

---

# THE RULE OF LAW IN VIETNAM: Theory and Practice

Truong Trong Nghia

## INTRODUCTION

After reviewing two Mansfield Center for Pacific Affairs publications on the Rule of Law, (*The Rule of Law: A Lexicon for Policy Makers* by Barry M. Hager, and the December 1999 issue of *Asia Perspectives*) as well as conducting my own research on this topic, I would like to share three observations.

First, it seems to me that there are fewer controversies between the West and Asia on what constitute the core components of the Rule of Law than there are on the contents of those components and on how to apply them to structure a government or govern a society. Second, neither Asia nor East Asia are unified in their approaches to the process of becoming familiar with or adopting the Rule of Law in their societies; different historical developments in each country have led to different attitudes towards and different treatment of the Rule of Law concept, despite a common Confucian tradition. Third, if we accept a certain level of diversity and modifiability in the course of adapting the Rule of Law to the specific circumstances of each country, without sacrificing the spirit and the goal of the Rule of Law, we will be better able to understand the development of the Rule of Law in theory and practice in different countries. We will also be able to learn more from and better help each other in adopting the Rule of Law.

With these three views in mind, I have three goals in writing this paper. First, the paper should provide a historical background on the course of adopting the Rule of Law in Vietnam. Second, it should give an update on the theory of the Rule of Law in Vietnam, especially its endorsement in the official documents of the ruling party—the Communist Party of Vietnam (CPV). Third, it should provide information about how the Rule of Law as a theoretical concept has been transformed into laws and regulations that can be enforced.

## HISTORICAL BACKGROUND OF THE RULE OF LAW IN VIETNAM

My research revealed the following: The Rule of Law in Vietnam has a history dating back to the 1920s. This is likely to surprise many legal scholars and practitioners in the West who have the perception that there is *suspicion or*

*resistance to the Rule of Law concept among Asian leaders*, a fact noted by Barry Hager in his lexicon. From 1858 to 1945, Vietnam was ruled by a French colonial regime, and from 1940 to 1945, also by the Japanese fascist army in Indochina. All patriotic movements and uprisings were drowned in bloodbath, including a number of resistance movements led by several kings of the Nguyen Dynasty, the last royal family of Vietnam. This situation led to the emigration of intellectuals and revolutionaries to other countries, most notably France and Japan, where they hoped to learn from other nations how to eliminate foreign occupation (or gain their support as allies).

Among the outstanding patriotic figures of that time was one person who understood the progressiveness of the Rule of Law and advocated for its theory. When he came to power, he did his utmost to apply the Rule of Law to his government. That person was Ho Chi Minh, the founder of the Democratic Republic of Vietnam—the predecessor of the current Socialist Republic of Vietnam. Thanks to Ho Chi Minh's personal contribution, the Rule of Law was very early planted in the political soil of Vietnam.

Ho Chi Minh left Vietnam in 1911 at the age of 21. By 1919, he became the most prominent leader of the Vietnamese patriotic movements. He joined the French Communist Party in 1920, went to the Soviet Union in 1923, and attended the Fifth Congress of Comintern in 1924. He then worked as a functionary of the Comintern in a number of countries between 1925 and 1938.

But being a communist did not prevent Ho Chi Minh from realizing that, once independence was gained, democracy and the Rule of Law would be the appropriate way to achieve development and wealth for a backward country like Vietnam. In June 1919, the victorious countries of World War I met in Versailles to deal with post-war issues. Ho Chi Minh, under the alias Nguyen Ai Quoc (Nguyen the Patriot), on behalf of a group of leading patriotic Vietnamese in France, sent to this conference *The Demands of the Annamese<sup>1</sup> People (Revendication du Peuple Annamite)* requesting *inter alia*:

- Reform of the justice system in Indochina by allowing domestic people to enjoy the same legal protection as European people;
- Free press and free speech;

---

<sup>1</sup> One of the old names of Vietnam.

- Freedom of association and meeting;
- Free emigration;
- Freedom of education; and
- Replacement of government by orders with government by laws.<sup>2</sup>

During the same period, in a document written in poetic form in the Vietnamese language and disseminated among Vietnamese in France, Ho Chi Minh wrote: “May the Law—this Holy God—be reigning and a constitution be made for Vietnam.”<sup>3</sup>

In 1926, in *An Appeal to All Other Nations*, jointly signed with two prominent leaders of the patriotic movement of Vietnam, Phan Boi Chau and Phan Chu Trinh, Ho Chi Minh declared:

We make our request known to all other nations: we demand full and immediate independence for the Vietnamese people. If that be not implemented, our people will resort to an uprising in a not far future...

