

LEGAL MEASURES TO CONTROL DISSIDENTS IN THE PEOPLE'S REPUBLIC OF CHINA

The People's Republic of China (PRC) has established several channels for control of dissidents through law, including the regulations on public order, re-education through labor, and the Criminal Code. In addition, there are regulations to control the press that indirectly work to control dissent.

The Regulations Governing Offenses Against Public Order ^{1/} provide for the detention of offenders for up to 15 days, fines, or warnings, on the authority of the police alone. Although police decisions can be appealed, the appeal must be made first, within five days, to higher level police organs, and then, again within five days, to the local people's court. There is no provision for the right to defense and no obligation on the part of the authorities to tell the detained individual of the right to appeal. A person can be held in detention during the appeal process, unless bail or a guarantor can be arranged. Furthermore, the police have the right to hold a person in custody for 24 hours for "investigation."

These public order provisions are aimed at those who disturb social order, but whose behavior does not warrant their being treated as a criminal under the Criminal Code (art. 1). In addition to covering the type of offenses dealt with directly by police in many countries, such as traffic and other safety violations, the regulations are applicable to "persons who

^{1/} Sept. 5, 1986, effective Jan. 1, 1987, replacing similar regulations of Oct. 22, 1957. Chinese text in Zhonghua renmin gongheguo falü huibian 1986 [Collection of Laws of the PRC 1986] 84-98 (Beijing, People's Press, 1987). English translation in Joint Publications Research Service, China Report: Political, Sociological, and Military Affairs, Oct. 21, 1986, at 23-34.

disrupt order in government departments, public organizations, enterprises, and institutions," (art. 19, §1) "persons who spread rumors to mislead the public [thereby] inciting the public to make trouble," (art. 19, §5), "persons who make false reports on incidents with the intention of creating confusion," (art. 19, §6) and "persons who obstruct state functionaries in the execution of their duties," even where no threat or violence is used (art. 19, §7). All of these actions are punishable by up to 15 days detention, a 200 yuan fine, or a warning. The potential for use by authorities to intimidate those whose views are not orthodox is clear. Anyone suspected of having spread anti-government rumors can be held for a day for "investigation" and possibly for the whole 15 days. In addition, persons who openly insult others or fabricate slanderous stories can be treated in the same manner (art. 22, §3).

The regulations covering "re-education through labor" were first adopted August 1, 1957. ^{2/} They remained in force in their original form until 1979, when they were re-issued with amendments. ^{3/} Under these regulations, plainly intended to strengthen social control, people without steady jobs, those who do not obey work orders, and "counterrevolutionaries and anti-socialist reactionaries," can be assigned to be re-educated by working in a labor camp. The decision to send someone for re-education is

^{2/} 6 Zhonghua renmin gongheguo fagui huibian 1957, 7 yue-12 yue [Collection of Laws and Regulations of the PRC for Sept.-Dec. 1957] 243-244 (Shenxi, Legal Press, 1981).

^{3/} Nov. 29, 1979. Chinese text in Zhonghua renmin gongheguo fagui huibian 1979 [Collection of Laws and Regulations of the PRC 1979] 139 (Beijing, New China Press, 1986). English translation in Foreign Broadcast Information Service, Daily Report: People's Republic of China (FBIS), Jan. 26, 1980, at L4-L5.

made by a local government organ. There is no court hearing and no procedure for appeal. Thus anyone expressing dissident sentiments can be considered a "counterrevolutionary" and forced to a labor camp without being convicted of a crime.

Originally, the regulations on re-education through labor specified no limit to the amount of time a person could be held, and some were in labor camps for many years. One prison inmate who served in the labor camps in the late 1950's and early 1960's states that those serving re-education terms were usually there for three years. ^{4/} Another observer from about the same period noted that re-education subjects served in the same camps as prisoners under criminal sentence, but received wages. Once their official terms were finished, however, they, like other inmates, were encouraged to stay on in the camps. ^{5/} Observers all agree that conditions in the camps were harsh, labor intensive, and food scarce. The 1979 amendment formalized the one to three year term, providing for extensions of one additional year. However the basic nature of the regulations remained the same; there is still a non-judicial channel for punishment of counterrevolutionaries.

