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Safeguard Defenders (11.01.2021) - <https://bit.ly/2LjQCZX> - Unbeknownst to all but a few [link in Polish], Poland has stood as the battleground between Sweden and China in an unfolding extradition case for nearly two years. China seeks former Chinese citizen, now Swedish citizen, Li Zhihui, a Falun Gong adherent, returned to China to stand trial on charges of economic crimes.

The case is set to stand as a precedent on how European countries respond to the severe deterioration of China's already flawed criminal justice system, and to test whether long-standing ignorance to massive changes in China across Europe can be overcome.

Sweden has protested, albeit meekly, via a brief 1.5-page letter that misses all the key points.

In dramatic fashion, the Polish prosecutor's office has switched from supporting, to objecting, and again supporting, the extradition. The Supreme Court is set to take a final decision in less than a week.

On January 15, the Polish Supreme Court will likely seal the fate of Li Zhihui, who left China in 2012 to settle down in Sweden with his Falun Gong-member wife [now divorced]. In 2016, Li became a Swedish citizen, and renounced his Chinese citizenship. Since leaving China, Li, a wealthy businessman, has supported the Falun Gong movement financially in Europe.

Until early January 2021, no Polish, Swedish nor international media has covered this remarkable tale, and the process has been unknown to all but a few

Chinese authorities filed a red notice with Interpol on him in 2017, when Interpol was chaired by Chinese Communist Party member Meng Hongwei – who later dramatically disappeared while visiting China. Li would only become aware of this red notice on March 17, 2019, while transiting at Warsaw's Chopin Airport, en route from Sweden to Bulgaria, and detained by Polish police.

Since his initial detention, the Polish judicial process to test whether he can be extradited has taken numerous and remarkable turns, but it now appears likely that the Supreme Court will uphold the decision taken September 25, 2020, which would see him extradited to China – unless the Minister of Justice intervenes.

Documents reviewed by Safeguard Defenders show that the Polish prosecutor's office seems to be unaware of the situation of the legal system in China, and vaguely worded promises from the Chinese embassy in Warsaw – which has no authority to issue any guarantees about a forthcoming judicial process – has been enough to allay fears of torture and unlikelihood a fair trial in China. In the same communication, the Chinese government has also levied additional accusations and threats against Li, opening up for at least two additional charges -- belonging to an evil cult, and spreading rumours, which

the prosecutor's office has ignored or simply not realized. Neither of these two accusations and possible basis for prosecution constitutes a crime in Poland or Sweden.

New information shows that Li is but one of three people currently being sought for extradition from Poland by China, and the Supreme Court's decision, just like the one in Sweden in 2019, could not only affect all three of them, but all cases of extraditions from countries bound by the European Convention on Human Rights (ECHR) to China in the future.

This analysis will not look into Li's adherence to Falun Gong, or whether he is right or wrong that China initially sought him for his Falun Gong activities in China, but rather look at the astounding legal process ongoing in Poland. Li himself is clear, "In the event of my extradition, my fate will be sealed" ... "if Poland surrenders me to China, I will die". It is also beyond doubt that he has provided significant support to Falun Gong in Europe since his relocation to Sweden. However, as to his activities in China before leaving little is known.

Chinese claims against Li

The only evidence of China seeking Li's extradition is a provisional arrest request. Polish courts have not received any documentation from the Chinese court system about the investigation against him or anything showing his current status in that investigation. Neither court nor prosecutor has seen fit to ask, taking the Chinese embassy's word instead.

Li, born December 14, 1967 in Nantong, Jiangsu, was targeted in an investigation launched July 8, 2014 – several years after he left China in November 2012. Since Li left, he has never returned, neither before nor after this investigation was launched. It is not known if Li has even been aware that such an investigation has been ongoing.

Along with a man named Zhang Cong – already sentenced - Li is accused of defrauding a business beginning in November 2011. On November 19, 2014, the prosecutor approved Li's arrest. Three years later, on November 8, 2017, a red notice was issued via Interpol.

Initial extradition detention and hearing

LI was apprehended by Chopin Airport police on March 17, 2019, due to the red Interpol notice. This red notice had been ignored for a year and a half. No other European country had taken any step to detain him during his travels – indicating that his notice was deemed to be political and therefore should not be enforced. Why Polish authorities thought differently remains unknown. Shortly after his detention, after having notified the Chinese authorities, a request for his extradition was filed with Poland.

During the prolonged legal drama, which has seen the prosecutor's office switch sides, Li, now 53, has been kept in 12 sq. metre cell in a detention facility in Warsaw's Białołęka district for some 20 months.

