

## Resolving Land Complaints - Analysis from The Experience of In China and Some Suggestions for Vietnam

LE VAN LONG<sup>1</sup>, TRAN THI THU VAN<sup>2</sup>, NGUYEN THANH PHUONG<sup>3</sup> and BUI THI DAO<sup>4</sup>

### **Abstract**

*The article focuses on analyzing advances in Chinese law in resolving land complaint. Beside that, the article is also pointing out the limitations and inadequacies in the provisions of Vietnamese law. From there, recommendations are made to improve the current mechanism for resolving land complaints in our country.*

**Keywords:** *Disputing in The Land, Resolving Land Complaint, Chinese Law*

## INTRODUCTION

### Complaint resolution mechanism in the land sector in China

Disputing in the land sector are an unavoidable problem in countries around the world. These are conflicts between the managing subject and the managed subject around a major action decision, prohibited administrative acts in the process of state administrative management. When conflicts arise, Chinese law allows people to protest administrative decisions and administrative acts through two specific methods: (1) Resolving disputes by acceptance by competent authorities, administrative management agency according to the method of resolving appeals, (2) Disputing resolution adopted by the Court, also known as the judicial method or administrative aptitude.

In resolving land recovery, China law applies the 1999 Administrative Complaints Ordinance and the Conditions for Implementation of the 2005 Administrative Deficit Ordinance. To completely organize and operate the agency, from In 2008, the National Assembly's Legal Committee banned the issuance of notices on the establishment of administrative complaint laboratories in a number of provinces and centrally run cities. Initially the bans on experiments were in Beijing, Heilongjiang, and Jiangsu, then expanded nationwide. As of early 2014, there were 190 cities and districts of 24 provinces nationwide piloting. Practical application for the quality of complaint resolution, and people's trust in the government has been enhanced. Accordingly, the legal system on resolving shortcomings in the land sector in China needs to be analyzed through the following three aspects:

Based on the Article 2 of the Ordinance on Administrative Complaints the Ordinance, it is stipulated that: "When any citizen, legal entity or organization believes that a specific administrative act may infringe upon their legitimate rights and interests, they may the right to complain to an administrative agency, it shall resolve the complaint and make a decision to resolve the complaint. In addition, in Article 6 of the Ordinance, the cases in which rights are granted in the field of land are identified, including: (1) Decisions to sanction administrative violations in the field of land, (2) Coercion administrative level in the field of land, (3) Confirmation of rights such as various types of land use rights certificates, decisions on land allocation, land lease..., (4) Contract for receiving agricultural shares, (5) None performing legal functions, such as not paying taxes and fees on land, (6) In addition, in Clause 11, Article 6 of the Ordinance, the object of complaints in the field of land is defined in a more open way, when people have the right to complain about acts "when they believe that specific acts other

---

<sup>1</sup> Associate professor Ph.D Faculty of Law, Nam Can Tho University, Can Tho, Viet Nam

<sup>2</sup> Faculty of Law, Nam Can Tho University, Can Tho, Viet Nam E-mail: [tranthithuvandnc@gmail.com](mailto:tranthithuvandnc@gmail.com)

<sup>3</sup> Faculty of Law, Nam Can Tho University, Can Tho, Viet Nam

<sup>4</sup> Associate professor Ph.D Faculty of Law, Ha Noi Law University, Ha Noi, Viet Nam

entities of administrative agencies violate their legitimate rights and interests. Based on the opinions of many experts in China, it has been concluded that: "It seems that according to this regulation, all specific administrative actions that violate the legitimate interests of individuals, legal entities, or other organizations are within the scope of administrative complaints".

Comparing the law on resolving complaints in the field of land in China, along with Vietnam, we find: "Complaints in China allow consideration and processing of legal documents, which are the legal basis", reason for the issuance or implementation of the complained decision or administrative action". Previously, like Vietnam, Chinese law limited the right to complain to individual administrative decisions and specific administrative acts in the process of performing state management tasks in the land sector.

However, along with the development of society, in Article 7 of the Ordinance on Resolving Complaints in China, there has been an expansion of the scope, when citizens can complain about administrative decisions and specific administrative acts based on an illegal legal document, people have the right to complain and sue both normative administrative decisions instead of just being limited within the scope of these decisions. administration is individual like in Vietnam. This is considered an expansion of citizens' right to complain in China during the current period.

### **Regarding the Agency for Resolving Administrative Complaints in the Land Field**

In the mechanism for resolving land complaints in China, it will be resolved at one level and at both levels. Most land disputes in China will be resolved at one level. According to the one-level mechanism, if the result of resolving complaints is not thorough and satisfactory to the wishes of the people, the subject making the complaint will directly initiate a lawsuit in Court, instead of filing a second complaint. In addition, people can still make the second complaint at different levels in the state administrative system. This has similarities with the law on complaints in Vietnam.

