

OPINION No. 1/2003 (VIET NAM)

Communication addressed to the Government on 21 January 2003.

Concerning: Le Chi Quang.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having submitted information concerning the case.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The reply of the Government was forwarded to the source, which provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.
5. According to the information submitted to the Working Group by the source, Mr. Le Chi Quang, a Vietnamese lawyer and computer scientist born on 30 June 1970, was arrested by the security forces on 21 February 2002 at around 9.50 a.m. while he was sending an e-mail in an Internet café in Hanoi. Security forces reportedly took Le Chi Quang to his home where they confiscated documents and his computer.
6. According to the information received, Le Chi Quang was arrested for having published on the Internet several articles calling for political reforms and criticizing government policy, notably with regard to land and sea border agreements between China and Viet Nam. On 24 September 2002, after eight months in detention, Le Chi Quang was reportedly charged with calling for pluralism and a multiparty system, disseminating documents that opposed the Vietnamese Communist Party and taking part in activities of the Association against Corruption.
7. On 8 November 2002, following a three-hour trial, the Hanoi People's Court reportedly sentenced Le Chi Quang to four years' imprisonment followed by three years of house arrest on the charge of disseminating propaganda against the State, in accordance with section 88 of the Penal Code. According to the information received, Le Chi Quang's parents were the only observers allowed into the courtroom. Foreign lawyers were reportedly not permitted to represent Le Chi Quang, thus depriving him of the right to legal assistance of his own choosing.
8. According to the information received from the source, Le Chi Quang is currently incarcerated in B14 prison. He and another prisoner reportedly share a 6m² cell, where they sleep on the dirt floor and relieve themselves in a bucket.
9. The source further reports that Le Chi Quang suffers from serious kidney dysfunction and stomach inflammation. Fears have been expressed that he may not be allowed to receive appropriate medical treatment in prison.

10. In its reply dated 17 March 2003, the Government stated that in Viet Nam, there has never been a case where a person was detained, prosecuted and tried for writing press articles calling for reforms or criticizing the Government's policy. The Constitution, laws and regulations of Viet Nam clearly stipulate that all Vietnamese citizens are entitled to freedom of information, of expression, of the press, of association, of assembly and demonstration.

11. It is further submitted that Mr. Le Chi Quang has committed acts in violation of article 88 of the Civil Code of the Socialist Republic of Viet Nam. All activities concerning his arrest, investigation, prosecution and trial have been carried out in full conformity with the laws and regulations of Viet Nam, i.e. the Code on Criminal Procedures promulgated on 30 June 2000 and subsequently amended on 9 June 2002. Mr. Le's family had been fully informed in a timely manner of his arrest, prosecution and trial. The trial was publicly conducted in conformity with legal procedures and the accused was ensured of his right to legal defence and self-defence, and it should be noted that he eventually chose not to appeal. The Government further reports that under the Code on the Organization of the People's Court and the Code on Criminal Procedure, the People's Court is the sole authority that decides whether to allow foreign lawyers to be present in court for the defence of the accused.

12. The Government stated that Le Chi Quang is currently serving his sentence and receiving treatment equal to that of other inmates who committed similar offences and if he were sick, he would receive adequate care and appropriate medical treatment without any discrimination.

13. In response, the source points out that in its reply the Government makes no mention of what crimes Le Chi Quang is actually accused and added that according to the Procuracy's indictment, Le Chi Quang is charged with "collecting, writing, distributing documents containing distortions of the political situation inside the country, [and] distortions of the internal situation of the Party and Government".

14. It is apparent from the foregoing that the communication contains a number of allegations, some of which do not fall within the mandate of the Working Group. Among these allegations, those relating to conditions of detention will be transmitted to the Special Rapporteur against torture. The opinion of the Working Group is limited to the legal aspects of detention, the only ones falling within its mandate.

15. As to the legal aspects of the detention in question, according to the source, Le Chi Quang was arrested, tried and sentenced to four years' imprisonment, to be followed by three years of house arrest, for having published on the Internet articles criticizing the Government's policy and the frontier treaties concluded between the Governments of Viet Nam and China, called for reforms, and participated in the activities of an anti-corruption association. In its reply, the Government stated that Le Chi Quang had been arrested not for having expressed opinions, but for having perpetrated acts in breach of article 88 of the Vietnamese Penal Code. The Government does not specify the nature of the charge provided for under article 88 and does not say what acts gave rise to that charge.

16. The Working Group accordingly assumes that the acts of which Le Chi Quang was accused were indeed those described in the communication, namely, writing, expressing and disseminating opinions. The Working Group concludes that those actions merely represent the

peaceful exercise of the right to freedom of expression and opinion, which is guaranteed under 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.

17. On the question of the violation of national legislation mentioned by the Government, the Working Group recalls that, in conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law. However, in the case in question, and given that the Government does not appear to have charged Le Chi Quang with acts other than those mentioned in the communication from the source, the national law which gave rise to his indictment cannot be regarded as consistent with the relevant provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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

The deprivation of liberty of Le Chi Quang is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

19. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and to study the possibility of amending its legislation in order to bring it into line with the Universal Declaration and the other relevant international standards accepted by that State.

Adopted on 6 May 2003