Strikes as the last resort for collective labor disputes: practical situation and legal limitations in Vietnam

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Abstract

Labor dispute is a socio-economic phenomenon which can arise during the establishment, change and termination of industrial relations. Together with the development of economy, labor disputes, especially collective labor disputes, became a concerning issue for many countries. To deal with this, the International Labor Organization (ILO) and countries' governments have promulgated regulations in which strikes or industrial actions are considered as the last resort for labor dispute resolution. However, due to different reasons, such regulations have not been effectively enforced in some countries. This paper discusses the practical situation of strikes and the legal enforcement in dealing with unlawful strikes which have been frequently occurring in Vietnam. International principles and views from different countries concerning labor dispute resolution are also mentioned as the basis to provide recommendations for the improvement of legal regulations on strike resolution in Vietnam.

keywords: Labor code, dispute resolution, International Labor Organization, employees, employer.

1. Introduction

The constantly changing landscape of aid has expanded beyond the narrow parameters

Vietnam has moved its centralized and subsidized economy to the multi-sectorial socialist oriented economy since 1986. The change in economic policies and the diversification of ownership categories has created strong motivation for the country development especially in economy. However, along with the economic development, labor dispute in general, and collective labor dispute in particular, have been increasing in terms of quantity and become more complicated in nature. According to the statistics of the Ministry of Labor, Invalids and Social Affairs (MOLISA) of Vietnam, since the promulgation of Labor Code 2012 there have been 1,384 strikes between 2013 and 2018, of which, 100% did not follow legal procedures[1]. As regulated in the revised Labor code 2012 of Vietnam, strike is not a solution for disputes about rights but only about interests, and the labor

[1] MOLISA report on Strike situation and resolution (2019)

collective can resort to a strike only after having failed to reach a solution through conciliation by a conciliator or a labor arbitration council, or if the arbitration council does not process the conciliation procedures within the established timeframe. However, the experience has shown that striking has always been the first option selected by employees once the dispute arose instead of the last resort, as regulated by law. According to the MOLISA's report on strike situation and resolution in 2019, as all the strikes occurred spontaneously, none of the legal resolution procedures including mediation, arbitration and court jurisdiction has ever been applied so far. Reasons for this may come from the low enforcement of relevant legal regulations, lack of guidance on dispute resolution procedures for workers, weak performance of trade unions at enterprise level and inadequate strike resolution action by the competent governmental agencies. When a dispute happens, they only target to meet the workers' immediate requests so as to stop the strike as soon as possible, but do not require them to follow the legal procedures for dispute resolution, as regulated. This paper discusses the practical situation and the legal procedures of strike in Vietnam, taking into account the international perspective in the resolution of collective labor disputes.

2. Theoretical issues in collective labor disputes

i. Concept of collective labor dispute

According to the ILO, "*Collective Labor Dispute (CLD) is a disagreement between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers over existing rights or future interests"*[2].

Many countries divide labor disputes into two types, namely the Individual Labor Dispute (ILD) and CLD. However, some countries only formulate the concept of ILD while the concept of CLD is understood by the method of exclusion. For instance, in France, the Labor Code 1952 regulates the establishment of labor court to "judge all the individual disputes relating to the employment contract between employees and employers" and there is no definition of collective labor dispute[3]. Hence, the concept of collective labor dispute in France can be understood by the method of exclusion: all the labor disputes involving the

[2] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p18;

[3] Eladio Daya (1980), Conciliation and Arbitration Procedures in Labor Disputes: A Comparative study, International Labor Office, p15;

participation of many employees and not directly related to the labor contract are considered collective labor disputes.

According to the Clause 7, Article 3, Labor Code 2012 of Vietnam: "*Labor dispute comprises of individual dispute between an employee and an employer, and collective labor dispute between a worker's collective and an employer*"

In Italy, "*Collective dispute is a dispute about the indivisible interest of a group (a collective interest), either when another group acts against that interest (bilateral trade-union collective dispute) or when an individual acts against that interest (unilateral trade union collective dispute), and both when that act against the group's interest affects the whole group immediately (collective disputes about a trade union's interest or rights) and when its immediate effect is on an individual within the group (collective disputes about a trade-union member's interests or rights")*[4]. Although it doesn't clearly state the subjects of collective labor dispute, the concept shows collective element for the dispute since the "indivisible group interests" in dispute are always those related to a labor collective and a collective agreement.

