

The Presidential Power to Request Reconsideration of Bills in Vietnam

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Introduction

Article 3 of the Constitution of April 1, 1967, has established the principle of separation of powers and responsibilities among the Legislative, the Executive and the Judiciary¹⁾. However, with a view to accomplishing national goals the same Article has also provided for the cooperation and coordination of activities of these branches.

One of the technical devices used by the drafters of the Constitution of 1967 to accomplish this cooperation and coordination is the presidential power to request reconsideration of bills provided in Article 45 of the Constitution. With this power, the Executive can strongly influence the law-making activities of Congress.

Since the establishment of the National Assembly, the President has

¹⁾ "Article 3: The functions and powers of the legislative, executive and judicial branches of government must be clearly delineated. Activities of these three branches must be coordinated and harmonized in order to realize social order and prosperity on the basis of freedom, democracy and social justice". *Jahrbuch des öffentlichen Rechts New Series (JöR)* vol. 19 (1970), pp. 581.

exercised this power more than once, causing severe dissension between the Executive and the Legislative. Many times the Legislative has brought to the Supreme Court controversies concerning the procedure for Constitutional interpretation. Performing its constitutionally assigned role as guardian of the Constitution, the Supreme Court has settled controversies in many decisions which have been observed and commented on by politicians and jurists — rather heatedly sometimes — in the press.

It can be said that all aspects of the presidential power to request bill reconsideration have been examined. Moreover views expressions in all circles have subsided. It may be time now to thoroughly examine this presidential power:

- 1) Through the discussion in the National Constituent Assembly,
- 2) Through the interpretation of Art. 45 of the Constitution by the Extended National Constituent Assembly and the present National Assembly, and
- 3) Through the decisions of the Supreme Court.

First of all, the vocabulary should be correctly defined. Quite a few people have wrongly used the phrase “the presidential power of reconsideration”.

Litterally, the word “Phúc” means again, and the word “Nghì”, to discuss for decision. The branch which has to discuss for reconsideration — or phúc-nghì — should be the Congress and not the President, hence the power of the President should be called the power to request congressional reconsideration.

At first sight, many people think that the presidential power to request reconsideration in Vietnam is similar to the corresponding power of the Executive in France (power to request a second reading by the Parliament). Others think that this presidential power in Vietnam is similar to the presidential veto power in the United States. In fact, in comparing these powers in Vietnam, in France and in the United States, we will see that the presidential power to request reconsideration in Vietnam has many differences from its counterpart in France and the presidential veto power in the United States.

In the drafting of the Constitution of April 1, 1967, the Vietnamese framers have been obviously influenced by the Constitutional Law of France and the United States. Therefore a comparison, however brief, of the Constitutional Law of Vietnam with those of these two countries will be useful to understand the initiative of the Vietnamese constitution framers.

- a) In France the Executive has long been recognized as having the

power to express its dissent and request the Legislative to consider for a second time all bills after they are transmitted to it for promulgation. Since the Revolution of 1789, all constitutions of the Republic of France²⁾ have reserved the same power to the Chief of the Executive, provided that the request for reconsideration be brought within the period allowed for promulgation. Only this period varies: 1 month (Constitution of 1875), 10 days (Constitution of 1946), 15 days (Constitution of 1958). The Constitution of 1958 brought a change: the President can request the Legislative to reconsider some sections of the bill whereas according to previous constitutions he could only request reconsideration of the whole bill.

In brief, the power of the Executive to request legislative reconsideration under French Constitutional Law is of a nature to suspend the promulgation until reconsideration by Parliament, and Parliament has no power to refuse this reconsideration. However, the opinion of the Executive is not binding on the Parliament, which has full power to decide either to keep the bill intact or to alter it, and then the Executive must promulgate the bill. Otherwise, the President of the Senate will do so.

b) The presidential veto in the United States over bills passed by the Federal Congress was provided in Art. 1, Sect. 7 of the Federal Constitution of 1787. This Section provides that every bill which shall have been passed by the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approves he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated³⁾. This House shall consider the objections of the President; if the veto is rejected by a two-thirds majority of a quorum the bill shall be transmitted to the other House, and if this House likewise reject the veto with a two-thirds majority of its quorum the bill shall automatically become law. The votes of the House of Representatives and the Senate shall be on roll call and determined by "Yeas" and "Nays". If both Houses or either of them do not secure a two-thirds majority vote to override the veto, there shall be no law.

