

RECHEBEI NGIRASMENGESONG, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 141

NGIRACHESIMER, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 142

Trial Division of the High Court

Palau District

February 7, 1958

Defendants were convicted in Palau District Court of violating Koror Municipal Ordinance No. 2, prohibiting pedestrian or vehicle traffic on roads of municipality between midnight and 6 a.m., "except for valid demonstrable reason." On appeal, defendants maintain that ordinance is invalid as violation of United Nations Charter, Trusteeship Agreement, and Trust Territory Code. The Trial Division of the High Court, Chief Justice E. P. Furber, held that ordinance was valid as reasonable exercise of police power and within discretion of legislative authorities.

Affirmed.

1. Police Power—Generally

Those concerned with United Nations have considered that human rights and fundamental freedoms are not unlimited, but subject to various limitations in public interest.

- 2. Police Power—Generally**
Freedom of movement guaranteed by Article 7 of Trusteeship Agreement is expressly subject to requirements of public order and security. (Trusteeship Agreement, Art. 7)
- 3. Police Power—Generally**
Rights guaranteed under United Nations Charter and Trusteeship Agreement are subject to proper exercise of police power.
- 4. Police Power—Generally**
Guarantee of liberty in Trust Territory Code does not interfere with proper exercise of police power. (T.T.C., Sec. 3)
- 5. Police Power—Generally**
Police power is necessary and important attribute of every civilized government.
- 6. Police Power—Generally**
Police power includes power to make laws to secure public peace, good order, and comfort of community.
- 7. Police Power—Generally**
Possession and enjoyment of all individual rights are regularly considered subject to police power.
- 8. Police Power—Generally**
Basic standard by which validity of all exercises of police power should be tested is that all regulations and acts under it must be reasonable under all circumstances.
- 9. Police Power—Generally**
In testing validity of regulations and acts in exercise of police power, question is not whether particular exercise of power imposes restrictions on rights secured to individuals, but whether restrictions so imposed are reasonable.
- 10. Police Power—Generally**
In determining whether particular municipal ordinance is reasonable under all the circumstances, local conditions must be considered.
- 11. Courts—Judicial Notice**
Court will take judicial notice that particularly difficult law enforcement situation exists in community owing to its nature and hesitation of local leaders to impose traditional restraints there.
- 12. Police Power—Generally**
In exercise of police power, what constitutes reasonable restriction in particular situation depends in part on established customs of those concerned, or what people of community are used to.
- 13. Police Power—Generally**
Where real community problem exists in which public has proper interest in protecting itself, and means adopted tend to promote that in-

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terest, those having legislative authority have wide discretion in determining what interests of public require and what measures shall be taken to protect those interests.

14. Police Power—Generally

General principles requiring courts to make every reasonable presumption in favor of validity of legislation apply with particular emphasis to exercises of police power.

15. Police Power—Generally

An act in exercise of police power should be upheld by courts unless clearly unreasonable, or unless act is so clearly unreasonable that no fair minded man can think it reasonable.

16. Statutes—Presumption of Validity

As long as means adopted by those having legislative authority are within bounds of reason, it is for them, not courts, to decide whether particular means adopted are wise, expedient or desirable, or whether some milder measure would be sufficient.

17. Police Power—Generally

General principle, that police power must not be exercised so as to unreasonably limit rights granted to individuals, applies to executive officers as well as to those having legislative authority.

18. Statutes—Presumption of Validity

Mere possibility of abuse is not sound objection to validity of law, and it is not for courts to presume law will be unlawfully administered.

19. Statutes—Construction

Particular words in ordinance should be construed in light of both purpose of ordinance as a whole and rights guaranteed to individuals by legislation such as Bill of Rights, so as to reconcile them and give effect to both if fairly possible.

20. Statutes—Construction

It is duty of courts to adopt construction of law which will make it consistent with Constitution if language of law will permit.

21. Police Power—Curfew

Words "valid demonstrable reason" in ordinance limiting traffic hours must be construed to include any traffic which is reasonably incidental to normal and usual economic, social or religious activities generally accepted in community as wholesome or specifically authorized by law.

22. Police Power—Curfew

So long as proper construction of words in ordinance limiting traffic hours is followed, and persons engaged in such traffic are not put to unreasonable inconvenience in demonstrating reason for traffic, there can be no valid objection to actual operation of ordinance.

FURBER, *Chief Justice*

Both of these appellants were convicted by the Palau District Court of violating Section 4 of Article I of Municipal Ordinance #2 of Koror Municipality in the Palau District, dated May 9, 1956, and approved by the District Administrator for the Palau District May 25, 1956. The section in question prohibits pedestrian or vehicle traffic on the roads of the municipality between 12:00 midnight and 6:00 o'clock in the morning "except for valid demonstrable reason".

