

DECISION No. 42/1996 (INDONESIA)

Communication addressed to the Government of Indonesia on 20 February 1996.

Concerning: Tri Agus Susanto Siswihardjo on the one hand and the Republic of Indonesia on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised 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. 37/1996.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Indonesia. The Working Group transmitted the reply provided by the Government to the source and received its comments. 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, the response of the Government thereto and the comments received from the source.
5. According to the communication, a summary of which was transmitted to the Government, Tri Agus Susanto Siswihardjo, aged 29, editor and leading member of the "Pijar" human rights group, was reportedly arrested on 9 March 1995 by policemen at the "Pijar" offices in Jakarta. On 11 September 1995 he was found guilty of "expressing hostility, hatred or contempt of the Government", under article 134 of the Indonesian Penal Code, and was sentenced to two years in prison. The sentence was upheld in appeal. Even the Supreme Court has upheld the verdict of the court of First Instance of Central Jakarta.
6. Tri Agus apparently started his career as a journalist in 1990. In 1993 he reportedly became a full-time worker for the human rights organization "Pijar". With the banning of a number of newspapers in June 1994 Tri Agus was learnt to have been at the forefront of the campaign against the suppression of freedom of expression in Indonesia, writing articles for the Kabor Dari Pijar (KDP), which magazine he occasionally edited. His arrest, however, in March 1995 was the result of an article in the KDP in which he interviewed Adnan Buyung Nasution, a leading human rights activist and director of the Indonesian Legal Foundation. Tri Agus gave the article the following title: "This country is in turmoil because of a man named (President) Soeharto", a quote from the interview with Nasution.

7. On 20 February 1996 the Working Group forwarded to the Republic of Indonesia the allegations of the source referred to above. The Government of Indonesia in response on 10 May 1996 has made the following points:

(a) That the right to freedom of expression and opinion is not prima facie absolute and unlimited both in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

(b) That the right to freedom of expression and opinion is subject to the law of defamation, libel and slander;

(c) That Tri Agus unfortunately defamed the President and Vice-President of the Republic of Indonesia;

(d) That the remark attributed to Adnan Buyung Nasution that Indonesia is destroyed by someone named Soeharto was not made by Nasution as testified by him at the trial and that Tri Agus had made up his own story and published his own defamatory remarks under the guise of an interview in his unlicensed publication;

(e) That the integrity of Tri Agus was highly questionable as he was clearly violating the code of ethics of journalism as well as the principle of good faith and honesty;

(f) That Tri Agus was not denied due process. He was represented by a group of lawyers. The trial court consisting of a panel of three judges found him guilty of wilfully defaming the President of the Republic. The decision was upheld at the Supreme Court;

(g) That the fundamental elements of article 134 of the Indonesian Penal Code were established. The material facts and evidence showed that:

- Tri Agus, by blatantly manipulating the interview, plainly shows that an element of malice indeed existed.
- Tri Agus, by wilfully and intentionally publishing his own defamatory article, evidently had the deliberate intention of injuring reputation, or of provoking adverse, derogatory or unpleasant feelings or opinions against President Soeharto.
- Tri Agus, by distributing his June edition of KDP which contained his defamatory article to more than four people and launching baseless and unsubstantiated allegations, evidently had the intention to expose the President to contempt, hatred, ridicule or obloquy.

8. The only issue that requires determination is whether the publication of an alleged interview in criticising the role of President Soeharto and holding him responsible for the turmoil in Indonesia, falls fowl of the protections guaranteed under the article 19 of the Universal Declaration of Human Rights. Issues relating to due process are not germane to the determination of this question. Even assuming that the alleged statement could not have been attributed to Nasution, the issue will still have to be decided on the

touchstone of the rights guaranteed and referred to herein above. The integrity, or lack of it, of Tri Agus in violating the code of ethics of journalism is again not germane to the issue. That all the elements of article 134 are satisfied for convicting Tri Agus does not take away from the conclusion that he has been convicted for expressing an opinion against President Soeharto. The right to hold an opinion and expressing it freely is the core of the right to freedom of expression. Even if the opinion of Tri Agus is erroneous, he has the right to believe in it and to express it. The Working Group believes that the conviction and sentence meted out to Tri Agus is violative of his right guaranteed under article 19 of the Universal Declaration of Human Rights.

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

(a) The detention of Tri Agus Susanto Siswihardjo is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) The Working Group further decides to transmit the present decision to the Special Rapporteur on freedom of opinion and expression.

10. Consequent upon the decision of the Working Group declaring the detention of Tri Agus Susanto Siswihardjo to be arbitrary, the Working Group requests the Government of the Republic of Indonesia 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.

Adopted on 3 December 1996.