

RULE OF LAW STATE AND RELIGION

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Abstract: To build a rule of law has been one of the most essential tasks in the process of political renovation in our country for the past few decades. It is much involved with solutions to religious issues. In this paper, the author analyzes the concept of the socialist rule of law about religion. At the same time, he analyzes the indispensableness of the planning for such a rule of law in our country.

Key words: Rule of law, socialist rule of law, secularism, law and religious freedom, secular state.

1. Rule of Law State and Religion

1.1. Rule of Law State

Rule of law state (in other words, rule by law state)⁽¹⁾ originated from the West, the first rule of law state was Roman Republic, then rule of law state was established in bourgeois revolutions in Europe and in America. Rule of law state gradually becomes perfect. It was fully developed by liberal constitutionalism. It is characterized, according to Max Weber, by "legal domination" or Montesquieu's words "We are free because we live under civil laws".

According to Bo Li, a Chinese researcher of law: "The difference between "rule by law" and "rule of law" is important. Under the rule "by" law, law is an instrument of the government, and the government is above the law. In contrast, under the rule "of" law, no one is above the law, not even the government. The core of "rule of law" is an autonomous legal order"⁽²⁾.

At present, the model of rule of law state becomes universal. It is the main legal principle for all political institutions of modern states. It is one of the aims of building the socialist rule of law state in Vietnam.

1.2. What is Rule of Law State and Religion?

Under the rule of law state, fundamental rights of human kind including the right to freedom of religions and beliefs must be effectively guaranteed by law, as J.J Rousseau said.

In general, the right to freedom of religion as well as human right emerged during and after the bourgeois revolutions in Europe and in America. Before 18th and 19th centuries, the model of monotheism played dominant role in European and American countries. One of aims of the bourgeois revolution was to destroy this model.

However, building the rule of law state and religion needs to answer two questions.

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(1) In Vietnam, the words "rule of law" is translated into *pháp quyền*. But in other condition it can be understood *pháp trị*, although in English there are words "Rule by Law" which are translated into "*pháp trị*". In this article, I use "*pháp quyền*" or "*pháp trị*" depending on context.

(2) Li Bo (2012) *On Rule of Law and Constitutionalism*, translated by Nguyen Dang Dzung, Pham Hong Thai, Labour and Social Publishing House, Hanoi. p. 27.

The first question: what is religion? *The second question* is how the right to freedom of religion can be explained? In modern European states, the second question means “what are human right, human dignity as well as natural law in religious field?”

The answer of these questions is the birth of a new model of state- secular state. It means non-religious state. The secular state is a concept of secularism, whereby a state or country purports to be officially neutral in matters of religion, supporting neither religion nor irreligion. Secularism consists of two basic principles. The first is to guarantee the right to freedom of religion and the right to freedom of thought and conscience. The second is the strict separation of the state from religious institutions.

The principle “the right to freedom of religion” is the first challenge to the rule of law state. From legal aspect, this principle should satisfy three requirements:

Firstly, the main religious problems have to be institutionalized (profession of faith, propagation of faith, manifestation of faith, conversion).

Secondly, the freedom of religion in special places (public place, prisons schools) and attitude to religious extremism.

Thirdly, freedom of religion and conflicts of society and customs.

Nowadays, we have four documents that mention the freedom of religions in 20th century: *the Universal Declaration of Human Right of United States* (1948), *the International Covenant on Civil and Political Rights* (1966); *the Declaration on the Elimination of All forms of Intolerance and Discrimination Based on Religion and*

Belief (1981) and Instruments in the field of human right were signed in Vienna, Austria, 1989⁽³⁾.

Article 18 of the Universal Declaration of Human Right of United States (1948) is the key one “*Everyone has the right to freedom of thought, conscience and religion; this right included 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, practice, worship and observance*”⁽⁴⁾.

