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THE UNDERSTANDING OF THE CONCEPTION AND PRACTICE OF PROTECTION OF THE RIGHT TO HEALTH IN THE LEGAL SYSTEM OF CHINA

This paper examines the substance and implications of Health Right in the related international human right convention and the European Convention on Human Rights (ECHR). In particular, using representative cases as a focal point aims to provide a comprehensive analysis of the European Court of Human Rights' (ECtHR) interpretations and recent developments regarding on the protection of health right Also, through the compared research and understanding of cruel or inhuman treatment in ECHR, it seeks to underscore the fundamental protection of the right to health within the Chinese judicial system.

Keyword: *health right, extradition, Ill-treatment, judicial fair, China law system; human right.*

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Introduction

The right to health is one of the most fundamental rights of natural persons and forms the basis for the protection of other basic rights enjoyed by individuals. Consequently, international and regional human rights conventions, as well as the domestic laws of various countries, have clearly stipulated safeguards for the right to health. Within national legal systems, the legal protection of the right to health can be found across various branches of law. The right to health is also typically enshrined in constitutions as one of the core components of fundamental human rights. In the context of international criminal judicial cooperation, the protection of the right to health generally involves assessing, during extradition proceedings, whether the requesting party's overall legal system adequately safeguards human rights. This assessment includes consideration of whether the requesting party respects and adheres to legal standards for the protection of fundamental human rights, ensuring that persons subject to extradition are afforded basic rights and are not subjected to torture or inhuman treatment throughout the entire process, from their return to the requesting country and the ensuing judicial proceedings, through to the execution of any sentences imposed.

1. The Connotation of the Right to Health in International and Regional Human Rights Conventions

1.1. International Conventions

One of the core conventions in the international human rights sphere, the International Covenant on Economic, Social and Cultural Rights (ICESCR), stipulates the right to health in Article 12. The right to health encompasses the protection of both physical and mental health of individuals, and requires States Parties to fulfill corresponding domestic legal obligations, transforming the protection of rights in the Covenant into domestic legislation, and ensuring comprehensive protection of the right to health across various sectors and for specific groups.

Meanwhile, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 14, emphasized that the right to health should not be understood as a right to be healthy. The right to health includes both freedoms and entitlements. Therefore, the right to health under international human rights law is a richly substantive right, involving not only the basic physical health of individuals, but also representing individuals' access to other possible rights. Freedoms include the right to control one's own health and body, as well as the right to be free from interference, such as freedom from torture, or non-consensual medical treatment and experimentation.

Regarding general legal obligations, the Committee clearly states that, in guaranteeing the right to health, States Parties are subject to three types of obligations: to respect, to protect, and to fulfill. The obligation to respect requires States Parties to refrain from directly or indirectly interfering with the enjoyment of the right to health. The obligation to protect requires States Parties to take measures to prevent third parties from interfering with the guarantees of the right to health. The obligation to fulfill obligates States Parties to adopt appropriate legislative, administrative, budgetary, judicial, promotional, and other measures to fully realize the right to health.

It is evident that international conventions define the right to health in relatively broad terms. This aligns with the general establishment mechanisms of such conventions, as a comprehensive scope allows for adaptation to the domestic legal systems of the States Parties. At the same time, these conventions explicitly delineate the protective obligations of the States Parties: not only must States Parties respect and safeguard the right to health, but they are also required to take effective measures to continuously promote its protection and to prevent improper infringements of this right by third parties. This implies that States Parties should, through legislation, establish corresponding legal liabilities for acts that infringe upon the right to health.

1.2 Regional Convention

The European Convention on Human Rights is a regional human rights treaty established under the ideals of "human rights, democracy, and the rule of law." The Convention protects individual rights, and, when a contracting state violates its obligations under the Convention or infringes upon the rights and freedoms of victims, individual petitions may be submitted if the admissibility criteria for cases are met.

The human rights protected under the Convention are safeguarded by a balanced framework composed of both theory and concrete practice. The Convention not only stipulates the specific content of the fundamental human rights to be protected but also, through a series of protocols, has expanded and removed certain rights and freedoms, thereby clarifying the scope and substance of the rights protected by the Convention. In fact, in addition to the European Convention on Human Rights, the European Social Charter also serves as a fundamental legal instrument in constructing basic human rights protection in Europe. These two legal documents form the core legal foundation of the European human rights protection system. Each sets forth legally binding human rights standards for contracting states, establishing two distinct categories of rights: one being civil and political rights, the other being economic, social, and cultural rights. Civil and political rights are interdependent with economic, social, and cultural rights; together,

they constitute the indivisible principles upon which the European democratic system is founded.

