ACTION OF CHINESE COURTS WITH THE ANTI-TORTURE LEGAL OBLIGATION UNDER THE UNITED NATIONS CONVENTION AGAINST TORTURE: A SOCIO-LEGAL NARRATIVE CRITIQUE ANALYSIS OF APPLICATION OF LAW AND LEGAL REASONING

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ABSTRACT

Background: The most of critique is based mainly on the previous literature, namely, that Chinese dynamic institutional structures’ silence may have exacerbated the miscarriage of justice and obtain illegal evidence in criminal proceedings in China. However, the fact that torture to extract confessions and maltreatment of prisoner’s cases involve judicial decision-making by Chinese hierarchical courts has been disregarded.

Objective: Taking China's outward telling and internal judicial reforms as starting positions, the article focuses on address the knowledge gap that torture to extract confessions and maltreatment of prisoner’s cases involving the application of law and legal reasoning regarding how Chinese domestic courts’ actions is related to the interpretation of torture and domestic compliance with international conventions. The causes of action include torture to extract confessions, maltreatment of prisoners in criminal scenarios, and cases of cruel, inhuman, or degrading treatment or punishment involving detention in police custody (garde a vue) and outside custodial settings. The article also examines how Chinese hierarchical courts have implemented their judicial practice in accordance with international obligations to prohibit and prevent torture under United Nations Convention against Torture.

Methods: Process tracing is a qualitative research method that examines causal processes connecting results to potential causes form socio-legal perspectives, focusing on varying time stages. It is essential for within-case analysis based on qualitative data.

Implication: This article highlights the intricate relationship between the definition of torture in law in context in UNCAT and treaty compliance by China domestic court, addressing flaws in previous court decisions and responding to those points of view to gain a more in-depth understanding of the dynamics underlying cases of confessions extracted under torture, ill-treatment in prisons and outside custodial settings (garde a vue) in China’s criminal judicial system.

Keywords: anti-torture, chinese courts, case guidance system, international obligation, judicial reform, judicial interpretation, open database, UNCAT.

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AÇÃO DOS TRIBUNAIS CHINESES COM A OBRIGAÇÃO LEGAL ANTI-TORTURA SOB A CONVENÇÃO DAS NAÇÕES UNIDAS CONTRA A TORTURA: UMA NARRATIVA SOCIOLEGAL ANÁLISE CRÍTICA DA APLICAÇÃO DA LEI E DO RACIOCÍNIO LEGAL

RESUMO

Antecedentes: A maior parte das críticas baseia-se principalmente na literatura anterior, nomeadamente, que o silêncio das estruturas institucionais dinâmicas chinesas pode ter exacerbado o erro judiciário e obtido provas ilegais em processos penais na China. No entanto, foi ignorado o facto de a tortura para extrair confissões e os maus tratos infligidos aos casos de prisioneiros envolverem a tomada de decisões judiciais por parte dos tribunais hierárquicos chineses.

Objetivo: Tomando como ponto de partida as reformas judiciais internas e externas da China, o artigo foca em abordar a lacuna de conhecimento de que a tortura para extrair confissões e maus-tratos de casos de prisioneiros que envolvem aplicação da lei e raciocínio legal em relação ao modo como as ações dos tribunais nacionais chineses estão relacionadas com a interpretação da tortura e o cumprimento doméstico das convenções internacionais. As causas da ação incluem a tortura para extrair confissões, maus-tratos de prisioneiros em cenários criminais e casos de tratamento ou punição cruel, desumana ou degradante envolvendo detenção sob custódia policial (garde a vue) e fora dos locais de detenção. O artigo também examina como os tribunais hierárquicos chineses implementaram sua prática judicial de acordo com as obrigações internacionais para proibir e prevenir a tortura sob a Convenção das Nações Unidas contra a Tortura.

Métodos: O rastreamento de processos é um método de investigação qualitativa que examina processos causais conectando resultados a causas potenciais de perspetivas sócio-legais, com foco em diferentes estágios de tempo. É essencial para a análise interna baseada em dados qualitativos.

Implicação: Este artigo destaca a intrincada relação entre a definição de tortura em lei no contexto da UNCAT e o cumprimento do tratado pelo tribunal interno da China, abordando falhas em decisões judiciais anteriores e respondendo a esses pontos de vista para obter uma compreensão mais aprofundada das dinâmicas subjacentes aos casos de confissões extraídas sob tortura, maus-tratos em prisões e fora de ambientes de custódia (valor absoluto) no sistema judicial criminal da China.

Palavras-chave: anti-tortura, tribunais chineses, sistema de orientação de casos, obrigação internacional, reforma judicial, interpretação judicial, banco de dados aberto, UNCAT.

ACCION DE LOS TRIBUNALES CHINOS CON LA OBLIGACIÓN LEGAL ANTI-TORTURA EN VIRTUD DE LA CONVENCIÓN DE LAS NACIONES UNIDAS CONTRA LA TORTURA: UNA NARRATIVA SOCIOJURÍDICA CRÍTICA ANÁLISIS DE LA APLICACIÓN DE LA LEY Y EL RAZONAMIENTO JURÍDICO

RESUMEN

Antecedentes: La mayor parte de la crítica se basa principalmente en la literatura previa, a saber, que el silencio de las dinámicas estructuras institucionales chinas puede haber exacerbado el error judicial y obtener pruebas ilegales en los procesos penales en China. Sin embargo, no se ha tenido en cuenta el hecho de que la tortura para obtener confesiones y el maltrato de los casos de los presos implican la toma de decisiones judiciales por parte de los tribunales jerárquicos chinos.
Objetivo: Tomando como punto de partida las reformas judiciales internas y externas de China, el artículo se centra en abordar la brecha de conocimiento que existe entre la tortura para extraer confesiones y el maltrato de los casos de prisioneros que implican la aplicación de la ley y el razonamiento jurídico sobre cómo las acciones de los tribunales nacionales chinos se relacionan con la interpretación de la tortura y el cumplimiento nacional de las convenciones internacionales. Las causas de la acción incluyen la tortura para obtener confesiones, el maltrato de los prisioneros en escenarios penales y los casos de tratos o penas crueles, inhumanos o degradantes que implican la detención en custodia policial (grado a vue) y fuera de los entornos de detención. El artículo también examina cómo los tribunales jerárquicos chinos han implementado su práctica judicial de acuerdo con las obligaciones internacionales de prohibir y prevenir la tortura según la Convención de las Naciones Unidas contra la Tortura.

Métodos: El rastreo de procesos es un método de investigación cualitativa que examina los procesos causales que conectan los resultados con las causas potenciales desde perspectivas socio-jurídicas, centrándose en diferentes etapas temporales. Es esencial para el análisis de casos individuales basado en datos cualitativos.

Implicación: Este artículo destaca la intrínseca relación entre la definición de tortura en la ley en contexto en la Convención contra la Tortura y el cumplimiento de los tratados por parte de los tribunales nacionales de China, abordando las fallas en decisiones judiciales anteriores y respondiendo a esos puntos de vista para obtener una comprensión más profunda de la dinámica subyacente a los casos de confesiones extraídas bajo tortura, malos tratos en las prisiones y fuera de los entornos de detención (grado a vue) en el sistema judicial penal de China.

Keywords: anti-tortura, tribunales chinos, sistema de orientación de casos, obligación internacional, reforma judicial, interpretación judicial, base de datos abierta, UNCAT.

