



# LEGAL NEWSLETTER

## AUGUST 2024



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## Notable new points of the Social Insurance Law 2024

The Social Insurance Law 2024 was passed by the 15th National Assembly on June 29, 2024, and will take effect on July 1, 2025, promising to bring many changes which affect regimes, and benefits positively and encourage participation in social insurance of employees as well as individuals in need. Below are some notable changes in the Social Insurance Law 2024 compared to the Social Insurance Law 2014.

### 1. Expanding the subjects participating in compulsory insurance

Article 2 of the Social Insurance Law 2024 expands the scope of subjects participating in compulsory social insurance and voluntary social insurance compared to the Law on Social Insurance 2014 as follows:

Business household owners (with business registration);

Part-time workers in villages and residential groups similar to part-time workers at the commune;

Enterprise managers, controllers, representatives of state capital, representatives of enterprise capital at companies and parent companies, managers and operators of cooperatives who do not receive salaries;

Non-fulltime workers (workers working under flexible working regimes);

The case of not entering into a labour contract, or an agreement with another name but with an explicit expression showing paid work, salary, and management, operation, and supervision of one party, in accordance with the Labor Code 2019.



## Notable new points of the Social Insurance Law 2024

### 2. New regulations on social pension benefits

Social pension benefits, as stipulated in Clause 2, Article 4, are defined as a type of social insurance guaranteed by the state budget for the elderly who meet the conditions prescribed in Article 21, which are: (i) From 75 years old or older (From 70 to under 75 years old for poverty households and near-poverty households); (ii) Not receiving monthly pension or social insurance benefits, except for other cases as prescribed by the Government; (iii) Having a written request to receive social pension benefits.

Regarding the social pension benefits stipulated in Article 22, specifically as follows:

The monthly allowance level will be regulated by the Government, meeting the conditions appropriate to the socio-economic development conditions and the capacity of the state budget in each period. Every 3 years, the Government shall review and consider adjusting the social pension allowance level.

The provincial People's Committee shall submit to the People's Council of the same level a decision on additional support for social pension beneficiaries.

In case a person receiving social pension benefits is also eligible for monthly social allowances, he/she shall receive a higher allowance.

A person receiving monthly social pension benefits shall have his/her health insurance paid by the state budget in accordance with the provisions of the law on health insurance. When he/she dies, the organization or individual in charge of the funeral shall receive support for funeral expenses in accordance with the provisions of the law on the elderly.

Article 23 stipulates the monthly allowance regime in cases where the conditions for pension and social retirement benefits are not met, specifically:

Vietnamese citizens who are of retirement age and have paid social insurance but are not eligible for pension and social retirement benefits, if they do not receive one-time social insurance and do not reserve it but have a request, they will receive monthly allowances from their contributions with the duration and level of monthly allowances determined based on the payment period and basis for social insurance contributions of the employee.

The person in need of receiving benefits will submit a dossier to the social insurance agency, including (i) a Social insurance book; and (ii) A document requesting monthly allowance. Within 05 working days from the date of receiving the complete dossier, the social insurance agency is responsible for resolving; in case of non-resolution, a written response must be given stating the reason.

## Notable new points of the Social Insurance Law 2024

### 3. Reduce the period of social insurance payment to receive a pension

According to the provisions of Article 64 and Article 98 of the Social Insurance Law 2024, individuals participating in compulsory or voluntary social insurance who have paid social insurance for 15 years or more are entitled to receive a pension. Social Insurance Law 2024 has reduced the period of social insurance payment to 15 years from 20 years as prescribed in the Social Insurance Law 2014. This provision aims to create favorable conditions for participating in social insurance to receive a pension, contributing to encouraging participants to choose to receive a pension instead of receiving social insurance one time.

### 4. Maternity allowance for voluntary insurance

While in the Social Insurance Law 2014, voluntary insurance participants only have pension and death insurance, the Social Insurance Law 2024 has added maternity allowance for this type of insurance. This will provide some support for female voluntary insurance participants during their maternity period. Maternity allowance is regulated from Article 94 to Article 97 with the following main contents:

Subjects eligible for maternity allowance include (i) Female workers giving birth; and (ii) Male workers whose wives give birth.

