
The Right of Ethnic Minorities to Free Interpretation in Criminal Proceedings under International Law: With Special Reference to China

Lijiang Zhu *

The right to free interpretation in criminal proceedings is one of the important components of the right to fair trial in international law. It applies to everyone within the territory and jurisdiction of the State, including those ethnic minorities who speak and write different languages from the ethnic majority. The international human rights treaty bodies and regional human rights courts expanded the scope of this right and imposed more obligations upon the State parties through the general comments and jurisprudences. This right serves to the interest of the right to fair trial in criminal proceedings. Under Chinese law, there might be two or more languages used in judicial proceedings in ethnic autonomous areas. In the case that one specific language is designated as the language to prosecute and try a specific criminal case, the Chinese judicial organs must provide interpretation and translation to the participant who is not familiar with that specific language. Therefore the right to free interpretation is implied in Chinese law and preserves the constitutional principle of equality to all ethnicities and the right to fair trial. The problem, however, is that such a right is not well implemented in Chinese judicial practice. Several practices are inconsistent with the minimum standards developed by the jurisprudence of the international human rights treaty bodies. It is suggested that China establish the regulations and judicial interpretations that comply with international minimum standards, and provide a robust constitutional review

* Assistant Professor/Lecturer of International Law, China University of Political Science and Law ("CUPL"), Beijing, People's Republic of China; Visiting Scholar at School of Law, Seoul National University ("SNU"), Korea. LL.B./LL.D. (Peking), LL.M. (Lund). The author may be contacted at: lijiangzhu@hotmail.com/Address: Faculty of International Law, CUPL, No. 25, Xitucheng Road, Haidian District, Beijing, China 100088. All websites cited in this article were visited before July 31, 2010. Because English is not the official language in the People's Republic of China, the English translations are not authentic. Thus, all English translation of Chinese laws cited in the footnotes are for reference only. The author wishes to thank the anonymous reviewers of the Journal. Any errors of fact or interpretation are, however, solely those of the author.

mechanism or national human rights institution to remedy the victims for violations of this right.

Keywords

Ethnic Minorities, Right to Free Interpretation, Fair Trial, ICCPR, ECHR, Chinese Criminal Procedure

I. Introduction

The People's Republic of China (hereinafter, China) is a country with 56 ethnic groups. The largest ethnic group is the Han ethnicity, while the other 55 ethnic groups are customarily referred to as 'ethnic minorities.' According to national census conducted in 2000, the population of mainland China is 1,265,840,000 of which 1,159,400 are ethnic Han (approximately 92 percent) and 106,430,000 are ethnic minorities (approximately 8 percent).¹ The human rights of Chinese ethnic minorities have been a topic of vast discussion in the fields of international relations, international law and the Chinese studies. Indeed, this topic not only relates to the protection of human rights of ethnic minorities at the international and domestic level, but is also a complicated game of international politics. Nevertheless, this paper will be limited to the legal aspects of the human rights of Chinese ethnic minorities.

There are several reasons why, among all of the human rights issues under international law, the right of Chinese ethnic minorities to free interpretation in the criminal proceedings is an important issue. First, it is estimated that the 55 Chinese ethnic minorities use about 120 languages, while the Han ethnicity, as the ethnic majority in China, uses Chinese. Only the Hui and Manchu ethnic minorities use Chinese. All other 53 ethnic minorities have their own languages.² Furthermore, the statistics of the State Ethnic Affairs Commission shows that more than 60 millions of the

¹ *Reports submitted by States Parties under Article 9 of the Convention*, presented by the People's Republic of China, para.3. See U.N. Doc. CERD/C/CHN/10-13 (Mar. 24, 2009).

² Li Jinfang, *Zhongguo Shaoshu Minzu you Shiyong he Fazhan Ziji de Yuyan Wenzhi de Quanli* (The Chinese Ethnic Minorities Have the Right to Use and Develop Their Languages and Characters), 5 RENQUAN (HUMAN RIGHTS) 30 (2005); See also Yang Jianwu, *Zhongguo Zhengfu de Yuyan Zhengce he Zhongguo Shaoshu Minzu Renquan Baohu* (Language Policy of the Chinese Government and Human Rights Protection of the Ethnic Minorities in China), 1 BIJIE XUEYUAN XUEBAO (JOURNAL OF BIJIE UNIVERSITY) 77 (2006) ("The Chinese academics have different views about the number of the languages which are being used by the Chinese ethnic minorities. Some say that the number is about 120, while others say it is about 100").