



Protecting the Core of Constitutional Rights in Vietnam: Proportionality, Administrative Discretion, and Judicial Safeguards

Trương Sơn Nguyễn¹

Abstract

Vietnam's 2013 Constitution establishes a general framework for restricting constitutional rights, but the relationship among the protected core of a right, administrative discretion, proportionality, and judicial control remains insufficiently articulated. This article asks how Vietnamese law should distinguish administrative interferences that merely limit a constitutional right from those that negate its protected core, and what safeguards should govern each category. It develops a doctrinal framework combining the bifurcated model of rights with proportionality analysis and procedural and judicial safeguards. Drawing on Vietnamese constitutional and administrative law, international human rights interpretive materials, and purposively selected administrative judgments, the article argues that interferences which negate the underlying purpose of a right should not be justified through ordinary policy balancing. Restrictions outside that core must satisfy legality, legitimate purpose, rational connection, necessity, and proportionality, while remaining subject to fair administrative procedure and effective judicial review. The article proposes a differentiated safeguards model that preserves legitimate administrative discretion by calibrating justification and procedure to the severity of interferences within the right's periphery, while treating negation of the protected core as a distinct threshold.

Keywords: Administrative discretion, constitutional rights, essence of rights, judicial review, proportionality, Vietnam.

Introduction

The 2013 Constitution marked an important shift in Vietnam's constitutional treatment of human rights. The constitutional framework expressly requires the recognition, respect, protection, and guarantee of human and citizens' rights, while Article 14(2) provides that rights may be restricted only by law and only when necessary for constitutionally specified public purposes (National Assembly, 2013). The central difficulty lies not in the absence of a constitutional limitation clause, but in the standards through which that clause is translated into administrative decision-making and judicial control. Public authorities necessarily exercise discretion in fields where legal rules are incomplete, open-textured, or dependent on technical assessment; the rights question is how that discretion should be justified and reviewed when it burdens constitutionally protected interests.

¹ Department of State Management, Thu Dau Mot University, Vietnam.

*Corresponding Author: Email: sonnt.luat@tdmu.edu.vn

Recent scholarship has begun to identify this problem from two complementary directions. Tran and Dao (2024), examining rights limitations during the COVID-19 crisis, argue that Vietnamese law has partially internalized the requirements of legality, necessity, and proportionality, while their clarification and practical application remain incomplete. Their analysis is particularly important because it shows how broad or unclear legal bases and administrative directives can create space for over-restriction, and how the availability of less intrusive alternatives matters to the justification of restrictive measures. A different strand of scholarship focuses on judicial review. Nguyen (2025) treats administrative discretion as an unavoidable feature of modern administration but argues that effective judicial control requires a clearer account of the scope of discretion and of the relationship between legality, administrative expertise, and reasonableness.

These contributions substantially advance the Vietnamese discussion, but they leave a further question unresolved. A proportionality analysis presupposes that a restriction remains capable of justification. It does not by itself answer whether some forms of state interference cross a prior threshold at which the right is no longer merely restricted but deprived of its protected purpose. Conversely, an account of the ‘core’ or ‘essence’ of rights cannot be useful if it is converted into a closed catalogue of supposedly superior rights or treated as a label that automatically excludes legitimate administration. The conceptual problem is therefore one of sequencing: when should an interference be treated as reaching the protected core of a constitutional right, and when should it instead be assessed as a justifiable limitation within the right’s periphery?

This article addresses that question in the context of Vietnamese administrative law. It asks: how should Vietnamese law distinguish administrative interferences that merely limit the periphery of a constitutional right from those that reach its protected core, and what substantive, procedural, and judicial safeguards should govern each category? The article argues for a differentiated model of rights protection. Where public action or omission effectively negates the purpose that makes a right meaningful, the interference reaches the right’s core and should not be justified through ordinary policy balancing. Where the interference remains outside that core, the state must justify it through legality, legitimate purpose, rational connection, necessity, and proportionality. In both situations, administrative discretion must be structured by fair procedure and remain subject to effective judicial review.

The article makes three contributions. First, it shifts the inquiry from a fixed category of ‘core rights’ to the protected core within particular constitutional rights, avoiding a predetermined hierarchy. Second, it connects the rights-essence debate to proportionality by treating the core as a threshold inquiry rather than another factor within ordinary balancing. Third, it links this framework to administrative institutions: discretion remains legitimate, but its exercise must be reasoned, procedurally fair, and subject to reviewable legal standards.

