

# СТАТЬИ

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## Public security and police law in China

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The Chinese police performs a wide spectrum of social functions. The first part of this paper presents a daily routine of a district police station in the city of Kunming, Yunnan Province, and the various social functions they perform. Mediation among members of the local community in solving minor conflicts is one of the police's main functions. Police officers are highly motivated in their work. Their success is measured by the degree of satisfaction of their local community. The methods of Chinese police are unique. Its force lies not so much in the extensiveness of governmental control over the life of ordinary citizens as in the wide network of personal relationships between the police and the members of the Chinese public. This network as well as the variety of functions has a single ultimate goal: public security. The second part of the paper examines the concept of public security in Chinese law. It is impossible to understand the whole of the Chinese legal system in its dynamic without taking into account the normative importance of the concept of public security or public order. In China, public order and public security are synonymous. They are understood differently from the Western legal tradition. In the West, public order is a delineation of freedom of private individuals to act pursuing their own interests. It exists to secure the individual rights and liberties. In China, it is the condition for the stability, greatness and prosperity of the Chinese nation. The third part of the paper examines the relationship between public security and human rights. It is argued that the criticism of China by the Western human rights activists fails to understand the Chinese perspective. The Chinese police's measures restricting individual freedoms should not be understood as the violation of human rights, on the contrary, it is a protection of the majority's essential right to public order. The idea of public security in the work of Chinese police is not simply an ideological slogan, it is an essential principle of the Chinese legal system which invigorates and innerves the work of the Chinese police.

*Keywords:* China, police, public security, human rights.

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Chinese police has been an object of a significant number of research works in English language<sup>1</sup>. Since China is a very dynamic country, many academic papers, even written recently, do not reflect the current situation. Chinese police is subject to a never ceasing drive to reform it to meet increasing challenges of social control<sup>2</sup>. China is often described as a 'police state'. However, many scholars have questioned the correctness of this definition<sup>3</sup>. Police state is often incorrectly defined as "a government that exercises power arbitrarily through the power of the police" with the disregard for the rights of citizens<sup>4</sup>. The problem with this definition is not only that the idea of human rights in China is understood very differently from the Western liberal democracies. It also fails to describe the style and the philosophy of the police in managing the society. On its surface, China might fit into the description of a police state given by Brian Chapman<sup>5</sup>. Chinese state is based upon internal discipline and rigorous control. The population is made to be wholly obedient and responsive to the rulers of the state. According to Brian Chapman, a police state is different from the state with the rule of law which is characterized, among other things, by the existence of independent judiciary that has the effective power of judicial review over the police actions<sup>6</sup>. The first problem of applying this definition of a police state to China is, that China has a written law which allows citizens to challenge the acts of the police in a court<sup>7</sup>, even though many scholars affirm that China lacks independent judiciary<sup>8</sup>. The notion of an independent judiciary is a controversial topic often colored by the authors' political biases. It is true that judicial review over the acts of Chinese police was not effective in the past, but the development of Chinese legal system is so fast that it may arrive at the situation when the courts are more proactive and yet the police remains the main form of the social control. The second problem is that this description of a police state does not elucidate the diversity of methods which enable obedience and responsiveness of people to its government.

This paper will demonstrate how the police performs a wide spectrum of social functions. Providing such an insight is a difficult task considering that China has an enormous police force which is well organized and managed, although one must acknowledge that the number of police per capita may be comparatively small<sup>9</sup>. "Estimates of police numbers range from a low 1.5 million to a hearty 4 million"<sup>10</sup>. The reason for such a broad estimation is that the system of Chinese police is very complex. First of all, there is *gongan* (public security police), which is at the focus of this paper. There are many other police systems such as *wujing* (armed police force) and *chengguan* (urban management

<sup>1</sup> A comprehensive analysis of the literature is found at: *Scoggins S. E. Policing Modern China // China Law and Society Review*. 2018. Vol. 3, no. 2. P. 79–117.

<sup>2</sup> *Yang Z. Legal organs urged to hasten reform // China Daily*. 28 August 2020. URL: <https://global.chinadaily.com.cn/a/202008/28/WS5f4856b8a310675eafc5604b.html> (accessed on: 18.03.2021); *Cain G. The Perfect Police State: An Undercover Odyssey Into China's Terrifying Surveillance Dystopia of the Future*. New York, 2021.

<sup>3</sup> *Guo X. China's Security State: Philosophy, Evolution, and Politics*. Cambridge, 2012. P. 156; *Cal-lahan W. A. China: The pessoptimist nation*. Oxford, 2009. P. 25.

<sup>4</sup> *Tipton E. K. The Japanese police state: The tokko in interwar Japan*. Honolulu, 1990. P. 14.

<sup>5</sup> *Chapman B. The Police State // Government and Opposition*. 1968. Vol. 3, no. 4. P. 428–440.

<sup>6</sup> *Ibid.* P. 430–431.

<sup>7</sup> 《中华人民共和国行政处罚法》(1996年3月17日第八届全国人民代表大会第四次会议通过) [Law of the People's Republic of China on Administrative Penalty (Adopted at the Adopted at the Fourth Session of the Eighth National People's Congress on 17 March 1996)]. Article 6.

