

The Squeeze of Criminal Prisoners in Custody in China and Measures for Resolve It

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Squeeze in prisons is a difficult problem confronted by many countries at present, especially developing countries. China, as a developing country, is no exception. The main expression of the squeeze in prisons in China is the squeeze of criminal prisoners in custody (a general reference to criminal suspects and the accused in criminal cases), and there basically does not exist a squeeze of sentenced offenders in custody (criminals serving sentences in places of custody). It is stipulated in Article 12 of the Criminal Procedure Law of the People's Republic of China that "No one should be determined guilty unless the People's Court so adjudicates according to law." Therefore, in China criminal suspects and the accused cannot be equated with criminals, and their lawful rights and interests are specially protected by law, including the citizens' basic rights which have not been deprived of and the litigious right commensurate with their status in litigation. One of the measures of protection is the implementation of separate custody and management in the custodian administration, which are different from those for sentenced offenders. It is obviously different from the practice in some countries to hold criminal prisoners and sentenced offenders into custody in the same prison. In China, the place for holding criminal prisoners in custody is a special place for executing compulsory measures such as detention and arrest, which is called detention house. The squeeze of criminal prisoners in custody mentioned in this article refers

to the squeeze of criminal suspects and the accused in detention houses.

1. The custody of untried prisoners in China

From the founding the People's Republic of China in 1949 up to now, the custody of criminal prisoners in China has experienced a course of squeeze, alleviation, squeeze and gradual improvement. At the beginning of the founding of the Republic, because of the mop-up of the remnants of hostile forces and the ensuing movements against "three evils" and "five evils", a large number of criminal prisoners were taken into custody, and the places for detention at that time were mainly the remodelled temples and ancestral halls. The small capacity and poor conditions resulted in the appearance of a squeeze of criminal prisoners in custody. From the end of 1950s to the time before the reform and opening-up in 1978, because of the low crime rate, there were not many criminal prisoners in detention houses, and no squeeze happened. After the reform and opening-up, due to a rise in the crime rate and the large-scale "severe crackdown of criminal activities" carried out in 1983, the number of criminal prisoners in custody increased by a large margin, resulting in a very serious squeeze in detention houses. It was until the beginning of 1990s that this situation was alleviated. At present, the criminal cases in China are still high in number. In 1998, the people's courts at various levels in the whole country imposed sentences on more than 530,000 criminals (based on a report made at the National People's Congress by Comrade Xiao Yang, President of Supreme People's Court). Compared with the Chinese population of more than 1.2 billion, the crime rate is still rather low, but the absolute number of crimes is big. Most of the more than 530,000 criminals were held in custody in detention houses, unavoidably bringing about a squeeze of criminals in custody in detention houses. At present, the main manifestation of a squeeze of

criminal prisoners in part of detention houses in China is that the actual number of people in custody has surpassed the designed capacity detention houses, with the result that the space for sleeping and rest of the criminal prisoners in custody has become narrow, the air inside the room of custody has become not fresh enough, the hygiene conditions have lagged and the recreation facilities have become insufficient. For example, the designed capacity for detention houses in Xining city, Qinghai Province, is 660 persons, but in May,1996, the actual prisoners in custody were 910, exceeding as much as 38%. That caused a squeeze of prisoners in the rooms for custody.

2. Main measures for resolving the squeeze of criminal prisoners in custody

The squeeze of criminal prisoners in custody in detention houses not only may make it easy for circumstances influencing criminal proceedings to occur such as collusion with accomplice to device consistent confessions, but also may sow the seeds of many hidden troubles of insecurity. And what is more important is that it seriously encroaches upon the lawful rights and interests of criminal prisoners in custody. Therefore, for a long time, the Chinese Government has regarded the resolving of the squeeze of prisoners in custody (including criminal prisoners and sentenced offenders) as an important measure to strengthen the rule of law and protect human rights. Through efforts made in many years, the squeeze of criminals serving sentences in prisoners has been basically resolved. Now, the Chinese Government and the political-legal organs at various levels have shifted their focus of work in resolving the squeeze of criminals to resolving the squeeze of criminal prisoners in custody in detention houses, and have explored some ways for solution which suit to the national conditions in China and are

highly effective.

