[UNOFFICIAL TRANSLATION]

Incheon District Court
1-2nd Criminal Branch
Decision

Case No.	2020InRa8
Appellant, Petitioner for Relief, and Inmate	A
Counsels	Attorney Lee, Il, Advocates for Public Interest Law; Attorney Lee, Hanjae
Defendant, Custodian	Incheon International Airport Immigration Office, Ministry of Justice Legal Representative Jeong, Beomgyun
Decision of the First Instance	Incheon District Court Decision 2020In62, delivered on 16 November 2020

Rulings

1. The decision of the court below are revoked.
2. The petition for relief in this case are dismissed.

Purport of the Petition and the Appeal

Purport of the Petition: The inmate to be immediately released.
Purport of the Appeal: The decision of the court below are revoked. Purport of the claim is reiterated.

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Reasoning

1. Summary of Reasons for Appeal

The Appellant (Petitioner for relief and inmate, hereinafter referred to as "Appellant") was unjustly confined in the transfer area on the 3rd floor of Incheon International Airport where the other Party (Custodian, hereinafter referred to as "Custodian") substantially manages entrance and exit thereof; the decision of the court below which found otherwise and dismissed the Appellant's petition is illegal and must be revoked.

2. Finding

A. Personal liberty is a fundamental right recognized for all human beings, and the Habeas Corpus Act was enacted to establish prompt relief procedures for individuals whose personal liberty is unfairly restricted. Thus, the right to petition for relief under the Habeas Corpus Act is recognized even for foreigners who stay at an airport of the Republic of Korea as a result of the denial of entry into the Republic of Korea. In addition, even if a foreigner is not allowed to enter the Republic of Korea, forcing him/her to stay in a limited space for a long period of time where access to the outside is controlled constitutes an illegal confinement subject to relief under the Habeas Corpus Act, as it restricts personal liberty without legal grounds(see Supreme Court Decision 2014Ma5 delivered on 25 August 2014).

According to the records, we find that the Appellant filed a refugee application for entry into the Republic of Korea at the departure hall of the transfer area of Incheon International Airport on 18 February 2020; the Custodian denied the Appellant's entry into the Republic of Korea without initiating the procedure for application for recognition of refugee status at the port of entry as stipulated in Article 6 of the Refugee Act and subsequently forced the Appellant to stay for a long time in the above-mentioned departure hall where access to the outside is controlled. However, the court below found that the Appellant was only staying in the 'transfer area' and was not held, protected, or confined by the Custodian and dismissed the petition for relief. The decision is illegal and needs to be revoked, as it misconstrued the facts or misunderstood the legal principles, including that on confinement under the Habeas Corpus Act (the court below did not explain the grounds for its judgment; however, we presume that it has accepted the Custodian's argument that the Appellant has been voluntarily staying in the transfer area even though he could go to Palau, the original destination, or another country, and thus does not constitute an inmate who is held, protected or confined against his/her free will as provided under the Habeas Corpus Act. However, the above argument is based on the premise that the Appellant is to be unjustly forced to give up his intention to apply for refugee status, and the argument itself shows

that even the Custodian has acknowledged that the Appellant had no choice but to stay in the transfer area against his will unless he gave up his intention to apply for refugee status; thus, the decision of the court below accepting the above argument is illegal).

B. However, if an inmate is released from confinement while the procedure for a petition for relief under the Habeas Corpus Act is in progress, benefit of the petition shall be deemed extinguished, unless there are special circumstances such as a case where, for the same reason as that for which the petitioner requested relief from the court, the petitioner has been re-confined in another confinement facility or the possibility of re-confinement in the future cannot be excluded (see the above Supreme Court Decision, etc.).

According to the records, we find that the Appellant who was an inmate filed a suit against the Custodian at the Incheon District Court(2020Guhap51536) to revoke the disposition of refusal to accept the application for recognition of refugee status. We also find that the above court has partially accepted the plaintiff's claims on 4 June 2020, ruling to the effect that "the court finds that the omission of the Custodian in initiating the procedure for application for recognition of refugee status at the port of entry as stipulated in Article 6 of the Refugee Act is illegal"; the Custodian appealed to the Seoul High Court(2020Nu45348) but the appeal was dismissed on 21 April 2021, and the decision was confirmed around that time; afterwards, following the purport of the above confirmed decision, the Custodian initiated the procedure for application for recognition of refugee status and the Appellant received a decision to refer refugee recognition review on 24 May 2021, which was after the decision of the court below; and subsequently, the Appellant, pursuant to Article 5 (4) of the Enforcement Decree of the Refugee Act, was allowed to enter the Republic of Korea and was released from the confinement in the transfer area of Incheon International Airport. Therefore, unless there is any evidence that the Appellant, who was an inmate, has been re-confined in another confinement facility or can be re-confined in the future for the same reason as that for which the Appellant requested relief from the court, the petition for relief seeking release from the confinement in the transfer area of Incheon International Airport where the Custodian manages entrance and exit thereof became unlawful because there is no benefit of petition for remedy. The decision of the court below, premised on the existence of benefit of the petition, is illegal also in this respect and cannot be sustained.

3. Conclusion

Therefore, we find unjust the decision of the court below, which found that the measures taken by the Custodian did not constitute confinement and consequently that the petition for relief was groundless. However, as there is no benefit of the petition for relief, the decision of the court below are

revoked and the petition for relief dismissed, as per Rulings.

9 August 2021