

The law-governed state in Vietnam

Nguyễn Duy Quý

Prof. and Dr., Vietnam Academy of Social Sciences.

Email: nguyenchihieu_05@yahoo.com

Received 22 July 2015; published 2 October 2015

Abstract: *The 11th National Congress of the Communist Party of Vietnam has affirmed their determination to continue building a socialist law-governed state of the people, by the people and for the people; operating on the basis of laws with a democratic legal institution, ensuring human rights, civil rights and comprehensive human development in Vietnam. The Communist Party of Vietnam and State of Vietnam has been increasingly aware of requirements for building a law-governed state based on the Marxist-Leninist theory and Hồ Chí Minh thought. The adherence to the rule of law in the process of developing and perfecting the socialist law-governed state continues to be reaffirmed in the 2013 Constitution. This article contributes to clarify requirements for renovating and completing the model of state apparatus based on the socialist rule of law in Vietnam today.*

Key words: Vietnam, the Communist Party of Vietnam, the Socialist law-governed state

I. Ideas of law-governed state in the history

In the history of Vietnam, especially from the fourteenth century to the eighteenth century, there were some ideas and activities to enhance the role of law. The historical period Lý - Trần (from the 12th century to 14th century), the dynasties used laws to govern the

country. For example, in 1340, Emperor Trần Dụ Tông instructed Nguyễn Trung Ngạn and Trương Hán Siêu to compile Book of Punishments including the only one copy for promulgation. Unfortunately, today this book is no longer extant. Historians have researched many historical sources to know partly about the content of this book. In the fifteenth century,

legislation was prompted more strongly than ever before. It shows that the Vietnamese feudal dynasties during this time were very interested in laws. The Early Lê Dynasty left Vietnam so many codified legal documents. That is the Criminal Codes of the National Imperial Court (Quốc Triều hình luật) including six books (Nguyễn Trãi compiled in the years 1440-1442), the Command Codes of the National Imperial Court including six books (Quốc Triều luật lệnh) (Phan Phù Tiên compiled in the years 1440-1442).

The Lê Dynasty's Criminal Code is an important orthodox code. This Code was promulgated in the Emperor Lê Thánh Tông's reign that called Hồng Đức, so it is also called The Hồng Đức Code.

The Lê Dynasty's ideology about the rule of law is clear. However, their use of law to govern the society remains restrictive weakness of viewpoint, justice, objectivity of the law. And indeed, despite having laws, it can't be to say that a law-governed state existed that time.

Later, in the mid-nineteenth century of Vietnam history, there was a prominent character who advocated reforms, supported the idea of rule of law and, to some extent, thought about objectivity of the law, equality before the law for everyone including the king. He was Nguyễn Trường Tộ (1830-1871). He stated that law should be used to maintain order to govern the country.

According to Nguyễn Trường Tộ, law must be suitable for the people. To do so, law should not be forced, but must be considered on core elements, that is freedom and justice basis. According to him, law when enacted must be applied, everyone must be subjected to law, including lawmakers. He supported reforms and said that it's necessary to have innovative humans to obtain innovative ideas. He also said that the king must know that his responsibilities are heavy, people have interests thanks to the King's responsibilities, so people themselves must be subject to law.

Thus, we can say that Nguyễn Trường Tộ's innovative ideas and favor of the rule of law, to some extent, underlied signs of law-governed state ideology.

The premise of Vietnam socialist law-governed state ideology is Hồ Chí Minh thought.

Through learning President Hồ Chí Minh's writings, teachings, studying the organization and operation of the State of Vietnam in practice under his direct leadership, we can see an all-sided system of viewpoints on Vietnam socialist law-governed state in Hồ Chí Minh thought.

Right in his petition sent to Versailles Conference in 1919, Nguyễn Ái Quốc had asked the justice reform in Indochina by requiring that natives were also entitled to guarantee rights under the law as Europeans. Thus, from very early days, Hồ Chí Minh had asked to replace decree regime by law

regime. He said “all things shall be under the rule of law”.

II. Building and completing Vietnam Socialist law-governed state under the leadership of the Communist Party of Vietnam

The 10th and 11th Congress of the Communist Party of Vietnam showed that: it's needed to accelerate construction of the socialist law-governed state in such areas as: the institutional system, functions and tasks; organizational apparatus; cadres and civil servants; mode of operation...

More specifically, the policy of building and perfecting the socialist law based state that has been affirmed by our Party in the Congress was: “To build the operating mechanism of the socialist law based state, ensuring the principle that all State's power belongs to the people, the state operates on the principle of unity and division of power between the legislative, executive and judiciary. To perfect a system of laws, improving concrete feasibility of legal documents. To build and perfect monitoring mechanism of the constitutionality and legality of operation and decision documents issued by public authorities” (Communist Party of Vietnam, in 2006, p.126). So, here it's easy to see that legislation is a fundamental characteristic of a law-governed state and the nature of the people, by the people and for the people of The Socialist Law-governed State. The fact that the Communist Party of Vietnam develop mechanisms for

distribution, co-ordination and control among state bodies in exercising legislative, executive and judicial powers to ensure the unified state, was based on Marxism-Leninism' theory on state and law.

