

## ABHANDLUNGEN / ARTICLES

### Judicially Reviewable Administrative Actions: The Development of Vietnamese Administrative Justice

By *Nguyen Van Quang*\*

**Abstract:** *Focusing on the scope of judicial review of administrative actions, this paper attempts to examine the development of Vietnamese administrative law in this regard through close analyses of related legal provisions under the Vietnamese law. By stressing a significant change in which Vietnam no longer limits judicially reviewable administrative actions within certain categories but adopts a broad range of judicially reviewable administrative actions so that almost all specific administrative actions can be subject to judicial review, the paper shows big efforts of Vietnam to develop the legal system for promoting administrative justice in the country. Also, for further improvements of Vietnamese administrative law, the paper reveals several related questions in regard to what Vietnamese law-makers should do with their future law projects, especially for the currently drafted Law on making administrative decisions. Looking for answers to those questions, some German administrative law experiences as suggested ideas for Vietnamese law reformers are discussed in this paper.*

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#### Introduction

Since 1996 when Vietnam first introduced the administrative law jurisdiction in its court system, much improvement in the field of administrative justice has been evidenced. To protect their legitimate rights and interests, judicial review of administrative action has now become a quite familiar review channel for Vietnamese people who want to challenge government decisions. Also, Vietnamese administrative law has been progressed to meet the need of building up a legal framework supporting efficient mechanisms for resolving administrative law disputes. This has particularly been corresponding with the expectations of Vietnam's

\* Head of International Cooperation Department, Chair of Administrative Law (Post-Graduate Studies), Hanoi Law University, Vietnam; email: [nguyenvanquang@hlu.edu.vn](mailto:nguyenvanquang@hlu.edu.vn). I would like to thank Friedrich-Ebert-Stiftung (FES) for their financial supports to make my research trip at Justus-Liebig Universität Gießen in the 2013 summer feasible. My sincere thanks also go to Prof. Dr. Franz Reimer - Professur für Öffentliches Recht und Rechtstheorie, Justus-Liebig Universität Gießen for his insightful comments. All remaining errors of this paper are mine.

legal reformers who argued for the establishment of a judicial channel for reviewing government actions in the early 1990. This paper focuses on the scope of judicial review of administrative actions and examines how far the Vietnamese administrative law has been developed in regard to this aspect. Revealing several questions concerning the issue in question, the paper also discusses to what extent German administrative law experiences can suggest Vietnamese law-makers ideas to improve its legal system.

This paper first presents some background information on the judicial review of administrative channel in Vietnam in which the court system and the two relevant statutes, i.e., the 1996 Ordinance on Procedures for Resolving Administrative Cases and the 2010 Law on Administrative [Court] Procedures will be briefly introduced. This is followed by close analyses of judicially reviewable administrative actions under Vietnamese law in which some remarks on the development of Vietnamese administrative law in this aspect will be provided. The paper ends by a discussion of several questions concerning the scope of judicial review of administration in Vietnam in which some relevant German legal experiences will be examined as suggested ideas for an improvement of Vietnamese administrative law.

## A. Some Background

### 1. *Judicial Review Channel for Administrative Actions in Vietnam*

In Vietnamese legal literature,<sup>1</sup> terms such as ‘judicial review of administrative action’, or ‘administrative adjudication’, or ‘administrative jurisdiction’, or ‘administrative justice’<sup>2</sup> were almost all completely absent prior to the 1990s. This reflected ideological arguments which had existed in the socialist countries against the introduction of judicial review of administrative action. Traditional legal theorists in socialist countries first argued that judicial review of administrative action was developed on the basis of the ‘bourgeois’ doctrine of separation of powers which was completely incompatible with the doctrine of the unity of the State power adopted in socialist countries.<sup>3</sup> They also asserted that judicial review of administrative action was unnecessary as the interests of the governors and the governed in a socialist society were almost the same. There would be no conflicts of interests between them. A socialist state was a state of the people, by the people and for the people whose representation

- 1 When using the phrase ‘Vietnam’s legal literature’ I do not include the legal literature of the Public Vietnamese Government in the South of Vietnam in the period from 1954 to 1975.
- 2 Some Vietnamese legal scholars employ the term ‘*tu phap hanh chinh*’ (administrative justice) which in Vietnamese legal language refers to judgment over administrative cases performed by courts of law. This term is imported from Soviet law where the term ‘*administrativnaia iustitsia*’ (literally administrative justice) was borrowed from the legal systems of continental Western European countries which have separate administrative courts for resolving administrative cases: *Donal D. Barry*, *Administrative Justice: The Role of Soviet Courts in Controlling Administrative Acts* in Goerge Ginsburgs et al (eds.), *Soviet Administrative Law: Theory and Policy*, Dordrecht; Boston, 1984, p. 64.
- 3 *Hiroshi Oda*, *Judicial Review of the Administration in the Countries of Eastern Europe*, *Public Law* (1984), pp. 112-113.

was the working class and logically ‘the workers could not defend themselves against the workers’.<sup>4</sup> For a long period in most former socialist countries administrative disputes were mainly handled by the administrative agencies concerned, through the mechanism of resolving complaints and denunciations or by the procuracies, which were given the power of general supervision.<sup>5</sup>

Being strongly influenced by the above socialist philosophy, Vietnam, like many countries in the socialist bloc refused to confer administrative law jurisdiction on courts for a long time.<sup>6</sup> To challenge government decisions, the main channel was internal review in which complaints about government decisions were solved by primary decision-makers themselves or by their superior ones who work in the same agency or the same system. In fact, it should be noted that, in practice, Vietnamese people’s courts were given jurisdiction to hear some cases that could be classified as administrative law cases before 1996.<sup>7</sup> However, the paucity of relevant legislation, the small number of cases relating to such legal matters accepted by the people’s court system, and the lack of scholarly and legislative interest in this area proves that there was no real system of judicial review of administrative action in Vietnam prior to the establishment of the special administrative law jurisdiction.<sup>8</sup>

In 1986 the Communist Party of Vietnam initiated the Renovation (*doi moi*) policy. Since then Vietnam has embarked upon a path of overhauling all aspects of political, economic and social life. In this context, the reform of political-legal thinking has emerged as an important factor providing an impetus to the establishment of a new mechanism, i.e., a judicial mechanism for resolving administrative disputes in Vietnam.<sup>9</sup> Many Vietnamese legal scholars have been analysing a range of factors supporting the notion of establishing administrative adju-

4 Rhett Ludwiskowski, *Judicial Review in the Socialist Legal System: Current Development, International and Comparative Law Quarterly* 37(1988), p. 91. Ludwiskowski quoted S. Hendel, *The Soviet Crucible: The Soviet System in Theory and Practice*, North Scituate, Mass. 1980, p. 94.

5 *Oda*, note 3, pp. 113-115.

