



General Assembly

Distr.: General
23 November 2012

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012

No. 27/2012 (Viet Nam)

Communication addressed to the Government on 15 March 2012

Concerning Le Cong Dinh, Tran Huynh Duy Thuc, Nguyen Tien Trung and Le Thang Long

The Government replied to the communication on 13 July 2012.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The cases have been reported to the Working Group on Arbitrary Detention as follows.

4. Le Cong Dinh, aged 42, a national of Viet Nam, married, is a prominent human rights lawyer, graduate of Ho Chi Minh City University and Hanoi Law School and a Fulbright scholar from Tulane University. Mr. Dinh is also a founding and managing partner of DC Law, a prominent law firm with offices in Ho Chi Minh City and Hanoi, Viet Nam. Mr. Dinh is well known for being outspoken about commercial legal reforms in Viet Nam and for his commitment to human rights, as reflected in his work defending the freedom of expression. In particular, Mr. Dinh has provided legal services to and defended Vietnamese bloggers, human rights advocates and labour rights activists.

5. It is reported that on the morning of 13 June 2009, Mr. Dinh was arrested at his law office in Ho Chi Minh City by police officers from the Ministry of Public Security. On 18 July 2009, Mr. Dinh, while incarcerated by the authorities, appeared to publicly confess to the unofficial charges advanced by the Government. In the recorded video message, Mr. Dinh read a prepared statement that denounced democracy and the United States of America, and stated that the Viet Nam Reform Party was a terrorist organization. The source questions the validity of such a statement, contending that it was the result of threats against Mr. Dinh's family, who were prohibited from visiting him in detention. Mr. Dinh was subsequently disbarred by the Ho Chi Minh City Bar Association, and the Ministry of Justice revoked his license to practice law.

6. Tran Huynh Duy Thuc, born in 1966, a national of Viet Nam, is a blogger and Internet telecommunications engineer, and Corporate Executive Officer of EIS, Inc. and One Connection Internet, Inc., based in Ho Chi Minh City and Singapore, respectively. It is reported that Mr. Thuc was arrested on 17 May 2009.

7. Nguyen Tien Trung, born in 1983, a national of Viet Nam, is a writer, blogger, activist and leader of the Assembly of Vietnamese Youth for Democracy. He is a graduate of Ho Chi Minh City University of Technology and the Institut National des Sciences Appliquées in Rennes, France. It is reported that Mr. Trung was arrested on 7 July 2009.

8. Le Thang Long, born in 1967, a national of Viet Nam, is a general director of the Innotech company, telecommunications engineer and businessman. He graduated from the Polytechnic University of Viet Nam and founded EIS Service Co., a mobile phone company. It is reported that Mr. Long was arrested on 4 June 2009.

The charges against the defendants

9. Originally, all four defendants were charged with "circulating propaganda against the Socialist Republic of Viet Nam" under article 88 of the Criminal Code. It is alleged that

the police extracted confessions from the four defendants which were subsequently broadcast on television in August 2009.

10. According to the information received, Mr. Dinh was accused of the following offences: maintaining close ties with “exiled” terrorist groups; visiting the United States and Thailand to establish plans; preparing to create democratic organizations in Viet Nam; compiling a book in support of democracy called *The Road to Viet Nam*; drafting a “New Constitution” for Viet Nam; and writing “tens of thousands of documents [criticizing the Vietnamese Government or promoting democracy] published on overseas radio, newspaper and websites”.

11. Mr. Thuc was accused of attending the 2009 training session in Thailand with Mr. Dinh, founding an online study group called the Chan Research Group and blogs entitled “Change We Need” aimed at discussing issues such as political pluralism, democratic reforms or criticizing Government plans to mine bauxite in the Central highlands. It is reported that the State-run press said Mr. Thuc had admitted to writing 49 articles on issues relating to democracy and creating three blogs and a website with “distorted information about the Vietnamese government and state”.

12. Mr. Trung was accused of forming the Assembly of Vietnamese Youth for Democracy to encourage young people and students to exchange political ideas, and attempting to launch an online radio station.

13. Mr. Long was accused of circulating articles on democracy and being a member of the Chan Research Group.

14. Shortly before the defendants’ trial, they were formally charged with “activities aimed at overthrowing the people’s administration” under article 79 of the Penal Code.

