

Decision No. 53/1993 (People's Republic of China)

Communication addressed to the Government of the People's Republic of China on 3 August 1993.

Concerning: Chen Lantao, 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 appreciation the information forwarded by the Government concerned in respect of the case within ninety (90) days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of decision No. 43/1993.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the People's Republic of China. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Chen Lantao, a marine engineer, was reportedly detained on 12 June 1989, and formally arrested a month later in Shangdong Province by Public Security Officers. A warrant for the detention was allegedly produced by the Qingdao Procuratorate and Qingdao Intermediate People's Court. He was reportedly held under custody by the Shangdong provincial prison authorities. He was reportedly tried and convicted by the Qingdao Intermediate People's Court for "counter-revolutionary propaganda and agitation", "disturbing social order" and "disturbing traffic" under articles 52, 60, 64, 103, 158 and 159 of the Criminal Law of China (1979) and article 100 of the Criminal Law of China (1979). Allegedly, in 1991 an appeal petition taken to the Higher People's Court of Shangdong Province was denied.
6. It was also alleged that Chen Lantao's pre-arrest detention exceeded the maximum authorized under the Criminal Procedure Law of China (1979) by almost one month.
7. The Government in its response dated 19 November 1993 stated that Chen Lantao was tried for inciting mobs to disrupt traffic and fomenting social disorder and specifically denied that his conviction had anything to do with listening to the Voice of America or for peacefully exercising his constitutional rights.
8. The complete absence of details in respect of Chen Lantao's trial and conviction leads the Working Group to believe that the conviction of Chen Lantao is based solely on the ground that he listened to the Voice of America, distributed leaflets on the basis of information gathered by

listening to the Voice of America, met with student leaders in Qingdao and called for student strikes. Indeed these activities were in exercise of Chen Lantao's right to free speech and assembly, guaranteed by articles 35 and 41 of the Constitution of the People's Republic of China (which guarantee freedom of speech, of assembly, of association, of procession and of demonstration, and which also grant citizens the right to criticize and make suggestions to any state organ or functionary) and also by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights. Exercise of such entrenched rights cannot form the legal basis of a conviction. Any municipal legislation that considers such activities as "counter-revolutionary propaganda and agitation", "disturbing social order" and "disturbing traffic" is also liable to be declared inconsistent with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and thereby declared inoperative.

9. Chen Lantao's detention in these circumstances is also clearly violative of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

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

The detention of Chen Lantao from its inception is in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of Chen Lantao 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 7 December 1993.