Methodologically, the article is primarily doctrinal and theoretical. It analyzes constitutional and administrative law materials, international human

rights interpretive standards, and scholarship on the essence of rights, proportionality, administrative discretion, and due process. Selected recent Vietnamese administrative judgments are used later in the article as illustrations of reasoning that resembles necessity review and effective judicial protection. They are not treated as a statistically representative sample, nor is the article intended to establish the existence of a fully developed proportionality doctrine in Vietnamese adjudication.

Theoretical Framework and Methodology

The Protected Core of a Right: From a Catalogue of Rights to a Threshold of Protection

The theoretical starting point of this article is the distinction between the scope of a right and the strength with which different parts of that scope are protected. Weinrib (2025) formulates this distinction through a bifurcated model: the scope of a constitutional right contains a core, or essence, and a periphery. The core possesses absolute strength within the model, whereas interferences with the periphery may be justified if they satisfy proportionality. The significance of this account for the present article is not that certain rights should automatically be classified as ‘core rights’. Rather, it is that each right may contain a protected purpose that public power cannot reduce to a nullity. The bifurcated model remains contestable in constitutional theory and is adopted here as an analytical framework, not as a claim of settled doctrinal consensus. Weinrib himself contrasts this approach with absolutist and relativist accounts and notes jurisprudence in which justification remains possible even after the essence of a right is said to have been breached. The present article therefore adopts the bifurcated model for its analytical capacity to separate a threshold inquiry from ordinary proportionality, while recognizing that other theories would absorb some or all of that inquiry into the justification stage.

For terminological clarity, this article uses “protected core” and “essence” interchangeably to denote the part of a right that, under the bifurcated model adopted here, cannot be nullified through ordinary balancing. “Purpose” is not used as a third synonym. It refers to the interpretive criterion for identifying the core: the normative function of the right whose denial would render the right practically or legally meaningless.

This purposive understanding is especially important for administrative law. Weinrib (2025) argues that the essence of a right is breached where public action or omission does not merely limit the right but denies the purpose that makes the right legally meaningful. The distinction therefore operates in both negative and positive directions. A public authority may reach the core by exercising unrestricted power over a protected sphere; it may also do so by failing to create the minimum legal conditions through which the right can be protected or effectively invoked. This point cautions against rigidly classifying constitutional rights as exclusively ‘negative’ or ‘positive’. Rights with a strong defensive dimension against arbitrary state interference may also generate positive duties of procedure, protection, and remedy.

The concept of a protected core must also be distinguished from the law of derogation in emergencies. The Human Rights Committee’s General

Comment No. 29 explains that the designation of an ICCPR provision as non-derogable does not mean that every restriction on that right is necessarily impermissible; derogability and ordinary limitation are conceptually distinct (Human Rights Committee, 2001). This distinction prevents four different ideas from being collapsed into one: an absolute prohibition, a non-derogable treaty obligation, the protected core or essence of a right, and the ordinary periphery of a right that may be subject to justified limitation. In this article, the core is therefore treated as a threshold of protection identified through the purpose of the right and the degree to which state action or omission negates that purpose, rather than through a closed list of rights presumed to be wholly absolute.

Proportionality as a Structured Justification Framework

Once an interference remains outside the protected core, the central question becomes whether the restriction is justified. For that inquiry, proportionality provides a structured framework rather than a single act of undifferentiated balancing. Barak (2012) identifies four principal components: a proper or legitimate purpose, a rational connection between the measure and that purpose, necessity, and proportionality *stricto sensu*. Möller (2012) similarly presents proportionality as a sequence that requires the decision-maker to identify a legitimate goal, determine whether the interference contributes to it, consider less restrictive alternatives, and only then assess whether the burden imposed on the right-holder can be justified in light of the competing interest.

Necessity is especially relevant to administrative discretion because it disciplines the choice of means. A measure should not be treated as necessary when an alternative can achieve the relevant public purpose to an equivalent degree while interfering less with the right. This requirement does not authorize a court to substitute its preferred policy whenever it can imagine a different measure. The comparison must remain anchored in the effectiveness of the alternative, the nature of the public objective, and the intensity of the rights burden. The final balancing stage is likewise not a mechanical cost-benefit exercise. Möller (2012) emphasizes that proportionality involves legal and moral reasoning about what sacrifice may legitimately be demanded from an individual for the benefit of others or the public.

International human rights interpretive materials reinforce this structured approach. The Siracusa Principles state that limitations should not be interpreted so as to jeopardize the essence of a right; they should be prescribed by law, non-arbitrary, directed toward a legitimate aim, necessary, and proportionate, and the state should use no more restrictive means than are required to achieve the relevant purpose (United Nations Commission on Human Rights, 1984, paras. 2, 7-12, 15-18). The Principles also stress the availability of challenge and effective remedies. They are not a treaty and are used here as an interpretive framework rather than as an autonomous source of binding obligations. Read together with the bifurcated model, they support a two-stage logic: first determine whether the interference negates the protected purpose of the right; if it does not, assess whether the remaining limitation can be justified through structured proportionality.