The veto power of the President of the United States can be exercised over all bills or documents having the effect of a bill, including the veto power of the President of the United States over budget bills and revenue bills. However it cannot be exercised over resolutions of Congress designed

²⁾ Constitutions of September 3, 1791, June 24, 1793, November 4, 1848, February 25, 1875, October 27, 1946 and October 4, 1958.

³⁾ In the United States either House has the right to pass a bill of its own initiative before transmitting it to the other, while in Vietnam every bill must originate in the Lower House.

merely to voice its sentiments, since those resolutions have not the effect of a bill.

When the President of the United States vetoes a bill, the veto shall have effect over the whole bill; he has no option to veto only part of the bill. Taking advantage of this provision, Representatives and Senators often add to a bill, which certainly shall not be vetoed by the President, other provisions having no connection with the bill and which, if presented separately, would be vetoed, thus forcing the President to approve them at the same time. This technique is known as the use of "Riders". Many Presidents of the United States have several times requested the Congress to amend the Constitution authorizing an item veto but this has not been accepted.

There is another method of veto. The President of the United States has 10 days to sign a bill into law or to veto it; beyond this delay the bill shall automatically become law. The 10 days delay begins to run from the day when the bill is presented to the President personally. If the President is travelling abroad or is absent, the bill shall not become law. On the other hand, if Congress adjourns before the lapse of the 10 days, the President cannot return the bill to Congress. The refusal by the President to sign a bill for promulgation has the effect of a veto, known as a "Pocket veto".

1. Origin and Formal Requirements of the Presidential Power to Request Reconsideration of Bills in Vietnam

The Constitution of October 26, 1956, provided in Art. 58⁴⁾ that within the period allowed for promulgation⁵⁾ the President may request the Con-

4) "Article 58: 1. The President appoints the Prime Minister. Upon the proposal of the Prime Minister, the President appoints members of the government.

2. The President has the right to reorganize all or part of the government on his own initiative, or upon the recommendation of the National Assembly". JöR vol. 19, p. 583.

5) For the different periods statuated in Art. 44, "full days" (clear days) do not include neither the day of the event from which they run, nor the day of the act to be accomplished within the period, but only the days lying between the said two days. Art. 44 runs in English:

"1. Bills approved by the National Assembly will be transmitted to the President within three full days.

2. The President must promulgate the law within fifteen full days from the date of receipt.

3. If the National Assembly appraises the matter as urgent, the bill must be promulgated within seven full days.

4. If the President does not promulgate the bill within the specified period of time

gress to reconsider one or more provisions of the bill, Congress had to finally decide by an open vote of a majority of 3/4 of the total number of its members.

However, as an exceptional feature of the Ngo Dinh Diem Regime, no controversies on the presidential power to request reconsideration were brought before the Constitutional Court of the time, depriving us of a reference and comparison.

The presidential power to request congressional reconsideration in Vietnam has been provided in Art. 45 of the Constitution of April 1, 1967, said Article reads as follows:

“Article 45: 1. Within the period allowed for promulgation the President has the right to send a message giving his reasons for requesting the National Assembly to reconsider one or more articles of the bill.

2. In this case, the National Assembly shall meet in joint plenary session to vote a final decision on the bill with a majority of more than one-half of the total number of Representatives and Senators. If the National Assembly votes to reject the request for amendment by the President, the bill shall automatically become law and shall be transmitted to the President for promulgation”⁶⁾.

The above Article, though being copied from Art. 1, Sect. 7 of the American Constitution, is briefer. Therefore its application causes many difficult questions of construction.

Some problems were settled by the Extended National Constituent Assembly while examining the request for reconsideration of the Chairman of the National Leadership Committee concerning bills on the Presidential Election, the Election of Senators and the Election of Deputies.

Other problems were solved by the present National Assembly while considering the presidential request for reconsideration of the General Mobilization Bill (a), Supreme Court Bill (b), General Inspectorate Bill (c)⁷⁾. Further problems were solved by the Supreme Court (*cf. infra* Sect. II and III).

