

Rights of grievance and denunciation in the 2013 Constitution and some mechanisms to ensure the exercise of the rights of grievance and denunciation

Quyền khiếu nại, tố cáo trong hiến pháp 2013 và một số cơ chế bảo đảm thực hiện quyền khiếu nại, tố cáo

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Abstract: Human rights, rights, and obligations of citizens are important contents affirmed and recorded in the 2013 Constitution - the supreme legal document of the Socialist Republic of Vietnam. Among the groups of human rights recognized in Chapter II of the 2013 Constitution, the right of grievance and denunciation, in particular, are fundamental rights closely associated with state management activities, serving as a means to express the democratic rights of the people and exercise their oversight over the state apparatus. This article provides an overview of human rights; the right of grievance and denunciation; legal provisions on grievances, denunciations, and some mechanisms to ensure the exercise of the right of grievance and denunciation at present. This presents evaluative viewpoints and directions for further improvement to enhance the effectiveness of exercising these rights in practice.

Keywords: *Administrative grievances; Mechanisms to ensure the exercise of the right of grievance and denunciation; Right of grievance; Right of denunciation;*

Tóm tắt: Quyền con người, quyền và nghĩa vụ của công dân là nội dung quan trọng được khẳng định và ghi nhận trong Hiến pháp 2013 – văn bản pháp lý tối cao của nước Cộng hòa xã hội chủ nghĩa Việt Nam. Trong các nhóm quyền con người được ghi nhận tại Chương II Hiến pháp 2013, đặc biệt có quyền khiếu nại, tố cáo là những quyền cơ bản gắn liền với hoạt động quản lý nhà nước, là phương thức thể hiện quyền dân chủ của nhân dân và thực hiện quyền giám sát của nhân dân đối với bộ máy nhà nước. Nội dung bài viết trình bày khái quát tổng quan quyền con người; quyền khiếu nại, tố cáo; quy định pháp luật về khiếu nại, tố cáo và một số cơ chế đảm bảo thực hiện quyền khiếu nại, tố cáo hiện nay. Thông qua đó đưa ra những quan điểm đánh giá và hướng hoàn thiện hơn nhằm nâng cao hiệu quả thực hiện các quyền này trên thực tế.

Từ khóa: *Cơ chế đảm bảo thực hiện quyền khiếu nại tố cáo; khiếu nại hành chính quyền khiếu nại; quyền tố cáo*

1. Overview of human rights and the right of grievance and denunciation in the 2013 Constitution

The concept of human rights has existed since ancient times, and the theory of natural rights profoundly influenced the idea of human rights (lex naturalis - natural rights) [1] (innate rights, inherent, not granted by anyone), such as the thoughts of the philosopher Zeno (333-346 BC) who argued that "no one is born into slavery, their slave status is due to the deprivation of their inherent human freedom." Later, the natural law school developed by many scholars such as Thomas Hobbes (1588-1679), John Locke (1632-1704), and Thomas Paine (1731-1809), argued that the natural rights of humans are "the right to use one's own power to secure one's own life, and therefore, to do whatever one deems right and reasonable" [2]. Because they defined the nature of human rights as natural, these thinkers believed that the Government is a means to protect "natural rights" rather than to grant and establish regulations on human rights. In contrast to the theory of natural rights, the theory of legal rights emerged in the 17th-18th centuries, arguing that human rights must be determined by the state and legally codified into laws and regulations that everyone must obey, with Edmund Burke (1729-1797) and Jeremy Bentham (1784-1832) being notable representatives. Both of these schools have certain rational points and can assert that human rights have both natural elements, inherent attributes, and legal factors, as well as differences in culture and politics [3].

Human rights are a multidimensional concept and can be approached from many different perspectives, so there are

about 50 different definitions of human rights. The concept of "human rights" is quite consistent in Vietnamese textbooks and research documents. The International Law textbook of Hanoi Law University defines "human rights" as "the legal values, capabilities, needs, and legitimate interests of humans institutionalized and protected by national and international law" [4]; The Theory and Law textbook on "human rights" of the Faculty of Law, National University of Hanoi understands "human rights" as "the natural and objective needs and interests inherent to humans recognized and protected by national law and international legal agreements" [5]. According to the Encyclopedia of Vietnam, "human rights" are "a synthesis of basic rights and freedoms to assess the legal status of individuals... Human rights are closely linked to citizens' rights in the relationship between citizens and the state, between individuals and the community, depending on economic-social development conditions, history, culture, and ethnicity" [6]. According to the perspective of the authors group at Ho Chi Minh City Law University, regardless of which perspective and level "human rights" are viewed from, they all have common points: (i) they are standards of value, capabilities, needs, and legitimate interests of humans. (ii) They are rights enjoyed by every individual human being and recognized by the international community. (iii) Human rights include values associated with each individual, both as an individual and as a member of society. (iv) Human rights are recognized and protected by national and international legal rules. "Human rights" in the Vietnamese perspective

