

TRADE UNIONS IN CHINA

Krisztina Dafkó*

Abstract

There is no other example in the history of mankind of the drastic economic and social change produced by China in recent decades. However, the economic growth of more than 7% per year has come at a price, the signs of which can be seen, among other things, in the erosion of workers' rights. In such an economic environment, therefore, trade unions, which are representing and enforcing workers' rights are of paramount importance, but as we will see below, they are struggling to keep up with the rapidly changing situation.

Key words: China, working conditions, trade unions, ACFTU, dependence, workers' interests

Introduction

In order to make it clear to the reader why it would be so important for trade unions to stand up for workers, it is necessary to briefly present the socio-economic background in China.

Migration

China has become one of the world's largest economy in recent decades, largely due to the influx of cheap labor from the countryside to major cities that function as economic centers. The main driving forces of migration on the one hand was the fact that in a city, the per capita income was three times more than in the rural households. On the other hand, the urban population was in a privileged position in all areas of social benefits – education, health care, unemployment benefits, etc. – compared to the rural population. In one word, the main driving force of rural-to-urban migration is the unequal development. The Chinese state seeks to support urbanization through central programs, partly through massive infrastructure developments, and partly through the facilitation of internal migration within a regulated framework.¹ However, this was not always the case.

In the first half of the 1950s the household registration (hukou) system was introduced to control migration movements because of urban unemployment. The registration is for citizens, according to their place of permanent residence and the municipality temporarily visited. Registration is done by the police and everyone can only have a permanent residence permit in the guard room's competent hukou zone. Registrations are checked by superior state security agencies and local party committees. In today's China, the change of residence, as well as

* Court clerk of the Miskolc District Court (Miskolci Járásbíróság); correspondence student, University of Miskolc, Faculty of Law, European and International Business Law course, dafko.kriszti@gmail.com; Supervisor: Dr. Mélypataki Gábor, PhD, assistant professor, University of Miskolc, Faculty of Law, Civil Law Department

¹ KAJDI László: Urbanizáció és migráció Kínában, *Gazdaság & Társadalom/Journal of Economy & Society*, 2017/3-4., pp.142-161

temporary, can only be done with the permission of the authority, citizens do not have free movement.²

Since the 1980s, the government have relaxed the strict rules of internal migration. The aim was to increase the urban population. Nowadays, rural residents are free to move to smaller cities, and in medium-sized cities with a population of one to three million, registration is not canceled, but conditions are relaxed. In the largest cities with more than five million inhabitants, such as Beijing or Shanghai, the former regulations remains, with only a few – representatives of shortage professions and the highly educated – allowed to move there because big cities are already overcrowded, putting enormous pressure on the environment and the social welfare system.³ Expressed in numbers: in 2019, there were approximately 290.77 million migrant workers in China.⁴

At this point we need to mention briefly the problem of the left-behind children. These are children who left behind in rural regions while one or both of their parents leave to work in urban areas. In many cases, these children are taken care of by their extended families, by grandparents, or family friends, who remain in the rural regions.⁵ Approximately 69 million children are affected according to the UNICEF 2018 Annual Report. This amount is equivalent to thirty percent of the children in rural area.⁶ Over two million of these children are live by themselves.⁷ The reason why children have to stay at the rural home, like the situation of adults, is to be found in the hukou system. Migrant workers children do not have access to the education system in cities or can only attend segregated schools thus, parents often prefer to leave their children behind. Nonetheless nowadays more and more migrant parents choose to bring their children with them.⁸

Working hour system

Under the 1994 Chinese Labor Law, which otherwise followed ILO international standards, working hours should not exceed 8 hours a day or 44 hours a week. In 1995 the State Council issued another decision which reduced the working hours to 40 hours per week. But some enterprises had difficulties to implement the new decision immediate. However, the relationship between the two legislation is still unclear concerning weekly working hours. Otherwise, daily working hours can be extended with one hour after consultation with the trade union and labourers in case of the needs of production or businesses. Furthermore, in special circumstances, overtime work can be three hours a day and 36 hours a month if the workers'

² György ENYEDI: A kínai város, Tér és Társadalom 21. évf. 2007/4. 1-20.