The first hearing, at Warsaw district court, was in August 2019, and concluded on September 25. Judge Dariusz Łubowski deemed that Li could be extradited and that the defence – led by Krzysztof Kitajgrodzki - could not prove that his Falun Gong membership was the reason for the investigation in China against him.

During this period, the Swedish Foreign Ministry filed a letter to its Polish counterpart stating that Li could face the death penalty if returned to China and requested that he not be extradited. The court noted that the crime Li stands accused of, fraud (article 224), does not carry the death penalty, and that Li's alleged associate in this crime

[Zhang Cong] had already been sentenced, to 10 years and 6 months in prison, for this crime. An appeal against the court's decision was filed.

Prosecutor switches side during appeal

While waiting for a hearing at the appellate court, the prosecutor, Anna Adamiak, on December 13 the same year [2019], switched side in a very rare instance and requested that the court deny the extradition request. The prosecutor argued that the change was because it had become clear that there would be no control over the legal process in China, nor about what stage of the judicial process Li's case was at in China. They also stated that the suspect's human rights cannot be guaranteed if returned to China.

The prosecutor emphasized that Poland would have to count on China's "goodwill to cooperate", and at the same time they emphasized that there was a "justified fear" and a "high degree of probability" that the release of the defendant [to China] "will not guarantee that his rights and freedoms will be preserved".

The court of appeal in Warsaw overturned the decision of the court of first instance and ordered the case to be re-examined by the district [lower] court again.

At the same time, the judgment from Sweden's Supreme Court about the extradition of Qiao Jianjun in 2019, also sought for economic crimes, was being translated into Polish. The defence had already filed this important verdict to support its position, but apparently it had not been translated into Polish and therefore not been used as basis for the court of first instance's initial decision.

China gets prosecutor to switch sides again

Before the new hearing that had been ordered, the court sent 11 questions to the consular section of the Chinese embassy in Warsaw [This is the same embassy at the centre of the north European refugee espionage story covered by Safeguard Defenders earlier]. The embassy responded to these questions on March 6, 2020.

Safeguard Defenders reviewed the answers provided to these 11 questions.

The answer from the Chinese embassy contains strongly worded and threatening language, and the embassy's response indicates that Li stands the risk of being charged with additional crimes, including for being a member of Falun Gong (article 300). The letter claims Falun Gong "is anti-human, anti-social and anti-scientific. It creates destructive rebel groups". They also stated that "information about the persecution of Falun Gong members was 'deceptive propaganda.'"

The letter also stated that "He [Li] is creating rumours (...) [and] the goal is to cheat, beg for sympathy and support." He is, due to the Chinese government's claim that he is spreading rumours, also at risk of prosecution under the new article 291 (1), and possibly also under article 105."

Considering the recent campaign by Chinese authorities against 'rumour spreading' one would imagine that this language from the embassy would raise alarm bells, but instead the prosecutor was seemingly convinced to about turn around and support the extradition again.

Despite having no legal mandate, as an embassy, or for that matter a representative of the Foreign Ministry, the letter claimed it could promise access to Li while he was in pre-trial detention, permission for consular staff to attend the trial, and visitation rights if he was sentenced to jail.

The prosecutor's office in Poland entirely missed the new threats made against Li, and took the above promises by the embassy at face value. The embassy has no legal right to make such guarantees because it is the police who decide who can or cannot visit a suspect and it is the court that decides who can or cannot attend a trial. In addition, the promises were worded vaguely – saying only that visitation could be organized, not that it would or that it was mandated to do so, and it also only stated that it would consider consular visitation in accordance with the Vienna Convention on Consular Relations – again not a guarantee that visitation would be permitted. Even if these were worded as a guarantee, without supporting documents from relevant Chinese judicial authorities, they would have no standing.

The prosecutor seemed unaware that such promises are regularly broken. Even high profile cases, such as fellow EU citizen Gui Minhai, was sentenced at a secret trial where Swedish consular access was denied, and where the Swedish government was not even informed. There is also the continued violation of the Canada-China consular access treaty, which is supposed to guarantee monthly visits to suspects in detention. Michael Kovrig and Michael Spavor has now been in custody 25 months, and should in accordance with this treaty have been given 25 consular visits each; in reality, only two such visits each has been allowed. Violations of the Vienna Convention on Consular Relations are so common that they are to be expected, and foreign officials are regularly denied access to their citizens in China.

EU, after the 22nd bilateral summit 2020, stressed the issue of the “continued arbitrary detention of Swedish citizen Gui Minhai and two Canadian citizens – Michael Kovrig and Michael Spavor”, and “raise[d] its concerns on the deteriorating human rights situation” and on “restrictions on fundamental freedoms”. The EU parliament voted mid-2020 for the EU to take China to the International Court of Justice over its violations of yet another treaty, the international agreement between the UK and China about Hong Kong.

