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A STUDY OF STATUTORY INTERPRETATION IN VIETNAM AND IN ENGLAND

MASTER THESIS

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Abbreviation

SI	Statutory interpretation
SPC	Supreme People's court of Vietnam
SPP	Supreme People's Procuracy of Vietnam
SC	The Standing Committee of the National Assembly of Vietnam

Executive Summary

Vietnamese law is interesting from the perspective of statutory interpretation. Although the interpretation is adopted in the constitution it does not get enough attention and it is important to discuss the matter from the point of view of legal science.

In recent years, many legal scientists in Vietnam have considered interpreting the Statutes theoretically and practically. Obviously, the theory and practice of this problem still have some distance to go and some conflict. We need to make a thorough study that we can use to serve the judicial reform, which our country set up.

The subject "Study Statutory interpretation in Vietnam and England" is a collection, presentation and analysis about interpretations as well as practice for the Statutory interpretation in Vietnam. The writer also tries to study and learn about the English law system and English Statutory interpretation to have a foundation for the comparison between the English and Vietnamese Statutory interpretation, and to get some improvements from that.

Affirmatively, this large subject is related with the law system and the state machine. So, it is difficult to display and study all the matters related to this domain. Therefore, we mainly use collective methods to display some of the main features of the research. Specific :

First, the writer sums up and learns about theoretical issues of the Statutory interpretation. Then, use them as a methodology for studying the legal rules which involve the study of the Statutory interpretation in Vietnam and England.

After having the materials, the writer counts up and selects the basic matters about the Statutory interpretation in both countries, and display them in a comparative way. In the process, the writer tries to display and analyze the main contents of Statutory interpretation such as the subject, object, method, and legal value of this matter as well.

Next, during the Statutory interpretation research about the law system in both countries, the writer tries to describe the advantages and disadvantages in these law systems. Based on that foundation, the writer gives an assessment of the law interpretation systems in both countries.

Final, based on the analysis, evaluations, the writer will give suggestions for improving and changing Statutory interpretation in Vietnam. These are general theory, so, they also have some restrictions which can't generalize the difficulties that the ones who study practice making mistakes. Hopefully, that, these petitions will improve Vietnamese Statutory interpretation in particular and Vietnamese law system in general.

This is a thesis for a Master program, and the writer tries his best to do his best. However, there are plenty of restrictions in the study such as time limit, language, documents. Therefore, the subject doesn't surely cover all the things which relate to Statutory interpretation of lawmakers.

1. Introduction

1.1 Background

The need of statutory interpretation in Vietnam.

Statutory interpretation activity is an indispensable need in any modern legal system all over the world. In Vietnam, statutory interpretation is also needed in both theory and practice. The legal system in Vietnam is considered a written legal system, Therefore, in absence of statutory interpretation, the system of legal regulations having a high general level, is hard to apply effectively in practice. Currently, the Vietnam legal system does not provide the concept of “statutory interpretation”, except “Constitution, Laws and ordinance’s interpretation” that was stipulated in Article 91 of the current Constitution (Constitution 1992), current Law on organization of the Office of National Assembly (Law No 30/2001/QH10 dated 25/12/2001, amended and supplemented in accordance to Law No 83/2007/QH11 dated 2/4/2007), and especially Chapter X, current Law on promulgating legal normative documents¹. Therefore, the scope of statutory interpretation is covered only for legal normative documents which have the highest legal value in the Vietnamese law system. They are the Constitution, laws passed by the National Assembly and ordinances passed by the Standing Committee of the National Assembly - the Standing agency of the National Assembly. But the Standing Committee of the National Assembly has only used these powers five times.

From the above theoretical analysis on statutory interpretation, the remaining legal normative documents for determining the scope of statutory interpretation in Vietnam are Laws and Resolutions of the National Assembly; Ordinances and Resolutions of the Standing Committee of National Assembly; decisions and directions of the State President; resolutions and directions of the Government; decisions and directions of the Prime Minister; inter- ministerial resolution and circulars; and circulars of ministries and inter-ministries.

This number of legal normative documents is still huge in comparison with the scope of statutory interpretation stipulated in current legislation that include laws and ordinances. This leads to a problem, that when any of the provisions in these legal acts are vague and unclear then no one can provide formal explanation. Consequently, statutory interpretation activity in accordance to current Vietnamese regulations can not handle effectively many types of legal normative documents that are used in Vietnam. Therefore, I think that the topic of statutory interpretation is necessary to elaborate.

¹ This law was passed by National Assembly on 03/06/2008,

Requirement of research into the statutory interpretation in the world

When I study the statutory interpretation in the world, I know that many countries have their own statutory interpretation systems, well suited to handle their system. Their systems ensure that their legal systems are uniformed, for example, in England.

Requirement of ensuring the uniformed application of the terms used in law

Statutory regulations are usually abstract, polysemous and even obscure, resulting in different understandings and thus a disunited application. Statutory regulations are usually stipulated in short and simple manner without further explanation, causing difficulties in practice. Moreover, lawmakers are not capable to foresee all cases that may arise in practice. Therefore an explanation on how to apply it in similar cases is necessary. However, at the moment in Vietnam, the statutory interpretation has not yet been studied and solved properly enough to meet the practical demands of the society. Several legal issues related to statutory interpretation such as the role in statutory interpretation of the courts, role in statutory interpretation of jurisprudence researchers, statutory interpretation documents of administrative agencies, etc. are still being left open.

If Vietnam had a more unitary system for the interpretation of the statutory, it would ensure a uniformed application of statutes, which would help to avoid disputes.

Vietnam should have a system for statutory interpretation. The agencies system should have the right to statutory interpretation. Statutory interpretation of the agencies has a value and will be applied to all cases. The interpretation of the law must be made clear and easy to understand.

Because of the above reasons, I chose the topic “**A Study of statutory Interpretation in Vietnam and in England**” for my Master’s thesis.

1.2 Purpose

The main question that I have to answer when I finish the thesis is how the statutory interpretation in Vietnamese should be amended and improved.

Therefore, the main purpose of my thesis that need to be discussed is that referring to statutory interpretation in a country, such as: How to define and determine the urgent need of statutory interpretation? The objective scope of the statutory interpretation activity (or called scope of the statutory interpretation)? Which agency will be responsible to conduct the statutory interpretation? What are the mechanism, procedures to interpret? Which principles should this be based on in order to ensure the effectiveness and practical value of the statutory interpretation?

1.3 Methods and sources

The methods used in this thesis are description, analysis, political and comparatison. Description is used mainly in the Chapter 2 while analysis, political and critical evaluation

are used in both chapters to make clear the legal options in both Vietnamese and English legal system. I also try to make a comparison between these two countries.

1.4 Delimitation

The thesis is a really large topic. Therefore, I cannot look deeply into all problems that is related to statutory interpretation. Specifically, the English legal system include two law types, those are Case law (precedent) and Statutory. In the thesis, I concentrate on research and analysis of the provisions of the regulation and practices of statutory interpretation in Vietnam and England.

Provisions of the under-law legal documents which guide the applying the law on statutory interpretation. I will study statutory interpretation in England.

After that, I will compare them with statutory interpretation of the system of England. In comparison, I will look at and analyze Vietnam legislation and its influence on statutory interpretation in Vietnam.

In conclusion, I will bring out reasonable solution to interpret statutory in Vietnam.

1.5 The structure of the thesis

Due to the purpose of the thesis, depending on the actual researching conditions as well as basing on the methods being used, the thesis will be divided into three parts as follows:

Part 1: The introduction

Part 2: General of statutory interpretation and the statutory interpretation under the Vietnamese and English legal systems

Part 3: Practice and suggestion of innovation for statutory interpretation in Vietnam derived from experience of England.

Conclusions.

2. General aspects of statutory interpretation and the statutory interpretation under the Vietnamese and English legal systems

2.1 Statutory interpretation in general

2.1.1 Definition of statutory interpretation

An useful concept of statutory interpretation is inspired from the concept of law with various perspectives from different philosophies, namely the Natural, the Practical, the Formal or the Socialist. Each of them has its own way in defining law, therefore, it is very difficult to frame a general concept.²

“Law” as a concept originated very early and often goes along with the concept of Government. It is understood as a system of common rules of conduct established or acknowledged by the government, representing the will of the ruling class, and is guaranteed to be complied with by the coercive force of the Government. It is an element that ensures social stability and order.³

There are many legal systems in the world. In the legal history, customs law and common law are the primary legal forms. Therefore, with the premise to clarify the formalities in community and religious rituals via priests and religious leaders, together with the origination of the “Law”, the first legal interpretation was the interpretation of customs law conducted by philosophers and politicians. The first written legal interpretation known to the World was the one conducted by Ancient Greek politicians.⁴

However, the concept of “legal interpretation” only became a publicly used social-legal terminology in the bourgeois age, when statutory interpretation was understood as an act of clarifying the idea and the content of legal normative, ensuring the awareness as well as strictly and unanimously compliance with the law. It is also understood as an attempt to rebuild the ideas the authors wish to convey in the regulations stipulated in statutory documents.⁵

The first problem to consider is “What is statutory interpretation in Vietnam”?

² The concepts of law under these philosophy can be found in the writings of Brian Bix, Jules Coleman and Brian Leiter, Ernest Weinrib in “A Companion to Philosophy of Law and Legal Theory” edited by Dennis Patterson, Blackwell Publishers, London, 1996 and the textbook *Giáo trình lý luận chung về nhà nước và pháp luật (General theory about State and Law)*, University of Law Ha Noi, edited by Prof. Le Minh Tam, The People’s Police Publisher, 2007.

³ Tran Ngoc Duong, *Lý luận chung về Nhà nước và Pháp luật (General arguments about Law and Government)*, National Politics Publisher, Hanoi, 2005, p. 186

⁴ Nguyen Nhu Phat, *Giải thích pháp luật tại Việt Nam – công cụ đảm bảo tính minh bạch của pháp luật (Statutory interpretation in Vietnam – a tool ensuring legal clarity)*. The International Conference on “Statutory interpretation”, Hanoi, 2008.

⁵ Hoang Van Tu, *Thẩm quyền của Ủy ban thường vụ Quốc hội về việc giải thích Hiến pháp, luật, pháp lệnh (The National Assembly Standing Committee’s jurisdiction in interpreting the Constitution, law, and decree)*. NCLP Magazine, 5/2002.

According to Vietnamese Dictionary, “interpretation” is the act of interpreting⁶; that is to use the reasons or arguments to explain and help the audience clearly and precisely understand the matter⁷ and “ *Statutory interpretation is an activity to clarify ideas, contents and meanings of legal principles, legal definitions, regulations and norms, ensuring the laws are acknowledged correctly and unified.*⁸”

In addition, a lot has been written about the concept of statutory interpretation in law schools, legal documents, etc...in those documents, statutory interpretation was present diversified, there are different opinion on this matter. But at present, the majority have opinions that statutory interpretation is to “clarify the contents and meanings of the law principles”⁹ or “ statutory interpretation determine the correct understanding of the contents of specific law principles from which people make bases for the implementation and application of statutory in practice.”¹⁰,

2.1.2 Subjects and Objects of statutory interpretation

2.1.2.1 Subjects of statutory interpretation

The subjects of statutory interpretation are defined as the works to certify which offices in the modern State structure have the power to interpret the meaning of statutory normative acts. Countries have a main legal system. They divide the power to statutory interpretation for their legal system. One country can give this power to the courts, another give it to legislative, administrative...or any agency. What is the best way? What is the best agency to interpret statutes? There are different opinions about this, however, the way that the subject of statutory interpretation is decided must follow certain theoretical and practical principles:

Theoretically, the subject of statutory interpretation must be carried out based on the philosophy of the State organization structure of a country, herein the basic rules in working out the State structure. If the basic rules make up the most of the State organizational structure, it is compulsory that this feature must be protected by the offices authorized to conduct statutory interpretation. For example, if the State is structured based upon the rule of solid separation of powers in which the Legislative, Executive, and Judicial bodies share the same level of importance and counterpoise each other, then statutory interpretation jurisdiction will be given to any offices not under control of the legislative and other state offices. If the state is built following a principle within which the Legislative is of highest position, then the offices having statutory interpretation jurisdiction should be of lower

6 Vietnamese Dictionary, Institute of Linguistics, Da Nang Publisher, 2005, p. 388.

7 Professional guidelines – website of the Ministry of Justice: <http://nghiepvu.moj.gov.vn>

⁸<http://dictionary.bachkhoatoanthu.gov.vn/default.aspx?param=284DaWQ9MTExMDEmZ3JvdXBpZD0ma2l uZD0ma2V5d29yZD1naSVIMSViYSVhM2krdGglYzMIYWRjaCtwaCVjMyVhMXArbHUIZTEIYmEIYWR 0&page=1>

⁹ Tran Ngoc Duong, *supra* note 3.

¹⁰ Ha Dang Quang, *Giải thích pháp luật trong đào tạo luật tại Việt Nam, thực tiễn và những vướng mắc (legal interpretation in law education in vietnam obstacles and realities)*, The International Conference on “Statutory interpretation”, Hanoi, 2008.

level. Otherwise, in case the statutory interpretation goes against the legislative spirits, accidentally there will exist two parallel legislative offices which might do harm to the position of the Legislative branch of that nation.¹¹

In one aspect, statutory interpretation activities is in line with legal normative acts brought up by the law makers purpose to clarify the rules. Therefore, the Law maker's interpretation of the rules will be the highest legitimized reasoning.

The delegation of power is required not to go against the traditional operation of the branches of the State. Several branches in the State organization structure can work as one party in a lawsuit with individual or private sectors (Legislative, Administrative Management branches). In that case, statutory interpretation will influence the benefits of all concerned parties given the power that conflicts with the inner benefits of that offices. The execution will be accordingly unfavorable to the individual and private sectors.¹²

Practically, the need for statutory interpretation arises when legal normative acts regulating the social relationships or behaviours are ambiguous. Sstatutory interpretation will then clarify the rules and at the same time sort out the troubles. Therefore, statutory interpretation in practice is required to take action repeatedly and timely so as to remove the barriers between Law and Life, and effectively support the legislative works.

