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THE LIFE IMPRISONMENT AND HUMAN SAFE GUARD IN EXTRADITION SYSTEM OF CHINA

Extradition is a traditional judicial cooperation between States, which represents the judicial sovereignty, in another side, the human right protection in extradition cooperation is important as well. The relationship between the life imprisonment and extradition is deserved to noted. This paper will first focus on the life Imprisonment in Chinese law system, then by analysis the key cases of European Court of Human Rights, the author discusses the obstacles results by life imprisonment in extradition, and how could resolved the legal obstacles, find the possible alternative solutions to life imprisonment as a legal obstacle in the extradition cooperation.

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1. Provisions and Interpretations of Life Imprisonment in the European Convention on Human Rights

The protection of human rights is a matter concerning the fundamental rights of all humanity, and it is also an indispensable representation of the spirit of the rule of law in modern society. Furthermore, the protection of basic human rights should be explicitly stipulated and guaranteed in the domestic legal systems of various countries.

1.1. The Curial Article Relatives to the Life Imprisonment in The European Court of Human Rights

The European Convention on Human Rights (hereinafter referred to as the ECHR) is formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms. It is an international treaty aimed at safeguarding human rights and fundamental freedoms in Europe. The drafting of the convention began around 1950, and it was subsequently signed by European nations with the support of the Council of Europe. It officially came into effect on September 3, 1953. Currently, all member states of the Council of Europe are parties to the convention, and newly joining members are also required to ratify it. The ECHR, plays a crucial role in interpreting the Convention in practice. Especially in recent years, the ECHR has provided specific, even nuanced interpretations of the protection of fundamental rights and the boundaries of freedoms through its case law.

Article 3 of the Convention addresses the prohibition of torture, stating: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” This provision is frequently cited in practice, as evidenced by the case law indexing pages published by the ECHR, making it one of the core articles of the Convention to avoid inhuman treatment, including in the extradition procedural.

Humanitarian treatment is reflected in its influence on criminal justice cooperation and extradition, often serving as a standard for evaluating the rule of law protections in the extraditing country. It assesses whether the extradited individual faces a real risk of torture or inhumane treatment after extradition. The case-law of ECHR is also relevant in cases of extradition to countries where death

penalty is still allowed, and the Court established doctrine of death row to reject extradition. (Bošković 2021:176) Then, the determination of whether life imprisonment constitutes torture or inhumane treatment plays a significantly impact on the extradition decisions.

Under the ECHR, the primary concern regarding life imprisonment is the conditions of confinement and the guarantee of basic procedural rights. The crucial focus is whether life sentences that are non-reducible and non-parole can serve as an absolute legal barrier to extradition, and whether they constitute a violation of Article 3 of the Convention.

1.2. Life imprisonment without reduction or parole

According to the latest case law guidelines issued by the European Committee on Crime Problems, Cases cited under extradition and life imprisonment include those involving the death penalty, terrorism offenses, the standards for whether life imprisonment constitutes torture, and the assessment of whether there is a real risk.

In the 2010 case of Babar Ahmad and Others v. the United Kingdom¹ from HCHR, there were six appellants accused of terrorism-related crimes for whom the U.S. requested extradition from the UK. Because these accusations involve terrorism, the individuals could face strict incarceration measures, as well as life sentences or the death penalty upon extradition to the U.S. Ultimately, the ECHR determined that the U.S. extradition request did not violate Article 3 of the Convention and did not constitute torture, agreeing to extradite all six appellants to the United States. Babar, as the first appellant, argues that he faces a significant risk of being subjected to special administrative measures during his detention in federal prison. These measures may include various actions such as solitary confinement, violating Article 3 of the Convention, and restrictions on communication with his lawyer, which contravenes Article 6 of the Convention. The United States' diplomatic assurances state that appellants, including Babar Ahmed, will not face the death penalty after extradition, will be prosecuted in federal court, and will enjoy full rights and protections. It emphasizes that the applicant will not be tried in a military tribunal nor will be classified as an enemy

¹ CASE OF BABAR AHMAD AND OTHERS v. THE UNITED KINGDOM, Applications nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09

combatant. The ECHR has determined that the U.S. diplomatic assurances clarify that he will not be sentenced to death following extradition. Furthermore, in this case, the court found that life imprisonment itself does not violate Article 3 of the Convention, which prohibits torture or inhumane or degrading treatment or punishment. For life sentences that are subject to commutation or parole, a violation of Article 3 would occur only if it can be demonstrated that the applicant's continued detention could not be justified under any legal penal rationale and that the sentence is, in fact, and in law, uncommutable.