Conditions for receiving maternity allowance: Individuals who have paid voluntary social insurance or have paid both compulsory social insurance and voluntary social insurance for at least 06 months within 12 months before giving birth; (ii) The father or the direct caregiver in the case where only the mother participates in social insurance and the mother dies after giving birth.

Regarding the type of insurance benefits in some cases:

- In case both the father and mother participate in voluntary social insurance and are eligible for maternity benefits, only the father or mother is eligible.
- In case both the conditions for maternity benefits in voluntary social insurance and the conditions for maternity benefits in compulsory social insurance are met, the maternity benefits in compulsory social insurance are only enjoyed.
- In case the mother is eligible for maternity benefits in compulsory social insurance and the father is eligible for maternity benefits in voluntary social insurance, the mother is entitled to maternity benefits in compulsory social insurance, and the father is entitled to maternity benefits in voluntary social insurance.
- In case the father is eligible for maternity benefits in compulsory social insurance and the mother is eligible for maternity benefits in voluntary social insurance, the father is entitled to maternity benefits in compulsory social insurance, and the mother is entitled to maternity benefits in voluntary social insurance.

## Notable new points of the Social Insurance Law 2024

Maternity benefit level: Article 95 stipulates that the maternity benefit level is 2,000,000 dong for each child born and each fetus from 22 weeks old or older who dies in the uterus or dies during labor. If the female worker is an ethnic minority or a Kinh person whose husband is an ethnic minority in a poverty household when giving birth, she will be entitled to other support policies.

The application for maternity benefits is one of the following documents:

- A copy of the child's birth certificate or birth extract or a copy of the birth certificate witness;
- In case of fetal death in the uterus, fetal death during labor or child death after birth without being issued a birth certificate, the file must be one of the following documents: (i) Original or copy of the summary of the medical record showing information about the child's death; (ii) Original or copy of the hospital discharge paper of the female employee giving birth showing information about the child's death; (iii) Copy of the child's death certificate; (iv) Confirmation document of the People's Committee at the commune level in case the child dies within 24 hours after birth.
- Within 60 days from the date of birth, the employee is responsible for submitting the file to the social insurance agency. Within 05 working days from the date of receiving the complete file as prescribed, the social insurance agency is responsible for resolving it; in case of non-resolution, a written response must be given stating the reason.

The provisions of the Social Insurance Law 2024 aim to expand insurance regimes for participants, and supplement subsidy regimes for specific subjects to ensure social security for special subjects, in line with the motto "no one is left behind". On the other hand, the provisions of the Social Insurance Law 2024 also contribute to encouraging social insurance participants to choose to enjoy retirement benefits instead of paying off social insurance at once, contributing to balance and stability in the social insurance system.



# Decree No. 72/2024/ND-CP on VAT Reduction Policy as per Resolution No. 142/2024/QH15 dated June 29, 2024, of the National Assembly

Decree No. 72/2024/ND-CP on the value-added tax (VAT) reduction policy ("**Decree 72**") is one of the key policies of the Government aimed at supporting businesses and consumers amidst the challenging economic context. This decree was issued to alleviate the financial burden on businesses while stimulating domestic consumption, thereby promoting the development of the Vietnamese economy.

## 1. Objectives

### a) Supporting Businesses

One of the main objectives of Decree 72 is to support businesses, particularly small and medium-sized enterprises, by reducing the VAT they are required to pay. By lowering production costs, the decree aims to enhance competitiveness in both domestic and international markets.

### b) Stimulating Consumption

The reduction in VAT also directly affects the prices of goods and services in the market. When this tax rate decreases, the prices of products and services will also decrease, thereby stimulating consumer demand.

### c) Promoting Economic Growth

By reducing the tax burden on businesses and stimulating consumption, Decree 72 contributes to the overall objective of the Government to promote economic growth in the face of global uncertainties.

## 2. Content

### a) Applicable Entities

Decree 72 applies to all businesses, organizations, and individuals engaged in trading goods and services subject to VAT, except for certain specific groups of goods and services, including:

Telecommunications, financial activities, banking, securities, insurance, real estate business, metals and metal products, pre-manufactured metal products, mining products (excluding coal mining), coke, refined petroleum, and chemical products.

Products and services subject to special consumption tax.

