

No. 33/2013 (Viet Nam)

Communication addressed to the Government on 25 June 2013

Concerning Le Quoc Quan

The Government has replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

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

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows.

4. Le Quoc Quan (hereinafter Mr. Quan), born in XXXX in Nghe An Province, citizen of Viet Nam, is a qualified lawyer, a prominent human rights defender and the author of a widely read blog on issues of human rights, democracy and social justice. He is the Director of the Viet Nam Solutions Company Ltd. at Hanoi. In 2008, Mr. Quan was the recipient of a Hellman/Hammett award for his extensive writing on civil rights, political pluralism and religious freedom.

5. It was reported that on the morning of 27 December 2012, Mr. Quan was arrested by police agents near his home as he was on his way to drop off his daughter at school in Hanoi. His home and office were reportedly subsequently searched by the police.

6. The source reports that Mr. Quan was detained incommunicado for the first two months. At the start of his detention he was reportedly on hunger strike, which lasted for 15 days. His attorney officially requested to see him several times, but he was reportedly only allowed to meet his client twice: once to attend one of his interrogation sessions in the last week of February 2013, and once in the second week of March 2013.

7. According to the information received, Mr. Quan has not been allowed any access to his family or the outside world. His family has reportedly requested visitation and has tried to send him additional food, but this has been denied. It is further reported that Mr. Quan lost a lot of weight as a result of his hunger strike, and that the current state of his health is of great concern.

8. According to the source, Mr. Quan has no indication of his trial date. He has reportedly been charged with tax evasion pursuant to article 161 of the Vietnamese Penal Code. However, the alleged criminal act underlying the charges against him is reportedly not known and a temporary detainment order has only recently been made available.

Previous communication from the Working Group on the case

9. The Working Group, along with other special procedures mandate holders, sent an urgent appeal to the Government of Viet Nam on 14 January 2013 regarding the present case and other cases.

The Working Group expresses its appreciation to the Government of Viet Nam for having provided it with a response, dated 21 March 2013.

10. In accordance with paragraph 23 of its methods of work, after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Paragraph 23 further clarifies that the Government is required to respond separately for the urgent action procedure and the regular procedure.

Previous periods of detention and alleged harassment of Mr. Quan and his family members

11. Mr. Quan was a member of the Hanoi Bar Association from 2002 to 2007 and defended human rights cases in court. The source reports that his first arrest followed his return from a five-month period of study in the United States and the publication of a report he wrote on democracy in Viet Nam. He reportedly spent 100 days in detention on suspicion of engaging in "activities to overthrow the regime". Following his release, he was reportedly no longer permitted to leave Viet Nam and he was subsequently disbarred and kept under constant surveillance by State officials.

12. According to the information received, Mr. Quan was arrested again on 4 April 2011, with Pham Hong Son, after appearing outside a Hanoi courthouse to show support for the dissident Cu Huy Ha Vu, a fellow lawyer on trial for spreading propaganda against the State. According to the source, the Government said that the two were detained for allegedly causing public disorder. They were released without charges.

13. The source reports that on 19 August 2012, Mr. Quan was severely injured in a violent attack near his house in Hanoi. He was struck with a steel baton on his knee, thigh, and back and had to spend several days in hospital recovering. According to the source, Mr. Quan believed at the time that he had been attacked by State agents.

14. In an interview with the Associated Press news agency in September 2012, Mr. Quan reportedly said that he and his family and staff had received frequent warnings from the authorities.

Nevertheless, he pledged to carry on speaking out against the Government and in support of multiparty democracy and freedom of speech.

15. According to the information received, Mr. Quan's brother, Le Dinh Quan, was arrested for tax evasion in October 2012. He is currently detained in Detention Centre No. 3 in Kien Hung. In addition, Mr. Quan's cousin, Nguyen Thi Oanh, was reportedly arrested in December 2012. She was in the early months of pregnancy, and was released without charges on 4 February 2013. In early December 2012, Mr. Quan told Agence France-Presse that his family was under "much pressure... It is terrible", with both his brother and cousin being held in detention.

16. The source contends that Mr. Quan was targeted by the State authorities in Viet Nam for arrest and detention on the basis of his expression of his political opinions and that his arrest and detention is arbitrary.

Current status of the defendant's detention

17. Mr. Quan is currently detained at Hoa Lo Detention Centre No. 1, Hoan Kiem District, Hanoi.

Response from the Government

18. The Working Group expresses its appreciation for the response provided by the Government.

19. Concerning the previous periods of detention and alleged harassment of Mr. Quan, the Government refers to its response, dated 21 March 2013, to the joint urgent appeal sent on 14 January 2013 by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders.

20. In particular, the Government refers to the following excerpt from its response to the joint urgent appeal:

Mr. Le Quoc Quan, born on XX September XXXX in Nghe An residence in Ha Noi, is a lawyer and the Director of Viet Nam Solutions company.

In May 2006, Mr. Le Quoc Quan participated in Viet Tan group's activities. He was in custody from 09 to 18 March 2007 for investigation. On 19 March 2007, the Investigation Bureau of the Ministry of Public Security issued an order to institute and arrest Mr. Le Quoc Quan for the charge of 'overthrowing the People's administration'. On 16 June 2007, the People's Supreme Court decided to cancel the detention measures and released him.

On 27 December 2012, the Investigation Bureau of the Ministry of Public Security issued an order to arrest Mr. Le Quoc Quan on tax evasion charges (article 161 of the Penal Code). Preliminary investigation shows that his Viet Nam Solutions company, established 2011, has 13 times changed the purpose of business with the last time on 06 June 2012 applying for "update, search, store, process data and provide market information." On that legal status, Mr. Le Quoc Quan sought cooperation with economic experts, gathering information for making fake contracts on hiring experts and coordinators, then claimed with tax authorities in an attempt to evade business taxes. The total tax evasion has amounted to VND 437,500,000. The concerned authorities continue working on this case and other implicated cases.

