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Police Power in the Republic of China

Heinrich Scholler* and Barbara Wagner**

I. Constitutional Background and Structure

In 1947 China adopted a modern Constitution with the guarantee of the separation of powers. But the Civil War between the communist and the anti-communist movements made impossible the implementation of this constitutional framework for executive power and for police power as a part of it.

Chiang Kai-Shek and the leading exponents of the Kuomintang party moved to Taiwan, an island province southeast of China. The Constitution of 1947 became the basis for the Chinese government in the Republic of China (R.O.C.), Taiwan. It established police power in Taiwan at the central, regional, and local levels. As late as 1953, the legal framework for police power at the central level was set by law, according to Art. 108, Sec. 1, No. 17 of the Constitution.

According to Art. 2 of the Police Power Act of 1947, the following tasks are within the competence of the central power: organization, police public service, police education, and uniforms.¹ According to Art. 109, Sec. 1, No. 16 of the Constitution, the provincial level of the police power is administered by the provincial authority, and Art. 110, Sec. 1, No. 9, provides that police administration be enforced by the local police authorities.

The impression, held by some, that police power in Taiwan is decentralized, is not correct. Central police authority is under the direct control of the Ministry of the Interior, which has supervisory authority over provincial and local police authorities.

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1. Huang Chii-Chen, *Entpnalisierung und Entpolizeilichung der Verwaltung [Deregulation and Reduction of Criminal Punishment for Police Offenses]* 59 at A2 (1989) (unpublished dissertation, Munich).

II. Organizational Problems on Different Levels of Police Power in Taiwan

As society becomes increasingly differentiated and complex, so does police administration. The Central Police Administration (ZPP) therefore has nine specialized sections and seven administrative units. In addition, there are five subordinate departments. Within the seven specialized units are the following sections: discipline, law, secret service, civil service, information, and communication systems. The five subordinate units include: criminology, immigration, airport police, highway and harbor police as well as a helicopter unit.

Due to political changes, the Central Police Administration in Taiwan had no function of its own and was combined with the Provincial Police Administration of Taiwan, Taiwan being a province. Therefore, the President of the National Police Administration (NPA) has three vice presidents of which one is the President of the Provincial Police Administration (PPA). Ten different police units are subordinate to the PPA, which can be roughly divided into five groups: 1) Police Task Force; 2) Criminal Police; 3) Police for waterway protection; 4) Police Task Force for industrial protection; and 5) Special police units for railways, highways, and harbors. Two additional units perform technical roles: telecommunication and repairs. All the provincial police administrative units and the police administration of two large towns, Taipei and Kaosing, are under the authority of the NPA.

Police power is also organized on the local level. There we find in each local police administration unit several departments with general and specialized tasks. Below this local level are a number of police station units, as the smallest entities on the lowest level of police administration.

III. Authority and Duties of Taiwan Police Power

Authority and duties are regulated by the Police Power Act. Article 2 provides: "Within the existing laws the police have the duty to guarantee public order, to protect the security of the country, to prevent possible danger and to promote the welfare of the citizen." In Art. 2 of the accompanying law of 1953 to introduce the Police Power Act, these tasks are detailed in relation to additional powers for assisting other authorities in enforcing the law. The police forces also have tasks which are transferred to them by subsequent laws.

In brief, the police can act when public order or the social security are endangered. These general notions, like those in the German police and security law system, are not defined by the law itself. These general

terms protect individual or collective rights and values, and the administrative courts are entitled to give binding interpretations accordingly.

Additional powers with regard to penal functions are granted. The R.O.C. Penal Procedural Act obliges all members of the police forces to act as organs of penal law enforcement.² These so-called judicial police are empowered to investigate criminal cases, to detect the wrongdoer and collect the evidence. The attorney (prosecutor), however, holds the exclusive power of public accusation (indictment). Disciplinary measures against members of the police fall within the competence of police authority, but they can be initiated by the attorney also.

IV. The Special Powers

In order to be able to fulfill the tasks mentioned above, the police have special powers granted in Art. 9 of the Police Power Act. There is no general empowerment for actions by the police forces, but specialized competences are established by the Police Penal Code, the Penal Procedural Act, and the Administrative Enforcement Act.

The Police Penal Code of 1943 empowers the police to exercise penal powers in cases of minor importance: imprisonment from four hours to seven days (in special cases up to twenty-four days), fines up to one hundred NT, and forced labor up to eight hours (in special cases up to sixteen hours).

