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UNITED NATIONS JURIDICAL YEARBOOK

1969

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

Chapter VIII. Decisions of national tribunals

CONTENTS (continued)

CONTENTS (continued)

CONTENTS (continued)

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Austria

VIENNA REGIONAL COURT FOR CIVIL CASES

MELANIE HÖFFER v. ARTHUR WALLIGURA: JUDGEMENT OF 9 OCTOBER 1969

Extraterritorial privileges of IAEA officials holding the grade P-5 and above under section 40 of the Headquarters Agreement between Austria and IAEA

The appellant, Melanie Höffer, as owner of an apartment building at Vienna, brought an action against an IAEA official holding the grade P-5 for payment of rent due under his lease. The district court had ruled that it had not jurisdiction and had declared the proceedings null and void.

On appeal, the Vienna Regional Court for Civil Cases upheld the decision of the lower court. It pointed out that the respondent enjoyed immunity, in the sense of extraterritorialty, as shown by a statement by the Ministry of Justice to the effect that the defendant had diplomatic status. The plaintiff's submission that the immunity enjoyed by the defendant did not amount to extraterritoriality was therefore irrelevant. The statement of the Ministry of Justice was binding on the Court and even debarred it from assessing whether the defendant was entitled to claim extraterritoriality. Furthermore, the plaintiff's submission was based on section 33 of the Headquarters Agreement between Austria and IAEA,[1] whereas in fact section 39 was applicable in the case, since the defendant was an official holding the grade P-5.

The plaintiff also argued that, since section 40 of the Headquarters Agreement provided for a waiver of immunity, the defendant had in fact lost his immunity. However, as long as the defendant had not requested the waiver of his immunity, his status remained unaffected. If the regulations of IAEA had imposed on him an obligation to make such a request, his relations with his employer might have been affected, but that would be no reason to infer that immunity had in fact been waived. The plaintiff further maintained that under section 40 of the Headquarters Agreement, privileges and immunities were conferred in the interests of IAEA and not for the personal benefit of the individuals themselves, but the Court ruled that that provision too could not alter the status of the respondent.

Lastly, the plaintiff maintained that the domestic courts had jurisdiction in the dispute, since it concerned immovable property or a real right. The Court ruled that the dispute arose from a lease to which the defendant was a party not as the owner or the holder of any other real right, but as a tenant, and that there was no question, therefore, that the principle of immunity was affected.

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[1] United Nations *Treaty Series*, volume 339, p. 110.

In short, considering that section 39 (*c*) of the Headquarters Agreement accords officials having the grade P-5 and above the same privileges and immunities, exemptions and facilities as the Austrian Government accords to members having comparable rank, of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria, further considering that according to a statement by the Ministry of Justice the defendant had diplomatic status by virtue of his appointment to IAEA and that the plaintiff had at no stage claimed that immunity had been waived, and finally considering that the members of the diplomatic corps enjoy extraterritoriality in Austria, the Court upheld the lower court's decision to declare the proceedings null and void on the ground of its lack of jurisdiction.

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2. Belgium

BRUSSELS APPEALS COURT

MANDERLIER v. UNITED NATIONS AND BELGIAN STATE: DECISION OF 15 SEPTEMBER 1969

The immunity from every form of legal process granted to the United Nations under the Convention on the Privileges and Immunities of the United Nations is unconditional and is not limited by article VIII, section 29 of the Convention in question, or by article 10 of the Universal Declaration on Human Rights, or by Article 105 of the United Nations Charter

The Court heard an appeal from a judgement of 11 May 1966 [2] in which the Brussels Court of First Instance had declared that an action brought by the appellant for damage he claimed to have suffered "as a result of abuses committed by the United Nations troops in the Congo" was inadmissible because it was brought against the United Nations.

