


ЮРИДИЧЕСКИЕ НАУКИ



<http://doi.org/10.5281/zenodo.4668681>
УДК 340.13:0044

Duong Van Quy

Duong Van Quy, postgraduate, lecturer, Hanoi Law University Branch in Dak Lak, Buon Ma Thuot city, Vietnam. E-mail: quydv@hlu.edu.vn.

Factors affecting the exercise of the citizens' right to access to information in Vietnam today

Abstract. The article analyzes the limitations, shortcomings and solutions to complete the role of The Communist Party of Vietnam, the role of Vietnamese law and the responsibility of the State of Vietnam affecting the exercise of citizens' right to access to information in Vietnam today. It is concluded that the promotion of the realization of the right of citizens to access information in Vietnam today, first of all, should consist in assisting the country's leadership, improving the legal system and increasing the efficiency and effectiveness of the state on the basis of human rights and civil-oriented approaches.

Key words: The Communist Party of Vietnam, State of Vietnam, Law of Vietnam; right to access to information; Vietnamese citizen.

The process of globalization, knowledge economy, digital economy, industrial revolution 4.0, rapid development of science and technology, strong regionalization and Renovation in Vietnam Nam has achieved important achievements, at the same time they have been posing many problems that need to be solved with new political - legal thinking. In the current Vietnamese rule-of-law society, there are a number of major issues that need to be grasped and resolved well, including the relationship between human rights, people's mastery, political power, and the power of the state and law [8]. Effective exercise of citizens' right to access to information is centroid of democratic reform. Therefore, it is very important and urgent to recognize the impact of the Communist Party of Vietnam, the laws of Vietnam and the State

of Vietnam on the exercise of citizens' right to access to information in Vietnam today.

2. The leading role of the Communist Party of Vietnam.

The leading role of the Communist Party of Vietnam has been prescribed in the 2013 Constitution of Vietnam. That is, the Communist Party of Vietnam determines the policy and direction on the exercise of the right to access to information and leading and directing the implementation of those direction and policy into life. Therefore, towards any policy related to the exercise of citizens' right to access to information that the Party has decided, all agencies, organizations and individuals in society must respond and organize the implementation, in order to realize the decision of the Party. Hence, whether or not the exercise of the citizens' right to access to information is really effective in reality mainly de-

depends on the political will of the Communist Party of Vietnam.

The Communist Party of Vietnam is the only political party in Vietnam, and also is the only leading and ruling party in Vietnam, so, in the exercise of the citizens' right to access to information, there are also certain difficulties. According to general concept, democracy is understood as having no leadership, direction, people make their own decisions, while the democracy in Vietnam is the democracy under the leadership of the Party [7]. Specifically, Article 25 of the 2013 Constitution prescribes that citizens have the right of freedom of speech, freedom of the press, access to information, meetings, association, and demonstration. Provided that it is defined as freedom, no one is allowed to violate or trample on those rights. That means people must be able to speak their inner voices, speak out their deep thoughts. And that saying of the people is not considered Unconstitutional. However, in reality, to some issues considered sensitive such as the ruling Party, the Party's leadership, economic directions, projects, corruption ... people are difficult to speak up their own voice. In fact, it is the lack of guarantee of the rights of the people under the Constitution. When people do not have the freedom to discuss some political, legal and social issues, it also means that people do not have access to necessary information in their field of interest. A part of the party members, leaders at all levels are still too politicized of human rights, considering this a sensitive issue, when it comes to human rights, we are inclined to fight against something, and Human rights are considered as a Western concept, while taking protection lightly, paying little real attention to human rights, not considering it as a intimate issue in daily life [4].

The Party is recognized for its comprehensive leadership towards the state and society, making it very easy to become authoritarian if it does not fully enforce the implementation of democracy. Citizens' right to access to information is a prerequisite for to exercise the democracy. Therefore, in order to fully implement democracy, firstly, the Party must

effectively exercise the citizens' rights to access to information in practice. In order to effectively exercise the right of access to information, the Communist Party of Vietnam needs to carry out well the following solutions:

Firstly, in order to implement the democracy in society, first of all, it is necessary to promote the democracy in the Party as the nucleus to fully promote the democracy in society [1], effectively exercise the right to access to information in the Party. So, it is required to publicize statutes and regulations so that officials, party members and people know and supervise the implementation of those statutes and regulations [5]. Recently, the Party's major directions and policies have been widely publicized for domestic and foreign organizations and people to comment, for example Documents submitted to the 13th National Congress of the Party ... Therefore, the discussion and consultation with the people plays a very important role, not only contributing to improving the quality of the draft Document, through which, also implementing the motto towards "the Party's will, people's hearts are one" ...

