

CHAPTER 7

Actions Against the Federated States of Micronesia

SECTIONS

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§ 701. Policy.

Implicit in the sovereignty of a Nation is the right and power to determine whether, how, when, and under what circumstances civil actions of any nature may be brought against it. The Constitutional Convention determined that the National Government be accountable for civil wrongs to its citizenry at such time and under such terms and conditions as found appropriate from the national experience. It is, therefore, at this time in our National history the policy of the National Government of the Federated States of Micronesia to grant redress for civil wrongs by waiving sovereign immunity to the extent prescribed in this chapter.

Source: PL 1-141 § 1.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

§ 702. Limited waiver of sovereign immunity.

Actions upon the following claims may be brought against the Federated States of Micronesia with original and exclusive jurisdiction residing in the Trial Division of the Supreme Court of the Federated States of Micronesia, and prior to its organization, in the Trial Division of the High Court of the Trust Territory of the Pacific Islands:

(1) Claims for recovery of any tax alleged to have been erroneously or illegally collected, or any penalty claimed to have been collected without or beyond legal authorization, or any sum alleged to have been excessive or improperly collected under applicable tax laws of the Federated States of Micronesia.

(2) Claims for damages, injunction, or mandamus arising out of alleged improper administration of statutory laws of the Federated States of Micronesia, or any regulations issued pursuant to such statutory laws.

(3) Claims, whether liquidated or unliquidated, upon an express or implied contract with the Federated States of Micronesia.

(4) Claims for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an employee of the National Government while acting within the scope of his office or employment, under circumstances where the National Government, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Recovery on an individual claim as set out in this subsection shall not exceed \$20,000.

(5) Claims for any injuries suffered consequent upon conduct of a National Government employee or agent acting under color of authority which violates those individual rights secured under article IV of the Constitution of the Federated States of Micronesia. Compensatory relief granted for damages incurred from such violation shall not exceed \$20,000.

Source: PL 1-141 § 2.

Cross-references: Section 112 of title 54 (Taxation and Customs) provides exemptions from gross revenue and wages and salaries taxation for certain foreign and international entities and foreign citizens when required by foreign aid agreements.

Case annotations: Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, fair labor standards, social security, minimum wage and income tax laws. *Rauzi v. FSM*, 2 FSM R. 8, 15 (Pon. 1985).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. *FSM v. GMP Hawaii, Inc.*, 16 FSM R. 601, 605 (Pon. 2009).

When whether 6 F.S.M.C. 702(2), which does not limit the FSM's liability to a certain dollar amount, or 6 F.S.M.C. 702(4), which limits recovery on an individual claim in that subsection to \$20,000, applies, must await the presentation of facts not yet in evidence and requires that certain facts be proven and certain rulings of law made before it can be resolved, the claims against the FSM of over \$20,000 will not be dismissed for failure to state a claim. *FSM v. Kana Maru No. 1*, 14 FSM R. 368, 373 (Chk. 2006).

The excavation of large holes on the land of private citizens, in areas where children play, and near a public road, is inherently dangerous and calls for special precautions. One who causes such work to be undertaken may not escape liability simply by employing an independent contractor to do the work. *Ray v. Electrical Contracting Corp.*, 2 FSM R. 21, 25 (App. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on

the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. *Rauzi v. FSM*, 2 FSM R. 8, 16 (Pon. 1985).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). *Plais v. Panuelo*, 5 FSM R. 179, 209-10 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. *Plais v. Panuelo*, 5 FSM R. 179, 210-11 (Pon. 1991).

The national government is a person within the meaning of 6 F.S.M.C. 702(2) and will be held liable under that section when civil rights violations are in substantial part due to a governmental policy of deliberate indifference to the constitutional rights of national prisoners and failure to attempt to assure civilized treatment to prisoners. *Plais v. Panuelo*, 5 FSM R. 179, 211 (Pon. 1991).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once -- as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. *Plais v. Panuelo*, 5 FSM R. 319, 321 (Pon. 1992).

Immunity

The granting of immunity is traditionally a matter within the powers of the prosecution. This is so because grants of immunity call for the balancing of numerous factors and weighing of important prosecutorial policies. *Engichy v. FSM*, 1 FSM R. 532, 551 (App. 1984).

The FSM Supreme Court may have the power to grant immunity, but the granting of immunity is traditionally a matter of executive or prosecutorial discretion. In the FSM, where there is no right to trial by jury and the trial judge is the trier of both fact and law, it seems especially unwise for the court to play an aggressive or active role concerning grants of immunity. *Engichy v. FSM*, 1 FSM R. 532, 552 (App. 1984).

Courts generally have recognized that they should grant immunity only under extraordinary circumstances. *Engichy v. FSM*, 1 FSM R. 532, 552 (App. 1984).

Customary and traditional practices within a state should be considered in determining whether the people of that state would expect their state government to be immune from court action. *Panuelo v. Pohnpei (I)*, 2 FSM R. 150, 159 (Pon. 1986).

Neither the Pohnpei Constitution, laws, custom nor tradition, nor the common law, grant the Pohnpei State Government sovereign

immunity from all unconsented suits against the state. *Panuelo v. Pohnpei (I)*, 2 FSM R. 150, 161 (Pon. 1986).

No clause in the FSM Constitution is equivalent to the eleventh amendment of the United States Constitution, which generally bars citizens from using US federal courts to seek monetary damages against states. *Edward v. Pohnpei*, 3 FSM R. 350, 361 (Pon. 1988).

Courts lack authority to establish sovereign immunity to general tort claims through judicial action. *Edward v. Pohnpei*, 3 FSM R. 350, 363 (Pon. 1988).