Administrative Discretion, Due Process, and Judicial Safeguards

A rights-protective model of proportionality must be compatible with the practical realities of administration. Administrative discretion cannot simply be removed from modern government. Nguyen (2025) argues that discretion is inevitable where legislation is ambiguous, incomplete, or dependent on technical expertise, but that Vietnamese law still faces difficulties in defining the boundaries of such discretion and in ensuring effective judicial control. The institutional problem is therefore not whether administration should have discretion, but how that discretion should be structured, reasoned, and reviewed when it affects protected rights.

Procedural safeguards are part of that structure. Comparative scholarship on administrative due process emphasizes that the protection of rights should begin before an adverse administrative decision is finalized. Perlingeiro (2016) argues for prior administrative proceedings in which affected persons can be heard and in which decision-making is sufficiently impartial and institutionally separated from accusatory or investigative functions. Such procedures can improve the quality of administrative decisions and reduce the need for later litigation. At the same time, effective judicial protection remains indispensable where administrative procedure is inadequate, where the authority fails to act, or where the legality and justification of the interference are disputed.

Vietnamese law already contains partial analogues to these safeguards, but they operate through specific statutory procedures rather than a uniform cross-sector standard. In administrative sanctioning, Article 61 of the Law on Handling Administrative Violations gives individuals and organizations a right to submit written or oral explanations in specified cases before a sanctioning decision, requires the competent authority to consider those explanations, and, for an oral explanation, requires notice of the hearing and disclosure of the legal grounds, relevant facts and evidence, and the contemplated sanction or remedial measure (National Assembly, 2012, art. 61, as amended). In complaint resolution, the Law on Complaints requires written notice of acceptance, dialogue in defined circumstances, and a written decision setting out verification results, dialogue results where applicable, the legal grounds, and the conclusion, followed by service of that decision (National Assembly, 2011, arts. 27, 30–32). These protections are significant but uneven: the explanation right is confined to specified sanctioning cases, while complaint safeguards largely operate after the challenged decision or omission. The model proposed here would therefore tighten and generalize the procedural baseline for serious rights-restricting decisions by requiring, where practicable, advance notice of the legal and factual basis, a meaningful opportunity to respond before finalization, and reasons that address material objections, with the intensity of these safeguards calibrated to the seriousness and reversibility of the interference.

This approach rejects two opposite extremes. It does not treat administrative expertise as a blank cheque insulated from meaningful review, but neither does it require courts to replace administrators as primary decision-makers. Judicial safeguards are instead conceived as a second-order

guarantee: courts should be capable of examining whether the authority acted within lawful competence, considered the relevant rights impact, gave reasons capable of legal scrutiny, and respected the justificatory structure appropriate to the interference. Within a right's periphery, more serious or irreversible burdens warrant stronger substantive and procedural justification. Once the interference negates the protected core, however, ordinary balancing is no longer the appropriate justificatory mode.

Methodology and Analytical Sequence

The article employs doctrinal legal analysis combined with theoretical and selective case analysis. The doctrinal component examines Vietnamese constitutional and administrative law on rights limitations and administrative decision-making, together with international human rights interpretive materials relevant to limitation, derogation, remedies, and procedural safeguards. The theoretical component uses the bifurcated model of rights and proportionality to construct an analytical sequence suitable for evaluating administrative interference with constitutional rights.

The sequence used in the article is as follows. First, the analysis identifies the purpose protected by the right and asks whether the challenged act or omission merely limits that purpose or effectively negates it. If the protected core is not reached, the analysis moves to legality and legitimate purpose, followed by rational connection, necessity, and proportionality *stricto sensu*. Finally, the article examines procedural and judicial safeguards, including notice, an opportunity to be heard where appropriate, impartial decision-making, reason-giving, access to review, and effective remedy. This sequence is analytical rather than a claim that Vietnamese courts already apply a single unified test in this form.

Selected Vietnamese administrative judgments are used as illustrative rather than representative materials. The cases were purposively selected because their published reasoning expressly engages questions analogous to less restrictive means, sanction intensity, administrative omission, or judicial remedy. No statistical inference is drawn from the selection, and the article does not claim that isolated language of necessity, appropriateness, or rights protection by itself amounts to the formal adoption of proportionality doctrine. Because the cases arise from land management, administrative sanctioning, and administrative inaction, they are used to illuminate the structure of administrative review rather than to define the substantive core of any particular constitutional right.