If independence is given to our country, we accept the following:

- (1) Voluntary contribution to pay, on an annual basis, a part of the debts France is owing to America and England during the World War.
- (2) Entrance into a peace and alliance treaty with France.
- (3) Adoption of a constitution based on the people’s rights.<sup>4</sup>

In 1927, Ho Chi Minh wrote *The Revolutionary Road*, a training and propaganda manual presenting the experiences of the revolutions in the United States, France and Russia, and basic lessons of revolutionary methodology. He also quoted the American Declaration of Independence saying “that all men are ...

---

<sup>2</sup> *Study on Ho Chi Minh’s Ideology on State and Law* (Research Institute for Legal Sciences under the Ministry of Justice, 1993), 75-76.

<sup>3</sup> *Id.*, 181.

<sup>4</sup> *Id.*, 182.

endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness .... [W]hen ever any Form of Government becomes destructive of these ends, it is the Rights of the People to alter or to abolish it, and to institute a new Government ...”<sup>5</sup>

*The above-mentioned examples show that for Ho Chi Minh, independence and freedom for a future Vietnam required, inter alia, three components: a constitution; the rule by law and not rule by orders; fundamental rights and freedoms for citizens. In other words, they required the core elements of the Rule of Law.*<sup>6</sup>

In February 1930, authorized by the Comintern, Ho Chi Minh founded the Communist Party of Vietnam by unifying three separate communist parties in the country at that time. Ho Chi Minh’s correspondence and writings (publicized in the series *Ho Chi Minh’s Entire Collection*) and Vietnamese literature on that event reveal that there was a certain discrepancy between Ho Chi Minh’s points of view and the official positions of the Comintern regarding strategies and tactics for the revolution in Vietnam. Ho Chi Minh incurred disgrace with the Comintern.<sup>7</sup>

Was Ho Chi Minh’s advocacy for the Rule of Law also the reason? I do not have a direct answer, but Ho Chi Minh’s literature provides some indication. In the Report on the Tonkin, Annam and Cochinchina sent to the Comintern in 1924, he wrote:

The economic structure of Indo-China, and I can say, also of India and China, does not resemble the one of the Western society, both in the Medieval Age and in the recent past, and the class struggle in the former is not so severe as in the latter .... In any way, one

---

<sup>5</sup> *The Revolutionary Road*, Ho Chi Minh’s Entire Collection, Title 2, 269-270, (National Politics Publishing House, Hanoi, 2000).

<sup>6</sup> Compare Barry M. Hager, *The Rule of Law: A Lexicon for Policy Makers* (Mansfield Center for Pacific Affairs, 1999), 19-44.

<sup>7</sup> A letter by Ho Chi Minh sent to a Comintern cadre revealed that situation: “Dear Comrade, today is the 7<sup>th</sup> anniversary of my arrest in Hong Kong. This also the day starting the 8<sup>th</sup> year of my inactivity. On this occasion, I write you this letter asking for your help to get me out of this sad and suffering situation. Send me to somewhere. Or keep me here. Assign me a work that you find useful. What I would like to propose to you is: please do not let me be inactive that long, just like being beside, being outside of the Party. I will be very grateful, dear Comrade, if you allow me to have an audience with you. I believe that would be better. Since very long, you did not see me. Dear Comrade, please accept my communist brotherly greetings. July 6, 1938. Lin (Nguyen Ai Quoc)” *Letter to a Comrade at Comintern*, Ho Chi Minh’s Entire Collection, Title 3, 90.

cannot forbid the supplement of the of the “historical basis” of Marxism by adding facts that Marx could not be aware of in his days .... Marx has built his theory on a certain philosophy of the history, but history of whom? History of Europe. And what is Europe? Europe is not the whole mankind .... Marxism is to be revised with respect to its historical basis, and to be consolidated by the ethnology of the East. Our Charter: The general direction: Mobilizing the native nationalism in the name of Comintern.<sup>8</sup>

Between 1939 and 1941, Ho Chi Minh returned to Vietnam via China, consolidated the Party, founded the Viet Minh (Alliance for Independence of Vietnam) and prepared for a national uprising.

In August 1945, the Viet Minh led by Ho Chi Minh succeeded in taking power from the capitulating Japanese army in Indochina, despite the presence of the French colonialist regime that had surrendered to the Japanese army in 1939. The Viet Minh took power over all of Vietnam.

