THE NEW CHINESE EMPLOYMENT LAW

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I. INTRODUCTION

The new Employment Contract Act of the People's Republic of China came into effect on January 1, 2008.[1] As the title suggests it applies to employment contracts but it also pertains to sets of regulations that are established by the employer after negotiations with employees (Art. 4), as well as to collective contracts whose potential scope of application may be extended (Art. 51 ff.). The previous law, especially the so-called Labor Act from 1994,[2] remains superseded only by conflicting or more expansive rules of the new law.

The following outlines the major provisions of the new legislative reorganization. Following that, it will attempt to put the Act in the context of China's political development, although, wanting a texture of application, many questions can only be answered by more or less plausible speculations and suppositions.

The Employment Contract Act comprises ninety-eight articles. For reasons of space only the parts with considerable novelty will be taken up here.

II. FIXED-TERM CONTRACTS

Limited employment contracts have become the dominant form of employment agreements in China in the past ten years. This not only holds for the private sector, but state-owned companies also made use of this option when recruiting. Effective limits did not exist, however. Pursuant to section 20, subsection 2 of the Labor Act of

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1. Articles without legal specification are from the Employment Contract Act.

2. For a discussion of that law, see *Schneider*, AUR 429 (1998); *Bauer/Diem* NZA 978 (1997).

1994, after ten years of service a permanent employment contract was to be concluded if the parties "agreed to continue the contract."[3] As fixed-term contracts were usually between half a year and three years this provision increased dependence on the respective employer and long-term life planning was made quite difficult for the workers. Different legal rules now apply:

- If the employee has worked for more than ten years without interruption for the same employer, a permanent employment contract has to be concluded on request of the employee (Art. 14, no. 1).
- If the employer already has concluded two fixed-term employment contracts, which do not necessarily have immediately to follow one another, then the third contract has to be a permanent one. However, unlike contracts after the ten-year period, this only holds for contracts concluded after January 1, 2008 (Art. 97, subs. 1, s. 2).
- If no employment contract in written form is concluded one year after commencement of employment, a permanent employment relationship is deemed to have been formed (Art. 14, last sentence). For smaller businesses and migrant workers this should be of special significance.
- If the employer does not meet his obligation to convert the contract into one of permanent employment, the salary owed is doubled (Art. 82 Abs. 2).

The legal consequences of a fixed-term contract were also mitigated. The employment contract does not expire but continues automatically if certain grounds, paraphrased by Articles 42 and 45, are at hand. For example, for an employee's pregnancy and lactation period, set at twelve months from birth according to the "Regulations to the Industrial Safety of Employees" of the Chinese State Council.[4] The same holds for the "treatment time regulated by law" in the case of illness.[5] If the employee has become completely or partly incapacitated for work because of an occupational accident or illness, the special regulations of the accident insurance apply but the employment relationship does not expire as long as a medical examination is not to the contrary. Accordingly, employers have to pay compensation pursuant to Article 46, number 5 if a temporary

3. This is treated by ROLF GEFFKEN & TING KEI-LIN, ARBEIT IN CHINA 60 (2004).
4. Issued Sept. 1, 1988.
5. According to regulations of Jan. 1, 1995, of the Ministry of Labor the lawful duration of treatment is dependent on duration of occupation and period of employment and is between three and twenty-four months.

employment contract expires and if the employee has not turned down a renewal of the employment contract under the same or better conditions. This compensation amounts to one monthly salary per year of employment in the company, though only time after January 1, 2008 counts (Art. 97 subs. 3.) Therefore, there will be a "precarity bonus" in future, akin to that discussed in Germany.[6]

The Chinese legislation has attended relatively sparsely to the problem of evasion. It is conceivable that the ten-year triggering period as well as the maximum number of fixed-term contracts may be rendered inapplicable if an employee works sequentially for a different, albeit allied, company of a group of enterprises every time. It also remains unclear if the expressly permitted "time limitation for a project" counts in the same way as a fixed-term contract.[7]

III. TEMPORARY WORK

The capacity to use subcontracted labor has been much reduced. If a temporary employment agency is availed of, it has to be a corporation with nominal capital of at least 500,000 Yuan (Art. 57). The employment contract between the temporary employment agency and the temporary employee can be limited to no less than two years' duration and must include precise regulations regarding the agency, time of hiring-out, and designated job. In the case of temporary unemployment, the local minimum wage has to be paid to the agency employee. In addition, the equal-pay-principle holds without exception (Art. 63)—which is quite different for the German system. Temporary employment is only permissible for "transitional, assisting and substituting jobs" (Art. 66.) Finally, Article 67 prohibits the formation of an agency that hires out employees to other affiliated companies of the group of enterprises.

