

OPINION No. 38/2005 (CHINA)

Communication: addressed to the Government on 21 April 2005.

Concerning: Mr. Hu Shigen.

The State has signed but not ratified 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 and reconfirmed by resolution 2003/31. Acting in accordance with its methods of work, the Working Group forwarded to the Government of China the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
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 Working Group transmitted the reply provided by the Government to the source and received its comments.
5. 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.
6. According to the source, Mr. Hu Shigen, born on 14 November 1954, of Chinese nationality, lecturer at the Beijing Language and Culture Institute, resident of Beijing, member of the China Freedom and Democracy Party, the Chinese Progressive Alliance and the China

Free Trade Union Preparatory Committee was initially arrested on 27 May 1992 by the Beijing Public Security Bureau, but the formalities required for criminal detention under Chinese law (*zhengshi daibu*) were complied with only on 27 September 1992. He was held for four months in detention until his formal arrest. Then, he was tried together with 14 other persons, for organizing a counter-revolutionary group and carrying out counter-revolutionary propaganda and incitement, according to articles 98 and 102 of the 1979 Criminal Law of the People's Republic of China. On 16 December 1994, he was convicted of counter-revolutionary organization and counter-revolutionary propaganda, crimes that were later abolished from the Chinese Criminal Law. Mr. Hu was sentenced to 20 years imprisonment and transferred from the Beijing Public Security Bureau's locals to the Beijing No. 2 Prison. At the time when the communication was submitted he was still serving his prison sentence.

7. According to the source, Mr. Hu had helped to establish the China Freedom and Democracy Party and founded its Beijing chapter. He acted as its co-Chairman in January 1991. He had also participated in the Chinese Progressive Alliance. In 1991, he had helped to establish the China Free Trade Union Preparatory Committee. Mr. Hu had also been active in calling for a reassessment of the Government's suppression of the pro-democracy movement in June 1989. He was arrested while planning memorial activities concerning this movement, including a plan to drop leaflets on Tiananmen Square.

8. The source further mentions that, after his arrest, Mr. Hu was held incommunicado for two years prior to his trial in 1994, without access to legal representation. He was tried and sentenced together with 14 other persons, all known as the "Beijing 15", who reportedly received one of the heaviest sentences since the trials concerning the 1989 protesters.

9. The source further indicates that Mr. Hu has suffered and is suffering serious medical problems, such as chronic migraines, intestinal illness, back pain and malnutrition as the result of the harsh treatment he received in prison, and that despite his family's request for a comprehensive physical examination and medical treatment, he is being denied appropriate medical treatment. The continuation of his deprivation of liberty constitutes a serious threat to his health and even his life.

10. The source concludes that Mr. Hu's detention is in violation of his right to freedom of expression and opinion. In addition, no process for review of his conviction has been authorized, despite the repeal from the Criminal Law of the counter-revolutionary crimes of which he was accused.

11. In its observations the Government basically confirms the allegations of the source as to the facts surrounding the arrest and conviction of Mr. Hu. It emphasizes, however, that although according to article 35 of the Chinese Constitution citizens of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration, article 51 of the Constitution stipulates that in exercising their rights and freedoms, citizens may not cause harm to the State, society or the community, or to the lawful rights and freedoms of other citizens. The Government adds that Hu was punished because he had engaged in activities detrimental to State security.

12. In its comments on the Government's observations the source reiterated that Hu was merely punished for the exercise of his freedom of expression.

13. The starting point in the Working Group's assessment is that not even the Government asserted that in engaging in the activities for which he was convicted Mr. Hu ever resorted to violence or would have incited others to violent behaviour. All what he did was participate in the attempt to establish the Chinese Freedom and Democracy Party, participate in the Chinese Progressive Alliance and assist in creating a free trade union. However, these organizations were, or would have been outside the official State structure, all of these activities he carried out in a peaceful manner.

14. Since any restriction on the peaceful exercise of the freedom of association is incompatible with international law, the Working Group renders the following Opinion.

The deprivation of liberty of Mr. Hu Shigen is arbitrary, being in contravention of articles 9 and 20 of the Universal Declaration of Human Rights and falls under category II of the categories applicable to the consideration of cases submitted to the Working Group.

15. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr Hu, which, under the specific circumstances of this case - the long time already spent in prison, the precarious health conditions of Mr. Hu, and the modification of the qualification of the offence, in which he was found guilty - is Mr. Hu's early release.

16. The Working Group also invites the Government to ratify, as soon as practicable, the International Covenant on Civil and Political Rights.

Adopted on 25 November 2005.