At a ceremony marking the founding of the Democratic Republic of Vietnam (DRV) on September 2, 1945, Ho Chi Minh commenced *The Declaration of Independence*, which he authored, with a quotation from the Declaration of Independence of the United States. This quote preceded an excerpt from the Declaration of Human and Citizen Rights of France. Even though he was a communist and a friend of the Soviet Union, which was a victorious party in World War II and playing an influential role in shaping the politics of Eastern Europe in the post-war period, Ho Chi Minh chose the Rule of Law-based democratic republic, not the dictatorship of the proletariat, as the appropriate political regime under the then political circumstances of Vietnam.<sup>9</sup>

One day after the foundation of the Republic, on September 3, 1945, Ho Chi Minh convened the first session of the Interim Government and suggested the *six most urgent tasks of the DRV*, one of which was “to have a democratic constitution .... , to organize, as soon as possible, the general election by giving

---

<sup>8</sup> Ho Chi Minh’s Entire Colletion, Title 1, 465-467. [Note: Tonkin, Annam and Cochinchina are old names for the north, central and south of Vietnam.]

<sup>9</sup> See Hoang Tung, *From Traditional Thinking to Ho Chi Minh Ideology* (The National Politics Publishing House, Hanoi, 1988), 10. The Soviet Union established diplomatic recognition of the DRV in 1950, five years after its foundation and its involvement in the resistance war against France.

the right to general voting and self-nomination to all citizens reaching the age of eighteen with no discrimination as to sex, wealth, religion, race.”<sup>10</sup>

On January 6, 1946, the general election was held throughout the country with nominees from different political parties, including anti-communist parties. A multiparty parliament, the People’s Parliament, was elected and it appointed a multiparty government to administer the country. In November 1946, the Parliament adopted the 1946 Constitution.

I find it is worthwhile to review some parts of this Constitution for two reasons. First, among the four constitutions of Vietnam, it is the classic constitution based on Rule of Law principles. Second, 46 years later, it was reincarnated in the 1992 Constitution. Nguyen Dinh Loc, Minister of Justice, noted that, “in many aspects, the 1992 Constitution has taken the model of the 1946 Constitution, not only with regard to the organization of the state apparatus, but also with respect to many provisions on the economic regime.”<sup>11</sup>

Regarding the political regime of Vietnam, Article 1 of the 1946 Constitution provides:

Vietnam is a democratic republic.

All power of the country belongs to the whole people of Vietnam without discrimination as to race, sex, wealth, social class,<sup>12</sup> [and] religion.

The second chapter stipulates the obligations and rights of the citizens, under which all citizens are equal before the law and have equal political, economic and cultural rights. The interests of both the intellectual and the manual worker are protected. Women have rights equal to those of men in all respects. Vietnamese citizens have freedom of speech, publication, association and meeting; the right to free choice of residence; free emigration within or outside the country; and free compulsory primary education. The people have the right to a general, free, direct and confidential vote, as well as the right to referendum on matters vital to the country or amendment to the Constitution. No seizure or detention is allowed without a judicial decision; no invasion of house and

---

<sup>10</sup> *The Urgent Tasks of the Democratic Republic of Vietnam*, Ho Chi Minh’s Entire Collection, Title 4, 8.

<sup>11</sup> See n. 2, *Study on Ho Chi Minh’s Ideology on State and Law*, 25.

<sup>12</sup> The non-discrimination as to social class distinguished this political regime from the dictatorship of the proletariat.

correspondence is permitted without stipulation by law. Private ownership is guaranteed.

With respect to the separation of power, the 1946 Constitution provides for a clearly determined jurisdiction for each of three branches of the state. The People's Parliament is given the highest power of the DRV. Not only does it make laws, but it also elects the president and prime minister and approves the cabinet members. It is subject to reelection by the people every three years. The government is given the highest administrative power, composed of the president, the prime minister and the cabinet, with the president having immunity from any liability except in the case of committing treason. The judiciary comprises the supreme court, appellate courts, primary courts and secondary courts. Judges are appointed by the government and abide by the law alone without intervention by other institutions. Court sessions are open except for special cases. Torture, beating and mistreatment of the accused or the defendants are forbidden.<sup>13</sup>

Should conferring the highest power on the legislative branch be considered a deviation from the Rule of Law? In my opinion, it is not. The Rule of Law requires a clear separation of the legislative, administrative and judicial powers, but does not proscribe the election of the administrative branch or judiciary by the legislature, which is the most democratic branch of the state due to its being subject to the periodic, general and direct election by the people, as well as its heterogeneous composition and its collective decision-making, voting mechanism.