The Appeals Court rejected the arguments already invoked by the appellant in the Court of First Instance, pointing out (1) that the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, which had the force of law in Belgium, in no way made the immunity from every form of legal process granted to the United Nations conditional upon the latter's respect for the obligations imposed upon it by other provisions of the same Convention, more particularly article VIII, section 29, which states that the United Nations "shall make provisions for appropriate modes of settlement of ... disputes of a private law character to which the United Nations is a party", [3] and (2) that although it was true that article 10 of the Universal Declaration of Human Rights states that everyone is entitled to a hearing by a tribunal, it was also true that the Declaration was not legally binding and could not alter the rule of positive law constituted by the principle of immunity from every form of legal process formulated in the Convention of 13 February 1946.

With regard to the argument that Article 105 of the United Nations Charter limited the privilege of immunity to the minimum necessary to enable the United Nations to fulfil its purposes, the Court replied that in acceding to the Convention of 13 February 1946, the signatories of the Charter had defined the necessary privileges and immunities and that the courts would be exceeding their authority if they were to arrogate to themselves the right

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[2] See *Juridical Yearbook*, 1966, p. 283.

[3] For the settlement of the appellant's claim, see Exchange of letters constituting an Agreement between the United Nations and Belgium relating to the settlement of claims filed against the United Nations in the Congo by Belgian nationals. New York, 20 February 1965 (United Nations, *Treaty Series*, vol. 535, pp. 197-203; *Juridical Yearbook*, 1965, pp. 39-40).

of determining whether the immunities granted to the United Nations by that Convention were or were not necessary.

The Court formulated the following conclusion: "... it must be admitted that in the present state of international institutions there is no court to which the appellant can submit his dispute with the United Nations; and although this situation, which does not seem to be in keeping with the principles proclaimed in the Universal Declaration of Human Rights, may be regrettable, it must be recognized that the judge of first instance was correct in declaring that the action brought against the United Nations was inadmissible".

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3. Chile

SUPREME COURT

DECISION OF 8 NOVEMBER 1969 CONCERNING AN ACTION BROUGHT IN A LABOUR COURT AGAINST THE ECONOMIC COMMISSION FOR LATIN AMERICA [4]

ECLA enjoys immunity from legal process under the Agreement concluded with Chile on 16 February 1953 and, more generally, under the Convention on the Privileges and Immunities of the United Nations, to which Chile is a party—Nullity of a summons to appear before a Chilean court served on the Executive Secretary of ECLA

The plaintiff, a former ECLA staff member, had brought an action against the latter in a Labour Court concerning the exchange rates which had been applied to his salary and to the social security benefits and allowances to which he was entitled and the Court had summoned the Executive Secretary of ECLA to make a statement under oath.

The Supreme Court, exercising the disciplinary powers which it possesses over all the courts in the country, set aside all the proceedings. It referred in particular to the Agreement of 16 February 1953 between Chile and ECLA, [5] article II, section 2 of which provides that "The Government recognizes the immunity from legal process of the Headquarters of ECLA, which shall be under the authority and administration of ECLA ...", and to article IV, section 7, which provides that "ECLA and its property, wherever situated and by whomsoever held, shall enjoy immunity from legal process, except in so far as in any particular case ECLA shall have expressly waived such immunity ...". The Court also referred to Article VII, section 15, which provides that "The Government shall accord to the Executive Secretary ..., to the extent permitted under its consitutional precepts, the diplomatic immunities and privileges specified in Article 105, paragraph 2, of the United Nations Charter", and to section 16, paragraph (*a*) of the same article, which states that "the privileges and immunities accorded under the provisions of this Agreement are granted in the interests of ECLA and not for the personal benefit of the individuals concerned ...". The Court stressed that the aforementioned provisions were merely a specific application of article II, section 2, and article V, section 18, of the Convention on the Privileges and Immunities of the United Nations, [6] which had been ratified by Chile.

Since the case concerned a labour dispute and the suit had been brought against the Executive Secretary of ECLA not in his private capacity but as the legal representative of ECLA, it was not one of the cases in which, according to the principles of international

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[4] Kindly provided by the Secretariat of ECLA.

