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China: Penalties for Home Church Gatherings

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China: Penalties for Home Church Gatherings

Laney Zhang
Foreign Law Specialist

SUMMARY Research reveals that the Chinese government’s treatment of home church gatherings does not appear to be uniformly severe. A common charge brought by the authorities when suppressing home church gatherings is illegal assembly. Under the law, participants in illegal assemblies may be subject to administrative detention for up to fifteen days. Organizers and other directly responsible persons may be sentenced to imprisonment, criminal detention, public surveillance, or deprivation of political rights. Reeducation through labor, involving up to three years in custody, may also be imposed.

I. The Government’s Treatment of Home Church Gatherings

As discussed in the Law Library’s letter dated August 15, 2012 (LL File No. 2012-008341), authoritative information regarding the treatment of home church gatherings in China is difficult to obtain. One scholarly study discussed below provides useful insight, indicating that the Chinese government’s treatment of home church gatherings does not appear to be uniformly severe.

In 2007 and 2008, Yu Jianrong, a prominent social science scholar at the Chinese Academy of Social Sciences, China’s top government think tank, led a national research project on home churches in over ten Chinese provinces.¹ According to Yu’s research, the government’s attitude to home church gatherings is “mixed.” At the central level, the laws, regulations, and relevant documents (which are publicly available) are very vague in addressing the home church issue. Yu observed that these legal provisions are generally hard to implement as they lack a clear definition of the legal status of home churches.²

As a result, local practices in implementing the provisions regarding home churches vary from locality to locality, with enforcement measures being severe in some areas where government officials may be abusing their power, while comparatively relaxed in other areas. Generally, home church gatherings are treated less severely in the developed areas of Eastern China and more severely in the less developed areas of Western China, according to Yu. However, his research recognized numerous incidents of home churches being suppressed in both the Eastern and Western provinces of China, including Hebei, Henan, Anhui, Jiangsu, Inner Mongolia, and Beijing.³

¹ Yu Jianrong, *Wei Jidujiang Jiating Jiaohui Tuomin [To Desensitize Christian Home Churches]* (presentation at Peking University, Dec. 11, 2008), available at <http://www.aisixiang.com/data/23629.html>.

² *Id.*

³ *Id.*

II. Penalties Provided by Law

Attending a home church gathering is not a specific offense regulated by Chinese law. A common charge brought by the authorities when suppressing home church gatherings is illegal assembly.⁴ Illegal assembly is regulated by a specific statute, the Law on Assemblies, Processions and Demonstrations (Assembly Law).⁵ According to the Assembly Law, such an offense may be subject to those punishments provided by the Law, and may also be subject to other administrative penalties or criminal penalties if there is any violation of public security administration or criminal law.

A. Assembly Law Penalties

Rather than holding all participants of an illegal assembly responsible, the Assembly Law provides penalties only for organizers of an illegal assembly and other directly responsible persons. According to the Law, such persons may be punished by a warning or detention of no more than fifteen days if the assembly was held without the permission of the authorities or at a venue that was not preapproved.⁶

B. Administrative Penalties

The activities of the participants of an illegal assembly may also be held to violate public security administration, and therefore give rise to administrative penalties under the Law on Penalties for Administration of Public Security.⁷ The forms of administrative penalties under this Law include warnings, fines, administrative detention, and revocation of licenses.⁸ The length of administrative detention is up to fifteen days.⁹

C. Criminal Penalties

According to the Assembly Law, criminal penalties may be imposed for illegal assemblies under serious circumstances, which include

⁴ *E.g. id.* In practice, other charges such as forming a cult or inciting secession may be brought, which may result in more severe penalties.

⁵ Jihui Youxing Shiwei Fa [Law on Assemblies, Processions and Demonstrations (Assembly Law)] (promulgated and effective Oct. 31, 1989), XINBIAN ZHONGHUA RENMIN GONGHEGUO CHANGYONG FALÙ FAGÜI QUANSHU [NEW COMMON LAWS AND REGULATIONS COLLECTION OF PRC] (NEW LAWS AND REGULATIONS) 1–98.

⁶ *Id.* art. 28.

⁷ *Id.*

⁸ Zhian Guanli Chufa Fa [Law on Penalties for Administration of Public Security] (promulgated by the NPC Standing Committee on Aug. 28, 2005, effective Mar. 1, 2006, amended Oct. 26, 2012), art. 10, NEW LAWS AND REGULATIONS 3–82.

⁹ *Id.* In the case of detentions for two or more offenses where administrative penalties are imposed concurrently, the combined detention may be no more than twenty days. *Id.* art. 16.

- possessing firearms, controlled knives, or explosives;
- failing to obtain a government permit in cases where the assembly seriously undermines public order;
- surrounding or breaking into a government organ and preventing it from proper operation; or
- occupying public places, intercepting vehicles or pedestrians, or blocking traffic, and as a result seriously undermining public order or traffic order.¹⁰

Under the Assembly Law, with the exception of those bearing weapons, only organizers of illegal assemblies and other directly responsible persons may be charged with criminal offenses. Such persons may be sentenced to imprisonment, criminal detention, public surveillance, or deprivation of political rights.

