

The Authority of the Government Agencies in the State of Emergency in Vietnam

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The state of emergency is the situation when the society is in severe crisis due to many causes, affecting and threatening the national survival. The declaration of the state of emergency is presumably to increase the power of the ruler's agencies. This article analyses the authority of the national authorities in the state of emergency in Vietnam and some recommendations.

Key words: *authority, state of emergency, National Assembly, President, Government.*

INTRODUCTION

The “state of emergency” is the situation that allows the government to enact policies or perform actions that are usually not permitted on behalf of the community benefits. A state of emergency could be declared when the country is in a state of wars, armed conflicts, natural disasters, catastrophes, epidemics or other causes, which have threatened the nation's survival. Through the above analysis, it can be seen that the state of emergency is a condition in that society is in severe crisis due to many causes, which is affecting and threatening nationwide survival. Therefore, to protect the country, public interests, the lives and properties of individuals and organisations, the competent agencies have set up special measures and rules of conduct that are not allowed under normal conditions. When announcing the state of emergency, the government will set up a system of actions to deal with extremely dangerous or difficult situations. This article analyses the authority of the national authorities in the state of emergency in Vietnam and proposes constructive solutions.

1. Definition and classification of the state of emergency under Vietnamese law

From the legal perspective, the “state of emergency” is the situation that allows the government to enact policies or perform actions that are usually not permitted on behalf of the community benefits' inhabitants (Oren Gross - Fionnuala Ní Aoláin (2006), *Law in Times of Crisis:*

Emergency powers in theory and practice, Cambridge University Press, p. 249). A state of emergency could be declared when the country is in a state of wars, armed conflicts, natural disasters, catastrophes, epidemics or other causes, which have threatened the nation's survival. When announcing the state of emergency, the government will set up a system of actions to deal with extremely dangerous or difficult situations. These types of conduct have the power to increase the rulers' authority while restricting several human rights and freedoms (Mark Tushnet (2005), 'Controlling Executive Power in the war in the War on Terrorism', *Havard Law Review*, No. 118).

Through the above analysis, it can be seen that the state of emergency is a condition in that society is in severe crisis due to many causes, which is affecting and threatening nationwide survival. Therefore, to protect the country, public interests, the lives and properties of individuals and organisations, the competent agencies have set up special measures and rules of conduct that are not allowed under normal conditions. The declaration of the state of emergency is likely to increase the power of the state agencies. Corresponding to the increase of state power is the restriction of rights and interests of inhabitants (Oren Gross - Fionnuala Ní Aoláin (2006), *Law in Times of Crisis: Emergency powers in theory and practice*, Cambridge University Press, p. 267). For example, according to Article 116 of the Spanish Constitution, declaring the state of emergency would give the Spanish governor more power to mobilise the military and police forces in order to intervene in particular situations and be allowed to restrict the movement of citizens or expropriate economic facilities.¹

In Viet Nam, there is a specific document indicating the state of emergency, that is the 2000 Ordinance on the State of Emergency issued by The National Assembly Standing Committee. However, this is a confidential state document; hence, individuals and organisations cannot access it. Based on the 2000 Emergency Ordinance, the Government issued Decree No. 71/2002/ND-CP of July 23, 2002, which illustrates the state of emergency in unpredictable disasters or pandemics. Thus, according to Decree No. 71/2002/ND-CP, there is a state of emergency about massive disasters or hazardous epidemics.

In addition to *the state of emergency about great disasters or dangerous epidemics*, the 2018 Law on National Defense provides *the state of emergency in defense* and the 2004 Law on National Security provides *the state of emergency of national security*. Similarly, the 2013 Law on Natural Disaster Prevention and Control and Decree No. 160/2018/ND-CP issued November 29, 2018, add a *state of emergency on natural disasters*. Thus, based on the cause, purpose, and origin, the state of emergency can be classified into five categories:

- *A state of emergency in defense*
- *A state of emergency on national security*

¹http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf

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- *A state of emergency about great disasters*
 - *A state of emergency on natural disasters*
 - *A state of emergency about dangerous epidemics*

