

Vietnam's Regulation of Fake News

: Focused on the Cybersecurity Law of 2018

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Technology

Vietnam to require 24-hour take-down for "false" social media content

Reuters

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Aa



Regulation: Cybersecurity Law (2018)

Article 8 and 16 enumerates **Prohibited Information in Cyberspace**

Article 8 Conduct which is strictly prohibited

(...)

(d) Providing false information, causing confusion amongst the Citizens, causing harm to socioeconomic activities, causing difficulties for the operation of State agencies or of people performing public duties, or infringing the lawful rights and interests of other agencies, organizations and individuals;

Article 16

(...)

5. Information in cyberspace with **invented or untruthful contents causing confusion amongst the Citizens**, causing loss and damage to socio-economic activities, causing difficulties for the activities of State agencies or people performing their public duties [or] infringing the lawful rights and interests of other agencies, organizations and individuals.

Continued

Article 26 declares obligation of CSPs to **delete content** and **data localization**

- **Content Deletion:** CSPs, including global social media such as **YouTube and Facebook**, must delete **information specified in Article 16, Paragraph 5** upon the governmental request in 24 hours.
- **Data Localization:** CSPs must store data generated by users in Vietnam within facilities located in Vietnam.

Continued

The implementation of Cybersecurity law(Decree 53, 2022) conditionally exempts the obligation of data localization

- The obligation is exempted only when the CSP faithfully executed the obligation for content deletion, as required by the government.
- Even though the Decree 53 might let global social media relieved, it can also be a leverage that makes **CSPs to conform more readily to government demands,** especially considering **significant financial and moral burden data localization may pose on global CSPs**

Assessment: From the Perspective of Article 19 ICCPR

- **Reasons that may justify restrictions on the freedom of opinion and expression,**

ICCPR Article 19(3)

(...)

1. For respect of the rights or reputations of others;

2. For the protection of national security or of public order, or of public health or morals.

- According to the UN Human Right **Council's General Comments No.34**, the restriction of freedom of expression conform to **the strict tests of proportionality**

Principle of Proportionality : restriction has to be...

- ① appropriate to achieve their protective function.
- ② the least intrusive instrument to achieve their protective function.
- ③ proportionate to the interest to be protected.

Continued

Does cyberspace law accord with **the proportionality test?**

- **Information deemed entirely false can sometimes serve a social good.**
→ Historical instances exist where facts previously thought to be fictitious were later proven true, and vice versa.
- Even false information also plays a role in the '**marketplace of ideas**' as potential candidates for truth.

Therefore, Restriction must be given only **when specific harm is associated with the falsehood of the information.**

Continued

- **However, terms like**

"confusion amongst the Citizens" "difficulties for the operation"

are too vague so that arbitrary, extended interpretation could possibly happen.

- **24-hour deadline** forces CSPs to **comply with government demands without any appropriate assessment of the veracity or harms of the news.**

Sub-conclusion : Cybersecurity law's regulation infringes rules of proportionality

In Cases of Conflict Between Norms

Can international treaty can directly be applied to domestic cases?

Monist approach. International law can be directly applied to domestic trials.

Dualist approach. International law need to be translated to be applied.

Treaty Law

Article 6

1. If a legal document, except the Constitution, and a treaty to which the Socialist Republic of Vietnam is a contracting party have different provisions on the same issue, **the treaty shall prevail.**
2. Based on the requirements, content and nature of a treaty, the National Assembly, the President or the Government shall decide on the consent to be bound by the treaty and the application of the whole or part of the treaty to agencies, organizations and individuals if the provisions of the treaty are clear and detailed enough for implementation; or decide or propose the amendment and supplementation, annulment or promulgation of legal documents for the implementation of the treaty

In Conclusion

- **Cybersecurity law and its implementation conflict with ICCPR**, which Vietnam acceded in 1982 and in that conflict situation, **ICCPR should take precedence.**
- This can imply that the controversy surrounding Cybersecurity Law is also a **judicial issue, not only a legislative issue.**

In Conclusion

- Meanwhile, in South Korea, there has been criticism that the direct application of international law in court cases is not as frequent in the field of human rights as it is in the economic sector. **A similar tendency appears to be present in Vietnam.**
- However, considering the ICCPR is indeed a legally binding international covenant, there should be no reason to evade its application.

**Thank You For
Listening.**