

Ngiraingas v. Eighth Peleliu State Legislature, 13 ROP 261 (Tr. Div. 2006)

**JACKSON NGIRAINGAS,
Plaintiff,**

v.

**EIGHTH PELELIU STATE LEGISLATURE,
Defendant.**

CIVIL ACTION NO. 06-071

Supreme Court, Trial Division
Republic of Palau

Decided: May 18, 2006

LARRY W. MILLER, Associate Justice:

This matter is before the Court following a trial of plaintiff Jackson Ngiraingas's complaint to void the resolution purporting to remove him from the office of Governor of Peleliu State.¹ For the reasons set forth herein, the Court finds that plaintiff is entitled to that relief.

On March 23, 2006, ten members of the Peleliu Legislature, constituting a two-1262 thirds majority, adopted Resolution No. 08-39-06, (the "Resolution") impeaching plaintiff. The Resolution left open the possibility that it could be revoked until April 8, 2006, but provided that if it were not revoked by that date, plaintiff would be removed from office. Plaintiff wrote a letter to the Speaker of the Legislature on March 31, 2006, responding to the Resolution, and later attended an informal meeting of legislators at the Penthouse Restaurant on April 5, 2006, following which he distributed additional documents to them.² Evidence was presented that a formal session of the Legislature was scheduled for the evening of April 7, 2006, but plaintiff did not travel to Peleliu to attend the session and only seven legislators showed up, falling one short of a quorum. April 8th having subsequently come and gone with no further action by the Legislature, on April 10, 2006, the Speaker wrote a letter to the Palau Election Commission, requesting that a special election be scheduled. This action followed.

Plaintiff makes two principal arguments. First, he asserts that the way in which the Resolution was adopted violated his due process rights. Second, he asserts that, even accepting the allegations made against him, they do not amount to "treason" as stated in the Resolution and

¹ Plaintiff originally filed a motion for a preliminary injunction. On April 11, 2006, the parties entered into a stipulation allowing plaintiff to remain in office (subject to certain restrictions) pending an accelerated trial. Trial went forward on April 25, written closing arguments were submitted, and, by agreement, plaintiff filed a supplemental brief addressing the recent appellate decision in *Tudong v. Sixth Kelulul A Ngardmau*, 13 ROP 109 (2006).

² The documents were various financial reports and statements intended to rebut certain assertions in the Resolution concerning his alleged non-compliance with PSPL No. 218-03.

Ngiraingas v. Eighth Peleliu State Legislature, 13 ROP 261 (Tr. Div. 2006) as required by the Peleliu Constitution. The Court will address each contention in turn.³

I. Due Process

Plaintiff's due process challenge hinges on the fact that he was not given notice of or an opportunity to be heard at the March 23rd special session at which the Resolution was adopted. He points out that although there was a written notice of that session, impeachment is not on the agenda, which is limited solely to the potential override of a recently vetoed bill. He also points out that there was no other session of the Legislature at which the Resolution was considered or voted upon.

Defendant's response to this argument is that due process was satisfied because plaintiff had the opportunity to respond to the allegations made in the Resolution after it was passed. Although, in common parlance, people often confuse impeachment of an officeholder with his removal from that office, it is, generally speaking, a two-stage process: first, an officeholder is accused of wrongdoing potentially subjecting him to removal; then, he is removed (or not). *See Ngirmekur v. Office of Palau Election Comm'n*, 9 ROP 295, 299 (Tr. Div. 2002).⁴ In **L263** such a system, what is significant for due process purposes is what happens after the impeachment, strictly speaking: the impeachment resolution gives the officeholder notice of the charges against him, and then he has the opportunity to respond to those charges before a decision is made to remove or not to remove him.

That is essentially what happened in the *Ngirmekur* case⁵ and that is what defendant urges happened here: plaintiff was given due notice through the passage of the Resolution on March 23rd, and then, pursuant to the Resolution, was given the opportunity to persuade the members of the Legislature to retain him in office by written submissions, through the informal meeting with legislators at the Penthouse, and through the invitation to attend a session on April 7th.

The April 7th session is the subject of some dispute.⁶ In the Court's view, however, the

³ Given the opinion in *Tudong*, see n.1 *supra*, the Court believes that its authority to address both of these contentions is clear. *Tudong* held that there is no justiciable controversy where "there is neither an assertion of a procedural due process violation nor a valid question raised as to the definition of a constitutional provision." *Id.*, at 113. Here, there is both. Although neither party could resist also discussing the truth or falsity of the particular allegations made in the Resolution, the Court eschews any discussion of those matters, which are clearly not justiciable.