are associated with the concept of "citizens' rights" but are not identical to this concept and are influenced by economic, social, cultural, and traditional factors of each ethnic group. (v) Human rights include both natural rights (right to life, equality, rights to respect for dignity, honor, and other fundamental freedoms) and legal rights (such as economic, social, and cultural rights) [7].

The 2013 Constitution of Vietnam, effective from January 1, 2014, is the fundamental law and holds the supreme legal position in the Socialist Republic of Vietnam, providing a solid legal foundation and strong impetus for the operation of the entire social life and national activities on the basis of democracy and the rule of law [8]. Structurally, the 2013 Constitution comprises 120 articles divided into 11 chapters, with human rights, rights, and fundamental obligations of citizens primarily stipulated in Chapter II, consisting of 36 articles. Thus, similar to the 1946 Constitution, human rights and citizens' rights provisions stand immediately after Chapter I, which regulates the political system. Building upon the provisions of Article 74 of the 1992 Constitution, the Right of Grievance and Denunciation has been elevated to the status of human rights, overcoming the limitations of the 1992 Constitution, which considered this right as exclusively reserved for Vietnamese citizens. Specifically, Article 30 of the 2013 Constitution stipulates:

“1. Everyone has the right to lodge a grievance or denunciation with competent authorities, organizations, or individuals regarding unlawful acts

committed by authorities, organizations, or individuals.

2. Competent authorities, organizations, or individuals must receive and resolve grievances or denunciations. The aggrieved person has the right to compensation for material and spiritual damages and restoration of honor as prescribed by law.

3. Revenge against grievants, denouncers, or abuse of the right to grieve or denounce to fabricate false accusations or harm others is strictly prohibited.”

According to the Vietnamese Dictionary, "Grievance" is understood as "raising objections, requesting a review of conclusions, decisions made by competent authorities" [9]. The right to grieve is a fundamental right of everyone (including Vietnamese citizens, foreigners, stateless persons) recognized in the 2013 Constitution, and it is one of the methods to protect the rights of the subject when the individual grievant themselves is violated by unlawful acts of competent authorities, organizations, or individuals (which may include state agencies, political and social organizations, economic, and other social organizations, and individuals authorized to act on their behalf, such as officials, civil servants, employees in those organizations). According to the viewpoint of the Faculty of Law, National University of Hanoi, the right to grieve is one of the fundamental rights of individuals, and citizens, representing the ability of individuals (or organizations of individuals) to undertake certain actions as prescribed by law to react to unlawful acts of competent authorities, organizations, or

individuals to protect their subject rights when violated [10].

Regarding the concept of "Denunciation," the Vietnamese Dictionary states: Denunciation is "clearly revealing the offenses of others to legal authorities or public opinion" [11]. One of the tasks of the state is to protect justice, uphold the law, handle legal violations, and establish legal order according to the will of the state. To handle violations, there must be information about the violations, and "denunciation" is one of the methods to provide such information. Vietnamese law stipulates denunciation as one of the fundamental rights of citizens and, in some cases, as an obligation. As a human right, citizens' right, the right to denounce, is understood as the ability to perform certain actions (expressed in various forms) to detect and formally report any unlawful acts to competent authorities, organizations, or individuals. Denunciation clearly reflects citizens' positive political attitude, consciousness, and responsibility in the struggle to prevent and combat legal violations. This positive aspect is manifested through the quantity and quality of denunciations, and together with grievances, denunciations reflect the effectiveness of the law, the solidity of the legal system, and the legal civilization of the political and social regime [12]. Grievances and denunciations are also considered as methods to express the democratic rights of the people and are one of the means to exercise the oversight of the people over the state apparatus.

