

# JOGI FÓRUM PUBLIKÁCIÓ

## *Some thoughts in connection with the Vietnamese law<sup>1</sup>*

recension

The basis of this short treatise is a Hanoi edited book entitled “ Selection of fundamental laws and regulations of Vietnam”. That is a unique volume regarding its objective and content. Its content is unparallel, for it shows us the basic elements of a legal system, which is absolutely known to a Central-East European country, and absolutely unknown because of the Asian features. Its aim is uncommon too, because it doesn't change the main features of the political system of Vietnam, but makes possible and evident an enormous step toward the joint ventures. How to attract the foreign capital into the country, and the new market possibilities can be interesting for a practising lawyer as well.<sup>2</sup>

Vietnam, – precisely the Socialist Republic of Vietnam – is situated in Indo-China, between the South-China Sea, Kambodia, Laos, and China. Though Vietnam is not the only one in the 20<sup>th</sup> century, who strived for freedom while being a colony, but its special way is determining from the point of view of its political-legal system. We have examined only a few basic laws, nevertheless – or exactly that's why – it is important to sketch the main feature of these laws: to introduce its legal family. It's not a simple task, for it belongs – within the religious and traditional family – to the Far-East legal system because of its geographical position, to the roman-german legal family because of its history – since being a French colony – and to the non-European socialist system because of its political system. The special feature of its historical development is first of all to be a French colony, what resulted that its legal development was influenced – over and above the traditional law – firstly by the Roman-German legal family, secondly by the independence simultaneously established socialist system, what was mixed with nationalism. But we should not forget the American, and North-Korean influence, previous because of the former division of the country, the latter in consequence of the similar political system. The Roman-German legal system – leaved by the colonizers – shows only formal similarity with socialist laws showing the pattern of the Sowjet influence, that's why in Vietnam – with vietnamese speciality – the characteristics of the socialist law is determining.

Democratic centralism, as governing principle, the Communist Party of Vietnam, the Marxist-Leninist doctrine and Ho chi Minh's thought as society organising powers, the power-concentration instead of sharing powers, the stressed role of the state authority in the field of culture and

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<sup>1</sup> Selection of fundamental laws and regulations of Vietnam, The Gioi Publishers, Hanoi, 1995. 2<sup>nd</sup>. edition

<sup>2</sup> That's the reason why dr. István Kállay is dealing with the laws of the Far-East at the Law History department of the Széchenyi István University in Győr. For the last 50 years of Vietnam is a very interesting surveillance place of the reception of the „foreign laws”, only with Japan similar. We can get an answer for the question: How is possible to force and apply a completely foreign law between different circumstances, and what could be the consequences?

education, the legislative-explanatory-executive power of the Standing Committee<sup>3</sup>, the declaration of human rights, the suppression of private property<sup>4</sup>, legal relations that get public law features, the idea which says law is the device of the political power<sup>5</sup>, and the glorification of the results of the revolution are the main features of the law of the Socialist Republic of Vietnam.

The strange explanation of the freedom of press and speech is another special characteristic of the socialist law and of Vietnam. The freedom of press, and the prohibition of censorship are fundamental laws of a democratic state. If these laws suffer any damage, we can hardly believe in the enforcement of the human rights, for putting the press into the sphere of state power queries the information mediatory role of the media.

That's the situation in Vietnam too, where the device of the dissemination of the information, what is necessary for the society life (press), and the sphere of the culture and ideology (publication) is under state surveillance. In the case of the press that begins with the mysterious Council of Ministers, and in the case of the publication the Ministry of the Culture and Information is on the top of the power.

Over and above the constitutional subordination – although both laws declare the prohibition of censorship – there are a lot of measures, which doubt the reality of the independence.<sup>6</sup>

The order of the constitutional institutions is similar to the experienced in the press: it's working by the democratic centralism and with each other strongly interlocked power centres. The principle of sharing power can be traced – e.g. in the declaration of the independence of the Court of Justice – but it has got not too much practical importance. All the institutions are beside one central power branch, and their importance depends on their share of the central power.

*De jure* the National Assembly has the most important powers, but *de facto* it belongs to the Standing Committee of the National Assembly. Although the most important institution of the Constitution is the National Assembly – as it is the legislative and constitutional organ – the everyday work, and the tasks of the National Assembly belong to the Standing Committee.

