



Legal Issues Concerning the Trials of Chinese Democracy Party Members Under the Criminal Procedure Law of the People's Republic of China

August 1999

LL File No. 1999-7989
LRA-D-PUB-001501

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

LAW LIBRARY OF CONGRESS

**LEGAL ISSUES CONCERNING THE TRIALS OF CHINESE DEMOCRACY PARTY
MEMBERS UNDER THE CRIMINAL PROCEDURE LAW
OF THE PEOPLE'S REPUBLIC OF CHINA**

Since December 1998, 18 leaders of the China Democracy Party (CDP) have been given harsh prison sentences on conviction of charges of attempting to “subvert state power.”¹ Some of the members were also convicted of accepting money from hostile overseas organizations. In defense of the application of Chinese law to the CDP activists, Chinese Ambassador Li Zhaoxing has stated that

With respect to China's proceedings against leading members of the so-called ‘Democracy Party,’ our judiciary has, under the country's Criminal Law, found them guilty of seeking and accepting financial support from hostile overseas organizations with an aim of subverting state power. The trials were held in strict compliance with legal procedures which included cross examinations by procurators and defense attorneys and attendance of the public including family members of the accused. One thing some commentators tend to forget is that China is a country ruled by law. They may not like our laws, but it can not stop us from observing them.

Transcripts of judicial proceedings are made in Chinese court case hearings. The transcripts of the trials of the CDP leaders and eyewitness reports were not available for the purposes of this paper. All statements herein are made on the basis of newspaper reports and an examination of the Law of Criminal Procedure of the People's Republic of China (PRC). In this light, the Ambassador's statements may be viewed as misleading. There were apparent violations of the Law of Criminal Procedure (CPL) in the conduct of the trials of the CDP members. In addition, there are serious shortcomings in the criminal and criminal procedural laws themselves and flaws in the legal system as a whole, which are acknowledged by PRC Chinese legal scholars, that overshadow specific procedural matters. The following should not be taken as a complete list of apparent violations, but as illustrative examples thereof.

Specific Issues of Contravention of the Criminal Procedure Law in the Dissident Trials

Right to a defense

Perhaps the most egregious violation of the law in the trials of the CDP leaders has been in the area of defense and representation. Under article 125 of the Constitution of the People's

¹ 4 CDP Founders Given Stiff Prison Sentences, Hong Kong Information Center of Human Rights and Democratic Movement in China, Nov. 9, 1999, as translated in Foreign Broadcast Information Service (FBIS), online service, Nov. 12, 1999.

Republic of China (PRC), “The accused has the right to defence.”² Article 11 of the Criminal Procedure Law (CPL) similarly provides “Defendants have the right to obtain defense, and the people’s courts have the duty to guarantee that defendants obtain defense.”³ This right is elaborated in article 32, which states: “In addition to exercising the right to defend themselves, suspects and defendants may ask one or two persons to defend them” and goes on to list three types of possible defenders.⁴

The CPL also addresses the issue of the time period allowed for retention of defense counsel. Article 96 provides for retention of a lawyer during the pre-trial period: after being first interrogated by an investigating organ or from the day coercive measures are taken against him, a criminal suspect may retain a lawyer to have him provide legal advice and to file petitions or complaints on his behalf.⁵ As for the trial process itself, in cases of public prosecution, suspects have the right to retain a defender starting on the day the prosecution is initiated (art. 33, para. 1). Within three days of receipt of materials for a public prosecution, the people’s procuratorate should inform suspects that they have the right to ask a defender to defend them (art. 33, para. 2). If the suspect does not have a defender due to financial difficulties or other reasons, the people’s court may designate a legal assistance lawyer to defend him (art. 34, para. 1).

Courtroom examination of the defendant and witnesses is covered under articles 155 and 156 of the CPL. The defendant may make statements about the crime as set forth in the bill of prosecution, the prosecutor and adjudicators may question the defendant, and the prosecutor, the defenders, and the adjudicators may question witnesses. Under article 160, the public prosecutor and the defenders may express their opinions on the evidence and circumstances of the case and debate until the chief judge announces the closing of debate.

