



REMOVAL OF NATIONAL ASSEMBLY DEPUTIES FROM OFFICE IN VIETNAM: SITUATION, PROBLEMS AND SOLUTIONS

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Abstract: *The removal of National Assembly deputies from office has been recognized early on and throughout the amendments of Vietnam's Constitution. Currently, the 2013 Constitution regulates that a National Assembly deputy shall be removed from office by voters or the National Assembly once he/she is no longer worthy of the People's confidence. Despite being an important issue reflecting the direct democratic right of the People in exercising the state's power, the practical application of laws on the removal of National Assembly deputies from office in Vietnam still demonstrates some limitations and shortcomings, such as all cases of removal from office were conducted by the National Assembly, no removal cases conducted by voters has been recorded; the foundation for the removal of National Assembly deputies from office is predominantly due to the wrongful conduct violating the legal regulations and standards of the National Assembly deputies themselves. This article aims to analyze the limitations and problems in legal provisions and evaluate the practical situation of the removal of NA deputies from office in Vietnam; on such a basis, the authors recommend a number of solutions to improve.*

Keywords: *removal from office, National Assembly deputy, removal of National Assembly deputies from office, Constitutional liability.*

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1. INTRODUCTION

In Vietnam, "The National Assembly (NA) is the highest representative body of the People, the highest body of state's power"¹ and "an NA deputy shall represent the will and aspirations of the People of his/her constituency and of the whole country, and exercise the state power in the NA on behalf of the People".² Being the decisive nucleus in exercising the functions, duties, and powers of the highest

¹ Constitution of Vietnam 2013, Art. 69(1).

² The Law on Organization of the National Assembly 2014, Art. 24(1).



body of state's power, NA deputies are individuals elected by voters and delegated the power to represent the People in the exercise of state's power.

However, according to the agency theory, once the principal has given the rights to the agent, problems in control arise; for the reasons both parties act in a way that will maximize their personal benefits, the agent can act contrary to the optimal benefits of the principal.³ Therefore, the most imperative issue is how elected deputies (the agent) can exercise all of their duties without tainting the state's power, and the people (the principal) who delegated these powers to the deputies do not lose their powers. If election is a method for voters to select credible deputies and give them the power to represent the people in the exercise of state's power, then removal from office is a statutory regulation bearing opposing characteristics. Through the process of removal from office, the people express their discredit to the deputies who failed to fulfill their mission as representatives for the will and aspirations of the people. The basis for removing an NA deputy from office originates from the principal and agent relation. This is a form for the people to "retrieve" the power formerly delegated to the deputies.

The statutory regulation of NA deputies' removal from office is enshrined throughout the constitutional amendments in Vietnam through the dual use of two terminologies "*Relief from duty*" and "*Removal from office*". Starting from the 1946 Constitution, Article 20 recognizes that "The People have the right to *relieve* elected deputies". Article 5 of the 1959 Constitution⁴ and Article 7 of the 1980 Constitution⁵ once again regulate the "relief from duty" of NA deputies as electors' rights. Coming to the 1992 Constitution, the terminology "relief from duty" is replaced by "removal from office" with the same meaning. Article 2 Clause 7 of the 2013 Constitution prescribes: "NA deputies are *removed from office* by electors or the NA once they are no longer worthy of the confidence of the People".⁶

According to the International Institute for Democracy and Electoral Assistance (IDEA), "Relief from duty is a direct democratic procedure, allowing the competent agency and/or a number of citizens to propose for a voting on whether or not to relieve an official prior to the expiration of his term".⁷ The Institute for Legal science under the Ministry of Justice in Vietnam defines "Removal from office is a disciplinary sanction to relieve an official from their elected title prior to the end of their tenure regarding individuals exhibiting unlawful conduct, moral violation, no longer worthy of holding the assigned title in the State's bodies".⁸ From the aforementioned explanation, in some aspects, the terms "*relief from duty*" and "*removal from office*" are used interchangeably across Vietnam's constitutional amendments, all point to the meaning of stripping the title of deputies before the end of their term. The reason for removal can originate from NA deputies' unlawful violation, or moral violation, no longer worthy of the People's confidence. Therefore, this article aims to analyze the situation and problems of the removal from office of NA deputies in Vietnam and recommend a number of solutions to improve.

³ Michael C. Jensen, William H. Meckling, 'Theory of the firm: Managerial behavior, agency costs and ownership structure' (1976), *Journal of Financial Economics*, Volume 3, Issue 4, [https://doi.org/10.1016/0304-405X\(76\)90026-X](https://doi.org/10.1016/0304-405X(76)90026-X).

⁴ Constitution of Vietnam 1959, Art. 5: "Deputies to the National Assembly and people's councils at all levels may be recalled by their constituent before their term of office expires if they show themselves to be unworthy of the confidence of the People".

