

ISSUE OF RELIGION AND BELIEF IN THE 1992 CONSTITUTION IN VIETNAM - FOUNDATION FOR AMENDEMENT

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1. Introduction

The 1992 Constitution of Vietnamese Socialist Republic was adopted on April 15th, 1992 in the 11th session of the 8th National Assembly of the Socialist Republic of Vietnam. Comparing to previous Constitutions, the 1992 Constitution has new contents. These contents show renewal thinking of Vietnamese Communist Party and the State on many levels from economy to society, including religious and belief level. The 1992 Constitution affirms in Article 70 of Chapter 5 (Fundamental Rights and Obligation of Citizens)

“Citizens have the right to freedom of belief and religion to follow or not to follow any religion. All religions are equal before the laws.

The places of worship belonging to beliefs and religions are protected by the law.

No one is allowed to encroach on the freedom of belief and religion or to take advantage of belief or religion in order to abuse the laws and policies of the State”

Since then, we have tried to institutionalize Article 70 and carried out the 1992 Constitution as well as many documents relating to religious and belief practices of our people in general and the relation between the State and religious organizations in particular.

However, many contents of articles on religion and belief seem to correspond with the realities of religious and belief life as well as with International Convention on Religion and Human Rights any longer. Moreover, the building of law state and the development of religious liberty have set up legal problem that we have to pay attention to.

In order to have necessary foundation for amendment to the most important legal document, we give some opinions as follows:

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1. The religious matters in the forms of Constitutions;
2. The analysis of structure and content of Article 70 of the 1992 Constitution;
3. Some features of institutionalization and implementation of Article 70 of the 1992 Constitution in Vietnam: Achievement and some problems that have been set up;
4. Trying amendment to Article 70.

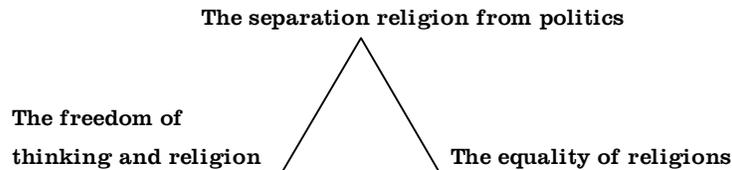
The following are concrete contents of this article.

1 The religious matter in the forms of Constitution

First, we would like to say that category ‘belief, religion’ in Constitution as well as in *Ordinance on Belief and Religion* (2004) is a suitable expression in Vietnam. After reading Constitutions of many countries in the world, we find that the category ‘belief, religion’ should be called as *religious matter* (in Constitutions of other countries, including famous Declaration of Human Rights (1948), category of ‘religion, belief’ is divided into triple category: freedom of thinking, freedom of belief and freedom of religion. It is convenient for statement I use the word - combination *religious matter*).

In the world, there are many countries following the model of secular state. It means a nonreligious state. However, there are still some countries following the model of state - religion. These countries do not accept the model of legitimate state and civilization, for example, Iran, Saudi Arabia...

On *religious matter*, the Constitutions of secular states affirm *the right to freedom of religion and the separation of State from Churches*. J. Bauberot, a French famous scholar on Secularism, has designed two above rights. On other words, he has designed the secular state as follows:



Of course, it is a complicated matter. When drafting elementary articles on freedom of religion in Constitutions, they often care about necessary elements. However, it is most difficult for secular states to solve the relation between state and religion in their constitutions. The description of above important

contents depends on political tradition, psychological and social features of each country.

On structure of description: *the right to freedom of religion and the separation of State from Churches* has expressed by some forms:

The first form is general description and “from side of State”.

The Constitution of United States is the typical case. The first Amendment of the American Constitution: “*Congress shall make no law respecting an establishment of religion, or prohibiting the freedom of cult*”⁽²⁾.

Among many articles *on free implementation* there are articles on “the wall of division” to regulate the boundary between religion and government. In its limit, religion can do everything without intervention of government. On the other words, the government does not intervene in the self-governing right of church and its relation with legal rights⁽³⁾.

France is a special case. The 1958 Constitution of France defines that *France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law without distinction of origin, race or religion*⁽⁴⁾.