It would seem from press reports about the trials of several of the CDP leaders that their rights to defense and representation under the CPL were violated. Examination and cross-examination procedures must also have been limited because of the lack of due representation. Wang Youcai and Qin Yongmin had to present their own defense in court because,

² For the Chinese text of the 1982 Constitution as amended on Mar. 29, 1993, see 1 *Zhonghua Renmin Gongheguo falü fagui quanshu* [Complete Book of Laws and Regulations of the People’s Republic of China] 20-29 (Beijing, China Democratic Legal System Press, 1994). For an official English translation, see 5 THE LAWS OF THE PEOPLE’S REPUBLIC OF CHINA (1993) 3-41 (Beijing, Science Press, 1995). For the Chinese text of amendments adopted on Mar. 15, 1999, see 2 *Zhonghua Renmin Gongheguo Quanguo Renmin Daibiao Dahui Weiyuanhui gongbao* [Gazette of the Standing Committee of the National People’s Congress of the People’s Republic of China] (hereinafter NPC GAZETTE) 93-95 (Apr. 15, 1999); for an English translation, see *Text of PRC Constitution Amendment*, Xinhua, Mar. 16, 1999, as translated in FBIS, Mar. 16, 1999. The ambivalence of the statement about the right of defense in article 125 is pointed out in a recent monograph on Chinese law. The author notes that it is unclear from the Chinese language version of the article whether this right includes a right to counsel, even though it does do so in practice, and whether the right is limited to the court trial or is also allowed in the pre-trial investigation period. J. CHEN, CHINESE LAW: TOWARDS AN UNDERSTANDING OF CHINESE LAW, ITS NATURE AND DEVELOPMENT (Boson, Kluwer Law International, 1998).

³ The CPL was adopted on July 1, 1979, and extensively amended in accordance with the “Decision on Amending the Criminal Procedure Law of the People’s Republic of China” of Mar. 17, 1996. The revised law was promulgated the same day and became effective as of Jan. 1, 1997. For the Chinese text, see 3 NPC GAZETTE 25-84 (Apr. 15, 1996). For an English translation, see for example Xinhua, Mar. 23, 1996, as translated in FBIS DAILY REPORT: CHINA, Apr. 9, 1996, at 24-47.

⁴ These include lawyers, citizens recommended by people’s organizations or by the defendant’s work unit or authorized by the court, and relatives or guardians.

⁵ In cases involving state secrets (this does not apply, thus far, to the trials involving the CDP leaders) the investigating organ must approve the suspect’s application to retain a lawyer as well as the lawyer’s interview with the suspect (art. 96, ¶1, 2).

relatives said, the authorities had detained and intimidated their lawyers.⁶ Similarly, Liu Xianbin had to conduct his defense because a private lawyer had been pressured by judicial authorities to abandon the case.⁷ The court-appointed lawyers for Zha (Cha) Jianguo and Gao Hongming were also reportedly “too timid to properly represent them and had given no information to their families.”⁸ In the first instance trial of Wu Yilong, Zhu Yufu, Mao Qingxiang and Xu Guang, held on October 25, 1999, Zhu’s mother complained that “we were only given the trial’s date on Friday afternoon [October 23]. Our lawyer said he would not have any time to prepare a defence for Zhu Yufu.”⁹

Evidence

Article 43 of the CPL states, in part, that “Conditions must be guaranteed for all citizens who are involved in the case or who are acquainted with the circumstances of the case to provide evidence objectively and fully, and, except in special circumstances, they may be brought in to assist in the investigation.” The panel of judges in Wang Youcai’s case reportedly just dismissed out of hand the arguments he made in his own defense that his actions did not constitute an attempt to overthrow the PRC government.¹⁰ In many of the CDP leaders’ trials, the court did not provide the defendants the opportunity to present an adequate defense and there was intimidation by the police through harassment of potential defenders and detention of other CDP members. It was also reported in the press that the trials were typically concluded in less than three or four hours. Given the gravity of the charges, it would seem that there was insufficient time for the defendants and defenders to “objectively and fully” present the evidence as the CPL requires.

