

# Vietnam and its international commitments and obligations of human rights: The case of the individual rights to life, liberty, and personal security in the time of COVID-19

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Received 27 June 2022; accepted 23 September 2022

## **Abstract:**

The respect, protection, and fulfilment of human rights has always been one of the foremost priorities of countries. The primary responsibility of such belongs to the state as recognized in international and national legal regulations. Indeed, international and national law, especially international human rights law, recognizes that in certain circumstances such as emergency cases human rights can be limited, temporarily restricted, temporarily suspended, or, based on the three basic reasons: (1) public security and public order, (2) public health and social ethics, and (3) the rights and interests of others. These restrictions must be established by law and under the principles of the rule of law, democracy, openness, transparency, and accountability. The vulnerability of restricting human rights during emergencies, such as the prevention of COVID-19 for public health reasons during the recent widespread pandemic, shows need and urgency for the theory and practice of crisis management and the guarantee of human rights on a global, regional, and national scale. Therefore, this article contributes to the analysis and interpretation of the theoretical and practical basis for ensuring human rights in emergency situations through Vietnamese legal provisions and practices of the right to life in time of COVID-19.

**Keywords:** COVID-19 pandemic, ensuring human rights, international and national law, Vietnam.

**Classification numbers:** 6, 7

## **1. International and national framework on right to life, liberty, and personal security**

### **1.1. International legal framework**

The rights to life, liberty, and personal security are fundamental rights enshrined in the International Bill of Human Rights, specifically, in the 1948 Universal Declaration of Human Rights and International Covenant on Civil and Political Rights of 1966 (ICCPR). Especially, the right to life is protected in ICCPR's Article 6, as stated: "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life [1]".

The right to liberty and personal security is also enshrined in Article 9 of ICCPR: "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as

are established by law," and "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him [2]".

The right to life is interrelated with the right to freedom of movement, therefore, Article 12 of the ICCPR affirms that the two main components of freedom of movement include: (i) an internal aspect, relating to freedom of movement within a country, i.e., "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence" and (ii) an external aspect comprising freedom of movement between States, i.e., the rights to leave one's country and the right to enter one's "own country". It can be seen that, according to the ICCPR, the subject of freedom of movement comprises all citizens, including foreigners. Thus, a foreigner living or lawfully present in a country also

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has the right to freely move within the territory of that country without being obstructed [1].

Article 12.3 of the ICCPR also specifies that the right to freedom of movement and residence is not an absolute right, as it may be subject to certain restrictions depending on the law of the member state. Specifically, the right to freedom of movement shall not be subject to any restrictions except those provided by law for the purpose of protecting national security, public order, public health or morals, or the rights and freedoms of others, and must be consistent with the other rights recognized in the ICCPR. In 1984, the United Nations Economic and Social Council adopted “The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights”, which sets the principles and required limitations of exercising the right to movement as follows: i) any measures shall be provided for by law and be compatible with the object and purposes of the ICCPR; ii) none of the restrictions imposed must discriminate in violation of international human rights law; iii) any such measures should also meet strict requirements including legality, necessity, and proportionality; and iv) all limitations shall be applied in a non-arbitrary manner and in favour of the rights at issue [3].

The ICCPR’s General Comment No. 27, adopted at the 67<sup>th</sup> Session of the Human Rights Committee on November 2, 1999, also indicates that: “the permissible limitations which may be imposed on the rights protected under Article 12 must not nullify the principle of liberty of movement, and are governed by the requirement of necessity provided for in Article 12, paragraph 3, and by the need for consistency with the other rights recognized in the Covenant”. This means that the right to life needs to be ensured in line with some measures of restriction of other rights including the right to freedom of movement when necessary.

This international legal framework has already been incorporated into the Vietnamese legal system, especially in its Constitution and laws.

### **1.2. Vietnamese legislation on right to life, liberty, and personal security**

The 2013 Constitution in particular, as well as the Vietnamese legal system in recent years, have made a great step forward in implementing recommendations on the right to life, liberty, and security of person through fulfilling international obligations and commitments provided in the 1966 ICCPR and other related treaties such as the 1989 UN Convention on the Right of the Child (CRC), the

International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as executing the recommendations of the 1948 United Nations Human Rights Council (UNHRC) about the Universal Periodic Review (UPR) on the implementation of human rights worldwide. Indeed, Vietnam has continuously improved its legal system, policies, and practices to ensure the rights to life, liberty, and security of person. The 2013 Constitution first mentioned the right to life as a separate right in Article 19: “everyone has the right to life. Human life is protected by law. No one shall be deprived of his life against the law” [4].

Institutionalizing the constitutional right in terms of right to life, Vietnamese law has gradually perfected and strengthened institutions as well as respected, protected, and fulfilled the right to life for all individuals and rights holders, especially vulnerable groups such as children, women, people with disabilities, people living with HIV / AIDS, the elderly, ethnic minorities, and people living in remote areas.

The Vietnamese legal system, including the 2015 Penal Code and the 2015 Criminal Procedure Code (effective 2018), continues to codify constitutional principles of the right to life and rights related to the right to life.

The right to life is a basic human right, the supreme right out of the fundamental rights and freedom of each person, community, and the entire humankind.

Human rights are unified, inseparable, inalienable, and interdependent. However, there are rights that play a role as prerequisites for the implementation of each person’s other fundamental freedom and rights. In particular, the right to life is considered a supremacy because it is a prerequisite for deciding all other human rights as recognized in the core documents of international human rights law. Article 3 of the Universal Declaration of Human Rights (UDHR) of 1948 states: “everyone has the right to life, liberty and security of person”. Meanwhile, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) concretizes Article 3 UDHR, which states: “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (Clause 1)”. Along with the ICCPR, some other international human rights conventions also address the right to life: Convention on the Rights of the Child, Convention on the Prevention and Punishment of Genocide, Convention on the Suppression and Punishment of the Crime of Apartheid, and the Convention against Torture, among others.