³ Végleg megszűnhet a röghöz kötöttség Kínában?, ázsiaspecialista, <https://www.azsiaspecialista.hu/2014/08/19/vegleg-megszunhet-roghoz-kotottség-kinaban/> (downloaded:12-02-2021)

⁴ Number of migrant workers in China by destination region 2015-2019, Published by C. Textor, Jun 24, 2020, statista, <https://www.statista.com/statistics/1127616/number-of-migrant-laborers-in-china-by-destination-region/#statisticContainer> (downloaded: 01-03-2021)

⁵ UNICEF Working Paper: Children "Left Behind", <https://www.unicef.org/media/83581/file/Children-Left-Behind.pdf> (downloaded:12-02-2021)

⁶ UNICEF: Country Office Annual Report 2018 China, https://sites.unicef.org/about/annualreport/files/China_2018_COAR.pdf (downloaded: 12-02-2021)

⁷ Jason HUNG: Protecting the welfare of China's 'left-behind children', Asia & the Pacific Policy Society, 9 June 2020, <https://www.policyforum.net/protecting-the-welfare-of-chinas-left-behind-children/> (downloaded: 12-02-2021)

⁸ Yao YAO: China's left-behind children find opportunities and pursue dreams, CGTN, 05-Sep-2020, <https://news.cgtn.com/news/2020-09-05/China-s-left-behind-children-find-opportunities-and-pursue-dreams-TvJzQi9CRW/index.html> (downloaded:12-02-2021)

health is guaranteed. Weekly rest days are two, normally Saturday and Sunday and at least one day off in a week is needed to be given to the employees. Worth mentioning, that paid annual leave depends on the continuous service with the same employer, for example after 1-10 years continuous work for the same employer 5 days are provided. Together with the 10 days public holidays, there's not too much time to spend with the relatives, and left-behind childrens.⁹

The tech economy is undergoing such a development these days that China – in competition with the Silicone Valley – is turning a blind eye to the extreme overtime expectations.¹⁰ The manifestation of this competition is the 996 working hour system which means that the employees work from 9:00 am to 9:00 pm, 6 days per week; that is 72 hours per week, which does not comply with the law as described above. Typically, IT companies take advantage of this working time practice, but obviously other forms of overworking methods are interweaving the entire Chinese industry.¹¹ For overtime work a minimum 150% of the employee's basic salary should be paid by the employer. But companies often structure overtime in several different ways in order not to have to pay compensation.¹²

A survey made between 2003 and 2004 showed that the average weekly working hours were 44.6 hours, and about 20 per cent of employees were working more than 50 hours per week. The survey also revealed that from the maximum 14 paid annual leave days only 7.3 days were used for men and 7.6 days for women. So it can be concluded that many Chinese workers were working more than the legal standard.¹³ A more recent survey made by a team at Wuhan University of Science and Technology also shows similar numbers: more than 80 percent of Chinese employees are overworked and under mental and physical stress and about 12.9 % of employees work more than 10 hours of overtime a week, furthermore often work 47.56 hours a week.¹⁴

Work safety

As a matter of fact, there is no other country that has industrialized faster than China and has ever faced as many new types of industries and hazards in such a short time.¹⁵ The speed of economic growth has significant effect on work safety, the fatality rate in industrial accidents and the growth of national economy are closely associated.¹⁶ Although there is an improving

⁹ Xiangquan ZENG – Liang LU – Sa'ad Umar IDRIS: Working time in transition: The dual task of standardization and flexibilization in China, Conditions of Work and Employment, Series No. 11, Conditions of Work and Employment Programme, 2005, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_11.pdf (downloaded:12-02-2021)

¹⁰ Rebecca FANNIN: Why China's 996 Work Culture Makes Sense Right Now, Forbes, May 5, 2019, <https://www.forbes.com/sites/rebeccafannin/2019/05/05/why-chinas-996-work-culture-makes-sense-right-now/?sh=609faa937802> (downloaded:12-02-2021)