According to the theory of power separation widely applied, the State is made up of three main branches: Legislative, Executive, and Judicial. In theory, there might be two possibilities: (1) the power will be granted to one of the three branches (2) the jurisdiction will be granted to an independent organization. Both of these cases bring up advantages and disadvantages in theory and reality.

- The first possibility: The jurisdiction will be granted to one of the three branches.¹³

If the Legislative branch is given the jurisdiction, then the supreme legislative power will be protected. Since the law makers establish the law, they are properly capable of reasoning the law by themselves. The jurisdiction in that sense will not conflict with the legislative duties as they are conceived to be the continuing and supporting activities of legislative works.

However, in fact, if the National Assembly takes over the duty, it will face a couple of practical problems. To begin with, the law makers are responsible for setting up the rules, and then to ratify them. They do not directly deal with real cases arisen from the need to interpret law. In that sense, the National Assembly performs statutory interpretation activities only when being proposed by other State branches; thus, normally uses a general and unspecific language. Consequently, the State Offices will refer to that reasoning to deal

¹¹ See To Van Hoa, *Một số vấn đề lý luận về giải thích pháp luật* (The theoretical issues in statutory interpretation), the International Conference on "Statutory interpretation", Hanoi, 2008, pp.8-10.

¹² See Hoang Thi Kim Que, *Một số vấn đề về giải thích pháp luật, vai trò và ý nghĩa thực tiễn*, (Some of problem on statutory interpretation, role and meaning practice), the International Conference on "Statutory interpretation", Hanoi, 2008.

¹³ See To Van Hoa, *Supra* note 11.

with the real circumstances. As the result, it is hardly achievable narrow the gap between law and reality. Besides, while it is probably agreed among senators to ratify the law, it sounds harder to compromise about statutory interpretation since the National Assembly works as a common forum for various political wills and the rules being reasoned have close connection with the benefits of several parties.¹⁴

If the Executive branch is given the jurisdiction, it can guarantee the immediacy since this body is the one who applies the law in concrete cases. Nevertheless, theoretical conflict emerges because its interests usually hit that of the individual. When being brought to the Court, both parties share statutory equality, which will be damaged if the Executive body also works as a statutory interpretation office. The reasoning hereby may oblige the Court and bring themselves priority over the other parties. That is why nowadays, the power of interpretation is not given to the Executive body (or State Administrative Management Offices).¹⁵

The Judicial body, or Court of Justice, is the most eligible office to do statutory interpretation duty, for the following reasons:

A court is the place to adjudicate disputes and dispense civil, labor, economic, administrative, and criminal justice under its laws; later, resulting in the need to interpret them. And so, they are capable of apply the rules in order to solve the disputes timely and properly.

Having expertise in dispute resolution under the law, the court is the most legally knowledgeable, specifically and generally, so as to interpret laws while still ensuring the unity of the legal system as a whole.

Being independent in reasoning, the Court is not inclined to any party concerned, thus successfully fulfill the role.

Taking into account the steps in bringing law into life, it is apparent that Judges need to go through statutory interpretation activities. They start by investigating the reality, then conceive their judgments. Afterwards, they will study the law to select appropriate rules which regulate the specific conduct in order to subsequently draw the conclusions. So as to pick up the right rules, Judges have to consider all concerned laws; such act is also seen as the reasoning activities. The Jurisdiction hereby is conceived as publicizing the understanding of the Judges.¹⁶ For the society, such act will allow people to understand the rule like an expertise or State offices having the right to interpret.¹⁷

The hereinabove analysis supports the fact that statutory interpretation's jurisdiction is nowadays, officially or unofficially, delegated to the Court of Justice in almost all countries where legal system is developed.¹⁸ Nevertheless, there are also disadvantages, especially

¹⁴ To Van Hoa, *supra* note 11. p.8.

¹⁵ See Duong Quoc Thanh, *Giải thích pháp luật và vai trò của Tòa án (statutory interpretation and the role of the court of justice)*, The International Conference on "Statutory interpretation", Hanoi, 2008, pp.4 -7.

¹⁶ John Bell, Sophie Boyron and Simon Whittaker, *Principles of French Law*, Oxford University Press, 1998, pp. 29-31.

¹⁷ To Van Hoa, *supra* note 11. p.9.

¹⁸ Nigel Foster and Satish Sule, *German Legal System and Law*, 3rd edition, Oxford University Press, 2002; Winfried Brugger, *Statutory interpretation, Schools of Jurisprudence, and Anthropology: Some Remarks from*

when the Court works as the only one statutory interpretation office in the country. Firstly, since the courts are not the law makers, they may interpret the rules against the will of the written law and the legislation. In case their interpretation goes beyond the will of law, then the legal rules may be viewed to be made by the Court, not democratically made by the law makers. Secondly, the jurisdiction may be delegated to different courts which may dispute with the rule to guarantee the unity of statutory interpretation activities aiming at improving the whole legal system.

Apparently, those shortcomings can possibly occur also when the Court conduct statutory interpretation. However, they can be overcome by establishing a proper mechanism and a set of rules as discussed below.

- Second possibility: The jurisdiction will be granted to an independent organization operating under no control of the three offices (Legislative, Executive, and Judicial branches).¹⁹

If a functional office is set up just to deal with statutory interpretation, then it will receive questions derived from the experience of the Executive and Judicial bodies in handling the real cases. The answers will be given afterwards in compliance with the law to support the execution. The most important disadvantage in this case is the waste of time and manpower. Since an independent office operates as a neutral office to reason the will of the legislative body, then to transfer this to the executive body in the form of statutory interpretation, it may take time and thus damage the intermediary of statutory interpretation activities. Also, the establishment of the new office require certain manpower resources, indispensably take away the expertise from established Legislative, Executive, and Judicial branches. It can be seen as a waste compared to the solution to refer to currently operating statutory interpretation offices. Moreover, the position of the new office, placing within or outside the established offices, is hard to be compromised in terms of legal and political aspects.²⁰

It sounds like those disadvantages are the reasons why almost all countries in the world do not refer to this possibility in setting the framework for statutory interpretation activities.

Therefore, statutory interpretation is an essential and regular need in the statutory making process, statutory enforcement and application process, law teaching, information, education and communication. However, what is more necessary and important is the process of statutory enforcement and application because law is composed of common behavioral rules. In case of law-based settlement, there should be uniformity. With an aim

a German Point of View, 42 Am. J. Comp. L. 395; William P. Statsky, *Legislative Analysis and Drafting*, 2nd edition, West Publishing Co, 1988; Peter Goodrich, *Historical Aspects of Statutory interpretation*, 61 Ind. L.J. 331,

¹⁹ To Van Hoa, *supra* note 11. pp.10-11.

²⁰ To Van Hoa, *supra* note 11. pp.11-12.

to converting the uniformity into the commonality, there should be a guess. Thus, organizations and individuals responsible for statutory enforcement and application should be responsible for interpreting the statutory in each particular case.

2.1.2.2 Objects of statutory interpretation

The analysis above has certified that the existing legal rules and legal documents or case law certainly give rise to the activities of statutory interpretation by State agencies having the jurisdiction. However, it is noted that in every country, the concept of written law involves various legal documents, for example, written constitution (if available), legal documents issued by law makers (the National Assembly or Congress), and those issued by the State Administrative management offices (administrative documents to manage various aspects in the social life).

Which types of statutory documents will need to be interpreted?

In terms of regulations, all of the three kinds of legal documents need to be interpreted as they consist of general rules in regulating the behaviour in specific cases. In specific circumstances, they will need to be clarified before being brought into effects. This assumption is fundamental. However, one needs to take into account that these documents differ in promulgating subjects as well as legal values; thus, statutory interpretation activities will accordingly contain different characteristics. These differences need to be worked out clearly so that all the terminologies will be properly used and a system of statutory interpretation needs to be built.²¹

The Constitution is the most basic and the supreme legal document in almost all country's legal system. It is not only issued by the law makers of the country but also undergone concrete constitutional process which involves the procedures that conventional legal rules do not require, for example, the qualified majority among the law makers (The US,²² Vietnam,²³ China,²⁴ Germany,²⁵ France,²⁶ Sweden,²⁷), specific consensus of the member states (the federation) or referendum (Denmark, France, and other members of the European Union). Constitution is viewed to be either of the supreme legal value or of crucial political significance. Consequently, there must be an understanding between interpreting Constitution and Law because they are aimed at explaining documents of different levels and values. In fact, almost all countries set up specific procedure for Constitutional interpretation

²¹ See Nguyen Minh Doan, *Đối tượng của giải thích pháp luật (Objects of law interpretation)*, the International Conference on "Legal Interpretation", Hanoi, 2008.

²² Article 5, The US constitution.

²³ Article 147, The current Vietnamese constitution.

²⁴ Article 64, The current Chinese constitution.

²⁵ Article 64, The current German constitution.

²⁶ Article 89, The current French constitution.

²⁷ Chapter 8 Article 16, The current Swedish constitution.

Documents issued by the law makers are the most important legal acts in the national legal system. They enjoy the most widespread coverage towards all aspects of social life; and thus require a lot of interpretation. Legal interpretation, as a result, is identified as the statutory interpretation.

Statutory interpretation, therefore, covers of legal normative acts promulgated by the State Administrative Authorities in order to execute specific State management aspects. These acts are relatively concrete and able to catch up with current incidents in that field. Besides, being issued by the Administrative Authorities, these acts do not go through democratic procedure and are not assessed by the law makers. The Administrative Authorities are unlike the law maker in the sense that they are based upon the leading operations of others. The policies and regulations therefore are made to express the inner attentive will. More importantly, the Administrative Authorities know more than any one else about the expertise, policies, and regulations in their own field. Therefore, they are the ones who can clarify the vagueness in the legal documents issued by themselves. The statutory interpretation process therefore is unlike that of legal documents made by the law makers.

It is possible to conclude that in any country the objects of statutory interpretation are legal documents issued by the law makers. Statutory interpretation will be carried out in a different way accordingly since they bring within themselves different characteristics.

Nevertheless, the concept of “ statutory documents promulgated by law makers” in this context is not the same in every country. The organizational structure of the State decides how the law makers can hand over statutory interpretation to other offices, like the collective executives within the law makers or the collective government’s offices. This will lead to the promulgation of legal documents which are not aimed at managing the State Administrative activities but improving the legislation. In many circumstances, they bring up new regulations under the name of the legislative offices.²⁸ As a result, the issuance of the documents to regulate the State Authorities should be distinguished from that to improve legislative works. If the power does exist, statutory interpretation will cover larger subjects including the second documents hereinabove to guarantee the democracy in legislative activities.²⁹

In contest to this, common law systems have specific regulations legal interpretation. The object of interpretation is case law and statutes. In this kind of legal system, case law has the main role in society.

However, interpreting statutes is the important task of the thesis. It is suitable for the Vietnamese legal system. Statutory interpretation guarantees correct, accurate, and uniform understanding of the contents and spirit of legal regulations, thus law making and

²⁸ The typical example is the model of Regulating Government under the Socialist regime

²⁹ To van Hoa, *supra* note 11, pp.4-6

enforcement can be strict and accurate. To that end, it is to interpret statutory, that is, to clarify the idea, contents and meaning of legal norms, to ensure a strict and uniform understanding and enforcement of statutory.

2.1.3 Methods of statutory interpretation

One of the most important features of law is the general promulgation because law mainly exists in the form of general accepted practices that the law makers need to study and summarize from various real cases. A code of conduct will be accordingly generalized to satisfy the majority. When law is implemented, especially with the practices being applied, it must be specified to fit with particular cases. In order to successfully perform this process, legal subjects, especially the authorities, have to “implement the law in real cases”³⁰ to assist its recognition and execution (especially in law application) in accurate, consistent, and effective ways. Statutory interpretation not only helps the subjects to precisely recognize and use the terminology and notion when making and executing law but also has active impact on legal notion and enhances the legislative and protective features of law.³¹

Generally speaking, the basic methodologies³² include:

❖ The most popular, fundamental and indispensable method is the one which interprets the language and grammar by clarifying the words, sentences, and their grammatical connections in this context. It is extremely important when interpreting the documents in which terminologies are used for the first time, thus non- professional readers will find it difficult to understand.

However, it is apparently seen in law making practice that the language hardly can transfer the total ideas and will of the State (Authorities). As the result, there is confusion in reasoning whether to follow the will of the State Authorities or the letter of the documents. According to English lawyers, the language hereby should not be considered as an expression of an individual or organization’s will. Only when the language is relying on its original sources could they be written without any personal remarks. In other words, the language expressed in the documents is the will of the State. Therefore, English jurists say that “*When interpreting legal documents, including Acts, what the court concentrate on and look for are not the things law makers state but the meaning of what they state*”³³. Whatever the will of the State is, once being issues for the authorities, the language of legal rules must

³⁰ Marx- Engels, collections, Vol.1, National Political Publisher, Hanoi 1995, p. 101.

³¹ Nguyen Minh Doan, *Về cách thức giải thích pháp luật ở nước ta hiện nay (Methodology law interpretaion)*, Dan chu va pháp luật magazine, No 4/2003.

³² Dinh Van Mau and Pham Hong Thai. *Lý luận chung về nhà nước và pháp luật (General arguments about Law and Government)*, Da Nang General Publisher, pp. 396-397.