Results and Discussion

The Protected Core of Constitutional Rights: An Operational Threshold

The analytical value of the protected-core concept lies in identifying a threshold rather than constructing a hierarchy of rights. Treating selected rights as a closed category of 'core rights' risks conflating several distinct questions: whether a right is civil or political, whether it is non-derogable in an emergency, whether some of its dimensions are absolute, and whether a particular interference destroys the right's protected purpose. A more defensible approach is to ask whether the challenged public measure leaves the right meaningfully exercisable or instead reduces it to a formal entitlement without practical legal force. This follows the bifurcated model more closely

because the inquiry concerns the strength of protection within the scope of a right, not the ranking of entire rights as intrinsically superior to others (Weinrib, 2025).

This article proposes three heuristic indicators for operationalizing that threshold in the administrative context. First, the intensity of the interference matters: a measure that regulates the conditions of exercising a right is different from one that eliminates the practical possibility of exercising it. Second, the structure of public power matters: a risk to the core is greater where the authority claims effectively unrestricted discretion over a protected sphere or where no meaningful legal standard constrains the intervention. Third, the availability of institutional protection matters: an omission may be as destructive as an affirmative restriction when the legal order provides no accessible procedure, review mechanism, or remedy through which the affected person can make the right effective. These indicators are not presented as a doctrinal test; they are a heuristic extension of Weinrib's purposive account for examining administrative action and omission (Weinrib, 2025).

A land-restoration order of the type considered in Judgment No. 469/2025/HC-PT illustrates how the indicators can be used. Intensity asks whether the measure merely regulates land use or instead causes irreversible demolition or loss of existing use. Structure of public power asks whether the authority distinguishes legally relevant categories and considers available alternatives, rather than applying a uniform restoration command mechanically. Institutional protection asks whether reasons are given and effective review can set aside an excessive measure. In Judgment No. 469/2025/HC-PT, the court's identification of a less destructive lawful alternative and its partial annulment of the coercive response illustrate the latter two inquiries. This does not establish that the protected core of a property-related interest was breached; it shows how the indicators organize the inquiry before that conclusion is reached.

This framework also clarifies the relationship between the protected core and non-derogability. General Comment No. 29 states that non-derogable status under Article 4 of the ICCPR does not imply that every restriction on the relevant right is prohibited; restriction and derogation are distinct questions (Human Rights Committee, 2001, para. 7). The core inquiry therefore cannot be reduced to the list of non-derogable treaty provisions. Nor should it be equated with a general claim that constitutional rights are exclusively negative rights. Rights can generate positive obligations to establish procedures, investigate interferences, protect against third-party harm, and provide effective remedies. The relevant threshold is whether public power, through action or omission, negates the purpose that gives the right practical and normative significance.

For Vietnamese law, this reformulation avoids labeling rights such as movement, privacy, property, or bodily integrity as wholly 'core' and immune from restriction. Each right may contain dimensions open to ordinary regulation and others whose negation would empty it of meaning. Review should therefore proceed sequentially: identify the right's protected purpose,

ask whether the interference negates it, and, only if the core is not reached, assess the remaining limitation through structured justification.

Constitutional Rights Limitations and Administrative Discretion in Vietnam

Article 14(2) of the 2013 Constitution provides the central domestic point of departure. It permits restrictions on human and citizens' rights only when prescribed by law and necessary for constitutionally enumerated public reasons, including national defence, national security, social order and safety, social morality, and community health (National Assembly, 2013). The clause is important because it rejects unrestricted administrative convenience as a sufficient basis for limiting rights. At the same time, the constitutional text does not itself specify a complete methodology for determining necessity, the permissible degree of impairment, or the relationship between administrative discretion and judicial review.

Tran and Dao (2024) show why this gap matters in practice. Their study of the COVID-19 period identifies two recurrent problems: uncertainty over what counts as an adequate legal basis for restricting rights and insufficiently structured analysis of necessity and proportionality. In particular, they question the use of administrative 'directives' as foundations for severe restrictions where such instruments did not fit comfortably within the formal hierarchy of legislative documents examined in their study. They also show that alternatives less restrictive of rights were sometimes available, such as inspection and disinfection measures in place of blanket prohibitions on the movement of goods. Their analysis demonstrates that Article 14(2) is not self-executing as a proportionality test; the quality of rights protection depends on how public authorities justify the choice and intensity of the measure used.

