

Trends in Law on Freedom of Belief and Religion in Vietnam

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Abstract. The article aims to provide an overview of the trends that exist in the law on freedom of belief and religion in Vietnam. To achieve this goal, the author studied a system of legal provisions on freedom of belief and religion in each period of Vietnam's legislation since the birth of the Democratic Republic of Vietnam in 1945, pointing out the cross-cutting issues connecting these periods. The author uses methods such as analysis, synthesis, and comparison. Research results show that there are 4 common trends: Approximating to the provisions of international law; ensuring "equality" in enjoying the right to freedom of belief and religion; promoting religious activities that contribute to social development; and building a harmonious relationship between the state and religion. These trends both reflect the characteristics of Vietnamese legal culture and religious policy and clarify the duties of the law in the context of building and developing Vietnamese society. This article not only contributes to affirming the success of the law on freedom of belief and religion but opens the ways for the process of completing this legal content.

Introduction

Vietnam's legislative and executive history has witnessed the birth of legal documents on freedom of belief and religion. These texts exist at different levels and regulate various specific issues of freedom of belief and religion. The right to freedom of belief and religion is enshrined in all constitutions of Vietnam adopted in 1946, 1959, 1980, 1992 and 2013 as well as in some typical documents within the periods of development of the country such as Decree No. 234 dated June 14, 1955 of the President on religion issues (as Decree 1955); Decision No. 297 dated November 11, 1977 of the Government on policies of religions (as Decision 1977); Ordinance dated June 18, 2004 of the Standing Committee of the National Assembly on belief and religion (as Ordinance 2004); and Law on Belief and religion 2016 (as Law 2016)... These provisions reflect Vietnam's policy on ensuring the freedom of religion in association with the social reality, integration and legal culture of Vietnam in each period. Simultaneously, they demonstrate the development and changes in Vietnam's legislative and executive processes in the field of religion. In terms of formality, it can be ultimately concluded that chronologically, legal documents that govern the freedom of belief and religion have advanced to higher levels and have addressed more specifically the contents of the state's regulation. Remarkably, the changes of law on freedom of belief and religion also illustrate the fact that there exist some specific provisions which are kept, inherited and completed by the time. Theoretically, these changes reveal prominent trends in Vietnam's law on freedom of belief and religion. Over the past time, the interest of the theorists has been directed to operating mechanism of the right to freedom of belief and religion in Vietnam and the ways to ensure it in practice. Many scholars have emphasized the issues of resolving the relationship between state and religion, building a secular state model, supporting religious diversity in Vietnam. The law enforcement process on the freedom of belief and religion raises many research issues such as: Implications and limitations of the right to freedom of belief and religion; freedom of religion in small communities of society such as ethnic minorities; legal status of religious organizations, religious groups, especially the regulations of civil relations of these organizations. In accordance with these studies, research on the popular trends in Vietnam's law on the freedom of belief and religion will continue to lay firm foundations for improvements of this issue in terms of legislative and executive domains in Vietnam. To clarify law

on freedom of belief and religion in Vietnam, the author uses methods such as analysis, synthesis, and comparison.

Results

The research findings indicate that there exist four important and popular trends in Vietnam's law on freedom of belief and religion as follows:

Approximating to the Provisions of International Law

Manifestations of This Trend in Law.

In 1984 Vietnam joined the International Convention on civil and political rights. The process of internalizing the provisions of this Convention has been accelerated in the following years. One conspicuous thing found is 04 changes in the names, structure, content, limited scope and subject of the right to freedom of belief and religion in Vietnam's Law.

1) Regarding the name, international law uses the phrase "*freedom of religion*" [1] with its definition "*freedom of religion which includes the freedom to hold beliefs*" [2]. In Vietnam, the phrase "*the right to freedom of belief and religion*" [3] has been employed officially and uniformly since Constitution 1992 as a replacement for the phrase "*the right to freedom of belief*" in previous constitutions [4, 5, 6].

