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SOLUTIONS FOR IMPROVEMENT OF LEGISLATIONS ON PERSONAL RIGHTS CONSISTENT WITH THE 2015 CIVIL CODE

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I. AN OVERVIEW OF PERSONAL RIGHTS IN THE 2015 CIVIL CODE

Personal rights is one of key provisions of the Civil Codes of Vietnam (1995, 2005, 2015). After two times of amendments, the provisions on personal rights have been perfected with many specific regulations compared to the the 2005 Civil Code which are aimed to address problems arising from practical application of the law as well as the requirement for further elaboration set out by the 2013 Consitution (Chapter II – Human rights, basic rights and obligations of citizens) with regard to the recognition, respect, protection and ensurance of human rights, civil rights of citizens.

The the 2015 Civil Code prescribes personal rights of an individual in Articles from 25 – 39. Article 25 specifies that: *“Personal rights specified in this Code are civil rights inherent to each individual, which cannot be transferred to other persons, unless otherwise provided for by other laws”*.

Compared to the the 2005 Civil Code, personal rights prescribed in the the 2015 Civil Code reflect new points as follows:

1. Unlike the the 2005 Civil Code which provides for a much wider scope of personal rights (26 rights), including rights which reflect the relationship between the State and citizens; rights which are not only linked to interests but also other property – related rights, etc., the the 2015 Civil Code only provides for personal rights related to the indentification of status of individuals when participating in civil relations as entities and personal rights linked to spiritual interests of individuals which are not specified in the Consitution such as: (1) the Right to family and given names (Art. 26); (2) the Right to change family names (Art. 27); (3) the Right to change given names (Art. 28); (4) the Right to indentify and re-identify ethnicity (Art. 29); (5) the

Right to declaration of birth and death (Art. 30); (6) the Right to nationality (Art. 31); (7) the Rights of an individual with respect to his/her image (Art. 32); (8) the Right to life, the right to safety of life, health and body (Art. 33); (9) the Right to protection of honor, dignity and prestige (Art. 34); (10) the Right to donate or receive human tissues and body organs and donate corpses (Art. 36); (11) the Right to re-determine gender identity (Art. 38); (12) the Right to private life, personal secrets and family secrets (Art. 39); (13) the Personal rights in marriage and families.

It is noted that some personal rights prescribed in the 2005 Civil Code are not acknowledged in the 2015 Civil Code, among which are the inviolable right to place of residence; the right to freedom of belief and religion; the right to freedom of movement, freedom of residence; the right to work; the right to freedom of business; the right to freedom of research, creation. These rights reflect relations between the State and citizens, they are not only linked to spiritual interests of the entity but also other property interests. On the other hand, these rights are further elaborated by other laws including the Law on Residence, Ordinance on Beliefs and Regions (the National Assembly is developing the Law on Beliefs and Regions), Labor Code, Law on Investment, Law on Enterprises, Law on Intellectual Property...

2. Many of personal rights specified in the 2015 Civil Code have been exercised immediately without promulgation of guiding documents such as: the right to family and given names (Art. 26); the Right to change family names (Art. 27); the Right to change given names (Art. 28); the Right to identify and re-identify ethnicity (Art. 29); the Rights of an individual with respect to his/her image (Art. 32); the Right to life, the right to safety of life, health and body (Art. 33); (9) the Right to protection of honor, dignity and prestige (Art. 34); Right to private life, personal secrets and family secrets (Art. 38).

Example 1: For the right with respect to family and given names (Art. 26), while the 2005 Civil Code only states generally:

“1. Each individual has the right to have a family name and a given name. The family and given names of a person shall be the family and given names in the birth certificate of such person.

2. An individual shall establish and exercise civil rights and perform civil obligations in his/her family and given names which have been recognized by a competent state agency.