1 INTRODUCTION

The critique contained here derives mostly from a viewpoint that was expressed in previous writings. This viewpoint suggested that dynamic institutional structures’ silence may have exacerbated the miscarriage of justice and obtain illegal evidence in China. However, this argument ignores the substantial part played by the judicial decision-making process of Chinese hierarchical courts in situations that include torture to extract confessions and maltreatment of prisoner’s cases. This article’s primary objective is to fill a current knowledge gap by investigating cases of torture that include the application of law and legal reasoning in the judicial processes of Chinese domestic courts. Specifically, the emphasis is on examples in which these elements came into conflict with one another. The primary question is how the interpretation of torture has played a role in the judicial decision-making processes of these institutions. In the context of these cases, a number of potential causes of action become apparent, including cases such as the use of torture to extract confessions, the mistreatment of prisoners in criminal contexts, and other administrative scenarios involving cruel, inhuman, or degrading treatment or punishment. In particular, these potential causes of action involve detention in police custody (garde a vue). In addition, the Case Guidance System of the Supreme...
People's Court is examined in this article to determine how the court has handled cases involving torture. The purpose of this investigation is to assess the degree to which Chinese hierarchical courts have conformed their judicial procedures to international obligations to outlaw and prevent the use of torture. The article is organized into four sections. The focus is on the fulfilment of China's external international obligation to combat torture and its internal judicial reforms as a starting point. How acts of torture are interpreted and punished by Chinese courts in both criminal and administrative scenarios and whether perpetrators are brought to justice or granted unjustified immunity are analysed in detail through particular cases. China's actions to increase judicial transparency have been recognised in both outside and inside narratives as the public disclosure of court judgements. However, the cases disclosed in the public database are highly selective; hence, the article also provides systematic statistics and analyses the possibility of data bias in cases involving torture from the time that China established its public database in 2013 until 2023. This article fills a gap by analysing specific police custody (also known as *garde a vue*) detention cases in which the issue of detention is frequently mentioned but that are neglected in the legal environment. The article also compares different aspects of the Case Guidance System established in China's judicial reform with precedents in common law systems and how guiding cases and typical cases in the Case Guidance System play a role and have limitations in cases involving acts of torture. Last, this article sheds light on the intricate relationship between the definition of torture, Chinese internal legislation, and judicial procedures in China. It provides a more thorough knowledge of the dynamics surrounding cases within China's legal environment by addressing the shortcomings of prior opinions and offering a response to those perspectives. The investigation produces significant results.
2 THEORETICAL FRAMEWORK

2.1 THE INTERPLAY BETWEEN INTERNATIONAL LAW AND CHINESE DOMESTIC LAW-MAKING ON TORTURE

2.1.1 Anti-torture Obligations in UNCAT and Its Implementation in Chinese Domestic Law-making

2.1.1.1 Anti-torture Obligations in Periodic Reports and Concluding Observations: From 1989 to 2013, a Narrative to the Outside World and Responding to Issues

China ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Convention") in September 1988. On 3 November of the same year, China officially became a party to the Convention. In accordance with Article 19 of the Convention, China had submitted five periodic reports to the Committee against Torture as of 2023. However, China has not yet presented its Sixth Periodic Report to the Committee against Torture, which has been overdue since December 2019. The Committee against Torture issued its concluding report after reviewing China's efforts to fulfill its anti-torture obligations. The periodic reports depicted the internal evolution of China's legal system and institutional functions between 1989 and 2013.

The Initial Periodic Report emphasized the fully independent role of the courts, aligning with the key issues addressed in the Initial Periodic Report. The People's Courts are entrusted with the responsibility of adjudicating cases across all causes of action with complete independence and conducting trials in accordance with the law, free from interference by administrative organs, social groups, and individuals. The People's Courts operate within a two-tiered jurisdiction system, and decisions made at the

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2 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, available at https://indicators.ohchr.org/

3 Ibid.

4 Article 19, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.


appellate level are final. This leads to the primary exploration, which is how the courts have interpreted torture. Dissenting voices have arisen based on the criticism that Chinese courts are not independent of politics and economics, which contradicts the statement in the periodic report that Chinese courts are fully independent in their role. This criticism also highlights how the courts have interpreted torture and the courts’ position, which is explored in depth in the next section. In addition, the Initial Periodic Report mentioned the monitoring role of public opinion, such as newspapers, radio broadcasts and other means of communication, in denouncing various violations of laws and regulations. While criticism from independent media reporting threatens to undermine the authority of the judiciary, the courts are encouraged to accept media scrutiny and promote judicial transparency (Sprick, 2021). Relevant documents were issued separately in 2009, and the courts' embrace of press and media public opinion monitoring was reaffirmed by authorities in the early stages of China's judicial reform efforts. This also triggered the establishment of open databases in the later stages of Chinese judicial reform. How torture cases have been disclosed in these databases is also investigated in the next section. The main research questions that emerged from the Initial Periodic Report are how to examine the courts’ actions and performance and how to increase judicial transparency and disclosure of torture cases in the context of establishing open databases.

As China set its sights on the Second Periodic Report, it was most noteworthy that although the exclusionary rule was formally introduced into The People's Republic of China Criminal Procedure Law (hereinafter “Criminal Procedure Law”) in 2012, it was...
already mentioned in the Second Periodic Report. The introduction of the exclusionary rule also sparked one of the most heated academic debates on measures to prevent and prohibit torture. The exclusionary rule is commonly regarded as having a mere “propaganda effect” (Ahl, 2018). The legal text is flawed because, due to the absence of a derived exclusionary rule of evidence, confessions obtained through torture or coercion remain implicitly permissible under the 2012 amendments to the Criminal Procedure Law (Jiang, 2018). Electronic recordings of interrogations are effectively controlled entirely by prosecutors and police, rendering them ineffective in deterring torture and police misconduct in the absence of mandatory legal representation during custodial interrogations (Zhu & Siegel, 2015). Despite China’s implementation of the exclusionary rule in its criminal procedure law, the rule’s definition is excessively vague, leading to inconsistent application by judges and prosecutors, while the police selectively record confessions in judicial practice (Guo, 2019). In essence, this renders the evidence unreliable, as interrogation torture is a widespread phenomenon in Chinese criminal investigations (Wu & Vander Beken, 2010). However, most of the discussion has focused on the introduction of the exclusionary rule and the struggle against obtaining illegal evidence in criminal proceedings. In fact, how to interpret genuine acts of torture in substantive contexts, such as torture to extract confessions and prison maltreatment as well as police custody (garde a vue) “extra-custodial” use of force in detention, has been neglected in the process of judicial law-making in the courts. This issue is analysed in detail in the following sections.

The key concerns that require attention in this paper are elucidated in the Third Periodic Report. In the Concluding Observations, China clarified to the Committee against Torture the question of how to define the concept of torture. The enhanced version of The People’s Republic of China Criminal Law (hereinafter “Criminal Law”) of 1997 signified an increased safeguarding of the personal and democratic rights of

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citizens, guaranteeing that no individual or organization can violate these rights under any pretext. Any unlawful infringement upon these rights is subject to legal penalties. The definition of "torture" as stipulated in article 1 of the Convention is encompassed within the Criminal Law. Article 247\(^{18}\) explicitly addresses the offenses of "extortion of a confession by torture" and "extraction of testimony by the use of force". An individual serving in a law enforcement capacity who attempts to extract a confession through torture or coerce testimony through force is subject to a punishment of three years' imprisonment or detention. Similarly, Article 248\(^{19}\) pertains to the crime of "physical abuse of inmates" and carries a potential sentence of three to ten years' imprisonment. Moreover, the Criminal Law encompasses acts resulting in injury or death, with specific provisions outlined in Articles 234\(^{20}\) and 232\(^{21}\) regarding punishments for intentional injury and intentional killing resulting from acts of torture (conditions for the escalation of legal penalties). Pertinent anti-torture articles include intentional killing, intentional injury, illegal detention, humiliation, and false testimony. The Convention characterizes torture as certain acts that are "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"\(^{22}\). In addressing these issues, the article examines how the concept and extent of a public official are defined within the framework of judicial law-making in particular torture cases. Furthermore, Article 94 of the Criminal Law\(^{23}\) also defines the scope of the

\(^{18}\) See also Article 247, “Judicial workers who extort a confession from criminal suspects or defendants by torture, or who use force to extract testimony from witnesses, are to be sentenced to three years or fewer in prison or put under criminal detention. Those causing injuries to others, physical disablement, or death, are to be convicted and severely punished according to articles 234 and 232 of this law”. Criminal Law of the People's Republic of China (1997 Amendment) (Issued 14 March 1997, Effective 01 December 1997).

\(^{19}\) See also Article 248, “Supervisory and management personnel of prisons, detention centres, and other guard houses who beat or physically abuse their inmates, if the case is serious, are to be sentenced to three years or fewer in prison or put under criminal detention. If the case is especially serious, they are to be sentenced to three to 10 years in prison”. Criminal Law of the People's Republic of China (1997 Amendment) (Issued 14 March 1997, Effective 01 December 1997).

\(^{20}\) See also Article 234, “Whoever intentionally injures the person of another is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or control. Whoever commits the crime in the preceding paragraph and causes a person's serious injury is to be sentenced to not less than three years and not more than 10 years of fixed-term imprisonment; if he causes a person's death or causes a person's serious deformity by badly injuring him with particularly ruthless means, he is to be sentenced to not less than 10 years of fixed-term imprisonment, life imprisonment, or death. Where this Law has other stipulations, matters are to be handled in accordance with such stipulations”. Criminal Law of the People's Republic of China (1997 Amendment) (Issued 14 March 1997, Effective 01 December 1997).