⁵ Constitution of Vietnam 1980, Art. 7: "Voters have the right to remove the National Assembly deputy and People's Council deputy from office before their term of office expires if they show themselves to be unworthy of the confidence of the People".

⁶ Constitution of Vietnam 2013, Art. 7(2).

⁷ Dao Tri Uc, Vu Cong Giao, *Direct Democracy - International IDEA Handbook*, (Hanoi National University: Hanoi, 2014) 117.

⁸ Institute of Legal Studies - Ministry of Justice, *Legal terminology*, (Judicial Publishing House: Hanoi, 2006) 20.



2. THE LEGAL FRAMEWORK FOR REMOVAL OF NATIONAL ASSEMBLY DEPUTIES FROM OFFICE

2.1. Current Legal Provisions on the Removal of National Assembly Deputies from Office

Currently, aside from the provisions in the 2013 Constitution, NA deputies' removal from office in Vietnam is detailed in the 2014 Law on Organization of the NA and the Regulation on NA's meetings with the following contents:

2.1.1. *The grounds for removing National Assembly deputies from office*

There are two common methods to form the legal grounds to remove elected officials in general and NA deputies specifically. *First*, the law does not specifically regulate the grounds for removal from office. Thus, elected officials can be removed for any reason provided that sufficient signatures have been collected in order to satisfy the required condition to organize a vote for removal. *Second*, the law limits the grounds for removal from office. Accordingly, elected officials can only be removed once there is sufficient evidence indicating that their conduct is inconsistent with regulations under the law. Commonly cited reasons for removal from office are: *i*) malfeasance (i.e. bribery and corruption); *ii*) immoral conducts in performing their duties (unprofessional behaviors and irresponsibility); or *iii*) nonfeasance.⁹ Vietnam's regulations regarding the grounds for removal of NA deputies from office fall under the first method, where there is no specific limit on the ground for removal.

According to Clause 2 Article 7 of the 2013 Constitution, NA deputies are removed from office by electors or the NA once they are no longer worthy of the confidence of the People. Hence, an NA deputy is removed from office once he/she is "no longer worthy of the confidence of the People". This is the legal basis to initiate the procedure of removal from office, which is consistently regulated throughout the amendments of the Vietnam Constitution, except for the 1946 Constitution.

Based on the 2013 Constitution, Clause 1 Article 40 of the 2014 Law on Organization of the NA emphasizes: "an NA deputy who no longer deserves the People's confidence shall be removed from office by the NA or voters". However, since NA deputies are the representative of the People's will and aspirations in their constituency and nationwide,¹⁰ the confidence of the People under this provision must be construed as meaning the trust of the people at the locality that elected the deputy, or the trust of the people nationwide, or both.

2.1.2. *The competency to remove National Assembly deputies from office*

The Vietnam Constitutions of 1946, 1959, and 1980 recognized the voters (or the people) as the sole competent subject to remove NA deputies from office. However, since the amendment of the Constitution in 1992 until now, the competency in removing an NA deputy from office is constitutionally delegated to the NA and voters.¹¹

As the highest representative body of the People, representing the People in the exercise of state's power, the NA is given the competency to remove NA deputies from office once they are no longer worthy of the People's confidence. The NA decides on the removal of a member through voting in order to pass a resolution on the removal from office of an NA deputy.

Voters are Vietnamese citizens from the age of 18 and above satisfying all the required conditions to exercise their voting right. However, the competent voters having the removal right are the voters in the constituency that directly elected the deputy.¹² Voters cast ballots to remove an NA deputy from office is regarded as reverse voting to "retrieve" the title of the deputy that voters gave him in trust. This is a direct democratic right, bearing important meaning in the process where the People exercise their power.

⁹ Anne Twomey, 'The Recall of Members of Parliament and Citizens' Initiated Elections' (2011) 34 UNSW Law Journal 43.

¹⁰ Constitution of Vietnam 2013, Art. 79(1).

¹¹ Constitution of Vietnam 2013, Art. 7(2) and the Law on Organization of the National Assembly 2014, Art. 40(1).

¹² The Law on Organization of the National Assembly 2014, Art. 54(6).



Regulating voters and the NA as the competent subjects to remove from office of NA deputies clearly demonstrates the balance and harmonization of both local and national interests. This balance and harmony ensures that NA deputies will not rely on only one side at the expense of the other.

2.1.3. The required conditions to remove from office a National Assembly deputy

Vietnamese law established various conditions for both the NA and voters when these subjects initiate the procedure for removal from office of an NA deputy.

Under clause 1 Article 85 of the 2013 Constitution, the removal from office of an NA deputy must be approved by at least two-thirds of the voting NA deputies. This content is reflected again at clause 2 Article 40 under the 2014 Law on Organization of the NA.¹³ As a general rule, laws and resolutions of the NA are passed when there is a supermajority approval among the NA deputies. However, the requirement for removal from office of an NA deputy enforces the “approval of at least $\frac{2}{3}$ of NA deputies”. The requirement of a higher approval rate demonstrates the importance of the removal from office of NA deputies. This condition is similar to cases of drafting or amending the Constitution, shortening or extending the tenure of the NA.

