

**OPINION No. 18/2005 (VIET NAM)**

**Communication addressed to the Government on 1 December 2004.**

**Concerning Mr. Thich Quang Do (Dang Phuc Thue) and Mr. Thich Huyen Quang (Le Dinh Nhan).**

**The State has ratified the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of opinion No. 20/2004.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. According to the information submitted by the source, Mr. Thich Quang Do (Dang Phuc Tue), a Vietnamese citizen and Buddhist monk, born on 27 November 1928, is the head of the Vien Hoa Dao, the Executive Institute of the Unified Buddhist Church of Vietnam (UBCV). His religious name, by which he will be referred to hereafter, is Thich Quang Do.
5. On 9 October 2003, at 9.30 a.m., Thich Quang Do was arrested by the Nhatrang City Security Police as he was driving towards Ho Chi Minh City with a group of Buddhist monks. The arrest took place on Highway 1A, the main road from Binh Dinh Province to Ho Chi Minh City, near the Luong Son Police Station close to Nhatrang City. A squad of Security Police armed with electric truncheons intercepted the monks and placed them under arrest. The police took the monks into the courtyard of the police station and searched the vehicle. They then searched the monks, confiscating Thich Quang Do's mobile phone. They then separated the monks, taking them to different places for interrogation. Thich Quang Do was taken to Ho Chi Minh City.
6. According to the source, at no time during the arrest did the police (or any other authority) present Thich Quang Do with any written document justifying the arrest, nor did they otherwise inform him of the reasons for his arrest or of any charges against him.
7. On 10 October 2003, officials from the Ho Chi Minh City People's Committee and the Ho Chi Minh City Security Police orally informed Thich Quang Do that he had been placed in administrative detention for an indefinite period. Since then Thich Quang Do has been in solitary confinement in his room in Thanh Minh Zen Monastery. Members of the Security Police are stationed both inside and outside the monastery. Thich Quang Do is locked inside his room for long periods, prevented from receiving visits and otherwise communicating with the outside world. The authorities cut his telephone line and confiscated his mobile phone.
8. The source adds that he was not informed of any charges against him and no criminal proceedings against him are taking place. On 11 October 2003, however, in a statement to foreign media correspondents in Hanoi, the spokesman of the Foreign Ministry of Viet Nam announced that Thich Quang Do had been found in possession of "documents classified as State secrets", and had been placed under investigation.

9. The source asserts that the restrictions on Thich Quang Do's liberty are so severe that they are equivalent to detention. The source argues that the deprivation of liberty is arbitrary because it results from Thich Quang Do's exercising his right to freedom of religion. The source states that the detention of Thich Quang Do is part of the repression of UBCV by the Government, which has banned it.

10. The allegations of the source were brought to the attention of the Government, which took issue with them. It stated that in Viet Nam freedom of religion is enshrined in the Constitution and the laws, and is guaranteed in practice. The Government's position is that the information provided by the source concerning the deprivation of liberty of Thich Quang Do is a sheer fabrication. The Government contended that "Thich Quang Do still lives and practises his religion as usual at Thanh Minh pagoda, completely free from any administrative surveillance or detention".

11. Concerning Mr. Thich Huyen Quang (Le Dinh Nhan), the source reported that he is a Vietnamese citizen and Buddhist monk, aged 87, the Fourth Supreme Patriarch of UBCV. His religious name, by which he will be referred to hereafter, is Thich Huyen Quang. He is usually resident at Nguyen Thieu Buddhist Monastery, Tuy Phuoc District, Binh Dinh Province.

12. According to the information submitted, Thich Huyen Quang was arrested with Thich Quang Do (see paragraph 5 above). Thich Huyen Quang was escorted by police back to the Nguyen Thieu Monastery and placed under house arrest.

13. According to the source, at no time during the arrest did the police (or any other authority) present Thich Huyen Quang with any written document justifying the arrest, nor did they otherwise inform him of the reasons for his arrest or of any charges against him.

14. It was said that since 9 October 2003, Thich Huyen Quang has been under house arrest at Nguyen Thieu Monastery, Binh Dinh Province. The authorities informed him that he was prohibited from leaving the monastery, which is under permanent surveillance by the Binh Dinh police. The authorities cut his telephone line and confiscated his mobile phone.

15. No public authority has issued a decision justifying the deprivation of Thich Huyen Quang's liberty, nor was he otherwise informed of the reasons for the deprivation of his liberty or the duration thereof. He was not informed of any charges against him and no criminal proceedings against him are taking place. On 11 October 2003, however, in a statement to foreign media correspondents in Hanoi, the spokesman of the Foreign Ministry of Viet Nam announced that Thich Huyen Quang had been found in possession of documents classified as "State secrets", and had been placed under investigation.

