

NOTES AND COMMENTS

REFORM FORUM'S NOTE

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EVIDENTIARY INEQUALITY AND EFFECTIVE ACCESS TO CIVIL JUSTICE: A STAGED EVIDENCE PROTOCOL FOR ENVIRONMENTAL COMPENSATION IN VIETNAM

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ABSTRACT

Background: Vietnam regulates environmental information, damage assessment, evidence production, urgent protection, judicial expertise, and costs. Yet these rules are fragmented across environmental administration and civil procedure. Article 133(2) of the Law on Environmental Protection shifts the burden of proving the causal link to the violator or polluter in court. However, it does not specify how evidence is preserved, when the burden attaches, how administrative records become contestable civil evidence, or how individual loss is valued. The central problem is procedural connection, not a wholesale absence of evidentiary law.

Method: This Reform Forum Note uses doctrinal reconstruction and bounded functional comparison. *Chà Và*, *Sonadezi-Bà Chèo* and *Vedan-Thị Vải* are treated as separate

historical stress tests, with adjudicated facts separated from details reported only in secondary sources. The stated legal propositions are based on primary legislation and published judgements. European Union (EU) environmental-information law, the Environmental Liability Directive, the Court of Justice's ERG judgement, and German environmental-liability law identify analogous procedural functions. The legal position is stated as of 8 September 2026.

Results and Conclusions: The Note defines remedial legal capacity as six linked functions: preservation and access, causal attribution, contestable expertise, multi-source allocation, individual valuation, and organisation of common issues. Its original contribution is to organise current Vietnamese law and lessons from the 2025 United Nations Development Programme-Ministry of Justice study into a staged protocol: preserve and screen; obtain targeted evidence and a responsive causal account; test expertise; determine common causation and source allocation; then value individual loss and supervise settlement. Reform is separated by legal vehicle. Existing powers can be coordinated now; public technical support and systematic administrative-civil transfer need an authorised regulatory and budgetary basis; broader retention duties, formal consequences for unjustified non-production and qualified representative proceedings require legislation. The objective is a contestable evidentiary process, not a lower standard of proof or preferential treatment of claimants.

1 INTRODUCTION

Access to civil justice depends on more than a cause of action or an open courthouse. Pollution disputes make this especially visible. Courts may need samples, monitoring data, production records, and expert interpretation long after the incident. By the time proceedings are filed, samples may have disappeared, and operating conditions may have changed. A claim can therefore be weakened before a judge decides liability.

Vietnam's legal framework is formally protective. The Law on Environmental Protection distinguishes ecological impairment from individual damage, allocates specified assessment and compensation costs, and addresses multiple sources. In court proceedings, it also shifts proof of the causal relationship between an environmental-law violation and damage to the violator or polluter.¹ Article 602 of the Civil Code adds fault-independent liability for environmental pollution.²

The problem is procedural fragmentation, not an absence of evidentiary rules. Article 133(2) addresses causation; it does not shift identity, violation, the legally

1 Law of the Socialist Republic of Vietnam no 72/2020/QH14 'On Environmental Protection', consolidated text no 98/VBHN-VPQH (amended 10 April 2026) Arts 114, 130-135 and 159-160, especially Arts 130(1)–(4), 132–135 and 159 <https://congbao.chinhphu.vn/van-ban/van-ban-hop-nhat-so-98-vbhn-vpqh-469382.htm>, accessed 3 August 2026.

2 Law of the Socialist Republic of Vietnam 91/2015/QH13 'Civil Code' (adopted 24 November 2015) Art 602 <https://vanban.chinhphu.vn/default.aspx?pageid=27160&doid=183188>, accessed 3 August 2026.

cognisable loss, or the quantum. Nor does it specify the preliminary event that triggers the burden, how administrative records become testable civil evidence, or how courts should organise common technical questions. A burden rule cannot recreate a lost sample or provide expert analysis that is inaccessible.

Vietnamese scholarship addresses environmental damage compensation and causation.³ Broader access-to-justice scholarship uses the term 'legal capability' mainly to mean the knowledge, skills and attributes individuals need to navigate civil justice problems.⁴ Recent Vietnamese work also examines liability exemptions and collective redress through comparison with European Union (EU) law.⁵ Socio-legal research documents the role of authorities and technical intermediaries.⁶ The 2025 United Nations Development Programme-Ministry of Justice study (UNDP-MOJ Study) provides a much broader survey of doctrine, foreign experience, and selected disputes.⁷ This Note instead isolates the procedural sequence presupposed by the current causal burden rule and organises reform by legal authority and safeguard.

Remedial legal capacity is not a synonym for individual legal capability, nor does it require equal resources. It shifts the analysis from a person's ability to navigate a legal problem to the institutional evidentiary infrastructure required for a technically complex claim. That infrastructure comprises preservation and access, causal attribution, independent expertise, damage valuation, multi-source allocation, and organisation of common issues. The concept is also narrower than a generic claim to evidentiary access: it concerns how administrative and party-held technical material becomes contestable civil proof. The contribution links these functions to Article 133(2) as a single procedural sequence rather than as disconnected reforms.

3 Tran Cong Thiet and Vu Thi Duyen Thuy, 'Some Legal Issues on Compensation for Environmental Damage under Vietnamese Law and the Law of the European Union' (2021) 3(87) *Studia Prawnicze KUL* 277 <https://doi.org/10.31743/sp.10660>, accessed 3 August 2026.

4 Pascoe Pleasence and Nigel Balmer, 'Legal Capability and Access to Civil Justice' in Anne Bloom, David M Engel and Richard L Jolly (eds), *Research Handbook on Civil Justice* (Edward Elgar 2025) 213 <https://doi.org/10.4337/9781035314584.00026>, accessed 3 August 2026.