For voters, the 2013 Constitution and the 2014 Law on Organization of the NA have not stipulated detailed conditions but opted for a guiding provision only: “In case an NA deputy is removed from office by voters, such removal shall be carried out in the order stipulated by the NA Standing Committee”.¹⁴ Therefore, the conditions for removal from office of an NA deputy by voters currently is not specified in detail but rather dependent on regulations in the documents issued by the NA Standing Committee.

2.1.4. The procedure to remove an NA deputy from office

The procedure for removal of an NA deputy can be carried out in three stages as follow:

Stage 1: proposal for removal from office of an NA deputy

Under Clause 1 Article 31 of the 2015 Law on the Vietnam Fatherland Front (VFF), two competent subjects for making removal proposal are: *i)* The Presidium of the Central Committee of the VFF, and *ii)* The VFF Committees at the provincial level. The right to propose for removal from office an NA deputy is one of the rights and obligations of the VFF in performing “social supervision and criticism”. It must be noted that while agency of the VFF is organized in central divisions and in administrative divisions at provincial level, district level, and commune-level,¹⁵ only the Presidium of the Central Committee of the VFF and provincial VFF Committees have the right to propose for the removal from office of NA deputies. However, the law does not specify in which case either the Presidium of the Central Committee of the VFF or the provincial VFF Committees will have the right to make a proposal. Moreover, the law does not stipulate the exact grounds for making a proposal. Whether the proposal must be proactively made by the VFF Committees, or it must be subjected to the order of other subjects. The production of the removal proposal is also not governed by the law but is entirely subjected to the regulations under the VFF’s internal documents. Generally, the removal proposal is determined based on the voting consensus of the VFF Committees at the central or provincial level in a regular conference or an irregular meeting. In case of supermajority approval, the removal proposal will be passed and sent to the NA Standing Committee to proceed with the removal procedure.

Stage 2: Decision on proposing the competent subject for removal

After receiving the proposal for removal of an NA deputy, the NA Standing Committee shall decide to propose the removal to be subjected under the competency of the NA or the voters at the elected constituency.¹⁶ It must be noted, during this stage, in the opinion of the authors, the NA Standing Committee only has the right to decide to propose either the NA or the voters to commence the removal from office. The NA Standing Committee does not have the right to reject the removal proposal.

¹³ The Law on Organization of the National Assembly 2014, Art. 40(4): “In case National Assembly deputies are removed from office, the removal must be approved by at least $\frac{2}{3}$ of National Assembly deputies”.

¹⁴ The Law on Organization of the National Assembly 2014, Art. 40(3).

¹⁵ The Law on Vietnam Fatherland Front 2015, Art. 6.

¹⁶ The Law on Organization of the National Assembly 2014, Art. 54(6).



Stage 3: Commencement of the removal from office of NA deputies

This is the central stage of the procedure to remove an NA deputy from office. However, there is a fundamental difference between the NA and voters in removing an NA deputy from office.

In case the NA initiates the removal procedure, the order for removal from office of an NA deputy is stipulated under Article 41 of the Regulation on the NA's meetings: i) The NA Standing Committee shall submit to the NA the removal from office of the NA deputy. ii) The NA shall discuss at the Delegation for the NA deputies; The Chairman of the NA can meet with the Heads of the Delegation for the NA deputies and discuss related issues. iii) The NA Standing Committee shall report to the NA the discussion result at the Delegation for NA deputies and explain, receive the opinions of NA deputies. iv) Before deliberations by the NA, the NA deputy proposed to be removed from office has the right to speak at the plenary session, except in case of being temporarily detained pursuant to the decision of competent agencies and other cases as decided by the NA according to the proposal of the NA Standing Committee. v) The NA shall establish the vote counting Committee. vi) The NA shall remove the NA deputy from office by confidential ballot. vii) The vote counting Committee announces the vote counting and voting result. viii) The NA shall discuss and vote to pass the resolution on removal from office of the NA deputy. Where at least $\frac{2}{3}$ of the total voting NA deputies approve the removal from office then the removed deputy will officially end his title as an NA deputy from the moment the Resolution on the removal from office takes effect.

In case the voters remove an NA deputy, "the removal from office will be conducted according to the order regulated by the NA Standing Committee".¹⁷ However, up until now, the NA Standing Committee has not yet issued any document regulating the procedure for voters to exercise their right to remove NA deputies from office.

2.2. Limitations and shortcomings

First, there is no criteria to determine when an NA deputy is "no longer worthy of the confidence of the People".

NA deputies shall be removed from office by electors or the NA once they are no longer worthy of the People's confidence.¹⁸ However, the law does not clearly state specific criteria to determine an NA deputy "no longer worthy of the confidence of the People".

