

The Rule of Law in Vietnam

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Abstract: In the 6th National Congress of the Communist Party of Vietnam, it affirmed an attempt to build the Socialist Rule of Law of the people, by the people, and for the people; it would be run on the basis of law with democratic legislation to guarantee human rights, civil rights, and comprehensive development of Vietnamese people. The State and the Party have recognized more profoundly the need of building the Rule of Law, based on the theoretical grounds of the Marxist - Leninism and Ho Chi Minh's thought. The compliance with the legal principles in formation and development of the Socialist Rule of Law was re-affirmed in the 2013 Constitution. This paper makes a contribution towards further clarification of requirements for renovation and improvement of the State apparatus on the basis of the Socialist legal principles in Vietnam at present.

Key words: Vietnam, Communist Party of Vietnam, Socialist Rule of Law.

1. Vietnam Rule of Law in history

In the history of Vietnam, there were activities and thinking that gave prominence to the role of law, especially in the period from the 14th Century to the 18th Century. In the time of Ly - Tran Dynasties (from the 12th to the 14th Century), the kings used the law to govern the nation. In 1340, for example, King Tran Du Tong ordered Nguyen Trung Ngan and Truong Han Sieu to edit a volume of the criminal law to be promulgated. Unfortunately, the volume cannot be found by now. Historians carried out research on various historical documents, aiming at learning about the volume of the criminal law. In the 15th Century, the promulgation and enforcement of the law were promoted more vigorously than ever before. This demonstrates that feudal governments paid a lot of attention to the law during this period. In the beginning time of Later Le Dynasty, a lot of

legal works and documents were codified, including: 6 volumes of “Quốc triều hình luật” (The Le Code) edited by Nguyen Trai in 1440 – 1442; and, 6 volumes of Quốc triều luật lệnh (The Dynastic Penal Code) edited by Phan Phu Tien in 1440 - 1442.

Quốc triều hình luật (The Le Dynasty Code) is an important and official set of laws promulgated at the time of King Le Thanh Tong. As the dynastic period was called Hong Duc, it is also named the Hong Duc Code.

The thinking on ruling by law can be seen clearly. In implementation of social governance by law, however, it was impossible to avoid shortcomings relating to opinions, justice, and objectivity. Obviously, we cannot say that the rule of law used to exist at that time, although the codes were promulgated.

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Later on, in the mid - 19th Century, there was a personage following the innovationism and supporting the viewpoint on ruling by law. To a certain extent, he paid attention to the objectivity of the law and the equality before the law among all people, including also kings. It is Nguyen Truong To (1830-1871). He assumed that it was necessary to apply the law to maintain social order, when we talked about ruling a nation. The law, according to Nguyen Truong To, must be appropriate to the people's heart and the time. Thus, the law should not be constrained, but it should focus on the key factors; i.e. it must be built on the basis of freedom and justice. He thought all people, including those who made the law, must conform to the law, once it was promulgated. Advocating the innovationism, he argued: "in order to carry out innovation, there must be innovative people"; and, "those, who are the kings, must realize clearly the hard responsibility that the God entrusted to them; the kings have to take care of happiness and wealth for all the people; the people, therefore, have to abide by the law".

To a certain extent, consequently, it can be said that Nguyen Truong To's thinking on innovation and rule by law shows the ideology of the Rule of Law.

The premise of the ideology of the Socialist Rule of Law is the very Ho Chi Minh's thought.

To study Ho Chi Minh's works and teachings as well as practical activities of our State under his leadership, we can see clearly a complete set of viewpoints on the Socialist Rule of Law in Vietnam.

In the very claims sent to the Treaty of Versailles in 1919 (Revendications du

peuple annamite), Nguyen Ai Quoc demanded: "Reform of the Indochinese justice system by granting to the native population the same judicial guarantees as the Europeans have" and "Replacement of the regime of arbitrary decrees by a regime of law". He said: "Everything must be governed by law".

2. Formation and development of Vietnam's Socialist Rule of Law under the leadership of the Communist Party of Vietnam

In the 10th and 11th National Congresses of the Communist Party of Vietnam, the attempt to accelerate the formation and development of the Socialist Rule of Law was obviously highlighted in following aspects: the institutional system, the State apparatus, functions, personnel, civil service, and mode of activities.

