
ROLE OF PROSECUTOR IN INSPECTING RETURN OF APPLICATIONS: FILING A LAWSUIT UNDER THE PROVISIONS OF THE VIETNAMESE CIVIL PROCEDURE CODE

Tran Xuan Sy, People's Procuracy of Region 16, Ho Chi Minh City, Vietnam

ABSTRACT

The article analyzes the role of the Prosecutor in supervising the decision to return the petition according to the Vietnam Civil Procedure Code. The author focuses on clarifying the legal basis, content, and scope of the Procuracy's supervision in the stages of initiating and accepting civil cases. From there, it highlights the limitations in practical application and proposes solutions to ensure the right to initiate a lawsuit, enhance the effectiveness of judicial supervision, and improve transparency in civil proceedings.

Keywords: Procuracy, return of petition, civil proceedings

1. Introduction

In the Vietnamese legal system, the People's Procuracy is the agency responsible for supervising compliance with the law in judicial activities, ensuring that the law is strictly and uniformly enforced. In civil proceedings, in addition to the Court, the agency that exercises judicial power, the People's Procuracy plays a particularly important role in ensuring that the process of resolving civil cases is conducted in accordance with regulations, protecting the rights and legitimate interests of citizens, agencies, and organizations, and at the same time contributing to strengthening the socialist legal system.

One of the stages of special legal significance in civil proceedings is the Court's consideration of the petition. The decision to return the petition directly affects the litigant's right to sue and access to justice, and is the starting point for the entire litigation process. Civil Procedure Code 2015 (amended and supplemented in 2025) (Civil Procedure Code 2015) has provided quite detailed regulations on the basis, authority, and procedures for returning the petition in Articles 192 and 193. However, in practice, there are still many cases where the Court returns the petition without legal basis, violates procedures, time limits or does not ensure

the legitimate rights of the petitioner. That requires close, timely, and objective supervision by the People's Procuracy - specifically, the role of the Prosecutor directly assigned to supervise this activity.

The practice of the Procuracy shows that although the legal regulations have established the authority and responsibility of the Procuracy in supervising the return of petitions, the awareness and implementation in localities are still inconsistent. Some Procurators are still confused when determining the legal basis for making recommendations on the Court's decision to return petitions; in some cases, the Procuracy has not received the decision to return petitions on time, leading to limitations in the exercise of the right to supervise. These shortcomings significantly affect the quality and effectiveness of the supervision of compliance with the law in civil proceedings.

This article focuses on analyzing the legal basis regulating the activities of supervising the return of petitions; clarifying the content, scope and role of the Prosecutor in this process; at the same time pointing out some difficulties and limitations in practical application and proposing solutions to improve the quality and effectiveness of the activities of supervising the return of petitions of the Court in the coming time.

2. Legal basis for the prosecution of the return of the petition

The activity of supervising the return of the petition of the People's Court is a content of the function of supervising the compliance with the law in the judicial activities of the People's Procuracy, stipulated in Article 4 and Article 27 of the Law on Organization of the People's Procuracy 2014 (amended and supplemented in 2025). Accordingly, the Procuracy is responsible for ensuring that all litigation activities are conducted in accordance with the provisions of law, without affecting the legitimate rights and interests of agencies, organizations, and individuals. In civil proceedings, this power is specifically demonstrated through the activities of the Procurator at each stage, including the stage when the Court considers the acceptance and return of the petition.

The legal basis directly regulating the return of the current petition is stipulated in Articles 192 and 193. 2015 Civil Procedure Code. According to this provision, the Court may only return the petition in cases specifically prescribed by law, such as: The case is not under the jurisdiction of the Court; the petitioner does not have the right to file a lawsuit or does not

have sufficient capacity to conduct litigation; does not meet the conditions to file a lawsuit; or does not amend or supplement the petition as required by the Court within the time limit prescribed by law.