6 Chinese people’s courts have been officially given administrative law jurisdiction to deal with since 1989, when the Administrative Litigation Law was passed. It is also noted that, following the Soviet model, most former socialist countries in Eastern Europe terminated their administrative courts modelled on the French system after joining the Soviet bloc. However, starting from the mid-1950 s judicial review of administrative action was again introduced in these countries. For a further discussion of this issue, see *Oda*, note 3, pp. 116-22.

7 For example, Article 15 of Law No 4 on the Election of Local People’s Councils and Local People’s Committees dated 20 July 1957, provided that voters could challenge their omission from the list of voters by bringing an action in the people’s court against the office which was responsible for drawing up the list.

8 *Vu Thu*, *Thu tuc tu tung hanh chinh* [Administrative Court Procedures], in: Dao Tri Uc (ed.), *He thong tu phap va cai cach tu phap o Vietnam hien nay* [The Judicial System and Judicial Reform in present Vietnam], Hanoi 2002, p. 334; *Le Hong Son*, *Cai Cach He Thong Tai Phan Hanh Chinh Bao Dam Thuc Hien Quyen Con Nguoi, Quyen Va Nghia Vu Cua Cong Dan* [Reforming the Administrative Jurisdiction System for Ensuring Human Rights and Citizens’ Rights and Duties], *State and Law* 7 (2003), p. 13.

9 *Thu*, note 8, p. 341.

dication bodies in Vietnam in the post -1986 period.<sup>10</sup> On the basis of these analyses, in 1992 a team comprising legal experts from the State Inspectorate, the Ministry of Justice, and some other relevant state organs was established for the purpose of studying and drafting law on administrative courts in Vietnam.<sup>11</sup> In 1995, the Law on the amendment of some articles of the Law on the organisation of people's courts conferred administrative law jurisdiction on people's courts and the courts in Vietnam have enjoyed the administrative law jurisdiction since July 1<sup>st</sup>, 1996. This means that since then, judicial review of administrative action has been officially recognised as a mechanism for controlling administration in Vietnam.

## II. Vietnamese Courts and Administrative Law Jurisdiction

Unlike Germany, Vietnam does not have a separate administrative court system but administrative law jurisdiction is conferred on the people's courts as courts of general jurisdictions. It is, however, noted that there is a distinctive way to structure Vietnam's people courts for the exercise of administrative law jurisdiction.

The Vietnamese court system is organised and functions within the legal framework created by the Constitution 1992 and several other statutes. The Constitution 1992 sets forth the underlying principles which are concretised by a range of pieces of legislation governing the organisation and operation of the court system.<sup>12</sup> People's courts are the main component of the Vietnamese court system which is organised on the basis of administrative territorial units.<sup>13</sup> Generally, they are structured by a three-level hierarchy, headed by the Supreme People's Court. The local people's courts are organised and operate within territories of provinces and districts.

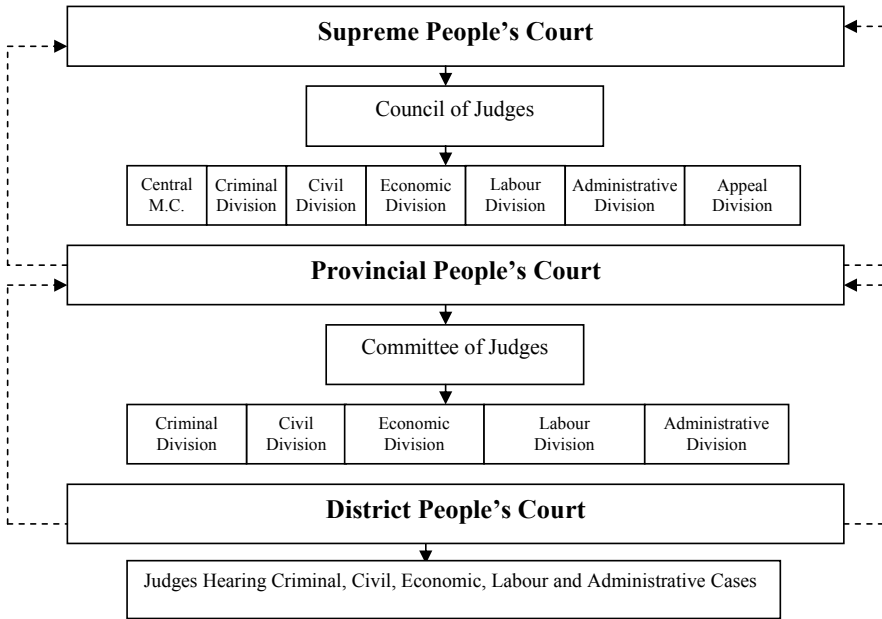
Under Vietnamese law, the Supreme People's Court enjoys the jurisdiction to supervise and instruct inferior courts on how to consistently apply the law, rather than having the jurisdiction to hear cases at first instance. Unlike the Supreme People's Court, provincial people's courts have both original and appeal jurisdictions. In terms of structure, provincial people's courts are very similar to the Supreme People's Court. A provincial people's court con-

- 10 *Thu*, note 8, pp. 344-7, *Nguyen Binh Vong*, *Mot so van de ve tai phan hanh chinh o Viet Nam* [Some Issues about Administrative Jurisdiction in Vietnam], Hanoi 1994, pp. 5-12.
- 11 See the *State Inspectorate*, *Thuyet minh Du an Luat to chuc TAHC va Phap lenh thu tuc giai quyiet cac vu an hanh chinh* [The Interpretation Paper on the Drafts of Law on the Organisation of Administrative Courts and the Ordinance on Procedures for Resolving Administrative Cases] dated 28 March 1994, (unpublished material, on file with the author).
- 12 Chapter X of the 1992 Constitution titled 'Courts and Procuracies' consists of provisions which lay down the legal basis for the organisation and operation of the Vietnamese court system. There are various statutes detailing the organisation of the court system, which are mainly the 2002 Law on the Organisation of the People's Court, the 2002 Ordinance on Judges and People's Assessors of the People's Courts and the 2002 Ordinance on the Organisation of the Military Courts.
- 13 It is noted that the Vietnamese court system also includes military courts and other special courts. Vietnamese military courts are established for hearing matters involving the military or persons serving the military, and which affect military discipline.

sists of a criminal law division, a civil law division, a labour law division, an economic law division and an administrative law division. The administrative law division of provincial people’s courts has jurisdiction to hear administrative law cases at first instance and hear administrative law cases of appeals from district courts.

District people’s courts, which are the lowest courts within the Vietnamese people’s court hierarchy, are organised on the basis of the locality of the district units. A district people’s court is not divided into sub-divisions as seen in the Supreme People’s Court or provincial people’s courts. Like provincial people’s courts, district people’s courts exercise a wide range of jurisdictions including administrative law jurisdiction, but their jurisdictions are explicitly defined by statute. The diagram below shows the current structure of the Vietnamese court system.

**Diagram: Structure of the Vietnamese People’s Court System**



Notes for this Diagram: M.C.: Military Court; indicates the relationship between courts in hearing appeals.