<sup>8</sup> *Wang Ch., Madson N. Inside China's Legal System*. Cambridge, 2013. P. 72; *Blasek K. Rule of law in China: a comparative approach*. Heidelberg, 2015. P. 72; *Yueh L. China's growth: The making of an economic superpower*. Oxford, 2013. P. 1.

<sup>9</sup> For general introduction see: *Wong K. C. Police reform in China*. Boca Raton, 2015; *Wang X. Empowerment on Chinese police force's role in social service*. Heidelberg, 2011. P. 40–55.

<sup>10</sup> *Scoggins S. E. Op. cit.* P. 81.

force). With regards to daily social control, the functions of *gongan* and *chengguan* are often indistinguishable<sup>11</sup>. This paper will focus on public security police by demonstrating that it plays a much greater role than police forces in many other countries even though China tries to borrow certain elements of policing from the West<sup>12</sup>. It will be argued that the methods of Chinese police are unique. Its force lies not so much in the extensiveness of governmental control over the life of ordinary citizens as in the wide network of personal relationships between the police and the members of the Chinese public. These personal relationships are based on trust not coercion<sup>13</sup>.

Nurturing personal relationship by means of a variety of police functions has a single ultimate goal: 'public security' 治安 (*zhi an*) which can be also translated as 'public safety' or as 'law and order'. It is impossible to understand the whole of the Chinese legal system in its dynamic without taking into account the normative importance of the concept of public security or stability which is particularly apparent in administrative and criminal law<sup>14</sup>. This concept is understood differently in China from the Western legal tradition. In the West, public security is one of the aspects of public order. The Western concept of public order is well described by a Russian philosopher Vladimir Solovyov more than a century ago<sup>15</sup>. For the Western thought, public order is a delineation of freedom of private individuals to act pursuing their own interests. It exists to secure the individual rights and liberties. In China, public order and public security are synonymous<sup>16</sup>. Both express the condition for the stability, greatness and prosperity of the Chinese nation. A student of Chinese law is often surprised by the abundance of political sloganiariness in legislative acts<sup>17</sup>. In this paper, I will attempt to show that the idea of public order in the work of Chinese police is not simply an ideological slogan, it is an essential principle of the Chinese legal system which invigorates and innerves the work of the Chinese police. In order to perceive this work better, let us examine a routine work of an ordinary Chinese police station.

## A routine work of a Chinese police station: a case study

A brief illustration of a daily work of a Chinese police station helps to understand the importance of the idea of public security in the Police Law of China. 'Weijing' police station<sup>18</sup> is placed in the center of Kunming, the capital of Yunnan Province in Thailand<sup>19</sup>. It has eight community police officers. They are responsible for providing security for the community of residents living in 300 apartment buildings. The area is also full of shops and hotels. There were 64 hotels in the police district at the time of the interview with the head of the police station. The main responsibility of the community police is to carry out

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<sup>11</sup> Lo S. *The politics of policing in greater China*. Heidelberg, 2016. P. 303.

<sup>12</sup> Zhou G., Li F. *On Security Mechanism in China and US: Comparison and Practices* // *International Journal of Law and Society*. 2020. Vol. 3, no. 4. P. 154.

<sup>13</sup> Han Z., Sun I., Hu R. *Social trust, neighborhood cohesion, and public trust in the police in China* // *Policing: An International Journal of Police Strategies & Management*. 2017. Vol. 40, no. 2. P. 389.

<sup>14</sup> Chen J. *Chinese law: Context and transformation*. Leiden, 2015. P. 281; Feng Ch., Leyton P. N., Simon Th. *China's Changing Legal System: Lawyers and Judges on Civil and Criminal Law*. New York, 2017. P. 171.

<sup>15</sup> Soloviev V. S. *Pravo I Nравstvennost'* // *Works*. Peterburg: Prosveschenie Publ., 1914. Vol. 8. P. 123. (In Russian)

<sup>16</sup> 惠生武 . 论治安与治安管理的同一性 // *北京警察学院学报*2019年 02期. 页 [Hui Sh. *On the Identity of Public Order and Public Order Management* // *Journal of Beijing Police College*. 2019. Vol. 2. P. 19–23].

<sup>17</sup> Cao D. *Chinese law: A language perspective*. London, 2017. P. 11.

<sup>18</sup> The name of the station has been changed to protect the identity of the interviewed police officer.

<sup>19</sup> The account of Weijing police station is obtained through one internal interview and also through interviews with four senior Chinese police officers in Kunming who commented on the results of the first interview conducted in summer 2019.

public security management. All police officers have a rich experience. Their task is much larger than reacting to administrative offences. They must be aware of what is happening in their community even up to small security concerns. The key-point of their work is building a good relationship with the community and local residences as well. This gives the community police a sense of accomplishment which also enhances the harmony and sustainability for the operation of the police-community management system. The police officers call their approach of local security management as “the policy of a more harmonious society”.