At the same time, Resolution No. 04/2017/NQ-HDTP dated May 5, 2017 of the Council of Judges of the Supreme People's Court has provided detailed guidance on the application of a number of provisions in Article 192 of the 2015 Civil Procedure Code, especially on the grounds, order, procedures for returning the petition and the right to re-file a lawsuit. This is an important professional basis for the Prosecutor to compare and determine the legality and reasonableness of decisions to return the petition in practice.

According to the provisions of Clause 2, Article 21 Pursuant to the 2015 Civil Procedure Code, the People's Procuracy exercises the right to supervise compliance with the law in civil proceedings; participates in court sessions and meetings as prescribed by the Code; and has the right to make recommendations and appeals against violations of the law in the process of resolving civil cases. Thus, when the Court issues a decision to return the petition, the Prosecutor has the right and responsibility to review the entire file, compare it with legal provisions to ensure that the return of the petition is based on the correct basis, in the correct order and within the prescribed time limit. If a violation is discovered, the Prosecutor may issue a recommendation requesting the Court, according to the procedures prescribed in Article 194 of the 2015 Civil Procedure Code.

It can be seen that the current legal system has established a complete and unified legal framework for the inspection of the return of petitions. However, in the application process, there are still some gaps that need more detailed guidance, especially regarding the time limit for the Court to send the decision to return the petition to the Procuracy, the form of transferring electronic files, and the mechanism for responding to and receiving protests. These are the practical issues that are arising for the inspection activities of the Procurator and will be analyzed more specifically in the following sections of the article.

3. The role of the Prosecutor in supervising the return of the petition

In litigation activities, the stage when the Court considers accepting or returning a petition is of particular importance, because this is the first step in determining whether the case will be brought to trial or not. " *The right to sue is the basis for accessing justice* " [\[1\]](#).

The return of a petition not only directly affects the litigant's right to sue but also reflects the level of compliance with the law in the activities of the judicial agency. Therefore, the activity of supervising the return of a petition is one of the key contents in the work of supervising the settlement of civil cases. At this stage, the Prosecutor is the person who directly exercises the right to supervise - playing a central role in ensuring the legality, objectivity and consistency in the application of the law by the Court.

The role of ensuring the legality of the decision to return the petition

First of all, the Prosecutor has the role of ensuring the legality and basis of the decision to return the petition. According to the provisions of Articles 192 and 193 of the 2015 Civil Procedure Code, the Court's return of the petition can only be carried out when there are specific legal grounds. In practice, there are still cases where the Court incorrectly determines the jurisdiction, incorrectly applies the provisions on the conditions for filing a lawsuit or the provisions on the form and content of the petition. Therefore, the Prosecutor must closely examine the file, compare the content of the petition, the accompanying documents and evidence with the provisions of law to conclude whether the return of the petition is justified or not.

When detecting signs of violation, the Prosecutor can request the Court to cancel the decision to return the petition and request to accept the case according to regulations. In practice, many cases after receiving recommendations from the Procuracy, the Court has accepted the petition again, thereby ensuring that the citizen's right to file a lawsuit is fully exercised. " This clearly demonstrates the role of the Prosecutor in protecting the rule of law and human rights in litigation activities."[\[2\]](#)

The role of the Court in detecting and remedying violations of the law

Another important function of the Prosecutor is to promptly detect and handle violations of the law during the process of the Court considering the petition. According to Clause 2, Article 21 of the 2015 Civil Procedure Code, the Procuracy has the right to protest and make recommendations when detecting violations during the process of resolving civil cases. In reality, some Courts are slow to send decisions to return the petition to the Procuracy, do not clearly state the legal basis in the decision, or do not clearly state the right of the plaintiff to re-submit the petition as prescribed in Clause 3, Article 192 of the Civil Procedure Code.

In the face of such violations, the Prosecutor must not only detect them but also propose appropriate remedies. Specifically, the Prosecutor can issue a recommendation to the Court according to the procedures prescribed in Article 194 of the Civil Procedure Code. This activity directly contributes to ensuring that all decisions of the Court comply with the provisions of law, avoiding arbitrary and subjective situations in restricting citizens' right to sue.

