



Ideas for Solving the Problem of Surrender of Fugitives in Different Domestic Jurisdictions

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Abstract. This paper firstly outlines the legal gaps and practical dilemmas in the surrender of fugitive offenders between the Mainland and Hong Kong, including the lack of a clear legal basis, conflict of criminal jurisdiction, double criminality standard, the problem of the surrender of death penalty offenders and political prisoners, and the problem of the surrender of residents in this jurisdiction. The existence of these problems has led to complicated and inefficient procedures for the transfer of fugitives, which has seriously affected the effectiveness of judicial cooperation between the two jurisdictions. The article further analyzes the urgency of legal cooperation and points out the importance of fugitive surrender for the maintenance of social security and the enhancement of public trust in the legal system. Finally, the article proposes countermeasures to build a cooperation mechanism for the surrender of fugitives in domestic jurisdictions, including adherence to the principle of “one country, two systems, mutual respect”, reasonable definition of criminal jurisdiction through equal consultation, exclusionary application of the principle of international extradition, and implementation of the principle of pragmatism and high efficiency, with a view to providing feasible solutions for judicial cooperation between the two places.

Keywords: Surrender of Fugitive Offenders; Legal Cooperation; “One Country, Two Systems”; Criminal Jurisdiction

1 Introduction

In the context of globalization, with the deepening of economic integration and regional cooperation, the movement of people between different jurisdictions within the country has become increasingly frequent. Consequently, the problem of cross-jurisdictional crimes has become increasingly prominent, and the surrender of fugitives has become a legal challenge that needs to be urgently resolved. As two different jurisdictions under “one country, two systems”, the Mainland of China and the Hong Kong Special Administrative Region, despite increasingly close economic and cultural exchanges, face significant legal gaps and practical difficulties in the transfer of fugitives. This situation not only affects the efficiency of the judicial authorities of the two places in combating crimes, but also poses challenges to social governance and legal justice. The purpose

of this paper is to analyze the status quo and challenges of the surrender of fugitive offenders between the Mainland and Hong Kong, and to explore countermeasures to build an effective cooperation mechanism for the surrender of fugitive offenders, with a view to providing references and suggestions for judicial cooperation between the two places.[1]

2 Current Situation and Challenges of Surrender of Fugitive Offenders in Different Domestic Jurisdictions

2.1 Legal Gaps and Practical Dilemmas in the Surrender of Fugitive Offenders Between the Mainland and Hong Kong

The legal gap in the surrender of fugitive offenders between the Mainland and Hong Kong is one of the major dilemmas faced in judicial cooperation between the two places. Although Article 95 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China provides a legal basis for the development of mutual legal assistance between Hong Kong and the Mainland, no agreement on mutual legal assistance in criminal matters has yet been signed between the two places. [2]This legislative gap has resulted in a number of legal obstacles to cooperation in the surrender of fugitive offenders, such as conflict of criminal jurisdictions, whether the criterion of double criminality applies, the question of whether capital offenders are to be surrendered, the question of whether political prisoners are to be surrendered, and the question of whether residents of this jurisdiction are to be surrendered. In addition, there are significant differences between the legal systems of Hong Kong and the Mainland, with Hong Kong practicing a common law system while the mainland practicing a civil law system, and such differences have added to the complexity of the surrender of fugitive offenders.

2.2 Urgency and Social Impact of Legal Cooperation

With the increasing economic cooperation and cultural exchanges between the Mainland and Hong Kong, the number of criminal cases involving the two places has been on the rise. The fact that criminals abscond across jurisdictions after committing crimes has created an urgent need for the judicial authorities of the two places to enhance mutual legal assistance in criminal matters relating to the transfer of fugitive offenders.[3]The urgency of judicial co-operation is not only manifested in the need to combat crimes and maintain law and order in society, but also involves public confidence in judicial impartiality and the effectiveness of the law. The lack of an effective mechanism for the surrender of fugitive offenders may result in criminals getting away with their crimes, thus affecting the deterrent effect of the law and the stability of society.