According to the Vietnamese Great Dictionary, "*confidence*" is "to entrust and rely upon someone in certain tasks, specific events".¹⁹ Thus, it can be understood that "no longer worthy of the confidence of the People" means no longer worthy of the People's trust. In other words, the People no longer trust the NA deputy to perform the task of representing their will and aspirations.

Currently, in order to become an NA deputy, candidates must first meet the criteria of political qualities, moral qualities, cultural qualifications, professional qualifications, health conditions, working experience, and especially "credibility" to perform the NA deputy's tasks.²⁰ Particularly for the NA deputy candidates, who are working at state agencies, political organizations, socio-political organizations, public non-business units, and state-owned enterprises, in addition to ensuring the aforementioned general standards, these candidates must also be "notable and excellent cadres, civil servants, public employees, and workers; having competency in analyzing, policy making, law

¹⁷ The Law on Organization of the National Assembly 2014, Art. 40(3)

¹⁸ Above n.11.

¹⁹ Nguyen Nhu Y, *Vietnamese Dictionary*, (Culture - Information Publisher: Ho Chi Minh City, 1998), 1646.

²⁰ The Law on Organization of the National Assembly 2014 (amended 2019) regarding criteria of the National Assembly deputies, includes:

"1. To be loyal to the Fatherland, the People, and the Constitution, to strive to conduct the renewal cause for the goal of a prosperous people and a strong, democratic, equitable and civilized country.

1a. Have Vietnamese citizenship.

2. To possess moral qualities, to be diligent, thrifty, incorruptible, public-spirited, and selfless, exemplary in the observance of law; to have the spirit and be determined to control corruption, waste and all manifestations of bureaucracy, imperiousness and authoritarianism and other illegal acts.

3. To possess educational and professional qualifications, to have full capacity, health, work experience and prestige to perform the tasks of a National Assembly deputy.

4. To keep close ties with the People, to listen to opinions of the People, to gain confidence of the People.

5. To have the conditions to participate in the activities of the National Assembly."



making, having expertise and practical experience suitable with the intended position; demonstrate the responsibility in setting an example of cadres and party members, not violating prohibitions for party members, cadres, civil servants, public employees”.²¹ Therefore, it can be observed that the conditions and criteria in becoming an NA deputy in Vietnam is not only enshrined in the Law but also by provisions of the Party.

However, will these “entry” requirements be applied to measure the confidence of the People towards NA deputies throughout their entire term? Moreover, current legislation also does not have regulations on reviewing or classifying the rate of task completion of NA deputies, which serve as the basis for the People to evaluate their confidence towards NA deputies. This issue leads to the fact that there is no established quantitative measure to determine the situation where an NA deputy is no longer worthy of the People’s confidence. Therefore, carrying out the removal of NA deputies from office procedure, in reality, will face many difficulties.

Second, voters’ right to a proposal of removal NA deputies from office has not yet been recognized. According to The International IDEA Handbook, there are two primary forms of removal depending on the level of voters’ engagement in the process: *i*) full removal - a type that necessitates voters’ involvement at the phases of initiation and approval or rejection of the removal; and *ii*) mixed removal - a type that necessitates voters’ involvement either at the initiation of process or at the phase of approval, through a popular vote. Both types of removal can be used at the national, regional, and local levels, either for officials of the executive body or elected members of the legislature.²²

Vietnam legislation had recognized citizens’ right to participate in the proposing phase of the removal. As stipulated in Article 41 of the 1946 Constitution, the Parliament shall consider the issue of recalling a deputy at the request of one-fourth of voters of the constituencies. Or Article 56 of the 2001 Law on Organization of the NA also recognized the right to propose removal from office of NA deputies of the voters in localities where such deputies were elected²³. However, at present, there are no provisions recognizing the voters’ right to request for removing NA deputies from office under neither the 2013 Constitution nor the 2014 Law on Organization of the NA (amended and supplemented in 2020).

Voters have the right to remove NA deputies from office, but not having the right to make removal proposals is not reasonable. This issue may be a retrograde step in regulations on NA deputy’s removal from office of the 2013 Constitution compared to those of previous Constitutions. As a result of omitting a specific provision on the voters’ right to propose removals, this direct-democratic right is deemed to become a form of indirect democracy mechanism.

Third, there is no clear delimitation of authority between the electors and the NA.

As stipulated under Clause 6, Article 54 of the 2014 Law on Organization of the NA, the NA Standing Committee has authority to propose to the NA or electors of constituencies to remove NA deputies from office after receiving the proposal of removal. However, there are no further provisions delimited clearly in which cases the NA deputies will be removed from office by the NA, and in which cases the NA deputies shall be subjected to the removal decision of electors at constituent units. Proposing the NA or voters for removal is a discretionary authority of the NA Standing Committee. In fact, through recent terms, there have not been any reported cases in which the NA Standing Committee granted the voters’ rights to remove an NA deputy, which means unprecedented.

