

Becheserrak v. Koror State, 3 ROP Intrm. 53 (1991)
KATSUTOSHI BECHESERRAK, et al.,
Appellants,

v.

KOROR STATE, et al.,
Appellees.

CIVIL APPEAL NO. 4-88
Civil Action No. 160-86

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: October 3, 1991

Counsel for Appellants: Michael W. Dotts

Counsel for Appellees: Mark Doran

BEFORE: ARTHUR NGIRAKLSONG, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice; EDWARD C. KING,¹ Associate Justice

NGIRAKLSONG, Associate Justice:

There are three main issues before the Court.

1. Do Appellants have standing to challenge the constitutionality of the Koror State government under the Guarantee Clause of the Palau Constitution?
2. Does the issue of whether the Koror State government complies with the Guarantee Clause present a non-justiciable political question?
- 154** 3. Does the Court have subject matter jurisdiction over the issue of whether the Koror State government complies with the Guarantee Clause of the Palau Constitution?

We hold that appellants have standing to challenge the constitutionality of the Koror State government under the Guarantee Clause of the Palau Constitution. We further hold that the Court has subject matter jurisdiction over issues arising under the Guarantee Clause of the Constitution. Finally, we hold that the Court is the ultimate interpreter of what the Guarantee Clause of the Constitution requires.

FACTS

¹ The Honorable Edward C. King is the Chief Justice of the Supreme Court of the FSM.

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Count II of the complaint alleges that the Koror State government violates the Guarantee Clause, Section 1, Article XI of the Palau Constitution which requires state governments to be based on “democratic principles” and “traditions” of Palau.

No answer to the complaint was ever filed. No evidence was taken and the Trial Court made no findings of fact. Appellees filed a motion to dismiss which, after a hearing, the Trial Court granted. Appellants appealed the Trial Court’s order of dismissal.

TRIAL COURT

The Trial Court’s primary reason for dismissing the case is that appellants did not have standing to bring this lawsuit. Without standing, the Trial Court concluded that the Court did not have subject matter jurisdiction as well. The Trial Court **155** also ruled that the issue of whether the Koror State government complies with the Guarantee Clause of the Palau Constitution was a non-justiciable political question because “. . . it is solely within the province of the National Legislative Branch to decide what inferior (state) governments are or are not in compliance with the Guarantee Clause of the Palau Constitution . . .” Dismissal at p. 18.

STANDING

We hold that appellants have standing to challenge the constitutionality of the Koror State government under the Guarantee Clause, Section 1, Article XI of the Constitution. *See* Section 5, Article X of the Palau Constitution; *Teriong v. Airai*, 1 ROP 664 (App. Div. 1989); *Santos v. Salii*, App. 21-87, Civil Action No. 104-87 (1987); *Gibbons v. Salii*, 1 ROP Intrm. 333, 336 (App. Div. Sept. 1986)

SUBJECT MATTER JURISDICTION

The complaint alleges that the Koror State government violates the Guarantee Clause of the Palau Constitution. This Court has exercised jurisdiction over precisely this constitutional challenge as in this case. *See Teriong, supra*.

Resolution of constitutional issues is the responsibility of the ultimate interpreter of the Constitution. “It has been well-settled that [it] is emphatically the province and duty of the judicial department to say what the law is.” *Gibbons v. Salii*, 1 ROP 333, 336 (App. Div. 1986), quoting *United States v. 156 Nixon*, 418 U.S. 200, 203, 94 S.Ct. 3090 (1974). *See also Remeliik v. The Senate*, 1 ROP 1, 5 (H.C. 1981).

JUSTICIABILITY

We hold that the issue of whether the Koror State government complies with the Guarantee Clause of the Palau Constitution is a justiciable issue which does not bar judicial review. *Teriong, supra*; 5 PNC § 104(b). The Trial Court confused Section 1, Article XI, the Guarantee Clause, with Section 10, Article IX dealing with the sole judge of election and

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qualification of members of the Olbiil Era Kelulau. As a result, the Trial Court erroneously concluded that it is the sole province of the OEK to “decide what . . . (State) governments are or are not in compliance with the Guarantee Clause . . .”

We reverse the Trial Court’s ruling that the issue of whether the Koror State government “conforms” to the Guarantee Clause is a non-justiciable political question. The issue, as we said in *Teriong, supra*, is a justiciable one and when properly presented, it becomes the duty of the Court to say whether a state government conforms to the Guarantee Clause or not.

CONCLUSION

Appellants have standing to challenge the constitutionality of the Koror State government under the Guarantee Clause of the Constitution. The Court has subject matter jurisdiction over this allegation of constitutional violation as well as the duty to say what the constitution means. The decision of the Trial 157 Court is reversed and the case is remanded for further proceedings consistent with this opinion.