**PETITION TO:**

**UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION**

Chairman/Rapporteur: Mr. José Guevara (Mexico) Vice-Chair on Follow Up: Ms. Leigh Toomey (Australia) Vice-Chair on Communications: Ms. Elina Steinerte (Latvia) Mr. Sètondji Adjovi (Benin)

Mr. Seong-Phil Hong (Republic of Korea)

**HUMAN RIGHTS COUNCIL UNITED NATIONS GENERAL ASSEMBLY**

**In the Matter of**

Phạm Chí Dũng

**Citizen of the Socialist Republic of Vietnam**

**v.**

**Government of the Socialist Republic of Vietnam**

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/71[[1]](#footnote-1)

**10 January, 2024**

***1. Family name***: Phạm

***2. First name***: Chí Dũng

***3. Sex***: Male

4***. Birth date or age (at the time of detention):*** 12/10/1966

***5. Nationality/Nationalities***: Vietnamese

***6. (a) Identity document (if any):*** Identity card

***(b) Issued by***: Ho Chi Minh City Police Director

 ***(c) On (date):*** 20/02/2014

***(d) No.:*** 022970120

***7. Profession and/or activity (if believed to be relevant to the arrest/detention):***

Mr. Phạm Chí Dũng is a journalist, writer and independent analyst who works with various international news agencies. He was a co-founder of the Independent Journalists Association of Viet Nam (IJAVN) that runs The Vietnam Times[[2]](#footnote-2), an online publication. He is also a member of the Civil Society Forum and the Former Vietnamese Prisoners of Conscience Association (FVPOC). Mr. Phạm Chí Dũng was the subject of a communication sent by the Special Procedures in 2014 (VNM 5/2014) after he had been prevented from traveling to Geneva to participate in a side-event in connection with the second cycle of the Universal Periodic Review (UPR) of Viet Nam. His case was included in the 2014 report of the Secretary-General for cooperation with the UN, its representatives and mechanisms in the field of human rights (A/HRC/27/38, para. 40).

On November 10, 2019, Mr. Dũng wrote his petition (in Vietnamese) to the European Parliament in which he urged the postponement of the ratification of EVFTA until Vietnam honors its human rights commitments. On November 13, 2019, Mr. Dũng submitted his petition after it was translated into English.

On November 16, 2019, Mr. Dũng’s wife received a phone call from an acquaintance who asked if he was being detained. Mr. Dũng and his family members did not interpret the call as an advance warning of his upcoming arrest and therefore did not take any precautionary measures. On November 19, 2019, Mr. Dũng went to a meeting with representatives of European NGOs.

***8. Address of usual residence:***
298/4 Nguyễn Trọng Tuyến Street, Ward 1, Tân Bình District, Hồ Chí Minh City,

**II. Arrest**

1***. Date of arrest***: November 21, 2019

***2. Place of arrest (as detailed as possible):***
Mr. Dũng was arrested at his younger son’s school after dropping him off, as he did every morning, at about 7:00 AM on November 21, 2019, according to school personnel. The police vehicle brought Mr. Dũng back to his house at 8:30 AM but waited until 2:00 PM the same day before announcing the arrest.

***3. Forces who carried out the arrest or are believed to have carried it out:***
The Security Investigation Office of the Police Department of Hồ Chí Minh City

***4. Did they show a warrant or other decision by a public authority?*** NO

***5. Authority who issued the warrant or decision:***
The Security Investigation Office of the Police Department of Hồ Chí Minh City

6. Relevant legislation applied (if known):
The Penal Code 2015, Article 117: "making, storing, distributing or propagating information, documents, articles aimed at opposing the State of the Socialist Republic of Vietnam.”

**III. Detention**

***1. Date of detention:*** November 21, 2019

***2. Duration of detention***: From November 21, 2019 until today.

***3. Forces holding the detainee under custody:***
C10 Division, Ministry of Public Security

***4. Places of detention (indicate any transfer and present place of detention):***

On November 21, 2019, Mr. Pham Chi Dung was arrested and taken to 4 Phan Dang Luu, Ward 3, Binh Thanh District, Ho Chi Minh City.

