

Basic Theory and Applicable Ideas of Extradition

-- The Jiangge Case as an Example

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ABSTRACT

Extradition, which originates from treaties and agreements between bilateral and multilateral countries, helps to combat transnational criminal activities and is one of the important rules of modern international law. This paper has sorted out the connotation and application premise of extradition system, and discussed some exceptions. At the same time, this article combines the national situation, with the Jiangge case as a case study, sorting out the internalization of the extradition system in China's domestic law and specific performance.

KEYWORDS

Extradition; Non-Extradition of Nationals; Protective Jurisdiction.

1. BASIC THEORY OF EXTRADITION

(1) Basic connotations of extradition

The origins of the institution of extradition can be traced back to ancient Greece[1]. By its nature, extradition is an act of mutual legal assistance in an international situation between States. Specifically, extradition is the process by which a State, upon receipt of a request from another State or in accordance with a treaty and its own domestic law, hands over a suspected or convicted offender to another State for the purpose of legal proceedings and the administration of a sentence by the other State. In this process, the State sending the request is called the requesting State and the party receiving the request is the requested State. The legal basis for extradition is the jurisdiction of a sovereign State over an offender present in the territory of another State. In terms of international practice, extradition, which is often for transnational and recognized serious crimes, promotes international judicial cooperation and the fight against transnational crime, enhancing the legal order and security of the global community.

(2) Prerequisites for the application of extradition

In terms of the sources of international law from which the obligation to extradite is formed, extradition usually involves international agreements or bilateral agreements, and should satisfy the basic principles of extradition in general, as follows: (1) the principle of double criminality, i.e., the act of the requested person shall be regarded as a crime both in the requesting State and in the requested State, and if either party does not regard the act as a crime, the requested State may refuse to extradite him; (2) the principle of sameness, i.e., after returning the requested person to the country, the requesting State can only deal with the person on the basis of the crime claimed at the time of requesting extradition, and cannot impose a separate penalty for another crime. (3) the principle of legality, i.e., procedurally, the request for extradition must be in line with the legal procedures and

statutory procedures of the countries of both parties, and may not violate the procedural system of either party; (4) the principle of non-discrimination: i.e., the request for extradition shall not be discriminated against on the basis of race, religion, gender, nationality or political position, and shall be applied equally by either party. discrimination, either party shall apply and deal with the subject of extradition on an equal footing, without any unequal discrimination[2]. The above principles are the general premise of the extradition regime in modern international law, and the specific terms and conditions may vary according to the bilateral treaties of the bilateral countries as well as the domestic laws of each country.

(3)Applicable exceptions to extradition

As mentioned earlier, there are corresponding positive principles in extradition regimes, but there are also considerable exclusionary rules, including, inter alia, the non-extradition of political offenders and the non-extradition of capital offenders. Currently, the extradition agreements of the vast majority of countries exclude extradition for political offenses, i.e., a State has the right to refuse to extradite suspects involved in political offenses to the country from which they have fled. The principle of non-extradition of political offenders is a comprehensive principle at the intersection of asylum and extradition in a State and centers on the identification of political offenders. However, there is no uniform definition of political offenders at the international level, and countries tend to interpret political offenders differently in the light of their own sovereignty.

The principle of non-extradition of capital punishment refers to the refusal of a State to extradite a person sentenced to death to a State requesting extradition because extradition could lead to the execution of the requested person. Many international human rights organizations and bodies consider the death penalty to be a form of punishment that seriously violates human rights. Therefore, the refusal to extradite is seen as an act in keeping with the spirit of human rights protection. In addition to this, some of the requested countries consider that there may be deficiencies in the judicial system of some countries and that extradition to a death row inmate could lead to an unjust execution if a fair trial cannot be guaranteed, which is contrary to the international community's universal values of justice.