The recruitment quota, plans of training, retraining, staff planning, rotation, maneuver, appointment, and introduction of candidate staff must be public and transparent [6]. For example, due to the lack of necessary information about Mr. Dinh La Thang, Trinh Xuan Thanh, etc., the Party and people made inaccurate decisions when choosing them to be in important positions in the party and state apparatus [2], Assistant to the Chairman of the National Assembly, former Vice Chairman of the Law Committee of the National Assembly Le Minh Thong once suggested that the planning should be publicized before the Party Congress, for example if there are 200 personnel planned to the 13th Central Committee, the list of those 200 people must be made public for Party members to know and supervise.

In Vietnam, there are no opposition parties, the opposition force who can make it difficult for the Communist Party to formulate and implement its own directions and poli-

cies. Due to the lack of competition from the opposition party, the motivation, thrust and pressure on the ruling Party's continuous improvement and efforts are not high, leading to satisfaction and complacency with what we have [2]. Therefore, the Party needs to seek, listen and even be able to dialogue with social organizations that are not yet under the leadership of the Party (operating within the legal framework) to have a more comprehensive and complete assessment on its own directions and policies. To do so, the Communist Party must facilitate maximum for social organizations to argue and contribute their opinions.

Secondly, building an equal rule-of-law institution of people, citizens and the state. In the past time, in Vietnam, it is mainly focused on building and perfecting the rule-of-law institution of the state, but hardly focused on building the rule-of-law of people and citizens. This is reflected in the fact that citizens' responsibility is to fully exercise with corresponding sanctions, but state agencies lack or are indifferent in performing responsibilities, even there have been some cases of violation of responsibilities, but there is no legal basis to handle it. Strengthen the inspection and supervision of the Party organization (at present, Vietnam has very good conditions, because, wherever there are 3 or more party members, it is possible to set up a party organization) to state organs, heads of state organs (party members), so that those entities can operate within the legal framework; handle publicly, strictly and equally for the violating party organizations and party members.

3. Legal factors.

In the rule of law, in order to well implement the citizens' right to access to information, first of all, the citizens' right to access to information must be recognized, defined and limited by law. In addition, the citizens' right to access to information is only effectively implemented when the law is respected by all subjects. Since then, the law is considered ultimate and state agencies, organizations and individuals must strictly comply with the law. In short, the citizens' right to access to information is only exercised substantially

and effectively when recognized by law, protected, guaranteed, and respected and implemented by all subjects in society [3], therein the most important things is from the state agencies, state officers

The applicable legal provisions on the citizens' right to access to information in Vietnam include: The 2013 Constitution - the document with the highest legal effect regulating the citizens' right to access to information (Article 25); followed by the Vietnam Law on the citizens' right to access to information in 2016 (Law) - is a legal document, a tool to ensure the implementation of the citizens' right to access to information; Decree No. 13/2018/ND-CP of the Government prescribing details and the implementation of the Law; Circular 46/2018/TT-BTC detailing actual costs to print, copy, take photo and send information in accordance with the Law and other relevant legal documents. In general, the applicable law on the citizens' right to access to information has defined the citizens' right to access to information and its comprehension; rights and obligations of citizens in the access to information; demonstrated the spirit of the Constitution on the State's responsibility to recognize, respect, protect and ensure citizens' rights to access to information, prescribed the principles of restricting the exercise of the rights to access to information; prescribed quite specifically and comprehensively on measures to ensure the citizens' right to access to information ... Those are the important legal basis for implementing the citizens' right to access to information in Vietnam. However, the applicable law on the citizens' right to access to information in Vietnam still has a number of unreasonable factors, contradictions, incompatibility with international law and even not fully institutionalized with the contents of the 2013 Constitution, therefore, the implementation of the citizens' right to access to information in Vietnam is not really effective in practice, specifically:

- The 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights stipulates: Everyone has the right to freedom of

speech, including freely seek, receive and transmit all information, opinions, regardless of field, form of propaganda in oral, written, printed, or artistic form, through any medium mass media depending on their choice. The 2013 Constitution of Vietnam localizes the above international conventions and recognizes that citizens have the right to freedom of information (Article 25). The law states that citizens have the right to access to information, accordingly, the access to information is reading, watching, listening, recording, copying, taking photo of information (Clause 3, Article 2). Thereby shows that the comprehension of the right to access to information is fully regulated in the law, in accordance with the 2013 Constitution of Vietnam.

- The applicable law stipulates exceptions of refusing to provide too broad information, lacking specific guidelines as well as not developing an independent complaint and supervision mechanism like the Information Commissions in many countries all over the world. These are the two biggest limitations of this law [9].