In this case, ECHR found that the first, third, fourth, and sixth applicants faced life sentences that could be eligible for commutation or parole, and there was no indication that their treatment posed a real risk under Article 3 of the Convention. Therefore, it can be seen that life imprisonment, including life sentences that are not subject to reduction or parole, does not inherently violate Article 3 of the Convention. Instead, the focus of the ECHR is whether the life sentence itself exceeds the standard of reasonableness. Provided that the assessment of the persistence of legitimate reasons for detention must be carried out at the stage of implementation (ex post), life imprisonment is in any case contrary to the principles of the Convention if the offender is deprived of the possibility of knowing ab initio when, how and what he must do to obtain conditional release.

(Mario 2021:495) And whether the sentenced or the person being extradited faces a genuine risk of torture during the execution of the sentence.

1.3. Standards and Understanding of Detention Conditions

Due to the judicial or administrative force of extradition and deportation judgments or decisions, which inevitably involve the detention of the requested person, whether the conditions of detention meet the minimum standards protected by Article 3 of the Convention, and whether the requested person suffers from inhumane treatment due to the harsh conditions of detention, are also important factors for the ECHR in assessing whether the place of detention complies with the standards guaranteed by Article 3 of the Convention in extradition requests and similar appeals.

According to the "Guide on the case-law of the European Convention on Human Rights - Prisoners' rights," detainees should be held in places that respect human rights, and the level of pressure and suffering imposed by the place of

detention, whether it is a prison sentence or other confinement measures, must not exceed that inherent to the detention or imprisonment itself. The assessment of such places also includes appropriate safeguards for the health and treatment of detained individuals. The human rights protections granted by Article 3 of the Convention are foundational to the respect of human rights and represent the most basic rights protection. The ECHR adopts a particularly cautious approach to the implementation of Article 3, without distinguishing whether the country is a member of the Convention. Additionally, the protection of rights is not diminished by the prospect of deporting the individual to another country. Therefore, regardless of whether the appellant is facing extradition proceedings or a review of an entry ban, the standard of review concerning their detention conditions remains consistent.

In other words, the ECHR does not distinguish in its examination of the standards of detention involved in administrative expulsion orders and extradition procedures regarding the protections of Article 3. Violations of the fundamental rights protected by Article 3 of the Convention are linked to the conditions at the place of detention, meaning that the conditions of detention must not exceed the treatment inherent in the deprivation of liberty itself. This implies that places of detention that comply with Article 3 of the Convention must respect fundamental human rights, and the methods and conditions imposed during the execution of imprisonment or other forms of detention must not subject the detainee to a level of stress and suffering that exceeds the suffering included in the detention itself.

Regarding the treatment of detainees, it is essential to first consider the ECHR's definition of the term "place of detention." According to the European Court of Human Rights' "Guide on the case-law of the European Convention on Human Rights-Prisoners' rights," the scope of detention facilities includes all locations used for confinement. This encompasses places where fixed-term and life sentences are served, such as prisons, and also includes sites for temporary detention like police station holding cells, facilities for detaining illegal immigrants, and transitional detention sites used during extradition proceedings all of which fall under the concept of detention facilities as outlined in the Convention. Furthermore, the articles in the Convention that pertain to the treatment of prisoners primarily include Articles 3, 5, and 8. These articles respectively provide the

foundational guarantees for prisoners' treatment in terms of protection against torture, the right to liberty and security, and the respect for private and family life.