The arrest, detention and investigation of Mr. Le Quoc Quan was carried out in strict compliance with the sequence and procedures stipulated in current Vietnamese laws, international norms and practices on human rights. The current investigation against Mr. Le Quoc Quan relates to economic charges.

21. In its response to the Working Group's communication dated 25 June 2013, which arrived during the week of the sixty-seventh session of the Working Group, the Government pointed out that, from 2009 to 2011, "Mr. Quan directed employees to contact and collect business and personal information of officials and economic experts for making fake expert consultation and coordination business contracts, with the purpose of formalizing the company's "increased" input costs and then claiming the taxes with tax authorities in order to evade the company's income taxes. The new figure of tax evasion amounts to VND 649 million, showing enough evidence of violation of Clause 3, Article 161 of the Penal Code on tax evasion."

22. On 25 December 2012, the Investigation Bureau of Hanoi Public Security issued an order to proceed with the criminal case against Mr. Quan and arrest him on the tax evasion charge, in accordance with article 161 of the Penal Code. On 27 December 2013, Mr. Quan was arrested for temporary detention.

23. The Government further reports that no request for visitation from Mr. Quan's family was registered. Mr. Quan's wife and his brother meet monthly and provide Mr. Quan with supplies. Mr. Quan uses the supplies from his family. Therefore, the information that he was on hunger strike for 15 days is groundless. His health is normal.

24. The Government further reports that Mr. Quan is currently held in the temporary Detention Centre No. 1 of Hanoi Public Security. His three defence attorneys have been working with him, and have met with him several times. Mr. Quan's first instance trial was scheduled for 9 July 2013.

25. The Government concludes that Mr. Quan, a lawyer who, as such, has a duty to defend laws and justice, has used sophisticated and fraudulent tricks to deceive the authorities for the purposes of tax evasion. His arrest and detention have been carried out in strict compliance with the sequence and procedures stipulated in Vietnamese laws and international norms and practices relating to human rights.

Discussion

26. The Government and the source agree that Mr. Quan is a Vietnamese lawyer. According to the source, he is also a well-known human rights defender and has been harassed constantly since 2007 by the authorities because of his work. Mr. Quan has been under constant surveillance and has regularly been subjected to arbitrary arrest.

27. Mr. Quan was most recently arrested on 27 December 2012 on charges of tax evasion, nine days after the British Broadcasting Corporation published his article entitled "Constitution or a contract for electricity and water service?" This article criticized the retention of constitutional article 4, which affirms the Communist Party as preeminent in national life. At the moment of his arrest, the police agents refused to give a copy of the arrest warrant to his family.

28. Mr. Quan was held in incommunicado detention at Detention Centre No. 1 in Hanoi. He denied the charges of tax evasion, considering them unfounded. The source considers the charges to be politically motivated.

29. Having read through all the documentation submitted on this case, the Working Group considers that Mr. Quan is known primarily for his work as a lawyer and as a human rights defender. His current detention might be the result of his peaceful exercise of the rights and freedoms guaranteed under international human rights law.

30. The events leading up to Mr. Quan's arrest on 27 December 2012 indicate that his arrest and detention could be related to his blog articles on civil and political rights. Although the charge against Mr. Quan is one of tax evasion, given Mr. Quan's history as a human rights defender and blogger, the real purpose of the detention and prosecution might be to punish him for exercising his rights under article 19 of the International Covenant on Civil and Political Rights and to deter others from doing so. This point could be seen to be underlined by the previous arrests and harassment of Mr. Quan.

31. In any case, Mr. Quan's current detention seems to be a clear violation of articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights, and principles 15 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Article 14, paragraph 1, of the Covenant provides that in the determination of any criminal charge, all persons "shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

32. Article 14, paragraph 3, makes clear that such a fair trial requires that accused persons be afforded certain procedural minimum guarantees. This general principle is also reflected in article 11 of the Universal Declaration of Human Rights, which requires that a person charged with a penal offence be tried with all the guarantees necessary for his or her defence. Article 14, paragraph 3 (b) of the International Covenant on Civil and Political Rights provides that the required guarantees include adequate time and facilities for the preparation of a defence and the right of the accused to communicate with counsel of his or her own choosing.

33. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adds to this by providing that communication with counsel "shall not be denied for more than a matter of days" (principle 15) and that the right to communicate with legal counsel is exercisable "without delay ... [and] may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order" (principle 18). The right to access to counsel without undue delay is recognized in the Basic Principles on the Role of Lawyers,

which provide that access to a lawyer shall in any case not be later than forty-eight hours from the time of arrest or detention.

34. Mr. Quan was held in incommunicado detention during the first two months of his detention. Prison officials have repeatedly denied visitation requests by Mr. Quan's family. Detention under such conditions is a clear violation of principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. These principles provide that communication with the outside world, particularly with family, "shall not be denied for more than a matter of days" (principle 15) and that a detained or imprisoned person shall have the right to be visited by and communicate with members of his family in particular, and shall be given adequate opportunity to communicate with the outside world (principle 19).

Disposition

35. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Quan is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights; it falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

36. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Quan, which is immediate release, or ensure that the charges are determined by an independent and impartial tribunal in proceedings conducted in strict compliance with the provisions of the International Covenant on Civil and Political Rights.

37. The Working Group also requests the Government to ensure that reparation is granted to Mr. Quan for the arbitrary detention that he suffered.

38. The Working Group brings to the attention of the Government its obligations as a State party to the International Covenant on Civil and Political Rights, and urges it to bring its laws into conformity with international law, in particular international human rights law.

[Adopted on 30 August 2013]