

UPHOLDING CIVIL RIGHTS IN EXERCISING EXECUTIVE POWER IN A LAW GOVERNED STATE

VŨ KIỀU OANH (*)

The promotion of democracy, the rule of law, and human rights has been in motion since the final days of the XIX century. It is the result of the advance of human civilization and years of conflict that came to be in antiquity. Since its advent, the concept of state jurisdiction inherently requires that human rights be respected and upheld. This characteristic is reflected in Article 2 of the 1992 Constitution (amended): *“The Socialist Republic of Vietnam is a law governed state of the people, by the people, for the people...”*

Science dictates that the state’s power be divided into three types: legislative power, executive power, and judiciary power. All three types must, in their own way, guarantee human rights and civil rights are protected. This paper addresses only the promotion of civil rights in relation to executive power.

1. The rule of law and civil rights in a law governed state

The reasoning behind the rule of law revolves around the relationship between state power and human rights or civil rights. The purpose is to identify the best way to wield power, as well as prevent power abuse and violation of civil rights. In the process of moving toward the rule

of law, each government applies its own model that it deems most appropriate. Still, a common trait is that democracy, human rights, and justice must be upheld.

The power of a state is linked to its jurisdiction. State power, otherwise known as the branches of government are separated into three categories: legislative power, executive power, and judiciary power. Legislation is controlled by the national assembly. A legislative body has the power to pass and amend laws that reflect the will of the authorities and of the people. Executive power is the power to administer and enforce laws in society on a daily basis. The judiciary branch is tasked with interpreting the law and ensuring equal justice by means of dispute resolutions and dealing with violations. In practice, it could be said that each power is important in its own right and is indispensable. But executive power, the purpose of which is to enforce laws, is particularly important. This is evidenced by the direct impact it has on civic life and on virtually all aspects of society; it influences each individual from the moment he or she is born until death. Depending on how

(*) MA. Institute of Social Sciences Information.

executive power is used, a political party's ability to wield or to abuse power changes drastically.

It is necessary to add that in past and present power structures, regardless of country, it is almost always executive power that encroaches on legislative power, not vice versa (1, p.15). Hence, executive power plays a pivotal role in state's ability to exercise its power, as well as in the protection of civil rights.

Pretty much all capitalist scholars believe that executive power is the power to enforce the law. The executive body is granted authority by the legislative body (see: 2, p.16). And executive power, in its broadest sense, is the power to enforce or implement laws. However, with the development of market economy, technology, and society, and with globalization in full swing, the concept that executive power is the power to enforce the law is no longer adequate.

Executive power does not just revolve around enforcing the law, it involves formulating and implementing state policies^(*). Policies are one thing, laws are quite another. Although the formulation and implementation of policies must be based on legal regulations and principles, policies are important in and of themselves and must be considered separately. It is not just a part of law enforcement. There are certain issues that are not clearly defined by the law and that need to be analyzed

^(*) It is similar with the change of a law governed state's concept. Traditionally, it is the power of issuing laws; however, it has turned into a bigger concept, including the power of issuing laws as well as the rights of supervision.

in a flexible and innovative manner by legal administrators. In reality, certain policies are better understood than law execution, especially in the area of civil rights. For example, in Article 67 of the 1992 Constitution, it is stipulated that the state shall support and help the elderly, disabled, and helpless orphans. But in actuality, the way in which the government fulfills this obligation is dependent on the policies of the government. The people know of the aforementioned forms of support only from a perspective standpoint...

Executive power indeed plays a crucial role in the power structure of a state. In addition, it has also been asserted that the protection of human rights and civil rights is integral to the functioning of a law governed state. This forms the basis upon which the relationships between executive power and civil rights in a law governed state are established.

Civil rights need to be acknowledged and upheld by a system of laws. But a greater challenge is the actual execution of laws done by an executive body. It is best that citizens exercise their own rights and obligations, but at times government intervention is required for those rights and obligations to be fulfilled. Consider, for example, business registration, birth registration, marriage registration, claims, accusation... Practically all civil rights are related to the operation of the executive body and administrative procedures. The reality in Vietnam and elsewhere around the world is that the execution of laws, if linked to human rights and interests, is always potentially risky. Human rights are not always

upheld in a fair, legal, and reasonable manner. Hence, it could be observed that controlling and managing law execution is an especially important mandate of a law governed state if it is to really uphold the rights of its citizens.

2. Executive power in relation to civil rights in law governed Vietnam today

Let us first analyze the problem from the state's perspective. Different political entities have different ways of organizing executive power, but two underlying principles prevail: granting power and centralization of power.