Specifically, according to the provisions of the Convention, the treatment of prisoners and the guarantees concerning detention facilities include the following aspects: First, regarding detention conditions, these include (1) whether visits are allowed and recorded follow-up; (2) the facility; (3) food and accommodation; (4) sanitary conditions; (5) clothing and bedding; (6) nutritional conditions; (7) exercise and recreational facilities; (8) research and monitoring; (9) the transportation of prisoners. Second, the right to contact with the outside world, including (1) contact and visits with family; (2) the right to marry; (3) guarantees for different means of communication. Third, medical and health conditions within detention facilities. Fourth, guarantees for life imprisonment prisoners. Fifth, the protection of judicial rights, including the right to legal defense, effective participation in domestic litigation, and effective communication with the court. Sixth, the rights to freedom of thought, speech, and religion. Seventh, other rights, including the right to work, protection of private property, the right to education, the right to vote, protection against discrimination, and the right to obtain effective remedies. Among the aforementioned provisions, the rights primarily concerning detention facilities fall under the first major category regarding detention conditions.

The ECHR takes into account the aforementioned factors in a cumulative manner when assessing detention conditions, as well as the length of detention. It considers that the restrictions faced by detainees accumulate over time, and the harm suffered in an environment that does not meet detention standards becomes more severe with prolonged exposure. Importantly, the assessment of detention conditions must be contextualized within the specific circumstances of each individual case, in order to determine whether the detention conditions faced by the applicant in a particular case comply with the fundamental principles of human rights protection outlined in the Convention.

The extradition's viability is a factor in determining whether the penalties that the receiving country might impose meet the "minimum severity" standard established by Article 3 of the convention. If this standard is met, it may be deemed inhumane and degrading. However, in extradition cases, the considera-

tion of “minimum severity” does not align absolutely with domestic legal contexts. British judge Lord Hoffmann pointed out that viewing the application of Article 3 relativistically is crucial for the ongoing operation of extradition. For instance, in the case of *Napier v. Scottish Ministers*, the Scottish Court of Appeal ruled that the practice of “slopping out” (requiring prisoners to use a bucket in their cells and dispose of it in the morning) may violate Article 3. According to the judgement, it is said that may skeptical about whether this practice reaches the necessary degree of severity even in a domestic context. However, if applied in an extradition context, it would prevent anyone from being extradited to many countries poorer than Scotland, where, even outside of prisons, people often lack access to flushing toilets.

From a juridical point of view, we establish dignity as a juridical ground and so we stress the equal value of every human being on the mere fact of his existence as such. (Pérez 2021:478) In evaluating whether the conditions in detention facilities constitute inhumane treatment, British judges have indicated in their rulings that whether a violation of Article 3 of the Convention occurs depends on the specific circumstances of each case². There is no universal standard to determine if the treatment in different countries around the world is inhumane or degrading. In extradition cases, it is necessary to specifically assess whether the person being extradited faces inhumane treatment.

2. Regulations on Life Imprisonment in Chinese Domestic Law

2.1. The Life Imprisonment Stipulates in Criminal Code of China

Article 46 of the Criminal Law of the People’s Republic of China defines life imprisonment primarily as the deprivation of personal freedom for life. However, due to provisions regarding sentence reduction and parole, in practice, life imprisonment does not necessarily result in lifelong confinement. In China, individuals sentenced to life imprisonment retain the hope of reintegrating into society and are not destined to despair. Those sentenced to life imprisonment can have their sentences reduced or be granted parole if they demonstrate genuine

² CASE OF BABAR AHMAD AND OTHERS v. THE UNITED KINGDOM, Applications nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09

efforts to reform. “The key is for them to strive for it themselves.” Therefore, a life sentence does not equate to a prisoner being locked away until death, leaving them hopeless about their future. On the contrary, it can motivate them to reform in pursuit of sentence reduction and parole. In terms of actual enforcement, since the vast majority of prisoners are typically eligible for sentence reductions or parole based on their rehabilitation efforts, the occurrence of individuals being imprisoned for life without any possibility of reduction or parole is quite rare. This practice is largely consistent with that of most countries abroad, where life sentences do not equate to a literal life term.

