

# 江苏省镇江市中级人民法院

## 刑事判决书

(2006)镇刑一初字第 12 号

公诉机关: 江苏省镇江市人民检察院

被告人杨同彦, 男, 1962 年 2 月 21 日出生于江苏省泗阳县, 汉族, 大学文化, 无业, 户籍在: 江苏省南京市白下区慧园街 9 号 201 室, 暂住江苏省南京市江宁区太平花苑 10 幢 2 单元 203 室。1991 年 7 月因犯组织、领导反革命集团罪被判处有期徒刑十年, 剥夺政治权利四年。2000 年 5 月 31 日刑满释放。因涉嫌犯颠覆国家政权罪于 2005 年 12 月 23 日被监视居住, 2006 年 1 月 20 日被逮捕。现羁押于镇江市丹徒区看守所。

辩护人李建强、兰芳, 山东花冠律师事务所律师。

江苏省镇江市人民检察院以镇检刑诉(2006)013 号起诉书指控被告人杨同彦犯颠覆国家政权罪, 于 2006 年 4 月 25 日向本院提起公诉。本院遵照江苏省高级人民法院指定管辖决定, 立案受理, 并依法组成合议庭, 于 2006 年 5 月 16 日不公开开庭审理了本案。江苏省镇江市人民检察院指派副检察长董建新、检查员陈东、代理检查员金庆华出庭支持公诉, 被告人杨同彦及其辩护人李建强、兰芳到庭参加诉讼。现已审理终结。

江苏省镇江市人民检察院指控: 2002 年 5 月至 2005 年 12 月, 被告人杨同彦以“杨天水”“中华泪”的网名在境外《大纪元》、《博讯》等网站上发表《十一是中华民族的灾难日》、《谆劝中共的当权派》等大量文章, 攻击中国共产党领导, 称人民民主专政政权是“专制政权”, 意图推翻现行国家政权和社会主义制度。其中在《十一是中华民族的灾难日》中称: “十月一日, 中共命之为国庆日。这是专制的国庆, 十一应该是中华民族的灾难日。”在《谆劝中共的当权派》中称: “赤贫、落后、野蛮、暴虐笼罩了大陆。专制是人性的公敌!”在《人人有权反对专制》中称: “专制制度本身是一种绝对的独夫民贼。这样的独夫民贼, 人人得而诛之。”在《我们对民主大党的期待》中称: “我们认为目前威胁中国国民幸福生活的主要势力不是台独, 而是大陆的专制势力。”在《反思中国民运》中称: “中国共产主义运动, 本质是暴民运动”, “眼前的旧体制, 将彻底走向它的坟墓。”

2005 年 3 月, 被告人杨同彦杂技境外人员发起的“中国天鹅绒行动”网上投票选举“民主中国过渡政府”的活动中, 被告人杨同彦当选为“民主中国第一届临时过渡政府”秘书处成员和各省市政权和平交接工作委员会江苏省接受成员, 并在《大纪元网》网站发表《划时代的天鹅绒行动》一文, 鼓吹‘天鹅绒行动’是划时代的, 其以一个新式的民运方式, 在网络上通过自由民主选举来产生的‘民主中国过渡政府’是合法的政府。

2005年4月，被告人杨同彦遵循敌对组织“中国民主党的纲领、章程，秘密组建中国民主党苏皖分部筹备组”，并发展组织成员。

2005年2月，被告人杨同彦接受境外“民主中国阵线”副主席盛雪等人的资金500欧元。同年12月，接受澳大利亚孙立勇的资金500澳元，所接受的资金部分用于资助曾因危害国家安全罪被判刑的王文江等人及其近亲属。

为了证实上述指控的犯罪事实，公诉人当庭询问了被告人，宣读了证人证言、提取证据记录、现场勘查笔录、扣押物品清单，并出示了物证、书证、现场摄像照片等证据。据此，公诉机关认为，被告人杨同彦组织、策划、实施颠覆国家政权，推翻这社会制度的活动，罪行重大，其行为已触犯《中华人民共和国刑法》第一百零五条第一款，应当以颠覆国家政权罪追究刑事责任。被告人杨同彦与境外机构、组织、个人勾结，实施颠覆国家政权、推翻社会主义制度的犯罪活动，依照《中华人民共和国刑法》第一百零六条之规定，从重处罚。被告人杨同彦曾因犯组织、领导反革命集团罪被判处有期徒刑，在刑罚执行完毕以后，再犯颠覆国家政权罪，依照《中华人民共和国刑法》第六十五条、第六十六条之规定，以累犯论处，应当从重处罚。