The Rule of Law-based state operated less than one year in peace. In December 1946, the French colonialists launched an unequal war on Ho Chi Minh's infant government and army. The war ended nine years later with the defeat of the French army at Dien Bien Phu.

Thereafter, the country was divided and became involved again in an extremely violent war, which ended in 1975. Between 1975 and 1990, Vietnam applied the "dictatorship of the proletariat," a model of state that was dominant in the whole system of socialist countries. Minister of Justice Nguyen Dinh Loc noted that "the 1980 Constitution almost

---

<sup>13</sup> The collection of state laws of the SRV, *The 1946 Constitution* (National Politics Publishing House, Hanoi, 1996), 8-19.

fully copied the Soviet model.”<sup>14</sup> This model prevailed until the collapse of the socialist block and Vietnam’s decision to transition to a market-oriented economy.

## **AN UPDATE ON THE THEORETICAL DEVELOPMENT OF THE RULE OF LAW IN VIETNAM**

From 1989 until the beginning of the 1990s, renowned legal scholars and practitioners, party cadres and government officials in Vietnam have thoroughly studied and discussed the Rule of Law as a theoretical concept for organizing the political regime and governing society. This examination took place in a series of studies that were assigned to a number of central government institutions that are the think tanks of the Party and the State.<sup>15</sup> It is easy to guess that those activities must have been permitted by the top leaders of the ruling Communist Party of Vietnam (CPV) as part of its efforts to bring political reform in line with economic reform.

The notable result of the theoretical studies of the 1990s was the creation of the concept of “the socialist Rule of Law state.”<sup>16</sup> The studies during the 1990s noted that the Rule of Law state originated with the birth of the bourgeois state during the course of fighting feudalism. The Rule of Law state is a democratic state, and vice versa. It is understood to be a state embodying the law, but also abiding by the law. It makes laws to govern relations between the state and its citizens, state-to-state relations, the relationships of citizens to one another, and the state itself (in contrast to the feudal state, which makes laws to govern others). The Rule of Law state enacts the democratic rights and

---

<sup>14</sup> See Nguyen Dinh Loc, Minister of Justice, *Study on Ho Chi Minh’s Ideology on State and Law*, Research Institute for Legal Sciences under the Ministry of Justice, 25.

<sup>15</sup> I pay special attention to and will quote more from the book *On the Reform of the State Apparatus*, a government-sponsored study project conducted by the National Administration School (now National Administration Institute) under its chair Professor Doan Trong Truyen. I focus on this project for the following reasons. First, it began in 1989 and was completed in 1990, one year before the 7<sup>th</sup> Party Congress. In this book, the terminology “Socialist Rule of Law State” was used for the first time and one chapter was reserved to define that terminology. Second., the book provided a more complex and far-sighted solution for the political reform that the 7<sup>th</sup> and 8<sup>th</sup> Party Congresses have gradually adopted. Other projects were either conducted or published after the 7<sup>th</sup> Party Congress, meaning that they have surely been adjusted according to official endorsement, or they provide only a repetition of the former.

<sup>16</sup> In fact, from the 7<sup>th</sup> Congress, the term “dictatorship of the proletariat” was no longer used and was replaced by the term “socialist state of the people, by the people, for the people on the basis of the alliance of the class of workers, the class of peasants and the intellectuals” (the 7<sup>th</sup> Congress) or “the socialist Rule of Law state” (the 8<sup>th</sup> Congress).

freedoms of the people into law and is responsible for protecting and guaranteeing those freedoms and rights. However, the differences between the socialist Rule of Law state and the bourgeois Rule of Law state must be distinguished.<sup>17</sup>

The first difference concerns the role and position of the ruling party, the CPV, in Vietnam.

The CPV is the political force leading the whole [political] system<sup>18</sup> .... [T]hat is an historical inevitability in Vietnam.

... We do not accept the multiparty or pluralist concept both theoretically and practically..., that explains that a democratic society be identical with the existence of oppositional political parties challenging the leading authority of the communist party.