On January 5, 2021, he and two of his friends in IJAVN, Nguyen Tuong Thuy and Le Huu Minh Tuan, were sentenced to a total of 46 years in prison and probation for the charge of "making, storing, distributing or propagating information, documents and items aimed at opposing the State of the Socialist Republic of Vietnam” according to Article 117 of the Penal Code. Mr. Dung was sentenced to 15 years in prison and 3 years of probation in a non-public and unfair trial that took place in a single day.

On January 26, 2021, Mr. Pham Chi Dung was transferred to Bo La detention camp in Phu Giao district, Binh Duong province.

On April 27, 2021, Mr. Pham Chi Dung was transferred from Bo La Detention Center (Phu Giao - Binh Duong) to Xuan Loc Prison (Suoi Cao - Xuan Loc - Dong Nai).

After two transfers, his family did not receive any notice from the prison management about those transfers. Therefore, the family encountered certain difficulties in visiting and providing for his basic needs. When they went to the old prison to visit as usual, they were informed that he was transferred.

On May 4, 2021, more than 17 months after his arrest, November 21, 2019, he was first allowed by the prison to call home to talk with his family.

More than 2 years after his arrest, from November 21, 2019 to January 22, 2022, Pham Chi Dung was able to meet his family for the first time. Initially, the police said that he was still under investigation. But after the conclusion of the investigation, after being sentenced by the court and even after the judgment took effect, the government still did not allow his family to see him.

5. Authorities that ordered the detention:
The Security Investigation Office of the Police Department of Hồ Chí Minh City

6. Reasons for the detention imputed by the authorities:
"Making, storing, spreading information, materials, items for the purpose of opposing the Socialist Republic of Vietnam" pursuant to Article 117 of the 2015 Criminal Code of Vietnam (amended in 2017)

7. Relevant legislation applied (if known):
The Penal Code 2015, Article 117: "making, storing, distributing or propagating information, documents, articles aimed at opposing the State of the Socialist Republic of Vietnam.”

IV. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to the arbitrary

Mr. Phạm Chí Dũng is a journalist, writer and independent analyst who works with various international news agencies. He was a co-founder of the Independent Journalists Association of Viet Nam (IJAVN) that runs The Vietnam Times , an online publication. He is also a member of the Civil Society Forum and the Former Vietnamese Prisoners of Conscience Association (FVPOC). Mr. Phạm Chí Dũng was the subject of a communication sent by the Special Procedures in 2014 (VNM 5/2014) after he had been prevented from traveling to Geneva to participate in a side-event in connection with the second cycle of the Universal Periodic Review (UPR) of Viet Nam. His case was included in the 2014 report of the Secretary-General for cooperation with the UN, its representatives and mechanisms in the field of human rights (A/HRC/27/38, para. 40).

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On November 16, 2019, Mr. Dũng’s wife received a phone call from an acquaintance who asked if he was being detained. Mr. Dũng and his family members did not interpret the call as an advance warning of his upcoming arrest and therefore did not take any precautionary measures. On November 19, 2019, Mr. Dũng went to a meeting with representatives of European NGOs.

**LEGAL ANALYSIS**

The Applicant’s detention constitutes an arbitrary deprivation of liberty[[3]](#footnote-3) under Category II and Category III as defined by the Working Group[[4]](#footnote-4) The detention is arbitrary under Category II because it resulted from the Applicant’s peaceful exercise of his freedom of expression. The detention is arbitrary under Category III because the Government’s detention and prosecution of the Applicant failed to meet minimum international standards of due process.

**Deprivation of Liberty for Exercising his Freedoms of Opinion and Expression under Category II**

Deprivation of liberty is arbitrary under Category II when it results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration on Human Rights (“UDHR”) and Articles 12, 18, 19, 21, 22, 25, 26, and 27 of the ICCPR.[[5]](#footnote-5) This case meets the requirements of Category II because the Applicant’s detention is a result of his exercise of his fundamental freedoms of opinion and expression guaranteed by the UDHR, to which Vietnam is bound, and the ICCPR, to which Vietnam is a party.