According to Art. 45 § 1, the time allowed to use the power to request reconsideration is the time allowed for promulgation by Art. 44 (see above note 5).

After deciding to use his power to request reconsideration the President

the bill shall automatically become law and shall be promulgated by the President of the Senate”. JöR vol. 19, p. 581.

⁶⁾ JöR vol. 19, p. 581 f.

⁷⁾ (a) June 14, 15, 16, 1968, (b) August 30, 1968, (c) October 21, 1968.

sends a letter known as a message to the President of the Senate in which he specifies the provisions for which he requests reconsideration and the reasons therefore. At the same time he proposes a new version of the Article to be adopted by the National Assembly.

The Constitution does not provide a time limit for examination of the presidential request; this examination, slow or speedy, will depend on the Legislative.

II. Scope of the Power to Request Reconsideration

Art. 45 § 1 of the Constitution providing that the President has the power to request the National Assembly to reconsider one or more provisions of a bill, has laid down two principles:

1. The Drafter of the Constitution has used the term "bill" in a general way. Therefore it must be understood that any bill without distinction as to nature may be subjected to the presidential request for reconsideration.

Some Vietnamese Senators have a conflicting view on the matter and, in their petition dated January 13, 1969, submitted to the Supreme Court they maintained that the President has no power to request the reconsideration of budget bills, on grounds that such bills are (in their opinion) special bills.

The Supreme Court, in its Decision of January 31, 1969⁸⁾, did not accept their view for the following reasons:

a) The presidential power to request reconsideration is a constitutional general measure to accomplish cooperation and coordination between the Executive and the Legislative; use of this power will not be prejudicial to the ultimate decision of Congress.

b) Art. 46 of the Constitution on the procedure of preparation of the budget does not exclude the presidential power to request reconsideration. In spite of some special rules, the procedure for preparation of the budget, due to its importance, requires close cooperation of all branches of the Government from preparation to promulgation.

c) Moreover, Art. 46 refers to other provisions of the Constitution regulating normal legislative procedure.

This interpretation is similar to the jurisprudential interpretation in the United States of Art. 1 Sect. 7 of the Federal Constitution. In said section the expression "Every Bill" has been used, and the American President has veto power over all bills, including budget bills and revenue bills.

⁸⁾ Tu' Pháp Tập San — Judicial Review — No. 2/1969, p. 62.

2. Art. 45 § 1 of the Constitution has explicitly authorized the President to request the reconsideration of one or more provisions of a bill.

This provision is an advanced step since the veto system or request for reconsideration affecting the whole bill has many disadvantages, because in most cases the Executive disagrees with the Legislative only on some provisions of a bill. The above system paralyzes the whole bill, which sometimes is of an urgent nature; experience shows that in the United States Representatives and Senators usually take advantage of the present situation of the Constitution and tack to a bill some provisions which, if presented separately, will be surely vetoed, thus forcing the President to approve them since his veto would delay the implementation of the whole bill.

For this reason the French Constitution of 1958 has explicitly provided, in Art. 10, that the President has the power to request the reconsideration of a bill item by item. In the United States many Presidents, including President F. D. Roosevelt, recommended the amendment of the Constitution in this tendency but the American Congress did not accept.

3. The Supreme Court in its decision of January 31, 1969, deduced an additional limitation to the President power to request reconsideration.

The National Budget is composed of the Executive's Budget and autonomous Budgets of the Legislative and the Judiciary. According to the court decision, the President may of his own will request the reconsideration of the Executive's Budget only. As to autonomous budgets, he can request reconsideration only upon request by the concerned branch.

III. Procedure Applicable in the National Assembly for Examining the Message for Reconsideration

1. Procedure of meeting

The message for reconsideration shall be examined by the National Assembly in Joint Session (Art. 45 § 2).

In the United States, a presidential veto shall be considered first in the House in which the bill originated and then it is transmitted to the other House. This procedure is a lengthy and time-consuming one and creates for the Executive two opportunities for campaigning.

The meeting in joint session of the Vietnamese congress is logical since it makes the procedure of examination speedier and avoids conflicting opinions that may be given by the two Houses.

2. Way of putting questions

In this matter, Art. 1, Sect. 7 of the Constitution of the United States is very explicit and requires that the votes shall be determined by "yeas" and "nays".