*III. Procedural Statutes for Resolving Administrative Law Cases*

To facilitate the exercise of administrative law jurisdiction of courts, Vietnam has made its efforts to establish a legal framework, both substantive and procedural, among which the

passage of the 1996 Ordinance on Procedures for Resolving Administrative Law Cases<sup>14</sup> and its successor – the 2010 Law on Administrative [Court] Procedures is of significant importance.

The 1996 Ordinance on Procedure for Resolving Administrative Law Cases was enacted right after the establishment of administrative law jurisdiction within the court system in Vietnam. It should be noted that while common issues in regard to the court system such as the court structure, the court competence, judges and lay judges are subject to the regulation of other Acts,<sup>15</sup> this statute mainly focused on particular issues for resolving administrative law cases including:

- Scope of judicially reviewable administrative actions;
- Particular jurisdictions of courts for resolving administrative law cases;
- Rights, duties, obligations of judges and other persons conducting administrative [court] procedures, the plaintiff, the defendant and other person participating in administrative [court] procedures;
- Specific matters relating procedures for resolving administrative law cases.

For the first few years since its passage, the Ordinance on Procedures for Resolving Administrative Law Cases, together with other guiding rules made by the Supreme People's Court,<sup>16</sup> to certain extent, had set up a legal foundation to facilitate administrative court procedures for protecting legitimate rights and interests in public administration. But concurrently several limitations of Vietnamese legal rules in this field had been gradually revealed during the course of their application. Those noticeable limitations included:

- The scope of judicially reviewable administrative actions was very limited since the 1996 Ordinance on Administrative Procedures for Resolving Administrative Law Cases limited certain categories of administrative actions which are subject to judicial review;
- There was the lack of detailed rules for judicial review of administrative actions, especially the lack of detailed rules stating grounds<sup>17</sup> for the judicial review of administrative actions and orders issued by courts for resolving administrative law cases;
- There were still several procedural constraints, especially rules of pre-trial procedure prior lodging the application in the court and rules of time limits for lodging applications.

14 Noted that this Ordinance was first introduced in 1996 and was then amended in 1998 and 2006 but its official name remains as the 1996 Ordinance Procedures for Resolving Administrative Law Cases.

15 See the 2002 Law on Organisation of People's Courts, the 2002 Ordinance on Judges and Lay Judges of People's Courts (they both are current ones).

16 According to the law of Vietnam, the Council of Judges of the Supreme People's Court has the power to issue Resolutions for instructing inferior courts how to consistently apply the law. Resolutions made in regard to administrative courts procedures are guiding rules to concretise the 1996 Ordinance on Procedures for Resolving Administrative Law Cases.

17 For a detailed discussion of grounds for judicial review of administrative action see *Nguyen Van Quang*, Grounds for Judicial Review of Administrative Action: An Analysis of Vietnamese Administrative Law, [http://cale.law.nagoya-u.ac.jp/\\_userdata/DP%20No.%203.pdf](http://cale.law.nagoya-u.ac.jp/_userdata/DP%20No.%203.pdf) (last visited on December 4<sup>th</sup>, 2013).

The above-mentioned limitations had become common concerns of judges, legal experts, scholars, administrators and the public in general for quite a long time. Such legal constraints became one of the hurdles to make judicial review of administrative actions less effective. In 2008, Vietnam started drafting a law replacing the 1996 Ordinance on Procedures for Resolving Administrative Law Cases.<sup>18</sup> Two years later, the Law on Administrative [Court] Procedures was passed by the National Assembly of Vietnam and this Law officially came into force on July 1<sup>st</sup>, 2011. It is expected that the 2010 Law on Administrative [Court] Procedures is an upgrade of the 1996 Ordinance on Administrative Procedures for Resolving Administrative Law Cases which is able to handle concerned matters arising in the law and legal practice of Vietnam in the past. On the surface, the Law which consists of 18 Chapters and 256 Articles is a quite comprehensive statute in the field.<sup>19</sup> Indeed, Vietnamese law-makers have made their efforts to address all concerned matters, seek comments from judges, legal experts and scholars, and study relevant foreign experiences in the course of drafting this Law to improve the legal framework for judicial review of administrative action in Vietnam. As we will see, a big difference in regard to the scope of judicially reviewable administrative actions has been made in the 2010 Law on Administrative [Court] Procedures. But the question is how far this difference has really become a legal development of Vietnamese administrative law given the context of a country in transition. The analysis below will respond to this question.

## B. Close Analyses of Judicially Reviewable Administrative Action under the Law of Vietnam

### I. Concepts of Administrative Decision and Administrative Act under Vietnamese Administrative Law

For review purposes, ‘administrative decision’ or ‘administrative act’, like the concept ‘*Verwaltungsakt*’ (administrative act) under the German administrative law,<sup>20</sup> has become key terms under the Vietnamese administrative law, though, as we will see, those terms may be differently defined in each legal system. Such key terms are defined in relevant statutes for both administrative and judicial review of administrative actions including the 1996 Ordi-

18 See Submission Paper No 46/TTr dated April 19<sup>th</sup> 2010 by the President of the Supreme People’s Court of Vietnam on the Project of the Law on Administrative [Court] Procedures, <http://www.vibonline.com.vn/Duthao/41/DU-THAO-LUAT-TO-TUNG-HANH-CHINH.aspx> (last visited on December 4<sup>th</sup>, 2013).

19 Comparing to the 1996 Ordinance on Procedures for Resolving Administrative Law Cases which consists of 11 Chapters and 76 Articles, this is a significant development.

20 The term *Verwaltungsakt* (administrative act) is defined in section 35 of *Verwaltungsverfahrensgesetz*- VwVfG (Administrative Procedure Act) 1976 of Germany. An (unofficial) English translation of this Act can be seen at <http://www.iuscomp.org/gla/statutes/VwVfG.htm> (last visited on December 4<sup>th</sup>, 2013). It is obvious that a full understanding of *Verwaltungsakt* (administrative act) can only be obtained while examining *Verwaltungsverfahrensgesetz* together with other special Acts in the field of public administration in Germany.

nance on Procedures for Resolving Administrative Law Cases and the 2010 Law on Administrative [Court] Procedures.

Technically, administrative actions classified as ‘administrative decisions’ and ‘administrative acts’ and both types of administrative actions are defined by the law. In accordance with the 1996 Ordinance on Procedures for Resolving Administrative Law Cases, an administrative decision referred to ‘a decision in written form of an administrative state agency or of an authority of an administrative state agency which is applied once to a specific subject (s) regarding a specific matter of state administration’.<sup>21</sup> In an effort to extend the scope of judicial review of administrative actions, a broader definition of administrative decision is given in the 2010 Law on Administrative [Court] Procedures which interprets an administrative decision as ‘a decision in written form of administrative state agencies, other state agencies and organisations or of an authority working in these state agencies and organisations, which is applied once to a specific subject (s) regarding a specific matter of state administration’.<sup>22</sup> Several core features of an administrative decision can be drawn from the Vietnamese administrative law:

- It must be specific, i.e., it is once applied to a particular individual or entity or a group of particular individuals or entities;
- It must be presented in a written form;
- It must be involved in a particular matter of public administration;
- It can be made by administrative state agencies, their authorities, other state agencies, organisations and their staff members to exercise powers in public administration.