Collective labor disputes are those arising between the labor collective and the employer. Many countries stipulate "labor collective" as a group of employees who work together in a business with the same motivation and purpose of performance, have ability to coordinate together closely, synchronously and effectively. However, there are also countries that define labor collective based on the participation of trade union as representative for workers. Accordingly, the labor collective includes not only a large number of participants in the dispute but also the participation of the union as an organization representing and protecting the workers' rights. Labor Collective is initially understood as those who work together for an employer. However, as collective labor disputes may not only happen within an enterprise but also occur in a broader scale as in an industry, region or country, the concept of labor collective should be understood in correlation with the scope of the dispute. If the collective labor dispute occurs within an enterprise, the concept of labor collective is understood as a set of employees working in an enterprise or in a part of an enterprise. If it occurs within an industry, the labor collective is considered a collection of employees working in that industry. Although the labor collective is understood as a collection of employees working in an enterprise or in a part of an enterprise, gathering of employees working in an industry, when collective labor disputes arise there is the participation of 100% employees of such collective, although not in all cases. It is important to identify the employees involved in the dispute as a labor collective if they have uniform requirements which relate to the interests or represent the interests of such labor collective.

[4] Mario Grandi (2003), Labor conciliation, mediation and arbitration in Italy, in Fernando Valdés Dal-Ré, Labor Conciliation, mediation and arbitration in European Countries, Subdirección General de Publicaciones, Madrid, p255;

ii. Categories of collective labor disputes

Classification of collective labor disputes is aimed at assessing the nature of disputes for an effective resolution. Based on the causes of disputes, ILO's documents and laws in many countries (Sweden, Norway, France, Austria, Denmark, Germany, Finland, Australia, New Zealand, Argentina, El Salvador, Guatemala, Panama, Peru, Venezuela, Japan, Taiwan, Hong Kong, Laos, Indonesia and Vietnam) divide collective labor disputes into right disputes and interest disputes. In some Italian legal documents, the terms "collective legal disputes" and "collective economic disputes" are used and their connotations are quite similar.

ii.i Right collective labor disputes

Right collective labor disputes arise when one party in the industrial relation believes that the other party violates its rights (as provided in the law or agreed in the Collective Agreement/other labor Agreements) or when there are different explanations and implementations of the provisions of labor law, collective agreements and working regulations. Therefore, the purpose of parties to enter a right collective labor dispute is to ensure proper implementation of the rights and obligations identified in the legal documents, internal working rules, collective agreements or other labor agreements.

According to the ILO, "*a right collective labor dispute is a disagreement between workers and their employer concerning the violation of an existing entitlement embodied in the law, a collective agreement, or under a contract of employment"*[5].

In Vietnam, the law did not make a clear distinction between collective labor disputes and individual labor disputes until the issuance of the Revised Labor Code in 2006. According to paragraph 8, Article 3 of Vietnam Labor Code 2012: *"A right collective labor dispute shall mean a dispute between a worker's collective and the employer arising out of different interpretation and implementation of provisions of labor laws, collective labor agreements, internal working regulations, and other lawful regulations and agreements*". This definition contains some modifications and supplements compared to the initial concept developed in the Revised Labor Code 2006. Accordingly, right collective labor

[5] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p18;

disputes arise on the basis of the rights and obligations of the parties in an industrial relation, which have been recorded in relevant documents as stipulated by the Labor Code, provisions in collective labor agreements, working rules or by other legal regulations and agreements. It is a dispute over what has been determined or legally agreed by law such as minimum wage, overtime pay, maximum working time, number of annual holidays, labor accident compensation. It can be understood how a collective of employees and employer have different ways of interpreting the contents recorded in the documents agreed or previously accepted by the parties, leading to the different ways of implementation that may have negative impacts on either party, causing conflicts and disagreements. To ensure the collective bargaining principles under the ILO Convention No. 98 that Vietnam has just acceded to, the revised Labor Code 2019 provides additional contents of the right CLDs which include cases where the employer discriminates the employees, cadres of workers' representative organization for the reasons of their establishment, accession and operations in the workers' representative organizations; or, due to intervention, manipulation against workers' representative organizations or if the obligation to collective bargaining in goodwill is violated.