Their relationship is similar to two circles touching each other with a common segment – and this segment is the most determining part – but have completely different parts too (as can be seen in Ill. 1.). The National Assembly is the only one institution which is directly elected. It has two sessions in a year, and these sessions are prepared by the Standing Committee, who is the deputy of the National Assembly between the sessions. It has got its own legislative power, wide range of supervision and controlling functions, and carries out constitutional control. It can suspend not only the execution of the decisions of the classical public administrative organs, but the execution

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<sup>3</sup> Constitution Art. 92-99.

<sup>4</sup> E. g. Land Law

<sup>5</sup> „The state exercises the administration of society by means of the law; „ Constitution Art. 12.

<sup>6</sup> Law on Publication Art. 22. Law on Press Art. 17., 22., 24.

of the written documents (!) of the People's Court, if – according to the Standing Committee's opinion – they're contrary to the constitution, laws or the decisions of the National Assembly. But it exercises supervision and control over the activities of the People's Council, and can annul its wrong resolutions.

Beside this “state in the state” jurisdiction, the Government is the top organ of the public administration, and it is responsible for the National Assembly. (But it is reporting not only to the National Assembly, but to the Country's President<sup>7</sup> and also to the Standing Committee.) The Government is a connecting link to the People's Councils and the People's Committees, for it is the constitutional obligation of the Government to direct them, and to control the People's Councils. The constitutional control belongs not only to the Standing Committee, but in connection with the directives, decisions and resolutions of the People's Council, and those of the Chairmen of People's Committees of provinces and cities under direct central rule to the prime minister – in the latter case, the final decision belongs to the Standing Committee.

In the diagram of the country's public administration (see Ill. 1.) the next steps are the People's Councils, who are the local organs of the state authority. In compliance with the Vietnamese administrative units, the People's Councils and the People's Committees are in hierarchical relationship with each other and – putting into practice the principle of double subordination – with the central organs of the state authority. The People's Committees are the executive organs of the People's Councils, they are not directly elected, but are established by the appropriate People's Council (see Ill. 1.). The People's Council shall pass resolutions on measures for the implementation of the constitution and the law at local level, and it shall fulfill all duties entrusted by the superior authorities and all obligations to the country as a whole etc. Within the bounds of its duties and powers, the People's Committee shall issue decisions and directives and supervise their execution.

It is its responsibility to implement the Constitution, the law, the formal written orders of superior state organs and the resolutions of the People's Council. An other really important rule is, that the Chairmen of the People's Committee may suspend or annul the – according to his opinion – wrong decisions of the subordinated People's Councils and People's Committees.

Special feature of the Vietnamese administration of justice, that it's not a unified one. There are local People's Courts and Supreme People's Court, the Military Tribunals and „*other tribunals, established by law*”. Under special circumstances the National Assembly may decide to set up a Special Tribunal, and some law allow other organs to decide special disputes (e. g. the different conciliation bodies of the Land Law or the Labour Code). Theoretically the Supreme People's Court is the highest judicial organ of Vietnam, and it supervises and directs the judicial work of

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<sup>7</sup> The Country's President gets only a small part from the central power, it has got only representative functions.

local People's Court, Military Tribunals, the Special Tribunals and other tribunals, unless otherwise prescribed by the National Assembly at the establishment of such tribunals. Although the independence of the judges and assessors is a constitutional principle, it is interesting to think over that the President of the Supreme Court is responsible to the National Assembly, or when it is not in session, to its Standing Committee, and to the Country's President, and the President of the local People's Court is responsible to the People's Council.

It is clear from the Penal Code and from the Law on Bankruptcy that there is a kind of organisation of the public prosecutors in Vietnam, but instead of this, the People's Office of Supervision and Control is described in the Constitution. This Office supervise and controls obedience to the law of ministerial rank, other organs under the government, local organs of power and citizens. It exercises the right to initiate public prosecution, and ensures a serious and uniform implementation of the law. The Office is a hierarchical organisation, the lower office is subject to the higher one, and – according to this hierarchy – the Office is responsible to the National Assembly, and to the People's Council.

