

COVID-19 PANDEMIC AND THE EMERGENCY LAW IN THE RULE OF LAW

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Abstract:

As countries around the world attempt to fight off the covid-19 pandemic, Vietnam's governments are introducing emergency measures. Those let argue that it examines how some of these can undermine the rule of law in Vietnam.

Key Words: Emergency Law, Covid19-Pandemic, Rule of Law

1. Introduction

*"Pandemic in the land is putting strain on our self-image as a free people for whom the rule of law is our ne plus ul".*¹ From the time of arrival until 4/5/2020, had more than 248.312.000 who people died, more 3.567.001 peoples have infected in the world.²

At 13:38 on December 31, the Chinese Government announced an "unexplained pneumonia" discovered in the area around the seafood market in Wuhan Industrial City - capital of Hubei Province with 11 million people.³ Quickly, on Jan 23, Wuhan City locked down to prevent the spread of the Covid-19 epidemic. Most travel in and out of the city is suspended. More than 800 cases of Covid-19 have been reported with 25 deaths.

Outside of China, Covid19 has been spreading rapidly in Europe and the United States, after creating a crisis in Korea and Iran. Faced that situation, on March 11, WHO been declared Covid-19 is a pandemic. As of 6 May, total number of Coronavirus Cases are 3,740,583, with 258,481 deaths and 1,247,191 recovered.⁴

¹ Andrew C. MCCARTHY, Law and Liberty in an Emergency, <https://www.nationalreview.com/2020/03/coronavirus-pandemic-response-law-liberty-in-emergency/>, Posted: March 31, 2020 4:17 PM, accessed: 10:32' 5/5/20

².

³. Pneumonia of unknown cause – China, <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/>, posted: 5 January 2020, accessed: 9:51' 5/5/20.

⁴Covid-19 Coronavirus Pandemic, Available at: https://www.worldometers.info/coronavirus/?utm_campaign=homeAdvegas1?

Confirmed cases of Covid-19

Data correct at 23.59 UTC 5 May

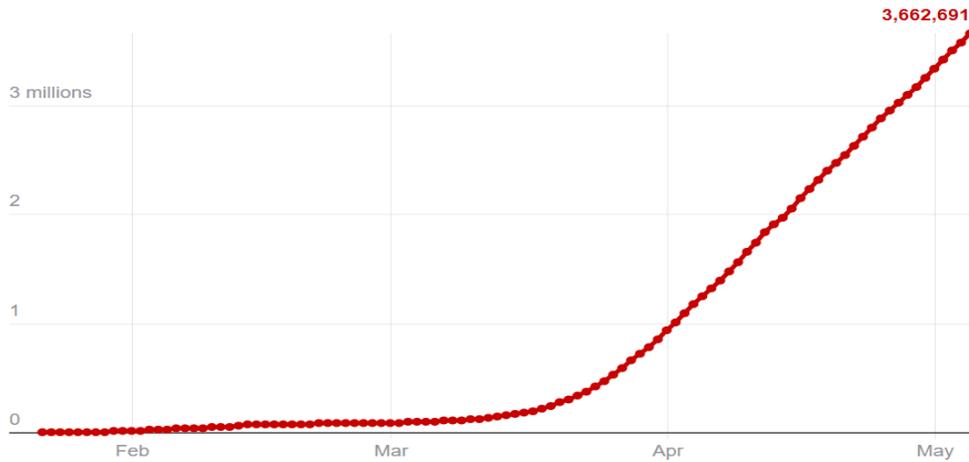
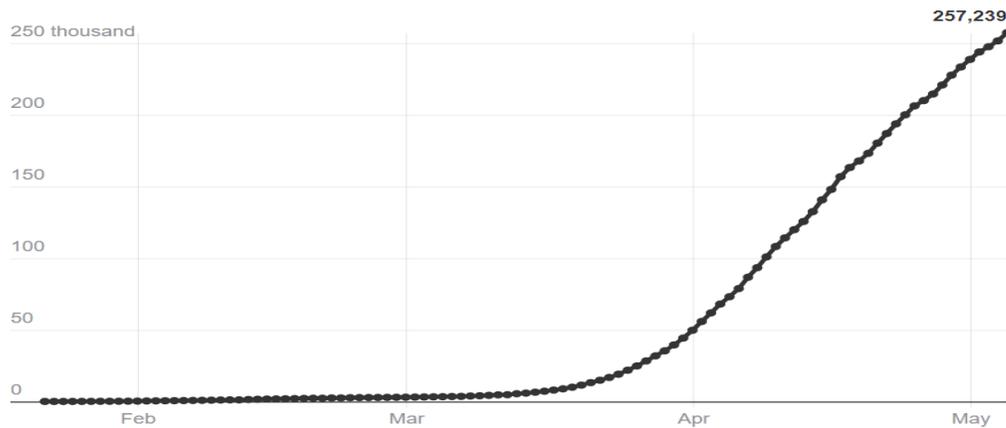