5 Tran Cong Thiet, 'Suggested Legal Amendments to Improve Vietnamese Environmental Damage Compensation Law: Lessons from the European Union' (2026) 12(1) *Cogent Social Sciences* 2632406 <https://doi.org/10.1080/23311886.2026.2632406>, accessed 3 August 2026.

6 Nguyen Van Thang and others, 'Environmental Disputes in Vietnam: Case Studies from Distributive and Procedural Justice Perspectives' (*Vietnam Law & Legal Forum*, 11 April 2018) <https://vietnamlawmagazine.vn/environmental-disputes-in-vietnam-case-studies-from-distributive-and-procedural-justice-perspectives-6204.html>, accessed 3 August 2026.

7 Nguyen Hung Quang, Mirjana Drenovak-Ivanović and Nguyen Thuy Duong, *Legal Study on International Experiences to Improve the Efficiency of Environment-related Tort Damage Dispute Resolution* (UNDP Viet Nam, Ministry of Justice 2025) 59-95 <https://www.undp.org/vietnam/publications/legal-study-international-experiences-improve-efficiency-environment-related-tort-damage-dispute-resolution>, accessed 3 August 2026.

The analysis is bounded. The legal position is stated as of 8 September 2026, based on primary legislation, published judgements, and adjudicated facts; secondary studies provide administrative or technical details not found in judgements. Chà Vả, Sonadezi-Bà Chèo and Vedan-Thị Vải are separate historical stress tests, not evidence of current national practice. The six functions are a normative-functional synthesis, not an empirical coding output. Comparative materials are used only to test analogous functions and safeguards.

2 THE REFORM PROBLEM: PROTECTIVE RULES, FRAGMENTED PROCEDURE

Vietnamese law already has a robust evidentiary framework. The Law on Environmental Protection regulates environmental information and community access, ecological and individual damage, assessment, compensation, and environmental damage expertise. Article 159 specifically gives representatives of affected communities routes to request environmental information and certain inspection or enforcement results, subject to statutory limits.⁸ Its implementing decree specifies notification, verification, evidence used in assessment, review and re-expertise, and identifies categories subject to environmental-incident liability insurance.⁹ The difficulty is that much of this architecture sits within environmental administration rather than private civil adjudication.

That division creates a transfer problem. Authorities may hold monitoring data, inspection records, sampling results, or an affected-area map, while a civil court must decide individual causation and quantum. Treating an administrative conclusion as binding risks denying meaningful challenge; forcing households to reconstruct state-held facts wastes evidence. The appropriate bridge is a controlled transfer of the conclusion, together with the material needed to test it, subject to confidentiality and judicial evaluation of its weight.

Article 602 of the Civil Code imposes fault-independent liability for environmental pollution.¹⁰ Article 133(2) places the burden on the violator or polluter to prove the causal relationship. Article 130(4) separately requires a facility satisfying specified compliance conditions to prove that it did not cause the environmental damage to obtain the statutory exemption.¹¹ These rules alter fault and causation but do not reduce ecological damage to individual civil loss.

Article 133(2) therefore needs a calibrated trigger. Requiring the claimant to prove the complete source-pathway model would consume the burden shift before it operates, but

8 Law of the Socialist Republic of Vietnam 72/2020/QH14 (n 1) Arts 114, 130–135 and 159–160.

9 Decree of the Socialist Republic of Vietnam 08/2022/ND-CP detailing a several Articles of the Law on Environmental Protection (adopted 10 January 2022) Arts 112–120 and 130, as amended by Decree no 05/2025/ND-CP of 6 January 2025 and Decree 48/2026/ND-CP of 29 January 2026 <https://leap.unep.org/en/countries/vn/national-legislation/decreed-no-082022nd-cp-elaboration-several-articles-law>, accessed 3 August 2026.

10 Law of the Socialist Republic of Vietnam 91/2015/QH13 (n 2) art 602.

11 Law of the Socialist Republic of Vietnam 72/2020/QH14 (n 1) Arts 130(4) and 133(2).

requiring any nearby operator to disprove a bare allegation would be indiscriminate. The claimant should instead show legally cognisable harm and facts that make the alleged source or pathway sufficiently plausible to require a responsive causal account. That threshold must not require proof of the causal relationship that the statute allocates to the alleged violator or polluter.

Civil procedure supplies further safeguards. Articles 94–110 of the Civil Procedure Code regulate evidence, its collection, and protection. Article 110 expressly provides evidence-protection measures where evidence is being destroyed, risks destruction, or may later be difficult to collect. Article 111(2) allows an urgent provisional-measure request to accompany the statement of claim when immediate evidence protection is necessary or to prevent serious consequences. Articles 159–162 allocate judicial-expertise costs.¹² The Law on Judicial Expertise, 105/2025/QH15, effective 1 May 2026, regulates supplementary and repeated expertise, recording of methods and conclusions, safeguards for independence, and costs.¹³ The remaining problems are timing, coordination, technical expense, and transfer from environmental administration to civil adjudication.

Evidence preservation should begin through existing routes. Urgent court protection and environmental notification or assessment procedures can secure some material. However, it is unclear who acts at the first credible incident, which records must be preserved, and how the chain of custody is documented. A broader pre-action retention duty imposed directly on operators would require separate legal authority; using existing powers earlier would not.

Article 133(1) prioritises negotiation before other dispute-resolution routes.¹⁴ Negotiation may reduce cost, but it is difficult to evaluate without access to the affected-area map, eligibility criteria, valuation method, and release terms. Settlement legitimacy therefore depends on an intelligible evidentiary basis and independent advice.

The Law on Legal Aid 2017 covers specified beneficiary groups.¹⁵ The 2026 amendment takes effect on 1 January 2027.¹⁶ It is a future implementation opportunity, not current capacity.

