

Empirical Analysis of Foreign Cases Handled by Foreign-related Courts of Basic-level People's Courts -A Case Study on R City

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Abstract: R city is adjacent to Myanmar. Located in the border area, R city enjoys some policy advantages. The employment environment here attracts many foreigners to work and live in this city of China. In recent years, more and more foreigners come to R city to live, do business and travel; the number of foreign-related cases increases year by year. With the decentralization of jurisdiction power over foreign-related criminal cases, how basic-level courts can strengthen the management of foreigners and try foreign-related cases more efficiently, are questions worth discussion. In this paper, the court of R City serves as the research object. Through analyzing data about foreign-related cases in recent years, the article summarizes the characteristics of foreign-related cases, and puts forward some suggestions for basic-level judicial organs on the handling of foreign-related cases.

1. Introduction

1.1 Basic situation of foreign-related courts of the People's Court of R City

With the increasingly frequent exchanges between China and other countries since the reform and opening up, more and more foreigners come to China for employment, study and tourism. The numbers of civil disputes and criminal cases of foreigners also grow year by year. These cases not only disturb the order of entry and exit administration in China and endanger the political and social stability of our country, but also seriously affect the order of social security and infringe on public and private interests. With the increase of foreign-related cases, in 2012, the National People's Congress adopted the decision of amending the *Criminal Procedure Law*; the revised *Criminal Procedure Law* was formally implemented in the next year. After the modification, the jurisdiction power of foreign-related cases is delegated to basic-level people's courts; the first instance cases under the jurisdiction of intermediate people's courts include, cases endangering national security, cases involving terrorist activities and cases in which criminals may be sentenced to death or life imprisonment. The modification of jurisdiction over foreign-related cases can be regarded as a judicial reform, which makes the work more arduous, and brings certain changes to judicial organs, especially to basic-level people's court. The reform also puts forward higher requirements on basic-level judicial workers, since the handling of cases is more difficult. The Foreign-related Court of the People's Court of R City was approved and established in June 2015. It is composed of two trial judges, one judge assistant and two court clerks.

1.2 Basic situation of foreign-related criminal cases in R city from 2015 to 2016

From July to December, 2015, the foreign-related court of People's Court of R City tried 23 criminal cases, including 5 robbery cases, accounting for 21.7% of the total number of criminal cases; 9 theft cases, accounting for 39.1% of the total number; 1 case of abduction and trafficking women, accounting for 4%; 1 case of concealing the proceeds of crime, accounting for 4%; 1 case of forcible seizure, accounting for 4%; 3 cases of drug trafficking, accounting for 13%; 1 case of traffic offence, accounting for 4%; 1 case of illegal possession of drugs, accounting for 4%; 1 case of disrupting production and operation, accounting for 4% of the total number of criminal cases.

In 2016, 53 criminal cases were concluded, including 2 casino crimes, accounting for 3.7% of the total number of criminal cases; 9 drug trafficking crimes, accounting for 17% of the total

number; 21 theft crimes, accounting for 39.6%; 7 robbery crimes, accounting for 13.2%; 2 illegal possession of firearms, accounting for 3.7%; 1 drug smuggling crime, accounting for 1.8%; 2 cases of organizing others to cross the border illegally, accounting for 3.7%; 2 cases of illegal business operation, accounting for 3.7%; 4 cases of illegal possession of drugs, accounting for 7.5%; 1 crime of causing traffic casualties, accounting for 1.8%; 1 crime of negligently causing a serious accident, accounting for 1.8%; 1 crime of forcible seizure, accounting for 1.8% of the total number of criminal cases.

1.3 Basic situation of foreign-related civil cases in R city from 2015 to 2016

From July to December 2015, 17 civil cases were tried, of which 2 cases were labor disputes, accounting for 11.7% of the total number of civil cases; 3 cases were divorce disputes, accounting for 17.6% of the total number; 6 cases were transport contract disputes, accounting for 35.3% of the total number of civil cases.

In 2016, 30 civil cases were tried, of which 3 were labor disputes, accounting for 10% of the total number of civil cases; 9 were divorce disputes, accounting for 30% of the total number; 3 were child-rearing disputes in cohabitation, accounting for 10%; 4 were disputes in transport contracts, accounting for 13.3% of the total number of civil cases.