被告人杨同彦对起诉书指控其再境外网站上发表以及参加“天鹅绒行动”和接受境外资金后部分用于资助曾因危害国家安全罪被判刑的王文江等人及其近亲属的事实不持异议，但辩称：1. 撰写文章在境外网站发表自己的见解，是自己追求民主的一种表达方式，因而不构成犯罪；2. 起诉书指控自己秘密组建“中国民主党苏皖分部筹备组”的事实证据不充分，自己仅有组党的意图，仅写了《中国民主党苏皖筹备组宣言》，并没有发展组织成员；3. 自己接受境外资金，用于资助曾因危害国家安全被判刑的人及近亲属，属于人道主义救济。其辩护人的辩护意见是：1. 被告人杨同彦撰写文章批评、攻击我国人民民主政权和社会主义制度，不是颠覆国家政权的活动，而是思想表达的一种方式，其不具有颠覆国家政权的主观故意；2. 被告人杨同彦发表文章支持“天鹅绒行动”已经与中国民主党毫无关系的准备组党活动，不是颠覆国家政权的行为；3. 被告人杨同彦接受海外自己部分用于资助他人的人道主义行为不是颠覆国家政权的组成部分。

经审理查明：2002年5月至2005年12月，被告人杨同彦以“杨天水”“中华泪”的网名在境外《大纪元》、《博讯》等网站上发表大量文章，攻击中国共产党领导，意图推翻现行国家政权和社会主义制度。

2005年3月，被告人杨同彦杂技境外人员发起的“中国天鹅绒行动”网上投票选举“民主中国过渡政府”的活动中，被告人杨同彦当选为“民主中国第一届临时过渡政府”秘书处成员和各省市政权和平交接工作委员会江苏省接受成员，并在《大纪元网》网站发表《划时代的天鹅绒行动》一文，鼓吹‘天鹅绒行动’是划时代的，其以一个新式的民运方式，在网络上通过自由民主选举来产生的‘民主中国过渡政府’是合法的政府。

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2005年2月，被告人杨同彦接受境外“民主中国阵线”副主席盛雪等人的资金500欧元。同年12月，接受澳大利亚孙立勇的资金500澳元，所接受的资金部分用于资助曾因危害国家安全罪被判刑的王文江等人及其近亲属。

认定以上事实，有下列经庭审举证、质证，本院予以确认的证据证实：

1. 中华人民共和国公安部确认“中国民主党”为敌对组织的说明，证实“中国民主党”在国内设有分支机构，该组织敌视我国人民民主政权和社会主义制度，组织策划实施危害国家安全的活动。
2. 镇江市公安局在互联网上进行电子数据提取、固定记录，并经被告人杨同彦辨认、签字认可，证实被告人杨同彦以“杨天水”“中华泪”的网名在境外《大纪元》、《博讯》等网站上发表《十一是中华民族的灾难日》、《谆劝中共的当权派》、《人人有权反对专制》、《我们对民主大党的期待》、《反思中国民运》、《铁窗思考录之五<组建新党，扩大联合，增强海外民运的战斗力的>》等大量文章。
3. 镇江市公安局在互联网上进行电子数据提取、固定记录，并经被告人杨同彦辨认、签字认可的《划时代的天鹅绒行动》文章，证实被告人杨同彦参与了“中国天鹅绒行动”。
4. 重庆市公安局对罪犯徐万平的电脑及电脑软盘进行数据提取、固定记录，证实被告人杨同彦在“中国天鹅绒行动”中，被当选为“民主中国第一届临时过渡政府”秘书处成员和各省市政权和平交接工作委员会江苏省接受成员。
5. 镇江市公安局从被告人杨同彦的电脑进行电子数据提取、固定记录，并经被告人杨同彦辨认、签字认可，由其撰写是《中国民主党苏皖筹备组宣言》，该宣言证实被告人杨同彦遵循敌对组织“中国民主党”的纲领、章程，秘密组建“中国民主党苏皖分部筹备组”，并发展组织成员。
6. 镇江市公安局从被告人杨同彦的电脑进行电子数据提取、固定记录，并经被告人杨同彦辨认、签字认可，由赵昕撰写的网络文章即《为知行合一的杨天水鼓与呼》，证实2005年4月，被告人杨同彦和陶士季在南京中山陵与赵昕见面时，曾将秘密组建“中国民主党苏皖分部筹备组”的计划告知过赵昕。
7. 未到庭证人林小卫的证言：证实2005年3月上旬，林小卫听陶士季讲，杨同彦负责中国民主党苏皖分部的筹备工作，具体情况杨同彦会找林面谈。隔了一个星期，杨同彦约林，与其在南京市中央门外王塘村苏果超市门口见面时，杨同彦讲，林小卫和陶士季都是中国民主党成员，他自己负责江苏省范围内的中国民主党筹备工作，成立了筹备小组，由他担任筹备小组组长，考虑到林的身份没有暴露，暂时没有将林放入五人小组。
8. 未到庭证人陶士季的证言：证实2005年4月，杨同彦决定成立“中国民主党苏皖分部”。同年5月，杨同彦亲自起草了一个纲领性文件，纲领性文件中列了筹委会5人名单。杨同彦曾就组建“中国民主党苏皖分部”的事征求过陶士季的意见，陶是筹委会成员之一。其证言还证实：被告人杨同彦和陶士季曾在南京市中山陵与赵昕见面时，商量过有关中国民主党的事。

