

# Constitutional Principle: The State Power is Unified and Delegated to State Agencies which Coordinate with and Control One Another in the Exercise of the Legislative, Executive and Judicial Powers

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**Abstract:** *Based on a new approach to the constitutional principle that the State power is unified and delegated to state agencies that coordinate with and control one another in the exercise of the legislative, executive and judicial powers, the paper discusses and analyses the following issues: (i) the unity of state power; (ii) assignment and coordination in the exercise of state power; (iii) control of state power.*

**Keywords:** Constitutional Principle, State Power, State Control, State Agency, Legislative Power, Executive Power, Judicial Power

## 1. The Unity: The universality of state power and its assertion in Vietnam

The unity of State power has become a universal rule. In all times, since its inception with the abolition of clanship, State power has been put on the unified mode. The unity of state power is reflected first and foremost in that a country cannot have two or more different types of State power in place in terms of nature, orientation, objectives and tools and means of enforcement. This does not even exclude a federal-structured State because the State power in the states is identical to that of the federal state, submits to the federal state and forms one entity of power. In terms of theory, there are many different explanations on the unity of State

power, but the one underscored in the popular sovereignty theory of J. J. Rousseau (1712-1778) which previously sketched by thinkers such as T. Hobbes (1588-1679) and John Locke (1632-1704) is considered to be the most complete.

These explanations have an organic combination between the recognition of people's natural rights and the popular sovereignty in a social contract. This is clearly shown in J. J. Rousseau's *The Social Contract* (1976). Accordingly, the Contract's main objective is to establish an association through which joint efforts are exerted to safeguard and protect the lives and property of each member. The association is the union of all persons, yet each member is

independent, exists as in the original state, completely free and belongs to him/herself. According to J. J. Rousseau, power is indivisible but State power and sovereignty must belong to the people; Legislative, executive, and judicial powers are only specific manifestations of the people's supreme power. Thereby, all members of the State, from old to young, need to participate in state management by forming a "common will" in people's conventions. However, according to him, big countries can establish common representative bodies to manage the affairs of the country on behalf of the people (See: Williams, 2014: 45-50).

Today, the assertion of people's power is a uniform and consistent view expressed in the Constitutions of most countries in the modern world. The characteristics of unified state power include as follows:

- Unity in social nature. State power is an expression of the unification of will and interests of social classes and strata under concepts and ideas that essentially embed the harmonization of interests of different societal classes toward the most fundamental and key goals.
- Unity in objectives and organizational and operational orientation of State power.
- Law-based Unity. Bodies with State power are organized on a uniform legal foundation: a Constitution, a legal system, placed in a common trajectory of the national interests.

The reality of many political regimes in countries around the world has shown different approaches to the unity of State power, although they have not lost the original nature of that unity. The idea of unification may be abused to establish totalitarianism, but it can also be used for

social consensus. Unification of power as the unity of principle-based goals and direction in the functioning of State bodies can be of high value for intensification of efforts of the State and society in solving the country's complicated problems. The renewed wave of constitutional amendments, reforms, and institutional reforms around the world in the past few decades has shown a prominent trajectory in which countries try to find ways to express interests for social consensus for the sake of development, especially in the context that racial, religious, economic and political conflicts are on the rise in many regions of the world.

In Vietnam, the social unity of State power has been asserted in all Constitutions. According to Article 1 of the 1946 Constitution: "All the power in the country belongs to the entire people of Vietnam, regardless of race, ethnic, man, woman, rich, poor, class, or religion"<sup>1</sup>. "All state power belongs to the people" was continuously provided in the following Constitutions: Article 4 of the 1959 Constitution<sup>2</sup>, Article 6 of the 1980 Constitution<sup>3</sup>, Article 2 of the 1992 Constitution<sup>4</sup>, and Article 2 of the 2013 Constitution<sup>5</sup>.

<sup>1</sup> See: [https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=536](https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=536), accessed on 20/01/2021.

<sup>2</sup> See: <http://vbpl.vn/TW/Pages/vbpq-luocdo.aspx?ItemID=889>, accessed on 20/01/2021.

<sup>3</sup> See: [https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=1536](https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=1536), accessed on 20/01/2021.

<sup>4</sup> See: [https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=22335](https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=22335), accessed on 20/01/2021.