The two appeals were heard together and involve identical issues. The appellants seek to have the section of the Municipal Ordinance under which they were convicted declared invalid as violating specifically the following:—

United Nations Charter, Chapter XII, Article 76 c.

The Trusteeship Agreement for the former Japanese Mandated Islands, Article 6, subparagraph numbered 3, and Article 7.

Trust Territory Code, Section 8.

They further argue generally that the ordinance in question violates the American concept of liberty guaranteed to the peoples of the Trust Territory by Section 4 of the Trust Territory Code.

The appellee claims that the section in question is a valid exercise of the police power, and cites the decision in this court on appeals from the Palau District Court in the case of *Kimau v. Trust Territory*, Palau District Criminal Case No. 104, and fourteen companion cases heard with it, in which convictions under this section were affirmed December 7, 1956, without a written opinion.

[1, 2] The provisions of the United Nations Charter which the appellants cite is a part of the statement of the basic objectives of the Trusteeship System, one of which is stated to be "to encourage respect for human rights and for fundamental freedoms for all without distinction

as to race, sex, language, or religion, . . .". It is clear those concerned with the United Nations have considered that these human rights and fundamental freedoms are not unlimited, but are subject to various limitations in the public interest, as indicated by Article 7 of the Trusteeship Agreement cited by the appellants, and similar provisions in other Trusteeship Agreements providing that various freedoms are subject to the requirements of public order and security. See Charter of the United Nations, Commentary and Documents, Second and Revised Edition, by Goodrich and Ramoro, p. 425 to 426. The freedom of movement guaranteed by Article 7 of the Trusteeship Agreement for the former Japanese Mandated Islands is expressly stated in that article to be subject to these requirements.

Article 6, subparagraph 3, of the Trusteeship Agreement cited by the appellants, provides that the administering authority shall:—

"3. Promote the social advancement of the inhabitants and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants; control the traffic in arms and ammunition, opium and other dangerous drugs, and alcoholic and other spiritous beverages; and institute such other regulations as may be necessary to protect the inhabitants against social abuses; and"

The wording of the latter part of this subsection indicates clearly that the rights and fundamental freedoms referred to in the first part are intended to be subject to many regulations in the public interest.

Section 8 of the Trust Territory Code, cited by the appellants, directs that the inhabitants of the Trust Territory shall be accorded freedom of movement, but it again provides this "subject only to the requirements of public order and security".

[3] The court therefore holds that all of the rights which the appellants specifically claim have been violated are subject to the proper exercise of the police power.

[4] The guarantee of liberty in Section 4 of the Trust Territory Code is in the words made famous by the 14th Amendment to the United States Constitution to the effect that no person shall be deprived of liberty "without due process of law". These words in the 14th Amendment to the United States Constitution have been repeatedly held not to interfere with the proper exercise of police power. See 11 Am. Jur., Constitutional Law, §§ 261, 262, p. 995 to 999.

[5] The police power is a necessary and important attribute of every civilized government and as old as civilized governments. It is difficult to define exactly and is said to have never received a full and complete definition. Blackstone's description of it as understood many years ago in England, however, gives a good general idea of what is meant by the term. He said the police power was "the due regulation and domestic order of the kingdom, whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and inoffensive in their respective stations." 11 Am. Jur., Constitutional Law. §§ 245 to 247, p. 966 to 974.

[6, 7] The sweeping and fundamental nature of the police power is more fully explained in 11 Am. Jur., Constitutional Law, §§ 248 to 251, p. 974 to 979. It includes the power to make laws to secure the public peace, good order, and comfort of a community. 11 Am. Jur., Constitutional Law, § 277, p. 1036 to 1037. The possession and enjoyment of all individual rights are regularly considered subject to it. 11 Am. Jur., Constitutional Law, § 267, p. 1006 to 1009.

[8-10] The basic standard by which the validity of all exercise of the police power should be tested is that all regulations and acts under it must be reasonable under all the circumstances. The question is not whether a particular exercise of it imposes restrictions on rights otherwise secured to individuals by such things as the Bill of Rights, but whether any restrictions so imposed are reasonable. 11 Am. Jur., Constitutional Law, §§ 302 to 304, p. 1073 to 1081. The main issue in these appeals therefore boils down to the question of whether the section of the ordinance in question is reasonable under all the circumstances. In determining this matter, local conditions must be considered. 11 Am. Jur., Constitutional Law, § 258, p. 990 to 991.

