

NOTABLE CASES

Throughout Palau's transition from a trust territory to an independent nation, the Judiciary of Palau has been responsible for interpreting the Constitution and the Palau National Code. The following cases illustrate how the Judiciary has carried out this role.

Historic Cases:

Eriich v. Reapportionment Comm'n, 1 ROP Intrm. 134 (1984). In this case, the Supreme Court reviewed the 1984 Reapportionment and Redistricting Plan. The plan set the number of Senate seats at 14, from three Senatorial Districts. It was challenged on equal protection grounds but upheld by the Supreme Court.

Gibbons v. Etpison, 4 ROP Intrm. 1 (1993). This case concerned the passage of the Compact of Free Association between Palau and the United States. According to a provision in the Palauan Constitution, "any agreement which authorizes use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require approval of not less than three-fourths (3/4) of the votes cast in such referendum." Palau Const., art. II, § 3. Because the Compact allowed the United States to store nuclear weapons on Palau, this provision required that the Compact be approved by 75% of votes cast. After several votes on the Compact which failed to reach a supermajority, a group of Palauan voters filed a petition for a popular initiative to amend the Constitution so that only a simple majority was needed to approve the Compact. This initiative was on the ballot November 4, 1992 and passed with a 62% majority.

Plaintiffs sought a determination that the initiative be voided on the grounds that (1) the constitutional provision establishing amendment by popular initiative had not been executed; (2) the ballot's language was misleading; and (3) that voters were insufficiently informed about the substance of the amendment. The Court held that a constitutional amendment, once approved by the people is self-executing, needing no OEK action to take effect. Additionally, the amendment was properly approved. Thus, the amendment passed, and it changed the vote needed to adopt the Compact to a majority of the population, rather than 75%.

Wong v. Nakamura, 4 ROP Intrm. 243 (1994). In this case, the Appellate Division affirmed dismissal of a complaint asking the court to bar implementation of the Compact of Free Association. The argument was that the OEK had to vote to approve the Compact, but the Court held that the OEK had approved it, the approval was not the result of coercion, and the Compact's eminent domain clause did not violate a fundamental right.

Senate v. Nakamura, 7 ROP Intrm. 8 (1998). In this case, the Court concluded that the Senate had standing to sue the President of the Republic. After the President, Vice-President, Director of the National Treasury, and the Director of the Bureau of Program Management and Budget spent \$644,154 more than the appropriated amount for fiscal year 1995, the Senate had brought suit alleging constitutional violations. The Appellate Division reversed and remanded the Trial Division's decision dismissing the case as a violation of the separation of powers doctrine and because the Senate did not have standing. The Appellate Division reasoned that the Senate had standing because the President's actions usurped its appropriation powers, creating an injury in fact. Also, the Court rejected the separation of powers argument that the Senate was trying to enforce the law; rather, the Court concluded that the Senate was simply preserving its right to appropriation.

Gibbons v. Government of the Republic of Palau, 1 ROP Intrm. 634 (1989). In this case, the Court held that an individual taxpayer has standing to challenge allegedly illegal government actions, if he can show some injury from the contested action. Palau National Communications Corporation ("PNCC") entered into an agreement with Orion Telecommunications to construct and manage the national communications system. Plaintiffs were taxpayers and citizens of Palau, suing the Republic to prohibit appropriating tax money to Orion. The Court held that Plaintiffs had standing due to the extremely broad language of the Article X, Section 5 of the Palau Constitution stating that the "judicial power shall extend to all matters in law and equity."

Salii v. HOD, Second OEK, 1 ROP Intrm. 708 (1989). In this case, the Appellate Division held that the Supreme Court is the ultimate arbiter of the constitution and has the responsibility of deciding whether the

action of any other branch of government has exceeded its constitutional authority. Carlos Salii, who had been elected to the house of Delegates from the State of Angaur, brought a complaint after he was expelled from the House of Delegates by vote. Although the Court concluded that Salii's claim as moot, it noted that it had a duty to address the dispute.