Recently, some articles were supplemented to the law, which dated November 2004 *on the model of neutral secular state*: “*No one may take advantage of the religious belief to consider him as not bound by the common rules that govern the relations between public institutions and individual citizens*”. Here, we do not discuss the difference of philosophical ideas and history of two countries -

² For the important article of the Constitution of the United States, see: *Law and Religion: A Panorama of Nation, International and Comparison* by W. Cole Durham, JR and Brett G. Scharffs, 2012.

³ This is a complicated matter of the model of secular state in the United States. It is suitable with a “religious nation”, but it typifies model of civil religion. See: *A Relationship between Church and State in United States (and its effects on Church's Autonomy)* by Carl H. Esbeck in the book “*Religion and Society in United States*” (2005).

⁴ It is noted that the Article 10 in Declaration of Human Rights and Right of Civilization of France affirms that “No one shall be disquieted on account of his opinions including his religious views, provided their manifestation does not disturb the public order established by law”. The Preamble to the 1946 Constitution of France wrote that “No person may suffer prejudice in his work or employment by virtue of his origins, opinions or belief... The provision of free, public and secular education at all levels is a duty of the State”. According to F. Messner, the principle of secular already had constitutional value before its inclusion in the 1946 Constitution and was already in force when the local religious law was confirmed by the legislative power. The principle of “secular” which is mentioned in Article 2 of the *Law of Separation* (December 9th, 1905). This principle is sometimes interpreted extensively to support the idea that the public financing of religions is illegal.

The institutionalization of the rights to freedom of religion in Constitution is a long process.

France and the United States. These countries were typical countries of bourgeois revolutions in the 18th century. The well-known Declarations of Human Rights were born in these countries. The difference of two countries' Constitutions on religious matter is that there is a sentence "*the human rights came from God*" in the United States. It does not aim to give power of to any particular church. On the contrary, in France, Catholic Church hold an important position, so the determination of the right to freedom of religion in the 1789 Constitution aims to resolve the relation between State and Religion⁽⁵⁾.

Although there are some differences, this description is similar to description of Article 18 of the Universal Declaration of Human Rights (1948): "*Everyone has the right to freedom of thought, of conscience and of religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, worship and observance*".

The popularity of *the Universal Declaration of Human Rights* is evident truth. Legally, this document is considered as the model and general document although it only deals with the right to freedom of religion and belief.

The second description: there is another description on the right to freedom of religion in Constitutions of some countries. This description has both its own principle and concrete clause. For example, Article 2 in first chapter of Iraqi Constitution (2007) affirms:

Islam is the official religion of State and it is a fundamental source of legislation.

a- No law may be established that contradicts the established provisions of Islam;

b- No law may be established that contradicts the principles of democracy;

c- No law may be established that contradicts the rights and basic freedoms stipulated in this Constitution⁽⁶⁾.

Iraq is the special case of secular state. This article shows that state tries to harmonize between matters that Islam is the official religion of State with the respect of the principles of democracy and the basic freedoms of citizens.

The Chinese case is also noted. The Constitution of China reflects the views of Communist Party of China; on the one hand, it reduces emphasis of atheistic

⁵ See: J. Bauberot. *French Laicization in the Worldwide Context*, the International Conversation on Religion and Rule of Law, Hanoi, 2007.

⁶ See: *Law and Religion: A Panorama of Nation, International and Comparison*, ibid.

inclination. On other hand, it continues to uphold “the right to freedom of religious belief” as a political tool to implement the general idea of a united front and simultaneously settle between the class struggle, national unity with the implementation of “freedom of religious belief”, “although the policy of freedom of religious belief is not to promote religion but to retard its progress”⁽⁷⁾.

Article 36 of China’s Constitution has specific provisions on the rights of citizen to religious beliefs: “*China recognizes the rights to freedom of religious belief and religious practices of all citizens. Religion and State shall be separated*”.

Another important article defines that “*No one may make use of religion to disturb public order, impair the health of citizens, or interfere the state’s education system*”.

It is clear that the description of the right to freedom of religious belief in China’s Constitution is of the second form. Many Chinese scholars are worried about how to perfect law on religion. There are some difficulties in legal reorganization and protection of religious organizations, at the same time the separation of power of State and of Church is uncompleted. In other words, amendment to Article 36 of Chinese Constitution is an important matter because “there is no sufficient protection of citizens’ fundamental rights. This is because the effect of law of religion will be confined by the limitations of some constitutional provisions. Amending Article 36 is necessary step in process of strengthening China’s judicial system and speeding up the legislation in religion. Constitutional amendment is the starting point for legal reform in China”⁽⁸⁾.