However, there will be certain differences when China promotes the establishment of complaint resolution departments in general and complaints resolution in the land sector in an independent manner within state administrative agencies. The subject with the function of resolving complaints is the full time person in charge and does not perform other tasks. This is different when compared to Vietnamese law, when the agency that issues land recovery decisions, enforces land confiscation, and sanctions administrative violations in the land field will directly hold the concurrent position of ability to resolve disputes related to administrative decisions or administrative acts issued by them or those issued by these agencies.

Based on China's legal regulations on resolving complaints, localities have implemented complaint resolution based on the principle that the complaint settlement agency is not at the same time the subject of the complained decision or behavior. In addition, the Chinese government has also implemented training and certification for entities with local complaint resolution functions. This helps the complaint resolution agency to be independent, fair, and equitable among the subjects in resolving complaints, and at the same time contributes to the professionalization of complaint settlement in general and the settlement of complaints about land in particular in China.

### **Regarding Administrative Procedures in Resolving Land Complaints**

Related to the process and procedures for resolving complaints in the land sector in China. Realizing that some regulations tend to expand the rights of subjects making complaints, when compared with Vietnamese law. For example: During the process of requesting complaint resolution, the person directly making the complaint, as well as the person with rights and obligations related to land, can make the complaint themselves or entrust a representative to participate the complaints. Accordingly, the law encourages the participation of lawyers in the complaint resolution process. Because this forces the agency with the function of resolving complaints to be cautious in resolving complaints. In the process of resolving complaints, in order to simplify procedures, as well as ensure the legitimate rights and interests of people; In case the complainant does not clearly know the agency competent to resolve the complaint, this subject can complain directly to the district government where the disputed job occurred. This regulation ensures the best way for people to express their power in state

administrative management, as well as ensure democracy and human rights in state administrative management in the field of land. Comparing with Vietnamese law, we find that the 2011 Law on Complaints still has "gaps" in the complaint resolution process, as Article 7 of the Law on Complaints stipulates: "When there are grounds to believe that an administrative decision or administrative action is illegal and directly infringes upon one's legitimate rights and interests, the complainant shall first file a complaint with the person who issued the administrative decision. ...". Reality shows that there are agencies and entities that have the right to issue an administrative decision but do not have the authority to resolve complaints. For example: if a police officer sanctions an administrative violation, based on Article 17-26 of the 2011 Law on Complaints, they do not give this subject the right to resolve the complaint. Regarding duties, the person making the complaint must "complain to the right person with authority to resolve it". From this regulation, if the complainant does not send the complaint to the correct authority, it will not be resolved according to the law. These are loopholes that need to be researched and completed to best ensure the legitimate rights and interests of the person making the complaint.

### **Existing Problems in Resolving Land Complaints Under Vietnamese Law Compared to Chinese Law - Experience and Solutions**

Through the complaint resolution mechanism in the land sector in China, we have seen regulations that are consistent with Vietnamese law, but there are still progress points that need to continue to be collected and promoted improvement the effective land settlement mechanism in Vietnam. For example:

Firstly, when resolving land complaints in China, most of the work is handled by directly competent superiors. However, in Vietnam, this authority will make the agency with the administrative decision or administrative action complained of handle the first complaint. In this issue, Vietnamese and Chinese lawmakers have their own assessment of the same issue. When Vietnamese law focuses on dialogue to resolve instabilities and accept disputes, then find common ground. On the contrary, from the perspective of Chinese law, it is believed that how to resolve disputes correctly, so that the results are resolved objectively and without bias, this is a position because China does not allow the subject to Complain will directly resolve the complaint. In essence, in Vietnam, in case the person with authority to resolve the matter does not proceed with the resolution or does not resolve it thoroughly, the person with the right to complain will transfer the complaint to the superior of the subject subject to the first complaint. If the second complaint resolution mechanism still cannot find common ground and satisfy the wishes of the subject conducting the absorption, this subject can submit an application to a neutral agency, the Court, to consider and resolve the complaint. Similar to the principle of resolving complaints in the land field, if the Chairman of the District People's Committee resolves the first complaint, the Chairman of the Provincial People's Committee will have the authority to resolve the second complaint. On the contrary, if the chairman of the provincial People's Committee is the subject to resolve the issue for the first time, then the Minister of Natural Resources and Environment is the subject to resolve the complaint for the second time. Many people believe that allowing the Ministry of Natural Resources and Environment to participate in resolving complaints is a premise for solving difficulties in resolving complaints. Because in general, the person whose administrative decision is complained about is also the person resolving it, so the results in some cases will not be objectively transparent. The Minister of Natural Resources and Environment's direct participation in resolving complaints is a premise to help people point out violations in the local land management process. However, this has not really been applied effectively and consistently according to the provisions of the 2011 Law on Complaints. Many expert opinions believe that Clause 3, Article 66 of the 2013 Land Law is invisible. generally invalidated the value of the Minister of Natural Resources and Environment's authority to resolve issues in the land sector. Analyzing this definition, it is found that the mechanism of land allocation and legal lease is not allowed. However, the land recovery mechanism allows the Provincial People's Committee to decide to recover land or authorize the District People's Committee to decide to recover land in cases where the land recovery area includes subjects. under the jurisdiction of the Provincial and District People's Committees (Article 66 of the 2013 Land Law). On that basis, most provinces and cities simultaneously delegated the authority to recover land in the project to the district-level People's Committee. This indirectly affects the authority to resolve complaints under the Law on Complaints 2011 because if the authority to recover land is completely delegated to the district-level People's Committee, then the authority to

