DOI:10.47152/PrisonLIFE.D4.5.18
Review Paper

The Extradition Legal System of China

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This paper outlines the extradition law system in China, focusing on bilateral treaties for extradition that have been signed and ratified. It articulates the fundamental principles of China's extradition law and the diplomatic commitments involved in the extradition process. Furthermore, the analysis highlights advancements in legal frameworks, particularly from the prospect of case involved with life-imprisonment, detailing successful cooperation through specific case studies with European nations in the field of extradition.

Keywords: *Extradition, Life-imprisonment, Human Right, International Cooperation*

1. The Legal Framework of International Judicial Cooperation in Criminal Matters in China

In the contemporary landscape of globalization, the criminal sphere has evolved in conjunction with the increasing interconnectedness of nations.[2] Indeed, as movement about the world becomes easier and crime takes on a larger international dimension, it is increasingly in the interests of all nations that suspected offenders who flee abroad should be brought to justice.[3] Transnational crime - encompassing offenses such as human trafficking, drug smuggling, and cybercrime - demands attention not only for its scope and impact but also for the complexities it introduces in law enforcement and judicial processes. As criminals exploit international

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[2] Chao, Y. (2021). The human right safeguard for person extradited in China. *Right to life*. Belgrade: Provincial Protector of Citizens – Ombudsman, Institute of Criminological and Sociological Research

[3] Griffith, G., Harris, C. (2005). Recent developments in the law of extradition. *Melbourne Journal of International Law*, *6*(1), 33-54.

boundaries to evade justice, the need for robust judicial cooperation and effective extradition mechanisms has become paramount. In other words, more offences contain transnational features, which including the fugitives flee abroad, the crimes committed or the consequences of offences in different countries, then to deal with these offences, the demands for judicial cooperation and extradition requirements is increasing.

International law is the basis for international community, the rule of law is essentially a mechanism for implementing natural law standards on human rights in international law and in national legislation[4]. In these years, China played active legislation progress in the field of international judicial assistance in criminal matters, on 26th August 1993 China signed the first bilateral extradition agreement with Thailand. This agreement represented the first step in the development of collaborative relations on extradition with other countries and led to the beginning of a process of harmonization of the Chinese legal system with the international rules on judicial cooperation in criminal matters. Till now, China has signed bilateral extradition agreements with 46 countries, including 14 European countries[5].

1.1 The Law of Extradition of People Repubblica of China

On 28th December 2000, the Permanent Commission of the National Popular Assembly enacted the Extradition Law. Besides the rules of substantive and procedural law related to extradition, A significant step forward in the development of contemporary Chinese legislation on international judicial cooperation is represented by the fact that the Extradition Law do no longer identify the extraditable person as an "object", at the mercy of the political and diplomatic transactions concluded between the requesting country and the requested one. The extraditable person is a legal entity in the process. Plus, as in the common criminal procedure, the extraditable person benefits from the protection of fundamental rights in the passive extradition process.

[4] Kambovski, V. (2018). Natural Rights, Legitimacy of Laws and Supranational Basis of Unlawfulness. *Yearbook Human Right Protection "From Unlawfulness to Legality"* (pp. 31-51). Belgrade: Provincial Protector of Citizens – Ombudsman, Institute of Criminological and Sociological Research

[5] http://treaty.mfa.gov.cn/Treaty/web/list.jsp?nPageIndex_=1&keywords=%E5%BC%95%E6%B8%A1&chnltype_c=all accessed on 5.10.2024.

1.2 The Law of International Judicial Assistance in Criminal Matters of People Republic of China

On October 26, 2018, the Sixth Session of the Standing Committee of the 13th National People's Congress voted to adopt the Law of the People's Republic of China on International Criminal Judicial Assistance. The assistance refers to providing mutual support when China and other countries deal with criminal cases, including legal document delivery, investigation and evidence collection, freezing, confiscating and recovering assets, as well as transfer and management of offenders, the law stipulated. The law represents a significant step forward in international cooperation, which provided solid legal basis, not only for criminal justice practitioners, but also for the persons suspected and accused in cross-border criminal proceedings. This reflects positive developments on the respect of fundamental rights and individual freedoms, which are a pre-condition for future cooperation in criminal matters. Also, Chapter VI of the Supervisory Law refers international Cooperation against Corruption, clarifies many contents of anti-corruption work and cooperation between the National Supervisory Commission and other countries, regions and international organizations, and provides an important legal basis and procedural guarantee for international person sought and asset recovery of corruption.

1.3 The System of Exanimation of Extradition in China

From the domestic law perspective, extradition may be viewed as part of the criminal process, with the emphasis on the fugitive's rights[6], and the human right protection shall be respected by all of States in the whole process.

The extradition law of China introduced a system of double verification on extradition requests, in other words a joint administrative and judicial examination system. The State Council, which is the Chinese supreme executive body, is in charge of the administrative control and it exerts its power though the Minister of Foreign Affairs. Differently, the judicial control is exerted by the Supreme Court and the Superior Court which is appointed by the Supreme Court itself. The warrant issued by the superior courts in the proceedings for passive extradition has to be verified and confirmed by the Supreme Court. During both the judicial and the administrative

[6] Williams, S. (1992). Human Rights safeguards and International Cooperation in Extradition: Striking the Balance. *Criminal Law Forum*, *3*(2), 191-224.

examination, the competent authority has the veto right, that is the power to reject the extradition request, and the decision made on the basis of the veto right is immediately effective.