Openness

Article 125 of the Constitution and article 11 of the CPL provide that all cases are to be adjudicated in public, except where prohibited by law. Article 152 of the CPL states more specifically that people’s courts are to adjudicate cases of first instance in public, except for cases that involve state secrets or individuals’ private affairs. As recently as March 1999, the Supreme People’s Court issued a set of provisions on “strictly carrying out the open trial system.” Item 10, paragraph 1, states that in cases openly tried according to law, citizens may sit in as auditors, except for the mentally ill, the inebriated, and minors who have not secured approval from the people’s court.¹¹ The fact that these provisions were issued indicates not only that the judiciary attaches importance to the holding of open hearings, but also its concern that open adjudication is not being very well enforced.

⁶ Michael Laris, *2 Chinese Dissidents Put on Trial*, THE WASHINGTON POST, Dec. 18, 1998, at A63.

⁷ *AFP: Further on Sentencing of Dissident Liu Xianbin*, Hong Kong AFP, Aug. 6, 1999, via FBIS online, Aug. 6, 1999.

⁸ *Two CDP Members Stand Trial for ‘Subversion’ 2 Aug.*, Hong Kong Information Center of Human Rights and Democratic Movement in China, July 30, 1999, as translated in FBIS online, July 31, 1999.

⁹ *AFP: Further on 4 PRC Dissidents To Go on Trial 25 Oct.*, Hong Kong AFP, Oct. 23, 1999, via FBIS online Oct. 23, 1999.

¹⁰ *AFP: More on 2nd China Dissident Sentenced to 11 years*, Hong Kong AFP, Dec. 21, 1998, via FBIS online, Dec. 21, 1998.

¹¹ The provisions were issued on Mar. 8, 1999. See 2 ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN FAYUAN GONGBAO (Gazette of the Supreme People’s Court of the People’s Republic of China) 55 (1999). Depending on the courtroom venue and the number of auditors attending, when auditors must hold an auditor card to enter the courtroom, the auditor cards will be issued by the people’s court (item 10, ¶2).

Family members were allowed to attend the CDP leaders' trials, and in some cases other CDP members were also permitted into the courtroom. However, police presence was very tight. It was reported that among his relatives only Xu Wenli's wife was permitted to attend his trial,¹² and police cordoned off the court to prevent journalists and other bystanders from approaching within 500 meters of the building. Only limited courtroom admittance was allowed in the trials of Qin and Wang as well.¹³ Qin Xiaoguang, Qin Yongmin's brother, was denied entry to the Wuhan City courtroom for the sentencing.¹⁴ In addition, some Beijing-based CDP members were temporarily detained during Xu's trial apparently so they could not attend¹⁵ and the houses of several members were placed under 24-hour surveillance with the police breaking in repeatedly to warn them not to attend Xu's trial.¹⁶

Defendant's Final Statement

Under article 160 of the CPL, "the defendant has the right to make a final statement." Restrictions on the content of the statement are not set forth. According to court minutes of his trial compiled by Xu Wenli's wife, the presiding judge repeatedly interrupted Xu to warn him that he should restrict his remarks to the case at hand only and not talk about others and should "obey the presiding judge in court." Before long the judge cut Xu off completely, stating that "You've strayed away from the point. You've refused to answer questions at the trial and this shows that you've held the court in contempt. Stop your statement."¹⁷

Political Crimes and the Drafting of Laws in General

Although crimes of counterrevolution have been done away with in the Criminal Law as revised in 1997,¹⁸ they have been substituted with crimes against national security, which, according to one Chinese law expert, "allow the government as much or even more leeway to criminalize political dissent as did the old counterrevolutionary provisions."¹⁹ Thus, the change is basically

¹² AFP: *2 Dissidents Jailed Over Bid To Form New Party*, Hong Kong AFP, Dec. 21, 1998, via FBIS online, Dec. 21, 1998.

¹³ AFP: *Spokesman: Foreign Criticism of Trial 'Irresponsible'*, Hong Kong AFP, Dec. 22, 1998, via FBIS online, Dec. 22, 1998. Xinhua News Agency reported that family members as well as "people from various walks of life" attended the Xu and Wang court hearings, but it is unclear who such people were. *PRC Sentences 2 to Prison for Subversion of State Power*, Xinhua, Dec. 21, 1998, via FBIS online, Dec. 22, 1998. Apparently 3 of Wang's supporters were able to attend his trial. *Supra* note 10.