The only clarity the Polish prosecutor seemingly needed to change its mind was that Chinese law does not provide for the death penalty for the accused crime, article 224, as pointed out by the embassy.

However, as the Swedish Supreme Court noticed in its verdict, such claims has been made by China before, and then violated – that is, promises have been made that a person will not face the death penalty, and then such penalty has been issued anyway.

To raise further doubts, Li's supposed ‘associate’, Zhang Cong, according to the provisional arrest request which Safeguard Defenders have reviewed, was sentenced back in 2016 to 10 years and 6 months in prison according to the same charge. Article 224 specifies imprisonment of not more than three years, unless severe, in which case it can be up to 10 years. Only in remarkable situations can someone be sentenced to more than 10 years.

The total amount that Li, Zhang (“and [unspecified] others”) are accused of defrauding is about 7 million RMB, less than 1 million EURO. How many others are involved was not stated, nor their names, but at least four people would be involved in accordance with the information from the Chinese side. Why was his associate sentenced to such an extremely long sentence for what is a very small amount of supposed fraud – 7 million CNY for four (or more people). This should raise real doubts as to whether fraud is the real reason for China wanting Li extradited.

Re-trial

Before the new hearing, the prosecutor's office switched teams to one led by Alina Janczarska. For the new hearing, the prosecutor stated that Poland may, if it wants to, according to the Chinese side, receive information about the time of the trial, judgment, and place of its execution. China also declared that it could organize the participation of consular representatives at court hearings and visits to the place of Li's detention. As we argued above, the prosecutor badly misinterpreted these promises.

Prosecutor Marcin Saduś from the Regional Prosecutor's Office in Warsaw said that these promises plus China's response to their 11 questions were the basis for the prosecution to revert to the original decision to support the extradition. He said:

"I would like to point out that the position of the prosecutor's office on the withdrawal of support for extradition was justified. However, from that moment on, the court obtained a declaration from the Chinese side, which changed our perception of this case. At the moment when the state applying for the extradition of the detained declares its full readiness to cooperate, there are no grounds for blocking the extradition."

After re-examining the case, the court, chaired by Judge Katarzyna Stasiów, decided that China's willingness to cooperate meant that the extradition should go ahead. Following an appeal, the appellate court, chaired by Judge Ewa Jethon, upheld the decision in August 2020. The court stated there were no grounds for opposing the extradition.

During the re-trial, the verdict from the Swedish Supreme Court was been entered into evidence. It seemingly did not make any difference to the court that evidence presented proving promises from the Chinese side were so vague as to be meaningless and that it showed that such promises have been made and then broken before.

The court also ignored two key considerations -- namely torture and the right to a fair trial, both used extensively by other courts around the world to stop extraditions, and which are legally mandatory for Poland to consider, as they are cornerstones of the European Convention of Human Rights (ECHR) (articles 3 and 6).

The latest report on the issue of torture (and also partly on the right to a fair trial) in China, by the United Nations Committee Against Torture, blasts China's extensive use of torture, its lack of protections against it, the use of coerced confessions. It also brings up the issue of control of the judiciary by organs of the Chinese Communist Party. This report represents the latest report, by the highest organ in the world on the issue, yet has seemingly not been brought to the attention of the court. As Poland and China both are countries that have ratified the Convention Against Torture, it should bear full weight in any consideration.

China's conviction rate in 2019 was, according to data from China's Supreme Court and Supreme Procuratorate, over 99.96%.

Upcoming Supreme Court hearing

An appeal to the Supreme Court was filed on grounds of article 604 of Poland's criminal procedure law, which prohibits the surrender of detainees to countries where freedoms and rights may be violated. The Supreme Court is scheduled to hold its hearing on January 15. Defender Krzysztof Kitajgrodzki remains Li's lawyer.

Despite the re-trial having taken the Swedish verdict into consideration -- or at least it was translated into Polish for consideration -- the court has so far only cleared -- possibly -- one of three main hurdles for Li's extradition under the ECHR, which is legally binding for Poland, namely the prohibition of the use of, the death penalty. The right to a fair trial and the prohibition of torture remains to be adequately addressed.

Torture is most often used during pre-trial detention, while a suspect is being investigated. On the basis of extensive data, Li will most likely face torture (article 1) and maltreatment (article 16) – violating the Convention Against Torture, which Poland is legally bound to uphold, as well as the ECHR.

