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Some Legal Aspects of Restriction on Certain Human Rights in the Context of Covid-19: A Case Study in Vietnam

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ABSTRACT

Human rights restriction in an emergency situation is necessary. However, the context of Covid-19 pandemic should not be used as an "excuse for human rights violations". Ensuring human rights should be the key to cope with a pandemic. Human rights need to be addressed both in a public health emergency and in the context of the impact of the pandemic on people's lives and livelihoods. In this paper, the author will analyze some legal aspects of restriction on performing human rights law and regulations in the pandemic of covid-19 following international law. From there, the author will link this issue to the reality of implementation in Vietnam.

Keywords: legal aspects; restriction; human rights; Covid-19; Vietnam

I. INTRODUCTION

Human rights refer to the natural and inherent human needs and interests recognized and protected by national laws and international legal agreements². Due to its inalienable feature, human rights cannot be arbitrarily deprived or restricted by any subject. However, in certain cases, some human rights may be restricted. Human rights can be restricted in the normal state³ (restricted rights) and in an emergency state (temporarily suspended rights). Temporary suspension can be considered as a form of right restriction at a greater level than restricted human rights in the normal context. It is expressed through the measures taken in an emergency by the countries, including martial law (nationwide, in a region or an area); prohibiting protests, crowded meetings; prohibiting or restricting the activities of some mass media such as television, radio, and press; prohibiting entry or exit from an area or a border (for certain individuals or groups); prohibiting the organization of religious activities, etc. Before the Covid-19 pandemic, human rights may be restricted under the provisions of

¹ Author is an International Law Faculty at Hanoi Law University, Vietnam.

² School of Law, Vietnam National University - Hanoi (2011), Curriculum on theories and laws on human rights, National University Publishing House, Hanoi.

³ To ensure human rights in relation to other rights and to the common benefits of the community.

human rights restriction or may also be temporarily suspended in the case of a declared state of emergency.

Human rights are a natural, inherent value of each person and must be guaranteed in all circumstances. However, for certain purposes, countries can restrict certain human rights. These restrictions do not conflict with protecting and promoting human rights. Appropriate human rights restrictions shall contribute to better protection of human rights.

(A) Literature Review

State of emergency⁴ a condition that may arise from war, aggression, armed insurrection, terrorist attack, natural disaster, epidemic or other types of crisis or catastrophe. In these states, the countries take the necessary actions to protect national security, stabilize essential public services, mobilize relief resources and allocate those resources to the areas where they are needed to restore the normal state of society. These necessary actions may include restricting human rights. Acute respiratory infections caused by Coronavirus (Covid-19) were discovered in December 2019, then quickly spread and affected the world. As of December 1, 2020, this epidemic has spread to 210 countries and territories with more than 63 million cases and 1,476,691 deaths⁵. World Health Organization (WHO) officially announced Covid-19 as a global pandemic from March 11, 2020⁶. In Vietnam, according to data from the Ministry of Health, the number of infected cases updated on December 1, 2020, is 1351⁷. On April 1, 2020, the Prime Minister signed Decision No. 447/QĐ-TTg to announce Covid-19 epidemic nationwide and propose measures and methods to cope with the pandemic⁸. Covid-19 pandemic not only takes the lives and affects the health of tens of millions of people but also causes many negative impacts on the lives and fundamental rights of all individuals and communities around the world, especially economic recession, increased stigma, inequality, poverty, job loss, etc. One of the current regulations on human rights restriction is the Universal Declaration of Human Rights of United Nations in 1948 (UDHR): “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are

⁴ According to Siracusa principle, an emergency is the one that affects the entire population and all or part of the territory of a country and threatens the physical integrity of the population, political independence or national territorial integrity, or the existence or basic function of the indispensable institutions to ensure and enforce rights recognized in the Convention,

⁵ See the updated data at Worldometers, COVID-19 CORONAVIRUS PANDEMIC, (Pandemic CoronaCOVID-19), <https://www.worldometers.info/coronavirus/>. Retrieved December 1, 2020.