Elucidating the aforementioned provision revolves around two opposing positions. One of these positions supposed that NA deputies are voted on and empowered by the voters to represent the will and aspirations of the People of his/her constituency and of the whole country. Therefore, it is

²¹ The Law on Organization of the National Assembly 2001, Art. 56: “To decide to propose the National Assembly or voters of constituencies to remove from office National Assembly deputies at the proposal of the voters of the constituencies where elected him/her”.

²² Virginia Beramandi, Andru Elis, *Direct Democracy - International IDEA Handbook* (2014).

²³ The Law on Organization of the National Assembly 2001, Art. 56: “To decide to propose the National Assembly or voters of constituencies to remove from office National Assembly deputies at the proposal of the voters of constituencies voting them”.



appropriate and consistent with the requirement of democracy to establish the procedure for removal from office where the NA has the sole right to cast removal votes... It is not necessary to include voters in this procedure as it renders the voting process complicated and costly.²⁴ On the contrary, Nguyen Thanh Phuong (2015) states that in deciding the competent subject to carry out the voting procedure for removal from office, it is imperative to ensure one of the fundamental state organization principles of “NA deputy has to be voted for and removed by the same subject”.²⁵ Hence while it can be inferred from this principle that the NA represents the people in carrying out the voting for removal from office procedure, there should exist exceptional cases where the people must directly vote for removal from office so as to ensure consistency with the principle of democracy.

Fourth, no detailed procedure guiding the process of removing an elected deputy from office by electors has ever been issued.

Clause 3, Article 40 of the 2014 Law on Organization of the NA regulated that: “In case an NA deputy is removed from office by voters, such removal shall be carried out in the order stipulated by the Standing Committee of the NA”. However, so far, the NA Standing Committee has not issued any legal documents guiding the specific procedure for electors to exercise their right to remove NA deputies from office.

In the tenure of the 13th NA (2011-2016), a draft Resolution on the procedure of removing NA deputies from office by electors was prepared by the NA Standing Committee. In which, the draft Resolution provides the principles, decision-making authority in giving the voters authority to remove elected deputies from office; the procedure for the NA Standing Committee to decide in which cases deputies are subjected to voters’ removal authority; principles and procedure of cast removal votes. As planned by the NA Standing Committee, the draft Resolution on the procedure of removal of NA deputies from office by the electorate shall have been unveiled for public opinion in December 2015 and approved in January 2016. However, after more than 10 years, this document still has not been approved yet.

One might have said, the aforementioned situation is left open by the NA Standing Committee regarding the obligation to concretize the right to remove NA deputies from office - a constitutional right of electors. This leads to adverse impacts on one of the primary characteristics of a socialist rule-of-law state in which the democratic rights of citizens must be ensured to be fully exercised by the State. Obviously, under no circumstances have democratic rights been fully exercised when citizens can only exercise their right to remove deputies from office indirectly through the NA.

3. THE PRACTICAL APPLICATION OF THE LAW ON REMOVAL OF NATIONAL ASSEMBLY DEPUTIES FROM OFFICE

Since the first time being recognized in the 1946 Constitution, the institution of removing NA deputies from office has shown certain efficient and effective implementations. Certain NA deputies, for different reasons, inter alia, include violating regulations about what party members are not permitted to do; or having behaviors against the foundational qualities, ethics that party members must have, which leads to the loss of the People’s confidence, were removed from the highest body of state power. Up to March 2023, there are totally eight NA deputies being removed from office as follows:

(1) Mr. Dinh Hanh - deputy of 10th NA of Hanoi City’s delegation of deputies in the 1997 - 2002 term. At the NA’s sixth session, on December 21, 1999, the NA approved the Resolution No. 28/1999/NQ-

²⁴ Nguyen Xuan Dien, *Let the voters remove NA deputies from office is unworthy*, Electronic Newspaper of People Deputies, 08 October 2016 (20 February 2023), available at <https://daibieunhandan.vn/de-cu-tri-bai-nhiem-dai-bieu-khong-xung-dang-379477>.

²⁵ Dinh Thanh Phuong, *Finalize the legal system ensuring the direct democracy rights of the People* (2015) 6 (286) Legal Research Magazine.