Senate v. Nakamura, 8 ROP Intrm. 190 (2000). This opinion addressed the executive's 1995 spending of \$644,000 more than the amount appropriated by the OEK. The Court affirmed the Trial Division's decision denying the Senate's motion to amend its complaint to add claims for restitution under common law and 40 PNC § 401. However, the Court held that the Senate was entitled to declaratory relief under 14 PNC § 1001. The Court turned to U.S. law, concluding that the Declaratory Judgment Act requires the existence of a case or controversy to state a claim for a declaratory judgment. The Court held that because the Senate and the government disputed whether the expenditures were constitutional, a substantial controversy "of sufficient immediacy and reality" existed. Thus, the Court concluded that resolution of the dispute would not create an advisory opinion.

Olikong v. Republic of Palau, 8 ROP Intrm. 250 (2000). In this case, the Court agreed and adopted the Trial Division's decision concluding that members of the OEK who held other public positions were not in compliance with Article IX, Section 10 of the Palau Constitution, that states that "A member may not hold any other public office or public employment while a member of the Olbiil Era Kelulau."

Bechesserak v. ROP, 8 ROP Intrm. 147 (2000). The Appellate Division upheld the Trial Division's decision concluding that Bechesserak's claim for post-judgment interest against the Republic was barred by the doctrine of sovereign immunity. After being awarded back pay in his wrongful termination suit against the Republic, Bechesserak sought post-judgment interest, arguing that 14 PNC § 2001 constituted a waiver of sovereign immunity. Section 2001 states that "every judgment for the payment of money shall bear interest." However, the Court disagreed, holding that the language of section 2001 did not include "terms expressing an intent to hold the government liable for post-judgment interest." The Court reasoned that a statute cannot waive immunity from post-judgment interest by its silence, even where there is an express reservation of immunity from pre-judgment interest.

State of Koror v. Blanco, 4 ROP Intrm. 208 (1994). In this case, the issue was whether a state government may prosecute alleged violations of its criminal laws. Seven defendants were charged with violating various Koror fishing and boating regulations. The Appellate Division reversed the Trial Division's conclusion that Koror State did not have the power to prosecute criminal actions because that power was not expressly delegated to state governments by either the Palau Constitution or the national government. The Trial Division had held that when the OEK reaffirmed 4 TTC § 51, which gave municipalities the power of "law enforcement," it gave the states the ability to enforce laws as well. However, the court concluded that the phrase did not include prosecuting criminal laws. The Trial Division reasoned that during the Trust Territory period, the district attorney prosecuted municipal matters, so once the municipalities became states, it was logical that the attorney general would prosecute state laws. The Appellate Division disagreed. It first noted that the attorney general made it clear that it would not prosecute state criminal laws. Then it went on to interpret "law enforcement" to include the ability to prosecute, ultimately finding that states do have the power to prosecute their laws, although such penalties may be limited by the national government.

Francisco v. Chin, 10 ROP 44 (2003). This dispute arose after Camsek Elias Chin was elected to the Senate of the sixth Olbiil Era Kelulau. After his election, the issue arose as to whether Chin met the residency requirement of Article IX, Section 6 of the Constitution. The issue in this appeal was to what extent the Senate's final conclusion regarding Chin's qualification to serve in the OEK may be reviewed by the judiciary. Under the Sole Judge Clause (Palau Const. art. IX, § 10) "[e]ach house of the Olbiil Era Kelulau shall be the sole judge of the election and qualifications of its members." After reviewing the Palau Constitutional Convention's Standing Committee Report, the Appellate Division concluded that the framers did not intend for the Senate to pass judgment on what the eligibility requirements set forth in the Constitution were. Rather, the Senate was permitted to determine whether candidates were qualified to be elected to the Senate. The Court reasoned that it is the "ultimate interpreter of the Constitution," and so it has the power to make the final interpretation of what the residency requirements set forth in the Constitution mean. It held that the Senate, in adopting a resolution requiring that the definition of residence for qualification purposes requires an "actual"

residence in Palau, exceeded its power. Therefore, the residency resolution was void, and the Senate was tasked with the responsibility of determining whether Chin met the definition of resident as interpreted by the Supreme Court.

