

OPINION No. 21/1999 (CHINA)

Communication addressed to the Government on 3 September 1998

Concerning Wang Youcai, aged 32

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. 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 Government's reply to the source, which did not comment on the Government's reply. The Working 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 source, Mr. Wang Youcai had, on 25 June 1998 and with some other individuals, lodged an application to register a new political party, called the "Chinese Democratic Party". The application was lodged at the provincial Civil Affairs Department, which informed Wang Youcai and the others to return the following Monday, 29 June. On that date, Wang Youcai was taken away from his home by plainclothes policemen and detained for interrogation for a total of eight hours.

6. After releasing him, the police reportedly warned him that it would take further action if the group did not drop its plan to register the party. Later, the police searched the home of Wang Youcai and confiscated some of his and the group's papers, without producing a search warrant.

7. The family of Wang Youcai was reportedly informed later by the police to bring clothing and his daily necessities to the Mishiang Detention Centre in Hangzhou, where he was then being held. At some point, probably in August 1998, he was released from detention and placed under house arrest.

8. In its reply, the Government explains that in 1989, Wang Youcai had been sentenced to three years' imprisonment and two years' deprivation of political rights for incitement to subversion of State power. In 1991, he was released on parole. In June 1998, in order to subvert State power, Mr. Wang plotted to set up an illegal organization called the "Democratic Party of China". He established the "Zhejiang Provincial Preparatory Committee of the Democratic Party of China" and drafted "regulations" and "declarations".

9. On 21 December 1998, the Huangzhou Municipal Intermediate People's Court of Zhejiang Province publicly tried Mr. Wang's case in accordance with the law. After hearing statements from both the prosecutor and Mr. Wang's defence counsel, the court decided that, pursuant to the relevant provisions of the Chinese Criminal Code, Wang Youcai's acts were constitutive of the crime of attempted subversion of State power; and since Mr. Wang was a recidivist, he had to be punished according to law. The court sentenced Wang Youcai to 11 years' imprisonment and 3 years' deprivation of political rights.

10. The Government notes that China's Constitution and other laws clearly lay down that Chinese citizens have the right to freedom of speech, publication, assembly and association. The citizens' exercise of their rights is guaranteed by law. Under Chinese law, to hold views different from those of the Government without being engaged in illegal activities is no crime. Wang Youcai was convicted and sentenced not for holding views differing from those of the Government but because of his illegal activities which, according to the Government, had nothing to do with the exercise of his right to freedom of speech.

11. China's Constitution provides that while exercising their rights to freedom of speech and association or other rights, citizens shall not jeopardize the State, social and collective interests or infringe upon other citizens' legitimate rights and freedoms.

12. While providing for such rights and freedoms, articles 19 and 22 of the International Covenant on Civil and Political Rights clearly provide that necessary restrictions may be placed on the exercise of these rights, in the interest of national security, public safety or public order, or for the protection of the rights and freedoms of others.

13. The crime of trying to subvert State power is universally punished. Owing to differences in cultural traditions and development levels, countries have adopted different systems, in the light of their national conditions. It is a primary purpose of the laws of the world's countries to

defend their State systems and protect their national security. Those who instigate, encourage, or carry out subversion of State power and those who undermine the constitutionally established State system are universally punished by law.

14. Before taking a position on the case before it, the Working Group must first respond to the following question of principle: when the Constitution of a particular country:

(a) On the one hand, expressly guarantees the right to freedom of expression, publication, assembly, association, procession and demonstration;

(b) On the other hand, without expressly forbidding the creation of political parties, bases the institutional system on the leadership of one party,

is the applicable law under which the competent authorities deny a group of citizens the right to register a newly established political party compatible with articles 19 and 20 of the Universal Declaration of Human Rights and with article 19 of the International Covenant on Civil and Political Rights which protects freedom of opinion and expression and particularly article 22 of the Covenant, according to which “everyone shall have the right to freedom of association with others”?

15. At first sight, such an internal provision does not seem compatible with the articles cited above, since political parties, in the same way as trade unions (art. 23 of the Universal Declaration of Human Rights), constitute a specific type of association.

16. In support of its contention that its law is in conformity with international standards, the Government refers to the International Covenant on Civil and Political Rights, which it has signed but to which it has not yet acceded:

“While providing for such rights and freedoms, articles 19 and 22 of the International Covenant on Civil and Political Rights also clearly provide that necessary restrictions may be placed on the exercise of these rights in the interests of national security, public safety or public order or for the protection of the rights and freedoms of others.”

In this respect, the Working Group:

(a) Firstly, appreciates the fact that in its reply the Government makes reference to the International Covenant on Civil and Political Rights;

(b) Secondly, notes that in its reply the Government does not mention the specific grounds relating to “protection of national security or of public order” which, under article 19 (2) of the Covenant, could make such a restriction legitimate.

17. The Group believes that the following criteria may be considered admissible:

(a) Any restriction based on reason of State must be interpreted strictly; therefore, any measure limiting the exercise of a freedom must, in order to be admissible according to the

standards of international law and human rights (for example, art. 18 (3) and art. 19 (3) of the Covenant), respect the principle of proportionality between the extent and range of the restriction and the desired objective;

- (b) Under these criteria the following could be considered as valid:
- As far as protection of public order is concerned, refusal to register political parties which, *inter alia*, have the aim or practice of engaging in propaganda for war in violation of the Covenant (art. 20 (1)); or
 - A party exercising the right of assembly in a non-peaceful manner (art. 21 of the Covenant).

However, on the basis of the information in its possession, the Working Group sees no indication that the new political party for which registration was requested advocated war, violence, national, racial or religious hatred or discrimination in violation of the above-mentioned articles, and therefore its founders, including Wang Youcai, were simply exercising their right to freedom of association with others in a group (in this case, a political party), in conformity with article 22 (1) of the Covenant.

18. Therefore, the Working Group believes that the initiative of Wang Youcai and others in requesting registration of a political party which has aims that do not run counter to the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights simply represents the exercise of the right of everyone to freedom of peaceful assembly and association with others, as guaranteed by article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights.

19. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of freedom of Mr. Wang Youcai is arbitrary in that it contravenes article 19 of the Universal Declaration of Human Rights and, insofar as this instrument is invoked by the Government in its reply, article 22 of the International Covenant on Civil and Political Rights, and falls into category II of the categories applicable to the examination of the cases presented to the Working Group.

20. Therefore, the Working Group requests the Government to take the necessary measures to remedy the situation, in order to bring it into conformity with the norms and principles laid down in the Universal Declaration of Human Rights and to take appropriate steps to accede to the International Covenant on Civil and Political Rights.

Adopted on 16 September 1999