\(^{21}\) See also Article 232, “Whoever intentionally kills another is to be sentenced to death, life imprisonment or not less than 10 years of fixed-term imprisonment; when the circumstances are relatively minor, he is to be sentenced to not less than three years and not more than 10 years of fixed-term imprisonment”. Criminal Law of the People's Republic of China (1997 Amendment) (Issued 14 March 1997, Effective 01 December 1997).

\(^{22}\) UNCAT (n1 above), Article 1.

\(^{23}\) Criminal law (n1 above), article 94.
activities of judicial personnel, referring to staff who perform the duties of investigation, prosecution, adjudication, supervision, and control of offenders. In the case of *Prosecutor v. Zhao Hongsheng*\(^{24}\), it was possible to identify what the police officers did in the police station, and the consequences of their actions were identified as the circumstances that led to a confession being extracted by torture; it was further identified that the police officers' conduct precisely went beyond the scope of public security management work. In this case, police officers in the police station were charged with the crime of extorting confessions under torture when they became the perpetrators of that crime during public security management work involving suspects, as they had sought to achieve the purpose of public security management through the actual exercise of their criminal investigative functions. This broader interpretation of the definition of the concept of judicial officer within the meaning of Article 94 is in line with actual judicial practice.

The forthcoming analysis pertains to the conditions for statutory upgrading and consequent aggravators outlined in Articles 247, 248, 234, and 232, where there is ambiguity surrounding the application of these provisions in Chinese court decision-making. Further analysis of the Fourth Periodic Report\(^{25}\) is conducted in response to the query concerning the eradication of all forms of administrative detention in accordance with relevant international standards in the Concluding Observations\(^{26}\). The People's Republic of China Public Security Administration Punishments Law (hereinafter “Public Security Administration Punishments Law”)\(^{27}\) and serves as the legal foundation for the authorization of detention in administrative contexts. Likewise, the Public Security Administration Punishments Law provides for the administrative punishment of relevant


\(^{27}\) Article 1 “This Law is enacted with a view to maintaining the social security order, guaranteeing public safety, protecting the lawful rights and interests of the citizens, legal persons and other organizations, regulating and ensuring the lawful fulfillment of the public security administration duties by the public security organs and the people's policemen”. Article 2, “With regard to an act of disrupting public order, encroaching upon the right of the person, the right of property or impairing social administration, if it is of social harmfulness and constitutes any crime as provided for in the Criminal Law of the People's Republic of China, it shall be subject to criminal liabilities. If it is not serious enough to be subject to a criminal punishment, it shall, in accordance with this law, be subject to public security punishment by the public security organ”. Public Security Administration Punishments Law of the People's Republic of China, (Issued 28 August 2005, Effective 01 March 2006).
offences in the form of warnings, fines and administrative detention. The next section seeks to determine how the courts have interpreted other cruel, inhuman or degrading treatment or punishment in non-criminal scenarios by searching the open database of court judgements in administrative detention cases.

China's most recent Periodic Report (as of 2023), the fifth, was submitted in 2013\(^{28}\). This report formally responded to the concerns about criminal proceedings raised in the Concluding Observations\(^{29}\) by the Committee Against Torture. The Criminal Procedure Law, which is constantly being amended, introduced the exclusionary rule and the principle of non-self-incrimination and related supplementary judicial interpretations. Indeed, the genuine act of torture, how the courts interpret torture and analyses of the courts' judicial decisions have been neglected both in the Periodic Reports and in previous studies. Additionally, it is worth noting that the Fifth Periodic Report draws a thorough and exhaustive distinction between the concepts of “torture” and “other cruel, inhuman or degrading treatment or punishment”. This has led to a debate on “other ill-treatment” and examinations of the construction and interpretation of the appropriate regulations and laws, such as administrative law and administrative procedure law, in the context of administrative detention scenarios (Biddulph, 2007) as well as the past evolution of the legal basis for law-based administration (Sapio, 2008). An obvious criticism is associated with the phenomenon of detention in administrative scenarios (police custody (garde à vue) detention), as China has no meaningful external mechanism to regulate the actions of the police, who are significantly more powerful than either the procuracy or the judiciary (Chen et al., 2020). Nevertheless, the analysis of cases in the context of administrative detention has been ignored in previous studies, and the relevant case discussions deserve to be examined in depth, as they are in the following sections.

2.1.1.2 Anti-Torture Measures in Chinese Law-Making, Post-2013 Reforms: SPC and SPP of Internal Evolution

China's external provision of information to the Committee against Torture stopped with its last periodic report to the Committee against Torture in 2013. After 2012,
the spotlight moved to the interpretation of the legal rules on the prevention and prohibition of torture in China's hierarchical domestic courts. Specifically, UNCAT Article 2(1)\(^30\) and Article 4\(^31\) stipulate the obligation of state parties to implement effective legislative, administrative and judicial measures at the national level, such as specifying all acts of offence of torture in the criminal law and providing appropriate sanctions. This brought the focus of the discussion to the Criminal Law of the People's Republic of China (Criminal Law), Article 247, "the crime of extorting a confession under torture" and Article 248, "the crime of maltreatment of prisoners"). In addition, cases relating to these two offences emerged as key data to be analysed by searching for cases disclosed in public databases and analysing how courts at the domestic level in China have interpreted the application of the law and legal reasoning regarding torture cases. Torture cases disclosed in public databases were chosen because China has increased its judicial reform efforts since 2013\(^32\). This includes the establishment of the “China Judgements” website by the Supreme People's Court to increase judicial transparency\(^33\). The national report submitted by China in accordance with paragraph 5 of the universal periodic review under Human Rights Council resolution 16/21\(^34\) again mentioned the increase in judicial transparency. Specifically, the people's courts have been building publicity on four major platforms: trial processes and procedures, courtroom activities, adjudication documents, and litigation information\(^35\). Additionally, the procuratorial authorities have set up a system for the disclosure of case information that also operates across four major platforms: applications for information on the procedures of a case, the

\(^{30}\) Article 2(1), UNCAT. ‘Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction’.

\(^{31}\) Article 4, UNCAT. ‘1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature’.


\(^{34}\) See A/HRC/RES/16/21, https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.RES.16.21_en.pdf#h-desc=Resolution%20Adopted%20by%20the%20Human%20Rights%20Council%20on%20the%20Prohibition%20of%20Torture%20%2025%20July%202016%20%2021,http%20%20-%20human%20%20rights%20%20council%20%20the%20human%20%20right%20%20 council%20%20 the%20%20 human%20%20 rights%20%20 council%20%20c

\(^{35}\) Ibid, para.5.
disclosure of legal documents, the dissemination of information on major cases, and applications for appointments by defenders and procurators.36

Although the disclosure of torture cases in the public database has been highly selective, the discussion in the subsequent chapters shows that the limitation of the number of cases disclosed is not extreme. The Notice of the General Office of the Supreme People's Court on the issuance of the Working Rules of the Expert Committee on Case Guidance Work37 of the Supreme People's Court in 2013 was issued as a preliminary stage and followed up with clarification of the specific criteria for its application. The Supreme People's Court also provided an official status of the judicial interpretation38. The Supreme People's Procuratorate also issued regulations on case guidance39 to strengthen and standardize the case guidance work of procuratorial organs and to give full play to the role of guiding cases as a model for procuratorial work. It also promotes the strict and impartial administration of justice by procuratorial organs and safeguards the consistent and appropriate implementation of the law. These are crucial parts of China's judicial reform and the promotion of the rule of law. Moreover, the analysis of certain torture cases reveals errors and logical flaws in the application of the law and legal reasoning. It is worth exploring whether typical cases of torture and state compensation as causes of action issued by the Supreme People's Court (SPC) as a “Case Guidance System” could de facto play the role of a "precedent". Therefore, it is essential to revisit and analyse the function of the SPC's Case Guidance System and the “judicial interpretation” of the relevant legal anti-torture provisions anti-torture.

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3 METHODOLOGY

Process tracing is a qualitative research method that examines causal processes connecting results to potential causes from Socio-legal perspectives, focusing on varying time stages. It is essential for within-case analysis based on qualitative data. Process tracing is a method with significant promise for pursuing an expressly socio-legal research focus (Bennett & Checkel, 2017). Process tracing is especially valuable for individuals who understand international law in terms of doctrine, process, and institutional aspects (Davidson et al., 2021). This is because it provides a high resolution and comprehensive contextualization of case studies (Nursaliyeva et al., 2023). The aim of process tracing is to identify the difference made by international legal features (Collier, 2011). This approach sheds light on the social dynamics that shape national anti-torture legislation as well as the social impact of national legal procedures. This article examines open access lawsuits according to the classification of the various timelines. This examination will demonstrate the relevance of process tracing to understanding international law’s domestic impact and related law reforms resulting from the internal changes of China’s society. This method has the benefit of being applicable to any law-making body whose decisions and opinions are preceded by communication that may be studied (Beach & Pedersen, 2019). Thus, through briefs, pleadings, and other communication, norms formed by policy-making bodies and court judgments may be traced back to the many individuals who advocated for or proposed the standard in that body (Beach & Pedersen, 2019).

