

A 'death blow to democracy': Spanish lawyers challenge new ruling that may close down Tibet lawsuits after Chinese pressure

Date : December 26, 2013

- The Chinese government has expressed its approval of the Spanish authorities' moves last week to close down a ground-breaking Tibet lawsuit involving orders of arrest against Chinese leaders.
- Spanish newspaper El Pais, quoting Spanish Justice Ministry sources, reported on December 15 that the leadership in Madrid was intending to take steps to limit the Spanish judiciary's powers to investigate human rights abuses under the principle of universal jurisdiction, after Spanish judges ordered warrants of arrest to be issued after five Chinese leaders for their policies in Tibet (ICT report, [Tibet lawsuits: Update following ground-breaking ruling by the Spanish courts](#)). A full translation of the El Pais article into English is published below.
- A Chinese delegation sent to Spain last week to express disapproval of the Spanish court orders was led by an official who presided over a campaign to compel Tibetan villagers to raise Chinese flags which has led to protests and a violent crackdown.

El Pais reported that the Spanish government plans a further reform of the Spanish law, which could begin as soon as January, in order to limit further the application of universal jurisdiction with direct mention of the Chinese cases and the bilateral interests between the two countries. It could lead to the Spanish government invoking reasons of "general interest" to prevent judges from investigating crimes of genocide committed abroad, although the principle of universal jurisdiction is the recognition that human rights abuses and crimes against humanity transcend national borders and nationality of victims.

This follows new developments last month in which three appeal court judges in the Spanish National Court ordered warrants of arrest to be issued against five Chinese leaders, including former President and Party Secretary Jiang Zemin, for their policies in Tibet, and on October 9, when Hu Jintao was indicted by the Spanish court for genocide in Tibet.

El Pais reported that the changes proposed are "A matter of tightening the screw even further and demanding, for example, that the victim was Spanish when they suffered the crime and did not acquire that nationality later, as in the case of the Tibetan, Thubten Wangchen, co-plaintiff in the lawsuit against high-ranking Chinese officials. To prevent possible legal loopholes, the new law may even demand, as in Italy, that the victim had Spanish nationality for at least two years prior to the crime being committed." Spanish lawyers and international experts have strongly challenged the development, with one of the key criminal lawyers in the case, Prof. Dr. Manuel Ollé Sesé, saying this would be "a death blow to the separation of powers in a democracy (judicial and state), to propose that Government decides what cases can be accepted or not [...] The government wants to make himself plaintiff, prosecutor and judge and that is how democracy ends."

Chinese spokesperson of the Ministry of Foreign Affairs Hua Chunying said on Monday (December 16) that the Chinese government were "aware" of the information published in El Pais, indicating there had been communication between the Spanish government and Beijing. Hua Chunying said that the Chinese leadership "believes and hopes that the Spanish government will handle this matter appropriately." (El Confidencial, [China confía en que España "resuelva apropiadamente" causa contra exlíderes](#)).

The El Pais article reported that a Chinese delegation sent to Spain last week expressed their strong disapproval about the Tibet lawsuits. The delegation was led by Wu Jingjie, deputy to the National People's Congress and vice executive secretary of the Tibet Autonomous Region, a senior official involved in a political campaign in Nagchu (Chinese: Naqu) to enforce loyalty to the Chinese Communist Party and presence of work teams. The campaign involved attempts to compel Tibetans to display Chinese flags on their homes. The intensified campaign led to unrest, and the dramatic escalation of troop presence, and beatings and detentions of Tibetans (ICT report, [New images of deepening crackdown in Nagchu, Tibet](#) and [Congressional-Executive Commission on China](#)).

According to El Pais, in a meeting with the Spanish government, the delegation led by Wu Jingjie "expressed their 'perplexity' and 'incomprehension' at the proceedings begun by Spain for the genocide in Tibet, which Beijing considers Chinese territory, and they made it clear that they expected a "political solution" from the Spanish government.

