

THE PROMOTION OF JUDICIAL COOPERATION AND COMBAT OF CROSS-BORDER AND TRANSNATIONAL CRIMES - PRACTICES AND DEVELOPMENT IN MACAO SAR

Ho Chio Meng
Prosecutor General of Macao Special Administrative Region

1. General profile of Macao SAR

Macao is a special administrative region of the People's Republic of China, situated on the west bank of the Pearl River estuary in the southeastern coast of Mainland China, neighboring Guangdong Province. The total area of Macao is 28.2 km². Ninety five percent of Macao's population of 488 000 are ethnic Chinese, and the rest are Portuguese and individuals of other nationalities. Chinese and Portuguese are the two official languages of Macao.

According to the constitutional law of Macao, the Basic Law, Macao Special Administrative Region exercises a high level of autonomy and is an independent jurisdiction. As the judiciary of Macao, the Court and the Public Prosecutions Office carry out functions of trial and prosecution respectively. The function of prosecution carried out by the Public Prosecutions Office is mainly realized in directing criminal investigation, prosecuting criminal offenses, monitoring the application of law, and representing Macao SAR in the Courts.

After the establishment Macao Special Administrative Region more than six years ago, we are very delighted to see that in 2005, the Historic Centre of Macao, which is a cultural blend between the east and the west, was listed as an UNESCO World Heritage. During this year, Macao recorded a total of 18.71 million visitors; GDP per capita has also risen from USD\$13,844 in 1999, to USD\$24,274.

Just as Mr. Edmund Ho Hau Wah, Chief Executive of MSAR once mentioned in a public report, Macao today "is undergoing significant transformation that has never occurred in hundreds of years". On one hand, such major changes have created a pleasant atmosphere of harmony and co-existence between different races. However, these changes have also brought about various challenges and conflicts in Macao. Under overall stability of public security, cross-border and transnational criminal activities have not only increased in numbers, the scope of its affects has also broadened.

At present, criminal organizations and individuals from Macao and neighboring countries and regions join forces with each other, taking advantage of different conditions and opportunities, to frequently conduct different types of cross-border and transnational crimes. After committing a crime in Macao, criminals will often escape to neighboring countries/regions or make use of neighboring countries/regions as jump boards to flee to a third country, in order to evade legal sanctions in the jurisdiction. For example, in 2005, approximately 80 percent of illegal activities, including drug trafficking, triad, kidnapping, blackmailing, production and selling of counterfeit money, credit card fraud, money laundering, illegal immigration, loan sharking, illegal workers, illegal gambling, trafficking of human, goods or weapons involved more than one jurisdiction. New and different crime-committing methods continue to appear, they are both complicated and precise, and a majority of them are conducted very quickly. This poses major challenges to law enforcement and judicial institutions.

Therefore, in order to resist non-conventional security threats such as cross-border/transnational crimes, to safeguard legitimate interests of Macao residents and transients, and to ensure normal exchange of trade and personnel between countries and regions, Macao SAR has asserted enormous efforts in establishing mechanisms for judicial cooperation, and has also undertaken some beneficial exploration.

2. Existing legal systems of international and regional judicial cooperation in Macao

The legal system of Macao regulating international and regional judicial cooperation is an open, yet stringent one.

Its stringency mainly reflects that the legal system has created an open, extensive and barrier-free platform for international cooperation in criminal matters in Macao SAR. Specifically, three aspects are reflected:

- 1) Requests for mutual legal assistance in criminal matters received by Macao can be classified into two categories: international mutual assistance requests made by foreign countries; and regional mutual assistance requests made by Mainland China, Hong Kong and Taiwan. A majority of these requests involve investigation and collection of evidence, and service of judicial documents. According to the general principle of the Criminal Procedure Code of Macao, unless under special circumstances such as the execution of the assistance requested violates the criminal procedure system, basic legal

principles or public order of Macao, the judicial authority shall provide necessary and efficient assistance in accordance with the law, and shall not be obstructed by any barriers brought about by the law.

