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**Suggested Improvements to the Administrative
Court Model & the Proposed Introduction Of an
Administrative Jurisdiction Body in Vietnam**

PHAM Hong Quang

Hanoi Law University
Asian Law Institute, National University of Singapore, Singapore

pqc22121998@yahoo.com

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Asia Law Institute

c/o Faculty of Law,
National University of Singapore
Eu Tong Sen Building
469G Bukit Timah Road,
Singapore 259776
Tel: (65) 6516 7499
Fax: (65) 6779 0979
Website: <http://law.nus.edu.sg/asli>
Email: asli@nus.edu.sg

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SUGGESTED IMPROVEMENTS TO THE ADMINISTRATIVE COURT MODEL AND THE PROPOSED INTRODUCTION OF AN ADMINISTRATIVE JURISDICTION BODY IN VIETNAM

PHAM HONG QUANG*

ABSTRACT:

For nearly 15 years, the Administrative Division Courts (ADCs) in Vietnam have failed to fulfill expectations, or to meet the requirements of Rule of Law (ROL), or to comply with the Judicial Reform Strategy promoted by Communist Party of Vietnam (CPV).

This paper explores why the ADC model and jurisdiction have been harshly criticized and which elements need to be reformed. It suggests building up the Administrative Jurisdiction Body (AJB) attached to the Government (the appellate system) in parallel with the Regional Administrative Court (the judicial review system) to ensure its independence from the governing agencies and ruling CPV.

The author's main argument is that the existing ADC model is not an ideal vehicle for protecting individuals from administrative malpractice. It should give people more channels to access justice in the context of post-WTO accession and the ROL era. The author concludes that the reform of the ADC model needs to be conducted concurrently with the transplanting of an Informal Institution of ROL to achieve the harmonization and democratic values of Vietnam as a State governed by ROL.

I. INTRODUCTION

A. Background

The foundation and inauguration of the Administrative Division Courts (ADCs) within the People's Court System nearly 15 years ago marked an epoch-making step toward the improvement of the Administrative Law Review System (ALRS) in Vietnam. This achievement undeniably resulted from a wide range of legal and judicial reforms in the push towards democratic values, as well as the introduction of *Nha nuoc Phap quyen* (Law-Based State) and the protection of the legal rights and interests of the Vietnamese people. However, this model has failed to fulfill expectations, or to satisfy the requirements of the Rule of Law (ROL) or the Judicial Reform Strategy promoted by the Communist Party of Vietnam (CPV). Some foreign scholars comment that it needs to be much more independent from the Government and the Ruling Communist Party in order to have credibility and legitimacy.¹

Criticism leveled at Vietnam's ADC model has recently increased, particularly in the face of the need to implement the Vietnam-America Bilateral Trade Agreement (BTA) and the WTO regulations. There has been strong support for the idea of creating an Administrative

* Hanoi Law University, email: pqc22121998@yahoo.com.

¹ See University of Iowa, News Release, "Law professor Reitz advising Vietnam on reforming its court system" (2 November 2007), online: University of Iowa News Release <http://news-releases.uiowa.edu/2007/november/110207reitz_reform.html>.

Jurisdiction Body attached to Government (AJB) or Administrative Tribunals. Meanwhile, the ADC model has itself faced great challenges.

From a theoretical perspective, Judicial Review of Administrative Action (JRAA), an expanding body of administrative law, is currently being developed throughout the world. Vietnamese administrative law, for a quite a long period of time, was criticized for its slow development, largely due to the absence of an impartial judicial body protecting the people from the malpractices of a powerful administration. Even now, it still lacks the features of an active and adjudicative administration.

In addition, Vietnam still lacks quality administrative law scholars, with the ability to introduce and implement Western theories and progressive systems of learning. An outstanding issue in the past 15 years has been the gradual change of legal perception towards the JRAA among Vietnamese scholars, who were historically influenced by Soviet legal thinking but who are nowadays influenced by legal thought from the West, East and Southeast Asia. One of the most difficult tasks of Vietnamese scholars is how to consult with the Government to achieve the best model and jurisdiction for JRAA, and one which is not simply a mishmash of borrowed sources. Of course, no legal system can develop in a vacuum, and one of the aims of this paper is to consider the ways in which Vietnam can make optimal use of developments elsewhere.

