

A GUARANTEE OF RIGHTS TO BENEFIT CULTURAL VALUES IN VIETNAM TODAY: SITUATION AND SOLUTIONS

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The constitution of 2013 (adopted by the National Assembly of the Socialist Republic of Vietnam on November 28th 2013 and took effect from January 1st 2014) constitutionally specifies the rights to benefit cultural values for the first time (in Article 41). This is a notable legislative achievement regarding to rights to benefit cultural values in the course of international integration and development in Vietnam today. However, the fact shows that there still exist a lot of limitations and challenges in ensuring and implementing rights to benefit cultural values. This paper interprets and clarifies the basic idea as well as analyzes the current situation of guarantee, especially challenges, of rights to benefit cultural values, which acts as a basis to propose some solutions to promote a guarantee and effective implementation of rights to benefit cultural values in Vietnam in the present context.

1. Cultural rights in general and rights to benefit cultural values in particular is one of basic human rights specified in international law on human rights, especially Universal Declaration of Human Rights (Article 27); International Covenant on Economic, Social and Cultural Rights (Article 15), Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986), the UN Convention on the Rights of the Child (Article 25), UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), and in lots of regional documents as well. Article 15 in International Covenant on Economic, Social and Cultural Rights also recognizes the cultural rights, including: a) to take part in cultural life; b) to enjoy the benefits of scientific progress and its applications; c) to benefit from the protection of the moral and material

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interests resulting from any scientific, literary or artistic production of which he is the author; d) and the freedom indispensable for scientific research and creative activity. Rights to benefit cultural values include rights to benefit material and spiritual cultural values and tangible and intangible cultural values. By nature, the right to benefit cultural values is recognized and ensures the needs for perceiving and exploiting values and good social capital created and kept in community life of a certain individual or a certain community. The fundamental content of the right to benefit cultural values is to respect and guarantee the acknowledgement, recognition, use and practice of cultural values (including tangible and intangible, material and spiritual values). It closely relates to rights to approach and create new cultural values.

Those values and good social capital can be created and kept by the individual or the community itself. The values and social capital can also be produced by the whole community, a certain geographic area, a specific territory. However, at different levels, the right to benefit cultural values has different scopes. For example, the author's right to benefit cultural values of his own cultural , artistic production will be different from his right to benefit common cultural values belonging to the whole nation...

Cultural rights in general and rights to benefit cultural values in particular is

specified and gradually completed in the law system of Vietnam, especially specified comprehensively and constitutionally in the Constitution of 2013. Article 14 (Section 1) in the Constitution of 2013 affirms "In the Socialist Republic of Vietnam, political, civic, economic, cultural and social human rights and citizen's rights are recognized, respected, protected, and guaranteed in concordance with the Constitution and the law (The National Assembly of the Socialist Republic of Vietnam). Article 16 (Section 2) also emphasizes that "No one shall be discriminated in his or her political, civic, economic, cultural, and social life." Especially, the specific institutions of cultural rights and rights to benefit cultural values are constitutionally specified in Article 41 and 42 of the Constitution 2013, respectively "Everyone has the right to enjoy and access to cultural values, participate in cultural life, and make use of cultural bases" (Article 41) and "Citizen has the right to determine his or her nationality, use of mother language, and select language of exchange" (Article 42) (National Assembly of the Socialist Republic of Vietnam, 2013).

Lots of codes and laws related to cultural rights and the right to benefit cultural values such as Civil Code, Cultural Heritage Law, Press Law, Publication Law, ... and especially Cultural Heritage Law institutionalize the regulations in the Constitution. Based on the above mentioned approach

to culture, it can be seen that the right to benefit cultural values is present in many aspects of the social life. For example, Cultural Heritage Law defines culture as: *Cultural heritage provided for in this Law includes intangible and tangible cultural heritages, which are spiritual and material products having historical, cultural or scientific values and handed down from generation to generation in the Socialist Republic of Vietnam (Article 1, Cultural Heritage Law, 2001)*^(*).