Art. 45 § 2 of the Constitution of the Republic of Vietnam has not been explicit as to the putting the question for resolution and has briefly mentioned "the final vote to reject the request for reconsideration". This omission will bring about many difficulties.

When the Extended National Constituent Assembly considered the request for reconsideration of the Executive concerning bills on the Election of the President, Vice President, Senators and Deputies, it posed the questions for resolution: "Who accepts?" "Who rejects"? This procedure is similar to that applicable in the United States Congress.

With the National Assembly, which was elected afterwards, the same method of setting questions for voting was adopted in various votes on the presidential request for reconsideration of bills on the General Mobilization, Organization of the Supreme Court and Organization of the General Inspectorate. In the reports of these meetings, the following proceedings have been mentioned:

a) After discussion by the Congress, the President of the Senate, who presides over the meeting, repeats or requests the Reporter to repeat the issue on which the President of the Republic has requested reconsideration.

b) Then the President of the Senate requests Senators and Deputies to cast their votes on the issue: "Yeas", "Nays" or "No opinion".

At vote-counting time, the "Nays" shall be totaled for comparison with the majority of the total number of Senators and Deputies⁹⁾.

Although the above method of phrasing questions has been applied several times and has become a custom, the Congress, later, perhaps to avoid internal difficulties (impossibility to secure a number of "Nays" equal to the majority of the total number of Senators and Deputies), has used a detour to evade it. Here is an example:

At the beginning of January 1969, the President of the Republic sent a Message requesting Congress to reconsider the 1969 budget bill. A number of Senators applied to the Supreme Court for interpretation of the Constitution concerning the power of the President of the Republic to request

⁹⁾ Conf. reports of Joint Session of Congress No 04/QHLV of June 14, 1968, p. 82/IX; No 5/QHLV of June 15, 1968, pp. 49/V, 50/V, 83/V, 113/V and 124/V; No 6/QHLV of August 30, 1968, pp. 72/VI, 85/VI, 93/VI, 102/VI; No 9/QHLV of October 21, 1968, pp. 47/IX, 49/IX ff., 80/IX ff., 102/IX ff.

reconsideration of budget bills. By Decision of January 31, 1969, the Supreme Court adjudged that the President has the power to request reconsideration of budget bills as to the Executive only (the President also requested reconsideration of the budget of Congress in the subject case). In accordance with this decision, on February 3, 1969, the President adjusted his request for reconsideration.

Instead of examining the subject of the request and putting questions: "Who rejects?", "Who accepts?" the request, Congress has instituted a question of form in the two following questions:

a) Who maintains that the adjustment of February 3, 1969, is still within the Constitutional delay? R e s u l t : 39 yeas, 66 nays.

b) Who maintains that it is necessary to reexamine the request for reconsideration of January 9, 1969? R e s u l t : 42 yeas, 65 nays.

The Congress concluded that

"the vote on the issue that it is necessary to reexamine the presidential request for reconsideration of January 9, 1969, does not secure the majority of the total number of Senators and Deputies as provided in Article 45 § 2 of the Constitution, and consequently the reconsideration of the request is deemed not necessary".

Thus, in the opinion of the Congress, the presidential request for reconsideration was rejected with a relative majority and it was not necessary to put questions on the subject of the request: "Who rejects?", "Who accepts"? This was specially to evade the condition of a majority of the total number of Senators and Deputies (98 votes).

The Executive did not accept that solution, maintaining that the number of rejecting votes did not reach 98 and therefore its opinion must prevail, and on February 28, 1969, the President promulgated the budget bill in accordance with the viewpoint brought up by the Executive for reconsideration. Again the Congress protested on the point: "Does the President have the power to promulgate a bill which has not been finally voted on in substance by Congress"?

This question was settled by the Supreme Court in a decision dated June 13, 1969 (Petition for Constitutional interpretation by 31 Senators) including a. o. the following opinion:

"When the Congress meets to finally vote on a bill of which the President has requested the reconsideration, the result of the vote must be understood as 'Rejecting' or 'not rejecting' the Presidential request, though the questions may have been put under any form whatsoever and relating either to the form or to the substance".

After the decision of June 13, 1969, the Congress could no longer use the method of putting questions for the vote under other forms than that of asking "Who rejects?" and "Who approves?", nor can it use the method of rejecting the Presidential request on the form in order to deviate from the majority required for rejection.

