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Controlling state power in Vietnam after Doi moi (1986): an increasing challenge and perspective

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Abstract: Controlling state power – a prerequisite in every democracy – assures ‘we the people’ fundamental principles and prevents power abuse from public officials. Due to the characteristic of the political regime, this issue has not captured Vietnam and other socialist countries’ attention. In the past, since the severe abuse of power threatened socialism, the Communist Party of Vietnam (CPV) and the State strived continuously to control state power from the Doi moi era (1986). This article analyses the premise triggering the escalating abuse of power for corruption in Vietnam since the Doi moi era. It then reveals the CPV and the state’s achievements and limits in establishing controlling state power mechanisms over the last 30 years. From the ground, the paper suggests some initiatives to enhance the efficiency in controlling state power in Vietnam in the future.

Keywords: state power; control of state power; Doi moi era; Vietnam.

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1 Control of state power: the Vietnamese perception

1.1 State power

According to Oxford Dictionary, power is “the ability or capacity to do something or act in a particular way,” or “the capacity or ability to direct or influence the behaviour of others or the course of events.” There, in society, exist many forms of power with different subjects and objects. In Vietnam, state power (*quyền lực nhà nước*) is a type of power in a broad sense. This concept is first recognised in the 1980 Constitution (Article 6) and then is emphasised in the 1992 Constitution (Article 2) and the current 2013 Constitution (Article 2).

From an academic perspective, generally, the Vietnamese scholars’ view is that state power is also one of the forms of power in society with its characteristics, which are:

- 1 associated with political power (power held by the ruling class/political party in society) [Nguyễn, (2015), p.5], or an expression of political power [Đào, (1996), p.290]
- 2 mainly exercised by the state apparatus [Nguyễn, (2015), p.5]
- 3 impact on all organisations and individuals in all areas of social activities [Nguyễn, (2015), p.5]
- 4 derivative from people’s power.

From a legal perspective, although there is no specific definition of state power, all the Constitutions mentioned above of Vietnam define state power as ‘belonging to the people’. It shows that Vietnamese constitution drafters were influenced by the theory of people’s sovereignty by Western thinkers. The theory of popular sovereignty was mentioned by many Western thinkers such as John Locke, Rousseau (especially in Rousseau’s Social Contract) and later by Abraham Lincoln, the 16th President of the United States of America (1861–1865) asserted in his famous speech at Gettysburg on November 19, 1863, after the South-North American Civil War, through the famous phrase: “the state of the people, by the people, for the people” (Goodwin, 2005) and saw it as the ideal state model that the American people must build after the civil war. The state and the constitution drafter were later embodied in the Constitutions of many countries, including the United States Constitution in 1787, the Constitution of the Federal Republic of Germany in 1949, the Constitution of the French Republic of 1958, the Constitution of the Federal Republic of Germany in 1958, and the Japanese Constitution of 1946 (ConstitutionNet, n.d.). Similarly, the Vietnamese Constitutions from 1946 to 2013 all affirmed the people’s sovereignty. By the 2001 amendment, the 1992 Constitution added the phrase affirming that Vietnam is “a socialist rule of law state

of the people, by the people, for the people” (Article 2). This phrase was later reaffirmed in Article 2 of the current 2013 Constitution.

Also, in the 2001 amendment, the 1992 Constitution, in Article 2, added the provisions: “State power is unified, there is assignment and coordination among state agencies in the exercise of the rights to make decisions. Legislative, executive and judicial.” This provision was further expanded in the 2013 Constitution, also in Article 2, Clause 3 “State power is unified, with assignment, coordination, and control between state agencies in the exercise of legislative, executive and judicial rights” (the author italicises other words) strongly influenced by the decentralisation theory of Montesquieu (see Montesquieu and Goldschmidt, 2005a, 2005b).