The policy of stepping up the construction of Vietnam socialist law-governed state with the above fundamental characteristics continued to be reaffirmed at the 11th Congress of the Party, in which the Party paid a special attention to improving the capacity of government and administration of the state under the law, strengthening the socialist rule of law and discipline” (The Communist Party of Vietnam, 2011, p.247).

1. In theory, scientists have come to some important judgements: law-governed state is not a type of state, but a common value, an expression of democratic development level.

In this sense, law-governed state is considered as a way of organization of democracy, state and society on the democratic basis; its common values are presented into various forms by theorists, depending on each person's political - legal viewpoints and academic perspectives, which may be different in presentation, but in essence emphasize the following values:

- Law-governed state is the concentrated expression of democracy. Thus, democracy is both the nature of a law-governed state, and the premise of building a law-governed state.

- Law-governed state apparatus is organized and operates on the basis of principles of democratic power division.

- A judicial regime is truly democratic, judicial authorities only comply with the law with public, democratic procedures.

Negation of the viewpoint considering law-based state as a type of state has a meaningful epistemological importance in recognizing law-governed state's nature, including the following aspects:

- Only since the appearance of bourgeois democracy, there have been opportunities and conditions for law-governed state's appearance. Therefore, in practice, bourgeois law-governed states have been built in most developed and developing capitalist countries.

- Law-governed state as a way of organization of a state and society is built not only in capitalist regime but also in socialist regime. Thus, in theory as well as practice, there are bourgeois law-governed state and socialist law-governed state.

- In addition to common values, law-governed state also implies specific values. Law-governed state's specificity is determined by many factors. These factors in substance are very diverse, complex, which are determined by each country's historical, economic, cultural, social psychological and geological conditions. In this sense, law-governed state is a category that has both popular

characteristics and specific ones, is both humanity's common value and each country's specific value. Therefore, there can be no unified law-governed state for all nations and countries. Each nation or country must consider her historical, political, economic, social characteristics and development level to build an appropriate law-governed state model.

2. For Vietnam, the matter of building the law-governed state is being considered as historical necessity and objective necessity.

The historical necessity of building Vietnam law-governed state stems from the history of foundation and development of our state itself. Since its foundation and during the development process, the Democratic Republic of Vietnam was and is always a constitutional, legal state. The State is organized and operates on the basis of the Constitution and laws and has always operated within the framework of the Constitution and laws. Laws on Organization of The National Assembly, the Government, the People's Court, People's Procuracy and local government are built on the basis of the 1946 Constitution and revised versions in 1959, 1980, 1992 and 2013.

The objective necessity of building Vietnam law-governed state stems from socialist orientation with the goal "national independence associated with socialism, to build a social regime with prosperous people, strong country and equal, democratic, and civilized

society". We are deeply aware that in order to build a social regime with this goal, our fundamental tools and means can be only a socialist-oriented market economy and a socialist law-governed state under the leadership of the Communist Party of Vietnam on the basis of Marxism-Leninism's theory and Hồ Chí Minh thought. That objective necessity also arises from the times' characteristics with globalization trend, demand of international economic integration.

3. Vietnam socialist law based state is the state that must both represent common values of law based state and affirm its unique identity.

The fundamental difference between bourgeois law based state and socialist one in general, including Vietnam Socialist law-governed State in particular, can be generalized in the following main points:

The first, the economic basis of Vietnam socialist law-governed State is a socialist-oriented market. The market economy's socialist-orientation does not deny the market's objective rules, but is the basis for determining differences between the market economy in capitalism and that in socialism.

The second, the social basis of Vietnam socialist law-governed State is great national unity, and relying on that, the State has a broad social basis and tremendous ability to unite people of

different social strata to execute and promote democracy.

In spite of not managing to eliminate social stratification between the rich and the poor, the socialist-oriented market economy is better at securing social justice. Because of being regulated by the state's laws, policies and other tools, social conflicts arising in the context of developing the market economy should be less likely to become antagonistic contradictions and create divisive social conflicts. This is one of conditions for ensuring political stability and social force solidarity to meet the common goal of development.

The political monism and the leadership of a single party create social consensus, enhance cooperation and mutual assistance between social strata, civil community and ethnic groups. Thus, the socialist law-governed state has broad support from the society and source of power from national unity, promote people strata's creativity in improving people's ownership.

4. Vietnam socialist law-governed state's characteristics.

The first, Vietnam socialist law-governed state is the state of people, by the people, for the people; all state power belongs to the people.

The second, state power is united and has a distribution, co-ordination and control among state bodies in exercising legislative, executive and judicial powers.

The third, the Constitution and laws hold supreme position in adjusting relations of all aspects in social life.

The fourth, the State respects and protects civil and human rights; raises liability between the state and citizen, practices democracy while enhancing discipline.

The fifth, Vietnam socialist law-governed state respects and fully implements international conventions that the Socialist Republic of Vietnam has signed or acceded.