4. RESULTS AND DISCUSSION

4.1 CASE GUIDANCE SYSTEM AS DE FACTO PRECEDENTS VS PRECEDENTS IN THE COMMON LAW SYSTEM

The Chinese legal system has undertaken significant reforms, with the courts playing a central role in the formation and interpretation of the law (Wang, 2019 & Lu, 2021). Academics have investigated the Case Guidance mechanism, which plays a crucial role in judicial decision-making and the development of judicial precedent (Ahl, 2014& (Luo, 2017)). These literature review critically analyses the institutional purposes of Chinese courts and the examination of judicial guiding cases in China, emphasizing their transformative impact on legal consistency, bridging traditions, fostering innovation, and shaping the Chinese legal system (Guo, 2016 & Jia, 2016). Guiding or typical cases also
play a role in interpreting vague and ambiguous legal language in China's judicial practice (Zhang, 2017). These features also highlight the essential difference from common law precedents. The Supreme People's Court first issued the Provisions of the Supreme People's Court (SPC) on Case Guidance in 2010, and in 2015, it further issued the Detailed Rules for the Implementation of the Provisions of the SPC on Case Guidance. Cases in the Case Guidance System are categorized as "guiding cases" and "typical cases". The publication of this official document has given rise to numerous academic debates on the topic. On the one hand, some experts have stated that Chinese guiding cases are akin to precedent in the common law system and that guiding cases are authoritative by nature and constitute precedent (Chen, 2014). These cases may also serve as a mutual benchmark in legal practice (Liu et al., 2021). Based on this argument, scholars have conducted experiments using empirical legal methods to examine the extent to which judges in Chinese courts use previous cases as grounds for deciding cases. The experiment concluded that de facto precedent significantly influenced the decisions of the Chinese judges who participated in the study (Liu et al., 2021). The judges spent more time reading previous cases than reading laws, and they usually read the precedent before consulting laws. It is reasonable to say that the guiding cases have permeated the judges’ legal reasoning process, exerting a strong influence on how judges decide cases. Hence, the influence of guiding cases on the legal reasoning used in subsequent case law has been subtle and implicit. In their legal reasoning, most judges did not refer to the precedent that influenced their decisions.

In addition, from the perspective of evolutionary law-making in Chinese domestic law, guiding cases may fill the gaps that exist in the statutory law of the Chinese civil law system (Gao, 2017). Guiding cases effectively play an important role during trials, unify the standards of legal application and safeguard judicial impartiality. These cases also have a positive effect on legal reasoning applied to the regulation of judicial discretion. Guiding cases have penetrated the legal reasoning processes that lead to decisions in subsequent cases. Indeed, the guiding case system clearly signals a move towards the use of case law in China and demonstrates the growing power of the Chinese judiciary to

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40 Provisions of the Supreme People’s Court Concerning Work on Case Guidance. (Adopted 15 November 2010, entry into force 26 November 2010) by Supreme People's Court No. 51 [2010].
42 Ibid, pp. 110-114.
43 Ibid, pp.119-120.
make law (Zhang, 2017). From this perspective, whether guiding cases on torts play such a role in Chinese courts is thoroughly analysed.

It is useful to recall the important legal provisions under the Detailed Rules for the Implementation of the Provisions of the Supreme People's Court on Case Guidance (Detailed Rules for Case Guidance). A question to be asked is how a judgment that “shall” be rendered based on key elements of the judgement rendered in relevant guiding cases under Article 9 should be interpreted. Experts and academics have debated on the question of the extent to which guided cases should be used as references. Some scholars have argued that the choice of guiding cases is controversial and that these cases may not be instructive; therefore, they should be used cautiously. Others have assumed that there is a widespread belief that the Chinese judiciary is not efficient in relying on guiding cases, as judges are unlikely to refer to judicial precedent when making decisions (Wang, 2018). Furthermore, scholars have reported that judges are not really independent in rendering their judgements on the matters they hear (Wang, 2019). Moreover, in the official document on how to understand “a judgement that ‘shall’ be rendered by reference to the key points of a judgement in the relevant guiding case”, the relationship between "shall" and "must" is set out in a document produced by the Legislative Affairs Committee of the Standing Committee of the National People's Congress. In fact, these terms mean different things in the Chinese nonlegal context. The term “must” indicate a factual and emotional necessity and reinforces an imperative tone, whereas “shall” has no such meaning. However, there is no substantive difference in the meaning of "shall" and "must" in the legal context. In law, the word "shall" is generally used instead of "must" when expressing obligatory norms. The term “shall” be used in the Detailed Rules for

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49 Ibid, Article 14.
The Implementation of the Provisions of the Supreme People's Court on Case Guidance. It has been shown that it is a mandatory obligation for domestic courts in China to refer to guiding cases.

The Detailed Rules for Case Guidance may also indicate whether the guiding cases issued by the SPC have the same binding force as precedent in the common law system for the adjudication of similar cases. In judicial practice, however, if a Chinese domestic court does not refer to a guiding case, the decision of that court cannot lead to an annulment and will not constitute a ground for appeal because Article 10 of the Detailed Rules for Case Guidance clearly states that guiding cases can be used in a judgement's reasoning, rather than being cited as the basis for that judgement.

As inferred from a series of previous articles on the shortcomings of the guiding cases issued by the SPC, if application of the law in the guiding cases is unclear or erroneous, the same situation may arise in the judgements of similar cases in subsequent practice. Indeed, a judge may, to a considerable extent, refer to decisions from previous cases and thus apply the law based on the same errors or lack of clarity. This practice may enhance the obstacles judges encounter when deciding on cases. How this happens in the torture cases discussed in this article is the focus of the ensuing discussion. It is also the main difference between China's Case Guidance System and the role of precedents in the common law system. In addition, this practice has resulted in the binding force of guiding cases not being particularly powerful in judicial practice. It also shows that guiding cases or typical cases of torture as a cause of action, which are discussed later, have flaws in the application of law and legal reasoning.

4.2 INVESTIGATION OF DIVERSE TORTURE CASES IN THE OPEN DATABASE: PROGRESS AND LIMITATIONS

As mentioned above, as part of its judicial reforms to increase judicial transparency, China has chosen to make court judgements available online on the China Judgement Online website. This move was designed to make court judgements publicly accessible.
available (Ahl & Sprick, 2017), and whether their court judgements are uploaded in a prompt and timely manner has become one of the performance evaluation indicators for judges (Chen et al., 2021). However, the highly selective nature of the cases disclosed in the public database has also been criticized (Lo, 2016), especially in cases involving sensitive areas (Xu, 2016). There has been a decline in recent years in the number of judgements from Chinese hierarchical courts disclosed in public databases (Lo, 2023), particularly cases involving acts of torture. Liebman and others examined a passive decrease in the number of criminal, administrative, and civil cases in Chinese courts in the public database (China Judgement Online) starting in 2021 (Liebman et al., 2023).

The following tables show the trend in the number of cases in China since the establishment of the public database in July 2013, in which the cases concerned were the crime of extorting a confession under torture and the crime of maltreatment of prisoners as well as state compensation for injuries and deaths caused by torture to extract confessions and maltreatment of prisoners.

Table 1. Number of Cases of Torture to Extract Confessions

<table>
<thead>
<tr>
<th>Year</th>
<th>Torture to Extract Confessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>6</td>
</tr>
<tr>
<td>2014</td>
<td>36</td>
</tr>
<tr>
<td>2015</td>
<td>48</td>
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<tr>
<td>2016</td>
<td>60</td>
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<td>2017</td>
<td>67</td>
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<td>2018</td>
<td>55</td>
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<tr>
<td>2019</td>
<td>29</td>
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<tr>
<td>2020</td>
<td>29</td>
</tr>
<tr>
<td>2021</td>
<td>177</td>
</tr>
<tr>
<td>2022</td>
<td>32</td>
</tr>
<tr>
<td>2023</td>
<td>5</td>
</tr>
</tbody>
</table>

Source: Author Analysis

regulate judicial practice and promote judicial justice). Available at: https://www.court.gov.cn/zixun/xiangqing/251141.html
Table 2. Number of Cases of Maltreatment of Prisoners

![Graph showing number of cases of maltreatment of prisoners over years, with a peak in 2018. Source: Author Analysis.]