[5] United Nations, *Treaty Series*, vol. 314, p. 49.

[6] *Ibid.*, vol. 1, p. 15.

law and the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961 [7] immunity from civil jurisdiction does not apply.

The Court therefore set aside the summons served on the Executive Secretary of ECLA as well as the rest of the proceedings, on the grounds that the Labour Court was not competent to try the suit, without prejudice to the plaintiff's right of recourse through such channels as might be appropriate.

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4. Italy

ROME COURT OF FIRST INSTANCE (LABOUR SECTION)

GIOVANNI PORRU V. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS: JUDGEMENT OF 25 JUNE 1969 [8]

Principles of customary international law concerning jurisdiction of national courts over subjects of international law—Distinction made by the Court between the private law activities of an international organization, which it carries out on an equal footing with individuals, and its public law activities by which it pursues its specific purposes—The appointment of staff members falls in the category of public law activities over which Italian courts have no jurisdiction—Interpretation of Article VIII, section 16, of the Headquarters Agreement between Italy and FAO

The plaintiff was an Italian national who, for a period of years had been employed by FAO as a messenger or lift operator under short term appointments which, with one exception, never exceeded three months. Under FAO's rules, short-term staff members are normally paid on a daily or monthly basis and are not covered by certain social security benefits provided for by the Organization. The latter fact is, however, taken into account when calculating the daily rates. The plaintiff complained that he had been refused permanent employment which would have entitled him to benefits such as medical coverage and participation in the United Nations Joint Staff Pension Fund and claimed an amount equivalent to certain Italian social security benefits.

The plaintiff followed the internal appeals procedure provided for by FAO's rules and his appeal was rejected by the Director-General acting upon the recommendation of the Organization's Appeals Committee. He did not bring his case before the Administrative Tribunal of the International Labour Organisation which has competence to hear disputes between staff members and FAO relating to their terms and conditions of employment. Instead he brought an action against the Organization before the Italian courts. The Organization maintained that it was in all respects immune from the jurisdiction of the Italian courts under the Headquarters Agreement it had concluded with Italy on 31 July 1950. [9]

The Court dismissed the case for lack of jurisdiction but observed that there was "no rule of customary international law under which foreign States and subjects of inter-

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[7] United Nations, *Treaty Series*, vol. 500, p. 95.

[8] Judgement No. 4961, published in *Temi Romana* 1969, pp. 531-533, Summary kindly furnished by the Legal Counsel of FAO, who has indicated that the statement of facts does not appear in the judgement and has been supplied by him.

[9] United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II (United Nations publication, Sales No. 61.V.3), p. 187.

national law in general are to be considered as immune from the jurisdiction of another State". Such immunity could only be recognized with regard to public law activities i.e., in the case of an international organization, with regard to the activities by which it pursues its specific purposes (*iure imperii*) but not with regard to private law activities where the Organization acts on an equal footing with private individuals (*uti privatus*). In this respect the situation of subjects of international law was analogous to that of the Italian State.

Interpreting article VIII, section 16, of the Headquarters Agreement which provides that "FAO ... shall enjoy immunity from every form of legal process except in so far as in any particular case FAO shall have expressly waived its immunity", the Court considered that this provision merely confirmed the general rules of customary international law but could not be understood as granting immunity from jurisdiction for all activities regardless of the distinction made above.

With regard to the issue in the present case, i.e. the legal relations between FAO and the plaintiff, the Court held that the acts by which an international organization arranges its internal structure fall undoubtedly in the category of acts performed in the exercise of its established functions and that in this respect therefore the Organization enjoyed immunity from jurisdiction.

