

# **OPINION No. 21/1997 (VIET NAM)**

## **Communication addressed to the Government of the Socialist Republic of Viet Nam on 14 July 1997.**

**Concerning: Phuc Tue Dang (religious name: Thick Quang Do), Quang Vinh (religious name: Thick Tsi Tun) and Van Ba Huyn (religious name: Thich Thien Minh)**

### **Viet Nam is a party to the International Covenant on Civil and Political Rights**

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above\_mentioned communication.

2. The Working Group regrets that the Government has not replied within the 90\_day deadline.

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

I. When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

II. When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

III. When the complete or partial non\_observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

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

5. The communication, a summary of which was forwarded to the Government, concerned the following persons:

(a) Phuc Tue Dang (religious name: Thick Quang Do), aged 69, was arrested on 4 January 1995, in Ho Chi Minh City, by the Vietnamese authorities. He is said to be detained in prison B14, near Hanoi, after being transferred from the Ba Sao re\_education camp, in the province of Nam Ha, in May 1996. He is reportedly accused "of having sabotaged the Government's policy of religious solidarity", and "of having abused the rights to liberty and democracy in order to harm the interests of the State". According to the source, the People's Court of Ho Chi Minh City accuses him of having written and circulated copies of a 40\_page document accusing the Government of suppressing Buddhist rights; of having placed an unauthorized notice at the entrance of his residence saying "Unified Buddhist Church of Viet Nam"; and of having faxed information to Buddhist groups abroad

concerning alleged persecution against the church's relief activities during recent floods in the south of the country. According to the source, Phuc Tue Dang has spent most of the last 18 years in prison or under house arrest on account of his humanitarian activities and his opposition to government policy concerning religion and civil and humanitarian rights.

(b) Quang Vinh (religious name: Thich Tri Tuu), aged 44, Superior of the Linh Mu Pagoda in Hue (Unified Buddhist Church of Viet Nam), residing at the Linh Mu Pagoda, Xa Huong Long (Huong Long hamlet), TP Hue (town of Hue), was arrested on 5 March 1997, in the camp of Ba Sao, province of Nam Ha, by the Security Forces (Cong An), who allegedly showed no order or other decision issued by a public authority. As from 7 March 1997, he is said to have been held by the Security Forces of the town of Hue, at the Tay Thien Pagoda (Buddhist Church of Viet Nam, State Church). Thich Tri Tuu had earlier been arrested on 5 June 1993, following a demonstration in favour of religious freedom, and sentenced to four years' imprisonment for disturbing the public order on 15 November 1993. On 4 March 1997, when he was released, he was transferred to the Tay Thien Pagoda, where he is allegedly being held at present, being unable to resume his religious activity at the Linh Mu Pagoda, where he spent 35 years and where he has been the Superior since 1992. During his detention in the camp of Ba Sao, province of Nam Ha, Thich Tri Tuu is said to have been subjected to ill\_treatment and to very hard forced labour, despite a weak state of health. By the time he left the camp of Ba Sao, Thich Tri Tuu's state of health had reportedly worsened considerably.

(c) Van Ba Huynh (religious name: Thich Thien Minh), aged 48, Bonze of the Unified Buddhist Church of Viet Nam, residing in the province of Minh Hai, was arrested in 1979, in the province of Minh Hai. Since 1979, he has been detained in the province of Minh Hai; in camp A20, province of Phu Yen; and finally in camp Z30A, Xuan Loc, province of Dong Nai. He was allegedly sentenced to life imprisonment by the People's Court of Minh Hai, in 1979, for intending to overthrow the revolutionary government. He was reportedly again sentenced to life imprisonment, in 1986, by the People's Court of the province of Phu Khanh for attempted escape.

(d) The source believes this deprivation of liberty is arbitrary for the following reasons:

(i) He appears to have been arrested and sentenced on account of his membership of and ties with the Unified Buddhist Church of Viet Nam;

(ii) The two trials (1979 and 1986) of Thich Thien Minh are said to have been unjust and held in camera. Thich Thien Minh reportedly was denied the benefit of being assisted by counsel of his choosing and was unable to appeal against his sentence. His relatives and family were reportedly not informed by the authorities that the trial was taking place and international observers wishing to attend were said to have been refused access to the courtroom;

(iii) In the course of his detention, Thich Thien Minh is said to have been denied the right to make a complaint (Principle 33 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; article 74 of the 1992 Vietnamese Constitution), the reason being that he was reportedly placed in solitary confinement as a punishment for having demonstrated (15\_18 November 1995 and 27 May 1996) for the improvement of prisoners' conditions and in favour of human rights.

6. Phuc Tue Dang was detained on the charge of having sabotaged the Government's policy of solidarity and having abused the rights to liberty and democracy in order to harm the interests of the State. The Working Group would like once again to emphasize, as it has done in several previous decisions concerning Viet Nam and in the report it prepared following its visit to that country, that the major drawback of vague and imprecise charges of the kind brought against the above\_named person is that they do not distinguish between armed and violent acts capable of threatening national security, on the one hand, and the peaceful exercise of the right to freedom of opinion and of expression, on the other. The Working Group is once again convinced, therefore, that the detention of Phuc Tue Dang is arbitrary because it is due solely to his opinions and humanitarian activities and that it occurred in violation of the rights guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party (category II).

7. With regard to Quang Vinh, the Group considers that his arrest on 5 March 1993 and his sentencing to four years' imprisonment on 15 November 1993 were the result of his taking part in a demonstration on behalf of religious freedom, which was not reported to have been violent. The Group is therefore of the opinion that his detention was arbitrary, because he was blamed only for having exercised his right to freedom of opinion and expression (article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party) (category II). Furthermore, his present custody in the Tay Thien Pagoda after serving his sentence is also arbitrary.

8. Lastly, in the case of Van Ba Huynh, the Group notes that his arrest and his first sentence of life imprisonment for having "intended to overthrow the Revolutionary Government" were in fact related to his membership of the Unified Buddhist Church of Viet Nam. Moreover, as pointed out by the source, the two trials to which he was reportedly subjected in 1979 and in 1986 following an attempted escape were not fairly held. They are said to have taken place in camera without the assistance of counsel and without the possibility of appealing against the sentences passed.

9. The Group therefore considers the detention of the above\_named person to be arbitrary, being in contravention of articles 18 and 19 of the Universal Declaration of Human Rights and of articles 18 and 19 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party (category II). Furthermore, the Group notes a series of violations of the right to a fair trial and in particular of article 14 of the International Covenant on Civil and Political Rights of such gravity as to confer on the detention an arbitrary character (category III).

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

The deprivation of liberty of Phuc Tue Dang, Quang Vinh and Van Ba Huyn is arbitrary insofar as it contravenes the provisions of articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights, falling within category II of the principles applicable in the consideration of cases submitted to the Working Group. In the case of Van Ba Huyn, his deprivation of liberty is also arbitrary insofar as it contravenes the provisions of article 14 of the International Covenant on Civil and Political Rights, falling within category III of the principles applicable in the consideration of cases submitted to the Working Group.

11. Having rendered that opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in 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 2 December 1997.