

Information openness on organization and operation of state apparatus in Vietnam

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Abstract: *Awareness of democraticness for people to participate in control and supervision of the Party and state apparatus is a thorough awareness manifesting the democraticness of socialist state of rule of law. However, to promote the democracy, ensure the power to be of people, build successfully the state of rule of law to be truly of people, by people and for people, it needs to effectuate various solutions. This paper clarifies somewhat the legal situation of information openness on organization and operation of state apparatus in order to implement the direct democracy today, and thence puts forth some recommendations to change the awareness of information openness on organization and operation of state apparatus.*

Keywords: Control of state power, Transparency of information, Openness of information, State apparatus.

1. Introduction

Information openness on organization and operation of state apparatus to effectuate the direct democracy originates in the doctrines of control of state powers. Because, there is true democracy only when the state power is controlled and limited by democratic institutions, people being allowed to participate in social processes. In reality, organization and operation of Vietnamese state apparatus have still insufficiencies, unsatisfying the comprehensive requirements of good, open and transparent governance.

Annually, Transparency International (TI) evaluates the transparency index of each country by analyzing the regulations of laws, the law enforcement, and measures the feelings of people, on the basis of these indexes, countries in the world are to be ranked. On the basis of rank change during several years, one can evaluate the advance or lagging of each country. According to the survey on South-East Asia, Singapore is in the first rank of the region and is of the top group of the world. The next come Brunei (38th rank), Malaysia (53rd), and a group consists of Thailand, Philippines, Indonesia,

Vietnam (from 80th to 120th rank) (as cited in Đặng Hùng Võ, 2015).

In current conditions, renovation of state apparatus is an important measure to build the Vietnam socialist state of rule of law of people, by people and for people. To build the state of rule of law is a process of proactive and self-conscious renovation of Vietnam state apparatus *from bureaucratic concentrative administrative mechanism to an apparatus of social management by laws. A good state apparatus is the one that permanently provides every individual and social organization with exact information, and the information must be complete, easy accessible and understandable* for the purpose of the construction of a society with wealthy people and strong democratic, just and civilized country.

2. Legal situation of information openness on organization and operation of state apparatus for the purpose of current implementation of direct democracy

First, the formation of legal system of information access in the direction of "open government", having high openness and transparency on organization and operation in order to meet effectively the needs of citizens and businesses who still encounter many difficulties due to the fact that there is not effective and comprehensive legal mechanism yet for people to exercise their rights.

Right to know is one of basic rights of man, belonging to the group of civil-political rights that were recognized by the Universal Declaration of Human Rights in 1948. In recent international integration process, Vietnam Communist Party and State always pay importance to human rights and have the concrete measures to

ensure the incessant enhancement of right of people to information access, considering this as an effective solution for ensuring the enforcement of human rights in Vietnam, as well as manifesting active attitude about international integration in the trend of defending human rights and peace. *However, the exercise of right to information of Vietnamese people in comparison with other civil-political rights still encounters many difficulties due to the lack of effective and sufficient legal mechanism for people to implement their right.* In fact, in Vietnam, only until the 1992 Constitution when the right to information was referred in the regulation that: citizens "have right to be informed". Before, in the 1946, 1959 and 1980 Constitutions there was no regulation on right to information. After enforcement of the 1992 and 2013 Constitutions, many promulgated legal acts have the regulation on the right of people to be informed and responsibility of state institutions to provide information kept by state. Some central authorities have been invested with duties of releasing information including :

i) Head of supreme authority must effectuate the regulation on providing the people with information as the Article 72 of 2013 Constitution states: Laws and resolutions of National Assembly must be certified by its Chairman and promulgated by country President after at least fifteen days since the adoption by Assembly. Head of central executive organ must effectuate the mission of reporting to people the important issues through reports of Government to National Assembly, responses of Government to

interrogations of members of Assembly and to mass media.

ii) Authorities are obliged to implement the principles of openness and transparency in the activities of its organs and institutions, except for the issues that are related to state secret and other issues according to regulation of Government. Openness of information would be effectuated by various measures, among which the press is the most effective instrument.

iii) The 2007 Ordinance on implementing democracy in commune, precinct and district-level towns regulates that socio-economic information about projects of investment, duties and rights of officials... must be posted openly at office of commune People's Council and Committee, on commune's radio and through the commune heads and heads of civil groups.