In relation to administrative offences, this policy finds its expression in the zero tolerance tactics towards minor offences. It is claimed that this policy has been successful. The success is measured by the perception of local residents who feel more peaceful and secure. There is an increasing demand for the police to be more effective in communication with parties involved in minor conflicts and to be able to conduct successful mediation. The police feels compelled to resort to mediation in dealing with minor offences, and to apply law, including court’s proceedings, only if mediation fails. For example, during the procedure of dealing with minor conflicts, such as fighting without involving serious injuries, police officer allows the parties to make choice whether to adopt formal court process or simple mediation. Usually, court’s proceedings are considered by the parties to be undesirable as they consume time, energy, and money. In contrast, simple mediation for minor social conflicts carries lower costs. In this way, the parties can make their own decisions being motivated by the desire to settle their dispute. The police can play an important role by providing suggestions how to settle the case and supporting the view of the parties whose demands they consider reasonable. The police also play the role of an educator as it informs the parties of the existing law (法律普及者). The effort is made not to substitute the consent of the parties with the police decision of the dispute. It is affirmed that this policy leads to a better adaptability in problem solving but also increases people’s consciousness to abide by law. In addition, the relationship between the police officer and the parties is no longer tense due to the change of roles.

A good example is enforcing law in cases of noise that disturbs local residents. A local police station in Kunming receives many complaints about noise, and a lower rank of police finds them comparatively difficult to resolve. If police had to follow the prescribed procedures, there could be many obstacles in enforcing law, and tension in the community will likely persist. Therefore, in such cases, the police prefers to communicate with the parties to settle cases in a less formal way. Sometimes, it involves cooperation of different departments in enforcing law. For example, there was a recent case (May, 2019) of a pharmacist shop actively promoting sales by loudspeakers’ advertisement. The residents that live nearby complained to the local police station. The police could not find an appropriate legal provision in *Public Security Administrative Penalties Law of the People’s Republic of China* to deal with the advertiser. However, there were some environmental regulations which could be used in those circumstances to impose a fine. The imposition of fine, however, was not within the powers of the local police but of an environment management authority. The police, in this case, acted as an intermediary between different parties involved including the offender and the environment management authority (环境管理部门). The police, apparently on the behalf of the environment management authority, issued a warning letter to the pharmacy threatening it with penalties unless it would desist from the disturbing advertisement. It monitored the situation and observed that the disturbing activity had indeed stopped.

In another case of a store using loudspeakers that disturbed local residents, the police went several times to the store to give advice but without a positive result. The police noticed that the store received regularly tourists brought by tour buses. The police contacted the local Tourist Administrative Department (TAD) as well as the Market and Mu-

nicipal Administrative Bureau for Industry and Commerce (MABIC). The agencies applied a joint enforcement measure. A group of officials went to the store trying to persuade the manager to desist from disturbing activity. They also sent a warning letter. To avoid the conflict with the TAD, as its primary customers were tourists, the store stopped using the loudspeakers' advertisement method. These are typical cases showing how police works. The police tries to adapt to the situation by being flexible. They use Chinese traditional military strategy: finding the sensitive part of the enemy and exploit this weakness. These two cases indicate that the Chinese police have to employ experience and skills in communication, cooperation, etc. to successfully settle local disputes.

There are also cases of mental disorder. There are people with mental disorder, particularly those with violent inclinations, who can create danger to society. There was a case when people reported about a person with mental disorder who had violent behaviour. The police concluded that the offender needs medical treatment. At first, the family members of the person did not cooperate. According to domestic rules on compulsory treatment of mentally ill people in a specialized institution, it is necessary to obtain consent of their family members. Police first contacted the family members and discovered the reason of their unwillingness to send the person to hospital: the family did not have money. Therefore, it was necessary to cooperate with the municipal organ (居委会 literally: neighborhood committee) which assisted in meeting financial costs of medical treatment in a specialized institution. The police acted in this case as an intermediary. The cooperation of the neighborhood committee was also needed to enter the residence in order to forcefully detain the person with a mental disorder. Thanks to this cooperation, the local community has a better sense of security.

The way how police manages social security and solves disputes has been greatly affected by the surveillance technology developments. Kunming Children's Hospital, which is a public management hot spot with intensive traffic and population, locates within the duty area of Weijing police station. In order to improve the management efficiency, the police persuaded the manager of the hospital to invest money in installing electronic surveillance system. The detection rate of reported offences in the hospital's area has been increased to more than 90 % due to its introduction. Shortly after the introduction of the system, a serious case (both criminal and civil) was successfully resolved. It involved a claim of homicide against the hospital staff by a family of a person whose body was found in a toilet room. The family of the deceased created significant disturbance within the hospital demanding vast compensation and threatened criminal prosecution even though there was no evidence that the hospital staff was responsible for the death.

The local police officers assisted in resolving the dispute by submitting electronic video recordings containing evidence that no hospital personnel was involved in the death of the person. It took only half a day to search for the necessary video records. The family accepted the evidence and the hospital was saved from the financial loss and trouble.

The introduction of electronic detectors is claimed to improve the overall sense of security. The police claimed that thanks to electronic detectors, 300 knives brought by the visitors were confiscated. It is certainly very unlikely that those knives were brought as a remedy against medical malpractice, however, their possession in public areas is prohibited and constitutes a minor administrative offence. The number of knives sized by the police gave them a significant sense of achievement.

Dealing with serious or minor offences is not the only main function of the police. They are heavily involved in crime prevention activities. For example, there is a sudden rise in telecom fraud alerts recently. Its rate as a percentage of the total number of crime reports has been increased to the 40 percent. Much work has been done by the local police to make the public aware of such cases. However, criminals use sophisticated fraud

techniques. That still leaves the number of such cases high. The police conducts public awareness campaigns to warn people from disclosure of private information.