The Constitution creates a special link between family – as the cell of society – socialist patriotism and the internationalist attitude. It prescribes to the state as a task to create the conditions for the development of nationals. It encourages the nationals to create a happy and cultured (!) family, marked by patriotism, love of socialism, a genuinely internationalist spirit, friendship, and cooperation with all nations in the world. The main features of education are part of the constitution too, which declare its aim as follows:<sup>8</sup> to form and nurture the personality, moral qualities, and abilities of the citizen, to train working people, and equip them with skills, to imbue them with dynamism and creativeness, national pride, good morality, and the will to strive for national prosperity so as to meet the need to build and defense the country.<sup>9</sup> The passionate patriotism, the communist-utopian principles<sup>10</sup> are well in one basket with the rights of national minorities<sup>11</sup> or with the democratic principles just like equality before the law<sup>12</sup>, the compulsory and free primary education, instructions regarding people living with disabilities, the emancipation of woman<sup>13</sup>, the

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<sup>8</sup> Constitution Art. 35.

<sup>9</sup> Ibid.: Art. 45.: „All units of the people's armed forces must show absolute loyalty to the motherland and the people; their duty is to stand ready to fight to safeguard national independence and sovereignty, the country's unity and territorial integrity, national security and social order, to safeguard the socialist regime and the fruits of the revolution...”

- Art. 48.: „The state shall develop to the full the people's patriotism and revolutionary heroism.....”

☞ Art. 76.: „To betray one's motherland is the most serious crime.”

☞ Art. 77.: ”It is the sacred duty and the noble right of the citizen to defend his motherland.”

☞ Art. 79.: „The citizen has the duty to..... join in the safeguarding of national security and.....the preserving of national secrets.....”

<sup>10</sup> Ibid.: Art. 3.

<sup>11</sup> Ibid.: Art. 5; 39; 94.

<sup>12</sup> Ibid.: Art. 52.

<sup>13</sup> Ibid.: Art. 63; 59.

prohibition of discrimination, the principle of universal, equal direct and secret suffrage<sup>14</sup> the right for legal remedy<sup>15</sup> the freedom of religion<sup>16</sup> and the sanctity of private ownership<sup>17</sup>.

The declaration of the right to property is similar to the independence of the judges, because the content of these principles is limited by several disposition. The cause of the distortion of the latter principle – as we have already mentioned – comes from the disregarding of the principle of sharing of powers and from enclosing the administration of justice to the sphere of state authority. The sanctity of private ownership – in compliance with the socialist pattern – can be explained only with some restriction also. According to the Land Law, the land is the property of the people and is subject to administration by the state. The right of use can last for not more than 50 years, if the possessor respects the provisions and use the land according to its intended purpose. The right of use can be inherited but basically cannot be alienated. That's why the sanctity of private ownership, and the right to property have sense only concerning the personal property.

The sanctity of private ownership and the right to property are in tight connection with the property of companies. So it is important to return to the Constitution's II. Chapter, which is dealing with the economic system. Pursuant to the latter, the economic policy of the state – its aim is to strengthen the country and the well-being of the people - and the economic structure has got three pillars: the property of the people (state property), social property and private property. Pursuant to the 19 Article of the Constitution the state property has got a kind of special autonomy in the field of the trade and production. The social property is based upon the principles of free contribution, democracy and mutual benefit, and the private property has its basis in family economies and in the creation of companies which are useful for the society and the people. The family and the family economies have already been risky institutions in the Byzantine law, but it's enough to remember what was the result of the application of this principle in the 60-70<sup>th</sup> in connection with the ground-plots and holiday-plots. (E.g.: High number of the divorce cases.) This threefold division is further divided by the Constitution when it set apart the sanctity of private ownership in its 23-25 Art. Once it declares that the property of individuals and companies cannot be expropriated, but in other places declares, that the forcible purchasing – according to the market prices – is possible if it's necessary because of national defence, national security and any other national interests.

Its particular rules can be found in other laws. But in order to help the foreign economic relationship the Art. 25 prohibits the expropriation of the foreign companies.

According to the Law on Companies, there are two forms of the companies in Vietnam, and it is allowed to everybody – of course there are some exceptions – to join them. These two companies

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<sup>14</sup> Ibid.: Art. 5; 7.

<sup>15</sup> Ibid.: Art. 74.

<sup>16</sup> Ibid.: Art. 70.