On March 31, 1982, Session 132 of the Committee approved General Comment No. 36 on the right to life of Human Rights Committee (the UN Specialized Committee formed from ICCPR). It details a specific and clear explanation on the characteristics and content of the right to life that was not specified in the ICCPR, namely, 1) the right to life is a supreme right of all human beings, need to be respected and no derogation is permitted under any circumstances, including national emergencies... (Paragraph 2) [4] and 2) the right to life is a right that should not be explained in a narrow way. It is directly related to each person's basic freedom including the entitlement of individuals to be protected from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity (Paragraph 3) [4]. Thus, the guarantee of each person's right to life is directly concerned with other fundamental rights, including moral rights, civil, political rights (such as the right to freedom of security, personal safety, the right to respect for integrity of life, dignity, humanity, honour, prestige... the right to live in peace, to resist armed conflict, ethnicity and religion conflict, etc.), as well as socio-economic rights (such as the right to health care, the right to escape poverty, and to combat natural disasters, epidemics, malnutrition, and underdevelopment [4].

Therefore, the United Nations also recommends that member states, to ensure the right to life, should create and preserve peace, and prevent armed conflict, conflict of ethnicity and religion, racism, ethnicity discrimination, or any other discrimination, as well as fight against war and arms races, nuclear weapons, chemical or other mass weapons, promote dialogues, cooperation in development, and ensure children's rights to life from the foetus, take measures to eliminate malnutrition and diseases leading to deprivation of the right to life, especially infants, pregnant mothers, or other vulnerable groups.

Vietnam has especially respected the right to life, as shown in its legislative tradition. For example, the Penal Code of the Ly Dynasty recognized the contents of this right, which has also been represented in Constitutions from 1946 to 1992. However, for the first time in the history of more than 70 years of constitution and legislature of the modern Vietnamese state, the concept of the right to life and protection of the right to life has been codified into a constitutional principle with full concepts and connotations of the right to life. Accordingly, the 2013 Constitution reaffirms: firstly, the right to life is "a fundamental human right that under any circumstances, even in a state of national emergency, cannot be violated..." and, secondly, the

right to life relates to other fundamental rights and freedoms, including the right to dignity, honour, bodily integrity, health (physical and mental), life, and, at the same time, relates directly to other basic conditions for the existence of biological, natural, and social human beings. Therefore, the right to life is directly associated with the right to the access of clean water, unpolluted air, clean food, the right to timely medical examination and treatment, non-discrimination, and equal and fair access to the healthcare system, the right to protection, care, and social welfare, benefits in case of natural disaster and enemy-inflicted destruction threatening the health and life of each person and community. For vulnerable groups, such as children and women, the right to life requires member states to take effective measures to reduce child mortality and increase people's life expectancy such as measures to eradicate malnutrition among children and pregnant mothers, eradicate epidemics and pandemics, to have access to affordable drugs and preventive vaccinations,... ie including both passive and active measures. Thirdly, the guarantee of the human right to life is synonymous with preventing common threats to the right to life such as war and particularly serious crimes such as genocide or crimes against humanity. Therefore, fighting against war and these crimes is also a guarantee of the right to life. Fourthly, member States should take measures to prevent and punish deprivation of human lives by any arbitrary or illegal action caused by any entity (such as terrorism, conflict, war, ...), particularly, abduction and causing an intentional disappearance is also considered as one of the forms of deprivation of the right to life. Fifthly, it is necessary make progress toward the elimination of the death penalty in the Penal Code. This requires continuous improvement of the legal system to limit the application of the death penalty apparently in some countries today. Furthermore, the principles of implementing the right to an effective complaint or the right to pardon or to request a change of penalty should be applied to ensure the right to life. At the same time, in the short term, it is necessary to continue to apply the principles of humane criminal policies, not to sentence the death penalty for offenders under 18 years old and not to perform the death penalty on pregnant women.

The Vietnamese legal system has been constantly improving to ensure the right to life of human beings, especially for children, even as a foetus (from the 12<sup>th</sup> week or more). The 1989 Convention on the Rights of the Child affirms that "children need special safeguards and care, including appropriate legal protection, before as well as after birth".

Over the years, recommendations from Human Rights Committees and the United Nations Human Rights Council have suggested that Vietnam abolish the death penalty and strengthen measures (including legislative, executive, and judicial) to more effectively protect the right to life, especially children, pregnant mothers, women, and other vulnerable groups.

Article 6 of the International Covenant on Civil and Political Rights states that the death penalty is only allowed for the most serious crimes, based on the current law at the time the crime is committed. Thus, international law does not prohibit countries from using death penalty, but encourages limitations and aims to abolish this penalty. Vietnam has been making efforts to supplement and perfect the legal system to limit the death penalty in order to gradually move towards the abolition of the death penalty in the future when conditions permit.

So as to internalize ICCRP regulations and recommendations into the legal system, Vietnam has revised the Penal Code and Criminal Procedure Code towards better assurance of human rights in general and the right to life in particular. The current Vietnamese Penal Code stipulates the death penalty for 22/272 crimes, a significant reduction as compared to before. Regarding the death penalty, the Vietnam Penal Code (2015) has been gradually amended and supplemented in the direction of reducing the number of laws regulating the death penalty in the Penal Code (1999) from 29 articles (accounting for rate of 11%) to 22 articles after being revised in 2009 (accounting for 8%) and the 2015 Penal Code continued the decrease to 15 articles (accounting for 5%). In addition, the 2015 Penal Code also expanded subjects not applicable for the death penalty (e.g., people aged 75 years or more when committing crimes or when sentencing). The method of executing the death penalty has also been revised in a more humane direction, shifting from being shot to injection, while the law also strictly regulates conditions for the application of the death penalty. Although the death penalty is prescribed for 15 crimes, in practice, the Courts mainly apply the death penalty to some cases of murder and the illegal production and sale of narcotics.

