

History of Legal Provisions on Central-Local Relations in Vietnam

VO CONG KHOI, PhD Student, Lincoln Law School, University of Lincoln, UK

As a part of the broader process of the national ‘innovation’ program (*Doi moi*), Vietnam has been riding the wave of decentralisation since 1991. Decentralisation is normally understood as a process of transfer of authorities, duties and responsibilities from central to local governments. Thus, the key issue of decentralisation is the relationship between central and local governments. Applying the historical review and legal analysis, the paper reviews the history of intergovernmental in Vietnam since 1945 until the present in order to indicate the changes in the legal framework according to each period, especially in the transitional period from centrally-planned economy to socialist-oriented market economy through the *Doi moi*. This chapter also examines two pivotal tendencies of central-local relations in Vietnam over the past years. Given Vietnam's political economy, applying the local autonomy model, preventing freely central's intervention through redefining and amending the existing legal framework on governmental system will have a positive result in enhancing the relationships between central and local governments.

Provisions on Compensation in the Vietnamese Legal System in Terms of Historical Aspect

Hoang Thi Hai Yen, PhD, University of Law, Hue University and
Nguyen Ngoc Huy, Master, University of Law, Hue University

With reference to legal history, compensation beyond contract is regulatory provisions which appear so early in the legislative history of Vietnam. These regulations have altered along with changes of Vietnam's history. In the feudal time, cultural and customary characteristics of Vietnam had many influences on regulations on compensation beyond contract and there was no distinction between these provisions and criminal liability. In the period of the French aggression (1858-1954), Vietnamese legal system enshrined some principles on compensation beyond contract of Civil Law system through the first three Civil Codes as legislative impression of colonial time¹. Influences of Civil Law system still remained in the south of Vietnam under the polity of republics. In the north, legal science approaches to compensation beyond contract was substantially affected by the socialist legal system through two Civil Codes in 1995 and 2005 which are regarded as typical legal outcomes of the innovation period². Currently, regulatory provisions on compensation beyond contract in the Civil Code in 2015 are formulated on the idea of international integration, and towards absorbing values of modern Civil Law system, especially the Civil Law of France and Germany.

¹ The Northern Civil Code in 1931, the Central Civil Code in 1936 and the Southern Civil Code in 1884.

² The August 1945 Revolution laid a firm foundation of establishing the Democratic Republic of Vietnam. After the earth-shaking victory at Dien Bien Phu on May 7th, 1954, the north of Vietnam was completely liberated from French army. Consequently, Vietnam was temporarily splitted into two main part: in the north, the Communist Party ruled the Democratic Republic of Vietnam; in the south, Government of the Republic of southern Vietnam which was supported by the US, governed for two decades. On December 20, 1972, President Nguyen Van Thieu of the Republic of southern Vietnam signed and announced five Codes, including the Civil Code. This Code basically maintained the former civil regulatory system in Cochinchina.

The Use of Precedents in Vietnamese Legal History

Nguyen Thi Phuong

PhD Candidate, School of Law, City University of Hong Kong

Vietnam created the judicial precedent system in 2015. However, precedents were used in Vietnamese legal history. Precedents were provided in the Hoang Viet Luat Le of the Nguyen dynasty, and in the Nam Ky Civil Law 1883 in period of French colonialism. Precedents were also published in law journals by the Judicial Ministry that were applied widely in the Republic of Vietnam. In the Democratic Republic of Vietnam, there were some regulations about applying precedents in trials such as the Circular of the Prime Minister No 442/TTg, dated 19th January 1955; the Circular of the Ministry of Justice No.19/VHS, dated 30 June 1955; the Directive of the Supreme People's Court No 772-TATC, dated 10 July 1959; and the Circular of Ministry of Justice No.92-TC, dated 11th November 1959.

This paper explores how and why precedents were used in Vietnamese legal history. It will consider the use of precedents under: (1) the Nguyen dynasty (1802- 1884); (2) French colonial legal system; (3) the Republic of Vietnam and the Democratic Republic of Vietnam during Vietnam War. This paper argues that the precedents were used in Vietnamese legal history to fill in the gap of laws, which were caused by despotism in the Nguyen dynasty, French colonialism, and war in the Republic of Vietnam and the Democratic Republic of Vietnam.

The root of the precedents in history is the foundation for creating the current precedent system in Vietnam. The historical experience can help Vietnam build the precedents with its own way. Vietnam can gain the past experiences in creating and applying the precedents. The historical experience can explain why the precedents were applied inconstantly, what are the main shortcomings in precedents in history, and whether these shortcomings can affect the current precedent legal system. Therefore, Vietnam would learn from history to fortify the capability of recent precedent system.

The Value of “Benevolence and Righteousness” Viewpoint of Mencius with the Formation and Development of Ho Chi Minh Thought on Law

Lt Col, Dr. Tran Quoc Cuong, Lecturer, Faculty of Ho Chi Minh studies, Political Academy, Ministry of National Defence, Vietnam

Being deeply influenced by the ideas of virtue rule in Confucianism, from the years of the third century BC, “Demigod Mencius” - the Chinese Confucian philosopher in the Warring States period expressed the “benevolence and righteousness” viewpoint in socio-political theory, which was classified as one of the classics. That point of view especially respects Righteousness, promotes Benevolence and combines benevolence and righteousness in “governing a state, pacifying the world”. 110 years ago, Nguyen Ai Quoc - Ho Chi Minh left his country to find a way to save the country with the desire to know how to liberate his nation, bringing independence, freedom and happiness to the people. With Confucian knowledge inherited from his family and his eager to learn spirit, Ho Chi Minh researched and developed the quintessence of Eastern culture, including the “Benevolence and Righteousness” viewpoint of Mencius, laying the basis for the construction of a Vietnamese state and law right from the first decade of the 20th century. The article continues clarifying Mencius’s viewpoint on the benevolence and righteousness in law, affirming the value of this view for the formation and development of Ho Chi Minh thought about the state and law. At the same time, it affirms the great merits of Ho Chi Minh with the rule of law state building and improvement together with the system of socialist countries.