

*Extract from:*

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Part Three. Judicial decisions on questions relating the United Nations and related inter-governmental organizations

Chapter VIII. Decisions of national tribunals



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## CONTENTS (continued)

Page

### Part Three. Judicial decisions on questions relating to the United Nations and related inter-governmental organizations

CHAPTER VII. DECISIONS OF INTERNATIONAL TRIBUNALS . . . . . 273

CHAPTER VIII. DECISIONS OF NATIONAL TRIBUNALS

1. *Austria*

Highest Court, Austria

Evangelical Church (Augsburg and Helvetic Confessions) v. Official of the  
IAEA: Judgement of 27 February 1964

Church dues are not taxes, but obligations under civil law—Article XV,  
section 38, of the Agreement regarding the Headquarters of the IAEA  
therefore does not grant exemption from the payment of church dues . . . 274

2. *United States of America*

Westchester County Court

Matter of foreclosure of tax liens by City of New Rochelle v. Republics of  
Ghana, Indonesia and Liberia: Judgement of 16 December 1964

Jurisdiction over proceedings to foreclose tax liens on residences of foreign  
representatives to the United Nations—Court declined to exercise juris-  
diction . . . . . 275

### Part Four. Legal documents index and bibliography of the United Nations and related inter-governmental organizations

CHAPTER IX. LEGAL DOCUMENTS INDEX OF THE UNITED NATIONS AND RELATED INTER-  
GOVERNMENTAL ORGANIZATIONS

A. LEGAL DOCUMENTS INDEX OF THE UNITED NATIONS

1. *General Assembly and Subsidiary Organs*

1. Plenary General Assembly and Main Committees  
Documents of legal interest . . . . . 280

2. United Nations Conciliation Commission for Palestine  
Document of legal interest . . . . . 281

3. Executive Committee of the Programme of the United Nations High Com-  
missioner for Refugees  
Documents of legal interest . . . . . 282

4. Committee on the Peaceful Uses of Outer Space  
Documents relating to agenda items of legal interest (sixth session)  
General debate (agenda item 2) and report of the Legal Sub-Committee on the  
work of its third session (agenda item 5) . . . . . 282

## Chapter VIII

### DECISIONS OF NATIONAL TRIBUNALS

#### 1. Austria

##### HIGHEST COURT, AUSTRIA

EVANGELICAL CHURCH (AUGSBURG AND HELVETIC CONFESSIONS)  
V. OFFICIAL OF THE IAEA: JUDGEMENT OF 27 FEBRUARY 1964<sup>1</sup>

*Church dues are not taxes, but obligations under civil law—Article XV, section 38, of the Agreement regarding the Headquarters of the IAEA<sup>2</sup> therefore does not grant exemption from the payment of church dues*

Plaintiff, the Evangelical Church (Augsburg and Helvetic Confessions) in Austria, sued the defendant for arrears of church dues for the period 1959-1962. The Lower Court had rejected the defendant's plea of lack of jurisdiction, ordered the defendant to pay the arrears and rejected both his interim petition for a declaration that he was not liable to the plaintiff for payment of church dues in respect of income derived by him from the IAEA and his alternative prayer for a declaration that sums derived by him from the IAEA should not be included in the calculation base for the assessment of church dues to be paid by him to the plaintiff. This was subsequently confirmed by the Appellate Court.

In upholding the judgement of the Appellate Court, the Highest Court (Civil Chamber) first observed that under article XV, section 38, paragraph (d), of the Agreement between Austria and the IAEA regarding the Headquarters of the IAEA, the defendant enjoyed exemption from taxation in respect of the salary, emoluments and indemnities paid to him by the IAEA for services past or present or in connexion with his service with the IAEA; therefore, the point for determination in the present case was whether the church dues claimed by the plaintiff fell within the category of taxation from which the defendant was exempt. With regard to the defendant's attempt to derive a favourable interpretation from the English text of the Headquarters Agreement which did not emerge from the German text, the Court held that the defendant could not be allowed to single out the English text inasmuch as the Agreement had been drawn up in German and English and in four other languages, all of which were equally authentic.