12 Law of the Socialist Republic of Vietnam 92/2015/QH13 'Civil Procedure Code', consolidated text 21/VBHN-VPQH (amended 12 February 2026) Arts 94-110, 111(2) and 159-162 <https://congbao.chinhphu.vn/van-ban/van-ban-hop-nhat-so-21-vbhn-vpqh-468974.htm>, accessed 3 August 2026.

13 Law of the Socialist Republic of Vietnam 105/2025/QH15 'On Judicial Expertise' (adopted 5 December 2025) Arts 32, 34-35, 38 and 40 <https://congbao.chinhphu.vn/van-ban/luat-so-105-2025-qh15-468667.htm>, accessed 3 August 2026.

14 Law of the Socialist Republic of Vietnam 72/2020/QH14 (n 1) art 133(1).

15 Law of the Socialist Republic of Vietnam 11/2017/QH14 'On Legal Aid' (adopted 20 June 2017) Arts 7 and 27–32 <https://thuvienphapluat.vn/van-ban/Dich-vu-phap-ly/Luat-Tro-giup-phap-ly-2017-322938.aspx>, accessed 3 August 2026.

16 Law of the Socialist Republic of Vietnam 05/2026/QH16 'Amending the Law on Legal Aid' (adopted 23 April 2026) <https://thuvienphapluat.vn/van-ban/Dich-vu-phap-ly/Luat-Tro-giup-phap-ly-sua-doi-2026-so-05-2026-QH16-704792.aspx>, accessed 3 August 2026.

In any event, legal representation alone does not finance sampling, laboratory analysis, or valuation; technical assistance must be addressed separately.

The baseline is thus fragmented, not empty. Environmental authorities generate information and assessments; courts can protect and collect evidence; judicial-expertise law regulates technical proof; substantive law modifies fault and causation. Yet these mechanisms do not form a routine sequence. The reform task is to connect them without attributing powers the law does not currently confer.

3 WHAT PRACTICE AND COMPARISON REVEAL

3.1. Chà Và: technical mobilisation before legal settlement

The Chà Và River dispute concerned aquaculture households and seafood-processing facilities in Bà Rịa-Vũng Tàu Province. The appellate judgement records an agreed resolution rather than a fully reasoned determination of the contested science.¹⁷ It should not be cited as authority for a general Vietnamese causation test. Its value lies elsewhere: the materials show how much institutional work it took to construct and test a common technical account before negotiating compensation.

The UNDP-MOJ Study identifies thirty-three claimant households, eleven defendant enterprises, and records a technical allocation of contribution among facilities.¹⁸ The importance of the exercise is institutional rather than numerical: a common source-apportionment platform made multi-party negotiation possible without the appellate settlement judicially validating every methodological choice.

The scientific record remained contested. Report 119/BD-VTNMT-KHCN attributed 76.64 per cent of the assessed pollution load to the defendant group, while the defendants disputed indicators, sampling assumptions, and modelling inputs.¹⁹ Because the appeal ended by a settlement agreement, the court did not resolve those objections. Chà Và therefore shows that technical mobilisation can enable settlement while leaving the evidentiary standard unsettled.

Valuation was a separate weakness. The UNDP-MOJ Study records objections to claimant-prepared loss tables, incomplete contemporaneous inventories, and disputed price bases.²⁰ A common finding on pollution and source contribution does not establish each claimant household's loss. Causation and quantum should therefore be sequenced rather than collapsed.

17 Judgement 84/2017/DS-PT (People's Court of Bà Rịa-Vũng Tàu Province, 1 August 2017) <https://congboanan.toaan.gov.vn/2ta6176t1cvn/chi-tiet-ban-an>, accessed 3 August 2026.

18 Nguyen HQ, Drenovak-Ivanović and Nguyen TD (n 7) 79–84, 93–95.

19 Ibid., 82–83.

20 Ibid., 94.

3.2. Sonadezi-Bà Chèo:

administrative mapping and negotiated support

Sonadezi Long Thành at Bà Chèo followed an administrative and negotiated route distinct from Vedan-Thị Vải. The 2018 socio-legal study reports official intervention, technical delimitation of the affected area, and later payments described as 'financial support'.²¹ Such support can alleviate loss without admitting civil liability, validating a causal method, or determining full compensable damage.

Sonadezi demonstrates the scale advantages of administrative coordination: common investigation, technical work, and claimant organisation. It also exposes procedural gaps. Claimant households need intelligible inclusion criteria, access to the basis of the affected-area map, a transparent valuation method and clarity on whether payment satisfies a civil claim. Administrative efficiency alone does not provide those safeguards.

3.3. Vedan-Thị Vải:

when an administrative map becomes an evidentiary boundary

The Vedan-Thị Vải episode raises a different problem and must not be merged with Sonadezi. Judgement 11/2019/DS-PT concerned an individual claimant against Vedan, not Sonadezi. The claimant was unsuccessful: the court treated the claimant's aquaculture area as outside the officially identified pollution-affected zone and found the remaining evidence insufficient to establish the claimed loss and causal connection.²² Earlier collective compensation arrangements involving Vedan were a separate event, not the outcome of this individual appeal.²³

Vedan illustrates the risk that an administrative map becomes a de facto evidentiary boundary. Such a map may be highly probative, but it should be rebuttable. A claimant outside the mapped area should be able to trigger reconsideration or independent expertise by producing credible location-specific evidence, without first proving the complete causal chain. The reform issue provides a defined route to challenge the map's scope.

21 Nguyen VT and others (n 6).

22 Judgement 11/2019/DS-PT (People's Court of Đồng Nai Province, 17 February 2020) https://congboanan.toaan.gov.vn/5ta475548t1cvn/BAN_An_DSPT_D__VD.pdf, accessed 3 September 2026.

23 Nguyen HQ, Drenovak-Ivanović and Nguyen TD (n 7) 82–83. The study discusses the Vedan-related individual proceedings separately from collective compensation arrangements.