ROP v. Ngiraboi, 2 ROP Intrm. 257 (1991). The court held that the fifteen-year mandatory minimum for firearms possession was not unconstitutional because the Constitution itself provided for that sentence in Article XIII, Section 13.. The Court held that the prohibition of cruel or inhumane treatment from Article IV, Section 10 of Palau's Constitution must be read in conjunction with Article XIII, Section 13; it does not eliminate the fifteen-year mandatory minimum.

Interaction Between Judiciary and Custom:

Blesam v. Tamakong, 1 ROP Intrm. 578 (1989). This case addressed the proper principal title holder of Ngetpak Clan of Ngerchol Hamlet, Peleliu, called *Obaklchol*. A judgment required members of Ngetpak Clan to meet and by means of customary process select the person desired to hold the title *Obaklchol*. The plaintiff informed the court that he had been appointed *Obaklchol*, and he sought injunctive relief because defendants were interfering with his efforts to carry out his functions. Defendants sought dismissal, arguing that the meeting of Ourrot and Rubak of Ngetpak Clan did not include all those required to select *Obaklchol*, but the court disagreed because the absence of those individuals was a purposeful avoidance of the meeting.

The Appellate Division disagreed, finding that the court did not grant sufficient credence to the customary process. It affirmed the trial court's dismissal of the claim, but reversed the injunctive relief granted. The Court reasoned that in granting injunctive relief, the trial court approved the plaintiff's appointment as *Obaklchol*, which was improper because Palauan custom requires consensus on that selection. Thus, the Court held that it does not have the authority to circumvent Palauan customs and ordered that the parties must select the *Obaklchol* pursuant to custom within a specific time period.

Espangel v. Diaz, 3 ROP Intrm. 240 (1992). This case addressed the court's subject matter jurisdiction to decide Palauan custom. The trial court held that Esebai Arbedul was vested with the traditional title of *Espangel*, the highest ranking male title of the Omrekongel Clan in Ngerkebesang, and that the removal of the title and the bestowment upon Nicholas Diaz was improper. The Appellate Division noted that the Constitution vests broad judicial power to the Supreme Court to resolve all matters in law and equity, but that matters of custom create a difficult decision for the court: "May the court in the exercise of its constitutional powers and authority, but within the context of the very influences that serve to degrade and diminish customary processes, take over and supervise the conduct of these processes in order to quiet controversy, bring peace, and settle differences among participants in traditional customary matters?" Ultimately, the court concluded that it "must intervene in the interest of justice and maintaining the peace when the matter is presented to the courts by one or more of the interested parties." It reasoned that the dispute could not be resolved by traditional leaders, and it therefore had an obligation to determine whether Esebei had been wrongfully deprived of his right to the title *Espangel*.

Udui v. Dirrecheteet, 1 ROP Intrm. 114 (1984). In this case, the Appellate Division concluded that the law of custom must be reduced to written form by record at trial, and it must be established by clear and convincing evidence through expert testimony. The dispute in this case was that the trial court concluded that Timarong Adalbert was vested with the traditional title of Chief Uoruyos, the highest ranking title of Chief in Ngeruos Clan of Ngiwal State, and Feliciano E. Udui was acting—without objection—as the Chief Uoruyos after the death of his father, the previous title holder. Because the trial court's record did not include how an expert was used to establish the customs relied upon in its judgment, the decision was reversed and remanded.

Ngardmau Traditional Chiefs v. Ngardmau State Government, 6 ROP Intrm. 192 (1997). In this case, the Ngardmau Constitution did not state how members of the Council of Chiefs are selected, and the Appellate Division held that the legislature may not appoint chiefs to the council in disputed cases or determine the composition of the council based on its understanding of the historical validity of each chief's title. The Court reasoned that the framers of the constitution intended to comprise the council of only traditional chiefs, making appointment by the legislature improper. Also, according to the Court, this practice would broaden the scope of the legislature's power and diminish the role of traditional chiefs.