The Court then pointed out that, under the Act concerning the imposition of church dues in the Austrian Province [of the German Reich] (GBlO No. 543 of 1939), churches were not granted the right to levy taxes but, rather, the right simply to impose church dues to be collected in the same way as subscriptions to associations. Furthermore, the Court observed that churches could not make orders establishing liability for the payment of dues and having the force of law; the fact that disputes over church dues were to be decided by the courts

<sup>1</sup> *Oberstergerichtshof*, 27.2.64, 6 Ob 302/63; *Landesgericht für Zivilrechtliche Sachen, Wien*, 42 R 287/63; *Bundesgericht Innere Stadt Wien*, 32 C 216/63.

<sup>2</sup> United Nations, *Treaty Series*, vol. 339, p. 110.

meant that church dues were deemed to be obligations under civil law. The Court went on to observe that the defendant could not maintain that the Headquarters Agreement granted him exemption from fulfilling obligations under civil law; therefore, all the remaining points of the appeal became futile and, in particular, the defendant's reference to the Evangelical Church's regulations relating to church dues was of no avail.

The Court concluded that no grounds existed for granting the defendant's interim petition or his alternative prayer. The defendant's reference to the judgement of the Court of Justice of the European Communities in the case of Jean E. Humblet also failed, since the circumstances of that case had been quite different in that the Belgian State had sought to claim the income for purposes of taxation, even though only of the wife of the plaintiff.

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## 2. United States of America

### WESTCHESTER COUNTY COURT

MATTER OF FORECLOSURE OF TAX LIENS BY CITY OF NEW ROCHELLE V. REPUBLICS OF GHANA, INDONESIA AND LIBERIA: JUDGEMENT OF 16 DECEMBER 1964<sup>1</sup>

*Jurisdiction over proceedings to foreclose tax liens on residences of foreign representatives to the United Nations—Court declined to exercise jurisdiction*

Petitioner, City of New Rochelle, instituted *in rem* proceedings to foreclose tax liens on three separate parcels of real property owned, respectively, by the Governments of Ghana, Indonesia and Liberia and used by them for the purposes of maintaining quarters for their principal resident representatives to the United Nations.

Each government moved to dismiss the proceeding on the ground that the Court had no jurisdiction over it or over the real property in issue. The United States Government moved to appear *amicus curiæ* and, thereupon, for summary judgement dismissing the proceedings.

The Court held that it had jurisdiction over the real property and that the question it was considering was whether it would "exercise its jurisdiction in these particular proceedings under all the circumstances". In dismissing the proceedings, the Court stated, *inter alia*:

"All three of the foreign governments involved maintain, first, that United States courts (state or federal) have no jurisdiction to entertain a proceeding to foreclose a lien on real property owned by a foreign government and used exclusively for diplomatic purposes and, second, that where the executive branch of the United States government has recognized a claim of immunity, the courts, uniformly will respect the claim and will refuse to entertain jurisdiction. The second point urged would seem to admit that jurisdiction exists but that it should not be exercised, and this seems to be implicit in Justice Eager's language in *Weilamann v. Chase Manhattan Bank*, ...192 N.Y.S. 2d 469, 471, where he said:

"The guiding principle to be followed, in determining whether a court should exercise or surrender its jurisdiction over a foreign nation or its property, is that the courts should not so act as to embarrass the executive arm in its conduct of foreign affairs."

"This court finds that the overwhelming weight of opinion holds that jurisdiction over proceedings such as these should not be exercised..."

"In view of the unquestionable weight of authority the court, most reluctantly, grants the motions of Republic of Ghana, Republic of Liberia and Republic of Indonesia, and dismisses the tax lien foreclosure actions against their respective real properties."

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<sup>1</sup> 255 N. Y. Supp. 2d 178.