

TITLE 5

JUDICIARY OF THE TTPI

[REPEALED in its entirety by PL 5-135 § 7]

Editor's note: TTPI is the abbreviation for the former United Nations "Trust Territory of the Pacific Islands" and was the predecessor governing entity for the now Federated States of Micronesia (FSM), Republic of Palau (ROP), and Republic of the Marshall Islands (RMI). Section 7 of PL 5-135 repealed Title 5 "JUDICIARY OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS", of this code in its entirety.

Section 8 of PL 5-135 states: "To the extent that the Supreme Court of the Federated States of Micronesia determines that it would have had jurisdiction pursuant to chapter 7 of title 5 of the Code of the Federated States of Micronesia over a criminal offense committed prior to the effective date of this act had that chapter not been repealed, the Court shall retain jurisdiction over such offense."

Cross-references: Secretarial Order 3039 and other Governmental Authority documents are found in Part IV of this code.

Case annotations: Secretarial Order 3039, § 2 cleared the way for the assumption of jurisdiction by FSM courts by delegating the judicial functions of the government of the Trust Territory Pacific Islands to the Federated States of Micronesia. Thus, the previous exclusive jurisdiction of the High Court under 6 TTC 251 was effectively delegated to the FSM, insofar as the FSM Constitution authorizes such jurisdiction. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 57-58 (Kos. 1992).

The language of Secretarial Order 3039, § 5(a) contemplates continued Trust Territory High Court activity pursuant to the "present procedural and jurisdictional provisions of Trust Territory law" only until new functioning courts are established by the constitutional governments, and recognizes that the jurisdictional provisions of Trust Territory law will necessarily be revised when those courts have been established. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 59 (Kos. 1982).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the TT government against unfair or overreaching actions by courts of the new constitutional governments. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 64 (Kos. 1982).

Trust Territory Appellate Division jurisdiction by writ of certiorari over appeals from the courts of last resort of the respective jurisdictions of the FSM, the Marshall Islands, and Palau eliminates any possible risk which might otherwise be posed to the United States or its interests or responsibilities here by the full exercise of constitutional jurisdiction by the courts of the constitutional government. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 64-65 (Kos. 1982).

The Secretary of the Interior has the power to terminate the Trust Territory High Court's exclusive jurisdiction over suits against the Trust Territory because that jurisdiction was originally conferred upon the High Court by authority emanating from the Department of Interior. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 65-67 (Kos. 1982).

The former exclusive jurisdiction of the Trust Territory High Court over lawsuits against the TT government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the FSM, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the FSM and the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the FSM and its respective states. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 68 (Kos. 1982).

Until the state courts are established, the Trust Territory High Court retains that portion of its exclusive jurisdiction formerly held under 6 TTC 251 which does not fall within the constitutional jurisdiction of the FSM Supreme Court. *Lonno v. Trust Territory (I)*, 1 FSM R. 53, 68 (Kos. 1982).

State courts, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. *In re Nahnsen*, 1 FSM R. 97, 97 (Pon. 1982).

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. *In re Nahnsen*, 1 FSM R. 97, 110 (Pon. 1982).

The interim nature and limited purpose of the Trust Territory Court, the District Courts and the Community Courts does not suggest that these entities are immune to the restraints imposed upon officials authorized to act by constitutions or statutes approved by citizens of the FSM or their representatives. To the contrary, respect for constitutional self-government and provisions of the Trusteeship Agreement to which they trace their power to act here, mandate that these interim entities act with great restraint, only as necessary to supplement the constitutional courts and until creation of constitutional courts here. *In re Iriarte (I)*, 1 FSM R. 239, 244-45 (Pon. 1983).

The FSM Supreme Court should not intrude unnecessarily in the efforts of the Trust Territory High Court to vindicate itself and other judges through court proceedings within the Trust Territory system. *In re Iriarte (I)*, 1 FSM R. 239, 254 (Pon. 1983).

The Trust Territory High Court is an anomalous entity operating on an interim basis adjacent to a constitutional framework and consisting of judges appointed by officials of the United States Department of Interior. These and other considerations point toward the propriety and necessity of vigilance by the FSM Supreme Court to uphold the constitutional rights of FSM citizens. *In re Iriarte (II)*, 1 FSM R. 255, 267 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising governmental powers within the

FSM, does not violate the constitutional rights of its citizens. *In re Iriarte (II)*, 1 FSM R. 255, 268 (Pon. 1983).

The Trust Territory High Court must promote constitutional self-government to satisfy the provisions of the Trusteeship Agreement to which is subject. *In re Iriarte (II)*, 1 FSM R. 255, 268 (Pon. 1983).