QH10 on the removal of Mr. Dinh Hanh from office for his dishonest report on the “Thang Long aquarium” project evaluation resulting in bad press and credibility reduction.²⁶

(2) Mr. Vu Xuan Thuat - deputy of 10th NA of Ha Nam’s province delegation of deputies in the 1997 - 2002 term. At the NA’s sixth session, on December 21, 1999, the NA approved the Resolution No. 29/1999/NQ-QH10 on the removal of Mr. Vu Xuan Thuat from office for irresponsible conduct in carrying out his delegated duties negatively affecting the internal unity, dishonesty, and credibility reduction.²⁷

(3) Mr. Le Minh Hoang - deputy of 11th NA of Ho Chi Minh City’s delegation of deputies in the 2002 - 2007 term. He used to hold the position as Director of Ho Chi Minh City Power Corporation and was arrested for his wrongful conduct during the bidding procedure, conclusion, and performance of the purchasing contract of 312.000 digital meters. Mr. Le Minh Hoang’s violations critically damaged People’s faith. On October 07, 2005, the VFF Committee of Ho Chi Minh City commenced the voting procedure for removal from office of Mr. Le Minh Hoang as an NA deputy with 89/90 approval votes. On November 29, 2005, 11th NA conducted the voting procedure to remove Mr. Le Minh Hoang as an NA deputy with the approval rate of 71,86%.²⁸

(4) Mr. Mac Kim Ton - deputy of 11th NA of Thai Binh province’s delegation of deputies in the 2002 - 2007 term and held the position as director of the Department of Education and Training of Thai Binh province. He was arrested for the abuse of power and position for personal interests. The VFF Committee of Thai Binh province commenced an irregular session, in which 100% of the members approved the proposal on the removal of Mr. Mac Kim Ton from his title. As a result, the 11th NA, on November 29, 2006, conducted the voting procedure to remove Mr. Le Minh Hoang as an NA deputy due to being no longer worthy of the People’s confidence with the approval rate of 83,94%.²⁹

(5) Ms. Dang Thi Hoang Yen - 13th NA deputy of Long An province’s deputy delegation. On May 26, 2012, the 13th NA commenced a voting procedure against the title of Ms. Dang Thi Hoang Yen as an NA deputy,³⁰ with 96.62% of the total number of NA deputies approving the removal. The main culprit for the removal from title of Ms. Yen was because of “her dishonesty in providing personal background information misled voters and organizations in her personal history during the 13th NA deputies’ election, which were in breach of clause 1 and clause 2, Article 2 of Law on Election of deputies to the NA. Wrongful conduct of Ms. Dang Thi Hoang Yen detonated a social uproar and was no longer worthy of the People’s confidence”.³¹

(6) Ms. Chau Thi Thu Nga - deputy of 13th NA of Hanoi City’s deputy delegation in the 2011 - 2016 term. On 15th May 2015, the Presidium of the VFF Central Committee commenced an extraordinary session regarding the adoption of a resolution proposing the NA to remove the NA’s eligibility of Ms. Chau Thi Thu Nga. As a result, due to “the serious misconduct in business sectors infringing upon legitimate rights and interests of customers, causing the indignation of the victims and resulting in bad press and credibility reduction; and violations against the NA deputy standards and being no longer worthy of the People’s credibility”. The Resolution on removing the deputy’s eligibility of Ms. Chau Thi Thu Nga was adopted with more than 90% approval votes on June 18, 2015.³²

(7) Mr. Pham Phu Quoc - deputy of 14th NA of Ho Chi Minh City delegation of deputies in the 2016 - 2021 term. Mr. Pham Phu Quoc asked for naturalization and had already achieved Cypriot citizenship without any proper notification to the competent agencies and organizations, which critically

²⁶ National Assembly’s History, ep. 4, (01 February 2023), available at <https://quochoi.vn/tulieuquochoi/anpham/Pages/anpham.aspx?AnPhamItemID=3785>.

²⁷ Ibid.

²⁸ Thanh Nam, *Beyond Ms. Chau Thi Thu Nga, who were arrested during their office term as a NA deputy?*, Infonet, 08 January 2015 (01 February 2023), available at <https://infonet.vietnamnet.vn/thoi-su/ngoai-ba-chau-thi-thu-nga-ai-tung-bi-bat-khi-dang-la-dbqh-215398.html>.

²⁹ Ibid.

³⁰ V.V. Thanh, *The National Assembly removed Ms. Dang Thi Hoang Yen from the office as a NA deputy*, Tuoitre online, 26 May 2012 (01 February 2023), available at <https://tuoitre.vn/quoc-hoi-bai-nhiem-dai-bieu-dang-thi-hoang-yen-493635.htm>.

³¹ Resolution No. 22/2012/QH13 (26 May 2012) on the removal from office of Ms. Dang Thi Hoang Yen.

