

OPINION No. 16/1999 (CHINA)

Communication addressed to the Government on 11 January 1999

Concerning Liu Nianchun

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I) ;
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Group transmitted the reply of the Government to the source and received its comments. The Group is in a position to render an opinion 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 information brought to the attention of the Working Group, Liu Nianchun, a labour activist and veteran Democracy Wall campaigner, was arrested on 21 May 1995 after signing several petitions. He was apprehended at his home in Beijing, and allegedly held incommunicado for one year without charges and without trial. In July 1996, he was sentenced to three years of re-education through labour.
6. Liu decided to challenge his administrative sentence by suing the Public Security Bureau and the Re-education Through Labour Committee. His case was heard on 17 September 1996.

Reportedly, no friends or relatives were able to attend the hearing, and Liu was only allowed to meet his lawyer a few hours before the trial. Two months later, his case was rejected. At the time of submission of the case, Liu Nianchun remained detained at Shuanghe Labour Camp, and his health allegedly was poor. According to the source, his sentence was extended by more than 200 days in May 1997, again without a trial.

7. In its reply, the Government confirms that Liu Nianchun was assigned to three years' re-education through labour on 14 May 1996, by decision of the Beijing Municipal Re-education Committee.

8. The Government notes that Liu Nianchun objected and on 16 July 1996 requested his wife, Chu Hailan, to submit an administrative appeal to the courts. On 17 September 1996, the Chaoyang District People's Court in Beijing conducted a public hearing with Chu and the lawyers she had hired. The court determined that the facts in the Re-education Through Labour Committee's decision were clear, that the evidence was ample, that the law had been correctly applied and the proper legal procedure observed. It therefore upheld the Committee's decision assigning Liu Nianchun to re-education. Liu objected and appealed to the Beijing No. 2 Higher People's Court. On 18 March 1997, a collegiate bench constituted by the court conducted a hearing, in which it found that the facts in the decision of the court of first instance were clear, that the law had been correctly applied, and that the trial procedure had been lawful. It accordingly rejected the appeal and upheld the original judgement.

9. Subsequently, considering Liu's appearance and physical condition in the re-education facility, the Chinese law enforcement authorities decided to allow him to seek medical assistance. Liu and his relatives requested that he be allowed to go to the United States to seek treatment and visit his family, and permission was obtained. He and his family left for the United States on 20 December 1998. According to the Government, his period of re-education was never extended.

10. The Working Group has taken note of the release of Liu Nianchun for health reasons. Having examined all the information submitted to it, and without determining whether the detention of Liu Nianchun was arbitrary or not, the Working Group accordingly decides, and pursuant to paragraph 17 (a) of its working methods, to file the case of Mr. Liu Nianchun.

Adopted on 15 September 1999