<sup>5</sup> See: [https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=28814](https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=28814), accessed on 20/01/2021.

The concept “people” refers to a community of all individuals in the society, despite differences in social composition such as ethnic groups, socio-political activities, private, religious views, gender, profession, etc., but come together, rise above social differences to come up with and implement a will, a direction, a goal for the development of the community and country. Therefore, speaking of “wills and aspirations of the people” is referring to the common will, common goal, not the will and goal of one or some separate components of the society. Speaking at the Inaugural Ceremony of the National Assembly of the Democratic Republic of Vietnam elected in the historic 1946 General Election, President Ho Chi Minh declared: Representatives of this National Assembly are not of any party but the entire Vietnamese people. It is the solidarity that shows that the forces of the entire Vietnamese people have “united into one”<sup>1</sup>. The unity of State power in Vietnam reflects and originates from the unification of national development directions and goals, expressing the will and interests of the Vietnamese people and ethnicities. Such general direction and goals are realized officially and unambiguously in the Constitutions. The 2013 Constitution defines: “The Vietnamese people frame, implement, and protect this Constitution for the objectives of prosperous people and a powerful nation, democracy, justice and civilization” (Preamble)<sup>2</sup>.

<sup>1</sup> See: <http://quochoi.vn/70qhvn/lichsuQHVN/Pages/bac-ho-voi-tong-tuyen-cu.aspx?itemID=30492>, accessed on 20/01/2021.

<sup>2</sup> See: [https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=28814](https://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=28814), accessed on 20/01/2021.

Thus, the unity of State power is clearly defined through the determination of the unification of social nature and the direction and operational objectives of State power in our country. The unity of power is expressed through the following factors: the people are the sole power-holder; the people delegate to the State to exercise the power recognized by the Constitution and retain the right to directly exercise state power; the people have always been the holder of the right to control the power of State bodies in legislative, executive, and judicial activities; The control of power by the people is done first and foremost by observing the will and interests of the people in the lines, policies and laws of the State, in the organization and operation of the State bodies and the conduct of State officials.

This can be considered a very important finding from the perspective of power control. The phrase “the people inspects, scrutinizes and controls the State power” includes the following factors: the subject of power control is the people; the object thereof is the State and its activities; The basis, therefore, is the will and interests of the people.

## **2. The Delegation and coordination between legislative, executive, and judicial bodies - A color gamut in the history of state power organization**

Both in theory and practice, the unity of State power by nature does not exclude but requires the delegation and coordination of power as two sides of the same coin. For that reason and even J.J. Rousseau and later F. Engels (1820-1895), one of the two founders of Marxism, on the one hand, asserted the sovereign power of the people,

on the other hand, did not deny the necessity of a reasonable separation mechanism (K. Marx and F. Engels, *Complete Works*, vol. 18, 1995: 421).

The history of modern political-legal thought and the practice of State power organization has seen a tireless search for mechanisms to ensure the combination of these two elements in the State power mechanism. Even in the power separation mechanism, the historical practice has shown very different colour gamut and levels of expression in different countries and regimes. France - the home of Baron Montesquieu - during the period from the Third to the Fifth Republic did not have a blueprint for a complete power separation mechanism compared to the design of the U.S. democracy. Vietnamese legal doctrines in particular as well as in the former socialist countries and the Marxist legal doctrine in general do not completely deny the issue of power separation, but only consider it as the assignment of functions and tasks between state bodies. Legal science receives that idea from Marx's assertion that: the power separation is nothing but the ordinary division of labour applied to the state apparatus for simplicity in management, inspection and control. In depicting the separation scheme, Montesquieu himself likened it to a choir (Pouvoir executive, Pouvoir legislative et Pouvoir jurisdictionnel en France-Paris, 1993). In theory and practice in the exercise of State power, the presence of one power in the realm of another power is completely possible and necessary. For example, the National Assembly authorizes the government to issue legal documents and law enforcement agencies normally enact normative documents and decrees with legal

effect. In contrast, it is not always the case that the National Assembly's documents are of executive and managerial effects. For example, the U.S. Congress normally enacts separate laws on specific governance issues. And when the courts decide on the unconstitutionality of a law, invalidating that act, it is a legislative action. In the U.S., the impeachment of Congress against the President and senior figures of the State, the amnesty power, etc. are manifestations of the judicial function, although it is not an activity of such. These are ways in which one power branch penetrates the sphere of another to control it toward a common orbit. In his power separation scheme, although Montesquieu does not mention the notion of coordination between branches of State power, it is clear that the above analogy already reflects it. The substance of power coordination, in addition to the delegation and separation of power, has the following important elements:

- Coordination requires the preclusion of non-authorized interference of a power branch (or agency) with the action of the other.