The guideline on formation and development of the Socialist Rule of Law was more specified at the 10th National Congress of the Communist Party as below: "To build an operational mechanism of the Socialist Rule of Law, ensuring the following principles: all powers of the State belong to the people; the State powers are united; there is assignment and cooperation between institutions in implementation of legislative, executive, and judicial rights; it is essential to complete the legal system and improve the specification and feasibility of regulations in legal documents; it is necessary to set up a complete mechanism to supervise and inspect the constitutionality and legality of all decisions and operational documents of Civil authorities" [2, p.126]. Herein, we can realize easily a basic characteristic of the Rule of Law as the institutional legitimacy,

and the nature of the Socialist Rule of Law as shown in the fact that it is built of the people, for the people, and by the people. Based on the Marxist-Leninist theoretical grounds on the State and law, the Communist Party of Vietnam promulgated the guideline on building a mechanism for assignment and cooperation between institutions in implementation of legislative, executive, and judicial rights, aiming at ensuring the unity of the State powers.

The guideline on development of the Socialist Rule of Law with the above-mentioned characteristics was re-affirmed again at the 11th National Congress of the Communist Party. It was particularly emphasized: “the law-based management ability of the State must be enhanced and the Socialist system of laws, rules and disciplines must be strengthened” [3, p.247].

2.1. Regarding to the theoretical aspect: Scientists have come to some significant conclusions: The Rule of Law is not a type of the State; it is a common value that shows the level of democratic development

In this sense, it is recognized that the rule of law is an organization of democracy; the State is organized on the basis of democratic grounds; common values of the rule of law are described by theorists in various ways, depending on their own political and legal viewpoints as well as their academic opinions. Although the descriptive ways may differentiate from each other, in essence they all emphasize some values as below:

- The Rule of Law is the central manifestation of democracy. Thus, democracy is not only the nature of the rule of law, but also the premise or essential conditions for building a rule of law.

- The State apparatus is run according to the principles of democratic allocation of powers.

- In a really democratic judicial system, the judgment body has to conform completely to the laws, based on democratic and open legal procedures.

The denial of the viewpoint that sees the rule of law as a type of the state is really significant to recognize correctly the nature of the rule of law. This significance covers following aspects:

- Only after the bourgeois democracy was set up, were there opportunities and favorable conditions for formation of the rule of law. In reality, consequently, the bourgeois rule of law was built in almost all capitalist developed and developing countries.

- As the rule of law is, in nature, a way to organize and run a regime and society, it is built not only in capitalist but also socialist nations. In both theoretical and practical awareness, there are capitalist rules of law and socialist rules of law.

- Apart from common values, the rule of law also contains particular ones. The particularity of the rule of law is determined by many factors. In essence, those factors are very complicated and diversified; they are identified by historical, cultural, economic, and socio-psychological conditions as well as geographical environments of every nation. In this aspect, the rule of law is a category that contains both popularities and particularities; it consists of general values of the whole mankind and private values of each nation as well. Thus, it is impossible to have a unique rule of law for all nations. Every nation can build an appropriate rule

of law, depending on its own historical, political, socio - economic conditions and its level of development.

2.2. For Vietnam, to build the rule of law is raised as a historical and objective inevitability

The historical inevitability about building the rule of law in Vietnam stems from the very history of formation and development of our State. Since it was founded, the State of the Democratic Republic of Vietnam has always been constitutional and legal. It was organized according to the regulations in the Constitution and laws; it was run within the framework of the Constitution and laws. The laws on organization of the Parliament, the Government, the People's Court, the People's Procuracy, and all the laws on local governments were set up on the basis of the Constitution in 1946 as well as the Amended Constitutions in 1959, 1980, 1992, and 2013.

