

STATE MANAGEMENT BY LEGISLATION OVER PRESS - SOME SHORTCOMINGS TO SOLVE

CHỦ KIM HOA^()*

Today, mentioning reformation means the openness and integration, especially the process of mechanism change. In such openness, integration and mechanism change together with other fields and careers, the press in Vietnam is facing the new complexities including the issues arising from the inside of the press system (such as the competition between forms of press, pressure of globalization to mass media). The press activities encounter a lot of difficulties and obstacles: there are barriers about awareness; many shortcomings still remain in state management mechanism over press; meanwhile, on the aspect of information reception, the public press starts paying more attention to the legal behavior rules, so even the small mistakes of journalists in terms of law may cause the bad reaction in the society; in general, the subjects specializing in press have not got adapted to the legal environment in career behaviors in time; the examination and inspection ensuring the serious enforcement of law are not made regularly; the abidance of law is still casual and inactive.

Apart from the above outside obstacles, there has been fierce competition even in

the system of press forms, especially in economy. This leads to less control over the propaganda – one of the big issues of press management activities in Vietnam today. Hence, to ensure the close and effective management over press activities and create favorable conditions for them, it is necessary to find out the scientific and reasonable measures and directions for adjustment. The improvement to the ability of state management by legislation over is the urgent requirements in terms of both argument and reality.

In Vietnam, that the press is managed by the State is the typical point of the state management by legislation over press. This is different from that in the capital societies where press is an industry of economy managed by the capitalists, so this is the most important and decisive point. As the civil authority management subject, the State is required to directly carry out management activities and create favorable legal environment for the development of press through the orientation, adjustment, examination,

^(*) Dr., Vietnam Financial Times.

control over the press activities. Relying on that, the State can both control the press activities closely and ensure the freedom of expression, press freedom of the citizens.

The state management by legislation over press in our country could be said to be the process for the State to build and complete the law system for press, organize and enforce law seriously, and inspect, examine, make timely discovery and strict penalty to the law violations in press. The effect of state management in the field of press is the centralized expression of state power in influencing the social relations formed in the field of press together with certain forms and methods to achieve the management target set out by the State.

It is necessary to realize that the international and domestic backgrounds have created the big opportunities as well as severe challenges for the field of press in our country today. The forecast about a revolution in organization model and press making technology, structure and enjoyment rate and distribution organization model, etc. in the strong regional and international integration period has put press in the heavy pressures, requiring press to keep updated and maintain development orientation within scope of law. With 702 press bodies, nearly 15,000 journalists granted with card, about 55 publishers, 1,200 printing facilities, 129 state owned book distribution companies, and about 12,000 private bookshops and bookstores and the appearance of many bookstores and joint stock companies specializing in culture and

communications (9), the activities and improvement to the effect of state management by legislation in the field of press is an urgent requirement in Vietnam today. However, in reference to the practice of activities of state management by legislation over press in our country, it could be said that, beside the achievements (largely notified to the public), there have been alarming affairs which need solution.

I. Present shortcomings

1. Little care for studies

During more than 20 years of reformation together with the processes of changing thinking and economy, the studies about the management mechanism have been made with the care from our Party and State. In legal science, the studies have paid great attention to building up the ruling by law socialist republic state, in which the State's management over the society by legislation is the basic content. These studies can be divided into several groups such as group for studying general argument about state management, law and mechanisms, method of state organization, law in the socialist market economy, one for state management by legislation over some certain fields, one for the effect, effectiveness of state management by legislation.

For the studies about state management and law in the field of press, legal science as well as press one, there have been some works, most of which are Master of Arts essays. Although these studies mention the fundamental issues about state management over the field of

press, they mostly refer some aspects of state management activities and come to a standstill with the general comments about the real situation of press management activities, and they are not basic and systematic; they have not become a unified argument system yet. On the other hand, the above studies have mostly been carried out over the current years, and they are not systematic. In general, as for the press science in our country, there has been no work basically and systematically studying state management in general and state management by legislation in particular for press as a basic scientific study topic. In extension, in the study about state management, no work basically and systematically studying about state management for press in general and press bodies in particular has been found.