9. 镇江市公安局电子数据提取、固定记录，并经被告人杨同彦辨认、签字认可的其与盛雪往来的电子邮件，证实了杨同彦接受境外“民主中国阵线”副主席盛雪委托他人从德国汇出 500 欧元的情况。
10. 中国农业银行西联汇款单及中国农业银行泗阳县支行贷方传票，证实 2005 年 2 月 1 日，潘文忠在德国汇给杨同彦 600.91 美元（折合 500 欧元）。
11. 泗阳县中国邮政储蓄存款凭单、辽宁省鞍山市邮政局储汇分局查询单及辽宁省鞍山市中级人民法院刑事判决书，证实 2005 年 3 月 6 日，被告人杨同彦通过邮政储蓄转汇方式将 500 元汇给曾因犯颠覆国家政权罪被判刑的王文江。
12. 中国农业银行西联汇款单及中国农业银行记账凭证证实，2005 年 12 月 23 日，澳大利亚的孙立勇汇给杨同彦 500 澳元。
13. 中国银行境内汇款申请书、辽宁省公安局出具的情况说明及辽宁省高级人民法院刑事判决书，证实 2005 年 12 月 23 日，被告人杨同彦将人民币 2918.60 元汇给郑贻春的弟弟郑晓春，而郑贻春曾因犯颠覆国家政权罪被判刑。
14. 现场勘查笔录及摄影照片、物证照片、扣押物品清单，证实公安机关从被告人杨同彦暂住地江苏省南京市江宁区太平花苑 10 幢 2 单元 203 室扣押 IBM600 手提电脑及兼容机。打印机各一台。照片中的电脑、打印机，经被告人杨同彦当庭辨认，确认是其作案的工具。
15. 被告人杨同彦在侦查期间及当庭的供述，除其否认在秘密组建“中国民主党苏皖分部筹备组”中，发展组织成员外，对其余事实均作了供述，并能与上述证据互相认证。

此外，认定本案的证据还有：

江苏省南京市中级人民法院（1991）刑字第 027 号刑事判决书及江苏省龙潭监狱出具的证明，证实 1991 年 7 月，被告人杨同彦曾因犯组织、领导反革命集团罪被判处有期徒刑十年，剥夺政治权利四年。2000 年 5 月 31 日刑满释放。

在庭审中，辩护人当庭提交了二份证据：

1. 加拿大籍华人即“民主中国阵线”副主席盛雪的证言，以证实盛雪汇给杨同彦的 500 欧元，是资助杨的律师费用。
2. 《中国民主党章程（章程）》，以证实被告人杨同彦及其秘密组建的“中国民主党苏皖分部筹备组”与中国民主党无任何组织联系。

对上述两份证据，经质证，控方对辩护人搜集该二份证据程序的合法性提出了异议。本院审查认为，辩护人当庭提交的两份证据，在搜集程序上不符合法律规定，本院不予采信。

本院认为，被告人杨同彦组织、策划、实施颠覆国家政权。推翻社会主义制度的行为，已构成颠覆国家政权罪，且罪行重大，依法应予惩处。其与境外机构、组织、个人相勾结，实施上述犯罪，依法应予从重惩处；其又曾因犯组织、领导反革命集团罪被判处有期徒刑，被释放后，再犯颠覆国家政权罪，依法应当从重惩处。对被告人杨同彦的辩解及辩护人的辩护意见，经查：言论、结社自由是我国宪法赋予公民的一项政治权利，但宪法也明确