In the Italian law, the distinction between collective labor dispute and collective right dispute/collective interest dispute does not exist. The term "collective labor dispute" is commonly used for both.

ii.ii Interest collective labor disputes

Interest collective labor disputes arise from disagreements over the views of the parties concerning the change and establishment of new working conditions, extension of a Collective Agreement (CA), continuation of the old CA or signing a new one in case of the enterprise's structure or ownership changes. Therefore, interest CLDs occur while neither party violates the provisions of the law, CA or other labor agreements. When an interest CLD arises, legitimate rights and interests of the parties in the collective labor relations have not been violated and affected at all. In addition, the purpose of parties towards entering into an interest CLD is to achieve common agreements for collective labor relations.

ILO defines an interest *dispute as a disagreement between workers and their employer concerning future rights and obligations under the employment contract*[6].

[6] International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance, p18;

The views of nations on interest CLD may be different, particularly concerning the determination of the disputed contents and the subjects entitled to initiate a dispute. Some countries argue that an interest CLD is the disagreement arising between the labor collective and the employer, whereby the labor collective requires to change or establish new working conditions compared to the provisions of labor law, existing CA or other labor agreements being in effect. In countries with this view, the contents of an interest CLD by law are recognized only as the labor collective's requirements concerning the improvement of working conditions of workers and as a result, the party initiating the dispute is always the labor collective. For instance, in Vietnam (*as stated in the Labor Code 2006 – Article 157 – Paragraph 3*) and in Laos, an interest CLD is understood as a dispute involving the workers' claims regarding their new benefits that the employer must realize[7]. From other countries' point of view, interest CLDs not only derive from the labor collective's claims to improve their working conditions but may also occur when the employer intends to add a new content into the CA and/or other labor agreements, or to change existing agreements. For example, in the United States' context, an interest CLD is construed as a dispute between an employer and a labor collective regarding the contents that will be included in a new collective agreement. This type of dispute occurs when either the trade union or the employer wish to include a provision in the CA but the other party does not agree[8]. In Indonesian law, the interest collective labor dispute is understood as a dispute arising in industrial relations due to the disagreements during the process of drafting and/or changing the working the conditions specified in labor agreements, company regulations or collective labor agreement[9].

In the revised Labor Code 2019 of Vietnam, the interest collective labor dispute include *"the labor disputes that arise during the process of collective bargaining or when a party refuses to participate in the collective bargaining or the collective bargaining is not held within the time limit prescribed by law"*.

Through the above provisions, it can be understood that interest CLD is a dispute between the collective of employees and the employer on issues which have not been yet specified or agreed upon. Interest CLDs occur on when the collective of employees is not satisfied with their current working conditions and is aiming at establishing better conditions or new benefits which have not been regulated yet, or which are more demanding than those prescribed in labor law, in existing agreements between parties and in the regulations of enterprises. The term

[7] Lào (2007), Bộ luật Lao động, Điều 61 (bản dịch tiếng Việt trong Pháp luật Lao động các nước Asean, Bộ Lao động, Thương binh và Xã hội xuất bản năm 2010, Nhà xuất bản Lao động – Xã hội);

[8]Trần Hoàng Hải (CB) (2011) Pháp luật về giải quyết tranh chấp lao động tập thể - Kinh nghiệm của một số nước đối với Việt Nam, NXB Chính trị Quốc gia, p56-57;

[9] Indonesia (2004), Luật về giải quyết tranh chấp quan hệ lao động (bản dịch tiếng Việt trong Pháp luật Lao động các nước Asean, Bộ Lao động, Thương binh và Xã hội xuất bản năm 2010, Nhà xuất bản Lao động – Xã hội), Art.1;

"interest collective labor dispute", as earlier mentioned, does not exist in the Italian labor law, while the right to strike is used as an instrument to defend and support collective interests.