The sixth, Vietnam socialist law-governed state is organized and operates under the leadership of the Communist Party of Vietnam.

5. Renovation, perfect state apparatus required by Vietnam socialist law based state

a) Renovation of organization and operation of the National Assembly towards higher quality, better performing legislative and supreme control function

The Constitution amended in 2013 determines that National Assembly is the highest representative body of the people and the highest body of state power with three functions: constitutional and legislative powers, decision of significant national affairs and supreme control.

It's needed to renew the awareness of the National Assembly's role and position in the overall state apparatus, under which the National Assembly is

the body the highest body of state power, but doesnot represent the whole state power. The problem is that it's needed to build a real power national assembly rather than full power one.

For constitutional and legislative functions, it's needed to thoroughly study the constitutional principle: the National Assembly is the only state body to have constitutional and legislative power. To ensure this principle, it's needed to study to limit promulgation power of the Standing Committee of the National Assembly, towards regulation of not delegating this power, while clearly distinguish the National Assembly's legislative power from the Government's legislative power to make sub-law documents and gradually restrict legislative authorization

For executive of the National Assembly's supreme control, the most realistic and important thing is monitoring efficiency through the National Assembly's handling mechanism to monitoring results, ensuring the National Assembly's monitoring conclusion to be respected and taken seriously by related authorities, organizations and individuals.

To create a feasible supreme monitoring mechanism over the State's activities, it's needed to organize studies to establish an authority for constitutional protection, ensuring the Costitution's supreme, sacred, inviolable position in our socialist law-

governed State of the people, by the people, for the people

Demand for international economic integration, especially since Vietnam became a member of the World Trade Organization (WTO) and is negotiating the Trans-Pacific Strategic Economic Partnership (TPP), requires Vietnam to promote renewal as well as review and amend all legislative work.

b) Building a government that is neat in organization, clear in function, effective and efficient in operation divided into the following basic groups :

- Research institutions and policies;
- Executive public administration power.

Specifically, the Government should implement four groups of rights and obligations as followed:

- To develop a strong, effective, efficient system of state administrative agencies from the central to grassroots enough to enough to complete functions of the executive power.
- To ensure the implementation of the Constitution and laws in state and social life.
- To exercise unified state administration of the economy, society, national defence, social order and security and external relations. To implement social policies, taking care of ethnic and religious policies.
- To take effective measures to protect human and citizen' legitimate rights

and interests; to create conditions for citizens to exercise their rights and duties; to protect the property and interests of the State and society, to protect the environment.

c) Renovation of judicial organs and procedures to meet the socialist law-governed State's requirements.

The focus of judicial reform is reform in the Court's organization and operation according to the view that the Court is the central of the judicial system and the Court's independence in trial is the fundamental condition to ensure implementation of its role as a defender of justice and human rights

Research is needed to reorganize the Procuratorate into the Prosecutor; redefine investigating agencies' position and authority. To restructure its organization and manage judgment execution; study socializing such judicial support activities as lawyer, notary, judicial expertise...

Strong renovation of law procedures for judicial activities in all fields, for example criminal, civil, administrative area, etc..., towards transforming the court's trial activities into litigation to really ensure equal rights of all related parties during litigative process in courts.

d) Renovation of local governments to meet the socialist law-governed state's requirements.

Organizing and operating models of local governments at all levels ensure

the uniform economic space and legal space. Local governments' autonomous power should be put under the Central's management in institutions and macroeconomic policies. Each level of government is an integral part of the uniform state administrative system. Therefore, it can not be consider ensuring the local governments' autonomy power as an escape or separation from the central state and cannot cause status of rule as local feuds, cannot create the opposition of interests between the local and the central.

Renovation, reform of the organization and operation of the local government must be associated with renewal of the organization and activities of Party agencies at local levels.

e) Construction and development of cadres and civil servants in accordance with the requirements of building a socialist law-governed state.

Over the years, the contingent of cadres and civil servants in our state has grown in both quantity and quality. Besides mature aspects, the contingent of cadres and civil servants still remains many weaknesses, is lack of professionalism.

The contingent of cadres and civil servants always keeps an important role in implementing laws and policies of the Party and the State for the whole society. Therefore, the first mission needed to be concerned is to build and

apply titles and standards of civil servant category in bureaucratic and non-business organizations. To proceed decentralizing the management of state administrative and non-business payrolls, and implement new management mechanism for non-business payroll, implement contract mechanism for non-business payroll to create autonomous power in human resources and change payroll structure in non-business organizations. To renovate the recruitment of cadres and civil servants, transform assessment mode into testing mode to get qualified people to work in state management bodies, meanwhile paying attention to deep, remote regions □

References

1. The Communist Party of Vietnam (2006), *Document of the 10th National Congress*, The National Political Publishing House, Hanoi.
2. The Communist Party of Vietnam (2011), *Document of the 11th National Congress*, The National Political Publishing House, Hanoi.
3. Nguyễn Duy Quý - Nguyễn Tất Viễn (co-chief author, 2007), *To build a socialist law-governed state of the people, by the people, for the people - theory and reality*, The National Political Publishing House, Hanoi.