

Mr. Josep Borrell Fontelles, High Representative for foreign affairs, Vice-President of the European Commission

Mr. Phil Hogan, Commissioner for trade

Mr. Giorgio Aliberti, Head of the EU Delegation to Vietnam

30 June 2020

Calling for EU action for the immediate and unconditional release of Dr. Phạm Chí Dũng, Nguyễn Tường Thụy and Lê Hữu Minh Tuấn - Vietnam

Dear High Representative,

Dear Commissioner,

Dear Ambassador,

We are writing ahead of the entry into force of the EU-Vietnam Free Trade Agreement (EVFTA) and Investment Protection Agreement (EVIPA) to express our deep concern about the November 2019 arrest and ongoing incommunicado detention of the human rights defender **Dr. Phạm Chí Dũng** and the recent arrests of his fellow activists, and to request that you take resolute action towards ensuring their immediate and unconditional release.

Dr. Phạm Chí Dũng is a founding member, and since 2014, Chairman of the Independent Journalists Association of Vietnam (IJAVN). He was arrested on 21 November 2019 in Ho Chi Minh City on the charge of "making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam" under Article 117 of the Vietnamese Criminal Code (VCC). In January, [four Special Procedure mandate holders of the UN Human Rights Council](#) expressed their concern about his arbitrary and incommunicado detention (see Annex).

After his arrest, a number of persons have been subjected to various forms of harassment up to and including arrest and prosecution in connection with their IJAVN membership. In May and June 2020, two other IJAVN members, journalist Nguyễn Tường Thụy and law student Lê Hữu Minh Tuấn, were arrested on the same charges in Hanoi and Quang Nam Province but the alleged conduct underlying the charges remain unclear.

As highlighted in the latest [EU annual report on human rights](#), these are far from isolated cases. While some progress has been registered on labour rights, the report rightly states that Vietnamese authorities "*continue to harass, intimidate, apply travel bans, physically attack, arbitrarily detain and imprison political and human rights defenders, journalists and bloggers for peacefully expressing their opinion, either online or offline. Human rights defenders face harsh conditions in detention, including denial of access to medical care, legal counsel and family contact, transfer to remote prisons as well as lengthy sentences. Freedom of assembly is also arbitrarily curtailed. Deaths in police custody remain a serious concern.*"

The basis of these arrests and the subsequent treatment of the detainees amount to serious breaches of Vietnam's obligations under international law, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Vietnam is a party.

Respect for fundamental rights is an essential element of EU-Vietnam relations under the bilateral [Partnership and Cooperation Agreement](#), on which the EVFTA and EVIPA depend. Yet, the government of Vietnam has amply proven its unwillingness to comply with its international human rights obligations, especially in the field of civil and political rights.

During its latest Universal Periodic Review at the UN, the government of Vietnam notably failed to accept a number of recommendations to reform its criminal legislation in conformity with the ICCPR and to release the increasing number of “political prisoners”. Such rejection, in light of the pending ratification of the trade agreements with the EU showed that the Vietnamese authorities were of the opinion that their human rights violations would not come at a price.

The arrest of Pham Chi Dung following his outreach to the European Parliament, and the government’s reluctance to release him despite repeated requests formulated by MEPs and a number of European institutions are emblematic of the Vietnamese government’s intention to continue its assault on the human rights and fundamental freedoms of its people. His arrest and that of his colleagues also raise serious questions about the EU’s claims that trade deals would lead to improvements in Vietnam’s overall human rights record other than, arguably, labour rights.

The 21 November 2019 arrest of Dr. Phạm Chí Dũng is arbitrary and undertaken as an effective reprisal for his advocacy and communication with the European Parliament ahead of the ratification of the EVFTA and EVIPA. In 2019, and especially in November 2019 shortly before his arrest, he had repeatedly communicated with the EP to postpone the ratification because he wanted to link the ratification to tangible human rights improvements, notably the release of political prisoners and the implementation of the [EP resolution 2018/2925\(RSP\)](#). We were heartened by communications from select Members of the European Parliament at the time but his ongoing incommunicado detention and increasing harassment of his colleagues demands further action from the European Union.

