

立法會

Legislative Council

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Paper for the House Committee meeting on 24 March 2006

Report of the Subcommittee on Fugitive Offenders (Finland) Order

Purpose

This paper reports on the deliberations of the Subcommittee on Fugitive Offenders (Finland) Order.

The Fugitive Offenders (Finland) Order

2. The Fugitive Offenders Ordinance (Cap. 503) provides for the surrender to certain places outside Hong Kong of persons wanted for prosecution, or for the imposition or enforcement of a sentence. It also provides for the treatment of persons surrendered to Hong Kong. Under section 3(1) of the Ordinance, the Chief Executive in Council may, in relation to any arrangements for the surrender of fugitive offenders, by order direct that the procedures in the Ordinance shall apply as between Hong Kong and the place outside Hong Kong to which the arrangements relate, subject to the limitations, restrictions, exceptions and qualifications contained in the order.
3. The Fugitive Offenders (Finland) Order (the Finland Order) is made by the Chief Executive in Council under section 3(1) of the Ordinance. The Order is made to implement the bilateral arrangements for surrender of fugitive offenders entered into by the Government of the Hong Kong Special Administrative Region (HKSAR) and the Government of the Republic of Finland which was signed on 20 May 2005.
4. The Finland Order is subject to a mechanism of scrutiny by the Legislative Council (LegCo) provided in section 3(2) to (6) of the Fugitive Offenders Ordinance under which LegCo has the power only to repeal the Order.
5. The scrutiny period of the Finland Order has been extended from 22 March 2006 to 26 April 2006 by a resolution of the Council.
6. The Order will come into operation on a date to be appointed by the Secretary for Security by notice published in the Gazette.

The Subcommittee

7. At the House Committee meeting on 24 February 2006, members formed a subcommittee to study the Finland Order. Under the chairmanship of Hon James TO, the Subcommittee has held a meeting with the Administration. The membership list of the Subcommittee is in the **Appendix**.

Deliberations of the Subcommittee

Political offence restriction on surrender of fugitive offenders

8. The Subcommittee notes that Article 6(1)(a) of the Finland Order provides that a person shall not be surrendered if the Requested Party has substantial grounds for believing that the offence of which that person is accused or was convicted is an offence of a political character. This restriction on surrender is based on section 5(1)(a) of the Fugitive Offenders Ordinance. Article 6(2) limits the scope of Article 6(1)(a) by providing to the effect that certain offences are not considered to be political offences. These relate to offences in respect of which both Parties have an obligation in accordance with a multilateral agreement either to surrender the person sought or submit the case to their competent authorities for decision as to prosecution.

9. In response to members' enquiry about the nature of "multilateral agreement" referred to in Article 6(2) of the Finland Order, the Administration has explained that it includes the various international conventions against terrorism which applied to Hong Kong, such as the International Convention for the Suppression of Terrorist Bombings. Article 11 of the Convention requires that for the purposes of extradition and mutual legal assistance, Convention offences are not to be regarded as political offences. The effect of this requirement, in combination with Article 6(2) of the Finland Order, would be that in case the Finland Government requests the HKSAR Government to surrender a person sought in connection with any of the Convention offences, the HKSAR Government cannot refuse to do so on the ground that the offence of which that person is accused is an offence of a political character and vice versa. The Administration has pointed out that this arrangement is consistent with the Fugitive Offenders Ordinance as one of the 46 descriptions of offences specified in Schedule 1 to the Ordinance relates to offences for which persons may be surrendered under multilateral international conventions.

10. The Subcommittee also notes that at the suggestion of the then Subcommittee to Study Issues Relating to the Fugitive Offenders (Sri Lanka) Order in 2002, the Administration had undertaken to consider amending the Fugitive Offenders Ordinance to give a clearer mandate for future orders to specify exceptions to the political offence restriction on surrender contained in section 5(1)(a) of the Ordinance. In response to members' enquiry about the Administration's work in following up the issue, the Administration has informed the Subcommittee that the Security Bureau, in consultation with the Department of Justice, is studying the necessary scope of amendments to be made to the Ordinance to provide for exceptions to the political offence restriction on surrender of fugitive offenders for the purpose of avoidance of doubt. The Administration would take into account in its study –

- (a) any other exception provision that has been made in the existing fugitive offenders orders in respect of the bilateral arrangements with other jurisdictions;
- (b) any necessary related amendment that would need to be made to the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525); and
- (c) international trend and practices of other jurisdictions in providing for exceptions to the political offence restriction.

The Administration has also advised that upon completion of the study, it would consult the Panel as soon as possible, hopefully by 2007, before proceeding to draw up the relevant legislative proposal. At the suggestion of the Subcommittee, the Administration has undertaken to expedite the study as soon as possible.

Requests for transit

11. The Subcommittee notes that Article 21 of the Finland Order provides that to the extent permitted by its law, transit through the jurisdiction of a Party may be granted on a request in writing. Hon James TO is of the view that as the relevant administrative decision made may be subject to judicial review, the Administration should be very cautious in handling requests for transit under Article 21. The Administration has pointed out that under Article 21(2) of the Finland Order, the Party through whose jurisdiction transit will occur may request the information referred to in Article 9(2)(b). Mr TO has suggested that as the HKSAR Government has the obligation to comply with the provisions of the International Covenant on Civil and Political Rights, the information as could be requested by the Administration from the Requesting Party under Article 21(2) should be as detailed as possible to facilitate its consideration of any request for transit. The Administration has agreed to consider Mr TO's suggestion.

Recommendation

12. The Subcommittee recommends that the Finland Order be supported.

Advice sought

13. Members are invited to note the deliberations of the Subcommittee.

Subcommittee on Fugitive Offenders (Finland) Order

Membership list

Chairman Hon James TO Kun-sun

Members Hon Margaret NG
Hon LAU Kong-wah, JP

(Total : 3 Members)

Clerk Miss Flora TAI

Legal Adviser Ms Connie FUNG

Date 6 March 2006