- 2) There are no restrictions in the laws of Macao regarding the form of expression in which foreign countries or regions request for mutual legal assistance in criminal matters, nor the method in which the request is submitted or transferred. Therefore, in practice, when reviewing a cooperation request, the judicial authority will only consider its substantial contents (whether the requesting party, requested party, the request itself and main facts of the case are clear and comprehensible), and will not consider its form or the method in which the request was submitted or transferred. Meanwhile, Macao not only accepts requests made by foreign courts in which the criminal case has entered the trial stage, but will also accept requests from criminal prosecution or investigation services for cases that are still in the prosecution or investigation stage. This has greatly facilitated the development of multi-channeled, multi-formed judicial cooperation.
- 3) Macao has been continuously expanding its multilateral international conventions and bilateral agreements that cover judicial assistance in criminal matters, in order to provide sufficient international law basis in combating and preventing serious cross-border/transnational crimes. At present, many important international conventions on mutual legal assistance in criminal matters, such as *the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* and *the International Convention of Terrorist Bombing*, are applicable in Macao. In 2003 and 2006, *the United Nations Convention Against Transnational Organized Crime*, *the United Nations Convention Against Corruption* and *the International Convention for the Suppression of the Financing of Terrorism* also came into effect in Macao. Based on the situation and needs of Macao, and after consultation with the Macao SAR Government, the Central Government of People's Republic of China decided that the three conventions shall be applied in Macao. In addition, in accordance with the agreements Macao signed with Portugal and Hong Kong on the transfer of sentenced persons, a number of prisoners have been returned to their homeland to serve the remaining sentence, as it will be more beneficial for them to be reintegrated with the society.

The stringency of the legal system for judicial cooperation in criminal matters is

mainly reflected in the continuous efforts to complete and improve specialized laws. It is reflected in the following areas:

- 1) In order to effectively and directly combat different types of serious cross-border/transnational crimes, including organized crimes, narcotics crimes, money laundering, terrorism crimes, etc, and in order to better connect with conventions and agreements applicable in Macao, research and legislation of relevant specialized laws were launched. Early in 1997, specialized law aimed at combating organized crimes and narcotics crimes was enacted, and enforcement results were very effective. In 2001, after Macao became a member of the Asia Pacific Group on Money Laundering (APG), anti-money laundering legislation was officially initiated. After years of deliberation and research, in April 2006, the Legislative Assembly of Macao Special Administrative Region passed two pieces of legislation which are now in effect: *the Anti-Money Laundering Law* and *the Anti-Terrorism Law*. Immediately in May, the Chief Executive stipulated an administrative regulation on *Preventive Measures on Money Laundering and Terrorism Financing*. Following the endorsement of the three sets of laws, the legal framework for prevention and combat of money laundering and terrorism have basically been completed within the domestic law of Macao SAR; relevant international obligations have also been fulfilled.
- 2) Special legislation for international judicial cooperation in criminal matters have been passed in this month at the Legislative Assembly of Macao, and will enter into force soon. It is common knowledge that the general notion of international judicial cooperation in criminal matters not only includes mutual legal assistance in investigation and collection of evidence, and service of judicial documents, but also includes six important aspects: mutual recognition and enforcement of criminal judgments (transfer of sentenced persons, assistance in execution of non-liberty deprived punishment, supervision of conditionally sentenced or released persons); return of criminal assets; extradition (return of fugitives); transfer of proceedings; and providing legal and other relevant information. However, since there are no regulations in Macao regarding the six aspects, the administration of these aspects cannot be put into practice. Only by enacting the Law on International Judicial Cooperation in Criminal Matters will the scope, contents and basic principle of international mutual legal assistance in criminal matters in Macao be fully regulated. At the same time, enactment of the Law will also formulate reasonable and comprehensive regulations for each of the specific items in mutual

assistance, thereby, providing proper operation procedures for practices in different fields of cooperation, and establishing a solid foundation for negotiation of bi-lateral agreements on judicial cooperation that Macao may sign with other jurisdictions or regions in the future.

3. The Public Prosecutions Office upholds the principle of pragmatism and efficiency in developing judicial cooperation

In its legal practices, the Public Prosecutions of Macao SAR upholds the principle of pragmatism and efficiency in launching judicial cooperation in criminal matters, which is also an important segment where the SAR government has achieved significant results.

Currently, all requests of mutual legal assistance in criminal matters sent to Macao SAR from other countries and regions will first be transferred to the Public Prosecutions Office – the criminal prosecution organ – where execution procedure is initiated. Judicial assistance requests issued by the Courts of Macao or submitted under the suggestion of police authorities must also be verified by the Public Prosecutions Office before being sent out.

Therefore, the Public Prosecutions Office plays a very important role in judicial cooperation in criminal matters. Specifically, its main tasks include:

I. Handling legal assistance requests with stringency, flexibility and in accordance with the law

Under the framework of criminal procedure law, bi-lateral judicial cooperation arrangements and international conventions, the Public Prosecutions Office actively responds to the requests of other countries or regions in providing assistance in criminal investigation, prosecution, trial or enforcement of criminal judgments.