Figure 1. Cases of Covid-19 in the world⁵

Confirmed deaths from Covid-19

Data correct at 23.59 UTC 5 May



Source: Johns Hopkins CSSE Note: The CSSE states that its numbers rely upon publicly available data from multiple sources, which do not always agree

Figure 2: deaths from Covid-19 in the world⁶

⁵ Coronavirus world map: which countries have the most cases and deaths? Available at: <https://www.theguardian.com/world/2020/may/06/coronavirus-world-map-which-countries-have-the-most-cases-and-deaths>

⁶ Coronavirus world map: which countries have the most cases and deaths? Available at: <https://www.theguardian.com/world/2020/may/06/coronavirus-world-map-which-countries-have-the-most-cases-and-deaths>

The Covid-19 pandemic completely disrupted life in the world, restricting travel, forcing schools to close and millions of people to work from home and millions of people lost their job.

Vietnam is a country has a long border and a massive volume of trade with China, was announced the first two Covid-19 patients were the father and son of Wuhan, China, on January 23, 2020.⁷ With the result has been achieved, Vietnam boasts a remarkably low infection rate in a country of 95 million people, with only 268 confirmed cases (97 active and 171 recovered) with no deaths as of April 17⁸.

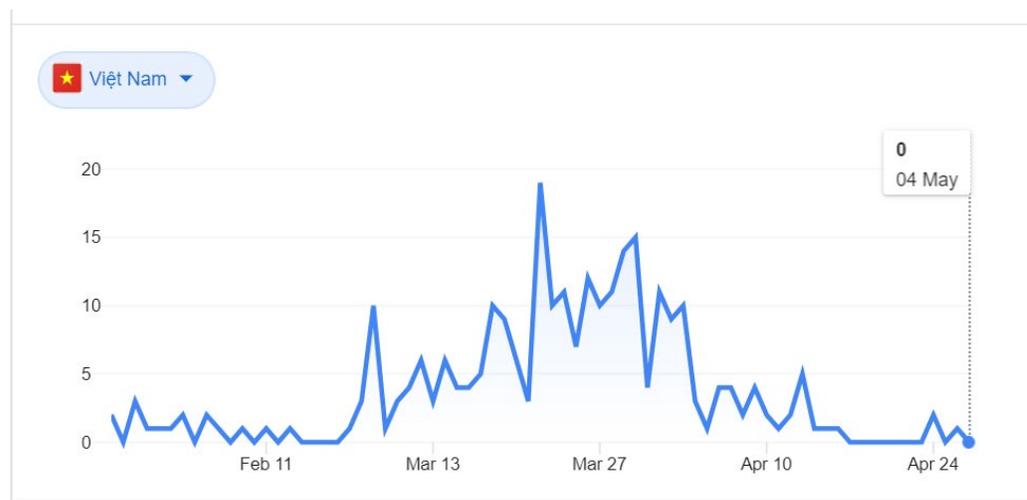


Figure 3: Cases Covid-19 in Vietnam⁹

So far, in limiting the number of cases in infection and without deaths, Vietnam is the world's most successful nation in tackling with Covid-19. To fighting the Covid-19 pandemic, governments enacted and implemented many strict measures to the Coronavirus crisis has included a strict curtailment of the right to freedom of movement. In fact, "*the central government, related agencies and local authorities have taken strong measures to prevent the spread of infection. If everyone strictly*

⁷ The Vietnamese Ministry of Health 2020. <https://ncov.moh.gov.vn/>

⁸ Minh Vu and Bich T. Tran, The Secret to Vietnam's COVID-19 Response Success, Available at: The Secret to Vietnam's COVID-19 Response Success

follows the 'social distancing' rules, we can totally slow down the epidemic and even bring it under control".¹⁰

Over the course of three months since the first case, Vietnam has not hesitated to restrict movements where needed, balancing overt caution with precision. For example, the local authority allowed to lock down villages and communes following advisory notices from the Ministry of Health.