The role of protecting the legitimate rights and interests of the parties and ensuring access to justice

In the context of judicial reform, promoting human rights and citizens' rights in litigation activities is a consistent principle. *“The protection of human rights in the civil field is voluntarily and proactively initiated and implemented by the litigants ”* [3]. As the person exercising the right to prosecute, the Prosecutor must comprehensively consider the Court's assessment of the validity of the petition, the guidance for the petitioner to amend and supplement the petition, or whether the notice of return of the petition is carried out on time. Through this activity, the Prosecutor contributes to ensuring the people's right to access justice and the right to a fair trial - one of the important constitutional principles.

In particular, in civil cases involving vulnerable people, such as people with disabilities, minors, or people living in remote areas, the role of the Prosecutor in protecting the rights of the public prosecutor becomes even more important. Closely monitoring decisions to return petitions helps limit the situation where the Court "avoids" complicated cases, thereby contributing to strengthening people's trust in judicial activities.

4. Some shortcomings in regulations and practices of supervising the return of petitions

The current legal system has relatively complete provisions on the return of petitions and the right to prosecution of the People's Procuracy, but through the application process, it has been shown that there are still many shortcomings and limitations in both legality and implementation , affecting the effectiveness of prosecution activities and ensuring the right to file lawsuits of citizens.

Legal regulations still lack specificity and consistency.

The provisions of the 2015 Civil Procedure Code , especially Articles 192 and 193 , although clearly defining the grounds for the Court to return the petition, have not yet

specifically stipulated the responsibilities, authority and procedures for the Procuracy to supervise this decision. The Law only stops at stating the principle that " *The Procuracy exercises the right to supervise compliance with the law in civil proceedings* ".^[4] without providing detailed instructions on the method, scope and duration of inspection. As a result, in practice, local Procuracies have not yet reached a consensus on the process of receiving, assigning, and processing returned petitions. In addition, Resolution No. 04/2017/NQ-HDTP of the Supreme People's Court's Judicial Council only provides detailed guidance on the activities of the Court without corresponding regulations on the coordination responsibilities of the Procuracy. This makes the process of exchanging, providing documents, and making decisions between the two agencies still lacking legal binding, making it difficult for Procurators to perform their prosecution duties promptly and fully.

Lack of a mechanism to ensure the deadline and form of sending the decision to return the application to the Procuracy

The Court's decision to return the petition to the Procuracy has not been clearly regulated in terms of time limits. The Civil Procedure Code only stipulates that the Court "sends to the Procuracy of the same level" but does not specify the time, form and responsibility for implementation. In reality, there are cases where the Court sends it late, even after the petitioner's appeal period has expired, leading to the Procuracy being unable to promptly inspect and make recommendations.

The lack of mandatory regulations on the form of submission (directly, via professional software, or paper documents) also creates inconsistencies between units, affecting the accuracy and speed of inspection activities. In the context of the inspection industry undergoing digital transformation, this is a point that needs to be guided uniformly soon to ensure the effectiveness and legality of electronic records.

The petition mechanism has not yet fully developed its effectiveness.

According to the provisions of Article 194 of the 2015 Civil Procedure Code, the Procuracy has the right to "recommend" the decision to return the petition illegally. However, in reality, the number of recommendations on this issue is still very low, not fully promoting the role of the Procuracy.

In addition, there are no clear regulations on the effectiveness and handling procedures after the Procuracy issues recommendations, leading to some recommendations being prolonged, not responded to or implemented slowly, reducing the effectiveness of the prosecution.

5. Solutions to enhance the role of Prosecutors in supervising the return of petitions

From the above analysis, in order to improve the effectiveness and fully promote the role of the Prosecutor in the inspection of the return of petitions, it is necessary to synchronously deploy many legal, organizational, human, and professional guarantee solutions, in order to overcome current shortcomings and meet the requirements of judicial reform.

First, perfecting legal regulations and professional guidance.