2. Unsatisfactory state management apparatus

In Vietnam, the authority of state management over press is stipulated specifically in the system of the law normative documents for press; according to that, the body performing the function of state management over press in our country is Government, and the Ministry managing speciality directly helps the Government to conduct this function; the people's committee of the provinces, cities are the bodies performing the function of state management over press in the regions. Together with the reformation our country, the system of the state management bodies in the field of press has been gradually renewed which has made an important contribution to the

establishment of rules over press activities.

However, the mark of the centralized management mechanism since the subsidy period is still heavy and it does not meet the requirements of the new management mechanism; although the management effectiveness and effect is improved, they are still not corresponding to the development missions and requirements of press in our country today. The function, mission of state management in the field of press of the system of these bodies in the socialist oriented market driven mechanism have not been clearly identified and matched with the reformation requirements up to now, which lead to the overlap in several management works. The organization of the state management body system specializing in press from the central to local government is still bulky with many levels, and the management method is still bureaucratic, centralized and dispersed with no suitable financial mechanisms and guidelines.

Especially the state management body at ministerial level with an extremely sensitive field in politics, culture, and economy such as newspapers, these bodies themselves are not stable in a long time in terms of organization, apparatus^(*), which lead to difficulties in achieving the comprehensive

^(*) On average, after every 2 years, the organization of apparatus, functions, missions of Ministry of Culture and Information (presently Ministry of Information and Communications) change once, from which the split and merge of the specialty bureaus and departments takes time to arrange, deliver and reorganize the apparatus and staff which causes the direct influence on state management over press activities (10).

requirements in effect and effectiveness of state management. The excessively quick change with high density has caused the instability from the inside of the state management apparatus over press; hence, the organization and management structure is cut and a lot of weak points, contradictions affecting state management activities are revealed.

Moreover, the organization form of the bodies helping the Ministry perform state management function in a long time is not in conformity with the principle as well as practice of state management: the form Department of Press existing in a long time is not reasonable, so the management effect is not high, with *insufficient function, mission, power to carry out the role of management* (see: 2, p.16). Additionally, there are overlap, repetition in function, mission between Department of Press and other units of the Ministry. Just in the recent years, Department of Press is officially changed into Directorate of Press to perform the mission of state management. The state management staffs for press are not good, especially in speciality competence, administrative skills: many (especially at department level) are not trained fully and basically; thus, they do not have knowledge about state management as well as training about the branch they are in charge; they do not gain the level corresponding to the press missions and grasp the violations taking place in reality (see: 3, pg.7). Not to mention that this force is thin and weak (see: 4, pg.2) in practice, the overload is obvious, not including

the factors of competence and synchronization. Additionally, in the practical activities of Directorate (Department) of Press as well as those of Ministry of Culture and Information, the content of state management over press mostly focuses on performing some missions, but other contents of state management which are very important receive no care.

Obviously, reality is requiring enhancement of state management by legitimization in the system of press state management bodies.

3. Many shortcomings in the press governing bodies

Currently, all the ministries, industries, political and social organizations, provinces, cities of central government have the press bodies, meeting the need for mass information of the governing ones. However, according to law regulations, there have been a large number of state management bodies (and leading bodies) over press as well as the governing ones over several newspapers, magazines, leading to the interminglement of leading and instructing positions with managing ones and the object under management in the same subject. Moreover, over the past years, a lot of press bodies have shared a governing one, and this leads to the spread in the press as well as management activities.

On the main and specific fields of management, (such as the performance of press planning, staff works, financial mechanism, etc.), beside the advantages, many governing bodies are still not fully aware of the roles and responsibilities of

leading, managing the press bodies for which they are in charge, the nature and the great influence of the good as well as the bad caused to the society by the press, or although the managers of press have been assigned, the effectiveness of such instruction and management is generally not high; they still get trouble and evades when instructing and dealing with press. Many governing bodies almost fail to examine, control their own press agencies (especially finance financial issues of press bodies, particularly in advertisement, campaign for sponsorship, collection for support to the press bodies, wage, royalties payment in which a lot of violations and negative things are hidden).