Vietnam is still in a 15-day social distancing campaign launched April 1. During this period, people have been told not to venture outside their homes except for "*essential*" reasons like buying food and medicine or other emergencies. The decision to close schools nationwide, as a formality, came with the national isolation order on March 31, effective April 1. Consequently, Vietnamese students have not gone to school this spring semester.¹¹ These decisions have been controversial in the field of legal science. The question raises whether the violation of the rule of law.

It has been already said that theoretical and legislative development resulted in understanding of the rule of law is system of governance based on three main elements: (1) that legal detriments should only be imposed by law, not on the basis of the personal will or decisions of government officials or private actors (neutrality); (2) that government action should be subject to regulation by rules, and that government officials should not be above the law (universality); and (3) that people should be protected from private violence and coercion (governance)".¹²

However, there is a still controversy on the relations between structural requirements of rule of law and human rights concept in the emergency. Is it reasonable to use the Rule of Law to evaluate the way responds to emergencies? It is often thought that emergencies require forms of state action that are more

¹⁰ Le Nga, Vietnam records no new Covid-19 case in 24 hours, Available at: <https://e.vnexpress.net/news/news/vietnam-records-no-new-covid-19-case-in-24-hours-4080001.html>, accessed: 19:47' 5/6/20.

¹¹ Minh Vu and Bich T. Tran, The Secret to Vietnam's COVID-19 Response Success, Available at: The Secret to Vietnam's COVID-19 Response Success

¹² Milica Kolaković-Bojović, The rule of law principle: The EU Concept Vs. National Legal Identity, Universally and particularity at law, Vol. I, Faculty of Law-University of Priština, pp. 137-160. Available at: https://www.researchgate.net/publication/325285943_THE_RULE_OF_LAW_PRINCIPLE_THE_EU_CONCEPT_VS_NATIONAL_LEGAL_IDENTITY/link/5b03ee704585154aeb077888/download

peremptory and less procedurally laborious than those required in normal times. As an argument of fact: 1) One is to insist, in the name of the Rule of Law, that existing constitutional safeguards should remain in force, therefore no decision may be contrary or different from the Constitution and laws; 2) in emergencies, one might rely on a general spirit of flexibility and circumstantial sensitivity in state action that is encouraged even in normal times. On this option, the Rule of Law does not present itself as a major constraint on the flexibility of state action in face of danger; 3) one might seek to preserve something like the Rule of Law by laying down in advance specific legal rules to govern emergencies—rules that suspend ordinary civil liberties guarantees for example or authorize widespread discretion on the part of officials to undertake action that would normally be governed by general rules of law.¹³

2. Critical Principles of the Rule of law

The Rule of Law has created an array of values that dominates liberal political morality: others include democracy, human rights, social justice, and economic freedom. In this concept, “*the rule of law principle has been recognized as a milestone of modern democratic societies all around the world*”¹⁴. The notion of Rule of Law, together with those of democracy and human rights, represents a fundamental principle and a common value recognized in humankind.

The meaning of this notion, especially in certain states of the former Soviet Union (conclude Vietnam) has been understood to mean “*state based on the principle of the supremacy of the laws*”.¹⁵

Just after the Reform “*Doi moi*”, there was a significant renewal of interest in the expression “rule of law”, especially in the context of founding of market Economic in Vietnam.

¹³ Rule of Law, Available at: <https://plato.stanford.edu/entries/rule-of-law/>

¹⁴ Milica Kolaković-Bojović, The rule of law principle: The EU Concept Vs. National Legal Identity, Universally and particularity at law, Vol. I, Faculty of Law-University of Priština, pp. 137-160. Available at: https://www.researchgate.net/publication/325285943_THE_RULE_OF_LAW_PRINCIPLE_THE_EU_CONCEPT_VS_NATIONAL_LEGAL_IDENTITY/link/5b03ee704585154aeb077888/download

¹⁵ Milica Kolaković-Bojović, The rule of law principle: The EU Concept Vs. National Legal Identity, Universally and particularity at law, Vol. I, Faculty of Law-University of Priština, pp. 137-160. Available at: https://www.researchgate.net/publication/325285943_THE_RULE_OF_LAW_PRINCIPLE_THE_EU_CONCEPT_VS_NATIONAL_LEGAL_IDENTITY/link/5b03ee704585154aeb077888/download

This revival became particularly marked in the early 2000s under influenced by the amendment and supplement of the Constitutional in 2001, as shown by the widespread use of the term “rule of law” in the national legal system. In order to pinpoint what is covered by the expression “principle of the rule of law”, a approach based on general values seems appropriate in a number of respects.