Additional measures can be imposed such as the confiscation of instruments or objects used by the criminal. Also, commercial activities can be temporarily stopped or permanently interdicted, when the owner or the representative responsible is not reliable or is unable or unwilling to fulfill the obligations imposed by the law or lawful decision of the administration. According to the Penal Procedural Act, the police have the following powers while performing criminal investigations or prosecutions: citation, compulsory attendance, detention, search, and seizure.

V. Police Education

There are approximately 80,000 national public safety personnel in the Republic. All employees are trained as police personnel but are then assigned to the following public safety organizations: police, fire, corrections, forensic science, and census. They then become more specialized.

2. 229/230 Penal Procedural Act (1953), Art. 9, § 1, No. 2.

In 1936, several police educational institutions, the Police Affairs Academy, various provincial training schools, and the Senior Police Officers School, were combined into one institution to create the Central Police College. To emphasize the importance of police education, Chiang Kai-Shek became the first president of the Police College.

Current criminal law can be divided into the following areas: criminal law, police offenses, criminal procedure, and the courts.

Criminal Law

Serious crimes can be categorized into two major areas: crimes against national security and crimes against persons and property.

Police Offences

Minor violations of the law are considered police offences. This concept is derived in part from the ideology of Imperial China, where judicial and executive powers were not separated but were combined into one branch of government.

Criminal Procedure

The application of criminal procedure is based on the European continental system modified by traditional Chinese legal influences. The trial is inquisitorial. A prosecutor has quasi-judicial powers and can conduct his own investigation of the crime and interrogate suspects, witnesses, and victims.

Courts

The court system is divided into a supreme court, high courts, district courts, and administrative courts. The majority of criminal cases are tried before district courts. In the sixteen district courts located throughout the country, one or more professional judges will hear a case without a jury. The government, although open to Western influences, continues to maintain strong traditional, cultural, and historical foundations. For example, protecting the family is still a touchstone for establishing law and order in the Republic.

Next to the NPA the Central Police College (CPC), soon to be called the Police University, is directly responsible to the Ministry of the Interior. The CPC is the only institution of higher education of police officers and administrators of the security authorities; it is also responsible for the continuous education of the lower ranks.

The College, with only a two-year program, was originally located in Nanking and recruited high school graduates. It moved to Chungking during the early 1940s but returned to Nanking in 1945. At this time additional school branches were established throughout China, and police courses were offered in Shanghai and Taipei. After 1949, for a brief

period, the College was closed. In May of 1954, however, the National Government reestablished it in Taipei.

During the same period that the Police College was established, a similar effort was made to create the Taiwan Police Academy. In 1945, the first students were recruited for a formal police training program.

The junior college program consists of: Chinese philosophy and principles (4%); general education (29%); police duties, police and fire control (25%); police procedures (22%); criminal and civil law (20%).

The entry training program consists of: police procedures (39%); police duties, police and fire control (28%); criminal and civil law (17%); Chinese philosophy and principles (11%); and general education (5%).

Under the joint supervision of the Ministry of the Interior and the Ministry of Education, the College is directed by a president and his staff. The academic programs must adhere to regulations for all colleges in the Republic of China under the direction of the Ministry of Education. Because of the specialized nature of the curriculum, the Central Police College must also meet requirements imposed by the Ministry of the Interior, which is responsible for the national police.

Courses taken by students can be grouped into the following categories: 1) those required by the Ministry of Education of all college and university students in the country, 2) those required of all students at the Central Police College, 3) those required in the major field of study, and 4) electives. The College offers a two-year junior college degree program, a four-year bachelor's degree program, and a master's degree program.

There are several educational goals that the College strives for: advanced police education and research, maintenance of Chinese values and philosophy, development of a solid foundation of professional knowledge based on academic education, adjustment of curricula to meet the needs of modern policing, a balance between the students' academic skills and physical fitness training, review and update of relevant information, and research for new courses.

Social Service

In order to increase the students' leadership abilities, there are social groups and public service projects available. These groups allow students to plan and handle diverse activities in and outside of the College. To extend community support, the College encourages students to participate in juvenile counseling and community services.

Academic Research

To promote research, the College has developed an academic research planning committee. Membership includes both scholars and specialists

who have experience in their respective fields of study. Students participate in various research projects whose results are published in either of two college journals.