The second principle focuses on carrying out the *strict separation of the state from religious institutions*. It was difficult for the rule of law state to separate the state from religious institutions. The second principle came into the world after the struggle of two political powers - Secular State and Church, namely the separation of *Code of Canon Law* from *National Law*.

Although in many countries, there are differences in carrying out the separated principle⁽⁵⁾, we can say that all the rule of

⁽³⁾ Derek H. Davis, *Evolution of Religious Freedom as Universal Human Right* (in English) <http://usinfo.state.gov/journals/idhr/1101/ijde/davis.htm>.

⁽⁴⁾ There are some translations of *The Universal Declaration of Human Right of United States*. We rely on the translation of the Institute of Social Sciences Information in *Human rights in the modern world*, Social Sciences Publishing House, 1995, p. 628. The general significance of this document is to combine the right to freedom of religion with the freedom of thought, conscience and set up the right to freedom of religion in three spaces (individual, family and community) and in three rights (following religion, conversion and preaching).

⁽⁵⁾ There were two typical experiences: In America, the separation of State from Church was carried out flexibly, but in France this separation was carried out definitively. It is called *laicism*.

law states should carry out this separation to ensure its secularity.

2. Vietnamese Socialist Rule of Law State and Religion

2.1. Conception

Many documents of Vietnamese Communist Party point out that the socialist rule of law state has been built on common principles of the rule of law state. At the same time, the socialist rule of law state has some socialist characteristics.

First of all, we should understand the basic principles of Vietnamese socialist state: “*the state of the Socialist Republic of Vietnam is a socialist ruled by law state of the people, by the people and for the people*”; “*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*”; “*The state shall be organized and operate in accordance with the constitution and law, manage society by the Constitution and law, and implement the principle of democratic centralism*”⁽⁶⁾.

In fact, we should exchange and discuss the problem of the rule of law state more and more to understand it thoroughly. And the above basic principles are necessary to build a rule of law state, because the rule of law state can create good condition to settle religious problems in general and to meet religious needs of people in particular.

2.2. The Rule of Law State and Religious Life

2.2.1 Only the Rule of Law State Can Guarantee the Right to Freedom of Religion and Belief.

As already stated, principles of secularism

are showed their basic roles in ensuring the freedom of religion, belief regardless of majority religions or minority religions. Vietnamese socialist rule of law state which has been built after the August Revolution (1945) also has ensured the right to freedom of religion.

The Constitution in 1946 mentioned “*freedom of beliefs*”, Decree 234/SL (1955) dealt with “*the freedom of worship*”, the Constitution of the Socialist Republic of Vietnam (2013) states clearly:

1. *Everyone has the right to freedom of belief and religion, and has the right to follow any religion or to follow no religion. All religions are equal before law.*

2. *The State shall respect and protect the freedom of belief and religion.*

3. *No one may violate the freedom of belief and religion, nor may anyone take advantage of a belief or religion in order to violate the law. (Article 24). Although this article has not showed legal attitude of our state to international convention on religion, it is the result of the process of institutionalization of the right to freedom of religion and belief in our country (Article 24).*

Looking back at recent legal documents of Vietnam mentioning religion, we can find clearly the role of the rule of law state toward religious life.

2.2.2 Building and Perfecting Law on Religion: an Important Aim

⁽⁶⁾ Vietnamese Communist Party (2011), *The Document of the 11th National Congress of Vietnamese Communist Party*, National Political Publishing House, Hanoi. p.51. We quote main contents of the rule of law state in this documents to study.

Our experience of founding and perfecting law on religion, especially since the period of renovation policies on religion (1990) has showed that the law on religion not only has met objective needs of the rule of law state but affirmed its great role in resolving the religious problems in our country. Since the promulgation of *Ordinance of Belief and Religion* (2004), many religious matters have been resolved positively. Our solutions have satisfied the right to freedom of religion and beliefs of religious people.

At the beginning of 2005, Instruction of the Prime Minister on some tasks regarding Protestantism was promulgated (Instruction 01 for short). This Instruction has helped us “to discharge a legal debt”. Like this, we not only recognize Protestant community and other religions in Vietnam but also show our respectful attitude to all religions.

