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RESTRICTIONS ON THE RIGHT TO FREEDOM OF WORSHIP AND RELIGION IN VIETNAM

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Abstract

The purpose of this article is to review the concept of “restrictions on the right to freedom of worship and religion”. Restriction of the right to freedom of WR is an objective requirement, which is reflected in the laws of many countries and national communities around the world. To achieve the goal, the author poses the following tasks: when analyzing the concept of “restrictions on freedom of WR” from the point of view of the International Convention on Civil and Political Rights of 1966, the necessary tasks for each nation that joined this Convention are determined; specific expressions of the restrictions on the right to freedom of WR in Vietnamese law, in particular, in the law on WR are analyzed; the provisions of the law on WR are evaluated on the basis of international law. The following methods are used in this study: analysis, synthesis, and comparison. The results of the study are the following: four points are identified in the interpretation of the International Convention of 1966; the form of restriction of the right to freedom of WR is fixed by constitutional and other legal provisions, its expressions are defined as prohibitions, obligations, liability, penalties; the merit of restricting the right to freedom of WR in Vietnam is in accordance with the International Convention. The prospect of this study is to ensure the right to freedom of WR, and also to protect human rights, strengthen popular solidarity, and managing WR by the state.

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1. Introduction

Vietnam is a multi-confessional country. According to the Government Commission on Religious Affairs (VietStat, 2018), as of October 20, 2018, 16 religions operate in Vietnam. The state recognizes the legal status and registration of activities of 42 religious organizations. In fact, there are more than 29.000 religious buildings, more than 26 million believers, almost 56.000 clergy, and more than 145.000 mediums in Vietnam. The proportion of believers is 27 % of the population of Vietnam. In addition, 95 % of the Vietnamese population is related to beliefs and about 45.000 objects of belief are active. Therefore, in the process of organization and management of society, attention should be paid to meeting the needs and protecting the legitimate interests of those believers for whom the right to freedom of WR plays a dominant role in society. As in secular states, supporting diversity in religion, Vietnam is in the process of improving the establishment and implementation of legislation on ensuring the right to freedom of WR to protect basic human rights. The first step of this process is that the protection of the right to freedom of WR is recognized by the Constitution and law of Vietnam. In the process of securing rights, specific legal provisions and government measures are established to protect them in practice. In this process, there is the phenomenon of “restrictions of the right to freedom of WR” in order to ensure public safety, order and stability in society. And so, “restrictions on the right to freedom of WR” seems to be an urgent issue, and it is necessary to consider it from different points of view, primarily from the point of view of legislation.

2. Problem Statement

The article examines restrictions on the right to freedom of WR in Vietnamese law. Indeed, most countries of the world have restricted and are restricting the right to freedom of WR in accordance with the provisions of international law, the specifics of religious life and the state model, as well as the political, economic and sociocultural context of each country. The legislative history of Vietnam contains certain legal documents regulating WR in general and restricting the freedom of WR in particular. At the same time, the Law on WR in 2016 marked a step in the development of the legislation of Vietnam, since for the first time there is a separate document on WR as a law. The provisions on limiting the right to freedom of WR, adopted in the Law on WR of 2016, reflect the unified point of view of the state of Vietnam on ensuring freedom of WR throughout all time periods, and also indicate a great innovation in the content of this law. The issue of “restricting the right to WR” remains increasingly relevant when the Constitution of Vietnam of 2013 explicitly addresses the content of “limitations” on human rights.

3. Research Questions

1. What is the concept of “restricting the right to freedom of WR” in the International Convention of 1966?
2. To what extent does Vietnamese legislation limit the right to freedom of WR?

4. Purpose of the Study

The purpose of this study is as follows: firstly, the establishment of the necessary steps for its implementation of the "restriction of the right to freedom of WR" in the analysis of the International Convention of 1966; secondly, analysis of the degree of restriction of the right to freedom of WR by legislation in Vietnam.

5. Research Methods

The following methods are used in this study: analysis and synthesis for (1) clarifying the concept of restricting the right to freedom of WR; (2) determining the limit of the right to freedom of WR in Vietnamese law, corresponding to the period of implementation of the Constitution of 2013 and the Law on WR in 2016; the comparative method for the provisions on restrictions of the right to freedom of WR in Vietnamese law and international law, the legislation of some countries of the world is used to evaluate, take summarize and also improve the provisions of Vietnam.

6. Findings

6.1. Clarification of the restriction of the right to freedom of WR in the International Convention of 1966

The 1966 International Convention on Civil and Political Rights reads: "*Freedom to practice religion or belief is subject only to the restrictions established by law and necessary to protect public safety, order, health and morality, as well as the fundamental rights and freedoms of others*" (Part 3 Article 18). Also, in accordance with the 1966 International Covenant, the right to freedom of belief and religion consists of two parts: the first part resorts to the freedom to have or accept a religion or belief of one's choice; the second part presents the freedom to practice one's religion and belief. The restriction is made only in the second part, excluding the upbringing of children in accordance with the parental (or guardians) own convictions (also in the second part) (parts 2, 4 of article 18). Thus, it should be noted that the restriction of the right to freedom of WR is the activity of competent entities, mainly the state and interstate organizations, which establish legal provisions in order to protect safety, public order, health or social morality or to protect the fundamental rights and freedoms of others.

