

ROP v. Sakuma, 2 ROP Intrm. 55 (1990)
REPUBLIC OF PALAU,
Appellee,

v.

TADASHI SAKUMA, ET AL.,
Appellants.

CRIMINAL APPEAL NO. 3-88
Criminal Case No. 388-89

Supreme Court, Appellate Division
Republic of Palau

Concurring opinion
Decided: February 1990

Attorney for Appellee: Gerald G. Marugg III, Assistant Attorney General

Attorney for Appellant Sakuma: Kevin N. Kirk

Attorney for Appellant Joel Toribiong: Randall F. Cunliffe and Johnson Toribiong

Attorney for Appellant Paul Ueki: John S. Tarkong

MUNSON, Associate Justice Part-Time:

I join my colleagues in affirming the decision of the Trial Division. However, I would not address the issue of the role of the Special Prosecutor because I do not believe it is properly before us on appeal.

Section 502 of Title Two of the Palau National Code states in relevant part:

There is hereby created an office of the Special Prosecutor for the Republic of Palau. The office shall be headed by a Special Prosecutor appointed for a term of five years by the President with the advice and consent of the Senate. . . .

* * *

The President must appoint a Special Prosecutor within 30 days of receipt of a Joint Resolution from the Olbiil Era Kelulau requesting such appointment. In the event of the President (sic) fails to so appoint, the Olbiil Era Kelulau may appoint a Special Prosecutor by Joint Resolution pursuant to Article XII, Section 5(20) of the Constitution of the Republic.

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It is a long-established rule that a Court will not address **156** questions unnecessary for decision. *See, e.g., Manning v. Upjohn Co.*, 862 F.2d 545, 547 (5th Cir. 1989)("Principles of judicial restraint dictate that if resolution of an issue effectively disposes of a case, we should resolve the case on that basis without reaching any other issues that might be presented."); *Green v. Department of Commerce*, 618 F.2d 836, 840 (D.C. Cir. 1980)("[A] party does not have the right to compel an appellate decision on a legal point unless it is necessary to his case.")

At the time of the trial in this matter, neither the Executive nor Legislative branches of government had fulfilled the requirements of the statute; i.e. neither had taken the steps necessary to appoint a Special Prosecutor.¹ Until the appointment of a Special Prosecutor, only the Office of the Attorney General had (or, more accurately, has) the power and duty to prosecute alleged violations of Palauan law, and the question of the proper role of the Special Prosecutor is strictly academic and not properly before the Court.

¹ The Court notes the irony of the fact that, by the terms of the Act, members of both branches of government could be prosecuted for "failure to implement such law." 2 PNC § 503(a)(1).