



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-003366

First-tier Tribunal No: PA/01280/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 11<sup>th</sup> of December 2024

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**LN**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Celia Recond, Direct Access.

For the Respondent: Mr J Thompson, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 27 November 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant is a male citizen of Vietnam born on 4 March 1996.
2. The Secretary of State did not accept in the refusal letter that:
  - a. The Appellant is a follower of the Hoa Hao Buddhist Religion
  - b. The Appellant is of adverse interest to the authorities in Vietnam due to his religion.

- c. The Appellant is a victim of modern slavery
  - d. The Appellant is of adverse interest to money lenders in Vietnam.
3. The First-tier Judge found the Appellant credible and that:
- a. The Appellant is a follower of the Pure Hoa Hao Buddhist religion.
  - b. The Appellant attended a demonstration in Vietnam in April 2014 to protest against the Chinese invasion and occupation of Spratly and Parceal Archipelago that belongs to Vietnam and to protest against the authorities who took away the land of the church without any reason.
  - c. The appellant attended a demonstration in London for human rights and freedom of religion.
  - d. The Appellant was a victim of trafficking.
4. The Appellant was granted a period of 12 months discretionary leave as a result of being trafficked valid between 27 June 2023 and 27<sup>th</sup> June 2024.
5. The Appellant claimed he fears return to Vietnam on the basis that the Vietnamese authorities will arrest and detain him due to his political opinion, that his traffickers would target him because of the debt he owes them, and that he will be re-trafficked.
6. The matter comes back before me today for a Resumed hearing following it being found in my error of law decision that:
28. The Judge was not assisted by the fact the appellant is a litigant in person and so the grounds of appeal, which are reflected in the review, did not properly mirror the points raised in the interview that the appellant claims give rise to a real risk on return in relation to the third summons.
  29. In that document the appellant claimed that he had been practising his religion at home when the police raided the house and he had punched a police officer. The appellant claimed that he feared suffering harm on return as a result but there is nothing in the determination that indicates the Judge made a finding on this specific point. That is the issue at the heart of the grounds seeking permission to appeal and grant of permission to appeal in relation to whether Article 3 ECHR is engaged.
  30. I find the failure to deal with this matter to be a legal error material to the decision to dismiss the appeal.
  31. There is no basis for challenging the other findings made by the Judge which shall be preserved.
7. The Appellant's case before me is set out in Miss Record's skeleton argument in the following terms:
4. The Appellant refers to a third summon in his asylum interview - the summons has been produced and has been translated.
  5. The summons requires the appellant to present himself on 26<sup>th</sup> February 2021 at Police of Lien Minh Commune to deal with some security issues in the area.
  6. Such summons are known to exist - the State Report excerpt states that lawyers report that some people are "invited" - for no clear reason- to present themselves and then questioned or pressured to write statements. - see page 27 first appellant bundle excerpt from State report 2023.
  7. The appellant has ignored this summons and run away. It is likely that the Summons is still valid and that the appellant would be questioned if returned to Vietnam.
  8. The background evidence shows that the appellant would face the risk of harm if questioned by the Vietnam Police. Although there is a legal framework in place in Vietnam for arrests and detention, torture is used for questioning detainees - see State Report 2023 pages 23 and 24 of first appellant bundle.

9. Furthermore- even if the appellant was charged and tried he cannot rely on a fair trial, as the State Report discloses that the Judiciary are effectively controlled by the CPV, are mostly members of the and are known to be corrupt- see pages 32-33 of the appellant first bundle.
10. If found guilty prison conditions vary and are austere as recognised in the background evidence – State Report 2023, pages 25-26 of the appellant first bundle. The prisoners lack access of clean food and water are overcrowded and suffer deteriorating health conditions due to psychological abuse, poor diet and lack of medical treatment.
11. Human Rights Watch provides the same information and states

“critics of the government face police intimidation and harassment, restricted movement, arbitrary arrest and detention and imprisonment after unfair trials. Police regularly hold political detainees for months without access to legal counsel and subject them to abusive interrogations. Party controlled courts sentence bloggers and activists to long prison sentences on bogus national security charges”.  
– see page 12 of appellant further bundle.