Accordingly, to implement the restriction of the right to freedom of WR and in accordance with international law, each country should hold to the following:

First, clarification of the content of the right to freedom to have or accept a religion or belief, so that national legal provisions restricting the right to freedom of WR do not affect the nature of this absolute freedom. According to UN General Comment No. 22 on human rights, the freedom to "have or accept" a religion or belief necessarily implies the freedom to choose one's religion or belief, including the right to change one's religion or belief, or to adhere to atheistic beliefs, as well as the right to continue to practice one's religion or belief.

Secondly, the clarification of the content of freedom "*to practice one's religion and belief, alone or in concert with others, publicly or privately, in worship, in the performance of religious and ritual ceremonies and teachings*" in order to build national legal provisions regarding restrictions of the right to

WR freedom. UN Human Rights General Comment No. 22 emphasizes that forms of religion and belief include worship, religious or ritualistic practices and teachings. Along with this, the areas of action related to the above are listed. In the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the content of religion and belief is explained in 9 paragraphs (Art. 6).

Thirdly, the specification of the content of “protection of security, public order”, “health or social morality”, “protection of the fundamental rights and freedoms of others” in Article 18 of the 1966 International Convention, which is included in national legislation, because these concepts are the goal, motivation and the basis for establishing restrictions on the right to freedom of WR. Paragraph 8 of UN Human Rights General Comment 22 explains: «Restrictions are not allowed on grounds not specified there»; «restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner»; particularly for the concept of “social morality”, «limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition».

Fourth, the choice of a legal form restricting the right to freedom of WR in national legislation. As it is known, states often restrict human rights after they are defined in the constitution. According to Aaron Barak, constitutional law is perceived starting from the scope and level of protection: At the first stage, the constitution recognizes the scope of law; at the second stage, the norms of the Constitution determine the level of protection of rights by applying restrictions on relative rights (Doron, 2012). Alexy (2010) also notes that constitutional law is understood as a legal principle, according to which the exercise of this right is aimed only at the maximum possible degree and is perceived and applied depending on specific circumstances. The European Court of Human Rights argued that the definition of law in the phrase “determined by law” is not only a statutory law, but also «European Community law», «non-statutory regulations», «common law» and «rules of a national body» (Clayton & Tomlinson, 2009).

6.2. Restrictions on the right to freedom of WR in Vietnamese law

For the first time, the Constitution of 2013 explicitly referred to the “restriction” of human rights as follows: “Human and civil rights are subject only to restrictions established by law if necessary for reasons of defense, national security, public order and security, social morality and public health.” This is a prerequisite for a clearer establishment by the Law on WR of 2016 of the content on restrictions on the right to freedom of WR, which consists in the following:

*** Provisions on the content of the right to freedom of WR**

Section 6 of the Law on WR of 2016 states: “*Everyone has the right to freedom of WR, to practice any religion or not to profess any of them.*” With this provision of the Law, the circle of subjects enjoying the right to freedom of WR was expanded. The expansion of the circle of subjects evidenced by the use of “everyone” instead of the word “citizen”. This Law listed all parts of the right to freedom of WR, such as the right to freedom of WR, professing any religion or refusing to profess all religions; the right to freedom to practice one’s religion or belief; the right to practice one’s religion in homes and legal places

of worship; practice religious or ritualistic rites; join the festival; to participate in the teaching and implementation of religious teachings and norms”.

*** Provisions on Prohibited Actions in Exercising the Right to Freedom of WR**

The Law on WR of 2016 provides for prohibited activities, including:

- Discrimination on the basis of WR;
- Coercion, bribery or obstruction of others to practice any religion or not to profess any of them;
- An insult to religious feelings;
- The activities of beliefs and religious activities affecting national defense and security, national sovereignty, public order and security, the environment; violating social morality, body, health, life, encroaching on the property, honor and dignity of others; preventing the exercise of the rights and duties of citizens; separating religions, believers and unbelievers, people of different beliefs and religions.
- The use of religious activities and activities of beliefs in search of one’s own benefits.

*** Provisions on duties, responsibilities in exercising the right to freedom of WR**

The Law on WR of 2016 establishes the obligations of organizations and individuals in exercising the right to freedom of WR: “To comply with the Constitution, this Law, and other provisions of relevant laws.” The law also establishes the duties and responsibilities of religious persons and organizations in the form of “registration”, “proposal”, “announcement” related to religious activities, publishing, education, healthcare, social protection, charity, humanitarian, international relations, depending on the degree of importance and impact on society.