3 Analysis of Legal Obstacles to the Surrender of Fugitive Offenders in Domestic Jurisdictions

3.1 Conflict of Laws and Jurisdictional Issues

In dealing with the transfer of fugitives from different domestic jurisdictions, conflict of laws and jurisdiction issues are particularly prominent. As the Chinese mainland and Hong Kong, Macao and other special administrative regions to implement “one country, two systems”, there are significant differences in their respective legal systems. Such differences are reflected not only in the content of legal norms, but also in the principle of jurisdiction. For example, the mainland applies the principle of territoriality and personal jurisdiction, whereas the Special Administrative Regions may focus more on the principle of territoriality. When a criminal act involves multiple jurisdictions, the question of how to determine jurisdiction and how to balance the interests of the various jurisdictions has become an urgent issue to be resolved. In addition, the lack of a unified legal framework for mutual legal assistance in criminal matters makes it difficult to reach a consensus in practice, leading to complications in the procedures for the surrender of fugitives and affecting judicial efficiency.[4]

3.2 Dual Criminality Standard and the Transfer of Death Row Inmates

The criterion of dual criminality is a fundamental principle in international MLA in criminal matters, which requires that the offense committed by the fugitive whose surrender is requested must constitute an offense under the laws of both the requesting and requested parties. This principle is equally applicable in the surrender of fugitive offenders between the Mainland and the Special Administrative Region, but there are certain difficulties in its application. On the one hand, due to the differences in the legal systems of the two places, there may be inconsistencies in the criteria for recognizing certain offences, making it difficult to reach agreement in practice. On the other hand, the issue of transfer of death row prisoners is particularly sensitive. As special administrative regions such as Hong Kong have abolished the death penalty, while the Mainland still retains the death penalty for certain serious crimes, this has led to legal and ethical obstacles in dealing with the transfer of death row prisoners.

3.3 Applicability of the Principle of Non-Surrender of Political Prisoners

The principle of non-referral of political prisoners is another important principle in international criminal judicial assistance, which aims to protect individuals who are pursued for political reasons. However, the applicability of this principle in the surrender of fugitive offenders between the Mainland and the SAR is controversial. On the one hand, due to the high degree of autonomy of the Special Administrative Region, how to define a political prisoner and how to balance national security and the rights of the individual have become issues that need to be explored in depth. On the other hand, due to the differences in political systems between the Mainland and the SAR, there

may be differences in the determination of the nature of certain criminal acts, which may make it difficult to reach agreement in practice.

3.4 Transfer of Residents of the Jurisdiction

The issue of transfer of residents of the jurisdiction involves the sovereignty of the jurisdiction and the protection of the rights of the residents. In the surrender of fugitive offenders between the Mainland and the SAR, whether to hand over the residents of the jurisdiction has become a sensitive and complicated issue. On the one hand, if a resident of the jurisdiction flees back to the original jurisdiction after committing a crime in another jurisdiction, whether he should be surrendered involves respect for the laws of the original jurisdiction and the punishment of the crime. On the other hand, taking into account the protection of the rights of residents, especially when it comes to the freedom of speech, freedom of assembly and other basic rights, how to balance the interests of all parties to ensure a just and reasonable transfer has become a problem that needs to be seriously considered.[5]

4 Analysis of Countermeasures for Building a Cooperative Mechanism for the Surrender of Fugitive Offenders in Domestic Jurisdictions

4.1 Adherence to the Principle of “One Country, Two Systems, Mutual Respect

In building a cooperative mechanism for the surrender of fugitives from domestic jurisdiction, the first principle is to adhere to the “one country, two systems, mutual respect”. This principle is not only a legal cornerstone, but also a guiding principle in practical operation. Under the framework of “one country”, each jurisdiction should respect the legal and social systems of the other, so as to ensure that the process of surrendering fugitives is consistent with the unity of the State while taking into account the particularities of each jurisdiction. This means that the legal differences between jurisdictions should be fully taken into account in the consultations and implementation of the surrender, and that a mutually acceptable solution should be sought through equal dialog and consultation. In addition, this principle requires that the basic human rights of fugitives be respected and protected in the surrender of fugitives to ensure the legality and legitimacy of the surrender process.

