

LIMITATION OF CONSTITUTIONAL RIGHTS IN THE CONTEXT OF COVID-19 IN VIETNAM

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Abstract - The COVID-19 pandemic is causing severe impacts on the world and Vietnam. Not only does it affect the lives and health of each individual, but it also threatens the economy, politics, and social stability of countries all over the world. Many countries have taken different response measures within their capabilities. But these epidemic prevention and control measures have raised concerns about their effect on the constitutional rights of people in society. This research paper aims to provide an analysis of limitations on constitutional rights in Vietnam in the context of the COVID -19, the deficiency of Vietnamese law on this issue. To achieve its objective, general and specific scientific scholarly research methods, including those denominated concrete-historical, logically historical, system-based, comparative legal (law), among others, are carried out. The paper clarified the legal provisions on constitutional rights, scientific views on the limitation of rights, and the fact of rights limitation in Vietnam in the COVID-19. At the same time, point out the inadequacies in the provisions of Vietnamese law and offer some solutions. The authors argue that the Government of Vietnam has enacted several legal documents restricting constitutional rights at different levels; however, the legality of these documents is a matter of controversy. At present, in Vietnam, the constitutional jurisdiction mechanism is still quite opaque, processes of power control, so far, have not been built in special situations of the society, and there is a lack of tools to assess the reasonableness of limitation of rights. The most important task here is to build completeness and enhance the effectiveness of the legal system, including constitutional norms.

Keywords: Limitation; Constitutional rights; COVID-19; Vietnam

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INTRODUCTION

The COVID-19 pandemic has caused negative impacts all over the world. It affects all countries, all aspects of social life in all political institutions. Being heavily affected by this pandemic. Vietnam takes effective measures to prevent and control the epidemic and demonstrates great efficiency. It can be said that Vietnam is a model of epidemic prevention and control. However, the execution of these measures also raised certain concerns about whether it infringes constitutional rights or not. There is even an opinion that “The Court of Human rights will certainly be overloaded by complaints after the COVID-19 crisis” [1]. The Constitution in 2013 of Vietnam recognized the constitutional rights in Chapter 2 - Human rights, basic rights, and obligations of citizens. This shows a change in the legislative thought of the lawmaker on constitutional rights, that is, (1) the constitutional right is not a granted product of the state, but the state is obliged to recognize and protect it; (2) the constitutional right cannot be arbitrarily limited, the limitation of the constitutional rights is forced to comply with certain principles and can be implemented only by competent authorities in compliance with the law. All this indicates

the need for and relevance of researching on the issue of limitation of constitutional rights in the context of the COVID-19 in Vietnam.

The limitation of constitutional rights is an accomplished fact recognized by legal science [2; 3; 4; 5]. P. Bon argues that limiting rights is necessary, but this must be done in a manner commensurate with the requirement to protect rights [2]. As their foreign colleagues, Vietnam scholars agree that the limitation of rights is a legal issue arising from the actual requirements of life as recognized in international human rights law to combat the arbitrariness of the authorities [6]. Given the so-called external theory of constitutional rights, R. Alexy argues that the scope of constitutional rights as a *prima facie* position is not reduced by a limitation. In other words, the limitation lies outside the right, the “limitation” and the “right” form as two objects themselves and separately. In opposite to external theory, the internal theory explains that “right” and “limitation” are a unified entity; in the right, the limitation is regulated, and the subject is only allowed to exercise the rights within the limitation regulated by the law.

This study seeks to analyze the issue of limitation on constitutional rights in general and their limitation by the Vietnam Government’s anti-epidemic measures in particular. Authors argue that limiting rights is a normal practice in a democratic society. Applied measures to limit constitutional rights in Vietnam in the context of the COVID-19 are closed to international legal standards, but the legal framework of Vietnam’s law, so far, needs to be enhanced.

According to this goal, the authors formulated the following research objectives:

- Explore various viewpoints on the limitation of constitutional rights of foreign legal experts as well as Vietnamese legal experts;
- Examine specific aspects of limitation of constitutional rights in Vietnam while applying anti-epidemic measures;
- Analyze the shortcomings of the Vietnam legal system in effect and suggest specific measures to improve it.

Subsequently, this paper will discover these issues based on theoretical studies on the limitation of constitutional rights and discuss the limitation of constitutional rights in the context of the COVID-19 in Vietnam. The conclusions and suggestions provided herein may be used to enhance the completeness of Vietnam’s legal framework on limiting constitutional rights as well as the effectiveness of its application.