VI. Police and Human Rights in Taiwan in General

The general situation concerning human rights in Taiwan in 1991 was as follows:

Huang Hua, a leader of the opposition was arrested in November and tried for sedition. He was accused of demanding independence and supporting pro-independence candidates in the 1989 parliamentary elections. Huang Hua was found guilty and sentenced to ten years in prison.³

In 1990 six non-violent political prisoners were released. Hsu Tsao-teh was released on bail after having served half his term. Shih Ming-teh, Tsai Yu-chuan and Dr. Huang Kuang-hsiung were freed as part of the presidential amnesty proclaimed by President Lee Teng-hui in March. Chuang Kuo-ming would also have benefitted from the amnesty but remained in custody on criminal charges. Luo Yi-shih was released in December after serving a ten-month term. In October the High Court had vindicated him of charges of sedition which had been raised against him for supporting Taiwanese independence in speeches.⁴

Cheung Ki-lok was permitted to return to Hong Kong. In January and again in October the High Court cleared him of charges of membership in a rebellious group. The attorney of state appealed.⁵

In October five military officers were arrested and charged with bearing responsibility for the death of a prisoner in a military prison. According to reports they admitted to having beat the man and having given him electrical shocks in different parts of his body.⁶

The Statute for the Punishment of Corruption was revised in October and the death sentence for corruption was abolished. Reports say that more than seventy people found guilty of crimes were executed in 1990. In July the death penalty was carried out on three young men who had abducted a man but had left their victim unharmed. This sparked considerable controversy in Taiwan.⁷

3. AMNESTY INTERNATIONAL REPORT 1991 at 221 (1991).

4. *Id.*

5. *Id.* at 221-22.

6. *Id.*

7. *Id.*

The Attorney General made a statement saying that the death sentence for the three abductors was in accordance with the country's laws. Both an official committee which had examined the question of capital punishment in 1974 and the public support maintaining this form of punishment, he said.⁸

Now, more specifically, we will consider whether the reduction of police power and the deregulation of law and order are really effective in political life.

In May and June of 1991 there were mass demonstrations in South Korea and in Taiwan at the same time, and one of the authors was able to observe some of them firsthand.

The demonstrations in Korea started out as a protest by students and intellectuals, while in Taiwan the demonstrations were also started by environmentalists (protesting a planned fourth nuclear power plant) and by "Independentists" (protesting the arrest of four students of Taiwan Independent Association (TIA), who were indicted on May 17 for sedition but released on bail). In Taiwan severe violence was not used against the students and other protesters even though members of Parliament had anticipated it. The two big demonstrations in Taiwan were peaceful and developed democratically.

The demonstrations were generally peaceful. Naturally, violence by protesters against the police and especially against members of Parliament must be strictly condemned. But this should be no argument in support of curbing freedoms of opinion, assembly, and demonstration. The police assertions about the increasing crime rate during the days of demonstration, however, should not be interpreted as an attempt to limit the fundamental freedom of demonstration. The China Post of May 22, 1991, referring to a "night camp" of students, said:

On Monday evening some 15,000 protesters, including students, professors and members of the opposition Democratic Progressive Party and various social action groups, had marched through downtown Taipei from the Sun Yat-sen Memorial Hall to the Education Ministry adjoining the Parliament.

The students had a peaceful night outside the Parliament without police harassment after the massive street demonstration ended.

Some 400 students continued protesting outside the Legislative Yuan, or Parliament, where they had stayed overnight, demanding the abrogation

8. *Id.*

of an article [law] that punishes sedition. The 400 students marched in the morning in the vicinity of the Parliament and blocked traffic. They disregarded police warnings that they had overstayed the demonstration curfew, which was 6:00 p.m. the previous day. They demanded that the Parliament immediately move to abrogate Article 100 of the Criminal Code, which punishes those who intend to overthrow the government. They also wanted to have Article 101 revised to punish only those who have committed violent acts against the government.⁹

This shows a very limited police activity with regard to protesters who ignored traffic and other regulations in the immediate vicinity of Parliament. It is difficult to say whether there is a completely new policy toward human rights or a weakness due to a power struggle within the executive.