Montesquieu, a political philosopher, had the following to say with regard to how state power impacts human rights: *"When legislative power and executive power are both vested in a single person or entity, there will no longer be freedom; such a person or entity may enact dictatorial laws. Freedom will also cease to exist if judiciary power is not separated from legislative power and executive power. If judiciary power and legislative power are joined, then people's freedom and rights will be jeopardized; the court will be enacting laws. If judiciary power and executive power are joined, then the judge will have power no different from that of a tyrant at his or her disposal"* (3, p.100-101). Consequently, in principle, the three powers must be wielded by different bodies and must be put to use independently of one another to protect people's rights and freedom. Granting power is not just a purely technical matter that should be regarded as the appointment of duties. Rather, it has great impact on human rights.

Centralization of power is the power organization concept that an agency or individual having massive power and influence over legislative, executive, and judiciary bodies of the government. In actuality, however, that is not to say that a state that centralizes its power has one person or agency wielding power at both the central and regional levels. Power must still be divided among different government bodies. As pertains to human rights, the difference is that the granting of power is a mechanism for internal control of power and upholding civil rights, whereas centralization of power is used in cases where the state lacks power.

Executive power in law governed Vietnam is organized according to the principle found in Article 2 of the 1992 Constitution: "State power is divided among different bodies into legislative power, executive power, and judiciary power". As per this regulation, Vietnam applies the centralized power model, of which power granting is a component. A telltale sign of this model lies in the regulation *The national assembly is the highest organ of state power, with control over executive and judiciary powers*, as indicated by the following functions: making laws, establish supreme agencies, make the most impactful decisions, and overseeing government bodies. The person at the helm of the executive body and the judiciary body must be responsible for reporting to the national assembly. Nonetheless, it could be observed that power granting is still done, since executive and judiciary agencies have a certain level of independence within the

scope of the power centralization model. Hence, state power in Vietnam does not conform to the principle of power division, but, to a certain extent, power is still divided and tasks are appointed to different legislative, executive, and judiciary agencies.

In reality, the relationship between executive power and civil rights has increasingly gained prominence ever since 1986. Improvements to administrative procedures in the form of removing or changing unnecessary procedures that are inconvenient and also the elimination of the “give-take” mechanism has made it easier for people to exercise their rights. Freedom has increased and complaints have been on the decline. However, a number of problems remain:

- Executive power has had a long history in Vietnam. After 25 years of administrative improvements, fundamental rules are still missing that govern state – citizens relations. Legal regulations as a whole are not always clear. In actuality, people can have different interpretations of a single regulation. Arbitrary judgment regarding executive power is necessary, but it is inherently prone to errors because there is the risk of power abuse and breaching the law. Those are some of the reasons for breaching the law and legal disputes.

- In Vietnam, corruption is a major problem that could entail great risks. According to an annual ranking made by an international organization, corruption in Vietnam is always alarmingly high. Corruption lies predominantly in the executive body of the government. Perhaps this is a widely known fact.

When an issue needs to be solved, a common mentality is that the “envelop” method needs to be used to exercise one’s rights. This belief is actually not wrong. For as long as there is corruption, people will not be able to exercise their rights properly.

- Transparency and the ability to form analyses of officials are still very much inadequate. It is not rare for officials to shirk interacting and addressing civilians, despite the fact that those actions are necessary in today’s society.

- Unprofessionalism in the executive body was caused by the government’s paying too much attention to political factors and too little attention to management, capability, and managerial skills (refer to: 4, p.49).

- Democracy as part of executive power is still limited. The channels whereby democracy is implemented (public surveys, protests, ...) are still missing, and those that are extant (claims, accusations...) are not fully utilized.

- Officials are not sufficiently responsible and aware of discipline. They have outdated work methods and are truly unskilled at serving the people. They are immoral, excessively demanding, and annoying in carrying out their duties. Quite a few are disciplined and accused on grounds of legal violations. It can be observed from dispute resolutions over recent years that the plaintiff is either partially right or completely right.

- The state and society fail to properly oversee the proper use of executive power and to control executive power as representatives of the people. The

relationship between delegates and electors is very loose. Therefore, people do not have much say when it comes to executive power.

3. A number of obstacles to reforming the use of executive power in Vietnam

Ever since the *Đổi mới* (economic reforms), the revamping and development of the economy has turned our country from one of the poorest in the world to one with low-average income. In addition, poverty and famine have been curbed, and social policies have been followed... But the time has come for economic success to occur hand in hand with promoting democracy and human rights. Economic achievements are not to be fully recognized unless democracy and human rights are upheld.

In today's era, reforming the use of executive power must entail the following fundamental elements:

First, protect and exercise civil rights under the leadership of the communist party of Vietnam. At the very core of this relationship is the upholding of civil rights. With regard to executive power, the leadership of the party has to serve the purpose of ensuring that civil rights are exercised. Executive power entails exercising civil rights.

Second, using executive power does not mean neglecting human rights and civil rights. The making of a law governed state requires that the executive body respect, uphold, and exercise civil rights while abiding by the constitution and the law.