The freedoms of opinion and expression are protected by international and regional instruments and include the freedom to seek, receive and impart information of all kinds, either orally or in writing[[6]](#footnote-6) Article 19(2) of the ICCPR provides that “everyone shall have the right to freedom of expression.[[7]](#footnote-7) Article 19 of the UDHR provides an analogous guarantee of freedom of opinion and expression[[8]](#footnote-8) Furthermore, Article 25 of the Constitution guarantees to freedom of opinion and freedom of speech[[9]](#footnote-9) The UN Human Rights Committee (“HRC”) has clarified that Article 19 of the ICCPR “protects all forms of expression and the means of their dissemination.”[[10]](#footnote-10)

The crime of “conducting propaganda against the Socialist Republic of Vietnam” under Article 88 of the Vietnamese Penal Code is, on its face, violative of an individual’s free expression as it penalizes an overly broad array of non-violent expression critical of the Government. Pursuant to Article 19(3) of the ICCPR, the freedom of expression and opinion may only be restricted as necessary for either the respect of the rights and reputations of others or the protection of national security or public order, health or morals[[11]](#footnote-11) Although the offense of “conducting propaganda” is classified as a crime infringing upon national security in the Penal Code, such permissible limitations on the right to freedom of expression do not apply in this case. The HRC has emphasized the narrowness of the limitations set forth in Article 19(3) of the ICCPR by noting that “when a state party imposes [a limitation] on the exercise of freedom of expression, [it] may not put in jeopardy the right itself.[[12]](#footnote-12) As such, any limitation “must meet a strict test of justification.”[[13]](#footnote-13) To guide states, the HRC has established three requirements for any limitation on the right to freedom of expression. A permissible limitation must be (1) “provided by law,” (2) for the protection of one of the “enumerated purposes,” and (3) “necessary” to achieve that purpose.[[14]](#footnote-14)

In this case, the limitation on the Applicant’s freedom of expression fails to meet the second and third requirements. It would be difficult to for Vietnam to make a good faith argument that preventing propaganda is a legitimate national security interest. Moreover, imprisonment of an individual for such alleged propaganda is not necessary to safeguard national security. Although governments frequently invoke such limiting principles – especially in the context of arbitrary detention – the latitude afforded is quite narrow. A government may not merely invoke the national security rationale without a searching review of that claim. Indeed, the government must “specify the precise nature of the threat” posed by the protected activity. and then demonstrate the proportionality of the limitation by establishing a “direct and immediate connection between the expression and the threat.” In short, general allegations claiming that an individual’s expression threatened security – without evidence of a specific threat and a proportional response – will not meet this high burden.

The applicant, as a journalist and independent author was subjected to the arrest and detention for the article he wrote. The government used a very vague justification for the arrest and detention. That is threat to the national security and making a propaganda against the government. Although governments frequently invoke such limiting principles – especially in the context of arbitrary detention – the latitude afforded is quite narrow. A government may not merely invoke the national security rationale without a searching review of that claim. Indeed, the government must “specify the precise nature of the threat” posed by the protected activity National security and the public order were not threatened, nor did the Government specify the precise nature of the perceived threat or demonstrate any connection between the Applicant’s statements and the perceived threat. Rather, the Government detained the Applicant as part of its attempt to silence critical voices.

Because the Applicant was detained for making statements that were protected by his freedoms of opinion and expression, his detention is arbitrary under Category II of the Working Group’s methods.