<sup>17</sup> Ibid.: II. Chapter

are the joint stock companies and the limited liability companies. But the law on private enterprises acknowledges the so-called private firms as well. The lay-out plan of these laws is the same, the same people can take part in the establishment procedure, and the same are prohibited to take part in any of them. We can say – with a little exaggeration – that regarding the establishment and the bankruptcy proceedings the private firms are simplified companies. Art. 2 of the Law on Companies stipulates the criteria of the so-called companies in general: *“Limited liability companies and shareholding companies...are enterprises to which the members together contribute capital and share the profit and losses in proportion to the size of their capital contributions and are only responsible for debts incurred by the company within the limits of their own capital contributions to the company.”* Though the companies can freely choose their working scope, there are some favourable sectors, which require the permission of the prime minister. Such sectors are: production and distribution of explosives, poisons and toxic chemicals, exploitation of valuable minerals, large scale production and supply of electricity or water, production of information transmitting equipment, postal and telecommunications services, broadcasting, television and publication, sea and air transportation, specialized import and export activities, and last but not least the international tourism. These sectors and occupations are subject to authorizations by the prime minister in the case of private enterprises too.

The companies have got the right to the independent decision-making in their working field, and they are independent in deciding on the use of remaining income, provided that they fulfill their obligations, including tax-obligations, and the establishment of the compulsory reserve fund.<sup>18</sup> Although the companies have the right to recruit and hire labour force as required by its business, according to the Art. 13, they have to give priority to the use of domestic labour.

The second chapter of the Law on Companies stipulates the establishment of the companies. It is very interesting to see, that the basic procedural rules are mixed with substantive legal elements, just like the rules concerning the legal capital, and charter capital, the information that shall be included in the company charter, and rules concerning the members of the company etc.

In order to establish a company, all founding members shall submit an application to the People's Committee of the province, or equivalent administrative units, where the company office is based. The People's Committee, upon receipt of an application, shall issue or refuse to issue a permit to establish a company within sixty days of receipt of the application. In the case of refusal of a permit, the reasons shall be clearly set out. Against this refusal, the person concerned, shall have the right to lodge a complaint with the Prime Minister. But this is not enough to the establishment of a company. The company – after regaining the permission of the People's Committee – shall register its business activities, and this business registration file shall include the establishment

<sup>18</sup> The aim of the compulsory reserve fund is to set up a security reserve. Unfortunately we have no details about this institution.

permit, company charter and a certificate acknowledging the existence of its business office. Business registration for a limited liability company shall be completed within one hundred and eighty days of the issue of an establishment permit. This time-limit for a shareholding company is one year. This registration must be therefore a kind of public registration, but unfortunately there are no details concerning it in our corpus.

In connection with the dissolution of the company the following must be mentioned: an application requesting dissolution shall be submitted to the People's Committee that issued the establishment permit. But there are other rules concerning the private enterprises. According to the Art. 16 of the Law on Private Enterprises, a private enterprise may be dissolved only if its owner guarantees full payment of all debts and complete settlement of all contracts signed by the enterprise. If the private enterprise cannot fulfill these criterias, the same rules shall be applied as in the case of bankruptcy of companies. If we think of the competences of the state (procedural rules, and the prime minister as the decision-making forum) we should reckon, that the application of the rules of bankruptcy somehow belong to one organ of the state. But instead of this, only the courts have got jurisdiction to settle a request for the declaration of an enterprise's bankruptcy. And the implementation of the decision on an enterprise's bankruptcy declaration belongs to the enforcement office for judgements under the Department of Justice, and the department for enforcement of civil judgements under the Ministry of Justice. The provisions of the Law on Bankruptcy aims to declare if a company is able or not to overcome the financial difficulties, and if not, its aim is to pay the mature debts. In some cases the Law allows the people concerned – just like the trade unions or the creditors after the limit of 30 days from the day of sending the demand bill – to decide if they want to request a court to settle the bankruptcy of an enterprise or not, and in other cases that request is a commitment. If the firm – after the necessary measures – is not able to pay the matured debts it is not a possibility to request the bankruptcy but a commitment. Surviving depends on the company concerned, for if it can set out a plan, which fits the law, the meeting of creditors, and which is endorsed by the court, then the aim is to provide the working ability. But if it cannot work out such a plan, or it is not approved by the meeting of the creditors, then the following step is the dissolution, for the court will settle the bankruptcy of the company.

The Law on Foreign Investment – which aims to bring the foreign capital into Vietnam – point out special rules concerning the companies. Basically it allows the foreign investment in any field of the Vietnamese economy, and it prefers some economic branches, just like tourism, developing the infrastructure and the industrial capacity etc.