If the request for assistance merely involves service of judicial documents of criminal cases, the Public Prosecutions Office of Macao can generally execute the request promptly.

If the assistance involves requesting authorities in Macao to investigate and collect evidence on behalf of the party making the request, the Public Prosecutions Office will also provide necessary and efficient assistance in accordance with the law. A request will only be rejected if it violates basic principles of the law, public order, etc. The Public Prosecutions Office can provide a variety of assistance, including exchange of information, search of whereabouts of suspects, recording testimonies,

ordering financial institutions to provide information, and collection or safekeeping of other evidence.

On requests where the cases have entered the trial stage, the Public Prosecutions Office will promptly transfer the case to the Courts of Macao to be executed. If the request involves exclusive competences of judges (request of banking information, telecommunication information, etc), before execution of the request, the Public Prosecutions Office will also apply for approval from the judge without any delay.

Moreover, in order to timely and comprehensively execute the request, and to achieve better results, the Public Prosecutions Office has developed a flexible method in handling requests. This includes: a) sorting cooperation requests made by foreign police authorities or other policing cooperation institutions (such as the Interpol) into the field of formal judicial assistance. Such requests will be executed by the judicial authority of Macao, hence overcoming legal restrictions police may encounter regarding limits of authority; b) if the requesting party requests for specific methods in executing the request based on its laws or facts of the case, for example, dispatch of personnel during the hearing of witnesses, examination of witnesses carried out according to the questions and order of the requesting party, requiring the witnesses to take oaths according to specific methods before giving testimonies, etc, provided that such requirements do not violate the laws of Macao, the Public Prosecutions Office will try its best to fulfill these requirements, and if necessary, urge the Court to make similar decisions; c) if there is significant error or omission in the contents of the request, in order to accelerate the procedure, the Public Prosecutions Office will first consider asking the requesting party to provide revised or supplementary information through direct communication, return or rejection measures will only be taken if the above-mentioned methods are not practicable or the effects are not significant.

II. Motivating the resolution of significant crimes under the prerequisite of practical cooperation

In recent years, the Public Prosecutions Office of Macao SAR has launched close and highly efficient judicial cooperation on a number of criminal cases with the courts, prosecution services and criminal investigation institutions of many countries and regions. Between 2003 and 2005, the Public Prosecutions Office of Macao received approximately 150 requests for judicial cooperation in criminal matters, more than 95% of which were executed.

With regard to some major cases, particularly organized crimes and serious violence crimes, under the prerequisite of practical cooperation, significant progress has been made in providing mutual assistance.

For example, the Public Prosecutions Office of Macao recently prosecuted a typical cross-strait cross-border criminal case, where, in 2005, the son of a wealthy Taiwanese businessman was kidnapped and blackmailed in Taiwan for HKD\$100 million. In Macao, the four suspects from Taiwan, Macao and Hong Kong were charged with money laundering. At the time, the family of the victim was forced to deposit a ransom of four million US dollars into a Macao bank account designated by the kidnapers. However, under close cooperation between police and prosecution authorities in Macao, Taiwan and Mainland China, and with approval from Macao judicial authority, the account was frozen before the suspects withdrew the amount. Macao police quickly arrested a Taiwanese suspect who came to Macao to withdraw the money and other accomplices of the case. With assistance from Macao authority, Taiwanese police also arrested the ringleader of the kidnapping case and the victim was successfully rescued.

In February 2006, Malaysian police notified authorities in Macao that the suspected ringleader of a criminal organization has entered Macao, and requested for immediate repatriation. After Macao police authority arrested the suspect, the Public Prosecutions Office promptly intervened in accordance with the law and launched follow-up of the case with police authorities in Macao and Malaysia. The suspect was repatriated to Malaysia within two days after the arrest.

III. Looking for ways to expand channels and room for judicial cooperation in criminal matters

Expanding channels and room for judicial cooperation in criminal matters between different countries and regions is a gradual and long-term process. The Public Prosecutions Office has continuously studied and investigated in this matter.

At present, many unsatisfactory issues still exist in judicial cooperation in criminal matters between different countries and regions. Some of which are obstacles due to differences in legal systems, and some involve other concerns. Undoubtedly, overcoming these obstacles as early as possible will be beneficial to the development of our cooperation. Not only will it create a suitable environment for broader and more in depth cooperation, but will also be favorable to the wholesome development of judicial cooperation based on mutual respect and mutual benefit. For this reason, the Public Prosecutions Office of Macao has been closely following the latest development in this field, and through methods such as regular publication of case study reports, we have provided judicial officers in Macao with valuable legal opinions on new problems and new trends.