**CASE LAW NO. 10**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 17 October 2016 and promulgated under Decision No. 698/QD-CA dated 17 October 2016 by the Chief Justice of the Supreme People’s Court.*

## Source of the case law:

Cassation Decision No. 08/2014/HC-GDT dated 19 August 2014 of the Judicial Council of the Supreme People’s Court regarding administrative case on *“complaint against decision on compensation, support and resettlement upon land expropriation by the State”* in Vinh Long Province between the plaintiff being Ms. Vo Thi Luu against the defendant being the People’s Committee of Vinh Long Province.

## Location of contents of the case law:

Paragraph 1 section *“Rulings”* of the aforementioned cassation decision.

## Overview of the case law:

### Background of the case law:

The decision on approval of the plan of support and resettlement of the People’s Committee of Vinh Long Province had contents referring to other document which directly affected the right and interest of the plaintiff.

### Legal resolution:

In this case, the content of the referred documents is part of the administrative decision and such administrative decision is the subject matter of the administrative case.

## Applicable provisions of laws relating to the case law:

* Article 3.1 and Article 28.1 of the Administrative Procedure Law 2010 (Article 3.1 and Article 30.1 of the Administrative Procedure Law 2015 correspondingly);
* Articles 41 and 42 of the Law on Land 2003;
* Decree No. 197/ND-CP dated 3 December 2004 of the Government on compensation, support and resettlement upon land expropriation by the State;
* Decree No. 69/2009/ND-CP dated 13 August 2009 of the Government supplementing regulations on land use planning, land prices, land recovery, compensation, support and resettlement.

## Key words of the case law:

*“Administrative decision”, “subject matter of administrative case”, “Land recovery”, “Compensation, resettlement for those having land recovered”.*

**CONTENTS OF THE CASE**

On 7 April 2008, the People’s Committee of Vinh Long Province issued Decision No. 567/QD-UBND on approval of the master plan for compensation, support and resettlement of the project on construction of livestock breeding farm of Vinh Long Province in Tan An Luong Commune, Vung Liem Town, with the following contents:

*“Approve the master plan on compensation, support and resettlement of the project on construction of the livestock breeding farm of Vinh Long Province:*

*The total area of land recovery: 122,909m2;*

*Total compensation value expected: VND7,342,730,000”.*

On 17 September 2008, the People’s Committee of Vinh Long Province issued Decision No. 1768/QD-UBND with the following contents: Recover a land area of 117,863m2 in Tan An Luong Commune, Vung Liem Town managed and used by households and individuals to carry out the project on construction of livestock breeding farm of the province and assign the People’s Committee of Vung Liem Town to issue decision on land recovery.

On 2 October 2008, the People’s Committee of Vung Liem Town issued Decision No. 2592/QD-UBND with the following contents: Recover a land area of 2,353.1m2 of Ms. Vo Thi Luu, being part of parcel No. 222, farming land under cadastral map No. 03, located in Rach Coc Hamlet, Tan An Luong Commune, Vung Liem Town to construct the livestock breeding farm of Vinh Long Province.

On 1 December 2008, the Committee on compensation, support and resettlement of Vung Liem Town carried out procedures for declarations about houses, land, trees and structures of households which had been affected by the project on livestock breeding farm of the province.

On 15 May 2009, the Department of Finance of Vinh Long Province submitted Statement No. 177/TTr/STC to the People’s Committee of Vinh Long Province regarding application for approval of the plan on compensation for site clearance for the livestock breeding farm of Vinh Long Province. Accordingly, Ms. Luu’s household is to be compensated for the land recovery in the amount of VND155,155,000 (under the decision, the compensation for land recovery was VND50,000/m2); compensation for assets on land, support for life stabilization and vocational training in the amount of VND19,286,200. The total compensation is VND174,441,200.

On 4 June 2009, the Chairman of the People’s Committee of Vinh Long Province issued Decision No. 1216/QD-UBND on approval of the plan for compensation, support and resettlement of the project on livestock breeding farm of the province in Tan An Luong Commune, Vung Liem Town with the following contents:

*“Article 1. Approve the plan for compensation, support and resettlement of the project: Livestock breeding farm of the province, in Tan An Luong Commune, Vung Liem Town;*

1. *The total amount for compensation, support and resettlement: VND9.467,085,000, consisting of:*
* *Value for compensation and support on land: VND8,071,914;*
* *Value for land and structure: VND161,560,000.*
* *Value for trees: VND273,152,000;*
* *Other support: VND654,600,000.*
* *Other costs (costs for committtees, measuring cost): VND305,859,000.*
1. *Costs: Within the total cost estimate of the project paid by the investor.*

*Article 2. Pursuant to Article 1 of this Decision, the Director of Department of Finance, Chairman of the People’s Committee of Vung Liem Town, Committee of compensation, support and resettlement of Vung Liem Town have the following responsibilities:*

* *Chairman of the People’s Committee of Vung Liem Town shall instruct the Committee of compensation, support and resettlement of Vung Liem Town to pay the compensation in accordance with the current regulations of the State and complete the site clearance for contractors.*
* *Director of Department of Finance is responsible before the People’s Committee of the province for the outcome of the data, volume and unit price in the Statement No. 177/TTr.STC dated 15 May 2009”.*

Disagreeing with the aforementioned decision, Ms. Luu submitted a complaint to request increased compensation.