It is necessary to continue to improve the provisions of the Civil Procedure Code and the guiding documents for implementation in the direction of more specific regulations on the order, time limit, and method of sending the decision to return the petition to the Procuracy. It is necessary to add Article 192 or Article 193 of the Civil Procedure Code to clearly stipulate the responsibility of the Court in immediately sending the decision to return the petition to the Procuracy at the same level within a certain time limit. At the same time, the Supreme People's Procuracy needs to issue or update unified professional instructions on the content, process and skills of supervising the return of petitions; clarify the authority of the Procurator in making recommendations and protests against violations, as well as the responsibility to report and archive prosecution records. Having detailed instructions will help ensure consistency across the industry, avoiding different applications between localities.

Second, strengthen training, fostering and standardizing the team of Prosecutors.

Prosecutors are the key factor determining the quality of prosecution. Therefore, it is necessary to improve the legal capacity and professional skills of prosecutors through organizing specialized training courses on civil litigation prosecution, especially skills in examining records, detecting violations, and arguing protests and recommendations.

At the same time, the People's Procuracy at all levels should encourage prosecutors to self-study and synthesize common types of violations in practice to form a bank of professional

situations to serve the work of specialized prosecution. Building a team of prosecutors who are "both red and professional", with strong political will, good knowledge of the law, and legal critical thinking, is a core factor to enhance the position and prestige of the Procuracy in the civil field [5].

Third, innovate inspection methods and increase the application of information technology.

Faced with the need for digital transformation in judicial activities, the Procuracy needs to promote the application of information technology in the work of supervising the return of petitions. Connecting case management software between the Court and the Procuracy will help send and receive decisions on returning petitions quickly and accurately, while creating conditions for Prosecutors to monitor, compile statistics and report automatically. In addition, a shared database system on decisions to return petitions should be established to help detect repeated violations, thereby making general recommendations for prevention. This is also a way to shift the inspection activity from "passive, detecting violations" to "proactive, predicting and preventing violations" [6].

Fourth, strengthen coordination between the Procuracy and the Court.

The inspection of the return of petitions is only effective when there is close and proper coordination and respect for the functions of each agency. The Procuracy and the Court need to periodically exchange and unify the professional procedures in the stages of receiving and returning petitions; organize conferences to draw common experiences, share typical cases, and cases with different perceptions in law application.

The coordination relationship must be built on the principle of independence but togetherness, ensuring that the Procuracy properly performs its prosecutorial function, while at the same time supporting the Court to improve the quality of trial activities, contributing to consolidating socialist legality.

In short, enhancing the role of the Prosecutor in supervising the return of petitions is not only an internal requirement of the Procuracy but also one of the important tasks of the current judicial reform. When fully equipped with legal basis, professional capacity, and support tools, the Prosecutor will play the role of "legal gatekeeper", ensuring that the right to sue of citizens is respected and the law is strictly enforced.

6. Conclusion

The activity of supervising the return of petitions is an important function in the function of supervising compliance with the law of the People's Procuracy, contributing to ensuring that the right to sue of citizens - a fundamental right recognized by the Constitution and the law - is properly, promptly, and equally exercised before the law. In the context of current judicial reform, when the requirements for improving the quality of judicial activities and strengthening power control are increasingly raised, the role of the Procurator in this period becomes clearer and has profound practical significance.

Through research, it can be affirmed that the current law has initially created a legal framework for the inspection of the return of petitions, but there are still gaps and shortcomings in regulations as well as in implementation. To overcome this, it is necessary to continue to improve the legal basis, unify professional processes, enhance training and skills development for Prosecutors and promote the application of information technology in inspection work. At the same time, improving the effectiveness of coordination between the Court and the Procuracy is a key factor to ensure that inspection activities are carried out objectively, promptly and in accordance with the law.

With the above synchronous solutions, it can be believed that the Procurator will increasingly affirm his central position in judicial prosecution activities, contributing to protecting the socialist legal system, maintaining people's trust in justice and the activities of judicial agencies, thereby effectively implementing the goal of "Ensuring that the law is strictly and uniformly enforced" in the spirit of the law.

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