

GUN CONTROL IN THE PEOPLE'S REPUBLIC OF CHINA

On July 1, 1979, the Second Session of the Fifth National People's Congress of the People's Republic of China adopted a Criminal Code. This code went into effect January 1, 1980. Two of its articles deal with gun control. These articles are:

Art. 100. Any of the following destructive acts for counterrevolutionary purposes will be punishable by life imprisonment or fixed-term imprisonment of not less than 10 years; in less serious cases offenders will be sentenced to fixed-term imprisonment of not less than 3 and not more than 10 years:

- (1) Destruction or damage to any military installation, production facility, telecommunications and transportation installation, building project and safety installation or other public building and property through explosion, arson or deliberate inundation;
- (2) Theft of any state document or military material and the robbing of any factory and mining enterprise, bank, department store, warehouse or other public property;
- (3) Highjacking of any ship, aircraft, train, streetcar or motorcar;
- (4) Directing the enemy to any bombing or shelling target; and
- (5) Making, robbing or stealing any gun or ammunition. ^{1/}

Art. 112. The illegal making, trading and transporting of arms and ammunition or the theft in any form of guns and ammunition from state organs, police or militiamen will be punishable by fixed-term imprisonment of not more than 7 years. In serious cases this will be punishable by fixed-term imprisonment of not less than 7 years or life imprisonment. ^{2/}

^{1/} Foreign Broadcast Information Service, Daily Report, People's Republic of China, v. 1, no. 146, supplement 019, July 27, 1979, p. 49.

^{2/} Ibid.

Article 100 appears in Chapter I of the code; this section deals with counterrevolution. Article 90 provides that "counterrevolutionary offenses are those for the purpose of overthrowing the political power of the dictatorship of the proletariat and the socialist system and jeopardizing the People's Republic of China."

Article 112 appears in Chapter II, which deals with "violation of public security." The code does not give a general definition of "violation of public security."

On November 29, 1979, the Standing Committee of the Fifth National People's Congress adopted a resolution on the status of past laws. As presented in Foreign Broadcast Information Service, Daily Report, People's Republic of China, November 30, 1979, p. L3-L4, this resolution reads:

To strengthen and perfect the socialist legal system and to insure the smooth progress of the socialist modernization drive, it is hereby decided, in accordance with the guidelines of the resolution on the validity of the PRC's existing laws and decrees adopted by the first session of the 1st NPC in 1954, that the laws and decrees approved and enacted by the former central people's government since the founding of the PRC on 1 October 1949 and the laws and decrees formulated and approved by the NPC and its Standing Committee since the establishment of the PRC Constitution by the first session of the 1st NPC on 20 September 1954, shall remain in effect except for those which are in conflict with the Constitution and laws formulated by the 5th NPC and those which are in conflict with the decrees formulated and approved by the Standing Committee of the 5th NPC.

The First Session of the Fifth National People's Congress of the People's Republic of China convened in Beijing February 26 to March 5, 1978. The resolution does not indicate what body is to decide if a past law is in conflict with an enactment of the Fifth National People's Congress or its Standing Committee nor how "in conflict" is to be interpreted. We have not seen primary materials discussing these issues.

Against the background of these statements, we are discussing the provisions of the Provisional Measures Governing the Control of Guns, promulgated by the Ministry of Public Security of the People's Republic of China on June 27, 1951.^{3/} Article 1 of these measures defines "guns" as referring to all kinds of firearms, with the exception of hunting guns.

Many of the articles of these measures were aimed at identifying and gaining control of the large number of guns which were within the borders of China as a result of the long period of war which preceded the institution of the present government. Article 15 stipulates:

After these measures are promulgated, the local people's public security organs together with other government organs must take inventory within a defined period of all guns currently in existence so that gun permits may be issued to authorized personnel.

