

新歐盟逮捕令及解送程序架構規定與傳統國際法引渡制度的比較研究

洪期榮*、陳荔彤**

目 次

- | | |
|----------------------|------------------------|
| 壹、歐盟逮捕令及解送程序架構規定之起源 | (一)政治犯罪的分類 |
| 一、導言 | 1. 單純的政治犯罪 |
| 二、歐洲三個共同體的形成 | 2. 相對的政治犯罪 |
| 三、歐洲聯盟條約 | (二)政治犯罪不引渡原則的例外 |
| 四、阿姆斯特丹條約 | (三)本架構規定廢除了政治犯罪不引渡原則 |
| 貳、歐盟逮捕令的傳遞程序 | 三、相互承認原則 |
| 一、司法機關的直接傳遞 | 肆、本架構規定的審查機關與程序並廢除引渡制度 |
| 二、透過「申根資訊系統」發布警示 | 一、傳統的引渡審查機關與程序 |
| 三、透過國際刑警組織傳遞 | (一)雙重審查制 |
| 參、本架構規定與傳統引渡制度的比較 | (二)各國審查制度的立法例 |
| 一、創設了雙重犯罪原則的例外 | 1. 我國的引渡審查制度 |
| (一)傳統引渡制度的雙重犯罪原則 | 2. 中國的引渡審查制度 |
| (二)雙重犯罪原則的審查性質 | 3. 英國的引渡審查制度 |
| (三)雙重犯罪原則的審查標準 | 二、本架構規定的審查機關與程序 |
| (四)本架構規定創設了雙重犯罪原則的例外 | 伍、結論 |
| 二、廢除了政治犯罪不引渡原則 | |
| (一)政治犯罪的用語及定義 | |

關鍵字：歐盟逮捕令、解送程序、架構規定、引渡、雙重犯罪原則、相互承認原則。

Keywords：European arrest warrant, surrender procedures, framework decision, extradition, special-ity rule, the principle of mutual recognition.

* 洪期榮，臺灣新竹地方法院檢察署檢察官，國立臺灣海洋大學海洋法律研究所博士生。

** 陳荔彤，國立臺灣海洋大學海洋法律研究所專任教授，英國威爾斯大學法學博士。



摘要

傳統的引渡制度是複雜而且費時的，因為它不只是單純的司法案件，也涉及國家主權與外交關係，所以引渡的請求必須先經過行政與司法機關的雙重審查，再由行政機關來決定是否准予引渡。但是，2002年6月13日歐洲聯盟理事會通過了歐盟逮捕令及解送程序架構規定（FDEAWSP，以下稱本架構規定）之後，廢除了歐盟國家之間的引渡制度，改由解送制度來代替。這個制度將解送請求歸類為司法案件，免除了行政機關審查的權利，由司法機關單獨審查解送請求之准駁，並且廢除了政治犯不引渡原則，也將國民不引渡原則與一事不再理原則，視為相對的不執行事由，雙重犯罪原則與特定性原則也增修了許多例外規定。最重要的是，本架構規定打破了傳統的國家主權觀念，要求締約國將司法主權退讓，採用了「相互承認原則」，規定締約國之間必須承認發布國所發布歐盟逮捕令的司法決定，除非執行國審查逮捕令內容具有本架構規定第3條、第4條應不執行或得不執行之事由，否則必須依本架構規定之條款執行歐盟逮捕令，從事逮捕行為及進行解送程序。本文希望藉由本架構規定的重點敘述，詮釋本架構規定與傳統引渡制度的差異性，進而提供我國作為司法實務運作的經驗，以及未來修訂引渡法的參考。

The Research on the Comparison between the Framework Decision on the European Arrest Warrant and the Surrender Procedures and the Traditional Extradition System of International Law

Hung, Chi-Lung Chen, Robert Lihtorng

Abstract

The traditional extradition system is complicated and time-consuming, because it involves not only a purely judicial case, but also a state's sovereignty and foreign relations. Therefore, extradition requests have to go through double examination by both administrative and judicial authorities before a decision could be arrived by the administrative authority on giving permission to extradition or not. However, on June 13, 2002, the European Council passed the "Framework Decision on the European Arrest Warrant and the Surrender Procedures", and hence the extradition system between the member states of the European Union was abolished and replaced by the surrender system.

In the new system, the request of surrender was categorized as the judicial case; the examination rights of administrative authority was abolished; the judicial authority was granted for examination and approval of requests; the Principle of Non-extradition for Political Offenses was abolished; the Principle of Non-extradition of Nationals and the Protection against Double Jeopardy were regarded as the reasons of comparative non-execution; many exceptive rules were revised for Principle of Double Criminality and Principle of Speciality.

Most of all, the framework decision broken the traditional concept of national sovereignty, requested the state parties to concede their judicial sovereignties, and adopted the the principle of mutual recognition stipulating that the state parties must recognize the judicial decisions on EAW issued by other state parties, and must execute EAW, implement arrest activities and the procedures of surrender according to the requirements of the framework decision unless the reasons of non-execution of Article 3 and Article 4 of the framework decision are shown on the contents of examination and arrest warrant of executive state.

By describing the clauses in this framework decision, and interpreting the difference between this framework decision and the extradition system, it is expected to provide an experience for Taiwan's practical operation, and a reference for future amendments to the extradition law.