Administrative discretion is nevertheless unavoidable. As Nguyen (2025) notes, public administration must often act where legislation is open-textured, factually contingent, or dependent on technical expertise. A rights-protective framework should therefore not treat discretion itself as the problem. The central issue is whether discretion is bounded by law, reasons, evidence, and review. On Nguyen's reading of the 2015 Law on Administrative Procedures, Vietnamese administrative adjudication is structured primarily around review of legality, while the statute does not establish a general power to review the reasonableness of administrative decisions. That institutional setting sharpens the tension between formal legality and meaningful scrutiny of excessive but formally authorized interferences.

The differentiated model proposed here responds to that tension by varying the intensity of justification according to the severity of an interference that remains within the right's periphery. Ordinary administrative choices may justify a degree of institutional latitude, especially where the authority possesses relevant expertise. But as burdens become more severe, durable, or irreversible, the authority should provide correspondingly stronger reasons: a clear legal basis and public purpose, a factual connection between the measure and that purpose, consideration of materially less restrictive alternatives, and reasons capable of judicial scrutiny. If the prior core inquiry shows that the measure negates the protected purpose of the right, ordinary deference and balancing cannot substitute for protection of that core.

Proportionality-Like Reasoning in Vietnamese Administrative Adjudication

Recent administrative judgments provide limited but instructive illustrations of how these questions can arise in adjudication. They do not establish that Vietnamese courts have adopted a formal proportionality doctrine. Their value is narrower: they show forms of judicial reasoning that can be analyzed through the concepts of necessity, intensity of interference, and effective review developed above.

The clearest example is Judgment No. 469/2025/HC-PT of the High People's Court in Ho Chi Minh City. The dispute concerned remedial and coercive administrative decisions in land management. Some structures on the claimant's land had existed before the relevant statutory cut-off and other works had been carried out following local authorization to repair and renovate. The appellate court distinguished among the different structures rather than treating the entire property as one undifferentiated violation. For certain parts of the property, it reasoned that the competent authorities should have allowed the structures to remain and required the land-use purpose to be adjusted to the existing situation. The court stated that the authority had instead "mechanically [required] restoration of the land to its pre-violation condition," a response it described as "unnecessary and inconsistent in land management" (High People's Court in Ho Chi Minh City, 2025, p. 9, author's translation). The court accordingly accepted the challenge in part and annulled the relevant remedial and coercive decisions to that extent.

This reasoning is significant because it resembles the necessity limb of proportionality. The court did not expressly cite proportionality, formulate a four-stage test, or compare quantified burdens and benefits. It did, however, identify an alternative legal response that was less destructive of the claimant's position and regard the harsher measure as unnecessary in the circumstances. The judgment therefore supports only a restrained claim: Vietnamese administrative adjudication can contain reasoning analogous to less-restrictive-means analysis even when proportionality is not named as a doctrine. This is precisely the type of reasoning that could be made more transparent if necessity were articulated as a structured justificatory requirement.

Judgment No. 95/2025/HC-ST of the People's Court of Lam Dong Province provides a useful contrast. The case involved a monetary administrative fine together with a fifteen-month suspension of business activity. The court stated that the fifteen-month supplementary sanction was "not appropriate"; however, the administrative authority had already issued a corrective decision reducing the suspension to nine months, and the court ultimately upheld the adjusted sanction and dismissed the claim (People's Court of Lam Dong Province, 2025, p. 7, author's translation). The judgment does not identify a less restrictive alternative, explain why nine months rather than fifteen months achieves the regulatory purpose, or balance the severity of the sanction against the public interest pursued. The language of appropriateness therefore should not be treated as proof of proportionality *stricto sensu*. Its value is methodological: it illustrates why isolated words such

as ‘appropriate’, ‘reasonable’, or ‘proportionate’ are insufficient to establish that a court has conducted a proportionality analysis.

Taken together, the two judgments reveal an important distinction. Rights-sensitive review is not created by terminology alone; it depends on the structure of reasons. The 2025 Ho Chi Minh City appellate judgment is analytically stronger because the court links the illegality of the coercive response to a concrete alternative that the authority could have used. The Lam Dong judgment, by contrast, records a conclusion about sanction intensity without exposing the reasoning that generated the revised level of interference. For a developing judicial practice, the normative priority should therefore be reason-giving: courts should make explicit whether they are assessing legal authority, factual suitability, less restrictive alternatives, or the overall excessiveness of the burden.

Judicial and Procedural Safeguards: Control without Judicial Substitution

Substantive standards alone cannot protect rights if affected persons lack procedures through which those standards can be invoked. A rights-protective administrative system therefore should not be framed as a simple transfer of authority from administration to courts. Administrative bodies must remain capable of making first-instance decisions, especially in regulatory fields requiring speed, local knowledge, or technical expertise. The more appropriate institutional objective is to combine rights-sensitive administrative procedure before the decision with accessible and effective judicial control when the decision, omission, or justification is challenged.