2.2.3 From Aspect of International Relation

Most religious organizations in Vietnam have established relations with organizations in other countries. Hundred thousands of Vietnamese people in other countries are believers of Buddhism, Catholicism, and Protestantism. Many religious sects and organizations have international relations. Furthermore, hostile forces aim to take advantage of the problem “religion – human right” to destroy our country so the rule of law state is very necessary on both legal and practical aspects.

2.2.4 Religious Activities of Foreigners

The problem of foreigners’ religious activities is a new issue. Although there is no precedent for these activities, our recent policies on religion have resolved many

problems concerning religious activities of foreigners. At present, we have not done any investigation on the number of foreigners who carry out religious activities in our country. We do not have enough legal documents to satisfy all their needs of religious activities. In fact, our rule of law state also satisfies a part of their needs in religious activities, especially in cities.

2.2.5 The Rule of Law State: the Main Solution of the Relation between State and Church

At present, the relation between state and church is still a key issue of religious policies. The building the rule of law state and religion can resolve religious problems completely. With the right orientations such as “*religions go together with nation*”, “*Living a good life and enjoying a lofty religion*”, we try our best to achieve main goal “*religions go together with socialism*”. It is the position of the socialist rule of law state.

2.2.6 The Rule of Law State and the State Management of Religion

Vietnam is one of few rule of law states have the model of state management of religion. Because of our historical condition and religious characteristics (especially from aspect of socio-politics), our state continues this model. At present, we have a view that “*religious affair is the task of the whole political system*”. This view has taken effect. However, the change of model and the method of state management of religion are our urgent tasks.

3. The Model of Socialist Rule of Law State and Religion in Vietnam

The building of the rule of law state and religion is a difficult task. It not only

concerns aspects of politics, society and psychology but also degree of learning. We think that building the rule of law state and religion must rely on three foundations: *choosing, building and perfecting the model of the rule of law state; towards a public policy and religion; to look for a model of state management of religion.*

3.1. Choosing, Building and Perfecting the Model of the Rule of Law State

Over last 200 years of building secular states, people have had much experience on secular principles, at the same time they can find its limitations that should be adjusted. Formerly when founding the model of secular state, as well as carrying out the principle of separating state from church, religion was merged with individual life in some countries, the role of religion was limited in social life. Many people thought that it was “escape from religion”. Nowadays, secular states do not think that “religion is individual life” but they create good condition for religions to contribute actively to social and cultural life.

We think that, though right after the August Revolution 1945, our government promulgated the first Decree on religion, the issue of “secular state” was not proposed.

We can say that Decree 234- SL that was signed by President Ho Chi Minh on 14 June, 1955 was ground for choosing and founding the model of secular state in Vietnam⁽⁷⁾. Basing on reality of religious life in some later decades as well as in renovation period, we can find that Decree 234-SL provided a right model of a secular state. In recent years, besides recognizing 6 major religions (Buddhism, Catholicism, Protestantism, Islam, Caodaism, Hoa Hao

Buddhism), Vietnam also recognized 14 other religions and 40 religious organizations⁽⁸⁾.

However, perfecting the model of secular state has set up many other problems, the most important problem is perfecting law on religion in our country. It is difficult for the author to deal with this problem in this article. It should be noted that choosing, building and perfecting secular state is prerequisite for building next foundations.

3.2. Towards “Public Policy and Religion”

The building of secular state can resolve the relation between state and religion in accordance with rule of law state, and the building public policy regarding religion has significant contribution to real life.

From 1945 up to now, Vietnam policies on religion have been “internal policy”, we have not true public policy regarding religion.

Religious policy in Vietnam is known as a part of social policy, namely it is public policy. It means that the religious policy must have characteristics of public policy such as legality, publicity and generality. It is decision of state on what need to do in religious field.