From the above analysis, the point of view of people’s power is transparent in the Constitutions of Vietnam and is close to the universal thought on this issue in the world. The addition of the concept of ‘state power’ since the 1980 Constitution is quite peculiar since the term is rarely mentioned in countries’ constitutions (ConstitutionNet, n.d.). However, the provision that state power ‘belongs to the people’ in 1980, 1992, and 2013 Constitutions shows that the concept of state power, legally, does not destroy the idea of people’s power that has been affirmed in all Vietnamese Constitutions so far. In practical terms, the concept of state power in the 1980, 1992, and 2013 Constitutions has strengthened the constitutional basis for discussions of state power control in Vietnam in recent decades.

1.2 Control of state power

According to Cambridge Dictionary, control means “the ability or power to decide or strongly influence the particular way in which something will happen, or someone will behave, or the condition of having such ability or power.”

In the Vietnamese Dictionary, ‘control’ means “Check to detect and prevent what is against the regulations” [Trung tâm Từ điển học, (2013), p.674]. From another angle, control means “Place within the jurisdiction of some object” [Trung tâm Từ điển học, (2013), p.674].

From the concept of control, some Vietnamese scholars believe that state power control is a system of mechanisms implemented by the state and society to keep the exercise of state power effective (see Trịnh, 2008), or in a more specific sense, it is “monitoring, reviewing, evaluating to prevent abuse of state power” (Nguyễn and Vũ, 2014).

Since Doi Moi (1986), Vietnamese researchers have approached and absorbed much universal knowledge about control of state power, especially the theory of separation, restraint, and counterbalance, which Aristotle mentioned, and John Locke later perfected by Montesquieu. Here, the purpose of separation is to prevent an undue concentration of power in a state agency, which will lead to authoritarianism under Montesquieu’s view. According to him, to control state power, state branches must have a ‘function to prevent’ or ‘a function to review’ each other’s activities because “If the executive does not have the power to prevent the legislative, the legislation will become peremptory.” “If the legislature does not have the power to stop the executive, it must have the function of seeing how the laws enacted are carried out” (Montesquieu and Goldschmidt, 2005a). No branch can take over, ‘encroach’ on the rights of another branch. The checks and balances are also often enshrined in the Constitutions of many countries. For example,

under the US Constitution, the legislative branch has the power to impeach and remove the president (who is the head, representing the executive branch) and approve the cabinet personnel nominated by the president. The legislative branch also can oversee the judiciary through the approval, conviction, and removal of supreme court judges. Meanwhile, to counterbalance the legislative branch, the President can veto laws passed by the legislature, while the Supreme Court can declare a law passed by the legislature unconstitutional and invalid (Patrick et al., 1993).

In general, modern states today, regardless of political institutions, are built on the principle of separation, and all apply (in different ways and to different degrees) the principle of separation. Therefore, in Vietnam, many scholars have long advocated for applying theories of separation and counterbalancing to control state power (Nguyễn, 2010, 2007, 2006), seeing it as an “internal mechanism for controlling state power” (Nguyễn, 2017, 2014). This argument means abandoning the socialist democratic centralism model (Phan, 2006) applied in constructing the state apparatus in the 1959 and 1980 Constitutions.

The addition of the phrase “State power is unified, with assignment and coordination [and control] among state agencies in the exercise of legislative, executive and judicial powers” in Article 2 of the 1992 Constitutions (amended in 2002) and the 2013 Constitutions show that Vietnamese constitution drafters have also absorbed the spirit of the doctrine of separation to design a mechanism to control state power. However, Vietnam is seen as “not copying the doctrine of separation in a stereotyped, mechanical way” (Trần, 2019) and showing ‘cautious’ in applying this doctrine (Trần, 2019). On the one hand, the nation creates a new mechanism to control state power. On the other hand, Vietnam still retains the characteristics of the socialist political system. The entire state apparatus, including the legislative, executive, and judicial branches, are all under the comprehensive leadership of the Communist Party of Vietnam (CPV).