In 1979, the PRC took a major step toward rule by law by enacting its first Criminal Code. ^{6/} Part II, Chapter I of the Code defines crimes of counterrevolution. These are generally defined as acts performed with the

^{4/} Bao Ruowang and R. Chelminski, Prisoner of Mao II (New York, McCann & Geoghegan, Inc., 1973).

^{5/} Ying Lai, The Thirty-Sixth Way 95 (London, Constable & Co., 1970).

^{6/} July 1, 1979, effective Jan. 1, 1980. Chinese text in Zhonghua renmin gongheguo falü huibian 1979-1984 (FLRB) [Collection of Laws of the PRC 1979-1984] 98-132 (Beijing, People's Press, 1985). English text in The Criminal Law and the Criminal Procedure Law of China (CLCPL) 5-64 (Beijing, Foreign Languages Press, 1984).

goal of overthrowing the political power of the dictatorship of the people or the socialist system (art. 90). In addition to the types of acts generally associated with the crime of treason in any country, including espionage, the Chapter outlines punishments for the types of offenses dissidents are likely to be accused of committing. Article 98 specifies that anyone organizing a counterrevolutionary group should be sentenced to no less than five years imprisonment; participants in such a group may be imprisoned five years or less.

Article 99 originally specified a sentence of at least five years for organizing a superstitious sect to carry on counterrevolutionary activities. In 1983, the Standing Committee of the National People's Congress approved a decision on more severe punishments, up to the death penalty, for "criminal elements who seriously endanger public security," including the organization of superstitious sects for counterrevolutionary purposes. ^{7/}

A sentence of up to five years may be given to those who incite the masses to resist or sabotage state laws or who use slogans and leaflets to propagandize for the overthrow of the political power of the dictatorship of the proletariat and the socialist system (art. 102). Furthermore, even before the 1983 decision to increase penalties for many crimes, article 103 of the Code specified that the death penalty could be applied to violators of article 98, 99, and 102 if "harm to the state and the people is especially

^{7/} Sept. 2, 1983. Chinese text in FLBB at 472-474. English text in CLCPL at 241-242.

serious and the circumstances especially odious." Since the terms of article 103 are nowhere defined, its vague standards are up to broad interpretation; the potential for political use is strong.

In addition to the criminal legislation, other measures can be imposed that may act to squash communications between dissidents, thus containing any movements the government does not want to see flourish. The Supreme People's Court and the Supreme People's Procuratorate have recently issued a joint circular banning "illegal publications."^{8/} While the controls are primarily aimed at stopping pornography, materials containing "feudal superstition and reactionary ideas" are also banned.^{9/} The joint circular states that the penalties for engaging in publication activities that are not sanctioned may be anything from 10 years imprisonment to the death penalty.

The experience of Yang Wei, a Chinese citizen arrested in January 1987, illustrates the operation of the laws on counterrevolution. He was held for close to a year while the case was being investigated, months longer than the period allowed under Chinese criminal procedure law. Yang was finally tried and sentenced December 21, 1987, to a term of two years for inciting unrest and spreading propaganda for a New York group, the Chinese Alliance for Democracy. Authorities claimed he had attacked the people's democratic dictatorship and the socialist system, two of the four basic principles, sometimes called the "four upholds" outlined in the Preamble to

^{8/} Renmin ribao [People's Daily], Dec. 29, 1987, at 4; translated in FBIS, Jan. 11, 1988, at 19.

^{9/} See Xin Lin, "Why Illegal Publications Have Been Banned," Beijing Review, Aug. 17, 1987 at 4.

the PRC Constitution. This language used to describe his counter-revolutionary crimes, the same used in the Criminal Code to define such crimes, is sufficiently vague that it could be stretched to apply to any form of opposition to the state. The Chairman of the Standing Committee of the National People's Congress, Peng Zhen, claimed that Hu Yaobang, prior to his downfall last year, sometimes upheld the four principles and sometimes did not. While Hu lost the powerful position of Chairman of the Chinese Communist Party, he did not face criminal prosecution for counterrevolution. Thus application of the standard of not maintaining the "four upholds" can be very selective. The Chinese system of criminal justice is being built step by step, and progress has been made in the last eight years, but China still lacks a fully independent judiciary. Although party secretaries are no longer supposed to be consulted for routine cases, they are called in for politically sensitive matters. Yang Wei, like others such as Wei Jingsheng before him, is a victim of use of the legal system to control dissent.

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