Certainly, the application of this alternative measure is subject to very strict limitations. On one hand, the eligible subjects are limited exclusively to those convicted of particularly severe cases of embezzlement or bribery that result in a suspended death sentence; it does not apply to other serious crimes. Therefore, life imprisonment is not established as a general rule in the General Principles, but rather specified in the Detailed Provisions concerning sentencing for embezzlement and bribery offenses, thus maintaining the overall stability of the penal system. On the other hand, there are requirements regarding the circumstances of the crime. Life imprisonment does not apply to all offenders sentenced to a suspended death sentence for embezzlement or bribery; instead, the people’s courts decide specifically whether to apply it based on the circumstances of the offense and other factors.

In terms of substantive law, the life imprisonment stipulated in China’s Criminal Law does not mean that reduction of sentence or parole cannot be executed. According to Article 78 of China’s Criminal Law, which outlines the “conditions and limits for sentence reduction”: criminals sentenced to control, detention, fixed-term imprisonment, or life imprisonment may have their sentences reduced during execution if they strictly adhere to prison regulations, accept educational reform, demonstrate genuine remorse, or show meritorious conduct. Sentence reduction should be granted for any of the following significant meritorious acts: (1) preventing others from committing serious criminal activities; (2) reporting major criminal activities inside or outside the prison that are verified to be true; (3) making inventions or significant technological innovations; (4) selflessly saving others in daily production and life; (5) showing outstanding performance

in resisting natural disasters or handling major accidents; (6) making other significant contributions to the country and society.

According to Article 78 of the Chinese Criminal Law, the standards for reducing life imprisonment and fixed-term imprisonment in our country are the same, and different levels of reduction are established. The most fundamental requirement for a reduction in sentence is compliance with prison regulations and acceptance of education and rehabilitation. This aligns with what the ECHR indicates in its guidance on cases regarding the rights of prisoners under the European Convention on Human Rights, which states that the execution of life imprisonment should reflect the goal of re-education for reintegration into society. At the procedural law level, Article 273(2) of the Criminal Procedure Law of our country stipulates that for criminals sentenced to control, detention, fixed-term imprisonment, or life imprisonment, if they demonstrate genuine remorse or meritorious conduct during their sentence, the executing agency should submit a proposal for sentence reduction or parole to the People's Court for review and decision, with a copy of the proposal sent to the People's Procuratorate. The People's Procuratorate can submit written opinions to the People's Court. This provision clearly indicates that in our country, the reduction of life imprisonment and fixed-term imprisonment, as well as parole, are supervised by the executing authority based on the behavior of the convicted person during their sentence. If there are signs of remorse or meritorious performance that meet the legal standards for reduction of sentence or parole, the executing authority has the responsibility to submit a recommendation, which the court will review according to legal procedures. There are established legal procedures for the reduction of sentence and parole for life imprisonment. In addition, regarding specific issues related to sentence reduction, in 2012, the Supreme People's Court issued the "Regulations on Several Issues Concerning the Application of Law in Handling Sentence Reduction and Parole," in which Articles 24 to 26 specifically outline the materials required for courts to hear cases of sentence reduction and parole, the public disclosure of such cases, and the methods of adjudication. Article 26 states that written hearings are generally applicable to cases of sentence reduction and parole, while special circumstances, such as significant meritorious performance, may warrant a court hearing. This corresponds to the provisions of Article 78 of China's Criminal Law, indicating that life imprisonment in Chinese law has the

potential for statutory sentence reduction. The core criteria for considering sentence reduction are the inmate's compliance with prison regulations and their demonstration of remorse.

