

Decision No. 7/1994 (Viet Nam)

Communication addressed to the Government of Viet Nam on
3 August 1993.

Concerning: Doan Viet Hoat, Pham Duc Kham, Nguyen van Thuan,
Pham Cong Cahn, Pham Kim Thanh, Nguyen Quoc Minh and Huyin Xay, 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 concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, the latter is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of decision 43/1993.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Viet Nam. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The cases in question were reported to the Working Group as follows:

(a) Doan Viet Hoat, a teacher of English at the University of Agriculture and Forestry of Hochiminh-ville, was arrested on 17 November 1990 at his home in Hochiminh-ville. He is alleged to have been the leader of an illegal organization named Die Dan tu Do (Freedom Forum), founded in June 1989, that is responsible for the publication of newspapers critical of the Government. Seven other persons belonging to the same organization are alleged to have been arrested during the months of November and December 1990. At a public trial which took place on 29 and 30 March 1993, all of these persons were sentenced to long terms of imprisonment: Doan Viet Hoat to 20 years; Pham Duc Kham to 16 years; Nguyen Van Thuan to 12 years and five other accused whose identity was not communicated by the source to prison terms ranging from eight-and-a-half months to seven years. Doan Viet Hoat had already been held without trial for 12 years, from 1976 to 1988, seemingly on account of his political opinions.

(b) According to the source, Doan Viet Hoat and the seven other persons were accused of having engaged in activities "aimed at overthrowing the People's Government", in the terms of article 73 of the Vietnamese Criminal Code. The source adds that the said article 73 makes no distinction between armed acts or acts of violence which might threaten national security, on the

one hand and the peaceful exercise of the rights of freedom of expression and association on the other. Consequently, the eight above-mentioned persons might have been convicted and imprisoned on account of their peaceful activities or their opinions. Furthermore, the source states that, in the case of the eight above-mentioned persons, the principle of presumption of innocence, guaranteed by article 14, paragraph 2, of the International Covenant on Civil and Political Rights, by principle 36 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and by article 11 of the Code of Criminal Procedure of Viet Nam, was violated by the publication of the accusations by the official media prior to the trial.

(c) Pham Cong Canh, Pham Kim Thanh, Nguyen Quoc Minh and Huyin Xay, all four of whom are associated with the Vietnamese cinema industry, were sentenced on November 1992 to prison terms for having associated themselves with a cinema company "Chun Sing Film" (CSF) of Hong Kong, in order to produce a film whose content was held by the authorities to be defamatory and anti-socialist. According to the source, Pham Cong Canh and Pham Kim Thanh were sentenced to three-year prison terms for "the crime of having intentionally violated principles, policies and rules concerning the economic management of the State, and of having caused grave consequences", an offence under Section 1, article 174, of the Criminal Code of Viet Nam, and for "the crime of having caused grave consequences through negligence", under article 220 of the Criminal Code. Nguyen Quoc Minh is alleged to have been sentenced to a two-year prison term for "the crime of having caused grave consequences through negligence" under article 220 of the Criminal Code. Huyin Xay is alleged to have been sentenced to imprisonment for 16 months for "the crime of anti-socialist propaganda", under article 82, paragraph 1, of the Vietnamese Code of Criminal Procedure. It is alleged that, following his release he will be assigned to residence in his home town for one year. According to the source, these persons were convicted and imprisoned for exercising their right to freedom of expression, that is guaranteed by article 19 of the International Covenant on Civil and Political Rights, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of the person's choice.

6. It should be noted that the Working Party declared the detention of Doan Viet Hoat to be arbitrary in its decision No. 15/1993.

7. Pham Duc Kham and Nguyen Van Thuan, who were sentenced at the same time as Doan Viet Hoat, were accused, as he was, of having engaged in activities "aimed at overthrowing the People's Government". As the source notes, this accusation, which could not be more vague, does not distinguish between armed acts of violence such as may threaten national security and the peaceful exercise of the rights to freedom of expression and association. The Working Group consequently believes that the persons in question are in fact being detained solely on account of their opinions, in violation of the rights guaranteed by 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, to which the Socialist Republic of Viet Nam is a party.

8. As regards Pham Cong Canh, Pham Kim Thanh, Nguyen Quoc Minh and Huyin Xay, the Working Group considers that the production of a film, even in association with a foreign company, is no more than the exercise of freedom of expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights, particularly since they are not reported to have, by so doing, impaired respect of the rights or reputations of others or the protection of national security or of public order, or of public health or morals.

9. In the light of the above the Working Group decides:

The detention of Pham Duc Kham, Nguyen van Thuan, Pham Cong Canh, Pham Kim Thanh, Nguyen Quoc Minh and Huyin Xay 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, to which the Socialist Republic of Viet Nam is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of the persons in question 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 norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 18 May 1994.