3. Majority required to reject the presidential request for reconsideration

According to Art. 45 § 2 of the Constitution, when the President requests reconsideration, the Congress can only reject the presidential request "With a majority of more than half of the total number of Deputies and Senators".

Here we can conceive two total numbers: the total number of Senators and Deputies actually elected (now 197) and the total number of Senators and Deputies in attendance and forming a quorum (98).

According to debates in the National Constituent Assembly while voting on Art. 45 of the Constitution, the total number referred to in Art. 45 is the total number of Senators and Deputies actually elected. Is this majority of more than a half (now 98) in application when the Congress examines, on the form, the presidential request for reconsideration? According to the decision dated June 13, 1969, of the Supreme Court, when rejecting the presidential request on the form, the Congress must also have a majority of more than a half of the total number of Senators and Deputies (98). Moreover, when a majority of more than a half has not been secured to reject the presidential request on the form, the National Assembly must consider the substance.

In practice the number of Senators and Deputies attending the joint session of Congress usually does not reach 1/2 of the total number, and therefore the Congress usually cannot reject the presidential request. Let us note for reference that in the United States the two Houses meet separately to consider the presidential veto, and the majority required to reject this veto is 2/3 of the attending quorum.

4. Secret vote or open vote

According to Art. 1, Sect. 7 of the United States Constitution, when voting on the presidential veto, each House, meeting separately, shall vote on roll call.

Art. 45 § 2 of the Constitution of the Republic of Vietnam has not explicitly provided the manner of voting, secret or otherwise, in the proce-

ture of consideration of the presidential request and the matter may be decided by the Congress in each case. When the Extended National Constituent Assembly considered the request of the Chairman of the National Leadership Committee for reconsideration concerning important problems it adopted open voting in important matters: the Election of the President and Vice-President; whether the Election of Senators be on the same day or two different days was decided by open vote¹⁰).

The present National Assembly in joint session adopted secret voting in the first case of examination of the presidential request for reconsideration of the General Mobilization Bill. But later, concerning the presidential request for reconsideration of bills on the organization of the Supreme Court and the General Inspectorate, Congress adopted nominative vote. The latter method is more logical because in this way each Senator and Deputy is responsible to electors for his decision.

IV. Interpretation of the Result of the Vote

When more than half of the total number of Senators and Deputies vote to reject the presidential request, there will be no problem because in such case the presidential request shall be rejected and the bill shall become law. But when the rejecting votes do not reach the majority of more than half of the total number of Senators and Deputies, to what conclusion shall we come with regard to the bill which the President has requested be reconsidered?

As we have noted above, in the United States if a two-thirds majority of each House is not secured to reject the presidential veto, the vetoed bill shall not become law. On the contrary, in Vietnam, in the above case, the view of the President shall become law *i. e.* the President will promulgate the bill with the provision(s) he has proposed in his Message to the National Assembly¹¹).

¹⁰) Công Báo Việt-Nam Công-Hòa, An Bản Quốc-Hội — Official Gazette of the Republic of Vietnam, Congress Edition of 1969, p. 1259.

¹¹) For illustration purposes extracts of an unofficial translation may be added of a letter dated Saigon, June 18, 1970:

“The President of the Republic of Vietnam to Mr. President of the Senate and Mr. Speaker of the Lower House

Sirs, After considering the bill defining the procedures for the election of half the Senate membership, which was recently passed by the National Assembly and forwarded to me, and in accordance with Article 45 of the Constitution, I earnestly request that both Houses amend Articles 3 and 5, Article 12 paragraph 8, and Articles 13, 26, 28 and 44 of that bill.

The above interpretation of Art. 45 § 2 has a very important consequence and may have in the future a deep influence on the application of the Constitution of April 1, 1967, in particular and the democratic regime in general: The Executive will become law-maker every time the Congress does not secure a majority of more than a half to reject the presidential request for reconsideration. Since the matter is of importance it is advisable to know the origin of the above interpretation.

First of all, such an important matter should have been deeply discussed in the National Constituent Assembly. In fact, in the Meeting of February 16, 1967, during a discussion on Art. 45 § 2 of the Constitution, only two

Articles 3 and 5: . . .