The European Court of Human Rights is a specialized court that examines violations by States Parties of their obligations under the European Convention on Human Rights. It exercises supplementary external supervision over national judicial protection of human rights by using the Convention as a minimum standard. The ECtHR is of the opinion that the state is not only obliged to provide an appropriate legal framework for combating domestic violence, but also to ensure its effective implementation (Kolarić, 2024:108). Generally, the Court does not review, in the first instance, whether domestic laws of member states contravene the Convention, nor does it have authority to assess whether national courts' interpretations are consistent with their own constitutions and laws. The Court is limited to examining whether the legal interpretations of domestic judges and the relevant national legal frameworks meet the minimum standards set by the Convention. Therefore, the European Court of Human Rights demarcates a baseline for respect and compliance with the European Convention on Human Rights; member states are required to ensure that provisions for human rights protection established through their domestic legal systems conform to these minimum standards. Case law is formed by the judgments rendered by the Court on the basis of the Convention. The case law of the European Court of Human Rights gives vitality to the Convention. Moreover, the Court's case law serves as a reference for the judicial institutions of the European Union, namely the Court of Justice of the European Union, when handling human rights cases. Through case law, the Convention becomes a "living instrument," providing a continuous source of development for Europe's human rights protection mechanisms. It is precisely through the highly active judicial activities of the Court in recent years, particularly its role in interpreting the Convention, that the European Convention on Human Rights has been kept vital and relevant in its application.

As indicated by the Committee on Economic, Social and Cultural Rights, the interpretation of the right to health is comprehensive. In the field of international criminal justice, the protection of the right to health is further linked to issues such as the prohibition of torture and inhuman treatment within extradition procedures. Regarding the protection of the right to health in international criminal justice, this right is regarded as a microcosm for assessing the overall human rights and rule of law conditions in the requesting state for extradition. In recent years, the European Court of Human Rights has provided interpretations and new elucidations on this matter in its case law.

2. Human Rights Protection in China's Law System

2.1 At the Level of International Conventions

To date, China has acceded to 26 international human rights conventions, including the International Covenant on Economic, Social and Cultural Rights. The Chinese government consistently adheres to the spirit of the Charter of the United Nations and the Universal Declaration of Human Rights, actively fulfills its international legal obligations regarding human rights protection, and insists on integrating the principle of universality of human rights with China's actual circumstances. It regards the rights to subsistence and development as fundamental and primary human rights, upholds a people-centered development philosophy, and takes the aspiration of the people for a better life as its goal. By consistently promoting economic and social development and enhancing the wellbeing of the people, China has coordinated and advanced the economic, social, and cultural rights of all its citizens, achieving a new level of guarantee for these rights. China has successfully forged a path of human rights development in line with the trend of the times and with distinctive Chinese characteristics, making significant contributions to the progress of human rights domestically and to the international human rights cause.

In 2024, in the forth-fifth session Human right Council published the working group on the universal periodic review, in it the committee on Economic, Social and Cultural Rights recommended that China systemize a human right impact assessment in the process of formulating legislation and policies in the areas of economic, social and cultural rights[1].

2.2 The Development of Domestic Legal Systems in Safeguarding Human Rights

China has always attached great importance to human rights issues. In order to realize the role of the rule of law in protecting human rights and to improve the national human rights protection system, the fundamental principle of "the State respects and protects human rights" was, for the first time, incorporated into the Constitution through the Fourth Amendment in 2004. Since human rights were enshrined in the Constitution, China has further accelerated the process of revising specific departmental laws to strengthen the protection of human rights. This includes legislation concerning the rights to health and the environment, laws involving ethnic minorities and returned overseas

[1] **中国代表就中国参加**《经济、社会及文化权利国际公约》履约审议会议介绍情况_**新**闻发布_**中国政府网**，accessed on 6.19.2025

Chinese and their families, and legal provisions for the protection of women's and children's rights. These rights are all addressed in detail through corresponding legal provisions.

2.2.1. Judicial Independence

China has adopted a series of measures to strengthen the independence and capacity of the judiciary in the course of judicial reform. These include reforming the judicial selection system, implementing a quota system for judges, advancing reforms in the management of the personnel, finances, and property of courts, as well as establishing systems for recording and holding accountable any internal and external interference with cases by members of judicial organs. These robust reforms have provided greater guarantees for courts to exercise adjudicative power independently in accordance with the law.

