

DECISION No. 14/1993 (VIET NAM)

Communication addressed to the Government of Viet Nam on 18 May 1992.

Concerning: Nguyen Dan Que, on the one hand, and the Socialist Republic of Viet Nam, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as paragraph 3 of Decision No. 43/1992).
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Viet Nam. The Working Group transmitted the Government's reply to the source, but to date the source has not responded. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. Nguyen Dan Que, 48 years of age, a radiotherapist and head of the Cho-Ray hospital in Ho Chi Minh City, was arrested on 14 January 1990. On 29 November 1991 he was tried and convicted under article 73 of the Criminal Code, which prohibits "activities to overthrow the Government of the people". He was sentenced to 20 years' imprisonment and 5 years' restricted residence. He is now reportedly in the Phan Dong Luu prison, Gia Dinh, Than Pho, in Ho Chi Minh City.
6. According to the source, Nguyen Dan Que was one of the founder members in 1990 of a political movement called Cao Trao Nhan Ban (Humanist High Tide Movement). On 11 May 1990 the movement published a declaration calling on all Vietnamese, as well as persons outside Viet Nam, to sign a petition for non-violent political, social and economic reforms, including the introduction of a multi-party system, in Viet Nam. Nguyen Dan Que's arrest followed shortly afterwards, on 14 June 1990. On 28 October 1991 (a month before the trial), an official gazette Php Luat (Laws and regulations) said that Nguyen Dan Que had used his surgery in Ho Chi Minh City to engage in propaganda against the Government. According to the gazette, when Nguyen Dan Que was arrested in June 1990, the authorities found at his home thousands of copies of documents ready for distribution, calling on the Vietnamese to overthrow the Government and to build "a nation with human rights".

7. The source of the communication states that, for the 18 months up to the time he was convicted, Nguyen Dan Que was denied the right to the assistance of counsel and that, in the course of his trial, which was held in camera, he was denied the right to speak in his own defence.

8. The source adds that the crime of "engaging in activities to overthrow the Government of the people", established in article 73 of the Vietnamese Criminal Code, draws no distinction between armed or violent acts, which might constitute a danger to national security, and non-violent exercise of the rights to freedom of expression and association.

9. In its reply, the Government, which confirms as indicated by the source that Nguyen Dan Que was prosecuted, tried and convicted for violating the terms of article 73 of the Vietnamese Criminal Code, none the less adds that the trial was held publicly on 29 November 1991 in the People's Court in Ho Chi Minh City, which sentenced him to 20 years' imprisonment for his activities to overthrow the Government. The Government of the Socialist Republic of Viet Nam also stated that Nguyen Dan Que was not a political prisoner, nor was he subjected to so-called "arbitrary detention or 'involuntary or enforced disappearance'". The Government also maintains that he was sentenced fairly by the court in accordance with the law.

10. It therefore follows from the foregoing that the charge against Nguyen Dan Que, which entailed a sentence of 20 years' imprisonment, is that he violated article 73 of the Vietnamese Criminal Code, which "prohibits" activities to overthrow the Government of the people. But as pointed out by the source and not contradicted by the Government, Nguyen Dan Que's arrest came shortly after a political movement called Cao Trao Nhan Ban, of which he was one of the founder members, published a declaration calling for signatures to a petition for non-violent political, economic and social reforms, with the introduction of a multi-party system. The Working Group considers that this is the real reason for Nguyen Dan Que's arrest and conviction, since the Government of Viet Nam seems to liken what is simply peaceful exercise of the rights to freedom of opinion, expression and association to "activities to overthrow the Government of the people".

11. In the light of the above, the Working Group decides the following:

The detention of Nguyen Dan Que is declared to be arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, and falls within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Consequent upon the decision declaring the detention of Nguyen Dan Que to be arbitrary, the Working Group requests the Government of the Socialist Republic of Viet Nam to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993