Article 12, paragraph 8: 'Is considered as unqualified and ineligible for candidacy any person directly or indirectly working for the communists or pro-communist neutralists, if there are any concrete proofs in support of such charges'.

In my opinion, the 'if-there-are-any-concrete-proofs' criterion, though apparently rigorous on the surface, can actually be interpreted extensively because it is very difficult to define a concrete proof: Is it a definite court judgment, or an investigation report by agents of the public order, or simply a report by security agencies?

Moreover, since the bill has set up a Central Electoral Committee composed mostly of legislative and judiciary representatives, I deem it more opportune to entrust this body with the task of judging the qualifications of the candidates.

For this reason, Article 12, paragraph 8, of the bill should be amended as follows:

New Article 12: 'Is considered as unqualified and ineligible . . . 8/ Any person directly or indirectly working for the communists or pro-communist neutralists'. (No alteration for the remainder) . . .

Article 44: I think a complementary provision should be added to Article 44, to provide for the temporary suspension of the immunity right of those candidates enjoying that privilege, in case of violation of election laws.

In fact, Article 13, paragraph 2, of the Constitution sanctions the principle of equality of every citizen in the exercise of his right to run for office. This principle will not be respected if the candidate is an elected member enjoying judiciary immunity and continuing to enjoy it during election time.

Therefore, I would propose this amendment to Article 44 of the bill:

New Article 44: 'Any violations of the freedom and honesty of the senatorial election shall be punished under Articles 35 through 47 of Law 01/67 of June 15, 1967, defining the procedures for the Presidential and Vice Presidential elections in the first term.

'With regard, in particular, to officials and agents directly responsible for the elections, from central down to regional levels, be they civilian or military, in case they violate the freedom and honesty of the elections in favor of a slate, they shall be prosecuted before court under aggravating circumstances, together with the candidates, even if their slate might be already declared elected.

'Judiciary immunity cannot be alleged as a pretext to deny the competency of the courts charged with pronouncing judgment on eventual violations of the election law'.

Sirs, To give the Executive a minimum time to organize the election, I would like to request that both Houses meet urgently in a joint session to decide about the above points. Respectfully yours,

President Nguyen Van Thieu
(signature and seal)".

Deputies mentioned the case when the Congress does not have a majority of more than half to reject the presidential request for reconsideration. According to these Deputies, if the Congress does not secure a majority of more than half of the total number of Senators and Deputies to reject the veto, the "Opinion of the President shall become law". These opinions were based on Art. 55 § 3 of the Tentative Constitution.

Regretfully, the opinions of these Deputies were not thoroughly discussed; moreover paragraph 3 of Art. 55 of the Tentative Constitution which these Deputies mentioned did not figure in the final Art. 45 of the Constitution although they requested that the paragraph be reinscribed in the actual Constitution. Due to the above omission, many interpretations may be possible.

It may be supposed that the National Constituent Assembly did not approve Art. 55 § 3 of the Draft, since it did not mention this provision in Art. 45. Also it may be argued that the silence of the National Constituent Assembly means that the latter tacitly approved the arguments of the above Deputies. Later, when the National Constituent Assembly was extended to exercise legislative power, the Executive, which was the National Leadership Committee, represented by its Chairman, used its veto power in the promulgation of law No 1/67 on the Election of the President and Vice-President, law No 2/67 on the Election of Senate, and law No 4/67 on the Election of the House, and in the reconsideration of these bills we have an official interpretation of the result of the vote by the Congress when it considered the message for reconsideration.

On June 13, 1967, the National Assembly met in joint session to examine the request for reconsideration of the Executive¹²⁾. From a discussion and vote in the National Assembly we notice that two questions of principle have been settled:

1. The Extended National Constituent Assembly has explicitly accepted that if the National Assembly does not secure a majority of more than half to reject the request, the view of the Executive shall become law.

2. The National Assembly thought itself qualified to change the presidential request for reconsideration, or in other words, to increase or diminish the proposals mentioned in the message for reconsideration.

The Executive did not agree on the latter point thinking that Congress was bound by the veto and could only reject or approve the whole request for reconsideration without having the right to change it. Therefore the

¹²⁾ Công Báo Việt-Nam Công-Hòa, An Bản Quốc-Hội — Official Gazette of the Republic of Vietnam, Congress Edition of 1968, p. 1268.