1.1. A state of emergency in defense

According to Clause 10, Article 2 of the 2018 Law on National Defense, the state of emergency in defense means a social state of the country where there is a risk of a direct invasion, or armed aggression or violence occurred but not to the extent of being declared the state of war. When the state of emergency in defense arises, state agencies may apply special measures such as *local mobilisation* and *martial law*. Accordingly, *local mobilisation* means the measure to mobilise all resources of one or several territories in the state of a national defense emergency (Clause 12, Article 2 of the 2018 Law on National Defense). Martial law is a particular state management measure in a limited time, implemented by the Army and is applied in the state of emergency in defense when political security, social order and safety in one or several territories are violated but the local governments could no longer control the situation (Clause 2, Article 21 of the 2018 Law on National Defense). During the period of martial law, the local management is assigned to military units. The military forces' commander in assigned areas may order special measures such as : *i.* ban or restrict people and means of transport; *ii.* suspend or restrict activities in public places; *iii.* mobilise people and means of agencies, organisations, and individuals; *iv.* compulsory purchase and expropriate properties (Clause 5, 6 Article 21 of the 2018 Law on National Defense).

1.2. A state of emergency on national security

According to Clause 1, Article 3 of the 2004 Law on National Security, "*National security means the stability and sustainable development of the socialist regime and the State of the Socialist Republic of Vietnam, the inalienability of the independence, sovereignty, unity and territorial integrity of the Fatherland.*" Thus, the state of emergency on national security is the situation that arises to threaten the survival of the socialist regime and the Socialist Republic of Vietnam and affects seriously the independence, sovereignty, unity, territorial integrity of the Fatherland.

1.3. A state of emergency about great disasters

According to Clause 13, Article 2 of the 2018 Law on National Defense, disasters are natural occurring events or dangerous epidemics spreading on a large scale or catastrophic events caused by human beings or as a result of war, all of which inflict severe loss and damages on people, property and the environment. When the state of emergency about great disasters is announced, the Prime Minister decides to set up a steering committee. In the areas where there is a significant disaster emergency, these measures can be taken: *i.* place signs and set up guard

stations, control the immobile or mobile checkpoints in dangerous areas; *ii.* suspend production and business activities of enterprises, factories, business, and service facilities when necessary; *iii.* strictly control people and vehicles entering dangerous areas; *iv.* restrict out of hazardous areas; *v.* requisition of the means and properties of agencies, organisations, and individuals.

1.4. A state of emergency on natural disasters

According to Clause 1, Article 3 of the 2013 Law on Natural Disaster Prevention and Control, *natural disasters* mean abnormal natural phenomena that may cause damage to human lives, properties, the environment, living conditions, and socio-economic activities. Natural disasters include typhoon, tropical low pressure, whirlwind, lightning, heavy rain, flood, flash flood, inundation, landslide and land subsidence due to flooding or water currents, water rise, seawater intrusion, scorching weather, drought, bad cold, hail, hoarfrost, earthquake, tsunami and other types of natural disasters. When natural disasters cause damage to people, properties, environment, living conditions, and *socioeconomic* activities, they are *considered* natural disaster risks. According to Article 6 of Decree No. 160/2018/ND-CP detailing and guiding the implementation of several articles of the Law on Natural Disaster Prevention and Control, “*Disaster risks are classified into 05 levels with increasing levels of risks, including Level 1, Level 2, Level 3, Level 4 and Level 5 (a state of emergency on natural disasters)*”. Thus, according to the Law on Natural Disaster Prevention and Control 2013 and Decree No. 160/2018/ND-CP, the *state of emergency on natural disasters* is the disaster risk at the highest level - level 5.

When the disaster risks are at level 5, the competent authority will announce the disaster emergency and apply basic measures to respond to natural disasters such as : *i.* restrict or ban people and means from entering dangerous areas on rivers, at sea, in the areas and roads which are deeply inundated, the areas at risk of landslide due to rain or flood, flows and other dangerous areas; *ii.* actively implement production protection measures; *iii.* arrange temporary accommodation, support food, medicines, drinking water, and other necessities for the suffered people; *iv.* mobilise urgently and comply with the direction and emergency decisions on human resources, supplies, means, equipment, and necessities to promptly respond to natural disasters (Article 26 of the 2013 Law on Natural Disaster Prevention and Control).

