

INNOVATION AND COMPLETION OF LAWS ON THE RIGHT TO VOTE, STAND FOR ELECTION AND GUARANTEE OF THE RIGHT TO VOTE

• Prof. Ph.D. Thai Vinh Thang*

Abstract: *The rights to vote and stand for election are important political rights of citizens. Only when citizens' right to vote and stand for election is guaranteed will the positions formed by the election be selected properly. The author analyzed the current electoral regime in Vietnam and pointed out the limitations and shortcomings that need to be renewed and overcome.*

Keywords: *Laws on the right to vote, stand for election, limit, inadequacies and innovation.*

Introduction

Like almost all countries, Vietnam functions on the principle that all state power belongs to the people and the people exercise their power in the form of representative and direct democracy via referenda and other measures of direct democracy. However, for modern countries whose populations are often huge, representative but direct democracy is preferred, in which the people exercise their power through representative agencies - Parliament/Congress at the central level, Local council/People's Council at the local level. Representative democracy emerged in Vietnam after the August Revolution (8/1945) and changed according

to different Constitutions and Laws on the right to vote. Nevertheless, as many of the innovative electoral principles have yet to be applied, our voting system still has limitations and inadequacies.

Currently, in the process of building a law governed state, integrating and globalizing, the need for democracy in everyday life is increasing. Innovation in the voting system allows citizens a wider range of choices in voting, increases their likelihood of standing for election to contribute their hearts and minds to society, helping to build a prosperous, democratic, fair and civilised country. Building and fostering an innovative voting system will pave the way for a strong

(*) Hanoi Law University

public apparatus, contributing to building a prosperous and democratic country.

1. Limitations and inadequacies of laws on the right to vote in Vietnam

a) Electoral principles

Currently, our main electoral principles are universal, direct, equal and secret ballots. Compared to the first Constitution in 1946, one principle is missing and that is free election. Free election gives a citizen the right to decide whether to cast his/her vote. The citizen is under no obligation to vote. Proper electoral principles include active voting rights (right to vote) and passive voting rights (right to be voted). Therefore, free election embodies the right to stand for election. Since this principle was not adopted in the Constitution 2013 (except for 1946, the Constitutions in 1959, 1980, 1992 and 2013 did not include this principle), the right to stand for election is limited given our consultation regime. The consultation somehow limits citizens' right to stand for election and possibility of being selected. In the National Assembly Election Session XII, 225 stood for election but only 30 were considered eligible after three consultations. In the end, there was only one elected. In other countries, to ensure the right to stand for election, there are clear laws on criteria to become an eligible candidate and the criteria are very clear and well defined. For example, over 21 of age, a clean slate (no criminal record), full payment of a deposit (which will be returned to the candidate if they get more valid votes than the minimum threshold, say 5%. Otherwise, the money

will be allocated to public funds). The role of a deposit is to increase the responsibility of those standing for election. To ensure the right to stand for election and increase the possibility of candidates being elected, the election will have two rounds or one round with a relative majority. In France, the presidential and parliamentary elections are held in two rounds¹ because the French prefers the model in which the winner must reach an absolute majority while voters also have the widest possible choice. In the first round, candidates with most confidence votes will be qualified for the second round (for example, in France, candidates for the House of Representatives with more than 12.5% of popular votes are qualified for the second round). In the presidential election, two candidates with the most votes will proceed to the second round. The winner must get the highest number of votes and reach an absolute majority (more than 50% of the votes). Therefore, if no candidates reach an absolute majority, two candidates with most votes will enter the second round. A two-round election ensures the right to stand for election of citizens. In our country, President Ho Chi Minh, our beloved supreme leader, a man of culture, wrote: *“General elections allow citizens to choose the most talented and virtuous individuals to shoulder national responsibilities. In a general election, anybody of Vietnamese citizenship concerned with solving the country's problems can stand for election and everybody has the right to cast their votes, regardless of gender, race, status, political*

and religious persuasions, etc. Therefore, a general election means freedom, equality, democracy, solidarity".² In the Thought of President Ho Chi Minh, competent authorities to hold an election must create conditions allowing talented and virtuous individuals to stand for election. However, in reality, the possibility that a person standing for election goes through the consultation and is elected is quite low. Why is it so low? We need to look at our electoral system³.

Currently, the consultation procedures to single out candidates to be elected as deputies entail five steps:

- Step 1: The first Consultative Conference held to agree upon the structure, composition and number of candidates;
- Step 2: Candidates for the election selected by agencies and institutions;
- Step 3: The second Consultative Conference held to agree upon a preliminary list of candidates;
- Step 4: The conference to welcome reviews and confidence votes of local residents as well as people at the workplace of the candidates (if any) held;
- Step 5: The third Consultative Conference held to make an official list of candidates for deputies.