Although the term is interpreted in relevant statutes, it is not always easy to fully understand the term ‘administrative decision’ under the law of Vietnam without a clearly authoritative interpretation. In this regard, to some extent, the mechanism for legal interpretation of Vietnam should be noted here. In Vietnam, the power to officially interpret the Constitution, Laws and Ordinances is only conferred on the Standing Committee of the National Assembly.<sup>23</sup> The Vietnamese Supreme People’s Court, however, also enjoys the so-called ‘judicial interpretation’ power to issue legal instruments in the form of Resolutions made by the Councils of Judges or other guidelines in the form of public letters made by the Court President for instructing the court system how to apply the law in case of need. In relation to the exercise of administrative law jurisdiction, the Supreme People’s Court of Vietnam in practice has issued several documents interpreting terms whose meanings needed to be further explained.<sup>24</sup> In the course of resolving administrative cases, courts must follow those interpretations in order to ensure the consistency of law application.

21 Article 4 (1) of the 1996 Ordinance on Procedures for Resolving Administrative Cases.

22 Article 3(1) of the 2010 Law on Administrative [Court] Procedures.

23 Article 91 (3) of the 1992 Constitution of Vietnam which states that the Standing Committee of the National Assembly has the power “to interpret the Constitution, Laws and Ordinances”.

24 The latest one in this regard is Resolution No 02/2011/NQ dated July 29, 2011 of the Council of Judges of the Supreme People’s Court instructing how some provisions of the 2010 Law on Administrative [Court] Procedures are applied.

‘Administrative act’ is a rather ambiguous term under the Vietnamese administrative law. The 1996 Ordinance on Procedures for Resolving Administrative Law Cases defined ‘an administrative act’ as ‘an act of a state administrative agency, or act of an authority of a state administrative agency to perform legal duties and public services, or a failure to perform legal duties and public services’.<sup>25</sup> Following the same approach to broaden the concept, under the 2010 Law on Administrative [Court] Procedures, an administrative act refers to ‘an act of a state administrative agency, other state agencies and organisations or of an authority working in these state agencies and organisations to perform legal duties and public services, or a failure to perform legal duties and public services’. An administrative act under the Vietnamese law can be noticeable by the following features:

- It can be both action or inaction,
- It can create legal effects on a particular individual or entity or a group of particular individuals or entities but it not an administrative decision as it is not presented in a legally written form; in other cases, it is simply a day-to-day act of executing or non-executing legal duties or public services.

Administrative acts that adversely affect the legal interests and rights of individuals and organisations can be judicially reviewable. Under the Vietnamese law, in case an administrative act is judicially reviewable, the courts can issue injunctive orders to stop administrators from performing that act, or mandatory orders to force administrators to perform their legal duties.

Comparing ‘administrative decision’ and ‘administrative act’ under the Vietnamese administrative and the concept ‘*Verwaltungsakt*’ (administrative act) under the German administrative law, we shall see several similarities and differences:

*First*, under the both jurisdictions, *Verwaltungsakt* (administrative act) and administrative decision can only be concrete ones; in other words, abstract administrative acts or decisions (administrative acts or decisions of a legislative character) are excluded from the scope of administrative acts or decisions under the administrative law of Germany and Vietnam. It should, however, be noted that while under the German administrative law ‘a general order shall be an administrative act directed at a group of people defined or definable on the basis of general characteristics or relating to the public law aspect of a matter or its use by the public at large’,<sup>26</sup> a decision of that nature is a normative decision which does not fall within administrative decisions under the Vietnamese administrative law.

*Second*, under both jurisdictions, the administrative act (decision) maker can be any authority who has the competence or is delegated to have the competence to exercise state powers

25 Article 4 (2) of the 1996 Ordinance on the Procedures for Resolving Administrative Cases.

26 Section 35 of *Verwaltungsverfahrensgesetz- VwVfG* (Administrative Procedure Act) 1976 of Germany available at <http://www.iuscomp.org/gla/statutes/VwVfG.htm> (last visited on December 4<sup>th</sup>, 2013).

in public administration although the wording of the law under both jurisdictions may be slightly different.<sup>27</sup>

*Third*, in nature, the ambiguous concept ‘administrative act’ under the Vietnamese administrative law and the term Verwaltungsakt under the German administrative law to some extent can be comparable. Administrative acts under the Vietnamese administrative law cover Verwaltungsakt in non-written forms. But while day-to-day acts of executing or non-executing legal duties or public services are administrative acts under the Vietnamese administrative law, the equivalent legal German term for these acts is *Verwaltungshandeln* (administrative action). Under the German administrative law, Verwaltungshandeln (administrative action) is normally *schlichtes Verwaltungshandeln* (physical administrative action) which does not fall within the scope of the concept ‘Verwaltungsakt’ (administrative act).<sup>28</sup>

Attempting to differentiate administrative decisions and administrative acts for the purpose of judicial review of administrative action implies that in order to successfully challenge the legality of an administrative action in the court, the disputed administrative action must first pass the test of being recognised as ‘an administrative decision’ or an administrative act under the Vietnamese administrative law. The above test, however, seems not to be as important as others. So long as the legitimate rights and interests can be proved as being affected by the disputed administrative action chances to challenge the action as a decision or act can be established. If the action does not fall with the administrative decision category it can be easy to put it in the administrative act category. This fact has given rise to the question whether the Vietnamese law-maker should merge ‘administrative decision’ and ‘administrative act’ into a concept which covers these two categories of administrative actions.

## II. *The Pre-2010 Law on Administrative [Court] Procedures Period: Adoption of an Enumerative Clause*

For quite a long time, Vietnam had limited judicial review of administrative actions to cases which fall within categories set out by statutes. The 1996 Ordinance on Procedures for Resolving Administrative Law Cases provided a list of judicially reviewable administrative actions and courts could not accept an administrative law case unless it fell within one of the categories on the list. In other words, an enumerative clause was adopted in the law of Vietnam. The question is that why was the adoption of an enumerative clause in the 1996 Ordinance on Procedures for Resolving Administrative Law Cases?

In the course of drafting statutes for the exercise of administrative law jurisdiction of Vietnamese courts starting in the early 1990s, much was discussed about the determination

27 According to section 35 of *Verwaltungsverfahrensgesetz- VwVfG* (Administrative Procedure Act) 1976 of Germany, the act maker is generally defined as an authority while the law of Vietnam describes in a detailed manner who are administrative decision makers.