1.5. A state of emergency about dangerous epidemics

According to Clause 13, Article 2 of the 2007 Law on Prevention and Control of Infectious Diseases, an epidemic means the occurrence of infectious disease when the number of patients exceeds the projected amount during a particular period and in a given area. When the epidemic spreads rapidly on a large scale, which seriously threatens the lives, human health, and *socioeconomic* situations of the country, the state of emergency must be declared.

When the state of emergency about dangerous epidemics occurs, the national anti-epidemic steering committee must be set up. The National Anti-Epidemic Steering Committee comprises representatives of health, finance, information-communication, diplomatic, defense, police, and other related agencies. Based on the scope of the area where the epidemic is announced and the nature of the epidemic, the Prime Minister may himself be or appoint a Deputy Prime Minister or Minister of Health as the Steering Committee's head. The Head of the Steering Committee has the rights (Article 54 of the 2007 Law on Prevention and Control of Infectious Diseases): *i.* mobilise and requisite human and material resources; *ii.* place signboards, checkpoints, and guide travel to avoid epidemic areas; *iii.* request medical examination and handle of transport vehicles before leaving epidemic areas; *iv.* prohibit the gathering of people and other activities that threaten to spread the disease in the epidemic areas; *v.* ban people and means not on duty entering the epidemic; *vi.* organise disinfection and detoxification on a large scale; *vii.* destruction of animals, food, and other objects at risk of spreading the disease to humans; *viii.* apply other necessary measures.

2. Competence of state agencies in a state of emergency in Vietnam

According to the 2013 Constitution, the National Assembly of Vietnam is the only entity with the right to promulgate the state of emergency (Clause 13, Article 70). When prescribing the state of emergency, the National Assembly will use a document as a normative resolution.² Based on the National Assembly's emergency, when there are situations that are expected to arise in practice, the National Assembly Standing Committee will declare the state of emergency throughout the country or in each locality (Clause 10, Article 74 of the 2013 Constitution). When the state of emergency no longer exists, the National Assembly Standing Committee decides to abolish the emergency state (Clause 2, Article 57 of the 2014 Law on Organisation of the National Assembly). When declaring and abolishing the state of emergency throughout the country or in each locality, the National Assembly Standing Committee shall use a document as a normative resolution.³ Based on the resolution of the National Assembly Standing Committee, the President will issue legal documents to announce and abolish the emergencies.

However, due to many different reasons, the National Assembly Standing Committee may not promptly declare the emergency state, which makes the country's coping capacity sluggish. Acknowledged that possibility, the 2013 Constitution provides the President with the right to "announce and abolish the state of emergency throughout the country or in each locality if the National Assembly Standing Committee cannot meet" (Clause 5, Article 88 of the 2013

² Point d, Clause 2, Article 15 of the 2015 Law on Promulgation of Legal Documents provides: 'The National Assembly issues a resolution to regulate the state of emergency'.

³ Point d, Clause 2, Article 16 of the 2015 Law on Promulgation of Legal Documents provides: 'The National Assembly Standing Committee issues a resolution to declare or abolish the state of emergency throughout the country or in each locality'.

Constitution). This is an essential authority of the President, which is crucial for proactively responding and overcoming emergencies. In this case, the President will issue legal documents to announce and abolish emergencies throughout the country or in each locality. Unfortunately, the 2015 Law on Promulgation of Legal Documents does not specify that the President will use the form of the document as an *order* or a *decision*.⁴

When the President has issued a legal document to *announce* the state of emergency, the Government must “*execute the order of encouragement, the order to declare the state of emergency and other necessary measures to protect the homeland, ensure the lives and property of the People*” (Clause 3, Article 96 of the 2013 Constitution). Within the scope of local state management, the Chairman of People’s Committees at all levels shall direct and apply the necessary measures to handle tasks in a state of emergency (Clause 9 Article 22, Article 43, Clause 9 Article 29, Article 50, Article 57, Clause 6 Article 36, Article 64, Article 71 of the 2015 Law on Organisation of Local Governments (amended and supplemented in 2019)).