3. The use of pseudonyms and pen names must not cause damage to the rights and interests of other persons.”

the 2015 Civil Code (Art. 26) specifies as follows:

1. *Each individual has right to have a family name and a given name (including a middle name, if any). The family and given names of a person shall be the family and given names in the birth certificate of such person.*

2. *The family name of a person shall be passed from his/her biological father's or mother's as mutually agreed between the parents; if the parents fails to agree, the person's family name shall be determined according to customary practices. If the father of such person is undetermined, his/her family name shall be passed from his/her natural mother's.*

If an abandoned child whose natural parents are unidentified is adopted, his/her family name shall be passed from his/her adoptive father's or mother's as mutually agreed between the parents. If the child has either an adoptive father or an adoptive mother, his/her family name shall be passed from such person's.

If an abandoned child whose natural parents are unidentified and he/she has not been adopted but has been fostered by a foster establishment or a , his/her family name shall be determined at the request of the head of such foster family or at the request of the person registering the birth of the child.

Biological father and mother specified in this Code means a father and mother determined at the event of parturition; intended father and mother and the resulting child as prescribed in the Law on marriage and families.

3. *The naming is restricted in case it violates lawful rights and interests of other people and contravenes basic principles of civil law prescribed in Article 3 of this Code.*

The name of each Vietnamese citizen must be in Vietnamese or other ethnic minority languages of Vietnam and not include any figure or any symbol other than a letter.

4. *Each individual shall enter in and perform his/her civil rights and obligations following his/her family and given name.*

5. *A person may not use his/her code name or pen name to cause damage to the lawful rights and interests of other people.*

Example 2: For the right of an individual with respect to his/her image (Art. 31), while the 2005 Civil Code only states generally:

1. *An individual shall have the right with respect to his/her picture.*

2. *The use of a picture of an individual must have his/her consent; where such person has died, lost his/ her civil act capacity or is under full fifteen years old, the consent of his/her father, mother, husband, wife, adult children or representative is required, unless it is for State interests, public interests or otherwise provided for by*

law.

3. *It is strictly forbidden to use pictures of other persons to infringe upon their honor, dignity and/or prestige.*

the 2015 Civil Code (Art. 32) specifies as follows:

1. *Each individual has rights with respect to his/her own image.*

The use of an image of an individual must have his/her consent.

When an image of an individual is used for commercial purposes, that person is eligible for a remuneration, unless otherwise agreed.

2. *The use of image for any of the following purposes needs not the consent of the image's owner or his/her legal representative:*

a) *For national and public benefits;*

b) *For public activities, including conventions, seminars, sports activities, art shows and other public activities that do not infringe the honor, dignity or prestige of the image's owner.*

3. *If the use of an image violates the regulation prescribed in this Article, the image's owner has the right to request a court to issue a decision that compel the violator or relevant entities to revoke, destroy or terminate the use of the image, compensate for damage and adopt other measures as prescribed in law.*

Example 3: For the right to protection of honor, dignity and prestige (Art. 37), while the 2005 Civil Code only provides that: *"Individuals' honor, dignity and prestige shall be respected and protected by law."*

the 2015 Civil Code clearly specifies at Article 34 as follows:

"1. *Honor, dignity and prestige of an individual is inviolable and protected by law.*

2. *Each individual has the right to request a court to reject any piece of information adversely affecting to his/her honor, dignity and/or prestige.*

The honor, dignity and prestige of a deceased person shall be protected at the request of his/her spouse or grown children; or his/her parent if he/she has no spouse or child, unless otherwise prescribed by law.

3. *If a piece of information adversely affecting to the honor, dignity and prestige of a person is posted on a mean of mass media, that piece of information shall be removed or rectified by that kind of mean. If that piece of information is kept by an agency, organization or individual, such entity is required to cancel it.*

4. *In case it is impossible to identify the person informing the information*

adversely affecting the honor, dignity and/or prestige of a person, the latter person has the right to request a court to declare that such piece of information is incorrect.

5. The person receiving the information adversely affected his/her honor, dignity and/or prestige both has the right to request rejection of such piece of information and has the right to require to informing person gives a public apology and rectification and compensation.”

Example 4: For the right to personal secrets, the 2005 Civil Code only specifies at Article 38 that:

“1. An individual’s rights to personal secrets shall be respected and protected by law.