Table 3. Number of Cases of State Compensation for Torture to Extract Confessions

![Graph showing number of cases of state compensation for torture to extract confessions over years, with a peak in 2018. Source: Author Analysis.]

The data in the above tables are taken from the public databases PKULAW and China Judgement Online. They show that the number of cases involving acts of torture is a relatively small proportion of the total number of cases in the public database. Surprisingly, the number of cases in which state compensation was granted to victims, in particular, does not exceed 20. The tables also highlight the highly selective nature of the public disclosure of cases involving acts of torture and the underlying data bias and limitations. A general trend emerges of a declining number of cases involving acts of torture, although the number of cases publicly disclosed in the period leading up to the judicial reform rose steadily and gradually. The next section explores the legal application of and legal reasoning in disclosed cases of torture to extract confessions and maltreatment of prisoners, even though the number of cases is small. Additionally, how Chinese courts interpret torture and punitive acts of torture in the fulfilment of anti-torture obligations will be examined.
4.3 HOW THE INTERPRETATION OF TORTURE AFFECTS LEGAL PRACTICE IN CHINESE DOMESTIC COURTS’ DECISION-MAKING

4.3.1 Torture Cases in Criminal Scenarios in Chinese Courts: Articles 247 and 248 of the Criminal Law

4.3.1.1 Torture to Extract Confessions under Article 247: Inconsistent Application of the Law

The punishment for what is called “torture” is regulated in Chinese domestic law. There are two forms of incrimination in the Criminal Law of the People's Republic of China (Criminal Law), which are the crime of extorting a confession under torture or the crime of obtaining evidence through violent means and the crime of maltreatment of prisoners. Article 247, which covers the crime of extorting a confession under torture or the crime of obtaining evidence through violent means, provides for the punishment of judicial personnel who extort confessions from criminal suspects or defendants by torture or use violence to obtain the testimony of witnesses. In the case of Prosecutor v. Liu Haijun and others, the perpetrators were all judicial officers who exceeded their authority during interrogations and repeatedly used abusive language, beatings, cigarette burns, lighter burns and other violent means to extract confessions from criminal suspects. The conduct of the perpetrators constituted the offence of extortion by torture and was sentenced by the Court of First Instance. The Fuyang People's Prosecution considered that the facts of the initial judgement were clear and that the evidence was sufficient. The Court of Appeal affirmed the decision of the Court of First Instance about the offence of extracting a confession by torture and recommended that the appeal be dismissed and the original sentence be affirmed.

In the latest case of torture to extract confessions, Prosecutor v. Wang Chang and Liu Chenyang, adjudicated by the Dandong Intermediate People's Court, the court concluded that the perpetrators, Wang Chang and Liu Chenyang, as judicial officers, had forced suspects to confess their guilt by using torture on them and that their conduct

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54 Criminal Law of the People's Republic of China (2020 Amendment) (Issued 26 December 2020, Effective 01 March 2021) [CLI Code] CLI.1.349391(EN), Article 247
55 Criminal law (n1 above), Article 248
57 Ibid, para 6-7.
constituted the crime of extorting confessions by torture\(^59\). After consideration of the specific facts of the case, the circumstances in which the crime took place and the degree of harm to society, the court also concluded that the victims' death was directly related to the perpetrators but that the two perpetrators could be exempted from criminal punishment\(^60\). The court concluded that the original verdict was clear in its determination of the facts, that the evidence was conclusive and sufficient, that the conviction was accurate and the sentence appropriate and that the trial procedure was lawful; thus, the court rejected the protest and appeal and upheld the original verdict\(^61\). However, the judgement did not explain the court’s reasoning for the finding of mitigating circumstances and lack of social harm. Even though this case was similar to a typical case in terms of cause of action, the legal reasoning in the case was flawed since the perpetrator was exempted from criminal punishment and the victim did not obtain state compensation.

In addition, in other cases regarding injuries caused by torture that was used to obtain a confession, there has been confusion about the applicable law. In the cases of Prosecutor v. Zhuang Hanzhong\(^62\) and Prosecutor v. Chen Lihong and others\(^63\), the Court of First Instance and the Court of Appeal concluded unanimously that the conduct of the perpetrator, a police officer who had beaten the victim for no reason while questioning him as a suspect in a public security case, resulting in minor injuries, constituted the crime of intentional injury in accordance with Article 247 and 234 of the Criminal Law. In contrast, the cases of Shen Weifeng v. Xinmi Public Security Bureau\(^64\) and Xiong Dongsheng v. Public Security Bureau of Yunmeng County\(^65\) were similar in that the Court of First Instance, under Article 247, sentenced Shen Weifeng and Xiong Dongsheng who caused injuries by torturing the victim to obtain a confession. However, domestic judicial

\(^59\) Ibid, para 5-6.
\(^60\) Ibid, para, 7-9.
\(^61\) Ibid, para, 10-11.
\(^63\) Prosecutor Chen Lihong and others [2008] Ningxia Hui Autonomous Region High People's Court,，《最高人民检察院公报》2009年第3号(总第110号)CLIC171494 (Ningxia Hui Autonomous Region High People's Court).
\(^65\) Xiong Dongsheng v Public Security Bureau of Yunmeng County [2013] Supreme People's Court, (2013)赔监字第148号 (Supreme People's Court).
cases in China suffer from a distorted application of these texts, although in a certain number of cases the perpetrators have been brought to justice, and the victims have obtained remedies. In judicial practice, however, legal reasoning has been flawed, and clarity has lacked in the boundaries of the *applicable law* in the adjudication of torture cases and the granting of lighter penalties or impunity. Legal provisions have been vaguely applied in China in criminal law cases in which torture was used to extract confessions and in which prisoners were tortured. There have been no clear criteria for determining whether a confession was extracted by torture, an injury was caused by torture, or death was caused by torture. This lack of clarity has led to confusion in the application of Articles 232 and 234 of the Criminal Law.

Many other similar cases strikingly show how police officers tortured the victim to extract a confession. In these cases, the application of the law was inconsistent. Moreover, these cases can be broadly divided into cases of torture by judicial officers to extract a confession from the victim (under Article 247 of the Criminal Law) and cases of torture by judicial officers resulting in injury to the victim or the victim’s (under Article 247 of the Criminal Law and Articles 232 and 234 of the Criminal Law); moreover, in those cases, state criminal compensation was not necessarily paid out for the injuries or death suffered by the victims as a result of being tortured into a confession (under Article 247 of the Criminal Law and Article 17(4) of the State Compensation Law). In the cases discussed above, there were mistakes of fact and mistakes of *applicable law* made by the Court of First Instance during the trial. Moreover, appeals have not worked; the Court of Appeal did not reconsider the errors that were made and upheld the original decision. However, to overturn the verdict of an original trial in the Chinese Court of Appeal's system, the court must find that the original verdict was rendered without mistakes of fact; instead the court must find that the law was applied incorrectly or that the court imposed an inappropriate sentence (Yang, 2013). When the original verdict is based on unclear facts or insufficient evidence, the court can either overturn the verdict of the original trial or remand the case for a retrial. Likewise, in some torture cases in which the Court of First Instance rendered the original decision based on unclear facts and a mistake of law, the Court of Appeal has not reconsidered the judgment. It has been relatively rare for a case to have completely different outcomes in the Court of First Instance and the Court of Appeal in relation to Article 247 of the Criminal Law.

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4.3.1.2 Maltreatment of Prisoners under Article 248: Conflicting Words in Legal Reasoning

In the instances in which Article 248 has been applied, there have been frequently cases of "lenient felony sentence" and "nonconvictions". Cases in which a person is assaulted or physically tortured while under supervision in a prison, detention centre, guardhouse or other custodial institution by a supervisor or cases in which a supervisor instructs a person under supervision to assault or physically torture another person under supervision is regulated by Article 24867. Different penalties are prescribed for different circumstances of the crime. If a person is maimed or killed, he or she is sentenced to a heavier penalty in accordance with Articles 234 and 232 of the Criminal Law for the offences of intentional injury and intentional homicide68.

What stands out in the case of Prosecutor v. Song Zhenban69 is the general situation of the crime of the maltreatment of prisoners. The appellant used shackles and leg irons cross-wounds to keep the three victims from standing upright for a week or more, resulting in serious consequences for one of the victims, Gao, who required medical treatment and surgery. In a similar case in China, Prosecutor v. Liu70, the court found that defendant Liu, a custodial officer, assaulted a supervised person and conspired to have detainees abuse a supervised person named Du with whom they were detained. The victim was physically injured, and the circumstances were serious. Liu's conduct constituted the offence of ill-treatment of a person in custody under article 248 of the Criminal Law. Both cases concluded with a verdict of serious and aggravated injury to the victim. Although the perpetrators were convicted under Article 284, the perpetrators were exempt from criminal punishment and were not convicted and sentenced for the offence of intentional injury under the aggravating circumstances set out in Article 248.