#### Appellants case

12. The appellants case is that – on the lower standard of proof he has proved that return to Vietnam would breach article 3. He admits that he assaulted a police officer after the police had attended a family ceremony.
  13. He was found to be credible by the FT Judge and there has not been any challenge to the credibility findings. Applying the case of Devaseelan the findings stand.
  14. Instead of arresting and charging the appellant he was summonsed to attend the Police commune to deal with security issues. The appellant ran away for the summons and has now fled the country and remains in the UK.
  15. If returned and questioned there would be a breach of Article 3, The court need hardly be reminded that no one shall be subjected to torture or to inhuman or degrading treatment or punishment in all circumstances. Human dignity must be respected, even in detention. Acts of torture or ill-treatment must be considered as criminal offences. Protection against torture is a universally acknowledged principle.
  16. The appellant also faces a disproportionate response to the assault of a police officer- which- if in the UK (as a comparison) would most likely be dealt with in the Magistrates court and small sentence and/or fine would be imposed. Instead the position of the appellant is that he faces some form of questioning on a security issue.
  17. The situation could easily escalate as set out in the background material and then the appellant would face abusive behaviour and torture and an unfair trial by a corrupt court. This treatment would breach Article 3.
  18. Furthermore in this case there is a religious/political motive for the police to attend a family ceremony. The 1951 Convention is engaged – presentation has shaded into persecution and there is a risk of harm due to the appellants religion- which is seen as political by the authorities in Vietnam. Return to Vietnam would breach the 1951 Convention in this case.
8. The issue in the appeal is limited to Article 3 ECHR and it is not made out the Appellant would not be able to practice his religion on return to Vietnam sufficient to engage the HJ (Iran) principle or to amount to persecution based on religious beliefs, as shown below.
  9. Mr Thompson in his submissions referred to the fact that new documents that had been provided contained similar information to that which had been considered, and that there was nothing new.
  10. Mr Thompson also submitted that country evidence showed that prison conditions in Vietnam varied by region/location as there is reference to this in the Upper Tribunal error of law finding, but there was nothing from the

Appellant to show that if he was detained he will be in such an environment. At [24 - 25] of the error of law hearing it was written:

24. Country material makes it clear that whether prison conditions will breach the Article 3 threshold depends upon which province an individual is likely to be imprisoned in.
25. The appellant's home province is Ha Tinh, a city in the northern coastal province of Vietnam. There is nothing to show that prison conditions there are so poor as to warrant a finding that the appellant is entitled succeed in Article 3 grounds solely as a result of his being in prison and any treatment he may receive there.

11. Mr Thompson submitted it was accepted the Appellant had been arrested before but he had not been ill-treated, which was relevant when considering the preserved findings and objective material.

12. Mr Thompson submitted that even if the Appellant was arrested on return, it had not just been established any treatment would breach Article 3 ECHR, i.e. whatever may happen it will not be sufficient to breach the Article 3 threshold.

### **Discussion and analysis**

13. Article 3 of the European Convention on Human Rights reads:

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

14. It is clear from the wording that the prohibition in question is absolute with no derogation from it being permissible under any other terms of the ECHR or a Contracting states domestic law.

15. Mr Thompson was entitled to submit that whatever may happen to the Appellant on return it may not be sufficient to breach Article 3, as it is settled law that Article 3 of the Convention does not relate to all instances of ill-treatment. In general ill-treatment must attain a minimum level of severity for it to fall within the scope of Article 3, although the assessment of that level is relative and depends on all the circumstances of the case, such as duration of the treatment, it's physical or mental effects and, in some cases, the sex, age and state of health of the victim - see MURŠIĆ v. CROATIA (*Application no. 7334/13*).

16. There is no evidence the Appellant had a profile as a leader, agitator, or a person who may be viewed as a threat to the Communist Party of Vietnam before he left that country, and who will therefore face a real risk from the authorities in Vietnam for that reason.

17. The Appellant claimed he had been issued with three summonses by the authorities.

18. The First-tier Tribunal records at [17] the Appellant attended a police station in respect of the two summons dated 17 June 2018 and 8 April 2019 and was released on condition he did not attend protests and preach. The lack of adverse interest in him and the fact he was released with no more than a warning by the authorities indicates at that time that he faced no greater risk of harm, as submitted by Mr Thompson.

19. The First-tier Tribunal records that the third summons related to his family organising a ceremony involving about 20 people on 25 February 2021. The police arrived, the Appellant claimed he either hit or pushed one of the police

officers, ran away, went into hiding, and the following day made arrangements to travel to Mong Chai. His uncle subsequently advised him to leave the country following which he made arrangements to leave Vietnam in May 2021.

20. The Appellant claims he has followed his religion in the UK which he practices at home.
21. A copy of the third summons has now been provided in the up-to-date bundle of evidence with a translation.