⁴ This process is more easily understood in a system with a bicameral legislature like the United States where, as people will remember with President Clinton, he was impeached by a vote of the House of Representatives, and then tried before the Senate. *See Palau Constitutional Convention, Standing Committee Report No. 14 (Feb. 24, 1979)*, at p.12: "An impeachment, at least in the United States, takes place in two stages roughly comparable to an indictment and a conviction. In a bi-cameral system each house of the legislature plays its own role."

⁵ In *Ngirmekur*, this Court found that due process was satisfied by the Governor's opportunity to be heard prior to the passage of the impeachment resolution on second reading, even though he was "not given notice of or an opportunity to be heard at the hearing ... when the impeachment resolution was first proposed." *See* 9 ROP at 299.

⁶ Plaintiff says he was not formally invited to attend, though he concedes that he was present

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difficulty with defendant's argument is not that the April 7th session never took place, but that there was never any subsequent session between March 23rd, when the Resolution was adopted, and April 8th, when, by its own terms, it was deemed to have effected plaintiff's removal from office. This is problematic for two related reasons. First, it obviously tends to magnify the significance for due process purposes of the March 23rd session -- from which plaintiff was absent -- as the only one where the legislators met formally to consider the merits of the Resolution. Second, and conversely, it tends to diminish the significance of plaintiff's chances to respond after that date. The opportunity to be heard guaranteed by the due process clause is not the opportunity to hear oneself talk, but to have one's words and arguments given consideration by the person or persons who will be determining whether to deprive you of your life, liberty or property. *See Billington v. Underwood*, 613 F.2d 91, 95 (5th Cir. 1980) ("The very notion of a hearing ... connotes that the decision maker will listen to the arguments of both sides before basing a decision on the evidence and legal rules adduced at the hearing."). Here, it does little good to emphasize plaintiff's chance to respond after the March 23rd session because it is unclear what consideration, if any, the legislators gave to his response. It may well be that the legislators who voted for the Resolution were not persuaded by plaintiff's response to it. But in the absence of any vote on that question, the Court believes it is constrained to say that plaintiff was not given a proper opportunity to be heard and was thereby denied due process.

The Court should note one other point which, although not raised by plaintiff, is 1264 significant to the Court's conclusion. In describing the potential for revocation, the Resolution states:

[I]f the Legislature feels that [the Governor's] explanations or defenses are sufficient, then this Resolution may be revoked by an affirmative vote of at least ten (10) members of the Legislature

Whether intentional or inadvertent, there is a problem here. The Peleliu Constitution provides that "[t]he Governor may be impeached and removed from office ... by a vote of not less than two-thirds (2/3) of the members of the State Legislature." Although the Resolution to impeach him was approved by the necessary two-thirds, the language of the Resolution appears to provide that a vote to revoke it -- in effect, the vote on whether or not to remove plaintiff from office -- would fail even if supported by a clear majority; that is, even if nine legislators had voted to revoke the Resolution, and thereby to retain plaintiff, the vote of only six legislators against revocation would be sufficient for removal. This puts the super-majority shoe on the wrong foot, and the Court should say so to avoid confusion in the future. But it is also important to the Court's finding of a due process violation because it serves to emphasize that -- on a proper reading of the constitutional language -- if only one legislator had changed his mind upon consideration of plaintiff's response to the Resolution, he should have been retained in office. Maybe someone would have changed his mind or maybe not; in the Court's view, due process required at least that the vote be taken.

when the session was scheduled. Plaintiff also points to the fact that no session was actually held; defendant urges that the reason a sufficient number of legislators failed to attend was because they had heard plaintiff wasn't coming anyway. The Court finds it unnecessary to resolve these conflicting contentions.