The objective inevitability about building the rule of law in Vietnam stems from the Socialist orientation that aims at achieving "the national independence attached with socialism, in order to make the country prosperous with wealthy people, social justice, democracy, and civilization". We have profoundly realized that the fundamental tool to build a social regime with such goals is the very Socialist-oriented market economy with the Socialist rule of law under the leadership of the Communist Party of Vietnam on the basis of the theoretical grounds of Marxism - Leninism and Ho Chi Minh's thought. The objective inevitability also stems from the characteristics of the time with the

tendency of globalization and international integration.

2.3. Vietnam's Socialist Rule of Law has to show not only common values of the rule of law, but also its particular identities.

The basic difference between the capitalist rules of law and the socialist rules of law, including that in Vietnam, can be generalized as below:

Firstly, the economic foundation of the socialist rule of law is the socialist-oriented market economy. The socialist orientation does not contradict the market objective rules, but it just plays the role as a ground to differentiate between the market economy in socialism and that in capitalism.

Secondly, the social foundation of the socialist rule of law is the national unity, which helps the State to have a large social foundation and a sufficient capacity to gather and organize all social classes to practice and develop democracy.

Although the Socialist - oriented market economy can eradicate neither social stratification nor the gap between the rich and the poor, it helps to deal with social justice more appropriately. Social contradictions occurring in the market economy can be regulated by the laws and policies as well as other tools of the State. They, therefore, rarely develop into antagonistic contradictions and do not result in conflicts for social division. This is one of the conditions to ensure political stability and social solidarity for general development goals.

The political monism and the sound leadership of the unique party help to create social consensus, strengthen cooperation and mutual - assistance between different

social classes, different communities, and different ethnic groups. As a result, the socialist rule of law can get wide support from society and power from national solidarity, while promoting creation from all social classes and heightening the people's mastery.

2.4. Particularities of Vietnam's Socialist Rule of Law

Firstly, the Socialist Rule of Law in Vietnam is a State of the people, for the people, and by the people; all powers of the State belong to the people.

Secondly, the State powers are unified with appropriate allocation, cooperation, and mutual - supervision between State institutions in implementing legislative, executive, and judicial rights.

Thirdly, the Constitution and laws play a supreme role in adjusting relationships in all fields of social life.

Fourthly, the State respects and guarantees human rights and citizen rights; it enhances legal responsibilities between the State and citizens, performs democracy and strengthens disciplines and regulations.

Fifthly, the Socialist Rule of Law in Vietnam respects and performs fully all international conventions, which the Socialist Republic of Vietnam has signed or has joined.

And, *sixthly*, the Socialist Rule of Law in Vietnam is organized and run under the leadership of the Communist Party of Vietnam.

2.5. Renovation and improvement of the State apparatus according to the requirements of the Socialist Rule of Law in Vietnam

a) To renovate organizational structure and activities of the National Assembly,

aiming at quality improvement as well as fulfillment of the legislative functions and supreme supervision.

The 2013 amended Constitution regulates that our National Assembly is the highest representative institution of the people; it is the most powerful with three functions, including: the constitutional, the legislative, and the supremely supervisory and decision-making for important issues of the country.

It is necessary to change awareness of the role and position of the National Assembly in the State apparatus. The National Assembly is the most powerful institution, but it does not mean that all powers of the State are seized by the National Assembly. It is needed to build a National Assembly, which is provided with real powers but not all powers.

For the constitutional and legislative function, it is important to comply with the following principle: The National Assembly is the only institution that has the constitution - making and law - making power. To guarantee this power of the National Assembly, the power to promulgate ordinances of the Standing Committee of the National Assembly should be more and more limited, until it will no longer issues an ordinance. At the same time, it is necessary to differentiate clearly the constitution - making role of the National Assembly and the regulation - making role of the Government; the constitution-making authorization should be step-by-step restricted.

For the National Assembly's power to do supreme supervision, it is the most important and practical that supervisory results should be dealt with effectively according to the supervisory mechanism of

the National Assembly; the supervisory assessments must be respected and implemented seriously by institutions, organizations, and individuals involved.

To make the mechanism of supreme supervision practical and effective for the State activities, it is necessary to set up an institution of judicial review in order to guarantee the supreme, sacred, and imprescriptible position of the Constitution in our Socialist Rule of Law of the people, by the people, and for the people.