3.4. What the three episodes establish, and do not establish

These three episodes do not establish how Article 133(2) operates today. They are historical stress tests. *Chà Và* shows the institutional work needed for source apportionment; *Sonadezi* shows the scale and opacity risks of administrative coordination; *Vedan* shows how an official affected-area boundary can structure and exclude individual proof. Their value is functional, not statistical.²⁴

They also expose weak institutional memory. Court settlements may disclose little science; administrative payments may reveal little about eligibility or valuation; unsuccessful claims may show exclusion without a route to revisit the technical boundary. Anonymised case coding should therefore record the requested evidence, expert involvement, costs, settlement stage, and enforcement so later disputes do not start from zero.

3.5. Functional comparison: European Union and German lessons

The Aarhus Convention links information, participation, and access to justice.²⁵ Directive 2003/4/EC provides access to environmental information subject to conditions and exceptions. Article 8(2) is narrower than general discovery: for information within Article 2(1)(b), an authority must, on request, identify where information on measurement procedures can be found or refer to the standardised procedure used.²⁶ It does not compel disclosure of every underlying record.

Roheline Kogukond is similarly limited. The court held that coordinates of permanent forest-inventory sample plots were inseparable from the data collected there, and therefore constituted environmental information under Article 2(1)(a). It did not need to decide Article 8(2).²⁷ The useful point is interpretability: location or methodological context may be necessary to understand a measurement, while the applicable access right and exceptions still govern disclosure.

The comparison does not imply unrestricted access. Environmental-information regimes contain exceptions, and civil proceedings must protect trade secrets, personal data, and

²⁴ Ibid., 61–64, 72, 78–84, 93–95.

²⁵ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted 25 June 1998) [2005] OJ L 124/4, Arts 4, 5 and 9 <http://data.europa.eu/eli/convention/2005/370/oj>, accessed 3 August 2026.

²⁶ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L41/26, Arts 3–7 and 8(2) <http://data.europa.eu/eli/dir/2003/4/oj>, accessed 3 August 2026.

²⁷ Case C-234/22 *Roheline Kogukond MTÜ and Others v Keskkonnaagentuur* (CJEU, 7 March 2024) EU: C:2024:211 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CJ0234>, accessed 3 August 2026.

security-sensitive material. Redaction, confidentiality orders, or expert-only access can preserve legitimate interests while permitting meaningful testing of the evidentiary basis.²⁸

The Environmental Liability Directive concerns prevention and remediation of specified environmental damage through competent-authority action.²⁹ It is relevant because authorities can organise technical work and recover costs, but Article 3(3) expressly denies private parties a right to compensation for traditional damage under the Directive.³⁰

In *Raffinerie Mediterranée (ERG) SpA (ERG)*, the court accepted that national law may use a rebuttable causation presumption based on plausible evidence, including proximity, correspondence between pollutants, and substances used. The presumption may establish causation if un rebutted, but the competent authority must still have a sufficient factual basis under national rules before imposing remedial measures.³¹

ERG does not create an EU private-law presumption for Vietnam. Its value is calibration: plausible indicators can support a rebuttable causal inference, not merely trigger investigation, while remaining open to challenge. Article 133(2) already supplies the Vietnamese burden rule; domestic procedure must define the preliminary showing and the defendant's opportunity to rebut it.

German law provides a closer private-law comparator within a limited statutory scope. Section 6(1) presumes causation when an installation is likely, on the individual facts, to have caused the damage. Section 6(2) restricts that presumption for intended operation, section 7 addresses plausible alternative causes, and sections 8–10 provide conditional and reciprocal information rights subject to factual thresholds, necessity, and confidentiality.³²

The value of the German model lies in this linkage. The claimant gains neither general discovery nor an unqualified presumption; the operator retains statutory defences and confidentiality protections. Threshold, information access, rebuttal, and protected interests are designed together. That combination, rather than the exact statutory wording, is the relevant comparative lesson.

28 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Improving Access to Justice in Environmental Matters in the EU and its Member States' of 14 October 2020 COM(2020) 643 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52020DC0643>, accessed 3 August 2026.

29 Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage [2004] OJ L143/56, Arts 1, 5–13 and Annex II <http://data.europa.eu/eli/dir/2004/35/oj>, accessed 3 August 2026.

30 Ibid., Art 3(3).

31 Case C-378/08 *Raffinerie Mediterranée (ERG) SpA and Others v Ministero dello Sviluppo economico and Others* (CJEU, 9 March 2010) EU: C:2010:126, paras 52–57, 65–67 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62008CJ0378>, accessed 3 August 2026.

32 Environmental Liability Act 'Umwelthaftungsgesetz' of 10 December 1990 (amended 17 July 2017), ss 1, 6(1)–(4), 7 and 8–10 https://www.gesetze-im-internet.de/englisch_umwelthg/, accessed 3 September 2026.

Direct transplantation would be unsound because the German Act covers specified installations and operates within a different procedural setting. Vietnam already has Article 133(2) and the distinct proof condition in Article 130(4). Its immediate need is not another presumption but a coherent account of threshold, evidentiary transfer, and rebuttal.

The comparative conclusion is functional. Environmental information should support redress without becoming conclusive proof; public ecological assessment should be usable without being equated with individual loss; and causal burden shifting should be linked to preservation, targeted evidence access, and rebuttal. Functional linkage, not procedural transplantation, is the point.³³

4 A STAGED PROTOCOL FOR EFFECTIVE ACCESS TO CIVIL JUSTICE

4.1. Preservation and Threshold Screening

The first stage is recording, then triage, and timely use of existing preservation routes, not creating a new disclosure power. Article 110 of the Civil Procedure Code permits evidence-protection measures where evidence is being destroyed, is at risk of destruction, or may later be difficult to collect. Article 111(2) allows an urgent provisional-measure request at filing when immediate evidence protection is necessary.³⁴ Environmental notification and assessment procedures can secure other material.³⁵ At the first credible institutional contact, the competent body should identify material already held or lawfully obtainable: samples, monitoring streams, treatment and maintenance logs, incident records, production changes, geospatial data, inspection files, and contemporaneous claimant observations. A compulsory operator duty to retain additional material beyond what the law currently requires would require separate authority.