Vietnam Communist Party and Vietnam Government respect, protect and promote human rights in general and cultural rights and right to benefit cultural values in particular. The notable achievements over the past 20 years since *Đổi mới* show great progress in the implementation of the views of the Party, the policies and laws of the Government as well as international agreements mentioned in International treaties on human rights in Vietnam. However, the practice of ensuring and implementing cultural rights in general and the right to benefit cultural values in general faces certain challenges and difficulties.

2. The challenges and limitations of ensuring the right to benefit cultural rights in Vietnam include:

Firstly, the policy and law frameworks are incomplete and insufficient in

ensuring, implementing and enjoying cultural rights.

Vietnam law system is inadequate, asynchronous, and there exist a lot of regulations which are infeasible and impractical and centralized. For example, the process of issuing fundamental codes related to culture to be amended is slow (Law on Art Performance). Especially, in the age of international integration, the amendment of law has not met the increasingly demanding requirement of society management by law; legal thinking renovation is still slow; the mechanism of law amendment in Vietnam is insufficient. The process of writing and issuing recent legal documents has been criticized by the public as those documents are impractical. For example, legal documents are not built based on the opinions of the people or their subjects. In the area of culture, some aspects of life in some localities are in the list of cultural preservation, which is the cause of some frustration. For example, the families in the ancient village of Đường Lâm asked to give back the title of heritage, because it was believed that: “the right is unfamiliar to the value of an ancient village” (P. Thảo, 2013). Another example is the fact that the people living in the Old Quarter of Hanoi are facing difficulties in dealing with the poor infrastructure where they live...

Secondly, there still exist a lot of problems in the enforcement of the law related to culture.

^(*) View at: http://www.moj.gov.vn/vbqp/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=23281

At the present, in Vietnam, copyright infringement is widely spread and the State does not pay enough attention to this area. For example, artistic and cultural products are pirated. The reason for this situation results from the fact that some people take advantage of the legal loopholes and some unintentionally violate the law for they do not pay attention to the changes in legal documents and still practice their old-fashioned habits. Therefore, the enforcement of the law is not only the responsibility of citizens but also the responsibility of related governmental bodies. However, in Vietnam, those agencies are still very poor and have not met the demand for the present course of integration. Obviously, when the law is weak or there are still loopholes in the law enforcement, law violations occur widely and counterculture is more and more prevalent. Because, those who violate the law are those who violate moral principle and cultural values.

That reality showed that Civil Codes taking effect from January 1st 2006, and Intellectual Property Law coming into enforcement from July 1st 2006 have created a secure legal framework, encouraged creative activities and protected the fruits of the creative labour. Although this is a quite new area in Vietnam, it clearly shows the right to benefit cultural values of human beings, including creators, users, and the public. According to the report by the Ministry of Culture, Sports and Tourism, over the past 2 years in the area of intellectual

property, there have been a lot of violations which have been handled, particularly:

Culture, Sports and Tourism Inspectors examined 31,477 businesses, detected and had an act on 10,599 businesses, warned 786 units, suspended 437 units, temporarily kept 203 business licenses, professional certificates, and filed 10 cases for criminal prosecution. The total amount of fine was VND 23,144,960,000. Among those cases, there were many related to copyright and relevant rights (Ministry of Culture, Sports, and Tourism, 2008).

Science and Technology Inspectors handled 88 cases of industrial copyright infringement, 3 cases of unfair competitions with 449,866 pirated products and the total fine of VND 170.2 million. In addition, economic police agencies and market management agencies handled a plenty of industrial copyright infringement. The National Office of Intellectual Property gave legal evaluations and consultancy for 601 industrial copyright infringement cases and 31 unfair competition cases related to industrial copyright.

The court system in the whole country handled 14 civil cases and settled down 11 cases related to intellectual copyright; 51 criminal cases with 110 defendants and took 44 cases to the court with 91 defendants related to intellectual copyright, in which 47 people were imprisoned (Lê Thu, 2012).