28 *Thomas Schmitz; Nguyen Van Quang*, Terminologieverzeichnis, [http://www.thomas-schmitz-hanoi.vn/Downloads/ZDR-Conference\\_admin-decision\\_terminology-list.pdf](http://www.thomas-schmitz-hanoi.vn/Downloads/ZDR-Conference_admin-decision_terminology-list.pdf) (last visited on December 4<sup>th</sup>, 2013).

of the scope of the courts' administrative law jurisdiction.<sup>29</sup> Referring to related foreign experience, Vietnamese law-makers asked whether Vietnam should adopt a clause giving the courts a general jurisdiction to resolve all kinds of administrative law cases, subject to some exceptions provided by law, or an enumerative clause listing certain types of administrative law cases that courts would have the jurisdiction to resolve.<sup>30</sup> They found that a general clause conferring broad administrative law jurisdiction on the courts was not applicable to a context where the courts were newly granted administrative law jurisdiction.<sup>31</sup> It was argued that for a country that had almost no experience in judicial review of administrative action like Vietnam, a broad administrative law jurisdiction given to the courts would be likely to cause its overburdening with cases.<sup>32</sup> The quality of the administrative adjudication of the courts, therefore, would be impaired. This was particularly true because in the case of Vietnam there were not sufficient judges with appropriate expertise in resolving administrative cases at the time.<sup>33</sup> Moreover, since Vietnamese substantive administrative law was not well developed, a broad administrative law jurisdiction would cause many difficulties for the courts in resolving administrative cases.<sup>34</sup> Thus, there was sufficient support for adopting a clause explicitly listing administrative cases falling within the jurisdiction of the courts, while the suggested option of a general clause was rejected. As a result, the 1996 Ordinance on Procedures for Resolving Administrative Law Cases included such an enumerative clause, which listed categories of administrative decisions and acts falling within the scope of judicial review by Vietnamese courts.

- 29 *Uong Chung Luu*, *Procedures for Reviewing Administrative Decisions in Vietnam*, in: John Gillespie (ed.), *Commercial Legal Development in Vietnam: Vietnam and Foreign Commentaries*, Singapore; Hong Kong 1997, pp. 471-472.
- 30 For a discussion of the two ways to define the scope of judicial review of administrative actions in the laws of several former socialist countries in Eastern Europe, see *Oda*, note 3, pp. 123-125. China opted for an enumerative clause to define the scope of judicial review of administrative action in the Administrative Litigation Law 1989. For a detailed discussion of this issue, see *Jyh-Pin Fa and Shaochuan Leng*, *Judicial Review of Administrative Action in the People's Republic of China*, *Case Western Reserve Journal of International Law* 23 (1991), pp. 455-456; *Arthur K.C Cheung*, *China's Administrative Litigation Law*, *Public Law* (2005), pp. 559-560.
- 31 In regard to the issue of defining the administrative law jurisdiction of Vietnamese courts, Vietnamese legal experts learnt much from foreign experience. See, for example, *Hoang Thanh Tung*, *Issues of Administrative Law Jurisdiction of the Courts from German Experience*, State Inspectorate: The National Scientific Project: Administrative Courts – Theory and Practice (1997), [http://www.giri.ac.vn/images/File/bai15\\_phan3\\_tap1.doc](http://www.giri.ac.vn/images/File/bai15_phan3_tap1.doc) (this link is no longer available, but the material is on file with the author). This author pointed out that in Germany when administrative courts were newly established in the 19<sup>th</sup> Century they were granted the jurisdiction to resolve a limited number of administrative cases listed in legislation. Only when the court became experienced, were they granted a broad administrative jurisdiction. This was also the experience of many other countries such as France, Sweden, Finland and other Nordic countries.
- 32 *Thu*, note 8, p.350; *Luu* note 29, p. 472.
- 33 This concern currently still remains in Vietnam. Resolving administrative law cases relating to land management or tax sets a clear example in which many controversial issues have arisen among judges.
- 34 *Thu*, note 8, p.351.

Originally, several categories of administrative decisions and acts involving a large caseload which directly affected legal rights and the interests of individuals and organisations were put on the list of the 1996 Ordinance on Procedures for Resolving Administrative Law Cases. They were:<sup>35</sup>

- administrative decisions imposing administrative penalties on individuals or entities;
- administrative decisions and acts imposing compulsory administrative measures displacing houses, construction projects and other solid constructions;
- administrative decisions and acts imposing or enforcing one of the following compulsory administrative measures: sending offenders for rehabilitation to communes, wards, or small towns; sending juvenile offenders to rehabilitation schools; sending offenders to re-education centres; sending people to clinics for compulsory treatment; and imposing administrative detention on offenders;
- administrative decisions dismissing functionaries who hold the post of General Directors of Departments under Ministries or equivalent and the inferior ones;
- administrative decisions and acts involving land management;
- administrative decisions and acts granting or revoking licences regarding construction, production, or business;
- administrative decisions and acts for requisitioning or confiscating property;
- administrative decisions and acts for collecting taxes or collecting taxes due in previous years;
- administrative decisions and acts for collecting administrative fees or charges.

It is noted that the enumerative clause adopted in the Ordinance also included an ‘open’ provision stating that courts would have jurisdiction to resolve other administrative cases to be listed in statutes other than the Ordinance. This means that while the Ordinance tried to include all categories of judicially reviewable administrative actions at the time when it was passed, the list could be supplemented with categories listed in other statutes. This flexibility would enable law-makers to expand the scope of judicial review of administrative actions in case of need for meeting societal requirements. Indeed, since the passage of the Ordinance in 1996, the scope of judicial review of administrative actions had been gradually widened.<sup>36</sup> Prior to the passage of the 2010 Law on Administrative [Court] Procedures, Vietnamese courts were granted the jurisdiction to review twenty-two categories of administrative decisions and acts and chances to expand the scope of review were always available.

35 See Article 11 of the 1996 Ordinance on Procedures for Resolving Administrative Law Cases.

36 After the passage of the 1996 Ordinance on Procedures for Resolving Administrative Cases many statutes to include provisions supplementing categories of judicially reviewable administrative decisions and actions were enacted. For example, the Decree 76/CP of the Government dated 29 November 1996 instructing the implementation of some articles regarding copyright of the Civil Code; the Decree 45/1998/ND-CP of the Government dated 01 July 1998 detailing technology transfer; the Ordinance on Lawyers 2001 and the Law on Customs 2001.

### III. Broadening the Scope of Judicially Reviewable Administrative Actions under the 2010 Law on Administrative [Court] Procedures

As above noted, by adopting an enumerative clause in the 1996 Ordinance on Procedures for Resolving Administrative Law Cases, the scope of judicial review of administrative actions was gradually expanded. However, after more than ten years, since the Vietnamese courts were first given administrative law jurisdiction, there had been several factors requiring a significant broadening of the scope of judicial review of administrative actions.

*First*, although the people's courts of Vietnam had had administrative jurisdiction for a quite long time, the number of administrative cases accepted and heard by the courts was still very modest.<sup>37</sup> There were several reasons for this, one of which is the narrow scope of judicial review of administrative actions determined by the law. In fact, there were many cases in which the courts dismissed applications for judicial review because the impugned administrative decision or act did not belong to the list of categories for judicial review. Thus the limited scope of judicial review of administrative action became a legal barrier, preventing people from bringing actions against government departments and their officials.