We must find that there is difference in understanding and practicing “religious policy”. In some secular states, “religious

⁽⁷⁾ In this Decree, there are not the words “secular state” but two secular principles are mentioned in this document. Furthermore, religious life, culture, political and social context are reflected clearly in this decree. Many articles in this document affirm the right to freedom of religion and belief and recognize religious organizations and the right to self determination of religious organizations.

⁽⁸⁾ We have considered that Instruction No 01 / 2005 of Government helps our State to pay ‘legal debt’ to religious organizations and open a new stage of the socialist rule of law state regarding religions.

policy” is mingled with social policy and law. In other states (such as Vietnam), civil society is being founded, religious policy is independent and separate. It reflects an important work of state. It is implemented specially. But we should consider religious policy the public policy. This policy must fall in line with process of building the rule of law state.

Moreover, the key problem of our religious policy is the relation *between state and church*. While we found a public policy regarding religion, we have to implement legal law of the rule of law state. It is a “paradox”. When founding and perfecting renovation policy regarding religion, we should take account of this paradox.

When founding policy and law regarding religion, we should pay attention to publicity, synchronism, administrative officials and receivers of policy. They are important matters to affirm public policy regarding religion.

3.3. The Model of State Management on Religion

The state policy on religious management reflects the difference between the secular states in Europe and America with the quasi - secular states in Asia⁽⁹⁾.

In general, management on religion of European - American countries is carried out by the principle that religious organizations are the components of a civil society. As other social organizations, they are impacted by the system of law. In some European – American countries, there are not religious laws because all things are in the system of civil law. So the management on religion is the task of the administrative bodies.

In Asian countries, especially in Vietnam and in China, the model of the state

management on religion is different from that of European countries because Vietnam and China establish religious management apparatus. Apart from the building of the model of rule of law state regarding religion, the choice of the model of state management on religion is the urgent demand in Vietnam and in China.

As already mentioned, apart from the foundations: “secular state” and “public policy regarding religion”, we must look for a suitable religion administration model. The following issues should be concretely regarded:

The first: the principle of “Religious affair is the responsibility of the entire political system” (Resolution No 24 of the Politburo of the Party Central Committee in October, 1990) is a logical principle, so all offices of political system should take in religious affair.

The second, the Government Committee for Religious Affairs is the main government agency to manage religious activities. At present, we continue to look for more appropriate model of religious management and promote the relation between religion and politics, at the same time we should determine function and task of religious affairs.

The third, whatever model of religious management we choose, we must realize following principles: religious management is carried out under the leadership of

⁽⁹⁾ The conception of *Quasi- Secular States* denotes the model of secular states in Southeast Asia except Vietnam. In these countries, two principles of secularism are applied in certain extent. In law and social life, there is the present of religion, including Islamic regulations (especially in states recognize Buddhism as the national religion, Islam as a main religion).

Vietnamese Communist Party; religious management is suitable with national law and international conventions.

We have dealt with establishment and perfection of the model of socialist rule of law state regarding religion in our country at present. Naturally, this process associates with the process of building of the socialist rule of law state under the leadership of Vietnamese Communist Party.

Conclusion

The building of the rule of law state and religion in our country is a new and important issue. Our article only puts forward outline of the rule of law state, even some contents of this article is only forecast. In conclusion, we would like to note following issues:

1- Religious life, the content of the right to freedom of religion in our country has some different characteristics. So the solution of religious issues should meet two conditions: the solution of religious problems should be suitable with nation; the solution of religious problems must obey political principle of socialist rule of law state.

2- The rule of law state regarding religion has been an experience and philosophy of human beings for 200 years. The principle of secularism and the model of secular state have been general principles for all states which would like to build non-religious states and use culture and spirit of religions.

3- Building and perfecting of the mode of the rule of law state in Vietnam with its general contents should be carried out step by step. When building the rule of law state with modern, national characters, we not

only apply international experiences and but also take initiative and creativity.

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