3. International legislative principles of collective labor dispute resolution

To facilitate the resolution of collective labor dispute, the ILO has regulated a series of principles concerning collective bargaining, conciliation, arbitration and implementation of the right to strike. The key principles include[10]:

- Collective bargaining must be held on a voluntary basis to ensure its effectiveness. Measures of compulsion which would lead changes in the voluntary nature of such bargaining should not be applied. Recourse to the bodies appointed for dispute resolution must be voluntary and those bodies should be independent from disputing parties;
- Parties involved in collective bargaining should behave in good faith and have mutual confidence. They should make their best efforts to reach agreements during the bargaining process. A positive attitude towards each other is also important for the bargaining to be successful;
- Both employers and workers should be able to choose the representatives for their interests without any interference from public authorities in the collective bargaining process.
- Free collective bargaining should be promoted by public authorities and made available to relevant parties. Collective agreements should be concluded based on mutual negotiation and voluntary consensus between parties, without any interference from public authorities for the purpose of hindering or preventing the application of freely signed collective agreements, especially when such authorities are employers or those who countersign the collective agreements;
- Strike procedures should be simple enough to enable a legal strike declaration to happen in practice, which is to ensure the right to strike of workers and avoid illegal industrial actions;
- Conciliation and mediation procedures should only facilitate the bargaining process and should not be complex or too slow, which in practice would lead to the impossibility to declare a lawful strike.

[10] International Labor Organization, 2006, Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 5th edition, para. 564, 565, 926, 932; International Labor Organization, 2018, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association, 6th edition, para. 1480, 790, 795, 803 & 816.

- The information asked for in a strike notice should be reasonable, or interpreted in a reasonable manner, and any resulting injunctions should not be used in such a manner as to render legitimate trade union activity nearly impossible.
- Compulsory arbitration is used as a resolution for a collective labor dispute or to stop a strike only when there is the request of both disputing parties or in cases such strike causes services interruption that may endanger life and safety of community people.

These principles are implemented differently in the countries' laws. In Malaysia, when a collective labor dispute arises, disputing parties can request the Director of Industrial Relations Department to conduct conciliation. However, if the parties agree a settlement method, the Director of the Industrial Relations Department will leave them to resolve the dispute on their own, unless that method had already been applied unsuccessfully or he found that the it was unlikely to be successful[11]; In Cambodia, when a CLD arises, the dispute would be resolved under the settlement mechanism agreed in the CA, if the parties had already agreed on such a mechanism. The labor conciliator and arbitration council shall only resolve the dispute in accordance with the law if the parties cannot agree on a dispute resolution mechanism in the collective labor agreement[12]. In China, even when the application has been submitted, the parties can still arrange the settlement themselves. In case an agreement is reached, the parties can withdraw the request for arbitration. At the arbitration session, before issuing the dispute settlement judgment, the arbitration council/arbitrator will assist disputing parties in mediation with the aim to help them reach a mutual agreement on resolving the dispute[13].

Arbitration is not allowed in interest collective labor disputes resolution and not recommended for right disputes either mandatorily or voluntarily in Italy while Vietnam's Labor Code 2012 requires arbitration as compulsory procedures for interest disputes after the failures of conciliation and before the labor collective can move to strike procedures. In the revised labor Code 2019, which has been in effect since January 1, 2021, arbitration is defined as a voluntary procedure for both interest and right collective labor dispute resolution.

[11] Malaysia (1967), Industrial Relations Act of Malaysia, Art.18

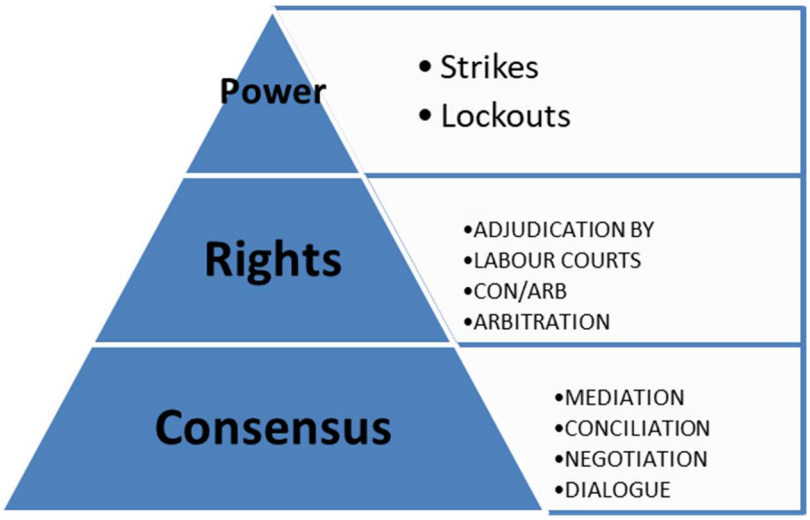
[12] Campuchia (1997), Bộ luật lao động (bản dịch tiếng Việt trong Pháp luật Lao động các nước Asean, Bộ Lao động, Thương binh và Xã hội xuất bản năm 2010, Nxb Lao động – Xã hội), Art.303&309;

