

Ngirausui v. ROP, 1 ROP Intrm. 185 (Tr. Div. 1985)
GREGORIO NGIRAUSUI, et al.,
Plaintiffs,

v.

NATIONAL GOVERNMENT OF THE
REPUBLIC OF PALAU, et al.,
Defendants.

CIVIL ACTION NO. 162-84

Supreme Court, Trial Division
Republic of Palau

Order

Decided: January 21, 1985

BEFORE: ALAN L. LANE, Associate Justice.

Defendants' Motion to Dismiss Complaint came on regularly for hearing on January 18, 1985. Present were John Rechucher, Esq., counsel for the plaintiffs and Eric Basse, Esq., counsel for the defendants.

The Motion and opposition thereto was argued by the parties, and the Court, after having considered argument and points and authorities filed therewith, made its Order denying defendants' Motion. In deciding defendants' Motion, the Court finds and concludes as follows:

Article II, Section I of the Palau Constitution provides: "This Constitution is the supreme law of the land." Article IV, Section 7 of the Constitution provides in part: "The national government may be held liable in a civil action for unlawful arrest or damage to private property as prescribed by law." Article XV, Section 3(a) (entitled TRANSITION) provides: "All existing law in force and effect in Palau immediately preceding the effective date of this Constitution shall, subject to the provisions of this Constitution, remain in force and effect until repealed, revoked, amended or until it expires by its own terms".

It is agreed that, on the effective date of the Palau Constitution, there did exist a law of the Trust Territory which provides for actions against the Trust Territory Government in certain cases. This law is contained in and identified as 6 TTC § 251, *et seq.*

¶186 Defendants argued that the Palau Constitution, by virtue of its supremacy clause, grants to the Republic an immunity which is absolute and distinct from that of any other government, including the Trust Territory Government. By virtue of this supremacy, or sovereign immunity, any provision in the laws in effect prior to the enactment and effective date of the Palau Constitution that purports to waive immunity is per se superceded. They argue that the immunity waivers (6 TTC § 251, *et seq.*) pertain only to the sovereignty of the Trust Territory Government,

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and not to Palau.

This Court disagrees. The framers of the Palau Constitution expressly provided for existing laws to remain in effect after the effective date of the Constitution [Article XV, Section 3(a), (*supra*)]. Article IV, Section 7 (*supra*) simply requires that immunity waivers be prescribed by law. No requirement is expressed that the Palau Congress must prescribe them. It is apparent that the new Palau Congress needed time to enact all the necessary laws to protect the citizens and government of Palau, and therefore existing laws on the books would continue until the Congress changed them.

The absolute supremacy argument presented by defendants is rejected. In the Appellate Decision re Writ of Prohibition, *Julio Kazuo v. Republic of Palau; Yukie Yano v. Republic of Palau*, Special Proceeding No. 7-83 and 8-83 [Palau Supreme Court (App. Div.) 1984]¹, the Court recognized the problem of absolute supremacy of the Palau National Government. As stated by the Palau Supreme Court: “The curious situation in which Palau now finds itself gives rise to the unusual issue before us. Palau is currently under the administration of two governments”. (*See* page 7 of decision, *supra*).

It cannot be said, until such time as the Trusteeship terminates, that the Republic of Palau enjoys a state of absolute sovereignty. The Republic is sovereign by virtue of its Constitution, but that sovereignty is qualified at best, and interrelated with the Trust Territory Government. An absolute sovereignty or supremacy would not require new laws to be reviewed by outside sources (the High Commissioner) or Court decisions to be reviewed by a yet “higher court” (Trust Territory High Court).

The Court concludes that the allegations contained in ¶187 plaintiffs’ complaint match the waivers expressed under 6 TTC § 251(c), and that said waivers pertain to actions filed after the effective date of the Palau Constitution.

For the reason stated herein, and good cause appearing therefore,

IT IS HEREBY ORDERED that defendants’ Motion be, and the same is, denied.

¹ Writ of Certiorari currently pending before the High Court of the Trust Territory, Appellate Division.