Besides the mechanism of controlling state power from within mentioned above, Vietnamese scholars also mentioned the external mechanism of controlling state power – that is, by social organisations, the press, and the people themselves (see Hannah, 2007). Institutions controlling external state power are considered indispensable, inexpensive, and effective in ensuring openness and transparency in the exercise of state power [Trần, (2011), p.24]. However, for social organisations, the press, and the people to be effective in controlling state power, it is necessary to respect and ensure the full implementation of the rights to freedom of association, freedom of thought, freedom of expression (including freedom of the press and publication) according to the global standards of international human rights law.

Due to the nature of a socialist state with only one leading party, Vietnam currently does not have an institution to control power through the mutual supervision of political parties. In pluralistic political regimes, it is very effective for opposition political parties to monitor the ruling party’s exercise of state power (Eggers and Spirling, 2018; see McCaffrie, 2012). To fill that gap, in Vietnam, the Communist Party has established a mechanism to control power within the party, operating in parallel but combination with the power control mechanism in the state apparatus. The internal power control mechanism of the CPV includes regulations on ethical standards and qualifications of party members; the process and procedures for admission, appointment, and introduction of party members to positions in the system of the party and the state; processes and procedures for disciplining party members who violate standards of ethics and conduct when holding positions in party organs and the state apparatus (Communist Party of

Vietnam, 2018). In the words of General Secretary of the Communist Party of Vietnam Nguyen Phu Trong, the purpose of these measures is to ‘lock power in an institutional cage’ so that power cannot be used arbitrarily (Hoa Hiên, 2017).

2 Controlling state power in Vietnam after Doi moi (1986): increasing challenge

According to Lord Acton, “Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority; still, more when you superadd the tendency of the certainty of corruption by authority” (Dalberg-Acton, 1907).

Abuse of power is a common rule of those in power, and the State of Vietnam is no exception. Since independence from the French colonialists in 1945, the State of Vietnam has faced abuse of power, especially corruption, by civil servants at all levels.

However, some studies show that the abuse of power and corruption of civil servants in Vietnam had increased sharply since Doi Moi (1986), when Vietnam opened up for international economic integration (Le and Hartley, 2017; see Revilla Diez, 2016). Before Doi Moi, the elite was involved in widespread corruption compared to people’s impoverishment (Kolko, 1997; Thayer, 2009). However, since Doi Moi, the abuse of power by civil servants has tended to be more common and increasingly diversified, complex, and sophisticated, not only for embezzlement of the property but also for many purposes and other dangerous targets. Specifically, corruption takes place at all levels and branches in the state apparatus, in many forms that are both blatant and sophisticated, with a close association of ‘top-bottom’, ‘inside-outside’, with ‘underground law’ (see World Bank, 2012). Even high-level forms of corruption such as state manipulation and crony capitalism are considered to have appeared in Vietnam (Rowley and Truong, 2009; Vu and Vu, 2021).

The seriousness of the abuse of power in the state apparatus in Vietnam is reflected indirectly through the performance of anti-corruption agencies. Specifically, from 2013 to 2020, Vietnam’s anti-corruption agencies prosecuted and investigated 14,300 corruption cases, with 24,410 defendants, tried more than 11,700 cases at first instance out of 22,600 defendants, including 800 severe corruption cases (Committee for Internal Affairs of the Communist Party of Vietnam, 2021). Also, from 2013 to 2020, there were 131 thousand Party members disciplined for their involvement in corruption, including 110 cadres under the management of the Central Committee (27 members of the Party Central Committee, former members of the Party Central Committee, four Politburo member, former member of the Politburo, more than 30 general officers in the armed forces), 18 cadres under the management of the Central Government were criminally prosecuted (including one Politburo member, seven members of the Politburo, member, former member of the Party Central Committee, four ministers, former ministers, seven general-level officers in the armed forces) (Nguyễn, 2020). Corruption cases tend to be larger and larger, with increasingly serious nature, causing damage of many trillions of dong (many millions of dollars) such as:

- 1 the case of Nguyen Duc Kien and his accomplices (Việt Dũng, 2014a)
- 2 the case of Duong Chi Dung and accomplices (Việt Dũng, 2014b)

- 3 the case of Vu Viet Hung and his accomplices (Tr, 2014)
- 4 the case of Vu Quoc Hao and his accomplices (Hải Duyên, 2019)
- 5 the case of Huynh Thi Huyen Nhu and his accomplices (Hải Duyên, 2018).

