

COMMENTS ON THE ROLE OF THE PRESIDENT IN EXTRADITION UNDER TAIWAN LAW

In January, 1985, Ch'en Jung-chieh's book, The Theory and Practice of Extradition, was published in Taipei. The author has an LLB degree from National Taiwan University, and both a JD and Masters of Comparative Law from Southern Methodist University; he has also qualified for the bar in Taiwan. He is currently the Deputy Chief of the Department of Treaties and Law of the Ministry of Foreign Affairs of the Republic of China.

The author says that the ROC's Extradition Law adopted the system of having the judicial organ give an advisory opinion on requests for extradition. He quotes Section 2 of Article 20 of the law, which says, "The court shall prepare a decision within five days after the conclusion of oral proceedings, stating whether extradition should be approved." Section 1 of Article 21 provides, "The court, after preparing the decision, shall submit the case to the Ministry of Justice through the procuracy, for forwarding to the Ministry of Foreign Affairs. The Ministry of Foreign Affairs shall then submit it to the President for review and determination." Article 22 states,

If extradition is permitted by the President, the procuracy corresponding to the court with jurisdiction shall, after receipt of the written notice from the Ministry of Justice, so inform the person requested for extradition. If extradition is refused by the President, the procuracy corresponding to the court with jurisdiction shall cancel the detention. The country making the requisition may not thereafter make requisition for extradition on the same case.

According to the above, Ch'en says, a request for extradition must be adjudicated by the court, but the result of the adjudication, regardless of whether it permits or denies extradition, is only for reference; the

President has the right to change the court's decision. The legislative reason for having the judicial organs adjudicate such cases is to see whether they meet the legal requirements, since legal principles are involved. However, extradition does affect international politics, so the executive organ shall have the power of review and discretion, and the final power of determination belongs to the President. [See Ch'en Jung-chieh, The Theory and Practice of Extradition 150-151 (Taipei, San-min Books, 1985).]

Thus, the author of this monograph on extradition takes a stronger stance than I have taken in my previous reports on the role given the President by the ROC's Extradition Law in determining whether or not extradition can be permitted.

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