- Coordination is mainly supportive: When an agency, under certain conditions cannot perform its functions and tasks by itself, can request the agency of another branch to support the implementation.

Different colour gamut and levels. Variations of the delegation and coordination in the exercise of State power derive from national, ethnic and regional features. Those are the manifestation of the application of the general principles to specific contexts considering the characteristics of the national development process, related to the level of development and improvement of the

organizational and operational mechanism of the State apparatus, the particularity of the society, the economy... In addition to the factors that are considered to be objective, researchers also pay special attention to the subjective factors that bring about specific features in the power separation mechanism in each country. For example, the opinion of the ruling faction, the academia to accept or not the theory of separation, or if accepted, which points to be accepted, removed, valued and emphasized in that theory (See: Ladd, 1989: 108; Nippon, 1993: 19).

In Vietnam, the first model for the government of the Democratic Republic of Vietnam is a unique one designed in the 1946 Constitution with elements such as The People's Parliament (National Assembly) is a body vested with the highest authority of the Democratic Republic of Vietnam. In other words, it was a parliamentary model with the paramountcy of the people's representative body: The 1946 Constitution continued the direction in which the Parliament would elect a Government consisting of the President and the Cabinet headed by the Prime Minister. However, this "parliamentary journey" has a turn, which is the provision:

- a) The government is the "highest administrative body of the country" (Article 43).
- b) The President is also the member selected in the People's Parliament, acts as the Head of Government, Chair of the Government Council and "shall not bear any responsibility, except for committing treason" (Article 50).
- c) A provision on judicial bodies including the Supreme Court, Court of Appeal, Secondary and Primary Courts. During

trials judges only obey the law, other agencies are not allowed to intervene (provided in Articles 63-69).

The above provisions of the 1946 Constitution of the Democratic Republic of Vietnam show that the "turn" from the classic parliamentary model was married with the presidential regime. This model created three independent branches of power: Parliament - the highest authority of the country, the Government - the highest administrative body of the country; independent judicial bodies. Accordingly, the Parliament exercises the legislative power and is the highest representative body of the people; has the power to form the Government, elect the President and the Prime Minister; vote to approve the Cabinet member list proposed by the Prime Minister. The Parliament also has the right to vote on the confidence of the Cabinet, has the right to interpellate the ministers, if voted non-confidence, the Cabinet, as well as individual ministers, shall resign; It has the power to set up a Special Court to try the President, the Vice President or the Cabinet staff. However, the Parliament can only vote on confidence when the Prime Minister, the Standing Committee or a quarter of the total number of members of Parliament submit the motion. Within 24 hours after the Parliament has voted non-confidence on the Cabinet, the President is authorized to resubmit the issue of confidence for deliberation. The second discussion must be 48 hours away from the first. After the deliberation, the Cabinet has lost confidence shall resign (Article 54 of the 1946 Constitution).

This is a very strict legal procedure governing the relationship between the legislature and the executive in Vietnam

during that period. It concurrently ensures the ability of an elected body to control the executive and demonstrates the independence of the executive body, an institution which, as the Constitution (Article 54) states, “shall take responsibility for its political path”. The government, as “the highest administrative body in the country” (Article 43) has an independent and unique position. First of all, it is the position of the head of this agency, the President. Despite also a member of the Parliament, the President shall not answer to the Parliament, nor take any liability, except for treason (Article 50). The Cabinet is formed collectively according to a general list proposed by the Prime Minister to the Parliament for approval, while the Prime Minister is responsible for the operation of the whole Cabinet. As noted above, the Parliament has the right to vote in the confidence of the Cabinet, but the Parliament can do so only when the Prime Minister, the Standing Committee of the Parliament or a quarter of the total number of members of Parliament submit the motion. At the same time, the Constitution provides for such a unique procedure (Article 54). Although the 1946 Constitution does not clearly define the possibility where the second voting result differs from the first, it is understood that, if it is the case, the views of the President and the Government and the Cabinet are approved by the Parliament. Also for the legislature, in particular, concerning laws that are enacted by Parliament, within 10 days the President has the right to request the Parliament to re-deliberate. The laws subject to re-deliberation, if still approved by the Parliament, shall be announced by

the President. Put differently, due to the re-deliberation, the views of the President, the Government and the Cabinet are approved by the Parliament.