As a result of the demonstrations against the arrest of the Taiwan Independence Four, not only was the right to release on bail established by the courts but a movement was also started by the Parliament to advocate the abolition of the Sedition Act. This Act had been the legal basis for the arrests. The prosecutor argued in vain that the arrests were carried out after investigations of more than one year. He even showed books, bags, and materials at a press conference, but he did not allow them to be opened.

The police were accused of beating demonstrators. At a conference called by Justice Minister Lu Yuweng, the police reported on the mass demonstrations protesting these arrests. Taipei's Chungcheng District Police Chief Chang Chi said that the police had to use force to clear the grounds of the Chiang Kai-Shek Memorial Hall after spotting persons Chang called "well-known instigators," but he denied that the action had led to the beating of demonstrators. The police and the prosecutor refuted charges that the bureau made arrests first and then started the investigation. According to the police, the investigations and arrests were initiated more than a year previously and were carried out in accordance with the law.¹⁰

The reforms President Lee introduced have brought forth greater calls for liberalization; however, local political analysts said that when the pace of change cannot keep up with the call for faster and greater reforms, political turbulence results.

9. CHINA POST, May 22, 1991, at 16.

10. CHINA NEWS, May 15, 1991.

It has become evident that there are two wings within the ruling party. In a press conference in April 1991, President Lee openly recognized Peking as a political entity that has existed on the mainland for more than forty years. This has made the old guard insecure; Peking, Taiwan's long-time enemy, was redefined as an "authority" instead of "communist bandits," analysts said.

President Lee also announced the end of the forty-three year "Period of Community Rebellion," an emergency decree adopted in 1948 when the ruling Kuomintang (KMT) and the Nationalists fought a civil war against the Chinese Communists on the mainland and fled to Taiwan in 1949 following defeat. Under these circumstances, Taiwan's political situation is expected to become even more complicated, now that the emergency rule has ended. The President's remark that Outer Mongolia already existed as an independent nation before the R.O.C. Constitution was drafted in 1946 further shocked the hardliners who distrust the independence movement on their own island.

When the sedition statute was introduced in 1949, it was aimed at preventing communist infiltration. The main criticism of the sedition statute is that it has lost its historical significance and has become a tool for the KMT to persecute dissidents. The political opposition joined in on the protesters' arguments.

Lei Chen and Fu Cheng, pioneers of Taiwan's opposition movement, were convicted of sedition in 1960 on charges of spreading propaganda for the communists. They were jailed shortly before founding what would have been Taiwan's first opposition party in defiance of a ban on new political parties, a ban that no longer exists. In 1980, several leaders of the main opposition Democratic Progressive Party (party chairman Huang Hsin-chieh, former chairman Yao Chia-wen, and secretary-general Chang Chung-hong) were convicted of sedition and sentenced to terms ranging from twelve to fourteen years in prison by a military court for their involvement in a riot in Kaohsiung, southern Taiwan. They have since been paroled.

The problems facing the President include the effects of the recent amendment of the Constitution, the growing call for an independent Taiwan, and ambiguity over the relations between the two sides of the Taiwan Strait. During President Lee's inaugural address on May 20, 1990, the native Taiwanese offered to end the emergency decree imposed on the island and promised to democratize domestic politics within two years. President Lee also promised to establish communication channels and engage in active exchanges with Peking, on the conditions that Peking promote democratization and economic liberalization, renounce the use

of force against Taiwan, and stop isolating Taipei internationally.

Under the suspicious eyes of the public, the strong-willed President has initiated the following step-by-step series of constitutional and political reforms:

1) In December of 1989, he initiated the establishment of the National Unification Council (NUC), which set guidelines to pave the way for the future reunification of China.

2) He called the National Affairs Conference in late June of 1990, inviting scholars and experts, including those from the opposition, to discuss ways to introduce reforms into the economically wealthy but politically poor Taiwan.

3) An ad hoc committee was also set up under the KMT to draft proposals for constitutional amendments. In late April 1991, the National Assembly adopted several of the KMT's proposals, removing the Period of Communist Rebellion and the controversial Temporary Provisions, an act which restricted the applicability of the Constitution. The Provisions and other laws enacted during the Period allowed the ruling party to maintain absolute political control by freezing almost ninety percent of the members of Taiwan's three elective bodies: the law-making Legislative Yuan or Parliament, the supervisory Control Yuan, and the National Assembly or electoral college. People had remained in office for more than four decades.

