



中华人民共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团

**PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA**

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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the joint communication [AL CHN 16/2020] dated 13 August 2020, has the honor to transmit herewith the reply by the Chinese Government.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 23 October 2020



Office of the High Commissioner for Human Rights  
**GENEVA**

*(Translated from Chinese)*

Receipt is hereby acknowledged of communication AL CHN 16/2020 of 13 August 2020 from the Special Rapporteur on the situation of human rights defenders, the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, of the United Nations Human Rights Council. The Chinese Government wishes to make the following reply.

1. The case of Yu Wensheng

On 17 June 2020, the Xuzhou Intermediate People's Court in Jiangsu Province publicly pronounced, in accordance with the law, a decision in the first instance in the case of incitement of subversion of State power by Yu Wensheng. It found, in accordance *inter alia* with article 105 (2) of the Criminal Law of the People's Republic of China, that Mr. Yu had incited subversion of State power through the spreading of rumours and slander, and it sentenced him to 4 years in prison and deprivation of political rights for 3 years. After the verdict was handed down in the first instance, Mr. Yu appealed on the grounds of excessive sentencing. The case is currently being tried in the second instance at the Jiangsu Higher People's Court.

The people's courts try cases in accordance with the law and have fully guaranteed all of Mr. Yu's procedural rights. After the Xuzhou Intermediate People's Court accepted the case, it informed Mr. Yu, in accordance with the law, of his right to counsel, and Mr. Yu hired two defence lawyers. In accordance with the law, information on the court session was published on the court's posting board and electronically on its bulletin board three days before the court hearing, and the case was heard in public. Mr. Yu's brother and over 50 people from all walks of life attended the court hearing. During the trial proceedings, the Xuzhou Intermediate People's Court requested approval from a higher people's court to extend the deadline for the trial, for reasons related *inter alia* to the COVID-19 pandemic.

2. Regarding the assignment of residential surveillance in a designated location

Residential surveillance in a designated location is a compulsory measure of the Criminal Procedure Law. It has clear objectives and there are strict procedures for its consideration and approval. Chinese judicial bodies protect the rights of criminal suspects, in accordance with the law. There is no such problem as so-called "forced disappearance caused by residential surveillance in a designated location" or "arbitrary detention".

3. With regard to safeguarding the right of lawyers to practise and ensuring their independence, China is a State based on the rule of law, and its achievements in implementing a comprehensive strategy of governing the country in accordance with the law are obvious to all. Through the practice of their profession, lawyers defend the legal rights and interests of their clients and uphold fairness and justice in society. At the same time, members of the legal profession must observe the Constitution and the law and must scrupulously abide by professional ethics and discipline. China has over 300,000 lawyers. They carry out their practice in accordance with the law and have made an outstanding contribution to the construction of China as a country based on the rule of law. However, there is also a very small number of individual lawyers who have engaged in illegal criminal activities and have thus been dealt with by judicial bodies, in accordance with the law. In concrete terms, in China, as a State based on the rule of law, if there is a law, it is to be followed; if there is a violation, it is to be investigated.

China has always attached a great deal of importance to safeguarding the right of lawyers to practise their profession. Article 3 of the Lawyers Law clearly stipulates that "lawyers are protected by law when practising in accordance with the law, and no



organization or individual may infringe upon the legitimate rights and interests of lawyers”. In recent years, China has continuously introduced measures to protect the right of lawyers to practise, striving to create a favourable environment for lawyers to perform their duties in accordance with the law and to take part in legal actions. In September 2015, the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly published the Provisions on the Legal Protection of Lawyers’ Practising Rights, which comprehensively covers arrangements for meeting with clients, examination of case files, investigation of cases and collection of evidence, and also all of their rights in lawsuits, such as those relating to questioning, examining submitted evidence, debating and putting forward a defence. The All China Lawyers Association and provincial and district-level lawyers associations have all set up rights protection centres, which are responsible for safeguarding the right of lawyers to practise. In April 2018, the Supreme People’s Court and the Ministry of Justice published a special notice putting forward further requirements for safeguarding the litigation rights of lawyers during the trial stage. In October 2018, the Supreme People’s Court and the Ministry of Justice jointly carried out a pilot involving full coverage of the defence in the trial stage of criminal cases. For cases where defendants did not hire counsel at the trial stage, the people’s court informed legal aid institutions to assign counsel to defend them; it strengthened guarantees of the lawyers’ right to question, cross-examine, debate and put forward a defence, giving full play to the functional role of lawyers in criminal trials and ensuring that defendants in criminal case were able to have access to an effective defence from a lawyer. In October 2019, the Ministry of Public Security and the Ministry of Justice jointly published a notice requiring detention centres to arrange lawyers’ meetings with their clients on time, in accordance with the law, and to guarantee the right of lawyers to meet with their clients.