[13] Trung Quốc (2007), Luật trung gian, hoà giải và trọng tài tranh chấp lao động (bản dịch tiếng Việt trong Vai trò của công đoàn và các nỗ lực của ba bên trong việc thúc đẩy thương lượng tập thể và đối thoại xã hội tại Trung Quốc, ILO Việt Nam xuất bản nội bộ), Art.41.

4. *Strikes as the last resort for CLD resolution and the practices of Vietnam*

ILO recommends an effective labor dispute resolution system which begins with consensus-based processes (dialogue, negotiation, conciliation and mediation), proceeds to rights-based processes (arbitration & labor court) and ends with power measures that are only used where no other solutions can be found (strikes and lockouts). This system is described in the diagram below:

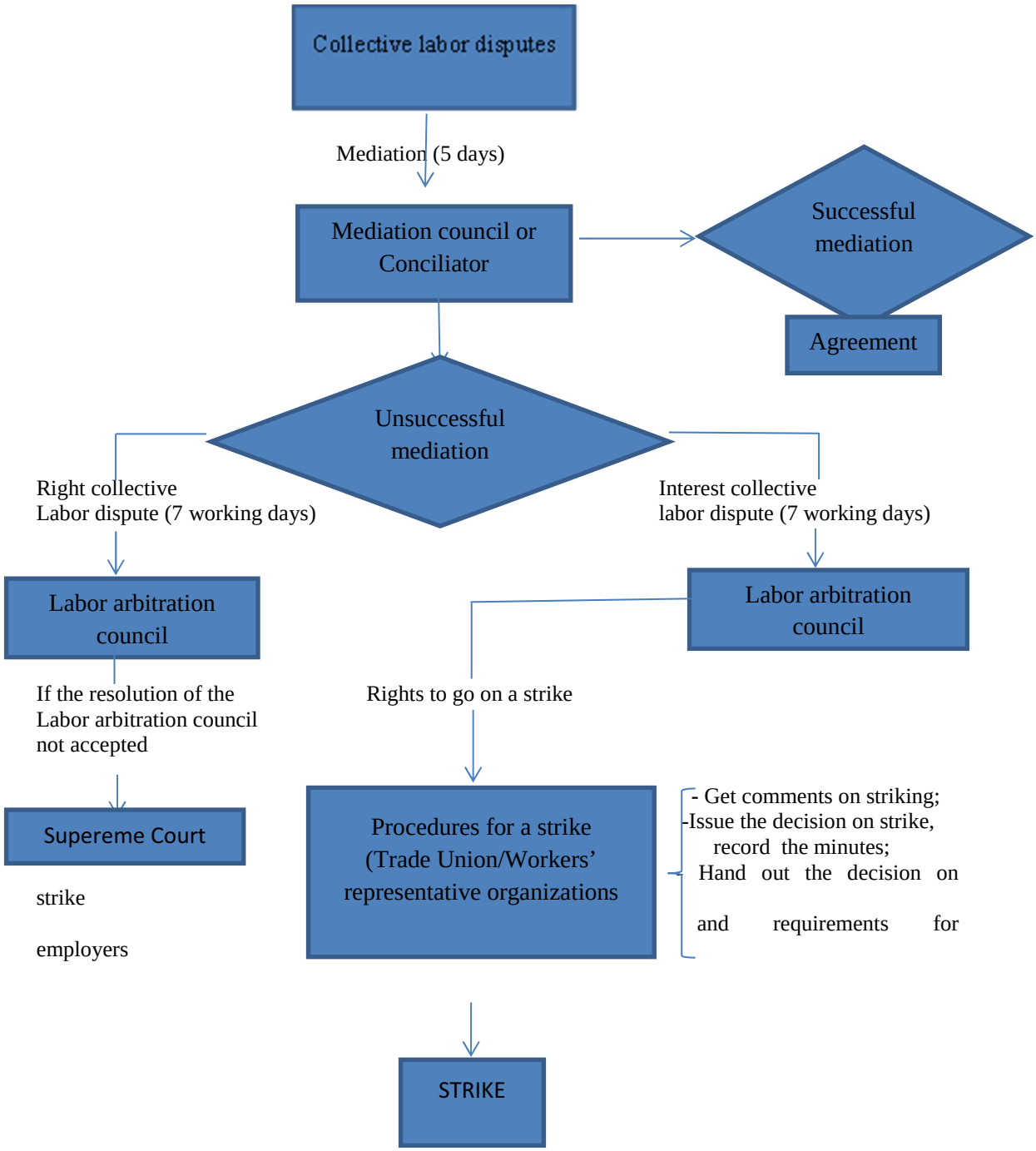
Figure 1: ILO's recommended labor dispute resolution system