规定，公民在行使政治权利时，不得损害国家利益和安全，被告人杨同彦在境外网站发表大量文章，攻击中国共产党的领导和社会主义制度，并遵循中国民主党的纲领、章程，秘密组建“中国民主党苏皖分部筹备组”，并发展组织成员，阴谋颠覆我国国家政权的证据充分；同时，被告人杨同彦与境外机构、组织、个人勾结，接受境外资金用于资助曾因危害国家安全罪被判刑的人及其近亲属，在主客观两个方面均证明了被告人杨同彦具有颠覆国家政权罪的故意和行为，故对被告人杨同彦的辩解及其辩护人的辩护意见，本院不予采信。江苏省镇江市人民检察院指控被告人杨同彦犯颠覆国家政权罪的事实清楚，证据确实、充分，定性准确，本院予以支持。为维护我国的人民民主政权和社会主义制度，本院根据被告人杨同彦的犯罪事实、性质、情节，依照《中华人民共和国刑法》第一百零五条第一款、第一百零六条、第五十六条第一款、第五十五条第一款、第六十五条第一款、第六十六条、第六十四条之规定，判决如下：

一·被告人杨同彦犯颠覆国家政权罪，判处有期徒刑十二年（刑期从判决执行之日起计算。判决执行以前先行羁押的，羁押一日折抵刑期一日。即自2005年12月23日起至2017年12月22日止），剥夺政治权利四年。

二·作案工具 IBM600 手提电脑、兼容机各一台，HP 打印机一台，诺基亚手机二部予以没收。

如不服本判决，可在接到判决书的第二日起十日内，通过本院或者直接向江苏省高级人民法院提出上诉。书面上诉的，应当提交上诉状正本一份，副本两份。

审判长 杨荣

审判员 吴金尧

代理审判员 张云

二〇〇六年五月十七日

书记员 刘静

Zhenjiang (Jiangsu) Intermediate People's Court Criminal Verdict

Zhenjiang Crim. First Trial No. 12 (2006)

Prosecuting organ is the Zhenjiang (Jiangsu) People's Procuratorate.

Defendant Yang Tongyan, male, born February 21, 1962 in Siyang County, Jiangsu, Han ethnicity, university graduate, unemployed. Household registration at Apartment 201, No. 9 Huiyuan Street, Baixia District, Nanjing, Jiangsu; temporarily resides at Apartment 203, Unit 2, Building 10, Taiping Gardens, Jiangning District, Nanjing, Jiangsu. In July 1991 he was convicted of the crime of organizing or leading a counterrevolutionary group and sentenced to 10 years' imprisonment with subsequent deprivation of political rights for four years. On May 31, 2000, he was released upon completion of [that] sentence. Placed under residential surveillance on December 23, 2005 on suspicion of having committed the crime of subversion, and arrested on January 20, 2006. Currently in custody at the Dantu District Detention Center in Zhenjiang.

Defense attorneys are Li Jianqiang and Lan Fang of the Shandong Huaguan Law Firm.

The Zhenjiang (Jiangsu) People's Procuratorate issued indictment No. 013 [2006] charging the defendant Yang Tongyan with the crime of subversion and brought charges for prosecution in this court on April 25, 2006. Pursuant to the Jiangsu Higher People's Court's decision on designating jurisdiction, this court filed the case for trial, formed a collegiate bench in accordance with the law, and heard the case in closed court on May 16, 2006. The Zhenjiang People's Procuratorate designated Deputy Procurator-General Dong Xinjian, Procurator Chen Dong, and Deputy Procurator Jin Qinghua to appear in court for the prosecution. Defendant Yang Tongyan and his defense attorneys Li Jianqiang and Lan Fang were also present in court to participate in the proceedings. This trial has now been concluded.