On 28 October 2009, Chairman of the People’s Committee of Vung Liem Town issued Decision No. 2023/QD-UBND rejecting the complaint of Ms. Luu.

On 8 August 2011, Ms. Luu initiated a lawsuit at the People’s Court of Vinh Long Province to request setting aside Decision No. 1216/QD-UBND dated 4 June 2009 of the People’s Committee of Vinh Long Province in respect of the the part of the price and compensation; to request increasing the compensation amount of the land recovery to be equivalent to the market sale price at the place of land recovery.

In First-instance Administrative Judgment No. 12/2012/HC-ST dated 18 December 2012, the People’s Court of Vinh Long Province rejected the statement of claim of Ms. Vo Thi Luu.

On 29 December 2012, Ms. Luu submitted an appeal.

In Appellate Administrative Judgment No. 96/2012/HCPT dated 25 April 2013, the Appellate Court of the Supreme People’s Court in Ho Chi Minh City set aside First-instance

Administrative Judgment No. 12/2012/HCST dated 18 December 2012 of the People’s Court of Vinh Long Province and suspended the settlement of the case.

On 28 June 2013, the People’s Court of Vinh Long Province issued Letter No. 1816/UBND- NC and on 2 August 2013, the Judicial Committee of the People’s Court of Vinh Long Province issued Letter No. 547/TAT-HC requesting cassation procedures over the aforesaid appellate administrative judgment.

In Decision No. 05/2014/KN-HC dated 5 March 2014, the Chief Justice of the Supreme People’s Court protested against the appellate Administrative Judgment No. 96/2013/HC- PT dated 25 April 2013 of the Appellate Court of the Supreme People’s Court in Ho Chi Minh City; request the Judicial Council of the Supreme People’s Court to conduct the cassation procedures to set aside the aforementioned appellate administrative judgment and transfer the case to the Appellate Court of the Supreme People’s Court in Ho Chi Minh City to conduct the appellate procedures.

At the cassation hearing, the representative of the Supreme People’s Procuracy agreed with the protest by the Chief Justice of the Supreme People’s Court.

## THE JUDICIAL COUNCIL OF THE SUPREME PEOPLE’S COURT FINDS:

Article 2 of Decision No. 1216/QD-UBND dated 4 June 2009 of the People’s Committee of Vinh Long Province on approval of the plan for compensation, support and resettlement of the project on livestock breeding farm of the province provided that: *“Director of Department of Finance is responsible before the People’s Committee of the province for the outcome of the data, volume and unit price in the Statement No. 177.TTr.STC dated 15 May 2009”.* Statement No. 177/TTr dated 15 May 2009 of the Department of Finance provided for the compensation for Ms. Luu’s household; therefore, such approved part had direct impact on the right and interest of Ms. Luu’s household and was the subject matter of the administrative case.

Therefore, the People’s Court of Vinh Long Province’s acceptance to resolve the petition of Ms. Luu on the part of compensation and support for her family as provided for in Decision No. 1216/QD-UBND dated 4 June 2009 was in compliance with regulations in Article 3.1 and Article 28.1 of the Administrative Procedure Law. However, the first-instance Court did not review and clarify whether the purpose of the land recovery in constructing the livestock breeding farm of Vinh Long Province was based on the State or private economic reasons to determine the basis for compensation and support when recovering the land of Ms. Luu’s household in accordance with the law.

Ms. Luu submitted an appeal to request compensation for land recovery based on the market price. In this case, the appellate Court should have reviewed the appeal of Ms. Luu on whether the issue of the compensation and support for Ms. Luu’s family was in compliance with regulations, but instead, it ruled that Decision No. 1216/QD-UBND dated 4 June 2009 of the People’s Court of Vinh Long Province is a decision on general matters and not a subject matter for initiating an administrative case, so that it set aside First-instance Administrative Judgment No. 12/2012/HC-ST dated 18 December 2012 of the People’s Court of Vinh Long Province and suspended the settlement of the case. This is a serious violation in application of the administrative procedural laws.

In light of the aforesaid reasons and pursuant to Article 219.3, Article 225.3, Article 227.1 and Article 227.2 of the Administrative Procedure Law,

## RULES

1. To accept Protest No. 05/2014/HN-HC dated 5 March 2014 of the Chief Justice of the Supreme People’s Court.
2. To set aside Appellate Administrative Judgment No. 96/2013/HC-PT dated 25 April 2013 of the Appellate Court of the Supreme People’s Court in Ho Chi Minh City and First-instance Administrative Judgment No. 12/2012/HC-ST dated 18 December 2012 of the People’s Court of Vinh Long Province;
3. To transfer the case to the People’s Court of Vinh Long Province to conduct first- instance procedures in accordance with the law.

**CONTENTS OF THE CASE LAW**

*“Article 2 of Decision No. 1216/QD-UBND dated 4 June 2009 of the People’s Committee of Vinh Long Province on approval of the plan for compensation, support and resettlement of the project on livestock breeding farm of the province provided that: “Director of Department of Finance is responsible before the People’s Committee of the province for the outcome of the data, volume and unit price in the Statement No. 177.TTr.STC dated 15 May 2009”. Statement No. 177/TTr dated 15 May 2009 of the Department of Finance provided for the compensation for Ms. Luu’s household; therefore, such approved part had direct impact on the right and interest of Ms. Luu’s household and was the subject matter of the administrative case”.*