Since the Constitution's Professional Services Clause is a promise that the national government will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly accept a contention that 6 F.S.M.C. 702(4), which creates a \$20,000 ceiling of governmental liability, shields the government against a claim that FSM government negligence prevented a person from receiving necessary health care. *Leeruw v. FSM*, 4 FSM R. 350, 362 (Yap 1990).

The FSM, as a sovereign nation, may bestow immunity upon civilian Employees of another nation in order to obtain benefits for this nation's citizens. *Samuel v. Pryor*, 5 FSM R. 91, 98 (Pon. 1991).

The Compact of Free Association provides to the United States immunity from the jurisdiction of the FSM Supreme Court for claims arising from the activities of United States agencies or from the acts or omissions of the employees of such agencies. *Samuel v. Pryor*, 5 FSM R. 108, 111 (Pon. 1991).

The court will not judicially create the right of sovereign immunity from suit for Chuuk State. This is a legislative function. *Epiti v. Chuuk*, 5 FSM R. 162, 166-67 (Chk. S. Ct. Tr. 1991).

§ 703. Extent of court's jurisdiction.

The jurisdiction of the court shall extend to any set-off, affirmative defense, counterclaim, or other claim or demand whatever pleaded by the National Government of the Federated States of Micronesia, or other properly joined party to such action, against any plaintiff commencing an action under this chapter.

Source: PL 1-141 § 3; PL 4-114 § 2.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Errata: 6 F.S.M.C. 703 corrected to read "joined party," PL 4-114 § 2.

§ 704. Civil actions by the National Government not limited.

Nothing in this chapter shall be construed as a limitation upon the right of the Federated States of Micronesia to bring a civil action upon claims of any nature. In any civil action brought by the Federated States of Micronesia, the jurisdiction of the Court shall extend to any set-off, affirmative defense, counterclaim, or other claim or demand whatever pleaded by the named defendant or defendants, or other properly joined party to such action, against the Federated States of Micronesia.

Source: PL 1-141 § 4.

Errata: 6 F.S.M.C. 704 corrected to read "joined party".

§ 705. Payment of judgments.

Money judgments rendered against the Federated States of Micronesia pursuant to the provisions of this chapter shall be paid from such funds as may be appropriated from time to time by the Congress of the Federated States of Micronesia for the purpose of paying a specific judgment or for the purpose of paying judgments in general.

Source: PL 1-141 § 5; amended by PL 5-123 § 1.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 706. Date of accrual of claims.

Claims for which actions are permitted against the Federated States of Micronesia under the provisions of this chapter must accrue on or after the effective date of this chapter.

Source: PL 1-141 § 6.

Editor's note: PL 1-141, section 7, states: "This act shall become law upon approval by the President of the Federated States of Micronesia, or upon its becoming law without such approval." The act was signed by the President on February 12, 1981. See, however, Secretarial Order No. 3039 of the Department of the Interior, section 4 b, which states: "No law shall take effect until the period during which the High Commissioner may suspend the law has expired unless the High Commissioner earlier notifies the chief executive of the jurisdiction in which the law was enacted that he does not intent to exercise his authority to suspend the law..." The High Commissioner concurred with PL 1-141 on March 9, 1981.

§ 707. Garnishment of funds or other assets owed by the National Government to a State.

The National Government of the Federated States of Micronesia shall not be subject to writ of garnishment or other judicial process to apply funds or other assets owed by it to a State of the Federated States of Micronesia to satisfy an obligation of the State to a third person. Nothing herein shall imply that authority exists to issue a writ of garnishment or other process against the National Government in any other circumstance.

Source: PL 10-142 § 1.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

Case annotations: When even if the court reversed the garnishment order, any relief it could grant the FSM on the sovereign immunity issue would be ineffectual since 6 F.S.M.C. 707 makes the FSM no longer subject to garnishment of funds it owes to a state, and when, although the general rule is that the payment of a judgment does not make an appeal moot, the FSM has stated that it will not seek repayment of the funds that it paid the plaintiff, the FSM would have no interest in the case's outcome and the issues it raised on appeal are moot. *FSM v. Louis*, 9 FSM R. 474, 482-83 (App. 2000).

When other trial division cases recognize the principle of sovereign immunity and the trial court decision appealed from only observed that in the absence of a specific expression by the legislature, sovereign immunity would not prevent the court from garnishing property held by the FSM for a state, when the constitutionality of the FSM's sovereign immunity statute was not before the court, and when the FSM served only as a mere garnishee in a situation which Congress has prevented from recurring by the enactment of 6 F.S.M.C. 707, the trial court decision will not effect future litigation involving the FSM and the FSM's appeal is thus moot. *FSM v. Louis*, 9 FSM R. 474, 483-84 (App. 2000).

A court finding that 6 F.S.M.C. 707 is unconstitutional to the extent that it prevents satisfaction of a judgment based on a violation of constitutional rights is limited to the facts before the court and applies only to a judgment against the state that is based on civil rights claims under the national civil rights statute, which confers a cause of action for violation of rights guaranteed by the FSM Constitution. *Estate of Mori v. Chuuk*, 11 FSM R. 535, 541 (Chk. 2003).

The finding of unconstitutionality of 6 F.S.M.C. 707 (the anti-garnishment statute) applies only to the facts of cases which involve judgments based on violation of constitutional rights guaranteed under the FSM Constitution's Declaration of Rights, and for which a cause of action is expressly conferred by national civil rights statute. *Estate of Mori v. Chuuk*, 12 FSM R. 3, 9 (Chk. 2003).