Regarding the crime of maltreatment of prisoners under Article 248, the sentences have seemingly applied the relevant articles, but the verdicts have usually resulted in lighter penalties or impunity. In the case of Prosecutor v. Lou71, it was found that

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67 Criminal law (n1 above), Article 248.
68 Criminal law (n1 above), Article 248.
defendant Lou, who was a prison officer, had beaten, physically punished and abused a prisoner in custody. The situation was serious, and Lou’s behaviour constituted the crime of maltreatment of prisoners.\(^{72}\) The Public Prosecutor’s Office charged the defendant with the offence, and the court upheld the charge. According to the decision, Lou thrashed the victim and forced him to take down his trousers before he beat him on the buttocks with a belt, causing serious bleeding on the buttocks\(^{73}\). Moreover, in the judgement, the court concluded that during the trial, the defendant Lou was able to confess and repent for his crime\(^{74}\). The nature of the defendant's crime, the circumstances of the crime and its harmful consequences were found to be a minor crime that did not require the imposition of a penalty\(^{75}\). Ultimately, defendant Lou was found guilty of the crime of maltreatment of prisoners and was exempt from criminal punishment. It has been argued that the defendant’s harmful conduct was identified and that the defendant was charged; however, the court’s findings contradicted the factual circumstances unveiled at trial, and the court arbitrarily granted Lou immunity from criminal punishment based on the fact that it did not find any relevant reasons or grounds within the judgement for a punishment. It is ironic that the wording used in the court's judgement describing the facts of the trial included the phrase "serious circumstances", while the wording used in the judgement for the outcome of the trial included the phrase "minor harmful consequences". Moreover, in the case of *Chen Wei and others v Sichuan Qiaowo Prison*\(^{76}\), the victims also benefited from the corresponding remedies in the form of state compensation.

These situations have been prevalent in the cases mentioned above. A search for cases of criminal maltreatment of prisoners in China's specialized legal research database, PKULAW\(^{77}\), reveals that similar verdicts appear in relevant sentencing documents. One case involved prison guards using their feet and fists to beat a victim on the abdomen and sides of the body and entailed the absence of prompt medical attention\(^{78}\). The beating resulted in a diagnosis of a closed abdominal injury, a ruptured spleen and multiple rib

\(^{72}\) *Ibid*, para 4-7.
\(^{73}\) *Ibid*, para 8.
\(^{74}\) *Ibid*, para 16.
\(^{75}\) *Ibid*, para 17.
\(^{76}\) *Chen Wei and others v Sichuan Qiaowo Prison* [2017] Supreme People's Court, (2018)最高法委赔监29号 (Supreme People's Court).
\(^{78}\) *Prosecutor v Li Haisheng* [2021] Yan'an Intermediate People's Court, Shaanxi Province, (2021)陕06刑终245号 (Yan'an Intermediate People's Court, Shaanxi Province).
fractures on the left and right sides\textsuperscript{79}. A judicial assessment later concluded that the victim’s injuries were serious\textsuperscript{80}. Prison supervisors also unlawfully used torture instruments on the victim, who was hung and beaten for a long period with his arms up and his head positioned below the waist\textsuperscript{81}. Additionally, prison guards gave the victim electric shocks to the head, neck and shoulders and poured hot water from an electric kettle over the back of the victim's hands and neck\textsuperscript{82}. What most of these cases have in common is that the victims were beaten by prison officers with different tools of torture, resulting in various degrees of injury and disability\textsuperscript{83}. In these cases, the first trial rendered a judgement that clearly mentioned that the circumstances were particularly serious but that the harmful consequences were minor\textsuperscript{84}. Moreover, the court concluded that the defendant was guilty of the crime of maltreatment of prisoners but was exempted from criminal punishment\textsuperscript{85}.

Moreover, in the cases of \textit{Prosecutor v. Li Haisheng}\textsuperscript{86} and \textit{Prosecutor v. Yue}\textsuperscript{87}, the Court of Appeal upheld the conviction on the grounds that the defendant had not directly participated in the offence and that the circumstances were not serious. The ground on which the decision was made was not directly related to the outcome of the judgement of the Court of First Instance or to the reopening of the appeal. In addition, it is evident from the cases presented here that the reason behind the decision was that the defendant confessed his guilt, sincerely repented of his crime, actively compensated the victim for the financial loss incurred and obtained the victim's forgiveness\textsuperscript{88}. The perpetrator was engaged within the scope of his work and was motivated by the need for

\textsuperscript{79} \textit{Ibid.}, para 6.
\textsuperscript{80} \textit{Ibid.}, para 7.
\textsuperscript{81} \textit{Prosecutor v. Cheng} [2014] People's Court of Luoyang Hi-tech Industrial Development Zone, Henan Province, (2014) 鄢襄新刑初字第00016号 (People's Court of Luoyang Hi-tech Industrial Development Zone, Henan Province).
\textsuperscript{82} Prosecutor v Yang Chao and Xu Chaodong [2016] Yuhong District People's Court, Shenyang, Liaoning Province, (2016)辽0114刑初281号 (Yuhong District People's Court, Shenyang, Liaoning Province).
\textsuperscript{84} See also (n94n95).
\textsuperscript{85} See also (n94n95).
\textsuperscript{86} See also (n94n95).
\textsuperscript{87} See also (n94n95).
\textsuperscript{88} See also (n94n95).
strict management and the normal maintenance of order in the prison\(^89\). There was no subjective intent to harm the person under supervision\(^90\). Another case, *Prosecutor v. Wang Huaian\(^91\)*, revealed how the wording in the sentencing phase changed. The court confused the verb “to appear” (Wan & Liu, 2018)\(^92\) after it gave notice to the defendant with the verb “to surrender”\(^93\), which is used when no clear suspect has been found. The motivation for providing such a justification was the imposition of lesser criminal penalties on the defendant. Indeed, in the Chinese context, these two terms have vastly different meanings.

Another case that applied Article 248 was *Prosecutor v. Zhang*, in which the court held that defendant Zhang, a prison supervisor, had violated the rules by beating and forcing the victim to perform excessive labour activities\(^94\). The victim was found to have died from blunt external force to the head, with bilateral pulmonary infiltrative tuberculosis playing a supporting and contributing role in his death\(^95\). The court also found that the circumstances of the offence were so serious that they constituted the crime of maltreatment of prisoners. However, the judgement imposed a suspended sentence on the grounds that the offence was minor. As shown in these cases, the causal inference of the judgement was based on findings about the circumstances being serious, and the judgement included the sentence suspension. The erroneous inference that the serious circumstances of the offence in the case justified the imposition of a suspended sentence is clearly contrary to the application of the Suspension of Sentence\(^96\). Mitigating circumstances in these cases were invoked as a basis on which the court made its decision. These cases have been discussed in previous chapters and in Article 248 of the Criminal Law.
Mistakes of law have continued to arise in similar cases. The dearth in publicly available documentation about torture-related cases under Article 248 of the Criminal Law has made it increasingly difficult to explore the applicable law and adherence to precedent.

Comparing these cases reveals that most were logically flawed (contradictory expressions in the back-and-forth language) and that they wrongfully applied the law under Article 248 of the Chinese Criminal Law. After the appeals, the higher courts did not find new verdicts after the cases were reopened, even in cases in which the law had been misinterpreted and lighter sentences had ensued. Most judgements show a breach of the principle of adequate punishment for the crime that is included in Article 248.

