

## Responsibility for Disciplining Civil Servants: A Comparison between China's Law and Vietnam's Law

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### Abstract

*Vietnam and China are two countries with the same political system, so there are many similarities in civil servant law, including responsibility for disciplining civil servants. The responsibility to discipline civil servants is considered a fundamental foundation to ensure the fairness of the civil service. For Vietnam, the responsibility to discipline civil servants has been implemented and brought achievements to civil servant management activities, but certain limitations still exist. In that context, it is necessary to clarify theoretical issues about civil servants and civil servant disciplinary responsibilities; analyze the current legal situation on civil servant disciplinary responsibility in Vietnam and China, similarities and differences; propose solutions that contribute to perfecting the law on disciplinary responsibility for civil servants and ensuring disciplinary action against civil servants in our country today is important and necessary. To achieve this goal, this study focuses on understanding legal documents on civil servants of Vietnam and China, analyzing, synthesizing, evaluating, and comparing with practice from which to draw necessary conclusions, contributing to perfecting the law on disciplinary responsibility for civil servants.*

**Keywords:** *Responsibility, civil servant discipline (CSD), China's law, Vietnam's law.*

### Introduction

In recent years, the Communist Party of Vietnam (CPV) and the State of Vietnam have always attached great importance to the issue of building, developing and constantly improving the quality of cadres and civil servants, considering this an important force in building and implementing the country's development goals. The majority of officials and civil servants are always conscious of training and constantly improving their political qualities, ethics, and lifestyle; have an attitude of respect for the people, are conscientious and dedicated to serving the people, always listen to the people's legitimate opinions and aspirations, be supervised by the people, and be trusted by the people.

However, in reality, there is still a large number of officials and civil servants, especially comrades holding leadership and management positions, and mentally degraded and even senior officials. political ideas, ethics, and lifestyle with other manifestations of fading ideals, falling into selfish individualism, opportunism, pragmatism, chasing after fame and fortune, corruption, waste, and depending on convenient, unprincipled, etc. Many officials and civil servants apply the CPV and the State's guidelines and policies at times arbitrarily, causing difficulties for people; solving the people's affairs in a "bestow favors" and "dispense" manner, not fulfilling the responsibilities and duties of a "loyal servant of the people". Some civil servants still lack equality, lack of respect for the people, and do not really demonstrate the relationship between the servant and the served. Some civil servants show a bureaucratic, bossy, and authoritative attitude when handling work, and there is a phenomenon of pushing and avoiding responsibility; behavior is not very polite, and courteous, do not perform tasks with enthusiasm, responsibility, dedication, honesty, not self-interest, not personal development. Some agencies and units also show signs of internal disunity, factionalism, jealousy, envy, and failure to cooperate with each other in the process of performing tasks. A part of civil servants shows signs of working sporadically, not regularly, actively studying, fostering, and training to improve their moral qualities, lifestyle, professional qualifications, etc.

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In the same context as Vietnam, China has gone through nearly 50 years of reform and opening up; In which strengthening the entire organizational structure, streamlining staff, and improving the quality of civil servants are always important reform contents; especially in the context of strengthening the comprehensive leadership of the Communist Party of China (CPC) today. China's results in institution building and economic development stem from policy and legal decisions, including policies and laws on CSD. Disciplining civil servants has become a necessary and drastic task in China's society recently. However, just like in Vietnam, in China's law on civil servants, there are still "loopholes", the responsibility to discipline civil servants still has shortcomings and limitations, this clearly shows that there are still many civil servants who violate regulations on what civil servants cannot do. In addition, the situation of tyranny, harassment, corruption, etc., still exists in China's society.

Based on the theoretical and practical issues mentioned above, this study focuses on (i) clarifying theoretical issues about civil servants and civil servant disciplinary responsibilities; (ii) Analyzing the current legal situation on civil servants. responsibilities for disciplining civil servants in Vietnam and China, (iii) Similarities and differences in disciplinary responsibilities for civil servants in Vietnam and China; (iv) Causes of similarities and differences; (v) propose solutions to contribute to improving the law on disciplinary responsibility for civil servants and ensure disciplinary action against civil servants in Vietnam today.

## Literature Review

### *Civil Servants*

Australia's public service perspective under the Public Service Act 1999, No. 147" (1999), "Civil servants" are all persons employed to perform duties on behalf of the Federation in an executive department or agency.

According to China's Civil Service Law (2005): "The Civil Service Law of the People's Republic of China", civil servants are understood as those who work in state agencies, political fronts, and political organizations, except service staff.

According to the concept of civil servants in France, they are civil servants working in the executive system (appointed by the State or territorial community), in other state offices, and in self-managed offices; At the same time, these civil servants have the common characteristic that their work is stable and continuous (Tuan, 2012).