Thanks to these legal regulations, people have been actually allowed to access to information on certain concrete domains such as: policy- and lawmaking, resolution of requests of citizens, operation of state, in justice and press sectors.

Secondly, system of regulations on responsibility of state organs for opening their information about state management was paid attention, but these regulations are still dispersedly kept in certain special legal normative acts and on some concrete domains, and they define the right of press to ask the related organs for providing the information about their issues.

Information openness on organization and operation of state apparatus are manifested in various legal acts. For example, Article 131 of The 2014 Law on Environmental Protection provides that the authority shall publish openly environment-related

information and ensure the facilities for people to receive information and is responsible for exactitude of information.

Clause 3 of Article 3 of Law on Promulgation of Legal Normative Acts dated 2015 provides: "To ensure the openness in making and promulgating the legal normative acts except the case of state secret contents, ensure the transparency of legal regulations." Clause 6, Article 33 of this Law defines that the institutions and organizations making laws shall "prepare the detailed bill presentation; explanation report; receive the opinions of organizations and individuals; report the evaluated impacts of the bill and publish all this documents on website of Government or of law making organ." Clause 2, Article 78 of this Law provides clearly that the legal normative act that is not published will not be valid (except the act that has state secret contents).

According to Clause 1, Article 8 of 2015 Law on State Budget, state budget is to be managed consistently, democratic-centrally, effectively, economically, openly, transparently and justly; with division and decentralization in management; having the association of rights with responsibility of management organs of all levels. According to Law on Accounting dated 2015, accounting department is responsible to provide timely, fully, accurately and transparently the accounting information and documents to related institutions and individuals according to regulations of law (Clause 2, Article 15). Law on Prevention of Corruption dated 2005 (amended in 2007 and 2010) conceives the openness as publishing and providing the official information of organs and institutions about

their documents and activities or certain issues (Clause 2, Article 2).

Law on Information Access dated 2016 defines the scope of information access as follows: Citizens have the right to access to all information of state organs according to this law, except the restricted information and information with conditioned access. Thus, the laws related to apparatus organization of state organs also regulate the openness of activities, the provision of information for people to participate in supervision of social management. Procedural laws also regulate the openness of trial. Administrative procedures of dealing with people are also announced openly by state organ for facilitating people's affairs.

Besides the information openness according to legal normative acts, state organs also fix the periodic or unscheduled press conference as well as other appropriate openness forms of information, facilitating the access of people to information created and kept by these organs.

People have been allowed to participate in policy- and law-making through the workshops, talks, opinion survey, publication of the bill on website of organ... National Assembly and Government websites have a column or forum space for citizens, organizations and businesses to discuss and express their opinions. Press also publishes the drafts of legal normative acts and organizes the forum for citizens to express their opinions. Many sessions of National Assembly debating the policy- and lawmaking were telecast live to people.

"One-gate" mechanism shortening time at local administrative institutions has facilitated transaction between citizens,

organizations and businesses and state organs. Information on administrative procedures, timetable, fees and charges in certain domains are posted openly at office of administrative organs. Many organs have taken the initiative to announce openly the procedures of business permission, certification of right to land using, construction permission, investment decisions, inhabitant status registration...

In parallel with concretization of regulations of Constitution, Vietnam State has incorporated certain regulations of international treaties to which Vietnam is a party to ensure the right to information of Vietnamese citizens and foreigners coming in Vietnam. However, institutionalizing and detailing the right to information recognized by Constitution and other international treaties into legal regulations and normative acts are still slow, not systematic, not fully comprehending all domains of living activities, lacking a concrete and simple legal mechanism, thus the implementation of information openness to citizens is still limited.