MATERIALS AND METHODS

This research aims to analyze limitations on constitutional rights in Vietnam in the context of the COVID-19 and the deficiency of Vietnamese law on this issue. The paper utilizes general scientific-scholarly methods and specific scientific scholarly research methods to achieve its objective. The background for the methodology of the research constitutes such key scientific methods as the dialectical cognitive method that allows analyzing all phenomena and processes in their development, interrelations, and interdependence, as well as general and specific scientific methods and analysis, including the following: denominated concrete-historical, logically historical, system-based and comparative legal (law) methods, among others.

The theoretical background for the research involves the works of foreign and Vietnamese specialists in the fields of constitutional law. The materials of the research are based on examining various scientific information sources, such as textbooks, monographs, theses, papers, material from research and practical conferences, and similar.

The author has studied and taken into account the opinions of foreign and Vietnamese legal experts such as Le Bret [1], Derek [7], Waline [5], Pierre [2], Giao [6], Alexy and Rivers [4], Dat [8-9].

The structure of the research paper is related to the author’s position on the issues in question. First, the author specifies various points of view and theories about the limitation of constitutional rights. Thereafter, certain particular characteristics of the limitation of constitutional rights in Vietnam are considered in the context of the COVID-19 as well as the importance of a state’s ability and commitment to carry out the limitation of constitutional rights following international standards.



RESULTS

The limitations of rights, for any reason, require reasonable justifications. At the same time, there must be a solid legal basis for the behavior of the authorities. In the context of the COVID-19 in Vietnam, constitutional rights have been limited to different levels. Although it has greatly contributed to the success of Vietnam in epidemic prevention and control, this has also led to many different opinions that require research to enhance the legal basis and its practical application.

The enforcement of rights limitation measures aims to ensure the restoration of rights of the individuals, ensuring the normal state of society. However, in terms of the constitutional principle of rights limitation, there are still issues that need to be perfected. In 2013, the Constitution stated: “Human civil rights can only be restricted when necessary in accordance with the regulations of the law for reasons of national defense, security, social order and safety, social ethics, and public health.” From the regulations stated above, it is possible to see the following issues: (1) To preserve social order, the limitation of rights is necessary, in case of conflicts of interest in social life; (2) The limitation of rights is regulated by legal documents under the Constitution. It is the content of the principle that raises the question of the directives’ legality in the context of the COVID-19 at present, as constitutional rights can only be restricted by legal documents (promulgated by the National Assembly). The Constitution of 2013 uses the formula “under the regulations of the law” instead of “following the regulations of the law,” thus setting excessively high standards for limitation of rights and reducing the flexibility by applying this principle (emergencies require a quick and timely response). Too “narrow” regulation of the scope of the principle leads to the impossibility of its implementation. No country uses exclusively acts of the legislative agency to limit the rights, especially in Vietnam when the execution of the acts is too dependent on the documents guiding the execution. In addition, the wording “following the regulations of the law” is completely compatible with the expressions of the Declaration of Human Rights of 1948, conventions on human rights, and constitutions of many countries in the world. Therefore, the principle of rights limitation should be edited according to the direction of using the formula “following the regulations of the law.”

In terms of legal form, the author notices that the Directives of the Government of Vietnam for the prevention and control of the COVID-19 is quite similar to the regulation of emergency state (although in the form, the emergency state is not declared), which is to introduce certain limitations for a certain period (even derogation from rights) such as: prohibiting travel within a certain area or nationwide, suspending religious and entertainment activities, prohibiting crowds, suspending some business activities, etc. However, the Constitution of 2013 does not regulate the suspension of obligation of ensuring the rights in emergency cases, and the described situation is no exception. Especially in countries like Vietnam, the role of explaining the Constitution of the Court is very limited; the failure to regulate the basic act on the exceptions of the limitation of rights leads to a legal gap and consequent arbitrary limitations constitutional rights. The success of the COVID-19 epidemic prevention and control by the government of Vietnam is undeniable, but from the legislative angle, there is still a need for a complete study on the issue of limitation of rights and the context of their implementation in Vietnam in the context of the COVID-19. In a democratic society, under any circumstance, the power of the government is still limited by the constitutional order, which makes the “emergency constitutional rules” the best way to minimize the risks of shaking the foundation of democracy and sabotaging basic civil freedoms in society when the emergency state appears.