16. The source asserts that the restrictions on Thich Huyen Quang's liberty are so severe that they are equivalent to detention. The source argues that the deprivation of liberty of Thich Huyen Quang is arbitrary because it is devoid of any legal basis. The authorities have so far failed to provide any decision justifying his arrest and detention. Thich Huyen Quang has been detained for 13 months, and no proceedings have been initiated against him.

17. The source argues that the deprivation of liberty is arbitrary because it results from Thich Huyen Quang's exercising his right to freedom of religion, guaranteed in article 18 of the Universal Declaration of Human Rights. It states that the detention of Thich Huyen Quang is part of the repression of UBCV by the Government of Viet Nam, which has allegedly banned it.

18. Concerning the situation of Thich Huyen Quang, the Government further responded that:

(a) The information in the communication is false and should be considered just another sheer fabrication of those who wish to pursue an erroneous policy and activities against the State of Viet Nam;

(b) Thich Huyen Quang is still practising his religion as usual at Nguyen Thieu pagoda, completely free from any administrative surveillance or detention;

(c) In March/April 2003, Thich Huyen Quang went to Hanoi for medical treatment at the K hospital, which specializes in cancer treatment, and he was well taken care of by leading physicians. Ten accompanying persons, including his personal nurse, were also allowed to be with him in the hospital for the whole time of his medical treatment. During his stay in the capital, at his own request, Thich Huyen Quang was cordially received by the Prime Minister of Viet Nam, H.E. Mr. Phan Van Khai. After the treatment in Hanoi, Thich Huyen Quang went back to Nguyen Thieu pagoda, Binh Dinh Province;

(d) According to recent information, Thich Huyen Quang recently suffered a gastric haemorrhage and is now under medical treatment in Binh Dinh Province General Hospital. Thanks to timely intensive medical care and adequate treatment from the hospital, he has recovered consciousness. Many people, including Buddhist clerics and followers, as well as representatives of local authorities, have visited and wished him well. While receiving the Chairman of the People's Committee of Binh Dinh Province, Mr. Quang expressed his gratitude to the local authorities for their kind attention and assistance. He also hoped that he would soon recover and return to the pagoda to continue his translation work. Up to now, Mr. Quang's health has gradually improved.

19. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the replies provided by the Government to the source, which offered comments on them. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of these cases, in the context of the allegations made and the responses of the Government thereto.

20. In the case of Thich Quang Do, the source has commented on the Government's reply as follows: the Government's statement that "Thich Quang Do is completely free from any administrative surveillance or detention" contradicts the declaration made by Mr. Le Dung, Viet Nam's Foreign Ministry spokesman, on 10 October 2003 to the foreign media, in which he declared that Thich Quang Do and Thich Huyen Quang had both been "placed under investigation" for alleged possession of "many documents classified as State secrets". Whilst neither of the monks was ever informed of this investigation, the Government is clearly aware of the affair. Later in October 2003, when the United States Ambassador-at-Large for International Religious Freedom, John Hanford, asked to visit Thich Quang Do during a trip to Viet Nam, the Foreign Ministry refused on the grounds that Thich Quang Do was "under police investigation".

21. On 23 November 2004, Thich Quang Do was summoned to the Phu Nhuan Ward People's Committee (in Ho Chi Minh City) for questioning about "appropriation of State secrets". This was the first time he had ever been questioned or even informed about this accusation, and he firmly denied the charge. After four hours of intensive questioning, the People's Committee officials ordered Thich Quang Do to come back that afternoon and again the following day for further questioning. He refused, and told officials that if they believed him to be guilty, they should arrest him and continue questioning him in prison.

22. More recently, on 29 April 2005, Mr. Sam Taylor, correspondent of Deutsche Presse Agentur (DPA) in Hanoi, sent a written request to the Vietnamese Foreign Ministry to visit Thich Quang Do for an interview on the thirtieth anniversary of the end of the Viet Nam war. He received no reply, but when he went to the Thanh Minh Zen Monastery, he was stopped by Security Police who banned him from visiting Thich Quang Do on the grounds that he was "under investigation for possession of State secrets". Mr. Taylor also said that the DPA office in Hanoi received numerous phone calls from Security officials warning him against making contact with Thich Quang Do.

23. These incidents indicate that the investigation into "State secrets" is still pending, in violation of Vietnamese law. According to the Vietnamese Criminal Procedure Code, accused parties under investigation must remain under house arrest until the investigation is concluded, after which they are either declared innocent and the investigation is formally suspended in writing (art. 139), or they are prosecuted. Until Thich Quang Do and Thich Huyen Quang have received written notification that the investigation is concluded, the Government cannot claim that they are free.