The prosecutor has not had to answer why confessions are so rampant and that almost all trials take place with a focus on, or use exclusively of, such confessions – a practice that ties the use of torture, and the absence of any right to a fair trial, nor the 99.96% conviction rate.

An in-depth review of EU-China judicial cooperation and relations summarized the issue neatly, stating “The separation of powers only takes place in terms of organisational structure but not in terms of functions since the legislative process also remains under the control of the Communist Party of China.”

In addition, the role of the Chinese Communist Party’s ‘Political and Legal Affairs Commissions’, a party organ that controls police, prosecutor and courts at every level, from top to bottom, has seemingly been brought up or taken into consideration when assessing the very idea of an independent legal system to handle Li’s case should he be extradited.

Nor has the possibility of Li being forced to ‘confess’ on national TV before any actual trial been brought up. This should also be a key issue with the sentence to death of a man accused of economic crimes just last week, Lai Xiaomin, who, was first in custody of the CCDI/NSC, and then, long before his trial, was paraded on national TV confession to all allegations. Safeguard Defenders have released extensive documentation and reports on this practice, and filed it for review by UN organs.

The Supreme Court will also have to consider the threats made against Li in the Chinese embassy’s response earlier, which the court has so far has failed to address. In addition, if the investigation into economic crimes against him was not at first due to his Falun Gong activities – which remain unknown – there is now such an ample amount of evidence to show that he will suffer both torture and maltreatment due his Falun Gong activities after he left China, and for having it brought up in the judicial process between China and Poland.

Should the Supreme Court fail to address these issues, it will not only fail in its duty but place the fate of Li in the hands of the Polish Minister of Justice, who has final say in the issue. A spokesman for the Minister of Justice recently stated that “We are aware that China is not a fully democratic country”, which shows clearly that the Ministry is either hopelessly ignorant or that they are intentionally turning a blind eye to the reality in China.

Unlike many of its counterparts, the Polish Foreign Ministry has not, it said in response to questions from Safeguard Defenders, released any country report on China, nor any statements as related to the Chinese judiciary, thus giving very little guidance for Polish courts to understand the situation of the criminal justice system in China.

The Ministry of Justice and the International Cooperation Office of the National Prosecutor’s Office admitted that the Polish side did not monitor the conditions under which persons were transferred to the People’s Republic of China under extradition. And even if promises of access were to be given in detail, with legal basis, and which would allow Poland impromptu access without warning, it is unlikely Poland would have the resources to actually carry out such any supervision.

Final consideration

Li, a businessman, was also a member of the Communist Youth League (CYL). His membership in the CYL, which Li claims he renounced in 2013, opens him up to being handed over to the National Supervision Commission (NSC) (also called Central Commission for Discipline Inspection (CCDI) when used on party members), which has jurisdiction over all party members, state functionaries, but also any economic crimes committed by anyone if it relates to the State, State-owned entities, or the Party.

The NSC is not, according to Chinese law, a judicial organ, but has mandate to carry out 'investigations', and may during those place suspects into secret custody for up to half a year in the liuzhi system. A report on the system was filed by Safeguard Defenders with the UN late 2019. A letter of allegations from the UN to the Chinese government has gone unanswered ever since.

Such incommunicado detentions, at secret locations, where foreign governments (if concerning foreigners) are not made aware of their whereabouts, nor are their families, constitute enforced or involuntary disappearances according to several statements by UN organs.

Likewise, all placements into Liuzhi must be in solitary confinement, which due to being done during investigation, and for prolonged periods, constitute both torture and maltreatment according to UN statements.

The establishment of the NSC, and it taking over a significant part of investigations into economic crimes which was before handled by the judiciary (prosecutor's office), has added another layer of complexity to any extraditions to China. As it is not part of the judicial system, should the person be taken over and investigated by the NSC, which is standard for economic crimes such as these, extraditions are no longer possible, as extraditions are intended to be from one judicial system and process to another. Handling a party member back to China for investigation by the NSC/CCDI is the equivalent of sending someone back for investigation by a political party's internal police.

China has made no guarantee that Li's case will not be handled by the NSC, nor could they, as only the NSC has mandate to make that decision, not the judicial system, so should such a promise be made, even if from the Prosecutor's office (let alone the Chinese embassy) it would not be legally binding.

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The learning curve for the Polish judicial system for handling this, and forthcoming extradition requests, is indeed steep, as it was in Sweden and is still across Europe, where courts and prosecutors, for understandable reasons, are almost entirely unaware of the functioning of China's judicial system. Considering the expansion of extradition requests, and other forms of judicial- and police cooperation, it is very urgently needed.