According to the law, the foreign organization and individuals may invest in Vietnam in the following forms: contractual business cooperation, joint venture enterprise or corporation, and enterprise with 100 per cent foreign owned capital. In an absolutely laconic manner it says

concerning the contractual business cooperation that the parties shall agree upon and expressly state in the business cooperation contract, the objectives and nature of business as well as the rights, obligations and responsibilities and the relationship between them. And any two or more parties may cooperate in the establishment of joint venture enterprise, and this enterprise shall have legal capacity.

Foreign organizations and individuals may establish enterprises with 100 per cent foreign owned capital, in which case they shall assume full management of the enterprise subject to the control of the State authority responsible for management of foreign investment, and shall enjoy the rights and be liable to carry out the obligations as stated in the investment licence. The duration of an enterprise with foreign owned capital shall be decided authorized in no case beyond seventy (70) years. As in the Law on Companies, Vietnamese citizens shall be given priority in the recruitment of personnel for an enterprise with foreign capital.

As the Constitution, the Law on Foreign Investment repeats, that the invested capital and assets of foreign organizations and individuals shall not be expropriated or requisitioned by administrative measures, and enterprises with foreign owned capital shall not be nationalized. According to this law, foreign organizations and individuals shall have the right to transfer abroad their share of profit derived from business operations, payments due as a result of provision of technology or services, the principal and interest due on loans made in the course of business operations, their invested capital and other sums of money and assets lawfully owned by them.

Depending on the sector of the economy in which the investment is made, the location of the investment, the scale of capital contribution, the volume of export etc., the joint venture enterprise may be exempted by the State authority from payment of income tax for a maximum period of two years dating from the first profit making year and it may be allowed a fifty per cent reduction in income tax for a maximum period of two succeeding years.

In special cases where encouragement of investment is needed, income tax may be reduced by the state authority by up to ten per cent of profits earned, and the period of tax exemption or reduction may be longer than that set out above.

Tax payment is one of the earliest obligation of the people toward the state, for the state as a kind of organization of powers always needed the support of its subjects. We can say, that this obligation is as old as the state itself. In most of cases the constitution of the states have some provisions in connection with the public burdens.

The Constitution of Vietnam hasn't got provisions concerning taxes but its legal system of course knows some kind taxes and rates, just like the turnover tax, the special sales tax, the corporate income tax, the income tax on high income earners and the natural resources tax. This latter can be seen as a kind of rental and this is approved by the law (Law on Foreign Investment in Vietnam)

itself, when it says: “Enterprises with foreign investment capital and business joint ventures entering into contracts before the day when this ordinance comes into force, which exploit and pay for resources in accordance with the provisions set out in Art. 29 of the Law on Foreign Investment in Vietnam, shall continue to pay in the same manner and shall not pay resources tax as set out in this Law.” (According to the Art. 29 of the above mentioned law, *the enterprises with foreign owned capital...shall pay rent for the use of any land in Vietnam.*) Some other law mention the category of agriculture tax.<sup>19</sup>

Organizations, and individuals carrying on business in production, construction, transportation, commerce, provision of services and other businesses and which have turnover, shall pay turnover tax. This shall be paid after the turnover monthly. Of course – avoiding the overloading – the law recognise the reduction and the exemption from turnover tax. According to its Art. 14 the small business establishments shall pay turnover tax every three or six months. Beyond the exemptions, the agricultural production, the production of goods, and the production of goods for export – because they have to pay other taxes – are not subject to turnover tax.

The subject of the special sales tax assimilate to the Hungarian excise tax. Economic organizations and individuals who manufacture the goods referred to in the law, shall pay special sales tax at the place where goods manufactured. Such goods are for example the tobacco products or the alcohol. Special sales tax shall be paid monthly but once only in respect of each item of goods. Goods which are for export shall be exempt from special sales tax. The special sales tax can be reduced or exempted if the production of the establishment concerned is adversely affected by natural disaster, war or other contingencies, or if a newly established organization has expanded by way of applying new technology with fulfilment of special sales tax has suffering from losses shall be considered for exemption from reduction of special sales tax of no more than 30 per cent of amount levied for a period no longer than two years.

Everybody from all economic sectors which earn income within the territory of Vietnam shall pay corporate income tax. But there are some exceptions, because business activities which are subject to income tax under the Law on Foreign Investment in Vietnam, and agricultural production which are subject to agriculture tax are not subject to the corporate income tax. The basis of this tax is the total annual taxable income. The tax rate is different according to the annual income. General rule is, that business organisations and individuals have to pay the tax with fixed tax rates laid down in the laws, and the so-called small businesses shall pay flat rate income tax.