Source: International Labor Organization (2013), Labor dispute systems: Guidelines for improved performance

The current Vietnamese law regulates the following methods of CLDs resolution: collective bargaining, conciliation, arbitration and court adjudication. Industrial action/strike is also considered as the last resort for the resolution of interest collective labor disputes, as detailed in figure 1 below.

Figure 1: Legal model of collective labor dispute resolution in Vietnam (Revised Labor Code 2019)



5. Legal procedures and strike situation in Vietnam

i. General procedures

The Labor Code 2012 distinguishes right CLD and interest CLD, whereby for right disputes strikes are not allowed; for interest disputes, after going through the mediation (5 days) and arbitration (7 days), a strike may be held but must be led by grassroots trade unions; in enterprises without grassroots trade unions, it should be organized by upper-level trade unions at the request of the laborers. Strike procedures include 3 steps:

- Collecting opinions of the labor collective. If the enterprise has a grassroots trade union, the members of the grassroots trade union executive committee and production team leaders will be consulted, and their opinions will be sought. If the workplace has no grassroots trade union, production leaders or workers will be consulted.
- The executive committee of the trade union issues the decision to go on strike if more than 50% of its members agree.
- Go on a strike.

ii. Situation of strikes

According to MOLISA (2019), the number of strikes was low in the early years of the Labor Code 1994 and has increased gradually since 2003, peaking in 2008 with 720 cases and in 2011 with 885 cases. In recent years, the number of strikes has been decreasing with 245 cases in 2015, 242 cases in 2016, 167 cases in 2017 and 106 cases in 2018. Strikes occur in all types of business but most in foreign direct investment (FDI) enterprises, then in private and least in state-owned enterprises. Out of 6,011 strikes occurred in the period of 1995-2018, the FDI sector accounted for the highest proportion, i.e. 75% with 4,513 cases, which were mainly in enterprises with investment from Korea, Taiwan, Japan and China. The private enterprises sector recorded 1,420 strikes, accounting for 23.6%; the remaining 78 cases (1.3%) occurred in state-owned enterprises. Strikes occurred in almost all occupations but were concentrated in labor-intensive industries. The strike data from 2007 to 2018 show that 3,590 cases, accounting for 86.5%, occurred in labor-intensive industries and businesses. The

industries with the highest number of strikes were garments (1,744 cases, accounting for 37.2%); leather and shoes (569 cases, equivalent to 12.2%); wood (578 cases, accounting for 12.3%); mechanical engineering (419 cases accounting for 8.9%); electronics (252 cases, accounting for 5.4%); plastic (176 cases, accounting for 3.8%); food processing (137 cases, accounting for 2.9%); textile (129 cases, accounting for 2.8%). The remaining national economic sectors had 678 strikes (11.5%)[14].

