



PFO 09-076: China Civil Society Report: Public Interest Litigation in China



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Recommended Citation

"PFO 09-076: China Civil Society Report: Public Interest Litigation in China", NAPSNet Policy Forum, September 22, 2009, <https://nautilus.org/napsnet/napsnet-policy-forum/public-interest-litigation-in-china/>

Public Interest Litigation in China

Policy Forum Online 09-076A: September 22nd, 2009

By Qiong Qiao and Zhou Hualei

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I. Introduction

Qiong Qiao and Zhou Hualei write, "Public interest litigation aims to adjust the unequal allocation of resources as it impacts the poorest and most marginalized groups in society. However, in the current situation public lawyers themselves are a vulnerable group."

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II. Article by Qiong Qiao and Zhou Hualei

- "Public Interest Litigation in China"

By Qiong Qiao and Zhou Hualei

At 9:00 on July 24th, 2009, in Room 410 of the Beijing Local Taxation Bureau, a hearing about the administrative punishment of the Beijing Public League Consulting Co., Ltd. (also known as Gongmeng) was held. As it might "involve state secrets, business secrets or personal privacy" the local taxation bureau did not open the hearing to public.

Beijing Public League Consulting Co., Ltd. (PL for short) is a non-profit organization engaged mainly in legal research and individual case assistance. Its legal representative, Dr. Xu Zhiyong, is a representative of the 14th People's Congress of Haidian District, Beijing and a Professor of Posts and Telecommunications at Beijing University. On the 14th of July PL received two notices of tax penalties from the Beijing Local Taxation Bureau and the State Administration of Taxation. The bureaus alleged that PL owed 240,000 RMB (\$35,000 US) in taxes and imposed the highest fine: five times the amount owed or more than 1.42 million RMB (\$208,000 US). On the 17th of July the Beijing Municipal Bureau of Civil Affairs made a decision to ban the subordinate body of PL and confiscated all materials including computers, office furniture, case information, research papers and so on. In four days time the PL has faced legal charges from three government agencies - the Beijing Local Taxation Bureau, the State Administration of Taxation, and the Beijing Municipal Bureau of Civil Affairs.

Survival as Companies

The first time Xu Zhiyong gained public recognition was because of a young man named Sun Zhigang. On May 20th, 2003 Sun Zhigang, a recent University graduate who had just found a new job, died from beatings he received at the Guangzhou municipal refugee aid station. On May 13th, 2003 Xu Zhiyong, along with his doctoral colleagues Teng Biao and Yu Jiang, submitted a "Proposal for the Legal Examination of 'Methods of Deporting and Accommodating Urban Beggars and Dependent People'" to the Standing Committee of the National People's Congress. After a month the "Methods of Deporting and Accommodating Urban Beggars and Dependant People" was abolished.

This action gained significant media attention and many more people came to his organization for help. However Xu Zhiyong and his partners' capacity to take on new cases was limited. To deal with this they founded an organization to "find like-minded people to organize a team, to be more professional and to help more people". In July of 2007 another well-known public lawyer, Zhang Xingshui, proposed to establish a civil organization. On December 28th they registered the "Beijing Sunshine Constitution Social Science Research Center" which was later renamed "Beijing Public League Consulting Co., Ltd." Zhang Xingshui, Teng Biao, Yu Jiang and Xu Zhiyong acted as councilors and named their website "Sunshine Constitution". The group is known as the "Open Democracy Initiative" outside of China.

There are many civil organizations in China, including well-known NGOs such as the Maple Women's Psychological Counseling Center in Beijing, Rural Women, the Beijing Huizeren Volunteering Development Center, etc. Because they cannot register with the departments of civil affairs, they have to register as industrial and commercial departments, and become "companies". This means that these organizations are companies on the outside and NGOs on the inside and subject to two different rules.

In recent years PL has spoken out on many important public issues such as drafting proposals to revise human rights regulations in the constitution, publicizing the restrictions on access to schools

for the children of migrant worker, helping the victims of the black brick kiln obtain state compensation, aiding the victims of contaminated milk powder, sponsoring direct election in Beijing Lawyer Association, and, most recently, providing help for Deng Yujiao as well as victims of black jails.

However, PL has been facing various institutional difficulties and pressures. This organization has never given up registering with the department of civil affairs, but has received no response to those applications. Because it is registered as an industrial and commercial organization it has to consider donations as corporate income and pay a 25% corporate income tax. PL has even have met some legal restrictions from different government agencies. Recently Councilor Teng Biao had his passport confiscated, his lawyer's license suspended and his class at the China University of Political Science closed. In July Xu Zhiyong received calls from both the landlord of the PL office and the landlord who rented him his house requesting he move out at once.

Finance and Taxation Crisis

When we examine the complaints filed by the two taxation bureaus, the tax evasion accusations stem from four grants from Yale University over the last three years and a 1.1 million RMB (\$161,000 US) grant to PL researcher Wang Gongquan in April of 2009. The Beijing Local Taxation Bureau contends that these "donations" were not included on the organization's tax return according to related regulations and that the group owes over 60,000 RMB. The State Administration of Taxation argues that these "donations" belong to statutory corporate income and PL did not pay the 25% corporate income tax of 180,000 RMB. In this punishment both bureaus imposed the highest possible fine of five times the owed amount on PL, totaling 1.42 million RMB.