As the EVFTA and EVIPA are about to come into force, we urge you to remind Vietnam of its human rights obligations and to demand that its government takes concrete steps to demonstrate its willingness to uphold its promises to the international community, starting with the immediate and unconditional release of Dr. Phạm Chí Dũng, Nguyễn Tường Thụy and Lê Hữu Minh Tuấn, and ceasing all harassment of their fellow members in IJAVN. We recall you also [the recommendations of the European Parliament P9_TA\(2020\)0027](#) and would be eager to hear from the Commission on the steps taken in that regards.

Sincerely and respectfully yours,

Boat People SOS
International Commission of Jurists
International Federation for Human Rights
Human Rights Watch
Vietnam Committee on Human Rights
VETO! Human Rights Defenders’ Network

ANNEX

Case Dr. Phạm Chí Dũng

From 2013 till his arrest, Dr. Phạm Chí Dũng wrote daily analyses and commentaries on important human rights and legislative issues in Vietnam - notably on freedom of expression, detention of human rights defenders, the lack of independent labour unions and other labour rights and harassment of independent civil society - for various domestic and international media outlets. As a doctor of economics, many of his articles in 2019 focused on labour unions, Vietnamese Labour Law, and the ratification of International Labour Organization (ILO) Conventions, the EVFTA and the EVIPA. We fear that his arrest was arbitrary and undertaken for the exercise of his fundamental freedoms, protected under international human rights law.

Dr. Phạm Chí Dũng was arbitrarily arrested for the first time in July 2012 on the charge of "plotting to overthrow the government", which was later changed to "propaganda against the socialist state." He was released without explanation in February 2013 after seven months in prison and without any trial. In 2014 he was subject of a [communication sent by the Special Procedures](#) 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 of Vietnam. His passport was confiscated to prevent him from traveling since.

In January 2020, [four Special Procedure mandate holders of the UN Human Rights Council](#) expressed their concern about his arbitrary and incommunicado detention with the Vietnamese Government. In their reply dated 18 February 2020 the [Permanent Mission of the S.R. Vietnam to the United Nations](#) confirmed the charge under VCC's Article 117 claiming that Dr. Phạm Chí Dũng had allegedly "posted 63 articles that distort the truth, incite individuals to rise up and overthrow the people's government, incite hatred and extremism, mislead people on the socio-economic situation with view to causing anxiety and social instability." The reply cited Article 74 of the Vietnamese Criminal Procedure Code (VCPC) to justify his incommunicado detention, despite concerns this provision is a violation of fundamental procedural safeguards and Vietnam's obligations under the International Covenant on Civil and Political Rights (ICCPR).

We consider the arrest on 21 November 2019 and detention of Dr. Phạm Chí Dũng to be in contravention of the [recommendations No. 26, 46, 50 and 52 of the UN Human Rights Committee \(CCPR\) on the Third Periodic Review of Vietnam on 28 March 2019](#) and according to the criteria adopted by the UN Working Group on Arbitrary Detention.

Vietnam is a state party to the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and is obligated to uphold the rights of all persons deprived of their liberty.

The prolonged incommunicado detention of Dr. Phạm Chí Dũng, which has now lasted almost seven months, constitutes a violation of the prohibition on torture and other ill-treatment under ICCPR's Article 7 and CAT, the right to liberty under ICCPR's article 9, as well as the ICCPR's Article 10 which guarantees persons deprived of their liberty the right to be treated with humanity and dignity.

While VCPC's Article 74 on time for the participation of legal counsel provides for the suspension of the participation of legal counsel in cases involving charges of infringing

national security until the conclusion of the investigation, this provision itself violates the right of access to legal counsel under international human rights.

The VCC's Article 117 is a vague and broadly formulated offence which is used to curtail the right to freedom of opinion and expression, and is incompatible with Vietnam's obligations under ICCPR's Article 19.

A 2019 [report](#) of the International Commission of Jurists showed how article 117 in the VCC and other national security-related provisions in Vietnam's criminal law are non-compliant with Vietnam's international human rights obligations, both on its face and as implemented. The report called attention to the law's vague and overbroad provisions; and excessively severe penalties. It showed how the absence of effective independent oversight or accountability mechanisms in these criminal law provisions, including article 117, violate the principles of legality and proportionality under international law. We furthermore recall that under the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) Vietnam has a responsibility to protect and facilitate the work of human rights defenders, not curtail it.