

Seklii v. ROP, 1 ROP Intrm. 108 (1984)
FENALLY SEKLII,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 1-83
(Criminal Case No. 291-82)

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: February 9, 1984

Counsel for Appellant: Johnson Toribiong
Counsel for Respondent: Russell E. Weller, Jr.

BEFORE: ROBERT A. HEFFNER, Associate Justice; HERBERT D. SOLL, Associate Justice;
LOREN A. SUTTON, Associate Justice.

Fenally Seklii appeals from an order denying his Motion to quash an extradition warrant issued by the President. The President's action was in response to an Application for Requisition from the Governor of the State of Hawaii.

The defendant was indicted by a grand jury in Hawaii on February 15, 1982. The indictment charges him with the offense of negligent homicide in the first degree. On March 1, 1982, in Hawaii, he was arrested, released on bail, and ordered to appear in court on March 12, 1982. He failed to appear and was later located in the Republic of Palau. On June 26, 1982, the Governor of the State of Hawaii requested his extradition through an Application for Requisition addressed to the President of the Republic of Palau. On August 27, 1982 President Remeliik issued a warrant for the defendant's arrest pursuant to that application. Seklii was arrested on September 1, 1982, and eight days later his counsel brought a motion to quash the warrant. While the court considered that motion, Seklii was formally advised of the nature of the proceedings, the charges, and of his legal rights. He was released on \$3,000 bail pending the court's decision.

¶109 On January 18, 1983, Seklii's Motion to Quash was denied by the trial court. On January 21, 1983, Seklii appealed from the order denying his motion and on January 25, 1983, the trial court stayed the matter pending this appeal.

Appellant urges three grounds for reversal in his brief. They are, as we understand them:
1. There is no legal basis for a state of the United States to demand extradition from the Trust

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Territory; 2. That the Republic of Palau has acquired a sufficient quantity of sovereignty to render extradition procedures under Trust Territory law inoperative in Palau; and 3. That the extradition authority of the High Commissioner has not been transferred to the President of the Republic of Palau.

In the first argument mentioned above appellant contends that laws of the United States regarding inter-state and territorial extradition, 18 U.S.C. § 3182, *et seq.*, do not apply to the Trust Territory and that this inapplicability denies the legal basis for extradition to a state from the Trust Territory. This position overlooks the unique legal nature of the Trust Territory and assumes that a U.S. law would be required to authorize the Trust Territory to extradite an individual.

The right to exercise all necessary powers of government over the Trust Territory was provided for in the Trusteeship Agreement. *Calvo v. Trust Territory*, 4 TTR 506 (App. Div. 1969). This right was then delegated by the United States Congress to the President of the United States. The President, in Executive Order 11021, delegated his authority to the Secretary of the Department of the Interior, who in turn established the governmental organization of the Trust Territory by a series of Secretarial Orders beginning in 1951. In *Calvo v. Trust Territory*, *supra* at 511, the court discussed the right of the United States to govern the Trust Territory as follows:

The power to govern was authorized in the several articles of the Trusteeship Agreement, particularly Article 3 and 6. Article 3 provides: “The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory.” . . . Pursuant to this agreement, the United States Congress in an enabling act (Title 48, Ch. 14, Sec. 1681-1687, U.S. Code) vested all executive, legislative and judicial authority in such persons or **1110** agencies as the President of the United States may direct or authorize. A broader or more comprehensive delegation of the “right to govern” would be difficult to find.

As stated in *Ngirarois v. Trust Territory*, 4 TTR 517 (App. Div. 1969), the government of the Trust Territory has been created with “full power” delegated to it to execute government functions through legislative, administrative and judicial branches. It was Department of Interior Secretarial Order No. 2918, as amended, that delimited the extent and nature of the authority of the Trust Territory government as exercised under the jurisdiction of the Secretary of the Interior. Part III, Sec. 1 and 2 of that Order created the “Congress of Micronesia” and described the power of the Congress. In reference to Department of Interior Secretarial Order No. 2918, the court in *Bedor v. Remengesau*, 7 TTR 317 (Tr. Div. 1976), stated that:

The Congress of Micronesia has legislative power which extends to all rightful subjects of legislation except that no legislation may be inconsistent with the Department of Interior Secretarial Orders or the Bill of Rights of the Trust Territory . . . [.]

It was pursuant to such power, that the Congress of Micronesia enacted 12 TTC § 451, *et*

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seq., dealing with criminal extradition in the Trust Territory.

We find this extradition law valid and that it need not relate to any statutory scheme for extradition created by the Congress of the United States.

The essence of appellant's next argument is that Palau has acquired sufficient indicia of sovereignty to remove it from the operation of the extradition procedure under Trust Territory law and place it, as regards to extradition, in the status of nationhood.