³³ Michael Bogdan, *Comparative Law*, Publisher Norstedts Juridik 1994, (translated by Le Hong Hanh and Duong Thi Hien, 2002), p. 101.

be closely followed. In this sense, as long as the State's will is shown accurately in the documents, this methodology will serve as the proper and concrete one.³⁴

Since language does not always exactly and fully reflect the spirit of the State, it is insufficient to solely refer to it. How do citizens sense the true will of the State, in other words, how to recognize which words are properly written and which ones are not? It is true that there are a variety of Chinese-Vietnamese words as well as the borrowed ones which are not unanimously understood. Therefore, as it is difficult for the State authorities to comprehend the State's will in those documents, it is even harder for the people. Accordingly, the explanation should be given by the authorities' right following the promulgation of the documents to clarify vague words. Otherwise, in case of conflict, the authorities have to interpret based on the language of the documents to avoid any violation to the people's benefits, freedom and democracy. Statutory interpretation following the promulgation of legal documents is probably viewed as significant towards the unspecific and unclear regulations which later may lead to the misunderstanding or multi-understandings.³⁵

❖ The second methodology is named logical method which involves predicting, ratiocinating, referring to the rules of logic philosophy in order to clarify the content of the regulations. Logical conditions allow the readers to truly understand the documents following critical analysis. Logical thinking will also help law makers work out a general but concrete regulations, accurate and understandable. This method is used concurrently with linguistic interpretation and systematic interpretation methods where the legal documentations do not express directly (but indirectly) the will of State. When applied in Vietnam, logical interpretation is used to interpret a single document and rarely to the whole legal system due to its level of incoherence.³⁶

❖ The politically and historically explanatory methodology is defined as the one which approach the content and philosophy of the legal rules by studying the conditions and circumstances in which the rules and documents are issued, and the political goal that the State expects to achieve.³⁷

The circumstances, purposes and political intent may often be found in legal documents (in the Introduction or first part of legal rules). However, they are found largely in either presentations or reports which mention the reasons and aims of legal rules or the appraisal and assessment reports made by concerned authorities. While it is easy for the State, it is next to impossible for the people to get it done. Consequently, the State needs to learn how to publicize all assessment and appraisal documents relating to the promulgation of legal

³⁴ Sinclair, Michael, "Llewellyn's Dueling Canons, One to Seven: A Critique". *New York Law School Law Review*, Vol. 51, Fall 2006 Available at SSRN: <<http://ssrn.com/abstract=780424>>

³⁵ S Feldman 1994 'Diagnosing Power: Postmodernism in Legal Scholarship and Judicial Practice' 88 *Northwestern University Law Review* 1046.

³⁶ Nguyen Minh Doan, *supra* note 31.

³⁷ Pachakop 1964, 'Van De Xay Dung Bo Luat Dan Su O Lien Xo' (Drafting the Civil Code in the Soviet Union), *Judiciary Magazine* (2), 20, pp.20-24

rules, especially those which concern the whole society so as to facilitate the law interpretation and application. The experience of several countries in the world is worth consulting, like that of Sweden which says: “The judgments in preparatory documents are also recognized as obligatory source of law”³⁸.

Vietnam has undergone fundamental changes; and thus, politically and historically explanatory method should be given proper attention in the future.

❖ Structural methodology is widely referred to in statutory interpretation activities. The content and philosophy of legal rules hereby are explained in comparison with others. Their position and roles are determined by considering the institution, law and the whole legal system. In legally developed countries, legal system is structured coherently, thus structural theory will be of great use. Moreover, the application of this method will help to find out the shortcomings, the overlapping and conflicts of the legal rules.³⁹

❖ In principle, legal rules must be interpreted concretely without any changes. Serving as the most appropriate rule in interpreting, this method requires the respects to the letter and language that the rules present. In fact, if unwisely being copied word by word, the interpretation will definitely be unreasonable. As the result, they need to be widely or narrowly paraphrased to avoid the notable illogicalness.

Widely paraphrasing is the work to interpret the letter of the statutory rules towards broader meaning than the original one as long as it expresses the will and ideas of the law makers (the content of the interpretation is broader than the original text). Take it for example, the phrase “therefore under the governance of the law”⁴⁰ is explained as “therefore under the governance of the legal rules” (hereby, law is interpreted as “legal rules”).

Narrowly paraphrasing is the work to interpret the text of the statutory rules towards less confined meaning than the original one as long as they express the will and ideas of the law makers (the content of the interpretation is narrower than the original text). For example, while it is written in the law that “The State power solely goes to the People”, it may then be interpreted like “The State power solely goes to the Workers, the Farmers class, the Intelligentsia and other working people”⁴¹. The content is narrowed since People is only conceived as the workers, the farmers, the intelligent circle, not all people in the society.

The two methodologies are viewed as exceptional cases since they help reinforce the legality. Since they are not referred to randomly, they are used with an aim to filling the legal gaps in the system, facilitating the subjects to understand the content and the will of the State accurately. And so, only when the text seems to be wider or narrower than the

³⁸ Michael Bogdan, *Supra* note 33.

³⁹ This method always used in statutory interpretation by all Vietnamese power agencies. We can find in case that was interpretation.

⁴⁰ Nguyen Minh Doan, *supra* note 21.

⁴¹ Nguyen Minh Doan, *supra* note 31.

original meaning should the two hereinabove methods be applied, otherwise this will go against the law. The application, to some extent, depends on the historical and political situation of the country. Currently in many countries, the judgments are highly respected in interpreting the legal rules in real cases⁴². Since the law may not keep up with the social development pace, the judgments will help it catch up with that changes, most of which come from civil and economic cases. On the one hand, the accuracy must be guaranteed, on the other hand, the clarity should be taken into account and the social and people's benefits should be prioritized. Flexible interpretation which goes in line with the national benefits is useful, not least when dealing with foreign regulations as well as the international commitments that is signed by Vietnam. Otherwise, the connotation and denotation are possibly interpreted in a different way due to the variety of languages and terminologies. As required by the globalization, the Vietnamese lawyers should interpret the statutory rules flexibly enough so as to meet the international standard.⁴³

It is notable that the above methodologies coherently complement and do not necessarily replace each other. They should be applied all together in order to remove misunderstandings of the statutory rule's content and spirit.⁴⁴

2.1.4 Legal values of statutory interpretation

The statutory, in government and societal management activities, especially in legal branch and the citizen society, possesses an undeniable and unreplaceable position and role. Statutory interpretation, whose duty is to elucidate statutory normatives as well as the results of statutory interpretation of similar legal value as the law, is extremely essential and plays a very important role in legal awareness – enforcement – application⁴⁵. It is safe to say that statutory interpretation is an indispensable need in every legal system and every society because theoretically, this demand is not only initiated when and only when there exists an absolutely perfect legal system or high level of legal awareness among the individuals in the society. However, law is a factor of the super structure. It is built on the basis of the infrastructure in order to regulate social relationships in real life. At the same time, each individual in the society possesses different levels of awareness. Therefore, given the limited legal awareness of the Vietnamese and the nature of its legal system, the demand for statutory interpretation becomes essential and plays a very important role. The role of statutory interpretation is manifested from the awareness of legal performance of the citizens as well as that of government agencies having jurisdiction.⁴⁶

⁴² See for example, the English and the US court.

⁴³ Nguyen Minh Doan, *Supra* note 31.

⁴⁴ Nguyen Minh Doan, *Supra* note 31.

⁴⁵ Tran Ngoc Duong, *supra* note 3.

⁴⁶ See Hoang Van Tu, *Giải thích pháp luật – Một số vấn đề lý luận và thực tiễn ở Việt Nam (Statutory interpretation – Basic theoretical and practical issues in Vietnam)*, Nghiên cứu lập pháp magazine, No 10/2008.

By clarifying the content and meaning of legal normatives, statutory interpretation will assist legal subjects in precisely and unanimously understanding the regulations; thus, improving legal awareness and consciousness, as well as legal application, compliance, and enforcement; as well as restraining and reducing illegal behaviors resulting from false awareness of legal normatives. Moreover, the role of statutory interpretation is fully demonstrated to bring about great significance in the forms of legal application – a form of legal performance conducted to ensure enforcement of the law in real life – a form conducted by the authority of agencies, organizations, and subjects vested by the government that directly influences the rights and obligations of the citizens. Such role is decided by the nature and characteristics of legal application activities. The nature of such action is the application of legal norms to specific cases. The characteristics of such action is the creativity of the subjects applying the law in the process of employing the common and general to the specific and detailed features. Such characteristics require the subjects to clarify the content and spirit of the law before applying it, that is they are requested to be able to interpret the law.

Thus, without statutory interpretation, legal norms would never be precisely, absolutely, comprehensively, and thoroughly understood; besides, its meaning as well as legal, political, and economic purpose “behind” the language upon which legal normative is established would never be revealed. The consequence would leave direct influence upon the quality of legal documents to be applied – the most important product in the application process; and thus, would directly affect the rights and legal obligations of legal subjects or legal responsibilities with respect to defined violations.⁴⁷

The role of statutory interpretation create the legal value of statutory interpretation. The legal value of statutory interpretation depend on the subject of statutory interpretation. It can be divided into two forms as unauthorized and authorized interpretation.

❖ *Unauthorized statutory interpretation* is the interpretation of any organization or individual without authority to interpret that legal regulation. Therefore, the unofficial interpretation is not legally valid and binding on authorities, organizations, and individuals. It only helps people to better understand legal regulations. The unauthorized statutory interpretation is the most common and most diverse among the general public as anyone can interpret law (one who knows interpret for the one who does not, one who knows more interpret for the one who know less...) However, this kind of interpretation is usually subjective and arbitrary, thus it has many limitations as inaccuracy and inconsistency. Nevertheless, unauthorized statutory interpretation, particularly interpretation done by prestigious organizations, individuals, legal scientists, and lawyers has important impact and influence over legal awareness and behaviors of legal actors, thus affecting their activities in law enforcement and application. We often come across unofficial statutory

⁴⁷ See, Hoang Van Tu, *Giải thích pháp luật – Một số vấn đề lý luận và thực tiễn ở Việt Nam (Statutory interpretation – Basic theoretical and practical issues in Vietnam)*, the International Conference on “Statutory interpretation”, Hanoi, 2008, p.7.

interpretations made by politicians, scientific and social activists, on the radio, press, and on legal journals and books or commentaries on some legal regulation or document.⁴⁸

❖ *Authorized statutory interpretation*⁴⁹ is the interpretation made by competent authorities who according to law are entitled to interpreting that regulation or legal document. The content of official statutory interpretation is legally valid, noted in a law-interpreting document, and is binding on other organisations and individuals to have the understanding and behaviours in accordance with the content of interpretation. Authorized statutory interpretation is crucially important, thus it can only be done by competent authorities of the State under strict processes and procedures as stipulated by law. All State agencies, social organisations and individuals are obliged to have the understanding and behaviours in accordance with the contents and spirit of legal regulations set out by official law-interpreting documents. Authorized statutory interpretation is divided into two kinds, that is, normative interpretation and interpretation for particular cases⁵⁰. *Authorized normative interpretation* is often the outcome of interpreting legal documents, documents issued by higher authorities or documents with higher legal validity by means of documents with lower legal validity and effect in the form of enforcement guiding documents issued by State competent authorities to ensure the uniform law enforcement and application⁵¹. *Authorized interpretation for particular cases* is only valid in that particular legal case, and it is not valid in other cases⁵².

In short, statutory interpretation not only possesses important role and position in the improvement of legal awareness and understanding of the people but also determines the rightness and feasibility of applied law. Statutory interpretation offers an accurate and unanimous legal awareness, and effectivity of legal application and enforcement; thus, promotes the legislation, and protect law and order.⁵³

2.2 Regulations stipulated by laws on statutory interpretation in Vietnam and England

Statutory interpretation, in a narrow sense, is an action demonstrating the government authority; therefore, its content must be regulated by legal normative acts and must be strictly followed. Reality shows that corresponding to each legal system is an interpretative

⁴⁸ Tran Ngoc Duong, *supra* note 2, p. 367. Hoang Van Tu, *Supra* note 47, p.4.

⁴⁹ Tran Ngoc Duong, *supra* note 48. Hoang Van Tu, *Supra* note 47, p.4.

⁵⁰ Nguyen Van Thuan, *Cơ sở lý luận và thực tiễn của thẩm quyền giải thích Hiến pháp, luật, pháp lệnh của UBTVQH (Argumentative and practical basis of the jurisdiction in interpreting the Constitution, the law, and decree of the National Assembly Standing Committee)*, Hanoi, 1999.

⁵¹ Tran Ngoc Duong, *Supra* note 2, p.368.

⁵² Tran Ngoc Duong, *Supra* note 2. Nguyen Duc Lam, *Thẩm quyền của các cơ quan bảo hiến ở các nước trên thế giới (Jurisdiction of constitutional protection agencies in different countries in the World)*. NCLP Magazine, 9/2001.

⁵³ Nguyen Cuc Viet, *the concept of legal interpretation, regulation on legal interpretation, and the nature of legal interpretation in vietnam*, The International Conference on “Legal Interpretation”, Hanoi, 2007, p. 2.

mechanism, through which the basis of statutory interpretation is illustrated in different forms of documents, including the Constitution, law, or sub-law documents. However, the basis of statutory interpretation generally regulates the following:

- Subjects having the right to request statutory interpretation;
- Subjects having the power to interpret the law;
- Object of statutory interpretation;
- Legality of statutory interpretation;⁵⁴

2.2.1 Subjects and Objects of statutory interpretation according to the Vietnamese and English legal system

2.2.1.1 According to The Vietnamese legal system

The Constitution of 1959⁵⁵ is the first legal normative act regulating the act of statutory interpretation as a jurisdiction of the National Assembly Standing Committee.

