

OPINION No. 13/2007 (VIET NAM)

Communication: Addressed to the Government on 4 August 2006.

Concerning: Dr. Pham Hong Son.

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

1. (Same text as paragraph 1 of Opinion No. 32/2006.)
2. (Same text as paragraph 3 of Opinion No. 32/2006.)
3. The Working Group welcomes the cooperation of the Government, which provided the Working Group with information concerning the allegations of the source. The replies of the Government were brought to the attention of the source, which made observations in its replies.
4. The case summarized below was reported to the Working Group as follows: Dr. Pham Hong Son, a citizen of Viet Nam, born on 11 March 1968, resident in Hanoi, an advocate for democracy and human rights in Viet Nam, was arrested for transmitting statements over the Internet advocating political openness and democracy.
5. Dr. Son graduated from Hanoi Medical University in 1992 and worked as a business manager for Tradewind Asia, a foreign pharmaceutical company, until his arrest. He published numerous articles online, such as, “The promotion of democracy: a key focus in a new world order”, and “Sovereignty and human rights: the search for reconciliation”. He also translated and posted articles online, such as “What is democracy?”, an essay on democratic values. In July 2003, Human Rights Watch awarded Dr. Son the Hellman/Hammett grant in recognition of his courage to write in the face of political persecution.
6. Dr. Son was arrested on 27 March 2002 at his home in Hanoi by members of the Security and Investigation Bureau of the Ministry of Public Security. He did not receive an arrest order upon his detention. Ms. Vu Thuy Ha, his wife, requested a copy of a warrant days after Dr. Son’s arrest but did not receive one. The Government of Viet Nam charged Dr. Son and convicted him of espionage under article 80 of the Penal Code.
7. Dr. Pham Hong Son was sent to a remote prison camp in Yen Giang Village, Thanh Hoa Province. He was detained for over four years. Dr. Son was in extremely poor health and was suffering a hernia. In 2005 a tumour developed in his nose. It was reported that Dr. Son did not receive treatment for his ailments and that he resorted to using a plastic band to support his hernia.
8. On 10 April 2003, an official indictment against Dr. Son was issued by the Chief Prosecutor of the Supreme People’s Prosecution, accusing him of gathering and supplying information and documents on behalf of foreign nations to use in opposition of the Socialist Republic of Viet Nam.
9. After 27 March 2002, Dr. Son was held at several detention centres in Hanoi, Phu Ly Province and Thanh Hao Province.

10. Dr. Son was accused of espionage crimes stemming from his e-mail contact with exiled reactionary elements, according to article 80 of the Criminal Code. He was also accused of receiving money from Thong Luan, a French group that supports democracy in Viet Nam, and disseminating materials and information “denigrating and distorting the policy of the Party and the State ... and falsely accusing the State of violating human rights” to exiled persons.
11. According to the source, Dr. Son’s arrest on espionage charges was pretextual for his posting of the article “What is democracy?”. Dr. Son also wrote an article, “Hopeful signs for democracy in Viet Nam”, which he also transmitted to senior government officials. On 24 March 2002, Dr. Son’s house was searched by members of the special police unit P4-A25, and his computer and personal papers were seized. Following the incident, Dr. Son published an open letter on the Internet protesting the search of his home and confiscation of his property.
12. From the date of his arrest on 27 March 2002 to his first trial on 18 June 2003, Dr. Son was not allowed any contact with his family or legal counsel.
13. Dr. Son was not allowed to contact any lawyers, and he had to rely on his wife to select a lawyer on his behalf. Dr. Son’s wife petitioned the investigative and prison authorities to allow Dr. Son to meet with his lawyers in jail before the trial but her request was refused. Nearly 15 months after his arrest and only 1 week before the trial Dr. Son met with his lawyers, Tran Lam and Dam Van Hieu.
14. Dr. Son was tried in a closed trial on 18 June 2003 at the People’s Court in Hanoi. Neither foreign diplomats nor journalists were allowed to enter the court. At the trial, Dr. Son refused the defence prepared by the lawyers Tran Lam and Dam Van Hieu and he defended himself without the assistance of legal counsel. His wife was not allowed to remain in the courtroom while Dr. Son was present. The trial lasted half a day, and Dr. Son was convicted of espionage under article 80 of the Criminal Code. The Court sentenced him to 13 years of imprisonment, to be followed by 3 years of administrative probation upon Dr. Son’s release from prison.
15. Dr. Son appealed the trial court decision. He was permitted to meet with his lawyers to prepare for his appeal but he was still not allowed any contact with his wife and family. Closed proceedings were held on 26 August 2003 at the People’s Supreme Court in Hanoi. In protest over the lack of transparency of the proceedings and violations of his due process, Dr. Son and his lawyer Dam Van Hieu walked out and boycotted the proceedings, refusing to participate in the appeal. At the conclusion of the appeal, the Court reduced Dr. Son’s sentence to five years of imprisonment, to be followed by three years of administrative probation upon his release from prison.
16. In its first response to the above-mentioned allegations, the Government reported that Pham Hong Son was released in August 2006 as one of 5,352 inmates under a special amnesty order by the President of Viet Nam on the occasion of the sixty-first anniversary of the National Day of the Socialist Republic. Since his release, Dr. Son has enjoyed normal citizenship rights, although he has to carry out the Court’s decision of three years’ administrative probation in his locality. Dr. Son was charged with having committed acts in violation of the law. On 18 June 2003, the First Instance Court sentenced him to 13 years’ imprisonment for the crime of