¹⁴ AFP: *Qin Yongmin Sentenced to 12 Years for Subversion*, Hong Kong AFP, Dec. 22, 1998, via FBIS online, Dec. 21, 1998.

¹⁵ *Six Held, Court Cordons Off Supporters as Xu Stands Trial*, SOUTH CHINA MORNING POST, Dec. 22, 1998, at 8, via FBIS online, Dec. 22, 1999.

¹⁶ *Dissidents Reportedly Detained in Beijing, Shenzhen*, Hong Kong Center of Human Rights and Democratic Movement in China, Dec. 20, 1998, as translated in FBIS online, Dec. 21, 1999.

¹⁷ *Court Minutes of Xu Wenli's Trial*, Hong Kong Information Center of Human Rights and Democratic Movement in China, Dec. 27, 1998, as translated in FBIS online, Jan. 2, 1999.

¹⁸ The Law was originally adopted by the National People's Congress on July 1, 1979, promulgated on July 6, 1979, and effective as of Jan. 1, 1980. The extensive revision was adopted on Mar. 14, 1997, promulgated and effective as of Oct. 1, 1997. For the Chinese text, see 2 NPC GAZETTE 138-218 (Mar. 30, 1997). For an English translation, see for example WEI LUO, THE 1997 CRIMINAL CODE OF THE PEOPLE'S REPUBLIC OF CHINA: WITH ENGLISH TRANSLATION AND INTRODUCTION (Buffalo, N.Y., William S. Hein & Co. Inc., 1998).

¹⁹ Kevin Platt, *US Sees Signs of Chinese Chess*, THE CHRISTIAN SCIENCE MONITOR, Dec. 23, 1998, p. 6, via LEXIS/NEXIS, News Library, Cumws File.

cosmetic. It is for crimes under this category—in particular, the crime of organizing, plotting, or acting to subvert the political power of the state or overthrow the socialist system (art. 105)--that the CDP leaders have been prosecuted. It may be noted, moreover, that the CPL has not done away with the old language. Article 20 stipulates that intermediate people's courts are courts of first instance in criminal cases involving, among others, "counterrevolutionary cases and cases endangering national security." According to Ding Zilin, whose son was killed in the June 4, 1989, crackdown in Tiananmen Square, Xu Wenli was a moderate dissident who recognized the CCP's ruling position and applied to the authorities before establishing the CDP. She questions, therefore, how he could be found guilty of subversion.²⁰

Improvements have been made in the drafting of laws in recent years, but many Chinese laws are still characterized by vague and flexible wording. The wording of the Criminal Law's article 105 on subversion, cited above, is a case in point. The Constitution and the CPL provide for open trials, but the degree of openness allowed is unclear, and the degree of openness to the public that might be assumed to be permitted in courtrooms in countries of rule of law may not yet be realized in a country that is aspiring to rule by law.

Chinese Legal System

Aside from questions of whether or not the provisions of a certain law are adhered to and how rigorously the laws themselves are formulated, there are certain features of the Chinese legal system that affect any consideration of the degree of compliance with the laws on the books.

One-party rule

The PRC is under the rule of a single party, the Chinese Communist Party. The leadership of the CCP and the guidance of Marxist-Leninist-Maoist thought and Deng Xiaoping theory are embedded in the Preamble to the Constitution, as is the principle that there will be continued adherence to the people's democratic dictatorship and the socialist road. Hence, challenges to one-party rule will be taken as attempts to subvert the CCP's control. The CDP clearly represented such a challenge, even if its leaders did not advocate the overthrow of the CCP or of the socialist system. As is noted below, in September 1998 Party policy lay behind the crackdown that began on nascent non-conformist political groups. The Constitution's Preamble says that the system of multiparty cooperation and political consultation led by the CCP will exist and develop for a long time to come. The parties referred to are small groups, funded and controlled by the CCP, that are part of the CCP's united front strategy to win goodwill abroad. They are not truly independent political organizations; in fact, in December 1996, the CCP Central Committee issued a document to strengthen political leadership over the so-called democratic parties and to increase the number of CCP members in their ranks.