The Zhenjiang People's Procuratorate charged that: From May 2002 to December 2005, defendant Yang Tongyan, using the online pseudonyms "Yang Tianshui" and "China's Tears," posted numerous articles on *Epoch Times*, Boxun, and other overseas web sites, including articles such as "October First is China's Day of Calamity" and "An Admonition to the Chinese Communist Ruling Clique," in which he attacked the leadership of the Chinese Communist Party, called the people's democratic dictatorship a "tyrannical regime," and attempted to overthrow the existing state power and the socialist system. In "October First is China's Day of Calamity," he wrote: "The Chinese Communist Party has named October First as its national holiday. This is despotic

China's national day; October First should be a day of calamity for the Chinese people." In "An Admonition to the Chinese Communist Ruling Clique," he wrote: "Abject poverty, backwardness, barbarianism, and brutality are rife on the mainland. Dictatorship is the public enemy of human nature!" In "Everyone Has the Right to Oppose Tyranny," he wrote: "The authoritarian system is itself a kind of absolute autocrat and traitor to the people. Everyone has the right to punish such traitors." In "Our Hopes for the Great Democracy Party," he wrote: "We believe that the main threat to the happiness of the citizens of China today is not Taiwan independence but tyrannical forces on the mainland." In "Pondering the Chinese Democracy Movement" he wrote: "The communist movement of the Chinese Communist Party is in essence a mob movement [and] "The old system before us now will be thoroughly [undone] and sent to its grave."

In March 2005, defendant Yang Tongyan took part in the "online ballot" to elect a "Democratic Chinese Transitional Government" that was launched by the overseas group "Velvet Action of China," and he was elected to the Secretariat of the "First Democratic Chinese Provisional Transitional Government" as well as a member for Jiangsu of the working committee for peaceful handover of authority in provinces and cities. Further, in an article posted on the *Epoch Times* website entitled "The Epoch-making Velvet Action," he claimed: "'Velvet Action' is epoch-making, and the 'Transitional Democratic Chinese Government' born out of a new model of people's movement, through an online free and democratic election, is a legal government."

In April 2005, defendant Yang Tongyan, adhering to the platform and charter of the hostile overseas organization "China Democracy Party," secretly formed and recruited members for the "Preparatory Committee for the Organization of the Jiangsu-Anhui Branch of the China Democracy Party."

In February 2005, defendant Yang Tongyan received €500 in funds from Sheng Xue, deputy chairman of the "Democratic China Front." In December of that year he accepted A\$500 from Sun Liyong of Australia. These funds were in part used to [provide] assistance to individuals convicted of the crime of endangering state security, such as Wang Wenjiang, and to their close relatives.

To demonstrate the above-mentioned criminal facts as charged, the prosecutors examined the defendant in court; presented witness testimony, records of evidence collection, transcripts of on-scene investigations, and a list of items seized; and produced photographic and written evidence, photos taken at the scene, and other evidence. On this basis, the prosecution held that the defendant Yang Tongyan

organized, plotted, and carried out activities [aimed at] subverting state power and overthrowing the socialist system. His criminal actions [constitute] a major crime and violate the provisions of Article 105, paragraph 1 of the Criminal Law of the PRC, and he should be held criminally liable for the crime of subversion. [Because] defendant Yang Tongyan colluded with organs, organizations, or individuals overseas to carry out his criminal activities [aimed at] subversion and the overthrow of the socialist system, in accordance with the provisions of Article 106 of the Criminal Code of the PRC, severe punishment should be imposed. [Because] defendant Yang Tongyan had been convicted and sentenced for the crime of organizing or leading a counterrevolutionary group in the past and committed the crime of subversion after his penalty had been executed, in accordance with the provisions of Articles 65 and 66 of the Criminal Code of the PRC, severe punishment should be imposed for recidivism.

Defendant Yang Tongyan did not dispute the indictment's allegation that he posted articles on a overseas websites, participated in "Velvet Action," and received monies from overseas which he used in part to [provide] assistance to individuals convicted of the crime of endangering state security, such as Wang Wenjiang, and to their close relatives, but argued that:

1. Writing articles to express his own views and posting them on overseas websites was a means of expressing one's aspirations for democracy and thus did not constitute a crime.
2. The factual evidence for the indictment's allegation that he secretly formed a "Preparatory Group of the Jiangsu-Anhui Branch of the China Democracy Party" was insufficient. He had only the intention to form a party and had only written a "Declaration of the Preparatory Group of the Jiangsu-Anhui Branch of the China Democracy Party" but had done nothing to recruit members.
3. He did receive funds from overseas and used these in part to assist persons who had been convicted of the crime of endangering state security and their close relatives, but this fell under the category of humanitarian relief.