In doing so, for the first time, the Law establishes religious organizations with the status of a legal entity in order to determine their legal status and ensure the rights and obligations of religious organizations with participation in legal relations. The law also provides for registration of centralized religious activities, which expands the right of everyone to religious activities.

*** Provisions on penalties in case of violations of the right to freedom of WR**

The Law on WR of 2016 provides that, depending on the nature and extent of violation of the legislation on WR, organizations and individuals committing acts of violation of this legislation or abusing beliefs and religions in violation of the law may be subjected to administrative punishment or criminal liability and compensation for damage in compliance with the provisions of the law.

Achievements and shortcomings

In general, the provisions on restrictions of the right to freedom of WR in the Vietnamese legislation are quite consistent with the norms of the International Convention of 1966. These restrictions are fixed by constitutional and other legal provisions. Progress in the provisions of Vietnamese law is evidenced by the addition of the absolute right to freedom of WR: “Everyone has the right to freedom of WR, to profess any religion or not to profess any of them”.

Restrictions of the right to freedom of WR in the Law of 2016 are manifested mainly in the form of prohibitions, duties, responsibilities and remedies with detailed articles and parts. This does not mean a distortion of the right to freedom of WR. This tactic is basic, civilized and transparent for the state to protect the rights to freedom of WR. In this the right holder has the basis for obtaining maximum protection by law, as well as for filing an appeal or legal action in the event of an act violating the rights of organizations and individuals. Kriegel notes: “Three conditions are necessary for a doctrine of human rights. First, human beings as such must be recognized as having value. Second, this recognition must be given legal expression. Finally, this legal status must be guaranteed by political authorities” (as cited in LePain & Cohen, 1995, p. 91). In fact, the provisions on the restrictions of the right in the Law on WR of 2016 contributed to: a reduction in the time for the resolution of certain administrative procedures; limiting rules for requesting, issuing, now introducing notifications instead of them. On the other hand, the legal status rules for religious organizations in the Law on WR of 2016 (which was not provided for in previous legal periods) indicate legal progress fitting such state models such as Vietnam (Do, 2014).

The norms – prohibitions in the Law on WR of 2016 demonstrated the efforts of the state to specify the content of the concepts of “protection of security, public order”, “health or social morality”, “protection of the fundamental rights and freedoms of others” in Article 18 of the International Convention of 1966. Despite to the fact that such concepts as: “violation of national defense and security, national sovereignty”, “encroachment on the environment”, “use of religious activities and activities of beliefs for personal gain” ... are new, they are all based on the reality of the situation with religion and beliefs in Vietnam. Moreover, the ultimate goal of these provisions is to ensure general stability and justice in Vietnamese society. On the other hand, compared with the norms of some countries, it can be seen that each country has a certain way of expression. The French Republic limits this right by the notion “for public order”. China sets a restriction on this right with respect to «*public order, impair the health of citizens, or interfere with the educational system of the State*». In Russia, this restriction is provided "in order to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of man and citizen, to ensure the defense of the country and the security of the state".

However, in terms of freedom of expression of belief or religion, Vietnamese law recognizes: “Everyone has the right to freedom to practice his religion or belief; practice religious or ritualistic rites; join the festival; to participate in the teaching and implementation of religious teachings and norms. ”

From this provision it is immediately clear that the freedom of WR has three new parts: (1) to practice religious or ritual rites; (2) to join the festival; (3) to participate in the teaching and implementation of religious teachings and norms. However, these 3 given parts are a form of the expression “freedom to practice one’s religion or belief”, the latter is fixed in the provisions of the International Convention of 1966.

The problem of “restricting the right to freedom of WR” already exists in the legal practice of Vietnam in a more specific and simple form, such as prohibitions, duties, and responsibilities. However, regarding restrictions of the right to freedom of WR, the Law on WR of 2016, Vietnamese Constitution of 2013 do not clearly reflect absolute and relative rights.

7. Conclusion

Thus, in analyzing the restrictions on the right to freedom of WR, we came to the following conclusions:

- On the basis of the International Convention on Civil and Political Rights of 1966, the content of the right to freedom to have or accept a religion or belief is defined, the content of freedom “to profess religion and belief”, the content of “protection of security, public order”, “health or social morality”, “protection of the fundamental rights and freedoms of others” the choice of a legal form restricting the rights to freedom of WR in national legislation are specified,.
- In the legislation of Vietnam, restrictions of the right to freedom of WR are fixed by constitutional and other legal provisions. And, also, their contents are manifested in the form of prohibitions, obligations, penalties, and responsibilities. These provisions are consistent with the 1966 Convention. It is necessary to improve and clarify their certain contents, and distinct availability of absolute and relative rights.
- In order to improve the law on WR, Vietnam should gradually do the following: first, from now on, to follow the reality of the religious situation and convictions within the country, the norms of international law; secondly, the study of the experience of foreign countries in regulating and explaining the content of restrictions of the right to freedom of WR in Vietnamese legislation in accordance with the content of international law on restrictions of the right to freedom of WR.

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