... Reform of the political system should absolutely not touch on the fundamental and decisive issue which is the sole leading role of the CPV.<sup>19</sup>

But at the same time, a warning is served to the ruling party. No matter how great its role and reputation, the ruling party cannot replace the role of the state, and the policy and ideology of the party cannot be substitutes for the law. The ruling party should never convert itself into a state power, or stand above the state power. Doing so will lead to self-weakening, or even to self-destruction. The ruling party must undertake self-reform in order to live up to its mandate as a party of intelligence and scientific methods.<sup>20</sup>

The socialist Rule of Law state does not separate its power but unites it in the legislative branch, the highest state power, which has the authority to make laws, but delegates the administrative authority to the government and the judicial authority to the court. The Rule of Law principle understands the separation of power to mean a clear distinction of the jurisdiction of each branch, and no

---

<sup>17</sup> The National Administration School. *On the Reform of the State Apparatus* (The Truth Publishing House, Hanoi, 1991), 32-37.

<sup>18</sup> Id., 10-11. "The term 'political system' is defined as comprising: first, the communist party as the leading force and the most decisive component; second, the state as the center or backbone of the system with the law as the core feature; and third, the political and social organizations, associations or groups of working people."

<sup>19</sup> *On the Reform of the State Apparatus*, see no. 19, 11-19.

<sup>20</sup> Id.

encroachment of one branch by the other. Western theoreticians and practitioners are quoted as saying that in Western countries, due to some flaws and contradictions of the separation of power theory, the separation is sometimes modified and inconsistent.<sup>21</sup>

The socialist Rule of Law state is defined as a state of law. This state makes the constitution and enacts laws to protect the socialist democracy and the freedoms, rights and obligations of citizens. Under this type of state, all people are equal before the law, allowed to do anything the law does not ban, and cannot be forced to do what the law does not oblige. All people, including party organizations or state institutions, have to comply with the law without exception. Restrictions on constitutional freedoms and rights are allowed only to prevent the violation of the interest of other people or of the state, and must be stipulated by law, not by sub-law regulations.<sup>22</sup>

Under the socialist Rule of Law state, state ownership of the key means of production is allowed, but should not lead the state to directly running or intervening in business operations, instead of governing the economy as a whole, and it should not diminish the non-state sectors.<sup>23</sup>

The results of the above-mentioned studies have become the theoretical basis for the CPV in outlining the orientation or policies for political reform. In fact, starting with the 7<sup>th</sup> Party Congress of CPV<sup>24</sup> in June 1991, the fundamental components of the above-mentioned Rule of Law concept were officially endorsed in the Party documents and enacted through a number of laws and regulations.

The 7<sup>th</sup> Party Congress did not itself use the term Rule of Law, but it caused a breakthrough in its application. The Congress requested that, unlike during the preceding period, political reform be carried out concurrently—albeit

---

<sup>21</sup> Id., 22-23, 104-105. See further “The separation of powers principle has not been fully and completely realized in our constitutional structure, federal and state. The general principle has been qualified by a number of exceptions.” *An Introduction to the Anglo-American Legal System* (West Publishing Company, St. Paul, Minnesota, 1988).

<sup>22</sup> Id., 36-41.

<sup>23</sup> Id., 38-40.

<sup>24</sup> Under socialism, the periodic congress of the ruling communist party has the mandate to adopt the most important policies and orientations for the development of all spheres of society over the next term.

gradually—with economic reform. It stated that the core of the political reform in Vietnam is the development of the socialist democracy, because “democracy is the objective law of the establishment, development and self-improvement of the socialist political system.” It also pointed out that “the important condition for furthering democracy is to develop and improve the legal system...<sup>25</sup> The 7<sup>th</sup> Party Congress opined that political pluralism or the operation of opposition parties is not a reflection of democracy. The uniparty system of Vietnam is a result of Vietnam’s historical development and objective reality; it does not contradict the Rule of Law or democracy, because state power does not belong to and serve the interest of a ruling minority, but rather the majority of the people. Of course, the ruling party must overcome mistakes and weaknesses in the past by strengthening the law and furthering democracy, but democratic character of a political regime must be evaluated not in political slogans or theories, but mainly in practice and reality.<sup>26</sup>

If the 6<sup>th</sup> Party Congress marked a milestone in economic reform through its endorsement of the multisectoral market economy including the private capitalist sector, the 7<sup>th</sup> Party Congress had the same historical significance for political reform. This Congress requested the repeal of the 1980 Constitution, which was almost a copy of the Soviet model,<sup>27</sup> and the enactment of the 1992 Constitution, which is the highest legal endorsement of the socialist Rule of Law state and the *market economy under a socialist orientation* (i.e., not a regular market economy but one that is modified by a socialist orientation).