4.4 TORTURE CASES IN THE CASE GUIDANCE SYSTEM VERSUS “PRECEDENTS”: LIMITATIONS AND IMPLICATIONS

4.4.1 Exploring and Assessing the Normative Value the Role of Guiding Cases and Typical Cases of Torture Acts

The SPC has not issued any guiding cases and typical cases on the cause of action of torture to extract confessions and maltreatment of prisoners. However, typical cases have been disclosed on torture and state compensation as a cause of action. *Huang Caihua and others v. Lianping County Public Security Bureau*⁹⁸ and *Cheng Xianmin and others v. Dandong Public Security Bureau*⁹⁹ are the only two typical cases issued by the SPC involving Article 247 of the Criminal Law in which state compensation was obtained for the death of a person as a result of torture. In these two cases, which were adjudicated in 1998 and 2010, respectively, the victims died because confessions were obtained from them through torture by persons in an official capacity. The typical case adjudicated by the Supreme People's Court, *Huang caihua and others v. Public Security Bureau of Lianping County*¹⁰⁰, occurred in 1997. In this case, from 30 July to 1 August 1997, police officer Huang and others interrogated the victim, Wei Yuexin, three times for more than

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⁹⁷ See also (n 94n95).
⁹⁸ *Huang Caihua and others v Lianping County Public Security Bureau* [2020] Heyuan Intermediate People’s Court of Guangdong Province, CLIC3104442910(EN) (Heyuan Intermediate People’s Court of Guangdong Province).
¹⁰⁰ *Huang caihua and others v. Public Security Bureau of Lianping County* [2020] Heyuan City Intermediate People’s Court of Guangdong Province (Heyuan City Intermediate People’s Court of Guangdong Province).
30 hours, using physical punishment and beatings to extract a confession, and on 1 August, the victim, Wei Yuexin, was determined to have hanged herself in the detention room of the police station. A forensic medical examination revealed that several injuries on Wei Yuexin's body had been caused by blunt force and were minor, nonfatal injuries, and it was concluded that Wei Yuexin had hanged himself. On 7 January 1998, the Intermediate People's Court of Heyuan City, Guangdong Province, found that Huang et al. had committed the crime of extorting a confession through torture and prosecuted the two of them for criminal liability in accordance with the law. On 8 December 1997, Huang Caihua, a relative of the victim, and others applied for state compensation on the grounds that the victim, Wei Yuexin, had died as a result of torture and extortion of a confession. They applied for state compensation for the death of the victim, Wei Yuexin, as a result of the confession having been extracted by torture.

This case is the first case in which state compensation was granted for the death of a person caused by the extortion of a confession by torture that was tried by the compensation committee of the People's court. The case was released as a typical case by the Supreme People's Court. Accordingly, it was particularly noteworthy that in the commentary, it was written that the case filled a gap in the legal jurisprudence about state compensation in cases of torture, and hence the case has had repercussions on similar cases. However, an investigation of the case reveals that the court's three conclusions were inconsistent. The victim was considered to have committed suicide, and the perpetrator was considered to have inflicted only minor injuries. This reflects flaws in the application of the law and legal reasoning of the court in the case, even though the victim's family was eventually compensated by the state. It also reflects a loss of function in their role of the police and the prosecution in the process of fact-finding and evidence-gathering. Typical cases in the process of the operation of the legal system do not generally fulfill the function of providing good judicial practice that the SPC expects.

In the case of Cheng Xianmin and others v. Dandong Public Security Bureau\(^{101}\), on 11 December 2003, the Fushun Wanghua District People's Court handed down criminal judgement No. 269 (2003), in which it found that in order to obtain a confession, Lu Zhaotong, the former head of the case investigation division of the Dandong Public Security Bureau, had instructed the officers in charge of the case to keep the victim, Cheng Shaogui, masked, hooded, and handcuffed with his arms parallel to the bars of an

\(^{101}\) Ibid. Note 115.
iron cage for a period of up to 18 hours, and that this behaviour constituted the crime of extorting a confession by torture. The judgement was confirmed at second instance by the Fushun Intermediate People's Court. On 3 August 2005, Cheng Shao Gui's father, Cheng Yuan Hong, filed an application for state compensation with the Dandong Municipal Public Security Bureau, which on 30 August 2005 issued a decision of non-confirmation. On 30 August 2005, the Dandong Public Security Bureau issued a decision of non-confirmation. Dissatisfied, Cheng Yuanhong applied to the Liaoning Provincial Public Security Bureau for reconsideration on 19 September 2005, but bureau failed to respond; thus, on 5 April 2006, Cheng Yuanhong applied to the Compensation Commission of the Liaoning Provincial Higher People's Court for a decision on compensation. During the hearing of the case, the Dandong Municipal Public Security Bureau argued that in the event that the reconsideration organ failed to make a decision until after the expiry of the time limit, the claimant should apply to the Compensation Committee of the People's Court of the same level for a compensation decision within 30 days of the date of expiry of the time limit. In this case, the compensation claimant's application had already exceeded the statutory time limit and should not have been accepted by the Compensation Commission of the People's Court.

However, the Compensation Committee of the Liaoning Provincial Higher People's Court considered that the provisions of Article 22, Paragraph 2, of the 1994 State Compensation Law of the People's Republic of China reflected the principles of convenience for the parties concerned and of timely compensation rather than restricting the rights of the parties concerned. After accepting the case, the review organ failed to make a decision until after the expiry of the time limit and failed to inform the claimant of his or her right of action. Where the review organ fails to make a decision until after the deadline, the compensation claimant may apply to the compensation committee of the people's court at the same level as the review organ for a decision on compensation. Where this results in the compensation claimant applying for compensation after the deadline, the fault lies with the review organ, which therefore cannot deprive the compensation claimant of his or her right of action. Accordingly, the Compensation Commission should have accepted the application for compensation. In this case, a people's court judgement found that Dandong Municipal Public Security Bureau police officer Lu Zhaozhong was guilty of extorting a confession by torture and sentenced to imprisonment; therefore, the Dandong Municipal Public Security Bureau bore the
responsibility for state compensation. In the case, the court presided over the coordination, and the compensation obligation organ and the compensation claimant voluntarily reached an agreement. The Compensation Committee of the Liaoning Provincial Higher People's Court accordingly decided that the Dandong Municipal Public Security Bureau should pay 400,000 RMB in compensation to the claimant.

The State Compensation Law establishes a review procedure for state compensation to better fulfil the rights of compensation claimants. The Compensation Commission of the Liaoning Provincial Higher People's Court held that the review body had accepted the case and then failed to make a decision; additionally, it had not informed the claimant of his right to apply for a decision on compensation to the Compensation Commission of the People's Court of the same level as the review body, resulting in the claimant's late application for compensation. As the review organ was negligent in performing its statutory duties, the compensation claimant could not be deprived of his right to claim compensation through its fault. The Compensation Commission of the court, on the basis of protecting the claimant's right to claim compensation, organized an agreement between the organ obliged to pay compensation and the claimant to pay the appropriate amount of compensation, reflecting the spirit of full relief of rights. The case also demonstrates the lack of institutional functionality in the way victims obtain redress, even though the victims ultimately received relief from the state after a protracted process.

4.5 OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN NON-CRIMINAL SCENARIOS: MULTI-DYNAMIC ACTORS AND IMBALANCE

4.5.1 Narrow Definition of Other Ill-treatment: Administrative Detention

Returning to the scope of other ill-treatment mentioned in UNCAT, in its Fifth Periodic Report to the Committee against Torture, China made it clear that “other ill-treatment” refers to detention in administrative scenarios. The literature focuses disproportionately on the exclusionary rule and Chinese domestic legislation related to torture to extract confessions while neglecting the legal context of police custody (garde à vue) “extra-custodial” use of force in detention. “The distinguishing factor between torture and other cruel, inhuman or degrading treatment or punishment “is not the

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102 See para 94-100, CAT/C/CHN/5. available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/422/42/PDF/G1442242.pdf?OpenElement
Moreover, there is no single definition of administrative detention at the international level, nor is there a specific international treaty governing administrative detention. However, the Report on the Practice of Administrative Detention submitted by Louis Joinet contains a useful working concept of administrative detention. In particular, a practice “is considered administrative detention if, de jure and/or de facto, it has been ordered by the executive and the power of the decision rests solely with the administrative or ministerial authority, even if a remedy a posteriori does exist in the courts against such a decision”. In line with this elaboration, this article divides the issue of administrative detention into de jure and de facto in the Chinese context. The main emphasis of this article is on the analysis of the actual situation of torture and other ill-treatment in China in these areas of detention and related publicly disclosed administrative detention cases as well as on the anti-torture safeguards that need to be put in place.

The specific delimitation of administrative detention:

**De jure:** The Administrative Penalty Law of the People's Republic of China (Administrative Penalty Law) provides for certain administrative irregularities or offences. These offences are subject not to criminal law but to administrative law. Namely, punitive administrative detention is a sanction imposed for administrative infractions, offences or misdemeanours on the grounds provided for by law or regulation (hereinafter "punitive administrative detention").

