

COMPACT OF FREE ASSOCIATION

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

A United States federal employee does not waive immunity from civil liability under the Compact of Free Association and the Federal Programs and Services Agreement when the civilian employee initiated litigation in the FSM Supreme Court in a separate lawsuit with different claims against different parties and where the affirmative misconduct is within the scope and in the performance of the official duty. Samuel v. Pryor, 5 FSM R. 91, 97 (Pon. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any Compact provision is contrary to the Constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM R. 91, 104 (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. United States, 5 FSM R. 108, 111 (Pon. 1991).

By the terms of the Compact and its subsidiary extradition agreement the term "Signatory Government" includes not only the national, but also the state governments of the two nations. Therefore state as well as national law may be used to determine if the offense for which extradition is sought satisfies the dual criminality test—is criminal under the laws of both signatory governments. In re Extradition of Jano, 6 FSM R. 93, 102-03 (App. 1993).

Although the Compact waives the sovereign immunity of the U.S. government, it does not create new causes of action or fashion a remedy where one was previously not available. The Compact does not authorize monetary damages to individuals for breach of the Trusteeship Agreement. Alep v. United States, 6 FSM R. 214, 218-19 (Chk. 1993).

Although the Compact of Free Association waives U.S. sovereign immunity it does not create new causes of action or remedies beyond what was available to private litigants before the Compact. Nahnken of Nett v. United States (III), 6 FSM R. 508, 526 (Pon. 1994).

The waiver of sovereign immunity clause in the Compact did not create any new causes of action, but merely waived sovereign immunity with respect to valid existing claims. Alep v. United States, 7 FSM R. 494, 497 (App. 1996).

The only new cause of action created by the Compact is where the U.S. government accepts responsibility for losses or damages arising out of nuclear testing in the Marshall Islands between 1946 and 1958. Alep v. United States, 7 FSM R. 494, 498-99 (App. 1996).

Nothing in the Compact suspends or tolls the statute of limitations. Alep v. United States, 7 FSM R. 494, 499 (App. 1996).

After the commencement of full self-government in 1986, the Federated States of Micronesia remained, from the United States's perspective, a foreign country. Under the Compact of Free Association with the United States, the Federated States of Micronesia is a sovereign and independent nation. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

The FSM's argument that the court is without jurisdiction to hear the defendant's counterclaims in the ground that they are nonjusticiable political questions because the Compact is a treaty between the FSM and the United States and the improvement of infrastructure through grants to the FSM is specifically contemplated by the Compact, the implementation of which must comply with requirements spelled out in the Compact, is without merit because, carried to its logical end, it would also bar the FSM from asserting its contract claims against the defendant since the contract was entered into to facilitate improving infrastructure in compliance with the Compact requirements attached to the FSM receiving the funds to pay for infrastructure improvements. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 482 (Pon. 2009).

When none of the questions to be decided by the court directly touch upon treaty relations between the FSM and the United States, the FSM Supreme Court may determine whether the FSM wrongfully provided false information to U.S. officials, whether, if proven, those actions were actionable, and if so, what damages the defendant-counterclaimant suffered since the court can also decide the issue of whether either party breached the contract, and if so, who owes what sums to the other. The mere existence of a funding mechanism agreed to by two sovereign nations cannot strip the court of jurisdiction to issue a decision on the merits of this case. Nor does the Compact intend to so hobble the court. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

Title 1 of the Compact governs the relationship between and amongst the parties to the Compact and its environmental protection section does not create a private cause of action since it provides that actions brought pursuant to that section may be initiated only by the FSM government. Damarlane v. Damarlane, 18 FSM R. 177, 179 (Pon. 2012).

The Compact of Free Association requires that, subject to the constitutional power of FSM courts to grant relief from judgments in appropriate cases, res judicata status be given to Trust Territory judgments. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

In an appropriate case, the Kosrae State Court has the power to grant a party relief from a Trust Territory High Court judgment through an independent action in equity. This has even been acknowledged by treaty with the United States. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

Under the Compact of Free Association, final judgments in civil cases rendered by any Trust Territory court continue in full force and effect, subject to the constitutional power of the courts of the Federated States of Micronesia to grant relief from judgments in appropriate cases. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

While a state may be designated as the administrator and allottee of Compact sector funds that are used to pay state employees, those funds are appropriated by the FSM Congress and remain subject to the provisions of the FSM Financial Management Act and the Compact of Free Association financial controls. The FSM Secretary of Finance has full and complete oversight over, and at all times full and complete access to all financial records for, all Compact funds of the state and national governments of the FSM. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

The FSM has standing to sue for conversion when it was Compact sector funds that were converted. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

The Compact of Free Association has a provision by which sentences imposed by FSM courts on U.S. citizens may be served in U.S. penal institutions, but if they go through the diplomatic channels and comply with transfer procedures and eligibility, but the Compact does not have a section that deals with an FSM citizen under a sentence rendered by a FSM court who seeks to serve the remaining term of his sentence in a U.S. jurisdiction. FSM v. Bisalen, 20 FSM R. 471, 473 (Pon. 2016).