3. The inadequacy of state agencies’ authority in a state of emergency in Vietnam

First, the authority to regulate the state of emergency does not have a consensus in the Vietnamese legal system.

Currently, in Viet Nam, the state of emergency is divided into different areas. Based on the causes of emergencies, emergent situations can be divided into five categories:

- 1. A state of emergency in defense*
- 2. A state of emergency national security*
- 3. A state of emergency about great disasters*
- 4. A state of emergency on natural disasters*
- 5. A state of emergency about dangerous epidemics*

The state of emergency in defense is specified in the 2018 Law on National Defense. The 2004 Law on National Security governs the state of national emergency security. The *state of emergency on natural disasters* is specified in the 2013 Law on Natural Disaster Prevention and Control. The *state of emergency about dangerous epidemics* is governed by the 2007 Law on Prevention and Control of Infectious Diseases. The *state of emergency about great disasters* is stipulated in the 2000 Ordinance on the State of Emergency. According to the 2013 Constitution, only the National Assembly has the right to promulgate emergency regulations.

⁴ Clause 1, Article 17 of the 2015 Law on Promulgation of Legal Documents provides: ‘*The President shall issue orders and decisions for the general or partial mobilization, to announce and abolish emergencies based on resolutions of the Standing Committee of the National Assembly; to announce and abolish a state of emergency throughout the country or in each locality in case the National Assembly Standing Committee cannot meet*’.

Therefore, the continued maintenance of the 2000 Ordinance on the State of Emergency is neither legal nor rational in terms of both the perception and the implementation process. It is unreasonable because the National Assembly Standing Committee's ordinance will not fully reflect the thoughts and aspirations of citizens by laws - documents issued by the highest representative agencies of the people of the country. It is illegal because the 2000 Ordinance on the State of Emergency stipulates issues directly related to human and citizen rights' restriction. The National Assembly is not assigned and cannot maintain regulations restricting human rights and citizen rights in legal documents other than laws, because only the law is the form of the legal document on this issue.

Second, the authority to declare and announce the state of emergency is not scientific and includes serious confusion.

According to the 2013 Constitution, the National Assembly Standing Committee declares a state of emergency; the President will then announce the state of emergency. In case the National Assembly Standing Committee cannot set up the meeting to declare the state of emergency, the President is entitled to announce the state of emergency. As a result, announcing the state of emergency is the mandatory procedure and belongs to the President's authority. Meanwhile, the National Assembly Standing Committee's authority to declare an emergency is not the mandatory procedure.

In terms of language, the declaration is a notice to carry out the matter that has been decided (Nguyen Lan (2006), *Dictionary of Vietnamese words*, The Ho Chi Minh City Publishing House, p. 74), and the announcement is to notify the public (Nguyen Lan (2006), *Dictionary of Vietnamese words*, The Ho Chi Minh City Publishing House, p. 419). Accordingly, the declaration is the decision on a problem and then instructs the other entities to execute. Meanwhile, the announcement is just a message to other subjects to know. Both declaration and announcement are to inform one or some subjects. However, the difference between declaration and announcement is in the scope of informing the news. Accordingly, the declaration is the news report in a narrow range, with the inner nature among agencies and organisations related to each other. Meanwhile, the announcement is large-scale dissemination for everyone to know (Ministry of Justice - Institute of Legal Science (2013), *Law Dictionary*, The Justice Publishing House. P. 173).