Prevention of bullying incidents in local schools is another priority of the local police. In order to tackle the challenges of increasing campus bullying incidents, anti-bullying strategy is adopted. For instance, by means of vigorous publicity activities of the police in the schools, the bullying incidents were timely reported and the perpetrators were deterred. As the result, schools enjoy a greater sense of security and harmony.

The interviews with the Chinese police present the work of Chinese police in a very positive, almost heroic light. There is a strong belief among Chinese public that a Chinese policeman is not simply a watchdog that can bite (which he certainly can and does) but that he is a servant of people. Certainly, there are people in China who do not share this perception, considering police as an oppressive and corrupt institution, but I have never found among the members of German, Russian, Thai, and the British public the same, almost naive idealistic vision of a policeman, a heroic figure who sacrifices his life for the interests of the society. This image is certainly influenced by the Confucian and Communist traditions. Its force may not last long in the society in which the capitalist economic realities, urbanization, and accompanied alienation of people from one another have made deep inroads. It may also last longer due to the influence of language. The policeman is called often as *minjing* 民警, literally rendered as “people’s vigilant one” or “the one who warns people”. The word “police” in English as well as in Russian is borrowed from Latin, and it does not carry the same connotations. The Thai word for the police: ตำรวจ, which is borrowed from the Old Khmer language, also does not affirm necessarily a positive meaning, although it connotes well a common Thai word ตรวจ, that is *to inspect*. The influence of language on our moral perceptions is undeniable. The same thing labelled by two different words may easily produce different responses. The peculiarity of Chinese police law and the words used to describe it carries a stronger morally positive linguistic load than Thai, Russian, or English languages that use a more neutral word.

In China, an open criticism of the police work is certainly not a very common thing. There must be some degree of trust that people would share their opinion about the police, especially if it is done to a foreigner. The author conducted around 30 informal interviews with his former students and colleagues who were willing to be open and direct in their critical attitudes. One must acknowledge, that China always had a tradition of officials and intellectuals who were very courageous to submit critical reports even facing persecution. In some rare interviews, the Chinese police were severely criticized. The critical opinions are still among a minority. However, their voice is important to verify or falsify the idea that the Chinese police is an active harmonizing force of Chinese society.

The content of the critical remarks tend to be very similar. The Chinese police is claimed to be suffering from widespread corruption, nepotism, factionalism, and even inhumanity. In one reported case, an interviewed teacher had a dispute with a local government official on the legality of a parking car fee he was charged. The interviewee was convinced that the fee was illegal as he was parking on the ground of a private estate where he owned a property. He wrote to the police accusing the local official in extortion. The police came and locked the teacher’s car demanding the pay. According to the teacher, the police was not interested in justice. They had a good relationship with the extorting official.

In another case, a couple managed to beget three children at the time when they were allowed to have only one. The husband had to pay a bribe to a senior police officer to get registration papers for the new born children. On both occasions, the husband claimed that the police were taking bribes, yet the police helped him to avoid a heavier penalty for defying the governmental policy “one family — one child”. He claimed that the senior police officer was kind, understood his situation and financial difficulty, and asked a reasonable amount. Indeed, this is a good example of bribery promoting social harmony! In

this case, the father of the children was not critical of the police, but approving its actions as mitigating the harshness of the governmental policy.

There was a case of a Chinese Christian pastor, who had conducted an unauthorized religious service. The police arrested him and a group of others at the time of the service. They attempted to force the confession by threat of violence (to apply an electric baton) that the group was involved in an illegal religious activity since it was not authorized. The pastor and the others were firm and refused to confess arguing their constitutional right to practice religion freely. After one day of detention, the group was released. The pastor was asked to register his church, which he did, and since then, he claimed good relationship with the Chinese local police. This case is interesting that the Chinese police decided not to impose a penalty on the leaders of an unauthorized Christian group. Rather, facing resistance, they assisted the legalization of the religious assembly.

Thus, the Chinese police has a complex profile. However, there is certain characteristic which is common in the few examples of Chinese police work given above. The Chinese police plays an important role in the daily life of ordinary Chinese people. It may not always achieve social harmony, but it is generally successful in maintaining public order and security.

### **The concept of Public Security in Chinese Law**

The Chinese term 治安 (zhi an) is generally translated as ‘public security’. The key legislative act which informs much of the daily routine of the Chinese police work is the *Public Security Administrative Penalties Law of the People’s Republic of China 2005, 2012*. (中华人民共和国治安管理处罚法)<sup>20</sup>. It mentions the term over 100 times in its 119 articles. However, the law does not define the concept. Its meaning is closely associated with the ideas of public order (公共秩序), and public safety (公共安全) throughout the text of the legislation. The way how the police understands these terms is very important not only for the police but also for the ordinary citizens. For example, Article 8 and Article 9 of the *People’s Police Law of the People’s Republic of China (1995, 2012)*<sup>21</sup> states that

“If a person seriously endangers public order or constitutes a threat to public security, the people’s policemen of public security organs may forcibly take him away from the scene, detain him in accordance with law, or take other measures as provided by law”.