Thirdly, the limitations in enforcement and monitoring of laws and policies on culture and cultural rights, especially at local levels.

The fact showed that pirated copies of software, illegally uploading to websites, broadcasting programs, music video clips without the permission of owners; advertising wine; wearing offensive clothes which are not appropriate to Vietnamese customs; in terms of sports, sports and gyms businesses without business license and labour contracts with employees; regarding tourism, international travel agencies without business license and certificate of accommodation types;are taking widely all over 64 provinces in the whole country. However, in Press Release regarding to Results of culture, family, sport and tourism activities in 2013, and Directions and missions in 2014, specialized inspectors in localities merely examined 11,842 businesses in the area of culture, sports and tourism, of which 3,334 businesses were detected with violations (Ministry of Culture, Sports and Tourism, 2013, pp.11). On average, it can be calculated that in $11.842 \text{ inspections}/64 \text{ provinces} = 185 \text{ inspections}/\text{province}/\text{year}$, there were $3.334 \text{ law violations}/64 \text{ provinces} = 52 \text{ violations}/\text{province}/\text{year}$. This showed that the competence of enforcing and monitoring laws on culture has not met the requirement.

Fourthly, the limited understanding of cultural rights and right to benefit cultural values.

The current situation of human rights in general and cultural rights in particular, as well as the statistics of violations showed the limited understanding and legal awareness concerning cultural rights and right to benefit cultural values of responsibility holders and beneficial right holders. In fact, arbitrary restoration of temples, cultural heritages in recent years without approval of management bodies or taking opinions of the local people clearly showed the limited understanding and legal awareness of stakeholders.

Fifthly, resources limitations in promoting implementation of ensuring and enjoying cultural values.

Studies on the enforcement of laws and policies related to culture in general and culture management in particular showed that the factor affecting the guarantee and enjoyment of cultural values is the resources for organizing and implementing. According to Press Release by the Ministry of Culture, Sports and Tourism (Ministry of Culture, Sports and Tourism, 2013), the reason lied in some issues as follows:

- Awareness and attention of leaders, directions of the Party Committees at different levels, local and central government about the role of cultural, family, sports and tourism activities in overall socio-economic activities and the meaning of those activities to the sustainable development of the country has been increased but not regular.

- Budget for cultural aspects in almost all localities, especially provinces and poor areas such as Northwest, Central Highland, and Southwest is still low.

- Human resources in general, and managers and specialists working on the culture area from the central to local levels are still insufficient and poor. At commune level, almost there is no specialized staff. A cultural staff has to hold concurrently many positions and there is often a change.

3. From the above analysis, the authors provided some solutions to promote the right to benefit cultural values in Vietnam in the near future, including:

Firstly, solutions to increase the leadership of Party committees at different levels and the management of all level of government in the implementation of right to benefit cultural values; strengthen the monitoring role of the National Assembly and People's Councils of different levels, socio-political organizations and social organizations in ensuring and implementing cultural rights.

The leadership of Party Committee of different levels and the management, organization, and implementation of the Government policies by all levels of authorities plays an essential role in ensuring, enforcing, and benefiting human rights in general, and cultural rights in particular. Good policies and laws related to culture, human rights and right to benefit cultural values are only

fully enforced if they are inseparable from monitoring. Thus, it is necessary to improve the National Assembly's responsibility for monitoring, Committees of National Assembly and Deputies (especially Law Committee, Justice Committee, Committee of Culture, Education and Youth and Children). At the same time, it is required to promote the monitoring responsibility of People's Councils of all levels. Authorities and responsibilities of representatives in People's Councils for monitoring the implementation of cultural rights have an important meaning at local levels. In addition, it is necessary to strengthen the monitoring of socio-political organizations (the Vietnamese Fatherland Front and other organization members), as well as social organizations (people unions and self-governing communities,...) in the implementation of policies on culture, human rights and cultural rights.