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**2. Deprivation of Liberty under Category III**

A detention is arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to a fair trial, established in the [UDHR] 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.[[15]](#footnote-15) Articles 5, 7, 8, 9, 10 and 11 of the UDHR and Articles 9 and 14 of the ICCPR provide international norms of fair trial. In addition to the due process requirement established by the ICCPR and UDHR, the Working Group may also look to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”) and the Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”) in making a determination as to the arbitrary nature of a detention[[16]](#footnote-16)

Vietnam failed to observe the minimum international standards of due process by denying the Applicant of his rights to not be subjected to an arbitrary arrest, to a prompt habeas corpus review, a hearing by an independent and impartial tribunal, equality before the court, a presumption of innocence, to prepare a defense and be represented by counsel of his own choosing, to be released pending trial and to be tried without undue delay.

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”[[17]](#footnote-17) This right is reiterated by Article 9 of the UDHR, and Principles 2 and 36(2) of the Body of Principles[[18]](#footnote-18) The HRC has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.”[[19]](#footnote-19) Article 9(1) requires compliance with domestic rules that define such procedures for arrest such as identifying the officials who are authorized to make arrest[[20]](#footnote-20) Under Article 80 of the Vietnamese Criminal Procedure Code, an arresting officer should present an arrest warrant which specifies the full name and address of the arrestee, as well as the reasons for the arrest[[21]](#footnote-21) Such arrest warrant must be read out loud to the arrestee[[22]](#footnote-22) An emergency arrest, i.e., an arrest without a warrant, is only permitted where there is evidence that the suspect is going to commit an extremely severe felony, that the suspect is a flight risk or where there is a risk that the suspect will dispose of evidence.[[23]](#footnote-23)

The arrest of the Applicant did not comply with international law; indeed, the arrest failed to meet the standards of Vietnam’s own laws, as the Applicant was not shown an arrest warrant at the time of his detention. Such failure to follow the legal arrest procedures violated the Applicant’s right to freedom from arbitrary arrest under Article 9(1) of the ICCPR, Article 9 of the UDHR, and Principles 2 and 36(2) of the Body of Principles.

Article 14(3)(c) of the ICCPR guarantees that every defendant shall have the right to “be tried without undue delay.[[24]](#footnote-24) This right “relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal.[[25]](#footnote-25)

As explained above, the Applicant was not granted, much less given the opportunity to request, bail and pre-trial release. Yet, contrary to the HRC’s guidance for Article 14(3)(c) of the ICCPR, the Applicant was not tried as expeditiously as possible. In fact, the Applicant was held incommunicado in pre-trial detention.

Under Article 14(2) of the ICCPR, every criminal defendant is also entitled to “the right to be presumed innocent until proven guilty[[26]](#footnote-26) This right is reiterated by Article 11(1) of the UDHR and Principle 36(1) of the Body of Principles. The HRC has explained that the right to be presumed innocent requires that the defendant be given the “benefit of the doubt” and that “all public authorities refrain from prejudging the outcome of the trial.”[[27]](#footnote-27) This right is also enshrined in Article 31 of the Constitution.

In the Applicant’s case, the court was not independent, did not grant the Applicant equality of arms and did not grant him a presumption of innocence. Vietnamese courts are subordinate to the CPV, which has great control over the judicial system. In practice, the Vietnamese courts do not operate independently and free from the government. There is no sufficient reasons and information if the applicant is represented by the lawyer that was chosen by his own will.

Because the Government denied the Applicant his right to a public trial, an independent and impartial court, equality of arms, the opportunity to cross-examine witnesses and a presumption of innocence, Vietnam violated Articles 14(1) and (2) of the ICCPR, Articles 7, 10, and 11(1) of the UDHR and Principle 36(1) of the Body of Principles.

Vietnam Violated Pham’s Right to be Visited by Family and to Communicate with the Outside World

Principle 19 of the Body of Principles provides that “detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations.” Similarly, this right is protected by the Mandela Rules, notably Rule 43 stating that “[d]isciplinary sanctions or restrictive measures shall not include the prohibition of family contact,” Rule 58 stating that “[p]risoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals,” and Rule 106 stating that “[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.”

Pham was held in communicado and when he was transfeered to another detention center, the family of the applicant was not informed about it. The applicant was uable to contact his family.