- (1) To do a good job of crime prevention and reduce the crime rate, and to avoid the occurrence of a squeeze of criminal prisoners by starting with the sources of crimes.

The best way to resolve the problem is to take preventive measures. In order to avoid the occurrence of a squeeze of criminal prisoners, we have established a whole system of preventing crimes and done a great deal of preventive work. Governments at all levels, from the central to the local, have set up “committees for comprehensive administration of social security”, which are responsible for social security and prevention of the occurrence of illegal criminal acts. This work, implemented from the central authorities through to the grass-root levels, has become a strong defense in preventing the occurrence of ordinary criminal cases. The procuratorial organs at all levels have also set up special agencies for preventing crime by taking advantage of duty (bribery and corruption crimes and tort and malfeasance crimes by government employees). The Supreme People’s Procuratorate has set up a “Crime Prevention Centre”, and the procuratorial organs at all levels have also set up corresponding crime prevention divisions and sections, and a network of preventing crimes by taking advantage of duty has been established in the society. By means of individual case prevention, department prevention and system prevention, the occurrence of crimes by taking advantage of duty has been effectively prevented. For example, the procuratorial organs in Shanghai have established 87 crime prevention networks since 1993, in which more than 1,300 enterprises and institutions participated. The procuratorate in Zhabei District, Shanghai, established the crime prevention network for only one year, and the rate of exposed criminal cases by securities employees dropped

by 50%.

(2)The political-legal organs have strictly complied with the conditions for detention and arrest and resolutely corrected the practice of unlawful withholding of sentenced offenders. Beginning from the link of admitting prisoners to the detention house, they have effectively resolved the squeeze of criminal prisoners in custody.

In the course of handling legal cases, we have stipulated in legislation that case handling departments are strictly prohibited from carrying out criminal detention of any incompetent criminal suspect and that the term of detention should be strictly observed in regard to a detained competent criminal suspect.. When arrest is required, it should be reported timely to the procuratorial organ for examination and approval, and the procuratorial organ concerned should carry out strict examination and be critical in giving approval to arrest according to law. In the examination every year, the procuratorial organs are able to find out a considerable number of legal cases of incompetent arrest. For example, in 1998, the procuratorial organs at all levels made decisions of not approving the arrest of 93,218 persons (based on a report made in the National People's Congress by Comade Han Shubin, Attorney-general of the Supreme People's Procuratorate). By strictly complying with the conditions for detention and arrest, the number of criminal prisoners in custody can be reduced to the minimum.

According to a provision of law in China, a detention house may, instead, execute the punishment of a criminal with the remaining term of imprisonment less than one year before being handed over to the prison for the execution of punishment. But in actual work, part of detention houses, due to various reasons, have often illegally withheld criminals with the remaining term of imprisonment above one year in the detention houses for

serving sentences, thus causing a bigger squeeze in the already insufficient prison cells. In order to change this situation, the procuratorial organs have intensified the supervision of law enforcement and resolutely corrected those violations of law, so as to maintain the solemnness of law, and at the same time have effectively alleviated the squeeze of the criminal prisoners in custody.

(3) In the process of criminal proceedings, the political-legal organs including public security, procuratorial and judicial organs should accelerate the handling of legal cases to avoid extended custody and shorten the time of custody of criminal prisoners in detention house. This is an important channel for resolving the squeeze of criminal prisoners in custody.

In the course of handling legal cases, the political-legal organs at all levels have asked *magister litis* to raise case handling efficiency as far as possible and carry out criminal proceedings timely so as to shorten the time of custody of criminal prisoners and increase the utilization ratio of per unit area of detention houses. For example, the Procuratorate of Guilin City, Guangxi Autonomous Region, in order to do a good job of winding up cases and jail delivery, has organized professional personnel to speed up the case handling and dealt with and finished 147 cases involving 221 persons within 20 days.