Most of existing legal instruments are limited to define the responsibility of state organs to provide information as well as the right to freedom of information as a common principle. Information openness is essentially regulated to very vague information, published later than websites and online social networks.

Due to certain insufficiencies of existing legal regulations, access to the information kept by state organs is still difficult, leading to unsatisfied implementation of openness and transparency in activities of public authorities, manifested most obviously in certain domains such as land management,

compensation for confiscated lands, favored loans, or unreturned official development assistance (ODA), disaster rescues, business aid package, stimulation of consumption. Hence, there still are the phenomena of bureaucratism, corruption, authoritarian attitude, making corrupt use of laws in state organs, resulting in people's class actions lingering and to upper level to self-defend their rights and legitimate interests.

Thirdly, there is lack of sanctions for legal responsibility as a condition for ensuring the obligation of information openness on state management.

In existing legal documents, there are not many regulations on conditions for ensuring the information openness that consist of regulations on keeping the information, technical means ensuring the open publication of information, staff for providing the information, and handling of violations related to responsibility for ensuring the right to information of organizations and individuals, these regulations are still rather vague, not concrete, not satisfying the requirements for ensuring the effectiveness of activities. These insufficiencies are manifested by the phenomena as follows:

i) Law on Information Access adopted by National Assembly on 6th June 2016, will be in force since 1st July 2018. According to this law, information must be published openly or provided when being legally required, but *almost legal documents are limited to the regulations on obligation to openly publish their information managed and kept on their website, on media, publically posted at their office or at other proper places..., and not on obligation to*

keep and manage information files ready for satisfying the demands for information, to establish and use the available websites for publishing openly the information, to establish the co-ordination between the organ that has responsibility for openly publishing information with communication and media agencies. Management and keeping of information are usually implemented by organs according to the Law on Archives, but this keeping is for management of acts and documents and not for open publication and exploitation of information.

ii) As for staff that is to be in charge of providing information, existing legal documents *do not have concrete regulations on charging a contact department or person to publish or provide information under demands.*

iii) In regard to handling of violations and to complaining related to providing information, in some domains, the law has concrete regulations on prohibited behaviors in open publication of information, on responsibility of those who are responsible for information provided by them, on acts of violation and sanctions for violation related to the charge of providing information of whom being in charge to openly publish information.

However, *in certain domains there are not yet the concrete and obvious regulations on prohibited behaviors, on the sanctions applied to persons who committed violations, on handling measures against violated responsibility of state organs for information openness as well as of related entities.* The Law on Prevention of Corruption and related acts have not established a truly effective mechanism to

ensure the right of citizens to information yet. Current Law on Handling of Administrative Violation and Civil Code have not yet obvious mechanism regulating directly the settlement of violations of right to information access, in other words, have not yet defined clearly what acts are violations of right to access to information and what sanctions will be as a result. Legal acts on the officials, official affairs, handling of administrative violations are also limited to general or insufficient regulations, so it is hard to sanction in case of failure to provide information, or provide information untimely or inexactly.

Law on complaining has not yet provided direct regulation on complaining in the case that state organs do not publish openly information, failure to provide information under demands or apply excessive fees to information access.

3. Current situation of legal implementation of information openness on organization and operation of state apparatus in order to effectuate the direct democracy today

First, according to evaluation of competent authorities, in reality the organization and operation of state apparatus of Vietnam are not enough openly published to correspond to demands of good governance and integration.

According to 130/BC-CP report of Government dated 23rd May 2012 on summarizing 5 year implementation of Law on Prevention of Corruption, the implementation of first strategy on realization of solution groups for openness and transparency in policy- and law-making has realized only 7 of 14 targets (50% of targets set forth), 5 of 14 targets deployed and 2 targets being not deployed yet. Hence,

intensification of openness and transparency of operation of state apparatus in general and of administrative apparatus in particular must be seen as top priority.