The operative part of the document is said to read:

Name of summoned person: [full name anonymized]

Residents address (or work address) : [as per Appellant's details held by the Home Office]

At Police of Lien Minh Commune to deal with some issues regarding security in the area.

Please bring along this summons to meet a Police Officer, Mr Tran Ngoc Giap.

Commune Deputy Chief of Police

22. Country material provided in the US State Department Country Reports on Human Rights Practices for 2023 states that by law authorities generally require a warrant approved by a prosecutor or a decision from a court to arrest a suspect, although the law allows authorities to hold an individual without a warrant in "unusual circumstances", such as when evidence existed that shows a person was prepared to commit a crime or when police caught a person in the act of committing a crime.
23. The report records that in addition to actually arrest lawyers and human rights non-governmental organisations (NGO) reported that, in many cases, authorities "invited" individuals who could be held for hours, questioned, or pressured to write or sign statements.
24. The Appellant's case is that the document that he received is a similar invitation for him to present himself at a Police Office.
25. The formal procedure to be followed if a person is a suspect of a crime in Vietnam is prescribed in Article 182 of the Criminal Procedure Code 2015 as follows:

- Investigators, when convening a suspect, must send out a subpoena. A subpoena for a suspect shall specify the suspect's full name and residential address; time, date and location for his appearance, schedule of tasks, contact individuals and liabilities for absence not due to force majeure or objective obstacles.

- The subpoena shall be sent to local authorities at the commune, ward or town where the suspect resides or his workplace or educational facility. The authorities or organizations receiving the subpoena are held responsible for forwarding it to the suspect in prompt manner.

The suspect, when receiving the subpoena, must sign and date the recipient's Section. The forwarder of the subpoena shall deliver the subpoena's Section bearing the suspect's signature to the authority issuing the subpoena.

If the suspect does not affix signature, a written record of his non-compliance shall be made and sent to the summoning authority. If the subpoena cannot be delivered due to

the suspect's absence, it shall be given to his family member possessing legal capacity, who affixes signature and forward the paper to the suspect.

- The suspect bear the obligation to appear as per the subpoena. Avoidance behavior or absence not due to force majeure or objective obstacles shall lead to investigators' decision to deliver by force.

- Procurators, if necessary, may convene suspects. Summoning of a suspect shall be governed by this Section.

26. There is no evidence of this procedure being followed in this case.

27. The core of the Appellant's case is that he faces a real risk as the police were aggressive on the day, that he could see one of the police moving towards his father, and that he decided to head the police officer off and so hit him. In his asylum interview, however, he claimed he pushed the police officer. The Appellant claims he knew what he had done was serious, as a result of which he ran away.

28. It is not unreasonable for an authority to wish to speak to an individual who has committed a criminal offence such as assaulting a police officer.

29. Article 134 of the Vietnamese criminal code, dealing with deliberate infliction of bodily harm upon another person reads:

Article 134. Deliberate infliction of bodily harm upon another person

1. A person who deliberately inflicts bodily harm upon another person and causes 11% - 30% whole person impairment (WPI) or under 11% WPI in any of the following circumstances shall face a penalty of up to 03 years' community sentence or 06 - 36 months' imprisonment:
  - a) Explosive, a dangerous weapon, a dangerous method is used to harm numerous people;
  - b) Acid or a hazardous chemical is used;
  - c) The victim is a person aged under 16, a women whose pregnancy is known by the offender, an old and weak, sick, or defenseless person;
  - d) The victim is the offender's grandparent, parent, caregiver, teacher or physician;
  - dd) Organizing;
  - e) The offender misuses his/her position or power to commit the offence;
  - g) The offender commits the crime while being kept in temporary detention, serving an imprisonment sentence, receiving compulsory education in a reform school, correctional institution or rehabilitation center;
  - h) The offence hires another person or is hired by another person to inflict bodily harm to another person;
  - i) The offence is of a gangster-like nature;
  - k) The offence is committed against a law enforcement officer in performance of his/her official duties or because of his/her official duties.
2. This offence committed in any of the following circumstances carries a penalty of 02 - 06 years' imprisonment:
  - a) The offence causes 31% - 60% WPI for another person;
  - b) The offence results in bodily harm to more than one person, each of whom suffers from 11% - 30% WPI;
  - c) The offence has been committed more than once;
  - d) Recidivism is extremely dangerous.
  - dd) The offence results in bodily harm to another person who suffers from 11% - 30% WPI in any of the circumstances specified in Point a through k Clause 1 of this Article.