The length of imprisonment depends on the specific offense. For example, where people are gathered to attack a state organ, making it impossible for the state organ to conduct its work and causing heavy losses, the leaders may be sentenced to fixed-term imprisonment of five to ten years; the active participants may be sentenced to fixed-term imprisonment of less than five years, criminal detention, public surveillance, or deprivation of political rights.¹¹

D. Reeducation Through Labor

Protestants who worship outside of state-approved parameters and some Catholic bishops and priests have reportedly been punished by reeducation through labor (*laojiao*), a long-debated administrative punishment that empowers public security organs to hold individuals in custody without judicial review.¹² The length of reeducation through labor is up to three years with the possibility of a one-year extension.¹³

III. Impacts of Being Arrested

Legally speaking, simply receiving a sentence of administrative detention or being arrested should not significantly impact an individual's ability to live in or travel out of China after being released. Being criminally investigated or punished, however, may involve travel restrictions or result in unemployment.

¹⁰ Assembly Law art. 29.

¹¹ *E.g.* Xing Fa [Criminal Law] (promulgated Mar. 14, 1997, last amended Feb. 25, 2011), art. 290, NEW LAWS AND REGULATIONS 6-1.

¹² CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA (CECC) 2012 ANNUAL REPORT, <http://www.cecc.gov/publications/annual-reports/2012-annual-report>.

¹³ *Id.*

A. Arrest and Detention

Arrest under Chinese law is authorized by the People's Procuratorate (the prosecutor) and executed by public security organs, and does not require a court warrant.¹⁴ In criminal proceedings, under limited circumstances specified by law, the police may temporarily detain a criminal suspect without preapproval.¹⁵ If the police believe it is necessary to arrest the detainee after interrogation, they must apply to the People's Procuratorate for approval to arrest.¹⁶

In contrast, administrative detention under the Law on Penalties for Administration of Public Security is a form of administrative penalty, which may be decided directly by the public security organs.¹⁷

B. Travel Restrictions When Released on Bail

In criminal proceedings, a suspect or defendant may be released on bail by providing an individual guarantor or cash security.¹⁸ According to the Criminal Procedure Law, a criminal suspect or defendant may be released on bail if

- he or she has committed a minor offense punishable by public surveillance, criminal detention, or supplementary punishments separately meted out;
- he or she has committed a crime punishable by fixed-term imprisonment or more severe punishments, but would not pose a threat to society if released on bail;
- he or she is suffering from a serious illness and cannot take care of himself, or is pregnant or breastfeeding, and would not pose a threat to society if released on bail; or
- the investigation of the case has not been concluded upon expiry of the lawful detention period, and the authority decides granting bail is necessary.¹⁹

Bail decisions may be made by courts, prosecutors, or public security organs.²⁰

The person being released on bail must not leave the city or county in which he or she resides without the permission of the police,²¹ and may also be specifically restricted from entering certain places, meeting or corresponding with certain people, or engaging in certain activities.²²

¹⁴ Xingshi Susong Fa [Criminal Procedure Law] (promulgated by the NPC on July 1, 1979, last amended Mar. 14, 2012, effective Jan. 1, 2013), art. 3, NEW LAWS AND REGULATIONS 7–1.

¹⁵ *Id.* art. 80.

¹⁶ *Id.* art. 85.

¹⁷ Law on Penalties for Administration of Public Security art. 2.

¹⁸ Criminal Procedure Law art. 66.

¹⁹ *Id.* art. 65.

²⁰ *Id.* art. 64.

²¹ *Id.* art. 65.

²² *Id.*

C. Unemployment

According to the 2007 Labor Contract Law, an employer may revoke a labor contract under any one of six prescribed conditions, and an employee being subject to criminal penalties is one of these conditions.²³ Since employment arrangements are typically governed by a labor contract, individuals who have been criminally punished may not be able to return to work after serving jail time.

IV. Result of Violating Travel Restrictions

While on bail, a released suspect or defendant must comply with prescribed restrictions, including those imposed on travel. Violation of the restrictions may result in forfeiture of the cash deposit or a fine on the guarantor.²⁴ Depending on the situation, the violator may be ordered to pay another cash deposit or provide a new guarantor, be placed under residential surveillance, or be arrested.²⁵

The “fugitive” in question, who was allegedly arrested for participating in a home church gathering, might be released on supervision under other procedures than being granted formal bail in accordance with the Criminal Procedure Law. Lacking information about the specific proceedings, it is not possible to determine how the authorities may treat him upon returning China. Information on the treatment of family members was not located.

V. Concluding Remarks

Most penalties under the law, in particular the criminal penalties concerning home church gatherings surveyed in this report, appear to focus on organizers and leaders rather than ordinary participants. For those who were allegedly released on supervision after being temporarily detained or subject to short term administrative detention, we did not find any authoritative information indicating they would be arrested upon returning to China.

²³ Laodong Hetong Fa [Labor Contract Law] (promulgated June 29, 2007, effective Jan. 1, 2008, amended Dec. 28, 2012, effective July 1, 2013), art. 39, NEW LAWS AND REGULATIONS 5–90.

²⁴ Criminal Procedure Law arts. 68–69.

²⁵ *Id.* art. 69.