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5. Netherlands

COURT OF APPEAL (GERECHTSHOF) AT THE HAGUE

VAN VLOTEN v. COMMISSIONER OF INTERNAL REVENUE: DECISION OF 9 DECEMBER 1969

Exemption of United Nations officials from all taxation on the salaries and emoluments paid to them by the United Nations—These salaries and emoluments are not to be taken into account in calculating the taxation on income from other sources

The Court passed judgement on a 1968 decision concerning the assessment of income tax which, while made in relation to a salary not paid by the United Nations, took a salary paid by the United Nations into account, on the basis of article 40 of the General Act on State Taxes *(Algemene Wet inzake Rijksbelastingen)*. The plaintiff invoked article V, section 18 (*b*) of the Convention on the Privileges and Immunities of the United Nations, which provides that officials of the United Nations "shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations". In particular, he contended that article 40 of the above-mentioned Act (which implies that if an international official is exempt from income tax on his international salary and emoluments but has additional taxable income, the international salary and emoluments shall be taken into account when calculating the amount of income tax payable—the so-called "progressive taxation reservation")[10] violated the provisions of the Convention and therefore should not have been applied to him.

The Court considered, *inter alia*, that a literal interpretation of the text of the aforementioned section 18 (*b*) supported the plaintiff's contention, since the expression "exempt from taxation on the salaries ... paid to them by the United Nations" indicated clearly that the exemption applied to every tax assessment based directly or indirectly on the exempted income and that it could not be argued that the expression "on their salaries" would

[10] See *Juridical Yearbook*, 1966, p. 10.

mean *a contrario* that article V, section 18 (*b*) did not prohibit a higher assessment from being imposed on other income as a result of those salaries being taken into account.

The Court stated that the assessment of income tax taking into account the salary paid by the United Nations, which was exempt from all national taxation, would constitute a violation of the exemption provided for in article V, section 18 (*b*) of the Convention. It therefore concluded that the salary paid to the plaintiff by the United Nations should not in any manner have been taken into consideration for taxation purposes.

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6. Spain

SUPREME COURT

(*a*) ADMINISTRATIVE DISPUTES (FOURTH CHAMBER): DECISION OF 14 MARCH 1969[11]

Decision rejecting an application for the registration of the title "Unesco" as the appellation of an educational centre, on the grounds that using the reputation of UNESCO for the purposes of private education would constitute a usurpation of the international credit and reputation enjoyed by that Organization

As a result of an application addressed to the Registry of Industrial Property, the plaintiffs had succeeded in registering the title "Unesco" for a language-teaching and translation centre. Three years later, the Registry submitted an extraordinary appeal for the reconsideration of its own decision to the Under-Secretariat of the Ministry of Industry, which accepted the appeal and ordered that the proceedings be recommenced from the point when the persons concerned had been informed of the existing obstacle, after which the Registry took a new decision, this time refusing to register the title "Unesco".

The Court, to which the plaintiffs had submitted an administrative appeal against the decision accepting the extraordinary appeal for reconsideration and the subsequent decision to refuse registration, noted that the word "UNESCO" was the usual appellation of the specialized agency established in 1946 under the name "United Nations Educational, Scientific and Cultural Organization", of which Spain was a member, that the educational activities of that agency were well known, that its press organ in Spain was the Spanish edition of the periodical *UNESCO Courier* and that there was, furthermore, an association known as the *Club de Amigos de la UNESCO*. It was thus obvious that the authorization to use the title "UNESCO" for the aforementioned purposes would undoubtedly entail a false indication of credit and reputation in view of the fact that that appellation was widely known to be associated with educational activities. The States Members of UNESCO, including Spain, had been invited to take appropriate steps to prevent the abusive use of that appellation. In those circumstances, the decision authorizing the registration of the title in question was based on an obvious material error, a case which was specifically covered in article 18 of the regulations on industrial property, which permitted the submission of an appeal for reconsideration. Hence, the decision accepting the appeal was valid. As to the subsequent decision to refuse registration, the Court recalled that according to the regulations on industrial property, appellations containing false indications of origin, credit and industrial reputation cannot be registered. It pointed out that in the case under consideration, the use of UNESCO's reputation for private educational purposes would

[11] *Aranzadi, Repertorio de Jurisprudencia*, 1969, No. 1599.

constitute a usurpation of the credit, good name and reputation which that Organization enjoyed in the international sphere, since the public could be misled by the subterfuge. The Court therefore ruled that the decision to refuse registration was valid.