²⁰ *Article on 'Politically Motivated' Trials Against Rights*, HONG KONG STANDARD, Dec. 22, 1998, at 6, via FBIS online, Dec. 22, 1998.

“Rule by law” and rule of law

Rule by law does not equate with rule of law. In his preface to the book *Basic Knowledge on the Construction of the Socialist Legal System*, dated August 12, 1996, PRC President (lit. Chairman) Jiang Zemin defines rule by law in China. He said that practicing and insisting on ruling the country according to law means, under the leadership of the Chinese Communist Party, making an effort to carry out legal institutionalization and the normalization of all kinds of work to guarantee that the masses, through various means and in accordance with the provisions of law, participate in managing affairs of State, economic and cultural undertakings, and social affairs. The goals of having laws to rely on, of laws being observed, of strict implementation, and of sternly dealing with violators [oft-cited ideals of the Chinese legal system] should be achieved so that enterprises can smoothly develop on the track of the socialist legal system. Jiang also stated that the Party must carry out its activities within the scope of the Constitution and the laws, manage affairs strictly in accordance with law, and rule the country according to law. In his view, this will be significant in unifying the Party and the people in maintaining solemn respect for law and the authority of the CCP Central Committee.

It was only in amendments adopted in March 1999 that the principle of “governing the country according to law” (*yi fa zhi guo*) and building China into a “socialist country based on the rule of law” (*shehui zhuyi fazhi guojia*) was written into the PRC Constitution. Before this step was taken, the principle had been incorporated in the Ninth Five-Year Plan for National Economic and Social Development and the Long-Term Target for the Year 2010 of the PRC (adopted in March 1996). It would seem, therefore, that the Chinese authorities, however vigorously they may be promoting rule by law, view it as a goal that has yet to be reached. Moreover, despite improvements made in this direction, PRC legal scholars still decry instances of by rule of man. The CCP still exerts strong influence over the legal system.

Right to freedom of speech and association

Article 35 of the PRC Constitution guarantees the rights of freedom of speech, press, assembly, association, and procession and demonstration. Those rights are not fully recognized in the field of political activities, however; they are subordinated to concerns about the maintenance of CCP rule. In an interview with reporters concerning the sentencing of Zha Jianguo and Gao Hongming, “a concerned party” said that “Chinese citizens’ right to freedom of association should be protected in accordance with law. However, the act of organizing and planning to subvert the government violates China’s Constitution and should be punished in accordance with the law.”²¹ As has been noted above, “subversion of the government” equates with challenges to the CCP’s exclusive control over it.

The backdrop of the trials of CDP leaders must also be kept in mind. Controls on freedom of association began to be exerted in the fall of 1998. In early September of that year, the State

²¹ *Court Sentences 2 Men to Imprisonment for Subversion*, Xinhua, Aug. 2, 1999, as translated in FBIS online, Aug. 2, 1999.

Council had issued a circular on procedures for applications to organize political groups, based on article 35 of the Constitution. Although it was unlikely, because of the many restrictions it imposed, that any group would actually succeed in organizing, it was still a rather remarkable document, according to the anti-communist journal *Cheng Ming*. However, a couple of its provisions state that “serious cases of disruptive and inflammatory political activity will be sanctioned” and that “subversive political activity” must be guarded against, dealt with firmly by legal means, and cracked down upon. Then, in mid-September 1998, in an abrupt change of policy, the Ministries of Public Security, State Security, and Civil Affairs as well as high-level CCP cadres and procurators held a teleconference that labeled efforts by political groups to register as “a challenge by hostile forces” and called for a “prompt and harsh crackdown.”²² Luo Gan, Politburo member and Secretary of the CCP Central Political Legal Committee, outlined the policy to be followed towards those who apply to form opposition parties. In particular, he pointed out that “hostile elements” who collude with and are manipulated by “hostile overseas forces,” who apply to form a group in order to create political incidents and who continue to do so after being warned, are to be detained for investigation or reported for arrest.²³ Shortly thereafter, new regulations²⁴ were also issued on the registration and management of social organizations that make it more difficult for social groups to become formally recognized. For example, even before applying to register, a group must apply for approval to carry out preparatory activities to establish a social organization.