Executive promulgated the bill as vetoed although the changes of the request for reconsideration have been accepted by a majority of more than half of the total number of Senators and Deputies. This interpretation of the Executive was dissected by the National Assembly at its meeting of June 19, 1967¹³⁾. Many Deputies protested, threatened resignation from office and demonstrations, and finally the Assembly voted to publish a proclamation protesting against the Executive.

This controversy is a very important one but there is no precedent of the Supreme Court in the matter. Many jurists maintain that as Art. 45 of the Constitution authorizes the President to veto one or more provisions of a bill, there will be no obstacle for the Congress to change, with a majority of more than a half, the request for reconsideration within the scope of this request. Accepting so is to accept the conciliatory spirit between the Legislative and the Executive, which is the base of all democratic regimes. But here we are stepping into the field of democratic philosophy.

The Executive cannot refer to the experience of the United States, since in the United States a veto is automatically effective against the whole bill. The National Assembly, which was elected later, has kept intact the above interpretation of Art. 45 § 2. In fact, in the three joint sessions of Congress to vote on the presidential request for reconsideration¹⁴⁾, the above interpretation was adopted without discussion.

The meaning of Art. 45 § 2 of the Constitution as conceived by the Congress has been often referred to by the President of the Senate presiding over the joint session as follows:

“If a majority of more than a half of the total number of Senators and Deputies is secured to reject the presidential request for reconsideration, this request will be considered as regularly rejected. If the rejecting votes do not reach the above majority of more than a half, the presidential request shall be considered as indirectly approved”¹⁵⁾.

¹³⁾ Công Báo Việt-Nam Công-Hòa, Ấn Bản Quốc-Hội — Official Gazette of the Republic of Vietnam, Congress Edition of 1967, pp. 1275 ff.

¹⁴⁾ Cf. above note 7.

¹⁵⁾ The above view has been reaffirmed in the reports of proceedings of joint session of Congress No 4/QHLV dated June 14, 1968, p. 103/IV; No V/QHLV of June 15, 1968, pp. 54/V, 88/V, 118/V, 129/V; No VI/QHLV dated August 30, 1968, pp. 72/VI ff., 91/VI, 98/VI, 107/VI; No 09/QHLV dated October 21, 1968, pp. 55/IX, 88/IX, 89/IX, 111/IX.

V. *Promulgation of Bills after Congressional Reconsideration*

After the Congress in joint session has examined the presidential request for reconsideration and has finally approved the bill, the latter shall be transmitted to the President for promulgation. In this stage many problems may arise.

1. Art. 45 of the Constitution has provided neither the delay for promulgation of bills repassed by Congress, nor the authority to promulgate them in case of the President's unwillingness to promulgate.

So far there have been no controversies before the Supreme Court on these points, but it seems that the Congress and the President tacitly agree on the application of Art. 44 of the Constitution providing promulgation in general *i. e.* the President has 15 clear days or 7 clear days for promulgation depending on either or not the bill has an urgent nature; if the President does not promulgate within the delay, the President of the Senate will proceed to the promulgation.

2. On the other hand, we learn from experience that since the time of the Extended National Constituent Assembly, many dissensions have arisen between the Executive and the Legislative within the period between final approval by Congress and the promulgation. These controversies are: a) On the interpretation of the result of the vote, b) On the question whether the Congress has or has not the right to change the presidential request for reconsideration.

3. There is now another important question: by what procedure a controversy between the Executive and the Legislative shall be settled? For this question many principles have been laid down in two decisions of the Supreme Court:

a) In the Decision of June 13, 1969¹⁶⁾, the Supreme Court decided as follows:

"To reject a presidential request for reconsideration, as to form as well as to substance, the congress must secure a majority of more than a half". "If Congress does not secure a majority of more than a half to reject the request as to form, it should consider it on the substance". "The President can promulgate a bill he has vetoed only after the Assembly has voted final approval on the matter".

