

Decision No. 43/1993 (People's Republic of China)

Communication addressed to the Government of the People's Republic of China on 22 February 1993.

Concerning: Huang Shixu and Lu Gang, on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:

- I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or
- II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or
- III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the People's Republic of China. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The facts, in the absence of a response from the Chinese Government, suggest that Huang Shixu aged 30, from Tianjin, was arrested in early September 1992 as he was the head of the autonomous workers' movement in Tianjin. He was earlier detained in 1989 and released in the summer of 1992. Lu Gang, aged 30, also from Tianjin, was arrested in mid-September 1992. He

is also said to have been detained earlier in 1989 and released in the summer of 1992. He had been detained for his activity in the autonomous workers' movement in Tianjin. The facts further suggest that both Huang Shixu and Lu Gang were arrested after being interviewed by a French Television team. In the interview in August 1992 they reflected upon their experiences in prison.

6. That both Huang Shixu and Lu Gang were arrested without a warrant and for their work in the autonomous workers' movement in Tianjin makes their detention arbitrary. That they have thus far neither been charged or tried makes their continued detention arbitrary. Their detention is in clear violation of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 19, and 22 of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

The detention of Huang Shixu and Lu Gang is declared to be arbitrary being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 19 and 22 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Huang Shixu and Lu Gang to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 September 1993.