The proportion of crimes with the death penalty over the total number of crimes committed by the 2009 Penal Code is 22/272 (over 8%), 3% lower compared to the 1999 Penal Code; approximately 6.87% lower compared to the 1985 Penal Code and 12.64% lower compared to the 1985 Penal Code [5]. There are a total of seven crimes with the death penalty removed in the 2015 Penal Code, including: property theft; producing and trading banned goods as food; illegally possessing

narcotics; appropriation of narcotics; destroying works, facilities, and crucial means to national security; contradiction of orders; and surrender to the enemy. At the same time, the Penal Code has also removed the charge of illegal armed activities that was previously assigned to the death penalty.

Although the current Penal Code provides the death penalty for 18 crimes, in reality, the Vietnamese Courts mainly applied this penalty to murder and possession, transportation, illegal trading, or appropriation of narcotics [5].

Along with the constitution and some related basic laws, such as 2015 Civil Code, 2015 Penal Code, 2015 Criminal Procedure Code, 2009 Law on State Compensation Liability, 2016 the Law on Children, etc., and other legal documents, there has been constant improvement to ensure each individual's right to life. Moreover, sub-law documents such as Decrees of the Government, Resolutions of the Judicial Council of the Supreme People's Court, and Circulars of Ministries and Agencies contain guidelines and regulations to ensure the right to life for everyone in the spirit of the ICCPR Convention and implement recommendations of the United Nations Human Rights Council at Universal Periodic Review (UPR) sessions.

These include new provisions to guarantee rights related to the right to life for groups at high risk of deprivation of the right to life such as detainees, arrestees, defendants, the accused, and persons serving imprisonment in the process of participating in the proceedings. The Constitution and laws of presumption of innocence (a person shall only be found guilty after a legally valid judgment declared by the Court), the right to silence, the right to have an advocate, the right to a fair trial without delay,... or the right to be protected from arrest without the Court's decision, the Procuracy's approval decision (except caught in the act of committing an offence).

The very encouraging result in the improvement of the law to strengthen the guarantee of the right to life is the continuous decrease of the number of crimes with death penalty provisions. Criminal law in recent years has also amended this penalty application procedure to be more consistent with international human rights law standards. For example, the 1999 Penal Code abolished provisions relating to the execution of the death penalty immediately after the trial in special cases, which had been referred in the previous Penal Code, and, at the same time, supplemented the subject not applicable to this penalty were women raising a child under 36 months old when committing an offense or being tried.



## 2. Implementation of the individual's right to life, liberty and personal security

### 2.1. Achievements

Vietnam has been actively implementing international legal commitments related to human rights on the principle of *Pacta sunt servanda*, in all fields and at all levels, from the central government downward to local institutions. These include the legislative, executive, and judicial measures, as well as national programs and action plans for executing these commitments.

In regard to this, the development of legislation related these rights have been consistently improved. For instance, the right to liberty and personal security has always been respected, protected, and enforced through the improvement of the legal system and guaranteed practice. Right in Chapter 2 of the 2013 Vietnamese Constitution, the institution of human rights and citizenship has affirmed the right to liberty and personal security. Articles 21 and 22 of the Constitution stipulate that everyone has the inviolable right to private life, personal secrets, and family secrets as well as the right to protect his honour and reputation. Information about private life, personal secrets, and family secrets are fully protected by law.

Everyone has the right to confidentiality of correspondence, telephone calls, telegrams, and other forms of private communication. No one is allowed to unlawfully open, control, or seize other people's correspondence, telephone calls, telegraphs, or other forms of communication. Article 22 states that citizens have the right to a legal residence and everyone has an inalienable right to this accommodation. It also states that no one may enter another person's residence without his or her consent and that the examination of accommodation is required by law. Article 24 of the Constitution stipulates that everyone has the right to freedom of belief and religion, following or not following any religion. Thus, all religions are equal before the law. The State respects and protects the right to freedom of belief and religion. No one is allowed to infringe upon the freedom of belief or religion or take advantage of beliefs or religions to violate the law. Specifically, Article 20 of the 2013 Constitution states: "1. everyone has the right to body inviolability, to be protected by the law in terms of health, honour and dignity; not subject to torture, violence, persecution, corporal punishment or any other form of treatment that infringes upon the body, health, or offends honour or dignity; 2. no one will be arrested without a decision of the People's Court, a decision or approval of the People's Procuracy, except

a crime in the act of committing an offence. Arrest and detention shall be stipulated by law; and 3. Everyone has the right to donate human tissues and organs and donate corpses in accordance with the law. All medical, pharmaceutical, scientific experiments or any other form of experiment on a human body must have the consent of the that person". At the same time, Article 21 states: "1. everyone has the inalienable right to privacy, personal secrets and family secrets; has the right to protect his honour and reputation. Information about privacy, personal secrets and family secrets are secured by law and 2. Everyone has the right to confidentiality of correspondence, telephone, telegram and other forms of private communication. No one is allowed to open, control, illegally seize other people's correspondence, telephone, telegram and other forms of exchanging private information". Finally, Article 22 states: "1. citizens have the right to a legal residence and 2. everyone has an inviolable right to the residence. No one is allowed to enter another person's residence without his or her consent [6]".

These are regulations directly related to liberty and security of person. In addition, Articles 23 through 25 of the 2013 Constitution also establishes rights related to the implementation of liberty and security of person, including the right to freedom of movement and residence within the country as well as the right to travel abroad and return home from abroad (Article 23). Meanwhile, Article 24, Clause 1 and 3 state the right to freedom of belief, religion, following or not following a religion and no one may infringe upon the freedom of belief or religion or take advantage of a belief or religion to violate the law. Then, Article 25 states the freedom of speech, freedom of the press and access to information, assembly, association, and demonstration with the exercise of these rights prescribed by law [6].