Perlingeiro (2016) provides a useful comparative basis for this approach. Prior administrative due process can improve decision quality by ensuring that affected persons know the case against them, can present relevant arguments and evidence, and are heard before an adverse decision is finalized. Impartiality is also institutional: where the same administrative structure investigates, accuses, and finally determines the dispute without meaningful separation or review, the risk of one-sided reasoning increases. These safeguards do not require every administrative restriction to receive prior judicial authorization. They require the administrative process itself to be capable of producing a reasoned and reviewable decision.

Judgment No. 148/2025/HC-PT of the High People’s Court in Da Nang illustrates the complementary role of judicial protection in cases of administrative omission. The dispute arose from a long-unresolved complaint concerning resettlement following land clearance. The appellate court found that the local authority had failed to resolve the complaint in accordance with Articles 27 and 28 of the Law on Complaints and rejected the authority’s later explanation that the family had not made a timely request, describing that explanation as inconsistent with the substance of the case (High People’s Court in Da Nang, 2025, pp. 6-7). It further held that the failure to consider resettlement on that basis infringed the claimant’s lawful rights and interests. The court ordered the competent authority to resolve the complaint according to law.

Equally important is what the court did not do. It did not itself allocate the resettlement land. Instead, it required the administrative authority to perform its legal duty and preserved the claimants’ ability to bring a

subsequent administrative action if they remained dissatisfied after the complaint was resolved. This is a useful example of judicial protection without wholesale judicial substitution. The court controlled unlawful omission, corrected the procedural blockage, and kept the administrative authority responsible for the substantive first-instance decision. That institutional pattern is consistent with a differentiated safeguards model: administration retains its decision-making function, but inaction, inadequate reasoning, and rights-affecting measures remain reviewable.

The implications for rights protection are twofold. First, procedural safeguards should operate *ex ante* where practicable: clear notice of the legal basis and contemplated measure, a meaningful opportunity to respond, impartial consideration, and reasons addressing material objections can prevent unnecessary interference before it occurs. Second, effective review must operate *ex post* or on demand: courts should be able to examine competence, legality, relevant facts, the existence of less restrictive alternatives where raised by the circumstances, and the adequacy of the authority's reasons. General Comment No. 29 emphasizes effective remedies and procedural or judicial guarantees even in the emergency context, while the Siracusa Principles emphasize challenge and remedy against abusive limitations (Human Rights Committee, 2001, paras. 14-16; United Nations Commission on Human Rights, 1984, paras. 8, 18). The Vietnamese judgments show how review can address both excessive coercive action and unlawful administrative omission.

Discussion: Toward a Differentiated Safeguards Model

The preceding analysis supports a differentiated safeguards model rather than a single rule for all administrative interferences with constitutional rights. Its central premise is that the intensity and form of legal control should depend on what the public measure does to the right. An interference that regulates the conditions under which a right is exercised presents a different justificatory problem from an act or omission that effectively empties the right of the purpose that makes it legally meaningful. Treating these situations as equivalent risks two opposite errors: an unduly rigid approach that disables legitimate administration, or an overly deferential approach in which every interference can be reduced to ordinary balancing.

The first level of the model is therefore a core-or-essence threshold. The inquiry is purposive rather than classificatory. It does not ask whether an entire right belongs to a privileged catalogue of 'core rights'; it asks whether the particular interference negates the protected purpose of the right in the circumstances before the decision-maker. This threshold is conceptually distinct from both absolute prohibitions and non-derogable treaty rights. General Comment No. 29 is useful precisely because it shows that non-derogability and permissibility of ordinary restrictions are separate questions (Human Rights Committee, 2001, para. 7). The model thus avoids converting emergency-law categories into a general theory of the essence of rights.

Where the core is not reached, the second level is structured justification through proportionality. The state should identify a legitimate public purpose, demonstrate a rational connection between the chosen measure and that

purpose, consider whether an equally effective but less rights-restrictive alternative is available, and address whether the remaining burden on the right-holder is justified in light of the public benefit pursued (Barak, 2012; Möller, 2012). The value of this sequence is institutional as well as analytical. It requires administrators to expose the reasons for their choice of means, while leaving room for a lawful zone of administrative choice where several measures are comparably effective and none is clearly less restrictive.

