In Review

Beijing Review in its Vol. 45 No. 36, September 5, 2002 carried a news item in its Forum column. It is published verbatim and acknowledgement is duly made of its source. This is interesting as China has opened up and is serious about emergence of rule of law. Hopefully the ruling junta in Burma may draw lesson.

Last-Minute Salvation

In April the execution of Dong Wei, a criminal sentenced to death in the Yan’an Prefecture, Shaanxi Province, was suspended at the last minute, and gained much attention.

Last year, Xi’an lawyer Zhu Zhanping became the defense attorney of Dong Wei, who was sentenced to death by the court of first instance for an alleged deliberate murder. After intensive investigation, Zhu presented as detailed report to the court, in which he pointed out some suspicious aspects in the case and insisted that his client should not be condemned to death, as he acted in self-defense. He went to court many times for any fresh information about the case, but on April 27, was told that the second trial upheld the original verdict of the death penalty.

Zhu immediately went to Beijing to appeal to the Supreme People’s Court (SPC) on behalf of Dong. He submitted relevant material to the criminal court of the SPC in the morning of April 28. At 5 p.m. that day, Dong Wei’s father called to tell him that Dong would be executed at 10:30 the next morning. On April 29, Zhu arrived at the SPC early in the morning. He met Li Wuqing, Vice President of the No.1 Criminal Court, and briefed him on the case and his appeal. After browsing through the appeal material, Li called the executive judge by mobile phone, requesting a suspension of execution. The case is still in progression.

Report of the case soon aroused wide concern. Some praised Zhu and the judges of the SPC; other think that they not only spared Dong Wei’s life,
but also exposed defects with the country’s litigation procedure, especially that of criminal lawsuits.

**The Have Done A Good Job**

**Li Wei (a middle school teacher in Shaanxi Province):** Because of Zhu Zhanping and Li Wuqing, and their attitude toward the law and life, I have full confident that a mature legal system soon be established in China.

After the watching the news report of the case, I just couldn’t hold back my tears. I was indeed moved by their actions and feel proud of them, not because they spared their live but their sense of responsibility and loyalty to law. We still can’t decide whether Dong is guilty or not, but I believe the final verdict will be fair and convincing. They make me believe China’s legal system is getting better.

**Grateful to Whom and for What?**

**Wei Wenbiao (staff reporter with Jiangnan City Post):** We have but one life and life is precious. Our lives should be entrusted to the law, not to the sense of responsibility of a lawyer or judge. In that case, we are gambling with our life as a bet. Judicial official must have a strong sense of responsibility, but that is not countable. A sense of responsibility is not sufficient, though it is necessary to make a fair judgment. But, our legal system must be able to guarantee fair judgment.

Dong’s case shows that we are still counting on a few responsibility and upright lawyers and judges. In other words, it reflects the fact that those who are irresponsible are more in number, and there is also much room for improvement within our judicial system. This is a grave problem we cannot deny. There is still a long way to go for China to established a perfect legal system and be rule by law instead of by man.

**Judicial Flaws Exposed**

**Chen Weidong (professor at the Law School of Renmin University of China):** Dong’s case exposes several problems with our judicial system that legislatures should concentrate on for solutions.

To begin with, the second trial procedure, in fact, exists in name only. In China, the court of second instance is also the court of last instance. The defendant can appeal to a higher court if he pleads not guilty after the first trial, and his right to appeal must not be taken away by any excuse.
This regulation is aimed at reducing the possibility of a partial verdict and guaranteeing the fairness of the legal system. With this in mind, legislator, when amending the Criminal Procedure Law in 1996, regulated expressly that the court of second instance should hold hearings with a collegiate panel in an appeal case. But under special circumstances, it can be handled through interrogation without opening a court session. In actual practice, most local courts of second instance are wasted. They seldom hold hearings when handling an appeal, except in some special cases. Take Dong's case as an example, it's easy to see that the court of second instance held no hearings at all, and Dong's lawyer did not even know how the verdict was brought about. This case is about life and death, and they handled so carelessly. You can just imagine what they do with other appeals.

There is another common practice that makes the court of second instance redundant; the court of first instance always asks a higher court for instructions before a verdict. It means that the higher court agrees with the first trial, so the defendant could seldom win an appeal. This is really ridiculous.

Some cases involving the death sentences are never reviewed. The review procedure is a special procedure required in criminal lawsuits after the first and second trials. It is aimed at preventing the execution of the innocent, but local courts seldom do it. Even they do, the procedures are unsatisfying. The following facts will clearly show this.

Both the Criminal Procedure Law and the Criminal Law set forth that cases involving capital punishment must be reviewed by the SPC. This regulation is seldom fully and satisfyingly implemented. The higher court usually cancels the review when examining such cases. According to relevant laws, only an intermediate court or a higher court has the right to issue a death sentence. Once the defendant in such cases appeals, the SPC will conduct the second trial and therefore it combines the second trial with the review procedure. In fact, the review is neglected. Departments concerned should pay attention to this problem.

In addition, criminals under a death sentence are treated differently. The SPC grants the higher court the right to independently handle cases of murder, rape, robbery, explosion and other crimes that severely harm public security and social order, as well as some drug-related cases. But those involving embezzlement, bribery and swindling must be dealt with by the SPC. This means some criminals may have a better chance than others. This violates the equality principle.
It’s a basic right of the defendant to ask for a lawyers’ help, and this is especially important for those sentenced to death. In view of this, the current Criminal Procedure Law and the SPC’s rules stipulate that the courts of both the first and second instances should designate defense lawyers for a criminal if he or she doesn’t already have one. In Dong’s lawsuit, the Higher People's Court of Shaanxi Province neither held hearings to let Zhu defend his client nor immediately informed Zhu of the verdict. The lawyer did not even know his client would be executed until very late. This case exposed a big flaw in the judicial system. If this practice continues, not only are defendants' rights harmed, but the credibility of the judicial system of our country will be also be greatly undermined.

The stay of execution in Dong’s case was obviously not conducted in accordance with judicial procedures, which state that the lower court should execute the criminal within 7 days from receipt of the SPC's capital punishment order. But if the verdict is wrong, or if the criminal disclosed some important facts about a crime, or a woman criminal is pregnant, the execution should be stayed and immediately reported to the SPC for Further instruction. Is any person, a judge, for example, entitled to call for a stay of execution under emergency circumstances? Personally, I think much more study should be conducted about this matter before a reasonable solution is reached.