³² Resolution No. 92/2015/QH12 (18 June 2015) on the removal from office of Ms. Chau Thi Thu Nga.

violated the NA's deputy standards under Article 22 of the Law on Organization of the NA. Resolution removing Mr. Pham Phu Quoc from his position as an NA deputy was adopted at the approval rate of 96,8% with the reason for "his dishonesty in reports to the organizations, which seriously violated NA deputy standard and shall be no longer worthy of the voters' and People's confidence".³³

(8) Mr. Nguyen Thanh Long - 15th NA deputy in the 2022 - 2026 term, a deputy of Vinh Long province delegation of deputies, which is also the latest case regarding the removal of NA deputy from office. Regarding the competent agencies' report, Mr. Nguyen Thanh Long was said to be negligent in direction, management, supervision, examination, and intervention. He had also committed acts of abusing his position to violate the provisions of law on the issuance of Viet A Company's circulation registration, price negotiation and price check of COVID-19. As a result, on June 7, 2022, the NA approved resolution on the removal of Mr. Nguyen Thanh Long from his post with a total approval percentage of 94.79%.³⁴

List of Vietnam's NA Deputies who were removed from office from 1997 to 2023³⁵

NO.	Deputy	Term	Voting quorum
1	Dinh Hanh	10 th term (1997 - 2002)	-
2	Vu Xuan Thuan	10 th term (1997 - 2002)	-
3	Le Minh Hoang	11 th term (2002 - 2007)	71,86%
4	Mac Kim Ton	11 th term (2002 - 2007)	83,94%
5	Dang Thi Hoang Yen	13 th term (2011 - 2016)	96,62%
6	Chau Thi Thu Nga	13 th term (2011 - 2016)	90,00 %
7	Pham Phu Quoc	14 th term (2016 - 2021)	96,80%
8	Nguyen Thanh Long	15 th term (2022 - 2026)	94,79%

There are two comments inferred from the above-mentioned cases on the removal of NA deputies from office:

First, all NA deputy's removal cases were conducted by the NA, no removal case conducted by voters has been recorded. It is obviously observed that all 08 cases on the removal of the NA deputies from office were carried out by the NA. Whereas, voters, as the primary subject of state power by whom the NA deputies were directly elected, and as the one who is constitutionally entitled to remove from office an NA deputy when he or she is no longer worthy of their confidence yet had the chance to exercise their rights. The main culprit originated from the inadequacies of the legal regulation on the removal from office by the voters as recently there has not been any resolutions providing specific guidelines for the procedure for voters to carry out the removal of NA deputies from office. Therefore, despite having removal rights constitutionally and legitimately recognized, voters have no chance to exercise their corresponding rights due to the aforementioned inadequacies in legislation.

³³ Resolution No. 123/2020/QH14 (03 January 2020) on the removal from office of Mr. Pham Phu Quoc.

³⁴ Thanh Chung, *Removal from office of NA deputy, approve the dismissal of Mr. Nguyen Thanh Long as a Minister*, Tuoitre online, 07 June 2022 (02 February 2023), available at <https://tuoitre.vn/bai-nhiem-dai-bieu-quoc-hoi-phe-chuan-cach-chuc-bo-truong-voi-ong-nguyen-thanh-long-20220607113421516.htm>.

³⁵ Data synthesized by the authors.



This factual reality may result in a greater risk of making the voters' right to remove NA deputies from office only occur in theory, rather than in practice as yet realistically, no corresponding cases have been recorded. Precisely for this reason, the purpose of the NA deputies' removal institution can not be achieved. As a result, the fact that the NA has currently "represented" the voters to undertake the removal of NA deputies from office during last time asks for more attention and serious reconsideration. As the People are the supreme subject of the state power, the people's control of state power is an essential and legitimate demand.

Secondly, the foundation for the removal of NA deputies from office is predominantly due to the wrongful conduct violating the legal regulations and standards of the NA deputies themselves. From the above-mentioned removal cases, the main basis for proposals on removing NA deputies from office is because of their own wrongful conduct being in contravene with the legislation and deputy's standards. There are no cases in which an NA deputy would be removed from office just merely due to their non accomplishment of tasks or their abilities being incommensurate to the tasks. Whereas two main purposes of the NA deputy's removal institution are: *i)* democracy enforcement - require that the People must have their constitutional right to vote for a deputy, who is believed to have enough capacity to represent their will and interests; and *ii)* power control - require to control the use of NA deputies' power is in proper purpose and effective manner. When an NA deputy is removed from office for their wrongful conduct, it just ensures the proper implementation of democracy and state power. Therefore, the NA deputies should be subjected to removal from office for their non-accomplishment of tasks to ensure the state power will be implemented effectively.

4. SOLUTIONS FOR IMPROVEMENT OF LEGISLATION ON THE REMOVAL OF NATIONAL ASSEMBLY DEPUTIES FROM OFFICE IN VIETNAM

First, establish specific criteria for identification of a "no longer worthy of the People's confidence" NA deputy. In terms of language, the word "confidence" is inherently subjective and extremely hard to quantify. Therefore, in order to make the removal institution happen on a consistent basis, clear and specific regulations on criteria used to identify "an NA deputy who is no longer worthy of the People's confidence" in corresponding laws. Moreover, the Law on Organization of the NA has defined expressly and unambiguously conditions, and standards to become an NA deputy. Therefore, it would be more reasonable if the forementioned standards were officially recognized as one of the criteria to assess the People's confidence in NA deputies during their office term. The entry standards and conditions of NA deputies can be directly applied to assess their performance; and on the other hand, it also will become one of the firm legal bases for voters or the NA to ask for the removal from office of an NA deputy.