⁶ WHO, *WHO Director-General's opening remarks at the media briefing on COVID-19*, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

⁷ Ministry of Health, Statistics on COVID-19 epidemic situation. Information is available at: <https://ncov.moh.gov.vn>. Retrieved December 1, 2020

⁸ Prime Minister, Decision on announcing COVID-19 epidemic, dated 1/4/2020. Information is available at: http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=2&_page=1&mode=detail&document_id=199640. Retrieved December 1, 2020

determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (Article 29). Besides UDHR, human rights restriction is recognized in many international treaties such as American Convention on Human Rights (ACHR, Article 27) and European Convention on Human Rights (ECHR, Article 15), International Covenant on Civil and Political Rights 1966 (ICCPR, Article 4), ISERCS (Article 4), etc. and national laws. In response to Covid-19 pandemic, the countries have placed restrictions on some human rights such as freedom of movement, right to employment, freedom of business, right to study, freedom of association, etc.

Under Japanese law, in the event of a natural disaster or major turmoil, the Prime minister can declare a state of emergency in one region or all over the country. Special Measures Act on New Influenza 2013 stipulates the measures to prevent and treat patients when a new strain of seasonal influenza virus spreads rapidly across the country, becomes a danger to human life, and causes serious damage to the economy. This law allows the Government to take appropriate action, including declaring a state of emergency, for a region or all over the country. The law was amended and supplemented on March 13, 2020, to allow the response to Covid-19 pandemic as a new seasonal influenza virus⁹. In India, the Constitution allows declaring a state of emergency only when “the security of India or any part of Indian territory is threatened by war, external aggression or armed insurgency”. It means that the Indian Constitution does not allow declaring a state of emergency in response to natural disasters (Article 352). Like India, Lebanese Constitution only allows declaring a state of emergency “where there is a threat or outbreak of war or where civil unrest affects the survival, security or well-being of the country to the extent of visible and obvious danger” (Article 86). In 2014, Lebanon faced an outbreak of Ebola virus disease. That was a serious public emergency that required a coordinated response from the government, including imposing restrictions on freedom of movement and association. However, since it was not 'war' or 'unrest', the pandemics are technically not the basis for declaring a state of emergency. This situation leads to some debates about whether the restriction on certain human rights is legal or not¹⁰.

(B) Research Methods

To study this topic, the author will use the combination of theoretical research methods such

⁹ Cam Vu Thao Nguyen, Japanese Laws on State of Emergency and Suggestions for Vietnam, *Journal of Legislative Study*, September 2020

¹⁰ Elliot Bulmer, *Emergency Powers: Constitution-Building Primer* 18, IDEA

as the synthesis-analysis method, the interpretation-inductive method, the statistical method, the comparative comparison method, etc. to go from study the actual developments to generalize and make an assessment of the general trend.

II. FINDINGS AND DISCUSSION

Legal requirements for human rights restriction in the context of Covid-19 pandemic and practices

The first requirement is *the legality*. The legality is understood that the human rights restriction in the case of Covid-19 pandemic must be publicized by the legal regulations that meet the clear and precise standards and are interpreted by independent judiciary institutions. This requirement is intended to prevent the arbitrary imposition of restrictions. HRC specifies that “law” includes the law enacted by a legislature and the law enacted by a court. Today, the laws of countries around the world often include human rights restriction and suspension due to emergencies in their legal regulations enacted by the legislature¹¹. Specifically, to prevent the spread of Covid-19, the countries often start by restricting freedom of movement. This issue is noted in Article 12 of ICCPR: “Everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and to choose his or her place of residence [...] In exceptional circumstances, the State can restrict these rights only to protect national security, public order, public health or morals and the rights and freedoms of others” and Article 5§1 (e) in ECHR allowing the restriction on freedom of movement to prevent the spread of infectious diseases, etc. This shows that the restriction on freedom of movement in the context of the Covid-19 pandemic in European countries has been recorded in law. Another example is to limit the spread of false information which can seriously affect the efforts of state agencies in preventing and controlling the epidemic, confuse the people, and lead to negative reactions. To reduce this risk, governments of many countries have imposed both financial and criminal sanctions for spreading fake news related to Covid-19 pandemic. In Hungary, after Prime Minister declared a state of emergency, the government announced an amendment to its Penal Code by which the citizens could face a prison sentence of 5 years for spreading fake news¹². Russia has enacted a similar law against misinformation regarding Covid-19. Anyone who deliberately spreads the “false information” about coronavirus can be imprisoned. These rules restrict freedom of expression.