The Penal Code, Civil Code, and a series of other specialized laws have codified moral rights in general and the right to liberty and security of person in particular. Civil Code 2015 has a separate section with 15 articles detailing moral rights in which moral rights are civil rights attached to each individual, which cannot be transferred to others unless otherwise stated by relevant laws. Private life, personal secrets, and family secrets are inviolable and protected by law. The collection, storage, use, and publicity of information related to private life, personal secrets, and family must be approved by such person and family. Individuals have the right to request the court to deny information adversely affecting their honour, dignity, or reputation. The protection of honour, dignity,

and prestige can also be performed after an individual passes away at the request of a spouse or adult child.

The guarantee of personal freedom and security is closely related to the right to private life, the right to respect for correspondence, dignity, and honour of individuals, especially in the digital age, when freedom of information, social networks, internet use are prevalent in Vietnam. The protection of privacy and personal security includes being protected from the arbitrary use of personal images without permission or consent from that individual (i.e., the use of an individual's image must be agreed upon by the person who has that image). According to Article 32 of the Civil Code, the person possessing the image has the right to request the court to issue a decision to force the violator, relevant agencies, organizations, or individuals to revoke, destroy, and terminate the use of the image and provide compensation. However, civil law also stipulates cases in which the image can still be used without the consent of the person having the image or the legal representative of that person including: the images used from public activities such as conferences, seminars, sports competitions, performing arts, interviews, or press conferences; images used for the benefit of the nation and public interest; and community activities without harming the honour, dignity, or reputation of the person without copyright infringement. Although the provisions of the Constitution and Vietnamese law have basically created a legal framework for the protection of freedom and personal security, the practice of ensuring this right indicates the necessity to perfect the system of law towards strengthening sanctions, measures, and mechanisms for its effectiveness. For example, defaming the dignity, honour, prestige, etc., of others can cause serious consequences (there are cases leading to the deprivation of the right to life of others). Thus, it is essential to impose serious punishments for arbitrary uses of images or letters of other people.

To codify the Constitutional principles of the right to liberty and personal security, Civil Code 2015 has concretized 15 relevant articles. Article 38 of the Code prescribes the right to private life, personal secrets, and family secrets, as follows: "1. private life, personal secrets, and family secrets are inviolable and protected by law. 2. The collection, storage, use and publicity of information related to private life or personal secrets must be consented by that person, the collection, storage, use and disclosure of information related to family secrets must be approved by family members, unless otherwise stated by law ... 4. The parties in the contract are not allowed to disclose information about each other's private life, personal

secrets, and family secrets that they have known during the process of establishing and implementing the contract, unless otherwise agreed" [6].

With these provisions, Vietnamese law has recognized "the right to confidentiality of private life" in terms of protecting information related to the privacy that an individual wishes to be kept confidential. In case that person proactively discloses information, it shall not be considered private and shall not be protected by law if such information is used by others.

At the same time, Vietnamese law has specified the right to confidentiality of correspondence, telephone, telegram and other forms of private information exchange including the right to information protection through uses such as mobile phone, electronic mail, and social networks. Civil Code 2015 stipulates: "mail, telephone, telegraph, electronic database and other forms of private information exchange of individuals are guaranteed to be safe and confidential. The opening, control, and seizure of correspondence, telephone, telegram, electronic database and other forms of private information exchange by other persons can only be carried out in the case specified by law ( Clause 3, Article 38)" [6].

The Penal Code 2015 also institutionalizes the constitutional protection of this right in Article 159. Crimes infringing upon the confidentiality or security of correspondence, telephone, telegraph or other forms of private communication of others are stipulated as follows: "1. any person who commits one of the following acts, had been disciplined or got an administrative penalty for this act but still commits a violation, shall be subject to a warning or a fine of between 20 million VND and 50 million VND or a fine of non-custodial reform for up to 3 years: a) Appropriating correspondence, telegraph, telex, fax or other documents transmitted by post or telecommunications network in any forms. b) Deliberately damaging, misplacing or intentionally taking information and contents of correspondence, telegraph, telex, fax or other documents transmitted by post or telecommunications network; c) Illegally listening or recording conversations; d) Illegal examination and seizure of correspondence or telegram; e) Other acts of infringing upon the confidentiality or security of correspondence, telephone, telegraph, telex, fax or other forms of private information exchange" [6].

The right to privacy is also institutionalized in specialized legal documents such as the Press Law of 2016 (in effect since January 1, 2017), prohibiting the act of "disclosure of information about the State's secret

list, personal privacy, and other secrets according to the provisions of law (Article 9)". At the same time, this law also stipulates that "no one can abuse the right to freedom of the press, the right to freedom of speech in the press to infringe upon the interests of the State, the legitimate rights and interests of organizations and citizens (Article 13)" and that journalists "d) Must correct, apologize in case of providing false information, distorting, slandering, offending the reputation of agencies and organizations, honour and dignity of individuals (Article 26)".

The Law on Network Information Security of 2015 also defines the principles of ensuring network information security in Article 4 as follows: "1. agencies, organizations and individuals are responsible for ensuring network information security. Activities of network information security of agencies, organizations and individuals must comply with law, ensure national defense and security, state secrets, maintain political stability, social order and security and promote socio-economic development; 2. Organizations and individuals are not allowed to violate the network information security of other organizations or individuals; and 3. The handling of network information security incidents must ensure the legitimate rights and interests of organizations and individuals, not infringe upon private life, personal secrets and family secrets of individual, private information of the organization...".

However, the respect and protection of an individual's right to private life is not applicable in all cases. The 2013 Constitution also has provisions that limit this right in some cases to ensure national security, social ethics, public health, etc. Specifically, Article 14 (2) of the 2013 Constitution stipulates: "human rights, civil rights can only be restricted according to the provisions of law in necessary cases for reasons of national defense, national security, social order and safety, social virtue, community health". At the same time, Article 15 states: "1. citizen's rights are inseparable from civil obligations; 2. Everyone has the obligation to respect the rights of others; and 3. Citizens have the responsibility to fulfill their obligations towards the State and the society. The exercise of human rights and citizen's rights must not infringe upon the interests of the nation, the legitimate rights and interests of others". Therefore, human rights in general and right to liberty and security of a person in particular can be restricted in the case of protecting national interests and protecting other fundamental legitimate rights and interests of a residential community. The recent practice has shown that with the COVID-19 pandemic, the restriction on

right to privacy of the health status of individuals, the disclosure of identifications and itinerary of individuals positive for COVID-19, etc., are necessary for public health, security, and freedom of others.