The Chinese Criminal Procedure Law has laid down clear provisions on the time period for investigation and custody, the term for reviewing and making a decision of prosecution and the time limit for adjudication in regard to a criminal prisoner, and calls for a timely release of people in custody or change the compulsory measure. Therefore, an extended custody not only may bring about a squeeze of criminal prisoners in detention houses,

but also is in violation of law and in encroachment of human rights. This explains why the political-legal departments at all levels have regarded whether there is an extended custody or not as an important indicator to judge the quality of handling legal cases. In 1998, the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security jointly issued a "notice concerning the strict enforcement of the provision on the time limit of custody for criminal suspects and the accused set forth in the Criminal Procedure Law and resolute correction of extended custody". After the notice was sent out to lower levels, a great number of cases of extended custody were put right all over the country, thus greatly alleviating the squeeze of criminal prisoners in detention houses.

(4) Governments at all levels have increased financial input and large numbers of detention houses have been re-built, expanded or newly built. This is the fundamental way out for resolving the squeeze of criminal prisoners.

In recent years, we have adopted the method of joint financing with the central government contributing a smaller part and the local governments contributing a bigger part to re-build, expand and newly build a batch of detention houses. According to statistics, from 1983 to 1990, the Central Government invested a total of 300 million yuan and the local governments invested 400 million yuan for the capital construction of detention houses, enabling half of the total number of detention houses at that time to be re-built, expanded or newly built. From 1991 to 1998, the Central Government invested 560 million yuan again and local government invested 2,400 million yuan for the construction of detention houses, detention centres and posts of detention for interrogation (after the practice of detention for interrogation was abrogated in 1997, most of the posts of

detention for interrogation were changed into detention houses. In this period, 50% of the detention houses were re-built, expanded or newly built. For example, in Inner Mongolian Autonomous Region, in 1997, the central finance made a special investment of more than 6.20 million yuan and the Government of the autonomous region invested 82 million yuan for the construction of detention houses. And the banners and counties under the autonomous region also contributed funds. Chifeng city made a total investment of 30 million yuan in 1995-1997 which made it possible for 80% of detention houses to be constructed, moved or re-built.

With investments on a large scale in recent years, the construction of detention houses in China has gained rapid development, and a great number of detention houses with good conditions, integrated facilities and leading designs have been completed. By the end of 1998, 121 first-grade detention houses, 491 second-grade detention houses and 1,242 third-grade detention houses have been completed throughout the country. As a result, the squeeze of criminal prisoners in custody in detention houses in the whole country was greatly improved. For example, The detention house in Dongcheng District in Beijing has a designed capacity of 1,500 persons, and now it has only 1,000 persons in actual custody.

3. Questions exist

In regard to the resolving of the squeeze of criminal prisoners in custody in detention houses, we have adopted many effective measures and obtained fairly obvious achievements. However, there still exist some questions in the work, which are in the main as follows:

(1)The work of crime prevention needs to be further strengthened.

Since the reform and opening-up, simultaneously with the absorbing of the capital and technology from developed countries, the hedonism and

money worship of the Western society also poured into China. The level of social morals of some people has lowered and the crime rate has ascended. The pornography, gambling and drug addiction disappeared in China for years have bred to some extent. How to do a good job of the crime prevention under the new situation of the reform and opening-up is still a weak link of ours and needs to be further strengthened.

(2)Laws and regulations on counter-conventional treatment of criminals await perfection.

In the Criminal Law in China there are punishments of counter-conventional treatment of criminals such as pecuniary penalty and penalty of control, but they are seldom applied in the practice of adjudication. To petty crimes, the people's courts still are inclined to pass a judgment of short-term imprisonment. This, on the one hand, easily leads to a squeeze of prisoners in detention houses (criminals with the remaining term of imprisonment less than one year serve sentences in detention houses), and on the other hand, is unfavorable to the reform and education of criminals. Therefore, how to introduce advanced concept of punishment, make a wider application of punishments of counter-conventional treatment of criminals such as fine, forced labor in community and probation needs to be made further clear and definite in legislation. At the same time, it is also necessary to strengthen international exchanges and co-operation in this field.