In fact, although in principle all information is open, except the information of state secret, but we always encounter a basic question: What is to be open? How is it open? And the most brain-wrecking question is that: What is the information of state secret? In present there is already a decree of Government classified what type of information is “secret”, “top secret”. But there are two questions put forth:

First, is regulation on secret level for management of information of each department and sector reasonable?

Secondly, custom to stamp the “secret” seal onto certain official documents when necessity is required is still subjective, not conforming to legal regulations.

In discussing amended Law on State Budget, one can see an unreasonable point. Many people express opinion that it must publish openly the entire draft of budget distribution for consulting people, because budget is money of people, thus they have right to participate in budget planning. But there is an opinion that this planning process must not be open because it is a “delicate” issue. Government decree on security of information in finance and budget also provides that draft of budget plan is to be secret. This is not reasonable. In principle, draft of budget plan may not be secret. Because if it is secret, it means to recognize a dubiousness in distribution of “budget pie” - the “pie” that is contributed by people! (Đặng Hùng Võ, 2015).

Secondly, certain domains of state management that have low openness and

transparency are such as: budget management; planning; plan of land use and prices of recompense for confiscated land; appointment of high officials.

Since the Law on Land dated 2013, a 2015 survey shows that after 5 years, the openness and transparency of plan of land use had trend to decline, according to which the ratio of persons who know the local plan in 2015 was only 11.8%, although the commune/precinct authorities have the duty to publish openly the local planning and plan of land use to their citizens, especially when they begin to build and put to realize the socio-economic development plan for the period 2016-2020. In Ha Tinh province, where there is a highest ratio of people who know the local plan of land use, there are only 37% of answerers who know information about the plan. Among those who know information about the local plan of land use, there is only a very small ratio (about 3%) who have the chance to contribute their opinion before promulgation of plan. There is a declining trend in the chance for people to express their opinion and for their opinion to be received. In general, the impact of planning and plan of land use to households nationwide is unfavorable, and this situation is still almost the same after 5 years. According to results of 2015 survey, the people of Điện Biên province seem to be more satisfied than those of else where by the changes in local plan of land use (Papi, 2015).

Openness and transparency are an index of development and democracy. In fact, where there is transparency, there is not place for deceitfulness and corrupt use for profit. We have already many laws and decrees related

to openness and transparency, but in reality they are very difficult to be implemented, even sometimes they are neutralized, for example the Law on Prevention of Corruption. Openness and transparency in public procurement, capital construction; in use of financial budget; and in management of state businesses... are an indispensable requirement in state management.

Inventory of assets is seen as a breakthrough of Law on Prevention of Corruption, but it is not applied effectively. Personnel management and process of post appointment are considered as very strict, but in the end people hear only an announced refrain: "it is just process"! (Nguyễn Đăng Tuấn, 2016).

4. Certain suggestions to change the conception of information openness on organization and operation of state apparatus in order to effectuate the direct democracy

In my opinion, today there are many important solutions for information openness on organization and operation of state apparatus in order to effectuate the direct democracy, but the most important problem today is to change the conception of officials about information openness.

Firt, it must increase the access possibility of people to information about public administration, because the access of people to authority and public administrative services is associated closely with transparency of administration. Accessibility to information of people is manifested in two points: right to information, and understandability and applicability of provided information (Nguyễn Đăng Dung, Nguyễn Hoàng Anh, 2012).

Secondly, it must have strict sanctions to handle legal violations in information access,

in information openness on organization and operation of state apparatus.

Thirdly, it must have a strong political determination to apply the Constitution into political life, administration and governance of country; increase accountability, strengthen transparency and promote participation of people in the process of policy-making and public management.

Fourthly, it must govern state in direction of comprehensive growth, associating the state sector with private sector in order to improve state governance, to promote deeper and wider growth, focusing on improvement of institutional environment, building the system of policies and legal acts in order to increase accountability and strengthen participation of all players in socio-economic life; improve policymaking by intensifying information access in service of decision making on the basis of evidences, promote more participation of people, strengthen transparency and increase effectively of supervision mechanism □

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