2. The Characteristics of Foreign-related Cases in R City

2.1 The number of foreign-related cases increases year by year.

The first feature of foreign-related cases in R city is the increasing numbers of criminal and civil cases involving foreigners. From above data it can be seen that the total numbers of criminal and civil cases are growing year by year. One important reason is that, due to the favorable employment policies, more and more foreigners come to R city for transit, temporary residence or employment. In 2012, the pilot district of R city gave full play to its policy advantages, formulated and promulgated the Interim Measures for the Service and Management of Foreigners in R City (Trial Implementation), and actively explored the standardized service and management of foreigners. In 2013, the Foreigner Service and Management Center of R City was established, which provided an innovative “one-stop” service and management mode for foreigners in health care (quarantine), human resources and social security as well as public security, and realized the standardized management of foreign personnel who came to China through legal immigration. In R city, the vast majority of immigrant workers are Burmese. The favorable employment environment here attracts an increasing number of immigrant workers. In addition, there are a lot of foreigners who come to R city for studying or visiting relatives and friends. These foreigners pose a certain challenge to local public security and the maintenance of social order.

2.2 “Three illegal” people account for a certain proportion of criminals

R city has a gentle and open terrain; there is no natural barrier in the 169.8 kilometers of frontier. The area has most crossing areas and the densest distribution of boundary tablets on Yunnan frontier. People live in the Sino-Myanmar border areas freely communicate with each other according to their historical habits and can freely enter and exit the border. Some residents do not have clear understandings on national boundaries or sovereignty. They are not used to carrying valid certificates, or entry and exit through designated ports and corridors. Thus, it is even more difficult for relevant functional departments to manage the personnel flow. Moreover, in Yunnan Province, the border areas between China and Myanmar has poor infrastructure construction, which makes it difficult to prohibit illegal entry and exit. There are a large number of “three illegal” people stay in R City. These people enter China illegally, then reside and work in R city illegally. Their identities are illegal. In order to avoid the investigation of relevant departments, they often change their residences. In order to survive, some “three illegal” people engage in illegal and criminal activities such as the drug abuse and drug trafficking, as well as robbery and theft, which brings a lot of difficulties to local government departments.

2.3 Causes of action in foreign-related civil and criminal cases are concentrated

Criminal cases involving foreigners mainly focus on robbery, theft and drug-related cases, while civil cases mainly focus on labor disputes, divorce cases and transport contract disputes. It can be seen that foreign-related criminal cases are mainly related to crimes involving property and drugs. Most foreign suspects commit crimes to get illegal economic interests, which is closely related to the large number of “three illegal” people stayed in R city and the location of Golden Triangle. In civil cases, labor disputes account for a certain proportion. One important reason is that R city opens up the employment market for foreigners; there are a lot of foreigners working in this city. The proportion of divorce cases is also high, which is related to the history of intermarriage in border areas between China and Myanmar. China and Myanmar have established good relations. Trade exchanges and intermarriage between countries are very common. In foreign-related divorce cases in R city, most marriages are composed of Chinese men and Myanmar women; the majority of divorce claims are proposed by Myanmar women.

3. Difficulties in Handling Foreign-related Cases in R City

3.1 Difficulties in verifying the identities of foreigners

In the process of handling criminal cases, the judicial organs need to verify the identity of criminal suspects. But some criminal suspects are “three illegal” people. They usually do not carry valid identity documents with them. Some suspects even deliberately abandon their documents or use false documents and confessions to conceal their identities. Chinese judicial organs cannot determine the identities of suspects through documents; they need to adopt diplomatic measures, such as sending letters to Myanmar government to inquire the specific identities of criminals. The procedure is complex, costly and time-consuming, which makes it difficult to deal with foreign-related criminal cases.

3.2 The quality of judicial officials who try foreign-related cases should be improved

With the transferring of jurisdiction power, basic-level judicial organs now need to handle foreign-related criminal cases. In the future, the number of foreign cases will increase significantly. Under that situation, judicial personnel not only need to be familiar with Chinese laws, cultures and judicial practices, but also to need to learn the legal, cultural and litigation systems of foreign countries, and understand the working habits and thinking patterns of foreigners. They need not only to understand the law, but also comprehend foreign languages and cultures. The situation puts forward higher requirements for basic-level judicial personnel. At present, although the overall quality of basic-level judicial officials has been greatly improved, there is still a big gap between them and the requirements of handling foreign-related cases effectively. The vast majority of judicial staff know little about foreign legal systems, cultural habits and languages.