Clause 2, Article 46 of the Law on E-transactions 2015 stipulates: "agencies, organizations and individuals are not allowed to use, provide or disclose information about privacy or information of other agencies, organizations and individuals that they have access to or take control in electronic transactions without consent, unless otherwise provided by law". In addition, Article 25 of the 1989 Law on the Protection of People's Health stipulates the responsibility of physicians is "to protect the confidentiality of patients related to illness or privacy that they have information about". Especially, Article 159 of the Penal Code 2015 (amended and supplemented in 2017) stipulates the crime of infringing on confidentiality or security of correspondence, telephone, telegram, or other forms of exchanging private information of other people. The following statistics demonstrate the vulnerability of the personal right to security in the time of widespread internet use. According to data from Kaspersky Security Network, in 2018, Vietnam was among the top three countries with the most cyber-attacks. In the digital age, threats to cybersecurity are becoming more and more sophisticated. In particular, in the context of the Industrial Revolution 4.0, Vietnam has been facing complex changes in cybersecurity, protection of human rights in general and the right to personal freedom in particular, especially the right to privacy. On June 12, 2018, at the 5<sup>th</sup> session of the 14<sup>th</sup> National Assembly, the Law on Cyber Security was passed, which is a very crucial legal basis clearly demonstrating the superiority of Vietnamese law. The Law on Cyber Security has internalized international standards, institutionalized the Party's views, and concretized the 2013 Constitution regarding the protection of human rights and citizenship in the context of integration and development.

In response to the COVID-19 pandemic that could take hundreds of thousands or millions of lives, the Communist Party of Vietnam and the State have actively deployed many adequate policies and programs in order to ensure the right to life of all individuals and social groups, especially the most vulnerable people such as the elderly, children, women, ill, and poor. These, among others, make up the nationwide campaign and program of vaccination for all, and demonstrate that "people are centred and ahead of other economic priorities". For example, Vietnam's policy of establishing a vaccine fund for COVID-19 prevention and control has been recognized



and appreciated by the international community. Assistant Dr. Kidong Park, World Health Organization Representative of Vietnam said: “the mobilization of resources to improve access to COVID-19 vaccines by the Vietnamese Government is very timely, in line with the Global Vaccine initiative” [7].

Guarantee of the right to life in the time of COVID-19 means that the foremost objective of the State must be responsibility to vaccinate as many people as possible and as soon as possible. As of September 29, 2021, the total number of vaccine doses administered in Vietnam was 42,165,168 doses of which the first dose makes up 32,669,057 and the second dose 9,496,111. Indeed, Ho Chi Minh City has already administered the 1<sup>st</sup> dose of vaccine to over 9 million people (the country’s highest figure), reaching a rate of about 75% of people receiving the 1<sup>st</sup> dose and about 25% of the people receiving the 2<sup>nd</sup> dose [8].

## 2.2. Shortcomings

Although the Vietnamese legal system has continuously improved in the direction of enhancing the right to life, liberty, and security of person, reality shows that the Vietnamese legal framework still has a number of provisions that are not compatible with the international legal system, especially the international conventions of which Vietnam is a member state, which includes provisions on the protection of the right to life, liberty, and security of person. The context of market-based economic development, extensive international integration, digital age, IoTs and broadband, especially the context of the global COVID-19 pandemic in 2020, has posed great challenges to the implementation of the laws on the right to liberty and security of person.

In 2021, the second year that Vietnam was strongly affected by the COVID-19 pandemic, bringing the total number of COVID-19 cases to more than 1.3 million and more than 27,000 deaths, the unemployment rate increased to 2.52% (as of July 2021) [9]. The pandemic has directly affected the people’s enjoyment of rights, especially living, traveling, and studying due to the need to social distance, which was applied across the nation to prevent the pandemic. Thus, alongside the impressive achievements of guaranteeing those basic rights, many challenges and difficulties regarding realizing those rights remain. The protection of the right to liberty and security of person, especially inviolable rights to body, honour, property, and personal privacy, etc., is an urgent issue now, more than ever, so as to build and perfect laws as well as ensure in practice. The infringement of privacy is a direct result of the lack of understanding the law, the sense of respect for

human rights of both law enforcement officer and the rights holder.

The right to liberty and security of person is a fundamental right of each person, a moral right defined in Articles 21 and 22 of the 2013 Constitution, in the relevant laws. However, in reality, there are still many shortcomings in ensuring this right in the context of increasing infringement with a more and more serious nature and its scale and scope directly affecting the right to life, liberty, and personal security. These include, among others, the five following shortcomings: i) the incomplete legal system and policy related to these rights in particular and to human rights in general; ii) the imbalance between the Party’s guidelines and policies, laws, and practices; iii) the incapability of delivering and executing legal and policy frameworks into practice by many law and policy officers and civil servants at both central and local levels; iv) the inadequate awareness of laws and policies in general as well as of human rights in particular both by duty-bearers (public and civil servants) and rights-holders (the people); and v) the ineffective mechanisms for the monitoring and protection of the right to liberty and personal security.

According to the statistics, Vietnam is ranked 13<sup>th</sup> among 20 countries with the highest number of internet users in the world. As of December 2019, Vietnam had 64/97 million internet users of which 94% of internet users in Vietnam use the internet every day. The status of intentional or unintentional violation of internet users in general and social network users in particular has imposed on the reasoning of legal aspects ensuring right to privacy, right to life, liberty, and security of individuals and community. The consequences of not adhering to legitimate principles, not respecting and ensuring the right to privacy, life, liberty, and security of person by social network users are extremely serious violations that sometimes deprive individuals not only of the right to liberty but also the right to life. Since human rights are interlinked, correlated, and indivisible, the protection of all human rights is vital. The violation of the right to liberty and personal security in the time of ubiquitous internet and social media use might cause the violation of other rights, especially the right to life. During less than two years of COVID-19, the limitation in executing the right to personal security, especially in regard to individual privacy, has reached a record-high rate with thousands of cases occurring across the country due to the application and imposition of zone-classified policies for restricting an individual’s free movement. Indeed, many localities have imposed their own harsher policies on movement, as well as



health registration and declaration that publicly disclosed a disclaimant's privacy and personal liberty.