This point is particularly important in Vietnam. Article 14(2) of the 2013 Constitution requires a legal basis and necessity for restrictions on constitutional rights (National Assembly, 2013), but it does not expressly codify a complete four-stage proportionality test. The differentiated model is therefore offered in two related senses. As a reconstructive interpretive method, it organizes existing constitutional requirements of legality and necessity together with available procedural and judicial safeguards. As a *de lege ferenda* proposal, it identifies where legislation or judicial guidance could make reason-giving, consideration of less restrictive alternatives, and the intensity of review more explicit. The model is thus both interpretive and reform-oriented, without claiming that Vietnamese law has already adopted the full doctrinal structure.

The third level concerns procedure. Substantive review becomes significantly weaker if the administrative record does not reveal what objective was pursued, what facts were relied upon, what alternatives were considered, or why the affected person's arguments were rejected. For that reason, the intensity of procedural safeguards should increase with the seriousness of the interference. At a minimum, affected persons should receive an intelligible legal basis and reasons for adverse action; where the nature of the decision permits, they should also have a meaningful opportunity to present relevant facts and objections before the measure becomes final. The comparative account developed by Perlingeiro (2016) is useful here not as a blueprint for importing Brazilian procedure, but as support for the broader proposition that due process before an administrative decision can improve both rights protection and decision quality.

The fourth level is effective judicial control. Judicial review should not be understood as requiring courts to replace administrative bodies whenever rights are affected. Nguyen (2025) correctly identifies the tension between administrative expertise and meaningful judicial control. A differentiated safeguards model responds by focusing review on the structure and sufficiency of justification: competence and legal basis, the relevance of the stated objective, the evidentiary foundation of the measure, the consideration of less restrictive means where required, the intensity of the resulting burden, and the fairness of the procedure. This approach permits appropriate respect for administrative expertise while rejecting deference that would make rights protection dependent on unreviewable discretion.

The selected judgments illustrate different safeguards. In Judgment No. 469/2025/HC-PT, the court identified a legally available alternative and criticized the harsher response as unnecessary and inconsistent (High People's Court in Ho Chi Minh City, 2025). Judgment No. 95/2025/HC-ST shows that describing a sanction as 'not appropriate' does not itself establish structured

proportionality review (People's Court of Lam Dong Province, 2025). Judgment No. 148/2025/HC-PT illustrates review of administrative omission without judicial substitution (High People's Court in Da Nang, 2025). Together, they demonstrate rights-sensitive but institutionally restrained review, not a settled proportionality doctrine.

The model therefore combines graduated safeguards within the right's periphery with a categorical threshold at the core. More serious peripheral burdens call for stronger reasons, procedure, and review; proportionality structures that justification. Once public action or omission negates the protected purpose, ordinary balancing is unavailable under the bifurcated model. Procedural safeguards and effective review make both standards practically enforceable.

The model also has limits. The article does not establish a comprehensive taxonomy of the core of every constitutional right, and the selected judgments cannot demonstrate the frequency or consistency of proportionality-like reasoning across Vietnamese administrative adjudication. Those questions require a larger and methodologically distinct empirical project. Nor does the model resolve every disagreement about how a right's purpose should be identified or how competing interests should be weighed. Its more modest claim is that separating the core threshold, structured proportionality, administrative due process, and judicial review clarifies the sequence of questions that public authorities and courts should address when administrative measures interfere with constitutional rights.

Conclusion

This article has asked how Vietnamese law should distinguish administrative interferences that merely limit a constitutional right from those that reach its protected core, and what safeguards should govern each category. The answer proposed here is a differentiated safeguards model. The core of a right should not be understood as a closed catalogue of specially privileged rights. It is better conceived as the protected purpose within a particular right: the point at which public action or omission ceases merely to regulate the exercise of the right and instead negates what the right is meant to secure.

This distinction changes the role of proportionality. Where an interference reaches the protected core, ordinary policy balancing should not be treated as sufficient justification. Where it remains outside the core, proportionality provides a structured framework for testing legitimate purpose, rational connection, necessity, and the justification of the remaining burden. The model therefore combines the rights-essence account associated with Weinrib (2025) with the structured proportionality analysis developed in comparative constitutional scholarship (Barak, 2012; Möller, 2012) and with international interpretive principles concerning legality, necessity, and less restrictive means.

For Vietnam, the principal implication is not that administrative discretion should be displaced by judicial decision-making. Discretion remains necessary to public administration, particularly where legislation leaves room for technical assessment or policy choice. The normative task is to strengthen

the legal structure surrounding that discretion. Rights-restricting decisions should have a clear legal basis, identify an intelligible public objective, address materially less restrictive alternatives where the burden on rights is substantial, and be produced through procedures that permit affected persons to understand and, where appropriate, contest the proposed interference. Effective judicial review should then be available to examine whether those justificatory and procedural requirements were respected.