Under these circumstances, there are hardly any cases conceivable in which, from the employer's point of view, the use of temporary employment yields advantages that a normal employment relationship does not.

IV. PART TIME

In contrast to the regulation of fixed-term contracts and temporary work, European employers would be quite satisfied with

6. WOLFGANG DÄUBLER, TARIFVERTRAGSRECHT margin 980 (3d ed. 1993).

7. "Employer and employee agree on the completion of a certain work as point of termination of the employment contract."

the provision regarding part-time work. Article 68 defines part time as an occupation that does not last more than twenty-four hours a week and as a rule not more than four hours a day. Part-time employment is an at-will relationship: it can be terminated at any time without reason and without notice, nor is any compensation owed for termination. The agreed hourly payment simply must not go below the minimum wage, and it has to be paid no later than every fifteen days. Whether wage equality in comparison to full-time employees has to be observed is subject to discussion.[8]

Part-time work is not as important in China as it is in Europe even though employers are largely exempt from making social security contributions to such workers. In China, women typically work full-time. Therefore, in the opinion of several experts these regulations should be expected to have special application to jobbers, those who have an other income such as students. This could have been clarified by denoting it as an "auxiliary employment relationship." All the more because of the well developed protection of standard employment relationships[9] benefit to employers for switching to part time seems obvious. Why should cleaners, sales assistants, and waiters not be employed part time? The exploitation of this provision would seem even more attractive as it is possible that two group-affiliated companies would conclude a part-time employment relationship with the same person. As yet it remains to be seen if this provision will be exploited in that way and, if so, how the courts or other legal institutions will respond.

V. PROTECTION AGAINST DISMISSAL

The value to the employee of an unlimited full-time employment relationship depends on the basis on which a dismissal by the employer is legally possible.

Pursuant to Article 39, termination without notice is possible in the case of a serious breach of contract. This is set out in a general clause followed by a set of specified circumstances, e.g., termination is possible if a lack of aptitude becomes apparent during the probationary period.[10] Dismissal with notice is possible, the notice

8. Specified in Qian Wang, *Teilzeitbeschäftigung nach dem neuen Arbeitsvertragsgesetz der VR China Wirksames Mittel zur Flexibilisierung des Arbeitsmarkts?*, 37 CHINA AKTUELL 162 (2008).

9. Concerning the right of continuance, see V.

10. According to Article 19, the maximum trial period depends on the duration of the employment relationships and is not allowed to exceed six months in cases of contracts that are permanent or longer than three years. Trial periods are excluded in respect to project limitation

period being thirty days (Art. 40). A release from employment is possible if the payment continues for these thirty days.

A. Grounds for Individual Dismissals

The grounds for individual dismissals are regulated in Article 40, for mass dismissals in Article 41. Compared to German law, these provisions present considerable problems of interpretation, but the grounds set out seem to be narrower than those allowed in German law. That is, the Employment Contract Act[11] does not include in terms a dismissal on grounds of conduct; thus a minor breach of duty on the employee's part, which would not be sufficient for a dismissal without notice, would apparently not permit the termination of the employment relationship.

Article 40, number 1, allows a dismissal because of illness insofar as it is related to the employee's ability to perform; it would have to be shown that the employee is not capable of performing his or her job assignments. The law is not clear on how an employer is to deal with frequently occurring illnesses. Article 40, number 2, allows discharge for incompetence or inaptitude manifested after efforts at further training or the like; it is not clear whether that would include the case of an employed driver who loses his driving license. Article 40, number 3, is modeled after frustration of contract: Only if the objective circumstances given at the time of conclusion of the employment contract change so substantially that the contract cannot be fulfilled and no agreement about a modified work effort can be found is a termination permitted on that ground. Notably, this probably comprises the elements of a termination on operational grounds without actually suggesting its further requirements or limitations. At least the requirement of a change of the "objective circumstances" makes clear that an employer's decision merely have the same tasks performed with fewer employees will not satisfy this ground.

B. Grounds for Mass Dismissals

According to Article 41, it is a mass dismissal if more than twenty employees or more than 10% of the personnel are given notice.