The seriousness of the abuse of power in the state apparatus in Vietnam is evident in the ranking of Vietnam's Corruption Perceptions Index (CPI) by Transparency International in the years from 2012 to 2020 (Towards Transparency, 2021).

From the Towards Transparency (2021) data, it can be seen that Vietnam has always been among the most corrupt countries in the world in recent years. In addition, the statistic also shows that the corruption situation in Vietnam has not changed significantly despite the outstanding efforts of the Communist Party and the State of Vietnam in recent times.

The increase in the number and complexity of corruption cases as outlined above has posed significant challenges to controlling state power in Vietnam since Doi Moi (1986). Many reasons lead to this situation. The most prominent are:

Firstly, Doi Moi (1986) transformed Vietnam's economy from a centralised, bureaucratic, and subsidised economic model like that of socialist countries to a capitalist-style market economy, thereby creating spectacular economic growth of Vietnam [Nguyen, (2016), pp.33–34]. However, many studies show that the same economic development also increases the alienation of power of civil servants [Gregory, (2016), p.229]. In market economic relations, many private enterprises are willing to bribe officials in exchange for favourable business activities, causing many officials to 'fall' [Gregory, (2016), pp.229–230]. This tendency is different from the centralised economy, bureaucracy, and subsidies in Vietnam before Doi Moi. All economic actors were state-owned enterprises. All economic activities were carried out according to a unified government plan, so there is a little loophole for giving and receiving bribes.

Second, the transformation of the economic management model after Doi Moi requires Vietnam to amend almost the entire legal system, especially the laws on the economy, trade, finance, and labour (Gillespie, 2006) is an extensive and complex legislative work that Vietnam is not able to complete in a short time. As a result, after more than 30 years of Doi Moi, the Vietnamese legal system still has many loopholes and unreasonable contents (Gillespie, 2006). These loopholes and unreasonable content have created favourable conditions for officials to abuse power and corruption (Vu and Vu, 2021).

Third, Doi Moi in Vietnam took place after the collapse of the socialist system in the former Soviet Union-Eastern Europe (and a consequence of that collapse). This collapse cost Vietnam political and economic support and created an ideological crisis for civil servants (Lane, 2010; Zukowski, 1996). While socialist ethical values such as "I am for everyone, everyone is for me", "Party members go first, the country follows" are overlooked along with Marxist ideology, public moral values in public services in the world such as integrity, transparency, accountability have been slow to be popularised in the state apparatus. As a result, many bad habits emerged and became common among civil servants in Vietnam since Doi Moi, such as selfishness, ambition for power, faction, partiality [Gregory, (2016), p.230]. These vices promote abuses. The misuse of power became widespread, creating a significant challenge for the control of power in Vietnam.

Fifth, as mentioned above, Vietnam has all internal and external state power control mechanisms except for mutual control between political parties. However, these

mechanisms operate in a highly formal manner, with low efficiency (to be further analysed later) and are slow to modify. Therefore, this is also a challenge with the control of state power in Vietnam today.

3 Controlling state power in Vietnam after Doi moi (1986): attempts and limitations

3.1 The development of the mechanism on controlling state power in Vietnam after Doi moi (1986)

The post-Doi Moi state power control mechanism is the successor and development of the mechanisms established in previous Vietnam periods. Controlling state power is not a new issue to be mentioned in Vietnam. Vietnamese dynasties applied many measures to prevent the mandarins' abuse of power and corruption even in the feudal period. For example, during the reign of Le Thanh Tong, the court established and consolidated the Luc Khoa and Hien Ty, which were agencies with the function of monitoring activities and handling violations of mandarins in the government apparatus (Phạm, 2016). During the Nguyen Dynasty, an agency named Censorate (Đô sát viện) was also established, which was responsible for monitoring the compliance with the law of the entire state apparatus from central to local levels (Đỗ, 1997).