In a legal sense, these two terms are different in that the declaration is the decisive authority, and the announcement is just a formal authority. In some cases when there is no declaring procedure, the announcement may also be deemed to include the right to decide. The National Assembly Standing Committee declares the state of emergency, which means that the decision-making power belongs to the National Assembly Standing Committee. The President's announcement of the state of emergency means that the President shall publicly notify all individuals and organisations about the state of emergency which the National Assembly

Standing Committee decides. The exception is when the National Assembly Standing Committee cannot meet up to declare it; the President will announce the emergency state. In this case, the President's announcement contains the right to decide the state of emergency.

In Viet Nam, the President's role is ceremonial, so the President's authority is mostly ceremonial (such as publishing the Constitution and laws) (Noel Cox - Raymond Miller (2006), *New Zealand Government and Politics*, Oxford University Press, p. 133). However, due to the head of the state's solemn nature representing the national concentration, unity, and solidarity on behalf of the country, the President has a unique advantage in deciding the state of emergency (Cao Vu Minh - Truong Tu Phuoc (2020), 'Regulations on the President of Vietnam', *Kutafin University Law Review*, Volume 7, No 2). Therefore, in necessary cases (when the National Assembly Standing Committee cannot meet up), the President has the right to decide and announce the state of emergency. Because of this factor and the publicity for everyone to know, the announcement of the emergency state under the President's authority is the mandatory procedure. Even when the National Assembly Standing Committee declares the state of emergency, the "means of conveying to lives" is still needed, which is the procedure for the President's announcing the state of emergency.

Unfortunately, many legal documents currently in effect pay little attention to this issue. The 2000 Ordinance on the State of Emergency and Decree No. 71/2002/ND-CP uses the same formula "*National Assembly Standing Committee or the President declares a state of emergency.*" The 2007 Law on Prevention and Control of Infectious Diseases also went into that "downfall" when stipulating: "*If the National Assembly Standing Committee cannot meet up immediately, the President shall issue the declaring order for the state of emergency.*" Even Decree No. 160/2018/ND-CP - the legal document issued right after the effective date of the 2013 Constitution is not aware of the difference between declaration and announcement: "*In case of natural disasters beyond level 4, the Central Steering Committee for Natural Disaster Prevention and Control shall report to the Prime Minister and request the President to declare a state of emergency*" (Article 11 of Decree No. 160/2018/ND-CP).

As stated, declaration and announcement are two different procedures with different legal implications and implemented by different entities, so there should be no confusion. The President has only the right to *announce* but no right to declare a state of emergency. Therefore, Clause 3, Article 96 of the 2013 Constitution also has an inaccuracy when stipulating: "*The Government must enforce the mobilization order and declaring order for the state of emergency.*" It should be "*announcing the order of the state of emergency*" because the orders are the written forms issued by the President while not declaring but announced is the mandatory procedure.

Third, the authority to apply special measures in an emergency state is stipulated unclearly, repetitively, and paradoxically.

According to Clause 3 Article 96 of the 2013 Constitution, when the emergency state is announced, the Government's mission is to conduct special measures to protect the Fatherland, and ensure the people's lives and property. Through the above provisions, the 2013 Constitution stipulates that the Government has the task of implementing special measures to all emergencies without distinction of a national defense or disaster emergency.

However, Clause 4, Article 18 of the 2015 Law on Government Organisation (amended and supplemented in 2019) seems to limit the implementation of necessary measures to the *state of emergency in defense*. Specifically, the name of Article 18 of the 2015 Law on Government Organisation (amended and supplemented in 2019) is the Government's Mission and authority in defense management. Thus, all the provisions mentioned in this Article 18 are directed to the defense field, which only covers the *state of emergency in defense*, not all *states of emergency*. The above deduction becomes more sensible based on the 2019 Law on Militia and Self-defense Forces, which stipulates the state of emergency in defense and the state of emergency (in general) are two irrelevant issues.⁵