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and contracts up to three months as well as part time employment. During the trial period, the arranged and agreed upon payment in principle can be undercut by 20% or a lower wage scale can be chosen, in compliance with Article 20.

11. Kündigungsschutzgesetz = Law protecting against dismissals.

There is no lower limit on the number of personnel that must be employed, as the law does not acknowledge any small business exception. So, for example, if one employee out of a staff of eight were dismissed, Article 41 would apply. The provision states three grounds of justification. First is a reorganization after insolvency law; this should be relatively unproblematic. The second, however, the occurrence of "substantial difficulties" in production and operation, is in need of interpretation. How many redundant employees and how much decline in turnover constitute "substantial difficulties"? The same interpretive problem is posed by the third ground, i.e., a fundamental change in production and the introduction of new technologies and work methods.[12]

It remains unclear of the extent to which grounds for a mass dismissal may also justify an individual dismissal as specified by Article 40, number 3. Wording and classification suggest that the threshold for an individual dismissal pursuant to Article 40, number 3, is higher: merely because one can manage the same work with forty-six instead of fifty employees, due to the introduction of new technologies, the dismissal of four would scarcely be justified.

There is a problem of selection with mass dismissals.[13] Employees with short-term contracts have to be dismissed before employees with long-term or permanent contracts; this does not depend on the period of service. Furthermore, employees who are sole earners of a family with children or caring for elders should be dismissed as the last resort. If new personnel is recruited within six months of the mass dismissal, the dismissed employees have to be notified and must be given priority in recruitment.

C. Exceptions

The grounds of dismissal created by Articles 40 and 41 cannot be applied if the exceptions of Article 42 are triggered; for example, the dismissal is excluded if a partial or total disability is the result of an accident or illness suffered at work. The same hold, if, for dangerous jobs, an adequate certification by a doctor has not been provided. A dismissal is also prohibited during a legally regulated treatment period for an illness. The same holds for employees during pregnancy and lactation. Finally, the "protection for old-aged workers," Article 42,

12. Here, a possible orientation toward provisions in German law such as § 111, s. 3, nos. 4–5, BetrVG could be conceivable. Betriebsverfassungsgesetz = works constitution or works council act.

13. The criteria are different from those set out in German law, § 1, subs. 3 KSchG.

number 5, deserves special emphasis: An employee who has worked fifteen years for the same employer and will reach the statutory retirement age in less than five years[14] cannot be dismissed by contractual notice.

On the other hand, dismissal protection is unavailable (and the employment relationship ends by law) if insolvency proceedings are instituted regarding the assets of the employer, the employer loses his license, or the business is closed down. The same holds if the employee receives benefits from the pension insurance; this is especially of importance concerning dismissal due to illness.

D. Compensation

Everybody who is dismissed on one of the grounds provided by law automatically receives compensation according to Article 47. Compensation is one monthly salary per each year of employment, a period of more than six months is rounded up to one year, a period of less than six months to one half of a year. The compensation is capped, twelve months of wages constituting the upper limit. With unlawful dismissals the employee can choose reinstatement or compensation. In this case, pursuant to Article 87 compensation is double the rate designated by Article 47. Comparable provisions are found only in a few European countries, e.g. Italy.[15]

VI. BEGINNINGS OF A COLLECTIVE LABOR LAW

A. The Employer's Set of Rules

Pursuant to Article 4, the employer must establish a set of rules that can be described as "work rules" in the broader sense. It refers to payment, working time including rest periods and holidays, as well as safety standards, integration into social security and granting of social insurance benefits, further training of the employees. It also comprises rules regarding the imposition of work discipline. Before one of these subjects is regulated "negotiations on an equal footing" with the labor union, employee representatives, or all employees have to take place. In this context, the employees' side can raise objections against unreasonable regulations and demand improvements, but the

14. By law, the retirement age is currently fifty-five years for women and sixty years for men.

15. *See*, *e.g.*, *Roccella*, MANUALE DI DIRITTO DEL LAVORO 340 (2d ed. 2005) ("trattamento di fine rapporto"). *Compare*, Rebhahn, *Abfindung statt Kündigungsschutz? - Rechtsvergleich und Regelungsmodelle*, AuR 272 (2002).

act does not state what happens if no settlement is reached. The first draft provided that, in that case, the proposal formulated by the employees would become binding. This caused quite a stir[16] and prompted the chamber of US-American investors to declare that such a regulation would be "worse than in Europe." Against this background it is understandable that, in final form, in the event of disagreement the employer may issue the set of rules. If and to what extent a strike were permissible in response is not addressed, though such does occur in practice.