**V. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.**

On June 14, 2022, the Civil Judgment Enforcement Department of Ho Chi Minh City issued a judgment enforcement decision. The decision requires Mr. Pham Chi Dung to repay royalties from the articles because they thought it was illegal income.

After that, the Department repeatedly issued summons to Mr. Dung’s relatives including his parents and his wife to the Judgment Enforcement Branch of Tan Binh District, Ho Chi Minh City. The Sub-Department asked the family to pay “the remedial money” on behalf of Mr. Dung.

**VI. Full name and address of the person(s) submitting the information (telephone and fax number, if possible)**

Kurtuluş Baştimar was retained by the wife of the applicant to submit this petition to the UN Working Group on Arbitrary Detention on behalf of the victim.

1. Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, and 24/7. [↑](#footnote-ref-1)
2. https://vietnamthoibao.org/ [↑](#footnote-ref-2)
3. An arbitrary detention of liberty is defined as any “deprivat[ion] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, at art. 9(1) (hereinafter, “ICCPR”). Such a deprivation of liberty is specifically prohibited by international law. Id. “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at art 9 (1948) (hereinafter, “UDHR”). “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law . . . .” Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) (hereinafter, “Body of Principles”) [↑](#footnote-ref-3)
4. Detention, ¶¶ 8(b)-(c), U.N. Doc. A/HRC/30/69 (Aug. 4, 2015) (hereinafter, “Methods”).

Human Rights Council, Methods of work of the Working Group on Arbitrar [↑](#footnote-ref-4)
5. Id. at ¶ 8(b). [↑](#footnote-ref-5)
6. Id [↑](#footnote-ref-6)
7. ICCPR, supra note 53, art. 19(2). Vietnam acceded to the ICCPR in 1982 and entered no reservations to this provision. [↑](#footnote-ref-7)
8. UDHR, supra note 53, art. 19. [↑](#footnote-ref-8)
9. Constitution of the Socialist Republic of Vietnam, art. 25. [↑](#footnote-ref-9)
10. Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, ¶ 12, U.N. Doc. CCPR/C/G/34 (Sep. 12, 2011) (hereinafter, “General Comment No. 34”). [↑](#footnote-ref-10)
11. ICCPR, supra note 53, art. 19(3). [↑](#footnote-ref-11)
12. General Comment No. 34, supra note 60, ¶ 21. [↑](#footnote-ref-12)
13. Park v. Republic Korea, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995 (adopted Oct. 20, 1998), ¶ 10.3. [↑](#footnote-ref-13)
14. CCPR/C/80/D/926/2000 (adopted Mar. 16, 2004), ¶ 7.3.

Shin v. Republic of Korea, Communication No. 926/2000, U.N. Doc. [↑](#footnote-ref-14)
15. Methods, supra note 54, ¶ 8(c). [↑](#footnote-ref-15)
16. Id. at ¶ 7(a) and (b). [↑](#footnote-ref-16)
17. ICCPR, supra note 53, art. 9(1). [↑](#footnote-ref-17)
18. UDHR, supra note 53, principles 2 and 36(2). [↑](#footnote-ref-18)
19. UN Human Rights Committee, General Comment No. 35, ¶ 23, UN Doc. CCPR/C/GC/35, (16 Dec. 2014) (hereinafter, “General Comment No. 35”). [↑](#footnote-ref-19)
20. Id [↑](#footnote-ref-20)
21. Criminal Procedure Code of Vietnam, Law No. 19/2003/QH1 [↑](#footnote-ref-21)
22. Id [↑](#footnote-ref-22)
23. Id [↑](#footnote-ref-23)
24. ICCPR, supra note 53, art. 14(3)(c). [↑](#footnote-ref-24)
25. Id [↑](#footnote-ref-25)
26. See also UDHR, supra note 53, art. 11(1). [↑](#footnote-ref-26)
27. General Comment No. 32, supra note 89, ¶ 30. [↑](#footnote-ref-27)