B. Research Questions

This paper groups all analyses and arguments in four research questions:

Part II - Why the existing ADC model needs to be improved;

Part III - Why experiences in other jurisdictions may assist in improving the position in Vietnam;

Part IV - How the existing ADC model can be reformed;

Part V - Why and how to introduce an Administrative Jurisdiction Body.

II. WHY THE EXISTING ADC MODEL NEEDS TO BE IMPROVED

Immediately after the ADC model was established in July 1996, Quach Le Thanh, Ex-General State Inspectorate in the National Research Project entitled “Administrative Court: Theory and Practice” (1997), admitted frankly that although this model was relevant in the current context of legal, political, and socio-economic conditions, it was not really ideal.²

Was the model merely an interim one, and why was it the source of so many objections?

Firstly, this model fails to fulfil the requirement that there be a clear distinction between the administrative jurisdiction and judicial jurisdiction, and between the adjudicative and governing functions within the administration.

Based on French theories and models, Vietnamese scholars expected the establishment of an independent administrative court system for judicial control of the administration. They suggested that, at the central level, the central administrative court should be attached to

² See Vietnam, Thanh tra Nha nuoc, “De tai nghien cuu khoa hoc cap Nha nuoc: Toa hanh chinh, Van de ly luan va thuc tien, [National Research Project: Administrative Court – Theory and Practice]”, (1997) at 25.

Government or be formed separately by the National Assembly to distinguish it clearly from the existing People's Court System. They considered that the creation of such a model would ensure appropriate administrative and judicial jurisdiction.

For these scholars, the establishment of the ADCs should be separate from but interlocked with the public administration itself, in a model in which administrative litigation proceedings would be heavily influenced by and almost copy civil litigation proceedings. The problem is that the administrative judges are not judges specializing in the settlement of administrative lawsuits, but rather judges who have been transferred from civil or criminal courts – which means that they are unable to meet the requirements of dealing with complicated cases.

Secondly, this model fails to fulfil the requirement of judicial independence.

Vietnamese scholars consider that the dependence of ADCs on local governments is the greatest threat to judicial independence. Article 17 of Law on People Courts (2002) states that: “The Supreme People Court (SPV) shall administer Local People's Courts in terms of organization in close cooperation with Local People's Council”. Some other legal norms also detail the dependent relationship between the local people's court and local government, such as: (1) the appointment of local judges through the Judge Selection Committee at the Provincial Level with the participation of the Local Government Members³; (2) the report on the performance of local courts to the People's Council at the same level⁴; (3) the organization of personnel for the local courts; and (4) the building of infrastructure and equipment for local court office facilities⁵. Such dependent relationships mean that it is impossible to ensure the court's independence in dealing with administrative lawsuits regarding local government decisions.

This model is directly impacted by the doctrine of State Power Concentration and the principle of Democratic Centralism controlling the entire operation of the Vietnamese state apparatus. Thus, the existing ADC model fails in essence to guarantee the independence of judiciary in terms of legislation and its execution.

This model is also severely controlled by the CPV's leadership. Most judges are members of the CPV, and are required to demonstrate both a professional quality and a moral, political quality. Local Courts are frequently under the leadership of the CPV's Executive Committee at the equivalent level and follow their guidance in complicated and/or politically involved cases.

Thirdly, this model fails to meet the demands of judicial reform carried out by CPV and the State.

The Party and State have already realized the disadvantage of the existing ADC model and have frankly admitted in the Judicial Reform Strategy to 2020 that “we should reform the people's courts at all levels step by step”, and “prepare for the establishment of the regional

³ *Ordinance on Judges and People's Assessors of the People's Courts*, 2002, art. 27.

⁴ *Law on the Organization of the People's Court*, 2002, art. 29 s. 2d.

⁵ See Vietnam, National Assembly's Standing Committee, Resolution No. 132/2002 (April, 4th 2002), art. 2 regarding the Requirement of Supreme People's Court in the Cooperation with Local People's Council in Control of Local People's Court System.

administrative courts”.⁶ However, as the kind of reform that would be desirable to achieve the goal of judicial reform and real judicial independence is still a subject of great controversy.