*Second*, in the context of international integration, the scope of judicial review of administrative actions was confronting legal requirements embodied by international agreements to which Vietnam was a party. For example, Article 7 of Chapter VI 'Transparency-related provisions and right to appeal' of the Trade Agreement between Vietnam and the US approved by the National Assembly on 28<sup>th</sup> November 2001 reads as follows:

*The Parties will maintain administrative and judicial tribunals and procedures for the purpose, inter alia, of the prompt review and correction (upon the request of an affected person) of administrative action relating to matters covered by this Agreement. These procedures shall include the opportunity for appeal, without penalty, by persons affected by the relevant decision. If the initial right of appeal is to an administrative body, there shall also be the opportunity for appeal of the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of the right to any further appeal.*<sup>38</sup>

This provision required that all administrative actions relating to matters covered by the Agreement would be subject to judicial review. Compliance with this obligation would require expanding the range of reviewable decisions under the Vietnamese administrative law. Moreover, to have access to the WTO, it was obvious that the range of judicially reviewable administrative actions would need to be supplemented by Vietnamese law-makers.

37 For a detailed number of administrative law cases heard by Vietnamese courts from 1996 to 2008 see the Summation Report of the Supreme People's Court of Vietnam No 210/TANDTC dated November 18<sup>th</sup>, 2009.

38 Agreement between the Socialist Republic of Vietnam and the United States of America on trade relation, <http://www.ustr.gov/regions/asia-pacific/text.pdf> (last visited on December 4<sup>th</sup>, 2013).

*Third*, in the course of reform of all aspects of political and socio – economic life, the goal of building up the rule of law has been considerably emphasised in Vietnam. There was adequate support by the Communist Party of Vietnam, many state officials, legal practitioners, legal scholars and the public as well for a broad scope of judicial review of administrative action.<sup>39</sup> It was argued that broadening the scope of judicially reviewable administrative action would be of great importance to a society where public law values such as the ‘rule of law’, the ‘accountability’ of administrators, the protection of ‘individual rights’ and ‘consistency and certainty in the administration of legislation’ are respected and maintained.

Responding to the above requirements, the scope of judicially reviewable administrative actions was much debated during the course of drafting the 2010 Law on Administrative [Court] Procedures. The main question was whether or not Vietnamese law should follow the law of developed countries in excluding the enumerative clause and adopting a very broad scope of judicial review of administrative action. If not, to what extent should the scope of judicial review of administrative action be broadened?<sup>40</sup> Finally, the long debate about the scope of judicially reviewable administrative actions ended with a rather radical resolution according to which Vietnamese courts have the power to review almost all administrative decisions and acts as defined by the law. The current 2010 Law on Administrative [Court] Procedures of Vietnam confers this broad power on courts by the following measures:<sup>41</sup>

*First*, the current Law generally states that Vietnamese courts have the power to judicially administrative decisions and acts.<sup>42</sup>

*Second*, excluding an enumerative clause, the current Law also includes some special categories of administrative decisions and acts which are subject to judicial review:

- Administrative decisions dismissing functionaries who hold the post of General Directors of National Administration Agencies under Ministries or equivalent and the inferior ones;
- Administrative decisions resolving complaints about decisions dealing with competition law cases;
- Administrative act of making the list of voters for the selection of Deputies to the National Assembly or Deputies to Local People’s Councils.

39 The opinion of the Vietnamese Communist Party on this issue was clearly shown in the Resolution of the Political Bureau No 08-NQ/TW on some judicial principal tasks for the forthcoming period. There were many articles, in which legal scholars have mentioned the necessity to extend the scope of administrative action in Vietnam.

40 See Submission Paper No 46/TTr dated April 19<sup>th</sup> 2010 by the President of the Supreme People’s Court of Vietnam on the Project of the Law on Administrative [Court] Procedures, <http://www.vibonline.com.vn/Duthao/41/DU-THAO-LUAT-TO-TUNG-HANH-CHINH.aspx> (last visited on December 4<sup>th</sup>, 2013).

41 See Article 28 of the 2010 Law on Administrative [Court] Procedure.

42 It may be comparable to section 40(1) of the Code of Administrative Court Procedures (*Verwaltungsgerichtsordnung* – VwGO) of Germany according to which ‘recourse to the administrative courts shall be available in all public-law disputes of a non-constitutional nature’ (An English translation of the Code is available at [http://www.gesetze-im-internet.de/englisch\\_vwgo/englisch\\_vwgo.html](http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html) (last visited on December 4<sup>th</sup>, 2013).

*Third*, broadening the scope of judicially reviewable administrative actions so that almost all administrative decisions and acts now can be judicially reviewable, the current Law also has a clear legal provision to exclude certain categories of administrative actions from the scope of judicial review. They are:

- Administrative decisions and acts involving the list of state secrets in the fields of national defence, security and diplomacy defined by the Government;
- Administrative decisions and acts of an internal nature (internal administrative decisions and acts).

From the adopted enumerative clause to a rather general clause defining the administrative law jurisdiction of the court system can be seen as a significant development of Vietnamese administrative law. The broadening of judicially reviewable administrative actions under the 2010 Law on Administrative [Court] Procedures has brought significant progresses in resolving administrative cases in Vietnam. In 2012, Vietnamese courts heard at first instance 3834 administrative law cases and comparing with 1236 administrative law cases heard in 2011 or 976 administrative law cases heard in 2010, a big change in number of court cases has been made.<sup>43</sup> To a certain extent, this has shown efforts of Vietnam in promoting its administrative justice system for protecting legitimate rights and interests of individuals and organisations towards a rule of law state.

### **C. Continuing the Improvement: Remaining Questions Concerning Judicially Reviewable Administrative Actions in Vietnam**

Acknowledging significant changes in the 2010 Law on Administrative [Court] Procedures, especially the one relating to the broadening of judicially reviewable administrative actions, it is admitted that room for further legal improvements still remains. Given the legal context of a country in transition like Vietnam, this appears quite understandable. The room for further improvement of Vietnamese administrative law also encourages us to raise the question to what extent German administrative law can offer some ideas for Vietnamese law-makers to improve their legal system. More importantly, Vietnam is now on the way to draft a new Law provisionally titled 'Law on Making Administrative Decisions'<sup>44</sup> and foreign legal experiences like those of Germany are always welcomed. It is expected that the coming Law will establish consistent legal rules for defining administrative decisions, procedures for making administrative decisions and legality of administrative decisions and for dealing with defective

43 Statistics on court cases can be seen at the official website of the Supreme People's Court of Vietnam at <http://toaan.gov.vn/portal/page/portal/tandtc/5901712> (last visited on December 4<sup>th</sup>, 2013).