However, these documents only regulate the orienting principles but not yet regulating detailed content; and thus, statutory interpretation has not yet been practically conducted.⁵⁶

Inheriting and developing the regulations was stipulated in the Constitution of 1959, the Constitution of 1980, the Constitution of 1992, and other legal normative acts regulating statutory interpretation including: Law on the organization of the National Assembly 2001, 2007; Law on the organization of the Cabinet Council 2001, Law on the organization of the People's Court 2002, Law on the organization of the People's Procuracy 2002; Law on promulgation of legal normative acts 1996, 2002, 2008; Operation statute of the National Assembly Standing Committee; Resolution No. 02 promulgated by the National Assembly Standing Committee regarding the organization and duty of the Office of the National Assembly; Resolution No. 369 promulgated by the National Assembly Standing Committee regarding the establishment of the Board of Legislature of 2003; etc... and several other legal normative acts regulating the interpretation of Constitution, law, and decree-law without regulating statutory interpretation. The act of interpreting the Constitution, law, and decree-law contains the following main content:

❖ Subjects having the jurisdiction requesting the interpretation of Constitution, law, and decree-law

Pursuant to the regulation stipulated in Clause 1, Article 15, Regulation No. 26/2004/QH11 of the National Assembly dated 06/15/2004 regarding the Operation statute of the National Assembly Standing Committee replacing that of the National Assembly Standing Committee of 1993, Law on promulgation of legal normative acts 2008,⁵⁷ the following

⁵⁴ Hoang Van Tu, *Supra* note 47, p.8.

⁵⁵ See Clause 3, Article 53, the Constitution 1959.

⁵⁶ Hoang Van Tu, *Supra* note 47, p.8.

⁵⁷ See Article 85.

subjects have the right to request the National Assembly Standing Committee to provide an interpretation of the Constitution, law, and decree-law:

- The Standing Committee of the National Assembly;
- The President;
- The Government;
- The People’s Supreme Court;
- The People’s Supreme Procuracy;
- The Ethnic Council, Committee of the National Assembly, Members of the National Assembly;
- Central Committee of the Vietnamese Fatherland Front, member organization of the Front.

❖ Subjects having the jurisdiction to interpret the Constitution, law, and decree-law

Pursuant to the regulation stipulated in Article 91, Constitution of 1992, the standing agency of the National Assembly – the National Assembly Standing Committee is the only subject having the jurisdiction in interpreting the Constitution, law, and decree-law. Assisting the National Assembly Standing Committee in conducting such jurisdiction are the Ethnic Council, the committees of the National Assembly, the Office of the National Assembly, and the Board of Legislature⁵⁸. Art 85 Law on promulgation of legal normative acts is the National Assembly Standing Committee, the only subject having the jurisdiction in interpreting law, and Ordinances.

❖ Illustrative form of documents interpreting the Constitution, law, and Ordinances.

Clause 2, Article 21 of the Law on promulgation of legal normative acts and Clause 3, Article 15 of Resolution No. 26/2004/QH11 of the National Assembly dated 06/15/2004 regulate that: “*The National Assembly Standing Committee discusses and passes the resolution on interpreting the Constitution, law, and ordinances. The resolution on interpreting the Constitution, law, and ordinances is announced on means of mass information*”. However, according to Art 86 Law on promulgation of legal normative acts is the National Assembly Standing Committee passes the resolution on interpreting law, and ordinances.

⁵⁸ See Clause 1 Article 2, Resolution No. 02 NQ/UBTVQH9 of the National Assembly Standing Committee promulgated on 10/17/1992 regulating the organization and duty of Office of the National Assembly; and Clause 7 Article 2, Resolution No. 369/2003/NQ-UBTVQH11 of the National Assembly Standing Committee promulgated on 3/17/2003 regulating the establishment of the Board of legislature.

2.2.1.2 According to the English law systems

There are different legal systems in the world: the European continental law, the Common law, the socialist legal system and other legal systems based on religion and customs... To study the Common law, the Anglo-American law, it is necessary to start from the English law because it is the basis, the original point of the foundation and development of the Common law. English law is understood as the legal system of England and Wales (English law is used in England and Wales)⁵⁹33. English law occupies (plays) the major part in the common law system and has strong influence in the world mainly because of the British Empire's colony widening (one third of the world population estimated to live in the countries, where the legal systems are mostly based on the English law). One of the prominent features of the English law is the stable connection to the past, which is created by the continuity and non-break of the legal development history.⁶⁰

In the English law system, common law is the legal system originated from case law (including equity law). Common law is created and refined based on particular jurisdiction of cases at the court. The essence of common law is that it is made by judges sitting in courts, applying their common sense and knowledge of legal precedent (*stare decisis*) to the facts before them. It is said that the real trial at the English court not only is applied but also makes the rules of law⁶¹.

Beside common law systems, in England there is also written law system as European law, written in Anglo-Saxon. It is a statute system.⁶²

It is a mistake to believe that legal precedents dominate English law. The statutes play an important role in English law system and its importance is increasing as English law depends more on the EU law. The most important written rules are the ones in the acts approved by the House of Commons and the House of Lords. The others named statutes are the notices by Council, regulations, decisions and a number of legal under documents by local governments. They are the objects of English statutory interpretation.

According to English law, judges make law. The judge makes decision in interpreting his judgement. When a judge makes law in the trial, the statutory interpretation is a part in this judgement. In the decisions or sentences there is always a statutory interpretation part.⁶³

The statutory interpretation is obeyed when the judge's verdict (sentence) is accepted as a legal precedent. But only the binding sentences create the legal precedents and have decisive authority, others have persuasive authority.

⁵⁹ See Michael Bogdan, *Supra* note 33, p. 78.

⁶⁰ See Michael Bogdan, *Supra* note 33, p. 78.

⁶¹ See Penny Darbyshire, *English legal System*, 8th edn, London Sweet & Maxwell Publisher, 2005, p.6005.

⁶² Penny Darbyshire, *Supra* note 61.

⁶³ See Edited by D.Neil Mac Cormick & Robert S. Summers, *Interpreting precedent – a comparative study*, Published by Dartmouth Publishing Limited, 1997. pp. 315-355.

The legal precedent decisions of sentences of backward issues (for example: male chauvinism, etc.) will be abrogated, are non-binding, persuasive authority, therefore, the statutory interpretation of those has no longer decisive authority.

Which one is considered the legal precedent, the whole judgement or a part of it?

A judgement has two parts: dispute (argument) and decision. The decision is not considered the legal precedent because it is only relevant to a particular case. The dispute is considered the legal precedent because the judge gives reason and his opinion of the case in this part. It is necessary to distinguish ratio decidendi from obiter dictum in the dispute. In other words the structure of a legal precedent consists of two parts: ratio decidendi and obiter dictum.⁶⁴

❖ **Ratio decidendi** is the reason for the decision, the obligatory factor of a process of making decision. With a proper understanding of the *ratio* of a precedent, the judge can in effect force a lower court to come to a decision that court may otherwise be unwilling to make, considering the facts of the case. It is the obligatory part of the judgment because it is legal regulations, based on which the court will make decision.⁶⁵

❖ **Obiter dictum** (obiter dicta) is a comment, a remark or observation made by a judge, which are not obligatory. Obiter dicta are the judges' opinions, remarks; therefore, they are not binding. However, in some jurisdictions, obiter dicta depended on the judge's position and prestige can be strongly persuasive. Unlike the rationes decidendi, obiter dicta are not necessary because their results are not tested in reality by the judge. That means obiter dicta are not so well and carefully considered or analyzed as rationes decidendi⁶⁶

Distinguishing ratio decidendi from obiter dictum in a judgement (sentence) will be very simple if a judge, who makes that sentence, determines them clearly. However, judges don't determine the boundary between ratio and obiter. The determination will be done by another judge in another case, when he or she needs to consider the decision of that sentence as a legal precedent for his/her case. In this situation it becomes more complicated to distinguish ratio from obiter because it depends on this judge's subjective will. For this reason, the obligatory statutory interpretation in English law system is the interpretation made by the subjects who have jurisdiction to promulgate legal precedent. Not all courts in England have the jurisdiction to promulgate legal precedents.

In the framework of English courts, senior courts have the jurisdiction to promulgate legal precedents and they simultaneously are the subjects of law interpretation in England.⁶⁷

High Court of Justice: (It deals with all the most high value and high importance cases, and also has a supervisory jurisdiction over all subordinate courts and tribunals. Appeal

⁶⁴ Penny Darbyshire, Eddey on *English legal System*, 6th edn, London Sweet & Maxwell Publisher, 1996, pp. 205 -206.

⁶⁵ Michael Bogdan, Supra note 33, p.89.

⁶⁶ Michael Bogdan, Supra note 33, p.90.

⁶⁷ Penny Darbyshire, Supra note 64, pp. 200 -204.

from the High Court in civil matters lies to the Court of Appeal and thence to the House of Lords) It has general jurisdiction in civil matters: first instance as stipulated by the law. Besides, appeal from subordinate courts (in some civil matters and criminal matters, even some cases heard by Crown court) goes to the High court of Justice.⁶⁸

Legal precedents made by one judge at High court of justice are obligatory for the subordinate courts, but not necessary for the other judges at High court of Justice, despite their mutual respect for decision. The verdicts of these senior courts are certainly not the necessary legal precedents for the higher courts, but that doesn't mean they lose their value there. The higher courts hesitate to change the existing rules, especially the ones have been accepted for a long time and they are familiar to individuals and companies. There is 1/10 of verdicts becoming legal precedents and only about 1/10 verdicts are promulgated (the unpromulgated legal precedent doesn't have high value).

Court of Appeal: The Court of Appeal is the highest court within the Supreme Court of Judicature, which also includes the High Court and Crown Court (It is a part and the second level in Supreme Court of England and Wales. It has higher position than High Court of justice and Crown Court). It hears the appeals from subordinate courts. 25% sentences of Court of Appeal are published and all legal precedents have obligatory value for the subordinate courts and even for other cases at this Court.

Court of Appeal will not deviate from their former decisions as long as these decisions are not rejected by House of Lords or laws. Although they are the high courts, the highest position belongs to House of Lords.⁶⁹

House of Lords:61 House of Lords doesn't belong to the senior courts as stipulated in the law of courts. It isn't the Supreme court of England and Wales, but it has the highest jurisdiction. The decision of the House of Lords has the highest value. The jurisdiction of the House of Lords extends in civil and in criminal cases to appeals from the courts of England and Wales, and of Northern Ireland (House of Lords is another (second) Appeal in England and Wales).

The jurisdiction of the House of Lords in civil cases is appeal from decision of:

- Court of Appeal
- High Court of Justice – from the year 1969
- Court of Session
- Supreme Court of North Ireland

However, appeals from one court can be judged (heard) based on the agreement of that court itself.

⁶⁸ Penny Darbyshire, *Supra* note 61, p. 150.

⁶⁹ Penny Darbyshire, *Supra* note 61, p. 153.

In criminal cases, House of Lords hears appeals from Supreme Court of Judicature and Supreme Court of North Ireland (but not appeals from Court of Session)

Legal precedents of the House of Lords have obligatory value for all subordinate courts and for other cases in House of Lords itself. The House of Lords is the highest court in England and Wales, therefore, House of Lords is stipulated to comply with their legal precedents, which is the barrier for the development of Common law. For that reason, in 1966, the House of Lords announced that it would no longer be bound by its decisions. This promulgation (announcement) is meaningful for the existence and development of common law system.

- Only $\frac{3}{4}$ of law precedents of House of Lords are published.⁷⁰

Privy Council: Privy Council is a body of advisors to the British Sovereign, which hears appeals from British Overseas territories, Sovereign base Areas, Crown Dependencies and some Commonwealth countries as Singapore and Caribbean countries.

Decisions of Privy Council are not binding but strongly persuasive because its members are largely senior politicians, who were or are members of either the House of Commons of the United Kingdom or House of Lords or other senior courts. That is why the decisions of Privy Council are promulgated together with the decisions of the House of Lords in the same report. The decisions of Privy Council normally become law precedents obligated in the law system where that case exists. The core of the decisions of Privy Council is not judgement but presented by Privy counselors in the form of "advice" to the monarch, but in practice it is always followed by the Sovereign.⁷¹

Consequently, when the judgement of the court is considered law precedent, statutory interpretation in the judgement is obeyed as well. Moreover, in the particular jurisdiction a judge himself is the one who interpretes the judgement. The value of statutory interpretation depends on the law precedent. In addition, an integral object in English law currently is statute interpretation, similar to law precedent interpretation. However each of them has its own position in English law system. In addition to the formal interpretation of the judges and courts, jurists, lawyers, law researchers carry on their own statutory interpretation. Despite unobligatory value of these interpretations, they are still respected.⁷²

2.2.2 Methods of statutory interpretation according to the Vietnamese and the English legal system

2.2.2.1 According to the Vietnamese legal system

Up till now, according to legal documents related to law interpretation in Viet Nam, law interpretation hasn't been stipulated in any legal normative acts.⁷³ Therefore, the methods

⁷⁰ Penny Darbyshire, *Supra* note 61, p.154.

⁷¹ Michael Bogdan, *supra* note 33, p. 97.

⁷² Michael Bogdan, *Supra* note 33, p. 88.

⁷³ See 2.2.1.1.

which statutory interpretation is based on haven't been mentioned in documents of legal normative, either.

However, the methods of statutory interpretation are divided based on the content (to clarify the content, legal ideology) and the form (the way to implement the content of statutory interpretation in real life).

The first method is not officially stipulated in documents of legal normative, but legal science classifies the followings:⁷⁴ Logical method and historical method of interpretation, grammar interpretation, political- historical interpretation and systematic interpretation approaches⁷⁵. Besides, volume based interpretation approach including word by word interpretation; expanded interpretation; and restricted interpretation is used in statutory interpretation as well.⁷⁶

In reality, to interpret the law, a combination of several methods, not a single one, is often used to obtain the highest efficiency of the task. The selection and combination depend on subjective awareness, and scientific philosophy of the interpreter and the specific law to be interpreted, the interpretative context, and a suitable period of time, as well as the individual requesting statutory interpretation, etc.,⁷⁷

Due to the lack of specific and in detail application of the above mentioned approaches in statutory interpretation, there hasn't been a common rule, regulation for specific case which can be used by legislative and juridical bodies. Considering the cases interpreted recently we can recognize that the statutory interpretation depended on the legally interpretive body's intention/ will. This will really bases on the subjective judgment, the understanding and selection of statutory interpretation approaches/ methods as mentioned.⁷⁸

This is also the common point of all legal systems in the world.⁷⁹ However, the interpretation of other countries has long and continuous history. Hence, legally interpretive application is considered comprehensively with the aim of most commonly popular explanation, the easiest and best understanding of statutory interpretation. In Vietnam, the statutory interpretation practice is new that is why the statutory interpretation has not developed the common rules and form.⁸⁰

Formal method is stipulated in documents of legal nominative⁸¹. That is the statutory interpretation approved Resolution and circulars⁸². There are two main approaches/ methods to interpret the law. Besides, there is another method of statutory interpretation via legal

74 Đinh Văn Mậu and Phạm Hồng Thái. *Supra* note 32, pp. 396-397.