2. The collection and publication of information and materials on the private life of an individual must be consented by that person; in cases where that person has died, lost his civil act capacity or is under full fifteen years, the consent of his/her father, mother, wife, husband, adult children or representative is required, except for cases where the collection and publication of information and materials are made by decision of a competent agency or organization.

3. Letters, telephones, telegrams, other forms of electronic information of individuals shall be safely and confidentially guaranteed.

The inspection of an individual’s letters, telephones, telegrams and/or other forms of electronic information may be performed only in cases where it is so provided for by law and decided by competent state agencies.”

the 2015 Civil Code clearly specifies at Article 38 as follows:

“1. The private life, personal secrets and family secrets of a person are inviolable and protected by law.

2. The collection, preservation, use and publication of information about the private life of an individual must have the consent of that person; the collection, preservation, use and publication of information about the secrets of family must have the consent of all family’s members, unless otherwise prescribed by law.

3. The safety of mails, telephones, telegrams, other forms of electronic information of an individual shall be ensured and kept confidential.

The opening, control and keeping of mails, telephones, telegrams, other forms of electronic information of an individual may only be conducted in cases provided by law.

4. Contracting parties of a contract may not disclose information about each other's private life, personal secrets or family secrets that they know during the establishment and performance of the contract, unless otherwise agreed.”

3. the 2015 Civil Code also prescribes a new personal which is not covered by the 2005 Civil Code at Article 37 – Right to Sex reassignment *“The sex reassignment shall comply with regulations of law. Each surged transgender has the right and obligation to apply for change of civil status affairs as prescribed in law on civil status affairs and has the personal rights in conformity with the transformed gender as prescribed in this Code and relevant laws.”* This provision creates a legal mechanism for fighting discrimination against transgender persons and to ensure that they have an equal legal status like other and to create transparency in exercising personal rights and property rights in civil relations. This progressive provision helps bring Vietnam into group of nations which have specific legal provisions to protect rights of transgender persons in particular and rights of Les Gay Bisexual Transgender group (LGBT) in general, in conformity with the Resolution of the UN Human Right Council adopted in September 2014.

4. Regarding protection of personal rights. Unlike the 2005 Civil Code which prescribes protection of personal rights as a separate article in the section on personal rights (Section 2, Article 25), the 2015 Civil Code identifies personal rights as other civil rights, therefore, the protection of those rights is provided for as a general modality for protection of other civil rights specified at Article 11 – Modalities to protect civil rights

If a person has his/her civil rights violated, he/she may protect them himself/herself as prescribed in this Code, other relevant laws or request competent authorities to:

- 1. Recognize, respect, protect and guarantee of his/her civil rights;*
- 2. Order the termination of the act of violation;*
- 3. Order a public apology and/or rectification;*
- 4. Order the performance of civil obligations;*
- 5. Order compensation for damage;*
- 6. Cancellation of isolated unlawful decision of competent agencies, organizations or persons;*
- 7. Other requirements specified by law.*

II. FURTHER IMPROVEMENT OF LEGISLATION AND IMPLEMENTATION PROVISIONS OF THE 2015 CIVIL CODE ON PERSONAL RIGHTS

The above analysis and assessment indicate that there are many new and

progressive changes embedded in the 2015 Civil Code compared to the 2005 Civil Code. Therefore, to ensure that the institution on personal rights as well as other institutions are implemented in a consistent, harmonious, timely and effective manner nationwide as of 1 July 2017, on 27 November 2015 the NA promulgated Resolution No. 111/2015/QH13 on prevention and control of law violations and crimes, work of the People Procuracies, the People's Courts and Judgment Enforcement in 2016 and coming years which, among other, identifies specific tasks of the Government in 2016 and coming years for implementing the Civil Code.