(*b*) Administrative Disputes (Fourth Chamber): Decision of 17 December 1969[12]

Decision rejecting an application for the duty-free importation of an automobile—The benefit of the Agreement concerning assistance of 30 June 1965 between Spain and the Special Fund can only be invoked by persons having a connexion with the activities falling within the scope of that Agreement

The plaintiff, having been refused a licence for the importation of an automobile, had appealed to the Ministry of Trade, arguing that he enjoyed diplomatic privileges because he had been a United Nations official. His appeal having been rejected, he submitted an appeal against that administrative decision to the Supreme Court. Among other things, he invoked an Agreement of 30 June 1965 between the United Nations Special Fund and the Government of Spain concerning assistance from the Spcial Fund.[13] The Court noted that the purpose of that agreement was to promote the economic development and social progress of Spain and that the latter had assumed obligations concerning the granting of facilities, privileges and immunities solely with a view to the attainment of the aforementioned ends and for the benefit of persons connected with the activities concerned which were undertaken in territories ruled by Spain. In the case under consideration, however, the appellant was a Spanish technician who had been employed by the Special Fund to work outside his country and who, upon terminating his international employment, had returned to the position he had formerly occupied in Spain. Consequently, he did not fall within any of the categories of persons who, under the Agreement, were entitled to benefit from the privileges provided for in the Agreement.

The Court furthermore noted that in a report enclosed in the file, the Ministry for Foreign Affairs had confirmed the correctness of the aforementioned conclusion, for it stated that the applicant's privilege of importing automobiles free of duty had been linked to his "residence abroad" and the "duration of his service with the United Nations". The report added that Spain granted the privilege to Spanish United Nations officials or experts "until they are repatriated" and to aliens who "in the exercise of such functions come to perform their work [in Spain]". The Court observed that it should be noted in that connexion that the Convention on the Privileges and Immunities of the United Nations of 13 February 1946[14] and the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947[15] limited the privileges granted to experts of the United Nations and its specialized agencies to effects belonging to them and transported in connexion with their voyage to take up their functions, it being understood that those privileges were not granted to them for their personal benefit.

In view of the foregoing, the Court declared that the applicant could not claim to benefit from the privilege of duty-free importation.

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[12] Aranzadi, *Repertorio de Jurisprudencia*, 1969, No. 5731.

[13] See *Juridical Yearbook*, 1965, p. 34.

[14] United Nations, *Treaty Series*, vol. 1, p. 15.

[15] *Ibid.*, vol. 33, p. 261.

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7. United Kingdom of Great Britain and Northern Ireland

HOUSE OF LORDS

ATTORNEY-GENERAL v. NISSAN: JUDGEMENT OF 11 FEBRUARY 1969 [16]

Legal status of British troops forming part of the United Nations Peace-keeping Force in Cyprus—Question whether the Government of the United Kingdom can be held liable for actions of such troops

The plaintiff, a citizen of the United Kingdom and Colonies, was the tenant of a hotel in Cyprus which was occupied by British troops from 26 December 1963 to 5 May 1964. He claimed compensation and damages from the British Government. The parties agreed to obtain a decision from the courts on questions of law, as a preliminary issue before trial on the facts.

The Government of the United Kingdom had pleaded in defence that it could not be held liable because the British troops in Cyprus had been acting as agents of the Government of Cyprus between 26 December 1963 and 27 March 1964 and thereafter as contingents of the United Nations Peace-keeping Force in Cyprus. It was also pleaded that, in any case, the actions of the British troops were "acts of state" not justiciable in an English court. The courts were asked to decide whether any of these defence pleas could constitute a good defence to any or all of the plaintiff's claims.