espionage, in accordance with article 80, point 1, of the Penal Code. Due to his proper behaviour of cooperation and repentance, on 26 August 2003, the Ha Noi Appeal Court reduced his sentence to five years' imprisonment on charge of espionage (article 80, point 2, of the Penal Code).

17. The Government considered that the allegations summarized in the above paragraphs were totally untrue. It pointed out that in Viet Nam there are no prisoners of conscience or suppressed dissidents. Freedom of opinion and speech, freedom of the press, the right to be informed, the right to assemble, to form associations and hold demonstrations in accordance with the law are expressly recognized by article 69 of the 1992 Constitution.

18. The Working Group forwarded the Government's reply to the source, which confirmed that Dr. Son was released from prison on 30 August 2006. However, it reported that he was facing numerous restrictions on his fundamental freedoms as part of his release and was not enjoying normal citizenship rights to the extent that he is now facing, as part of probation, a de facto arbitrary detention. The restrictions upon Dr. Son violate his fundamental freedoms of movement, association and opinion and expression. Although he is allowed very minimal movement outside of his house, this does not materially change the nature of his house arrest.

19. According to the source, the police have restricted the distance that Dr. Son may travel to a limited area within the Hai Ba Trung district, where he lives. On 2 September 2006, a request for permission to travel to Hoan Kiem Lake, which is approximately 2 kilometres from his house, was rejected by the authorities. Another request to go to Nam Dinh City, approximately 100 kilometres south of Hanoi, for the purpose of visiting his mother and other relatives and to pay respect at his father's tomb was also rejected, despite the recent death of his father. His request to go to a hospital to have surgery for his inguinal hernia and for medical examinations of his respiratory tract was also refused and the authorities replied that he could be visited by a medical doctor at home.

20. The source further reports that Dr. Son is under constant police surveillance. Both uniformed police and plainclothes agents have been maintaining a constant presence at his house and around the vicinity of his home. There are always two agents that follow him whenever he leaves his house, affecting his freedom of movement. The authorities have harassed pro-democracy activists who have attempted to visit him and he has been prevented from meeting with dissidents, being physically harassed by police agents when he attempted to meet Hoang Mink Chin. Two mobile phones used by his relatives were blocked by order of the police and he was prevented from trying to have access to the Internet.