Commonly, the consultation process is full of arrangements. In other words, there is a lack of equality between those introduced by organizations and self-nominated ones. For example, people who are introduced by the organization get confidence votes by publicly voting, while self-nominated candidates do by secret ballot. The

consultation process eliminates the majority of self-nominated candidates. Previously, according to Decree No. 51 dated October 17, 1945, candidates were free to stand for election of their chosen place (Article 12). Decree 51 also stipulates that "Candidates submit their applications directly to the People's Committee of the province or city where they directly run for the candidacy, and the nomination application is accompanied by a paper of the Administrative Committee of the home country or the residence certified as eligible for candidacy". Article 12 of this Decree clearly stipulates that candidates are free to stand for election of their only one chosen place. This means in the first general election to elect the first National Assembly of our country, all Vietnamese citizens aged 21 years and over, fully meet the candidate's conditions as prescribed by law and all candidates are on the list of candidates and are not subject to preliminary consultation procedures as currently. A democratic election must first ensure freedom to stand for election, and give people the freedom to choose. In the election, candidates are disqualified only when they do not collect enough votes, not by consultation before the election.

b) The voters' ability to choose in elections

In elections in recent years, it is widely acknowledged that the voters' ability to choose in elections is often very low. In the ballots distributed to voters during the election, the ratio of 1/2 is often not achieved. Normally, in the National Assembly election,

the rate is given as 3/5 (From 5 candidates, voters choose 3), while in People's Council election, the rate is usually 5/7 (from 7 candidates, voters choose 5). The current way of voting shows that the consultation stage is more important than the election one. In a constituency where 3 out of 5 candidates (60%) are to be elected as Deputies as prescribed by consultation activities, voters can only cross out 2 candidates, thereby the ability to choose at 40%. In People's Council elections, 5 out of 7 candidates must be chosen (72%), leaving voters with only 28% of choice (2/7). Looking back at the election history in our country, in the 1st National Assembly election, the citizens' ability to choose was much higher than today. According to General Vo Nguyen Giap's article in the 1946 Constitution and the development of the Vietnamese Constitutions book, in the election of the first National Assembly, Hanoi had 76 candidates to elect 7 members of the National Assembly. In the list, President Ho Chi Minh was elected with a very high number of votes. Thus, the citizens' ability to choose was very high since one delegate seat was selected from more than 10 candidates. Apart from Hanoi, other electoral regions witnessed that the voters' ability to choose was also very high. The ratio between candidates and the number of seats to be elected in Kien An was 60/7, in Ha Nam it was 52/7, and the ratio was more or less the same in other provinces.⁴ Increasing the voters' ability to choose in elections is not difficult. Democratic

countries have already implemented various voting methods to increase the ability to choose appropriate candidates for organizations and positions like President, State Governor or Mayor. In the majority election model, there are simple majority, absolute majority and overwhelming majority. The absolute majority requires the winner to get the highest number of votes, and the number of votes must be over 50% of the valid votes. The overwhelming majority requires the winner to get a high number of confidence votes, and at least 2/3 of the valid votes. The simple/relative majority means that the winner gets the most votes, even though those votes may not exceed 50% of valid votes. The relative majority is established under the viewpoint: "The first past- the post". Under a relative majority electoral system, multiple candidates can compete for a single delegate seat. For example, when there are 500 MP seats allocated to 500 constituencies, each electoral unit elects only one delegate. In each electoral unit there can be 20, 25, or 30 candidates. Since there is only one seat but there are so many candidates, the votes will be dispersed and the highest possible percentage of votes one can get ranges from 35% to 45% of valid votes. The person with the most votes is considered worthy of election. This voting method is always effective and inexpensive, with an advantage of creating maximum conditions for citizens to choose candidates. However, the shortcoming is that, the winner may not represent the majority of voters, so many

countries hold two-round elections. If no one reaches an absolute majority in round 1, two candidates with the highest number of votes will proceed to the second round. The candidate to reach an absolute majority in round 2 will be the winner. On applying the two-round voting method above, we will increase the citizens' ability to choose and stand for election.