The personel income tax is regulated by an ordinance, and not by a law. The precise name of it is income tax on high income earners. This is the title of the law too, and it refers to the fact, that this kind tax shall be paid only over a certain income. The basis of the tax can be the so-called regular –

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<sup>19</sup> E.g.: Law on Corporate Income Tax, and Law on Turnover Tax.

just like the total amount of the average monthly income – or irregular incomes, just like money or other commodities in the form of gift sent by other overseas residents, or income by the transfer of technology, licencing of rights, and lotteries winnings.

According to the progressive method tax-free is the regular income till 1,200,000<sup>20</sup> dong (currency in Vietnam) per a year, and after that amount the tax rate is from 10% to 60%. There are other rules regarding irregular income, here the limit of the tax exemption is 2,000,000 dong, and the tax rate is from 5% to 30% according to the progressive method. Of course there are other rules regarding the foreign residents in Vietnam, and regarding the foreigners if they don't live in Vietnam. If living in Vietnam the limit of tax exemption is 5,000,000 dong, and after that, the tax rate is between 10% to 50%. If living outside Vietnam after every income shall be paid at least 10% income tax. The regular income tax is stipulated on a monthly base, while the irregular income tax is levied on case by case. Tax exemptions and reductions are first of all in connection with the principle of vis maior. There is a separated ordinance on natural resources tax. Because all national resources are under the public ownership and under the exclusive management of the State, all organizations and individuals involved in the exploitation of resources shall pay natural resources tax. Natural resources tax shall be calculated on the basis of the volume of output the price charged per unit of production, and the tax rate calculated according to the value of the particular resource exploited. Tax rate is between 2-40%, but the detailed rules are determined by the Council of Ministers. There is no tax exemption concerning this kind of tax, but there is a kind of tax relief.

An other important question exists in connection with the companies and private enterprises, namely: the labour law.

The Vietnamese Labour Code contains not only the rules concerning employment, but the rules of vocational training and those of social insurance too. Similar to the Hungarian solution, some of the workers are subject to other laws and regulations, but some of the provisions of the Labour Code are applicable to them. Such exceptions are applied to the government officials, elected or appointed office-bearers, members of the People's Army, and People's Security forces, members of people's organisations, political and social organisations and members of cooperatives.

One of the most important task of the state concerning labour law is to develop and allocate labour resources. The state defines the indexes on employment creation in five-year and annual socio-economic development plans, creates necessary conditions, provides financial support and loans, tax reduction or exemption and take various measures of encouragement to enable persons who are able to work to create employment on their own, while various organisations can develop new trades and thus generate substantial employment for workers.

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<sup>20</sup> According to the datas on the webside of the Hungarian National Bank, 1US\$=15333,5 dong.

As mentioned above, characteristic feature of the Labour Code, that it includes the rules concerning the vocational training. These rules refer to a system in which the vocational training doesn't belong to the educational system, but aims providing for the employers the perfect employee – for example by the trainings of the employer. The vocational training doesn't belong to one appointed organ, but vocational training facilities must be registered. They are allowed to collect training fees and must pay tax. Facilities which provide vocational training to disabled and sick war veterans, disabled persons, members of ethnic minorities or are located in areas where many people are without work or have lost their jobs, facilities which provide training on traditional trades and crafts, apprenticeship in the workshops or at home can be given tax reduction or exemption. Trainees of vocational training facilities must be at least 13 years old, but there are some exceptions.