Limitation of rights is a very sensitive issue because of its impact on the democracy of the institution itself. Therefore, there are certain standards for the limitation of rights. According to international law, the limitation of the right is considered to be reasonable when the following conditions are met: (1) to prevent the arbitrary imposition of limitations so the limitations must be regulated in the law; (2) imposed limitations must not be contrary to the nature of limited rights; (3) to set forth the limitations only if it is necessary in a democratic society and promotes the general welfare of the community (general interests may be: National security, public order, community health, community ethics, rights and freedom of other people). At the same time, the countries of the world have very strict supervision mechanisms on the limitation of the right. In western democracies, the legislative agency strictly controls the emergency power and only allows temporary application of this state. However, at present in Vietnam, when the constitutional jurisdiction mechanism is still quite opaque, processes of power

control have not been built for emergencies, and there is a lack of tools to assess the validity of limitation of rights. Therefore, these are still issues that need further research and perfection.

DISCUSSION

1. Constitutional rights and viewpoints on limitation of rights

In governmental jurisdiction-based institutions, the constitutional rights are understood as the basic rights of individuals regulated by the Constitution, which the government is obliged to respect and protect, including human rights and citizen rights. In Vietnam, the Constitution of 2013 regulates the constitutional rights in Chapter 2 - Human rights, rights, and obligations of citizens, thereby “in the Socialist Republic of Vietnam, human rights, citizen rights about political, civil, economic, cultural and social fields are recognized, respected, protected and guaranteed under the Constitution and law.” In other words, it can be understood that constitutional rights, including human rights and citizen rights, are recognized and protected by the Constitution.

Human rights are understood as “global legal warranties that have the effect of protecting individuals and groups against actions or neglects that harm human dignity, permissions and basic freedom of people” [10]. Human rights have the basic characteristics of “inherent,” “non-transferable,” and “universal.” The inherent characteristic of human rights is as follows: people as being born have these rights only for the reason that they are human, which means that these rights are not granted by a ruler. The non-transferable characteristic of human rights means that this right cannot leave the human. The universal characteristic of human rights means that everyone has those rights regardless of nationality, social status, sex, or race [11]. The Constitution of 2013 recognizes human rights as a means to establish the relationship between the state and individuals and determines the obligations to ensure the implementation of the rights of the state over individuals in society.

Citizen right is the right to express the special nature and legal relationship between the state for certain people, established based on nationality. Accordingly, citizen rights are the rights established in the Constitution in the political, civil, economic, social, and cultural fields, which are the basis for implementing other specific rights of citizens and are the basis for determining the legal status of citizens [12]. The recognition of citizen rights in the highest law of the state is the way of establishing the legal relationship between the state and the majority of the population in society; thereby, the citizens enjoy the corresponding rights and benefits and shoulder the minimum obligations.

Based on the regulations in the Constitution in 2013 of Vietnam, the constitutional rights can be divided into the following groups:

The political rights show the citizens’ participation in governing activities. This group of rights includes the right to vote in the election to the National Assembly and the People’s Council (Article 27); the right to participate in governmental and social management, voice and discuss opinions on problems faced by the population, locality, and the whole country with authorities (Article 28); the right to vote in a governmentally organized referendum (Article 29); the right to complain and denounce (Article 30).

The democratic freedom and individual freedom rights demonstrate the respect of the government for individual freedom as well as one of the signs of a democratic institution. This group of rights includes the following: the right not to be expelled, handed over to another state (Article 17); the right to live (Article 19); the right of body inviolability, to be protected by law in terms of health, honor, and dignity; the right not to suffer from torture, violence, persecution, corporal punishment, or any other treatment that infringes upon the body, health, honor, or dignity; the right to donate human tissues and organs and donate corpses (Article 20); the right of private life inviolability, personal secret, and family secret; the right to protect honor and reputation; the right of the confidentiality of correspondence, telephone, telegram, and other forms of information exchange (Article 21); the freedom of movement and residence right within the country, right to travel abroad and return to the country from abroad (Article 23); the freedom of belief (Article 24).

The group of economic, social, and cultural rights represents the governmental obligation to ensure the quality of life towards individuals in society. This group of rights includes ownership (Article 32); the right to freedom of business (Article 33); the right to work, choice of profession, employment and

workplace, right of employee (Article 35); the rights and obligations to study (Article 39); the right to enjoy and access cultural values, participate in cultural life, use cultural facilities (Article 41).

As referring the constitutional rights, the government takes an obligation to ensure the implementation of the rights of the state. However, in some special circumstances of society, for example in the context of the COVID-19 pandemic, the constitutional rights may be limited to ensure a stable society and healthy development.

Limitation of rights is a term that can be approached from many angles, within the article, the author gives the most common approaches to the limitation of rights.

From a semantic perspective, limit (noun) means “certain scope, a degree which cannot be exceeded” or (verb) means “to regulate a limit,” limit (verb) means “to keep, contain within a certain limit, not to let it pass” [8]. Therefore, in a semantic aspect, there are both differences and interference between limits and limitations. In the notion of a limit, there is a limitation with a certain scope and degree and when limiting something, it is always meaningful within a certain limit, which means it is necessary to draw its boundary [9].

