

OPINION No. 27/2006 (CHINA)

Communication: addressed to the Government on 20 October 2005.

Concerning: Mr. Shi Tao.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government of China for having forwarded the requested information.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. 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.
5. The source informs that Mr. Shi Tao, born on 25 July 1968, of Chinese nationality, is a journalist for the daily *Dangdai Shang Bao* (Contemporary Business Newspaper), a resident of Taiyuan, Shanxi Province, and he is currently held in detention at the Chishan Prison, Yuanjiang Municipality, Hunan Province.
6. According to the information received, Mr. Shi Tao was arrested on 23 November 2004 in the street near his residence at Jun An Li Small District in Taiyuan City, Shanxi Province, by unidentified agents of the State Security Bureau of Changsha Municipality (Hunan Province) without an arrest warrant. The same day, the police searched his house without a warrant and took away his personal computer and some written material from his apartment. His family was not notified of his arrest. On 25 November 2004, a detention order was issued by the Changsha Municipal State Security Bureau and Shi Tao was officially detained at the Detention Centre of the Hunan State Security Bureau on suspicion of “providing State secret illegally to [agents] outside the borders”. On 14 December 2004, he was formally arrested on suspicion of the above-mentioned offence after the approval of the Changsha Municipal People’s Procurator’s Office.

7. The source reports that on 11 March 2005, the Changsha Municipal Intermediate People's Court, Hunan province, tried Shi Tao in secret. It is alleged that the main defence lawyer for the defendant was barred from attending the trial because government authorities had suspended his licence, citing un-related reasons. On 27 April 2005 the court delivered its verdict and sentenced Shi Tao to 10 years in jail followed by two years of deprivation of political rights for the crime of "providing State secret illegally to [agents] outside the borders." The source states that the offence was sending articles to overseas Internet publications, in which he talked about an internal communication the authorities had sent to his newspaper, warning journalists of the dangers of social instability and possible incidents on the occasion of the 15th anniversary of the Tiananmen Square events. During the first trial, State Security officials reportedly confirmed that the message was "top secret". The prosecutor insisted that sending articles abroad for publication via the Internet was a crime punishable by imprisonment. Shi Tao admitted that he had sent the articles but contested that the articles had contained anything "top secret" in nature and stated that he had no intention to endanger State security. The Changsha Municipal Intermediate Court reportedly admitted the evidence provided by the State Security Bureau, which used records of email correspondence provided by Yahoo, without allowing the defendant and his lawyers to challenge the legality of such evidence and the methods used to obtain these.

8. The source further reports that Shi Tao filed an appeal to the Hunan Provincial Higher People's Court on 4 May 2005, in which he reportedly presented his own defence arguments for innocence. Shi Tao's defence lawyer for the second trial, Mo Shaoping, submitted to the Provincial Higher Court his defence arguments for Shi Tao's innocence on 9 June 2005. But the Provincial Higher Court presented to the lawyer its verdict, which is considered final by Chinese law, of turning down the appeal and upholding the lower court's verdict because it had been delivered at a closed-door review panel convened by the Higher Court on 2 June 2005, which the defence lawyer had not been informed of nor asked to attend while the defendant, who was present, was not asked to present his self-defence. The 10-year jail sentence was upheld on the same basis of such "evidence" by the Hunan Provincial Higher Court. Shi Tao's lawyer for the second trial argued that his actions had in no way endangered State security, but he was not given a chance to present these arguments before the Higher Court.

9. The source also informs that between 23 November 2004 and 30 April 2005, Shi Tao was not allowed to meet with anybody (including his lawyers) except once with his mother and once with his wife. Furthermore, he was forced to undergo pre-imprisonment training in July and August 2005, during which he was denied any visits by anybody, including family and his lawyers. Repeated requests by his lawyers to meet their client were also rejected. The source informs that the lawyers submitted to the Higher Court their "Legal opinion by defence lawyers concerning the final verdict issued by the Hunan Provincial Higher Court" on 11 July 2005. On 21 August 2005, Shi Tao's mother, on behalf of Shi Tao, publicly appealed to the highest court, the Supreme People's Court, as well as the Provincial Higher Court, for a review of the final verdict and for retrial. Neither of these courts has yet responded to the mother's request for judicial review.

10. The Government, in its response, states that Shi Tao, university graduate, was employed on the Hunan Province *Modern Business Daily*, in charge of the editorial department, and that in April 2004, he had used his own office Internet equipment to send material that he had transcribed from secret official documents by email to an Internet site abroad.

11. It states that on 31 January 2005, the Changsa city Procurator's Office in Hunan province instituted proceedings against Shi Tao with the Changsa city Intermediate Level Court, for the offence of unlawfully transmitting State secrets to persons outside the country. Because the materials in question involved State secrets, in accordance with the relevant provisions of the Code of Criminal Procedure, the Changsa city Court decided, on 11 March 2005, to consider the case in closed session.

12. In the proceedings the Court concluded that the suspect had knowingly supplied secret State intelligence in his possession to an organization outside the country resulting in a situation of extreme gravity, and that this conduct constituted the offence of unlawfully transmitting State secrets to persons or bodies outside the country. In accordance with the Criminal Code, on 30 April 2005, the court sentenced Shi Tao to 10 years' imprisonment, stripping him of his political rights for two years.