“In order to maintain public order, the people’s policemen of public security organs may, upon producing an appropriate certificate, interrogate and inspect the person suspected of having violated law or committed a crime. After interrogation and inspection, the person may be taken to a public security organ for further interrogation upon approval of this public security organ, if he or she is under any of the following circumstances: (1) being accused of a criminal offense; (2) being suspected of committing an offense on the scene; (3) being suspected of committing an offense and being of unknown identity; (4) carrying articles that are probably obtained illegally. The period of time for holding up the interrogated person shall be not more than 24 hours, counting from the moment he or she is taken into the public security organ. In special cases, it may be extended to 48 hours”.

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<sup>20</sup> There are a number of laws and regulations. The most commonly used is: 《中华人民共和国行政处罚法》(1996年3月17日第八届全国人民代表大会第四次会议通过) [Law of the People’s Republic of China on Administrative Penalty. (Adopted at the Adopted at the Fourth Session of the Eighth National People’s Congress on 17 March 1996)]. Article 32. URL: <https://www.cecc.gov/resources/legal-provisions/public-security-administration-punishment-law-chinese-text> (accessed on: 18.03.2021).

<sup>21</sup> Twitchett D. C., Fairbank J. K. The Cambridge History of China. Cambridge, 1978. Vol. 7, Part 1. P. 163.

Violations of law, that do not constitute a crime, can be of various nature, and police has a significant discretion to define what conduct is illegal and what is not. Police authorities in several cities, for example, recently announced the ban on small meeting societies playing Mahjong, a popular game, in an attempt to suppress illegal gambling and “purify social conduct”<sup>22</sup>. Many people protested calling the game the “quintessence of Chinese culture”. Later, the Police had to clarify that only unlicensed parlours would be shut. It is true that the police discretion is limited by a mass of internal regulations and orders that attempt to provide more guidance. Ironically, as some interviews indicate, the presence of too many internal regulations create the necessity to be very selective in their implementation depending on the local circumstances.

Defining what is legal or illegal under broad and imprecise provisions of legislation is not the only ‘paradise’ for the police discretion when defining the scope of the concepts of public order, public security and public safety. The higher levels of Chinese police can issue comprehensive regulations to ensure public security with the enormous impact on the daily life of ordinary citizens. For example, the Ministry of Public Security issued a “Regulation on cybersecurity supervision and inspections by the police” (《公安机关互联网安全监督检查规定》)<sup>23</sup>. It is claimed to be formulated in accordance with the PRC Cybersecurity Law<sup>24</sup>, but the law describes the authority to issue such regulations only in very broad terms: “State cybersecurity and informatization departments are responsible for comprehensively planning and coordinating cybersecurity efforts and related supervision and management efforts. The State Council departments for telecommunications, public security, and other relevant organs, are responsible for cybersecurity protection, supervision, and management efforts within the scope of their responsibilities, in accordance with the provisions of this Law and relevant laws and administrative regulations”<sup>25</sup>.

Article 28 of the same law requires network operators, defined very broadly and imprecisely in Article 76, “to provide technical support and assistance to public security organs and national security organs that are safeguarding national security and investigating criminal activities in accordance with the Law”. According to the Regulation, the police supervises and inspects any organization or person who provides internet services to others<sup>26</sup>. It can include any business which offers its customers even a temporal access to the Internet, such as Internet-café, hotels, restaurants, etc. Article 15 of the Regulations gives the power to the police to enter business places, computer rooms, and workplaces and among other things to copy information related to Internet security supervision and inspection matters. Article 27 threatens the persons subjected to supervision and inspection, if they do not obey regulations and public security management with administrative

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<sup>22</sup> 《中华人民共和国行政处罚法》(1996年3月17日第八届全国人民代表大会第四次会议通过) [Law of the People’s Republic of China on Administrative Penalty (Adopted at the Adopted at the Fourth Session of the Eighth National People’s Congress on 17 March 1996)]. URL: <https://www.cecc.gov/resources/legal-provisions/public-security-administration-punishment-law-chinese-text> (accessed on: 18.03.2021).

<sup>23</sup> 《中华人民共和国人民警察法》(1995年2月28日第八届全国人民代表大会常务委员会第十二次会议通过) [People’s Police Law of the People’s Republic of China (Adopted at the Twelfth Meeting of the Standing Committee of the Eighth National People’s Congress on 28 February 1995)]. URL: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92664/108061/F-1334361595/CHN92664%20Eng.pdf> (accessed on: 18.03.2021).

<sup>24</sup> Jin E. ‘Mahjong: Police clamp down on China’s most loved game’ // BBC. 24 October 2019. URL: <https://www.bbc.com/news/world-asia-china-50162766> (accessed on: 18.03.2021).

<sup>25</sup> Zhang L. China: New Regulation on Police Cybersecurity Supervision and Inspection Powers Issued // Global Legal Monitor. 13 November 2018. URL: <https://www.loc.gov/law/foreign-news/article/china-new-regulation-on-police-cybersecurity-supervision-and-inspection-powers-issued/> (accessed on: 18.03.2021).