In order to implement the task specified at the Resolution No. 111/2015/QH13, the PM, Minister of Justice have issued the Plan on Implementation of Civil Code, which identifies many key tasks to implement the Civil Code, thus contributing to further improvement of the system of civil legislation in general and legislation on personal rights in particular. These tasks include the following major activities:

1. Organizing the development of documents for thorough understanding of the Civil Code through communication, advocacy and training activities

To timely implement these tasks, MOJ has developed and introduced the communication document titled "Basic contents of the 2015 Civil Code", to which I myself contributed as the Chief Editor together with the input from those who have directly participated in the development of the 2015 Civil Code. The contents of this document have been used in many seminars, workshops, meetings...on introduction of the 2015 Civil Code held by agencies, organizations on both central and local levels related to development of specialized training materials for each particular local targeted audience groups. This is an implication of a practical significance of the implementation of the 2015 Civil Code and how it is brought into life.

At present, MOJ is developing an in-depth training document on institutions of the 2015 Civil Code for training courses for legal staff and people holding judicial titles.

2. Reviewing related LNDs; proposing on one's own initiative or requesting competent authorities to timely cancel, amend, supplement existing documents or proposing promulgation of new documents to be in compliance with the 2015 Civil Code

In Section 4, Part II of the Plan on the Implementation of Civil Code issued together with Decision No. 243/QĐ-TTg dated 05/02/2016 by the PM, MOJ is assigned to take lead and cooperate with Ministries, Ministerial Agencies, subordinate agencies of the Government in conducting review of LNDs related to the 2015 Civil Code. To implement this task, MOJ has cooperated with other Ministries,

agencies to organize several activities to review LNDs related to the 2015 Civil Code in general and related to provisions on personal rights in particular. These activities include:

- Development of the Plan on the Implementation of Civil Code issued together with the Decision No. 276/QĐ-BTP dated 25/02/2016 by the Minister of Justice;

- Conducting review of LNDs related to the 2015 Civil Code in 21 Ministries, agencies on central level;

- Organizing inter-agency meeting on results, problems and difficulties in implementation of the Plan on implementation of the 2015 Civil Code of the Government, providing comments on the draft report to the PM on results of reviews of LNDs related to the 2015 Civil Code;

- Collecting written comments by related Ministries, agencies on the draft report to the PM;

With regard to contents on personal rights, as mentioned earlier, the provisions on personal rights include many new and more progressive changes compared to the 2005 Civil Code, therefore, to ensure a harmony in understanding, application and consistency of legal system of personal rights, in addition to the Civil Code, other related LNDs should be revised to ensure the compliance with the provisions of the 2015 Civil Code or there is sufficient detailed guidance on new contents of the 2015 Civil Code.

For example:

- (1) It is necessary to review, revise or promulgate new LNDs related to civil status to ensure there are consistent regulations on the order and procedures on civil status for the rights to family, given names, ethnicity, reassignment of sex....

- (2) to respect, protect human rights, civil rights of transgender persons and to ensure that they are treated equally or treated without any discrimination on their legal status, protection of their rights and obligations in civil relations, in Decision No. 243/QĐ-TTg dated 05/02/2016 by the PM on the issuance of the Plan on the Implementation of Civil Code, the Ministry of Health is assigned to study and making proposal on development of LNDs on sex reassignment.

At present, the Ministry of Health is promptly carrying out development of this bill which will be submitted to the Government and the NA in the near future.

So, to ensure that sex reassignment is realized in practice, it is necessary to develop and promulgate Law on Sex Reassignment in accordance with the law and ordinance development program of the NA. In this law, it is needed to elaborate personal rights of transgender persons to guarantee human rights of the transgender.

In addition, to ensure that the 2015 Civil Code is implemented in a consistent, timely and effective manner, the Plan on the Implementation of the Civil Code of the Government also requests SPC, SPP, Vietnam Fatherland Front Central Committee and its member organizations, to implement specific activities to implement the Civil Code within their systems and to coordinate with other Ministries, agencies to implement specific tasks in which SPC, SPP will be implementing most of the activities indicated in the Plan; Vietnam Fatherland Front Central Committee and its member organizations, Vietnam Fatherland Front Central Committee and its member organizations will be mainly engaged in dissemination, communication and training on the 2015 Civil Code.