44 Some initial information of the draft Law can be seen in the official website of the Ministry of Justice of Vietnam (in Vietnamese): <http://moj.gov.vn/ct/tintuc/Pages/thong-tin-khac.aspx?ItemID=5289> (last visited on December 4<sup>th</sup>, 2013) or in the website of the Conference 'Administrative Decision and Administrative Procedure under the German, French and Vietnam Law' funded by FES in Hanoi April 9<sup>th</sup>, 2013: [http://www.thomas-schmitz-hanoi.vn/Events/Conference\\_Admin-Decision-and-Procedure.htm](http://www.thomas-schmitz-hanoi.vn/Events/Conference_Admin-Decision-and-Procedure.htm) (last visited on December 4<sup>th</sup>, 2013).

administrative decisions arising in public administration; thus, this future Law will directly affect the 2010 Law on Administrative [Court] Procedures and the Vietnamese administrative justice system in general.

### *I. Concept of Administrative Decision*

As noted above, for review purposes, concepts like administrative decision or administrative act become key terms. Although attempts have been made to interpret those important terms for the legal application in Vietnam, this is not always easy to the legal practice.

An administrative decision under the Vietnamese administrative law, as mentioned above, must be presented in a written form. Since written forms of a legal document in Vietnam are various in terms of name, presentation and associated formality, the question is whether an administrative decision must be presented in a 'Decision' form or can be in any other written form. As Article 3(1) of the 2010 Law on Administrative [Court] Procedures cannot answer this question, judges ought to refer to the Resolution No 02/2011/NQ dated July 29, 2011 of the Council of Judges of the Supreme People's Court instructing how some provisions of the 2010 Law on Administrative [Court] Procedures are applied. According to the interpretation of this Resolution, an administrative decision can be presented in not only a 'Decision' form but also other forms such as 'Announcement', 'Conclusion' or 'Public Letter' so long as it can create legal effects on legitimate rights and interests of a particular individual or organisation.<sup>45</sup> Such an interpretation implies an open and flexible approach to the concept of administrative decision. In other words, forms of an administrative decision seem not to be an important factor so long as the decision has external legal effects on concerned individuals or organisations in public administration.

The above analysis suggests a substance-oriented approach to the concept of administrative decision should be adopted in the Vietnamese administrative law, particularly in the future Law on Making Administrative Decisions. Following this approach, the concept '*Verwaltungsakt*' (administrative act) under the German administrative law is worth consulting. German law-makers express that, among other things, '*Verwaltungsakt*' (administrative act) is '*intended to have a direct, external legal effect*'.<sup>46</sup> This core feature of an administrative decision needs to be stressed in the law of Vietnam for several reasons. It would make arguments in regard to whether the decision is presented in a correct written form or even whether the decision need to be presented in a written form less and less important. Also, it would help to obtain a clearer understanding of 'internal administrative decisions' which, unlike admin-

45 Article 1(1) of the Resolution No 02/2011/NQ dated July 29, 2011 of the Council of Judges of the Supreme People's Court instructing how some provisions of the 2010 Law on Administrative [Court] Procedures are applied.

46 Section 35 of *Verwaltungsverfahrensgesetz- VwVfG* (Administrative Procedure Act) 1976 of Germany.

istrative decisions, are excluded from the scope of judicial review under the Vietnamese administrative law.<sup>47</sup>

## II. *Judicial Review of Abstract Administrative Decisions in the Vietnamese Context*

While concrete administrative actions are normally subject to judicial review, this is not the case for abstract administrative decisions (or administrative decisions of a legislative character). The administrative law of different countries deals with this issue in different ways. In some countries, administrative courts or courts exercising administrative law jurisdictions are conferred powers to review abstract administrative decisions. For example, under the French administrative law, applicants can challenge the legality of abstract administrative decisions in administrative courts.<sup>48</sup> In contrast, under the Chinese administrative law, administrative regulations or rules or decisions and decrees have normal binding force once formulated and promulgated by administrative organs and therefore fall outside the scope of judicial review of administrative action.<sup>49</sup>

In Vietnam, the question of whether Vietnamese courts should be granted the jurisdiction to review the legality of abstract administrative decisions (or literally ‘normative administrative decisions’<sup>50</sup> under the Vietnamese administrative law) has been raised amongst legal experts and scholars. For the future development of Vietnamese administrative law, the issue in question is worth discussing in this paper.

Arguing for a broader scope of administrative law jurisdiction for the courts, to ensure the accountability of administrators and to provide the people with better protection, many hold that the law should confer the power to review decisions of a legislative character on

47 Although Article 3(4) of the 2010 Law on Administrative [Court] Procedures already interprets ‘internal administrative decisions as ‘decisions made by a state agency or organization for managing and directing activities to perform functions and duties within the state agency or organization’, the interpretation would be clearer if the phrase ‘and not intended to have a direct, external effect’ was included.

48 *Lionel Neville Brown and John S. Bell*, *French Administrative Law*, New York 1993, pp. 152-153.

49 Article 12 of the 1989 Administrative Litigation Law, China.

50 See Article 2 of the Law on Making Legal Normative Documents. According to this Article, normative administrative decisions include:

- Decrees by the Government;
- Decisions by the Prime Minister;
- Resolutions by the Council of Judges of the Supreme People’s Court,
- Circulars by the President of the Supreme People’s Court or the President of the Supreme People’s Procuracy;
- Circulars by Ministers and Heads of State Agencies equivalent to Ministries,
- Joint Resolutions between the Standing Committee of the National Assembly or the Government and central socio-political organizations and Joint Circulars between competent state agencies or between competent state agencies and central socio-political organizations,
- Resolutions by local people’s councils;
- Decisions and Directives by local people’s committees.

Vietnamese courts; applicants, therefore, would have the opportunity to bring action against such administrative decisions in courts. This proposal, however, is currently not supported in Vietnam for several reasons.

First of all, challenging the validity of abstract administrative decisions is not an easy task. In the Australian jurisdiction, for example, although the validity of abstract administrative decisions could be judicially challenged, it is admitted that '[t]he power to make subordinate legislation, however, is commonly conferred in broad terms, making it difficult to apply some of the grounds for review'.<sup>51</sup> If those reasons are put in the Vietnamese context, where the capacity of the court system is still limited and courts have been burdened with a heavy workload due the broadening of the scope of judicially reviewable administrative actions, it seems that there is a little chance to support Vietnamese law-makers to include abstract administrative decisions for judicial review.

Also, the role of existing review mechanisms in challenging the validity of abstract administrative decisions is also a reason why Vietnamese law-makers should not include such administrative decisions in the scope of judicial review. In Vietnam, there exist various review channels, through which the validity of abstract administrative decisions could be challenged. Among these review mechanisms, noticeable are supervision mechanisms by representative organs and state inspection:

The former one refers to the supervision performed by the National Assembly and local people's councils. In accordance with the law of Vietnam, the National Assembly and local people's councils are given the power to supervise the activities of administrative agencies at the corresponding levels. The National Assembly, for example, has the power to supervise the Government's activities in different forms prescribed by the law. During the course of supervision, the validity of abstract administrative decisions of the Government can be challenged and the National Assembly is given the power to abrogate administrative decisions if they are found to be unconstitutional.<sup>52</sup> Similarly, rules and regulations enacted by local governments can be reviewed by local people's councils at the corresponding levels.

