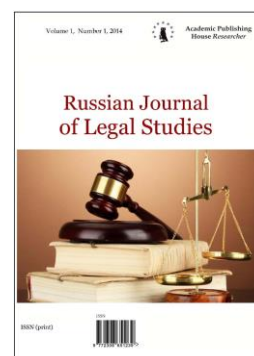


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Economic Rights and Right in Rem in Vietnam and Russia: Comparative Legal Research

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Abstract

This study states experienced lessons in building and completing law of economics and right in rem in Vietnam at present which based on the study of Russian Federation's law in those issues. All of the lessons will include: defining the objective and freedom level of the economy; diversifying the ownership forms and ownership of municipal administration; applying the theory of right in rem in constructing legal system. The article considers the legislation of Vietnam and the Russian Federation.

Keywords: Russian Federation, Vietnam, Economic Right, Right in rem, experienced lessons.

1. Introduction

Since the implementation of the new innovative policy proposed in National Congress of the Communist Party of Vietnam VI (12/1986), Vietnam had transferred from centrally planned economy into market economy and gained great achievement (Doanh Le Dang, 2016). The legal system in Vietnam is more and more completed and initially meets the demand of the market economy (Cuong Nguyen Van). However, in order to further impulse the development of the market economy, currently Vietnamese law need to accurately figure out the target, freedom level of the economy; diversify the property forms and recognize property of local authorities; apply right in rem theory in constructing law of property.

Russian Federation is the country whose legal system owns many similarities to that of Vietnam, this was established basing on the historical relationship between Soviet Union and Vietnam (Huong Ha My, 2010). Nowadays, the economy of Russian Federation is also the result of transference from centrally planned economy into market economy and it keeps role as one of the biggest economy in the world (World Bank, 2018). Simultaneously, the former institution of right in rem which was not prescribed in Soviet Union's Civil Law now becomes the basic institution in Civil Law of Russian Federation. Hence, studying its law and then infer the experienced lessons for Vietnam in building and completing law of economics and right in rem is absolutely reasonable and necessary.

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2. Material and methods

2.1. This research is implemented relying on the present provisions of Russian Law and Vietnamese Law and those studies had been published such as:

“*Vietnamese economy after thirty years of renovation: In need of the second renovation*” (Doanh Le Dang, 2016);

“*Some new theoretical points about developing Socialist-oriented market economy in our country currently*” (Thang Nguyen Xuan, 2017);

“*The Legal Nature of Land Use Rights in Vietnam*” (Luan Thanh Nguyen, Ngoc Thi Ha, 2018).

2.2. It is also accomplished in the base of simultaneously using different study methods which are analysis, general, dialectical materialism, interpretation, comparison.

3. Discussion

The first lesson, should there is an economic legal system which is enough in number of documents and precise in content to deal with socio-economic issues timely and accurately, the first thing Russia do is to clearly define the feature and aims of the economy which it decides to follow. It is understandable due to the fact that traits and aim of the economy will determine the socio-economic development policy. In Vietnam, this policy again determines the described content of the whole legal system in general and economic law, in particular. Article 1 in Russian Constitution 1993 had stipulated: “The Russian Federation - Russia is a democratic federal law-bound State with a republican form of government”. Article 7.1 in Constitution 1993 also prescribed: “The Russian Federation is a social State whose policy is aimed at creating conditions for a worthy life and a free development of man”. From the Constitution and other provisions of law, it is easily inferred that: Russian economy is the market economy yet social direction (socio-economic economy). This trait has marked the differences of Russian economic law policies in compared to other countries which have the pure market economy such as the free market economy in the United States (Nghia Cao Minh, My Nguyen Thi Hoang, 2009). This lesson is really noticeable to Vietnam. Therefore, Constitution 1992 (modified, edited 2001) and especially Article 2, Article 51 new Constitution 2013 which have specified Vietnam as “the rule of law governed the state” and socialist-oriented market economy has a meaningful significance in building policies and law proportionally.