13. The Government sustains that during the court proceedings, in accordance with the law, Shi Tao appointed Tong Wenzhong, a lawyer with the Tianyi Attorneys Office in Shanghai, to act in his defence in the trial and he also conducted his own defence, and that the court fully upheld both Shi Tao's and his counsel's defence rights. The Government states that following the proceedings at first instance, Shi Tao did not accept the verdict and lodged an appeal, on the grounds that his offence has not been particularly serious, it had not caused any serious consequences, he had displayed a good attitude in admitting his guilt and the sentence had been excessively severe. The Hunan provincial High Court ruled at second instance, dismissing Shi Tao's appeal and upholding the original judgement. The Government states that during the proceedings at second instance, Shi Tao was defended by the lawyers Mo Shaoping and Ding Xikui, from the Mo Shaoping law firm in Beijing. With regard to the appeal lodged on Shi Tao's behalf by his mother with the Supreme Court, following an investigation, the Supreme Court determined, in accordance with the rules for the hearing of appeals, that the letter of appeal should be referred to the Hunan provincial High Court, which reviewed the case and ruled that grounds for the appeal had no substance, and accordingly, no case file was opened on the matter.

14. The source responds that as the Government did not give any evidence that Shi Tao had disclosed any State secret in what he published on the Internet, what he was really punished for was for posting on the Internet articles critical of the Government.

15. The source also claims that the State Secret Law and article 111 of the Criminal Code cause a dangerous defect in the legal system, which allows authorities to use "leaking State secrets" or "providing abroad State secret or intelligence" to prosecute people for exercising free speech/expression and it subjects many people, especially journalists/writers, to an undue risk.

It states that in this case, despite the person who orally delivered the notice in question and claimed that he asked the audience to keep it confidential, it by no means assigned the item/notice a status of state secret, as Shi Tao's lawyers argued.

16. Shi Tao was deprived of a fair trial because at the basic level trial, the main defence lawyer was prevented from representing him at Court and putting on a defence for his client because authorities had found unrelated excuses to suspend the lawyer's licence. The Hunan Higher Court refused to give the defendant Shi Tao and his second-trial lawyer an opportunity to present their defence arguments for his innocence at court when the court reviewed the case without notifying the lawyer. The final verdict had been delivered without opening a Court session. After the final verdict, access to legal council of his own choosing was impeded because he was forced to undergo harsh pre-prison training.

17. On 9 June, Shi Tao's defence lawyer requested re-examining the evidence, subjecting the evidence to expert evaluation, and postponing the second trial, but the Higher Court never responded. The retrial was replaced by a review panel in which Shi Tao's defence lawyer was not present because the Court had not informed the lawyer. Owing to these failures and impediments, the Hunan Higher Court violated Mr. Shi Tao's right to all facilities necessary for appeal and a fair trial.

18. The Working Group notes, as stated in the Government's reply, that Shi Tao is accused of unlawfully transmitting State secrets to persons or bodies outside the country. In its previous reports on its visits to China, the Working Group has identified as matter of concern the criminalization of contacts and exchange of "classified" information with individuals, institutions or organizations based abroad, in a way that acts of individuals exercising their freedom of opinion may well be regarded as criminal offences (E/CN.4/1998/44/Add.2, para. 46 and E/CN.4/2005/6/Add.4, para. 23).

19. While no details are given by the Government on the nature of the State secrets transmitted outside the country, the information received and not contested is that the accusation of dissemination of State secrets was based on sending articles to overseas Internet publications. The Working Group is not convinced about how these activities could "result in a situation of extreme gravity" as stated by the Government.

20. In the absence of any convincing argument, the Working Group concludes that Mr. Shi Tao is detained for the peaceful exercise of the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas through any media, including the Internet and regardless of frontiers, since, the dissemination, even outside the territory, is guaranteed by article 19 of the Universal Declaration of Human Rights.

21. The Working Group is also concerned about the facts, not contested by the Government, that (a) the lawyer chosen by Shi Tao was barred from attending the trial and not allowed to assist his client, who was judged in a secret trial, and (b) that other restrictions are imposed on the right to defence. In its previous reports on its visits to China, the Working Group has pointed out that "where the case concerns charges of endangering State secrets, the rights of the defence are even further restricted. Under article 96 the right of the accused to be represented by a

counsel of his own choosing as from the first hours of detention and the right of the lawyer to meet his or her client are subject to a preliminary authorization by the authorities in charge of the investigation. In practice, this provision appears to give rise to numerous abuses, either because the notion of State secret is not defined with sufficient precision, or because it is interpreted in an extensive manner”(E/CN.4/2005/6/Add.4, para. 36).

22. These considerations, coupled with other elements relating to the impossibility of challenging the allegations brought against Shi Tao, would cumulatively confer to the deprivation of his liberty an arbitrary character.

23. In the light of the foregoing, the Working Group renders the following Opinion:

The detention of Mr. Shi Tao is arbitrary, as it contravenes the principles and norms set forth in the articles 9, 10 and 19 of the Universal Declaration of Human Rights and falls into categories II and III of the methods of work adopted by the Working Group on Arbitrary Detention.

24. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to rectify the situation, in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights, and to take the necessary measures to ratify the International Covenant on Civil and Political Rights.

Adopted on 1 September 2006.