resolve the first complaint (if yes) is definitely the Chairman of the district People's Committee; The authority to resolve a second complaint in this case falls under the jurisdiction of the Provincial People's Committee. In the case just mentioned, the case was resolved "encapsulated" within one province.

At that time, if the law does not allow "authorization" in land recovery, it means that the authority to resolve the first complaint will fall under the authority of the Chairman of the Provincial People's Committee and the authority to resolve the second complaint regarding Specialized Minister (in this case, the Minister of Natural Resources and Environment) . From the above issue, the authors believe that Clause 3, Article 66 of the 2013 Land Law needs to be adjusted. Accordingly, the principle of land allocation and land recovery needs to be developed on the basis that the entity with the authority to allocate land will directly collect the land. Removing the authorization mechanism in land recovery will contribute to improving the quality of complaint settlement in the land sector in general and settlement in the field of land recovery in particular.

Secondly, China's Law on Administrative Complaints in the Land Field stipulates that the complaint settlement agency belongs to the system of state administrative agencies, both managing and resolving complaints. However, there are differences compared to Vietnamese law. In China, specialized complaint resolution agencies will be established within the administrative system, which will ensure objectivity, fairness and independence in complaint resolution.

From the above perspective, the current complaint resolution mechanism in China has established independent complaint resolution agencies or departments, belonging to legal departments at all levels. Although in some localities there are still cases where complaints are handled concurrently, China is still trying to strengthen the team of specialized officials to resolve complaints locally. Aiming to resolve complaints objectively, we believe that the complaint resolution model in China is an issue worth studying. Accordingly, in Vietnam, a similar complaint resolution mechanism should also be built, with the resolution subject not being concurrent, the complaint resolution subject will receive intensive training and a training certificate, before when handling complaints like in China.

Thirdly, the Complaint Law in China allows people to complain directly to the Government if they think there is no competent agency to resolve it. Accordingly, there will be a citizen reception department and specific instructions on the competent authority to resolve complaints. However, if compared under Vietnamese law, even though the 2011 Law on Complaints, the 2013 Law on Citizen Reception, and Circular 04/2021/TT-TTCP regulate the process of continuing citizenship, there are related regimes. to receive citizens during the process of resolving complaints. However, many opinions argue that whether receiving citizens is a process within the procedure for resolving complaints or not? If the competent authority ignores the process of receiving citizens, can the citizens make a complaint? According to Clause 11, Article 2 of the Law on Complaints 2011: "Resolving complaints means accepting, verifying, concluding and making decisions to resolve complaints."

Through this, we realize that receiving citizens is not part of the process of resolving complaints in general and resolving complaints in the land sector in particular. Because of this inconsistent regulation, many localities do not have representatives to receive citizens, as well as to guide the order and procedures for resolving complaints in general. From the issue towards synchronization and unification in legal regulations. The author believes that Clause 11, Article 2 of the 2011 Law on Complaints, needs to be specifically revised as follows: "Resolving complaints means receiving citizens, processing, verifying, concluding and making decisions to resolve complaints".

In short, the right to complain is a constitutional right, recognized by law. Therefore, to ensure people's legitimate rights and interests, the 2011 Law on Complaints needs specific adjustments. Through analysis and legal experience in resolving complaints from China, there are suggestions to help Vietnam perfect the complaint resolution mechanism in the current period./.

## **REFERENCES**

Judgment 522/2018/HC-PT dated October 4, 2018 on complaints against administrative decisions on land management. Constitution of the Republic of China (Taiwan); Land Occupation Law and Land Equalization Law (Taiwan).

