

ROP v. Wolff, 4 ROP Intrm. 278 (Tr. Div. 1993)
REPUBLIC OF PALAU,
Plaintiff,

v.

MARTIN WOLFF,
Defendant.

CRIMINAL CASE NO. 320-93

Supreme Court, Republic of Palau
Trial Division

Order denying demands for jury trial, indictment & trial in U.S. Art. III Court and denying third motion to dismiss

Decided: December 8, 1993

JEFFREY L. BEATTIE, Justice:

Defendant was ordered to file briefs in support of his demands for Jury Trial, Indictment by Grand Jury, and Demand for Trial in an Article III court. He failed to file any brief. Instead, he submitted a copy of a Petition for Writ of Mandamus which he prepared for filing in the United States Court of Appeals for the Ninth Circuit. The Court will examine the scant legal authority cited therein.

Defendant does not argue that he has the right to a jury trial, indictment, or trial in a United States Article III court under the Palau Constitution. Indeed, although defendant failed to direct the court's attention to the case, one case directly decided the question of whether there is a right to a jury trial under the Palau Constitution. In *Republic of Palau v. Chisato*, 2 ROP Intrm. 227 (1991), the Supreme Court held that there is no right to a jury trial under the Palau Constitution.

Defendant's demands rely wholly on the applicability of the United States Constitution to this case. Defendant contends that the United States Constitution applies to criminal proceedings in the courts of Palau for violations of Palau criminal statutes committed in the Republic of Palau if the accused is a United States citizen. In support of that contention, defendant cites *Reid v. Covert*, 354 U.S. 1, 77 S.Ct. 1222 (1957). That case held that a civilian United States citizen living abroad could not be tried by a *United States* military court martial under the Uniform Code of Military Justice, which did not give the accused a right to trial by jury. The *Reid* rationale was that when the *United States* acts against its citizens abroad, it is bound by the United States Bill of Rights. 77 S.Ct. at 1225. At first blush, then, it appears clear that *Reid* is inapplicable to this case because Palau, not the United States, has filed the criminal charges in its court for violation of its laws.

However, defendant argues that since Palau is still part of the United Nations Trust

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Territory administered by the United States, the Palau Supreme Court was therefore created by the United States Department of Interior and is thus a mere administrative law court of the United States in effect, a United States agency dressed up in Palauan robes. Numerous court decisions in the United States have rejected the contention that the Trust Territory is an agency of the United States. *See McComish v. C.I.R.*, 580 F.2d 1323 (9th Cir. 1978)¹; *Gale v. Andrus*, 643 F.2d 826 (D.C. Cir. 1980); *Porter v. United States*, 496 F.2d 583 (Ct. [C1 sic] 1974), *cert denied*, 420 U.S. 1004 (1975) (holding that “the courts have consistently held the Trust Territory to be either a ‘foreign country’ or something other than a ‘federal agency’”, 496 F.2d at 588-89).²

In arguing that the Palau courts are mere agencies of the United States, defendant not only overlooks contrary court decisions, but also the restricted role of the United States in the Trust Territory. The Trust Territory is derived from a trust created, not by the United States, but rather by the United Nations. The real authority over the Trust Territory is the United Nations, with the United States acting only as an administrator. The 1280 United States has only the authority granted by the United Nations. It cannot unilaterally terminate the Trust Territory or modify the terms of the trust. Under those terms, the United States is *required* to assist the Trust Territory in obtaining self government or independence. *See* Trusteeship Agreement, Article 6, § 1. Acting to fulfill that requirement, the Department of Interior has issued Secretarial Order 3119, which, among other things, delegates judicial and legislative functions of the Government of the Trust Territory to the Government of Palau established pursuant to the Constitution of Palau. *See* Secretarial Order 3119, § 2. The Palau Supreme Court is part of the judicial branch of the Government of Palau established pursuant to the Constitution of Palau. *See* Palau Constitution, Art. X, § 1.

The Palau Supreme Court was created by the Government of Palau, not the United States. Its judges are appointed by the President of Palau, not the Secretary of the Interior. Its employees are paid by the Government of Palau, not the United States. The promotion of self government which eventually resulted in the creation of the Palau Supreme Court was mandated by the terms of the Trusteeship Agreement. As trustee or administrator of the Trust Territory, the United States does not have the discretion to prevent Palau’s march toward self government. With respect to its authority over the Trust Territory, the United States receives its marching orders from the United Nations, not from the United States Congress or its delegates (except as to the manner of exercising such authority). In short, the Trust Territory and the courts of Palau both owe their existence to the United Nations, not the United States. The Palau Supreme Court

¹ In the later case of *Bowoon Sangsa Co., Ltd. v. Micronesian Industrial Corporation*, 720 F.2d 595 (9th Cir. 1983), the Ninth Circuit held that the Palau courts are not “foreign courts”, but did not retreat from its previous holdings that Palau was quasi-sovereign and not an agency of the United States. Moreover, the *Bowoon* court relied heavily on facts that are no longer existent in Palau. For example, it was of extreme importance that the Compact of Free Association had been rejected in the then most recent plebiscite. That rejection compelled the court’s holding “as a matter of policy.” 720 F.2d at 602. The voters of Palau have now approved the Compact.

² *Porter* further points out that “in entering the trusteeship agreement, the United States made clear that it did not consider its role of trustee to encompass the highest form of political authority over the islands, i.e., sovereignty. 16 Dep’t State Bull. 416, 417 (1947).” As *Porter* notes, that is the accepted view under international law.

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is not an agency of the United States.

The fundamental rights given to a defendant in a criminal proceeding by the Palau Constitution are very similar to those granted in the United States. The Palau courts often look to decisions of United States courts for guidance in interpreting the nature and extent of those rights. However, it is the Palau Constitution which applies to criminal proceedings in Palau for violation of its statutes. The Palau Constitution does not grant a defendant a right to a jury trial, grand jury indictment or trial before a court created under L281 Article III of the *United States* Constitution. Accordingly, the defendant's demands are DENIED.

DEFENDANT'S THIRD MOTION TO DISMISS

In this Motion to Dismiss, defendant claims that 17 PNC § 3306, which prohibits possession of firearms and ammunition, is unconstitutional as applied to him because he is a United States Citizen who has a right to bear arms under the United States Constitution. Further, he argues that, as applied to him, the sentencing provisions constitute cruel and unusual punishment in violation of the United States Constitution. For the reasons stated earlier, the United States Constitution does not apply here, so the defendant's argument is without merit. To hold otherwise would not only fly in the face of the reasoning and authorities cited hereinabove, but would also mean that United States citizens could possess guns in Palau, but Palauans could not. In contending for such an absurd result, defendant once again fails to cite any relevant authority.

Defendant further argues that the ban on possession of weapons exceeds the authority granted to the administering authority under Article 6, Section 3 of the Trusteeship Agreement and thereafter delegated to the Government of Palau with other legislative authority. Article 6, Section 3, provides that the administering authority shall, among other things, control the traffic in arms and ammunition. That is exactly what 17 PNC § 3306, along with § 3307, is designed to do. These statutes control the possession of firearms and ammunition so they are restricted to certain designated law enforcement and military personnel. Defendant's Motion to Dismiss is therefore DENIED.