Recent Cases:

Nicholas v. Palau Election Commission, 16 ROP 235 (2009). In this case, the Court determined that the term "resident," used in Article IX, Section 6 of the Constitution, is to be interpreted as equivalent to "domicile." The definition of resident in the Voting Rights Act cannot be used to define candidate residency because candidate residency is a Constitutional term that the judiciary, not the OEK, interprets.

House of Delegates v. Republic of Palau, 16 ROP 13 (2008). In this case, the Court addressed the validity of House Resolution 7-17-29S under Article IX, Section 8 of the Constitution. House Resolution 7-17-29S amended the Travel Policy and Procedures Regulations to include emergency care and expenses for delegates traveling abroad on official business. The ROP filed a complaint asserting that the resolution was unconstitutional because it provided for an increase in compensation for members of the OEK during the term of enactment. The Court held that that resolution did not increase the delegates' compensation because travel expenses are not "compensation" as defined by the Constitution. Compensation is defined as a "uniform fee for each day a member attends an official session of the OEK." Because travel expenses are not part of that uniform fee, the increase did not violate Article IX, Section 8 of the Constitution.

Gulibert v. Borja, 16 ROP 7 (2008). In this case, the Court interpreted the Fourth Amendment of the Constitution. The amendment, passed in November of 2004, provided that no person may serve more than three terms as a member of the OEK. After the Palau Election Commission ("PEC") informed certain delegates that they were ineligible for reelection, they sought a declaratory judgment that the term limit excluded terms served before the amendment was passed. The Court affirmed the PEC's determination, reasoning that the Fourth Amendment was not ambiguous and applied retrospectively.

The Ngaimis v. Republic of Palau, 16 ROP 26 (2008). In this case, the Court held that Article IX of the Ngatpang State Constitution was inconsistent with the Guarantee Clause of the Palau Constitution. The Guarantee Clause of the Palau Constitution provides that the "structure and organization of state governments shall follow democratic principles." Palau Const. art. XI, § 1. Under the Ngatpang Constitution, the state government was controlled by a traditional council of ten chiefs known as "the Ngaimis." The state constitution provided that all changes to the government had to be approved by eight of the ten Ngaimis. In 2004, a referendum passed to change the structure of the Ngatpang government, but the Ngaimis blocked the change. Because the people's ability to change the government was subject to the wishes of the Ngaimis, the Court held that this provision of the Ngatpang Constitution was inconsistent with the Guarantee Clause and thus unconstitutional.

Pamintuan v. ROP, 16 ROP 32 (2008). In this case, the Court reversed convictions of two individuals because their statutory and constitutional rights to understand the trial proceedings were violated. The trial court failed to appoint an interpreter despite notice that two of the defendants did not understand the English language. Article IV, Section 6 of the Palau Constitution provides for due process, and 18 PNC § 401(f) provides that every defendant "shall be entitled to have proceedings interpreted for his benefit when he is unable to understand them otherwise." The Court concluded that "the Palauan Constitution guarantees criminal defendants the right to an interpreter if they are unable to meaningfully understand the English language," and reversed the convictions for those two defendants.

Rteai Chief of Ngarchelong v. Swenny Ongidobel, CA No. 08-150 (Dec. 27, 2010). In this case, defendants were fined for fishing within the waters of Ngarchelong in violation of a bul prohibiting non-citizens of the state from fishing within its territorial water. Plaintiffs brought suit when Defendants refused to pay the fine. The Trial Division of the Supreme Court held that the national government has the power to enact and enforce fishing regulations. Thus, the national government must delegate the power to state governments before states can enact and enforce such laws. As the national government did not delegate the power to enact and enforce fishing regulations to the traditional chiefs of each state, the fine was inconsistent with the Constitution and statutes of Palau, and the court held in favor of Defendants.