According to Article 24 of the 2008 Law on Purchase and Requisitioning of Property, the authority to decide the requisition of properties belongs to the Minister of Finance, the Minister of Defense, the Minister of Public Security, the Minister of Transport and Communications, Ministry of Agriculture and Rural Development, Minister of Health, Minister of Industry and Trade, and Chairman of the provincial People's Committee. Apart from these entities, no individual or organisation is entitled to requisition property of organisations or individuals. However, the 2018 Law on National Defense allows military units to requisition property of individuals and organisations in a state of defense emergency. Specifically, Clause 5, Article 21 of the 2018 Law on National Defense stipulates that "*during the martial law, the state management in the particular areas is assigned to the military units. The commanders of the military units who have authorities to manage the provincial-level locality shall be entitled to purchase and requisition any property*". According to the principle of *applying* legal documents, the competence to requisition properties prescribed in Article 21 of the 2018 Law on National Defense, though *contradicts* Article 24 of the 2008 Law on Purchase and Requisitioning of Property, will still take priority.⁶

⁵ Clause 2, Article 32 of the 2019 Law on Militia and Self-Defense Forces stipulates: '*In a state of war, a state of emergency in defense, a state of emergency, martial law or a curfew, the mobilization and use of the Militia Self-Defense Force defense complies with the Defense Law and other relevant laws*'.

⁶ Clause 3, Article 156 of the 2015 Law on Promulgation of Legal Documents provides: '*If various legislative documents promulgated by the same agency contain different regulations on the same issue, the one that is promulgated later shall apply*'.

Not only the 2018 Law on National Defense but also the 2000 Ordinance on the State of Emergency and Decree No. 71/2002/ND-CP also have contradictory provisions on the authority to requisition properties compared to Article 24 of the 2008 Law on Purchase and Requisitioning of Property. In particular, when the state of emergency about great disasters is announced, the agencies that take special measures in the emergency state may have the right to requisition means and properties of organisations and individuals. After the state of emergency is abolished, the agencies that have requisitioned means and properties of agencies, organisations and individuals during the emergency state shall immediately return such means and properties to their lawful owners or managers. In case the requisitioning agency is dissolved, before the dissolution, it is responsible for handing over all requisition documents, papers as well as requisitioned means and properties to the authorities. The People's Committee of the province where such facilities and assets are stored shall continue to handle the refund (Article 8 of Decree No. 71/2002/ND-CP). Although Decree No. 71/2002/ND-CP does not specify the authority to requisition property of individuals and organisations in a state of major disaster emergency, the traditional legal sense allows us to conclude that the Steering Committee has the right to requisition property. Some phrases such as "*in case the requisitioning agency is dissolved,*" "*hand over all requisition documents, papers and requisitioned means and properties to the People's Committee of the province*" are aimed at the Steering Committee because the Steering Committee is the agency that will be dissolved when the state of emergency is abolished (Clause 6 Article 4 of Decree No. 71/2002/ND-CP). When the Steering Committee is dissolved, it is necessary to hand over all of the requisition documents, papers as well as the requisitioned means and properties that have not yet been returned to the People's Committee of the province where the facilities and assets are stored for further reimbursement. Thus, compared with Article 24 of the 2008 Law on Purchase and Requisitioning of Property, the 2000 Ordinance on the State of Emergency and Decree No. 71/2002/ND-CP has different provisions subjects who have the right to requisition assets and property of individuals and organisations. Although both the 2000 Ordinance on the State of Emergency and Decree No. 71/2002/ND-CP have a lower effect than the 2008 Law on Purchase and Requisitioning of Property, these are the two documents directly regulating when a state of emergency about great disasters arises. Therefore, the codes of conduct in these two documents (including the authority to requisition assets of the Steering Committee) may still be prioritised in a state of emergency about great disasters.

According to the 2013 Law on Natural Disaster Prevention and Control, besides the requisition of the property of individuals, organisations, state agencies also have the right to mobilise assets (materials, means, equipment, necessities) to serve disaster response activities. However, the legal implications of asset requisition and asset mobilisation do not have clear distinctions.