Transfer of a case not in active trial in the Trust Territory High Court is mandatory unless the legal rights of a party are impaired by the transfer. U.S. Dept. Int. Sec'1 Order 3039, § 5(a) (1979). *Actouka v. Etpison*, 1 FSM R. 275, 277 (Pon. 1983).

The Trust Territory High Court should leave final interpretation of the Constitution and public laws of the FSM to the Supreme Court. *Jonas v. FSM*, 1 FSM R. 322, 327 n.1 (App. 1983).

Title 5 of the FSM Code, including § 514, was in essence the judiciary act of the Trust Territory High Court. The statute was enacted when the T.T. High Court had general original jurisdiction over criminal cases within the area that is now the Federated States of Micronesia. The act was not deleted in the original codification process but still remained a part of the body of national law in the FSM until its repeal by PL 5-137 § 7. This is so because at the time of original codification, the TT High Court still had extensive original jurisdiction in the FSM. *In re Raitoun*, 1 FSM R. 561, 564 (App. 1984).

The Judiciary Act of 1979, in title 4 of this code, and the Judiciary article, art. XI of the FSM Constitution govern the structure and powers of the FSM Supreme Court, and make no provision for appointment of special judges to sit with a Justice of this court. 5 F.S.M.C. 514 has no application to proceedings before the Trial Division of the FSM Supreme Court. *In re Raitoun*, 1 FSM R. 561, 564-65 (App. 1984).

Since the Trust Territory High Court and District Courts were still active at the time of codification, provisions in the FSM Code referring only to them quite likely were intended only to regulate those courts. *Rauzi v. FSM*, 2 FSM R. 8, 14 (Pon. 1985).

Statutes governing procedures or decision-making approaches for Trust Territory courts might not apply to constitutional courts. *Semens v. Continental Air Lines, Inc. (II)*, 2 FSM R. 200, 204 (Pon. 1986).

According to Secretarial Order No. 3039, § 5(a), all cases against the Trust Territory of the Pacific Islands and the High Commissioner that were filed in the FSM at the time the Truk State Court was certified will continue to remain within the exclusive jurisdiction of the High Court. Those cases filed after certification are not within the jurisdiction of the High Court. *Suda v. Trust Territory*, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

The FSM Constitution provides no authority for any courts to act within the Federated States of Micronesia, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. *United Church of Christ v. Hamo*, 4 FSM R. 95, 105 (App. 1989).

The transitional actions of the FSM Congress, intended to adopt as law of the FSM those portions of Secretarial Order 3039 relating to judicial functions within the FSM and permitting the Trust Territory courts to continue functioning within the FSM pending establishment of constitutional courts, were a necessary and proper exercise of Congress' power under the Constitution to provide for a smooth and orderly transition. *United Church of Christ v. Hamo*, 4 FSM R. 95, 105 (App. 1989).

The FSM Supreme Court normally will refuse to review the correctness of an earlier Trust Territory High Court judgment, which has become final through affirmance on appeal or through lack of a timely appeal, and claims that the earlier judgment is ill-reasoned, unfair or even beyond the jurisdiction of the High Court typically will not be sufficient to escape the doctrine of res judicata. *United Church of Christ v. Hamo*, 4 FSM R. 95, 107 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the FSM in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction. *United Church of Christ v. Hamo*, 4 FSM R. 95, 118 (App. 1989).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. *United Church of Christ v. Hamo*, 4 FSM R. 95, 118-19 (App. 1989).

Where the Trust Territory High Court improperly retained a case for four years after the FSM Supreme Court was certified, and continued to hold the case more than a year after the Truk State Court was established, issuing a judgment based upon filed papers, without there ever having been a trial, let alone an active trial, in the case, by the time judgment was issued the subject matter of the litigation was so plainly beyond the High Court's jurisdiction that its entertaining the action was a manifest abuse of authority. *United Church of Christ v. Hamo*, 4 FSM R. 95, 119 (App. 1989).

Where the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the FSM by giving local decision-makers control over disputes concerning ownership of land. *United Church of Christ v. Hamo*, 4 FSM R. 95, 119 (App. 1989).

Decisions regarding res judicata and the transitional activities of the Trust Territory High Court typically should be made on the basis of larger policy considerations rather than the equities lying with or against a particular party. *United Church of Christ v. Hamo*, 4 FSM R. 95, 120 (App. 1989).

Actions of the Trust Territory High Court taken after the establishment of functioning constitutional courts in the FSM, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. *United Church of Christ v. Hamo*, 4 FSM R. 95, 122 (App. 1989).