**De facto:** The Public Security Administration Punishments Law of the People's Republic of China (Public Security Administration Punishments Law) and The

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106 Administrative Penalty Law of The People's Republic of China (2021 Amendment), 中华人民共和国行政处罚法 (issued on 22/02/2021, enter into force on 15/07/2021)
107 Article 116, “Where a people's policeman conducts any of the following acts when handling a public security case, he (she) shall be given an administrative sanction. If any crime is constituted, he (she) shall be subject to criminal liabilities: (1) Making an interrogation by torture or extorting a confession from the interrogated, inflicting physical suffering on, maltreating or insulting any other person; (2) Restricting the personal freedom by exceeding the time limit for interrogation; (3) Failing to execute the system with the decision of a fine separated from the collection of fine, failing to turn any confiscated property over to the state treasury according to relevant provisions, or illegally disposing of any confiscated property; (4)
Regulations on Administrative Detention Facilities (Regulations on Administrative Detention Facilities) of the People's Republic of China\textsuperscript{108} cover any form of deprivation of liberty where a person cannot leave without consent and the decision to detain is taken exclusively by an administrative or ministerial authority (hereinafter "administrative detention" unless otherwise stated).

This article categorizes \textit{de facto} administrative detention as detention in police custody (\textit{garde a vue}) ("extra-custodial" use of force) in the Chinese context. Police custody (\textit{garde a vue}) means arrest and initial deprivation of liberty in police custody by law enforcement officials (before the suspect is brought before a judge)\textsuperscript{109}. The aim of this article is to analyse cases of \textit{de facto} administrative detention in police custody (\textit{garde a vue}) disclosed in public databases by examining the application of law and legal reasoning in these cases. It also investigates how courts have interpreted what constitutes an act of torture in \textit{de facto} administrative detention.

\subsection*{4.5.2 Broader Interpretation of Other Ill-treatment through Judicial Decision-making}

Following cases deal with an issue that is particularly relevant when State agents resort to unnecessary, excessive or unlawful force during arrests, stop and searches or crowd control operations without necessarily violating the right to life. In the Chinese context, such situations frequently occurred in police custody detentions\textsuperscript{110}. The section...
focuses on analysing three police custody (garde a vue) (“extra-custodial” use of force) detention latest cases, also known as detention in administrative scenarios from a publicly available database selected for the years 2019, 2020 and 2021. These three cases were selected because they were recently disclosed cases and were not currently available in searching the public database for cases in 2022 and 2023.

The case of Dong Lifu v. Yushu Public Security Bureau in 2019\textsuperscript{111} centred around an administrative penalty appeal initiated by Dong Lifu, the petitioner for retrial, against the respondent, Yushu Public Security Bureau. The case involved three legal issues: (1) the interpretation and application of Article 23, Paragraph 1(1) of the Public Security Administration Punishments Law; (2) the legality of Dong Lifu's detention by the Yushu Public Security Bureau; and (3) the legitimacy of Dong Lifu's act of self-harm as a form of protest. This case revolved around the validity of an administrative penalty decision issued by the Yushu City Public Security Bureau, which led to the petitioner's detention and subsequent self-harm. The victim, Dong Lifu, stated that he had done nothing wrong, but at the exit of Beijing West Railway Station, a dozen plainclothes policemen took him into a car and illegally detained him for 90 hours. He was forced to commit suicide by slitting his wrists. The public security authorities detained him in police custody for disturbing public continuity and safety. The court again rejected the victim's complaint on the grounds that he had disturbed the working order of the public security authorities and should be punished in accordance with the law. The court determined that the administrative punishment judgment was legally sound and rejected Dong Lifu's argument that the Yushu Public Security Bureau had not provided enough evidence to support his arrest and imprisonment. The case emphasizes the intricate interactions that exist between legislative requirements, administrative sanctions, and individual rights, underscoring the significance of striking a balance between public security considerations and individual rights.

The case of Jing Changfu v. Xigang Branch of the Benxi Public Security Bureau in 2020\textsuperscript{112} involved a dispute over the legality of the defendant's actions during the plaintiff's detention. On 4 May 2012, the victim purchased a train ticket for 6 May to go to Beijing to petition, and when the Xigang Branch heard about it, they arrested the victim

\textsuperscript{111} Dong Lifu v. Yushu Public Security Bureau [2019] People's Court of Qixingguan District, Bijie City, Guizhou Province

\textsuperscript{112} Jing Changfu v. Xigang Branch of the Benxi Public Security Bureau [2020] People's Court of Pingshan District, Benxi City
at the Xigang Branch at 17:00 on the night of 5 May, snatched the victim train ticket, and forcibly sent the victim to the detention centre overnight. There was no proof that the victim had violated the law, and the interrogation statement the victim was given seven days later (the offence exceeded the time limit), and subsequently victim at the age of 73 was sent to the detention centre. After 7 days of interrogation (illegal overtime), the victim was illegally detained for 20 days and tortured (handcuffed and shackled), which is against the law.

The Pingshan District People's Court of Benxi ruled that certain actions by public security during a criminal investigation are authorized by the Criminal Procedure Law and constitute criminal investigation acts. The court dismissed the plaintiff's claims against the Xigang Branch of the Benxi Public Security Bureau, stating their allegations did not meet the requirements for administrative litigation. The case highlighted the complexities of criminal investigations and administrative actions.

In 2021, Wang Kaiqin filed a lawsuit against the Public Security Bureau of Hezhang County for administrative compensation after being accused of invading someone's privacy while reporting an issue to a local party committee. She claimed that the bureau expropriated her land without proper compensation and subjected her to physical and mental torture. The court dismissed Wang Kaiqin's lawsuit against Liu Jianping due to his ineligibility as a defendant. Wang Kaiqin's claim for compensation was upheld based on the national average daily wage and authorities' standards, while other claims were rejected due to lack of evidence or legal basis. During her detention, she alleged that she was subjected to physical and mental torture. The court dismissed Wang Kaiqin's lawsuit against Liu Jianping due to his ineligibility as a defendant. Wang Kaiqin's compensation claim was upheld based on the national average daily wage and authorities' standards, while other compensation requests, including mental distress claims, were rejected due to lack of evidence or legal basis. This case demonstrates that judicial practice does not include compensation for mental torture.

5 CONCLUSION

Some observations can be made about Chinese domestic law-making and domestic courts’ interpretation of UNCAT. First, the definition of 'torture' found in the UNCAT has been incorporated into and transformed in Chinese domestic law-making; however, lighter sanctions or impunity have been granted in cases of torture because of
contradictory wording in the context as well as flaws in the legal reasoning and application of the law in torture cases. Despite the fact that the UNCAT concept of "torture" has been included and modified in Chinese domestic law, conflicting wording and deficiencies in legal reasoning have led to reduced punishments or even instances of impunity in situations involving torture. Contextual ambiguity gives rise to such inconsistencies.

Second, a review of the Case Guidance System of the Supreme People's Court revealed that there are no guiding cases or typical cases in which torture was the reason for the action. Instead, torture and state compensation are the underlying causes of action in instances that are only seldom made public through the Case Guidance System's open database. Revisiting the Case Guidance System of the Supreme People's Court indicated that there are few guiding or typical cases that expressly concentrate on torture as a cause of action. This finding was a result of the study. Instead, seldom-released cases in the open database of the Case Guidance System shed light on scenarios involving torture and state compensation. Furthermore, the greatest difference between the Case Guidance System and precedent is that Article 10 of the Detailed Rules for Case Guidance clearly states that guiding cases can be used in a judgement's reasoning rather than being cited as the basis for that judgement. Although the SPC has made it clear that it is mandatory to refer to guiding cases or typical cases in judicial practice, the guiding cases or typical cases contain ambiguous language regarding legal reasoning. This may also make it more difficult for judges to interpret cases relating to acts of torture.

Third, the statistical analysis in the above tables delves into the restrictions that surround the publication of court decisions in open databases that pertain to cases involving torture as the cause of action. The article highlights the highly selective nature of such disclosures as well as the decrease in the number of publicly disclosed cases involving acts of torture. The analysis of the restrictions that accompany the disclosure of judicial rulings about cases involving torture acts in public databases highlights the selective character of the reported cases, pointing to the possibility of biases in the accessible data.

Last, the Public Security Bureau contended that the victims’ detention in police custody (garde a vue) was legal on the grounds that the perpetrators had posed a threat to public safety because of their actions. The ambiguous language used by the courts, which offered immunity to the offender, did not specify what exactly constitutes a threat to the
The detention was legitimately justifiable due to the threat to public safety concluded by the courts. However, because the courts employed imprecise language, they did not specify the precise parameters of what constitutes a threat to public safety. By ambiguously interpreting legal provisions, the courts unintentionally granted unjustified immunity to the perpetrator. This article also illuminates the intricate relationship between the definition of torture, Chinese domestic law, and Chinese judicial procedures. It does so by addressing the flaws in previous court decisions and responding to those points of view, resulting in a more in-depth comprehension of the dynamics underlying cases in China's judicial system and treaty compliance by China domestic court practice.

DATASETS

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