All the strikes that have occurred so far did not follow the legal procedures (they were not led by trade unions, neither they went through the steps of collective disputes resolution procedures from conciliation or arbitration, nor did they follow the required steps for strike)[15]. They often occurred unexpectedly without warning and in the absence of official leaders. Nevertheless, the majority of strikes were conducted methodically and in an organized manner (*with mobilization; joint work stoppages; clear demands were put forward; strikes were stopped when part of the claims had been met or resolved by a competent authority, etc*). The nature of strikes has shifted from the requirements for resolution of right disputes to those of interest disputes: nearly two thỉrd of the strikes occurred before 2008 were for the right disputes[16] and the main causes of strikes were the violations of the labor law by the employers[17], while since 2010, they have rather stemmed from collective labor disputes over interests (55,22%), or intermingling both rights and interests (32,84%)[18], especially those related to increases in salaries, bonuses, allowances, work shifts and working conditions improvement. In reality, strikes have spillover effects. Strikes spread quickly among enterprises, especially in the period of 2006-2012, concentrated in industrial zones in the Southeastern provinces, mostly in FDI enterprises, in simple labor-intensive industries such as textiles, footwear, wood, plastic, electronics, which affected the social security, production and business of enterprises.

[14] MOLISA report on Strike situation and resolution (2019)

[15] MOLISA report on Strike situation and resolution (2019)

[16] Báo cáo tổng hợp kết quả đề tài nghiên cứu cấp Bộ *"Cơ sở lý luận và thực tiễn nâng cao vai trò của Công đoàn trong thực hiện chính sách pháp luật giải quyết tranh chấp lao động và đình công ở nước ta hiện nay"* (2015)

[17] MOLISA report on Strike situation and resolution (2019)

[18] https://laodongthudo.vn/nguyen-nhan-dinh-cong-chu-yeu-vi-quyen-loi-nguoi-lao-dong-khong-duoc-dam-bao-96653.html

iii. Practical legal resolution and limitations

As all strikes that occurred did not follow the legal regulations, procedures to resolve collective labor disputes under the requirement of statutory institutions (mediation, arbitration and court adjudication) have not been applied.

Before the Labor Code 2012, the procedures to resolve a wildcat strike were not regulated by law. After several attempts to revise the regulations on the resolution of labor disputes and strikes no improvement was achieved and strikes continued occurring without compliance with the statutory procedures; these procedures were then regulated in article 222, Labor Code 2012 and the Government Decree No. 05/2015/NĐ-CP. Article 222 states that, when detecting a strike that is not led and organized in compliance with the regulations detailed in article 212 & 213 of the Labor Code 2012, the Chairperson of the Provincial People's Committee (PPC) shall issue a declaration of an unlawful strike and immediately inform the Chairperson of the District People's Committee (DPC) about the case. Within 12 hours from being notified, the DPC's Chairperson will work with the district Department of Labor, Invalids and Social Affairs (DOLISA), trade union and other relevant actors at the same level to run a meeting with the employer and workers' representatives (either grassroots or upper-level trade unions) to identify the problems and assist disputing parties to settle their conflict so as to enable the enterprise's business to go back to normal. Under these regulations, the declaration of an unlawful strike should be implemented within 2 working days after the case is reported by the employer to the DPC's Chairperson and to the upper-level trade union. Within 12 hours from receiving the Decision of the PPC's Chairperson, the DPC's Chairperson should request the district DOLISA to coordinate with the relevant agencies to assist the parties to resolve their dispute, with the engagement of the inter-sectorial Task Force in the resolution process.

The inter-sectorial Task Force is established by the Chairperson of PPC. Participants of the Task Force come from different agencies and organizations located in the province/city of which DOLISA, Trade Federation, Management Unit of industrial zones and police are the key institutions in the strike resolution. Main tasks of the inter-sectorial Task Force include: i) controlling the situation to ensure that the strike would not negatively impact on the social order and security, which is a main responsibility of the group member belonging to the police agency; ii) resolving the enterprise's illegal activities, if any; this task will be assumed by the members from provincial DOLISA, labor inspection and district people's committee and iii) conducting the mediation between the employees and the employer. Besides the police, that should carry out the functions described in the first task, all other members of the group seem

to be involved in both the second and third tasks: directly or indirectly collect information, investigate, suggest solutions, participate in the mediation and support disputing parties in their negotiation.