Regarding legal content, requisition of property means the State can use the property of organisations, individuals and households for a definite period in cases of extreme necessity due to national defense, security, and national interests. Meanwhile, the mobilisation of assets

is also the State's limited adoption of organisations, individuals, and households in case of serving activities concerning responding to the state of emergency on natural disasters (also in extreme cases for security reasons and in the national interest). *Regarding impacted subjects*, the requisition is applied to assets of organisations, individuals and households, while mobilisation is also applied to those of organisations, individuals, and households. *In terms of coercive properties*, when both requisition and mobilisation are applied, the organisations, individuals and households are forced to hand over properties to state agencies. *Regarding adverse consequences*, organisations, individuals and households who delay, refuse or resist the execution of requisition properties shall be examined for liability. Similarly, organisations, individuals and households who oppose or obstruct decisions on mobilising human resources, materials, means, equipment, and necessities in emergency service are also administratively sanctioned.⁷

In addition to the 2013 Law on Natural Disaster Prevention and Control, The 2004 National Security Law also gives the Prime Minister the power to mobilise manpower, material resources in order to protect national security. However, the measure to mobilise human and material resources does not have clear legal implication; there is an overlap with the measures to requisition assets. Similarly, the Law on Prevention and Control of Infectious Diseases 2007 sometimes stipulates the requisition, other times regulates the mobilisation of human and material resources with serious confusion about the content and authority to apply these measures.

4. Complete the legal provisions on the authority of state agencies in a state of emergency in Vietnam

First, the National Assembly needs to enact the Law on the State of Emergency to replace the 2000 Ordinance on the State of Emergency.

According to the 2013 Constitution, the National Assembly is the only agency having the authority to regulate the state of emergency. When the state of emergency is declared, state agencies may restrict several lawful rights and interests of individuals and organisations. The constitutional principle is that human rights and citizens' rights can only be restricted by law. Therefore, the existence of the 2000 Ordinance on the State of Emergency - with many provisions restricting human rights and citizens' rights - is not consistent with the rule of law. To solve this problem, the National Assembly must enact the Law on the State of Emergency soon to replace the 2000 Ordinance on the State of Emergency.

⁷ Articles 54 and 55 of the 2007 Law on Prevention and Control of Infectious Diseases allow the Head of the Anti-epidemic Steering Committee to have the right to require and mobilise facilities, medical equipment, drugs, chemicals, medical supplies and muscles. The department of public services, transportation and other resources are required to fight epidemics. However, the 2007 Law on Prevention and Control of Infectious Diseases did not distinguish specifically when the property was *requisitioned* or when *property mobilisation* was applied.

Currently, according to Clause 2, Article 15 of the 2015 Law on Promulgation of Legal Documents, “*the National Assembly has issued a resolution to regulate the state of emergency.*” This provision is unreasonable because the resolution’s scope in most cases is social relations groups that are important but not as basic and inclusive as the law. The law is the document regulating social relations affecting the entire society, directly affecting the entire population. Meanwhile, in many cases, the National Assembly’s Resolution is the document for stabilising the work and organisational structure of the National Assembly, thus indirectly affecting the people (Phan Trung Hien (2011), ‘Is the Resolution of the National Assembly a Law document or a legal documents?’, *Journal of Legislative Studies*, No. 18). For individuals and organisations, the use of laws being the main form to regulate social relations will facilitate access to the law (Hoang Thi Ngan (2013), ‘Activities of issuing Resolution of the National Assembly’, *Journal of Legislative Studies*, No. 14). The state of emergency directly affects the whole society, limits the legal rights and interests of individuals and organisations, so it is necessary to be defined in the Law, not the Resolution.

According to the author, when making the Law on the State of Emergency, lawmakers should agree to adjust the state of emergency in the same law rather than separate it into different laws. The promulgation of only one general law governing the state of emergency will minimise scattered, contradictory and overlapping conditions governing this matter. The state of emergency affects the lawful rights and interests of all individuals and organisations. Therefore, enacting a general law about the state of emergency is also the necessary legal guarantee for the accessibility of all subjects.