Finally, this model fails to fulfil the people’s expectations, and is still ineffective in protecting the people from the malpractices of the administration. It is strongly criticized, largely for the following reasons:

- (1) The only administrative matters which can be taken to the ADCs are those enumerated in Article 11 of OSAC (2006). The ‘standby’ provision which allows people to initiate other lawsuits is considered as a threat to Judicial Independence, and in practice only the National Assembly’s Standing Committee or Government may decide which kinds of administrative matters are to be dealt with by the courts.
- (2) People are not allowed to challenge an illegal, or even an unconstitutional, norm or regulation. In fact, there are numerous such provisions which go against people’s legal rights and interests.⁷ Besides this, public interest lawsuits are treated as beyond the jurisdiction of the courts.
- (3) To be resolved by ADCs, claims must involve a compulsory pre-litigation period, which makes it difficult for individuals to initiate lawsuits. The latest revised OSAC 2006 once again narrows the circumstances in which an action may be commenced by providing more cases in which the original settlement decision must be submitted. This is therefore regarded as a retrogressive step compared with the revised OSAC 1998.
- (4) Many errors of law, such as contradictions, overlaps, lack of clear provisions, and the slow issuance of guidance regulations by Ministries⁸ are among the main factors which interfere with people’s legal rights and interests.
- (5) Due to the lack of concrete provisions regarding the content of judgments, local ADCs often make mistakes when issuing discretionary judgments. In some cases, this also damages the claimants.

III. WHY EXPERIENCES IN OTHER JURISDICTIONS MAY ASSIST IN IMPROVING THE POSITION IN VIETNAM

This paper supports the idea of David Nelken that “[b]orrowing other people’s law is seen as just a method of speeding up the process of finding legal solutions to similar

⁶ See Vietnam, CPV, Nghi Quyét 49 NQ/TW (May, 24th 2005) Ve Chien luoc Cai cach Tu phap den nam 2020, [Resolution No 49 (May, 24th 2005) on Judicial Reform Strategy up to 2020] in *Official Documents Regarding the Reform of State Apparatus*, (2005) at 25.

⁷ Some examples include provisions prohibiting music school students from performing in pubs or discotheques, banning the registration of more than one motorcycle per person, prohibiting people who are less than 145 cm tall and weighing less than 40 kg from steering motorcycles, banning the three-wheel motorcycle as a means of transportation. Some of these regulations have just been abolished. According to the statistics by the MOJ’s Department of Checking Legal Norms, about 6.300 legal documents were illegal. See Gan, “6.900 Van ban trai Phap luat da duoc ban hanh, [About 6.900 Illegal Norms or Regulations were enacted]”, online: VN Express <<http://vnexpress.net/GL/Phap-luat/2008/11/3BA08CB1/>>.

⁸ See *Hanoi*, “A Case Regarding Personal Income Tax Decision to Mr. K.S. (Japanese)” (1998) at Chapter II, II.2.2. (Pham Hong Quang, *Administrative Division Courts in Vietnam: Model, Jurisdiction and Lessons from Foreign Experiences*, published by CALE, Nagoya University, 2010)

problems”.⁹ Studying foreign laws and experiences is the best way for Vietnam speedily and efficiently to bring itself into line with international norms. However, Vietnam should not introduce foreign laws without careful consideration, since introducing inappropriate laws from other jurisdictions will actually hinder the process of development.

Firstly, this section selects three countries, France, China and Japan – three countries which have already had significant influence – from which to draw experience. China and France have overseen long periods of colonial rule, China and Japan have helped imbue Asian values, France and Japan were early and enthusiastic FLA donors, and there are political, cultural and social commonalities between China and Vietnam, as well as Japan’s long-standing experience of importing foreign laws with “total personality make-up that give births to those conclusions arrived at by Western learning”.¹⁰

France is one of the most influential countries in the history of modern Vietnam, due to nearly one century of colonization, ending in 1954. Since the early 1990s, the Vietnam-France Legal House (Maison du droit), established by a Bilateral Agreement between the Governments of Vietnam and France (signed in 1993), has organized nearly one hundred workshops and training courses, including those concerning the study of the French administrative court model, and the comments of Vietnamese legislative drafts relating to the settlement of administrative lawsuits etc. In addition, some of the government inspection delegations were sent to France in 1992 to study French experiences.¹¹

Although the proposal of setting up an administrative court attached to the government, resembling the French Conseil d’Etat model, was not approved by National Assembly at the end of 1995, it is still strongly supported by many scholars.