The terminology “Rule of Law” was officially used for the first time in the documents of the 8<sup>th</sup> Party Congress in June 1996. Evaluating the implementation of the resolutions of the 7<sup>th</sup> Congress, it recognized “the successful realization of a number of important renovations of the political system,” such as “the proclamation of the 1992 Constitution; amendment and enactment of a number of important laws, further reform of the public administration, [and] continuous building and improvement of the Rule of Law state of the SRV.”<sup>28</sup> The Congress’ Political Report realized that “the political system has many shortcomings,” such as the capability and effectivity in the leadership of the Party and the State not matching the requirements of the

---

<sup>25</sup> Documents of the 7<sup>th</sup> Party Congress (The Truth Publishing House, Hanoi, 1991), 54, 90-91.

<sup>26</sup> *Id.*, 122-126.

<sup>27</sup> See n. 16.

<sup>28</sup> See Documents of the 8<sup>th</sup> Party Congress (National Politics Publishing House, Hanoi, 1996), 61.

situation; widespread bureaucratic attitudes towards and serious violations of democratic rights of the people; and the weakening of morality and diminishing idealism and enthusiasm among some party members and organizations. After confirming the acceptance of the market economy under a socialist orientation, the Congress reaffirmed the characteristics of the socialist Rule of Law state in the same manner as the 7<sup>th</sup> Congress<sup>29</sup> and urged the Party and the State “to strengthen the socialist legality and the building of the Rule of Law state of Vietnam.”<sup>30</sup> It also instructed the Party and all members to operate within the Constitution and the law and bear the liability for their operation.”<sup>31</sup>

## THE CONVERSION OF THE RULE OF LAW CONCEPT INTO LAWS

In my opinion, understanding the Rule of Law in Vietnam requires viewing both sides of the coin: the theoretical and the practical. In the case of Vietnam, the theory of the Rule of Law and even its theoretical endorsement in Party documents do not reflect the reality of the multifaceted process of converting the Rule of Law concept into enforceable legal norms that regulate people’s actions and social relations. This part of my paper presents some information on this reality.

### The 1992 Constitution

The 1992 Constitution is based on the concept of the socialist Rule of Law state. Under Article 146, “[t]he Constitution of the SRV is the State’s basic law having the highest legal validity. All other laws must comply with the Constitution.” Although up to now, there has been no procedure and state institution for directly enforcing constitutional norms, the Constitution can have practical application in at least two instances. First, a number of constitutional provisions (e.g., the freedoms and rights of citizens, and the structure and operation of the central state institutions) must be converted into detailed laws and regulations in order to be enforced. Second, all laws and regulations must be made in compliance with the Constitution. Therefore, when you find a law or sub-law provision conflicting with constitutional norms, you can request the National Assembly (NA) to nullify it by making use of the NA’s supreme authority of supervision over the implementation of the

---

<sup>29</sup> See above, 6-8.

<sup>30</sup> See Documents of the 8<sup>th</sup> Party Congress (National Politics Publishing House, Hanoi, 1996), 129.

<sup>31</sup> *Id.*, 150.

Constitution and laws and the NA's authority to repeal laws or other normative documents conflicting with the Constitution, under Articles 83 and 84.

Regarding the political regime, Article 2 stipulates that "the State of the Socialist Republic of Vietnam is a state of the people, by the people, and for the people." All power of the state, the fundament of which is the alliance of the class of workers, class of peasants and the intellectuals, belongs to the people. The CPV is defined under Article 4 as "the leading force of the state and the society." The targeted objective of the nation is defined as "the building of a strong and wealthy country," "the realization of social equality," and "a comfortable, free and happy life for all people."<sup>32</sup>

As for the principle of the supremacy of the law, Article 12 provides that "the State governs the society by the law, and continuously strengthens the socialist legality. All state institutions, economic and social organizations, units of the people's armed forces and all citizens shall strictly abide by the Constitution and the law .... All activities infringing the interest of the state, [and] legitimate rights and interest of collective or individual citizens, shall be handled in compliance with the law." Furthermore, Article 4 stipulates that "all organizations of the Party operate under the Constitution and the law."