Yang's defense attorney submitted that:

1. Defendant Yang Tongyan's written articles criticizing and attacking China's people's democratic dictatorship and socialist system were not actions taken to subvert state power, but rather a means of expressing ideas with no subjective intent to subvert state power.
2. Defendant Yang Tongyan's actions in posting an article in support of "Velvet Action" as well as in his preparations to form a party, during which he had no contact with the China Democracy Party, were not actions of a subversive nature.



3. Defendant Yang Tongyan's humanitarian actions in using monies received from overseas in part to provide aid to others did not constitute subversion of state power.

In the course of the trial it was determined that: From May 2002 to December 2005, defendant Yang Tongyan, using the online pseudonyms "Yang Tianshui" and "China's Tears," posted numerous articles on *Epoch Times*, Boxun, and other overseas web sites, in which he attacked the leadership of the Chinese Communist Party and the people's democratic dictatorship and attempted to overthrow the existing state power and the socialist system.

In March 2005, defendant Yang Tongyan took part in the "online ballot" to elect a "Democratic Chinese Transitional Government" that was launched the overseas group "Velvet Action of China," and he was elected to the Secretariat of the "First Democratic Chinese Provisional Transitional Government" as well as a member for Jiangsu of the working committee for peaceful handover of authority in provinces and cities. Further, in an article posted on the *Epoch Times* website entitled "The Epoch-making Velvet Action" in which he claimed such things as: "'Velvet Action' is epoch-making, and the 'Transitional Democratic Chinese Government' born out of a new model of people's movement, through an online free and democratic election, is a legal government."

In April 2005, defendant Yang Tongyan, adhering to the platform and charter of the hostile overseas organization "China Democracy Party," secretly formed and recruited members for the "Preparatory Committee for the Organization of the Jiangsu-Anhui Branch of the China Democracy Party."

In February 2005, defendant Yang Tongyan received €500 in funds from Sheng Xue, deputy chairman of the "Democratic China Front." In December of that year he accepted A\$500 from Sun Liyong of Australia. These funds were in part used to [provide] assistance individuals convicted of the crime of endangering state security, such as Wang Wenjiang, and to their close relatives.

To demonstrate the above facts, the following evidence was adduced and cross-examined in court during the trial and has been affirmed by this court:

1. A memorandum from the Ministry of Public Security of the PRC verifying that the "China Democracy Party" is a hostile organization, which confirms that the China Democracy Party has chapters in China and overseas, is

antagonistic to China's people's democratic dictatorship and the socialist system, and organizes, plots, and carries out activities that endanger state security.

2. Electronic data retrieved from the Internet and archived by the Zhenjiang Public Security Bureau, which, having been identified and signed by defendant Yang Tongyan, confirms that defendant Yang Tongyan, using the online pseudonyms "Yang Tianshui" and "China's Tears," posted a large number of articles on *Epoch Times*, Boxun, and other overseas web sites, including "October First is China's National Day of Calamity," "An Admonition to the Chinese Communist Ruling Clique," "Everyone Has the Right to Oppose Tyranny," "Our Hopes for the Great Democracy Party," "On the Chinese Democracy Movement," and "Thoughts from Behind Bars, No. 5: Form a New Party, Expand Unity, Strengthen the Fighting Capacity of the Overseas Democracy Movement."
3. Electronic data retrieved and archived by the Zhenjiang Public Security Bureau from the article "The Epoch-Making Velvet Action," which, having been identified and signed by defendant Yang Tongyan, confirms that defendant Yang Tongyan participated in the "Velvet Action of China."
4. Electronic data retrieved and archived from the computer and computer floppy disks belonging to the criminal Xu Wanping by the Chongqing Public Security Bureau, which confirms that defendant Yang Tongyan [participated] in the Velvet Action of China and was elected to the Secretariat of the "First Democratic Chinese Provisional Transitional Government" and as a member for Jiangsu of the working committee for peaceful handover of authority in provinces and cities.
5. Electronic data retrieved and archived from the computer of defendant Yang Tongyan by the Zhenjiang Public Security Bureau, which was identified and signed by defendant Yang Tongyan. The document "Declaration of the Preparatory Group of the Jiangsu-Anhui Branch of the China Democracy Party" written by the defendant confirms that he was adhering to the program and charter of the hostile organization "China Democracy Party" in secretly forming and recruiting members for the "Preparatory Committee for the Organization of the Jiangsu-Anhui Branch of the China Democracy Party."
6. Electronic data retrieved and archived from the computer of defendant Yang Tongyan by the Zhenjiang Public Security Bureau, which was identified and signed by defendant Yang Tongyan. The online article written by Zhao Xin, "Encouragement for Yang Tianshui, Who Joins Thought to Action," confirms that in April 2005, when defendant Yang Tongyan and Tao Shiji met Zhao Xin at the Sun Yatsen Mausoleum in Nanjing, [Yang] informed Zhao Xin of a plan to form in secret the "Preparatory Group of the Jiangsu-Anhui Branch of the China Democracy Party."
7. Testimony of deposed witness Lin Xiaowei, which confirms that in the first part of March, Lin Xiaowei heard Tao Shiji say that Yang Tongyan was in charge of preparatory work for the Jiangsu-Anhui Branch of the China