It can be said that the 1946 Constitution has thoroughly asserted the principle of popular sovereignty and applied the most fundamental and important cores of power separation theory and the historical experience of the world in the “art” of organization and operation of state power. However, the 1946 Constitution of Vietnam did not fully adopt the power separation theory in Montesquieu’s vision of “checks and balances”. That is reflected in the fact that although it is very clear that the Parliament is the legislature, the Government is the executive, the judiciary is independent Courts, but still, it considers the Parliament as “the supreme organ”; Ministers are accountable to the Parliament for the promulgation of decrees of the Government, ministers must resign from their posts given parliamentary non-confidence; There is no judicial mechanism to judge and rule on Parliament laws or government ordinances. The centralization, bureaucracy, and subsidy mechanism of the following long period in our country led to the assertion of the centralized power regime. All versions of the Constitution of Vietnam during this period affirmed that the National Assembly was the highest body of State power; even the 1959 Constitution (Clause 17 of Article 50) and the 1980 Constitution (Clause 15 of Article 83), when speaking of the National Assembly, have provided that the National Assembly has the right to “set for itself other duties and powers, when necessary”. The 1959, 1980 and 1992 Constitutions all identified the Government as the executive

organ of the National Assembly (Article 71 of the 1959 Constitution, Article 104 of the 1980 Constitution, Article 109 of the 1992 Constitution); The Court has the functions of adjudicating, responsible and answering to the National Assembly and People's Councils at corresponding levels (Article 104 of the 1959 Constitution, Article 136 of the 1980 Constitution, Article 135 of the 1992 Constitution), while still asserting the principle that judges are independent and only obey the law.

Since 2001, after being revised, the Constitution has set a new direction in developing and strengthening the State power mechanism in our country. However, the following development of that mechanism even in the Constitution and the State institutional system has not been detailed in terms of the design of the delegation and coordination mechanism. Take one of the various legal issues on the relationship between the legislature and the executive as an example, the limitation of law- and regulation-making through the legislative authorization mechanism. Both the 1980 Constitution (Article 82) and the 1992 Constitution (Article 83) have identical provisions on the power of the National Assembly: "The National Assembly decides basic policies on domestic and foreign affairs, socio-economic tasks; national defence and security, key principles on the organization and operation of the State apparatus, social relations and activities of citizens". This provision is highly metaphysical, it is still possible to conceive of an omnipotent National Assembly. Perhaps that is the reason for the existence of a legislative authorization mechanism, under which many laws are enacted but with flimsy

enforcement and difficult to come to life, subject to amendment and supplementation for many times in a short period, many await the decrees to be implemented. The situation of decree "debt" is pervasive today, while we do not have a proper legislative authorization mechanism. The delegation and coordination between the National Assembly and the Government are most evident in the legislative process. Most of the draft laws are submitted to the National Assembly by the Government, and then the appraisal and deliberation in the National Assembly belonging to the committees of the National Assembly. However, the Government still has little room to defend a bill in the event of a discrepancy between the views of the National Assembly and those of the Government, which, on the other hand, must be received, revised and resubmitted by the Government through the drafting board in the next sessions of the National Assembly according to the appraisal results of committees of the National Assembly (Article 72 of the Law on Promulgation of Legal Documents in 2015<sup>1</sup>).