After gaining independence (1945), the fledgling Democratic Republic of Vietnam government soon paid attention to the issue of controlling state power [Gregory, (2016), p.228]. On November 23, 1945, President Ho Chi Minh signed Decree No. 64, establishing a Special Inspection Committee to supervise all the work and staff of administrative committees and agencies of the Government. The Decree grants the Special Inspection Board vast powers such as: Receiving complaints from the people; Investigate, interrogating, examining documents and papers of administrative committees or government agencies necessary for supervision; Suspend the arrest and detention of any staff member of an administrative or government committee who has committed an offence before being brought to the Government Council or Special Court for trial. This Decree can be seen as the first law on state power control and anti-corruption of the new Vietnam.

The 1946 Constitution established a mechanism to control power within the state apparatus both horizontally and vertically. Horizontally, the 1946 Constitution stipulates the establishment of a system of agencies holding three branches of legislative power (People's Parliament), executive (Government), judicial (Court), and at the same time stipulates the relationship between the two branches of the legislative and the executive. The system is based on mutual restraint-counterweight between these two organs. Specifically, according to the 1946 Constitution, the People's Parliament has the right to elect the President and establish a special court to try the President for treason (Articles 47, 51). Meanwhile, the President has the right to request the Parliament to re-discuss the laws passed by the Parliament and the right to appoint judges of the courts (Article 64). From a vertical perspective, the 1946 Constitution establishes a supervisory and control relationship between the central government and the local government by stipulating that only state agencies must control lower-level state agencies (Articles 59, 60). In addition, the 1946 Constitution also indirectly established a mechanism to control power outside the state apparatus through the recognition of the people's sovereignty; fundamental civil

and political rights, including freedom of speech, freedom of publication, freedom of organisation, and assembly (Article 10); the right to elect and remove elected deputies (Articles 17, 18) and the right to vote on the Constitution and matters related to the national destiny (Article 21).

Although some provisions on separation and restraint between the three branches of state power in the 1946 Constitution were no longer inherited, the 1959 and 1980 Constitutions still kept the provisions on legislative control (National Assembly) with executive bodies (government) and judicial organs (Supreme People's Court). In addition, the People's Procuracy system was established (from the 1959 Constitution) with the function of prosecutors to supervise the observance of law by state agencies, acting as a new institution in the mechanism of controlling power within the state apparatus. For the control mechanism outside the state apparatus, the provisions on human rights of the 1946 Constitution were still inherited in the 1959 and 1980 Constitutions. Besides, the 1959 and 1980 Constitutions also supplemented regulations on citizens' right to complain and denounce (from the 1959 Constitution); and regulations on the political and legal status of the Vietnam Fatherland Front, socio-political organisations, and other members of the Front (since the 1980 Constitution).

The 1992 Constitution has made adjustments (especially in the 2001 amendments and supplements) in the direction of consolidating the power control mechanism within the state apparatus, reflected in the provisions on the assignment and coordination of the State apparatus in the exercise of legislative, executive, and judicial powers (Clause 2, Article 1); stipulates on the right of the National Assembly to be able to "vote of confidence to those holding positions elected or approved by the National Assembly" (Clause 7, Article 84); provides for the right of the President to recommend 'review' the ordinance passed by the Standing Committee of the National Assembly... The mechanism for controlling power outside the state apparatus was also strengthened in the 1992 Constitution, reflected in the addition and concretisation of regulations on supervision. And social criticism of the Vietnam Fatherland Front system (Articles 9, 10) and citizens' civil and political rights.

Article 2 of the 2013 Constitution added mutual 'control' between agencies exercising legislative, executive, and judicial powers (besides the assignment and coordination prescribed in Article 2 of the Constitution). Article 2 of the 1992 Constitution only prescribed the assignment and coordination between state agencies. Article 2 of the 2013 Constitution then added mutual 'control' between these bodies. This regulation marked a significant turning point in the constitution of Vietnam's internal state power control mechanism. This mechanism focuses on the mutual control between the three legislative bodies, executive, judicial, rather than division and coordination. In addition, the 2013 Constitution only added provisions on two more constitutional bodies (National Electoral Council and State Audit) and mentioned the establishment of a mechanism to protect the Constitution by law. These are new institutions in the power control mechanism within the state apparatus that has never been mentioned in the previous Constitutions of Vietnam.