At the same time, China has always attached importance to ensuring the independence of lawyers who carry out their practice in accordance with the law. In addition to a series of regulations on safeguarding the right of lawyers to practise, the Criminal Procedure Law and the Lawyers Law also clearly set out the obligations of lawyers in representing and defending clients, specifically stating that they are to “present, on the basis of facts and law, materials and arguments to prove that a criminal suspect or defendant is innocent or is less guilty than charged, or that his or her criminal responsibility should be reduced or relieved, in order to protect the procedural rights and other lawful rights and interests of the criminal suspect or defendant”. Chinese lawyers act as defenders in criminal proceedings and are independent participants in litigation. Lawyers defend their clients and perform their duties independently, according to their own will, and safeguard the legitimate rights and interests of criminal suspects and defendants without interference from any body or individual.

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联合国人权理事会“人权卫士”问题特别报告员、任意拘留工作组、强迫失踪工作组、言论自由问题特别报告员、法官和律师独立性问题特别报告员、在反恐中促进和保护人权问题特别报告员和酷刑问题特别报告员 2020 年 8 月 13 日来函[ALCHN 16/2020] 收悉。中国政府对来函答复如下：

### 一、余文生案

2020 年 6 月 17 日，江苏省徐州市中级人民法院依法对余文生煽动颠覆国家政权案一审公开宣判，认定余文生以造谣、诽谤等方式煽动颠覆国家政权，依照《中华人民共和国刑法》第一百零五条第二款等的规定，对余文生以煽动颠覆国家政权罪判处有期徒刑四年，剥夺政治权利三年。一审宣判后，余文生以量刑过重为由提出上诉，目前案件正在江苏省高级人民法院二审审理中。

人民法院依法审理案件，充分保障了余文生的各项诉讼权利。徐州市中级人民法院受理案件后，依法告知余文生有权委托辩护人，并由余文生委托了两名律师担任辩护人；依法在开庭三日以前在法院公告栏及电子屏幕公布开庭信息，对案件公开开庭进行了审理，余文生的哥哥及各界群众 50 余人旁听了庭审。案件审理期间，因新冠肺炎疫情等因素，徐州市中级人民法院依法报请上级人民法院批准延长了审理期限。

### 二、关于指定居所监视居住措施



指定居所监视居住措施是《刑事诉讼法》规定的一种强制措施，有明确的适用对象和严格的审批程序。中国司法机关依法保障犯罪嫌疑人的各项权利，不存在所谓“指定居所监视居住导致强迫失踪”、“任意拘留”的问题。

### 三、关于维护律师执业权利，保障律师执业独立性

中国是法治国家，实施全面依法治国战略，取得的成就有目共睹。律师通过执业活动，维护当事人合法权益，维护社会公平正义。同时，律师执业必须遵守宪法和法律，恪守律师职业道德和执业纪律。中国有 30 万余名律师，他们依法履行律师权利，为法治中国建设做出了突出贡献。但也有极个别律师因从事违法犯罪活动被司法机关依法处理。有法必依，违法必究，正是法治中国的具体体现。

中国始终高度重视维护律师执业权利，中国《律师法》第 3 条明确规定，“律师依法执业受法律保护，任何组织和个人不得侵害律师的合法权益”。近年来，中国不断出台保障律师执业权利的举措，努力为律师依法履职、参与司法活动创造良好环境。2015 年 9 月，最高人民法院、最高人民检察院、公安部、国家安全部、司法部联合印发《关于依法保障律师执业权利的规定》，对保障律师会见、阅卷、调查取证以及发问、质证、辩论辩护等各项诉讼权利作出全面部署。全国律协和省级、设区的市级律师协会也都全部设立了维权中心，专门负责维护律师执业权利。2018 年 4 月，最高人民法院、司法部专门印发通知，就保障律师庭审阶段各项诉讼权利提出进一步要

求。2018年10月，最高人民法院、司法部联合开展刑事案件审判阶段律师辩护全覆盖试点工作，对于审判阶段被告人没有委托辩护人的案件，由人民法院通知法律援助机构指派律师为其提供辩护，加强律师发问、质证和辩论辩护权利保障，充分发挥律师在刑事案件审判中的职能作用，确保刑事案件被告人能够获得律师有效辩护。2019年10月，公安部、司法部联合印发通知，对看守所依法及时安排律师会见、保障律师会见权等提出要求。

同时，中国始终重视保障律师依法执业的独立性。中国《刑事诉讼法》和《律师法》除对维护律师执业权利作出一系列规定外，还对律师的辩护代理职责作出明确规定，即“根据事实和法律，提出犯罪嫌疑人、被告人无罪、罪轻或者减轻、免除其刑事责任的材料和意见，维护犯罪嫌疑人、被告人的诉讼权利和其他合法权益”。中国律师在刑事诉讼中担任辩护人，是具有独立地位的诉讼参与人，律师依自己的意志依法独立辩护、独立履行职务，维护犯罪嫌疑人、被告人合法权益，不受任何单位或者个人的干扰。