

'The arrest and the detention of Pham Doan Trang was arbitrary,' lawyer says

Rights lawyer Kurtuluş Baştımır filed a petition to the UN Working Group on the Vietnamese journalist's behalf.

By Giang Nguyen
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Detained journalist Pham Doan Trang display the books she wrote that were banned by the Vietnamese government, in In a file photo,

The UN Working Group on Arbitrary Detention in a 16-page opinion issued on Oct. 25 has spoken out against what it calls the “arbitrary” arrest and detention of Vietnamese journalist and dissident Pham Doan Trang, who had written books criticizing Vietnam’s government and been interviewed by Radio Free Asia and the BBC. Arrested on Oct. 6, 2020 at her home in Ho Chi Minh City, Trang was later charged with “making, storing, distributing, or disseminating information documents and items against

the Socialist Republic of Vietnam” under Article 117 of Vietnam’s Penal Code. RFA’s Giang Nguyen interviewed human rights lawyer Kurtuluş Baştımar, who filed the petition on behalf of Pham Doan Trang with the UN Working Group.

RFA: We spoke back in July when you were in the process of submitting this petition to the UN Working Group on Arbitrary Detention in the case of Pham Doan Trang. And now we have this decision by the Working Group calling Trang’s deprivation of liberty “arbitrary.” When did you receive this decision, and what was your reaction?

Baştımar: I am so happy to have learned of this decision, as it is really important for international human rights law. I received this decision on Monday [Oct. 25]. The United Nations Working Group on Arbitrary Detention transmitted the decision to me after they sent it to the Vietnamese government. My reaction is that the decision clearly states that the arrest and the detention of Pham Doan Trang was arbitrary under international law, because when we look at Paragraph 64 of the decision it says the Vietnamese government.

As you know, the U.N. Working group considers five categories, and each category involves different articles. In the first category, the UN working group decided that under Category One, Article Nine of the International Covenant on Civil and Political Rights, Trang’s civil and political rights were violated, as I said, because her arrest and detention was carried out without an arrest warrant and Trang was not informed about the charges against her. And that’s how Article 9, Subparagraph One and Subparagraph Two were violated.

The government justified the absence of an arrest warrant by stating that the arrest had been approved by the People’s Procuracy. But the UNWGAD says the People’s Procuracy is not an independent judicial authority. And this is really important because indirectly it means that even if an arrest warrant was approved by the People’s Procuracy, this would not matter either because the judicial authority in question is not independent.

The UN working group also decided that Trang has been unable to challenge her detention before the court. And that’s why her right to effective remedy under Article 2, Subparagraph Three of the International Covenant on Civil and Political Rights, has been also violated. That means that since the first arrest and detention of Trang, she has not been allowed to challenge her detention.

There is also another important and crucial part: The UN also decided that Trang has been placed outside of the protection of the law. That means her right to be recognized as a person before the law, under Article 16 of the Covenant, has also been violated. So, you know, this is really, really important. If a person cannot be regarded as a person before the law, that is the minimum level of human rights that must be protected. But it was also violated, and especially in Paragraph 68, the UN Working Group stated once again that the Vietnamese government cannot deprive the liberty of an individual based on Article 88 or amended Article 117 (of Vietnam’s Penal Code), because these articles are really broad and vague.

The UN also stated in this decision that a law must be clear and precise: so that when Vietnamese individuals read this law, they can understand it and regulate their behavior accordingly. But when they look at the law—namely Article 88 or 117 amended—they cannot understand what kind of action could be categorized as ‘conducting propaganda’ or ‘defaming the government.’ And they do not know this because the limits of the law are not clearly identified.

**RFA: So what
this all means is
that we have a**



International human rights lawyer Kurtuluş Baştımaz, in an undated photo.

that we have a decision by the Working Group finding Pham Doan Trang's detention 'arbitrary?'

Baştımaz: This decision is an international decision and was given by a supranational body, namely the UN Working Group. This means the Vietnamese government cannot judge, try, or

continue to arrest and detain Pham Doan Trang. Because even if her detention has a basis or is legal under domestic law, this is not sufficient reason for a person to be arrested or detained. Arrest and detention must also be in line with international law. This has been stated many times by the United Nations Human Rights Committee as well.

The Vietnamese government should now respect this international decision because many of its domestic law processes as well as international laws have been violated [during Trang's arrest and detention.] This international decision clearly states that the deprivation of Pham Doan Trang's liberty is arbitrary under international law. That's why she must be released immediately and unconditionally.

RFA: You mentioned that the Working Group stated that no trial should be held for Trang. We also know that the Vietnamese government tends to disregard such rulings, as it has in the past. We fully expect that they will continue with the trial. What mechanism does the Working Group have to hold the government accountable to those covenants that it has signed?

Baştımaz: Basically you are right. We know that the Vietnamese government tries to ignore these decisions. They continue to rely on their own domestic laws and their domestic law processes. But that doesn't mean that they have a right to continue to ignore these decisions.

When we look at the impact of these decisions, we see the Vietnamese government decided to amend Article 88. So we know there is huge pressure and a huge impact resulting from those decisions in every country—for example including in Turkey and in other countries as well. These decisions cannot be regarded as having a vague impact or no impact at all.

When it comes to the process of following up on those decisions after the trial process or at any other stage, the UN Working Group has now initiated follow-up procedures, which means the Vietnamese government will be monitored, and will be asked to provide information on whether or not Pham Doan

Trang has been released, and whether she has been remedied or not. All of this information will be tracked by the UN Working Group.

But if the Vietnamese government continues to not implement the Working Group's decision, they will be invited to the United Nations Human Rights Council, where they will be questioned. And they will be asked to provide the reason why they did not implement this decision.

But I know that in the case of Pham Doan Trang, this decision will have a huge impact because we know from domestic lawyers in Vietnam that she was accused on [a charge that can carry a penalty of] 20 years of prison, but this has now been decreased to three years.

So every step we have taken at the level of international law has a great impact on domestic law and the domestic trial process. But I agree with you, that the UN Working Group on Arbitrary Detention must start to have a body or process that can impose sanctions in case the decision is ignored.

RFA: Obviously, you'll be following this case now, but what other steps will be taken by yourself and other advocates for Pham Doan Trang? What's next, given this decision?

Bastimar: I will continue to follow the case and the decision and the situation of Pham Doan Trang in Vietnam. But I have already spoken to some international human rights bodies and other entities who will support us. I will also try to connect with parliamentarians in Europe.

We don't want to intervene, and we are not intervening, in the domestic affairs of Vietnam, and we are not issuing any orders to the Vietnamese courts. We are just kindly asking the government to respect international law and the international decision that our client should be released, and we will continue to fight for the rights of Pham Doan Trang until she is released.