B. Status of the Unions

The Employment Contract Act refers to the labor unions at several points. It is remarkable that Article 4 mentions unions only as *one* possibility in the negotiation over work rules. The relationship of a union to the personnel's representatives and employees' meeting set out as alternative institutions thus remains unclear. Article 6 assigns labor unions the tasks of advising employees regarding the conclusion and performance of their employment contracts as well as of representing the employees' interest in the event of collective negotiations. The latter corresponds with the statement of section 7, subsection 2, of the Labor Act of 1994, under which the union is conceived of representing the rights of the employees and is contemplated as taking action "independently and autonomously." This will be elaborated below. If mass dismissals are planned, the labor union has to be consulted at least thirty days before the dismissals are declared, i.e., they must be included in the process of consultation (Art. 41).

C. Conclusion of Collective Agreements

Articles 51 to 56 contain provisions regarding collective agreements. Traditionally, these are concluded at the plant level. There, the employees are represented by the union, though the draft collective agreement has to be submitted to a meeting of the employees or their representatives "for discussion and adoption" (Art. 51). What is supposed to happen if a majority of the employees says "no" is not regulated; presumably only further negotiations are anticipated to ensure. If the plant does not have a union, a person authorized to sign the collective agreement is determined by the

16. *See also* PETER HANAU & KLAUS ADOMEIT, ARBEITSRECHT preface (14th ed. 2007).

employees under directives of the labor union at the next higher level. By which procedure this representative is determined, even if he has to be an employee, is not addressed. Possibly, any external agent, who does not have to fear sanctions, may be appointed.

The collective agreement may treat the same subjects as does the employer's "set of rules" issued pursuant to Article 4, though special collective agreements may be concluded for separate sectors. Collective agreements become effective when they are reported to the employment authority and no objection is raised within fifteen days (Art. 54). In China, the principle of non-derogability also holds; i.e., according to Article 55, employment contracts may not provide for terms and conditions less favorable than those provided in the collective agreement.

The provision of Article 53 is especially notable: industrial sector pay scales may be concluded up to the district level, which takes wages and employment conditions out of competition. The three "problem sectors"—construction, mining, and catering—are explicitly mentioned because numerous deficiencies occur due to the lack of collective agreements at the company level. This goes beyond previous practice, but it cannot yet be determined how far this provision will be pursued. A "local" collective agreement, where every business at a particular place irrespective of the sector of its activity, is also permissible.

The collective agreement is binding on the employer and all employees. The sector agreement comprehends every employer in the respective sector. The same applies to local collective agreements. In the German lexicon, these have a "normative effect," though that terminology is not expressly used.[17]

If the employer does not abide by the collective agreement, a labor union can "hold the employer liable" for compliance under Article 56. After unsuccessful negotiations, the union can refer the dispute to arbitration and, if necessary, take legal action at the People's Court (Art. 56.).

17. This conception is also found in Spanish law, which, however, contains differentiating provisions regarding the representative character of the contracting organizations. *See* ARBEITSBEZIEHUNGEN IN SPANIEN 231 (Wolfgang Däubler ed., 1982). *Compare* Rebhahn, *supra* note 15, at 214, 217.

VII. ASSESSMENT

A. *Legislation as a Reaction*

The Employment Contract Act marks a reaction to numerous labor disputes and evident grievances. These have been repeatedly documented in the West.[18] Although it remains unclear if these reports are at all representative of what happens in a labor force of 758 million,[19] the reactive nature of the law is strongly suggested in its chronology. About two weeks before the Act passed, the Chinese press revealed cases in which employees were kept like slaves in a brickworks.[20] This became a "national matter."[21] Shortly before, "usually well informed circles" from the surroundings of the Ministry of Labor and the National People's Congress did not want to specify if and when the draft would pass, but it became law thereafter virtually overnight.