The claimant's threshold should not be proof of the complete causal chain. It should require (i) credible evidence of legally cognisable harm and (ii) facts that identify an alleged violation, source, or pathway with enough specificity to make the causal issue genuinely contestable. Relevant indicators may include temporal and geographic correlation, pollutant correspondence, abnormal operating conditions, inspection findings, community observations, analogous unaffected sites, and preliminary sampling. Proximity alone is weak; a combination of proximity, pollutant match, and timing may be sufficient to require a responsive account.³⁶

33 Ralf Michaels, 'The Functional Method of Comparative Law' in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (2nd edn, OUP 2019) 345 <https://doi.org/10.1093/oxfordhb/9780198810230.013.11>, accessed 3 August 2026.

34 Law of the Socialist Republic of Vietnam 92/2015/QH13 (n 12) Arts 110 and 111(2).

35 Decree of the Socialist Republic of Vietnam 08/2022/ND-CP (n 9) Arts 112–120.

36 Case C-378/08 (n 31) paras 52–57, 65–67.

The threshold serves two purposes. It prevents Article 133(2) from hindering proof of any unparticularised allegation, while ensuring a claimant does not have to finance a complete source-apportionment model before obtaining records held by an operator or authority. Failure to identify credible harm or any sufficiently specific source-pathway basis can justify rejection. Meeting the threshold does not establish causation; it activates the statutory allocation of the causal issue and the procedural tools needed to test it.

4.2. Targeted Evidence Production and a Responsive Causal Account

Once the threshold is met, the court should use existing evidence production and collection powers early.³⁷ Requests should be defined by pollutant, period, facility, and pleaded pathway rather than by a general demand for all records. Potentially relevant material includes permits, discharge and continuous-monitoring data, treatment logs, incident reports, inspection files, waste manifests, maintenance records, and information about substances used during the relevant period. Relevance, proportionality, privilege, trade secrets, and personal data protection remain part of the inquiry.

The polluter's response must engage with the alleged event. A general statement that the facility held a permit should not discharge the burden where the permit does not resolve abnormal operation, monitoring gaps, cumulative releases, or the pollutant-period combination in dispute. Conversely, complete monitoring data, credible alternative sources and a technically coherent pathway analysis may rebut the claim. Article 133(2) should be understood as requiring a responsive causal account, not a ritual denial.

4.3. Independent Expert Inquiry

Expertise should be organised around written questions rather than broad requests to decide 'whether the defendant caused the damage'. Questions should separate source identification, pathway, exposure, contribution, ecological effect, and individual loss. Parties should be able to pose questions, identify conflicts, inspect underlying data, and challenge assumptions. The court should decide the legal significance of the expert's findings rather than delegate the standard of proof.

A court-appointed expert or panel may reduce inequality in technically complex cases, but appointment alone does not guarantee reliability. The Civil Procedure Code's expert-cost rules provide part of that baseline.³⁸ The 2025 Law on Judicial Expertise adds supplementary and repeated expertise, recorded methods and materials, independence safeguards, and cost rules.³⁹ Together, these tools can make decisive technical material contestable while the court retains responsibility for the legal standard of proof.

37 Law of the Socialist Republic of Vietnam 92/2015/QH13 (n 12) Arts 7, 97 and 106–109.

38 Ibid., Arts 102–109 and 159–162.

39 Law of the Socialist Republic of Vietnam 105/2025/QH15 (n 13) Arts 32, 34–35, 38 and 40.

4.4. Common Causation and Source Allocation

Common scientific issues should be separated from individual valuation where the pleadings and evidence permit. The questions may include whether a pollution event occurred, its area and period, the pathway, whether identified sources materially contributed, and the best available allocation among sources. Article 130(3) of the Law on Environmental Protection addresses contribution-sensitive environmental responsibility; it does not create joint-and-several civil liability.⁴⁰ Where several persons jointly cause civil damage, Article 587 of the Civil Code separately governs joint liability and internal allocation according to the statutory conditions.⁴¹

The sequencing consequence is important. An injured person should not have to resolve internal allocation among several alleged sources before those sources produce records. The court should first decide whether the evidence satisfies the legal requirements for responsibility of the identified source group and, only where the conditions of Article 587 are met, apply its joint liability and internal allocation rules. This preserves causation discipline while locating allocation uncertainty at the stage where operator-specific information is most available.

4.5. Individual Valuation, Settlement and Remedial Completion

After identifying common scientific questions, individual loss should be assessed using a disclosed methodology. Standard schedules may be appropriate for recurring heads of loss, but claimants and defendants must be able to justify departures. Aquaculture production, property repair, medical expenditure, lost income, and future monitoring should not be reduced to a single percentage of ecological damage. Contemporaneous records, reasonable proxies, and documented assumptions should be ranked transparently.

Settlement review should identify the beneficiary, valuation method, payment timetable, treatment of future or latent harm, remediation obligations, and the effect of release clauses. A payment labelled 'support' should not silently extinguish a civil right. Courts and legal advisers should ensure that a collective agreement on common issues does not authorise a representative to compromise distinct individual losses without consent and notice.

The protocol is sequential. First, preserve the record and require credible harm plus a plausible connection. Then obtain targeted evidence, test a responsive causal account through independent expertise, and determine common causation and source contribution. Individual loss and remedial completion follow. This sequence gives Article 133(2) practical content while preserving a genuine opportunity to challenge source, method, and quantum.