Different types of state of emergency will have different causes for emergencies. Therefore, if the general law about the state of emergency is established, it is still advisable to classify the law on the state of emergency to design the respective specific rules. According to the author, based on the cause of the dangerous situations, the Law on the State of Emergency can be divided into categories such as : *i.* a state of emergency in defense, *ii.* a state of emergency on natural disasters; *iii.* a state of emergency about epidemics. Because of the similarities in causes, nature, and consequences, the state of emergency national security needs integrating to become a content in the defense emergency state. Meanwhile, the state of emergency on natural disasters is caused by disaster risks at level 5 and dangerous epidemics cause the state of emergency on epidemics. They can be classified as different types of emergency states independent of the defense emergency state.

Second, harmonising legal regulations ensures the accuracy and uniformity of the subjects’ authority in the state of emergency.

According to the 2013 Constitution, the 2014 Law on Organisation of the National Assembly, the 2015 Law on Promulgation of Legal Documents, the National Assembly Standing Committee promulgates the resolutions to declare the state of emergency. The President

promulgates legal documents announcing the state of emergency. Declaring the state of emergency and announcing the state of emergency are two different procedures with different legal implications, so there should be no confusion. Based on the provisions of the 2013 Constitution, the legal documents about the state of emergency need amending to ensure the accuracy and consistency between the authority to declare the emergency state of the National Assembly Standing Committee and the authority to announce a state of emergency of the President.

When declaring the state of emergency, the National Assembly Standing Committee will issue the resolution's legislative document. However, the current law does not specify that the President will use the legal documents as orders or decisions to announce the state of emergency. This can only be "inferred" from the relevant laws.

According to Clause 5, Article 88 of the 2013 Constitution: *"Based on the resolution of the National Assembly Standing Committee, the President issues an order of general or partial mobilization, announcing and abolishing the state of emergency"*. Clause 6, Article 19 of the 2018 Law on National Defense stipulates: *"Based on the resolution of the National Assembly Standing Committee, the President issues an order of general or partial mobilization"*. Besides, Clause 21, Article 21 of the 2018 Law on National Defense also stipulates: *"When the political security, social order and safety in one or several localities are so seriously violated that their competent authorities no longer take control of the situation, the State President shall issue the martial law order upon the request of the Government"*. Thus, based on Article 88 of the 2013 Constitution, when announcing or abolishing the state of emergency, the President must issue legal documents in the form of orders to be highly effective. However, the above explanation is only for academic and research purposes, not for official regulations in legal documents. The announcement and implementation of legal provisions on the state of emergency are significant for each nation. Therefore, in order to create a uniform application of the law, the legislators need to specify the President to issue an order to announce a state of emergency.

Based on the order to announce a state of emergency, the Government will organise the implementation and take necessary measures to protect the Fatherland and protect the People's lives and properties. The implementation of necessary measures to protect the Fatherland, the lives and properties of people shall be applied in all the states of emergency, not only in the defense emergency state. Therefore, legislators also need to adjust Clause 4, Article 18 of the 2015 Law on Organisation of the Government (amended and supplemented in 2019) in the direction of expanding the application to all the state of emergencies to avoid the perceptions of application only in the defense emergency state.



Third, lawmakers need to have a clear distinction between special measures applied in the state of emergency and measures applied in normal conditions.

Regarding the criteria of the level, the law should specify the ladder and the nature of dangerousness to create a uniformity in the awareness of the emergency state. In this case, we can acquire legislative techniques of the 2013 Law on Natural Disaster Prevention and Control and Decree No. 160/2018/ND-CP. Accordingly, the social status can be divided into distinct levels, such as normal, alert, emergency... When society is in the normal state, the legal rights and interests of individuals and organisations ensure a harmonious relationship with the state agencies' power. When the society is in the state of alert, state agencies will be assigned more power, which leads to the restriction of individuals and organisations (restriction of travel; suspending entertainment activities; mobilising properties). When declaring the state of emergency, the authority of the state agency will be designed at the highest level, and individuals and organisations will be limited several rights also at the highest level (prohibition of travel; prohibition of people concentration; suspension of all activities in public places; compulsorily purchase and requisition of properties). The design of the social status ladders creates the conditions for state agencies to quickly recognise and promptly cope with the actual situations while ensuring authority, avoiding the widespread application of special measures even when the state of emergency has not occurred.



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