The judgments discussed here do not establish a formal proportionality doctrine. They nevertheless show reasoning analogous to necessity, sanction appropriateness, and remedies for administrative inaction. Broader case-law analysis is needed to determine whether such reasoning remains isolated or is becoming a more stable pattern. For present purposes, the differentiated model offers a framework for interpreting these developments without overstating current doctrine.

Author Contribution

The author confirms sole responsibility for the conception of the study, doctrinal and case-law analysis, interpretation and verification of sources, manuscript revision, and final approval of the work.

Declaration of Generative AI and AI-Assisted Technologies in the Manuscript Preparation Process

During the preparation of this manuscript, the author used OpenAI ChatGPT as a language and editorial support tool to review English expression, grammar, spelling, clarity, and consistency in the process of translating and refining the author's original Vietnamese text. All substantive arguments, legal analysis, source selection, source verification, and final editorial decisions were reviewed and approved by the author, who takes full responsibility for the content of the article.

Declaration of Conflicting Interest

The author declares that there is no conflict of interest.

Funding

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

References

- Barak, A. (2012). *Proportionality: Constitutional rights and their limitations*. Cambridge University Press.
- High People's Court in Da Nang. (2025, February 27). Bản án số 148/2025/HC-PT: "Khiếu kiện hành vi hành chính về lĩnh vực quản lý đất đai" [Judgment No. 148/2025/HC-PT: Challenge to an administrative act in the field of land management].
- High People's Court in Ho Chi Minh City. (2025, April 22). Bản án số 469/2025/HC-PT: "Khiếu kiện quyết định hành chính về quản lý nhà nước

- trong lĩnh vực đất đai thuộc trường hợp áp dụng biện pháp khắc phục hậu quả, bồi thường thiệt hại” [Judgment No. 469/2025/HC-PT: Challenge to an administrative decision concerning state management in the land sector involving remedial measures and compensation].
- Human Rights Committee. (2001). *General Comment No. 29: States of emergency (Article 4)* (CCPR/C/21/Rev.1/Add.11). United Nations.
- Möller, K. (2012). Proportionality: Challenging the critics. *International Journal of Constitutional Law*, 10(3), 709–731. <https://doi.org/10.1093/icon/mos024>
- National Assembly. (2011). Luật Khiếu nại số 02/2011/QH13 [Law on Complaints No. 02/2011/QH13].
- National Assembly. (2012). Luật Xử lý vi phạm hành chính số 15/2012/QH13 [Law on Handling Administrative Violations No. 15/2012/QH13] (as amended through Law No. 88/2025/QH15).
- National Assembly. (2013). *Hiến pháp nước Cộng hòa xã hội chủ nghĩa Việt Nam năm 2013* [Constitution of the Socialist Republic of Vietnam of 2013] (as amended by Resolution No. 203/2025/QH15 of 16 June 2025).
- Nguyen, T. T. (2025). Judicial review of administrative decisions in Vietnam: Insights from the Chevron Doctrine. *VNU Journal of Science: Legal Studies*, 41(1), 49–62. <https://doi.org/10.25073/2588-1167/vnuls.4637>
- People’s Court of Lam Dong Province. (2025, August 29). Bản án số 95/2025/HC-ST: “Khiếu kiện quyết định xử phạt vi phạm hành chính trong lĩnh vực an ninh, trật tự, an toàn xã hội” [Judgment No. 95/2025/HC-ST: Challenge to an administrative sanction decision in the field of security, order, and social safety].
- Perlingeiro, R. (2016). Due process prior to administrative decisions and effective judicial protection in Brazil: A new perspective? *ICL Journal*, 10(1), 30–62. <https://doi.org/10.1515/icl-2016-0104>
- Tran, K., & Dao, K. T. (2024). ‘Desperate times, desperate measures’: An appraisal on Vietnamese law’s limitation of rights in the COVID-19 crisis. *Cogent Social Sciences*, 10(1), 2350558. <https://doi.org/10.1080/23311886.2024.2350558>
- United Nations Commission on Human Rights. (1984). *The Siracusa principles on the limitation and derogation provisions in the International Covenant on Civil and Political Rights* (E/CN.4/1985/4). United Nations Economic and Social Council.
- Weinrib, J. (2025). The essence of rights and the limits of proportionality. In G. Cartier & M. D. Walters (Eds.), *The promise of legality: Critical reflections on the work of TRS Allan* (pp. 161–176). Hart Publishing. <https://doi.org/10.5040/9781509970988.ch-010>