2.2. The Practice of Life Imprisonment Impact on the Extradition Case of China

In the past, in the extradition practices between China and European countries, the Audiencia Nacional (National Court) of Spain has recognized the possibility of parole for life sentences in its extradition cooperation with China. In its judgment No. 24/2014, dated May 19, 2014, it pointed out: "Conditions for parole, such as those specified in Article 78 of the Criminal Law of the People's Republic of China accepting education, undergoing character correction, complying with prison regulations, demonstrating remorse, and performing meritorious deeds are also generally stipulated in the legislation of various countries, including Spain, as conditions for obtaining preferential treatment in the execution of sentences. The relevant provisions of the Criminal Law of the People's Republic of China state that the people's courts shall respond to individuals who show genuine remorse or perform meritorious deeds and are responsible for ruling on issues of parole, which means that the decision on parole is made by judicial authorities established under the constitutional system of China and can be influenced by the offender's demonstration of remorse." Ultimately, the Spanish National Court concluded: "In summary, Chinese legislation has provided for the modification of life sentences, allowing such penalties to be shortened and no longer considered life imprisonment, thereby concluding that the request for extradition made by the relevant authorities in China concerning the appellant does not violate the Spanish Constitution." It is evident from this conclusion by the Spanish National Court that the ordinary life imprisonment stipulated in Chinese criminal law contains substantive and procedural regulations for parole, and a sentence of life imprisonment does not absolutely imply a lifelong incarceration. Such life imprisonment meets the standards of human rights protection stipulated in Article 3 of the Convention and does not fall under the category of inhuman or degrading punishment that is non-paroleable.

It can be understood that in the future, when making diplomatic commitments regarding life imprisonment in Europe, in order to comply with Article 3

of the Convention, it is essential first to clearly articulate the meanings of our criminal law and criminal procedure law. Life imprisonment includes fixed-term imprisonment. According to Article 78 of our Criminal Law, both life imprisonment and fixed-term imprisonment have the possibility of legal reduction of sentence, and this possibility is mandated by law rather than being optional. Our country provides for two situations in which a sentence can be reduced, both of which are mandatory reductions or parole as stipulated by law. Firstly, concerning the understanding of sentence reduction, a convict who abides by prison regulations and does not commit new or overlooked offenses is entitled to a legal review opportunity for sentence reduction. This is in line with the practical aspects highlighted by the ECHR, which states that individuals sentenced to life imprisonment should have access to judicial review opportunities for sentence mitigation within their home country's judicial system upon return. The legal provision in our Criminal Law regarding the expression of "repentance" is reflected in the convict's compliance with prison rules and their acceptance of education and rehabilitation during incarceration, without any additional legal obligations or preconditions required for sentence reduction.

In addition, the judicial interpretation in our country has further clarified the applicable standards for the possibility of sentence reduction. The Supreme People's Court's 2016 "Regulations on the Specific Application of Laws for Handling Sentence Reduction and Parole Cases" (hereinafter referred to as the "Regulations") stipulates in Article 3 that the expression of genuine remorse refers to the simultaneous fulfillment of the following conditions: (1) confessing guilt and expressing remorse; (2) complying with laws, regulations, and prison rules, and accepting educational reform; (3) actively participating in ideological, cultural, and vocational education; and (4) actively engaging in labor and striving to complete labor tasks. This judicial interpretation clarifies that the specific demonstration of remorsefulness is the compliance of inmates with prison rules and the management norms of the prison environment. Furthermore, the 2021 "Opinions on Strengthening the Substantive Hearing of Sentence Reduction and Parole Cases" issued by the "Two Highs and Two Ministries" (hereinafter referred to as the "Opinions") stipulates in Article 5 that for those eligible for sentence reduction, they must meet the assessment criteria of prison rules, specifically complying with the rules and accepting educational reform. It emphasizes that as long as

inmates comply with prison rules and have not violated any regulations, they can achieve sentence reduction through the assessment system in practice.

Secondly, regarding the understanding of circumstances that warrant a sentence reduction, the criminal law of our country stipulates several significant circumstances under which a sentence reduction is applicable. If a convicted person exhibits behaviors specified in the provisions during their imprisonment, it constitutes a special circumstance for sentence reduction. Article 6 of the “Regulations” clarifies the specific extent of sentence reductions, providing a greater reduction for significant meritorious conduct and other special circumstances. The “Opinions” state that significant circumstances require specialized evidence to be proven. Considering that significant circumstances can lead to a larger sentence reduction according to our criminal law, a more detailed assessment process has been established. Only those significant circumstances that meet the legal standards can be recognized. This also confirms that, in our judicial practice, individuals serving fixed-term or life sentences have a legal possibility of obtaining a sentence reduction as long as they comply with prison regulations. Furthermore, from the perspective of procedural law, our country also has a legal procedure for reducing life sentences, and this procedure operates as an automatic mechanism. As long as the inmate meets the criteria for sentence reduction, they can apply to the court for a reduction without needing to fulfill additional conditions.