4.2 Equal Consultation and Reasonable Definition of Criminal Jurisdiction

When dealing with the issue of the surrender of fugitives, equal consultation and reasonable definition of criminal jurisdiction are key to ensuring the effective operation of the cooperation mechanism. Jurisdictions should jointly determine the jurisdiction of criminal cases through equal dialog and consultation to avoid the waste of judicial

resources and the evasion of legal sanctions by criminals due to jurisdictional disputes. In defining jurisdiction, comprehensive consideration should be given to such factors as the nature of the case, the place where the crime was committed, the place where the results of the crime occurred and the place of residence of the fugitive, so as to ensure that the determination of jurisdiction had a legal basis and was in line with the principles of fairness and justice. In addition, effective communication and coordination mechanisms should be established in all jurisdictions so that jurisdictional disputes can be resolved in a timely manner to safeguard judicial efficiency and justice.

4.3 Exclusive Application of the Principle of International Extradition

In the construction of domestic jurisdictions fugitive surrender cooperation mechanism, the need for international extradition principle of exclusionary application. Because the surrender of fugitives between domestic jurisdictions is different from the international extradition, so we cannot completely copy the principles and procedures of international extradition. For example, the principle of dual criminality is a basic requirement in international extradition, but in the surrender of fugitives between the Mainland and the Special Administrative Regions, consideration can be given to relaxing it under certain conditions to improve the efficiency of surrender. Meanwhile, as for the principle of non-surrender of political offenders, since the Mainland and the Special Administrative Region are one and the same country, there is no question of political offenders, and therefore this principle is not applicable in the inter-district surrender of fugitive offenders. By applying the principle of international extradition in an exclusionary manner, unnecessary legal obstacles can be reduced and the efficiency and effectiveness of the surrender of fugitives can be improved.

4.4 Implementation of the Principle of Pragmatism and Efficiency

The principle of pragmatism and efficiency is an important guiding principle in constructing the cooperation mechanism for the surrender of fugitives in domestic jurisdictions. In practice, the simplicity and efficiency of the procedures should be pursued to avoid cumbersome procedures leading to prolonged impunity of fugitives. This requires jurisdictions to minimize unnecessary legal procedures and simplify documentation requirements and review processes when negotiating and implementing transfers to ensure a fast and efficient transfer process.[6] At the same time, jurisdictions should also establish a rapid response mechanism to enable them to respond and deal with requests for the transfer of fugitives in emergency situations. In addition, the principle of pragmatism and efficiency requires jurisdictions to focus on practical results in their cooperation, and to regularly assess and improve their cooperation mechanisms to ensure that they can effectively respond to new situations and problems that arise in the transfer of fugitives. Through the implementation of the principle of pragmatism and efficiency, the practicality and effectiveness of cooperation mechanisms for the surrender of fugitives in domestic jurisdictions can be enhanced.

5 Conclusion

The resolution of the problem of the surrender of fugitives between the Mainland and Hong Kong is not only related to the efficiency of the cooperation between the judicial authorities of the two places, but also to the authority of the law and social justice. Through the analysis in this paper, we can see that despite the existence of many legal obstacles, it is entirely possible for the two places to construct an effective cooperation mechanism for the surrender of fugitive offenders by means of equal consultation, reasonable definition of criminal jurisdiction, exclusionary application of the principle of international extradition, as well as the implementation of the principle of pragmatism and efficiency. This will not only enhance the ability of the two places to combat crime but will also strengthen public trust in the legal system and provide solid legal safeguards for the long-term stability and development of the two places. In the future, with the deepening of legal cooperation between the two places, we have reason to believe that the cooperation between the Mainland and Hong Kong in the surrender of fugitive offenders will be smoother and make greater contribution to the construction of the rule of law in the two places and even the whole country.

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