4. A lot of shortcomings in building up law in the field of press

With a system of law normative documents issued in the reformation period (1986-2009), the activities in legislation and regulation in press in general in our country could be asserted to gain a lot of achievements. However, beside the advantages, this activity since reformation has still contained basic disadvantages: in a long time, the legislation and regulation activities still violate the authority of form and content, building up law in this field is still unsystematic, inactive, and pursuant to the reality; moreover, due to the authorization mechanism of legislation and regulation, the executive body is the one to compose law norms; however, no mechanism for eliminating the partialness shown in a variety of documents has not been provided. The time for issue of the documents is too

long, leading to the backwardness of the norms. This system is currently in lack of synchronization, focusing on situation solution and changing quickly, and there are contradictions in an issue which cause trouble in law enforcement.

Beside that, the mechanism for building up documents has not promoted the real intelligence of the bodies, experts, and people, and it lacks the objective critic mechanism. In the process of building up the institution, there are little scientific studies, summarization, and practical investigation. Although the implementation of verification and appraisal for the projects, drafts brings the great significance for improving the quality and the application possibility of the document in reality, in practice, it emphasizes on formalism and word consideration, lacks the widespread survey measures, leading to the quick amendment or substitution to the documents.

Moreover, in building up the law, it comes to a standstill with the general regulations and lacks the specific regulations and guidance. This can be seen clearly through the large proportion of the decrees and decisions (as for press, there are more than 40 Decrees, Decisions by Prime Minister, Decision of Minister of Culture and Information), but the forms of instruction account for a small number (only nearly 20 Instructions by Prime Minister and Minister of Management). This enables the assertion that the document forms defining the measures for instruction, encouragement, coordination and examination to the activities receive little

care while the documents in which the guidelines, leading and operating measures are stipulated have more attention.

5. Too weak activities of organizing enforcement, inspection, and handling to violations

Through the study about the law normative documents on press in the period from 1986 to 2009, low enforcement effect is the first to be seen. The instruction and organization for enforcing press law of the involved subjects are not conducted frequently, and giving the full power to the responsible bodies to organize and enforce law still exists (while this force is both thin and weak now); the policy mechanism has not created favorable conditions for these bodies to have sufficient management ability yet.

Moreover, our country still “lacks the coordinating mechanism to handle the violations in the field of press, publication between state management bodies and the appropriate authorities, measures and sanction which are strong enough to deal with the violations (5, p.81). Although the awareness of law in society, from the staffs to people, has changed, it is very low as compared with the requirements for state management by legislation. The fact that there are no mechanisms for law enforcement supervision and “post check” (to supervise the performance of the requests by the inspection and examination bodies) so as to deal with the violations or absolutely overcome the consequences is not included, and

the administrative sanction is not strong enough.

There are several reasons for the limit in effect of state management in the field of press, but the basic ones are as follows: firstly, *the current law system is insufficient and asynchronous*, and it is in running and queuing situation. Especially, as for a great number of important codes which directly impact on press laws (such as Law on issue of Law Normative Document, Civil Law, Intellectual Property Law), the late and inadequate issue has caused negative influence on the effect and effectiveness of state management.

Secondly, the assignation of tasks and responsibilities in activities of legislation and regulations, management organization still encounters a lot of shortcomings, making a state management body on press both manages and operates the press directly and the point assigned with the task of building up press law when it does not have enough condition and ability. This is a serious reason because it not only makes the burden heavier to the state management body but also has no compliance with the principle of state management by legislation. Together with several other reasons, the aforesaid basic ones have still caused the shortcomings to the state management.

II. Basic solutions

In order to deal with the solutions to the above issues, a system of the basic solutions is required.

