

OPINION No. 27/1998 (VIET NAM)

Communication addressed to the Government on 9 June 1998

Concerning Professor Doan Viet Hoat

The State 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, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group expresses its appreciation to the Government for having promptly provided the information requested.
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, in 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 international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. According to the source, Professor Doan Viet Hoat, the editor of Dien Dan Tu Do ("Liberty Forum"), was sentenced by a court in Ho Chi Minh City in late March 1993 to 20 years' imprisonment with hard labour for his role in the publication of the above-mentioned newspaper. On appeal, his term of imprisonment was reduced to 15 years, which he is currently serving in Thanh Cam prison. The source states that Doan Viet Hoat's brothers were refused admission to the prison when they tried to visit him on 5 February 1998; he was also forbidden to receive the food and medicines they had brought with them. One of the prison officers reportedly justified the refusal on the grounds that Doan Viet Hoat had made little progress in his re-education. According to the source, the imprisonment of Doan Viet Hoat is contrary to article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which Viet Nam is a party, since he has been imprisoned simply for having exercised his right to freedom of expression.

5. In the light of the allegations made, the Working Group welcomes the Government's cooperation. The Working Group transmitted the Government's reply to the source, which did not consider it necessary to make further observations. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in the light of the allegations made and the reply transmitted by the Government.

6. According to another source, Doan Viet Hoat is being held in Thanh Cam prison for "serious offenders" in Cam Thuy (Thanh Hoa Province in the north of Viet Nam), after having been frequently moved from one prison to another since his conviction. The same source states that, after his arrest on 17 November 1990, no charge was brought against him for 28 months. He has been accused, with seven of his Dien Dan Tu Do colleagues, of having published "anti-communist" articles and having founded a "reactionary organization" (Vietnamese Penal Code, art. 73). It should be noted that the executive body of the World Association of Newspapers, on 1 June 1998, awarded Doan Viet Hoat the "Golden Pen", the most prestigious world press freedom prize, in recognition of his courage in the struggle for freedom of expression and freedom of the press in Viet Nam.

7. In its reply, the Vietnamese Government, which acknowledges that Doan Viet Hoat is indeed being held in Thanh Cam prison in Thanh Hoa Province, submits that:

(a) Doan Viet Hoat was properly tried and sentenced, pursuant to the provisions of section II, chapter I, article 73, of the Penal Code and not for having exercised his right to freedom of opinion;

(b) He has never been subjected to any form of hard labour, his state of health is normal, he is receiving adequate medical care and has access to his relatives;

(c) In the case of the visit by his brother Doan Hien, he was not authorized to see Doan Viet Hoat because, not being a Vietnamese citizen, he should have availed himself of the diplomatic channel in order to secure the necessary authorization.

8. The source stated that it had no comment to make on the Government's reply.

9. The Working Group finds that Doan Viet Hoat's detention was consistent with article 73 of the Vietnamese Penal Code, which is contained in the chapter relating to national security (arts. 72-100). In its report following its visit to Viet Nam (E/CN.4/1995/31/Add.4), the Working Group noted that the provisions of article 73 are so vague that they could give rise to the conviction of not only persons using violence for political ends, but also persons simply exercising their right to freedom of opinion and expression. In its recommendations, the Working Group requested the Vietnamese Government to make amendments so as to define more clearly offences relating to national security and thereby indicate what is prohibited without any ambiguity.

10. It should be noted that in its Opinions Nos. 15/1993 and 7/1994, the Working Group already declared the detention of Doan Viet Hoat to be arbitrary because it was, and remains,

convinced that his imprisonment is consequent solely on action which he took in furtherance of human rights, political pluralism and democracy in Viet Nam. In so doing, however, he was merely exercising his right to freedom of opinion.

11. In the light of the foregoing, the Working Group again declares that Doan Viet Hoat's deprivation of liberty is arbitrary since it is contrary to the provisions of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases before the Working Group.

12. Noting that the Vietnamese Government has not seen fit to act on its two previous decisions relating to the imprisonment of Doan Viet Hoat, the Working Group decides to report accordingly to the Commission on Human Rights, pursuant to paragraph 5 (d) of Commission resolution 1998/74.

Adopted on 3 December 1998