In the legal context, the limit/limitation of a certain right is understood that the State does not allow the beneficiaries of the right to implement that right at an absolute level (highest) [4]. Social life is the interaction between rights and obligations. To ensure the order of rights, there are always limitations on themselves and the limitations of rights are necessary, it can be said that public order “assumes a particular function that is to limit freedom only when this is compulsory and only limits the right proportionally to what the protection of other rights requires” [2]. Like this, the limitation of rights is not a strange phenomenon to ensure the common order of society, the state always sets out the norms that limit the rights of the subjects. Ultimately the purpose of limitation of rights is also to protect rights, because “the limitation and restriction of rights are requirements originating from the life fact that was recognized by international human right law, with the main purpose of preventing the arbitrary act of the state in exercising human rights, not providing tools for the state to violate those rights” [6].

In another approach, R. Alexy believed that the concept of limitation of a right” seems to be based on a presumption that there are already two things: a “right” and a “limitation,” between them there is a certain relationship, for example, a relationship of restriction” [4]. According to these understandings, the “limitation of rights” in the relationship between “right” and “limitation” forms two theories:


“External theory,” in which the limitation lies outside the right, the “limitation” and the “right” form as two objects themselves and separately. The external theory is mainly recognized and applied in the conventions on human rights. Accordingly, in the jurisdiction states, the right is not limited, the limitation only occurs when the “right” is placed in the relation to the rights of another subject and request of the public interests. The limitations according to the theory of outside must be determined and specified in advance.

The “internal theory” approaches “right” and “limitation” as a unified entity, whereas in legal science, the limitation is regulated, and the subject is only allowed to exercise the rights within the limitation regulated by the law. The internal theory is widely recognized in the countries according to the school of real statutory law. The content of this theory assumes that guarantees and limitations of rights are inseparable [3] because limitations on some rights and freedoms are the guarantees for the execution of other rights and freedoms [3]. It can be said that “all rights and freedoms have an implicit limitation, that is to respect the public order [...]. Like this, people only acknowledge limited (restricted) rights and freedoms” [13].

In short, in terms of the limitations of rights, there are different approaches but the same point of view is that the right is always limited when it is placed concerning the rights of other subjects or in front of the demands of the public interests.

2. Limitations of constitutional rights in the context of the COVID-19 in Vietnam

Faced with the situation of the COVID-19 epidemic, the Government of Vietnam has taken strong measures to prevent and control it. However, there are measures that directly or indirectly affect the



constitutional rights protected by the law. The Government of Vietnam has promulgated the directives consecutively and implemented the epidemic prevention and control measures timely and firmly. Among these measures, some measures limit the constitutional rights of individuals such as the right to freedom of movement, right to work, right to study, religious activities, etc.

The study of Directives of the Government of Vietnam shows that constitutional rights have been restricted at different levels as follows:

The limitation of the right to freedom of movement and residence in the country, right to travel abroad and from abroad: when the epidemic broke out in the world and Vietnam discovered the first case of infection, the Government of Vietnam applied measures to restrict travel in epidemic zones and exit and entry into Vietnam. In Directive 05/CT-TTg of January 28, 2020 [14], the government suspended flights from Vietnam to the epidemic zones of China and all flights from the epidemic zones to Vietnam. Then, in Directive 06/CT-TTg of January 31, 2020 [15]; Directive 10/CT-TTg of February 25, 2020 [16]; Directive 11/CT-TTg, of April 3, 2020 [17]; Directive 13/CT-TTg of March 11, 2020 [18]; especially Directive 15/CT-TTg of March 27, 2020 [19] and Directive 16/CT-TTg of March 31, 2020 [20] Vietnam stopped all flights from Vietnam to other countries and from other countries to Vietnam (except for flights to rescue Vietnamese citizens stuck abroad), suspended the issue of visas to Vietnam, closes all boundary border gates, controlled paths on border lines with neighboring countries; at the same time, in the country, suspended the means of transport between the epidemic zones and neighboring zones, limited personal vehicles, suspended public means, especially during the peak stage of social distancing in 15 days from 00h on April 1, 2020 according to Directive 16/CT-TTg dated March 31, 2020 [20] all over the country, all individuals are advised to limit their travel except for some special cases where they were allowed to travel such as buying necessities, pharmaceuticals and other essential services; emergency cases; Working at state agencies and units, armed forces, diplomatic agencies and at other essential establishments and services. At the same time, the Government of Vietnam itself has strongly sanctioned the cases of violating the regulations on epidemic prevention and control, such as violation of regulations on restricting travel. Individuals in a society have limited the right to freedom of movement of the individual in society to serve epidemic prevention and control at different levels, even imposed sanctions for violations of regulations on restricting travel and residence.