The demand for international economic integration, especially after Vietnam became the WTO's member and took part in the Trans-Pacific Partnership negotiations, requires to accelerate the renovation process as well as review and revise all the constitutional activities.

b) To build a Government that is neat in organization, clear in functions, and effective in activities by two fundamental categories, including:

- Policy and institutional research
- Management in terms of administrative and civil authority

Specifically, the Government has to undertake powers and duties classified into four groups as below:

- To build and complete a State system from the Central to the local, ensuring that it will be run effectively to accomplish all the executive functions.
- To guarantee the implementation of the Constitution and laws in the State and social life.
- To unify the State administrative management in all aspects, such as:

economic, social, security, national defense, social order, and foreign relations. It is also necessary to implement social policies, in which the ethnic and religious policies should be attached with much importance.

- To execute effective measures to protect the rights and legitimate interests of citizens, creating favorable conditions for them to perform their rights and duties; at the same time, it is necessary to have appropriate measures to protect the State and social property as well as protect the environment.

c) To carry out renovation in the judicial bodies and procedures according to the requirements of the Socialist Rule of Law.

The key point of the judicial renovation is to improve organization and activities of the courts, viewing the courts as the core of the judicial system; the courts' independence in making trial is a very important factor for them to execute the functions of justice and human - right protection.

It is essential to do research on how to re-organize the People's Procuracy, re-specifying the jurisdictions of investigation agencies. It is also necessary to carry out restructuring of the judgment execution and socialize activities of judicial assistance such as: lawyers, notary, and judicial assessment, etc..

Legal procedures on judicial activities should be profoundly improved in all criminal, civil, and administrative areas, aiming at switching the court's judgment activities into the litigation in order to ensure the equality of all parties during the process of litigation in court.

d) To carry out renovation in the system of local governments, meeting the requirements of the Socialist Rule of Law.

The organizational model and activities of local governments at different levels have to comply with the general economic and legal framework. The local sovereignty must be placed under the management of the Central Government in terms of institutions and macro-policy. Local governments at every level constitute a part of the State administrative system. It is, therefore, impossible to separate completely the sovereignty of the local governments from the Central Government; local governments cannot rule over local areas as isolated lords; the local interests cannot be opposed to those of the Central government.

Renovation in the organization and activities of local governments must be closely attached with renovation in the organization and activities of the Communist Party at local levels.

e) To build and develop the force of State officials innovationist and civil servants according to the requirements of the Socialist Rule of Law.

For the past years, the force of officials and civil servants has developed significantly in terms of both quantity and quality. Apart from those positive changes, the State official and civil servants, however, still have shortcomings; the professionalism still remains insufficient.

The State officials and civil servants always play an important role in implementing laws and policies of the State and the Party for the whole society. It is, therefore, necessary to apply titles and

standards as well as classify officials and servants in the administrative system and State institutions. Administrative management should be decentralized; a new management mechanism must be applied for regular positions in the State institutions; employment contracts should be used to enhance the self-control over human resources and organizational structure. It is essential to change the way to recruit officials and employees, switching from the review - based pattern to the test - based one in the hope of getting high - qualified people to work for the State management institutions. In addition, it is also necessary to pay attention to remote and mountainous areas.

References

- [1] Nguyen Duy Quy, Nguyen Tat Vien (co-editors, 2007), *Xây dựng Nhà nước pháp quyền xã hội chủ nghĩa của nhân dân, do nhân dân, vì nhân dân – lý luận và thực tiễn (To Build the Socialist Rule of Law for the People, by the People, and of the People - Theoretical and Practical Issues)*, the National Political Publishing House, Hanoi.
- [2] Communist Party of Vietnam (2006), *Văn kiện Đại hội đại biểu toàn quốc lần thứ X (Documents of the 10th National Congress of the Communist Party)*, the National Political Publishing House, Hanoi.
- [3] Communist Party of Vietnam (2011), *Văn kiện Đại hội đại biểu toàn quốc lần thứ XI (Documents of the 11th National Congress of the Communist Party)*, the National Political Publishing House, Hanoi.