A complete chapter is designed to the question of wages. The wage of a worker is agreed upon by the employer and the employee in the labour contract, but must not be lower than the minimum wage level set by the state. It is really interesting that minimum wages diverge from each other according to occupations and according to geographic areas. The workers have the right to know the reason for any deduction from their wages, and the employer is not allowed to punish labourers by cutting their wages. The Code goes into details e.g. about occupational safety and health, and it has got specific regulations concerning female workers, under-age workers, disabled workers, aged workers etc. Labour disputes have to be solved by negotiation, and only after its totally failing can be decided the case by the court. Under the chapter concerning labour disputes we can find lot's of procedural rules. Its reason is quite simple, for there is no law on legal procedures (or at least it is not mentioned in the book). Other characteristic feature is the role of the reconciliation. The organs of conciliation cannot be evaded, and their role is not declarative, for in the case of individual labour dispute the record on unsuccessful conciliation has to be send to the People's Court. And if an employer doesn't agree with the decision of the Provincial Council on Labour Arbitration, he or she has the right to request the People's Court to re-examine the decision of that Council. And the third characteristic feature is, the question of strike, which is associated with the collective labour dispute. If a collective of workers doesn't agree with the decision of the above mentioned Council, it has the right to apply for a resolution by the People's Court to organize a strike. The strike in Vietnam is a tool of enforcing of interests of the workers, but it is possible only after the failed conciliation mechanism, and only after the collective labour dispute. If the strike is deemed to be a serious danger to the national economy or public safety, the Prime Minister has the right to postpone or terminate it.

Over and above the lack of the procedural rule the civil code is completely missing from our corpus and perhaps from the Vietnamese legal system. Of course it doesn't mean that there is no civil code

because there is no need for it. It is perhaps the feature of the communist systems, namely that the public law lose its primacy, and the private relations become somehow a kind of public relations. But this cannot be the perfect interpretation of this missing, which has the following consequence: basic civil and procedural laws are regulated in “special” laws and ordinances. In addition to the lack of the civil code, and the procedural codes, we can find embarrassing variety concerning the legal decision-making process and the hierarchy of the sources of law. As we do not have the law about them, what we can do is to compile these rules from the Constitution and from the construction of the book. It is clear that the legislative and constitutional power belongs to the National Assembly. The decision of the National Assembly exists too, but there is nothing concerning its legal feature in this collected laws. The Standing Committee enacts decree-laws on matters entrusted to it by the National Assembly, and its own right is to enact resolutions. The Country’s President – although it has got only representative function – shall issue orders and decisions for the accomplishment of his duties and exercise of his power. The government shall issue resolutions and decrees, the Prime Minister decisions and directives, the heads of government organs decisions, directives and circular, the People’s Council resolutions, the People’s Committee decisions and directives. Unfortunately it is not completely clear from this book to which organ belong the ordinances – these form a separate part of the book – , which are the individual decisions etc. The very likely hierarchy of the sources of law can be seen in Ill.2.

But there are some interesting law-preparing methods what deserve attention. The structure of the laws and regulations is quite similar. After the general provisions – which normally contain provisions concerning the duties of the citizens concerning the fulfilling of the provisions of the law<sup>21</sup> – come the operative part with some chapters, then provisions regarding the law-breakers, and last the final provisions. At the end of the final provisions we can find the “small penal codes” – regarding the petty offenders –, and after a certain limit the “real penal code” shall be applied. From codificational point of view the final clause can be of three types: first, which enumerates the laws to be abrogated. That meets the requirements of the principle of rule of law, and the security in law. Secondly when the final clause says “*All previous laws and regulations which are in contravention of the present Code are repealed*”. An interesting question is in that case, who can ascertain whether a rule is contrary with the rule in force or not. And the third solution is, when an other rule has got the enacting clause – e.g. this may be in the case of the Penal Code, but we can not be sure about it. This is only a fiction, because this law can not be found in the book. This collection will be absolutely familiar for those lawyers who were educated on the communist legal system, but it will be absolutely interesting too, because of the Asian characteristic features. Over and above the theoretical approachment, this volume aims the investors, and shows the changes in Vietnam since