In addition, the author also researched the concept of civil servants in the Federal Republic of Germany, the Russian Federation, and the United Kingdom. Research on the concept of civil servants in some countries shows that they all have their definitions, but they all recognize that civil servants must be citizens of that country, carry out responsibilities according to their positions, and receive salaries paid by the budget.

In Vietnam, based on Clause 2, Article 4 of the Law on Cadres and Civil Servants (2008), amended by Clause 1, Article 1 of the Law on Cadres and Civil Servants and the amended Law on Public Employees (2019), it is stipulated as follows: "Civil servants are Vietnamese citizens, recruited and appointed to ranks, positions, and titles corresponding to job positions in agencies of the CPV, the State, and socio-political organizations in central Vietnam, provincial and district levels; in agencies and units of the People's army but are not officers, professional soldiers, or defense workers; in agencies and units of the People's Public Security but are not officers or non-commissioned officers serving under the professional regime, police workers, on the payroll and receiving salaries from the state budget.

From the above analysis, according to the author, the definition is given: civil servants are citizens of the country, recruited and appointed to perform certain public duties corresponding to the job position of civil servants in government agencies countries, political organizations, and socio-political organizations at the central, provincial, and district levels; in agencies and units of the People's Army but are not officers,

professional soldiers, or defense workers; in agencies and units of the people's public security but are not officers or non-commissioned officers serving under the professional regime, police workers, on the payroll and receiving salaries from the state budget.

### *Responsibility for disciplining civil servants*

In Vietnamese, the term “responsibility” is defined as “something that must be done, shouldered, or taken upon oneself” (Y, p.1678), which means that an individual or a group completes its work. , assigned tasks are considered responsible. In the most general perspective, responsibility can be understood as a bond in human relationships, in which individuals or organizations must perform obligations for others or the community. Thus, responsibility is always associated with mandatory obligations that must be performed

According to the Vietnamese Dictionary, discipline is punishment for people who break the law (Y, p.933). Discipline is the handling and sanctioning according to the nature and content of violations of regulations and laws by civil servants. Handling disciplinary violations for people working in state agencies refers to aspects of administrative discipline, violations of rules, and operating regulations of the agency (Dieu, p.94). However, from a legal perspective, punishment only applies to acts that are crimes.

Combining the definitions of civil servants, responsibility, and discipline, the author gives a definition of disciplinary responsibility for civil servants as follows: Disciplinary responsibility for civil servants is a type of legal responsibility imposed by the State. Competent agencies, organizations, and units according to the order and procedures prescribed by law, apply to civil servants who violate discipline, violate rules or obligations in public service activities, or Violations of the law shall be subject to disciplinary action according to the provisions of law.

## **Research Methods**

During the research process, the author also used a combination of scientific research methods to clarify the content of the topic, ensuring the scientific nature of the issues of the topic, specifically as follows:

The systematization method is used mainly in Chapter 1 to systematize the domestic and foreign research situation on theoretical issues, practical implementation, and solutions directly or indirectly related to the topic.

Analysis and synthesis methods are used throughout the topic to analyze and synthesize documents, scientific works, and document systems related to civil servants, legal responsibilities, and disciplinary responsibilities for civil servants. With civil servants, the author of the topic will have a general, complete, and in-depth view of the issues related to the topic.

The comparative method is used to compare research issues between domestic and foreign countries to draw reference values for Vietnam.

Historical and comparative methods are used to research the process of formation and development of laws on disciplinary responsibility for civil servants in Vietnam and China through specific periods.

Multidisciplinary and interdisciplinary approaches are used to research issues related to the topic from the perspective of many different scientific disciplines such as the state and legal theory, Constitutional law and Administrative Law, public policy, and state administration, to see the multi-dimensional and multi-disciplinary impact on research issues.

## Results and discussion

### *Overview of Civil Servant Law and Regulations on Official Disciplinary Responsibility under China's Law*

#### Overview of China's Civil Service Law

According to China's civil service law, the evaluation of civil servants in China is based on the following principles:

Firstly, fairness and objectivity are the most important principles of civil servant evaluation. Evaluation content needs to be made public, standards homogenized, and methods scientificized to achieve fairness and reasonableness in evaluation work.

Second, classification of tests, the purpose of which is to scientificize the evaluation of civil servants so that we can accurately evaluate the manifestations of talent and virtue of civil servants, and make reasonable use of talented people.

Third, focus on actual achievements, based on the actual achievements of civil servants as the focus for evaluation work. Actual achievements at work are an objective reflection, synthesizing the capacity, attitude, and quality of civil servants.

Fourth, is democratic supervision. This principle requires respect for the selection and supervision of leading cadres by the masses. Based on the requirements of the classification of civil servants, different forms of democracy are applied to different types of civil servants.