¹¹ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, 24: <https://www.refworld.org/docid/4ed34b562.html>, retrieved March 18, 2020

¹² Committee to Protect Journalists (CPJ), *Proposed Hungarian Laws Could Imprison Journalists Covering Coronavirus Response*, 24 March 2020, <https://cpj.org/?p=36940>.

For the restriction on human rights by suspending certain rights after a declared state of emergency, the requirement of legality also includes the legitimacy of declaring an emergency. Ordinarily, the legislature can enact a general emergency law. The regulations of the law are not applicable under normal conditions and only applied after a declared state of emergency. Along with these regulations, Constitutions of the countries also specify the competent authorities who supervise the validity and legality of the decision to declare a state of emergency and restrict human rights.

The restriction on human rights after a declared state of emergency due to Covid-19 pandemic, three main issues need to be identified: what is the state of emergency, which agency has competent authority to declare a state of emergency, and what is the procedure of declaring a state of emergency. A state of emergency is a situation where a major disaster caused by nature or humans occurs, an epidemic spreading on a large scale beyond the government's ability to respond and seriously threatening the lives, health, and property of individuals, property of the State and other organizations. Applying a state of emergency inevitably leads to the restriction on human rights in each particular situation¹³. Currently, determining whether a condition is an emergency depends on the laws of each State. It is worth mentioning here that, at present, there is no general rule or definition of severity or specific criteria for determining a state of emergency. In the first adjudge of *Lawless v. Ireland*, the European Court of Human Rights (ECTHR) explains that a public emergency must concern a state's entire population to justify a state of emergency¹⁴. Therefore, whether Covid-19 pandemic leads to a national emergency or not is up to the law, judgment, and practice of each State.

The authority to declare a state of emergency is not stipulated in international human rights treaties. Instead, the countries determine by themselves the authority to declare a state of emergency under their national laws. The declaration of national emergency is widely recognized as a measure of the government in responding to an unusual situation that poses a fundamental threat to a country, including disease.

Procedures for declaring a state of emergency comply with national law as long as they are specified in advance of the emergency¹⁵. In addition to the procedures prescribed by national laws, several international treaties stipulate the obligations of states to notify about declaring

¹³ Vu Hong Anh, Assurance of human rights and citizenship in a state of emergency under Vietnamese law, *Journal of Legislative Research* August 2020

¹⁴ <http://cilj.co.uk/2020/07/04/derogation-of-human-rights-rules-in-times-of-emergency/>

¹⁵ Siracusa principles on Restriction and Suspension of Provisions in International Covenant on Civil and Political Rights, 1984, principle 43

a state of emergency, such as ICCPR¹⁶. Until now, nearly 20 countries have implemented human rights restrictions after the declared state of emergency caused by Covid-19 pandemic in an official manner through the notification to United Nations, Organization of American States, or European Committee¹⁷. Facing Covid-19 pandemic, countries such as Latvia¹⁸, Romania¹⁹, Armenia²⁰, Estonia²¹, Moldova²², Georgia²³, Algeria²⁴, North Macedonia²⁵, Serbia²⁶, and SanMarino²⁷ apply Article 15 (3) of ECHR and notify the Secretary-General of the Council of Europe about the declared state of emergency and restriction of human rights. The countries such as Guatemala, Peru, Ecuador, Columbia, Bolivia, Panama, Chile, Honduras, Argentina, El Salvador and the Dominican Republic apply Article 27 (3) of ACHR, notify the Secretary-General of Organization of American States (OAS) about the declared state of emergency, and inform other members about the special rules they have adopted²⁸. In the case that the states are a member of both regional treaty and ICCPR, such states must follow the notification procedure under the provisions of both treaties. The countries often comply with the provisions of regional treaties more seriously and fully than the notification mechanism of the United Nations. So far, only 5 countries of the Council of Europe and 6 countries of OAS have informed the Secretary-General of the United Nations regarding the restrictions on human rights under ICCPR in a state of emergency. Some countries do not follow the notification procedure. Besides, several countries implement the notification procedures but the content of the notification about restrictions on human rights in an emergency is incomplete²⁹.