3. This offence committed in any of the following circumstances carries a penalty of 05 - 10 years' imprisonment:
    - a) The offence results in  $\geq 61\%$  WPI of the victim, except in the circumstances specified in Point b Clause 4 of this Article;
    - b) The offence results in bodily harm to more than one person, each of whom suffers from 31% - 60% WPI;
    - c) The offence results in bodily harm to another person who suffers from 31% - 60% WPI in any of the circumstances specified in Point a through k Clause 1 of this Article;
    - d) The offence results in bodily harm to more than one person, each of whom suffers from 11% - 30% WPI in any of the circumstances specified in Point a through k Clause 1 of this Article.
  
  4. This offence committed in any of the following circumstances carries a penalty of 07 - 14 years' imprisonment:
    - a) The offence results in the death of a person;
    - b) The offence results in deformation of the victim's face and the physical disability inflicted is  $\geq 61\%$ ;
    - c) Inflicting injury or causing harm to the health of 02 or more people with an injury rate of 61% or higher for each person;
    - d) The offence results in bodily harm to another person who suffers from  $\geq 61\%$  WPI in any of the circumstances specified in Point a through k Clause 1 of this Article;
    - dd) The offence results in bodily harm to more than one person, each of whom suffers from 31% - 60% WPI in any of the circumstances specified in Point a through k Clause 1 of this Article.
  
  5. This offence committed in any of the following circumstances carries a penalty of 12 - 20 years' imprisonment or life imprisonment:
    - a) The offence results in the death of more than one person;
    - b) The offence results in bodily harm to more than one person, each of whom suffers from  $\geq 61\%$  WPI in any of the circumstances specified in Point a through k Clause 1 of this Article.

Any person who prepares a weapon, explosive, acid, dangerous chemical; establishes or joins a group of criminals to inflicts bodily harm upon another person and shall face a penalty of up to 02 years' community sentence or 03 - 24 months' imprisonment.
30. The Appellant gives no details of any harm actually caused to the police officer and indicates the seriousness of his situation arises from the fact he struck the police officer which would be the same in any jurisdiction, including the UK. Indeed it is noted in the Refusal letter that the basis of the Appellant's claim, taken from his answers in his asylum interview was that on 25<sup>th</sup> February 2021 he pushed a police officer and then ran away and went into hiding, indicating he did not strike an officer or provide evidence of serious harm - see asylum interview questions 47 - 48. In relation to the degree of any impairment of the police officer it is not made out that the likely offence is that the Appellant inflicted harm upon the police officer leading to over 11% whole person impairment, meaning he would face a penalty of up to 3 years community sentence or 6 to 36 months imprisonment.
31. It is not made out that the range of the sentence will be sufficient to amount to persecution as it will clearly be an act of prosecution. Whilst I accept that prosecution can amount to persecution in certain circumstances those circumstances are not made out on the facts of this appeal.
32. If the Appellant is sentenced to a period of imprisonment, not a certainty on the facts as he may receive a community sentence, the issue which then arises is where that would be, and whether there is evidence that it would be in a prison in which he is likely to suffer ill treatment sufficient to breach Article 3. In this

respect there is merit in the submission of Mr Thompson that there is insufficient evidence provided to show that the Appellant is likely to be sent to such an institution or, even if he suffers harm within a prison, that it will be sufficient to breach the Article 3 threshold.