Articles 21 and 22 of the Constitution stipulate that "everyone has an inviolable right to private life, personal secrets and family secrets; has the right to protect their honour and reputation". Information about private life, personal secrets, and family secrets are secured by law. Everyone has the right to confidentiality of correspondence, telephone calls, telegrams and other forms of private communication. No one is allowed to illegally open, control or seize other people's correspondence, telephone, telegram and other forms of information exchange. Article 22 states that citizens have the right to a legal residence and everyone has an inalienable right to the accommodation. No one is allowed to enter another person's residence without that person's consent. The examination of personal residence is prescribed by law. Article 24 of the Constitution stipulates that everyone has the right to freedom of belief and religion, following or not following any religion. All religions are equal before the law. The State respects and protects the right to freedom of belief and religion. No one may violate the freedom of belief or religion or take advantage of beliefs or religions to violate the law.

Article 32 of the Constitution stipulates that everyone has the right to ownership of legal income, savings, housing, living facilities, means of production, capital contributions in enterprises or in other economic organizations. Private ownership and right of inheritance are protected by law. In case there is an expropriation or requisition for reasons of national defense and security or national interests, in a state of emergency, natural disaster, and its prevention and control, etc., the State shall make up for individual's assets at market prices. Article 36 of the Constitution stipulates that men and women have the right to marry and divorce. Marriage is based on the principles of voluntariness, progressiveness, monogamy, equality, and mutual respect between husband and wife. The State protects marriage and the family and protects the interests of mothers and children. Article 38 of the Constitution stipulates that everyone has the right to health protection and care, equality in the use of medical services, and the obligation to comply with regulations on disease prevention, medical examination, and treatment. Any acts threatening the life or health of others and the community are strictly prohibited.

In fact, in order to ensure liberty and security of person, privacy is much related to the use of personal images, so the use of personal images must be agreed by those who own those images. If a personal image

is used for commercial purposes, the owner of the image must be paid, unless otherwise agreed by the parties. According to Article 32 of the Civil Code, the person possessing the image has the right to request the court to issue a decision to force the violator, relevant agencies, organizations and individuals to revoke, destroy, and terminate the use of the image as well as compensate for the loss. However, civil law also prescribes the cases in which the image is still used without the consent of the person owning the image or the legal representative of the person having the image, including: the image is used from public activities including conferences, seminars, sport competitions, art performances, interviews, press conferences, etc., images used for the benefit of the nation or public interests, etc., and community activities without harming the honour, dignity, or reputation of the person owning the image and without copyright infringement. In spite of being well and fully recognized in the Constitution and laws of Vietnam, challenges to freedom and personal security lie not only in the effectiveness of specific regulations but also in the protection and enforcement through the judicial system and other measures, especially education, dissemination, and propaganda together with practical action plans and programs of the Government and all level of branches.

One of the main limitations of ensuring liberty and security of person is restrictions in protecting the right to confidentiality and the inviolable right to private life, honour, dignity, and reputation of individuals in the digital age and in popular social networks today. These shortcomings consist of incomplete and asynchronous legal provisions as well as in the practices of implementing and ensuring these rights.

The inviolable right to private life, personal secrets, and family secrets have been recognized in the 2013 Constitution and institutionalized in a number of documents such as the Civil Code, the Penal Code, and Press Laws, but these regulations are just general principles and not specific enough to go deep into real life adjustments. These regulations are more general and formal than practical, and there is a lack of specific legal mechanisms to ensure the inviolable right to private life, personal secrets, and family secrets. Because Vietnam still does not have a separate law on the protection of privacy, the contents belonging to the category of privacy are still unclear. What content belonging to personal secrets/family secrets are necessary to be protected? How will an invasion of private life be handled? These are gaps in the provisions of the law on the protection of right to private life.

Because current law has unclear and unspecific regulations as mentioned above, it is difficult for people to access necessary information considered to be crucial evidence of a lawsuit and therefore, in many cases, authorities accidentally push the plaintiff into a dead end due to a general lack of agreement about the perception of right to privacy.

### 2.3. Causes

In the aforementioned analysis, there could be both subjective and objective reasons for the existing shortcomings to implementing the rights to life, liberty, and personal security. Inevitably, the main reasons for these shortcomings are: a) an inconsistent and incomplete legal system, lack of specific and detailed sanctions, and the lack of a specific institution in practice to ensure the inviolable right to privacy, personal secrets, and family secrets; b) the limitations on capacity, skills, and enforcement of policies and laws, especially from law enforcement staff at a grassroots level; c) the restrictions on sense of rule of law and awareness of human rights, respect for the culture of rights of both responsible subjects (cadres, civil servants, law enforcement, journalists, etc.), the duty-bearers, and the rights-holders (all human beings) especially in terms of right to life, liberty, and security of person; d) the incompleteness and asynchronization of institutions and the mechanisms for coordination responsible for monitoring and advising, protecting the exercise of the right to life, the right to privacy, liberty, and security of person, especially the lack of specialized, independent, and national agencies to protect and promote human rights of individuals in practice, and the lack of programs or action plans at both national and local levels on human rights in general and the right to life, liberty, and security of person in particular. The reason is there are contradictions in protecting the right to life and the right to liberty and personal security due to the severely spreading COVID-19 pandemic. These are, for example, the restriction of implementing the right to movement in order to protect the individual's right to life and personal security have also caused limitations to the enjoyment of other fundamental rights such as the right to association and assembly, the right to work, and the right to entertainment.