Democracy Party and that Yang Tongyan would give Lin the specific details himself. A week later, when Yang Tongyan met Lin as arranged at the entrance to the Suguo Supermarket in Wangtang Village outside Nanjing's Zhongyang Gate, Yang said that Lin Xiaowei and Tao Shiji were both members of the China Democracy Party and that he himself was in charge of China Democracy Party preparatory work in the region of Jiangsu Province. [Yang also said that] he had set up a preparatory group of which he served as chair, but Lin would not be included in the five-member group for the time being because Lin's identity [as a party member] had not yet been exposed.

8. Testimony of deposed witness Tao Shiji, which confirms that in April 2005, Yang Tongyan decided to establish the "Jiangsu-Anhui Branch of the China Democracy Party." In May of the same year, Yang Tongyan personally drafted a programmatic document that listed the names of the five members of the preparatory committee. Yang Tongyan had sought the opinion of Tao Shiji on the formation of the "Jiangsu-Anhui Branch of the China Democracy Party," and Tao was one of the members of the preparatory committee. His testimony further confirmed that when defendant Yang Tongyan and Tao Shiji met Zhao Xin at the Sun Yatsen Mausoleum in Nanjing, they discussed matters concerning the China Democracy Party.
9. Electronic data retrieved and archived from email correspondence with Sheng Xue by the Zhenjiang Public Security Bureau, which, having been identified and signed by defendant Yang Tongyan, confirms the circumstances of Yang Tongyan's acceptance of €500 from Sheng, deputy chairman of the "Democratic China Front," which Sheng requested a third party to send by transfer from Germany.
10. An Agricultural Bank of China Western Union transfer receipt and a credit memo from the Siyang County branch of the Agricultural Bank of China, which confirms that on February 1, 2005, Pan Wenzhong of Germany transferred US\$600.91 (equivalent to €500) to Yang Tongyan.
11. A Siyang County China Post postal savings deposit slip, an Anshan (Liaoning) Postal Remittance Branch enquiry slip, and an Anshan (Liaoning) Intermediate People's Court Criminal Verdict, all of which confirm that on March 6, 2005, defendant Yang Tongyan transmitted RMB 500 via postal savings remittance to Wang Wenjiang, [previously] convicted of subversion.
12. A Western Union transfer receipt and an Agricultural Bank of China account book entry, which confirm that on December 23, 2005, Sun Liyong in Australia transferred A\$500 to defendant Yang Tongyan.
13. A Bank of China domestic remittance application, a memorandum issued by the Liaoning Provincial Public Security Bureau, and a Liaoning Higher People's Court decision, which confirm that on December 23, 2005 defendant Yang Tongyan transferred RMB 2918.60 to Zheng Yichun's younger brother Zheng Xiaochun and that Zheng Yichun had been [previously] convicted of inciting subversion.

14. On-site crime scene investigation records and photographs, photographs of material evidence, and a list of items impounded, all of which confirm that the public security organs impounded an IBM600 laptop computer, a [PC desktop] clone, and a printer from defendant Yang Tongyan's temporary residence at Apartment 203, Unit 2, Building 10, Taiping Gardens, Jiangning District, Nanjing. The computers and printer in the photographs were identified in court by defendant Yang Tongyan, who verified that these were the tools used in the case.
15. The statements made by defendant Yang Tongyan during the investigation period and in court, which, excluding [Yang's] denial of secretly forming and recruiting members for the "Jiangsu-Anhui Branch of the China Democracy Party," attests to all the remaining facts and serves as corroboration for the above-mentioned evidence.