24. Moreover, as Thich Quang Do pointed out in a letter to the Vietnamese leadership dated 21 October 2004, this excessively long detention pending investigation is also a violation of Vietnamese law: "I have been detained beyond the legal limits stipulated in article 71 of the Vietnamese Criminal Procedures Code, which states that pretrial detention for investigation must not exceed 6 months in less grave offences, or 12 months in case of grave offences, after which the defendant must either be put on trial or immediately released."

25. On 29 March 2005, Thich Quang Do recorded a video message for the sixty-first session of the United Nations Commission on Human Rights in Geneva, in which he called for the respect of human rights in Viet Nam and described his own situation: "As I speak to you today, I am under house arrest at the Thanh Minh Zen Monastery in Saigon. Secret Police keep watch on me day and night. My telephone is cut, my communications are monitored, and I am forbidden to travel ..." Thich Vien Phuong, the young monk who filmed the message, was arrested by Security Police as he left Thanh Minh Zen Monastery and detained for several hours of intensive questioning. Security Police confiscated the video camera and the film, and continued to summon Thich Vien Phuong for interrogations over several days.

26. Furthermore, while the Government claims that Thich Quang Do and Thich Huyen Quang are not subject to administrative surveillance or detention, both monks were indeed sentenced "verbally" to administrative detention by the local Security Police and People's Committee officials in Binh Dinh Province and Ho Chi Minh City, respectively, on 9 October 2003.

27. Furthermore, the source made the following comments regarding the Government's replies:

(a) The Government refers to Thich Huyen Quang's visit to Hanoi in April 2003, where he had medical treatment in hospital and met with Prime Minister Phan Van Khai. This information is correct - it was the very first time Thich Huyen Quang was allowed out of house arrest since 1982. But this information has no bearing on the case in question, since Thich Huyen Quang was arrested again only months after this meeting (October 2003). In fact, Thich Huyen Quang was arrested because, following promises of increased religious tolerance made by Prime Minister Phan Van Khai during their meeting in Hanoi, Thich Huyen Quang decided to call an assembly of UBCV at his monastery in October 2003 to elect a new leadership. In violation of these promises, however, the authorities reacted by launching a brutal clamp-down on UBCV, arresting 11 members of the new leadership, including Thich Huyen Quang and Thich Quang Do;

(b) The Government states that Thich Huyen Quang received medical treatment at Binh Dinh Province General Hospital. Again, this is correct, but it by no means proves that he is no longer under house arrest. On 18 November 2004, Thich Huyen Quang fell gravely ill and was taken to the emergency ward, suffering from failing kidneys, a heart condition and pneumonia. After receiving treatment, he was taken back to the Nguyen Thieu Monastery and placed back under administrative detention. While he received visits from local officials in hospital, Security Police physically impeded Thich Quang Do and other UBCV monks as they attempted to travel from Ho Chi Minh City to visit him.

28. The information available to the Working Group supports the allegation of the source that Thich Quang Do was placed under administrative detention on 10 October 2003 for an indefinite time, and since then he is confined to solitary confinement in his room in the monastery, where he is living. He is often locked inside his room for long periods. Security Police are stationed inside and outside the monastery.

29. Under the terms of its deliberation No. 1 the Working Group is of the opinion that his situation is to be considered deprivation of liberty within the meaning of the Working Group's mandate.

30. As a Buddhist priest and one of the leading figures of the Unified Buddhist Church of Vietnam, Thich Quang Do is obviously restricted in his liberty for his religious belief.

31. Despite the Government's rebuttal of the source's allegations, the Working Group considers that the deprivation of liberty suffered by the Buddhist Patriarch Thich Huyen Quang has been established. The source acknowledges that Thich Huyen Quang was indeed hospitalized in April 2003, received medical treatment and met Prime Minister Phan Van Khai, while pointing out that the date of the Patriarch's arrest was 9 October 2003. The source also acknowledges that the Patriarch received medical treatment in Binh Dinh Province General Hospital, but adds that on completion of the treatment was taken back to the Nguyen Thieu Monastery.

32. Thich Huyen Quang is under permanent detention in the monastery without having been notified of any charges against him. He is unable to go in and out and is under permanent surveillance. The administrative authorities have denied him permission to visit Ho Chi Minh City despite repeated requests, and have also taken away the fax machine and the telephone line for international calls.

33. As the source alleges, the deprivation of liberty suffered by Thich Huyen Quang is tantamount to house arrest, although no procedures have been respected and no charges of any kind have been laid, in violation of the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and on no apparent grounds other than his status as a Buddhist patriarch.

34. On the basis of the above findings the Working Group renders the following opinion:

The deprivation of liberty of Thich Quang Do (Dang Phuc Thue) and Thich Huyen Quang (Le Dinh Nhan) is arbitrary, being in contravention of article 18 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

35. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Thich Quang Do and Thich Huyen Quang and to bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 26 May 2005