China, although having no legal assistance projects in terms of Vietnamese administrative courts, has had the strongest influence in Vietnam. Inspired by the traditional thinking “Take a look at one’s neighbors to see what they have done, then do the same subject to one’s local conditions”, Vietnamese lawmakers have clearly been influenced by Chinese experiences in empowering the people’s courts to hand over administrative lawsuits. In addition, the thousand years of Chinese colonial rule has undoubtedly led to many commonalities in political, cultural and social conditions.

Japan was one of the earliest donors to carry out legal assistance projects in Vietnam, beginning in the mid-1990s. Japan, through JICA, actively assisted Vietnam in improving its laws in the civil and economic areas. Although legal assistance in the field of administrative law is still limited, it is nevertheless promising. Under the Justice Reform Strategy of Japan in the 21st century, some recent amendments to the Japanese ACLL (2004), as well as the reform of training of the legal profession, provide some ideal learning opportunities for Vietnam in improving the current ALRS by codifying the law and training professional judges.

⁹ David Nelken, “Legal Transplants and Beyond: Of Disciplines and Metaphors” in Andrew Harding & Esin Orucu, eds, *Comparative Law in the 21st Century* (The Hague: Kluwer Law International, 2002) at 26.

¹⁰ Itsuo Sonobe, “Comparative Administrative Law: Trends and Features in Administrative Law Studies in Japan” (1986) 19 *Law in Japan* 40 at 56.

¹¹ See Vietnam, Thanh tra Nha nuoc, “Bao cao Khao sat kinh nghiem nuoc ngoai ve Tai phan hanh chinh, [Report on Foreign Experiences on Administrative Jurisdiction]” by Project on Drafting Law on Administrative Court submitted to National Assembly IX, (1995) at 3.

Secondly, Vietnam can study some relevant experience from each of the above countries, particularly those related to expanded jurisdiction (France, Japan), special administrative courts grouped in the main regions throughout the country (Japan), controversies regarding limited jurisdiction (China), contemporary reform regarding ALRS and training legal human resources (Japan, China), and the enforcement of the administrative judgments (France, China, Japan). Nevertheless, Vietnam cannot totally follow any single model, due to: (i) the differences in political structure and State Power (France, Japan); (ii) the defects in similar ADCs (China); and (iii) the immaturity of contemporary Vietnamese administrative law theory.

Thirdly, Vietnam can also study some positive points from the common law theory of judicial review, such as the introduction of administrative jurisdiction bodies resembling the Merit Review Tribunal or Administrative Tribunal in Australia and the USA.

Finally, to avoid constructing ALRS from a mishmash of borrowed theories and models, Vietnamese lawmakers need to take their time to find solutions which are suitable for modern-day Vietnam. In addition, to avoid political pressure, Vietnam needs to be more active in FLA Projects, and needs gradually to promote legal cooperation, guaranteeing equal status and mutual benefits among partners.

IV. HOW THE EXISTING ADC MODEL CAN BE REFORMED

Firstly, Vietnamese scholars suggest that a reformed model should not be based on geographical units, but rather on the relevant adjudicating jurisdiction. The idea of establishing regional administrative courts emerged in the early 2000s, due to the dependence of the local courts on governing agencies at the same level during the settlement of administrative lawsuits. Some scholars consider the choice of this model as the best way to guarantee judicial independence.¹²

According to this model, at the local level, some provinces would share the same Regional Administrative Court. In the same way, some districts within one or more provinces would share a single-area Administrative Court. However, at the central level, the administrative court would be either: (1) subordinated to the Supreme People's Court (SPC) in the same way as the central military court, or (2) subordinated to the National Assembly and absolutely independent from the People's Court System.