The latter one refers to the supervision performed by the State Inspectorate Bodies.<sup>53</sup> These bodies belong to the executive branch and are organised at the three levels: central, provincial, and district. The function of these bodies is to help the government at the same level to supervise the administrative activities of administrative agencies and their officials. On the basis of the recommendation of the state inspection bodies, the government can challenge the validity of administrative decisions, including decisions of a legislative character.

51 *Australian Review Council*, The Scope of Judicial Review: Report to the Attorney-General, Report No.47 (2006), p. 39.

52 The supervisory power of the National Assembly is provided by Article 84 (2) of the 1992 Constitution and the 2004 Law on the Supervision of the National Assembly. For a discussion of the role of the National Assembly in reviewing the legality of legal normative documents enacted by State Organs at the central level in Vietnam, see *Ngo Duc Manh*, Theoretical and Practical Issues on the National Assembly's Functions, *Vietnam Law & Legal Forum*, 5 (2003), p.22.

53 See the 2010 Law on Inspectorates of Vietnam.

With such existing review mechanisms many people believe that the legality of abstract administrative decisions would be ensured, even though the courts had no jurisdiction to challenge the legality of such decisions.

Additionally, referring to foreign legal experiences including those of Germany would help Vietnamese law-makers consolidate their arguments to exclude abstract administrative decisions from the scope of judicial review of administrative actions. For example, in the German legal context, the German opinion is that the making of administrative decisions of a legislative character (*Verordnungen*) should be put under the direct supervision of representative organs since those decisions were fewer in number than the specific administrative decisions (*Entscheidungen*) and the making of them was very similar to the legislative process.<sup>54</sup> That is why administrative decisions of a legislative character are normally excluded from the scope of judicial review of administrative actions under German administrative law.<sup>55</sup>

It is noted that although the law of Vietnam does not generally confer on courts the power to review abstract administrative decisions, the question is raised whether Vietnamese courts should challenge unlawful decisions of this kind, based on which impugned specific administrative decisions are made.<sup>56</sup> This concept is known in many legal systems as ‘collateral attack’ in judicially challenging the legality of administrative actions. In the current law of Vietnam there is no such a concept and the validity of those administrative decisions can only be challenged by review mechanisms as above mentioned. In practice, Vietnamese courts cannot do anything other than make recommendations on the validity of abstract administrative decisions of a legislative character to relevant state bodies. However, they rarely do this in practice and leave the job for making law bodies. Thus, in Vietnam there has also been an argument for expanding the scope of judicial review to include abstract administrative decisions as the basis for impugned specific administrative decisions and acts.<sup>57</sup> But this discussion has not attracted much attention from Vietnamese law-makers. Most related debates focus on the issue of establishment of an organ which has jurisdiction to review the constitutionality of legal normative documents in Vietnam, especially in the current context of revising the 1992 Constitution.<sup>58</sup>

54 *Tim Koopmans*, *Courts and Political Institutions: a Comparative View*, Cambridge 2003, p. 149.

55 It is noted that in Germany, the “Allgemeinverfügung” as a specific type of “Verwaltungsakt” according to sec. 35 of *Verwaltungsverfahrensgesetz- VwVfG* (Administrative Procedure Act) 1976 of Germany can be challenged by way of sec. 42 of *Verwaltungsgerichtsordnung*; some of the abstract administrative decisions can under German Law be challenged by way of “Normenkontrolle” (review of norms) according to sec. 47 of *Verwaltungsgerichtsordnung*.

56 *Vu Thu*, *Mot so khia canh nang cao hieu suat hoat dong cua toa hanh chinh trong viec giai quyet cac khieu kien hanh chinh* [Some Issues on Promoting the Efficiency of Administrative Courts Regarding Hearing Administrative Cases], *State and Law* 8 (2003), p. 28.

57 *Thu*, note 56, p. 26.

58 In the revised 1992 Constitution draft, a new institution of Vietnam for protecting the constitutionality known as *Hoi dong Hien phap* [literally, the Constitution Council] is proposed. Debates on this model are currently heated among Vietnamese jurist circle.

It should be noted that German administrative courts have jurisdiction to consider the legality of an abstract administrative decision which creates legal bases for making the impugned specific administrative decision except for cases relating the constitutional validity of a statute.<sup>59</sup> This German experience would make sense for Vietnamese law-makers to adopt a similar legal provision in the coming law. However, dealing with the question of whether Vietnamese courts should be given the jurisdiction to review abstract administrative decisions, even in this case, must be put in the Vietnamese legal context.

It is noted that there are many challenges facing the reform of the Vietnamese legal system in general and of administrative law in particular. Vietnam has observed the doctrine of concentration of state powers for a long time,<sup>60</sup> where the independent role of courts, especially that of local courts has not been fully respected; the adjudicative capacity of its court system is rather weak; the concept of ‘rule of law’ is still new for Vietnam and it needs to take appropriate steps towards ‘rule of law’ commitments. Therefore any feasible reform must not be considered beyond this context and the proposal for the inclusion of abstract administrative decisions which create legal bases for making the impugned specific administrative decision or act in the scope of judicial review ought to be carefully examined. The two issues in question which should be centrally focused are:

- Which types of abstract administrative decisions can be judicially reviewable,
- Which courts in the court system should be conferred the jurisdiction to challenge those decisions.

## Conclusion

As a country in transition, Vietnam is on the way to develop its legal system towards a rule of law state with commonly recognised social values. This can be seen in many fields of law and the development of Vietnamese administrative law sets a good example. From limiting the scope of judicially reviewable administrative actions within certain categories to adopting a broad range of judicially reviewable administrative actions so that almost all specific administrative actions can be subject to judicial review, Vietnamese administrative law has made a big step in the improvement of administrative justice. However, although much has been done for promoting administrative justice in Vietnam, room still exists for further legal improvements and the issue of scope of judicially reviewable administrative actions is not exceptional. The question is what should be done for such further legal developments.

59 Section 47 of the Code of Administrative Court Procedures (*Verwaltungsgerichtsordnung – VwGO*) of Germany.

60 This doctrine, which was developed on the basis of the fundamentals of Marxism-Leninism, claims that in socialist states, all state powers have to be united in their representative organs, which are organised at both the central level and the local level. Although this doctrine is now more flexibly applied, it does not, however, mean that Vietnam is inclined to accept the doctrine of separation of state powers. Article 2 of the current 1992 Constitution reads “State power is unified, and there is the assignment and coordination of state organs in exercising legislative power, executive power, and judicial power”.

In responding to the above question, among other things, studying foreign legal experiences may play a significant role. In other words, comparative law should serve as a tool for legal development in Vietnam. As a well-developed administrative law system, German administrative law may offer some relevant German legal experiences for Vietnamese administrative law reformers. The question as always, however, is how we can define the ‘relevance’ in applying foreign legal experiences. Dealing with this question, understanding the context of different legal systems is of significant importance. Experiences of German administrative law as a complicated and expensive law system which can effectively function in the German context may only be relevantly applicable to Vietnamese administrative law as a transitional system on the basis of understanding the context of the two systems.