Information technology as per the law on information technology.

The specific details of goods and services that are not eligible for VAT reduction incentives are outlined in Annexes I, II, and III attached to Decree 72.

### b) Tax Reduction Rate

The VAT rate is reduced from 10% to 8% for most goods and services subject to VAT. However, some groups of goods and services are reduced to 5% to provide maximum support to key sectors.

## Decree No. 72/2024/ND-CP on VAT Reduction Policy as per Resolution No. 142/2024/QH15 dated June 29, 2024, of the National Assembly



Business establishments (including business households and individual businesses) that calculate value-added tax (VAT) using the percentage method on revenue are entitled to a 20% reduction in the percentage rate used to calculate VAT when issuing invoices for goods and services eligible for VAT reduction under Clause 1, Article 2 of Decree 72.

### ***c) Duration of the VAT Reduction Policy***

The VAT reduction policy is applicable from July 1, 2024, to December 31, 2024.

## **3. Recommendations**

### ***a) Monitoring and Enforcement***

One of the biggest challenges is effectively monitoring the implementation of the policy. There needs to be close coordination between relevant authorities to ensure that businesses comply with the regulations and do not misuse the policy to evade taxes.

### ***b) Ensuring Sustainability***

The VAT reduction policy is only a short-term solution aimed at stimulating the economy. To ensure sustainability, the Government needs to implement additional measures to maintain growth momentum, such as administrative reforms, supporting innovation businesses, and enhancing access to capital.

### ***c) Assessment and Adjustment***

The Government should regularly assess the impact of Decree 72 to timely adjust related policies if necessary, to achieve long-term economic and social development goals.

Decree 72 on VAT reduction policy is an important step by the Government in the face of significant economic challenges. This policy not only helps reduce the financial burden on businesses and consumers but also creates new momentum for the development of the Vietnamese economy. However, to achieve optimal effectiveness, close monitoring and coordinated support measures from the Government and relevant authorities are necessary. If implemented correctly, the VAT reduction policy will make a significant contribution to achieving the country's economic and social objectives in the coming years.



## Case Law No.39/2020/AL regarding the determination of civil transactions due to invalid conditions

*In civil law, Conditional Contracts are understood as contracts in which, when entered into, the parties agree to determine an event that when that event occurs, the contract will arise, be performed, or be terminated. From a dispute that arises when the seller receives money but the conditions of the contract do not occur, the buyer requests the seller to refund the money and requests the court not to recognize the contract, Case Law No. 39/2020/AL has provided an opinion to resolve disputes arising related to this type of conditional transaction. In this article, TNTP's lawyers will analyze the content of Case Law No. 39/2020/AL.*

### 1. Summary of the case

a) In 1982, the family of Mr. Nguyen Viet L (died in 1985) and Ms. Tran Van C (died in 2011) and their 03 children, Mr. Le Minh S, Mr. Le Minh D, Mr. Le Minh T2, were granted permission by the State Bank of Vietnam to use the ground floor in front of the house No. 182, Street A, Ward B, District D, Ho Chi Minh City.

b) In May 1989, Ms. C rented a part of the house with an area of 50.85m<sup>2</sup>, located on the corner of 02 fronts of A - D streets, to the Branch of T Tourism Company to open a general service store. At that time, Ms. C1 took the position of store manager, and with her husband, Mr. Nguyen Cong H, directly conducted business and represented the Branch of T Tourism Company to pay the rent in June 1989 of 2.3 maces of 24K gold and the next rental payment from July 1989 to December 1992 was 75 maces of 24K gold, the first payment on July 10, 1989 was 35 maces of 24K gold, the second payment of 40 maces of gold on September 1, 1989. In total, Ms. C received 7.5 taels of 24K gold.

c) In December 1989, the Branch of T Tourism Company was not doing business effectively, so it was assigned to Ms. C1 to continue doing business and pay rent until the end of February 2002. Since March 2002 until now, Ms. C1 and Mr. H have still lived in this area and have not paid rent. A part of the house is currently used by Ms. T1, and another part is used by Ms. K.