- Although the applicable Vietnamese law clearly and specifically stipulates the State's measures to ensure the implementation of the citizens' right to access to information, those measures are still principled and not really effective in practice. Because there are no specific sanctions for state agencies that are obliged to provide information when violating the citizens' right to access to information. Thus, the applicable Vietnamese law has not yet effectively met the implementation of the citizens' right to access to information. That situation leads to the limitation of citizens' right to freedom of information. The State acts as an entity having the responsibility to provide information and ensure the exercise of the rights of information organizations, but do not have no specific sanctions to handle violations of the right to access to information from the side of the state, since then, the responsibility State is not guaranteed and enhanced.

The above limitations and shortcomings partly limit the role of the law in exercising the citizens' right to access to information in

Vietnam over the past time. Therefore, it is necessary to have synchronous solutions to perfect the law, creating a solid legal basis for state agencies, organizations and individuals in exercising the citizens' right to access to information. Therefore, Vietnamese laws in the coming time need to be perfected according to the human rights-based approach, in particular the following basic solutions:

- *Firstly*, it is advisable to amend the comprehension of the right to access to information in the direction of the comprehension of freedom of information to be compatible with international law and the 2013 Constitution of Vietnam.

- *Secondly*, The Law should amend the restriction on the citizens' right to access to information based on 6 basis in accordance with the 2013 Constitution of Vietnam: in necessary cases for reasons of national defense, security, social order and safety, social ethics, and health of the community, and a basis for guidance should be provided in this case. Circulars of ministers, heads of ministerial-level agencies and decisions of chairmen of provincial-level People's Committees are sufficiently competent to guide restriction cases of this right.

- *Thirdly*, specify the responsibility towards the adverse consequences that state agencies must bear on all three aspects: moral responsibility, political responsibility and legal responsibility. For legal responsibility, it is necessary to supplement regulations on sanctions imposed on state agencies when violating citizens' right to freedom of information. Depending on the nature and extent that state agencies may be handled with administrative, civil or disciplinary sanction.

- *Fourthly*, it is necessary to institutionalize the constitutional protection mechanism specified by the 2013 Constitution of Vietnam. Renovate the organization and operation of the Inspectorate of the National Assembly and the Government in the direction that if these agencies are independent and only accountable to the National Assembly and the Government, they will effectively exercise their competence to protect the Constitution, thus, contributing to the protection of human

rights in general and citizens' right to freedom of information in particular in the most effective way.

4. Responsibility of the State.

The state is defined as the center of political power - a class tool for the ruling Party to turn its policies and lines into reality, so in the process of implementing its activities, the state always clearly demonstrates its role as an organizer and is constantly providing information to the people. The law on the right to access to information in Vietnam or the law of any other country in the world, no matter how preeminent it is perfected, the real meaning that can only be obtained in real life when the regulations on citizens' right to access to information is exercised in practice and the State effectively exercises the responsibility of recognizing, respecting, protecting and ensuring the implementation of the citizens' rights to intellectual property. Although the applicable Vietnamese law has clearly and specifically defined the State's responsibility in ensuring the implementation of citizens' rights to access to information, the exercise of that responsibility in practice still faces many difficulties as follows: *Firstly*, the awareness of human rights, especially the citizens' rights to access to information of a part of state officers is still inadequate, not really on par with the requirements of ensuring citizens' rights in the operation of central and local state agencies. *Secondly*, Vietnam as well as other countries, perhaps the biggest challenge is not related to capacity, but promoting the transition from a culture of secrecy to a culture of transparency in a state agency [10]. In Vietnam, there is still the situation of providing information as a grant activity from state agencies, but not perceived in terms of obligations and responsibilities. *Thirdly*, in the context of a socialist-oriented market economy, social stratification is not only affected by the rich and poor differentiation, but also by the cultural diversity of the region, ethnic culture and international integration. Social stratification has been leading to a stronger diversification of needs for human rights among social strata. The state has an obligation to meet the increasing requirement of the right to access

to information for residential groups in urban areas and to continue to perform the obligation to ensure essential rights for vulnerable groups. In order to overcome the emerging challenges and further improve the effectiveness and efficiency of the obligation to ensure the rights to access to information of the State agencies in Vietnam today, it is necessary to pay attention to the implementation of the following basic directions:

Firstly, strengthen communication and education about the right to access to information. The current central task is to strongly innovate both the content and methods of human rights education for leaders and managers at all levels; Law enforcement officers and university students. Next, it is necessary to firmly institutionalize the introduction of education on the right to access to information in educational establishments. Education must aim to raise awareness from the culture of secrecy to the culture of maximizing information, respecting and exercising the right to access to information in the operation of state agencies and state officers. Promote positively, proactively, uphold the self-discipline and exemplary spirit of the contingent of civil servants in public service execution.