Currently, in addition to the majority system, the proportional system is also quite popular because most countries in the world today are pluralist democracies, allowing the parties to freely run for office. The regular proportional system used in the election of Parliament and Local Councils allow voters to vote for participating parties (for both parties and specific candidates of the parties) and stipulates that the number of seats assigned to parties corresponds to the number of votes for parties. In this way, participating parties are more or less represented in the Parliament and Local Councils. Our country is one of the few countries in the world that maintains a single-party system, so it is impossible to apply the proportional system. However, we can adopt the two-round voting system, which combines a relative majority (in round 1) and absolute majority (in round 2) to increase the citizens' ability to choose and enhance the ability to stand for election of talented and virtuous people who aspire to help the country, and dedicate their talents to society.

c) Campaigning

In the Parliamentary elections of countries around the world, every time

Parliamentary candidates run for election, they must have their specific action plans when they are elected, and must promise the people to do what is necessary to their constituency, their country and stick to that promise. Candidates for Parliamentarians must have a passion for the work of a Parliamentarian, show their inner desire to be an MP and demonstrate their action plans to persuade voters. Campaigning is often expensive, painstaking and time-consuming so foreign MPs are very proud of their title. In Vietnam, Deputies do not have to do campaigning so when they are elected, they usually have no personal action plans. Rather, they follow the tasks assigned by the National Assembly. Even when a deputy does not fulfill the task, (s)he is not under any pressure from his/her own voters. Campaigning in other countries is considered as the soul of the election. Citizens will find it hard to choose talented individuals when the election is of low competitiveness and when there is no campaigning. Campaigning can be viewed as a channel through which voters can be exposed to candidates. Through campaigning, voters can assess and choose the most appropriate programs for the current situation of the country. Citizens will therefore be informed of what the candidates will do for the sake of the whole country and its people when they get elected.

d) Organizing constituencies

The organization of a constituency can be based on geography, population, or criteria of certain fields. Whatever the criteria are, a constituency is a representative

structure. Currently, constituencies in our country are organized based on criteria of geography and population, which means a certain district with a certain population. Decree No. 51/SL dated October 17, 1945 states: "The constituency is the administrative unit at the provincial level, that is, the people in each province elect directly their delegates to the National Assembly". The first general election of our country had 71 constituencies in total, and the number of representatives of each constituency corresponds to the population⁵. According to the 1997 Law on Election of National Assembly Deputies, amended in 2001, the centrally run cities and provinces are divided into constituencies, each of which is entitled to elect no more than 3 deputies. In a centrally run city, at least 3 delegates reside and work in the locality. The number of participants is calculated according to the population and characteristics of each locality. Law on Election of People's Council deputies in 2003 stipulates that each constituency cannot elect more than 5 delegates. The National Assembly Session XII election on April 25, 2007 had 876 candidates, allocated to 182 constituencies in 64 centrally run cities and provinces to elect 500 delegates.⁶ The number of delegates elected in each province or city is from 5 to 36. Each province or small city will set up 2 to 3 constituencies, and in large cities 7 to 9. According to the Law on Election of National Assembly deputies and People's Council deputies 2015 (Law No. 85/2015/QH13) centrally run provinces and cities are divided into

constituencies of National Assembly deputies. The number and the list of constituencies are calculated according to population, determined by the National Election Commission at the request of Election Committees of centrally run cities and provinces and announced at least 80 days before election day (Clause 2 of Article 10). Each constituency of National Assembly deputies may elect no more than 3 deputies, and each constituency electing deputies to the People's Council may elect no more than 5 deputies (Clause 4 Article 10)⁷. The above provisions show that our current Electoral Law lacks coherence. This limitation can lead to inequity among constituencies. The 1946 Constitution clearly states that for every 50,000 people there is one deputy. Such clear regulation will facilitate the establishment of constituencies and regulate the number of representatives in each constituency. Currently, our country's population is estimated at 95 million people and the number of National Assembly deputies is prescribed to be no more than 500. If we take the maximum number of National Assembly deputies to be 500 delegates, each member of the National Assembly of Vietnam represents 190,000 people. If a constituency can elect no more than 3 delegates, then it is established based on a population of 570,000 people. Therefore, to facilitate the establishment of constituencies, each should be based on a population of 570,000 people. Due to this lack of clarity, in practice, we have yet to ensure the equality of the voters' ballots. For

example, in the election of the National Assembly Session XII on May 20, 2007 the fixed number of delegates before the election was 500 delegates, and the population of our country at that time was statistically 83,119,900 people⁸. Thus, the national average rate was one delegate per 166,240 people. Hanoi's population at that time was 3,145,300 people, and 21 delegates were chosen, equivalent to one delegate per 149,776 people. In Ho Chi Minh City, 26 delegates were chosen compared to the population of 5,891,000, equivalent to one delegate per 226,581 people. In Dak Nong, 6 delegates were chosen compared to the population of 397,000, equivalent to one delegate per 66,250 people. Thus, it can be seen that the value of the votes cast in the constituencies was not the same, for example the value of votes of the people of Ho Chi Minh City was only one fourth that of the people of Dak Nong⁹.