China has strengthened the protection of substantive and procedural rights in litigation and advanced the reform of the criminal procedure system centering on adjudication. The Central Political and Legal Affairs Commission, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice have jointly and separately issued normative documents, emphasizing the strict implementation of legal principles such as legality of crimes and punishments, adjudication based on evidence, and exclusion of illegal evidence. They uphold judicial fairness and the correction of wrongful decisions, and have decisively rectified a number of unjust, false, and wrongful cases. Judicial organs work in close coordination and, in cases where evidence is insufficient to sustain a conviction, pronounce the defendant not guilty in accordance with the law, ensuring that innocent people are not subjected to criminal prosecution. Since the 18th National Congress of the Communist Party of China, courts at all levels have rectified 61 major unjust cases involving 125 people and have acquitted 8,491 defendants by law (Zhang wenxian, 2024:30).

2.2.2. Protection of Rights in Criminal Procedural

In 2004, China incorporated "respecting and safeguarding human rights" into its Constitution, formally establishing the constitutional principle of human rights protection. This not only ushered in a new era of legal protection of human rights in China, but also provided fundamental guidance for safeguarding human rights in the field of criminal procedure. Today, in modern societies, three main goals of punishment stand out: protection of society from criminals, resocialization of criminals and prevention of criminal behavior(Igrački, 2024 : 373). China also stans for these main goals of punishment into the criminal legislation. And to further implement the constitutional principle of human

rights protection, the 2012 Criminal Procedure Law of China explicitly stipulated "respecting and safeguarding human rights" and designated it as one of the core tasks of criminal procedure. It can be said that closely following constitutional developments and explicitly enshrining "respecting and safeguarding human rights" in legislation demonstrates the great importance attached by the Criminal Procedure Law to the protection of human rights, while also highlighting the distinct "people-oriented" philosophy underpinning human rights protection.

The supervisory system reform initiated in 2016 was a significant innovation in China's political system reform. By establishing the National Supervisory Commission to oversee all public officials exercising public power, a "centralized, unified, authoritative, and highly efficient" supervisory system was formed. After the reform, investigative authority over disciplinary violations, administrative law violations, and duty-related crimes – previously exercised separately by the Party's disciplinary inspection organs, administrative supervision departments, and procuratorial organs – was unified under the discipline inspection and supervision commissions, which now function under a merged Party and state office. Corresponding to these changes, the Supervision Law was promulgated in 2018, followed by the Implementing Regulations of the Supervision Law in 2021, gradually establishing a new mechanism for investigating duty-related crimes. As to the relationship between supervisory organs and other departments, Article 127 of the Constitution and Article 4 of the Supervision Law explicitly state that supervisory organs "shall coordinate with, and provide mutual checks and balances on, judicial organs, procuratorial organs, and law enforcement departments." Thus, supervisory power has become the fourth type of fundamental political power within China's basic political power structure. Through supervisory system reform, the issue of connecting the Criminal Procedure Law with the Supervision Law has been incorporated into legislation, promoting the overall coordination and integration of the legal system and further deepening the judicial protection of human rights.

In 2024, the Supervision Law underwent further revision. This revision centers on the spirit of human rights protection and checks on power, making additional provisions regarding the connection between compulsory measures under the Supervision Law and the Criminal Procedure Law. The revised Supervision Law stipulates four types of compulsory measures: compulsory appearance, order to await investigation, guardianship, and detention, applicable to individuals under investigation for serious job-related violations and crimes under various circumstances. These four supervisory compulsory measures can be applied in conjunction. Judging from the applicable targets, conditions, and provisions for changing the application of compulsory measures as stipulated in the

Supervision Law, different measures can be connected and applied as needed. The objective is to enable supervisory organs to adopt or change compulsory measures according to the actual circumstances of case investigations. At the same time, emphasizing the importance of human rights protection, the Supervision Law has added the right for the person under investigation and their close relatives to apply for a change of compulsory measures, and has further expanded the right of the person under investigation to appeal, thereby embodying the spirit of human rights protection in the Supervision Law.

2.2.3. Exclusion of Illegal Evidence

In fact, according to the provisions of China's Criminal Procedure Law and relevant judicial interpretations, illegal evidence has been explicitly excluded from the admissible evidence system. The domestic legal framework has clearly established the methods, criteria for determination, and behavioral boundaries regarding illegal evidence collection and coerced confessions. In actual criminal proceedings, evidence obtained through torture to extract confessions is recognized as illegal.

According to Article 58 of the Criminal Procedure Law, there are two mechanisms for initiating the exclusionary procedure for illegal evidence: First, the adjudicatory personnel may initiate an investigation ex officio, meaning that if the adjudicators in a case believe there is indeed a suspicion of illegally obtained evidence, they may investigate the legality of the evidence in court. Second, apart from the court investigating ex officio, parties' representatives or defense counsel may also request the court to conduct an investigation, provided that relevant leads or materials are submitted to the court as a precondition for such an application.