<sup>26</sup> Ibid.



or criminal law sanctions. The Regulation does not specify which penalty applies. The PRC Cybersecurity Law, however, has a number of provisions on penalties in respect to various offences. For example, Article 69 penalizes network operators or its personnel, “if the circumstances are serious”, with a fine of between RMB 10,000 and 500,000 if they do not follow the requirements of police to stop dissemination or delete information that is prohibited by laws or administrative regulations; or refusal or obstruct the police in their lawful supervision and inspection; or refuse to provide technical support and assistance to the police.

The further examination of this interesting piece of Chinese law would lead us too far from the issue of this paper. It is sufficient to conclude that the broad definitions of public security, public order, and public safety provide the police with enormous powers to control the daily life of people living in or visiting China. The duty to maintain public order and to stop acts that endanger public order<sup>27</sup> gives the Chinese police the authority which is unimaginable in the most countries of this world.

The way how Chinese police uses this power has become more evident thanks to the outbreak of coronavirus. According to the Financial Times<sup>28</sup>, the Chinese police have used the following measures.

“More than 900km from Wuhan, the metropolis of Wenzhou has been put in virtual lockdown over the past few days. Local regulations permit only one person per family to leave the house every two days to buy food”. “Zhuozhou, a city of more than 600,000 people in Hebei province, announced on January 31 that it would shut its freeways after officials discovered a case of coronavirus in the area”. “Poyang county in Jiangxi province turned all traffic lights red on Monday and barred any travel on roads, as its neighbouring counties closed all transportation links”. “Some local governments have told residents to remain in their homes for days. Heilongjiang province in northern China has threatened the death penalty for anyone caught intentionally spreading the bug”.

The Chinese police is not the only institution that enforced these draconian measures of control to protect public security and public safety. However, the multiple images of the deserted Chinese cities during the outbreak of the infection showed the ubiquitous presence and involvement of Chinese police in enforcing the restrictions described by the news reporters. There is a massive use of surveillance technology, including drones, monitoring the compliance with the epidemic prevention measures.<sup>29</sup> The official news reports praise the police for the heroic acts in “the national war against the virus”<sup>30</sup>.

There is also the criticism of the police. In a well-publicized case, a Chinese doctor, who had warned about the outbreak of coronavirus and later died from the infection in Wuhan, was censured by the Chinese police for “making false comments” that had

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<sup>27</sup> 《中华人民共和国网络安全法》(由中华人民共和国第十二届全国人民代表大会常务委员会第二十四次会议于2016年11月7日通过) [Law of the People’s Republic of China on Cybersecurity (Adopted by the Twenty-fourth Session of the Standing Committee of the Twelfth National People’s Congress of the People’s Republic of China on 7 November 2016)]. URL: <https://www.newamerica.org/cybersecurity-initiative/digichina/blog/translation-cybersecurity-law-peoples-republic-china/> (accessed on: 18.03.2021).

<sup>28</sup> 《公安机关互联网安全监督检查规定》已于2018年9月5日公安部部长办公会议通过 [The Regulations on Internet Security Supervision and Inspection by Public Security Organs (Adopted by the General Office of the Minister of Public Security on 5 September 2018)]. Article 8. URL: [http://www.gov.cn/gongbao/content/2018/content\\_5343745.htm](http://www.gov.cn/gongbao/content/2018/content_5343745.htm) (accessed on: 18.03.2021).

<sup>29</sup> See: 《中华人民共和国人民警察法》(1995年2月28日第八届全国人民代表大会常务委员会第十二次会议通过) [People’s Police Law of the People’s Republic of China (Adopted at the Twelfth Meeting of the Standing Committee of the Eighth National People’s Congress on 28 February 1995)]. Article 6.

<sup>30</sup> *Financial Times*. Chinese villages build barricades to keep coronavirus at bay. 6 February 2020. URL: <https://www.ft.com/content/68792b9c-476e-11ea-aeb3-955839e06441> (accessed on: 18.03.2021).

“severely disturbed the social order”.<sup>31</sup> The Wuhan police made a statement that they acted according to the *Public Security Administrative Penalties Law of the People’s Republic of China*<sup>32</sup>. The report does not quote the exact provision, but it was likely Article 25 which states: “A person who commits one of the following acts shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan; and if the circumstances are relatively minor, he shall be detained for not more than 5 days or be fined not more than 500 yuan (1) intentionally disturbing public order by spreading rumors, making false reports of dangerous situations and epidemic situations or raising false alarms or by other means”. The police report indicates, that since the circumstances were not serious, they did not impose any penalty. The death of the doctor caused a significant amount of anger against the police displayed on the social media, which, according to the news reports, was quickly suppressed by the Chinese censors<sup>33</sup>.

It is not only the public that raises some limited criticism of the police work. In a very unusual move, the Supreme Court made a news release criticizing the action of the Wuhan police in suppressing the warnings of the doctor<sup>34</sup>. It is important to underline that there was not any court case involving the doctor. In the Anglo-American legal tradition, the court may take a public stance but there must be a case brought before the court. In the words of Alexis de Tocqueville, “it can only interfere when the conduct of a magistrate is specially brought under its notice”<sup>35</sup>. The news release is still an exception. If there is an official disapproval of the actions of the police, it will likely come from the leaders of the Communist party or the party’s watchdog “Central Commission for Discipline Inspection”<sup>36</sup>.

