

Evidence Qualifications from International Cooperation for Taking Evidence : Violation of International Cooperation and Interrogation of Foreign Witnesses

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Abstract

The determination or the implementation of compulsory measure regarding evidence gathering tend to invade the field of human rights protection. Therefore, it is widely believed that the exclusionary rule is an indispensable part for the due process protection, the judicial integrity, and the deterrence of illegal conducts of law enforcement agencies. The same rule should be applied in the area of international cooperation for taking evidence. However, the current theory of exclusionary rule focuses on the domestic affairs regarding illegal evidence taking, which does not include the area of international cooperation. Considering the potential difference about the legal systems between requesting state and requested state, and the basic principles of mutual respect and reciprocity in international mutual legal assistance, the criteria for the exclusionary rule in this area should be based on the notion of “the violation of universal human rights or domestic fundamental legal principles,” instead of the sole considerations of foreign laws or domestic laws. Since the judicial practices in Taiwan have been inconsistent regarding such an issue, a comprehensive examination is crucially needed. This study demonstrates the application of the criteria and reexamines the deficiency of current judicial practices through the example of the violation of the right of cross-examination while collecting or using the testimony. A conclusion consists of the proposals of the revised model

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of testimony collection in foreign country will be presented at the end of the study.

Keyword: international mutual legal assistance, right of cross-examination, mutual recognition, The European Evidence Warrant, universal human rights, information exchange