

Criminal Liability for Taking Part in Strikes and Petitions in China IHLO, 28 February 2014

The second hearing of Wu Guijun's case, originally scheduled on 26 February 2014 was postponed again by the prosecutor in the eve before. The defence lawyers were informed that the prosecutor needed more preparation and new evidences would be brought up. A week ago, the prosecutor refused to appear before court in the first trial forcing the judge to cancel it. It was the angry supporters who complained and pressured the judge to re-convene the hearing an hour later.

Up to now the police has been using administrative punishments to disperse strikes in China. Strikers are punished for disruption of public order and sent straight to custody for up to 15 days without any necessary legal procedure.

Criminal liability for workers in strike

Wu Guijun's case arouses worries that step-up punishments are tested by the government using public order reasons under Article 291 of the Criminal Law against the strike leaders. Once the practice of criminalization becomes a norm, workers will be easily threatened with prolonged detention and trial.

The Criminal Procedure Law allows the police and the procuratorate to arrest, detain and investigate a suspect for eight months before filing for a public prosecution. In preparing a prosecution, the custody can range between one to more than seven months if the public security asks for extensions or the procuratorate requests supplementary investigations. Although the law limits the first trial of a criminal case within three months to give a ruling, postponements and extensions are allowed if the public security or the procuratorate needs more investigations making it ten months by maximum to complete the first trial. The court may even suspend the trial for an indefinite period on a number of reasons.¹

In other words if the criminal law is used against workers for taking part in labour strikes, they are liable to twenty-four-month-custody or more before completing the trial in first instance.

Strike is not outlawed in China

Up to now there is no law to criminalise a labour strike in China, nor is there any law to restrict or illegalize a labour strike or an industrial action. Rather than a criminal offence, labour strikes, or preferably known as stoppage of work in China, is treated with tolerance. The only legal reference to it lies in the Trade Union Law which

¹ Article 202 of the revised Criminal Procedure Law, CPL allows the court to extend the postponement for three more months if it is a case of complication or major criminal activity and new evidences are collected. Article 200 of the CPL allows the court to suspend the trial if (1) the defendant is unable to appear before court for suffering a serious illness; (2) the defendant has escaped; (3) the private prosecutor is unable to appear before court for suffering a serious illness and has not retained an agent ad litem to appear before court; or (4) there is any irresistible reason. After the cause of suspension of a trial disappears, the trial shall be resumed. The time of suspension of a trial shall not be counted in the period of trial.

obliges the ACFTU to mediate a resolution and restore order and productive activities at the workplace (Article 27, Trade Union Law). In the first hearing on 17 February, Wu Guijun testified in the court that he and the striking workers had asked the district ACFTU in Shenzhen for negotiation with the employers. In his words, the request was ‘fallen into the sea like a piece of rock’. Unwilling to accept the deal negotiated by the government and the employer, the workers of Diweixin went to petition the government. Their right to do so is legally protected under the Chinese system of ‘letters and visits’ designed to ratify the malpractices of government and party bodies.

The prosecutor therefore has no legal ground to outlaw the strike and the petition taken by the workers of Diweixin and could only use public order reasons against them.

ILO on Strikes and Freedom of Association

The Chinese government is leading the establishment of collective bargaining under the ACFTU. Yet, the local provisions on collective bargaining legislated so far are incomplete to ensure the representation of the trade union and resolution of disputes during the bargaining process. Wu Guijun’s case shows that harsher penalties including criminal liability are used against workers who use strikes to press for negotiation with the employers. They do so usually in desperate situations where the official trade union has not been helpful. If they dispute the deal negotiated by the union and the labour bureau, they expose themselves to criminal liability.

The ILO has elaborate opinions regarding the abuse of police and state power to obstruct the exercise freedom of association which is inseparable from the right to strike as the essential means for workers to defend their economic and social interests. The ILO committee of experts’ reviews of violation cases of freedom of association is most relevant to China which is now pushed by enormous number of wild cat strikes, and the effectiveness of the administrative-driven collective bargaining system in attaining industrial peace is questionable. The ILO has clear principles that “no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike”². The ILO also warns against abuse of power when government is resorting to arrests and imprisonment against workers in peaceful strikes³.