¹¹ Sarah Dai – Li TAO: Start-ups China's work ethic stretches beyond '996' as tech companies feel the impact of slowdown, South China Morning Post, 29 Jan, 2019, <https://web.archive.org/web/20190331205709/https://www.scmp.com/tech/start-ups/article/2183950/chinas-work-ethic-stretches-beyond-996-tech-companies-feel-impact> (downloaded: 12-02-2021)

¹² Overtime Payments, Regulations in China, Global Payroll Management Institute, Asia Briefing, April 2016 Issue, <https://www.gpminstitute.com/publications-resources/Global-Payroll-Magazine/april-2016/overtime-payments-regulations-in-china> (downloaded:12-02-2021)

¹³ Xiangquan ZENG – Liang LU – Sa'ad Umar IDRIS op. cit.

¹⁴ Most Chinese employees overworked: survey, ChinaDaily.com.cn, 02-11-2018, <http://www.chinadaily.com.cn/a/201811/02/WS5bdbdf4ca310eff303286339.html> (downloaded:12-02-2021)

¹⁵ Garrett D. BROWN – Dara O'ROURKE: The Race to China and Implications for Global Labor Standards, Occupational Health and Safety in China, VOL 9/NO 4, OCT/DEC 2003 (downloaded:12-02-2021)

¹⁶ Xueqiu HEA – Li SONG: Basic Characteristics of Work Safety in China, SciVerse ScienceDirect, Procedia Engineering 26 (2011) 1 – 9,

trend in the subject matter today, it can be said that the government still have more focus on preventing the major accidents and disasters than ensure daily occupational health and safety. Expressed in numbers: in 2018 there were 49,000 accidents and 34,600 work-related deaths in China, which means 4.5 deaths per 100,000 full-time employees. By contrast, in 2017 there were 5,147 work-related deaths in the United States, this equates to 3.5 deaths per 100,000 full-time employees.¹⁷

1. Statistics about trade unions

Trade union movements have generally declined in most developed countries since the 1980s, as suggested by the steadily declining union density in each country (i.e., the percentage of employees with union membership). For instance, the density of the union in the UK and the US fell by 24.3% and 10.9% individually between 1980 and 2010. This declining trend was also observed in some post-communist countries, such as Poland, where the density of the union was around 80% in the early 1980s but fell to 14.6% in 2010. While trade union density in China has expanded significantly over the past decade - by 30.4% between 2000 and 2010. The All China Federation of Trade Union (hereinafter ACFTU), China's only legal union, had 280 million members in 2012, with a union density of 80.1%. Consequently, it became the world's largest union with more members than other unions in the world.¹⁸

However, the imposing numbers often could not talk much about the fundamental reality. The ACFTU has been criticized by Chinese and foreign labour activists and scholars for its lack of ability to protect the rights of Chinese workers.¹⁹

2. Historical overview of All-China Federation of Trade Unions

The All-China Trade Union Confederation (ACFTU) was formally established on May 1, 1925, when the "Second National Labour Congress of China" came together in Canton with 277 delegates representing 540,000 workers and adopted the All-China Federation of Trade Union. Between 1922 and 1927, the organization did extremely well, as did the Chinese Communist Party's control over the trade union movement. The labour movement has grown tremendously, especially in the three industrial and commercial centres in Canton, Hong Kong and Shanghai. In addition, it has also had organizational favourable outcome in other cities such as Wuhan. The ACFTU was constrained in 1927 by the newly formed rule of the nationalist regime as part of the suppression of communism. Trade unions led by all communist parties were banned. With the rise of Mao Zedong in 1949, the ACFTU was put in place as China's only national trade union headquarters but was disbanded again in 1966 following the Cultural Revolution. After Mao's death in 1976, in October 1978, the ACFTU held its first congress since 1957.

https://www.researchgate.net/publication/257723542_Basic_Characteristics_of_Work_Safety_in_China
(downloaded:12-02-2021)