75 See 2.1.3.

76 Hoang Van Tu, *supra* note 5, p. 5.

77 See for example, Supreme Court conducted its law interpretation in five cases in Vietnam.

78 Nguyen Cuu Viet, *supra* note 53, pp.3-5.

79 Penny Darbyshire, *Supra* note 64, pp. 260-264.

80 That is general comments of legal scientists in Vietnam.

81 Art 2, the Law on promulgation of legal normative acts 2008

82 The first case was interpreted by the resolution No 746/2005 of the National Assembly Standing Committee 11.

documents of The National Assembly. The above-mentioned methods are used often and regularly in legislation and justice in VietNam. The Circular promulgation can be considered as the guidance for the law application by the legal bodies and itself is the statutory interpretation.

2.2.2.2 According to English legal system

Principles or rules of legislation interpretation in England are constituted from two sources: legal documents (statute) and legal precedents (case law). Furthermore, the common law system also develops rules of language and internal and external support for legislation interpretation.⁸³

❖ *Rules of language*⁸⁴

There are three rules of language applicable in legislation interpretation namely:

Ejusdem generis: Ejusdem generis means belonging to the same sort or group. For example, if the law mentions a list of concrete things, any common concept after that list will be interpreted as to reflect the concrete things in the list.⁸⁵

For example, *Powell v Kempton Park Racecourse* [1899] AC 143.

Expressio unius est exclusio alterius:

This rule means if the legislation describes something, it excludes other things. Differently from the rule of *ejusdem generis* mentioned earlier, this rule lists concrete things but there is no common noun to go with those things.⁸⁶

For example, *Tempest v Kilner* (1846) 3 CB 249.

Noscitur a sociis:

This rule means the language in legislation must be understood in its particular context. Therefore, to identify the meaning of a word it is required to consider all surrounding words.⁸⁷

This rule was used in the case *Inland Revenue Commissioners v Frere* [1965]AC 402.

❖ ***Besides, Common law has methods in case interpretation. Although the main subject of the thesis is statutory interpretation, it is of some interest to also describe some case interpretation methods.***

The literal rule: This rule is very simple: words and phrases in a piece of legislation are clear enough if it can be construed in their ordinary sense. The judge may use external support instruments such as dictionaries to look up their ordinary meaning of a word. An example of this rule is the case *Whiteley v Chappell* (1868) LR 4 QB 147.

However, use of this rule especially for interpretation of legislation promulgated long before the date of interpretation will limit how far the judge can consider in responding to societal changes.⁸⁸

⁸³ *Smith & Bailey on the Modern English Legal System*, Third edition, 1996, pp351-403;

⁸⁴ <http://www.lawteacher.net/Statutory%20Interpretation.php>

⁸⁵ Supra note 84.

⁸⁶ Supra note 84.

⁸⁷ Supra note 84.

⁸⁸ <http://legal-directory.net/english-law/interpretation-literal-rule.htm>.

The golden rule: This rule can be used to overcome the limitations of the literal rule. This rule can be understood in both a broad and a narrow term.

In the narrow term, this rule means if a word can be understood in many ways, the judge will choose one way of understanding leading to the least absurd result. Use of this rule in the narrow term was seen in the case *R v Allen* (1872) LR 1 CCR 367.

In the broad sense, this rule is used when the meaning of a word in a piece of legislation is clear but understanding in that ordinary sense leads to an absurd result. In such a case, the literal rule is not used as it will go against public interest.⁸⁹

The mischief rule: Differently from the two first rules, this rule takes into consideration the intention of law makers, and therefore identifies the purpose of making a particular piece of legislation. Thus, this rule allows the judge to consider external support elements and look up a word beyond its literal meaning to identify the mischief or the problem the legislation aims to address. An example of this rule is the case *Smith v Hughes* (1960) 2 all ER 859 related to the Street Offences Act 1959.⁹⁰

The purposive approach: The purposive approach considers positive social purpose of a piece of legislation rather than just focusing on threats the legislation aims to address. The case *Notham v London Borough of Barnet* [1978] 1 WLR 220 is an example of this approach

Nowadays the purposive approach is the dominant principle in legislation interpretation in countries with a common law system. “Today there is only one principle or approach, namely the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”⁹¹. This statement by Driedger was stressed by the Canadian Court in some recent cases⁹².

❖ ***External and internal support for legislation interpretation***⁹³

External support for legislation interpretation is support which is independent of the legislation, including:

Major publications in the course of promulgating the legislation: the Court may use publications such as White Papers and reports made by law reforming institutions in interpretation of legislation.

Parliamentary debates (*Hansard*): this support is applicable to the mischief rule and the purposive approach.

Dictionary: judges using the literal rule will use a dictionary as external support.

International treaties: a useful source of support for interpreting legislation domesticating international treaties.

⁸⁹ <http://legal-directory.net/english-law/interpretation-golden-rule.htm>.

⁹⁰ <http://legal-directory.net/english-law/interpretation-mischief-rule.htm>

⁹¹ Driedger, *Construction of Statutes*, 2nd edn (Toronto: Butterworths, 1983) p. 87

⁹² Stephane Beaulac, *Recent developments on the role of international law in Canadian statutory interpretation*, (2003) Statute Law Review, p. 26

⁹³ <http://www.lri.jur.uva.nl/~winkels/PP-Jurix-2007.pdf>

Apart from external support, the judge many use internal support to interpret legislation. This type of support is considered internal as it is included right in the legislation. This type of support may be in short titles, long titles, annexes, etc.

In addition, some basic assumptions are also used in legislation interpretation, e.g. when the legislation mentions a man (he), it also implies a woman (she) and vice versa. Legislation mentions a singular noun also applies to a plural noun and vice versa.⁹⁴

2.2.3 Legal values of statutory interpretation according to the Vietnamese and English legal system

2.2.3.1 According to the Vietnamese legal system

According to Article 1 clause 1 of the Law on adoption of normative documents 2008, “normative documents are documents passed by competent state agencies ...will be ensured for implementation by the State in order to realise social relations”. Therefore, if they are the normative documents, the State will ensure their implementation, which means these regulations are binding for all legal subjects.

According to Article 1 clause 2 of the Law on adoption of normative documents 2008: Resolutions of the Justice Council of the SPC and Joint Circular between the SPC and SPP are “normative documents” that are “ensured for implementation” by the State. Interpretation of the SPC through these documents thus enjoy legal binding values.

Otherwise, values of regulations adopted by the SPC through specific cases (outputs of law interpretation) have not yet been recognized clearly in any documents. Before going into analysing legal values of these interpretation, it should be noted that it is not rarely that resolutions in practical settlement are recognized in normative documents

In the lecture of Law University of Hanoi, “in our country, judicial practice (precedent) is not recognized as a source of laws generally and of international judiciary particularly. Only normative documents adopted by the State are sources of the laws. This confirms an opinion that the courts in Vietnam are an executive institution which only apply, but not adopt, normative documents during its resolution; and precedents cannot be a source of the laws in Vietnam in general and of Vietnam’s international judiciary in particular”.⁹⁵ Similarly, according to Dictionary on jurisprudence,⁹⁶ “In Vietnam nowadays, despite an annual summary of judicial performance in which the SPC introduces typical cases in order

⁹⁴ See Vu Van Ngoc, *Các phương pháp giải thích pháp luật trong hệ thống pháp luật thông luật và việc áp dụng các nguyên tắc này trong việc giải thích một số tình huống pháp luật hợp đồng và doanh nghiệp ở Việt Nam (methods of legislation interpretation in the common law system and application of these principles in interpretation of legislation on contracts and enterprises in vietnam)*, The International Conference on “Statutory interpretation”, Hanoi, 2008, p. 5.

⁹⁵ *Giáo trình tư pháp quốc tế (Lecture on private International law)*, Law University in Hanoi, People’s Police Publisher, 2001, p. 22. ‘In Vietnam nowadays, sources of International Judiciary include: national laws, international treaties and customs. Practice at courts and arbitration (precedents) are not considered as one source as in other countries such as England, America, etc.’ *Giáo trình tư pháp quốc tế (Lecture on private International law)*, Law University in Hanoi, People’s Police Publisher, 2001, p. 24.

⁹⁶ Institute of Jurisprudence of the Ministry of Justice, *Encyclopedic Dictionary* Publisher and Judiciary Publisher, 2006, p. 13.

to provide guidelines in settlement for junior courts, judges still base on the grounds of legal regulations, not tried judgments, for their arguments in resolution. Vietnam has not traditions of precedent application and does not consider precedents as a source of the laws”.⁹⁷

According to Pham Hong Thai and Dinh Van Mau, “in books and magazines on jurisprudence in our countries, it is disseminated that sources of the laws are forms external expressions of the laws. In other words, only normative documents contain legal regulations. Precedents and customs are not considered as sources of the laws. This conception is only to emphasize the role of normative documents in the system of sources of laws, but it is not sufficient and comprehensive. In practice in our country, there are several cases that need management use ‘precedents’ at a general and highly collective level under forms of guidelines in judicial settlement by the SPC”.⁹⁸

In the current laws of Vietnam, there are no documents neither officially recognize nor publically refuse precedents as a source of the laws. Pham Hong Thai and Dinh Van Mau admitted the legal role of precedents and failed to introduce any documents for their grounds. Similarly, the lecture International Judiciary of Law University of Hanoi and Jurisprudence Dictionary of the Institute of Jurisprudence of the Ministry of Justice refuse the role of precedents without grounds in any specific documents. Therefore, whether precedents are considered as a source of the laws depends on law interpretation in Vietnam related to this issue. According to Article 19 clause 1 of the Law on Organization of the People’s Court dated 02/04/2002, “the SPC has the following functions and powers : provide guidelines to the courts in order to apply the laws righteously, summarize judicial experience of the courts”.⁹⁹ The National Assembly seems to implicitly recognize that existing normative documents in Vietnam are not comprehensive, sufficient and specific. Its allowance as well as compulsion for the SPC to ‘guide the courts in applying the laws unifiedly’ seems as an allowance and compulsion for the SPC to adopt normative regulations when necessary. In other words, the National Assembly seems to implicitly grant powers to the SPC to adopt some normative regulations when necessary i.e. when normative documents are just in a frame form or disabled. Regulations adopted by the SPC through judgments pay a guiding role to local courts for unified application of laws.¹⁰⁰

In practice, if the SPC does not adopt regulations for dispute resolution, judgments of local courts are of high possibilities to be dismissed and reviewed, thus to avoid a risk of dismissal, local courts have to respect these legal regulations.

⁹⁷ See Do Van Dai, *Tòa án nhân dân Tối cao với việc giải thích pháp luật dân sự ở Việt Nam (Supreme People’s Court and Interpretation of civil laws in Vietnam)*, The International Conference on “Statutory interpretation”, Hanoi, 2008, p. 10.

⁹⁸ Pham Hong Thai and Dinh Van Mau, *Luật hành chính Việt Nam (Administrative Law in Vietnam)*, Hochiminh city Publisher, 1996, p. 61.

⁹⁹ Refer similarly, Article 20 clause 2 of the Law on Organization of the People’s Court dated 03/07/1981 and Article 18 clause 1 of the Law on Organization of the People’s Court dated 06/10/1992.

¹⁰⁰ Do Van Dai, *Supra* note 97.

2.2.3.2 According to the English legal system

Interpreting common law is related to Stare Decisis principle.¹⁰¹ From the feature of setting law is in reality judgment of the court, English law created the Stare Decisis principle (precedent must be obeyed). The content of this principle is the court's decisions which will be used for potential cases later, which means case precedent must be respected. This is the core of English law because if the decisions of the court can't apply for similar cases later, the existence of case law will be broken, therefore the decisions have to respect and apply in the future. The duty of abiding by the decisions, respecting case law is the logic to the law causing by the court make equality judgment. The Stare Decisis is the basic, specific one and the existence of common law system is ensured.¹⁰²

According to the Stare Decisis, the regulations of promulgated decisions before is effective closely to judge who try similar cases. This means, the similar cases are strongly decided by applying case law. The judges use this condition to decide without using any case law. If the judge don't agree with the case law, he can avoid it by pointing out the difference between that case law and examine cases in any situations, so if he find a different detail, it's enough. When the situations considered as the same, he also doesn't depend on precedent rule which is made in promulgated decision, if he thinks it's not ratio dicidenti, especially that case has obiter and being augured, or the principle is over the framework of examine cases. With the above methods, the judges lose law principle of some important case laws before without needing the court clearly declare that the case laws are obsolete.¹⁰³

Therefore, there are many ways to limit case law compelling through interpreting these one by the judges. Then, the England judges also continue making and changing law by their own sentences while they are limited by the Stare Decisis. (*Actually, the England judges dosen't make a public agreement with this rule, they always argue in their sentences that they examine the cases through searching promulgated stipulations which used in case laws.*)¹⁰⁴

However, in general, the legal value of case law interpretation of higher court applies for the lower court timely. Case law and case law interpretation of House of Lords has compelling value to all lower court (The appeal court, the higher justice court, the higher criminal court, the lower courts), case interpretation of the appeal court has compelling value to the whole lowers of the appeal court (the higher justice court, the higher criminal court, the lowers court).