While (1) is a compromise between the idea of setting up an independent administrative court and the idea of subordination to the SPC at the top, (2) is entirely inspired by the German model. Scholars supporting this consider that the relevant court system should be absolutely separate from the judicial courts and that it should review only the legality of the litigated decision or action. If the system of Government Inspection were upgraded to become an independent administrative court, it would hold only the adjudicative function without an advisory function to the government. Thus, at the central level, the Administrative Court and the Chief Justice would be appointed by the National Assembly. The personnel of the regional and area courts would be under the direct control of the Chief Justice of the Central Administrative Court, and would be required to hold independent status from the local administrative agency.

¹² See Le Thi Nga, "To Chuc Toa an Nhan dan Khu vuc – Nhung Van de Ly luan va Thuc tien, [Reorganizing the People's Regional Courts: Theoretical and Practical Issues]" (2003) 4 J. Legislative Stud. 51 at 51-57.

To organize the model of the regional courts, some Vietnamese scholars, based on the Strategy of Judicial Reform initiated by the CPV's Politburo, suggest that Vietnam should establish High Courts (Toa thuong tham).¹³ Accordingly, the regional administrative court system would consist of four levels, as follows:

- (1) First-Instance Area Courts (Toa so tham khu vuc). Each Area Court would include some districts in one or more provinces and would be empowered to hear cases at first-instance;
- (2) Regional Courts of Appeal (Toa phuc tham vung). Each Regional Court would include one or more provinces hearing appeals from area courts of first-instance. These courts would also hear first-instance cases where the plaintiff is a central agency or where foreign factors or other complications are involved;
- (3) Administrative High Court (Toa thuong tham). There would be five such courts in territorial divisions, such as the North, the Middle, the South, the Central High-Lands and the Mekong Delta. Each High Court would hear appeals of first-instance decisions of the Regional Court;
- (4) The SPC would hear supervisory matters and review trials. It would also guide lower courts in resolving the issues and publishing supervisory judgments.

This model avoids the involvement of local governments in the appointment and dismissal of judges. Under the present law, a judge's term is five years from the date of his appointment. The appointment of local judges depends on the decision of the Provincial Judge Selection Committee, which consists of members of the Provincial People's Council, Local Government Organizational Board, and the Fatherland Front.¹⁴ In practice, the limited nature of the term, as well as the pressure of local government on the judge's appointment and the dependence on a limited budget and infrastructure are the main obstacles for administrative judges to act in an unbiased way when local governments are defendants in actions. The Deputy Chief Justice suggests that judges should in future be appointed for life to make them more confident in their work. Thus, the idea of setting up regional courts along with the lifetime appointment of judges is a promising reform. Nevertheless, some scholars still question whether it is feasible, because it may fail be inconsistent with the 'Party Ruling', which binds all state mechanisms. It may also create other problems in relation to budget, infrastructure etc.

Secondly, the court's jurisdiction should be extended to ensure: (i) that any claim will be impartially and transparently reviewed; and (ii) that any final settlement will be reviewed by judicial courts (according to the requirement of the Vietnam-America BTA and the WTO membership regulations). It can examine the legality of any litigated administrative decision or action, and also the legality of judgments given by the AJB (which will be discussed below).

Thus, although still controversial, the establishment of regional administrative courts is a worthy proposal. Excluding the establishment of a central administrative court that is independent from the SPC as in the German model (since it may be hard to consult), the

¹³ See Dang Quang Phuong, "Se Thanh lap Toa an Khu vuc, [Whether Regional Court Should be Set Up]", online: <<http://vietbao.vn/An-ninh-Phap-luat/Se-thanh-lap-toa-an-khu-vuc/40108555/218/>>.

¹⁴ See *Ordinance on Judges and People Assessors of the People's Court*, *supra* note **Error! Bookmark not defined.**, art. 24, 27 s. 1.

setting up of regional courts within the people's court system is in principle suitable for Vietnam's current context. In this case, the existing court model should be reconstructed to ensure its independence from local government. However, whether it becomes really independent from the Government and Party's Ruling is still likely to remain a controversial matter.

V. WHY AND HOW TO INTRODUCE AN ADMINISTRATIVE JURISDICTION BODY

A. Why Introduce the Administrative Jurisdiction Body

Firstly, it will implement the administrative law theory that there should be two interlocking functions of government and adjudication.