In addition, the NA also needs to establish a set of criteria for evaluating the quality of the NA deputy's performance. The appraisal shall be based on the assigned functions and responsibilities of the NA deputies and their annual working plan. And the assessment result will be a foundation for voters to take their confidence with the ineffective performance of NA deputies into reconsideration. Simultaneously, this assessment mechanism also plays a vital instrument for the NA deputies to adjust their own plans in order to improve the quality of their performance.

Second, reestablish the voters' right to make a proposal on removal of NA deputies from office. As mentioned above, no provisions regulating the rights of voters to make an NA deputy's removal proposal lawfully recognized is a serious shortcoming, which negatively affects the implementation of the People's direct democracy. Therefore, the voter's right to make a removal proposal of an NA deputy needs to be promptly re-recognized and stipulated expressly in the legislation. Over this matter, the legislators can internalize the spirit of Article 56, the 2001 Law on Organization of the NA. Accordingly, clause 6, Article 54 of the 2014 Law on Organization of the NA must be amended and supplemented as follows: "To decide to propose the NA or voters of constituencies to remove from office NA deputies at the proposal of the central, provincial-level VFF Committee or of the voters of constituencies". And the most common method for voters to initiate the phase of removal proposal of an NA deputy is by mobilizing the signatures of voters. Thereby, it also requires the



quorum of voters' signatures being expressly legislated as Article 41 of the 1946 Constitution to make this right become effective.

Third, delimit the authority of voters and the NA in removing NA deputies from office. The current legislation does not have an express delimitation between the authority of voters and the NA in removing the NA deputies from office. To propose solutions to overcome this inadequacy, the authors suppose that the legislation should take into account the equal balance between local interests and national interests when delimiting removal's authority. If the removal proposal arises from the representative subject of local interests, it must be assigned to national interests' representative to conduct the removal from office process and vice versa. Specifically, in case the provincial Committee of VFF (or voters of constituencies) make a removal proposal, the NA will be the subject holding responsible for commencing the removal voting procedure. In case the VFF Central Committee makes a removal proposal, the voters of that constituent will be responsible for carrying out the voting procedure. However, observing current practices of removing NA deputies from office in Vietnam, it is obvious that both the VFF Central Committee and the provincial VFF Committees have authority to make NA deputy's removal proposals. Therefore, this solution, for a proper implementation, requires the legislators to expressly define in which cases the former party will propose, and in which cases the authority belongs to the latter, rather than using the VFF's internal regulations.

Fourth, promulgate legal documents on the NA deputies' removal procedure. On November 15, 2022, the NA approved Resolution No. 71/2022/QH15 on the Enactment of NA sessions' rules (takes effect since March 15, 2023) as a replacement of the Resolution No.102/2015/QH13. Accordingly, the procedure for the NA to remove deputies from office was amended and regulated in a clear and detailed manner in Article 45 of the 2022 Rules on NA session. Meanwhile, the procedure for voters to exercise their right of removing deputies from office is still neglected. Previously, the 1980 Law on the Election of NA deputies dedicated one Chapter (Chapter 9) for regulating the procedure of voters to remove an NA deputy from office. Simultaneously, a draft resolution on the procedure of voters to remove an NA deputy was constructed by the NA in 2015. As a result, legislators can inherit and develop the afore-mentioned legal documents to promulgate and enact an Ordinance or Resolution on the order and procedure for NA deputies' removal by the voters. Knowing that the organizational process for organizing a voting conference by the voters will be extremely "sophisticated and costly".³⁶ Recognizing the NA deputy's removal procedure by voters remains necessary in order to ensure the direct democracy of the people in the process of building a Vietnam Socialist rule-of-law state.

5. CONCLUSION

In Vietnam's current legislation, an NA deputy would be removed from office by voters or the NA once he/she is no longer worthy of the People's confidence. However, there are no criteria to determine when an NA deputy is "no longer worthy of the confidence of the People" as well as lack of further provision clearly delimiting removal authority between voters and the NA. In addition, the NA Standing Committee has not issued any legal documents guiding the specific procedure for voters to exercise their right to remove NA deputies from office. Hence, there have been eight cases of NA deputies being removed from office; however, none of them were conducted by voters over the past 25 years.

This paper suggests the legislators establish specific criteria for the identification of NA deputies who are no longer worthy of the People's confidence, expressly define in which cases the voter or the NA will propose removal proposals, and promulgate an Ordinance or Resolution on the procedure of removing NA deputies from office by the voters of constituencies. It is our hope that these findings will provide further inspiration for improving legislation on the removal of NA deputies from office.

³⁶ See Nguyen Xuan Dien, above n. 24.



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