

Witness 32: Clive Ansley

Summary of oral testimony: 8th December 2018

There is no such thing as an independent judiciary in China. Judges at all levels in China are appointed by the People's congress of that particular level and they serve at pleasure of the People's congress. So, they can be removed at any time as well as appointed. The People's congresses are composed of the deputies who are either members of the CCP or they have been approved to stand as candidates by the CCP. In effect the constitutional provision that the courts are responsible to the People's congresses, which appointed them, in fact means that they are responsible to the CCP. They can be removed at any time and I had a personal opportunity to observe that.

Another factor of the lack of independence is illustrated by the court's structure in an appeal process, which is the same at any level. There is an appeal system set out but something that is never mentioned is that there is a political and legal committee, which is a committee of the CCP. A chairman of that committee stands at the top of the structure, and in practice he can overrule any finding by any court at his level. Normally this particular person has no legal training involved; he is a purely political appointment.

[In the absence of any judiciary independence the overview of what will happen to a person from detention to the trial]. A person can be detained by a number of different agencies nowadays in China, but according to the criminal procedural law normally he will be detained by the police or public security bureau. A detention is not the same thing as an arrest, where a person may be detained for a very lengthy period, e.g., months, without being arrested. Various time frames are set out by the procedural code, when a decision to arrest has to be made. Within this time the suspect will be interrogated by the public security bureau and often also by the prosecutors and he will have no access to his counsel at that time. He will also be routinely subjected to torture.

The Article 3.3 of the Code of the criminal procedure specifies that he may have the right to meet with legal counsel after the interrogation is finished, by which time the interrogators will usually have a confession. In practice the suspect is not allowed to meet with the counsel even after the interrogation. The lawyer, whom he may wish to retain, will often be refused an access by the guard of the detention centre.

One thing I remember reading about years ago and since then I have encountered that fairly frequently with lawyers, a lawyer will typically turn up once the interrogation has finished (and the lawyer has now supposedly the right to meet his client) and the guard will tell him that it is not convenient today or that a particular police officer who must be present is not available today. The lawyer would refer the guard to the provision in the Code regarding his right to meet with the client and the guard would typically respond that the lawyer is not refused his right under the Code of criminal procedure but is refused under the internal regulations of that detention centre.

Once the trial is set up, the trial is based on the witness statements against the accused, which are written and signed by the witnesses who are not present at the trial, and these statements will be read by a police officer or a prosecutor. So, the defence has no chance to cross-examine the witnesses.

Article 59 of the Code of criminal procedure specifies that in order that a witness testimony be accepted by the court, a witness must appear personally in the court and must be cross-examined by both sides. If that does not happen the evidence is inadmissible. But in practice this has never happened. We see the witness statements admitted by simply being read out by prosecutors or police officers and there is no opportunity for cross-examination.

There is no presumption of innocence in China and it is a greatly misunderstood issue outside of China. It is not written into the law whereas many believe presumption of innocence is in the procedural code. It is not written into the law as it stands. Second, it is difficult to find a judge in China who is interested in what the Code of criminal procedure says in any case.

There is an interesting history behind this. The Chinese legal system has come under heavy criticisms under the western jurists and legal scholars for many years. One of the things that kept coming up over and over again is that there is no presumption of innocence. In 1997 when the Code of criminal procedure was reviewed, China purportedly answered this criticism and they inserted Article 12 under the code and this article had been heralded ever since as being the enshrinement of the presumption of innocence. In fact, Article 12 simply says that no one shall be guilty of the crime until they have been found guilty by the Chinese court. That says nothing at all about the presumption of innocence.

Most Chinese lawyers, and I must say Chinese lawyers are not the weakness of the system, they are very selected group, where only 9% of law students would pass the bar exams. Chinese lawyers are brilliant, and their standards and values are very high. They are not weak elements of the society. It is the system that defeats them, it is not their inferiority.

Most Chinese lawyers whom I met talk about the presumption of innocence, and almost with pride. This is something that was acknowledged at least in theory by the authorities in 1997.

It is not frequent to see the policy of the governments subject of a criminal case. The whole system is not set up to have an independent investigation by the police to start and then to proceed in the court in order to look at evidence and look at the facts and try to find the truth. The system is from the beginning to the end geared towards compiling evidence against a suspect who has been selected. That is the way it works.

When the persecution of Falun Gong first began in 1999, there was the creation of the 610 office (stands for the 10th of June when the persecution started). The whole process of crushing Falun Gong and removal from the society would be handled by the 610 office. All other organisations such as courts, prosecutors, police, everyone involved in the criminal justice system should defer to the 610 office. The 610 office is not an office consisting of legally trained people or having any legal status in law. So, there is a court system set up on one side and the government claiming the rule of law. Then the government arbitrarily called upon a group of Falun Gong to be crushed. For this the government has created a special office 610 to take care of this problem and the courts do not need to be involved.

In my materials I oversimplified, saying that the normal process is for the police officer to issue a decree and to send somebody to a labour camp. When the 610 office became involved, they did not necessarily start to perform the same functions. In some cases, they used police officers, in some they brought the judges to have some sort of hearing. The judges and the courts took the directions of the 610 office.