Secondly, it will bring Vietnam into line with world trends. Some foreign experts comment in the report of Vietnam-STAR project that

The change to taking administrative lawsuits to an independent administrative jurisdiction body rather than to courts, is in accordance with the new trend of the world entrusting the adjudication to a special body ... We respectfully propose to establish the Administrative Jurisdiction Body (AJB), which can independently and impartially review all administrative decisions and actions protested by any organization or individual, including foreigners.¹⁵

Thirdly, it meets the demand of giving people more channels to access justice in the post-WTO accession and the ROL era.

Fourthly, it may remedy the ineffective operation of the existing ADC model and the existing inspectorate agency.

Finally, it will be useful for Vietnam to learn from overseas experiences regarding the model and jurisdiction of the AJB (as a quasi-judicial adjudicative body). Examples of such bodies overseas include a hybrid between a court & administrative agency or Merit Review Tribunal (Australia); a Merit System Protection Board, and various tribunals (the US); special Doctors' Chambers under the Code of Doctors' Ethics, 1991 (Poland); the Audit Jurisdiction Body under Article 139 of the 1991 Constitution (Rumania); the Scientific-Technological Commission on Meteorology, the Commission on Anti-Monopoly, the City Housing Commission (Russia); and the Income Tax Board of Review, the Land Acquisition Appeal Board, Professional Disciplinary Bodies, the Board of Architects, the Singapore Medical Association and the Pharmacy Board (Singapore).

B. How to Set Up the Administrative Jurisdiction Body

At the central level, the central AJB will be formed by the National Assembly and will have three main tasks: (1) Resolving appeals of administrative lawsuits involving central state agencies and those concerning claims that have been settled by Ministers or the heads of Ministerial agencies or of agencies belonging to the Government; (2) Consulting with

¹⁵ Vietnam, STAR-Vietnam Project, "Bao cao va Khuyen nghi ve viec thanh lap Co quan Tai phan Hanh chinh o Vietnam, [Report and Recommendation on Establishment of AJB in Vietnam]" in *Thanh tra Chinh phu* (2006) at 127-129.

the Government and Prime Minister on administrative matters in specific cases; (3) Offering guidance to the local AJB.

At the local level, the AJB should be divided into the regional (vung) and area (khu vuc) bodies.

The Regional AJB should deal with provincial lawsuits involving both central and local agencies, such as claims that have been reconsidered by the Chairman of the Provincial People's Committee but are still in dispute and claims relating to a certain Minister's decision.

The Area AJB should comprise of districts or cities within provinces and should deal with actions concerning district agencies and claims that have been reconsidered by the Chairman of District People's Committee but are still in dispute. The AJB could review both the legality and the rationality (merits) of the litigated decisions. Its judgments could also be reviewed by the area or regional administrative courts.

Two specific AJBs – a Land Tribunal and a Claim Settlement Council could also be formed

A Land Tribunal would have the following characteristics:

- (1) It should be attached to either the National Assembly or Government, but should be absolutely independent from the administrative agency system;
- (2) It should hold a quasi-judicial function and render its judgments on any dispute involving the issue of land management;
- (3) It should consist of one central tribunal and several regional or area tribunals. There would no need to set up land tribunals throughout the country; rather they should be located in regions which have “hot” land issues;
- (4) the adjudicators would have to equip themselves not only with relevant legal knowledge but also with the litigation skills relevant to land policy;
- (5) it would have the power to annul, uphold or revise, and its judgments would have to be executed.

Vietnamese scholars consider that the establishment of such land tribunals would have the following advantages: (1) It would distribute the burden of dealing with actions involving land, which currently amount to about 50% of the cases coming before the courts each year; (2) Land lawsuits often involve land confiscation for various purposes, land policy during times of war, dispute resolution on land-use rights, and land compensation in the urbanization process. However, most such matters cannot be dealt with by existing courts, due to their limited jurisdiction. The process is further hampered by the fact that requests to reconsider decisions by administrative agencies must always be submitted before actions are assessed. In addition, land disputes mostly involve factual matters, such as the calculation of compensation, the measure of land area for granting or acquisition, dispute settlements concerning inheritance, grants or transfer during times of war etc. Administrative tribunals are more appropriate bodies than courts to deal with such matters, since they can review both the legality and reasonableness of disputes and act as efficient mediators; (3) The existence of administrative tribunals would not only end the exclusive

rights of administrative agencies to deal with such disputes in non-transparent proceedings, but it would also create a good opportunity for lawyers to follow such disputes from their outset.