e) The relationship between National Assembly deputies and voters

The National Assembly is elected by the people, so it is a place where people's ideas and aspirations are gathered. To achieve this, the deputies must represent their people, understand and sympathize with what the people need. The deputies need to establish a close rapport with the people. In our country, currently, many deputies live and work in centrally run organizations, not in localities, so there is little connection between them and the people. When these deputies stand for election in their local areas, the people often have no inkling of who their

representatives are, meaning the choice can be inaccurate. A typical example can be seen in the National Assembly Session XIV election, in which a candidate introduced by the central government to Hau Giang province was elected by the people with a high rate of votes (71%). After the election was completed, however, the press discovered the criminal law violations committed by Trinh Xuan Thanh, the National Assembly member capacity assessment committee did not recognize Trinh Xuan Thanh as a National Assembly deputy.

2. A number of solutions to renovate and perfect the electoral law to ensure the right to vote and stand for election of citizens in Vietnam today

From the above analysis, we have some suggestions for solutions to renovate the electoral system and representative democracy in our country today:

- Supplementing specific criteria for National Assembly candidates, when the candidate meets the criteria requirements, (s) he will be included in the list of candidates for election. The criteria for a candidate should be specified as follows: a) 21 years of age or over by the election day; b) Have a clean slate (no criminal record); c) Collect 300 signatures to support the candidacy to National Assembly; d) Have the application submitted to the National Assembly on time; đ) Have a resumé certified by the People's Committee of the ward (commune, town) where the person resides); e) There is a campaign program.

- Replacing the form of constituencies, in which the whole country is divided into 500 constituencies, each constituency elects only one delegate. Our population is estimated to be 94.67 million¹⁰, meaning each constituency has 189,340 people. The number of people in the constituencies must be equal in order to ensure equality of the value of the votes.

- Replacing the consultation regime with a two-round voting system, where in round one, if no one reaches an absolute majority, two candidates with the highest number of votes will be selected for the second round.

- All candidates, in addition to their personal resumé, must have a campaign program, in which the candidate must be clear about what they would do to benefit the interests of the people and to be more committed to the people.

- In order for the National Assembly to fulfill its three functions, namely the constitutional and legislative functions, the function of deciding important issues of the country and the function of supervision, it is necessary to build a new National Assembly in a professional manner. Deputies of the National Assembly need to work responsibly, so that all three functions can be bettered, especially the one that supervises the executive and judicial system and one deputy cannot serve in both the legislative and executive or the legislative and judicial branches simultaneously. ■

References:

(1) Andre Blais and Peter John Loewen (2007), The French electoral system and its effects, source: https://www.researchgate.net/publication/233027541_the_french_electoral_system_and_its_effects, accessed on 9/5/2019.

(2) Archives of Ho Chi Minh, National Political Publishing House of Vietnam, Hanoi 1995, issue 4, p.125.

(3) See: Thai Vinh Thang, Amend the Constitution in 1992 to meet the requirements of building a socialist law governed state and serve international integration, *Legislative Research Journal*, no. 5/2010.

(4) Theoretical and practical basis for the renewal of the electoral system in Vietnam today, Ministry level scientific research topic, 2012-2013, Professor Doctor Thai Vinh Thang as head of the topic, p.388.

(5) Vu Van Nhiem- Electoral system in our country - theoretical and practical issues – Doctoral thesis in law, Hanoi, 2009, p.113.

(6) Theoretical and practical basis for the renewal of the electoral system in Vietnam today, Ministry level scientific research topic, 2012-2013, Professor Doctor Thai Vinh Thang as head of the topic, Hanoi, 2014, p.392

(7) See: Law on Election of National Assembly deputies and People's Council deputies, National Political Publishing House of Vietnam, 2016, p.13-15.

(8) Statistics by the General Statistics Office of Vietnam in 2016.

(9) Vu Van Nhiem- Electoral system in our country - Theoretical and practical issues - Doctoral thesis in law, Hanoi, 2009, p.89.

(10) According to statistics by General Department of Population and Family Planning of the Ministry of Health, the population of Vietnam is 94,670,000 (Source: <https://dantri.com.vn/suc-khoe-/dan-so-Viet-nam-dat-gan-95trieu-nguoi-dung-thu-14-cac-nuoc-dong-dan-nhat-the-gioi-20190119093910455.htm>).