4) The President also initiated the establishment of the Straits Exchange Foundation (SEF), a government-funded group serving as a front for Taipei to contact officials in China over trade and other disputes arising from the ever-improving relations between the two sides. This move was considered a breakthrough in cross-strait policy, shattering Taipei's most basic tenets toward China, the so-called "Three No's": no contact, no negotiations, and no compromise with Peking.

Political analysts said that ending the mobilization period would be tantamount to dropping Taipei's longstanding vow to recover the mainland from Chinese Communists and encouraging the growing call for Taiwan's independence.¹¹

In an attempt to counter this development two things occurred, things which seem to be interrelated and have to do with the old guard's (KMT's) interest in stopping further collaboration between the two states.

As a result of the discussion, the Sedition Act was canceled by the Taiwan Parliament. This Act was a main hinderance to free democratic

11. CHINA POST, May 15, 1991, at 3.

development. The Act's history clearly shows its impact on human rights in the political sphere.

The opposition Democratic Progressive Party, which is boycotting the current Legislative Yuan session, issued a statement demanding that the Kuomintang restore the Constitution in its entirety, that martial law on Kinmen and Matsu be lifted, that all political prosecutions be stopped, that four alleged "Independent Taiwan Association" members be released, and that the Statute for the Punishment of Sedition and Article 100 of the Criminal Code be annulled. Chen Shui-Pien and Grank Hsieh (DPP) said that they proposed scrapping the statute and Article 100 last year, but KMT legislators Huang Chu-Wen, Li Tsungjen, and Hung Chao-nan refused.

The opposition argued that in the past days the government had given people the impression that the "white terror"¹² of the 1950s was back. Chen Cheh-nan of the KMT demanded that the officers responsible should be disciplined within three days. The background of the police action against the students and the independence-movement is a political one and has to do with the relations between Taiwan and Mainland China. The changing attitude of both sides shown by the beginning of an economic cooperation seemed to be threatened by the independence movement. There is a growing conflict between the traditional Taiwanese policy and the Democratic Progressive Party. She even went further and issued a statement that the Kuomintang restore the Constitution in its entirety, lift martial law on Kinmen and Matsu immediately, stop all political persecutions, release the four members of the alleged "Independent Taiwan Association" and annul the Statute for the Punishment of Sedition and Article 100 of the Criminal Code.

The group of non-partisan legislators joined their colleagues in demanding the abrogation of the statute and Article 100 because the wording allowed various interpretations, the punishment was too heavy, and, above all, because it hindered the rise of democracy. Article 100 of the Criminal Code reads:

A person who commits an overt act with intent to destroy the organization of the State, seize State territory, by illegal means change the Constitution, or overthrow the Government shall be punished with imprisonment for not less than seven years; a ringleader shall be

12. The period that followed the arrival of the Central Government in Taiwan in 1949 was often referred to as years of "white terror," years of random arrests and imprisonment without trial. CHINA NEWS, May 15, 1991, at 3.

punished with imprisonment for life. A person who prepares or conspires to commit an offense specified in the preceding paragraph shall be punished with imprisonment for not less than six months and not more than five years.¹³

The statute was originally meant for communists; now staff members of the Straits Exchange Foundation have gone to the mainland to meet with and embrace former "communist bandits." The government is also giving the Chinese Communists a new status, calling them Communist Chinese Authorities or Mainland Authorities. The statute is outdated; the social and political situation has made the law irrelevant.

The public has developed some experience of free speech regarding independence, Chen Kui-miao of the KMT said, and it will not be swayed easily by advocacy of Taiwan independence. They can exercise judgment, he said.¹⁴

The DPP has supported the protest,¹⁵ influenced also by new police discussions about whether a one- or two-ballot system¹⁶ should be used. The two-ballot system was introduced to West Germany in 1949 and is still in force. It combines the advantages of the proportional voting system with the majority system. It can be characterized as an improved or personalized proportional system of electoral law. The discussion in Taiwan is obviously influenced by the German Electoral Law Act.

VII. Conclusion

It has been argued that Art. 2 of the Police Power Act is not lawful because the police cannot have the duty to prevent all possible dangers. They have to assist other authorities which are given the duty of preventing certain occurrences under the law. Also, the police cannot be obliged to promote welfare without violating the principle of restricting the use of police power to prevention or to repression of dangerous actions.