Third, the law must bind not just individuals and organizations, but also

government officials that exercise their power so as to prevent power abuse and to uphold human rights.

Fourth, executive power must be used effectively. In modern states, effective management plays an important role not just in societal development but also in protecting democracy. Thus, any party or person of power must be responsible to the people. If any one wishes to continue wielding the power of the state, he or she must put that power to good use. Executive power must first and foremost be used to propel the growth of the country, and so too must civil rights be exercised.

Fifth, executive power must be controlled tightly by means of government mechanisms and societal mechanisms. This is a matter of principle since we are dealing with the use of state power.

In addition, executive power must also showcase the positive aspects of a socialist-oriented market economy. Executive power must be organized in such a way that it conforms to the specific conditions of Vietnam, a country in the process of integrating with the international community; the organization and reform of executive power and, more generally, of state power must be proportionate to economic, political growth, as well as to the reform of legislative power and judiciary power.

To successfully organize and exercise executive power in Vietnam, the following proposals are made:

First, executive power must be organized within the framework of

power distribution. Only then can executive power, legislative power, and judiciary power be independent from one another. Power distribution helps to ensure that civil rights are upheld. In the XI national assembly, it was asserted that "... State power must be divided among different bodies, which are to cooperate and exercise control as they use legislative power, executive power, and judiciary power" (5, p.85).

Second, executive power must be kept separate, and it must be sufficiently great to cope with the dynamic and unforeseeable changes of society. Executive power must also be used to aid in the implementation of policies and adherence to laws. Only when wielding such executive power, can an appropriate body do a good job and generate favorable conditions for citizens to exercise their rights.

It must be added that, vast executive power does not necessarily mean absolute power. Along with power comes responsibility and obligation. Also, that power must be overseen and checked.

Third, make use of the socialist-oriented market economy to organize executive power. Some positive characteristics of such an economy include fair competition, freedom, equality... These must be put to good use for administrative purposes. Only then will the people and enterprises be better served.

Fourth, there must be a philosophy for the use of state power. State power's role and limits must be defined, as well as the methods used to exercise power. This is a matter that has been subject to little research in Vietnam, and also one

that needs to be further looked into by scientists.

Fifth, executive power must showcase the quintessential qualities of law execution and administration in a modern society. It must embody a number of traits that are commonly held in high value: transparency (information is circulated freely according to generally accepted standards), responsibility to explain, ability to make projections, and the participation of the people, even those that are vulnerable, in the decision making process.

Sixth, executive power, if it is to be used properly, must be wielded by officials that are competent and that have the right qualities. In light of the current conditions in Vietnam, it is difficult to make good use of ethical and competent people who have a good grasp of law execution. Opportunities must be generated for all such people, and achievements must be given precedence over credentials. What must be avoided is using people purely because they are close or blood related. What is of the essence is that they be sufficiently qualified.

Motivation is key to exercising executive power properly. The pay must be appropriate to the current conditions of our country. Research has shown, however, that people obtain motivation from being proud of their jobs, the desire to be praised, and the will to prove themselves. Those are the true and stable sources of motivation. An increase in salary does not necessarily mean an increase in motivation for officials. In fact, it could just motivate them in the wrong ways. Hence, what is important is to motivate officials by

correctly appraising their capabilities, stimulating their sense of pride, and instilling in them the belief that being a public servant is noble.

Seventh, by means of different mechanisms, oversee the use of executive power, which does not just involve checking to see whether the use of executive power abides by legal regulations. It is crucial to evaluate the extent to which executive power is exercised effectively. On the basis of power being divided, the national assembly must monitor the government as an independent entity. In principle, officials that work in the executive body cannot be voted into the national assembly, since that would render the national assembly's ability to oversee less effective. The administrative court's reputation and effectiveness must be enhanced to ensure the constitution is followed.

In addition, there needs to be self-restraint when it comes to executive power. This could be done by means of inspection and checking. Such inspection is still largely ineffective. It is not uncommon for managers to be in the dark about what their subordinates do.

What is of even greater importance is that the public or, alternatively speaking, civilians, monitor the exercise of executive power. A society with a strong population is highly conducive to the proper wielding of executive power. Historically, people have cast a strong influence on state power, particularly executive power. More often than not, people can affect how executive power is used more than any form of government inspection.

To date, Vietnamese society is rather vapid. The problem our country faces at this moment in time is that we must approach the concept of "civilian society" and that we must endeavor to make such a society thrive. This issue is relevant for any state governed by law, and irrespective of what people may want or may not want, civilian society will materialize and impact state power. Civilian societies have come to be in developed countries thanks to a long and arduous process of development that inevitably started off with challenges and obstacles. Hence, to achieve a civilian society, our country must endure hardship from both a political and legal perspective. In principle, a mature civilian society will ensure that civilian rights are upheld and that the links between such rights and executive power remain tight.

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