*In re Won and Song*, 1 ROP Intrm. 311 (1986)

**IN THE MATTER OF THE APPLICATION OF LIM CHUL WON and JOO SUK SONG.**

CRIMINAL CASE NO. 108-86-A

Supreme Court, Trial Division
Republic of Palau

Order re petition for writ of habeas corpus
Decided: April 25, 1986

Counsel for Petitioners: Johnson Toribiong
Counsel for Respondent: Michael Finn, AAG

BEFORE: MAMORU NAKAMURA, Chief Justice.

On March 28, 1986, petitioners, Lim Chul Won and Joo Suk Song, both Korean citizens, were arrested and detained in Koror, Palau pursuant to 18 PNC § 1002. The petitioners' arrest and detention resulted from an extradition request made to the President of the Republic of Palau by the Governor of the State of Yap, Federated States of Micronesia. The complaint and supporting affidavit charged petitioners with two criminal counts: theft by deception, 11 F.S.M.C. § 934(a); and theft by unlawful taking, 11 F.S.M.C. § 933(1).

On April 3, 1986, petitioners filed a petition with this Court to issue a Writ of Habeas Corpus pursuant to 18 PNC § 1024,[1] and an Order releasing them from custody. Petitioners urge that they should be released since procedural defects in their warrants of arrest and demand for extradition violated due process. The Court need not address the merits of petitioners' constitutional arguments as the petition for Writ of Habeas Corpus is granted for the following reasons.

18 PNC§ 1002 states that:

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[1]18 PNC § 1024 states:

> No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge or justice of the Republic, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the court shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the Attorney General of the Republic and to the agent of the demanding state. (Code 1970, tit. 12, § 461.) (emphasis added).

> Subject to the provisions of this chapter the President shall have arrested and delivered up to the executive authority of any state any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in the Republic. (Code 1970, tit. 12, §452.)

⊥312 18 PNC § 1001(c) defines the term "state" as used in the above statute:

> 'State' refers to any state of the United States of America, its territories and possessions, organized or unorganized, including the District of Columbia, Virgin Islands, Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa and Guam. (Code 1970, tit. 12, § 451; P.L. No. 7-4, § 1.)

The first issue this Court must address is one of first impression: whether the Federated States of Micronesia (FSM), from which the State of Yap is a member thereof, falls within the coverage of the ROP's statutory scheme for extradition. Simply stated, the question is whether the FSM is a "state" for extradition purposes pursuant to 18 PNC § 1001(c)?

The legislative power of the ROP is vested in the Olbiil Era Kelulau (OEK). ROP Const. Art. IX, § 1. In enacting 18 PNC § 1001(c), the OEK is "presumed to know the meaning of words, and to have used the words of a statute advisedly". 73 Am. Jur. 2d *Statutes* § 196. A statute is therefore "to be taken, construed, and applied in the form enacted." *Id.*

⊥313 18 PNC § 1001(c), as ratified by the OEK, is identical to 12 TTC § 451(3), as amended, of the Trust Territory Code. In 1977, the Seventh Congress of Micronesia enacted Public Law No. 7-4 and specifically stated that it was an act

> [a]mending 12 TTC Section 451(3) to include within its coverage the Territory of Guam and the Government of the Northern Mariana Islands.

Public Law No. 7-4; House Bill No. 7-130, H.D.1, S.D.1 (First Reg. Sess., 1977). 12 TTC § 451(3), as amended, read as follows:

> [t]he term 'state' refers to any State of the United States of America, its territories and possessions, organized or unorganized, including the District of Columbia, Virgin Islands, Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa and Guam.

Since the enactment of Public Law No. 7-4, there has been no further amendment of this provision of the Trust Territory Code.

The OEK incorporated the same exact language of 12 TTC § 451(3), as amended, into what is now known as 18 PNC § 1001(c). Moreover, no amendments were made by the OEK to expand the provision to include any other "states". Thus, of the several political subdivisions that exist within the Trust Territory of the Pacific Islands, only the CNMI was recognized as

being within the statute's coverage. Consequently, extradition from the ROP to the FSM under the statute is effectively precluded until such time as the OEK deems it in the best interest of the ROP to amend the statute and include the FSM within the coverage of the term "state". Any other result would frustrate the purposes of 18 PNC § 1001 *et seq.* The courts are bound to avoid judicial legislation, or the usurpation of legislative power, by judicially enlarging a legislative enactment. *Ebert v. Poston*, 266 U.S. 548, 45 S.Ct. 188 (1925); 73 Am. Jur. 2d *Statutes* § 197.

The second issue concerns whether international comity should be applied. This issue is easily disposed of using the following analysis.

Within the sphere known as the Trust Territory of the Pacific Islands, several groups of islands have achieved different political and sovereign status since the 1947 ⊥314 Trusteeship Agreement took effect. They are now known respectively as the Republic of Palau, Republic of the Marshall Islands, the CNMI, and the FSM. As a result of Secretarial Orders, on-going Compact negotiations, and various agreements each has made with the Administering Authority, the United States, each respective jurisdiction enjoys to some extent a constitutional government and a degree of self-independence from one another. At all times, however, despite the increased sovereignty of the islands, the sphere referred to above has remained intact. While the ROP is well on its way to becoming a sovereign nation, it is too premature to classify Palau as a full fledged nation for purposes of applying principles of international comity.

The United States is still responsible for the administration of the Trust Territory and has yet to relinquish control in several significant respects. *See* Secretarial Order No. 3039 § 3. The High Commissioner of the Trust Territory, under the general supervisory power of the Secretary of Interior, has the power to suspend any legislative enactment of the OEK if she concludes "that such law, or part thereof, is inconsistent with the provisions of this Order, the Trusteeship Agreement, with existing treaties, laws, and regulations of the United States generally applicable in the Trust Territory of the Pacific Islands, or with the Bill of Rights as set forth in the Trust Territory Code". Secretarial Order No. 3039 § 4(a).

Until the Trust Territory of the Pacific Islands is finally terminated, the collective islands that exist within the Trust Territory are still uniformly subject to the administrative authority of the United States. Secretarial Order 3039.

In this matter, similar to how the respective states in the United States function in relation to the Federal Government, the islands in the Trust Territory are to a certain extent "states" among one another for extradition purposes. Each and every island is under the administrative authority of the United States, yet each enjoys its own separate sovereignty. In the United States, extradition of fugitives from one state to another is not dependent on comity and a fugitive is not subject to interstate rendition except in circumstances contemplated by applicable state laws. 31 Am. Jur. 2d *Extradition*, § 3. Thus, "the principles governing international extradition have no application to extradition cases arising between the states". *Id.* As stated earlier, the statutory scheme of the ROP only contemplated that of the respective jurisdictions within the Trust Territory, the CNMI ⊥315 alone would be included within the coverage of 18 PNC § 1001(c). Because the OEK did not provide for the use of comity within its statutory scheme for

extradition, and the coverage of the statute is clear as to its purpose, we will not encroach on the legislative wisdom. 73 Am. Jur. 2d *Statutes* § 156.

In view of the aforementioned, the petition for Writ of Habeas Corpus is hereby granted.

So Ordered, Decreed and Adjudged, this 25th day of April, 1986.