¹⁷ China Labour Bulletin, Work accidents and deaths in China fall but familiar failings remain, 30 October 2019, <https://clb.org.hk/content/work-accidents-and-deaths-china-fall-familiar-failings-remain> (downloaded:12-02-2021)

¹⁸ Dongtao QI – Jingyang HUANG: Chinese Trade Unions: Development and Dilemmas, ResearchGate, September 2016, Chapter 5 (downloaded: 31-10-2020)

¹⁹ QI –HUANG op. cit

Accordingly, the ACFTU continued to operate after the Cultural Revolution and helped the Chinese government reinstall industrial order and promote economic reforms.²⁰

It has been governed by the Trade Union Law of the People's Republic of China since the early 1990s. According to the Trade Union Law of the People's Republic of China the Trade Union is a mass union of the working class, led by the Chinese Communist Party, and a voluntary union of workers. It is also a bridge and link between the Chinese Communist Party and the masses of workers, an important social pillar of state power and a representative of the interests of its members and workers.²¹ In 2018, at the 17th National Congress, the leadership of the Union began to exert pressure to abandon it as a bridge or intermediary between employees and management and to begin to act as the true voice of employees.²²

3. Structure of the ACFTU

The organizational principles and structure have been carefully maintained without profound reforms as an important pillar of the CCP system. The hierarchy of Chinese unions is generally the same as the party-state hierarchy at all levels, with the ACFTU at the top and head of the secretariat of the CCP Central Committee.²³

The ACFTU is split up into 31 regional federations and 10 national industry unions. Member organizations for example: All Chinese Federations of Railway Workers' Unions, China University of Labour Relations, National Committee of China Bankers' Trade Unions.²⁴ Accordingly, local branches of trade unions and industry union federations will be established at all levels of government. At the grass-roots, there are workplace unions led by the higher-level union and the corresponding industrial union in the same region.²⁵

The grassroots enterprise unions are usually set up by local union officials in consultation with management instead of employees. Enterprise unions operate as social welfare organizations rather than real unions that represent a member's social interests. Commission activities are usually limited to giving gifts on holidays and organizing social functions. Enterprise union leaders only occasionally support employees in a debate against management. In addition, in almost all cases, local trade union offices have to turn to higher-level trade union offices or local government and party organizations for guidance.²⁶

4. Membership, financing

In China, all workers have the right to form or join a trade union. However, this right is severely restricted, as all corporate unions must be affiliated with the only legally empowered body, the All-China Federation of Trade Unions (ACFTU). Any attempt to create an independent union

²⁰ QI –HUANG op. cit

²¹ Trade Union Law of the People's Republic of China (2009 Amendment), <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/30352/118793/F1165849917/CHN30352%202.pdf> (downloaded: 02-11-2020)

²² China Labour Bulletin, Why is the Communist Party telling the All-China Federation of Trade Unions to reform?, 10 October 2018, <https://clb.org.hk/content/why-communist-party-telling-all-china-federation-trade-unions-reform> (downloaded: 02-11-2020)

²³ QI –HUANG op. cit.

²⁴ About ACFTU, <https://web.archive.org/web/20051228130532/http://www.acftu.org.cn/about.htm> (downloaded: 02-11-2020)

²⁵ QI –HUANG op. cit.

²⁶ China Labour Bulletin, Workers' rights and labour relations in China, 13 August 2020, <https://clb.org.hk/content/workers%E2%80%99-rights-and-labour-relations-china> (downloaded: 02-11-2020)

will be regarded by the Chinese Communist Party as a political threat. The only time in the history of the People's Republic of China was the creation of the Short-Term Beijing Workers' Autonomous Union (BWAU) in the spring of 1989, the BWAU was declared an illegal organization and was disbanded as a result of the military attack in Beijing on June 4, 1989.²⁷

Membership is open to those who depend on wages for all or most of their income, a qualification that excludes most agricultural workers. In theory, membership is not required, but given the role of trade unions in the distribution of social benefits, the economic pressure for accession is high.²⁸