In China's current law, the Civil Service Law is the basic law in personnel management, the basic basis for the management of civil servants and personnel in Party and government agencies, reflecting the requirements basic requirements and rules of human resource management in agencies, imbued with Chinese characteristics.

In 1993, China issued the "Temporary Regulations for State Civil Servants"; By 2005, the Civil Service Law had been developed and promulgated (effective from January 1, 2006). In 2018, China amended this Law (issued on June 1, 2019). The general principle of the revised Civil Service Law is to insist on "the Party managing cadres", and at the same time demonstrate the new thinking of "selecting excellent people, strictly managing, etc." in China's civil service management.

In October 2019, the Central Committee of the CPC and the State Council of China issued the "Outline for Implementing the Construction of Civic Ethics in the New Era", with the goal of strengthening the construction of civic ethics in the new era. civic virtue, improve the moral level of the entire society, promote the comprehensive building of a moderately prosperous society, and comprehensively build a modern socialist country with Chinese characteristics.

### *Regulations on official disciplinary responsibility under China's law*

#### *Supervise the performance of civil servants' duties:*

State agencies supervise the performance of civil servants' duties in terms of political integrity, performance of functions, tasks, work style, and compliance with discipline and law. They will raise employees' awareness of the need to be diligent and non-corrupt at work and establish a regular management and supervision system (Article 57 of China's Civil Service Law, 2005).

In case during the process of supervising civil servants, problems are discovered, apply measures for each case: Dialogue with warnings, criticism, requests for self-criticism, reminders, corrections, or sanctions (Article 1 57). In cases where civil servants are suspected of violating the law or committing work-related crimes, they will be transferred to higher management agencies for handling according to the provisions of

the law (Article 57). Civil servants must be willing to accept supervision, seek direction on their work, report their work to their superiors, and report private matters according to regulations (Article 58).

According to Article 59 of China's 2005 Civil Service Law: Civil servants working in China's public apparatus are not allowed to perform one of the following acts: (i) Disseminate any statements that are detrimental to the public authority of the Constitution, the prestige of the CPC and the State, or organizing or participating in activities such as meetings, parades, and demonstrations aimed at opposing the Constitution, the leadership of the CPC, and the State of China. (ii) Organize or participate in illegal organizations, or organize or participate in strikes. (iii) Causing discord or destroying ethnic relations, participating in ethnic separatist activities, organizing or using religious activities to destroy national unity or social stability. (iv) Lack of responsibility, failure to perform, neglect of duties, causing delays in work. (v) Refuse to implement decisions and orders of superiors according to the provisions of law. (vi) Repress and take revenge on people who criticize, complain, denounce, or report crimes.

In addition, according to the provisions of China's civil service law, civil servants are not allowed to commit the following acts: (i) Misleading or deceiving the leadership team or the public through fraudulent and deceitful tricks. (ii) Embezzle, bribe, or seek benefits for yourself or others by taking advantage of your position. (iii) Violating financial discipline, causing waste of State resources and funds. (iv) Abuse of power, infringement of legitimate rights and interests of citizens, legal entities, and other organizations. (v) Revealing State secrets or work-related secrets. (vi) Loss of honor or interests of the State in international exchanges. (vii) Participating in or supporting activities such as pornography, drug abuse, gambling, and superstition. (viii) Violation of professional ethics, social and family ethics. (ix) Participate in spreading prohibited information online or prohibited online activities in violation of relevant regulations. (x) Participate or participate in for-profit activities, and at the same time hold a position in an enterprise or other for-profit organization in violation of relevant regulations. (xi) Leaving work without permission or not returning to work without a legitimate reason after completing work duties expiring the leave period, or committing other acts that violate discipline or law.

Thus, China's law on civil servants fully regulates violations of civil servants. Regulations not only focus on behavior in agencies and workplaces but also social relationships as well as behavior in cyberspace, thereby serving as a basis for disciplinary action against employees with civil servants who violate the above acts.

#### *Handling disciplinary violations of civil servants:*

In case a civil servant, while performing official duties, believes that a decision or order of a superior has an error, he or she has the right to propose correction or cancellation of that decision or order. In case the superior refuses to change the decision or order or requests immediate implementation, the relevant civil servant must execute that decision or order but must be responsible for the consequences caused by that action, and the civil servant concerned is not responsible. However, in cases where civil servants execute decisions or orders that clearly violate the law, they must be held responsible before the law (Article 60).

Article 61 of China's Civil Service Law (2005) also stipulates: In cases where civil servants violate discipline or violate the law and are subject to disciplinary responsibility, they will be disciplined according to the provisions of this Law or be punished by the agency. Supervise disciplinary actions according to the provisions of law. In cases where the violation of discipline or law is of a minor nature and the relevant civil servant has corrected it after being criticized, he or she may be exempted from fines.

