

OPINION No. 21/2003 (CHINA)

Communication addressed to the Government on 18 June 2003.

Concerning: Li Ling and Pei Jilin.

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group conveys its appreciation to the Government for having submitted information regarding the case in good time.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. The Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. The source states that Li Ling, former director of the Guta District Labour Bureau, was arrested on 28 May 2002 at her home by police officials. She was sent to the No. 1 Detention Centre in Jinzhou city. Later, she was sentenced to four years' imprisonment. On 15 November 2002, she was sent to Dabei prison, Liaoning province, where, despite her critical health condition, she was forced to do heavy labour. Her current whereabouts are unknown.
6. It was further reported that Li Ling was previously arrested in late 1999, when she went to Beijing to appeal for Falun Gong. On that occasion the Beijing Dongcheng District Court sentenced her to 1½ years in jail.
7. Pei Jilin, aged 50, resident of Jilin city, Jilin province, employee of the No. 101 Factory of the Jilin Chemical Company, was arrested on the night of 16 June 2002 at his temporary home in Jilin city by police officials and taken to the Wenmiao police station in Jilin city. It was reported that he managed to escape from the police station, but was arrested again and sent to a labour camp.
8. It was further reported that Pei Jilin was previously arrested on three occasions on charges of being a Falun Gong practitioner: In October 1999, he was detained for 15 days in the Paoziyan detention centre, on his way to Beijing to appeal for Falun Gong. In December 1999, he was arrested again. After his release, on 1 October 2000, Pei Jilin went to Beijing again to appeal for Falun Gong and was rearrested. He was sent to the Jilin City Liaison Office in Beijing where he went on a hunger strike to protest his detention. Three days later, he was escorted back to No. 3 Detention Centre of Jilin city. One month later, Pei Jilin was sentenced to three years of forced labour. Later, he was transferred to the Jiutai City Labour Camp in Jiutai city. In September 2001, in critical health, he was released.
9. The Government in its reply reported that on 27 October 1999, Li Ling and others demonstrated illegally in a public place without making a previous application as required by the

law. On 17 January 2000, the District People's Procuratorate brought a case before the Eastern District People's Court, charging Li with breaking the law against illegal demonstrations. The court tried the case, found that Li's conduct amounted to illegal demonstration and sentenced her, under article 296 of the Chinese Penal Code, to 18 months' imprisonment. Li appealed and the Intermediate People's Court upheld the original judgement.

10. After her release upon completion of her sentence, Li again disrupted public order, making use of a heretical group to undermine law enforcement. The Guta District People's Procuratorate in Jinzhou city brought a case, charging Li with the crime of using a heretical group to undermine law enforcement. She was sentenced to four years' imprisonment, and appealed. On 4 November 2002, the Jinzhou Municipal Intermediate People's Court ruled that the facts established in the original judgement were clear, the evidence was true and ample, the offence had been correctly identified, the sentence was proportionate and the trial procedure had been in accordance with the law; it rejected the appeal and upheld the original judgement.

11. These cases were in open hearings, the prosecutorial organs presented a large volume of evidence and testimony which the courts accepted once the witnesses' accounts had been confirmed for the record and challenged by the defendant and her counsel. In both cases, since the defendant did not appoint counsel, the courts designated defence counsel for her and amply safeguarded her procedural rights and interests.

12. On 5 October 2000, Pei Jilin was assigned by the Jilin Province Re-education through Labour Committee to three years' re-education through labour for disrupting the social order. Because, during his term of re-education, he developed high blood pressure and became physically weak, the re-education facility allowed him to seek outside medical treatment in October 2001. While receiving treatment, Pei continued to disrupt the social order. On 18 June 2002, the Jilin Municipal Re-education through Labour Management Committee assigned him to a further two years' re-education on account of his unlawful activities.

13. In its response, the source states that to avoid international criticism, the Government has carried on a campaign of misinformation about Falun Gong. Contrary to the Government's claim of Li Ling's right to a fair trial being safeguarded, she was given show trials instead of fair trials. The legal counsel contacted by the Government coerced her instead of defending her. The source adds that after Li Ling's first imprisonment, she wrote a letter clearly stating that her appeal for Falun Gong was the real reason for her arrest and detention. The second sentencing of Li Ling took place in secret, sometime between May and November 2002, and her family was not informed of the trial.

14. As for Pei Jilin, also a Falun Gong practitioner, the source contends that re-education through labour punishments in China are based on instructions from the Chinese State Council and are therefore administrative measures, with no safeguards provided for the right to fair trial.

15. The Working Group observes that the Government has not denied that Li Ling and Pei Jilin were detained in connection with the practice of Falun Gong.

16. As there is no evidence that Li Ling and Pei Jilin used violence in their practice of Falun Gong, their free exercise of the practice should be protected by article 18 on freedom of belief and article 19 on freedom of opinion and expression of the Universal Declaration of Human Rights.

17. The restriction of the peaceful exercise of these liberties may imply a violation of international law norms. Neither the accusation of participating in an illegal demonstration against Li Ling, nor the accusation of causing social disturbance against Pei Jilin stated that acts of a violent nature had been committed. Consequently, the Working Group determines that Li Ling and Pei Jilin were detained for the mere fact of their practice and defence of Falun Gong, in a peaceful manner and in exercise of the rights to freedom of belief, freedom of opinion and expression, to assemble and to demonstrate, which are guaranteed by international human rights law.

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

The deprivation of liberty of Li Ling and Pei Jilin is arbitrary, as being in contravention of articles 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

19. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of these two persons and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 27 November 2003