d) During the process of Ms. C1 and Mr. H using the house, there was construction and repair, so the disputed area's value according to the valuation minutes dated January 22, 2014, is 1,427,421,900 VND. Regarding the Association Contract No. 05 signed on May 20, 1989, with the Branch of T Tourism Company, the plaintiff did not request settlement and withdrew the request to force T Tourism One Member Limited Liability Company to pay 1.48 taels of 24K gold for rent.

e) Because the two parties have no business buying or selling the house and no longer have a rental relationship, the plaintiff requests the Court to cancel the commitment made and signed by Ms. Tran Van C and Ms. Tran Thi C1 on July 10, 1989; force Ms. C1 and Mr. H to immediately pay for the part of the house that they are staying in; agree to pay Ms. C1 and Mr. H the cost of repairing the house of 64,105,000 VND.

f) The Defendants are Mr. Nguyen Cong H and Ms. Tran Thi C1 presented:

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In 1989, Mr. H and Ms. C1 transferred an area of about more than 40m<sup>2</sup> located in house 182 A Street, District D of Mr. Tran Van C for 7.5 taels of 24K gold. Both sides wrote a handwritten paper to sell the house. On July 10, 1989, Mr. H and Ms. C1 delivered this amount of gold to Mr. C, then added 05 maces, the total selling price was 08 taels of 24K gold. The transferred area is located at the corner of 2 frontages of streets A - D. At that time, Ms. C was renting the above house from the State Bank of Vietnam, so she had not yet been granted ownership of the house, so the two parties only wrote the handwritten paper and could not sign a sales contract.

After that, Mr. H and Ms. C1 transferred to Ms. Tran Thi Kim T1 a part of the house with an area of about 16m<sup>2</sup>. The transfer with Ms. T1 was only agreed upon verbally.

Around 2005, Mr. H and Ms. C1 had business cooperation with Ms. Luong Thi K in the above area.

According to the commitment between the two parties in the handwritten paper dated July 10, 1989, when the State allows Ms. C to buy the house price, Mr. H and Ms. C1 must pay the price of the transferred area and Mr. C is responsible for completing the procedures to transfer ownership of the transferred area to Mr. H and Ms. C1. At the same time, based on the Land Law 2003, Mr. H and Ms. C1 have used the house and land for over 25 years, so their land and house use rights must be recognized, so they request recognition of the house transfer according to the commitment dated July 10, 1989, because this is a conditional civil transaction.

Those who inherit the rights and obligations of Ms. C that request for a house to stay in is unfounded because according to the Certificate of House Ownership, Mr. C only has ownership of 167m<sup>2</sup> and the above area Mr. C has no ownership rights, so he has no right to sue, Mr. H and Ms. C1 do not accept. Because the prescriptive period for initiating legal action for the dispute that arose in 1989 had expired, the case was requested to be suspended.

The transfer of part of the area to Ms. T1 and the business cooperation with Ms. K does not require settlement. During the period of using Mr. H and Ms. C1, the house was repaired with the repair cost calculated according to the calculation minutes of 64,105,000 VND. In case the Court does not recognize the house transfer, this repaired amount must be returned.

g) The person with related interests and obligations is Ms. Tran Thi Kim T1 presented:

Ms. T1 transferred from Ms. C1 a part of house No. 182, Street A, Ward B, District D, Ho Chi Minh City with an area of about 16m<sup>2</sup> in 1989, for 04 taels of gold, the transfer was without paperwork. Now, Ms. T1 requests Ms. C to be responsible for carrying out procedures to transfer ownership rights to Mr. H and Ms. C1. The transfer between Ms. T1 and Mr. H and Ms. C1 is not requested to be solved by the Court.

At the same time, according to Ms. T1, the area the parties are disputing is the common use of the households in the house on 182 Street A, Ward B, District D, Ho Chi Minh City. Ms. C has no ownership rights, so Mr. C has no right to sue.