In case the supervisory agency has decided to sanction a civil servant for violating discipline and law, the state agency to which that civil servant belongs may not apply other forms of sanction to that civil servant for the violation similar.

Disciplinary action against civil servants is based on verification and established evidence, determining the true nature of the case, corresponding to the level of violation, and based on the order and procedures in accordance with the law (Article 63). Forms of discipline include warning, reprimand, serious reduction,



demotion, dismissal, and dismissal (Article 62). These forms of handling show many similarities with Vietnam's law, however there are still some differences.

In case a civil servant violates discipline or law, the disciplinary authority shall issue a decision to investigate the violation and notify the relevant civil servant of the details identified through the investigation process. investigation and grounds for disciplinary action against him or her. The relevant civil servant has the right to make a statement in his or her defense. The agency responsible for disciplinary action may not impose a heavier penalty because the civil servant has made a statement to defend himself (Article 63).

In case the competent disciplinary authority finds it necessary to discipline a civil servant, it shall issue a decision on disciplinary action within the prescribed time limit, in accordance with management conditions and procedural order. Relevant civil servants will be notified of the decision in writing (Article 63).

While under a disciplinary penalty, a concerned civil servant will not be promoted to a higher position, level, or grade; Civil servants are not allowed to increase their salary level if they are praised or severely disciplined, demoted, or dismissed (Article 64).

Disciplinary terms are 6 months for reprimand, 12 months for warning, 18 months for serious crimes, and 24 months for demotion or dismissal (Article 64). Civil servants who are dismissed will be demoted according to regulations (Article 64).

In case a civil servant shows remorse and does not commit any other violations of discipline or law while being disciplined other than being forced to resign, the sanction will automatically be lifted. when the penalty period expires (Article 65).

Article 65 also stipulates that after the disciplinary form is removed, civil servants are not affected by this form of discipline in terms of raising salary levels, ranks, positions, or higher ranks. However, the lifting of the disciplinary form of demotion to a lower position or rank or removal from office is not considered reinstatement to the previous position or rank.

*Overview of the Law on Civil Servants and regulations on disciplinary responsibilities of civil servants according to Vietnam's law*

*Overview of Vietnam's Civil Servant Law*

The Law on Cadres and Civil Servants (2008) was promulgated to replace the 1998 Ordinance on Cadres and Civil Servants to meet the requirements of building a socialist law-governed state of the people, by the people, for the people; Build a clean, effective and efficient administration. The Law on Cadres and Civil Servants has created the basis and legal foundation to form and build a separate and appropriate management and use mechanism between cadres, civil servants and civil servants. However, after a period of implementation, some provisions of the Law on Cadres and Civil Servants have revealed limitations and inadequacies. Typically: Clause 1, Article 80 of the Law, stipulates that the statute of limitations for disciplinary action is 24 months without stipulating exceptional cases, so in some cases, there are difficulties in handling; special circumstances need to be considered to carry out appropriate disciplinary action. Clause 4, Article 78 of the Law stipulates: "The application of disciplinary forms, authority, order and procedures for disciplining officials are carried out in accordance with the provisions of the Law and the charter of the CPV", socio-political organizations and documents of competent agencies and organizations". Thus, disciplinary action against officials in Party agencies and unions falls under the guiding authority of the Secretariat; for election officials in state agencies under the guiding authority of the National Assembly Standing Committee. However, the National Assembly Standing Committee has not issued documents specifically stipulating the application of disciplinary forms, orders, and disciplinary procedures for officials according to the provisions of the Law.

In addition, this Law makes it difficult to implement Resolution 4 of the XIIth Central Committee on strengthening Party building and rectification; prevent and repel the deterioration of political ideology,

ethics, lifestyle, and manifestations of “self-evolution” and “self-transformation” internally; Resolutions of the 6th and 7th Plenums of the XIIth Central Committee on “Some issues of continued innovation and organizational arrangement of the streamlined political system, effective and efficient operation” and on “Focus on building a team of officials at all levels, especially at the strategic level, with sufficient qualities, capacity, and prestige, on par with their tasks”... Therefore, amending and supplementing the Law on Cadres and Public Works position is necessary, ensuring consistency and synchronization between the Party’s and the PL’s regulations in personnel work.

To meet that requirement, on November 25, 2019, the Law amending and supplementing a number of articles of the Law on Cadres and Civil Servants and the Law on Public Employees was passed by the National Assembly. In addition to amending and supplementing a number of regulations related to cadres and civil servants, the disciplinary regulations for cadres and civil servants also have more appropriate amendments and supplements, especially regarding the time limit. disciplinary action. On that basis, on September 18, 2020, the Government issued Decree No. 112/2020/ND-CP on disciplining officials, civil servants, and public employees to replace Decree No. 34/2011/ ND-CP dated May 17, 2011, of the Government regulates disciplinary action against civil servants.