40 Law of the Socialist Republic of Vietnam 72/2020/QH14 (n 1) Art 130(3).

41 Law of the Socialist Republic of Vietnam 91/2015/QH13 (n 2) Art 587.

5 REFORM BY LEGAL VEHICLE, INSTITUTION AND SAFEGUARD

5.1. Measures Available under Existing Authority

The first reform package should build on existing powers rather than create new ones. Within their respective competences, the Supreme People's Court, the Ministry of Agriculture and Environment, and the Ministry of Justice should coordinate a non-binding model environmental-evidence protocol. The environmental-law component would operationalise current compensation and assessment provisions rather than expand them.⁴² Implementing procedures already specify notification and assessment routes.⁴³ Courts can draw on existing evidence-protection and collection powers.⁴⁴ Expert-question templates can likewise be anchored in the judicial-expertise framework.⁴⁵ The protocol should identify recurring records, minimum metadata, preservation routes, expert-question templates, and controlled-access categories, while courts use those existing powers earlier and more consistently.

Judicial guidance can clarify how Article 133(2) interacts with the Civil Procedure Code without converting guidance into legislation. It can distinguish the claimant's threshold from proof of the complete causal chain and direct early use of evidence-protection and collection powers. It can also separate common causal questions from individual loss and explain that regulatory compliance is relevant but does not resolve every causal issue. Guidance should not create a general pre-action retention duty, automatic disclosure, binding administrative proof, or a new presumption beyond statutory authority.

Case classification can also begin immediately. Courts, legal-aid bodies, and environmental authorities should code environmental compensation matters by pollutant, source type, evidence requested, expert involvement, funding, disposition, settlement, and enforcement. The absence of usable statistics is itself a recurring finding in Vietnamese research.⁴⁶ A claim abandoned because expert proof was unaffordable should not be placed in the same category as a claim rejected after full testing.

5.2. Regulatory and Budgetary Measures

A second package of reforms requires an authorised funding and administrative basis. Vietnam should pilot support for urgent sampling, accredited laboratory work, neutral expert reports, and valuation for cases that meet a defined screening test. Eligibility should require credible harm, plausible source connection, technical necessity, collective significance or claim-specific vulnerability, and inability to finance the work. A panel should approve the questions and budget before any expenditure.

42 Law of the Socialist Republic of Vietnam 72/2020/QH14 (n 1), Arts 114, 130(2)–(4), 132–135 and 159–160.

43 Decree of the Socialist Republic of Vietnam 08/2022/ND-CP (n 9) Arts 112–120.

44 Law of the Socialist Republic of Vietnam 92/2015/QH13 (n 12) Arts 94–111 and 159–162.

45 Law of the Socialist Republic of Vietnam 105/2025/QH15 (n 13) Arts 32, 34–35, 38 and 40.

46 Nguyen HQ, Drenovak-Ivanović and Nguyen TD (n 7) 15–16, 93–95.

The pilot should not be assigned casually to an existing environmental fund. The fund holder must have a lawful mandate to support evidence for private compensation, rules for eligible expenditure, audit, conflicts, and cost recovery. Where liability is established, reasonable authorised costs should be recoverable from the responsible operator. Where a screened, good-faith claim fails, the claimant should not automatically bear the public technical cost. The pilot should begin in sectors and localities where accredited capacity and recurring industrial, waste, or aquaculture disputes permit evaluation.⁴⁷

The administrative-civil evidence problem should also be addressed as a transfer standard rather than as if administrative evidence did not exist. Inspection conclusions, monitoring records, and ecological assessments should be transmitted with the material needed to evaluate their reliability, subject to lawful confidentiality restrictions and party challenge. Their weight should depend on the body's competence, sampling design, chain of custody, relevance to the disputed period, and consistency with other evidence. A statutory presumption of correctness or binding effect would require legislation, but standardised transmission and judicial evaluation do not, so they can be developed sooner.

Specialised environmental legal assistance should be linked to technical rosters. Its functions should include early preservation requests, community intake, claimant registers, expert instructions, settlement, review, and enforcement. The 2026 amendment to legal-aid legislation creates a policy window from 1 January 2027, but implementation must supply training and technical connections rather than assume that a broadened legal mandate will solve the problem of scientific cost.⁴⁸

5.3. Legislative Measures

Three reforms require primary legislation or a clearly authorised procedural instrument. First, where a demonstrated gap remains, supplement existing evidence-protection and environmental-information rules with defined pre-action retention duties for records material to serious pollution claims and proportionate consequences for intentional or unjustified non-production. The legislation should specify scope, duration, notice, accidental loss, privilege, trade secrets, personal data, and proportionality. The reform should fill a defined preservation gap, not duplicate duties already imposed by environmental or procedural law.

Second, Vietnam should consider qualified representative proceedings for common environmental questions. Existing authorisation to act for injured persons is not equivalent to allowing an entity to bind or manage a defined group. A representative procedure affects notice, participation, funding, conflicts, settlement authority, and absent claimants. Courts should certify common issues, require an auditable register, and approve settlements that settle claims. Individual damages should remain separately contestable.

47 Nguyen HQ, Drenovak-Ivanović and Nguyen TD (n 7) 72, 93–95.

48 Law of the Socialist Republic of Vietnam 05/2026/QH16 (n 16).

Third, financial security should be treated as an area for targeted extension, not a blank slate. Vietnam's implementing decree already requires environmental-incident liability insurance for specified actors and activities; any broader compensation-security mechanism should start by identifying the losses and operators not covered by that regime.⁴⁹ The Environmental Liability Directive is cautious in a different context: Article 14 promotes development of financial security rather than imposing a single uniform model.⁵⁰ Any Vietnamese insurance, guarantee, or reserve requirement should be risk-based, coordinated with licensing and insolvency law, and secondary to the operator's primary liability.