2) In terms of the structure of the right, both the absolute part referring to the freedom to have or to adopt a religion or belief and the qualified part mentioning to manifesting someone's religion or belief of the right to freedom of religion under the Convention 1966 have been increasingly clarified in the law of Vietnam to ensure the proper enforcement of the state on this right. From the general understanding of the meaning of "*freedom of belief and freedom of worship*" [7] or "*freedom of belief and religion*" [8], up to now, Law 2016 has expressed more clearly the implication of the right to freedom of belief and religion include: (1) Everyone has the right to freedom of belief and religion, to follow or not to follow a religion; (2) Everyone has the right to manifest their belief or religion; to practice belief or religious rites; to participate in festivals; to study and practice religious tenets and canon laws [9].

3) With reference to the content and scope of the rights, the interpretations of the General Comment No. 22 of the United Nations were also further concretized into Vietnamese law based on political, social, legal, historical, traditional and cultural conditions of Vietnam. Typically, the issues "*The terms "belief" and "religion" are to be broadly construed*" (Paragraph 2) and "*the freedom to "have or to adopt" a religion or belief*" (Paragraph 5) in the General Comment 22 were also defined as "*Everyone has the right to freedom of belief and religion, to follow or not to follow a religion*" and concretize into some prohibitions in Law 2016. The matter of limiting the right to freedom of belief and religion under the provisions of the Convention 1966 and the General Comment 22 (Paragraph 8) is also conducted by Vietnam through two levels: constitutional recognition and concretization through provisions under the constitution. Since the Constitution 2013, the concern of limiting human rights is noted (Article 14) [10]. Law 2016 further formulates the provision of this limit by prohibitions (Article 5) and other liabilities (Chapter 4). When enforcing this right in Vietnam, the essence of the Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief 1981 is also strictly legalized. The issue of anti-discrimination was explained in Ordinance 2004 "*No discrimination by reasons of belief or religion*" (Article 8) and was raised by Law 2016 to the first prohibited act "*Discrimination and discrimination by reasons of belief and religion*" (Article 5) [9].

4) In relation to the subjects of the right to freedom of belief and religion, the provisions of Vietnamese law also expand gradually according to international law, from "*citizens*" to "*everyone*" since the 2013 Constitution. Law 2016 also directly refers to the freedom of religious beliefs of those who are deprived of several civil rights (Article 6) and foreigners (Article 8).

The Issues That Need to Be Paid Further Attention by the State.

The attempt on approaching to the provisions of international law in Vietnam's legislative process is a strong commitment of the state on ensuring the freedom of belief and religion. In this trend, some contents will need further focusing in details such as clarifying issues of the minors' right to freedom of religion; explaining and guiding the implementation of the content and limitations of this right, etc.

Ensuring “Equality” In Enjoying the Right to Freedom of Belief and Religion

Manifestations of This Trend in Law.

First of all, the equality mentioned here is the one between religious and non-religious people. It is maintained consistently in Vietnam's religious policy through periods. However, gradually, more and more humanity is emphasized, especially in the Constitution 2013, a chapter on human rights is provided (Chapter 2), which reflects that the awareness of the right to freedom of belief and religion is not only a civil right but also a human right [10]. Actually, beneficiaries of this right are not limited by nationality, gender; age (Law, 2016). On the contrary, this “equality” trend is also manifested when these individuals coexist in the same society. If this “equality” was not maintained, it would be difficult to ensure social order. From Decree 1955, this issue has been apparently stated as “*Clergypersons and believers are entitled to all rights of citizens and must fulfill all obligations of citizens*” (Article 2). This has been maintained until the implementation of Ordinance 2004 with the provision that “*Dignitaries, clergypersons, and citizens who follow a belief or religion shall be entitled to all civic rights and shall be liable to perform civic obligations*” (Article 2). Currently, Law 2016 also notes that “*Organizations and individuals engaged in religious activities and religious activities must abide by the Constitution, this Law, and other relevant laws*” (Article 9).