The conservative party in power in Spain, led by Mariano Rajoy, has an absolute majority and could in theory pass the new measure without the help of the votes from the socialist opposition. The El Pais article notes that the Spanish government has been very concerned about the Chinese authorities' reaction to the court's decision to order the issuing of arrest warrants against the Chinese leaders. No date has yet been set for president Mariano Rajoy's visit to China to re-launch economic relations, which was scheduled for last September but was then suspended.

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A full translation of the El País article into English by the Spanish Tibet Committee CAT follows below.

El País: 15 December 2013

The government plans to change the law in order to deactivate the lawsuits against the Chinese regime

The scope of universal justice will be restricted a second time

The government aims to have veto power in cases of international justice

The Spanish government plans to reform universal justice in order to deactivate the crisis that erupted with China last month after the Audiencia Nacional issued arrest warrants for five high-ranking Beijing officials, including former president Jiang Zemin and former prime minister Li Peng, accused of genocide against the Tibetan people. According to government sources, in January the Spanish Ministry of Justice will submit changes to the law of judicial procedure, considerably modifying Article 23 which grants Spanish courts competence to try, among others, crimes of genocide and crimes against humanity when “the accused is on Spanish soil or the victims have Spanish nationality or there is a connecting link with Spain”, and when the same crimes have not been pursued in the country affected.

These conditions were introduced in 2009 after Israel protested against the Audiencia Nacional’s decision to try former Israeli defence minister Benjamin Ben-Eliezer for the killing of civilians in Gaza in 2002. The government believes that reform was insufficient and has not prevented new and undesirable diplomatic conflicts.

Now it is a matter of tightening the screw even further and demanding, for example, that the victim was Spanish when they suffered the crime and did not acquire that nationality later, as in the case of the Tibetan, Thubten Wangchen, co-plaintiff in the lawsuit against high-ranking Chinese officials. To prevent possible legal loopholes, the new law may even demand, as in Italy, that the victim had Spanish nationality for at least two years prior to the crime being committed.

This will not be the only obstacle for cases of universal justice. Invoking the argument that genocide is a crime of international law and not a private offence, the Spanish Ministry of Justice is studying ways of leaving it exclusively to the public prosecutor to promote such proceedings, at least in those cases where there are no Spanish victims.

In addition, the government plans to introduce a mechanism of political control similar to what exists regarding extradition. The passive extradition act leaves it to the Cabinet to hand over someone accused of a crime and whose extradition has been authorised by the courts, “on the basis of the principle of reciprocity, sovereignty, security, public order and Spain’s other interests”. In other words, the government will be able to invoke reasons of “general interest” to prevent Spanish judges from investigating crimes of genocide committed abroad.

The underlying argument is that the existence of the International Criminal Court (ICC) makes it unnecessary for Spanish courts to investigate these crimes. The only problem is that the United States, Russia and China do not accept the jurisdiction of the International Criminal Court.

Although it will be several months before the new law proposed by the government will come into effect, when it does so it will deactivate the lawsuit against high-ranking Chinese officials because, according to judicial sources, reforms to criminal law that benefit the accused are applied retroactively.

The Spanish government is very concerned by the irritation the investigation by the Audiencia Nacional has caused Beijing authorities. No date has yet been set for president Mariano Rajoy’s visit to China to re-launch economic relations, which was scheduled for last September but was suspended at the last moment.

After France, China is the second largest foreign holder of Spanish debt, with 20%, about 80,000 million euros; a growing number of tourists (177,000 in 2012, 55% more than in 2011) and an important commercial partner (21,400 million in 2012, though with a large deficit for Spain). Some 600 Spanish companies have established themselves in China and the number is growing: last week Banco Santander announced it had bought an 8% share of Bank of Shanghai.

The government fears that Beijing will take economic reprisals against Spain if it proceeds with the case against Chinese officials; as occurred with Norway after that country granted the Nobel peace prize to dissident Liu Xiaobo.

Last Thursday a delegation of the Chinese People’s National Assembly met with members of the Foreign Affairs Commission of the Spanish Congress. At the meeting held behind closed doors, the Chinese expressed their “perplexity” and “incomprehension”

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at the proceedings begun by Spain for the genocide in Tibet, which Beijing considers Chinese territory, and they made it clear that they expected a "political solution" from the Spanish government.