In terms of the period of a state of emergency, a state of emergency is considered as a temporary response to a specific urgent need. The countries should only use the powers

¹⁶ According to ICCPR, on deciding to suspend the rights, a State must immediately notify other ICCPR member states through the Secretary-General of United Nations, clearly state the specific measures that are taken and the intended time of termination of those measures

¹⁷ Restriction on human rights based on ICCPR Article 21, ECHR Article 11, and ACHR Article 15 due to Covid-19 at: [https://www.rightofassembly.info/assets/downloads/Derogations_from_the_Right_of_Peaceful_Assembly_\(at_11_November_2020\).pdf](https://www.rightofassembly.info/assets/downloads/Derogations_from_the_Right_of_Peaceful_Assembly_(at_11_November_2020).pdf) Retrieved January 4, 2020

¹⁸ Notification on March 16, 2020, <https://rm.coe.int/09000016809ce9f2>. On the same day, Latvia also notified ICCPR, <https://treaties.un.org/doc/Publication/CN/2020/CN.105.2020-Eng.pdf>

¹⁹ Notification on March 16, 2020 and notify ICCPR: <https://treaties.un.org/doc/Publication/CN/2020/CN.121.2020-Eng.pdf>, on March 20, 2020

²⁰ Notification on March 19, 2020, <https://rm.coe.int/09000016809cf885> .

²¹ Notification on March 20, 2020, <https://rm.coe.int/09000016809cfa87>

²² Notification on March 18, 2020, <https://rm.coe.int/09000016809cf9a2>

²³ Notification on March, 23, 2020, <https://rm.coe.int/09000016809cff20>

²⁴ Notification on March 31, 2020, <https://rm.coe.int/09000016809e0fe5> .

²⁵ Notification on April 2, 2020, <https://rm.coe.int/09000016809e1288> .

²⁶ Notification on April 6, 2020, <https://rm.coe.int/09000016809e1d98> .

²⁷ Notification on April 14, 2020, <https://rm.coe.int/09000016809e2770>

²⁸ See the notifications at: http://www.oas.org/en/sla/dil/inter_american_treaties_Treo_guarantees.asp

²⁹ <https://datastudio.google.com/u/0/reporting/1sHT8quopdfavCvSDk7t-zvqKIS0Ljiu0/page/dHMKB>

conferred by the state of emergency to deal with the urgent need and should restore the constitutional normality as soon as possible. Consequently, most constitutions provide a time limit for any declaration of emergency (usually from two to six months) after the time, the state of emergency shall automatically expire unless it is extended. In many cases, the state of emergency can be terminated before the expiration date if it is no longer needed.

Secondly, *the restriction on human rights in response to Covid-19 pandemic must be justified*. Justified requirements are expressed in the purposes, the reasons for the State to restrict human rights. In other words, the State's restriction on human rights must not be arbitrary or for no reason, it must serve the reasonable objectives. The reasonable objectives of restriction on human rights are recognized in two common ways. A *general objective* can be applied to the rights in the Convention. For example, International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) Article 4 notes that "[...] the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely to promote the general welfare in a democratic society". The *specific objective* provides the separated purposes of limiting each right. For instance, in ICCPR, the objectives are scattered, but in general, the reasonable objectives of ICCPR include protecting national security, community safety, public health or morals, and the rights and freedoms of others. The reasonable objectives listed in ECHR include national security, territorial integrity; the economic well-being of the country, prevention of disorder or crime, protection of health or morals, or protection of the rights and freedoms of others; protection of confidential information; maintaining the authority and impartiality of the judiciary³⁰.