Secondly, promote the implementation of the law on the access to information from state agencies. State agencies need to increase contact and dialogue with other subjects in society to have more convenient and effective channels and forms of providing information. Therein, emphasize on the renewal and diversification of propaganda and popularization of the law on access to information suitable to each object and specific conditions, creating maximum favorable conditions for people to access the law, including law on people's right to access to information. Further promote the role of social organizations and media and increase the application of scientific and technological advances in the dissemination of the law, to ensure that people understand and realize their right to access to information.

Thirdly, State agencies need to well implement the mechanism of inspection, supervision and assessment on the provision of in-

formation to citizens; strengthen the implementation of international commitments related to transparency and disclosure of information in the current globalization trend.

Fourthly, take advantage of the achievements of the industrial revolution 4.0 to develop e-government, e-society and build e-democracy. For example, in the US recently, they have succeeded in holding online presidential election, fair and public, both ensuring social safety and social cost savings. Besides, Vietnam needs to do well in information management and information security.

5. Conclusion.

The right to access to information is the prerequisite right to exercise and protect other rights of citizens. Executing citizens' right to access to information effectively, in fact is the

premise for building and developing a democratic society, heading to building a rule-of-law society in Vietnam. Therefore, Vietnam needs to promote the exercise of the citizens' right to access to information. In a modern society, the exercise of the citizens' right to access to information is both internationally compatible and consistent with the characteristics of Vietnam's rule-of-law society in particular. Hence, the promotion of the implementation of the citizens' right to access to information in Vietnam today, first of all, must be to promote the leadership of the Communist Party, perfect the legal system and improve the effectiveness and efficiency of the State on the basis of human rights and citizenship-based approaches.

REFERENCES

1. Communist Party of Vietnam. Document of the 13th National Party Congress. Hanoi: National Political Publishing House of Vietnam, 2016.
2. Nguyen Minh Doan. Continue to innovate thinking about controlling political power, state power in our country // Journal of legislative studies. 2019. № (12), Pp.3-11.
3. Nguyen Thi Viet Huong. The relationship between the implementation of the principles of rule-of-law and the democracy in Vietnam today // Journal of State and Law. 2019. № (11). Pp. 3-12.
4. Tuong Duy Kien. Human rights protection and guarantee: Opportunities and challenges. URL: <https://vietnamnet.vn/vn/tuanvietnam/bao-ve-bao-dam-quyen-con-nguoi-co-hoi-va-thach-thuc-493681.html> (accessed on January 01, 2021).
5. Nguyen Viet Thong. Institutionalization and concretization of the content of the Constitution: The Party is subject to the supervision of the people and accountable to the people for its decisions. Url: <https://tapchiconsan.org.vn/web/guest/chinh-tri-xay-dung-dang/-/2018/820144/the-che-hoa%2C-cu-the-hoa-noi-dung-hien-Decision-making-management-of-people-and-before-people-to-people-to-decisions-of-minh.aspx> (accessed on January 05, 2021).
6. Nguyen The Trung, Bui Nguyen Khanh. On practicing democracy under one party-led conditions. URL: <http://hdll.vn/en/nghien-cuu---trao-doi/ve-thuc-hanh-dan-chu-trong-dieu-kien-mot-dang-lanh-dao.html> (accessed on January 14, 2020).
7. Nguyen Nhu Phat. Organizing and exercising state power in Vietnam - Current Situation and Raising Issues // Journal of State and Law, 2020. № (2). Pp.12 - 21.
8. Vo Khanh Vinh. About Vietnam's rule-of-law society // Journal of State and Law, 2020. №(2).Pp.3-11
9. Towards Transparency (TT). Transparency International (TI)'s National Contact in Vietnam. Promoting enforcement of Access to Information in Vietnam: Expert Toby Mendel shares international experience. URL: <https://towardstransparency.vn/thuc-day-thuc-thi-quyen-tiep-can-thong-tin-tai-viet-nam-chuyen-gia-toby-mendel-chia-se-kinh-nghiem-quoc-te/>, (accessed on January 03, 2021).
10. UNESCO. About Freedom of Information (FOI). URL <http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/about/> (accessed on January 16, 2021).

Поступила в редакцию 05.04.2021.
Принята к публикации 08.04.2021.

Для цитирования:

Duong Van Quy Factors affecting the exercise of the citizens' right to access to information in Vietnam today// Гуманитарный научный вестник. 2021. №4. С. 169-174 URL: <http://naukavestnik.ru/doc/2021/04/Duong.pdf>