly individuals unfamiliar with labor laws. In practice, many instances arise where Power of Attorney documents submitted by litigants fail to ensure the authorized representation adequately. This includes cases where the authorization is limited, such as delegating authority only for contact with the Court, authorization based on the summons for a specific court date or authorizing participation in the litigation without specifying the mandate for a particular case or authorizing the submission of a lawsuit and

² Tran Phuong Thao, Pham Van Phat (2017), *"Mechanisms to ensure human rights, civil rights in procedures for resolving civil cases and some recommendations"*, School-level scientific topic: Mechanisms to ensure human rights and civil rights in civil proceedings according to the requirements of judicial reform and implementation of Constitution 2013, (Nguyen Thi Thu Ha - project manager), code LH-2016-27/ĐHL-HN.

accompanying documents without granting participation in the entire litigation process. However, the court of first instance often lacks proper verification, leading to the acceptance of these authorizations, allowing the appointed representatives to participate in throughout the proceedings³.

Mediation and preparation for trial of individual labor dispute cases: The specific procedures for mediation and trial preparation in individual labor dispute cases are regulated under Chapter XIII of the CPC 2015. *Firstly*, the deadline for trial preparation is stipulated in point b, Clause 1 of Article 203 of the CPC 2015, with a maximum trial preparation period of 3 months from the date of case acceptance (including any extensions). *Secondly*, the mediation procedure is outlined from Article 209 to Article 211 of the CPC 2015, emphasizing the importance of a meeting to verify submissions, access, and publicly present evidence before mediation.

First instance trial of a labor case: The first-instance labor court hearing is a legal procedure that manifests the characteristics of court proceedings. It comprises various activities, including inspection, comparison, review, and evaluation of all evidence to accurately apply the law in resolving the rights and obligations of the parties involved in the labor dispute. The composition of the labor dispute trial council must include people's assessors who are either currently or previously employed in labor union representative organizations or individuals knowledgeable about labor laws. This is a new feature introduced in the CPC 2015 to ensure the efficiency of the labor dispute trial process. All participants summoned to litigation must attend the trial; if absent, the court, depending on the circumstances, may decide to adjourn, continue the trial, or suspend case resolution. Article 259 of the CPC 2015 stipulates temporary suspension of trial sessions. This regulation stems from trial practice and contributes to safeguarding the legal rights and interests of the parties involved, ensuring that disputes are resolved openly, transparently and effectively.

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The data that support the findings of this study are available on request.

Competing Interests Statement

The authors declare that there are no competing or potential conflicts of interest.

³ Pham Thi Thu Phuong (2019), *Resolution of disputes over unilateral termination of labor contracts under Vietnamese law from the practice of the People's Court in Ho Chi Minh City*, PhD thesis in Jurisprudence, Graduate Academy of Social Sciences, p. 117

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