## Public security and human rights

A much greater amount of disapproval comes from the human rights activists. They are often struck by what appears to them as an obvious violation of human rights. However, the claimed violations of the rights become less apparent if we consider the weight of public security considerations which influence many decisions of the police. Public security as an essential part of public order is one of the reasons for limiting human rights according to the Universal Declaration of Human Rights<sup>37</sup>. One example is Zhenping County

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<sup>31</sup> Griffiths J., Gan N. China’s massive security state is being used to crack down on the Wuhan virus // CNN. 11 February 2020. URL: <https://edition.cnn.com/2020/02/10/asia/china-security-police-wuhan-virus-intl-hnk/index.html> (accessed on: 18.03.2021).

<sup>32</sup> Kun C., Hongbin Y., Zhao K. Creating a Safe and Stable Environment for Winning the Epidemic Prevention and Control Blockade // People’s Daily. 4 February 2020. URL: <http://politics.people.com.cn/n1/2020/0204/c1001-31571103.html> (accessed on: 18.03.2021).

<sup>33</sup> Wenliang L. Coronavirus kills Chinese whistleblower doctor // BBC. 7 February 2020. URL: <https://www.bbc.com/news/world-asia-china-51403795> (accessed on: 18.03.2021).

<sup>34</sup> 新华网. 武汉警方回应 “8人造谣被拘”: 依法未给予任何警告、罚款或拘留 2020-01-29 [Xinhua. 8 people detained for rumors: no warning, fine or detention according to law. 29 January 2020]. URL: [http://www.xinhuanet.com/2020-01/29/c\\_1125510476.htm](http://www.xinhuanet.com/2020-01/29/c_1125510476.htm) (accessed on: 18.03.2021).

<sup>35</sup> Wade S. Coronavirus “rumor” crackdown continues with censorship, detentions // China Digital Times. 12 February 2020. URL: <https://chinadigitaltimes.net/2020/02/coronavirus-rumor-crackdown-continues-with-censorship-detentions/> (accessed on: 18.03.2021).

<sup>36</sup> 人民法院新闻传媒总社. 治理有关新型冠状病毒感染的肺炎的谣言问题, 这篇文章说清楚了! 2020-01-28 [People’s Supreme Court of the PRC. The problem of dealing with rumours about the infection a new coronavirus. This article makes clarifications // People’s Court News and Media Corporation. 28 January 2020]. URL: [http://www.xinhuanet.com/politics/2020-01/28/c\\_1125508460.htm](http://www.xinhuanet.com/politics/2020-01/28/c_1125508460.htm) (accessed on: 18.03.2021).

<sup>37</sup> Tocqueville A. Democracy in America Transl. by Henry Reeve. 1835. Vol. I. Chapter V. Part II. URL: <http://www.gutenberg.org/files/815/815-h/815-h.htm> (accessed on: 18.03.2021).

Public Security Bureau's imposing a fine on Zhao X<sup>38</sup>. An abstract of the official notice is the following:

Zhao X in the village of Yushuzhuang, Henan Province rented premises to three Uighur people who were selling nan-bread in the locality. Zhao X violated article 91 of the "Counter-terrorism Law of the P. R. C."<sup>39</sup> by not reporting this to the branch public security bureau. He was accused in refusing to cooperate with relevant departments responsible for counter-terrorism security precautions, intelligence information, investigation, or emergency response efforts. More specifically, Zhao X rented premises without authorization and without reporting. The landlord was given administrative detention of 15 days, and a concurrent fine of 1900 RMB. The three Uighurs were "forcibly repatriated to their previous residence in Xinjiang to receive education".

This incident was given by the *China Law Translate* as an example of violation of human rights. There are, however, certain factors which may justify the acts of Zhenping County Police. First, the offender was given the maximum penalty of detention and almost the maximum fine in the cases of a serious violation. This measure is imposed only when there are some serious consequences (严重后果). The notice does not specify the details of those consequences. However, without such consequences, the imposition of penalty is very unlikely. Second, the fact of a forceful repatriation of the tenants to receive education indicates that the police did perceive them as dangerous. Third, the "Counter-terrorism Law of the P. R. C." was introduced in China following the deadly terrorist attack of a group of Uighurs on the railway station in Kunming in 2014<sup>40</sup>. The author happened to be in Kunming at that time, and witnessed the shock and the anger of the Chinese public at the inability of Chinese police to protect them. Fourthly, the incident happened in the countryside of Henan Province which is predominantly populated by Han Chinese. It is possible that the stay of the Uighurs in the village created a social tension. The notice said that the violation was discovered not by the police itself but through a complaint brought by a local person.

It is certainly premature to allege a violation of human rights in this case without fully understanding the motives of the police action. The idea of human rights is understood very differently from the West. It is based on Marxist historical materialism, collectivism, statism, culturalism, and developmentalism<sup>41</sup>. The Chinese police's measure should not be understood as the violation of human rights, on the contrary, it is a protection of the majority's human rights. In this case, police acted to prevent possible violence. A senior police officer in Kunming acknowledged that the conflicts between Han Chinese and a Muslim Hui minority can be violent. Kunming, unlike Henan countryside, is a much more culturally and ethnically diverse region, where people have learned to live together and respect the cultural differences. It is possible that the action of the Henan police was an example of an overzealous pursuit of the police duty to guard public security. In any case,

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<sup>38</sup> Wong K. C. Police reform in China. P. 20–21.