Ex : when the county court judges a similar situation as a declared decision before of House of Lords, the county court has a duty of judging timely after the text which

¹⁰¹ See, Geoffrey Rivlin, *Understanding the law*, 4 edn, Oxford publisher, pp.129-133.

¹⁰² Michael Bogdan, *Supra* note 33. p.80.

¹⁰³ Michael Bogdan, *Supra* note 33, pp.89-91.

¹⁰⁴ Michael Bogdan, *Supra* note 33, p.89.

promulgated in that case law. If the concerned person doesn't agree with the county court's sentence, he can appeal to a higher court. And the higher courts must obey case law's principles, depending on case laws before to examine all situations. So the case law will be operated closely in length and the explanation of the higher court is obeyed by the lower court.

Besides, the court is also tied by its case law. This is considered as wide operation of legal law value of case law interpretation in the English court system, only the appeal court 's case law operate in width which means the sentences itself compel when the appeal court given.

The case laws of the House of Lords and the higher justice court don't operate in width. The House of Lords also tied closely with their case laws but in 1966 House of Lords declared that they didn't agree with their given decisions and could change case law of all the lower courts and also its own case law. The decisions of the higher justice court has important meaning and usually use as direction text for the parts of the Higher Justice Court and the Higher Criminal Court.¹⁰⁵

Interpreting statute of England, law has a particular legal law value. Sometimes, there is a conflict between case law and statutory, the value of law interpretation of statute will be used by the judges. However, according to England lawmakers' view, the statute create a intervention from the outside into 'usual' law, that is common law, equity law, and the judges try to intepret statute to restrain maximumly in applying them. The England judges summarized their view to appraise the statute which changed the laws badly. Therefore, the court has a responsibility to limit damages by supposing common law could not be changed. The England judges believe that the written law compared to case law create an unaccurate method in making law, they have an attitude to written law norm. In addition, the case law has highlighted a practical point, because it relates to the situations happening in real life not to argued suppositions in the future. The disadvantages of common law system to the England lawyers who considered as the advantages as the difficulty of understanding the whole law stipulations.¹⁰⁶

This method limits applying statutes which means the interpretation of these law atcs is under literal meaning of style, " grammatical rules". The fact compelled House of Lords to issue law acts in detail, as a retaliatory measures, to solve difficulties in applying and lose legal value itself.

Another different feature in interpreting English statute is people usually quoted legislative history at the court. With this point, The England law is fully different from some anther countries, ex. Sweden. In England, people consider the documents of building law is exotic element and it is no accident that England writers like the French expression "*travaux préparatoires*". The cause of this view is every words in a statute can't become an intention expression of any person or specific groups, on the contrary those which don't belong to individual, this point may happen when the meaning is independent of its origin. The England judges summarized that when explaining written law, including all statutes,

¹⁰⁵ <http://www.parliament.uk/lords/index.cfm>.

¹⁰⁶ Michael Bogdan, *Supra* note 33. p. 100.

and the thing which the court looked was not the lawmakers say but the meaning of what they said.¹⁰⁷

It is limited in legislative history's documents, there is no surprise that people never find out quoting documents in court's texts or law documents. On the contrary, the English judges and the writers don't forget quoting to the decisions which have an important role for interpreting statutes. This does not happen for a long time before the new statute style interpreting and using by the court. Only the case law, not the statute style in practical law life is considered as real law source, because the Stare decisis principle is also used for explaining statutes.

The explanation of limited law texts above, called literal principle, therefore, it also has exceptions. The exceptions have developed and could be discovered in court's decisions. People accept that the court does different things from statute to avoid clearly unreasonable things and called "golden rule"¹⁰⁸ The restriction to legal value of statutory interpretation depends on every judge's character.

¹⁰⁷ Michael Bogdan, *Supra* note 33. p. 101.

¹⁰⁸ See 2.2.2.2.

3. Practice and suggestion of improvement for statutory interpretation in Vietnam derived from experience of England

3.1 Practice and evaluation statutory interpretation activities in Vietnam and in England

3.1.1 Practice and evaluation statutory interpretation activities in Vietnam

According to Article 91 of the Vietnamese Constitution (in 1992, and amended and supplemented in 2003), the Standing Committee of the National Assembly (SC) is the sole competent agency to interpret the Constitution, Laws and Ordinances. But in practice, executive , judicial agencies also always carry out statutory interpretation.

a. The Standing Committee of the National Assembly interpret the Constitution, Laws and Ordinances.

Since it first was stipulated in the 1959 Constitution, over almost 50 years of development and improvement of its legal basis, up to now. In practice, SC only conducted its law interpretation in five cases:¹⁰⁹ Resolution No. 58/NQ-UBTVQH10 dated 24/08/1998 on civil transactions related to house that concluded before 01/07/1991, Resolution No. 746/2005/UBTVQH on explanation of Article 241 clause 2 point c of the Commercial Law, Resolution No. 755/2005/NQUBTVQH11 dated 02/04/05 on regulations for resolution of some specific cases related to lands in an implementation process of the land management policy and socialist reform before 01/07/91, Resolution No. 1037/2006/NQUBTVQH dated 27/07/2006 on civil transactions related to houses that were established before 01/07/1991 with Vietnamese overseas' participation, Resolution No. 1053/2006/UBTVQH11 dated 10/11/2006 on interpretation of Article 19 clause 6 of the Law on State Audit. Interpretation of Constitution and Ordinances has never been done.

b. Practice and evaluation statutory interpretation activities of Executive agencies.

The law interpretations in Vietnam are most conducted not by the courts or any legislative agency, but by executive authorities. In practice, Laws and Ordinances that were adopted and came into force cannot be applied as they have to 'wait' for Guideline Decrees on guidelines from the Government; state administrative agencies directly under ministries again 'wait' for Guideline Dispatches from provincial agencies. This causes a fact that in several cases, preservations of rights of related parties are often 'suspended' for quite a long time, and that does not cover business damages, 'jams' when there is lack of regulating provisions.¹¹⁰

c. Practice and evaluation statutory interpretation activities of judicial agencies.

¹⁰⁹ See Hoang Van Tu, *Supra* note 47.

¹¹⁰ See Hoang Van Tu, *Supra* note 47.

A form of statutory interpretation in the practice of Vietnam is Resolutions of the Justice Council of the Supreme People's Court (SPC).¹¹¹ Resolutions of the Justice Council of the SPC contain detailed regulations under the laws' spirits. In some cases, the laws only stipulate generally, and for united application of the nationwide courts, the Justice Council of the SPC passes guideline resolutions on application of those regulations.

For example: Resolution No. 02/2003/NQ-HĐTP of the Justice Council of the SPC dated 17/04/2003 provided guidelines on application of some provisions in the Criminal Code such as: explaining the term 'causing slight chronic injuries to victims' stipulated in Article 104 clause 1 point b; the definition of 'weapons and other dangerous means and tricks' stipulated in Article 133 clause 2 point d; or the identification of values of false money, checks, bonds according to Article 180, etc.

Law interpretation plays an important role in bringing laws into daily life. However, the practical law interpretation in our country still attaches great discussion. There are several conflicts on laws' application as conflicts arise from law interpretation documents of state agencies.¹¹²

❖ **Practice of statutory interpretation in Vietnam has shown in the example:**

On 23/06/2003, the Vietnam's International Arbitration Centre (VIAC) accepted a claim of a foreign company against a Vietnamese company for breaching payment responsibilities of a contract of goods sale and purchase. The two parties could not agree on the understandings of the time limit for filing petitions.¹¹³

On 18/11/2003 and 20/07/2004, the arbitral tribunal conducted two hearings. However, the resolution in the two hearings failed due to different understandings of Article 241 clause 2 point c of the Commercial Law, and even the arbitral tribunal for this case has no jurisdiction to interpret this provision's content.

Article 241 of the Commercial Law stipulates that:

1- The time limit for complaints is a time limit in which those whose rights are violated may file their complaints against the violators. After an expiry of the time limit, those whose rights and interests are violated will lose their rights to file petitions at a competent arbitration centre or court.

2- The time limit for complaints depends on agreements between the parties within the contract; in cases of no such agreements, the time limit is regulated as follows:

¹¹¹ Article 2, Law on promulgation of legal normative acts 2008

¹¹² See Hoang Van Tu, *Supra* note 47.

¹¹³ Legal department, vcci, *Đôi nét về thực trạng giải thích pháp luật ở Việt Nam (some issues related to practice of interpretation of laws in vietnam)*, The International Conference on "Statutory interpretation", Hanoi, 2008. p. 3.

a) *Three months from the date of goods delivery to complain of the quantity of goods;*

b) *Six months from the date of goods delivery to complain of products' specification and quality; in cases of warranty, the time limit will be three months from the date of expiry of the warranty;*

c) *Three months from the date the violators should have fulfilled their responsibilities regulated in the contract for other commercial activities, except cases regulated in Article 170 clause 4 of this Law.*¹¹⁴

The question arises here is that in the term '*other commercial activities*' regulated in Article 241 clause 2 point c, the word '*other*' will be interpreted as to compare with which commercial activities? What commercial activity does the term '*other commercial activities*' cover? Does Article 241 clause 2 point c regulate the time limit for petitions on violations of payment responsibilities in goods trading contracts with foreigners?

After the two failures at the hearings, in July 2004, the President of VIAC sent an Official Document to request the SC to issue a document to officially interpret Article 241 clause 2 point c. However, this request was refused on formal grounds because of an argument that VIAC is not a member of the Vietnamese Fatherland Front. Under the laws, only members of the Vietnamese Fatherland Front are competent to initiate the laws.

Once again VIAC had troubles in making recommendations to the law interpretation. Only after the recommendations from members of the National Assembly and the Government's reports, does the SC hold meeting and adopts resolution to interpret the laws on 21/01/2005.¹¹⁵

Therefore, due to difficulties in the law interpretation, VIAC had to spend almost two years for one dispute in the commercial field. This affected the rights and interests as well as money of the enterprises in doing business. In commercial field, time plays an important role to the business performance of enterprises. When a dispute arises, in order to unify the understandings of the laws, the two parties had to spend too long to request competent state agencies to make the law interpretation. Therefore, should we expand the subjects who are competent to make requests of law interpretation, and make procedures for law interpretation of state agencies more transparent?

The other example: the interpretation of law was requested for the first time in the 8th National Assembly, when the regulation in Clause 3, Article 38 of the 1993 Land Law led to

¹¹⁴ Article 170 clause 4 stipulates that: Person who provides service for goods delivery bares no responsibilities in the following cases:

a) The service supplier for goods delivery receives no information of the petitions within 14 days from the date of delivery except Sunday and holidays;

b) The service supplier for goods delivery receives no written information on the state of being sued at arbitration or court within 9 months from the date of delivery.

¹¹⁵Forre ference: <http://www.judaca.edu.vn/default.aspx?lang=VN&key=tin-tuc&sub=nganh&id=5e902500-cf87-4942-b6ad-76d99dd95aff>.<http://vietbao.vn/Xa-hoi/Uy-ban-thuong-vu-Quoc-hoi-ra-nghi-quyet-giai-thich-luat/40065013/157/>.

non-unified understanding, resulting in the dispute over the jurisdiction for managing the litigation between the People's Court and the People's Committee. As a consequence, the General Directorate of Land Survey requested the National Assembly Standing Committee to clarify the regulation. However, owing to various reasons, the interpretation of the law was not performed. One of the reasons was that different opinions within the National Assembly Standing Committee assumed that Article 89 of the Land Law regulated that the National Assembly already granted the authority to the Government for detailed regulation; thus, the jurisdiction (to interpret the law) belonged to the Government. If the National Assembly Standing Committee conducted the interpretation, an antecedent would be established, and the National Assembly Standing Committee would definitely not be able to undertake the mission. As a result, the People's Supreme Court, the People's Supreme Procuracy, and the General Directorate of Land Survey promulgated Circular No. 02/TTLT on 07/28/1997 instructing the jurisdiction of the People's Court in managing the litigation incurred from the right to land use (pursuant to the stipulation in Clause 3, Article 38 of the 1993 Land Law). The major content of this Circular was indeed the interpretation of the law.¹¹⁶

In other perspective on statutory interpretation, Vietnamese courts, especially the Supreme Court, even though of no interpretative function, are authorized to promulgate legal normative acts in order to instruct the uniform application of the law in the courts in particular and in the society in general. Legal normative acts promulgated by the Supreme Court include, but are not restricted to, the Resolution of the Board of Judges and the Circulars,¹¹⁷ comprised Circulars promulgated by the Court itself or Joint-Circulars jointly promulgated with others, such as: the Ministry of Public Security, Ministry of Justice or the People's Supreme Procuracy. Therefore, one could infer that Supreme Court is authorized to interpret legal documents promulgated by itself or to coordinate with offices concerned to interpret jointly promulgated documents (i.e. Joint-Circulars).

In this perspective, the act of promulgation hereinabove (assumed by the Supreme Court) is considered an act of statutory interpretation. The underlying reason is that Resolutions of the People's Supreme Court's Board of Judges, like Circulars jointly promulgated are meant to clarify the resolutions promulgated in the law and to specify and list the steps to be taken or the content of the law or article of law to be applied.

❖ **The execution of statutory interpretation in Vietnam**

Firstly, thanks to the promulgation of tens of Resolutions from the People's council in the past years, the courts have introduced a series of convenient and more unanimous modes of legal application. However, the application also has several shortcomings, such as the rewrite of legal regulations, or new proposals that go against the promulgated regulations

¹¹⁶ legal department, vcci, *some issues related to practice of interpretation of laws in vietnam*, The International Conference on "Legal Interpretation", Hanoi, 2008, pp.3 -6.