Appellant aptly demonstrates that Palau as a part of the Trust Territory bound for complete internal self-government, or more, has taken definite steps toward that status. A constitution has been ratified and the three branches of government created in that document are functioning. The procedure that this very appeal has followed through the courts of Palau is an example of the extent to which self-government has gone but as to the world around us the Trust Territory of the Pacific Islands remains an entity under the responsibility of the United States. Any adjustments §111 within are internal matters.

Sovereignty should not be considered synonymous with self-governing. We must remain aware that the unique usage of the title "Republic" in connection with Palau speaks of a status that will not be reached until the United Nations terminates the trusteeship. While many features of the present self-governing status are consistent with sovereignty the substantive Trust Territory law treating relations with states of the United States is still valid and applicable to the situation in this case.

Finally appellant contends that the extradition authority vested in the High Commissioner by 12 TTC § 451 *et seq.*, was not transferred to the President of Palau and therefor any action taken by the President in this case is without legal authority.

The Secretary of Interior issued Secretarial Order 3039 with the stated purpose of providing the maximum permissible amount of self-government to the entities emerging from the Trust Territory as they progress toward their permanent political status. The Order calls for the transfer of all executive, legislative, and judicial functions not contrary to or in conflict with existing treaties, laws, and regulations of the United States generally applicable in the Trust Territory except for those specifically retained by the Order.

The Order requires the High Commissioner to arrange for the transfer, as expeditiously as possible, of executive functions not required to be retained. Our reading of the Order, specifically section 3 which deals with retention of functions in the Office of High Commissioner, leads us to the conclusion that there was no intention to retain the authority to deal with matters of extradition under 12 TTC § 451 *et seq.*, and we find such authority to be included in the executive powers intended for transfer to the new entities of government.

As indicated above the governmental powers were not automatically transferred by the Secretarial Order. To facilitate the transfer of functions the High Commissioner of the Trust Territory and the President of the Republic of Palau signed a Memorandum of Understanding on

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March 20, 1981. This memorandum establishes the procedure by which functions would be transferred from the Trust Territory to Palau. Specifically, it provides for “Transfer Agreements” to detail the orderly transition of functions from one government to the other. One of those agreements, Transfer Agreement No. 9, signed on June 25, 1981, transfers all executive functions ¶112 involved in Titles 69, 83 and Section 1(10) of Title 2 of the Trust Territory Code. These laws deal with public officers and agencies, vehicles, and law enforcement. Transfer Agreements Nos. 1, 11, and 12 serve to transfer the executive authority for functions of the Attorney General, Pardon and Parole, and Public Defender from the Trust Territory to the Government of Palau.

The responsibility and authority to deal with extradition is not specifically stated in any of the above mentioned Transfer Agreements, but it is not one of the specifically retained functions in the Office of the High Commissioner. Section 3(6) of Secretarial Order retains communications and relationships with agencies of the United States Government and with foreign governments and organizations. This language does not include communications and relationships with the government of a state or territory in the United States[,] and this section would not prevent the High Commissioner from transferring authority over extradition under 12 TTC § 461 *et seq.*, to the new government emerging from the Trust Territory.

We note that the legislative branch of the government of Palau, in anticipation of such transfers, passed Public Law No. 7-8-7 which empowers the President to accept and perform transferred executive functions.

The remaining question is whether or not the Transfer Agreements have effected a transfer of the authority to act under 12 TTC § 461 from the High Commissioner to the President of the Republic of Palau. The trial court found that this power was included in Transfer Agreement No. 9 under the portion of that order dealing with law enforcement. We reach the same result but by a broader path. It is clear from the language of Secretarial Order 3039 that all executive functions are to be transferred from the Trust Territory to the government of Palau with only the exceptions as noted above. Those Transfer Orders that we have reviewed make no specific reference to the authority to act in matter of extradition, but they do pass to the government of Palau the executive functions of the Office of the Attorney General and Public Defender. They also transfer Pardon and Parole and, as we have stated, law enforcement in general. These transferred functions include the officers that would be involved in representing and advising the chief executive and counseling the accused in most cases of extradition. Further, matters of executive clemency generally require participation by the Attorney General and frequently the Public Defender. We do not find that it was the intention of the Secretary of Interior in preparing Secretarial Order No. 3039 to retain the extradition ¶113 responsibility in the High Commissioner, nor do we find that the High Commissioner intended to retain that function by not specifically including it in the transfer orders. In the context of all of the transfer orders and the manifest intent of Secretarial Order No. 3039[,] we find that his function of the chief executive has been transferred to the President of the Republic of Palau as a necessary part of the “package” of responsibilities specifically transferred in the orders mentioned above.

Accordingly, the trial court decision denying the Motion to Quash the warrant of arrest is affirmed and the case is remanded to the trial court for further proceedings consistent with this

holding.

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