<sup>39</sup> Universal Declaration of Human Rights 1948. Article 29. URL: <https://www.un.org/en/universal-declaration-human-rights/> (accessed on: 18.03.2021).

<sup>40</sup> The translation of the Police Notice is available on China Law Translate website. Terrorizing those who Rent to Uighurs? 2018. URL: <https://www.chinalawtranslate.com/en/10038-2/> (accessed on: 18.03.2021).

<sup>41</sup> 《中华人民共和国反恐怖主义法》(2015年12月27日第十二届全国人民代表大会常务委员会第十八次会议通过) [Law of the People's Republic of China on Counter-Terrorism (Adopted at the 18<sup>th</sup> meeting of the Standing Committee of the 12th National People's Congress on 27 December 2015)]. Article 91: Refusal to cooperate with relevant departments counter-terrorism safety precautions, intelligence information, investigation, or response and handling efforts, is given a fine of up to 2,000 yuan by the relevant departments; where serious consequences are caused, 5–15 days of detention is given, and a fine of up to 10,000 yuan may be given concurrently. URL: [http://www.pkulaw.cn/fulltext\\_form.aspx?Db=chl&Gid=261788](http://www.pkulaw.cn/fulltext_form.aspx?Db=chl&Gid=261788) (accessed on: 18.03.2021).

it indicates the scope of the police powers to limit the rights of private individuals. One may conclude that achieving public security and protection of human rights are the same thing in China.

## Conclusion

Chinese police can be defined as a system for which securing public order or public security is among the greatest priorities. The recent years saw a significant growth of the role of the police in managing Chinese society. Chinese police controls the life of ordinary citizens not only through a direct use of authority but also indirectly: through the wide network of personal relationships between the police and the members of the Chinese public. This concept of public order is understood differently in China from the Western legal tradition. It exists to secure not so much the individual rights and liberties as to ensure the stability and prosperity of the Chinese nation.

The whole evolution of the Chinese police law appears as a progressing increase of regulation of the life of ordinary citizens by the police force, and also the increased regulation and control of the police itself by the central government. The scope of the police duties increases on the basis of proliferating legislation. “Counter-terrorism Law of the P. R. C.” applied in the Henan case described above is only one of them. The conversations with the Chinese police clearly indicate that securing public order is the major concern of the central government and the reason for the increased regulation of the work of the Chinese police. At the same time, this increased regulation affects the quality of the police social network relationships which become less informal. One can also observe that the general government policy to solve complex problems of Chinese society by an increased and rigid police regulation creates the dissatisfaction among some members of the public. This dissatisfaction does not always appear to a foreign observer, but it is there and its force may undermine the effectiveness of the Chinese police to enforce public security. In a sense, the future of the Chinese political regime will depend on the effectiveness of the Chinese police in achieving a high level of public security.

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## Общественная безопасность и полицейское право Китая\*

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В статье показано, как китайская полиция выполняет широкий спектр социальных функций. В Китае полиция играет гораздо большую роль, чем во многих других странах. В первой части статьи описывается повседневная работа районного полицейского участка в городе Куньмин, провинция Юньнань на юго-востоке Китая. В ней представлены различные социальные функции, выполняемые сотрудниками полицейского районного участка в центре города. Посредничество между различными гражданами и организациями в разрешении бытовых конфликтов и ссор является одной из основных функций полицейского участка. Сотрудники полиции высоко мотивированы в своей работе. Их успех измеряется степенью удовлетворенности местного населения. Методы работы районной полиции достаточно своеобразны. Командные методы далеко не всегда являются основными в действиях китайской полиции. Часто применяются уговоры и соглашения. Влияние китайской полиции заключается не столько в широком государственном контроле над жизнью простых граждан, сколько в широкой сети личных отношений между полицией и представителями местного населения. Эта сеть, как и разнообразие полицейских функций, имеет единую конечную цель — общественную безопасность. Во второй части статьи рассматривается концепция общественной безопасности в китайском праве. Невозможно понять всю китайскую правовую систему в ее динамичном развитии без учета нормативного значения концепции общественной безопасности, или общественного порядка. Влияние этой концепции особенно ярко проявляется в административном и уголовном праве. В Китае общественная безопасность и общественный порядок являются синонимами. Они понимаются иначе, чем в западной правовой традиции. На Западе общественный порядок — это разграничение свободы частных лиц действовать в собственных интересах. Он существует для обеспечения прав и свобод личности. В Китае общественный порядок и общественная безопасность являются условием стабильности, величия и процветания китайской нации. В третьей части статьи рассматривается взаимосвязь между общественной безопасностью и правами человека в китайской полицейской практике. Отмечается, что критика Китая со стороны многих западных правозащитников не учитывает значение китайской концепции прав человека. Меры китайской полиции по ограничению индивидуальных свобод не следует понимать как нарушение прав человека, напротив, это защита важнейшего

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права большинства китайского населения на общественный порядок. Идея общественного порядка в деятельности китайской полиции является не просто идеологическим лозунгом, а основополагающим принципом китайской правовой системы, который вдохновляет и наполняет содержанием работу китайской полиции.

*Ключевые слова:* Китай, полиция, общественная безопасность, права человека.

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