II. Basis for Impeachment

The Court next addresses plaintiff's challenge to the basis for the impeachment, which contends that the Legislature strayed from the true meaning of the Peleliu Constitution by creating its own definition of "treason."⁷ The Resolution "adopt[s] a definition of 'treason' as it appears in Webster'[s] New World College Dictionary, to mean a betrayal of trust or faith, treachery, and/or a violation of one's allegiance owed to one's state ...". Plaintiff argues for a different definition, preferring a legal dictionary to the college dictionary consulted by defendant, and contending that "treason" should be defined as "[t]he offense of attempting to overthrow the government of the state to which one owes allegiance, either by making war against the state or materially supporting its enemies." *Black's Law Dictionary* 1506 (7th ed. 1999).⁸

Although the Court finds itself ultimately in agreement with plaintiff, it begins its analysis not by looking in the dictionary but by noting that the language of the Peleliu Constitution authorizing impeachment is substantially identical to the language of the Palau Constitution. Compare Peleliu Const., Art. VII, § 7 ("for treason, bribery, or other serious crime"), with Palau Const., Art. VIII, § 9 ("for treason, bribery, or other serious crimes"). Unfortunately, this **¶265** turns out to be a dead end, since the committee that proposed this language apparently came up with this particular combination of impeachable offenses by itself and provided no further explication. See Palau Constitutional Convention, Standing Committee Report No. 14 (Feb. 24, 1979), at p.12 ("Your Committee received no proposal dealing directly with impeachment").⁹

Another place to look before turning to dictionaries – or at least in deciding which dictionary is a better source – is the language surrounding the word "treason", *i.e.*, "treason, bribery, or other serious crime." There is an interpretive rule called *noscitur a sociis*, which is sometimes explained as meaning that "a word is known by the company it keeps." *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575, 115 S. Ct. 1061, 1069 (1995); see also *Beecham v. United States*, 511 U.S. 368, 371, 114 S. Ct. 1669, 1671 (1994) ("That several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well."). Here, "bribery" is obviously a crime, and the phrase "other serious crime" also implies that "treason" is being employed in its criminal, rather than its colloquial, sense. With this in mind, the definitions proposed by plaintiff, which refer to the attempted overthrow of the government, are more appropriate than that used by the Legislature. "Treason" may be used in some circumstances to mean nothing more than "a betrayal of trust or faith", but "a betrayal of trust or faith" is not "[an]other serious crime" and is therefore not a sufficient definition for "treason" as

⁷ In the Court's view, because plaintiff's success on this issue might (and does) entitle him to a stronger remedy, *i.e.*, a declaration that the Resolution was void from the start, this issue must still be addressed notwithstanding the due process violation already found above.

⁸ Plaintiff also offers the following definition of "treason" from *American Jurisprudence*, a legal encyclopedia: "[T]he offense of attempting by overt acts to overthrow the government of a state to which the offender owes allegiance." 70 Am. Jur. 2d *Sedition, Subversive Activities, and Treason* §58 (2005).

⁹ The combination of "treason, bribery, or other serious crimes" does not appear in the U.S. Constitution, and a Westlaw search failed to uncover any state constitution from which the framers may have borrowed those words.

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it is used in the Peleliu Constitution.¹⁰

Defendant offers a fallback argument, suggesting that even if the Court disapproves its definition of “treason,” certain assertions made in the Resolution – namely, that plaintiff failed to comply with PSPL No. 218-03 – amount to the “serious crime” of Misconduct in Public Office, 17 PNC § 2301. The Court does not address whether plaintiff failed to comply with PSPL No. 218-03, or whether such non-compliance would violate 17 PNC §2301. Assuming that both are true, plaintiff is correct to point out that the Resolution cites only “treason” and not any “other serious crime” as the basis for its action. This is true both as to the “WHEREAS” clauses of the Resolution, but also as to the first, and principal, “BE IT RESOLVED”:

BE IT RESOLVED that the people of the State of Peleliu ... hereby impeach Jackson R. Ngiraingas from the Office of Governor ... on the grounds that the Legislature has adjudged and decreed that Jackson R. Ngiraingas has and will commit treason ...

Just as a proper respect for the separation of powers dictates that the Court should not interfere with the judgment of the Legislature as to matters that are peculiarly within its **1266** domain, so, too, it dictates that the Court not substitute judgments the Legislature might have made for what it actually said and did. If defendant hereafter determines that plaintiff is subject to impeachment on a basis other than that stated in the Resolution (or if it has some plausible basis for concluding that plaintiff “has and will commit treason” in the sense that the Court believes the framers of the Peleliu Constitution intended), it may adopt a new resolution to that effect. The Resolution before the Court, on which the purported removal of plaintiff was based, does not comport with the Peleliu Constitution, and accordingly must be declared void.

An appropriate judgment is entered herewith.

¹⁰ It may be expected that people reading this decision will refer to “the Court’s” definition of treason as contrasted with “the Legislature’s” definition. But it should be kept in mind that what both the Court and the Legislature are ultimately trying to find (or should be) is not their own definitions, but the best understanding of what the framers of the Peleliu Constitution intended when they used that word.