Article 1 of the 2024 "Regulations on the Exclusion of Illegal Evidence in Handling Criminal Cases" elaborates on "illegal methods such as torture to extract confessions." It not only stipulates the exclusion of confessions obtained through violent means or physical abuse in disguised forms, but also provides that "confessions obtained by means of threats involving violence or methods that seriously infringe upon the lawful rights and interests of the suspect or their close relatives, causing the suspect or defendant to suffer unbearable pain and act against their own will," shall also be excluded. The regulations further specify that "confessions obtained through illegal detention or other unlawful restrictions of personal liberty," as well as "repeat confessions made under the influence of torture, following an initial confession extracted by torture," shall be excluded as well, with two exceptions provided.

These provisions clarify, on a normative level, a number of previously contentious and difficult issues in judicial practice, such as how to handle confessions obtained

by exerting psychological pressure targeting a suspect's weaknesses during interrogation, and the evidentiary value of "repeated confessions."

These legislative amendments reflect China's ongoing progress in the field of human rights protection. Human rights protection legislation in China is based on the Constitution and is realized through the concerted application of various departments of law. In particular, with regard to areas concerning the right to personal liberty in criminal procedure, the legal norms safeguarding human rights have been continuously refined, thereby clarifying the legislative philosophy of human rights protection to guide both legislation and judicial practice.

3. The accounting of human right protection situation by ECtHR in extradition cases

In the case of Kislov v. Russia, the European Court of Human Rights provided guidance on how to assess the general situation of human rights protection in the requesting country in extradition cases. In this case, the person subject to the extradition request had previously been detained and subjected to torture in Belarus, and Belarus had submitted the extradition request.

In response to the extradition request submitted by Belarus, the main grounds for opposing extradition put forward by the requested person included: first, that he had suffered torture during his previous detention in Belarus; second, that some international organizations have criticized the general human rights situation in Belarus, and that there are systemic and institutional failures to respect human rights, as well as practices of torture and coerced confessions in the country; and third, that during the prosecution and investigation by the Belarusian prosecutor's office on appeal, his fundamental rights of defense were not protected – for instance, his lawyer did not receive the judgment from the court of first instance, nor was he given adequate time, as required by law, to prepare his defense.

Belarus submitted an extradition request to Russia and, in the request, pledged to comply with the rule of specialty in extradition, to adhere to humanitarian principles, and to ensure that, upon his return to Belarus, the fundamental procedural rights of the extradited person would be safeguarded. On October 2, 2009, the Office of the Prosecutor General of the Russian Federation approved Belarus's request for extradition, concluding that the individual whose extradition was requested would not face a risk of inhuman or degrading treatment upon return to Belarus. The appellant requested a review of the Belarusian extradition request under the 1957 European Convention on Extradition, arguing

that the Office of the Prosecutor General of the Russian Federation had not lawfully assessed the actual risk of torture he would face if extradited. The appellant stated that the judgment forming the basis of Belarus's extradition request was procedurally unlawful: there was no public hearing, his defense counsel was unable to participate lawfully, and his confession was made under duress. Furthermore, Belarus had provided no assurance that, following extradition, he would be retried so as to guarantee his right to a lawful defense, nor that his sentence would be reduced in line with recent amendments to Belarusian criminal law.

In relation to Article 3 of the European Convention on Human Rights, the appellant submitted to the court a report from the United Nations Human Rights Committee to the UN Security Council regarding the human rights situation in Belarus, which described the Committee's particular concerns about widespread torture and unlawful treatment by law enforcement authorities in Belarus. The report urged Belarusian authorities to immediately take effective measures to prevent the occurrence of widespread torture, and called for enhanced observation and monitoring of the human rights situation in Belarus by relevant international organizations. It also noted that, in the past ten years, no member of Belarusian law enforcement agencies had been investigated or prosecuted for acts of torture. In addition, the appellant submitted several relevant precedents from the European Court of Human Rights concerning past human rights violations by Belarus, supporting the assertion that Belarus's human rights record is cause for concern and that extradition would expose him to the risk of torture and other violations, thereby constituting a breach of Article 3. of the Convention.

In the extradition request submitted by the Prosecutor General of Belarus, it was stated that the extradition of the individual was not based on political, religious, racial, or other discriminatory reasons. The Belarusian authorities argued that the appellant's allegations about the human rights situation in Belarus were unfounded and that he had not submitted any substantive evidence. The Russian Prosecutor's Office had already conducted a domestic review and found no grounds to deny extradition. Therefore, the authorities held that extradition would not constitute a real risk of breaching Article 3 of the European Convention on Human Rights.