Freedom of movement is among the fundamental rights under the 1966 ICCPR to which Vietnam has been a member state since 1982. Freedom of movement not only creates the premise for an individual to enjoy civil, political, and other economic, social, and cultural rights, but also as a condition to promote the development of the economy and society of countries. Nonetheless, the right to freedom of movement is not

absolute and can be subjected to restrictions in certain circumstances, for example, in a time of emergency like during COVID-19.

The absence of an efficient, national, and independent institution has resulted in diminishing the effectiveness of the protection and promotion of human rights in general. Indeed, the protection of the right to life and the right to inviolability in terms of private life, personal secrets, and family secrets has not been effective and substantial. Moreover, information in the press is also a tool for a number of journalists to invade the private life of individuals. With a large and diversified press system covering the entire country from the central to local level, the press is an important information channel in propagating, disseminating, and educating about human rights while raising awareness to the practice of ensuring human rights. However, there is also a downside effect when the market creeps into the press and dominates communication, along with the understanding and awareness of the law and the rights of some press agencies and journalists. During the continuous development of the society and the explosion of information, some newspapers have shown signs of leaving their principles and operating purposes, pursuing profits and erroneous tastes, becoming a deceptive means of communication, trespassing and illegally spreading personal information to attract readers and this has adversely affected the reputation of the journalism. The press is sometimes the trigger increasing the violation of the privacy of individuals through hot news, soliciting by exploiting the private aspects of famous people (artists, etc.), often reporting without verification and consent in order to use images, private information, personal life and defame their honour, reputation and dignity. Some newspapers and reporters may also act as investigators, or judges by producing incriminating articles, or providing information on the identity and images of suspects, defendants, or victims, etc., in many investigations by the authorities.

There are some recent cases of violating the right to privacy such as cases related to the artist Tran Thanh or Ngo Kien Huy, which reveal the void of effective and synchronous legal regulations as well as mechanisms protecting these rights in our country today.

Although the legal framework for securing the right to confidentiality of correspondence, telephone, telegraphy and other forms of private information exchange is relatively complete, when the 2013 Constitution was enacted and came into effect, some legal documents were not yet amended according to the spirit of the new Constitution such as the

Postal Law, the Law on Telecommunications, the Information Technology Law, among others.

In addition, although the law has imposed penalties for violations of the right to confidentiality of correspondence, telephone, telegraphy and other forms of private communication, sanctions are generally still not strict enough and are mainly based on handling administrative violations making them less deterrent and educational. A group of people with high expertise in technology take an interest in exploring but lack their awareness of law, so they accidentally or intentionally illegally access the internet to exploit personal information for their own self-interests. The wiretapping of more than 14,000 mobile subscribers in 2015 is an example of this limitation.

On May 7, 2015, the People's Court in Hanoi brought the case of using software to wiretap to trial. Accordingly, Nguyen Viet Hung (born in 1974, residing in Khuong Dinh Ward, Thanh Xuan, Hanoi) - Deputy Director of Viet Hong Technology Co., Ltd. was prosecuted by the People's Procuracy of Hanoi for "Disseminating or illegally using information on computer networks, telecommunications networks, the Internet".

In 2015, information about a hacker group named DIE Group (identified in Vietnam) that attacked the website of a member unit of the Vietnam Posts and Telecommunications Group (VNPT) and disclosed tens of thousands of customers' bank accounts on the Facebook page of this group made many people confused and worried when important personal information such as full name, address, and phone number (both fixed and mobile) were easily accessed to infringe upon the legitimate rights and interests of citizens. Information about potential customers is for sale in almost every field from securities and real estate sectors to companies in industrial zones, NGOs, entrepreneurs, directors, accountants, customers of insurance companies, telco subscribers, fresh graduate students, etc., and even a list of parents from preschools.

Advertising and selling personal information of mobile phone subscribers are acts of violating the law, personal liberties, and privacy rights. Regarding sanctions, the acts of selling personal information of subscribers, depending on the level, can be administratively sanctioned with a fine between VND 50 million and 70 million or prosecuted for criminal liability in accordance with the 2015 Penal Code with a sentence of up to 7 years if the offence

falls into one of the following cases: organized crime, taking advantage of right to administer computer networks, telecommunications networks, or internet networks to gain illicit profits of one hundred million dong or more, or causing very serious or particularly serious consequences. However, the above-mentioned situations are still widespread, uncontrolled, and rampant due to difficulties in proving and sanctioning violations. Only when the origin of the data can be determined can there be a basis for handling violations. On the other hand, most cases of identity sale stop at the level of sharing personal contact (phone number, email, office or home address, etc.) to offer for sale. Additionally, very few people who have lost personal information sue for a variety of reasons. Therefore, the investigation and strict handling before the law have not been thoroughly deployed.

Shortcomings in privacy protection stem from the lack of a consistent and unified legal system, especially the lack of detailed and specific legal provisions. In particular, there is no implementation guidance on the protection of privacy or a private life for individuals, and even the concept and connotation of private life remain unclear. Therefore, this controversial and inconsistent legal issue leading to a gap in the application of the law needs awareness.

In fact, there are more and more cases of infringement of the right to correspondence, privacy, and personal secrets such as disclosing or leaking personal information of users from social networks like Facebook, YouTube, and Zalo, etc. Millions of user accounts have been attacked and their information has been stolen. However, the current legal system is not synchronous and effective and there is no mechanism to effectively protect personal information or family secrets of users who are Vietnamese citizens in the territory of Vietnam on cyberspace. Legal provisions on the protection of personal secrets of defendants, victims, and witnesses have not been concretized and are not strict enough. The mere fact that disclosure of information about victims, defendants, or witnesses is quite common and is exploited by the press and public leads to serious consequences for witnesses and their families. Disclosure of information about a crime can injure victims and witnesses, create discrimination against them and their families, and have a direct impact on their lives and their ability to reintegrate into society, thereby increasing the risk of violating rights to liberty and privacy.