Along with the development of society and human beings, the right to freedom of religion and belief is institutionalized, rationalized more and more in Constitution and law of religion.

2. The analysis of structure and content of Article 70 of the 1992 Constitution

In general, Article 70 of Constitution of Vietnam belongs to the second form.

Article 70 consists of three main points: “*Citizens have the right to freedom of belief and religion*”; “*to follow or not to follow any religion*”; “*All religions are equal before the laws*”.

⁷ See: Liu Pang. *Religion in China*, the International Convention on Religion and Rule of Law, Hanoi, 2007.

⁸ See: Liu Pang, *ibid*.

Constitution of Vietnam appreciates the protection of places of worship. Like Constitution of China, our Constitution also emphasizes “political principle” in religious field. *“No one is allow to encroach on the freedom of belief and religion or to take advantage of belief or religion in order to abuse the laws and policies of the State”.*

Comment:

1. *The right to freedom of religion and belief* is recognized by all secular States because it is an evident matter of human beings. However, there is difference when this right is expressed by legal language.

The Constitution 1992 gives the concept *“follow or not to follow any religion”*. We think that Constitution 1992 is more progressive than previous Constitutions. According to us, the concept *freedom of religion* in International Convention includes the *right not to follow any religion*.

For *“All religions are equal before the law”*, we think that if there is not the true right to freedom of religion, *“all religions can be not equal before the law”*; small religions will be pressurized by great religions.

At last, may *citizens* have the right to freedom of religion and belief? In many countries, the word *citizen* is replaced by the word *everyone*. Prisoner still enjoys the right to freedom of worship and religious practice.

2. *On concrete rights*

- When we stress on *“Places of worship belonging to belief and religion are protected by the law”*, many things are emerged such as which places of worship are protected by the law? Today, in Vietnam there are two kinds of places of worship. The places of worship of recognized religions (13 religions and 32 religious organizations). These places are surely protected by the law. Other places of worship are protected by law or not.

- The clause on *“One can take advantage of belief and religion in order to abuse the law and policies of the State”* is always necessary, but we are only interested in *“to abuse the law and policies of the State”*. We have not yet minded *“to abuse health, cultural tradition, nation, national security”*.

We think that Article 70 of the Constitution 1992 was born when Vietnam implements innovation. Naturally, this Constitution has its historical position but we find that it is necessary to amend this Constitution. The Articles of Constitution require high standards and stableness. Some countries’

Constitutions have maintained their articles for some centuries. For Vietnam, we need to amend the 1992 Constitution.

3. Some features of institutionalization and implementation of Article 70 of the 1992 Constitution in Vietnam

3.1. The main documents and achievement

Decree 26/1999/ND/CP was promulgated on April 19th, 1999 then the Circular Letter 01/1999/TT/TGCP was promulgated on June 16th, 1999 *on Guidance for Implementation of a number of Articles in Decree.*

This Decree emphasizes the religious management. This Decree not only reaffirms the Article 70 of the 1992 Constitution but also tries to concretize the right to freedom of religion and belief (the concrete regulations on *religious practice, management and wishing to lead a religious life*).

The most important document on belief and religion is *Ordinance on Belief and Religion* (it was signed by the Standing Committee of the National Assembly on June 29th, 2004 and promulgated on November 15th, 2004). On March 1st, 2005, Government promulgated Decree 22/CP *on Guidance for Implementation of a number of Articles of the Ordinance on Belief and Religion.*

The Ordinance on Belief and Religion consists of 6 chapters and 41 articles. It inherits and develops many articles so it is able to overcome some limitations in Decree 26. It is compatible with International Conventions and Laws on religion.

Thanks to *The Ordinance on Belief and Religion*, we can institutionalize the freedom of religion and belief on four levels.

The first level: we have institutionalized and concretized the right to freedom of religion and belief (with many legal documents, *The Ordinance on Belief and Religion* has standardized the right to freedom of religion and belief in new contents)⁽⁹⁾;

The second level: *The Ordinance on Belief and Religion* has dealt with the training and appointment of religious dignitaries;

The third level: *The Ordinance on Belief and Religion* has dealt with land and property of religion⁽¹⁰⁾;

⁹ Comparing to International Convention, Vietnamese law has not dealt with the right to freedom of religious propagation and the right to freedom of conversion.