Source’s contention as to the arbitrariness of the defendants’ detention as a result of total or partial non-observance of their right to a fair trial

15. On 20 January 2010, Messrs. Dinh, Thuc, Trung and Long were brought for a one-day trial before the People’s Court of Ho Chi Minh City. Mr. Dinh was convicted and sentenced to five years of imprisonment. Mr. Thuc was convicted and sentenced to 16 years of imprisonment followed by five years of house arrest. Mr. Trung was convicted and sentenced to seven years of imprisonment. Finally, Mr. Long was convicted and sentenced to five years of imprisonment followed by three years of house arrest.

16. It is reported that on the day of the trial, the authorities increased security to prevent access to the courthouse and allegedly detained numerous bloggers and other political opponents for up to 14 hours. According to the source, the computers of some human rights activists were confiscated, to prevent them from reporting on the details of the trial. The source indicates that before the trial commenced, the Foreign Ministry announced that cameras, tape recorders, mobile phones and computers could not be brought into the courtroom.

17. Allegedly, neither relatives of the accused nor foreign journalists were allowed into the courtroom. The source contends that the authorities paid a number of individuals unrelated to the defendants to attend the trial so as to give it the appearance of a public hearing. According to the information received, the defendants’ relatives, foreign reporters, and diplomats were confined to an observation room where they could see only a censored version of the proceedings on closed-circuit television.

18. The source maintains that the bench of judges was composed of members of the Communist Party of Viet Nam. One of the defendants, Mr. Thuc, lodged a formal complaint about the alleged lack of impartiality and independence of the presiding panel during trial. This complaint was denied by the presiding judge, Nguyen Duc Sau. The

source reports that throughout the proceedings, the presiding judge denied every request made by the defendants. The source contends that no defendant was allowed sufficient time to finish his oral statement. In contrast, the Court reportedly allowed sufficient time on unrelated topics, including the economic progress of Viet Nam, the increase of the gross domestic product in the country and how the higher standard of living was due to the leadership of the Viet Nam Communist Party.

19. The source further reports that at critical points in the trial the electronic transmissions of the proceedings were not audible to the observers. The defendants' microphones did not function at crucial moments of the trial and hence they were unable to properly defend themselves. The defendants' microphones were cut in the following instances: when Mr. Thuc's defence counsel tried to speak on behalf of his client; when Mr. Long tried to inform the court that his official complaint was not accepted by the Ministry of Public Security as required by law; when Mr. Long attempted to inform the court that officials at the Ministry of Public Security and the Criminal Investigation Unit deliberately tampered with his court file and related evidence; when Mr. Long protested that he had been detained for a longer period of time than allowed by law for pretrial detention; when Mr. Long attempted to state that the findings made by the Ministry of Public Security and the Criminal Investigation Unit were false and that the indictment was flawed; and when Mr. Long attempted to inform the court that his confession was written under duress, as he was allegedly mentally and psychologically intimidated by members of the Ministry of Public Security and the Criminal Investigation Unit. Moreover, whenever defendants Thuc and Long spoke, they could not be heard on the closed-circuit television in the observation room due to poor sound quality.

20. Mr. Dinh pleaded guilty to all charges and confessed that he had "been influenced by...ideas of democracy, freedom and human rights during his studies abroad". In the case of Mr. Dinh, the judges cited mitigating factors influencing his sentence of five years of imprisonment, including that (a) he acknowledged that he had been influenced by Western notions of freedom while studying abroad, and that as a lawyer he could now see that advocating multiparty democracy violated Vietnamese law, (b) he pleaded guilty, (c) he cooperated with the police, and (d) his family had exhibited loyalty to the Communist Party in the past.

21. It is reported that Mr. Dinh and Mr. Trung admitted to calling for democracy, and asked for clemency. However, they denied seeking to overthrow the Government. Mr. Thuc refused to ask for clemency and insisted that he had committed no crime. Mr. Thuc had allegedly asked the court for an extra day to discuss important issues raised by the prosecution, but his request was denied.

22. According to the information received, the defendants' trial ended abruptly before they could properly cross-examine witnesses and analyse evidence presented against them. The judges allegedly took 15 minutes to deliberate at the closure of the trial and thereafter read the judgment for 45 minutes. This, in the source's view, indicated that the judgment had been prepared in advance of the actual hearing.