33. Miss Record in her submissions referred to the fact the reason the Appellant been asked to attend the police station had not been given in the summons, which I find may be unusual if the reason the police wish to speak to him was as a result of his assaulting a police officer when such details could be clearly provided in accordance with the requirements of the Penal Code. In such a situation one would expect to see specific reference to the nature of the assault upon the police officer as the requirement to provide an accurate explanation for why a person was being subpoenaed is a fundamental requirement of the Vietnamese criminal code.
34. Miss Record referred to the Appellant's subjective fear in his up-to-date witness statement where he records:
9. The summonses issued on security grounds because I organised a group meeting of Pure Hoa Hao which is seen as challenging to the government in Vietnam.
  10. I am aware that hitting a policeman is a serious thing to do. I don't try and excuse it. But if I had attended the Commune I would most likely have been detained and forced to make a statement and admit my guilt and possibly that I was guilty of some security issues while. I would never have been seen again.
  11. As well as this I have now run away from this summons - so if I return back to Vietnam's and I would be arrested and detained. One sign arrested and detained by the police in Vietnam I would be mistreated. I have friends who were badly beaten by the police in Vietnam. As well as this I would not be given a fair hearing in front of the judge and there will not be any justice for me. This is because I hit the policeman at a Pure Hoa Hoa meeting - in my case there is a link to politics and the government in Vietnam is very sensitive to any protests or organisations that are not compliant with the security laws.
35. The Appellant cannot no wiser summons was issued as he claims he ran away before finding out, and his claim it was issued on security grounds because you organised a meeting of the Pure Hoa Hao Buddhist group is pure speculation designed to enhance his claim for international protection.
36. The Appellant claims his family follows the Pure Hoa Hao religion which he grew up with. Pure Hoa Hao Buddhism which is a very small sect of Buddhism within Vietnam which is subject to state harassment and surveillance with members being detained and imprisoned as the government perceives some members of opposing the state which is the defining characteristics of the sect.
37. The First-tier Tribunal Judge wrote at [30] "*I find that the appellant is a Hoa Hao Buddhist who is a member of an unregistered group which practises at home and may meet occasionally in a larger group*".
38. The Respondent's Country Policy and Information Note: Ethnic and religious groups, Vietnam, February 2022 refers to registered and unregistered religious groups which requires religious communities to register their activities, place of worship and organisation, although also permits the government to restrict religious activities in the interests of national interest, public order, and national unity. It states all activities have to be registered in advance.
39. In Section 2.4.36 it is recorded that in general registered groups are mainly able to operate and believers are able to practice their faith without interference from the state and that the government generally respects the religious



freedom of registered groups as long as they comply with regulations and local attitudes and interests and are not perceived as a threat.

40. In Section 2.4.37 it is stated that in general there is no real risk of state persecution or serious harm on account of the person's religious beliefs for persons belonging to government registered groups, although at section 2.4.38, it is stated that where a person is also a member or perceived to be a member of the group who the government believes to have separatist aims or considered a local/national threat, risk may arise. Each case is however fact specific with the need for a person to demonstrate that they are risk of persecution, see section 2.4.39.
41. In relation to unregistered religious groups, it is stated the government does restrict activities of some unregistered religious groups especially where they are regarded as a threat to the Communist Party in Vietnam. It is said at section 2.4.42 such groups could be subject to monitoring, harassment and be prevented from gathering, with some being attacked by 'thugs' believed to be hired by local authorities to pressure unregistered groups to stop their religious activities.
42. In Section 2.4.43 it is stated that in general while members of unregistered groups and their members face discrimination, they are unlikely to be subject to persecution or serious harm for that reason alone, but that may depend on the Communist Party of Vietnam's view on the group and the role and activities of persons.
43. In relation to Buddhists specifically it is recorded in the CPIN:

- i. Buddhists

2.4.47 The estimated number of Buddhists in the country varies from approximately 5 to 11.5 million of the population. Buddhism is the major religion in Vietnam and is found throughout the country with Mahayana Buddhism the main affiliation of the ethnic majority. Theravada Buddhism is the main religion of the Khmer ethnic group but is not recognised by the authorities as a distinct religion (see [Buddhists](#) and [Khmer Krom](#)).

2.4.48 Buddhist groups are divided into those who are registered with the government and those who are unregistered. The Vietnam Buddhist Sangha is a registered group while unregistered groups include Khmer Krom, the Unified Buddhist Church of Vietnam (UBCV) and unrecognised branches of Hoa Hao (see [State treatment of specific religious groups](#)).

2.4.49 Generally, those who are members of registered Buddhists groups are able to practice their religion freely without government intervention (see [State treatment of specific religious groups](#)).

2.4.50 Unregistered Buddhist groups report that they are subject to harassment, including disruption of, and interference in, their right to worship freely. They have also sometimes been subjected to violence, including threats and intimidation to join state sanctioned groups. Buddhists, particularly those from ethnic minority areas, such as the Khmer Krom, have also been affected by land appropriation and destruction of property (see [State treatment of specific religious groups](#) and [Khmer Krom](#)).

2.4.51 Persons associated with unregistered Buddhist groups generally face more interference in their ability to practise their religion freely. Unregistered groups also face more instances of land appropriation and destruction of

property. Risk is likely to depend on the views and activities of the group toward the state, the CPV's view of the group and the role and activities of person. Members of unregistered Buddhist groups who promote religious freedom or are otherwise involved in activities which are perceived by the government to advocate separatism, such as protesting or being vocal about land appropriation, and who come to the attention of the authorities, may face treatment that is sufficiently serious by its nature and/or repetition, or by an accumulation of various measures, to amount to persecution or serious harm.