In addition, further determining evidence in the case includes:

Nanjing (Jiangsu) Intermediate People's Court Criminal Verdict No. 027 (1991) and certification provided by the Jiangsu Province Longtan Prison, which confirm that in July 1991, defendant Yang Tongyan was sentenced to 10 years' imprisonment with subsequent deprivation of political rights for four years for the crime of organizing or leading a counterrevolutionary group. He was released on completion of his sentence on May 31, 2000.

During the course of the trial, the defense submitted two items of evidence:

1. The testimony of Sheng Xue, a Chinese Canadian citizen who is deputy chairman of the "Democratic China Front," in order to confirm that Sheng Xue transferred €500 to defendant Yang Tongyan to assist with his legal fees.
2. "(Draft) Charter of the China Democracy Party," in order to confirm that the defendant Yang Tongyan had had no organizational contact of any kind with the China Democracy Party in his secret formation of the "Jiangsu-Anhui Branch of the China Democracy Party."

During cross-examination of these two items of evidence, the prosecution raised objections concerning the legality of the procedure used by the defense to procure these two items of evidence. After consideration, this court holds that the two items of evidence presented in court by the defense were not collected through procedures in accordance with legal provisions and were inadmissible in court.

It is the opinion of this court that defendant Yang Tongyan organized, plotted, and carried out actions to subvert state power and overthrow the socialist system; that these actions constitute the crime of subversion; and that these were major criminal activities and should be punished according to the law. His collusion with organs, organizations, or individuals overseas in carrying out the above-mentioned crimes should be severely punished according to the law; moreover due to his past conviction and [subsequent] prison sentence for organizing or leading a counterrevolutionary group and his repeat commission of the crime of subversion after his release, severe punishment should be imposed according to the law. As for defendant Yang Tongyan's defense and the defense attorney's submission, after consideration [the court's view is that]: Freedom of speech and association are political rights bestowed upon citizens in China's constitution, but the constitution clearly stipulates that in the commission of these political rights, citizens shall not endanger the interests or security of the state. Defendant Yang Tongyan posted numerous articles on overseas-hosted websites, attacking the leadership of the Chinese Communist Party and the socialist system. Moreover, he adhered to the platform and charter of the "China Democracy Party" and secretly formed and recruited members for the "Jiangsu-Anhui Branch of the China Democracy Party." There is sufficient evidence that he conspired to subvert China's state power. At the same time, defendant Yang Tongyan received overseas assistance from organs, organizations, or individuals overseas, which he used to assist persons who had been convicted of endangering state security and to assist their close relatives. This is both subjective and objective proof of deliberate criminal action by defendant Yang Tongyan to subvert state power and therefore, this court cannot accept defendant Yang Tongyan's defense or the submission of his defense attorney. The facts of the charge of the crime of subversion brought by the Zhenjiang (Jiangsu) People's Procuratorate against defendant Yang Tongyan are clear, the evidence is credible and sufficient, and the characterization [of the crime] is accurate; [therefore] the charges are supported by this court. To safeguard China's people's democratic dictatorship and socialist system, on the basis of the facts, nature, and circumstances of defendant Yang Tongyan's crime, and in accordance with the provisions of paragraph 1 of Article 105, Article 106, paragraph 1 of Article 56, paragraph 1 of Article 55, paragraph 1 of Article 65, Article 66, and Article 64 of the Criminal Code of the PRC, this court rules as follows:

1. Defendant Yang Tongyan is sentenced to 12 years' imprisonment, with subsequent deprivation of political rights for four years, for the crime of subversion. (The prison term is to be calculated on the day the verdict is implemented, with each day spent in detention prior to the verdict's implementation to count as one day of the prison term; therefore, it will run from December 23, 2005 to December 22, 2017.)
2. Equipment used for criminal purposes, the IBM600 compatible laptop computer, the HP printer and two Nokia mobile phones, will be confiscated.

If this verdict is not accepted, an appeal may be filed between two and ten days from the receipt of this verdict, either to this court or directly to the Jiangsu Higher People's

Court. In case of a written appeal, the original appellate petition must be submitted together with one copy.

Presiding Judge: Yang Rong

Judicial Officer: Wu Jinyao

Deputy Judicial Officer: Zhang Yun

May 17, 2006 (seal of the court)

Secretary: Liu Jing