The conciliation procedure by inter-sectorial Task Force consists of 5 steps:

- *Step 1:* Identify the representative of the striking labor collective. This is considered the first important step. Since a spontaneous strike does not follow statutory procedures, in principle there would be no official strike leader; however, in practice there is always one leading individual or one group of leading persons. In many cases, the strike leaders don't want to appear or work as the representative of the labor collective for collective bargaining, whereas it is essential to identify a representative of the striking labor collective, in order to find out the strike claims, conduct the negotiation and/or mediation or reach an an agreement to end the strike.
- *Step 2:* Identify the labor collective's claims. This step consists of 4 actions: collect – screen – summarize and classify the claims. After collecting the claims, members of the inter-sectorial Task Force will screen "inappropriate and excessive claims" to be explained to the employees, then summarize the list of claims to avoid the addition by employees and finally classify types of claims. All claims regarding rights will be investigated and settled or recommended to competent agencies for resolution while the interest claims will be included in the collective bargaining.
- *Step 3:* Establish communication channels among various institutions. After having identified the representative and the claims of the labor collective, the inter-sectorial Task Force will discuss with the disputing parties and facilitate the discussion between the two parties.
- *Step 4*: Organize the mediation meeting. This is the key stage of the whole working process, as a strike normally is over only when both parties achieve an agreement, which usually follows the employer's acceptance or concession over the employees' claims. However, this is not always necessary. The final agreement mainly depends on the two parties' mediation and bargaining. During this process, the Inter-sectorial Task Force will facilitate the disputing parties to reach agreements but not directly intervene on the agreed results
- *Step 5:* Record mediation results.

In practice, the labor collective and employers in Vietnam have not yet actively requested the competent entities to be involved when a dispute arise. Labor collectives tend to conduct strikes spontaneously to force the employers to accept their claims if there is a disagreement about their interests. In order to mitigate the negative impacts of those unlawful strikes, some localities have used "situational methods" through the intervention of the inter-sectorial Task Force. However, the use of this "situational method" revealed many inadequacies, such

as: it may encourage workers to continue unlawful strikes because “when they go on strike, even in contravention of the law, laborers "lose nothing but get more"”. The results of a CLD resolution is usually favorable to the employees: all their recommendations and requirements are recorded by the Task Force to later "negotiate" with the employers and they are usually responded to. The employees are still fully paid for the days off due to their unlawful strikes. Therefore, when they want to demand better working conditions, they continue to strike unexpectedly to put pressure on the employers. Nevertheless, this undermines the collective representation of the labor force. Most of the recent strikes have not been organized and led by the trade unions. The role of trade unions in the resolution of strikes by the inter-sectorial Task Force is very limited.. On the other hand, the result of unlawful strikes is often beneficial to employees, and this may lead to their disregard of the role of trade unions at enterprise level. In addition, this situational method does not completely resolve the conflicts and disagreements between the two sides and discourages the development of collective bargaining. The fact that the employers accept claims for the benefit of the labor collective is primarily due to the pressure from officials of the state administration of labor in separate meetings between the inter-sectorial Task Force and the employers. In fact, the action of the inter-sectorial Task Force on behalf of the labor collective has used the strengths and advantages of state management agencies to "negotiate" with the employers and the employers have accepted the demands of the labor collectives for many reasons, including a fear of being fined due to a violation of labor regulations.. Therefore, in many cases, after the strike ended, the employer did not implement the agreed agreement and strikes easily went on.

Although the mechanism of handling unlawful strikes by local inter-sectorial Task Forces may soon stabilize the social situation, it seems to be burdened with heavy administrative procedures, whereby the Task Force plays the roles of the two parties, fails to strictly comply with industrial relation principles and fails to fully resolve the root causes of the problems. In turn, it could be the trigger of the strike, because most of the demands from the workers' collective are worked out by the Inter-sectorial Task Force.

6. Conclusion

Although the law is fully provided, spontaneous strikes occur quite often in Vietnam and have not been settled in accordance with the procedures prescribed by law. This implicates the regulations do not work in practice, but on paper only. The current labor dispute resolution process, as described in figure 1

above, includes mandatory steps listed in a strict order that does not allow skipping one step to take the next. It can be considered as a unique, long and complicated path that has not been chosen by the labor relations parties over the past twenty years. Instead, they went on "spontaneous strikes" as their own way to solve the disputes. Thus, it is recommended that Vietnam review and learn the models of some developed countries, not to stipulate uniform legal procedures for resolving CLDs but leaving them flexibly discussed and agreed upon by the labor relations' parties as one part of their collective agreements. Procedures may vary according to types of business and enterprises and work better in labor dispute resolution of each enterprise and industry.

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