2. INTERFACE BETWEEN THE PRINCIPLE OF EXTRADITION AND OUR DOMESTIC LAW

(1)Applicable understanding between extradition regimes and jurisdiction

The origin of the institution of extradition was to facilitate the fight of States against criminal offenses, and the primary issue in criminal cases lies in the jurisdiction of the criminal case. Jurisdiction over a case is a matter of the sovereignty of a State, and extradition is an exception to that jurisdiction. The basic principles and rules of the extradition process are set out in international law, such as the United Nations Convention against Corruption and the Rome Statute of the International Criminal Court. At the level of domestic law, countries have also stipulated the specific implementation rules of the extradition procedure through legislation or judicial interpretation. China has formulated the Extradition Law, which has made corresponding provisions on the requirements, prerequisites and procedures for foreign countries to extradite to our country, and the question of how to make extradition requests to other countries needs to be further answered in the Criminal Law. According to the principle of criminal law, the principle of territoriality has priority among many principles, meaning that when a crime is committed in a certain country or region, that country or region has the right to have jurisdiction over it and to try it, which reflects the sovereignty of that country or region and is also conducive to the protection of the rights and interests of victims. According to the principle of territoriality, when a crime is committed in a certain country or region, that country or region has the right to try and sanction the criminal, and the victim can seek judicial relief in the country or

region where he or she is located. China's criminal law indicates that territorial jurisdiction is also the most preferred choice in domestic criminal case jurisdiction.

However, there would be no need for an extradition regime if jurisdiction were based solely on the principle of territoriality as a principle for recognizing jurisdiction. Therefore, the principles of personality and protection are often the basis for extradition requests by requesting States to try their own nationals or third-party nationals who have infringed on their interests. China's Criminal Law stipulates that if a Chinese national commits an offense under this Law outside the territory of China, Chinese criminal law shall, in principle, apply. However, if the maximum penalty under Chinese criminal law is less than three years' imprisonment, they may not be prosecuted. Thus, the principle of *ratione personae* provides the institutional basis for extradition under domestic law.

(2) Applicable understanding between extradition regimes and the right to punishment

Penal power is a derivative of jurisdiction, and a State enjoying jurisdiction over a case naturally enjoys penal power. Similarly, in foreign-related cases, a State enjoying criminal and penal jurisdiction over a case is naturally presumed to have jurisdiction, and there is no logical sequence. Through the extradition system, the requesting State can obtain jurisdiction and trial rights in criminal cases, but when extradition fails or is not granted, the handling of the case by the requesting State requires interpretation and clarification under the domestic law of each State. For example, article 10 of China's Criminal Law clearly states the provision of double trial, i.e., if a case over which China has jurisdiction is not tried in China as a result of the failure of extradition or non-extradition, China still has the right to take jurisdiction and try the case, but it can be exempted from or mitigate the punishment. On the one hand, it clarifies our right of criminal recourse, and on the other hand, it also provides institutional safeguards for our right of recourse in the event that extradition fails. The behavior of the extradited person shall be deemed to constitute double punishability as long as there is similarity or overlap in the application of penalties under the penal systems of the two extraditing parties[3]. Specifically, there are clear judicial interpretations of the jurisdiction of the right of recourse mentioned above, according to the Supreme Court's "Interpretation of the Criminal Procedure Law of the People's Republic of China", the people's court of the place of entry or the place of residence of the victim before leaving the country shall have jurisdiction; if the victim is a Chinese citizen, the jurisdiction may be that of the people's court of the place of residence of the victim before he leaves the country. Article 9 provides that if an alien commits a crime against a State or citizen of the People's Republic of China outside the territory of the People's Republic of China and is liable to punishment under the Criminal Law of the People's Republic of China, the people's court of the place where the alien entered the country, or the place where the alien resides after entering the country, or the place where the victimized Chinese citizen resided before he or she left the country shall have jurisdiction. It also follows that, in foreign-related criminal cases, even if China does not have territorial jurisdiction, Chinese citizens may be subject to jurisdiction and trial on the basis of the principles of personality and protection.