5.4. Phasing, Evaluation and Opposing-Party Safeguards

Implementation should follow both legal difficulty and evidentiary need. Standard forms, earlier use of preservation powers, targeted evidence requests, expert-question templates, case coding, and training can improve current practice. A publicly funded technical support pilot and systematic administrative-civil transfer require an authorised regulatory and budgetary basis. Broader operator retention duties, formal non-production consequences, qualified representation, and any expansion of financial security should follow only after earlier measures generate evidence about cost, demand, and procedural effect.

Every measure must identify its institution, authority, cost, and safeguard. Limit access by relevance and proportionality; support expert evidence with accreditation and adversarial challenge; ensure collective organisation through notice and settlement control; and recover costs through a finding of liability. These constraints are part of access to justice because a remedy loses legitimacy when claimants cannot access it, or defendants cannot understand the process.

6 CONCLUSIONS

Vietnamese environmental compensation law provides stronger formal and procedural protection than an ordinary burden-of-proof account suggests. Environmental legislation regulates information, assessment, and expertise; civil procedure supplies evidence and urgent protection mechanisms; judicial-expertise law governs technical proof; substantive law modifies fault and causation. The weakness lies in the connections among them. A claimant may still have a legitimate claim but lacks a timely sample, a transferable administrative record, affordable expertise, or a route to organise a common scientific issue.

Article 133(2) should therefore be implemented through the staged protocol developed here, but within the limits of existing authority. Courts and authorities can improve triage, use existing evidence-protection powers earlier, formulate targeted requests and expert

49 Decree of the Socialist Republic of Vietnam 08/2022/ND-CP (n 9) Art 130.

50 Directive 2004/35/EC (n 29) Art 14.

questions, and classify cases more consistently. Public technical support and systematic administrative-civil transfer need an authorised financial and regulatory basis. Legislation is needed to broaden pre-action retention duties, establish formal consequences for unjustified non-production, and create qualified representative proceedings. When addressing multi-source liability, Articles 130(3) and 130(4), and Civil Code Article 587 must remain doctrinally distinct.

The contribution is deliberately narrower than the 2025 UNDP-Ministry of Justice study. It does not claim a new national dataset or a comprehensive catalogue of foreign law. It identifies a procedural sequence that explains why favourable liability rules can remain selectively usable and specifies which parts of that sequence administration, judicial practice, funding, and legislation can improve. Remedial legal capacity does not lower the standard of proof, or guarantee claimant success. It asks whether the proof process is sufficiently preserved, intelligible, and contestable so that outcomes turn on the evidence rather than on prior control of scientific information.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Нотатки та коментарі

Коментар до законодавства

ДОКАЗОВА НЕРІВНІСТЬ ТА ЕФЕКТИВНИЙ ДОСТУП ДО ЦИВІЛЬНОГО ПРАВОСУДДЯ: ПОЕТАПНИЙ ПРОТОКОЛ ДОКАЗУВАННЯ У СПРАВАХ ПРО ВІДШКОДУВАННЯ ЕКОЛОГІЧНОЇ ШКОДИ У В'ЄТНАМІ

Нгуєн Хуу Кхань Лінь

АНОТАЦІЯ

Передумови. Законодавство В'єтнаму регламентує доступ до екологічної інформації, оцінювання шкоди, подання доказів, застосування невідкладних заходів правового захисту, судову експертизу та судові витрати. Утім, відповідні норми залишаються фрагментованими між сферами публічного управління у сфері охорони довкілля та цивільного судочинства. Частина друга статті 133 Закону В'єтнаму «Про охорону навколишнього середовища» покладає на порушника чи забруднювача тягар доказування щодо причинно-наслідкового зв'язку під час судового провадження, проте не встановлює порядку збереження доказів, моменту виникнення обов'язку доказування, процесуального механізму надання адміністративним матеріалам статусу оспорюваних судових доказів у цивільному процесі або методики оцінювання індивідуальних збитків. Основна проблема полягає не у відсутності правового регулювання доказування як такого, а в недостатній узгодженості відповідних процесуальних механізмів.

Методи. Ця аналітична наукова робота ґрунтується на доктринальній реконструкції та функціонально-порівняльному аналізі у визначених межах. Справи «Ча Ва», «Сонадезі-Ба Чео» та «Ведан-Тхі Вай» досліджено як окремі історичні приклади, що дають змогу перевірити дієвість відповідних процесуальних механізмів, при цьому фактичні обставини, встановлені судом, розмежовано з відомостями з вторинних джерел. Правові положення сформульовано на основі чинного законодавства та опублікованих судових рішень. Правові засади Європейського Союзу (ЄС) щодо екологічної інформації, Директива про екологічну відповідальність, рішення Суду Європейського Союзу у справі ERG, а також законодавство Німеччини про відповідальність за заподіяння шкоди довкіллю є орієнтирами для виокремлення аналогічних процесуальних функцій. Аналіз правового регулювання здійснено станом на 8 вересня 2026 року.

Результати та висновки. У статті правову спроможність забезпечувати ефективний захист порушених прав визначено як шість взаємопов'язаних функцій: збереження доказів та надання доступу до них; встановлення причинного зв'язку; можливість змагальної перевірки експертних висновків; розподіл відповідальності за наявності кількох джерел забруднення; оцінювання індивідуальних збитків та координація спільних вимог. Наукова новизна дослідження полягає в розробленні поетапного протоколу, сформованого на основі

систематизації чинного законодавства В'єтнаму та узагальнення висновків дослідження, проведеного Програмою розвитку ООН спільно з Міністерством юстиції у 2025 році: 1) збереження доказів і первинний аналіз; 2) витребування конкретно визначених доказів та одержання вмотивованого пояснення щодо причинного зв'язку; 3) забезпечення можливості перевірки експертних висновків у змагальному процесі; 4) встановлення загального причинного зв'язку й розподіл відповідальності між джерелами забруднення; 5) оцінювання індивідуальних збитків та судовий контроль за мировими угодами. Запропоновані реформи класифіковано за відповідними нормативно-правовими механізмами. Чинні процесуальні повноваження можна скоординувати вже зараз; державна технічна підтримка та системна передача матеріалів адміністративних проваджень до цивільних судів потребують належного нормативного й бюджетного забезпечення; водночас розширення обов'язків щодо збереження доказів, установлення процесуальних наслідків за неправомірне ненадання доказів та запровадження механізмів представницького судового провадження за визначених законом умов потребують законодавчих змін. Метою є забезпечення змагального процесу доказування, а не зниження стандарту доказування чи надання необґрунтованих процесуальних переваг позивачам.