The remarkable point is the difference between regulations of ICCPR and ECHR related to objectives of human rights restriction. The drafting of ICCPR is based on many provisions in ECHR, but Article 19(3) does not set "territorial integrity", "public safety", "prevention of crime or disorder", "preventing the disclosure of confidential information", "maintaining the authority and impartiality of the judiciary" as the objectives to limit this right like Article 10(2) ECHR³¹. However, the objectives in ICCPR Article 19(2) can be interpreted further to include the above objectives in ECHR Article 10(2). On the one hand, in fact, to deal with

³⁰ Article 4 ICESCR, Article 19 ICCPR, ECHR

³¹ Article 10(2) ECHR: "*The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary*", at: https://www.echr.coe.int/Documents/Convention_ENG.pdf, retrieved April 13, 2020.

related cases, the European Court of Human Rights did not clearly distinguish the reasonable objectives to restrict human rights. On the other hand, during the trial process, the Commission on Human Rights also interpreted the objectives in ICCPR Article 19(2) in the manner of expanding and covering many of the above objectives. During Covid-19 pandemic, the legal purposes commonly applied by the States to limit human rights are to protect public order, health, and morals.

Thirdly, *human rights restriction in response to Covid-19 pandemic must meet the requirements of necessity and proportionality*. This requires the necessity of the aforementioned reasonable objectives to limit human rights and a balance between the benefits of human rights restriction and the damage caused by such restrictions. In a simple word, the necessity and proportionality mean that the measures taken by a State to limit the rights should be not only effective to achieve the pre-set reasonable objectives but also the less restrictive means with the lowest restrictive level.

The intrinsic link between the measures to limit human rights and the fight against Covid-19 pandemic requires the minimization of means encroaching human rights. A statement from Commission of Human Rights on April 24, 2020, states: “If possible and considering the need to protect the life and health of others, States parties should replace Covid-19-related measures that prohibit activities relevant to the enjoyment of rights under the Convention by less restrictive means to allow such activities to be conducted, while complying with public health requirements, for example, minimum physical distancing”³².

At present, ECTHR does not give a specific explanation of what is “necessity”, ECTHR uses the concept of plurality and reconciliation instead, by which “necessity” is in the middle of the concept “irreplaceability” and other flexible concepts such as “rationality” or “usefulness”, “practicality”³³. MoA doctrine (Margin of Appreciation - about the scope of State's decision), which has its roots in judicial oversight for activities of the executive³⁴, was initially applied to only Article 15 on a temporary suspension of rights³⁵. Since then, ECtHR precedents gradually developed and expanded the doctrine and applied it to all ECHR regulations. However, until now, ECtHR has not given a specific definition for this theory. Some scholars believe that this theory is too broad, unpredictable, and difficult to understand

³² Commission of Human Rights, Statement on derogations from the Covenant in connection with the COVID-19 pandemic, April 24, 2020, CCPR / C / 128/2, §2 (b)

³³ Handyside

³⁴ Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights* (3rd ed.) (Oxford University Press, 2012), pg. 634.

³⁵ Steven Greer, pg. 15-17; *Greece v. The U.K.*, ECHR Inter-States App No. 176/56 (1959); *Lawless v. Ireland*, ECommHR App No. 332/57 (1959)

as different national circumstances lead to different interpretation³⁶. MoA is closely related to the proportionality principle. ECtHR has repeatedly cited the proportionality principle to point out that the intervention of a State has gone beyond its MoA. In other words, limiting the rights of individuals is under the discretion of the State as long as the objective is justified. However, if the limit exceeds the necessary level, the limitation is considered inconsistent with the spirit of ECHR Convention.

Article 4(1), ICCPR allows, in an emergency, to apply the measures to limit human rights but not to impose restrictions based on discrimination of racism, color, gender, language, religion or social origin, meanwhile, Article 2 ICESCR requires States to ensure that the rights in ICESCR are exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status". This can be explained by the discrimination of doctor based on age, gender, or origin in deciding who should be given priority in terms of access to limited diagnostic tests or overcrowded hospitals, lack of medical equipment such as ventilators, hospital bed, etc.

III. RESTRICTIONS ON HUMAN RIGHTS IN THE CONTEXT OF COVID PANDEMIC IN VIETNAM

Covid-19 pandemic has caused many adverse impacts on the lives and fundamental rights of all individuals and communities around the world. In recent years, Vietnam has made great efforts in ensuring the harmony between the measures responding to Covid-19 and respecting international commitments to guarantee and promote human rights. Vietnam has not declared a state of emergency. With the impacts of Covid-19 pandemic, in addition to active measures to protect the right to life, the right to health care, etc., Vietnam also limited certain human rights. Specifically, to ensure the right to health in response to Covid-19 pandemic, the Vietnamese Government has proactively adopted a range of disease prevention measures, including several measures through the Directives No. 13/CT-TTg dated March 11, 2020 on continuing to promote the prevention and control of Covid-19 pandemic in new situation and Directive No. 16/CT-TTg dated March 31, 2020 on the implementation of urgent measures to prevent, detection, quarantine, zoning and stamping out the pandemic with specific actions such as control, compulsory isolation for immigrated people, closing schools, travel restriction, medical declaration, social isolation, dealing with sources of virus transmission and outbreaks, management of cross-contamination at health facilities, management of infection risks in high-risk groups and quarantined people, etc.