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h) The person with related rights and obligations is N Housing Business Management Company represented by Ms. Pham Thuy HI presented:

N Housing Business Management Company sold the house on No. 182, Street A, Ward B, District D, Ho Chi Minh City in 2001. Before selling, they took minutes to check the area used by each household. According to the content of the minutes, the area of houses and land in dispute between the parties is located within the boundary of the owner's right of use (Ms. C – died) until the State collects it to implement the road widening project. The fact that Ms. C allowed them to stay, rent, or transfer was against the regulations, so N Housing Management Company did not agree and requested a trial according to the provisions of the law.

i) In First Instance Civil Judgment No. 28/DS-ST dated July 27, 2006, the People's Court of District 3, Ho Chi Minh City decided:

*Cancel the commitment dated July 10, 1989, between Ms. C and Mr. H and Ms. CI.*

*Mr. H, Ms. CI, Ms. TI, and Ms. K are obligated to deliver to Mr. C a part of the ground floor of house 182, Street A, Ward B, District D, Ho Chi Minh City with an area of 50.85m2.*

*Ms. C paid Mr. H and Ms. CI: 08 taels of gold received + 27.49 taels of gold for damage + 64,105,000 VND for repairs. The total amount is 35.49 taels of gold and 64,105,000 VND.*

j) The plaintiff and defendant both filed an appeal.

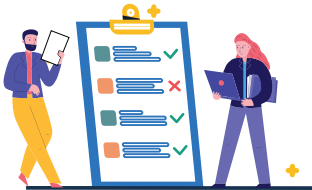
k) In Civil Appeal Judgment No. 188/2007/DS-PT dated February 7, 2007, the People's Court of Ho Chi Minh City decided:

Partially amending the First Instance Judgment:

*Recognize the house purchase contract between Ms. Tran Van C and Mr. Nguyen Cong H and Ms. Tran Thi CI according to the commitment dated July 10, 1989.*

*Ms. C is responsible for transferring ownership of the house to Mr. H and Ms. CI.*

*Mr. H and Ms. CI paid Ms. C the house price of 169,432,000 VND.*



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l) In Decision No. 138/QĐ-KNGĐT-V5 dated November 13, 2007, the Director of the Supreme People's Procuracy protested the above civil appeal judgment.

m) In Decision No. 01/2008/ĐS-GĐT dated January 25, 2008, the Civil Court of the Supreme People's Court decided to annul the *First Instance Civil Judgment No. 28/ĐS-ST dated January 27 - July 2006 of the People's Court of District 3 and annul the Civil Appeal Judgment No. 188/2007/ĐS-PT dated February 7, 2007 of the People's Court of Ho Chi Minh City; deliver the case file to the People's Court of District 3 for trial according to first instance procedures.*

n) In First Instance Civil Judgment No. 12/2014/ĐS-ST dated April 16, 2014, the People's Court of District 3, Ho Chi Minh City decided to:

Partially accept the request for the heirs' rights and obligations of Ms. Tran Van C.

*Declare the commitment on transferring the right to use part of house No. 182, Street A, Ward B, District D, Ho Chi Minh City signed on July 10, 1989, between Ms. Tran Van C and Ms. Tran Thi C1 is null and void.*

*Force the heirs of Ms. Tran Van C's rights and obligations, Ms. Le Thi Minh C2, Mr. Le Minh S, Mr. Le Minh D, Mr. Le Minh T2, to repay Mr. Nguyen Cong H and Ms. Tran Thi C1 the amount of gold received is 08 taels of 24k gold = 276,320,000 VND.*

*Force the heirs of Ms. Tran Van C's rights and obligations, Ms. Le Thi Minh C2, Mr. Le Minh S, Mr. Le Minh D, Mr. Le Minh T2, to repay Mr. Nguyen Cong H and Ms. Tran Thi C1 house construction and repair costs are 64,105,000 VND.*

*Force the heirs of Ms. Tran Van C's rights and obligations, Ms. Le Thi Minh C2, Mr. Le Minh S, Mr. Le Minh D, Mr. Le Minh T2, to compensate for damages to Mr. Nguyen Cong H, Ms. Tran Thi C1 amount is 575,550,950 VND.*

*Force Mr. Nguyen Cong H, Ms. Tran Thi C1, Ms. Tran Thi Kim T1, Ms. Luong Thi K to be responsible for returning to the heirs of Ms. Tran Van C's rights and obligations, Ms. Le Thi Minh C2, Mr. Le Minh S, Mr. Le Minh D, Mr. Le Minh T2, the area of house and land in the house No. 182, Street A, Ward B, District D, Ho Chi Minh City includes: Area of house and land in the main house with the first floor, suitable for planning is 8.11m<sup>2</sup> + house and land area within the road is 42.74m<sup>2</sup>.*

o) The first instance court also decided on court fees and the litigants' right to appeal.

