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Vol 8 Issue April 2022

Vietnam's Virtual Hearings under new regulations: Step-by-step approaches for e-Court system



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1. Overview

Facing numerous difficulties and delays amid the on-going COVID-19 pandemic, courts across the globe have been utilizing their electronic systems in order to implement remote courts. Such movement is an appropriate solution to balance public health directives with the need to continue upholding the rule of law and thus Vietnam is no exception. Indeed, the Vietnamese government has been applying a series of technological solutions to develop electronic court system.

Within the past 2 years, considered as a component of the e-court platform, term "virtual court hearing" has been gradually used in

Vietnam as the possible solution to support physical hearings specially when the pandemic continues to disrupt litigation practice. In many countries, thanks to virtual hearings stakeholders don't have to come to courtrooms.

In this regard, the National Assembly of Vietnam issued Resolution 33/2021/QH15 dated 12 November 2021 ("Resolution 33") to regulate virtual hearings as a coexistent method with the current method of hearings.

Notably, a Joint Circular issued by the People's Supreme Court of Vietnam, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of Defence and the Ministry of Justice on December 15, 2021 (Joint Circular 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP, "Joint Circular 05") aims to set out the guidelines and procedures on organizing online court hearings which took effect from February 1, 2022.

A virtual hearing may be conducted by using videoconference or teleconference facilities, where cases are progressed without the need for participants to attend the court in person. From the current legal perspective, a virtual hearing court is held in a courtroom, using electronic devices connected to each other via a network, allowing the defendant, victims, litigants and other participants to join the court session from outside the courtroom, but still ensuring they are able to fully follow the hearings through images and sounds, and to fully take part in the hearing by verbalizing and actions

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Vol 8 Issue April 2022

continuously and publicly proceeding at the same time of the court's proceedings.¹

2. Cases and authority of holding online hearings

According to Resolution 33/2021/QH15 (Art.1.1), the People's Court is entitled to hold online court sessions for first-instance trial and appellate trial of the cases that satisfy the following 02 conditions:

- Criminal, civil and administrative cases having simple facts and characteristics;
- Cases having clear factual documents and evidences.

However, e-hearings shall be not applied for:

- Criminal, civil and administrative cases related to State secrets;
- Criminal cases for crimes in national security specified in Chapter XIII of the Penal Code;
- Criminal cases for crimes of against peace, humanity and war crimes specified in Chapter XXVI of the Penal Code.

3. General guides on holding Virtual Hearings

The organization of online court hearings is carried out according to the general principles of organizing the hearings of cases specified in the 2015 Criminal Procedure Code,

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the Civil Procedure Code 2015 and the Law on Administrative Procedure 2015. Besides, an important legal basis for the People's Court to organize an online trial is the Resolution 33 and the Joint Circular 05 with some

notable points as follows:

3.1. Obligation of the competent authorities

In the stage of preparation for an e-court hearing and decision to bring a case to trial, the court and relevant authorities (including procuracies, detainment centres and legal aid centers) have to coordinate effectively to ensure that the e-hearing is organized in compliance with applicable regulations.²

The court as the host of the virtual hearing shall ensure that all parties are properly

¹ Article 1.2 Resolution 33/2021/QH15

² Chapter II Joint Circular 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP

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Vol 8 Issue April 2022

notified of the virtual hearing so that necessary technical arrangements are made by the parties to test and connect to the e-platform.

3.2 Technical and procedural requirements

Online hearings shall be held by setting up 02 types of connecting points.

The main connecting point or an online courtroom may be at the Court's headquarters or at a location selected by the Court, held in accordance with the provisions of Circular 01/2017/TT-TANDTC with the compulsory participants (the Trial Panel, the Court Clerk and the procurator assigned to handle the case).

The aforementioned e-courtroom shall be fully equipped with the devices for the online hearing such as lighting system, transmission lines and network equipment, sound systems and image display device, data and power and, etc.

For most civil, administrative or criminal trials, the component points only need to meet the basic conditions of space, image quality and sound to ensure online transmission of the trial. For a criminal court hearing where a component point is located at a detention facility, separate regulations must be met according to Circular No. 01/2017/TT-TANDTC dated July 28, 2018 of

the Chief Justice of the People's Court. The Supreme People regulates the courtroom.

The participants other than the judges shall joint the hearing through a maximum of 03 component connecting points accepted by the Court.

In addition to the normal procedures as prescribed by the Criminal Procedure Code, the Civil Procedure Code and the Administrative Procedures Law, the online court hearing has other requirements,³ e.g. identifying participants in the e-hearing; the dissemination of some information about the online hearing at the opening of the same by the presiding judge.

3.3 General requirements for participants

To attend a hearing virtually, the participants have to comply with the notable etiquettes as follows:

- Keep the camera and audio on at all times;
- Do not create any any extraneous and distracting noises.
- Dress appropriately for court when appearing via videoconference;
- Do not walk around or step away during a videoconference meeting unless allowed by the judge;

³ Article 13 Joint Circular 05

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Vol 8 Issue April 2022

- Ensure the confidentiality and the safety of the court, do not take photos, record audio or distributing documents on the media, etc.
- Present ID documents as required by the court.

4. Conclusion

Vietnam is applying timely IR4.0 to virtual court hearings, which may bring benefits for stakeholders. virtual court hearings shall save time and costs, and be accessible. If Vietnam develop well such system, it shall improve the court capacity and to avoid the stagnancy of case settlements.

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Vol 7 Issue March 2022

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Bản tin này cùng với các nội dung trong bản tin chỉ nhằm mục đích cung cấp thông tin chung. Chúng tôi không cam kết hoặc bảo đảm về tính chính xác, tính thời sự hoặc sự đầy đủ của các thông tin cung cấp trong bản tin này. Bản tin này thể hiện quan điểm, ý kiến chính thức hay tư vấn pháp luật của chúng tôi. Bạn không nên sử dụng những thông tin trong bản tin này để thay thế cho việc tham khảo ý kiến tư vấn pháp luật của chúng tôi hoặc của luật sư của bạn. Việc bạn sử dụng các thông tin trong bản tin này không hình thành mối quan hệ "luật sư – khách hàng" giữa bạn và chúng tôi, trừ khi và cho đến khi một thoả thuận được ký kết giữa bạn và chúng tôi theo đó chúng tôi được yêu cầu tư vấn về vấn đề cụ thể của bạn.

Chúng tôi giữ quyền sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này hoặc bất kỳ phần nào của bản tin mà không thông báo trước. Chúng tôi không chịu bất kỳ trách nhiệm nào về các sửa đổi, tạm ngừng hoặc ngừng vĩnh viễn hoạt động của bản tin này.

Nếu bạn có vấn đề nào cần tư vấn, hãy liên hệ với chúng tôi hoặc yêu cầu luật sư của bạn tư vấn về vấn đề đó cho bạn.

Tất cả các quyền, bao gồm cả quyền sở hữu, quyền tác giả, quyền liên quan và các quyền sở hữu công nghiệp đối với nội dung thông tin, thiết kế, trình bày mỹ thuật của bản tin này thuộc chúng tôi và được bảo vệ theo Luật Sở hữu Trí tuệ Việt nam, các hiệp định, hiệp ước quốc tế mà Việt nam đã ký kết.

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Vol 7 Issue March 2022

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