³⁶ Oskar Holmer, *Decoding the Margin of Appreciation Doctrine In Its Use by the European Court of Human Rights* (Stockholms University, 2013).

The restrictions on human rights in Vietnam during Covid-19 pandemic are legal as the issue is clearly stated in the Constitution and national laws. Specifically, Clause 2, Article 14 of Constitution 2013 states that “*Human rights and citizenship can only be restricted according to the provisions of law in case of necessity for reasons of national defense, security, social order and safety, social ethics, public health*”. Thus, in addition to affirming, recognizing, respecting, protecting human rights and citizenship, the Constitution also specifies the possibility of limiting human rights and citizenship in certain cases related to national defense, security, social order and safety, social ethics, public health. The regulations on restricting rights in the Constitution have been concretized by the legal provisions on emergencies, National Security Law 2004, National Defense Law 2018, Law on Infectious Diseases 2007, Law on Veterinary Medicine 2015, Law on purchase and use of assets 2008, etc. and guidelines on the implementation of laws.

It is completely justified for the Vietnamese Government to limit the exercise of human rights in response to Covid-19 pandemic. Covid-19 is a new disease, in the absence of a vaccine, specific drugs, or treatment protocols, Covid-19 pandemic has been becoming a medical disaster for all countries. According to WHO, Covid-19 transmits among people through direct, indirect contact (by contaminated objects or surfaces), or close contact with an infected person through secretions from the mouth and nose. WHO recommends to limit close contact between infected people and others, avoid crowded places, etc. Vietnam discovered the first case of Covid-19 on January 23, 2020³⁷. By December 1, 2020, the infected cases were 1351³⁸. Faced with the spread of the virus and the nature of the disease, to ensure public health, the measures to limit human rights adopted by Vietnam are completely justified.

The measures to limit human rights adopted by Vietnam are necessary and proportional. As analyzed above, in the context of Covid-19 pandemic, determining the necessity and proportionality is not easy. However, so far, Vietnam has been evaluated as a typical country in effectively responding to Covid-19 under the low-cost model³⁹. The recent survey from Dalia Research - a large-scale public survey of Covid-19 researching the perspectives of global citizens on governments' efforts in response to Covid-19 – unveils the assessment of 32,631 respondents in 45 countries about the efforts to cope with Covid-19 at three levels: too

³⁷ <http://bachmai.gov.vn/tin-tuc-va-su-kien/tin-trong-nganh-menuleft-34/6232-cuoc-chien-chong-dich-covid-19-tai-viet-nam-100-ngay-nhin-lai.html>

³⁸ Ministry of Health, Statistics on COVID-19 pandemic situation. Information is available at: <https://ncov.moh.gov.vn>. Retrieved December 1, 2020

³⁹ John Reed and Pham Hai Chung, *Vietnam's coronavirus offensive wins praise for low-cost model* tại: <https://www.ft.com/content/0cc3c956-6cb2-11ea-89df-41bea055720b>. Retrieved April 10, 2020

little, satisfied and too strong⁴⁰. According to the survey results, 62% of Vietnamese respondents believe that the Vietnamese government has taken appropriate measures to control Covid-19 pandemic which is not too aggressive or loose⁴¹.