Power delegation and coordination have also taken certain shapes given the position shift of the Court - the body vested with the judicial power. From the view that the Court and Procuracy shared the mandates of safeguarding socialist legality, defending the socialist regime and protecting property, life, freedom, honor and dignity of citizens, to the point on the separation of the duty of these two bodies with the provision on the Court as the body exercising the judicial power, "has the duty to safeguard

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<sup>1</sup> See: <http://vbpl.vn/TW/Pages/vbpq-van-ban-goc.aspx?ItemID=70800>, accessed on 20/01/2021.

justice, protect human rights, civil rights, the socialist regime, the interests of the State, the legitimate rights and interests of organizations and individuals” (Article 102 of the 2013 Constitution); from making the Courts at all levels accountable and report to elected bodies, to reserving that responsibility exclusively to the Chief Justice of the Supreme People’s Court (Article 105 of the 2013 Constitution); from just stating the principle during trials judges and assessors shall be independent and only obey the law to “prohibiting agencies, organizations and individuals from interfering with the adjudication of judges and assessors” as an important guarantee for the independence of judges and assessors, which entails responsibility, including criminally (for example, Article 372 of the Criminal Code<sup>1</sup>) for a violation of that prohibition; from violations of executive and official activities handled solely within the framework of that system to the establishment of judicial procedures to hear administrative cases under petitions of individuals, agencies and organizations in administrative courts (Law on Administrative Procedures 2010<sup>2</sup>). Apart from the regulation that during trials judges and assessors shall be independent and “obey only the law”, the Constitution has for the first time given the Supreme Court the power of “summarizing the trial practice, ensuring the uniform application of the law in adjudication” (Article 104

of the 2013 Constitution) and accordingly the 2015 Civil Code<sup>3</sup> considers case law and equity as a legal source (Clause 2, Article 6) and stipulates the Court shall not refuse to settle a civil case in an absence of applicable laws (Clause 2, Article 14 of the 2015 Civil Code), but shall rely on customs, an analogy of law, and basic principles of civil law, case law and equity for settlement. The above article shows the new independent status of the Court that was not previously available.

### **3. Control of power - The Principle of the use of power and the variety of forms**

#### *3.1. On the scope of power control*

The term “control” is used in sociology to denote the need for consolidation and strengthening of social institutions. Sociologists have shown that any society needs to control, even if it is the smallest unit of society, for example, a group of people wandering on the street and wanting not to be lost (Bernard, Thompson, 1970: 125). Social control is understood as a special mechanism used to maintain social behaviour through the use of factors including social norms, social sanctions and social authority.

Thus, control from the behavioural perspective is the set of mechanisms and institutions to ensure observance and compliance with the rules of conducts, including morals, laws, etc. Social control is the most effective tool so that social institutions can be organized and functioned normally.

In the broadest and most general sense, power control is a type of power activity that shows the relationship between a power

<sup>1</sup> See: <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=122854>, accessed on 20/01/2021.

<sup>2</sup> See: [http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&mode=detail&document\\_id=98569&category\\_id=0](http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=98569&category_id=0), accessed on 20/01/2021.

<sup>3</sup> See: <http://vbpl.vn/TW/Pages/vbpq-van-ban-goc.aspx?ItemID=95942>, accessed on 20/01/2021.



holder and its object to monitor and inspect the performance of tasks and functions and authority, ensuring that the object must be in the trajectory of the power requirements defined in the Constitution, law and other requirements of the power holder. The above general concept of power control can be understood in different aspects and levels.

When we use the concept of “power relation”, it not only implies the relation of power from top-down, command and obedience but also denotes the nature of the mutual relationship between the power holders. For example, in a power structure, the control of power through forms such as voting, referendum, removal of delegates, etc., are manifestations of power relations of the powerholders - the people, the owner of State power, and State agencies and institutions authorized by the people; while the control in “checks and balances” mechanism is the mutual control between power institutions, not the top-down power relation, the command - obedience. Power control can be either a one-way or another operation according to the principle of interaction. Regardless of any forms, one-way or another, the control always reflects the power of the holder over the object, the requirement on the subject of power control over the object thereof.

That depends on the feature of the political regime. In a non-democratic regime, power control is always one-direction activity from the power holder: The State controls the society, the top controls the bottom. In a democratic political regime, power control is the expression of the functional relationship between the State and society. The State control over the society denotes the governance of the society, but the

society and social institutions also have the power to control State power. Within the state apparatus, there are also two types of control: not only top-down but also mutual control with interdependent separation power mechanism.

Along with the concept of power “control”, are there two other commonly used concepts: inspection and scrutiny? Thus, between these three concepts, what are commonalities and particularities?