3.3 The concept of litigation is facing challenges

When trying foreign cases, respecting and safeguarding human rights is an important principle established by the Constitution of China, and is the essential requirement of the socialist system. This constitutional principle is embodied in the procedural settings and specific provisions of China’s Criminal Procedure Law. In addition, procedural justice is an important aspect of judicial justice. Procedural justice and substantive justice are closely related, mutual complementary and indispensable. We must further strengthen the awareness of procedural justice and pay more attention to the independent value of procedural justice. Foreigners’ crime cases often involve with Western litigation ideas. For basic-level judicial organs, the relevant legal provisions about foreign-related criminal cases are unfamiliar. Some of them even do not know the existence of relevant legal provisions, which brings severe challenges to the traditional concept of litigation.

Foreign-related civil cases involve with many international organizations, as well as relevant conventions and treaties. For example, foreign-related labor disputes are related with relevant provisions of international organizations such as the International Labor Organization, the

International Organization for Migration and the World Trade Organization. When dealing with these foreign-related civil cases, we need to be in line with these conventions, and take the specific national conditions of our country into consideration. How to balance international standards and the specific situation of our country, how to align foreign-related civil trials with international standards, and how to establish a pioneering and international development direction, are questions need to be considered by basic-level courts.

4. Conclusions and Reflection

The basic-level courts need to face many challenges and difficulties in hearing foreign-related cases. How to make this process more efficiently is a question worth pondering. The author holds that the issue can be analyzed from following perspectives. First, we should strengthen the management of foreigners now stay in China, and establish a standardized mechanism to verify the identification of these foreigners. After entering the country, they need to register their residence addresses immediately, and report to police stations in time after arriving their residences. If these foreigners change their addresses or contact information, they should update their registration information immediately. Before leaving the country, they should register at relevant police stations again. For foreigners, their valid certificates should be checked periodically and irregularly. Landlords who rent houses to foreigners should also be effectively managed. A registration management system can be established, in which landlords need to take the main responsibility. The management mechanism of “the landlord is responsible for the renter” should be adopted; people who illegally provide accommodation to “three illegal” people should be punished. In addition, we should also establish a basic information system for foreigners, and make full use of modern information techniques to manage foreigners dynamically. Through collecting, sharing and processing information in a timely and comprehensive manner, we can establish a comprehensive and efficient information system with early warning mechanism, and grasp the information of foreigners who resident in China.

Secondly, in order to reduce and prevent crimes committed by foreigners in China, international judicial cooperation should be strengthened. For crimes committed by foreigners and Chinese of foreign nationality in neighboring countries, it is necessary to strengthen judicial cooperation with neighboring countries, and establish a cross-border criminal case notification system through the foreign ministry. Information of foreigners who have committed criminal offences in China should be offered to foreign ministries or embassies and consulates in China, so as to establish a criminal record list. The authority should also impose certain restrictions on the behaviors of these criminals, such as personal credit, as well as entry and exit.

Thirdly, we should pay attention to training specialized talents. The handling of foreign-related cases requires a wealth of knowledge of international law and foreign law, as well as strong practical abilities of foreign languages. Therefore, it is particularly important to train judicial personnel who are responsible for foreign-related cases. It will greatly improve the efficiency and quality of foreign-related cases handling. Judicial departments should provide judicial workers with learning materials and platforms, as well as opportunities of foreign exchanges. Through learning about foreign legislation and exchanging case handling experience, a group of judicial specialists can be cultivated.

Finally, we need to update the judicial concept of dealing with foreign-related cases. To renew the judicial concept, we need to establish the concept of legal authority. The authority of law has two connotations. One is the integrity of law; it covers all areas of governmental duty as well as the life and activities of the people. The other is the obedience to judicial decisions. Once judicial organs made decisions, they must be fully implemented. The renewal of judicial concepts requires the establishment of equal subject concept. Subject equality is the commitment of China to the world. In the field of justice, it requires us to treat different litigant subjects equally. For both natives and foreigners, both domestic enterprises and foreign enterprise, their illegal acts shall be investigated while their legitimate rights and interests shall be equally protected. The renewal of judicial concept also needs us to establish the concept of judicial justice. Justice is the soul of law

and the bottom line of judicial work. As a special body shouldering the responsibility of legal supervision, it is more important for people's courts to safeguard the judicial justice. When exercising its powers and handling cases, it is necessary for courts to ensure the fairness of results and processes. The renewal of judicial concept can help our judicial organs to hear foreign-related cases more efficiently. However, it should be noted that the renewal of judicial concept must be carried out on the basis of our national conditions and conform to the reality of China. We cannot simply imitate foreign models, or pretend to be self-confident, which will lead to exclude or even deviate from judicial rules.

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