Covid-19 pandemic is increasingly complicated; under the influence of Covid-19 pandemic, although a declared state of emergency is not necessary, the Vietnamese Government still prepare for the potential scenarios. For the worst scenario in which a declared state of emergency is a must, Vietnam already has a fairly complete legal system related to this issue. To determine a national emergency, Article 1 in Ordinance on State of Emergency 2000 provides that a state of emergency is declared when in the whole country, one or more provinces have a major natural or man-made disaster, dangerous pandemics spreading on a large scale, seriously threatening property of the State and organizations, lives, health, property or seriously threatening national security, social order and safety. Besides, specialized legal documents providing the conditions for declaring a state of emergency also invoke the law on the state of emergency: Defense Law defines the conditions for a declared state of emergency is direct danger of invasion or existence of actual invasion or armed riot but not to the extent of declaring a state of war (Clause 10, Article 2); Law on Prevention and Control of Infectious Diseases defines that when a pandemic spreads rapidly on a large scale, seriously threaten human life, health and socio-economic situation of the country, a state of emergency must be declared (Clause 1, Article 42); Veterinary Law defines the conditions for a declared state of emergency is that an animal pandemic spreads rapidly on a large scale, seriously threatens human life or health or causes serious socio-economic damage (Clause 6, Article 28), etc. Currently, despite the great influence of Covid-19 pandemic, with the Government's efforts to minimize the spread of the virus, Vietnam has not yet declared a national emergency. Regarding the competent agency to declare a state of emergency, according to Article 1 in Ordinance on State of Emergency 2000, the Standing Committee of National Assembly or the President shall declare a state of emergency to take special measures in order to promptly prevent, limit and overcome the consequences, and quickly stabilize the situation. The human rights that may be suspended due to a declared state of emergency under Vietnamese law include prohibiting people and vehicles from entering or leaving certain areas in a certain period; closing theaters, cinemas, and other public places;

⁴⁰ Nguyen Thi Thanh Hai, Ho Chi Minh National Academy of Politics, Vietnam with the guarantee of human rights in response to the Covid-19 pandemic, at <https://hcma.vn/tintuc/Pages/tin-tuc-sukien.aspx?ItemId=30203&CateID=0> retrieved on December 5, 2020

⁴¹ Dalia, *Global study about COVID-19: Dalia assesses how the world ranks their governments' response to the pandemic*, dated March 3, 2020. See more at: <https://daliaresearch.com/blog/dalia-assesses-how-the-world-ranks-their-governments-response-to-covid-19/>. Retrieved April 10, 2020.

prohibiting, dissolving the protests or gatherings of people and activities of individuals and organizations; restricting entry, exit and transit; suspending the exit or entry for some persons granted visas; controlling mass media; publishing censorship; suspending the publication, etc⁴². Besides, specialized legal documents also provide the measures to restrict human rights and other civil rights in an emergency. Specifically, the Law on Prevention and Control of Infectious Diseases provides the measures such as medical isolation; temporarily suspending operations of public catering services in the epidemic area that are likely to spread the pandemic; etc.

IV. CONCLUSION

Human rights are natural and inherent human values. Human rights need to be protected in all circumstances even in an emergency, such as Covid-19 pandemic. Regulations on restricting human rights in emergencies under international law provide the States with opportunities to deal with real public emergencies, especially Covid-19 pandemic. The current flexible provisions of international law on limiting human rights in an emergency have allowed States to be proactive. Limiting human rights in an emergency does not conflict with the guarantee of human rights, it actually contributes to better protection of human rights. The practice of human rights restrictions in the context of Covid-19 pandemic has revealed certain legal issues that need further research and solutions at both international and national level for limiting human rights in an emergency, such as general criteria for determining a national emergency, the issue of implementing notification procedures to report the restriction on human rights in a national emergency according to the regulations of ICCPRs and ECHR, the consequences of the failure to notify and inadequate notification, the levels of rights restrictions in the countries in each specific circumstances to meet the necessity and proportionality. As a developing country with limited economic potential and medical equipment, but with proactive and appropriate measures, including step-by-step imposing restrictions on some rights, Vietnam has successfully limited the spread of the pandemic as well as secured and promoted human rights.