There are two regular sources of union revenue. The most important source of the two is the 2% wage tax paid by trade unions and the second source of income for the union is a levy equal to 0.5% of the salary of each union member. In addition, many unions own their properties (e.g., cinemas, cultural activity centres) and other businesses (e.g., employment service centres) that can generate extra income. Regional governments also provide financial support to trade unions from time to time.²⁹

5. Function³⁰

Chinese unions function differently than Western unions. It is not independent labor organizations that represent the interests of workers, but state apparatuses that serve government goals by mediating labour discussions. The ACFTU is defined by the CCP as a key social pillar of system stability. As one of the government agencies, the ACFTU and its local branches are only able to protect labour rights to the extent that the government allows. For most local governments, labour relations take a much lower priority than developing local gross domestic product. Therefore, the over-reliance of Chinese unions on government and workplace leadership is the reason they are unable to protect the interests of Chinese workers.

Since China's reform and its opening up in the late 1970s, ACFTU has become dominant for the following reasons. Firstly, the number of urban Chinese workers increased from 95 million at the beginning of the 1978 reform to 287 million in 2008. Industrial relations have therefore become the most important economic relationship, with major political implications for the Chinese government. Through its trade union system, the Chinese government has overseen the political activities of workers, if any. To put it in another way, the ACFTU needs to strengthen its monopoly on labour issues in order to stop independent labour movements. Secondly, economic reforms, particularly the restructuring and privatization of state-owned enterprises (SOEs) since the late 1990s, have fallen victim to many Chinese workers and caused widespread grievances that required the ACFTU to take action against the government in order to maintain its social stability.

In short, the Chinese government expects the ACFTU to perform as a stabilizer and intermediary for the government, capital (employers) and workers. The ACFTU performs its function mainly through trade union formation, legislation, and the settlement of labour disputes.

5.1. Unionisation

²⁷ China Labour Bulletin, Workers' rights... op. cit.

²⁸ Ying GE: What Do Unions Do in China, http://www.hanqing.ruc.edu.cn/upfile/file/20150113162830_60401_66870.pdf (downloaded: 02-22-2020)

²⁹ QI –HUANG op. cit.

³⁰ QI –HUANG op. cit.

In September 2012, there were approximately 2.66 million local unions and 280 million union members in China. Trade union density increased by 35.6% between 2000 and 2012. In 2003, only 33% of them formed trade unions. Since 2006, ACFTU has achieved great results in its campaign as a trade union for foreign-funded businesses. The creation of the union of the world's leading retailer, Walmart was the most successful case.

5.2. Legislation

In order to improve working conditions, the ACFTU also has a role to play in the development of labour legislation. Between 2001 and 2005, the ACFTU was engaged in the drafting of more than 100 national laws and regulations and, together with other government agencies. It also issued more than 30 circulars on the protection of workers' rights. The three most important laws related to labour rights are the Labour Act 1994, the Trade Union Act 2001 and the Labour Contract 2008.

5.3. Labour disputes resolution

ACFTU's local offices have also set up a number of legal service centres to help employees with labour disputes. The number of legal service centres increased from 2,363 to 4,960 to 7,634 with 23,071 employees between 2000 and 2010. Legal advice from unions has helped ensure that a large percentage of workers win labour disputes. In 2008 and the first half of 2009, about 85% of labour disputes were won, in whole or in part.

Although the ACFTU has made significant progress in union formation, legislation, and the settlement of labour disputes, it still has a long way to go in protecting the interests of workers. Labour scientists and activists have pointed out that the progress made by the ACFTU cannot significantly improve working conditions in China. First, higher union density does not necessarily mean that more workers are protected. If unions do not stand by workers, union membership is just a game of numbers. Second, because the ACFTU does not have ample power, resources, and capacity to implement these high-quality laws and regulations, the promulgation of new labour laws and regulations favours only the image building of the ACFTU. Finally, resolving labour disputes is a reactive way to resolve labour issues. Consequently, the more important task of the ACFTU is to take proactive action to address employee grievances and avoid industrial relations conflicts.