Even though China has not ratified ILO Convention 87 and 98, charging labour strikers and petitioners for criminal liability breaches the core labour standards which the Chinese government, as a member of the ILO has obligations to uphold.

² “...., no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike. (See Digest, op. cit., para. 602.)” Interim Report - Report No 302, ILO, March 1996.

³ “The Committee considers that the authorities should not resort to arrests and imprisonment in connection with the organization or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association. (See Digest, op. cit., para. 601.)” *ibid*.

Criminal Procedure and Custody of WU Guijun
 Compiled by IHLO, 2 February 2014

Procedure	Enforce authority	Application	Custody period (max.)	Detention of WU Guijun
Administrative Detention	Public Security	Detention by public security for	Max.15 days	24 May 2013
Criminal Detention	Public Security	Public security detain the suspect and file for arrest - general situation	3 days	
		Special circumstances	Extend 1-4 days	
		Suspected of cross border, repeated, or gang crime	Extend 1 month	
	Criminal detention max : 1month and 10 days			
Approval of Arrest	Procuratorate	Give approval or disapproval of arrest	7 days after the request	28 June 2013
		Public security appeal against disapproval of arrest		
Criminal Investigation	Public Security and Procuratorate	Custody during investigation – general situations	2 months	
		Complicated case	Extend 1 month	
		Significant and complicated cases in outlying areas where traffic is very difficult; involving criminal gangs; cross-border cases; or with difficulty in gathering evidence.	Extend 2 more months	
		Suspect may be sentenced to fixed-term imprisonment of ten years or more; investigation needs to extend further.	Extend 2 more months	
		Suspect found to have committed another major crime during investigation	Recount custody period	
	Supreme People's Procuratorate	Extraordinarily significant and complicated case inappropriate to transfer for trial for special reasons	Postpone	

	Criminal investigation max : 7 months and 1 week or indefinite postponement			1 month	
Prosecution	Public security	File the case transferred by public security, review and decide a public prosecution	1 month	Filed for prosecution 29 July 2013	
		Serious circumstances	Extend 15 days	Extend custody 28 Aug 2013	
		Return the case to public security and request supplementary investigation	Non-prosecution decision or proceed public prosecution	1 month	First supplementary investigation 10 Sep - 26 Sep 2013
		Procuratorate re-start review		1-1.5 month	Extend custody 24 Oct 2013
		Return the case to public security for supplementary investigation second time;		1 month	Second supplementary investigation 7 Nov - 6 Dec 2013
		Procuratorate re-start review		1-1.5 month	Extend custody 3 Jan 2014 Indictment issued 21 Jan 2014
Public prosecution max : 6 months and 15 days (if no appeal is made)			6 months		
Sub-Total:	Criminal detention to trial: >14 months			8 months	
Trial - Public Prosecution	First Level People's Court	Filing the case, trial and ruling	2-3 months	First hearing 17 Feb 2014	
		Postpone trial for new evidence and witness to call, or procuratorate to do supplementary investigation,	1 month (start trial anew in 2-3 months, total 3-4 months)	Second hearing 26 Feb 2014 postponed	
		Death Penalty or a case with incidental civil action or circumstances as in A156 ⁴	Extend 3 months		

⁴ Extension is allowed with reference to A.156 in case of the following: (1) significant and complicated cases in outlying areas where traffic is very difficult; (2) significant cases regarding criminal gangs; (3) significant and complicated cases regarding crimes committed from place to place; and (4) significant and complicated cases with a wide involvement and difficulty in gathering evidence.

		Suspension ⁵	Indefinite	
		Appeal against the sentence or appeal against the ruling; filing the appeal	5-10 days	
	First trial max : 10 months or indefinite postponement			

⁵ The court may suspend the trial if (1) the defendant is unable to appear before court for suffering a serious illness; (2) the defendant has escaped; (3) the private prosecutor is unable to appear before court for suffering a serious illness and has not retained an agent ad litem to appear before court; or (4) there is any irresistible reason. After the cause of suspension of a trial disappears, the trial shall be resumed. The time of suspension of a trial shall not be counted in the period of trial.