That the Act's protections are extensive is evident from the foregoing abstract. They are complemented by some provisions that are rather unusual when taken in comparative context. Article 9, for example, forbids employers from withholding the employee's passport or to demand a deposit of riskmoney, which would not have been legislated unless there was palpable cause for such prohibitions. Previously the employee could agree upon a contractual penalty, a deposit that would be forfeited in the event the employee terminates the employment contract. Under Article 84 such provisions are penalized; the employment authority may demand the return of any deposit, and the employee is entitled to damages. If the employer does not make the payment agreed upon or fails to do so completely, or if it falls short of the local minimum wage, the employment authority may set a time limit within which the payment must be made. If this time limit, usually four weeks, expires with the payment having been made, the employer has to make an extra payment set out by the authority in amounts of between 50–100% of the back

18. Heping Cai, *Ländliche Wanderarbeitnehemer in der Volksrepublik China—Probleme und Lösungsansätze*, ZIAS 297 (2006); Yanyuan Cheng, *The Development of Labour Disputes and the Regulation of Industrial Relations in China*, 20 INT'L J. COMP. LAB. L. & INDUS. REL. 277 (2004); *id.*; *Die Entwicklung der kollektiven Arbeitgeber-Arbeitnehmer-Beziehungen und das Tarifverhandlungssystem in China*, ZIAS 353 (2005); Jie Shen, *An Analysis of Changing Industrial Relations in China*, 22 INT'L J. COMP. LAB. L. & INDUS. REL. 347 (2006).

19. Thomas Zimmer, *China aktuell*, 46 CHINA REPORT 1, 6 (July 30, 2007) (state of 2005).

20. *See*, *e.g.*, *540 Menschen aus Sklavenarbeit befreit*, ZEIT ONLINE, June 16, 2007, *available at* http://www.zeit.de/online/2007/25/china-sklaven.

21. *See* the television report in N24, June 21, 2007, *available at* http://www.n24.de/wirtschaft_boerse/wirtschaftspolitik. The Employment Contract Act was passed on June 29, 2007.

payment due. This "legal penalty" should function especially (but not only) in favor of migrant workers.[22] Furthermore, penalties, administrative sanctions, and damages to the employee are set out if the employer forces the employee, by means of "violence, threat or unlawful restriction of personal freedom," to work, or if the employee is "insulted, physically harmed, beaten, unlawfully searched or locked up" (Art. 88)—the connection to China's experience with the cases of slave labor seems obvious.

B. The Law—The Unknown Factor

Common legal norms can have different effect depending on the national context. Even in Europe there are countries that take their law very seriously and countries for whom the recourse to legal norms is an exception. The latter is particularly true for China: in China about half as many labor law proceedings are instituted annually than in Germany, although the number of dependent employees is approximately twenty times higher. However, undergirding this raw statistic is the country's common conception that relationships on a personal level are more about restoring harmony than about prevailing over one another. Courts for civil and labor law try hard to end litigation with settlements. According to law firms in Shanghai, allowing time to make compromises—even compared to further waiting—seem like the lesser of two evils for both sides.[23]

The character of the employment regulations fits in with this aim of harmony. In content, they often are highly undetermined and leave many questions open. In principle one could also say that of German legislation, but there is a crucial difference: Within a short time there would be numerous commentaries for a comparable German Act or Code of which some would surely go beyond a thousand pages due to importance and complexity of the subject.[24] Such a mode of debate with legal norms, which detects gaps and inconsistencies in the law as well as suggesting solutions for them, can only be found in rudimentary form in China. To the extent that commentaries exist, they basically merely reproduce the legal wording. It is the German author's perception that in China such an effort would constitute a kind of impertinence, a self-aggrandizement of the individual who

22. *See* Cai, *supra* note 18, at 297.

23. Arbeitsstreitigkeiten können sich wegen des vorgeschalteten Schlichtungsverfahrens zusätzlich in die Länge ziehen.(bitte übersetzen).

24. A German act or code with similar content would, besides causing an outcry, probably result in several authors exceeding the 2,000-page mark.

wants to display greater intelligence than the National People's Congress. Even less politically or economically charged areas of law, like the law of unfair competition, where corporations, as key decision-makers, are interested in exact interpretations, do not have commentaries of the kind produced in Germany.

What follows? The Chinese employment law is led by the principle "control by uncertainty." Because exact legal assertions in respect of dismissal on operational grounds cannot be made, an employer would probably choose a solution by mutual agreement, e.g., in terms of a transfer or a termination agreement, instead of risking a double compensation that, however, necessarily improves the employees' basic situation. Apart from that, a range of provisions, such as the restriction to two fixed-term contracts or those regarding compensation, do not call for much interpretation. Here, the employee can effectively claim certain benefits, notably those applicable after termination of the employment relationship. This part can be characterized as the Act's "hard core." In consequence, and considering the law's provenance, there should be expected to be less cause for social unrest and disruption in future.