¹¹⁷ Article 2, Law on promulgation of legal normative acts of 2008.

and the points of view or intentions of law makers; thus, resulting in false understanding and tricky practical application.¹¹⁸

Courts need to apply the law in a way that fits with the spirit and content of the article of law, as well as the regulations of legal documents; and most importantly, need to reflect the intention of law makers. The application (of the law) will be smoother once Resolutions of the Board of Judges are available. However, not all cases are timely supplemented with instructions because the promulgation of Resolutions depend upon the popularity and urgency of issues to be instructed and the availability of the Board. Therefore, how could the Presiding Judge in a case have a better vases when applying the law?

Secondly, A study of the cases in which the National Assembly Standing Committee conducted its statutory interpretation jurisdiction reveals the following drawbacks:

- Legal subjects in general and subjects having the right to request the interpretation of Constitution, law, and decree-law in particular have not yet fully comprehended and complied with the regulations stipulated by laws. To be specific, regarding the interpretation of Item c, Clause 2, Article 241 of the Commercial Law, Vietnam International Economic and Trade Arbitration Committee, and the Vietnam Chamber of Commerce and Industry have submitted a document requesting the National Assembly Standing Committee to interpret the law, even though according to the regulation stipulated by law, these two subjects are not given such jurisdiction.¹¹⁹

- The cooperation between legal subjects is not yet satisfactory; the formalities and proceedings of statutory interpretation are not yet strictly followed. Regarding the interpretation of Item c, Clause 2, Article 241 of the Commercial Law, the Government, Vietnam Chamber of Commerce and Industry, and the Office of the National Assembly have not yet closely cooperated, leading to the extension of the interpretation process, affecting the rights and obligations of the enterprises.

- Work overload in government agencies having the interpretative jurisdiction and the limit of legal awareness, understanding, and sense of responsibility of the staff in these agencies are among the major reasons leading to the limit of statutory interpretation in general and the interpretation of the Constitution, laws, and decree-laws in particular.¹²⁰

Thirdly, The legal interpretation of executive agencies by means of promulgating decrees and circulars to concretize (guide) the law is so slow that the law is hung up. That means the law became effective but in fact it couldn't be executed until the promulgation of its decrees and circulars.

In Vietnam it can be said that, the promulgation of decrees to define law and circulars to concretize the decrees becomes so popular that in many cases executive bodies still

¹¹⁸ See Duong Quoc Thanh, *supra* note 15, p. 5.

¹¹⁹ Document NoSee D. 201/VIAC dated 7/26/2004 and Document No. 2018/PTM-PC dated 9/21/2004

¹²⁰ Hoang Van Tu, *Supra* note 47.

promulgate under-law documents as the decrees and circulars to give the instructions which have already been clearly stated in the law. In fact, the rapid changes of socio-economic conditions require equivalent application of law, of which lateness could lead to losses in Vietnamese nation and people's life.

3.1.2 Practice and evaluation statutory interpretation activities in England

Forming the English statutory interpretation reality depends on reality of promulgating legal precedents and acts. It was estimated that in early 1980s over 350 000 judgements were promulgated, 3000 laws promulgated by the Houses (the oldest one promulgated in the year 1235) and countless underlaw documents.¹²¹

a. Case interpretation.

The important judgments as obligatory legal precedents have been reported in law reports, published in different official law report series by Incorporated Council of Law Reporting which was established in 1865 with the representatives from both lawyer Associations. The legal precedent reports have been edited by counsels for defence

In addition, Incorporated Council of Law Reporting publishes the Weekly Law Reports instead of the Weekly Notes (1953) with the aim of quickly promulgating the latest judgments. A lot of cases in the Weekly Law Report will subsequently be published in The Law Reports together with a note of counsel's argument.

Incorporated Council of Law Reporting doesn't have monopoly to publish the judgements. A lot of private companies publish law reports, among which the All English Reports published in 1936 is the most important. Some of the reports are specialized in some certain legal fields, for example, Butterworths Company Law Cases specializes in company law reporting. Hence the important cases can be found in different reports, but in case of difference or contradiction the most precise ones are the law reports. Some of the judgements are presented in other publications as the Daily Reports. A judge has the right to deny the application if the reporting is not precise and not in his jurisdiction.¹²²

One comprehensive legal information service covering all cases and legal precedents is the Current law Yearbooks, which has been published annually with one volume since 1952. It contains monthly reports which are rearranged in the Current law Yearbook at the end of the year. From XV century to the year 1865, before the time precedents were arranged systematically in publications, there had been hundreds volumes published separately as the old reports. Currently it is not difficult to find these old reports because they have been collected and printed in 178 volumes of the English Reports.¹²³

b. Statutory interpretation.

¹²¹ Michael Bogdan, *Supra* note 33, p. 105.

¹²² Michael Bogdan, *Supra* note 33, p. 106.

¹²³ Michael Bogdan, *Supra* note 33, p. 108.

Besides legal precedents, the acts officially published by Her Majesty's Stationery Office are called the public Acts. The other important legal documents can be found in the Statutory Instrument. The Incorporated Council of Law Reporting publish law reports and the Acts.¹²⁴

When the Acts (laws) are interpreted, it is very important to interpret the definitions of legal words and phrases. They are the combinations of legal terminology, selected legal phrases and the lists of law interpretations according to the Acts, judgements and jurists. In the English law system, the articles on law (magazines) are not officially considered the source of law, but all the judges and lawyers study these articles and they themselves are the writers of important legal books. Some scholarly books have position like the source of law, such as "Blackstone", which is currently considered a reliable legal work .

In conclusion, if the reality of English law interpretation is assessed based on legal precedent enforcement and act promulgation, we can perceive the unity, in time and popularity of the English law interpretation. It is easy for the judges, lawyers, jurists to study and apply law in their work.¹²⁵

3.2 Suggestions of innovation for statutory interpretation in Vietnam

3.2.1 Demands of innovation for statutory interpretation in Vietnam

The demand for statutory interpretation arises and exists in all legal systems; thus, a study to improve the legal basis and to overcome the existing limits of statutory interpretation process is an indispensable need. This demand is crucial and urgent for Vietnam. In order to improve statutory interpretation, taking into account the task to build a rule of law government of socialist nation of the people, by the people, and for the people; and a socialist legal system, the following opinions and guidelines must be considered:

Firstly, statutory interpretation must be attached with the process of building a rule of law government of socialist nation on the basis of considering the following basic principles: i) Our Government is a Government of the people, by the people, and for the people; all Government authorities belong to the people; ii) government authority is unified with the duty allocation and cooperation between Government agencies in enforcing the legislative, executive, and judicial powers; iii) law plays an important role in Government management and societal management, in which the Constitution and law assume the highest position in social life. Besides, it asserts the role of ethics and other social rules; iv) ensure human rights and civil rights, assert and enforce interactive duty between the Government and the citizens, enforce socialist principles, continue to constitutionalist the democratization policy and apply it to every aspect of social life; v) define the Government's duties in performing international commitments in the economic integration process following the spirit that Vietnam is ready to

¹²⁴ Michael Bogdan, *Supra* note 33, p. 108.

¹²⁵ Michael Bogdan, *Supra* note 33, p. 108.

be a reliable friend and partner with other countries in the international community to strive for peace, independence, and development; vi) ensure the leadership of the Vietnam Communist Party towards the Government in the process to build a rule of law government of socialist nation of the people, by the people, and for the people.¹²⁶

Secondly, statutory interpretation is to overcome the outstandings and timely meet the demand of statutory interpretation that arise from practice. Over the past 20 years of innovation, under the pressure of international economic integration and social development, a large volume of legal normative acts have been promulgated. With the current speed of “making law for a flat rate” and the law-making ability in Vietnam, no one could be certain or ensure the quality of the promulgated legal documents. Reality shows that “outline law”, which still exists with large quantity, has slowed down the penetration of legal acts into daily life, and forced these documents to wait for detailed instructions and regulations. Besides, legislative technique has not yet been paid adequate attention; thus, the content of many articles of law is not always clear, straightforward, and easy to understand. Therefore, the need for statutory interpretation will certainly increase in the near future; and statutory interpretation will be asked to be done in a timely manner in order to ensure the rights and legal interests of the citizens, especially to protect the benefits of enterprises from international disputes.¹²⁷

Thirdly, statutory interpretation of sub-law documents hasn't been regulated and conducted yet besides legal interpretation of the Constitution, laws, decree-laws which has legal basis of sequence, procedures and jurisdiction regulated in the 1992 Constitution and Law on promulgation of legal normative acts 2008. As mentioned, there is a great need of statutory interpretation of legal normative acts, especially in this period when Vietnamese legislation is in the stage of improvement and reform. The large number of sub-law regulated documents with limitations in quality requires completion of detailed regulations, synchronous procedures and sequence as well as jurisdiction of statutory interpretation to avoid the overlapped regulations in many legal documents as at present.

Requested to complete statutory interpretation in the new context, legal scientists have mentioned, studied, and proposed various solutions. However, owing to the presence of different approaches and legal bases in the current legal scientific world, there still exist different opinions, the major of which are as follows:

The first opinion suggests that the National Assembly Standing Committee's duty to conduct the interpretation of Constitution, law, and decree-law fits with the practical condition of Vietnam. Therefore, basically there is no need to modify this duty; instead, the interpretative capacity of the National Assembly Standing Committee should be improved by detailed allocation and assignment of the task to assisting offices, of which work efficiency (in assisting the Standing Committee) should be improved in the future. This opinion demonstrates that the

126 Dao Tri Uc, *Tiếp tục xây dựng và hoàn thiện Nhà nước pháp quyền xã hội chủ nghĩa (Continue to build and better the Socialist government having jurisdiction)*. Nhan Dan Newspaper, 8/8/2006.

127 Hoang Van Tu, *supra* note 5, p.16.

demand for statutory interpretation in general and the interpretation of Constitution, law, and decree-law in particular in Vietnam is not so high; besides such interpretation is normative official interpretation, not practical interpretation for specific cases. Meanwhile, the Government could conduct statutory interpretation using detailed regulations and implementation guidelines. Reality shows that over the past few years, the Government has successfully conducted this act without major shortcomings.¹²⁸

The second opinion, initiated from the role and position of legal normative acts in legal normative system, especially the role and position of the Constitution in jurisdiction government, suggests that Constitutional interpretation is one act of constitutional protection; thus, should be conducted using a special mechanism that differs from that of other legal normative acts. To be specific, the duty of Constitutional interpretation needs to be delegated to an agency specialized in constitutional protection.

The third opinion, initiated from the organization and operation principles of the government apparatus, suggests that there should never exist a situation where an agency of lower rank interpret the documents of an agency of higher rank, and the subjects promulgating the documents are the ones conducting the act of interpretation. Therefore, in order to ensure “power balancing” as well as the objectivity and integrity, the duty of statutory interpretation should be delegated to judicial branch. And thus applying some of experience of law interpretation from England into Vietnam.

3.2.2 Apply some of experience of statutory interpretation from England into Vietnam

Traditional long standing of the English legal interpretation has brought about efficiency for applying the law. Thus, lessons learnt from the English legal interpretation are needed. However, there is fundamental difference between Written law systems and Common law systems. For this reason, we can't apply all experience of English legal interpretation to the Vietnamese one. The selection of a suitable experience for Vietnamese tradition, history and reality is needed.

First, the role of legal precedent interpretation is admitted in England. case interpretation by means of legal precedents is popular in many countries. It is affirmed in the reality of legal precedents, because legal precedents play a main role in the case interpretation and that forms the framework of social behavior.

Legal precedents bring vitality to theoretical legal documents. Thanks to that, acts and law have close relation with reality. Legal precedents help to create legal safety for citizens and social security and stability when all members' behavior in society is performed within the framework established as a precedent. When there is a dispute, courts abide by that precedent and judge the dispute based on the existing framework.

¹²⁸ Hoang Van Tu, *supra* note 5, p.17.

Making a legal precedent (case law), a court contributes to determine the future orientation of law. As case interpretation is made at different time when the socio-economic conditions have changed a lot in comparison with the time of law promulgation. Legal application used to judge a new case is not enframed in the former context, which is now very popular for economic cases. It becomes creative performance, which is totally different from official-judges' passive work. By judgement, the court implicitly extends their law application beyond the legislator's scope or his initial intention and makes preparation for adjusting the available acts and set up legislative plan for the future.¹²⁹

The English law has been able to do this and has done it well. It has been proved by the reality.¹³⁰ The question is what will happen in Vietnam if we consider legal precedents as a source of law. What are the advantages and obstacles?

According to Constitution, legal precedent hasn't been considered the source of law in Vietnam, but the reality of judgement in Vietnam has proved that legal precedents have existed for a long time in the Council of judges' summary report of the Supreme People's Court. Although the summary report doesn't involve all particularity of a legal precedent and doesn't inform all remarks and legal analysis of a case and lawsuit, the summary report is the experience of judgement by analysing a particular case and it is the legal basis for lower courts to obey.¹³¹

In addition, with the rapid and strong changes of different aspects of the society if legal precedents are not admitted, judicial innovation will be difficult to achieve expected result because of the latest changes in legislative and judicial activities as renovation of the process to draft and promulgate laws, adjust organisational structure, performance of judiciary, juridical assistance, piloting a sample trial with rules, insuring the related sides' right to dispute and defend....This is the renovation, which is needed for improving the present system and bowler people's confidence, but hasn't aimed at modernizing the whole legal system.

It is time to seriously consider the need of legal precedents which a modern law cannot be without. It should be carried out synchronously in both legislative body and judicial body such as to stipulate legal value of statutory interpretation documents, especially statutory interpretation of under-law documents.¹³²

Besides, the experience of English legal interpretation showed that the legal precedent interpretation rapidly comes in life thanks to clear regulation of promulgating legal precedents. For this reason, in Vietnam the first thing which needs to be done to make legal

¹²⁹ See Luu Tien Dung, *Áp dụng và giải thích pháp luật trong hoạt động xét xử ở Việt Nam (Law application and interpretation in judgments in Vietnam)*, The International Conference on "Legal Interpretation", Hanoi, 2008.

¹³⁰ See in 1.2.3

¹³¹ Do Van Dai, *supra* note 97.