2. Regulations of Vietnamese Law on the Right to Grievance and Denunciation

Acknowledging the right to grievance and denunciation is not exclusive to the 2013 Constitution. Although the 1946 Constitution did not contain any specific provisions regarding the right to grievance and denunciation, the democratic system established by this Constitution laid the fundamental groundwork for the practical formation of the right to grievance and denunciation. The 1959 Constitution, in Article 29, officially recognized the right to grievance and denunciation as one of the fundamental rights of citizens: "Citizens of the Democratic Republic of Vietnam have the right to lodge grievances and denunciations with any state authority regarding illegal actions of state officials. Grievances and denunciations must be promptly considered and resolved. Persons harmed by the illegal acts of state officials have the right to compensation." The 1980 Constitution (Article 73), and the 1992 Constitution (Article 74) and up to now, all have provisions on the right to grievance and denunciation and tend to expand the scope of this right to include not only Vietnamese citizens but indeed all human rights subjects (Article 30 of the 2013 Constitution). Accordingly, in each period, the National Assembly sessions have implemented the spirit of the Constitution and enacted the Grievances Law of 1998 and laws amending and supplementing certain provisions of the Grievances Law in 2004 and 2005. The XIII National Assembly clarified the scope of regulation of grievances and denunciations by dividing them into two separate laws: the Grievances Law of 2011 and the Denunciations Law of 2011. The Denunciations Law of 2018

has come into effect, and Chapter V of the Grievances Law of 2011 on Citizen Reception has been replaced by the Citizen Reception Law of 2013.

2.1. Legal Regulations on the Right to Lodge Grievances

Regarding the right to lodge grievances, after the Constitution, Vietnamese law currently has the Grievances Law of 2011 and subordinate documents under this law guiding the concentration of the right to lodge grievances. According to Article 2, Clause 1 of the Grievances Law of 2011: "A complaint is when citizens, organizations, or officials, public employees, following the procedures prescribed by this Law, request competent authorities to reconsider administrative decisions, administrative acts of state administrative agencies, or disciplinary decisions against officials and public employees when there are grounds to believe that such decisions or acts are illegal, infringing upon their rights and interests." Comparing Article 13 of the 2013 Constitution, some issues indicating the right and exercise of human rights, and citizen rights regarding grievances are as follows: (i) Grievances under the Grievances Law of 2011 are "requests," and requests imply submission, "asking for," if it's called "asking for," then "providing" or not depends on the recipient, carrying the administrative stamp. Meanwhile, the Constitution stipulates that "everyone has the right to complain," the use of the term in this case is particularly significant and demonstrates the equal status between the complainant and the authority responsible for resolving the complaint. Therefore, changing from "request" to "demand" would be appropriate and

would establish the "right" and the exercise of the complainant's "right" more firmly; (ii) The complainant mentioned in the Grievances Law of 2011 refers only to citizens (individual subjects) and not "everyone" as in the Constitution. There is currently no separate legal document regulating the right to lodge grievances of foreign stateless persons, while the scope of regulation of the Grievances Law is limited to Vietnamese citizens, which does not fully reflect the expanded right to lodge grievances according to the spirit of the 2013 Constitution; (iii) Is the regulation of the subject of grievances in the Grievances Law of 2011 complete? (including administrative decisions and administrative acts) while the 2013 Constitution stipulates "illegal actions." Can outside actions be understood as administrative decisions or acts, or are there other forms of expression?

2.2. Legal Regulations on the Right to Denunciation

Regarding the right to denunciation, after the 2013 Constitution, the Denunciations Law of 2018 came into effect on January 1, 2019, regulating denunciations and the handling of denunciations regarding violations of the law in the performance of duties, public tasks, and other violations of state management in various fields; protection of denouncers; the responsibility of agencies, organizations in managing the handling of denunciations (Article 1 of the Denunciations Law of 2018). According to Article 2 of this Law, "A denunciation is when an individual, following the procedures prescribed by this Law, informs competent authorities, organizations, or

individuals about the illegal actions of any agency, organization, or individual that cause or threaten to cause damage to the interests of the State, legitimate rights and interests of agencies, organizations, or individuals." (i) Compared to the provisions of the Grievances Law of 2011, the provisions of the Denunciations Law of 2018 have some more progressive points (since they were enacted after the 2013 Constitution took effect) and are consistent with the 2013 Constitution. However, regarding the subject of denunciation, the Denunciations Law stipulates "illegal actions," while the Constitution stipulates "actions." Does the legislature not differentiate between "actions" and "illegal actions," considering these two terms are synonymous? (ii) Unlike complaints, the right to complain is only exercised when there are grounds to believe that the actions of the competent authority individual are illegal and directly infringe upon the rights and interests of the complainant then, the denunciation does not require actions that directly cause harm to the denouncer but can denounce any actions of any agency, organization, or individual that cause or threaten to cause damage to the interests of the state, legitimate rights and interests of agencies, organizations, or individuals. However, the Denunciations Law 2018 provision regarding the element "cause or threaten to cause damage" may somewhat limit the right to denunciation. To be in line with the approach to human rights and in accordance with the 2013 Constitution, the denouncer must have the right to denounce any illegal actions that violate the law of any agency, organization, or individual, whether

they have caused consequences or not. Moreover, the act of violating the law already implies the possibility of causing some degree of harm to one or more individuals, the issue is at what level of harm. Therefore, only the mandatory factor in the content of denunciation should be regulated as illegal actions that violate the law.