A Claim Settlement Council would also be beneficial:

Vietnamese scholars point out that this model already exists in the Department of Competition Management, the Ministry of Trade and Industry, and the Department of Intellectual Property of the Ministry of Science and Technology. Scholars suggest that this Council should be strengthened further by expanding its jurisdiction to become an independent AJB. It should not merely give advice but also render effective judgments. The members of this Council should be appointed as lifetime members by the Minister and should receive payment directly from the Ministry of Finance.¹⁶ It is emphasized that in Vietnam this would be subordinated to the administrative agency. In comparison with the model of the AJB attached to Government discussed above, some foreign experts consider that it is less attractive, because the members of this Council still belong to the governing agency¹⁷. They are likely to have only advisory powers, and not those of an independent adjudicator, as in the case of the US. Some Vietnamese scholars also refer to China, where a tribunal system was suggested immediately after China became a member of the WTO (2001). However, it was finally discarded due to its unfamiliar theory, inconvenience in terms of access, and the existence of various other channels for supervising administrative activities.

C. The Proposed Mechanism for Settlement of Administrative Disputes

If a new system of AJB and Regional Administrative Court models were to be set up, the settlement mechanism would be as follows:

Firstly, there would be a period during which the original or upper-level administrative agency or authority would take time to reflect on the situation. This period would be necessary for the competent agency or authority to consider rectifying any mistakes. The right to take claims to an independent AJB should be optional, not compulsory.

Secondly, the Area or Regional AJB would review both the legality and rationality of litigated decisions and consider awarding damages to compensate for damage done by the state agency or authority. The central AJB would hold quasi-judicial power to inquire into the legal position and suggest any amendments to the law. The AJB system would be distinct in that it would involve self-reconsideration by the administrative agency as well as by courts of its professionalism, convenience and simplicity. If the settlement were still regarded as inadequate, the plaintiff could appeal to the Area or Regional ADCs.

Finally, Area and Regional ADCs could review the legality of litigated decisions and consider whether the AJB at the level below failed to apply the correct laws in its settlement proceedings. These ADCs could confirm or revoke decisions by the agencies or AJBs.

¹⁶ Vietnam, STAR-Vietnam Project, “Bao cao va Khuyen khich ve viec Thanh lap Co quan Tai phan Hanh chinh Vietnam, [The Report and Proposal on Establishment of AJB in Vietnam]” in *Thanh tra Chinh phu* (2006) at 131-133.

¹⁷ *ibid.* at 87.

VI. CONCLUSION

In conducting this research, I have reached the following conclusions:

Firstly, the existing ADC model is not an ideal model for protecting individuals and entities including foreign partners residing in Vietnam in the period of post WTO-Accession.

Secondly, the jurisdiction of current ADCs is very limited and has been harshly criticized, although it has been gradually improved through two revisions of the Ordinance of Settlement of Administrative Cases in 1998 and 2006. Based on that criticism, this paper supports the need to expand the court's jurisdiction to its maximum (with exceptions only for matters involving national defense, diplomatic relations and so on).¹⁸

Thirdly, to reform the ADC model in the context of international integration, Vietnam needs to learn from foreign experiences by means of the FLA. This paper agrees that it is sensible to borrow applicable provisions and systems from other jurisdictions in order to speed up the process of finding legal solutions for Vietnam.

Fourthly, to reform ADC model, Vietnam needs to improve in parallel both the appellate system and the judicial review system.

Finally, the reform of the ADC model should be conducted concurrently with a gradual move towards the adoption of the ROL in Vietnam, preparing the legal system for the integration of democratic values.

¹⁸ The law on administrative litigation has been approved by the 12nd National Assembly of the Socialist Republic of Vietnam in November 2010 with some amendments made to the jurisdiction of the administrative division courts.