21. The Working Group considered that the comments from the source to the response by the Government contained new allegations and decided, at its forty-seventh session, to transmit them to the Government. In its second reply, the Government pointed out that, although Dr. Son had been granted a special amnesty concerning his sentence to five years' imprisonment, he had also been condemned to three years' administrative probation in his locality as an additional punishment in accordance with provisions of articles 80 and 38 of the Penal Code. The sentence to this additional punishment was totally right in accordance with the provisions of Vietnamese laws and fully suitable with the provisions of international law. The level of the additional punishment was decided by the People's Court based on the violations to the law committed by Dr. Son. According to the law, during the time of observing this additional punishment, the

convict should be allowed to freely go out of his or her residential area but is not allowed to practise or work in a number of professions. He cannot enjoy all citizenship rights of freedom as other normal Vietnamese citizens do. If he wants to go out of his residential area he has to get the approval of the professional agencies in his living area. This is very ordinary in many other States of the world and is not a form of arbitrary detention. On the other hand, Dr. Son's health condition is totally normal. If he eventually suffers from ailments, he has the full right to get his health examined and treated like other ordinary citizens.

22. In its comments on the Government's second reply, the source considers that, to the extent that Dr. Son now faces conditions as part of probation, he remains a victim of arbitrary detention. The conditions imposed on him amount to a form of de facto house arrest, a form of arbitrary detention as recognized by the Working Group. House arrest typically involves severe restrictions on freedom of movement, freedom of association and freedom of expression.

23. The Working Group has to decide first if the current situation of Dr. Son is a deprivation of liberty equivalent to detention.

24. The Working Group notes that, although Dr. Son is suffering from severe restrictions imposed on his freedom of movement, freedom of opinion and expression and freedom of association, he is not placed in closed and locked premises which he cannot leave without being authorized to do so. The Working Group has always maintained, in accordance with its Deliberation 1/93 on House Arrest, that "house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave". The Working Group concludes that the above-mentioned restrictions are not tantamount to deprivation of liberty.

25. The Working Group notes, however, that these restrictions are the consequence of the three years' administrative probation imposed by the Court in his sentence. For that reason, it is appropriate to make sure that his sentence was imposed in accordance with international standards. Consequently, and according to its Methods of Work (chap. C, para. 17a), the Working Group reserves the right to render an opinion in this case.

26. According to the source, Dr. Son did not enjoy a fair trial and his pretrial detention and conviction were due solely to the fact that he had used his right to freedom of expression.

27. With regard to the violation of the right to a fair trial, the Working Group notes that, in its reply, the Government did not reject or even discuss the facts and allegations contained in the communication, particularly those concerning the reasons for the arrest, detention and conviction of Dr. Son and those concerning the details of the trial proceedings. The Government did not comment on the allegations that Dr. Son was denied the right to a prompt hearing, the right to access to a lawyer of his choice, the right to be promptly informed of the charges against him, and the right to a fair trial in accordance with international norms as set forth in articles 9 and 14 of the International Covenant on Civil and Political Rights to which Viet Nam is a State party.

28. With regard to enjoyment of the right to freedom of opinion and expression, the Government has declared that Dr. Son was charged with having committed acts in violation of the law and sentenced to 13 years' imprisonment for the crime of espionage, in accordance with article 80 of the Penal Code, without giving any specific details on the facts that underlie the

charges against him and without invalidating the argument submitted by the source, that the detention and sentencing of Dr. Son followed the publication of articles critical of the Government.

29. 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.

30. In the case in question, and given that the Government does not appear to have charged Dr. Son with acts other than those indicated in the communication, i.e. to have written statements critical to the Government, and to have disseminated these statements via the Internet, 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.

31. For all the above-mentioned reasons, the Working Group considers that Dr. Son's detention between 27 March 2002 and 30 August 2006 was motivated by the peaceful dissemination through the Internet of ideas and opinions advocating political openness and democracy, a right recognized by article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. His detention also affected his right to take part in the conduct of public affairs, a right enshrined in article 25 of the International Covenant on Civil and Political Rights.

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

The deprivation of liberty of Dr. Son between 27 March 2002 and 30 August 2006 was arbitrary, being in contravention of articles 9, 14, 19 and 25 of the International Covenant on Civil and Political Rights to which Viet Nam is a State party, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

33. Having found that the detention of Dr. Son is arbitrary, the Working Group requests the Government of Viet Nam to take the steps necessary to remedy the situation, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 11 May 2007.