The judiciary

- Poor quality of PRC judges

Chinese judicial authorities and Chinese legal scholars repeatedly stress the importance of improving the quality of judges. Luo Ginned, in an address to presidents of Intermediate People’s Courts delivered in October 1999, said that China needs to form a team of high-caliber judges if fairness in the judiciary is to become a reality. He added that the courts should work to safeguard judicial fairness, “which is at the heart of the socialist democratic and legal system and vital for the country’s reform, development and stability.”²⁵ To this end, training courses for judges, who typically have no or little formal legal training, are being held within the next three years to improve the professional capabilities of judges at a certain level. At the same conference, Xiao Yang, President of the Supreme People’s Court, said that “a fair, clean and highly-efficient panel of judges is the guarantee for judicial fairness, which is the basic requirement of the Party and the people.”²⁶

The CPL does not prescribe the length of court hearings. However, the brevity of the trials of the dissidents, which typically lasted only about four hours, raises concerns about the quality of the judges and their fair-mindedness.

²² Lung Yung, *Hard Liners Prepare To Crack Down on Non-Government Activities To Form Parties*, 252 CHENG MING (Contending) 6-8 (Oct. 1, 1998), as translated in FBIS online, Oct. 14, 1998.

²³ *Id.*

²⁴ Adopted by the State Council on Sept. 25, 1998, promulgated and effective as of Oct. 25, 1998. For the Chinese text, see 27 ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO 1028-1035 (Nov. 23, 1998) ; for an English translation, see Xinhua, Nov. 3, 1998, as translated in FBIS online, Nov. 5, 1998.

²⁵ Luo Ginned Says PRC Needs High-Caliber Judicial Team, Xinhua, Oct. 26, 1999, via FBIS online, Oct. 26, 1999.

²⁶ *Id.*

- PRC Lack of judicial independence

An independent judiciary is not part of the legal tradition of the PRC. While impressive changes in the legal system have been made in the last 20 years, it has been pointed out that “Without fundamental political changes [in the authoritarian rule of the CCP] there can be no independent judiciary or an autonomous bar - key elements of the rule of law.”²⁷ The revised CPL mirrors the 1982 PRC Constitution’s provision on judicial independence: the courts, in accordance with the law, are to exercise judicial power independently, without being subject to interference by administrative organs, public organizations or individuals.²⁸ However, the Constitution also upholds the principle of the leadership of the CCP, which seems to imply that judicial independence is still subject to the Party’s dictates. It had been proposed that the provision on judicial independence in the PRC’s 1954 Constitution—“People’s courts shall conduct adjudication independently and shall be subject only to the law”—be included in the revised CPL, but the proposal was rejected.²⁹

Conclusion

In the trials of leaders of the China Democracy Party, aspects of procedures involving the right to a defense, full and objective presentation of evidence, openness of the trial, and the defendant’s full exercise of the right to make a final statement appear to have been violated. Easy solution of this problem does not appear near at hand, given the flexible and vague nature of many provisions of the criminal and criminal procedure laws, one-party rule by the Chinese Communist Party, the lack of a strong judiciary, and the fundamental conflict between the exercise of constitutional freedoms and the state’s broad power to suppress treasonable and other criminal activities that endanger national security.

Prepared by Wendy I. Zeldin
Senior Legal Research Analyst
Directorate of Legal Research
Law Library of Congress
August 201999

²⁷ Chen, *supra* note 2, at 85, citing Gelatt, LAWYERS COMMITTEE FOR HUMAN RIGHTS, CRIMINAL JUSTICE WITH CHINESE CHARACTERISTICS: CHINA’S CRIMINAL PROCESS AND VIOLATIONS OF HUMAN RIGHTS 85 (New York, 1993).

²⁸ Arts. 126 & 5, respectively.

²⁹ Chen, *supra* note 2, at 215-216. Chen cites art. 78 of the 1954 Constitution. He points out that the same provision was in art. 4 of the 1954 Organic Law of the People’s Courts of the PRC. Art. 4 of the 1979 Organic Law of the People’s Courts has the same version of the provision as the 1982 Constitution.