1. Continuation for the perfection of law normative document on press

Today, in order to build up the state management activities by legislation over press in Vietnam, it is, first of all, a must to promptly complete and supplement the law normative document system on press both in content and form. The amendment and addition should be made with simplification, putting the opinion of package law building in practice, but it is necessary to have the method for issuing a law amending several related laws, make addition to the regulations, sanctions, legal responsibilities of individuals and organizations that issue the constitution violating documents which cause damage.

Beside the perfection of the law system in general, it is also required to make *addition and completion of the content of the law normative document system on press*, focusing on dealing with the defects, limits of the current law regulations on press to step by step create a full and united legal lobby as the base for the thorough implementation of the state management activities. Evidently, the reality of press activities shows that thinking is required to make advance to building up a new Press Code (including specific regulations for each press form) to have better management and quality for each form of press. This is also the form of press law which has been applied by the countries with developed press for many years (see: 6, pg.123).

Another content requiring urgent addition and amendment is *the content of the law normative document about administrative sanction* containing the

norms which are strong enough to fulfill the tasks of education, deterrence, prevention, and serious penalties because “penalizing with the hard measure such as fine at a high rate so that the income earned from the illegal business can not compensate the fine or penalizing with verdict in accordance with law” (7, pg.72). Apart from the above contents, it is a must to build and perfect the mechanism for examination, supervision over the activities of building up the documents and highly effective performance of the principle ensuring technology and legality should also be focused.

2. Reformation to the state administrative management apparatus, enhancement to the ability of the civil servants for state management over press

The new situation of our country today requires the quick formation of a new management mechanism over the entire society in general and press in particular, so a great reformation in the apparatus organization, operating method of the state management bodies should not be avoided, delayed, and extended when the “defects, weak points in organizing management and staffing are the deep and direct reasons which lead to the other different points in media over the past time” (8, pg.35).

To perform this solution, beside the necessary works (investigate, survey, assess the civil servants, have suitable training program and plan, train by title of state management), the reformation in thinking, management method, even in the correlative state apparatus, are

required, and the law system must ensure the basic factors so that the desired result of performance could be achieved

In general, the selection of the state management staff is in compliance with the State regulations, but so as to achieve the high management effect, the state management staffs about press must be the people having good command about press works, long time in the field of press; they must be experienced in press.

Beside that, it is also required to improve the activities for raising the level for the leaders, managers of press bodies, press staffs, and it is time to think about the establishment of a body for training the press titles (like Judicial Institute which trains the judicial titles today), in which, the training for title of Editor in Chief is particularly cared.

3. Good organization of press law enforcement, guarantee of serious abidance of law

In the activities of state management by legislation, the building of a complete law system is considered the first important one which works as the base for the entire activities of state management. The guarantee for the serious law enforcement in press plays a significant role. In the conditions of building a ruling by law socialist state today, the important points are not the activities of issuing law, but the more important is that how that law is applied in life and what to do so that the people abide it accurately and thoroughly.

To do that, the activities for organizing enforcement of law in the field of press, first of all, must start by deploying propaganda, explanation, guide, education of law in many forms, measures with the participation of a variety of forces, organizing the performance and application of law as well as strict and timely penalties to law violations. In this, it is required to promote inspection, examination, improvement of the effect in handling the violations of press as well as enhancement to the other legal professional knowledge (enhancing the examination, check, systemization of the law normative documents on press, speeding up the processing of law documents and use of the right type of documents, combining state management method with law and the others).

III. Conclusion

Today, in the new conditions and situations, Vietnam press is facing the great opportunities and challenges. Under the pressure of the international integration process and in the reformation initiated and led by Vietnamese Communist Party, as well as other forms of press, reformation and change are required for Vietnam press to catch up with the era advance and fulfill the duty as a revolutionary soldier of the Party in the front of thinking and culture. Especially in building the ruling by law socialist state today in our country, press – as a social system – also participates in the process as a historical essence. And the reality of press activities set up the urgent requirement:

it is required to have the study, application in reality for the measures to adjust this field by the means of law.

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