The second lesson, law in general and economics law in particular of Russia do not accept the absolutely freedom in every activities fields, including production and business fields. Article 8 in Constitution 1993 stipulated that The State ensures the freedom of economic activities. Specifically, in Russia, the union of economics space, freedom in transporting of goods, services, financial tools, competition support, and freedom of economic activities are guaranteed. Individual property, State property, municipal administration property and other kinds of property are approved and protected as well. In Civil Law and other laws both accept this principle of Constitution; moreover they also recognize conditions, structure to contribute a part in implementing those principles in reality. However, even in the Constitution and other laws of Russia, nothing records the idea of absolutely freedom. Every rights and freedom in Russia has limitation but they must be stipulated in law so that to be effective. Concretely:

- Article 17.3 in Constitution 1993: “The exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of other people.”;

- Article 285 in Civil Code 1994 (edited by Russian Law number 339 date: 03/08/2018): “The land plot may be withdrawn from the owner, if the use of the land plot proceeds with a crude violation of the rules for the rational use of the land, laid down by the land legislation, in particular, if the land plot is not used in conformity with its special purpose, or if its use causes an essential fall in the fertility of the farming lands or seriously deteriorates the ecological situation, or the constructions built illegally on land by subjects stipulated in Article 222.2 who did not execute obligations following law provisions about removing or adjusting to be suitable with provisions requested”.

- Article 10.1 in Civil Code 1994 (ed.) stipulated: “The Limits of Exercising the Civil Rights”, not admissible shall be actions by the citizens and the legal entities, performed with the express purpose of inflicting damage to another person, as well as the abuse of the civil rights in other forms. Not admissible shall also be the use of the civil rights for the purpose of restricting the competition, as well as the abuse of the dominating position on the market.

With a view to building a socialist-oriented economy with the characteristic of The State holding the decisive role in overcoming drawbacks, flaws, failure of economy and ensuring the role of administrating economy in “the rule of law governed the state following socialist-oriented direction” under the leadership of Vietnam Communist Party (Thang Nguyen Xuan, 2017), the lesson mentioned has an important sense to Vietnam in constructing law so that to gain the goal proposed.

The third lesson, about those types of ownership forms, Law of Russia stipulates that the Right of the State ownership consists of two kinds:

(i) Ownership by the Russian Federation,

(ii) ownership by the subjects of the Russian Federation. Article 214.1 Civil Code 1994: “The state property in the Russian Federation shall be the property, owned by the right of ownership by the Russian Federation (the federal, or the federally owned property), and also the property, owned by the right of ownership by the subjects of the Russian Federation - by the Republics, the territories, the regions, the cities of federal importance, by the autonomous region and by the autonomous areas (the property of the subject of the Russian Federation). Division of the State ownership into ownership by the Russian Federation or ownership by the subjects of the Russian Federation is implemented following the order required by law.

Besides two kinds of ownership as mentioned above, Russia also has a type called “The Right of the Municipal Ownership”. In Article 215.1 Civil Code 1994: “The property, belonging by the right of ownership to the urban and to the rural settlements, and to the other municipal entities, shall be the municipal property”. Ownership of those subjects is not regarded as a kind of the State ownership yet individual ownership. This form is fully stipulated by law, especially Civil Code with specific regulation and is executed by agencies, subjects allowed by law.

Therefore, in Russian Law, the State ownership issue and other kinds of ownership are distinctly stipulated which differentiates between the State ownership and local authority ownership (called Municipal ownership in Russia). Meanwhile, there is only one kind of ownership in Vietnam, which is national ownership, however, it is basically the State ownership and there is not any definition of local authority ownership. This is such an important issue which legal science in Vietnam lacks of a fully research. Due to the disapproval of those agencies ownership, national property is not clearly divided among central authority and local authority, which leads to the loss and inefficiency. Otherwise, many conflicts are also arisen between two agencies and even inside different local authorities.