#### *Regulations on disciplinary responsibilities of civil servants according to Vietnam’s law*

##### *Principles for disciplining civil servants:*

Complying with the principles when handling discipline is very important. Because this principle is one of the mandatory regulations for competent entities, the implementation of the principle, it is not only to control the activities of agencies and agency heads regarding the observance of regulations. regulations on the basis of application, order, procedures, statute of limitations, application period... and subjects, cases of application and non-application (even though civil servants commit violations), but also aim to protect the legitimate rights and interests of civil servants against arbitrary and illegal applications against civil servants. Accordingly, when disciplining civil servants, it is necessary to comply with the basic principles specified in Article 2 - Principles of Disciplinary Action in Decree No. 112/2020/ND-CP, some principles are as follows:

First, when disciplining civil servants, the principles of objectivity and fairness must be ensured; transparency; strictly and legally, this is the principle inherited from Decree 27/2012/ND-CP and Decree 34/2011/ND-CP. Accordingly, when considering and handling violations of civil servants, it is necessary to base on objective truth, fully research information, details of the case, causes, conditions, and circumstances, and look at it in a comprehensive way. comprehensive problem that leads civil servants to commit violations. From there, we ensure that civil servants’ behavior is handled correctly, and that disciplinary action is taken in accordance with the law and in accordance with the level of violation as well as the provisions of law.

Second, each violation is subject to only one disciplinary action. At the same time considering disciplinary action, if a cadre, civil servant, or public employee commits 02 or more violations, he/she will be disciplined for each violation and apply severe disciplinary measures. one level higher than the disciplinary measure applied to the most serious violation, except in cases of disciplinary action in the form of dismissal or dismissal; failure to separate each violation of officials, civil servants, and public employees for multiple disciplinary actions with different forms of discipline. In cases where a disciplinary decision is being implemented and a civil servant continues to commit violations, the disciplinary form shall be based on the level of the following behavior, and the principle of aggravation of the level of discipline must be followed towards stronger deterrence and education in this serious case. This is one of the basic principles in disciplining officials and civil servants, this principle has been maintained from Decree 27/2012/ND-CP and Decree 34/2011/ND-CP until Decree The latest current regulation on disciplining officials and civil servants is Decree 112/2020/ND-CP.

Third, when considering disciplinary action, it must be based on the content, nature, extent, harmful effects, causes of violations, aggravating or mitigating circumstances, attitude of acceptance and correction, and

remediation. Redress defects, violations, and consequences caused. The attitude of accepting, correcting, and proactively overcoming the consequences of violating civil servants is a factor considered for aggravation and mitigation when applying disciplinary measures. It can be seen that the majority of disciplinary violations by civil servants are caused by the violator's lack of respect, unwillingness to voluntarily comply with the law, and lack of responsibility. Therefore, if the subject is aware of his or her violation and remediates the consequences to ensure state interests, rights and interests of agencies, organizations, and individuals, this is considered a mitigating factor. when applying discipline. Conversely, if civil servants are stubborn, do not recognize their mistakes, or continue to violate them, it must be considered an aggravating factor. Because in the end, the purpose of disciplinary enforcement, besides the element of punishment, is still the main purpose of educating civil servants who commit violations.

Fourth, do not apply administrative sanctions or party discipline instead of administrative discipline; Administrative disciplinary action is not a substitute for criminal prosecution if the violation is serious enough to be criminally prosecuted. These forms of processing are independent of each other, have different purposes, and different responsible subjects. Accordingly, administrative sanctions only apply to administrative violations; the order, procedures, time limit and authority are prescribed by the Law on Handling of Administrative Violations; Party disciplinary measures applied to party members who violate Party regulations; Criminal handling of acts that are crimes according to the provisions of criminal law. In addition, the legal consequences of these forms are also completely different.

*Grounds giving rise to disciplinary liability for civil servants:*

Considering the constitutive elements, violations are the basis for disciplinary liability for civil servants, with the following signs:

Objective side: The objective side of violating the law - the basis for disciplinary action against civil servants. The objective aspect of violating the law includes the illegal act, the damage and the cause-and-effect relationship between the illegal act and the consequences of the illegal act (damage to society). The consequences of disciplinary violations are assessed based on the level of the behavior: violations cause less serious consequences, violations cause serious consequences, violations cause very serious consequences, and violations cause serious consequences. the consequences are particularly serious.

Subjective aspect: Civil servants must be responsible for disciplinary action in case of error, including intentional or unintentional error, and are exempt from liability in cases where it is determined that there is no error.