2. Principles in the Extradition Process

In the sense of criminal law the protection of life represents the fundamental dimension of criminal law protection. Extradition as an especial process of criminal procedural, involved with the cooperation between two judicial sovereignty, which needs more emphasized on the right safeguard. However, the crucial issue that arises here is that a foreign legal system is not unjust just because is different.[7]

2.1 Grounds for Deny the Extradition Decision

As the UN model treaty listed the grounds may and shall be deny the extradition request, which can be divided to two parts, obligations grounds and optional grounds. In the extradition law of China and the bilateral treaties in China, all of them clearly stipulate the grounds that may and shall deny extradition request because of the request contains the risk that against the person extradited' basic right. In general, these grounds could be catalogued as three groups, firstly, the extradition request against human treatments, such as once the request been approved, the person extradited would be subjected to torture or other cruel, inhuman or humiliating treatment or punishment when he/she back to the requested country or he/she already been thought above inhuman treatment. Secondly, the extradition request is based on unprejudiced opinions, like the political opinion or region grounds, also includes that the person extradited has been granted asylum status. Thirdly, in particular consider the person extradited physical condition if the extradition may results in harmful impact on healthy condition.

By these grounds, we can see that in the law and treaties in China, the extradition process and final decision all based on the spirt of human right safeguard, if the requirement may result in damages to human right, against the basic right, it would be denied.

[7] *Ibidem.*

2.2 Dual Criminality

The dual criminality means that the offense must be considered criminal in both states. The crucial factor is whether the conduct is viewed as criminal in both states and there is a sufficiency of evidence—usually from the perspective of the requested state[5]. The UN Model Treaty on Extradition, for example, provides that double criminality is met despite differences in denomination, categorization and in the elements of the compared offences. Obey with the dual criminality is a fundamental principle in extradition process, there are various essential conditions for extradition respected in most treaties and domestic laws.

In light of what has been talked about the double criminality, if a crime is listed in the treaty some states take the view that that listing is determinative of extraditability and double criminality is not required[8], the approach taken in China is by clearly explain the requirement for double criminality, nor listed the crimes that shall be decisive for extradition in treaties. In the treaty between China-France on extradition, article 2 refers to the extraditable offences, which stipulates that any act which constitutes an offence under the laws of both States shall be an extraditable offence, the act whether commit crimes not depend on whether the offence belongs to the same certain of crime or the specific crime, but shall according to the laws of requesting or requested country. Also, we can find the similar articles in other bilateral treaties between China and other countries for the dual criminality.

2.3 Rules of Specialty

Rule of specialty in the extradition is another fundamental way that protect human right, with the binding of specialty principle, the person extradited would not suffer other unjust accusing. The rule sets an obligation to the requesting State that avoid to arbitrary criminal charging to the person extradited. If the specialty rule were not given effect, it would negate the whole worth of the extradition procedure and vitiate any safeguards for the fugitive[9].

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[8] Boister, N. (2018) *Global Simplification of Extradition: Inter-Views with Selected Extradition Experts in New Zealand, Canada, The US and EU. Criminal Law Forum,* (29), pp. 327–375.

[9] Williams, S. (1992). Human Rights safeguards and International Cooperation in Extradition: Striking the Balance. *Criminal Law Forum, 3*(2), 191-224.

In the extradition law of China, article 14th expressed the rule of specialty, the Requesting State shall make the following assurances when requesting extradition: no criminal responsibility shall be investigated against the person in respect of the offences committed before his surrender except for which extradition is granted, nor shall that person be re-extradited to a third state, unless consented by the People's Republic of China.

With stipulated the rule of specialty, the article also with an exception provision to the specialty, in the circumstance that extradited to the Third State with consent of the China or the person extradited still stay in the requesting country or voluntarily back to it in certain period. Besides the law, in the treaty between China and Portugal on extradition, article 14 is clearly stipulated that the person extradited to the execution of sentence in the requesting party for an offence committed by that person before his surrender other than that for which the extradition is granted nor shall that person be re- extradited to a third State.

3. Regulations on Life Imprisonment in Chinese Domestic Law

3.1 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 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.

3.2 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.

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.

Conclusion

China's judicial system can ensure that criminal suspects and defendants fully enjoy all basic procedure rights, including the right to defense, and receive a fair and impartial trial, and will not be subjected to inhuman or degrading treatment or extorted confessions by torture. China's detention system has strict procedures and restrictions, and any extension of the detention period must go through strict approval procedures. China's law clearly provides for a system of diplomatic assurances and a mechanism to ensure their full implementation. For the extradited person who finally extradited back to China would not face the risk of inhuman and degrading treatment or unfair trial after extradition.

References

Boister, N. (2018). *Global Simplification of Extradition: Inter-Views with Selected Extradition Experts in New Zealand, Canada, The US and EU. Criminal Law Forum*, (29), pp. 327–375.

Chao, Y. (2021). The human right safeguard for person extradited in China. *RIGHT TO LIFE.* Belgrade: Provincial Protector of Citizens – Ombudsman, Institute of Criminological and Sociological Research.

Griffith, G., Harris, C. (2005). Recent developments in the law of extradition. *Melbourne Journal of International Law*, *6*(1), 33-54.

http://treaty.mfa.gov.cn/Treaty/web/list.jsp?nPageIndex_=1&keywords=%E5%BC%95%E6%B8%A1&chnltype_c=all, accessed on 5.10.2024.

Kambovski, V. (2018). Natural Rights, Legitimacy of Laws and Supranational Basis of Unlawfulness. *Yearbook Human Right Protection "From Unlawfulness to Legality"* (pp. 31-51). Belgrade: Provincial Protector of Citizens – Ombudsman, Institute of Criminological and Sociological Research.

Williams, S. (1992). Human Rights safeguards and International Cooperation in Extradition: Striking the Balance. *Criminal Law Forum, 3*(2), 191-224.