Xu Zhiyong maintains that "we have not violated any regulations". He says that "it is very interesting that for the same sum of money from Yale University, the Beijing Municipal Office of the State Administration of Taxation considers it a donation, while the Beijing Local Taxation Bureau thinks of it as corporate income. However, we still pay tax as corporate income. We have paid the both the taxes we should and should not have paid." Xu Zhiyong insists that PL never evaded its tax obligations, "I always maintain to pay the taxes required by law, even if the law is unreasonable". A certificated tax agent who wished to remain unnamed questioned the penalty amount noting, "If all penalties were like this, few companies could survive." This tax agent also noticed that from January 1st, 2009 to July 14th of the same year only five units have been penalized by Beijing Municipal Office of the State Administration of Taxation. "Most enterprises have tax problems (intentionally or unintentionally), why do they specially care about PL... and impose a heavy penalty on it?" Dr. Jia Xijin, Vice Dean of the NGO Research Center at the School of Public Policy and Management at Tsinghua University also had the same question. She wrote: "if it is routine work and the tax bureau carries out random spot checks of tax units, then why would both the Beijing Local Taxation Bureau and State Administration of Taxation check the same organization at the same time? Even if someone had reported PL to several groups, there is a very small probability that all three sectors would complete their punishment process using different procedures and contents at the same time."

The Beijing Local Taxation Bureau and Beijing Municipal Office of the State Administration of Taxation held non-public hearings on July 24th and 30th, but have not replied to these questions. The PL has said that they were unable to pay this high penalty. At present, they only have around 80,000 RMB (\$11,700 US) left in their accounts. Teng Biao said he was not optimistic about the result and the group might have to consider bankruptcy or Xu Zhiyong, the legal representative of the company, might face up to seven years in prison.

At the same time, three days after receiving the tax penalty papers, Beijing Municipal Bureau of Civil

Affairs announced the "Banning Notice" of the subordinate body of PL - PL Law Research Center. On July 23 PL submitted an administration review application for revocation of the "Banning Notice", requesting that the illegal administrative penalty act be disclosed by Beijing Municipal Bureau of Civil Affairs and that the Bureau return all confiscated property and documents. The spokesman of the Beijing Municipal Bureau of Civil Affairs, Zhou Libiao, declined interview because the case had not been completed.

Plight as a Group

There are many other public litigation organizations, large and small, that are concerned by the treatment of the PL. These groups face threats, assault, and pressure that is not generally visible to the public. For example, the Yirenping Center, which helps people with AIDS and other diseases, has been searched by law enforcement groups that suspected them of publishing material and confiscated their newsletters. Liu Xiaoyuan, who was awarded the Best Chinese Blog at the International Blog Competition by Deutsche Welle, had his blog at Sohu.com shut down and his law office was ordered to suspend its practice. Lawyer Yan Yiming was attacked by criminals in his own office without reason and was badly injured.

Lawyer Guo Jianmei, founder of The Center for Women's Law and Legal Services of Peking University is envied by colleagues for her "governmental support". She has successfully established the NGO as part of the Law School of Peking University. This resolved the three most difficult problems of Chinese NGOs: registration, funds, and finance. She credits this accomplishment to her deep understanding of how to "open the channels" and establish a cooperative relationship with the government and international society and how to "surviving in the cracks" and have an impact. The political value of the \$180,000 US grant that she received from the All China Women's Federation is the most encouraging thing for her. "This means you are affirmed by the government". However, this famous lawyer has suffered from depression. "Being threatened and hit have become regular occurrences, the most troubling thing is being called in for conversations by government from time to time and having my mobile phone monitored." But she says the most difficult things are the obstacles to her work. "Case work is very difficult," she said, "the opponents are often men with power, parts of the criminal underworld, or local bullies. Anyway, they all have social relations. Sometimes, the opponent is powerful economic interest group, even the government."

Money is an inevitable problem. The clients of a public interest lawyer are mostly vulnerable groups struggling at the bottom of society, so most public interest litigations is free. Therefore, the economic condition of public lawyers is very low. The most serious crisis is faced by Zhou Litai's law firm. There are still 5 million RMB (\$732,000 US) in lawyer fees owed by over a hundred migrant workers, and the foreign borrowing of the law firm has reached 1.5 million RMB (\$219,000 US). Right now the firm can barely keep its head above the water. In PL, except for three full-time staff, no one else receives a salary. The only income of Xu Zhiyong is the money he receives for teaching at Beijing University of Posts and Telecommunications. Despite this financial strain they still carefully decline most foreign donations. They only accept donations from "safe" organizations such as the Ford Foundation and Yale University.

Vice Professor of China University of Political Science, Xiao Han, said such an economic condition cannot attract more talented individuals to join. "We should not give people the impression that doing this work is just like being an ascetic, this should be attractive." Xiao Han believes all public lawyers are the heroes of Chinese citizens, "it is wrong to let a civil hero be a poor man."

III. Nautilus invites your responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send

responses to: napsnet-reply@nautilus.org . Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

Produced by The Nautilus Institute for Security and Sustainable Development
Northeast Asia Peace and Security Project (napsnet-reply@nautilus.org)

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