¹⁰ This is a complicated matter in many countries. It is a hot spot in Vietnam.

The fourth level: *The Ordinance on Belief and Religion* has dealt with the international relation of religion.

Another important thing is seldom expressed by legal language. It is the process of building and improving the *model of secular state*. It is reasonable for Vietnam to select the model of pluralist secular State. Actually, on June 14th, 1955 Hồ Chí Minh signed Decree N^o. 234/SL regulating religious activities in Vietnam's new political system⁽¹¹⁾. Before Instruction N^o. 01/2005/CT-TTG on *Some Task regarding Protestantism* was promulgated, our State had a legal debt. When selecting the model of religious pluralism, Vietnam only recognized 6 religions. We were not interested in other religions.

Instruction 01 is considered as a red stamp in process of developing religion and rule of law. Since 2006, religious system in Vietnam has had many essential changes. The state has recognized many religions in turn. 13 religions and 32 religious organizations have been recognized. To speak from religious sociology, it is reconfiguration of religious life. This event plays an important role in the relation of religion and rule of law⁽¹²⁾.

3.2. Things set up

When speaking of Article 70 of the 1992 Constitution or reality of the relation between rule of law and religion in Vietnam, we have had many important achievements. Because of subjective and objective condition of religious life in Vietnam, there are some difficulties in process of carrying out articles of *the Ordinance on Belief and Religion* as well as articles of other codes relating to religious life.

Firstly, as already stated, Article 70 of the 1992 Constitution needs to amend. We need to strengthen the institutionalization of freedom of religion and belief. We should update, comprehend and embrace the right to freedom of religion and belief to stabilize this right legally. What we do not only meet the legitimate need of great part of people (the number of religious believers is about 30 million people) but also make legal appearance more modern.

Secondly, because Article 70 and legal system on religion consider state to be subject and religion and belief as object, so they are asynchronous and

¹¹ According to "summarization" of the world, at present there are four models of secular State: the model of religion - state (in these countries there is only main religion. It is considered as national religion); the model of civil religion; the model of plural secularism (state only recognizes some religions and respects other religions); the model of neutral laicization (state does not recognize any religion. All religions have to implement laic principle of state).

¹² See: Đỗ Quang Hưng. *Reconfiguration of Religious Life in current Vietnam: New Legal Challenges*, Social Sciences Review, N^o. 10/2011.

contradictory.⁽¹³⁾ The general experience of the world is good rule on religion in Constitution. It not only affirms the right to freedom of religion and belief but also creates the line between state and religion. It satisfies three matters: *people have right to choose their religion; the self-governing right of religion and religious organizations are protected; the sectarianism in politics is reduced*⁽¹⁴⁾.

Thirdly, we should have professional and complete thoughts to overcome “space” in Ordinances, Decrees and Constitution. We need to surmount backward and unfeasible regulations. Of course, I do not speak of the drafting of articles on religion.

4. Trying amendment to Article 70

4.1. The principle of amendment

As already analyzed, we should select the general model. The content of this article should be suitable with political psychology as well as with the reality of religious life. The language of this article should be consistent with the language of Constitution.

In necessary case, we can change this model and combine with concrete model. We have to ensure the embracement of content so that Constitution is *consistent and stable*.

4.2. A concrete and petitionary draft

“Everyone has the right to freedom of belief, religion; this right is manifested in teaching, religious practice, worship and observant of both individual and collectivity. The right to implementation of religious liberty can be limited when this right contradicts with the elementary rights that are regulated in Constitution.

The Socialist Republic of Vietnam is a secular state”. /.

¹³ When drafting articles on religion in Constitution, according to international experiences, we find that any secular states have to resolve two following relations well: the first, the power of state and the self-governing right of church; the second, the relation between interests and structure. In general, government has not “interests” although it has power and obligation. When separating state and church, state must ensure the right to freedom of religion at the same time, it defines “the limited role”. Meanwhile, religion has to maintain its autonomy of organization and it is independent of the state’s help.

¹⁴ See: Carl H. Esbeck, *ibid*.