In political practice and state management, the concepts of examination, scrutiny, inspection and control are often understood and used interchangeably sometimes due to the word practice, but also other times they can approximate the true nature of power action. For example, in Vietnam, we normally understand inspection as a function of the Party Inspection Committee, but according to the Statute of the Communist Party of Vietnam, the Inspection Committee has the function of scrutiny; scrutiny is both an “authority” and a “mandate” of the National Assembly, the National Assembly’s inspection is nowhere in sight. But in reality, the “delegations” of the National Assembly, the supervisory delegations of the National Assembly not only scrutinize but also inspect and appraise the actual situation in localities, units and sectors. In addition to the commonality of the concepts’ substance, several characteristics make it easier for us to use these closely related concepts.

Firstly, on the level of performance: Inspection can be understood as the examination and assessment of an incident in any field and level and to a general or certain extent. Meanwhile, also based on review and assessment, but conduct

from the outside, and only in that case, is considered as scrutiny. This should be regarded as the most basic manifestation of inspection, including power scrutiny. Hence, the concept of “inspection” has a broader connotation than “scrutiny”.

Secondly, on the object of assessment: In the field of power, the term “inspection” is often used in cases where it is necessary to assess the reasonableness, or the legitimacy, or both of such cases. Meanwhile, “scrutiny” is only used to consider and assess the legality and constitutionality of power enforcement. For instance, Congress oversees law enforcement. Whether the Procuracy’s oversight of judicial activities is consistent with the procedural laws or not, the application of the law on criminal charges and the Court’s determination of applicable penalty, etc. From the look at each area of power activity, inspection activities are common in executive bodies and regulators. Because, as just mentioned above, in the operation of the executive and regulatory bodies, the focus is on assessing the correctness and reasonableness, and followed by the legitimacy of decisions, administrative and management affairs. Therefore, it is understandable that agencies without a major managing function do not possess the general inspection function. For instance, the Procuracy (or prosecutor) is not a state administrative agency, thus its functions do not include inspection but scrutiny: to scrutinize other agencies.

Thirdly, on legal consequences: Inspection activities must result in legal consequences with the application of sanctions: administrative and material sanctions. Meanwhile, scrutiny results only entail recommendations or suggestions, or at most,

suspension of the validity of the normative document or decision. For example, the Procuracy’s petition in the event of negative results is discovered in the administration of judicial affairs. In countries with a constitutional review, that body shall decide on the unconstitutionality of the regulation of conduct and thus suspended from effect.

Fourthly, in terms of enforcement entities: The agencies with the inspection function lies within the executive system, while scrutiny often underlies the operation of the representative bodies: Parliament (National Assembly), local self-governing councils.

Fifthly, given that all activities that are regarded as inspection or scrutiny are of a common strait in monitoring, assessing, and influencing the object with a common aim to keep it in the trajectory of the requirements and demands of power, therefore, both are manifestations of a type of common power activity known as power control. Thus, control is a general concept, including inspection and scrutiny. However, if derived from the requirement of “monitoring”, “assessment”, “influencing” the object and for “keeping the object in the trajectory of the requirements and demands of power”, then power control also indicates much more broadly.

If the substance of power control is to monitor and assess the process of power activity, the fundamental purpose of power control is to ensure that power activities are carried out according to their mandates, duties and authority, consistent with the power authorization (political lines, policies, laws). Power control ascertains to establish effectively the relationship between the subject and object of the power, bridging the entire process of power enforcement.

Hence, power control can be conducted at any stage of the exercise of power.

The primary objective of power control is to ensure that it is properly and effectively exercised. Only in certain cases will power control be aimed at preventing and eliminating wrongdoings and violations. It is necessary to overcome the view that reduces the objective of power control to merely violations. Therefore, the control of power can be compared to the practice of football referees in watching the course of the game and only blowing the whistle in case of a violation, given that the referee's function is to ascertain the game to play out under its established rules.