With respect to the economic regime, Article 15 affirms "the development of a market economy under the socialist orientation," with a "multisectoral structure with diversified forms of production or commerce on the basis of the whole people's ownership, collective ownership and private ownership the fundament of which are the whole people's and collective ownership." Under Article 22, "businesses and enterprises of all sectors shall implement strictly the obligations towards the State, are equal before the law, enjoy the protection of the State as to legitimate capital and assets. Enterprises of all sectors are allowed to enter into joint ventures or cooperate with local or foreign individuals or economic organizations as stipulated by the law." According to Article 21, "the private and capitalist economic sectors are free to select the

---

<sup>32</sup> This is a clear break with the Soviet-influenced 1980 Constitution, which provided that the state is "a dictatorship of the proletariat" on the fundament of the "alliance of workers and peasants" carrying out the "historical mandate of successful building of socialism and moving towards communism." Under that Constitution, the CPV is defined as "the sole leading force of the state and the society," "the key factor that is decisive for all successes of the revolution in Vietnam," while the 1992 Constitution recognizes the CPV as "the leading force of the state and the society." As to the party-law relationship, the 1980 Constitution said that "all organizations of the Party operate under the Constitution," whereas the 1992 Constitution adds "...under the Constitution and the law."

form of production or commerce and to set up their enterprises with no limit of size in the industries or professions beneficial to the country and the people.” Article 23 provides a “non-nationalization of legitimate properties of individuals and organizations,” whereas under Article 25, “the State guarantees the legitimate ownership of capital, properties and other interest of foreign individuals and organizations...” and guarantees that “foreign-invested enterprises shall not be nationalized.”

With regard to human rights, Article 50, for the first time, stipulates that “In the Socialist Republic of Vietnam, human rights such as political, civil, economic, cultural and social rights, are respected, as expressed in the citizen’s rights and enacted in the Constitution and in laws.” Besides other common constitutional freedoms and rights, Chapter 5 provides for a number of personal freedoms, such as the right to free choice of residence and free emigration in, from and into Vietnam; the right to no infringement of body and of residence; the right to legal protection of life, health, honor and virtue; the right to safety and secrecy of correspondence, telephone and telegraph; and various rights to due process (e.g., presumption of innocence, warranted search and seizure, ban on induced or oppressed confession and corporal punishment, early assistance of counsel ...), especially the rights of illegally arrested, detained, accused, and tried people to compensate for physical damages, restoration of honor, and to file suit against their wrongdoers.

In implementing the 1992 Constitution, a number of laws and statutes have been passed. I just address those that are new and relevant to the conversion of the Rule of Law concept to enforceable legal norms.

### **The Civil Code**

The Civil Code of 1995 is the first ever codified civil law of Vietnam; it is the result of a high level of legal drafting skills and legal thinking. The Code provides civil substantive norms for a wide and diversified range of civil relations and activities, such as the civil rights of individuals, including personal rights and their protection through cause of action; all kinds of properties and ownership, especially the official endorsement of private ownership of the means of production and the judicial protection thereof; freedom of business and contract, including forms of civil contract and transaction; and laws on inheritance, intellectual property, technology transfers, and transfers of land use rights.

Regarding personal rights and freedoms, the Code provides *inter alia*: the right to identity (name, picture); the right to protection of honor, virtue and

reputation; freedom of belief or non-belief; freedom of personal privacy; freedom of emigration and the right to free choice of residence; freedom of business; freedom of creative work; and the right to a cause of action to request judicial protection of the rights and freedoms formulated under this Code.

One of seven titles of the Code (Title 2 with 113 sections, out of a total of 838) addresses property and ownership. The Code defines different forms of ownership and reserves one sub-chapter to the regulation of private ownership (for sole proprietors, small businesses and capitalists), which can be established for different kinds of properties, including capital and the means of production, and which pertains to property rights such as the right to occupy, use and dispose of properties, and the right to no restriction as to the quantity and value of properties. One chapter deals with measures to protect the ownership rights and properties of legitimate owners, including the right to judicial protection.

Implementing Article 12 of the Constitution, the Civil Code provides for the first time two sections imposing civil liability on civil servants and judicial officials for their wrongdoings during the course of carrying out their public functions. The Code gives the harmed person a cause of action to recover damages not from the individual wrongdoers, but from the government agency for which the wrongdoer is working.

### **The Commercial Law**

The National Assembly enacted the Commercial Law in May 1997. This Law, which came into force on January 1, 1998, governs all aspects of commercial activities in Vietnam. It elaborates the constitutional freedoms and rights by providing, *inter alia*, the rights of individuals reaching the age of 18 to practice commerce; the right to equality before the law for business people of all economic sectors; and the obligation of healthy competition and consumer protection versus unfair practices such as market distortion, price dumping, defamation, and the infringement of intellectual and industrial properties. Regarding private sectors in commerce, Section 12 of the Law affirms that the State protects the legitimate commercial ownership, rights and interests of private sector business people, including private capitalists, and encourages state capitalism<sup>33</sup> or mixed ownership.