The most impressive feature of this trend lies in the guarantee of equality between religions, especially between religious organizations within the law. Chapter 1, Decision 1977 notes that “*All religions and all citizens who are religious or not religious are equal before the law*”. Article 1 of Ordinance 2004 states that “*All religions are equal before the law. Citizens who follow a belief or religion, or who do not follow any belief or religion, as well as citizens who follow different beliefs or religions, shall have to respect each other*”. Article 3 of the Law on Belief and religion 2016 recognizes that “*The State respects and protects the right to freedom of belief and religion of everyone; ensures equality of religions before the law*”. “Equality” becomes a cross-cutting issue of the law on freedom of belief and religion in Vietnam.

The Issues That Need to Be Paid Further Attention by the State.

By maintaining this equality mechanism, the provisions of the enjoyment of the right to freedom of belief and religion of new subjects including those who have been deprived of several civil rights and foreigners have appeared in Law 2016. At the same time, this mechanism also requires a clear, united and compulsory regulation in the conduct of the state with religious organizations that belong to the same religion or different religions; between religious organizations and other organizations in society. This is clearly shown in Vietnamese law, for example, the recognition of religious organizations. Until Ordinance 2004 was issued, there has been a provision of the process of recognizing the legal status of a religious group and becoming equal with other religious organizations as well as being protected by law. This issue is further clarified by Law 2016 with the legal status identified as a “*non-commercial*” one.

This trend has been studied by some Western scholars. It has been concluded that there is a “The Shift from Liberty to Equality” [11]. Accordingly, the issue of “*freedom*” attached to “*the common*” instead of “*the particular*” in Vietnam is an indispensable trend and suitable for a country without a state religion like Vietnam, which is also qualified for the secular state model with support for religious diversity. It has contributed to addressing the diversity of everyone's need for belief and religion; maintaining national unity, avoiding division among different groups of people because of the needs of belief and religion in society.

In this trend, in the upcoming time, the law should be adapted to meet the practical requirements of the provisions on the realization of the rights and obligations of religious legal entities, especially when religious organizations engage in both specific fields and civil relations.

Promoting Religious Activities that Contribute to Social Development

Manifestations of This Trend in Law.

In fact, the state also clearly expressed the view of “*promoting*” by “*incentive*” provisions. From Decree 1955, it has been stipulated that “*organizations of economic, cultural and social of all religions can operate after having obtained permission from the government*”. Especially since the Ordinance 2004 was issued with the provisions of Article 33 of the encouragement of religious organizations to participate in humanitarian charity activities; and dignitaries. Moreover, clergypersons with the status of a citizen are encouraged by the State to organize educational, medical, charitable and humanitarian activities. By Law 2016, some positive points are found such as adding some terms, expanding the scope of activities of religious organizations in the fields of health, education, and training, encouraging religious organizations to do charity and humanitarian activities (Article 55).

Besides, this trend is also closely related to the regulations governing educational activities and religious properties. The law has continuously supplemented regulations in a way that is more convenient for religious organizations. By Law 2016, regulations on opening religious training classes guarantee the right to attend religious training classes for everyone. The religious organizations' right to “*receive lawful properties donated by themselves and foreign organizations and individuals*” also has been recognized more clearly than before in Articles 7 and 56 of Law 2016.

The Issues That Need to Be Paid Further Attention by the State.

It is extremely important to give the social role of religion appropriate recognition in the relationship between state and religion in secular countries. It is explained that the separation between state and religion will intensify the participation in social activities of religion. This trend is reflected in the fact that the law has gradually identified the improvement of the level and the scope of participation in the social fields of religious organizations. It is also pointed out by William Cole in the trend of “*maximizing the social benefits generated by religion*” when discussing general trends of the law on the legal status of religious organizations [12].

It can be affirmed that the trend of promoting religious activities contributing to social development is quite strong. As the result, it has made the rising contribution of religious organizations to issues such as: educating citizens with good lifestyles, helping those in difficult circumstances, participating in the development and construction of community cultural activities, etc. Therefore, the mechanism to ensure that religious organizations to carry out social activities “*for the purpose of social development*” should continue to be protected by law.

Building Harmonious Relations between the State and Religion

Manifestations of This Trend in Law.

The harmonious relationship between the state and religion is a consequence that requires great efforts of not only the state but also religious organizations.

