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AN ANALYSIS OF EMPLOYMENT DISCRIMINATION IN CHINA’S ECONOMIC AND SOCIAL TRANSITION

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1 INTRODUCTION

Since the introduction of the market-oriented economic reform and open door policy in 1978, China has become one of the most dynamic and fastest-growing economies in the world. The rapid economic development over the past three decades has been viewed by many as an ‘economic miracle’. The World Bank study on poverty reduction showed that the economic progress has lifted approximately 500 million Chinese off the poverty line of earning less than $1.25 per day.¹ The living standard of the majority of Chinese, especially those living in urban areas, has improved considerably. In the course of economic development and restructuring, the Chinese government has made efforts to broaden the range of avenues for employment and maintain a relatively stable employment situation.

Despite government policy, which aims at a balanced positive interaction (liangxinghudong) between economic growth and expansion of employment, the outcome is far from satisfactory. A commonly known fact is that the economy has maintained a high rate of growth, while the growth rate of employment is low or even non-existent. Chinese research showed that in 1997 the GDP grew by 8.8%, while employment grew by 1.1%; in 1998 the GDP grew by 7.8%, while employment grew by 0.5%; in 2000 the GDP grew by 8%, while employment grew by 0.8%.² The registered unemployment rate in urban areas,

according to official statistics, was 3.1% in 2000, and 4.3% in 2003.\(^3\) However, Chinese scholars estimate that the actual unemployment rate has reached 7%.\(^4\)

The sheer magnitude of people entering the labour market, resulting in the demand for jobs far surpassing the supply, has increased competition in the labour market. Taken in conjunction with the establishment of a market-oriented employment mechanism, which allows employers to enjoy hiring autonomy without adequate regulatory restrictions, as well as the lack of legal support for citizens’ rights to employment, job applicants are facing increased disadvantages. A resulting phenomenon is that employment discrimination is becoming an ever more serious and pervasive problem on China’s road to modernization.\(^5\) According to the survey conducted by the Constitutionalism Research Institute of the China University of Political Science and Law in 2006 (hereafter the Survey),\(^6\) of the 3454 people investigated, 85.5% replied that employment discrimination does exist, 50.8% considered the discrimination to be very serious, and only 6.6% held the view that discrimination does not occur.\(^7\) Discrimination in employment exists in both blatant and latent forms. The Survey illustrated that when asked what requirements employers had stated regarding job applicants, 21% indicated gender, 32.9% indicated age, 13.8% required a certain height, 36.7% required a certain appearance, 28.7% demanded the right resident permits, 47.7% stipulated that there should be no serious illness, 13.6% touched on disability, 18.9% indicated that there should be no infectious diseases, 6.4% required Communist Party membership, and 4.4% barred applicants from an ethnic minority.\(^8\)

This chapter discusses the major characteristics of employment discrimination in China’s transition from a centralized planned economy to a socialist market economy. Firstly, from a legal point of view, the Chinese Constitution, the Labour Law and the most recently promulgated Law on Promotion of Employment contain general principle of equality of all citizens and the principle of prohibiting employment discrimination on the grounds of ethnic group, race, gender, religion, disability, infectious diseases and migrant worker. However, these general principles are primarily declaratory in nature, and they lack the legal mechanisms to protect equal employment rights, both of which undermine the role of law in tackling employment discrimination. In


\(^4\) Xie Zhiqiang, *supra* note 2.

\(^5\) Prior to 1978, under the ‘iron rice bowl’ system, those who worked within state-owned enterprises and public sectors (*shiye danwei*) enjoyed guaranteed lifetime job security and other benefits such as housing and medical insurance from the state.


\(^7\) *Ibid*, E4.

\(^8\) *Ibid*, B1-a to B1-n.