---

<sup>33</sup> State capitalism is a joint venture of state-owned and capitalist enterprises.

## **The Enterprise Law**

Passed by the National Assembly in June 1999 and enacted on January 1, 2000, the Enterprise Law applies to all private enterprises, including enterprises of mixed ownership and joint-stock companies with state equity.<sup>34</sup> Again the constitutional freedom of business and the right to private ownership is the legal basis for the detailed rights, obligations and procedures of the Law. Except for a few categories, such as civil servants or state agencies, the Law gives every individual and organization the right to set up and manage enterprises, and it gives owners of the enterprises full authority to operate their business as well as to own, occupy and dispose of the enterprise's assets.

The Law itself is a revolution of Vietnamese business law in many aspects. It abolishes the licensing authority of the government and gives the business person the freedom to set up and merely register the enterprise. It also repeals the system of minimum capital for each industry prescribed by the government. Except for a few types of businesses, when setting up an enterprise now, the incorporator only declares the capital in the business charter. The Law also does not require the business person to have capital on hand before obtaining the certificate of incorporation.<sup>35</sup>

## **The Administrative Court**

In May 1996, in an effort to deal with widespread red tape and arbitrary practices in public administration and to further democracy in the state-citizen relationship, the Administrative Court was established as a trial court specializing in adjudicating complaints made by citizens or entities disagreeing with or wrongfully harmed by administrative decisions or actions. Currently, the Administrative Court's jurisdiction encompasses nine categories of administrative decisions or actions, including administrative fines or injunctions, dismissal of civil servants, administrative measures concerning land, housing and construction, confiscation of properties, and collection of taxes and fees. If not satisfied with the Court's judgment, the parties can appeal to the higher court, whose judgment is final.

---

<sup>34</sup> The Law has been said to be a step toward creating a level playing field for all business sectors, including state-owned and foreign-invested enterprises. Currently, the latter two are still governed by the Law on State-Owned Enterprises and the Foreign Investment Law.

<sup>35</sup> Statistics show that during the first six months of the new Enterprise Law, 6,100 new private enterprises were established, an increase of 15 percent from the entire number of private enterprises (41,000) created since 1990. Before 1990, no private enterprise was allowed.

## CONCLUSION

At present in Vietnam, there is no suspicion or resistance to the Rule of Law concept from the society and the leadership. Vietnam's reality dictates that while Vietnam should learn from other countries, the nation must develop its own concept and theory of the Rule of Law. That concept must be, on the one hand, based on the generally agreed core principles or components of the Rule of Law, but on the other hand, these must be applied to the specific circumstances of our history, tradition and culture according to the state of our development. This adaptation or modification of the Rule of Law and the consideration of a reasonable pace and prudent way of applying the Rule of Law to the political structure of our country are necessary parts of political reform and aim to ensure political stability and accelerate economic development.

However, there should be no slowness or hesitation in effecting political and economic reform; nor can there be an abridgment or deviation from the esteemed goals of the Rule of Law: furtherance of democracy, protection of the people's rights and freedoms and guarantee of the supremacy of law. Like the economy, the Rule of Law concept is subject to globalization, which will lead to mutual understanding and benefit for all countries, as long as it does not or is not used to infringe on national sovereignty or intervene in the internal affairs of nations.

**Truong Trong Nghia** is vice president of the Foreign Trade and Investment Development Center (FTDC) of Ho Chi Minh City (HCMC), a position he has held since October 1996, when he was appointed by the chairman of the People's Committee of HCMC. He also serves as an associate member of the Prime Minister's Research Commission and member of the Government and Administration Reform Subcommission. An attorney and member of the Bar of HCMC, Mr. Nghia has served since 1992 as a member of the Executive Committee of the Vietnam Lawyers Association, and he is Editor-in-Chief of *Saigon Newsreader* (a business bulletin published daily in English). Throughout his legal career, Mr. Nghia has participated in drafting and developing legislation, ordinances, decrees and regulations, and he has been a member of several projects that have dealt with the reform of Vietnam's government and legal system.

Mr. Nghia was a Fulbright Scholar who graduated from New York University School of Law with a master's degree in law. He also studied law and obtained an L.L.B. at the University of Leipzig, Germany. He has held internships in New York City and Germany.