⁴² See Articles 6, 7 and 8 of Ordinance on State of Emergency 2000

V. REFERENCES

1. UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, đoạn 24 , tại: <https://www.refworld.org/docid/4ed34b562.html>, retrieved March 18, 2020.
2. Ordinance on State of Emergency 2000
3. Law Faculty, Hanoi National University (2011), Curriculum on theories and laws on human rights, National University Publishing House, Hanoi
4. Worldometers, COVID-19 CORONAVIRUS PANDEMIC, (Pandemic CoronaCOVID-19), <https://www.worldometers.info/coronavirus/>, Retrieved December 1, 2020.
5. WHO Director-General's opening remarks at the media briefing on COVID-19, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>
6. Ministry of Health, Statistics on COVID-19 epidemic situation. Information is available at: <https://ncov.moh.gov.vn>. Retrieved December 1, 2020
7. Prime Minister, Decision on announcing COVID-19 epidemic, dated 1/4/2020., http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=2&_page=1&mode=detail&document_id=199640 Retrieved December 1, 2020
8. Committee to Protect Journalists (CPJ), Proposed Hungarian Laws Could Imprison Journalists Covering Coronavirus Response, 24 March 2020, <https://cpj.org/?p=36940>.
9. Elliot Bulmer, Emergency Powers: Constitution-Building Primer 18, IDEA
10. Restriction on human rights based on ICCPR Article 21, ECHR Article 11, and ACHR Article 15 due to Covid-19 at: [https://www.rightofassembly.info/assets/downloads/Derogations_from_the_Right_of_Peaceful_Assembly\(at_11_November_2020\).pdf](https://www.rightofassembly.info/assets/downloads/Derogations_from_the_Right_of_Peaceful_Assembly(at_11_November_2020).pdf), Retrieved January 4, 2020
11. <https://rm.coe.int/09000016809ce9f2>
12. Latvia, ICCPR, <https://treaties.un.org/doc/Publication/CN/2020/CN.105.2020-Eng.pdf>
13. <https://treaties.un.org/doc/Publication/CN/2020/CN>
14. <https://rm.coe.int/09000016809cf885>
15. <https://datastudio.google.com/u/0/reporting/1sHT8quopdfavCvSDk7t-zvqKIS0Ljiu0/page/dHMKB>

16. Pandemic and Human Rights in the Americas, Resolution 1/2020 dated April 10, 2020, § 3 (g), <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>
17. <https://www.justsecurity.org/73520/covid-19-and-international-law-series-human-rights-law-civil-and-political-rights/>
18. Commission of Human Rights, Statement on derogations from the Covenant in connection with the COVID-19 pandemic, April 24, 2020, CCPR / C / 128/2, §2 (b)
19. Alastair Mowbray, Cases, Materials, and Commentary on the European Convention on Human Rights (3rd ed.) (Oxford University Press, 2012), pg. 634.
20. Steven Greer, pg. 15-17; Greece v. The U.K., ECHR Inter-States App No. 176/56 (1959); Lawless v. Ireland, ECommHR App No. 332/57 (1959)
21. Oskar Holmer, Decoding the Margin of Appreciation Doctrine In Its Use by the European Court of Human Rights (Stockholms University, 2013).
22. Oskar Holmer, Decoding the Margin of Appreciation Doctrine In Its Use by the European Court of Human Rights (Stockholms University, 2013).
24. <http://bachmai.gov.vn/tin-tuc-va-su-kien/tin-trong-nganh-menuleft-34/6232-cuoc-chien-chong-dich-covid-19-tai-viet-nam-100-ngay-nhin-lai.html>
25. Ministry of Health, Statistics on COVID-19 pandemic situation. Information is available at: <https://ncov.moh.gov.vn> Retrieved December 1, 2020
26. John Reed and Pham Hai Chung, Vietnam's coronavirus offensive wins praise for low-cost model tại: <https://www.ft.com/content/0cc3c956-6cb2-11ea-89df-41bea055720b> Retrieved April 10, 2020
27. Nguyen Thi Thanh Hai, Ho Chi Minh National Academy of Politics, Vietnam with the guarantee of human rights in response to the Covid-19 pandemic, at <https://hcma.vn/tintuc/Pages/tin-tuc-su-kien.aspx?ItemId=30203&CateID=0> retrieved on December 5, 2020
28. Dalia, Global study about COVID-19: Dalia assesses how the world ranks their governments' response to the pandemic, dated March 3, 2020. See more at: <https://daliaresearch.com/blog/dalia-assesses-how-the-world-ranks-their-governments-response-to-covid-19/> Retrieved April 10, 2020.