C. The Status of the Unions

In the previous planned economy, the labor union was to contribute to the successful working of the company; unions operated as the Party's transmission belt. In case of conflict, they had to arbitrate between authoritarian operating managers and obstructive employees or had to do a lot of convincing regarding plan requirements. Today, in a market economy, its role is different: the labor union has to represent interests, it has to make sure nobody takes advantages of employees, the weaker party, who are kept in dependency. This implies that demands are formulated and pressed, if necessary, even to the point of confrontation. Such a change of roles is quite difficult, not only because creative minds can be found in the Party or in corporations to counter union efforts,[25] but because in China, social life is oriented more toward personal relations than interests: Should one really risk valuable contacts to the management or to the Party's local level? The fact that the Labor Act of 1994 already spoke of labor union autonomy indicates that it has lessened

25. Auch bei uns konnte man bisweilen „Anpassungsprobleme" feststellen, als z. B. plötzlich auf Arbeitgeberseite nicht mehr die kooperative Bundespost und das kooperative Ministerium, sondern verschiedene Unternehmen standen, die ausschließlich an der Profitmaximierung orientiert waren. Bitte übersetzen.

the extent of the Party's claim to power, but problems arise within the unions to oppose the transformation to a representation of interests. This shift might be successful in some of the country's provinces, but, thus far, such transformations are not all that common. Vietnam seems to have gone further in this direction. Since the amendment of the Vietnamese Employment Law Code in 2006, not only the right of retention in the case of outstanding wages has been recognized but also—though only exercisable within complicated procedures—a right to strike.[26]

It remains an open question which mechanisms actually provide for more tolerable conditions of employment. Thirty years of economic boom, which also led to a significant growth of skill, can hardly be managed with "bondslaves." One can suspect that smaller or bigger sodalities are formed among the employees—for instance on the basis of regional provenance—where one stands up for another. Therefore, an employer could expect a lot of covert resistance if it treated one of the group members "unfairly." However, in small businesses, employee resistance can only be conducted by quitting and searching for another job. In addition, as a cultural particularity, a Chinese worker never says "no," but rather expresses discontent and refusal indirectly. If an employer ignores this it might come to disruption—examples of which industrial actions are blockades of streets and railway lines.[27] It has also been reported that employees have climbed on to the roofs of multi-story houses threatening to jump if they did not finally get their wage—evidently they must have felt immense frustration and anger.

D. Conflicts in the "Harmonic Society"

For two years, the "Harmonic Society" has been, according to the Chinese Communist Party's resolutions, the aim of further social development. Harmony should not only be in families and generally in human relationships, but also the relation to nature and in international affairs. This concept, drawing from Buddhist and Confucian traditions, is not only a benchmark that one should follow (although even that may be seen as progress in the face of the lack of prospects prevalent in our society). Rather, concrete consequences flow from it, such as the effort to reduce the discrepancies between urban and rural areas as between well as rich and poor. Conclusions

26. The Labour Code of the Socialist Republic of Vietnam, Amended and Supplemented in 2002, 2006, and 2007 (in two Languages Vietnamese and English) 157 (Hanoi 2007).

27. Cheng, *supra* note 18.

were drawn in tax law where peasants were freed of all taxes and high and secondary income earners imposed with higher tax rates. The readily available *China Daily* wrote that if not every citizen had a health insurance the aim of the Harmonic Society would only be "empty talk."[28] Hu Jintao has compared the path to the Harmonic Society with the "Long March" in the civil war; this endeavor would not be less difficult and full of challenges and risks.[29]

According to Article 1, the Employment Contract Act also intends to encourage harmony in the employer-employee relationships. The law does not say much about the means to facilitate that harmony. Occasionally, "negotiations on equal footing" are mentioned, but in day-to-day life it is difficult to distinguish them from "normal" negotiations or negotiations where the employees' side is disadvantaged from the start. The next few years will show if and how people can legally reach compromises and hence harmonic togetherness, even by means of strikes and other forms of refusal to cooperate. Until 1982 the right to strike was guaranteed in the Chinese constitution—why should people not remember it?

28. So Li Xing, *New health care system essential for social harmony*, CHINA DAILY, Sept. 14, 2006, at 4.

29. *70th anniversary of Long March marked*, CHINA DAILY, Oct. 23, 2006, at 4.