Ключові слова: доступ до правосуддя; цивільне судочинство; доказова нерівність; відшкодування екологічної шкоди; експертні докази; процесуальна реформа; В'єтнам.

TÓM TẮT BẰNG TIẾNG VIỆT*

Ghi chú và bình luận

Diễn đàn cải cách

BẤT BÌNH ĐẲNG VỀ CHỨNG CỨ VÀ TIẾP CẬN CÔNG LÝ DÂN SỰ HIỆU QUẢ: QUY TRÌNH CHỨNG MINH THEO GIAI ĐOẠN TRONG BỐI THƯỜNG THIẾT HẠI VỀ MÔI TRƯỜNG TẠI VIỆT NAM

Nguyễn Hữu Khánh Linh

TÓM TẮT

Bối cảnh: Pháp luật Việt Nam đã quy định về thông tin môi trường, đánh giá thiệt hại, cung cấp chứng cứ, biện pháp bảo vệ khẩn cấp, giám định tư pháp và chi phí. Tuy nhiên, các quy định này còn phân tán giữa quản lý hành chính về môi trường và tố tụng dân sự. Khoản 2 Điều 133 Luật Bảo vệ môi trường đặt nghĩa vụ chứng minh quan hệ nhân quả tại tòa án lên chủ thể vi phạm hoặc gây ô nhiễm, nhưng chưa xác định cách bảo toàn chứng cứ, điều kiện áp dụng nghĩa vụ này,

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cách chuyển hồ sơ hành chính thành chứng cứ có thể được kiểm tra và tranh luận trong tố tụng dân sự, hoặc cách định lượng thiệt hại của từng người. Vấn đề cốt lõi là thiếu sự kết nối về thủ tục, không phải hoàn toàn thiếu các quy định về chứng cứ.

Phương pháp: Bài viết sử dụng phương pháp phân tích và hệ thống hóa các quy định pháp luật, kết hợp so sánh chức năng trong phạm vi xác định. Các vụ việc Chà Và, Sonadezi-Bà Chèo và Vedan-Thị Vải được xem xét riêng biệt như những trường hợp lịch sử để kiểm nghiệm các điểm nghẽn thủ tục; những tình tiết đã được tòa án xác định được phân biệt với các chi tiết chỉ được ghi nhận trong nguồn thứ cấp. Văn bản luật và bản án đã công bố là căn cứ chính cho các nhận định pháp lý. Pháp luật về thông tin môi trường của Liên minh châu Âu (EU), Chỉ thị về trách nhiệm môi trường, phán quyết ERG của Tòa án Công lý EU và pháp luật Đức về trách nhiệm môi trường được đối chiếu để nhận diện các chức năng thủ tục tương đồng. Nghiên cứu xác định tình trạng pháp luật tại ngày 8 tháng 9 năm 2026.

Kết quả và Kết luận: Bài viết xác định “năng lực pháp lý bảo đảm khắc phục thiệt hại” (remedial legal capacity) qua sáu chức năng liên kết: bảo toàn và tiếp cận chứng cứ; xác định quan hệ nhân quả; bảo đảm khả năng kiểm tra, tranh luận đối với giám định; phân định mức đóng góp của các nguồn gây ô nhiễm; định lượng thiệt hại của từng người; và tổ chức giải quyết các vấn đề chung. Đóng góp của bài viết là kết nối pháp luật hiện hành của Việt Nam với các bài học từ nghiên cứu năm 2025 của Chương trình Phát triển Liên hợp quốc và Bộ Tư pháp thành một quy trình theo giai đoạn: bảo toàn chứng cứ và sàng lọc ban đầu; thu thập chứng cứ theo phạm vi xác định và yêu cầu giải trình cụ thể về quan hệ nhân quả; kiểm tra kết quả giám định; xác định các vấn đề nhân quả chung và mức đóng góp của các nguồn gây ô nhiễm; sau đó định lượng thiệt hại của từng người và giám sát thỏa thuận giải quyết tranh chấp. Các kiến nghị được phân biệt theo công cụ pháp lý cần sử dụng. Việc phối hợp thực hiện các thẩm quyền hiện có có thể tiến hành ngay; hỗ trợ kỹ thuật bằng nguồn lực công và chuyển giao có hệ thống chứng cứ từ quản lý hành chính sang tố tụng dân sự cần củng cố sở pháp lý và ngân sách được phê duyệt đúng thẩm quyền; mở rộng nghĩa vụ lưu giữ chứng cứ, quy định hậu quả pháp lý đối với việc không cung cấp chứng cứ mà không có lý do chính đáng và thiết lập tố tụng đại diện nhóm với các điều kiện luật định đòi hỏi quy định ở cấp luật. Mục tiêu là bảo đảm quá trình chứng minh có thể được kiểm tra và tranh luận, không phải hạ thấp chuẩn mực chứng minh hoặc dành ưu thế cho người khởi kiện.

Từ khóa: tiếp cận công lý; tố tụng dân sự; bất bình đẳng về chứng cứ; bồi thường thiệt hại về môi trường; chứng cứ giám định; cải cách thủ tục; Việt Nam.