As a consequence of the abolition of martial law, the Taiwanese government is about to restore fundamental human rights, including full

13. Criminal Code, Art. 100, Offenses Against the Internal Security of the State.

14. CHINA NEWS, May 15, 1991, at 3.

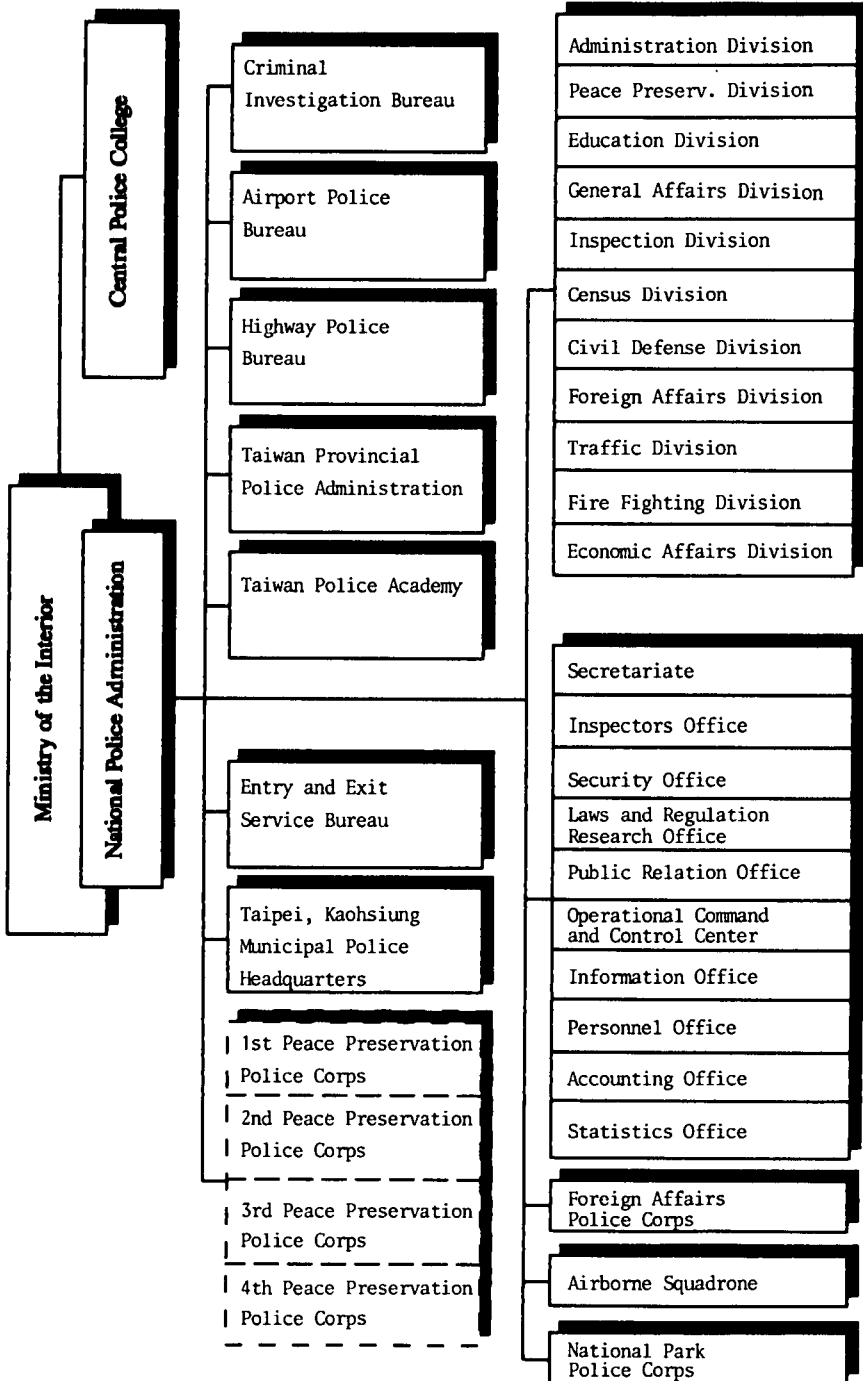
15. CHINA NEWS, May 22, 1991, at 3.