The institutions that control power are considered to be a kind of power because the activity of inspecting, supervising, and controlling power is their main mandate and for that reason, they exist. It is thus very important to delineate between control and scrutiny. If inspection and scrutiny are for leadership, management, administration, or to perform a certain key function, such functions of inspection and scrutiny are not considered a manifestation of independent control. For instance, law enforcement agencies also have the authority and conduct scrutiny and inspection. The Court's cassation adjudication function includes judicial examination, to exercise judicial powers; The Parliament's impeachment procedure over the executive's activity is to exercise the Parliament's powers of oversight, etc.

### *3.2. Forms of power control*

#### *a) Power control through the People - State channel*

The content of Clause 3, Article 2 of the 2013 Constitution of Vietnam only mentions

the power relationships within the State apparatus but does not imply other forms of control over the State apparatus. The concretization of the people's prerogative to control power materializes in the legal mechanism for removal (or dismissal). All the Vietnamese Constitutions provide for such a prerogative of voters (Article 20 of the 1946 Constitution, Articles 5 and 6 of the 1959 Constitution, Article 7 of 1980, 1992, and 2013 Constitution). Power under control is reflected in the requirement that political power and state power must always lie at the heart of the people's interests, without departure from the ideology and the path upon which the people have embarked. One of the most effective and universal power control mechanisms in all nations, regardless of political regime, is the control from social institutions, public opinion and citizens. For a mechanism to control power from the citizen's perspective, the "right to know" or the right to information transparency is an effective and common mechanism.

For the control of State power, the institution of human rights and citizens' rights in the socialist rule of state law is also very important. Clause 2, Article 14 of the 2013 Vietnamese Constitution affirms: "Human rights and citizens' rights shall only be restricted when prescribed by law in imperative circumstances for the reasons of national defence, national security, social order and security, social morality and community well-being". This provision shows that the constitutionalization of human rights and citizens' rights in the 2013 Constitution has closely followed the provisions of the International Human Rights Law.

An important guarantee for the protection of human rights and citizens' rights, also the most important and solid safeguard for human rights and citizens' rights to prevent violations by the procedure-conducting agencies, is the realization and recognition of the principle of presumption of innocence. This is the most "classic" principle of criminal procedure recognized in many important international documents such as the 1948 Universal Declaration of Human Rights (Article 11.1)<sup>1</sup>; The 1966 International Convention on Civil and Political Rights (Clause 2, Article 14)<sup>2</sup>. In particular, the aforementioned Declaration regards this principle as "the dignity of human civilization". The 2013 Vietnamese Constitution provides: "A defendant shall be regarded as innocent until the crime is proved following legal procedure and the sentence of the Court has acquired full legal effect" (Clause 1 Article 31). With this principle, the 2013 Constitution of Vietnam has established legal safety for citizens throughout their lives and activities.

*b) The Role of power control by the mechanism of power delegation and coordination*

This mechanism contains three issues to be continually placed at the heart of the power control mechanism. The first is the delimitation of legislative powers between the National Assembly and the Government; The second is to ensure the independence of the judiciary, and the third is the establishment and operation of

independent constitutional institutions. The 2013 Constitution of Vietnam provides the National Assembly's authority to "decide on important matters of the country" (Article 69) without giving a list of matters as in the 1992 Constitution: "The National Assembly decides on fundamental domestic and foreign policies, on national socio-economic, defence and security tasks and the main principles governing the organization and functioning of the State apparatus and the social relations and activities of citizens". Such an exhaustive list seems concrete but very abstract, is only consistent with the concept that the National Assembly is an omnipotent institution in the former socialist centralized model. The provision of the 2013 Constitution - the National Assembly "decides significant national affairs and exercises supreme control overall activities of the State" (Article 69) - will be the constitutional ground for concretization under the laws corresponding to the role of the National Assembly in each period, not as an omnipotent body as in the 1992 Constitution.

From the perspective of power control, the determination of the legislative limit of the National Assembly and the executive power of the Government will lay the foundation for the following definition in power relations: The limit of the National Assembly - the legislature in honouring its responsibility in bringing the people's will, the Party's lines and policies into laws. It can be said that the untimely legal governance of existing social relations is a manifestation of bureaucracy on the legislative level in the urgent need for legal order and environment - the first basis for the legal safety for the people and the sustainable development of the country. It is also the

<sup>1</sup> See: <https://thuvienphapluat.vn/van-ban/Quyendansu/Tuyen-ngon-quoc-te-nhan-quyen-1948/65774/noi-dung.aspx>, accessed on 20/01/2021.