23. All the defendants, except for Mr. Trung, appealed against their sentences. On 11 May 2010, the appeals section of the Supreme People's Court reduced Mr. Long's sentence to three and a half years of imprisonment. The sentences of Mr. Dinh and Mr. Thuc were confirmed. It is reported that the appeal was also closed to the public, and independent observers were not allowed to enter the court to monitor the proceedings. During this appeal, Mr. Thuc complained that he was ill-treated during the investigation process and allegedly forced to sign a confession which was broadcast on national television in August 2010. The appeals court allegedly upheld Mr. Thuc's 16-year sentence due to the fact that he had refused to plead guilty during the trial, whereas Messrs. Dinh, Trung and Long

received sentences of five to seven years of imprisonment because they recanted and asked for clemency.

The detention of the defendants and their peaceful exercise of the rights and freedoms guaranteed under international human rights law

24. It is the source's submission that the four men were engaged in non-violent activities by peacefully expressing their ideas regarding the alleged need for political reforms, pluralism and the respect of human rights in Viet Nam. The source contends that their arrest and detention are directly linked to their exercise of the rights and freedoms under articles 19 and 20 of the Universal Declaration of Human Rights, articles 19, 21 and 22 of the International Covenant on Civil and Political Rights and article 69 of the Constitution of Viet Nam.

25. The source points to the language of article 79 of the Vietnamese Criminal Code, which in its view is vague and does not sufficiently draw a distinction between the use and non-use of violence. The source reiterates that the defendants in the present case did not use any form of violence for political ends, such as overthrowing the Government.

Current status of the defendants' detention

26. Messrs. Dinh, Trung, Long and Thuc are currently being detained at K1, Z30A Prison Camp in Xuan Loc, Dong Nai province, Viet Nam.

Previous communications from the Working Group in these cases

27. The Working Group, together with other special procedures mandate holders, sent two urgent appeals to the Government of Viet Nam regarding the present cases, on 23 June 2009 and 27 January 2010. The Government of Viet Nam responded on 7 April 2010.

28. In accordance with paragraph 23 of its revised methods of work, after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Paragraph 23 further clarifies that the Government is required to respond separately for the urgent action procedure and the regular procedure.

29. In a communication of 15 March 2012, the Working Group requested the Government to respond to the allegations received from the source, concerning the activities of the defendants as well as the conduct of their trial and appeal proceedings.

Response from the Government

30. The Government submitted its response on 13 July 2012.

31. According to the reply, the People's Court of Ho Chi Minh City opened the trial on the appeal on 11 May 2010 and decided to uphold the judgment of the first instance against Mr. Dinh and Mr. Thuc and reduce Mr. Long's sentence to three and a half years in prison. Mr. Trung decided himself not to appeal against his sentence. The Government reports that these four people are serving their sentences in different prisons, namely, the Chi Hoa, Ho Chi Minh City and Xuan Loc prisons. They are free from discrimination and torture and enjoy normal services provided to all prisoners, such as food, health care and entertainment, in strict compliance with the sequence and procedures stipulated in existing Vietnamese laws.

32. The Government also informs the Working Group that in Viet Nam, as in other States of law, the Court is an independent body. The trials at the first instance and on the appeal against the aforementioned individuals were carried out in strict compliance with the sequence and procedures stipulated in existing Vietnamese laws. In court, before the

judgement, they fully enjoyed the relevant human rights and fundamental freedoms, including the right to self-defence, the right to a fair trial and the right to be assisted by lawyers. According to the reply, the activities carried out by these four men were well organized and clearly aimed to wipe out the existing Constitution and to overthrow the State. The punishment for such activities is absolutely in compliance with the standards of international law. The arrest, provisional detention for investigation, and trial of Mr. Dinh, Mr. Long, Mr. Trung and Mr. Thuc were carried out in strict compliance with the sequence and procedures stipulated in existing Vietnamese laws, particularly the Criminal Procedures Code, and also in line with international standards on human rights, particularly the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

33. The Government further reports that all trials were public, with the participation of family members of the accused, media and representatives from several diplomatic missions in Viet Nam. The Government also reports that the individuals publicly confessed to the violations during the trial and asked for mercy. Allegations that the trials were not open to the public, that the authorities prevented the access to the courthouse and that the defendants were ill-treated during the investigation process are totally untrue.