3.2 Limitations of the current mechanism on controlling state power in Vietnam

Although both internal and external power control mechanisms have been established in Vietnam, compared with many other countries, these mechanisms still have some limitations, which can be generalised as follows:

3.2.1 The limitations of internal mechanism on controlling state power

Although enshrined in the 2013 Constitution, the legal framework for mutual control between the National Assembly, the Government, and the Court in exercising legislative, executive, and judicial powers in Vietnam have not yet been established completely (Trương and Đăng, 2021).

Expressly, the Constitution and laws of Vietnam have not yet provided for how to control the legislative power of the National Assembly. Usually, in other countries (and in Vietnam's first 1946 Constitution), the legislative power of the parliament is controlled through the veto of the head of the executive branch. However, in Vietnam today, the President is the head of state, but not the head of the executive branch. In addition, the 2013 Constitution only stipulates the authority of the President to request the Standing Committee of the National Assembly (an agency of the National Assembly) to review the Ordinance passed by this agency but does not stipulate the right of the President to request the National Assembly to review a law passed by it. Similarly, neither the Constitution nor the specialised laws of Vietnam contain provisions on the authority of the Prime Minister (who is the head of the cabinet) to request the National Assembly to review a law passed by this body.

Similarly, in most countries in the world, the legislative power of the parliament can also be controlled through the constitutional jurisdiction of the courts (constitutional courts or ordinary courts) (Chen and Harding, 2018). However, in Vietnam, the current Constitution of 2013 only stipulates in a general way that the constitutional protection mechanism is prescribed by law (Article 119). So far, the constitutional protection mechanism under Article 119 of the 2013 Constitution has not been developed. Researchers and members of the National Assembly are still debating which constitutional protection body model is appropriate to the characteristic of Vietnam's political system – when in principle, the constitutional body would not be included in making decisions contrary to the Party's views (Bui, 2018).

The current specialised laws of Vietnam (Law on Organization of Courts, Laws on Judicial Procedures) also do not stipulate the constitutional jurisdiction of the courts. Therefore, the courts of Vietnam, including the Supreme People's Court, have no authority to declare a law promulgated by the National Assembly, a Decree of the Government, or a Decision of the Prime Minister, to be unconstitutional. The constitutionality of laws promulgated by the National Assembly of Vietnam is still based on the internal review mechanism, namely through verification by the National Assembly's Committees before submitting to the National Assembly session for parliamentarians to discuss and vote on (Hoàng, 2019).

Thus, it can be said that according to the current law of Vietnam, the executive and judicial branches have no way to exercise control over the legislative branch. Currently, in a broad sense, the National Assembly is only subject to the Government's control in some matters regarding personnel and finances of the Office of the National Assembly. Specifically, the number, ratio structure, staffing, operating budget of the Office of the National Assembly and the system of offices of the National Assembly delegations in the provinces and central cities will have to comply with regulations and subject to the inspection of the Ministry of Finance and the Ministry of Home Affairs of the Government. However, this control is low-level and has never exerted significant pressure on the National Assembly.

In contrast, the control mechanism with the executive authority in Vietnam is currently quite specific. Even so, the effectiveness of executive control in practice is still limited (Vũ, 2019). According to the 2013 Constitution, the National Assembly has the power to elect the Prime Minister (Article 98), “appoint, relieve and dismiss the Deputy Prime Minister, Ministers and other members of the Government” (Article 98.2), “...regulate the organization and operation of the Government...” (Article 70.6). “Exercise the power of supreme oversight over the observance of the Constitution, laws and resolutions of the National Assembly and review work reports of Government...” (Article 70.2). The National Assembly deputies have the right to question the Prime Minister and cabinet members (Article 80). The Prime Minister is the head of the Government and responsible to the National Assembly for the work of the Government and assigned tasks; and shall report on the work of the Government and the Prime Minister to the National Assembly, the Standing Committee of the National Assembly and the President (Article 95.2). Among the monitoring activities of the National Assembly, only the questioning activity (Prime Minister, Deputy Prime Ministers, and ministers) is relatively effective, while other monitoring activities are just formality (Thái, 2008).