Secondly, solutions to complete policies and laws

Nowadays, culture has become a global issue closely related to human rights. The guarantee of human rights is an important requirement in ensuring the right to benefit cultural values. It can be seen that wherever human rights are guaranteed, cultural, spiritual values grow prosperously.

In her current context, Vietnam has recognized the right to benefit cultural values for the first time in the 1992 revised and amended Constitution in

2013, which is a remarkable legal achievement. However, strong legal solutions such as issuing laws and legal documents to execute these rights should be available. Because, in Vietnam, the Constitution has no immediate validity in settling down legal disputes.

Apart from issuing legal documents to guarantee the right to benefit cultural values, these activities should be socialized by establishing agencies and civil organizations in charge of detecting violations related to the right to benefit cultural values of the people like the establishment of social organizations to protect customers and to avoid cultural products being pirated... At the same time, law enforcement agencies should be asked to have more responsibility to timely have action on violations concerning culture, the area having serious violations at the present.

In terms of these legal solutions, Vietnam should entirely refer to and implement international treaties concerning the right to benefit cultural values and institutions. The government should amend, develop and issue legal documents on the responsibility and authority of obligors in the implementation of human rights in general and cultural rights in particular. Simultaneously, they should amend rights and obligations of right holders in the enjoyment of cultural rights and rights to benefit cultural values.

Thirdly, economic solutions

The development of economy and the continuous improvement of infrastructure are important prerequisites to guarantee human rights and cultural rights. At the same time, increase in income and living standard is an effective solution to expand the people's chances of benefiting cultural values and cultural rights. Moreover, the centralization of state budget and the division of revenues from cultural activities to guarantee the right to benefit cultural values require attention. Appropriate implementation of economic policies is a driving force to raise right holder's awareness of the right.

It can be seen that when the intellectual right, copyright ... are guaranteed, this will motivate people to create economic conditions for themselves. In contrast, if these rights are violated, it is hard for this creation motivation to be available because it is easy to pirate... In the exploitation of cultural heritage, for example, if the people's rights are guaranteed, this will motivate them to maintain and develop that heritage. On the contrary, if the economic rights are not guaranteed, no one wants to maintain or protect it.

Fourthly, solutions to complete legal regulations concerning culture and empower the people and communities.

The right to benefit cultural values has a close relation to regulations on culture management and empowerment of communities in managing those

regulations, especially at local levels. Therefore, to increase people's benefit of cultural rights, especially ethnic minorities and people living in remote areas and rural areas, it is necessary to innovate the methods and activities of cultural regulations, and at the same time to allow communities to manage and monitor cultural facilities.

Fifthly, solutions to improve educations, popularization, dissemination of law, human rights, cultural right and the right to benefit cultural values.

The implementation of human rights in general and cultural right in particular is in charge of main obligators (the government and governmental staff). Therefore, in addition to promote the National action program on disseminating, educating laws and raising legal awareness of governmental officials and people at localities, Vietnam should continue to disseminate and provide guidelines of law at local levels: developing legal documents in languages of ethnic minorities, which consist of basic points and is easy to understand to make sure that the law will be enforced; appropriately invest money and human resources in disseminating laws; develop an effective cooperation mechanism among functional authorities such as broadcasting agencies and cultural agencies at communes and wards; provide training on legal knowledge, legal dissemination and education techniques for officials at communes,

towns, and wards; regularly and suddenly check the implementation of laws related to intellectual property, copyright, and rights to benefit cultural values.

In the near future, there should be available a responsibility framework of the relation between governmental officials and the people (the relation between individual and government) in order to make sure that each official can show up all his competence; at the same time, it is necessary to identify individual responsibility of each official in the implementation of their duties minimizing the risk of violating human rights, civil rights in general and rights to benefit cultural values in particular. Hence, effective legal documents should be responsibly executed by the staff and the current situation that there are too many management agencies but copyright infringement is still widely spread should be eliminated □

References

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