3. Some mechanisms to ensure the implementation of the right to lodge grievances and denunciations currently and solutions for improvement

The mechanisms for exercising the right to lodge grievances and denunciations are the methods and procedures aimed at effectively exercising the right of everyone to lodge grievances and denunciations, as stipulated by law. "1. Everyone has the right to lodge grievances and denunciations with authorities, organizations, and individuals authorized to address illegal actions by state agencies, organizations, or individuals. 2. Persons harmed have the right to compensation for material and moral damages and restoration of dignity as prescribed by law." To specify the above provisions, current laws on grievances and denunciations have mechanisms to enforce the right to lodge grievances and denunciations effectively. Below, the author lists some mechanisms that need to be further perfected and supplemented as follows:

Firstly, the right to be advised, delegated to individuals with legal expertise to lodge grievances. Point b, Clause 1, Article 12 stipulates that the complainant has the "right to seek legal advice from a lawyer or delegate a lawyer to complain to protect their lawful rights and interests," which is a continuation and specification of the

provisions in the Grievances and Denunciations Law of 1998 as amended and supplemented in 2005 (Clause 1, Article 17: The complainant has the right to seek legal assistance from a lawyer during the complaint process). In addition to the provision on delegation to lawyers, the Legal Aid Law of 2017 also specifies that when the complainant is a person receiving legal aid, they can seek legal aid advisors for legal advice, guidance, opinions, drafting documents, or delegate legal aid advisors to lodge grievances to protect their lawful rights and interests (Article 13, Article 32 of the Legal Aid Law of 2017). This provision demonstrates the profound humanitarian nature of our state in caring for policy beneficiaries, the poor... to help them in legal matters to protect their lawful rights [14]. However, there still exist shortcomings in the implementation of grievance resolution procedures due to many cases where people lack access to legal services provided by lawyers due to high costs; legal aid is limited in terms of the target audience requiring legal aid involvement. Therefore, there needs to be mechanisms and measures to expand legal support services to economically disadvantaged areas and individuals in need but with limited access to legal services to support them in the process of lodging grievances and denunciations. At the same time, this method is also an effective measure in counselling and disseminating state legal policies. Through the study of legal policies and grievance resolution work in some countries, the administrative consulting organization model consists of administrative consulting experts who are retired officials, lawyers, and

lecturers...volunteering to participate, and the list of these administrative consulting experts must be approved by competent authorities such as the Ministry of Public Management, Internal Affairs (Japan); or a team of volunteers who are retired officials or practicing lawyers but allocate a certain amount of time for this work voluntarily with a small fee (mostly to cover travel expenses) to participate in grievance counselling activities, meeting and discussing with complainants (South Korea); South Korea also establishes an Integrated Administrative Information Center to help people more conveniently perform administrative procedures [15]. With this approach, Vietnam can learn because our country's current situation of grievances and denunciations is overloaded in receiving, screening, and handling complaints. If there is pre-advice from a team of experts, a significant number of invisible grievances and denunciations can be resolved, and effective counselling also creates a self-screening mechanism for cases as the content of the complaint will be correct, sufficient (based on evidence), and focused, sent to the appropriate authority to address, reducing grievances to higher levels, reducing the pressure of resolution on state agencies.

Secondly, the right to participate in dialogue or delegate legal representatives to participate in dialogue during the process of resolving cases (Point c, Clause 1, Article 12 of the 2011 Grievances Law). This is considered a progressive provision because it aims to allow the complainant to express their thoughts and wishes, and it also provides an opportunity for the respondent to reconsider whether

their administrative decision or action complies with legal regulations. Organizing effective dialogues can have a positive effect, and in many cases, grievances can be resolved entirely at this stage (the complainant withdraws the petition; the administrative decision/action is annulled/replaced). However, the 2011 Grievances Law does not clearly specify conditions for facilitating dialogue in resolving cases, such as dialogue principles; cases where dialogue is not conducted; notification of dialogue sessions; composition, procedures of dialogue; handling dialogue results. This leads to situations where citizens, when exercising their right to dialogue, want to directly engage with the issuing authority of the administrative decision or action, but this authority delegates another person to resolve the issue. However, the authorized officials are not fully aware of the nature of the case and do not conduct the dialogue properly, leading to ineffective dialogue and prolonged complaints. Therefore, adjustments and additional provisions are needed in the Grievances Law to ensure effective dialogue mechanisms.