Another difference is that while the judicial branch in other countries is strictly guaranteed for independence, the courts in Vietnam are under the quite comprehensive supervision of two other state power agencies, the National Assembly and the Government. Although the control is primarily personnel and financial rather than adjudicative, it is also controversial as to its reasonableness. In particular, there is a view that the National Assembly’s right to request the Chief Justice of the People’s Court to report and answer questions before the National Assembly on the judiciary’s work has affected the court’s independence (Hoàng, 2002; Phạm, 2017).

The 2013 Constitution has added provisions on more independent constitutional agencies, the National Election Council and the State Audit. The National Electoral Council is the ‘upgraded’ institution from the previous Central Electoral Council, which was originally a statutory body. However, with a higher position, the National Electoral Council still only plays the same role as the Central Election Council before, that is, to organise the elections of National Assembly deputies and People’s Council deputies under direction of the Communist Party and the National Assembly. In other words, the National Electoral Council is not a real independent institution which is capable of holding elections following to international standards. Therefore, the role of the National Electoral Council in controlling state power through elections is very limited. The State Audit has a direct role, continuously and frequently, in controlling the abuse of state power for corruption. In fact, over the past time, the State Audit has proved a specific role in controlling the use of finance and public property for agencies in the state apparatus and agencies in using state budget and assets in Vietnam (Lan Phuong, 2021). However, the independence of the state audit is still unclear, thus reducing its effectiveness and efficiency (Thái and Nguyễn, 2020).

3.2.2 The limitations of external mechanism on controlling state power

While the internal mechanism to control state power has many limitations as mentioned above. The actual effectiveness of the external mechanism for controlling state power in Vietnam is still minimal, mainly due to the lack of specific or specific legal institutions on most of the above issues.

In terms of the role of the people, according to Vietnam's current law, the people can exercise control over state power through the election and removal of elected representatives, voting in referendums, and participation in public opinion polls, consulting with state agencies in the formulation of the Constitution and laws. These activities have all been carried out in practice, but they are all very formal (Thayer, 1996). Some activities, namely dismissing elected deputies and voting in referendums, have never been carried out due to the lack of specific legal provisions. More broadly, the legal framework on the rights to freedom of speech, freedom of the press, access to information, assembly, association, demonstration, complaints, and denunciations – is seen as the foundation for controlling of state power of citizens is still incomplete (Sidel, 2013). Currently, Vietnam does not have a law on associations and demonstrations, so people cannot exercise their right to protest and face many difficulties in exercising their right to association. Although Vietnam has quite detailed legal provisions on the right to access information and the right to complain and denounce, the mechanism to ensure the implementation of these rights is still unreasonable (CEPEW et al., 2020).

The 2013 Constitution continues to emphasise the role and position of the Vietnam Fatherland Front, its member organisations, and trade unions in “representing and protecting the people's legitimate and legitimate rights and interests; gather and promote the strength of the great national unity, exercise democracy, strengthen social consensus; supervise and criticize society, participate in Party and State-building” (Article 9). This provision forms the constitutional basis for the mentioned organisations to participate in the control of state power. However, Vietnamese law has not yet specified factors such as implementation methods, order, procedures, and legal consequences arising from controlling the power of social organisations. The effectiveness of controlling the state power of social organisations is very minimal (Hannah, 2007; Thayer, 1996). In addition to major socio-political organisations (Vietnam Trade Union, Vietnam Farmers' Union, Vietnam Women's Union, Vietnam Veterans Association, Ho Chi Minh Communist Youth Union), the correct vision and social criticism of other socio-political organisations at lower levels (Vietnam Union of Science and Technology Associations, Vietnam Union of Literature and Arts Associations, Vietnam Lawyers Association), Vietnam Journalists Association) has not been specified in the law. Therefore, it is not clear whether low-level social organisations (but the majority in civil society) have the right to monitor and criticise independently or through membership of the Vietnam Fatherland Front (Salemink, 2006). That lack of clarity prevents these social organisations from promoting their role in monitoring state power.