p) On April 24, 2014, Mr. Nguyen Cong H, Ms. Tran Thi C1, and Ms. Tran Thi Kim T1 filed an appeal.

q) On April 28, 2014, Ms. Le Thi Minh C2 filed an appeal.

r) In Civil Appeal Judgment No. 1515/2014/ĐS-PT dated December 1, 2014, the People's Court of Ho Chi Minh City decided:

*Not to accept the appeal of Ms. Le Thi Minh C2, Ms. Tran Thi C1, Mr. Nguyen Cong H and Ms. Tran Thi Kim T1, withhold the first instance civil judgment.*

## Case Law No.39/2020/AL regarding the determination of civil transactions due to invalid conditions

s) After the appeal trial, the defendant Mr. Nguyen Cong H and Ms. Tran Thi C1 filed a request for review according to cassation procedures for the Civil Appeal Judgment No. 1515/2014/DS-PT dated December 1, 2014.

t) In Appeal Decision No. 38/KNGDT-VC3-V2 dated March 21, 2016, the Director of the High People's Procuracy in Ho Chi Minh City appealed against Civil Appeal Judgment No. 1515/2014/DS-PT dated December 1, 2014 of the People's Court of Ho Chi Minh City; request the Committee of Judges of the High People's Court in Ho Chi Minh City to conduct a cassation trial to annul the above-mentioned Civil Appeal Judgment and First Instance Civil Judgment No. 12/2014/DS-ST dated April 16, 2014. of the People's Court District 3, Ho Chi Minh City; deliver the case file to the Court of First Instance for re-trial.

u) In Decision No. 234/2016/DS-GĐT dated September 9, 2016, the Committee of Judges of the High People's Court in Ho Chi Minh City decided:

*Not to accept Protest No. 38/KNGDT-VC3-V2 dated March 21, 2016 of the Director of the High People's Procuracy in Ho Chi Minh City; uphold the Civil Appeal Judgment No. 1515/2014/DS-PT dated December 1, 2014 of the People's Court of Ho Chi Minh City.*

v) On January 21, 2017, Mr. Nguyen Cong H, Ms. Tran Thi C1, and Ms. Tran Thi Kim T1 submitted a request for review according to cassation procedures for cassation decision No. 234/2016/DS-GDT dated September 9, 2016, mentioned above.

w) In Decision No. 56/2019/KN-DS dated August 5, 2019, the Chief Justice of the Supreme People's Court appealed Decision No. 234/2016/DS-GDT dated September 9, 2016, of the Committee of Judges of the High People's Court in Ho Chi Minh City; request the Council of Judges of the Supreme People's Court to conduct a cassation trial to cancel the Decision No. 234/2016/DS-GDT dated September 9, 2016 of the Judges' Committee of the High People's Court in Ho Chi Minh City. Ho Chi Minh City, canceling Civil Court of Appeal No. 1515/2014/DS-PT dated December 1, 2014 of the People's Court of Ho Chi Minh City and First Instance Civil Judgment No. 12/2014/DS-ST dated April 16, 2014 of the People's Court of District 3, Ho Chi Minh City; deliver the case file to the People's Court of District 3, Ho Chi Minh City for re-trial in accordance with the law.

x) At the cassation trial, the representative of the Supreme People's Procuracy agreed with the appeal decision of the Chief Justice of the Supreme People's Court.



## Case Law No.39/2020/AL regarding the determination of civil transactions due to invalid conditions

### 2. Comments of the Court:

2.1. Case files and evidence show that on July 10, 1989, Ms. Tran Van C and Ms. Tran Thi Cl signed a Commitment and Receipt with the content: Ms. C received 75 gold taels from Ms. Cl, giving Ms. Cl and her husband have full rights to use the area of 45m<sup>2</sup> at house number 182, Street A, Ward B, District D, Ho Chi Minh City; Ms. C never asked for his house back, nor did Ms. Cl and her husband ask for their gold back; when the State allows Ms. C to buy the house, Ms. Cl must pay the price for the area being used and Ms. C is responsible for carrying out procedures to transfer ownership of the transferred area to Mr. H and Ms. Cl.