Regarding the responsibility of the state, in Decree 1955, Chapter IV established the relationship between the people's government and religions: “*The government does not interfere in the internal religion of religions*” (Article 13), and “*freedom of belief and freedom of worship is a right of the people. The democratic republic government always respects that right and helps the people to exercise it*” (Article 15). Ordinance 2004 states: “*The State guarantees the right to practice beliefs and religious activities according to the provisions of law; respects cultural values and religious ethics; preserves and promotes the positive values of the tradition of ancestor worship, commemorate and honor people with meritorious services to the country and the community in order to contribute to strengthening the great unity bloc of the entire nation and meeting the spiritual needs of the people*” (Article 5). Within the Law 2016, there is a separate provision on “*The State's responsibility in*

ensuring the right to freedom of belief and religion” (Article 3). In addition, the responsibilities of state agencies in solving specific issues are also specified more and more in order to guarantee period and uphold responsibility and service. Typically, management practices have been changed from the perspective of a modern management mechanism with simplifying administrative procedures. Towards religious organizations, the law always focuses on explanations and propaganda. In Decision 1977, there are provisions on the responsibility of “propagating and explaining”, “helping to facilitate” of the People's Committees at all levels and the Fatherland Front in exercising the right to freedom of belief [13]. The issue has become more and more evident in the provision for responsibilities of the Fatherland Front and mass organizations in the gathering of compatriots with or without beliefs or religions in the great unity bloc of the entire nation in Article 4 of Law 2016.

Responsibilities of individuals and organizations when exercising their right to freedom of belief and religion were stated in Decree 1955: “*When promoting religion, the clergypersons have to educate the patriotism, the obligations of the citizens, and the sense of respect for the people's administration and the laws of the Democratic Republic of Vietnam*”. In Ordinance 2004, this issue is described in Article 2: “*Dignitaries and clergypersons have the responsibility of regularly educating patriotism, exercising citizens' rights and obligations and aware of law enforcement*”. Law 2016 recognizes the responsibility of “*religious dignitaries, clergypersons, representatives, management of religious establishments are responsible for guiding believers and participants in belief and religious activities exercise religious activities and religious activities strictly according to the provisions of law*” (Article 9). Additionally, the mechanism of adverse effects of individuals and religious organizations is also increasingly guaranteed. Law 2016 notes the concern of “the right to appeal, initiate administrative lawsuits, initiate civil lawsuits, request to resolve civil matters in Court to protect legitimate rights and interests” (Article 63).

The Issues That Need to Be Paid Further Attention by the State.

It is important for this trend to strictly organize the implementation of laws, select effective formats of state management. Concurrently, it is necessary to continue to identify, evaluate and forecast the risks, the influence from outside and inside to protect this harmonious relationship by progressive legal provisions. In the context of building a rule of law state, the provisions aimed at establishing this relationship are reflected in strong determination and equal shares of responsibilities of both two sides. At the same time, the state must have appropriate behaviors for special organizations in society, for example, religious organizations.

In the trend of religious globalization, Vietnamese laws have made provisions that contribute to a better resolution of international relations of religions. Since Ordinance 2004 was promulgated, this matter has been mentioned and continued to be clarified in Law 2016. Ordinance 2004 also consistently shows Vietnam's views that the relationships between the Socialist Republic of Vietnam State, other countries and international organizations in religion-related matters shall be based on the principle of respect for each other's independence and sovereignty, non-interference in each other's internal affairs, equality, mutual benefit, and in conformity with each other's law and international law and practice.

Summary

In conclusion, the study of trends in law on freedom of belief and religion in Vietnam can draw the following conclusions:

Common trends have existed in the legislative and executive process of religion in Vietnam including approximating to the provisions of international law; ensuring “equality” in enjoying the right to freedom of belief and religion; promoting religious activities that contribute to social development; building a harmonious relationship between the state and religion.

In general, these trends are very progressive, have contributed effectively to the guarantee of freedom of belief and religion in Vietnam during the legislative periods. The next important thing is the adherence to the trends to clarify and continue to improve them in the next periods based on Vietnamese practices and world experiences.

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