34. The reply from the Government refers to article 12 of the 1992 Constitution, which reads “all infringements on the interests of the State and on the lawful rights and interest of collectives and citizens shall be sanctioned according to law”, and to article 79 of the 1999 Penal Code, which is quoted by the Government as:

Those who carry out activities, establish or join organizations with intent to overthrow by violence the people’s administration shall be subject to the following penalties:

(1) Organizers, instigators and active participants or those who cause serious consequences shall be sentenced to between twelve and twenty years of imprisonment, life imprisonment or capital punishment;

(2) Other accomplices shall be subject to between five and fifteen years of imprisonment.

35. According to the reply, these articles are absolutely in compliance with standards of international law, especially article 19 of the International Covenant on Civil and Political Rights, which reads: “The exercise of the rights (...) carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights and reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals”, and article 29 of the Universal Declaration of Human Rights, which reads: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Further comments from the source

36. The source comments on the Government’s response in its letter of 7 August 2012. It maintains the challenge to the fairness of the trials, and that the criminal offences are overly broad and thus can be abused to suppress freedom of speech. The source also maintains that the arrest and detention of the four individuals are directly linked to their exercise of the rights and freedoms under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights.

Discussion

37. Regarding the question of violation of national legislation as referred to by the Government, the Working Group recalls that in its previous opinions relating to Viet Nam,¹ it had underlined that:

In conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law.

38. The Working Group also reiterates its previous finding that broad criminal law provisions, which criminalize “taking advantage of democratic freedoms and rights to abuse the interests of the State”, are inherently inconsistent with any of the rights and liberties guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,² to which Viet Nam is a party.

39. The Working Group also refers to its report from the official visit to Viet Nam in 1994, where it is pointed out that the wording of certain criminal offences was “so vague that it could result in penalties being imposed not only on persons using violence for political ends, but also on persons who have merely exercised their legitimate right to freedom of opinion or expression” (E/CN.4/1995/31/Add.4, para. 58).

40. The cases of Mr. Dinh, Mr. Thuc, Mr. Trung and Mr. Long demonstrate the objections to vague and overly broad criminal offences. The Working Group points to the facts and legal procedures as set out by the Government in its response above.

41. Mr. Dinh, Mr. Thuc, Mr. Trung and Mr. Long were charged with “circulating propaganda against the Socialist Republic of Viet Nam” under article 88 of the Criminal Code and later charged with and convicted for “activities aimed at overthrowing the people’s administration”, under article 79 of the Criminal Code. In the absence of any information as to any violence involved in the petitioners’ activities, the Working Group holds that the criminal provisions that gave rise to the charge against the four individuals and their subsequent conviction by the court cannot be regarded as consistent with the relevant provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Working Group recalls that the holding and expressing of opinions, including those which are not in line with official Government policy, are protected under article 19 of the International Covenant on Civil and Political Rights.

Disposition

42. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Le Cong Dinh, Tran Huynh Duy Thuc, Nguyen Tien Trung, and Le Thang Long is arbitrary and in contravention of articles 9, 19 and 21 of the International Covenant on Civil and Political Rights, to which Viet Nam is a party. The detention falls within category II of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

¹ Opinions No. 1/2003, adopted on 6 May 2003, No. 13/2007, adopted on 11 May 2007, No. 1/2009, adopted 5 May 2009, No. 24/2011, adopted 29 August 2011, and No. 46/2011, adopted on 2 September 2011.

² See, inter alia, opinions No. 1/2009 and No. 24/2011 concerning Viet Nam.

43. Consequent upon the opinion rendered, the Working Group requests the Government of Viet Nam to take the necessary steps to remedy the situation of Le Cong Dinh, Tran Huynh Duy Thuc, Nguyen Tien Trung, and Le Thang Long and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

44. The Working Group holds that the adequate remedy is to release Le Cong Dinh, Tran Huynh Duy Thuc, Nguyen Tien Trung and Le Thang Long and to accord them compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 29 August 2012]