[11] The court takes judicial notice that a particularly difficult law enforcement situation exists in Koror owing to a number of factors. Among these are the fact that by Micronesian standards Koror is a distinctly cosmopolitan community, having within it many people who are not used to and in some instances are hardly conscious of, various of the traditional restraints usual in Palauan society, and are therefore not readily susceptible to these traditional restraints; that the traditional leaders are not as yet clear as to how far they can go in enforcing their traditional restraints, or any others, without violating the American concept of liberty; and that the rank and file of the more stable elements in the community have not yet learned to take the initiative and responsibility which is necessary if a community is to satisfactorily police itself under democratic principles. The Constabulary are looked upon as so largely a foreign innovation or institution that it is extremely difficult for them to obtain evidence, even in situations in which it would ordinarily be readily forthcoming in an American community, at least in the case of serious crimes, and which is essential to successful prose-

cutions. Furthermore, the experience of the people for generations has led them to look to the government for a more paternalistic control than is usual in the United States, and to accept without concern, or even approve, regulations designed to prevent or reduce occasions for trouble in preference to attempts to discourage trouble by fear of punishment to follow after it occurs.

While the ordinance in question is commonly, and it is believed fairly referred to as a "curfew" law, it should be noted that as curfew laws go it is extraordinarily mild and does not purport by any means to even prevent all traffic on the roads between the hours specified, but merely that for which there is no "valid demonstrable reason". It is far milder than the ancient curfew laws in England which caused such extreme resentment centuries ago that many Americans today dislike the very thought of such a law. See Bouvier's Law Dictionary, Vol. 1, p. 738, "Curfew". Much more stringent curfew laws than that here in question, however have in recent times been held to be valid and reasonable in the United States in war time and clearly recognized as an appropriate means in aiding in maintaining law and order at such times. See 56 Am. Jur., War, § 29, p. 154, 155.

[12] What is "reasonable" in particular situations depends in part on the established customs of those concerned, what is sometimes called "the conventionalities of the time"—that is, in the cases now under consideration, what the people of the municipality are used to. 11 Am. Jur., Constitutional Law, § 304, last full par. on p. 1080. Various Sunday laws, some of them imposing restrictions on individual liberty fully as irksome to those who are not used to them as the restrictions imposed by the ordinance now in question, have been upheld in the United States for generations as constitutional and a

proper exercise of the police power. See 50 Am. Jur., Sundays and Holidays, §§ 5, 9, p. 803, 808.

[13-16] Where, as in this instance, a real community problem exists in which the public has a proper interest in protecting itself, and the means adopted tend to promote that interest, those having legislative authority are entitled to a wide discretion in determining just what the interests of the public require and what measures shall be taken to protect those interests. The general principles requiring courts to make every reasonable presumption in favor of the validity of legislation apply with particular emphasis to exercises of the police power. An act in the exercise of this power should be upheld by the courts unless it is clearly unreasonable—unless, according to some authorities, the act is so clearly unreasonable that no fair-minded man can think it reasonable. As long as the means adopted by those having legislative authority are within the bounds of reason, it is for them, and not the courts, to decide whether the particular means adopted are wise, expedient, or desirable, or whether some milder measure would be sufficient. 11 Am. Jur., Constitutional Law, §§ 305 to 307, p. 1081 to 1092, especially the final par. of § 306 beginning on p. 1088.

[17, 18] The court realizes there is some danger that the section in question might be unreasonably or arbitrarily applied in an unlawful manner by those endeavoring to enforce it, and that the reasonableness of the actual operation of the section may depend in some instances on what is recognized by the enforcement officials as a “valid demonstrable reason” for traffic between midnight and 6:00 o’clock in the morning. It should be noted, however, that the general principle that the police power must not be so exercised as to unreasonably limit rights granted to individuals applies to executive officers—including both

sonable inconvenience in demonstrating the reason for the traffic, it is believed that there can be no valid objection to the actual operation of the section.

What constitutes a "valid demonstrable reason" was not at issue in the case of *Kimau v. Trust Territory*, cited above, and the companion cases heard with it, because in all of these cases it had been stipulated that the accused had violated the terms of the section in question. In the cases involved in these appeals, the only evidence of the appellants' reason for being on the road at about 3:40 a.m. is testimony that they stated they "came for alcoholic beverage". In view of the whole purpose of the ordinance in question, the court holds that this is clearly not a "valid demonstrable reason".

Under all the circumstances this court holds that Section 4 of Article I of Koror Municipal Ordinance #2 is a reasonable means tending to meet a community problem, that its enactment was within the discretion of the legislative authorities, that it is a valid exercise of police power, and is of legal effect, and that it was not unreasonably or unlawfully applied in the cases now on appeal.

JUDGMENT

The findings and sentences of the Palau District Court in its Criminal Cases Nos. 853 and 854 are hereby affirmed.