Categories of persons whose members could be authorized to carry guns are specified in Article 7:

In addition to military personnel on active duty, the following personnel may carry guns:

- (1) If it is necessary to their work and after having received permission from the proper organs, those with the rank of section head or above of a people's government at the level of shih [city] or hsien [county] or above.
- (2) If it is necessary to their work and after having received permission from the head of the hsien, the primary responsible cadres of the people's government at the ch'u [a subdivision of the hsien] level.
- (3) If it is necessary to their work and after having received permission from the head of the people's public security organ at the shih or hsien level or above, public security personnel at the various levels.

^{3/} Zhonghua renmin gongheguo youguan gongan gongzuo fagui huibian [Collections of laws and regulations relating to public security work in the People's Republic of China], Beijing, Qunzhong chubanshe [Mass Press], 1958, p. 51-56.

- (4) If it is necessary to their work and after having received permission from the proper organs at the shih or hsien level or above, the guards of the communications and telecommunications personnel of various organs and the chief of such organs, and other cadres not covered by the provisions of sections 1 and 2.
- (5) If it is necessary to their work or training and after having received permission from responsible persons at the school and moreover the agreement of the people's public security organ at the shih or hsien level or above, higher level cadre schools and classes which have a military nature.

Article 8 provides that without special permission the personnel of publicly operated factories, stores, enterprises and mass organizations, and teachers and students of non-military schools are not allowed to carry guns.

By the provisions of Article 9, guns presently in the possession of personnel of various organs, groups, and enterprises who do not meet the requirements stated in Articles 7 and 8 are to be surrendered to the people's governments at the hsien level or above. In Article 10 it is ruled that privately operated enterprises having guns must apply for a gun permit for such guns; if this application is denied, the guns are to be confiscated.

Those carrying guns are required by Article 11 to obtain a gun permit, which is to contain the following particulars about its bearer and the gun for which it was issued: name, age, sex, place of birth, residence, organ, occupation, type of gun, serial number, identifying marks [of gun], quantity of ammunition, and expiration date. With the exception of members of the militia, who may substitute a fingerprint, a picture of its bearer is to be displayed on the gun permit.

Article 13 counsels that those carrying guns must: (1) take special care to prevent the loss of their guns; (2) in case of loss, report it immediately to the people's public security organ, at which time they are to surrender their gun permit; (3) never lend their gun, give it as a gift, or exchange it; (4) carry their gun permit whenever carrying the gun for which it was issued; (5) show their gun or permit for inspection on demand to public security personnel or armed forces personnel; (6) in case of loss of the gun permit, insert an announcement in the newspaper to invalidate the lost permit, and report to the public security organ for the issuance of a new permit.

Control by the government of guns in the People's Republic of China goes beyond the requirement and issuance of permits to authorized personnel. Article 2 of these measures provides that ammunition and guns can be manufactured and repaired only in state factories and repair shops. Article 3 stipulates that only organs designated by the state may buy or sell guns and ammunition.

Article 19 places responsibility for the enforcement of these measures upon the Ministry of Public Security of the People's Government. Without spelling out definite penalties, Article 16 provides:

In case of violation of these measures, the public security organs of the area must report the case to the local people's government for punitive action in accordance with the seriousness of the offence.

It is provided in Article 18 that different regulations are to be issued for the minority nationality areas.

On October 22, 1957, the Standing Committee of the First National People's Congress adopted the Regulations of the People's Republic of China Governing Public Security Administration and Punishments. These

regulations are considered an administrative, rather than a criminal enactment, and the sanctions provided in them are imposed by the public security organs rather than the courts. Article 9 of these regulations calls for detention of less than 5 days, a fine of under 10 yuan, or a warning to anyone who has committed one of a list of offenses that includes:

- (1) Buying and possessing guns and ammunition for athletic and sports purposes without government permission, or failing to meet safety rules in keeping such guns and ammunition;
- (2) Manufacturing, buying and possessing shotguns and setting up shotgun repair shops without government permission; and,
- (3) Setting up and using civilian shooting ranges that fail to meet safety rules. 4/

These regulations were reissued in February 1980; their reissuance can be taken as an affirmation of their continued validity.

4/ Foreign Broadcast Information Service, Daily Report, People's Republic of China, February 26, 1980, p. L10.

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