6. Other ways

The lack of faith of Chinese workers in Chinese unions can be assigned to the delicate position and role of unions. When conflicts between employers and employees erupt, workers tend to bypass and marginalize unions and prefer to fight for their interests in their own individual or collective ways.³¹

In the 2000s and early 2010s, there were dozens of civil society working groups in China. Many were located in the southern province of Guangdong and actively supported workers in demanding better salary and working conditions. These organizations have essentially done the work of a real union, helping workers in collective debates with employers to articulate their needs, elect bargainers, develop a bargaining strategy and maintain workforce solidarity. They

³¹ Qi–HUANG op. cit.

have also helped workers use increasingly powerful social media tools to put pressure on local union officials to support workers' legitimate needs. Nevertheless, many labour law activists and small organizations exist across the country, often working with local unions and government officials to ensure not only that existing laws are implemented fairly and that workers have access to justice, but that the necessary legal reforms can be made to better protect workers' rights. Furthermore, employees across the country continue to raise their voices, staging thousands of strikes every year in different regions and industries, demanding fair treatment and rights guaranteed by law.³²

However, the right of Chinese workers to strike was removed from the 1982 constitution, and in 1997 China signed the International Covenant on Economic, Social and Cultural Rights (ICESCR), which reinstated it. In fact, there have been a number of header strikes in the last decade. Numerous strikes led to occasional or spontaneous collective bargaining, during which employees elected their own representatives and developed strategies to force management to the negotiating table. Often, local government and union officials get involved in an attempt to reach a compromise agreement. Nor is it rare for police officers to be sent to the scene of a strike, but their primary role in these situations is isolation, ensuring that protesters do not leave the workplace, or otherwise disturbing public order. Arrests are made in only about five percent of cases. If workers are detained by the police, they are usually released within a few hours or a maximum of a few days. Waves of workers strike in China in May–June 2010 (Honda, Foxconn, Toyota) once again displayed the dilemmas of Chinese unions in dealing with serious labour issues.³³

7. New trends³⁴

Recent developments in Chinese industrial relations and trade unions have shown that some unions, especially at the local levels, have begun to defend the interests of workers more independently and effectively. The rise of a new generation of migrant workers is the first source of pressure. The majority of migrant workers are the ones who were born in the 1980s and 1990s. They are the so-called new generation of migrant workers. The experience of better education and urban life increases their awareness of workers' legal rights and also expects fair pay, benefits and a working environment with much higher expectations. The second source of pressure comes from international labour organizations. Eventually, globalization has increased the participation of international labour organizations in China's labour disputes. The third source of pressure comes from the growth of labour non-governmental organizations (NGOs) in China. Labour NGOs in China have grown rapidly over the past decade despite government restrictions. Many Chinese workers who became frustrated by inefficient unions, turned to labour NGOs for help.

In general, some bottom-up and international pressure in China and beyond seems to be pushing Chinese unions toward greater protection of workers' rights. However, there is no firm evidence that the CCP and the Chinese government would reform the trade union system and offset institutional and organizational barriers. Nevertheless, the dilemmas of Chinese trade unions continue with the growing resistance of Chinese workers.

³² China Labour Bulletin Workers' rights... op. cit.

³³ QI–HUANG op. cit.

³⁴ QI–HUANG op. cit.

Summary

The weakness of Chinese trade unions can be attributed to the following reasons. First, the fact that the basic union unit is located in the workplace makes it difficult to reach the Western pattern, like rate for the job or common rule. Second, according to the party-state there is no conflict between the capital and labour. Third, although the class consciousness is increasing, the party-state seeks to suppress any manifestation of the common interests. Fourth, the members' interests are low priority with attention the ACFTU's leading officials consideration as the members are entirely separate from the union. Fifth, many firms do not want to deal with the unions, whatever the law says.³⁵

³⁵ Trade unions in China, CentrePiece, Summer 2006, <https://cep.lse.ac.uk/pubs/download/CP204.pdf> (downloaded: 31-10-2020)