



COURT-ANNEXED MEDIATION AND DIALOGUE IN VIET NAM

Court-annexed mediation and dialogue is a form of mediation conducted under the auspices of the court in the pre-trial stage of a case, giving the parties an opportunity to explore whether the dispute can be settled amicably before going to court. This is a new dispute resolution mechanism in Viet Nam, introduced through a pilot program launched in 16 localities throughout the country since 2018 . Cases submitted to court will be first transferred to Mediation and Dialogue Centres at the Court, which are established under the pilot program, except cases not under the court’s jurisdiction, cases not subject to mediation or dialogue, and cases where the parties don’t wish for mediation or dialogue at the court. The majority of mediators are retired judges, procurators, lawyers, legal experts who have experience and capability in resolving disputes. Court-annexed mediation and dialogue is recognized as an important initiative to help reduce the number of cases submitted to court and to enhance the quality of court process for complicated cases.

¹ Decision No. 332/QĐ-TANDTC

Under EU JULE, a survey was conducted to assess the effectiveness of the pilot model on Court-annexed mediation and dialogue and provide recommendations to law makers for improving the draft of a new Law on Court-annexed mediation and dialogue.



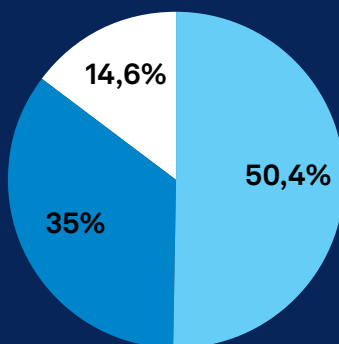
SURVEY

- **Timeframe:** 1 – 3/2020
- **Location:** Hai Phong, Ha Noi, Nghe An, Ho Chi Minh City.
- **Methodology:** seminars collecting opinions of respondents, survey through sending questionnaires, interviewing respondents through phone
- **Survey targets:** 400 respondents including 170 mediators; 55 persons who are parties to mediation; 95 court officials; 80 lawyers and legal practitioners
- **Purpose:** collect information and opinions about the pilot model, especially concerning protection of rights and legitimate interests of vulnerable groups



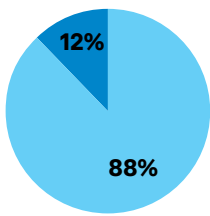
90%

of mediation and dialogue cases involve women



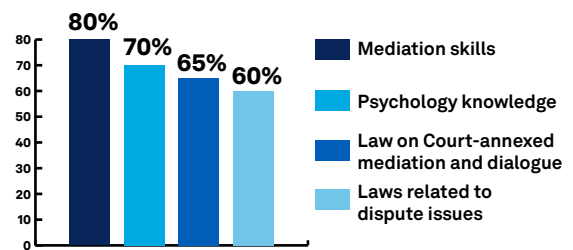
- retired judges, court officials
- other retired judicial officials
- lawyers, legal experts

Majority of mediators are retired judges



- Average time to settle a case with CAM
 - under 1 month
 - over 1 month
- Average time to settle a case with judicial mediation (Mediation following Civil Procedure): **2 – 4 months**
- Average time to settle a case with first instance trial: **5 – 7 months**

CAM is an effective, time-saving mechanism



Mediators' needs assessment for training



CHALLENGES

- The number of mediators appointed and allocated is disproportionate to the number of cases received. As a result, certain Mediation and Dialogue Centres at courts suffered from work overload, which undermines the overall quality of mediation.
- The current 30-day time limit for conducting mediation is too short to effectively resolve complicated cases, e.g. cases that require further consultations from government agencies.
- The pilot program also identified certain areas that require specific regulation. For example, there were difficulties and inconsistencies with application of procedural laws related to mediation when the parties to the dispute request temporary emergency measures.
- The allocation of budget is insufficient to guarantee adequate infrastructure and appropriate payment for mediators to ensure effective mediation. There is also no funding for related costs such as telephone or on-site evaluation.
- There is a lack of effective dissemination on the new pilot model. As a result, many people who seek for dispute resolution at the court are not aware of the new mechanism. This leads to confusion and unwillingness to cooperate when they are notified that their case will be transferred to the mediation centres at the court.



RECOMMENDATION

On the draft Law on Court Annexed Mediation and Dialogue

- Training on professional mediation knowledge and skills and issuance of related certificates should be carried out by the Court Academy since the People's Courts are the agencies selecting and appointing mediators.
- Develop a Code of Conduct for mediators following international standards, with reference to the regulations of successful mediation centres from other countries such as Singapore, India, etc. The draft Law on Court Annexed Mediation and Dialogue should also include provisions stating the obligations of mediators to comply with the Code of Conduct.
- Include specific provisions to resolve cases of inconsistencies in application of law identified throughout the pilot program. A typical case is when there is a request for application of temporary emergency measures from dispute parties. As mediation is conducted on a voluntary basis, the Court does not impose coercive measures in the mediation process. In this example, the case should be transferred back to the court and be handled according to court procedure.
- To maximize the effectiveness of mediation and dialogue, it is practical to allow court recognition of partial mediation awards. In this case, the remaining issues on which the parties have failed to reach an agreement at mediation must be resolved in court.
- The judge who is involved in the mediation process of a case should not be allowed to adjudicate that same case, unless there is consent from dispute parties.

On implementation of the Law on Court Annexed Mediation and Dialogue

- Strengthen the dissemination on mediation and dialogue so that many people will know and benefit from this new mechanism.
- Mobilize mediators who participated in the pilot program to continue their position as mediators when the new Law take effect. These are quality mediators that already have experience with the new mechanism and would be a great asset to the court.
- Enhance training on mediation professional skills, including knowledge on psychology and working with vulnerable groups. Enhance training on legal knowledge especially the new Law on Court Annexed Mediation and Dialogue. Mobilize support from relevant agencies, organizations, national and international experts to discuss and give training on mediation best practices to mediators.
- Continue to develop and expand Mediation and Dialogue Centres at the Court. Design and develop a friendly mediation space model suitable for children and persons with disabilities.
- Develop and implement appropriate remuneration policy for mediators. Ensure that costs related to mediation are covered.



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