In the above case, the Congress rejected the presidential request for reconsideration as to form without considering it on the substance, and then the President promulgated the bill as vetoed. In the above specific case, if

¹⁶⁾ *Senators v. The Executive concerning the promulgation of 1969—1970 Budget Bill*, Tu-Pháp Tập-San — Judicial Review — No 3/1969, p. 5.

a procedure conformable to the spirit of the decision of June 13, 1969, must be applied, the President should submit the case to the Supreme Court which will confirm that the Congress must consider the presidential request for reconsideration on the substance; afterwards the case shall be transmitted to Congress for vote on the substance and finally the President will promulgate the budget bill.

b) In another controversy, the Supreme Court has explicitly established the principle that when a controversy arises out of a Constitutional Interpretation (all controversies arisen so far are related to Constitutional Interpretation) the President can promulgate the bill only after settlement of the controversy by the Supreme Court¹⁷⁾.

Conclusion

We have discussed the presidential power to request reconsideration of bills in Vietnam and the difficulties arising out of the exercise of this power. Now let us try to analyze the juridical nature of that power and, for more clearness, let us make a comparative study with the American and French Constitutional laws.

The veto of the Chief of the Executive in France, termed by French Jurists as "suspensive veto", is merely an act suspending the promulgation of the bill until the reconsideration of the same by Parliament, with the effect that the Parliament is bound to reconsider the bill in light of the different views presented by the Executive. The procedure for reconsideration of the presidential request is the ordinary legislative procedure. The French Parliament is not bound by the reasons given by the Executive. Parliament may either change the bill according to the view of the Executive or keep it intact and then the Executive must promulgate the bill otherwise the President of the Senate will do so.

The American presidential veto has likewise the two above effects: to suspend the promulgation and to compel the Congress to reconsider the bill; but the presidential veto in the United States is broader than that of the Chief Executive in France. The suspensive effect of the veto may become permanent if both Houses of the American Congress or either of them do not secure a two-thirds majority to reject the veto. In other words, in such case the bill passed by the Congress shall be considered as non existing.

¹⁷⁾ *President of Senate and Speaker of the House v. the Executive* — Decision of August 19, 1969 — *Tu'-Pháp Tập-San* — Judicial Review — No 3/1969, p. 110.

In comparison to the presidential veto under the French or American constitutional law, the scope of the presidential power to request reconsideration in Vietnam is much greater since, besides the effects of suspension and compelling the Congress to reconsideration, the power to request reconsideration mentioned in Art. 45 of the Constitution has granted legislative power to the President should the Congress have not secured a majority of more than a half of the total number of Senators and Deputies to reject the presidential request for reconsideration; in such case, the presidential view will automatically become law and will be promulgated by the President.

Many jurists have criticized the above measure maintaining that in this way the principle of separation of powers between the Legislative and the Executive will be severely violated. The Executive, under some conditions, will become the Legislative.

Indeed, as shown in the above study, this is an initiative of the drafters of the Vietnamese Constitution. And for any initiative, the value of the change can be appreciated only through practice.

The Constitution of April 1, 1967, has been in application for more than three years and the Executive has exercised its power to request reconsideration in the promulgation of the very first bills of the Second Republic: Bills on the Election of the President and Vice-President, the Election of Senators and the Election of Deputies.

After the election of the present National Legislative Assembly and its actual operation in the middle of 1968, the Executive often exercised its power to request reconsideration in almost every bill.

At first sight the majority of more than a half required to reject the presidential request for reconsideration seems to be favorable to Congress in comparison to the two-thirds majority required in the United States. But it should be noted that the majority of more than half in the Vietnamese Congress is the majority of the total number of Senators and Deputies actually elected whereas the two-thirds majority in the United States is a majority of a required quorum.

Besides, since democracy is only in its earliest development in Vietnam, Deputies and Senators care very little to attend the sessions. Usually, joint session of Congress does not have 98 members in attendance and in most cases, the request for reconsideration of the Executive has "prevailed" and the presidential view has become law.

The constant victory of the Executive has created a rather tense atmosphere of lack of mutual confidence between the Executive and the Legislative.

The conciliatory spirit between these two branches — which most politicians deem necessary for all democratic regimes — seems to have been jeopardized substantially. Therefore, in the future, the conscientious exercise of the power to request bill reconsideration by the Executive shall be an important factor — if not a decisive one — in the building of democracy on the base of the Constitution of April 1, 1967.

Saigon, February 25, 1971

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