Firstly, supremacy of Law. According to the first principle, rule of law means there should be lack of arbitrariness or wide discretionary power. In other words, every act will be controlled by law.

Secondly, all are equal before the Law. This principle “emphasizes everyone, including the government, irrespective of rank, shall be subject to the same law and courts”.¹⁶ There now appears to be a general consensus that the expressions “rule of law” is equivalent, in that they emphasize the need to prevent arbitrary interference by public authorities by instituting a legally based relationship between such authorities and individuals. The state-made law on a given subject be uniform within state boundaries, and, so far as feasible and appropriate, take the preceptive form of general and definite rules applicable to classes of persons, acts, circumstances, etc., and also be applicable to officials and citizens alike, as appropriate.

Thirdly, the law is made by representatives of the people in an open and transparent way. That all forms of law be duly authorized, and thus conform to established criteria of validity; that the accepted criteria for determining the validity of law generally be clear and readily applicable, and include criteria for the resolution of any conflicts between otherwise valid forms of law.¹⁷ that any possible remedy, sanction, nullification, or other adverse consequence of failure to comply with a form of law be known or knowable in advance of the relevant occasions for action or decision under that law.

Fourthly, the law and its administration are subject to open and free criticism by the people, who may assemble without fear.

¹⁶ Alok Kumar Yadav, Rule of Law, International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212:Volume 4 Issue 3, p.209.

¹⁷ Australia’s Magna Carta Institute, Principles, <https://www.ruleoflaw.org.au/principles/>

Fifthly, the law is capable of being known to everyone, so that everyone can comply.

Sixthly, the judicial system is independent, impartial, open and transparent and provides a fair and prompt trial. All people are presumed to be innocent until proven otherwise and are entitled to remain silent and are not required to incriminate themselves.

Seventhly, that all forms of law be appropriately clear and determinate in meaning; that the behavioral requirements of a law be within the capacity of its addressees to comply; that the law on a subject, once made and put into effect, not be changed so frequently that its addressees cannot readily conform their conduct to it, or that long term planning cannot be feasible.

Eighthly, no one is subject to any action by any government agency other than in accordance with the law and the model litigant rules, no one is subject to any torture.

3. Legality in the pandemic control powers

On 30 January, the Prime Minister signed the Decision No. 170/QĐ-TTg on establishing the National Steering Committee for prevention and control of acute respiratory infections caused by new strains of corona virus, caused by Deputy Prime Minister Vu Duc Dam is Head of the Steering Committee. During more 3 months has been happened the COVID-19 pandemic, the Vietnamese government has taken various measures, which have grown more stringent over time, to combat the spread of the disease. The measures have included the following:

Travel Requirements and Restrictions: On February 1, 2020, the Prime Minister signed Decision 173 / QĐ-TTg announcing the acute respiratory infection epidemic caused by the new strain of corona virus. On March 18, 2020, the Prime Minister decided to suspend the issuance of visas for On March 31, 2020, the Prime Minister issued Directive No. 16 on the implementation of urgent measures to prevent and combat COVID-19 epidemic. The directive takes effect from 00:00 April 1, 2020 on a national scale. The whole country carried out social isolation (social separation) within 15 days. foreigners entering Vietnam; restrict flights from epidemic areas. On April 15, 2020, the Prime Minister asked 28 provinces

and cities "high risk" and "risk" of infection to continue to isolate society until at least by April 22, 2020.

Not only decisions were launched by central Government but also decisions were made by local governments such as nearly 11,000 people had to be isolated in Son Loi commune, Binh Xuyen district, Vinh Phuc province in isolated commune. On April 8, 2020, Ha Loi village with about 13,000 people was isolated for 28 days.

Prohibition on Gatherings: On April 24, 2020, the Prime Minister issued Directive 19 / CT-TTg on continued implementation of prevention and control of COVID-19. The country moved to a longer anti-epidemic stage, relaxed restrictive measures, gradually restored socio-economic activities.

At the same time, implementing the Prime Minister's Directive No. 16, many local governments' response to the Coronavirus crisis has included a strict curtailment of the right to freedom such as Quang Ninh Province and Hai Phong City. The decision No.16 requires everyone to strictly wear masks in public places where crowds of people gather.