Subject: the employee has all the signs: being a Vietnamese citizen, recruited, appointed to ranks, positions, and titles corresponding to job positions in groups of agencies, organizations, and units determined in Clause 2, Article 4 of the 2008 Law on Cadres and Civil Servants, amended and supplemented in 2019 if they commit disciplinary violations, they are considered subjects to be considered for disciplinary action.

Object: violating the law is the basis for disciplinary prosecution of civil servants, which is the management relationship between the state and civil servants, the relationship between civil servants and individuals and organizations in the performance of public duties. , law enforcement, and public service ethics.

Disciplinary action against civil servants must be based on cases prescribed by law. According to regulations, in Article 6 of Decree No. 112/2020/ND-CP, civil servants can be disciplined when committing the following violations: "Officers, civil servants, and public employees commit violations regulations on obligations of cadres, civil servants and public employees; What officials, civil servants and public employees are not allowed to do; internal rules and regulations of agencies, organizations and units; Violating ethics, lifestyle or violating other laws while performing public duties will be considered for disciplinary action. Compared with the previous regulations in Article 3 of Decree 34/2011, the current regulations are different, specifically, Clauses 2 and 3 of this Article are omitted, aiming to make the new regulations directional, More general, specific behaviors are more clearly and fully specified in the disciplinary regulations. However, that leads to Decree 112/2020/ND-CP having a limitation. In Article



13, which regulates the application of disciplinary measures such as forced dismissal for civil servants, there is no regulation “Civil servants shall be If the court sentences you to imprisonment without a suspended sentence or you are convicted of a corruption crime, you will automatically be forced to quit your job from the date the judgment or decision takes legal effect; Civil servants holding leadership or management positions who commit crimes and are convicted by the Court and whose judgments and decisions have taken legal effect will automatically cease to hold their positions due to their appointment”, this regulation is specifically stipulated. in Clause 3, Article 79 of the 2008 Law on Cadres and Civil Servants, amended and supplemented in 2019. As a decree regulating the disciplinary handling of cadres, civil servants, and public employees, this is a major omission of Decree 112/2020/ND-CP.

#### *Disciplinary forms for civil servants:*

Violating civil servants may be subject to different forms of discipline based on the nature and severity of the violation. Disciplinary action against civil servants is the method and method of disciplining civil servants and is the adverse legal consequences for civil servants when violating discipline. Accordingly, the forms of handling can be reprimand, warning, salary reduction, and forced dismissal for civil servants not holding leadership or management positions; Reprimand, warning, demotion, dismissal, and forced dismissal apply to civil servants holding leadership and management positions. Specifically, cases where disciplinary measures are applied are specified in Article 8, Article 9, Article 10, Article 11, Article 12, Article 13 of Decree 112/2020/ND-CP.

Based on the level of the behavior and the subject’s recidivism, higher forms of discipline will be applied to create a system, i.e. more unified, stricter, and more orderly in the discipline. determine disciplinary measures.

The level of violations is classified into 04 levels: Violations causing less serious consequences, violations causing serious consequences, violations causing very serious consequences and violations causing particularly serious consequences. Determining the level of violation is based on the following signs:

A violation that causes less serious consequences is a violation that is of a small nature and level of harm, has an internal impact, and affects the reputation of the agency, organization, or work unit.

Violations that cause serious consequences are violations that have the nature, extent, and great harm, impact beyond the internal scope, cause bad public opinion among officials, civil servants, public employees and the people, and reduce reputation. of agencies, organizations, and work units.

Violations that cause very serious consequences are violations that have a very large nature, extent, and harmful effects, with a scope that affects the entire society, causing very angry public opinion among officials, civil servants, public employees and the people, discrediting agencies, organizations, and working units.

A violation that causes particularly serious consequences is a violation that has a particularly great nature, level, and harmful effects, with a far-reaching impact on the entire society, causing particularly urgent public opinion among officials, civil servants, and public servants. officials and people, discrediting agencies, organizations, and work units.

However, it can be seen that determining the nature and extent of what is large, very large, especially large, what causes bad public opinion, causes public anger, and is especially annoying is the key issue. but there are no more specific regulations to determine. Therefore, it can easily lead to the fact that in reality, determining the nature and extent of impact from many factors, from many sides, can lead to the consequence of handling lightly, superficially, and not as a deterrent. That is, the regulation is only formal and not effective.

The lightest form of discipline currently is the form of reprimand specified in Article 8 of Decree 112/2020/ND-CP applied to 09 violations, these are also 09 fundamental acts as a basis for identifying

more severe forms of discipline such as warnings, salary reduction, demotion, dismissal, and forced dismissal. However, the issue of applying current disciplinary forms still has major shortcomings. Disciplinary violations are specifically listed in Article 8.