4 Concluding remarks

Due to several subjective and objective reasons, the abuse of state power manifested as corruption has increased continuously in Vietnam since Doi Moi (1986). Abuse of power and rampant corruption cause the Vietnamese people's growing discontent with the Communist Party and the State, becoming an ‘internal enemy’ that threatens the existence of the socialist regime.

In that context, during the more than 30 years of Doi Moi, the Communist Party and the State of Vietnam have made efforts to establish and gradually perfect the mechanisms for controlling state power, both internally and externally. These mechanisms have been

strengthened and upgraded since the 1992 Constitution, in which the higher level of upgrading is since the 2013 Constitution. However, compared to many other countries, these mechanisms in Vietnam have many limitations.

The main factor leading to these limitations is that the awareness of people's power, state power, and control over state power in Vietnam is still unequivocal. The position of the people as the supreme master of all power in society is still 'hesitating' with Vietnamese communists who follow the Marxist-Leninist doctrine, because this doctrine only emphasises the role of the 'proletariat'. Meanwhile, the state's position as a public service institution created by the people and empowered to serve the community has been identified but is still inconsistent. This is because the followers of Marxist-Leninists believe that the state is the 'dictatorship of the proletariat' to dominate other classes and social groups. In short, there is still not clear in thinking and a lack of clarity in the theory of controlling state power in Vietnam. As a result, the current power control mechanisms both inside and outside the state apparatus in Vietnam are flawed and have not yet reached their full potential. Thus, the root cause of the limitations of the state power control mechanism in Vietnam is the conflict between the characteristics of a state based on a 'dictatorship of the proletariat' of Marxism-Leninism (which CPV still considers as a 'the motto of all actions of state') with the characteristics of a state based on the rule of law that Vietnam is heading to. Here, CPV is facing a dilemma. They both wanted to keep the Sovietic state model (which emphasised the class dictatorship of the state and denied the mechanisms for controlling power) to protect the one-party political system, and at the same time wanted to reform according to the state model based on the rule of law (which denies the class dictatorship of the state and promotes power control mechanisms). As a result, a 'patchy' and formalised mechanism for controlling state powers exist in Vietnam.

Although the possibility of reform is low, opinions to advocate for the upgrading of the state power control mechanism in Vietnam have been frequently raised in the last two decades. Many local experts believe that in order to improve the effectiveness of the internal state power control mechanism in Vietnam today, it is necessary to:

- Specify ways to control power between the legislative, executive, and judicial branches, especially how the executive and judicial agencies can control the legislative body and how the executive and judicial branches can control each other.
- Expand and concretise the authority of the State President in controlling the power of the legislature, specifically in vetoing laws passed by the National Assembly.
- Expand the authority of two independent constitutional bodies (National Electoral Council, State Audit), especially in supervising the activities of all legislative, executive, and judicial branches. In addition, it is necessary to establish other independent monitoring institutions such as the national anti-corruption agency, the national human rights agency, the National Assembly inspection agency, especially the constitutional protection agency (according to Article 119 of the 2013 Constitution).

In order to improve the effectiveness of the current external state power control mechanism in Vietnam, many local experts suggest to:

- Elaborate laws on associations, demonstration laws and amend and supplement laws on access to information, referendum laws, press laws, complaints, and

denunciations laws for the people and press agencies can participate in the control of state power in an active, proactive, and effective manner.

- Concretise regulations on supervision and social criticism of the Vietnam Fatherland Front and its member organisations, and at the same time expand the scope of subjects of the right to supervision and social criticism to all other social organisations.

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