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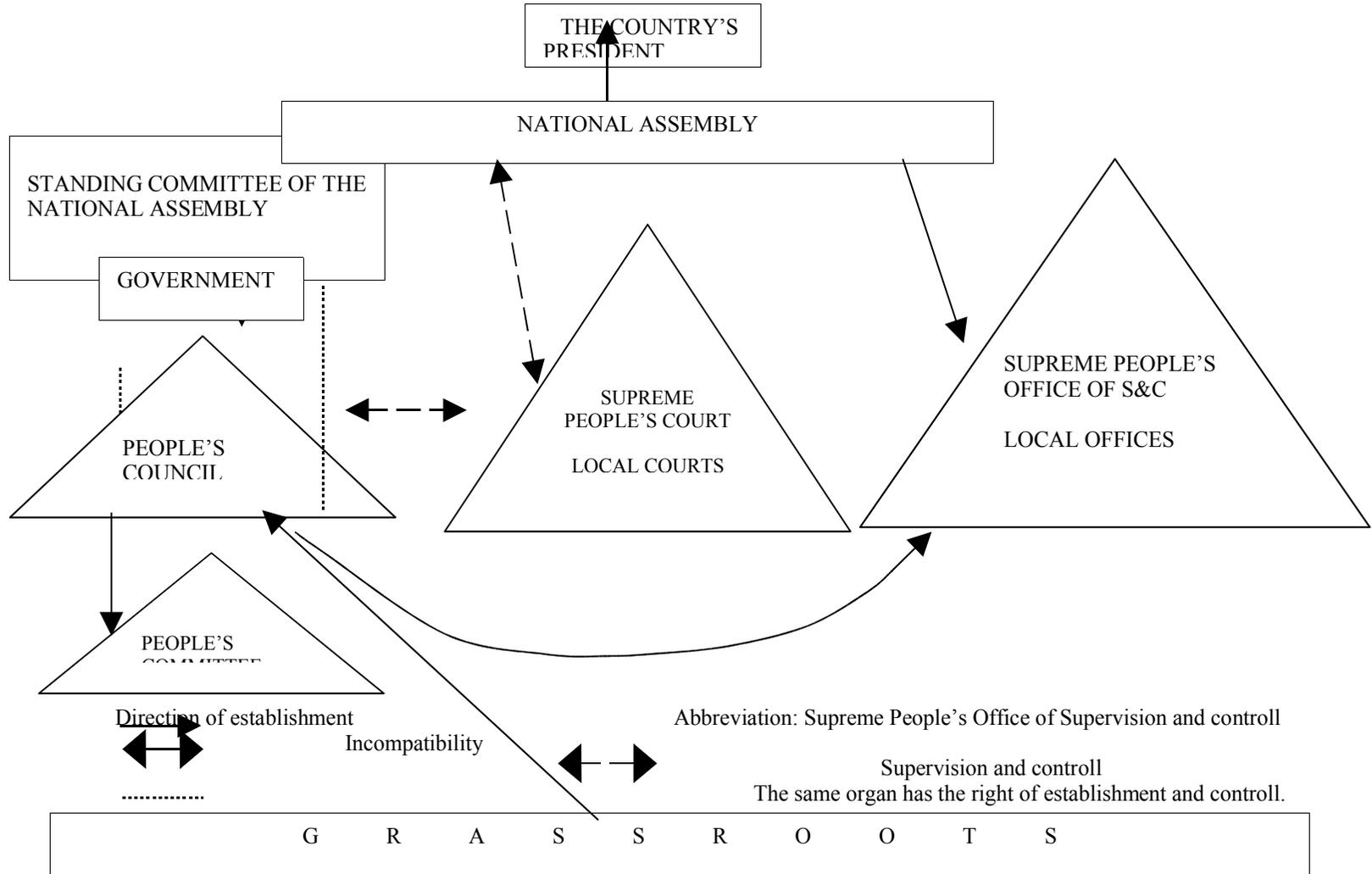
<sup>21</sup> Just like in the Constitution Art. 79.

1986. The purpose of creating a multi-component commodity economy functioning in accordance with market mechanisms become clear with the Law on Foreign Investment in Vietnam in 1987, with the amendment of the Constitution in 1992, and also with the amendment of the Law on Companies in 1994. Vietnam undergoes changes day by day, and nowadays it is under total renovation. This collected laws and regulations had also the aim to help know and better understand the laws of Vietnam especially for those who are interested in doing business there.

February, 2005. Budapest

dr. Kinga Rigó

1st. ILLUSTRATION



2nd ILLUSTRATION

CONSTITUTION

Law

Decree-law

Resolution of the National Assembly

Decree-law of the Standing Committee

Resolution of the Standing Committee

Order and decision of the Country's President

On the basis of the above mentioned:

Resolution of the Government

Decree of the Government

On the basis of the above mentioned:

The decision, directive, and circular of the governmental organs

On the basis of the Constitution, laws and written documents

Resolution of the People's Council

Decision of the People's Committee

Directive of the People's Committee



jogi hírek

interjúk

publikációk

vitafórum

szaknévsor

jogi szakkönyv-katalógus

jogi állásbörze

szakmai rendezvények

heti hírlevél



**országos ügyvédi szaknévsor**

magyar, angol és német nyelven

ügyfél keres ügyvédet szolgáltatás