Chapter 5
Recognition of Foreign Penal Judgments, Transfer of Criminal Proceedings, and Execution of Foreign Penal Sentences
5.1 Introduction to Recognition of Foreign Penal Judgments

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Introduction

States’ exercise of their criminal prerogatives has historically been considered part of their national sovereignty. Consequently, in the absence of a treaty, states do not recognize penal judgments rendered by other sovereigns. Even in the case of a treaty, states also require national legislation either to specifically implement the treaty or to more generally regulate this practice and its domestic effects.

Although nonrecognition of foreign penal judgments in the absence of a treaty and national legislation seem to be categorical in the legal position of states on this question, this is not necessarily the case in practice. For example, extradition is granted by one state to another, when the request is based on a foreign penal judgment. Admittedly, in such a case, the requested state does not give recognition to the foreign penal judgment per se, but it gives it effect by granting extradition on the basis of that judgment, thus implicitly recognizing its validity. Similarly, the transfer and enforcement of foreign penal sentences gives effect to a foreign penal judgment by enforcing the sanctions contained in the foreign penal judgment. As in the case of extradition, the enforcement of foreign penal sanctions is not based on the recognition of the foreign penal judgment in question. Instead the enforcing state gives effect to that judgment by relying on it in the execution of the foreign sentence in its own state. It could therefore be argued that giving effect to a foreign penal judgment is tantamount to the implicit recognition of such a judgment.

To paraphrase Shakespeare, “A rose by any other name is still a rose.”

The United States Position

In the United States, the case of The Antelope in 1825 held that a foreign penal judgment is not enforceable. Chief Justice John Marshall wrote, “The courts of no country execute the penal laws of another...” This position was also followed in Huntington v. Attill, in 1832 and has since then been consistently followed in the jurisprudence of Federal and State courts.

4 This was also evident in the case of Cooley v. Weinberger, where the Fifth Circuit affirmed the decision of the social security administration to deny a widow’s award benefit to a claimant who had killed her husband in Turkey and was convicted of his murder and returned to the United States to claim her widow’s award. The Social Security Act disallows a widow who killed her spouse from obtaining a widow’s award. Cooley v. Weinberger, 518 F.2d 1151 (10th Cir. 1975). The denial of the claim was based on the Turkish penal judgment which found the claimant, then defendant, to have murdered her husband. The Fifth Circuit found that penal judgments are not recognizable in the United States, but the court held it was not recognizing the Turkish penal judgment, but only taking note of the judgment’s findings.
5 “That which we call a rose by any other name would smell as sweet.” William Shakespeare, Romeo and Juliet (II, ii, 1–2).
7 The Antelope, supra note 6, at 123.
8 Huntington v. Attill, 146 U.S. 657 (1892).