In reference to Russian Law of this issue, Article 10.1 Law of Russian Federation number 131 date 06/10/2003 (edited 03/08/2018) about the general principles of autonomous authorities in Russia stipulates that: “Local autonomous authorities can implement throughout Russian territory, inside urban area, rural inhabitant are, municipal area, city area and over inner area of federational cities”. About the economic base of local autonomous authority following Article 49 in that Law, it includes property within municipal ownership, local budget tools as well as property right of municipal entity. Municipal ownership is recognized and protected equally in comparison to others kind of ownership by the State. To overcome mentioned situations in Vietnam nowadays, it is suggested that there should be a provision which enables and protects ownership of 63 provinces, cities directly under the central government. Those properties which belong to this ownership must be stipulated in a completely legal statute by Law and also need to be clear in fundamental foundation, administration rules, exploitation, determination in order to ensures that every property in Vietnam all has its owner and be used in a scientific, economical and effective way.

The forth lesson, in building Economic Law, it is necessary to freely study, apply and institutionalize the theories, point of views of former countries; it should not be too conservative and preconceived as scientific knowledge in general and legal science in particular are common intellectual property of human being; if any countries find it suitable with the circumstances, economic condition of their own, they have the right to research and apply. For example: before 1995, Civil Code of Russia (when is Soviet time) did not use the definition of right in rem. Nowadays, The new Civil Code uses this term. Specifically, section 2 in the first part of Civil Code has a new name “Ownership right and other rights in rem”.

Currently, Vietnam is pursuing the socialist-oriented economy. This economy, no matter how specific it is, still brings some similarities to other kinds of market economy and Russia is a common example. Personally, after research the experience in constructing Civil Code of Russia, especially the issue of right in rem, Vietnam has more foundations to form the second part of Civil

Code 2015 following the way of strongly applying the right in rem theories as well as changing name of part II Civil Code 2015: “Ownership right and other rights of property”.

The fifth lesson, through the research in establishing process and development of Law about right in rem in Russia, it is noticeable that, different historic times had different types of rights in rem. Particularly, in Civil Code 1922, there were only 3 types of right in rem. Apart from ownership right – the main right in rem which is always recognized in Russia, this Law only ratifies 2 limited rights in rem: the right to build on other’s land and mortgage right. After 40 years of implementation, Civil Code 1922 is now replaced by Civil Code 1964. Instead of ratifying kinds of limited rights in rem as before, this Law and others related civil documents recognize only one right in rem – business administration right. Nowadays, the new Civil Code of Russia approves some limited rights in rem such as easement, possessory lien to inherit all life time with a parcel of land, forever land use right, trade administration right, business administration right,... Throughout the study, it is proclaimed that the number of rights in rem cannot be stipulated in an inflexible or arbitrary way but to be determined basing on the circumstances and socio-economic development trait of the country in each times. Vietnam must grasp this lesson to avoid the trend of freely copying kinds of rights in rem due to the fact that each country has their own right in rem. Besides the same characteristics, Law in each country has particular stipulation to demonstrate its feature of socio-economic life in every specific development period.

At present, new types of rights in rem in Vietnam have just been stipulated in Civil Code 2015 with the rights in rem which are ownership right, surface right, usufruct right, right to adjoining immovable property,... In the next time, it is essential to study and add more kinds of rights in rem in the Construction Law, Land Law, and Law on housing. Especially, land use right must be recognized – a particular trait of Vietnam because the maintaining of national ownership about land is a limited right in rem in order to ensure the right and advantage of land using subjects, which will create a mainstay for the economic development and social stability (Luan Thanh Nguyen, Ngoc Thi Ha, 2018).

4. Results

This research has cited out five important experienced lessons that Vietnam need to refer to construct and improve law of economics and right in rem from that of Russia. Besides, the study also contains the comparison of difference in currently law between Russian Federation and Vietnam.

5. Conclusion

In reference to the experienced lessons from others, each country will soon find an effective solution in building and completing law of its own. Vietnam is pursuing the aim of constructing “the rule of law governed the State” and following socialist-oriented market economy with its own features, however, in comparison to Russia, we can still figure out many similarities that can hardly be found in any other countries. Therefore, Vietnam should learn from Russian mentioned lessons because they are absolutely valuable which contribute in the complement of Economics Law and right in rem of Vietnam in this phase.

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