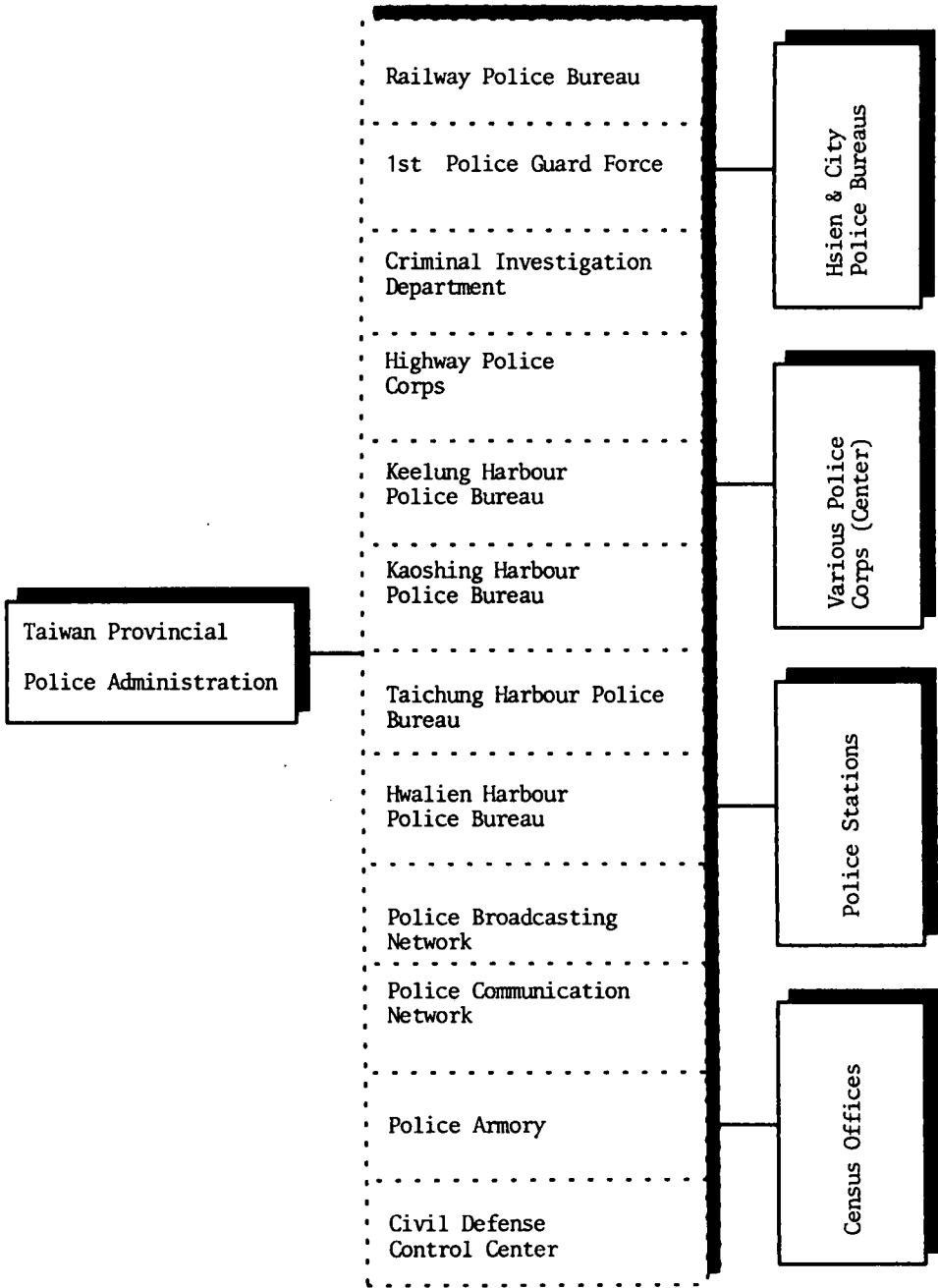
16. In a two-ballot system like the German Federal Electoral system, every citizen has two votes. By the first vote he votes according to the majority electoral system, while with the second vote he votes for a list according to the proportional system.

freedoms of the press and assembly. The legal regulations barring the implementation of freedom of expression and assembly, including the sedition statute, had to be abolished.

The development of the strategy for handling peaceful demonstrations is obviously a step in the right direction, and the emphasis that has been laid on all-around police education throughout the last decades has proven to be successful.

THE ORGANIZATIONAL SYSTEM OF THE NATIONAL POLICE ADMINISTRATION, MINISTRY OF THE INTERIOR





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