<sup>2</sup> See: <https://thuvienphapluat.vn/van-ban/Linh-vuc-khac/Cong-uoc-quoc-te-ve-quyen-dan-su-vachinh-tri-270274.aspx>, accessed on 20/01/2021.

expression of the State's responsibility to reflect the interests of social groups and strata. From the view of the executive, the determination of a clear legislative limit is an important condition for executive action not to "encroach upon" legislative activities. Because, as noted above, a fundamental part of the legislative jurisdiction is concerned with human rights, citizens' rights, the most fundamental interests of the State, thus, the "encroachment" upon legislative activities from the executive body is not merely a violation of authority, but more than that, this is a risk for violations of human rights, citizens' rights, national interests. A clear delimitation of legislative power will be a condition for assessing the autonomy and effectiveness of executive affairs, as well as the legitimacy of decisions and conducts in the executive sphere.

Independent judicial power is a precondition to perform a very important function of state power, which is to apply the proper laws to rectify violated rights and interests and ensuring justice in legal disputes. Judicial power, whose central subject is the Court, has the role of upholding and maintaining justice, legal safety, constitutional and legitimate rights of people and citizens. The two fundamental mandates of the Court in the state power system include legal protection and rectification for violated rights. Without the independence of the Court, follow no justice and no people's trust therein.

To ensure the principle of independence, the 2013 Constitution made a remarkable change. Accordingly, there is no longer a provision that the Chief Justice of the local People's Court is responsible to the People's Councils (Clause 2, Article 105); additional provisions: "strictly prohibit

agencies, organizations and individuals from interfering with the trials of judges and assessors" (Clause 2, Article 103). The court must be freed from the role of pursuing the objective truths of the case and thus the prosecuting role. The fact that the Court may return files for additional investigation under Article 179 of the 2015 Criminal Procedure Code of Vietnam is a sign of a violation of an important principle in adversarial procedure: A procedure-conducting entity shall perform only one procedural function. Courts in adversarial proceedings only adjudicate to the degree and extent of the charge under the principle of "nemo iudex sine actore" - no trial without the claimant! To play a central role, the Court's adjudication must meaningfully create the space for the parties to freely debate, freely presenting the views and evidence: the prosecution as well as the defence. The Court must be the central subject of the proceeding in the sense that it can facilitate all the conditions for such proceedings. Only in the adversarial criminal proceedings can the central role of the Court be underscored, more precisely, it is the central role of the trial and vice versa, it can only be spoken of the central role of the trial when the adversarial elements are fully established.

It is possible to return to the argument on the function of power control with the assertion that inspection and scrutiny are the apparent functions in state power institutions, but given the needs and nature of power, it is a necessity to have several institutions in which the function of power control is dominant. The particularity and universality of the subject of power oversight make the institution's independence and specialization, preventing it from being

confused with any branch of power. That is the reason for the emergence and recognition in the Constitutions of many countries around the world about specialized, independent constitutional institutions. The independence of specialized constitutional institutions does not mean that they will no longer have connections with other branches of power. Independent constitutional institutions, even in their sphere, must always be linked with other branches of power and to a certain extent subject to scrutiny from those branches, even though they have the function of overseeing those organs. That is the feature of the dominion of power in any nation. Independent control institutions cannot be an exception and are also an element of the checks and balances mechanism. The conclusions and judgments of the supervisory agencies do not give rise to general normative rules, nor sanctions against wrongdoers, abolition of documents of relevant State agencies. It is an important guarantee that supervisory agencies armed with authority are not abused their authority to interfere with the functions and authority of other State organs. Assuming that, a power control agency has the authority to issue a decision to prosecute the wrongdoer, has the power to amend and abolish documents of another agency that are considered to

be unconstitutional, illegal or ineffective, it would by chance displace the functions of the legislature, the executive and the judiciary. Hence, the Constitutions and laws of countries around the world do not provide enforcement powers for the agencies with control mandate. Otherwise, it would be a violation of the principle of checks and balances between bodies of state power □

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He concurrently assigns tasks to the Institute of Social Sciences Information, as the management agency of the Library of Social Sciences - the VASS central library; to member libraries, to the Planning and Finance Department on advising, implementing and

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