

AN ABSURD DECISION REFLECTS A CRISIS OF CONFIDENCE IN THE JUDICIAL SYSTEM:
WRITTEN AFTER LI JIAN LOST HIS LAWSUIT¹

by Pu Zhiqiang

At 1:30 p.m. on March 19, 2004, the Beijing No. 1 Intermediate Court handed down its appellate ruling in the administrative case of Li Jian versus the Beijing Municipal Communications Regulation Bureau (CRB). It rejected his appeal "according to law" and upheld the administrative ruling of the Xuanwu court.² This "legally effective"³ ruling is no different from declaring that in the face of certain government actions that abuse power, citizens don't even have the right to sue!

Li Jian was originally the victim of an unlawful demolition; his tiny property, accumulated over the course of several years of business, was destroyed in a day, and he had no avenue for seeking relief. But Li Jian was a man with a sense of responsibility. He understood that his own rights needed protection, and gradually came to realize that there were many others like him in the world. He thus proceeded to establish the "Network for Upholding Citizens' Rights" for the specific purpose of issuing news about the unlawful infringement of citizens' rights and the propagation of relevant legal knowledge. But this kind of "unemployed" person, dedicated to the public interest, could not be tolerated by the supervisory authorities. Without any notice to him, his "Network for Upholding Citizens' Rights" was shut down by the Beijing CRB. When he went to inquire about it, the official he spoke to frankly admitted that his web site had been shut down even though nobody [from the Bureau] had visited it. What really confused him was that they could not understand what the upholding of citizens' rights had to do with him personally. In order to uphold the rights of the "Network for Upholding Citizens' Rights", Li Jian retained me to bring an administrative lawsuit in the Xuanwu court in Beijing. Equally without rationale, the Xuanwu court rejected his lawsuit "according to law". Thus, this setback for Li Jian was by no means the first one.

The Beijing No. 1 Intermediate Court in its ruling stated that "Li Jian's suit does not meet the conditions for the bringing of an administrative lawsuit; the rejection of his suit by the court of first instance was correct." As for the legal conditions for bringing an administrative lawsuit and the reason that this lawsuit did not meet those conditions, the court as usual had not a word to say. Its absurdity and peremptoriness were out of the same mold as the Xuanwu court. The only difference between the two decisions is that the CRB simply didn't bother to show up for the

¹*Huangtang caijue zheshechu sifa xinren wei ji — xie zai Li Jian baisu zhi hou*, available at http://www.chinalegaltheory.com/bbs/showprint.asp?topic_id=2759&forum_id=72. Translated by Donald Clarke.

²Translator's note: Xuanwu is a district of Beijing municipality. The court in question is a Basic-Level People's Court.

³Translator's note: The ruling is called "legally effective" because the original ruling would not have been formally effective while the appeal was pending.

decision-reading performance staged by the appeals court; by its actual actions it demonstrated its appropriate contempt for the judicial organs that were bending over backwards to protect it. Probably they thought that with this kind of law-perverting verdict under their belt, they would have the complete power to deal with any website in the future — they could simply close them all down!

Under the pressure of power and black money, China's courts, under the name of the law, have declared Wang Juntao, Jiang Qisheng, Yang Zili, Zheng Enchong and others to be criminals. In the name of the law, they have declared it unlawful for attorney Zhu Yuantao to have brought books into the country. In the name of the law, they have declared that the upright and rigorous Mr. Wu Si should lose his lawsuit. In the name of the law, they have tolerated and protected the real estate magnates, blinded by greed, who have snatched away the property relied on by the little people for their livelihood. Yesterday, the court again in the name of the law stripped away the right to sue of Li Jian, who had dedicated himself to the mission of upholding citizens' rights. Against the background of these absurd and monstrous rulings, all high praise of judicial justice and slogans about judicial independence seem pale and feeble. Even if we do not consider law-perverting decisions that issue because the influence of money makes it difficult to win the case, these utterly distorted decisions, the result purely of the interference of political and administrative elements, are sufficient to give contemporary Chinese jurisprudence a place on history's wall of shame.

The significance of these judgments is that in the name of the law, the courts have declared the reality of utter lawlessness to the public. They have told the people that court judgments can ignore the law, that when there is a conflict between power and law, there may be absolutely no room for law to exist — even if it's the so-called law that they [the powerholders] wielded the sword to make themselves!

It cannot be denied that after acknowledging and accepting the corruption and arbitrariness of government organs, thinking people put their hopes for the rebuilding of social justice in the courts only on the basis of reason and there being no other alternative. They fervently hoped that courts could, in an era of social transition, lead China to realize the rule of law and constitutionalism. They wishfully believed that only the judiciary could undertake this great mission of national resurgence.

At a time when judicial justice has already become the dilemma of the century, this kind of fragile confidence urgently needs the sincere support and cultivation of everyone inside and outside of government. But reality tells us that the failings of the system determine that the whole body of judges has already, from its very bones, been castrated by power. The courts have again and again by their actions rejected people's warm embrace, continually overturned the faith of the public in the system, and used a ruthless iron fist to smash the rational dream of those such as Mao Yushi, He Weifang, Ji Weidong and Xiao Han. We have discovered to our sadness that any faith in the judicial system is perhaps all blind, because at least at present it is unworthy of receiving people's trust.

Precisely in this kind of absurd environment, Mr. Zhang Sizhi, on the basis of a win rate

of zero, was eulogized by Xiao Han as "the greatest lawyer" in the whole world. Lawyer Mo Shaoping, following closely in his footsteps, has with a succession of defeats become the glory of his profession. When lawyers become world famous because of their failures, one could call it a strange phenomenon unprecedented in history. But this is precisely the most awkward fact about the Chinese judicial environment today.

March 20, 2004