- Le citoyen et son administration”, sous la direction de Celine WIENER and Michel LECLAINdre, (Preface de Guy BRAIBANT), Group Imprimeria National, France 2000.
- Nguyen Hoang Anh (2021), Bàn về mối quan hệ và hiệu quả của cơ chế giải quyết tranh chấp đất đai ở Việt Nam hiện nay (Discuss the relationship and effectiveness of the land dispute resolution mechanism in Vietnam today), Kỷ yếu hội thảo khoa học: Cơ sở lý luận và thực tiễn của việc sửa đổi Luật đất đai năm 2013, Khoa Luật, Trường Đại học Quốc gia Hà Nội, November, 24, 2021.
- Nguyen Thanh Phuong- Cao Thanh Son (2020), Những bất cập trong Luật khiếu nại năm 2011- Một số trao đổi nhằm hoàn thiện (Inadequacies in the Law on Complaints 2011 - Some discussions for improvement), Tạp chí Giáo dục và Xã hội, số 108 (Journal of Education and Society, No. 108 (169).
- Nguyen Thanh Phuong (2020), Quyền khiếu kiện trong lĩnh vực thu hồi đất, bồi thường, hỗ trợ, tái định cư - Thực trạng và hướng hoàn thiện (Right to sue in the fields of land recovery, compensation, support, and resettlement - Current status and direction for improvement), Tạp chí Nghề luật, Học viện Tư pháp, Số 7 (Journal of the Legal Profession, Judicial Academy, No. 7.
- Phan Trung Hien- Lê Hoang Xuan Huong (2013), “Vì sao người dân ít chọn khiếu kiện tại tòa án khi có sự không đồng thuận về thu hồi đất, bồi thường, hỗ trợ, tái định cư” (“Why do people rarely choose to sue in court when there is disagreement about land recovery, compensation, support, and resettlement?”), Tạp chí Nghề luật, Học viện Tư pháp, số tháng 5, Journal of the Legal Profession, Judicial Academy, No. May.
- Phan Trung Hien (2011), “Quyền khiếu kiện khi Nhà nước thực hiện việc thu hồi đất, bồi thường, hỗ trợ, tái định cư” (“Right to file a lawsuit when the State implements land recovery, compensation, support, and resettlement”), Tạp chí Luật học số 7/2011 (Tạp chí Luật học số 7/2011).
- Phan Trung Hien (Author, 2017), “Giáo trình pháp luật về quy hoạch và giải phóng mặt bằng” (Legal textbook on planning and site clearance), Nxb Chính trị Quốc gia năm 2017 (National Political Publishing House 2017).
- Pham Duy Nghia (2014), Giải quyết tranh chấp trong thu hồi đất (Resolving disputes in land acquisition), Tạp chí Nghiên cứu Lập pháp số 14 (270), Journal of Legislative Studies No. 14 (270).
- R.O. Rost and H.G. Collins, 1993, Land valuation and compensation in Australia, Australian Institute of Valuers and Land Economists
- Thu Phuong, Trang tin quốc hội: Ủy ban pháp luật thẩm tra sơ bộ báo cáo của chính phủ về công tác giải quyết khiếu nại, tố cáo năm 2018 (National Assembly news site: The Law Committee preliminarily verifies the government's report on the settlement of complaints and denunciations in 2018) <http://quochoi.vn/uybanphapluat/giamsat/Pages/giamsat.aspx?ItemID=229> [truy cập ngày 1/4/2020], accessed on 1/4/2020.
- Vu Kieu Oanh (2018), Kinh nghiệm thi hành khiếu nại hành chính ở Trung Quốc (Experience in implementing administrative complaints in China), Tạp chí Dân chủ Pháp luật, số 2 (287) (Journal of Legal Democracy, No. 2 (287).
- Vu Kieu Oanh (2016), Pháp luật khiếu nại hành chính của Trung Quốc và một số gợi ý cho Việt Na (China's administrative complaint law and some suggestions for Vietnam), Tạp chí Quản lý Nhà nước 2016 (State Management Journal 2016).
- World Bank (2011), Compulsory Land Acquisition and Voluntary Land Conversion in Vietnam: The Conceptual Approach, Land Valuation and Grievance Redress Mechanisms.

**Information about the author:**

Fullname: Tran Thi Thu Van

Address: Department of Law, Nam Can Tho University, 68, Nguyen Van Cu Ext Street, An Binh Ward, Ninh Kieu District, Can Tho city, Viet Nam.

Contact: tranthithuvandnc@gmail.com, (+84) 984615716