The limitation of the right to freedom of belief; right to enjoy and access cultural values, participate in cultural life, use cultural facilities: the content of this constitutional right is understood that individuals are free to follow or not follow a religion, the freedom of individuals to publicly or secretly practice, worship, preach, or gather together any religion or belief (Derek [7]). However, the reality shows that the gathering of people to practice belief and religious rituals at worshiping and religious establishments led to a very high risk of spreading the COVID-19 epidemic; the health authorities have had recommendations for restriction of the practice of crowded religious and belief rituals, as well as safety measures in the context of the COVID-19 [18]. Therefore, the Government of Vietnam has “absolutely stopped religious rituals, activities with focus of 20 people or more at religious, belief and worship establishments; stopped all cultural, sport and entertainment activities at public places; Stopped meeting activities, events gathering more than 20 people in 1 room; not gathering 10 or more people outside the premises of offices, schools, hospitals; required the implementation of the minimum distance of 2 m between person and person in public places” [19], which limited the right to freedom of belief as well as the right to enjoy and access cultural values, participate in cultural life, use the cultural establishments of individuals in society.

The limitation of the right to freedom of business and labor was also enforced in certain fields. In the context of the COVID-19 pandemic, the government of Vietnam has suspended the business of certain fields, for example, international flights of airlines, restricted the activity of domestic passenger transport, suspended non-essential business activities such as catering services, restaurants, hotels, karaoke, gym room, etc. Accordingly, the people’s right to freedom of business has been limited in certain fields. The restriction of the right to freedom of business has led to the restriction of the individual’s working rights, the laborers in the group of industries and occupations restricted the business has been suspended the implementation of their working rights, only the people who worked in state agencies and units, armed forces, diplomatic agencies, and essential business services were entitled to participate in working normally.

The limitation of the right to study of pupils and students. The COVID-19 pandemic has had a great influence on normal activities of society, including the implementation of the right to study of pupils and students. According to the guidance of the professional agency, the learning environment is easy to spread the COVID-19 epidemic because the activity of gathering people is of a high-risk nature. The epidemic does not have discrimination of border, ethnic group, and gender. At the same time, the protection of children and educational institutions is especially important. It is necessary to have measures to prevent the spread of the COVID-19 epidemic in educational institutions. To ensure the health of pupils, students, and the community, the Government of Vietnam had to adjust the schedule of study, suspended direct study in the classrooms of pupils and students in each locality, even in remote areas, difficult areas, the distance learning process could not be carried out because of students' inability to approach television or internet. Therefore, the pupils' right to study was suspended. Although the suspension of direct study in the classrooms or conversion to online study is the optimal choice in the situation of the COVID-19 epidemic, it greatly affects the quality of study as well as the right to study of pupils and students nationwide.

Privacy rights of patients and people suspected of having the COVID-19. In the process of implementing the measures of prevention and control of epidemic, the privacy right of individuals is significantly affected. Because infectious diseases often show discrimination, regardless of class, group, or specific patient, the patients with infectious diseases are always discriminated against, as well as the discrimination against patients with infectious diseases is a historical factor. Therefore, the disclosure of the identity of a patient or suspected person (in the form of an abbreviated name or symbol), schedule of activities, workplace, residence place imperceptibly affects the privacy right of the patients, making them become the subject to be "hunted" on the media, social networks, causes a direct effect on their privacy rights. This raises issues to be considered about the limitations of privacy right in the context of the COVID-19 epidemic to ensure the balance between the public interest and the rights of each individual in society.


CONCLUSION

The study results confirm that Vietnam has been one of the most successful countries in the world at containing the COVID-19 pandemic while taking out measures that may lead to the restriction of constitutional rights. The paper also points out the shortcomings of Vietnamese law on the issue of limitation of rights that have been revealed in the context of the COVID-19 pandemic.

The limitation of rights is a very sensitive issue. Therefore, certain standards for the limitation of rights are required. Limited attempts have been made to review the limitation of constitutional rights in Vietnam, especially in the time of the pandemic COVID-19. So this paper attempted to present such an analysis. However, further studies should be conducted with an in-depth analysis of the limitation of specific constitutional rights or an assessment of the impact of constitutional rights restrictions on people's lives in Vietnam. An assessment of the principle of limitation of rights as stipulated in the Vietnam Constitution 2013 is also necessary from the point of improving the law system related to this issue.

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