3. The Relationship Between Torture and Life Imprisonment

In fact, life imprisonment without the possibility of parole or probation does not inherently constitute a violation of Article 3 of the Convention; rather, it depends on whether this punishment is clearly excessive or disproportionate in severity.

In the 2001 case of *Nivette v. France*³, the ECHR ruled that the extradition request involved a U.S. citizen, Nivette, who was accused of murdering his girlfriend. The United States requested his extradition, and France agreed. Afterward, Nivette appealed to the ECHR, arguing that upon extradition to the U.S.,

³ DÉCISION PARTIELLE SUR LA RECEVABILITÉ de la requête n° 44190/98 présentée par James NIVETTE contre la France.

he could face the death penalty or life imprisonment without the possibility of parole, both of which he considered to be forms of torture. The ECHR, upon reviewing the case, found that the U.S. prosecutor provided an affidavit stating that the charges against Nivette upon his return would not include any circumstances that would definitely lead to the death penalty or life imprisonment without parole. According to the California Penal Code, a death sentence for murder must be based on one of the 12 special circumstances outlined in the code, and the crimes committed by the extraditee did not fall under any of the 12 specified offenses.

The prosecutor's oath simultaneously indicates that her sentencing commitment is legally binding on both her and the government of California, USA. The ECHR thus determined that the extradition request would not pose a serious risk of violating Article 3 of the European Convention on Human Rights for the individual being extradited. Furthermore, the sentencing commitment clearly states that the death penalty will not be imposed, including both not imposing and not executing it. This means that the avoidance of the death penalty encompasses not only the final execution but also the rejection of any potential written judgment that could induce psychological fear in the extradited individual, which also constitutes torture. In the extradition request submitted by the United States, it is clearly stated that based on the charges against the extradited person, they would face a maximum of 35 years in prison and may also be eligible for parole. According to the California Penal Code, offenders may be eligible for parole after serving one-seventh of their sentence.

Ultimately, the ECHR determined that the sentencing assurances provided by the U.S. judicial authorities were clear and could explicitly rule out the possibility of the extradited individual facing the death penalty or torture upon returning to their home country. The court rejected the appellant's request and upheld the extradition decision.

Article 3 of the European Convention on Human Rights addresses the understanding of torture, distinguishing between torture and ill-treatment. Torture refers to inhumane treatment that causes severe or cruel suffering, as defined in Article 1 of the United Nations Convention Against Torture. According to the convention, the act of torture must also have a specific purpose. Torture can take

many forms, including deprivation of sleep, rape, denial of food or forced feeding, and denial of medical treatment.

The ECHR has not excluded the threat of torture from the scope of torture itself. The court believes that in certain special circumstances, the threat of torture can also cause significant psychological fear, achieving the effects and purposes of actual torture. If an extradition request poses a real danger to the individual, the contracting states of the European Convention on Human Rights should not expel or extradite them to the receiving country. This danger refers to the treatment that the extradited person is likely to face, which contradicts the protections provided under Article 3 of the European Convention on Human Rights.

In examining evidence of violations of Article 3, the ECHR does not replace domestic courts in conducting a thorough review of the evidence, but rather assesses the conclusions of domestic courts to ensure they conform to the fundamental rights protected by the European Convention on Human Rights. The evidence for a violation of Article 3 should reach the standard of “beyond reasonable doubt,” but the ECHR also allows for evidence that is sufficiently clear, compelling, or irrefutable through inference.

4. Conclusion

Overall, the impact of life imprisonment in extradition cases is a topic worthy of discussion. Through the cases mentioned in the text, we can see that the European Court of Human Rights considers the impact of life imprisonment on extradition decisions based on different circumstances of the cases and the requesting countries, leading to varied handling of the final extradition decisions. Life imprisonment, as a special form of punishment, especially regarding whether life imprisonment without the possibility of reduction or parole constitutes a violation of fundamental human rights, has sparked increasing research and discussion among scholars. Ultimately, when determining whether life imprisonment itself complies with human rights protection in extradition procedures, it is necessary to make specific and objective judgments based on the domestic legal systems of the respective countries.

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