The Russian side stated that no grounds for refusing extradition had been identified, and the appellant had not submitted applications for refugee or temporary refugee status. Therefore, it could not be established that extraditing the appellant to Belarus would expose him to a real risk.

The European Court of Human Rights states that, for member states, the most fundamental obligations under Articles 3 and 6 of the Convention are reflected in the determination of whether an appellant faces the risk of inhuman or degrading treatment

or an unfair trial, or whether a decision to extradite would directly expose them to such danger. It must be emphasized that when assessing risk, if a member state decides to expel an individual, it must either be aware, or ought to be aware, of facts related to that risk.

In its judgments, the European Court of Human Rights has indicated that, when evaluating the general human rights situation in a country, the Court can attach a certain weight to human rights reports issued by international organizations or governments. However, it is important to note that the Court also stresses that consideration of these reports must take into account whether, with respect to specific groups or sectors relevant to the individual sought for extradition, the human rights situation in the destination country has recently improved or deteriorated. Moreover, the Court has made clear that a single report on the human rights situation in a given country does not in itself constitute grounds to refuse extradition, and this constitutes a rule. Such a report may be presented merely as evidence submitted by the person sought for extradition to demonstrate concerns regarding potential inhuman or degrading treatment. Conversely, with regard to diplomatic assurances of non-use of torture, a single diplomatic assurance is insufficient to support the conclusion that the person sought for extradition will not face torture; rather, this depends on the past record of compliance with such assurances. The requesting country must be able to provide sufficient domestic legal safeguards and relevant materials through reliable and objective sources of information, such as United Nations agencies or reputable non-governmental organizations.

4. Reflections on Criminal Justice Cooperation between China and EU Countries from the Perspective of Human Rights Protection

The protection of human natural rights is faced today with the key challenge of establishing them as a barrier to the contemporary global crisis, expressed as a crisis of values, an economic and political crisis and negative global tendencies that bring the world to the edge of a devastating world war （Kambovski，2022:59). Also in recent years, China has encountered numerous obstacles when engaging in criminal justice cooperation and extradition with European countries. These obstacles are not solely technical legal hurdles, but often stem from over-politicization or discriminatory attitudes toward China, which impede cooperation. In fact, as discussed in this article, China has already reformed and continues to improve its domestic legal system, which aligns with the human rights protection standards set out in international conventions, and is likewise capable of ensuring judicial fairness and independence. Western countries should not unilaterally deny China's achievements in human rights protection or its fair and independent

judiciary simply because China adopts a political system different from that of Western countries.

Carrying out international criminal justice cooperation is a shared need for both China and European countries in the context of today's increasingly diverse and globalized world. In future instances involving extradition and criminal justice cooperation between China and European countries, the relevant states should strictly refer to the relevant case law of the European Court of Human Rights and undertake comprehensive and specific evaluations of human rights reports issued by international organizations or governments. During the evaluation process, it is necessary to consider specific legal fields and cooperative projects, rather than making simplified or generalized judgments about the human rights situation in China. Attention should be paid to the actual changes in human rights conditions across different periods and regions, avoiding reliance on a single international organization's report or a particular point in time as the sole basis for assessing China's overall human rights development. Meanwhile, in practical cooperation, it is also essential to comprehensively reference information from multiple sources and consider the real context, conducting targeted analyses of the relevant areas of each case. This approach avoids making negative or categorical assessments of China's human rights situation based solely on individual reports, thereby allowing for an accurate view of the progress and development of China's judicial system and recognizing that China has established a legal system for human rights protection that aligns with international convention standards.

Meanwhile, efforts should be made to minimize the tendency towards excessive politicization in criminal justice cooperation and to promote a return to the legal essence of such cooperation. Whether concerning extradition or other forms of mutual legal assistance in criminal matters, cooperation should be grounded in the relevant provisions of the Council of Europe's Amsterdam Protocol, emphasizing that extradition and judicial cooperation are predicated on mutual recognition of each other's criminal justice systems and legal norms. In specific extradition procedures, substantive understanding and respect for both parties' legal systems should be highlighted, and the politicization of legal issues should be avoided. Moreover, the recognition and application of legal norms should be governed by legal standards and judicial practice rather than by political positions or ideological considerations, allowing both China and Europe to advance stable and effective criminal justice cooperation on the basis of mutual respect for their legal systems. Such cooperation not only enhances the efficiency of legal collaboration but also contributes to establishing a stable and enduring relationship of mutual trust between the two parties.

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