2.4.52 Where a person's fear is the result of their actual or perceived opposition to the state decision makers should refer to the [Country Policy and Information Note on Vietnam: Opposition to state](#). Where a person's fear is closely related to their membership of an ethnic minority group decision makers should also refer to the relevant section above. Each case must be considered on its facts with the onus on the person to demonstrate they would be at real risk from the state on return.

44. A specific CPIN entitled 'Hoa Hao Buddhism, Vietnam, January 2024' is now available.
45. This records that religious groups need to register in order to operate and undertake religious activities and that the state recognises 16 different religions including Hoa Hao Buddhism with the Hoa Hao Buddhist Church being a state approved group.
46. The CPIN records that Hoa Hao Buddhism is practised at home or whilst attending land and that those who practice their faith in that way are unlikely to attract adverse attention from the authorities.
47. It is also recorded that Hoa Hao Buddhist who openly criticise the government or who participate in activities that are, or may be perceived to be, against the state may face harassment risk in detention but whether a Hoa Hao Buddhist activist is at risk of persecution or serious harm will depend on their profile and activities.
48. It is not made out the Appellant is a leader or activist who openly criticised the government or whose antics creates a real risk or has participated in activities that may be perceived to be political in nature or likely, individually or cumulatively, create a real risk for him on return.
49. It is accepted at section 3.1.10 that there are no reliable figures of those who follow unregistered Hoa Hao groups although it is noted diplomatic sources and Hoa Hao Buddhist managers both agree that the number of those who belong to the 'Pure sect' which is the unregistered group, was very small.
50. Notwithstanding what the Appellant claims, at 3.1.12 of the CPIN it is recorded:
  - 3.1.12 There is limited information on the arrest and detention of Hoa Hao Buddhists. However, available sources indicate that there are very few people detained or imprisoned, with 2 separate databases giving the details of 7 Hoa Hao Buddhists who have been arrested or detained in the last 7 years. Of the 7 Hoa Hao Buddhists listed in both databases, 6 of them were arrested after attending the same Hoa Hao Buddhist event in April 2017, with 5 of them sentenced to terms in prison ranging from 3- 6 years. Both databases list only one Hoa Hao Buddhist as currently detained, he had previously served a prison term for attending the event in April 2017 and was released in June 2021 but arrested in 2023 on charges relating to "making, storing, spreading information, materials, items for the purpose of opposing the State of Socialist Republic of Vietnam".

51. The Appellant was not protesting against the government on the street, even if his claim is credible.
52. If the Appellant is detained and asked about hitting a police officer, he is not likely to deny that fact. If he is asked about taking part in a meeting in a home environment and he admits that he did, there is insufficient evidence that he will be perceived to be a member of a group contrary to the interests of the state sufficient to create a real risk of harm likely to cross the Article 3 threshold. It is not made out the Appellant has the profile of a person who was undertaking activities, individually or cumulatively, sufficient to result in a real risk of treatment contrary to Article 3. I find his subjective fear is not objectively made out.
53. Miss Record in her submissions refers to evidence in the bundle highlighting the risk to political prisoners or those who may be of concern to the security forces as posing a threat to the Communist Party of Vietnam. Whilst such a risk to those individuals is not disputed before me it is not made out on the evidence that the Appellant has a profile that would create such a risk for him on return to Vietnam.
54. It is not disputed that the Appellant may be of interest to the authorities as a result of his criminality, if such claim is credible, and indeed Mr Thompson did not say that the Secretary of State disputes that a person who has interaction with the police may suffer ill treatment but that the Appellant had not established, even by reference to the country material, that on his specific set of circumstances, he would suffer ill treatment sufficient to amount to persecution or that your treatment will be sufficient to breach Article 3 threshold, either as a result of what may occur to him during the course of interrogation or as a result of being imprisoned in an environment where the Article 3 threshold will be breached.
55. Even if the judiciary are under the control of the Communist Party of Vietnam as submitted by Miss Record, it has not been established that any sentence the Appellant is likely to be given even if it amounts to a sentence of imprisonment, will cross the Article 3 threshold.
56. It is known from the grant permission to appeal to the Upper Tribunal and the error of law finding that the key issue has always been whether what would occur to the Appellant on return was sufficient to breach Article 3. I do not find, however, that the material that has been provided shows that the Appellant has proved his case on that point. Whilst those with a profile of interest may suffer harm, not everybody does to the required standard.
57. On that basis I dismiss the appeal.

### **Notice of Decision**

58. Appeal dismissed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 December 2024**