One of the leading causes of limitations in the implementation of the law on the protection of these



rights is inconsistent awareness of the legislature and law enforcement, especially among levels, sectors, and academia, on privacy in our country at present. The lack of adequate awareness also directly affects the inconsistent, synchronous, and drastic action between sectors from central to local levels with regard to effective implementation as well as strengthening measures to protect these rights. Lack of support mechanisms for self-protection of personal information related to personal privacy, or handling skills in the situations regarding confidentiality protection, and personal information sharing in the digital economic environment or social networks are other causes.

#### **2.4. Policy recommendations and ways forward**

In order to further improve the implementation of an individual's rights to life, liberty, and personal security in time of COVID-19, as well as post-COVID-19, the following resolutions should be highly considered and upheld as follows: *Firstly*, further improving legal and policy system, especially revising some laws and legislation in order to better protect these rights. For example, the right to life in time of COVID-19 requires a better mechanism for protecting the right to life of every Vietnamese citizen and individual, especially the most vulnerable people such as women, children, elderly, disabled, and low income citizens, etc. In addition, some inadequate legal provisions related to health care and personal security need to be changed. Thus, there a new law on the protection of personal data in time of digitalization in order to protect better the personal security and liberty should be enacted. In addition to this, it is necessary to amend the 2015 Penal Code in order to criminalize cyber crimes as well as any breaches against personal security and liberty when taking advantage of the internet and a citizen's right to freedom of expression. *Secondly*, enhancing the capacity and competence of law and policy makers, in particular, and executors and officers in general, would ensure these rights. The 13<sup>th</sup> Party National Congress's Resolution sets the three breakthroughs of which the necessity of building developed institutions, especially a developed legal system, alongside developed human resource and infrastructure (especially digital one) are pre-conditions for achieving the ultimate goal of a civilized, democratic, just, and happy nation with human rights for all. *Thirdly*, further education,

propaganda, and information about the law, policies in general and human rights in particular, for both rights-holders (all stakeholders) and duty-bearers (public officials and civil servants) are essential. Human rights education must be provided and further strengthened in Vietnam's national universal educational system, especially for those training in the legal profession such as lawyers, judges, prosecutors, police officers, etc. *Fourthly*, further review is needed by an independent institution of the necessity of establishing a more effective and efficient mechanism for constitutional protection in particular, and to better protect human rights in general. At the same time, an independent institution of human rights such as a National Human Rights Commission or Ombudsman should be seriously reviewed for the establishment. In the present context of Vietnam, there should be an inter-commissional body established within the National Assembly's organs in order to supervise the implementation of human rights in general and the right to life, liberty, and personal security in particular. *Fifthly*, a more effective coordinative and collaborative mechanism for human rights protection among State and non-State organs or institutions, between national and local organs, must be established. *Sixthly*, further improving working institutions, as well as promoting, for the competence and role of mass media, mass organizations, or associations such as the Father's Front, Women's Union, Youth Union, the Association for the Protection and Care for Children, Lawyers' Association, Journalism Association, etc. should be accomplished. *Seventhly*, promotion of international cooperation in the fields of education, training, and sharing experiences in implementing the human rights in time of COVID-19 in the new context and a changing world is essential.

### **3. Conclusions**

In short, the implementation of the rights to life, liberty, and personal security during the COVID-19 period in Vietnam has been remarkably improved and has obtained a lot of achievements. The Communist Party of Vietnam and the State of Vietnam have been adopting and implementing many new guidelines, policies, and laws to better guarantee human rights for all, especially the right to life, liberty, and personal security. Along with great efforts made in realising those rights in the time of COVID-19 over the past few years, Vietnam is beginning to fall in line with

the new context of in-depth international integration and rapid socio-economic development. However, there are still many obstacles and challenges to overcome to ensure these rights, which need to be carefully considered and taken seriously to improve the Vietnamese legal and policy framework, as well as implement and bring these rights into practice in the years to come. These obstacles and challenges are both objective and subjective resulting from the process of the nation's socio-economic development, international integration, as well as the recent changes in the regional and international context. Notably, there exists a range of issues that needs to be improved to ensure better human rights for all, such as i) the contradiction between the rapid growth of a socialist-oriented market economy with the higher demand of people in meeting national and international human rights standards; ii) the wider gap between the upper and mid-incomers and the poor, the rural and urban areas, modernisation and urbanisation with the conservation of cultural and national identity; iii) the incapacity of delivering the Party's policies and the State's law enforcement, especially at the local level; iv) the incompleteness of the national legal and policy frameworks; v) the improvement of establishing appropriate, effective mechanisms for power control and supervision in checking and balance amongst the state organs in fulfilling their own powers and duties in the implementation of human rights for all; vi) the inappropriate awareness of the law, human rights and the culture of human rights respect.

Thus, to better guarantee the human rights for all individuals, social groups and the entire society, the most and foremost priorities should be taken seriously as follows: 1) Much greater effort is needed for further improving the developed institution for the organisation and operation of the Party, the State and the entire political system, especially legal-administrative institutions; 2) Much greater attention made to educate and train advanced human resources who are capable of performing the law and policy in general, as well as that of human rights in particular, in the current context; 3) Much greater improvement of establishing an advanced technology and science, a developed infracostal system, etc. More importantly, there should be an appropriate shift in mindsets, thinking, and culture among politicians, leaders and managers, cadres, public and civil servants, about the essential role

of strategic leadership and governance in law and policy making, implementation and supervision. In addition, there needs to raise awareness of human rights, skills and culture for both the state organs, or the duties-bearers, and the people, or the rights-holders, based on international human rights law and national law, cultural identity and the nation's tradition.

### CRediT author statement

Van Nghia Hoang: Conceptualization, Methodology, Formal analysis, Writing, Editing; Thi Van Anh Pham: Data analyst.

### COMPETING INTERESTS

The authors declare that there is no conflict of interest regarding the publication of this article.

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