It is true to say that a number of Falun Gong practitioners travelled to Beijing or other main cities to appeal to the authorities to change their policy believing that this right was guaranteed under the Constitution. This is a very interesting concept of the right to petition. Long before the CCP took over, long before the modern codes, that right to

petition existed in the old dynastic and legal system. It started at the local level. There was a structure, called the Yamen, consisted of the local magistrate's residence and the facility where he held the court. The citizens had a recognised right to come and beat on a drum before the magistrate's structure and present their grievances if they were unfairly treated by local officials, by tax collectors, whoever it was. They could petition at that level. If they did not get a satisfaction there, they were now entitled to go to Beijing and directly petition the Emperor. Today there is no Emperor, but this right has been preserved in Article 41 of the Constitution. This article does not use the word petition, but it addresses the right to come to a bureau and submit grievances against the officials, who they think have wronged them or any kind of injustice that was carried out against them. Over the years leading up to the present because of the gross corruption and the abuses of power in China there has been a rising tide of petitioning. I do not have any actual statistics on it, but I believe there were millions of people every year that have come to Beijing for this purpose. Perhaps because there are so many of them the reaction of the government and the party was essentially to put a lid on it. They do not want to hear from these people or these people coming to Beijing. As a result, they put a lot of pressure on the police forces in the cities and towns throughout China to prevent anybody from their jurisdictions getting on the train and coming to Beijing to petition. Nevertheless, a lot of them are coming through and the local authorities would send the police to Beijing to pick the people up before they could submit their grievances.

In terms of the current position of the Chinese law on ownership of the body and the organs of someone executed in accordance with the Chinese capital punishment law there have been a number of laws dating back to the 1980s on the use of organs from the Chinese criminal prisoners. I am not sure on that subject; I cannot cite any particular governing law right now. But the most important position has always been the official position of the Chinese Communist Party. That position was put forward by Huang Jiefu who is the former Vice Minister of Health in China and he is a person who I think is credited with about 5,000 liver transplants himself. He is a transplant surgeon, but he has been responsible for the entire program of organ transplants in China. So, he stated the legal position on the 1st of January 2015 that there would no longer be any organ sourced from prisoners and that would become illegal. China just very recently has claimed to have a volunteer organ donation system but as far as any of the leading researchers can find there have been very few voluntary donors we have heard of.

In terms of how if at all does the People's Republic of China acknowledge the non-binding validity of the Universal Declaration of Human Rights, I am not aware of any particular statement made.

In terms of genocide definition and persecution of Falun Gong practitioners, genocide doesn't have to be necessarily the attempt to physically wipe out an entire group of people such as in the Holocaust. I think it is enough to look at the statements from Jiang Zemin who started this particular program and other Communist Party statements as well, that the goal is to entirely remove Falun Gong practitioners from Chinese society to essentially achieve a situation where there are zero Falun Gong practitioners.

There are many ways of doing that and there is overwhelming evidence of physical attempts to do that of the numbers of Falun Gong people who have disappeared without a trace and who some of them have been documenting the effects of torture on their body. We have seen a lot of the physical evidence but on top of that the use of retraining or re-education centres to force Falun Gong practitioners to renounce their beliefs and to end the Falun Gong movement. Many of them appeared on television with bowed heads denouncing Falun Gong. There are also prohibitions against employers employing Falun Gong people and seizures of their property. So, in my definition I was looking well beyond just the physical elimination.

In relation to dehumanisation of Falun Gong practitioners, I did contribute the chapter on this issue. It dealt with the last few years when I was in China. There had been the absolute blitz in the mass media for a period of time just totally focusing on Falun Gong. Falun Gong practitioners were demonized. It did remind me of the demonization of the Jews under the Third Reich in Germany because you could not open a newspaper, you could not turn on a TV or listen to a radio without hearing about this non-stop attack on Falun Gong and how the founder of Falun Gong Li Hongzhi was a totally evil person and he had led people to commit all kinds of diabolical deeds. They claimed that studying the works of Li Hongzhi led to people committing murders, rapes, mass murders through poisoning and all kinds of things.

In terms of how effective the process of dehumanisation within the various classes of society was, my opinion is that it was extremely effective.

One of the things that always puzzled me in China was that in my view the overwhelming majority of the population had no respect for the Chinese Communist

Party at all. They ridiculed it in private conversation, they attacked it for corruption, they attacked it for lying and yet if you had a discussion about capital punishment for example, in my experience nearly a hundred percent of Chinese people are in favour of capital punishment. When you would talk to them about the possibility of the courts convicting an innocent person they would say “*well, he would not have been in court if he was not guilty*”. These are the very people who told me about the evils of the party and how it controls the media and the courts.

The same applies to Falun Gong practitioners. The people who hate the Communist Party and attack their credibility would be quoting the Communist Party for their opinions of Falun Gong. They were being filled full of these stories like a man in Nanjing who was being executed for having put poison in the food at the noodle restaurant and I think 42 people had died. Everybody knew this story and everybody was attributing it to Falun Gong because the last idea in the news report that announced that this person was going to be executed and taken off for execution was “*Oh and by the way he was a Falun Gong practitioner and had been studying the works of Li Hongzhi*”.

In China there are a number of specialised special courts such as military, railway, maritime and forestry courts. The hearings in the military courts are not public and neither they are in the ordinary courts even though the Code of Criminal Procedure says they must be public. There is an exception made for anything involving state secrets and among the many definitions of state secrets is any information from a criminal investigation. That is why most ordinary criminal courts are not public. When the hearings are made occasionally public it is because the Communist Party will want to hold a show trial. They will want to demonstrate something, and they have the TV cameras there, then they will fill up all the seats and it will look like a public hearing. The only thing is that you must have a ticket to get into those trials. Most often, even the relatives of the defendant will not be able to get a ticket to get in.