¹³² See Nguyen Viet Khoa, *Thực trạng của việc giải thích pháp luật hiện nay ở Việt Nam và sự cần thiết phải ban hành một đạo luật về giải thích pháp luật (the status-quo of legal interpretation in Vietnam and the necessity of introducing new regulation on legal interpretation)*, The International Conference on "Legal Interpretation", Hanoi, 2008.

precedents familiar to judicial activities and supplementary ones is to promulgate legal precedents. If the judgement is proclaimed open in public hearings, there will be no reason to secure the legal precedents from the public. In most of the countries in the world, the judgements of the courts are gathered and published in a book, at least for the reference and criticism by the legal researchers, jurists and lawyers.¹³³

Promulgating the legal precedents helps the executive bodies understand deeply the meaning and operation in the jurisdictional body's view and avoid the jurisdictional bodies' inappropriate legal application. On the other hand, law magazines has the item of criticism by professors which contributes to research and a proposal of new legal theory. Thus, to promulgate a legal precedent is necessary for developing law in general.

Currently in Vietnam they don't pay enough attention to the promulgation/announcement of legal precedents. When jurists and practical lawyers want to refer to legal precedents, they need to rely on their personal relationship with the judges. It is difficult for law lecturers to find the legal precedents for their teaching or their students' reference, let alone the students, who are unable to approach the judgements. This reality reduces the democracy of legitimate state, doesn't encourage the law researchers to update and deepen their knowledge. In consequence of this reality, law is interpreted improperly, mostly according to administrative bodies' opinion and at lecture hall there is lack of valuable legal theory, which is an obstacle for the right development of legal system in Vietnam.

3.2.3 Commenting and suggesting some solutions to improve statutory interpretation in Vietnam

Given the aforementioned argumentative and practical basis as well as guidelines and opinions, the act of statutory interpretation should include the following:

Firstly, regulations on statutory interpretation should soon be studied besides the ones on the interpretation of Constitution, law, and ordinances currently in force in order to overcome the "openness" in the interpretation of other legal normative acts or the equation of statutory interpretation with detailed regulation and legal enforcement instructions of the Government¹³⁴ In fact, even the 2008 Law on promulgation of legal normative acts (effective from January, 1st 2009), which is the highest law below the Constitution regulating statutory interpretation, defines only statutory interpretation of Constitution, laws and decree-laws.

Therefore, in the writer's opinion there should be additional detailed regulations of jurisdiction requesting statutory interpretation and the value of statutory interpretation documents together with regulation of jurisdiction of promulgating legal normative documents in the Law on promulgation of legal normative acts. At the same time, there is necessity of the regulations to distinguish the formalities of executing the detailed legal normative documents from statutory interpretation. The detailed legal normative documents

¹³³ Nguyen Viet Khoa, *supra* note 132.

¹³⁴ Nguyen Cuu Viet, *Supra* note 53, p.10. See 2.2.1.1 and also see 3.2.1.

can be considered as a temporary solution for a period when the legislative technique is not comprehensive.

In summary, according to the writer's opinion the promulgation of a law on statutory interpretation or additional regulations of statutory interpretation in the Law on promulgation of legal normative acts is a necessary demand, which creates a comprehensive and united basis of statutory interpretation. One of the main point in this reform is to stipulate clearly the jurisdiction of executive, legislative and jurisdictional bodies in statutory interpretation as well as the procedures, legal value of legal normative acts on statutory interpretation

Secondly, a special mechanism for Constitutional interpretation needs to be established in order to fit with the role and position of the Constitution in jurisdiction government and to match with the current conditions in Vietnam.¹³⁵

Thus, it is irrational to get the authority which must belong to the highest organ of state power of the Socialist Republic of Vietnam, the people's highest representative organ- the National Assembly. "According to the principle of the state of law, authority to interpret Constitutions must be done by the constitutional court or institutional mechanism and when there isn't the institutional mechanism, the National Assembly must take this task at least."¹³⁶

In theory, the assignment of the National Assembly to interpret constitutions is totally suitable with the Vietnamese tradition and basic principles of Vietnamese law system as well as the principle of organising and operating the mechanism of government. Furthermore, based on the role and the value of Constitution which ensure legal hierarchy in the system of legal normative acts, the supremacy of the Constitution in jurisdiction, only the National Assembly as a constitutional subject, as the highest state authority, has the jurisdiction in interpreting the Constitution. In reality, the National Assembly totally can fulfil this task because besides two sessions annually, the National Assembly has extraordinary sessions. Hence, if there is urgent need to interpret Constitution, the National Assembly will hold an extraordinary session. However the best solution for the state of law is to establish a Court of Constitution for constitutional interpretation

One of the tasks proposed in the 10th National Congress of the Vietnam Communist Party (in the year 2007) was "to set up a judgement mechanism for constitutional breakings in legislative, executive and judicial activities" for establishing a jurisdiction government of socialist nation (a state of law) in Vietnam. For completing this, the most important thing is the establishment of constitutional court and the delegation of constitutional interpretation duty to this court.¹³⁷

¹³⁵ The problem was analysed on 3.2.1

¹³⁶ Nguyễn Cửu Việt, *The outlines of statutory interpretation, regulations and reality of statutory interpretation in VietNam*, the Speech at seminar on statutory interpretation, Hanoi, 2007,p.7.

¹³⁷ See Truong Dac Linh, *Arguments about constitutional jurisdiction and constitutionally jurisdictional bodies in VietNam*, Magazine on legal science, Vol.3 (40),2007.

The delegation of the Constitutional interpretation duty to the National Assembly totally concur with the tradition and basic principles of Vietnamese legal system as well as the organization and operation principles of the government apparatus. Furthermore, it ensures legal hierarchy in the system of legal normative acts; ensuring the supremacy of the Constitution in rule of law government.¹³⁸

Thirdly, a clear assignment of power between concerned subjects regarding the act of statutory interpretation must be present, that is parts of the interpretative power must be delegated to the court of justice because judiciary (in a narrow sense, the court of justice system)¹³⁹ deals with legal violation activities and civil lawsuits.¹⁴⁰ Court of justice is a judging office responsible for defending socialist legal system; protecting socialist regime, and the sovereign immune of the people; protecting the property of the Government and the community; and defending the life, property, freedom, as well as honor and human dignity of the citizens.¹⁴¹ Basic objective of judicial bodies is to ensure the rights and obligations of all parties (government and citizens). Its operation principle is to be unbiased; upon conducting a trial, the Judge and the Jury act independently and must abide with the law. Therefore, the objectivity of statutory interpretation will be ensured if the court of justice carry out the task.¹⁴²

Furthermore, reality shows that most of the demand (for interpretation) arise and physically are attached to a real case. In other words, for most cases, statutory interpretation means the interpretation of one particular case; it is related to the solution of one certain dispute, and according to the delegation of government power, the court of justice is an agency having the jurisdiction to handle such dispute.

Apparently, a judicial body is the only one (not legislative or executive bodies) that clearly understands and has direct connection with the demand for statutory interpretation. It is the only office that conducts statutory interpretation with just and practical manner, fitting the process of judicial institution reform in jurisdiction government up to 2010, put forward by the Party.

The scope of the court's jurisdiction, the form, and legal value of interpretative content: Of course, when the power of statutory interpretation is granted to the court of justice, besides the official and normative form of interpretation currently existing (conducted by the National Assembly Standing Committee), the form of official case interpretation needs to be taken into account. This feature is one of the bases used to determine the scope of interpretative power of the court, and the form as well as the legal value of the content to be interpreted. To be

¹³⁸ Nguyen Cuu Viet, *Supra* note 53.

¹³⁹ Refer to the opinion of Dr. Le Cam in his Government level topic "Basic reasoning issues regarding the judicial system for penal matters in the context of the construction of a jurisdiction Government" (presided by Le Cam) for more information;

¹⁴⁰ Vietnamese Dictionary, Institute of Linguistics, Da Nang Publisher, 2005, p. 1071.

¹⁴¹ Article 1, Law on the organization of the People's Court, 2002

¹⁴² See Nguyen Van Diep, *Nhu cầu về giải thích pháp luật phát sinh trong quá trình xét xử và hoạt động của Tòa án (Demand of statutory interpretation was arised by procedural practice of the court)*, The International Conference on "Legal Interpretation", Hanoi, 2008.

specific, during the adjudication of a particular case within the court's jurisdiction, the Judge is authorized to conduct the interpretative action once the demand for statutory interpretation arises. The content to be interpreted must be recorded in relevant documents; more importantly, the official content to be interpreted must be included in the verdict or the final decision of the trial. Legal value of the interpreted content lies in the legal value of the verdict and the decision of the court.

Fourthly, the statutory interpretation of executive agencies should be considered as a temporary solution for current. For this reason, the renovation of current legislative and judiciary branches is carried out by reducing decrees and circulars promulgated by the executive bodies. This can be done in another way as to hand over the courts more authority of statutory interpretation as well as to stipulate details in laws, together with reducing the "equivocal law" of legislative bodies.

Fifthly, based on the demand of the right application of the International law of commerce and good implementation of the Prime Minister's instruction No.20/2005/CT-TTg dated 09/06/2005, Vietnam must have regulations of expanding objects of statutory interpretation and its subjects as arbitrators and arbitrators' international office because they have experience in applying international laws of commerce and dealing with commercial disputes at international level. Their statutory interpretation accepted and stipulated in Vietnamese law has better value for both sides than using the Vietnamese statutory interpretation for a commercial dispute in which includes Vietnamese side .

Sixthly, legal precedent collections of different level courts should be published soon. Currently there is the publication of the Supreme Court, which is the 1st step in legal precedent publication. It is much better with the continuous and constant publications which become good reference for both individuals and organizations with interest. The duty of dealing this task in detail could be assigned to a governmental prestigious agency of legal research, but the judgement promulgation should not be done by only one organisation . The participation of different responsible agencies and organisations in promulgating judgement improves the objectiveness and scientific features. Together with the changes of subject's authority and task, the material and human resource conditions are needed to ensure the changes.

In short, statutory interpretation is an act to clarify the spirit and the content of legal normatives. If this act is properly conducted, the content of legal normatives will be comprehended clearly in a more detailed and unified manner, allowing legal subjects to equip themselves with precise legal awareness, improving legal understanding and knowledge; ensuring the strict and unified enforcement and application of the law; protecting the rights and legal interests of the people; and promoting socialist legal system. Therefore, a study for the improvement of statutory interpretation mechanism is an essential and indispensable demand in every legal system of every nation. It becomes exceptionally crucial when Vietnam is striving to build a rule of law government of socialist nation of the people, by the people, and for the people within the context of global economic integration.

Conclusion

Statutory interpretation has been used in Vietnam as judicial assistance, but it is done in a very simple way and statutory interpretation is understood improperly from the point of view of legal science. For example, the instructional legal documents of the Supreme People's Court which are considered as statutory interpretation are not fully right according to science of statutory interpretation because the statutory interpretation in instructional legal documents of the Supreme People's Court is neither the legislative body's will nor interpretation of practical judgement. Normally a case interpreted by the Supreme People's Court is usually the practical one of the lower court. Is it the powerful authority's interpretation which must be done for the lower legislative body?

The instructional legal documents and statutory interpretation of legislative, executive, judicial bodies are themselves compulsory for related objects to follow strictly. According to legal science, statutory interpretation must be done in the right, scientific close sequence and has highly persuasion to force the both related sides to follow. Has this been done?

With the current statutory interpretation in Vietnam, the enforcement of statutory interpretation is mainly based on the interpreter's power and available legal value of the document interpreted. For a democratic, jurisdiction state of socialist nation, its power should not be maintained in this way. It should only be a temporary solution for a certain time.

Facing this reality and weakness of statutory interpretation in VietNam, the writer tried his best during the research to find out, analyse and propose some solutions for a short term as long as for a long term with the aim of overcoming these obstacles (the aim of overcoming this weakness):

- The regulations on statutory interpretation should be stipulated soon in addition to the ones of Constitution, laws and decree-law as at present. To ensure other legal documents to be interpreted when there is legal condition which needs statutory interpretation.

- The instructional legal activities must be separated from the law enforcement. Reducing the instructional legal documents together with increasing legal interpretation.

- A suitable mechanism for the Constitutional interpretation needs to be established according to its role, position and legal value in jurisdiction state. The statutory interpretation of the Constitution is not regular, consequently, the National Assembly is the agency, as a constitutional subject, having the jurisdiction in interpreting the Constitution or establish the Constitution court.

- A clear assignment of jurisdiction between concerned subjects regarding the act of statutory interpretation must be present, which is a part of the interpretative jurisdiction must be delegated to the court of justice.

- Based on the theory and reality of statutory interpretation in different countries, if the court of justice carries out the task of statutory interpretation, there will be a lot of advantages such as objectivity, opportuneness. However, according to the reality of VietNam with different levels of judges' professional ability, different socio-economic conditions among regions for which the court of justice's assignment of statutory interpretation must consider. Above all others, in order to improve the role and efficiency of statutory interpretation, statutory interpretation is necessary to be promulgated broadly in public. Lessons learnt from the English law show that the regulations on editing and publishing judicial cases need to be promulgated soon. Legal precedent collections of different level courts should be published soon. The publication of cases provides a source of reference for different judicial subjects with the aim of ensuring the democracy, the legislation and bringing students an opportunity to approach the reality.

The above mentioned proposals summarise and conclude the thesis. They are also other law researchers' common ideas and recommendations in Vietnam and other countries. Some of the proposals are still on debate. Though it is not new, it is necessary because we haven't appraised statutory interpretation at its true worth. Therefore, a study to improve statutory interpretation mechanism is an essential and indispensable demand in any legal system, especially in Vietnam.

Due to the time and reference document limitation as well as the writer's inexperienced knowledge in scientific study, the result hasn't been comprehensive enough. The writer highly appreciates the tutors, jurists' recommendations as well as others' contribution.

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