*Competence, order and procedures for considering disciplinary actions against civil servants:*

Regarding the disciplinary statute of limitations, the statute of limitations for disciplining civil servants is understood as the time limit prescribed by the Law on Cadres and Civil Servants to consider disciplining civil servants. When this period expires, civil servants who have violated the law will be prosecuted, not subject to disciplinary review. The statute of limitations for discipline is 02 years for violations that are less serious than requiring disciplinary action in the form of reprimand; 05 years for violations that do not fall into the above cases; Except for some cases where the statute of limitations does not apply, including officials and civil servants who are party members commit violations that require disciplinary action in the form of expulsion; There are acts of violating regulations on internal political protection; Committing acts that harm national interests in the fields of defense, security, and foreign affairs; using fake or illegal diplomas, certificates, certificates, or certifications.

It can be seen that the grounds for determining that the statute of limitations does not apply are based on the violation or the conclusion of an independent third party. The basis for determining whether the statute of limitations is 02 years or 05 years is determined by the violation being less serious than requiring disciplinary action in the form of reprimand. First, a reprimand is the lightest form of disciplinary action, so it is not necessary to use the word “to the extent”, such regulations create complexity and confusion. Therefore, to apply the 2-year statute of limitations, it is necessary to prove that the violation is less serious and must be disciplined in the form of reprimand. That means it leads to the conclusion that the disciplinary form is a reprimand, which is then used as a basis to determine the statute of limitations for discipline. In the case where the conclusion is that the discipline is a reprimand, the statute of limitations exceeds 02 years, i.e. The statute of limitations for disciplinary action has expired and a conclusion must be made that no disciplinary action will be taken. Such regulations will make the process of determining the statute of limitations difficult, and the processing order and procedures will not be logical. Accordingly, it is necessary to stipulate that the basis for determining the statute of limitations is that less serious violations are prescribed to be considered and handled in the form of reprimand. The Government regulates these acts in detail as a basis for determining the disciplinary statute of limitations. That is, we will rely on behavior to conclude the statute of limitations and not rely on the disciplinary form of reprimand to conclude the statute of limitations.

Regarding time limit, the time limit for disciplinary action against civil servants is the period of time from the discovery of disciplinary violations by officials and civil servants until the disciplinary decision of the competent agency or organization is issued. authorization.

According to the current new regulations, both the deadline and statute of limitations are extended. The time limit for disciplinary action is no more than 90 days (according to the old regulations, it was 02 months); In case the case has complicated circumstances that require time for inspection and examination for further verification and clarification, the disciplinary time limit may be extended but not exceeding 150 days (according to the old regulations, it was 04 months). The statute of limitations for disciplinary action is 2 years if the violation is less serious than a reprimand; and 05 years for remaining violations (the old regulation was 24 months).

*Differences in Vietnam Regulations and Laws on Civil Servant Discipline*

Firstly, in Vietnam’s law, there is a clear division: (i) For civil servants who do not hold leadership or management positions: There are 04 forms of disciplinary action including reprimand; warning; lower salary

level; and forced to quit. (ii) For civil servants holding leadership and management positions: There are 05 forms of disciplinary action including reprimand; warning; demotion; dismissal; and forced to quit. (iii) For officials: There are 04 forms of disciplinary action including reprimand, warning, dismissal, and dismissal. China's law stipulates the following forms of discipline: reprimand, warning, serious crime, and demotion or dismissal for all civil service systems.

Second, regarding the supervision mechanism for civil servants: The phrase "People supervise" was included in the Resolution of the 13th Party Congress with the slogan "People know, people discuss, people do, people check, people supervise". observed, the people benefit" has shown that our Party is always consistent with the viewpoint of building a Vietnamese socialist law-governed state of the People, by the People and for the People, ensuring grassroots democracy, ensuring the true mastery of the People. In the country's development orientation for the period 2021 - 2030, our Party also affirms: "Practice and widely promote socialist democracy, the people's right to mastery and self-governance, etc.". For China, since the 18th Congress of the CPC until now, a series of measures such as strict Party management, and strict power management, especially the "Disciplinary Regulations of the CPC" have been implemented. CPC" was newly amended and took effect from January 10, 2016. There is also the "Supervision Law of the People's Republic of China" effective from March 20, 2018, etc., which has introduced new regulations and determined the content of adjustments in China's current supervision mechanism: "Civil servants are subject to the supervision of the supervision system and the Law on Supervision". At the same time, to support the implementation of the Law on Civil Servants, the Central Organizing Committee has issued 04 regulations, including: "Regulations on the scope of civil servants", "Measures for approving management units according to "Civil Service Officer Law of the People's Republic of China", "Measures for Managing the Positions, Positions, and Ranks of Civil Service Officials" and "Measures for Registering Civil Service Officials". These regulations were issued after the Central Government announced the "Concurrent Regulations on Positions and Ranks of Civil Servants" in March 2019, accompanied by the "Amended Law on Civil Servants of the People's Republic of China", is a guarantee of the regime for building a team of professional civil servants with high caliber and good qualities.