Government and Civil Service: During this period, most agencies and organizations closed, and staffs worked from their home. With a few exceptions, Vietnamese government offices and courts are still in operation. However, they were worked and sent documents (and receiving them) via post. *"The courts will not open court hearings, except for cases for which the settlement term has expired. For such court hearings, the hearings must contain no more than 20 people and ensure safety measures"*¹⁸.

As the results of the strict measures that were enacted by governments, the question is whether the government are free to shape their emergency measures as they wish. If they have it, when will they be able to use this right. Looking for answers to these questions, the Vietnam's Constitution 2013 regulates: *"Human rights and citizens' rights shall only be restricted when prescribed by law in imperative circumstances for the reasons of national defense, national security, social order and security, social morality and community well-being."* (Clause 2,

¹⁸ Vinh Quoc Nguyen, Giang Thi Lan Nguyen, Vietnam Imposes Measures to Fight COVID-19, Available at: <https://www.tilleke.com/resources/vietnam-imposes-measures-fight-covid-19>

Article 14). However, it is clearly that in this regulation, the terms are very vague, it needs specific regulations.

On other side, to looking for answers from the power of the authorities to enact the measures was provided by the Laws: Law on Government Organization 2015, Law on Organization of the Local Governments 2015, Law on Prevention and Control of Infectious Diseases 2007, all of them have not clear result.

Moreover, looking for the term "emergency situation" in the law, but unfortunately this term is not finding this define whether it includes the concept of "*emergency situation*" used by laws. The question is how this term is defined in the Ordinance on Emergencies issued in 2000, while this Ordinance is not public. Decree No. 71/2002 / ND-CP launched to guide and implement the Ordinance on the state of emergency 2000 has not mention the contents of the concept.

From "suggested that legitimate governments had to be based on popular consent and that any action by any government that was not supported by popular consent was not valid and was "without authority"¹⁹. And "*Constitutional governments are based on a previous commitment to freedom under the rule of law. The essential attribute of constitutionalism is a legal limitation on government. Under constitutionalism, rulers are not above the law*"²⁰. What has been done by government and what the existing laws are posing legal challenges:

1. The cognitive conflict of authorities and stakeholders is a result of the unclear definition of the "*emergency situation*" concept in law system.

2. Lack of a specific legal framework to ensure that decisions of governments are not abusive or restriction of the human rights and freedom of peoples.

3. Lack of legal mechanisms and tools lack of legal mechanisms and tools to monitor the process making and enforcement decisions. That decisions are to ensure a balance between public interests, personal rights and democracy. Because the rule of law requires all individual were entitled to certain rights of which they could not be deprived of either by the actions of government.

4. Conclusion

¹⁹ Ricardo Gosalbo-Bono (2010), The significance of the rule of law and its implications for the European Union and the United States, p. 239

²⁰ Alok Kumar Yadav, Rule of Law, International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212:Volume 4 Issue 3, p.206

In fact, Vietnam's lack of a strong legal framework for dealing with crises highlights the challenge of introducing a response that addresses covid-19 while staying in line with domestic, regional and international obligations. Although Vietnam enacted an emergency Ordinance and Law on Prevention and Control of Infectious Diseases 2007, that extended the powers of authorities and law enforcement and enables measures that limit access to public institutions and public transport and individual rights. Vietnam's Assembly Parliament has to continue to function and the country has to a strong rule of law culture and good track record of respecting human rights.

Vietnam must follow regional and international rule of law and human rights standards. It is complete necessary because while fighting existential threats can require limits to fundamental rights and freedoms, there is a high risk that governments will overstep and excessively impede rights and freedoms in response to covid-19. In extreme cases, a permanent, unlimited state of emergency, could lead to the removal of checks and balances and undermining the rule of law to the point where a country ceases to be democratic. Indeed, in some cases, it is a push towards autocracy masqueraded as a measure that ensures the safety of citizens. This crisis requires compulsory powers in emergency should be evaluated and justified under a common legal and ethical standard, including (1) must pose a significant risk of spreading a dangerous, infectious disease; (2) interventions must be likely to ameliorate risks; (3) least-restrictive means necessary to achieve public security and social order objectives are required; (4) use of coercion should be proportionate to the risk; and (5) assessments must be based on the best available scientific evidence. In emerging crises when the science is uncertain, adoption of the “*precautionary principle*” is reasonable to ensure public safety./.