**[Content of Case law]** Thus, there is a basis to determine that Ms. C has agreed to sell part of the house No. 182, Street A, which is being rented from the State to Ms. Cl under the condition that when Ms. C is valued by the State, or in other words, the transaction between Ms. C and Ms. Cl is a conditional civil transaction. When Ms. C is sold by the State for the house price, the transaction becomes effective. Article 23 of the 1991 Ordinance on Civil Contracts stipulates: *"Where the parties agree on a condition precedent for the performance or termination of a contract, the contract shall be performed or terminated upon such condition occurring"*. Although the conditions agreed in the contract do not violate legal prohibitions or are not contrary to social ethics, the part of the house and land that Ms. C agreed to transfer to Ms. Cl has an area of 42.74 m<sup>2</sup> located within the road, the State do not price and recognize Ms. C's home ownership and land use rights, so most of those conditions do not occur. Therefore, the agreement between Ms. C and Ms. Cl is not taking legal effect, and the Court of First Instance and Appeal declared it null and void is appropriate.

2.2. According to the provisions of Article 21 of the Housing Law 2005, point h, Clause 1, Article 10 of the Housing Law 2014, and Article 256 of the Civil Code 2005, owners and subjects with other property rights have the right to reclaim property from the possessor, user of the property, or person benefiting from the property without legal basis. Because the disputed portion of land with an area of 42.74 square meters is located within the right of way, the State does not price it, and does not recognize home ownership or land use rights for Ms. C, Ms. C, and Ms. C's heirs have no right to sue for that area.

The first instance and appellate courts forced Mr. H, Ms. Cl, Ms. Ti, and Ms. K to be responsible for returning to the heirs of Ms. C's legal rights and obligations to the house and land area within the right of way, The state does not recognize home ownership or land use rights as unfounded. The cassation decision of the Committee of Judges of the High People's Court in Ho Chi Minh City did not recognize the errors of the Court of First Instance and the Court of Appeal, thereby not accepting the appeal of the Institute. Head of the High People's Procuracy in Ho Chi Minh City, maintaining the appeal judgment is inconsistent with the provisions of Clause 2, Article 345 of the 2015 Civil Procedure Code.

## Case Law No.39/2020/AL regarding the determination of civil transactions due to invalid conditions

### 3. Comment on Case law

3.1. In Clause 6, Article 402 of the Civil Code 2015, it is stipulated that *“A conditional contract is a contract the performance of which depends on the occurrence, modification or termination of a specified event.”*

For better understanding, this type of contract is characterized by a contract formed based on certain conditions (for example, arising conditions, performance conditions, contract cancellation conditions). If this condition occurs, the obligation to perform the contract of one party or parties will arise.

Compared with the case of this Case law, the agreement in the Commitment dated July 10, 1989, of Ms. C with Ms. C1 and Mr. H has content consistent with the nature of a conditional contract, that is, when the land plot is valued by the State, the parties will proceed with the purchase, sale and transfer procedures.

3.2. In the judgment of the Court, it was noted that *“there is a basis to determine that Ms. C has agreed to sell part of the house No. 182, Street A, which is being rented from the State to Ms. C1 under the condition that when Ms. C is valued by the State, or in other words, the transaction between Ms. C and Ms. C1 is a conditional civil transaction. When Ms. C is sold by the State for the house price, the transaction becomes effective”* clearly stated the conditions in the house purchase contract. Although the contract has not yet taken effect, the parties have agreed on the conditions for implementation. The court determined that this was a conditional transaction.

Therefore, the Court's judgment that *“a civil transaction has conditions but is voided because the contract conditions cannot occur”* is reasonable because the object of the transaction is a house that has not yet been priced. From the time the parties conduct the transaction, the seller is only renting the house, which is still owned by the State. As long as the house has not been priced, the seller has not been granted ownership of the house. The fact that the buyer is transferred ownership of the area agreed to be transferred after the seller is granted the right is only an uncertain future condition that may occur. The reality of the case shows that the State did not conduct an appraisal and did not recognize ownership of the house, thus the conditions for the validity of the transaction did not occur and therefore the agreement between the buyer and the seller is disabled.

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