### **Limitation and Existence**

Firstly, like China's "civil service" system, the civil servant team in Vietnam is still quite "massive", the tasks that need to be managed and performed are too many, and there is no clear classification. In recent times, both China and Vietnam have continued to streamline their apparatus to reduce the number of organizations and human resources; Some job positions can carry out contract recruitment, recruiting talented people to take on positions that require good expertise, or temporary jobs that need professional expertise, contributing to improving work efficiency. However, the implementation results still do not meet the set requirements.

Second, on building the political qualities, ethics, and lifestyle of civil servants. Since the 18th Congress of the CPC (2012) and the 4th Plenum of the 11th Central Committee of the CPV (2012), the building of political integrity, ethics, and lifestyle for the team civil servants have achieved many achievements. However, many corrupt individuals have not yet been detected, some are still among civil servants (China), and civil servants (Vietnam), and even hold leadership positions in the government system. treat. In addition, in some units, there is still the phenomenon of civil servants lacking effort, working indifferently, coping, and avoiding work.

Third, in recent times, in both China and Vietnam, a number of cases where officials and civil servants committed violations during their working time but have since retired or transferred their jobs out of the state sector have been punished. Party discipline and government discipline. However, current law does not have regulations to regulate this issue, so many agencies and units are still confused about disciplining officials and civil servants who have left their jobs to ensure fairness and fairness. mandarin.

*Propose solutions*

Firstly, regarding the operating mechanism and classification of civil servants: The formation of a regime that simultaneously applies positions and ranks to civil servants in China is a noteworthy approach that Vietnam can study reference. Combining the criteria of position and rank at the same time will have the effect of encouraging civil servants to fulfill their responsibilities and tasks, promoting the spirit of progress. Although determining the corresponding relationship between positions and ranks of civil servants is difficult, the experience that China has gained from applying the process of integrating and converting equivalence between positions and ranks is difficult. Ranking will be valuable information that Vietnam can research and apply appropriately to the country's conditions and situation.

Second, continue to strengthen education and strengthen the mechanism for strict supervision of civil servants. Education always plays an important role, helping civil servants constantly cultivate and practice revolutionary ethics, actively study to improve their qualifications and work capacity, and always stick to reality. Civil servants know how to apply knowledge into practice, at the same time accumulate knowledge, experience and work skills, train their bravery and leadership, management capacity, ability to cooperate, organize and implement and in charge of; resolute and persistent in the fight against manifestations of wrongdoing. In addition, strengthening the monitoring mechanism helps all activities of civil servants fall into line. China's Supervision Law (2018) stipulates general principles in implementing functions and tasks, identifying supervisory agencies and issues such as scope, powers, and supervision processes. This Act also contains regulations on international cooperation in anti-corruption, specific requirements for supervision of agencies and employees performing supervisory functions, and specifies the specific legal responsibilities of relevant subjects. Vietnam can study and refer to the mechanism framework of this law in developing and perfecting a separate law on supervision mechanisms, to create a legal foundation and standardize the supervision of staff, civil servants and state employees.

Third, it is necessary to amend the regulations on statute of limitations and disciplinary periods for officials and civil servants as in the current law on civil servants. The current regulations on the statute of limitations for disciplinary action are 24 months and the time limit for disciplinary action is 2 months, lasting no more than 4 months for officials and civil servants. handling of officials, civil servants and public employees who commit violations. In some cases that have been disciplined for the CPV (or have been criminally handled but given a suspended sentence), when considering disciplinary action according to the provisions of the Law, the statute of limitations and time limit have expired. The time limit for disciplinary action should be increased to a maximum of 12 months, from the date a civil servant is discovered to have violated the law until the date the competent agency, organization, or unit issues a disciplinary decision. In case the case has complicated details that require time for inspection and examination for further verification and clarification, the disciplinary time limit may be extended but must not exceed 18 months.

## Conclusion

Civil service laws in both China and Vietnam play an important role in developing the civil service. Determining the disciplinary responsibilities of civil servants is considered an effective tool in operating the state apparatus. Along with the Reform in China, Innovation in Vietnam has achieved many important achievements, including perfecting the legal system for civil servants as well as the responsibility for disciplining civil servants. In a public regime, with the leadership of the Communist Party, the civil service must truly serve the development of society, and civil servants must be worthy of being "loyal servants" of the people. Violators must be dealt with according to the law. Studying the CPC's laws and guidelines on disciplining civil servants will help Vietnam have a more complete view of the civil service and disciplining civil servants in the context of many similar political and socio-economic situations.

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