Thirdly, the right to "request individuals, organizations, related agencies holding, managing information, documents related to the content of the complaint to provide such information, documents within 07 days from the date of the request for submission to the person handling the complaint, except for state secrets" under Point d, Clause 1, Article 12 of the 2011 Grievances Law still faces many difficulties in implementation. Because in cases where the complainant is also the person handling the complaint, the complainant has an inherent bias as they

are not on equal footing with the respondent. The act of complaining is inherently "involuntary" because it can attract attention, cause fear of retaliation, and cause fear of unfair treatment in various ways if the complaint forces the respondent to acknowledge that their actions are illegal. In cases where individuals, organizations, and related agencies holding and managing information, and documents related to the content of the complaint are not the respondents, requesting the provision of information, and documents is also not feasible due to the lack of specific sanctions for refusing to provide information by the information holder, and they themselves have a reluctance to be involved in the complaint process in any role.

Fourthly, the right to choose mechanisms to protect one's rights and lawful interests. Article 7 of the 2011 Grievances Law on the complaint procedure stipulates that when there are grounds to believe that an administrative decision or administrative act directly violates their lawful rights or interests, the complainant may complain to the person who issued the administrative decision or the authority with the administrative act or initiate administrative litigation at the court according to the provisions of the Administrative Procedure Law. This is one of the provisions that reflect the efforts of the Party and the State stemming from the Strategy for Judicial Reform of the Politburo Resolution No. 49-NQ/TW dated June 2, 2005, which expands the jurisdiction of people's courts in resolving administrative lawsuits. Accordingly, administrative decisions, administrative acts of state

administrative agencies, and authorized individuals in state administrative agencies can all choose the method of complaining to the authority, the authorized person, or initiating administrative litigation at the competent people's court (except for disciplinary decisions to terminate employment, if not agreed, only then they have the right to initiate litigation according to administrative litigation procedures). Because the individuals are affected by administrative decisions, administrative acts can objectively evaluate and assess which mechanism best protects their rights and interests and which is most objective and democratic. However, in over ten years since the Administrative Procedure Law 2010 took effect, the number of cases where people choose to resolve administrative litigation at the court still accounts for a small proportion, stemming from many reasons: the litigation procedures are still heavy in terms of time for trial and prolonged resolution; the fear of confrontation "ineffective lawsuits" ... these barriers lead to limitations in the choice of resolution methods in court.

Fifthly, regarding the mechanism to protect denouncers. The 2018 Denunciation Law regulates the confidentiality of denunciation information, which can be seen as a consistent principle throughout the process of receiving, handling denunciations, and resolving denunciation cases. Protecting denouncers is the responsibility of competent state agencies to ensure the life, health, dignity, honor, and reputation of denouncers; encouraging citizens to bravely denounce violations of the law and helping state agencies to

detect and promptly handle violations of the law. Although the 2018 Denunciation Law is very concerned about protecting denouncers, its implementation still faces many obstacles stemming from traditional inherent psychological barriers, people's fear that denunciation will lead to retaliation against themselves when there are no clear provisions on the procedure, measures, and responsibilities for protecting denouncers. Receiving and handling denunciation grievances through many departments, officials, and public servants makes it difficult to maintain confidentiality and protect denouncers because if any of them do not fully adhere to the idea and awareness of maintaining confidentiality for denouncers, it is tough to maintain confidentiality and protect denouncers. Therefore, regarding the mechanism to protect denouncers, there need to be more detailed provisions on receiving, handling, and protecting denouncer information to reassure them in their struggle for justice and lawfulness.

4. Conclusion

The right to grievances and denunciations is a constitutional right and is institutionalized through legal documents, primarily the Grievances Law, Denunciation Law, and related implementing regulations. However, the Grievances Law, enacted in 2011, has not been updated to reflect the new perspectives of the 2013 Constitution, thus requiring some adjustments and supplements. In this spirit, it is necessary to continue improving mechanisms to ensure the exercise of the right to file grievances and denunciations in practice, considering the current backlog situation in

receiving and handling complaint and denunciation letters: grievances and denunciations lacking grounds; grievances and denunciations exceeding jurisdiction; situations of abusing the complaint and denunciation process for defamation or other improper purposes. This is an issue of current relevance and critical importance in the endeavor to construct the essence of a socialist rule-of-law state in the era of international economic integration.

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