3. APPLICATION OF THE EXTRADITION REGIME IN THE JIANG GE CASE

(1) Treaties as a prerequisite for extradition

As mentioned earlier, treaties are the prerequisite for the normative exercise of extradition and even for the enforceability of the extradition system, therefore, in the process of implementing extradition, the primary purpose of each country is to confirm and examine the existence of an extradition treaty between the two parties. At present, China has extradition treaties with 57 countries, including Thailand and Russia, but there is no extradition clause or extradition clause[4] in force with Japan, which has no special obligation to extradite to China. In the absence of a special extradition obligation under the treaty, Japan has the right to decide on its own whether or not to assist China in extraditing

criminals in accordance with the general principle of extradition. Therefore, in the Jiang Ge case, Japan has the right to refuse our extradition request.

(2) Principle of non-extradition of nationals

The principle of non-extradition of nationals has been one of the focuses of discussion in the wake of the Jiang Ge case, which means that no country allows the extradition of its nationals to foreign countries on the basis of the consideration of safeguarding the superiority *ratione personae* of the country. Only a very few countries, such as the United Kingdom and the United States, do not refuse to extradite their own nationals. Our country also recognizes the principle of non-extradition of its own nationals. Article 8 of the Extradition Law (hereinafter referred to as the Extradition Law) stipulates that under Chinese law, if the person whose extradition is requested has the nationality of the People's Republic of China, the Chinese Government shall refuse to extradite him. According to the connotation of the principle of non-extradition of nationals, it is clear that Chen Shifeng does not meet the principle of non-extradition of nationals; when Chen Shifeng is engaged in criminal judicial activities in China, if a foreign country submits a request for extradition to our country, our country can refuse extradition directly on the basis of the principle of non-extradition of nationals, whereas the situation in this case belongs to the fact that Chen Shifeng participated in the criminal trial activities in Japan, which is outside the scope of the discussion of non-extradition of nationals.

(3) Principle of non-extradition of persons facing the death penalty

As mentioned earlier, non-extradition of capital offenders is one of the principles of extradition favored by most countries. In this case, Chen Shifeng is suspected of the crime of intentional homicide, and, in conjunction with the principle of double criminality, considering the fact that he may be sentenced to the death penalty in China and that it is more difficult to sentence him to death in Japan, Japan may refuse extradition on the ground of non-extradition of capital offenders in cases where the death penalty may be imposed in the requesting country but not in the requested country.

(4) Respect for the principle of territoriality

Respect for the principle of territoriality is one of the consensus points of the modern criminal legal system, which gives priority to the application of the principle of territoriality among the various jurisdictional principles such as the territorial principle, the personal principle and the protective principle. From the logic of the extradition system, its starting point tries to break through the territorial jurisdiction conditionally, so as to facilitate the judicial cooperation among countries. Therefore, in the Jiang Ge case, Chen Shifeng killed Jiang Ge in Japan, according to the principle of territorial jurisdiction, Japan has jurisdiction. Although according to the criminal law, our country has the power of personal jurisdiction, but out of respect for the sovereignty of other countries, when the territorial country is not willing to give up jurisdiction, our country is inconvenient to force jurisdiction. Although China has lost its direct jurisdiction, according to the provisions of the Criminal Law of China, although Chen Shifeng was tried and served his sentence by the Japanese judicial authorities in this case, the Chinese courts still have the right to continue to pursue the case and to exempt or reduce the punishment on the basis of the decision of the Japanese court.

4. SUMMARIZE

The extradition regime is one of the key institutions of modern international law, which derives from the international community's need to combat crime and from the fundamental attitude of States to safeguard national sovereignty. There are many principles and exceptions in the extradition system, which are often internalized in international treaties and multilateral treaties of States. The interface between the extradition system and domestic law is often reflected in the retroactivity of criminal cases involving foreign countries. For example, China has stipulated the principles of personality and protection as the legal basis for extradition requests, while still enjoying the right of recourse for criminals who have been tried in foreign countries. Finally, this paper analyzes several important

issues in the extradition system through the Jiangge case, so as to clarify the common misunderstandings in the extradition system.

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