The House of Lords, on appeal, held that the British troops had not been acting as agents of the Government of Cyprus between 26 December 1963 and 27 March 1964 and that the arrangements relating to the establishment of the United Nations Peace-keeping Force in Cyprus were not such that no claim by the plaintiff against the British Government could succeed in respect of the period when the British troops were contingents of the Peace-keeping Force. The House of Lords also held, by a majority of four to one, that the actions of the British troops were not "acts of State".

On the question of the status of the British troops as contingents of the United Nations Peace-keeping Force, the House of Lords said that the United Nations cannot simply be regarded as a super-State or even a sovereign State. It is a unique legal person or corporation. It is an instrument of collective policy which it enforces by using the sovereignty of its members. In carrying out the policies, each member still retains its own sovereignty. The functions of the United Nations Force as a whole are international. But its individual component forces have their own national duty and discipline and remain in their own national service.

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[16] As reported in 1969 *All England Law Reports*, vol. 1, p. 629.

8. United States of America

(*a*) U.S. COURT OF APPEALS, SECOND CIRCUIT

MENON v. ESPERDY: JUDGEMENT OF 30 JUNE 1969[17]

Purpose of the G-4 visa status—Title 8, paragraph 1101 (a) (15) G (iv) of the United States Code does not create a right to such status by its own terms but only provides a basis for the issuance of a visa upon a request by the appropriate international organization—For the purpose of the statute, "members of the immediate family" must reside regularly in the household of the principal alien

The case concerned Mrs. Esterya Menon and her minor daughter who had come to New York on a visitor's visa. Mrs. Menon's husband was a United Nations staff member who, after having been stationed at United Nations Headquarters for a short period, had been permanently assigned overseas. When Mrs. Menon and her daughter were denied entry in the United States after one of their frequent trips, Mrs. Menon claimed she was entitled to a G-4 visa which is granted to dependents of United Nations employees under title 8 of the United States Code. Her claim having been rejected, she challenged the exclusion order, which order was held valid by the US District Court, Southern District of New York.[18]

On appeal and while the issue was not actually before it, the Court considered and rejected the validity of the claim. It noted that the G-4 status had been denied because the United Nations was unwilling to request such status for the Menons or to indicate they were entitled to it. The Court argued that the G-4 status had been created to facilitate the operation of international organizations in the United States. In the light of this purpose, the statute did not create a right to such status by its own terms but only provided "a basis for the issuance of a visa upon a request or certification by the appropriate international organization" and "unless and until requested to do so by the international organization", the United States could refuse to issue a G-4 visa. The Court added that, in the light of the aim of facilitating the operation of the organization, it was reasonable for regulations to require that members of the immediate family, to fall within the provision of the statute "reside regularly in the household of the principal alien". In the instant case, it was clear that Mrs. Menon had not lived with her husband since six years before she first came to the United States and that there was no prospect of her doing so in the future.

(*b*) FAMILY COURT, CITY OF NEW YORK, NEW YORK COUNTY

MEANS v. MEANS:[19] DECISION OF 6 AUGUST 1969[20]

United Nations immunity from sequestration of a staff member's salary

Mrs. Barbara Means, on behalf of herself and her minor child, unsuccessfully sought sequestration of the salary and allowances being paid to her husband, a United Nations staff member stationed in Korea at the time of the litigation. On the basis of section 429 of the Family Court Act which provides for sequestration of a non-resident's property

[17] 413 F. 2d 644 (2d Cir. 1969).

[18] See *Juridical Yearbook*, 1965, p. 247.

[19] The names are fictitious for the purpose of publication.

[20] 60 Misc. 2d 538 (Fam. Ct. 1969).

without personal jurisdiction over him or personal notice to him, the Court granted a temporary order of sequestration of any sum of the husband in New York State. Specifically excluded however were any wages, salaries or other sums payable from the United Nations. The Court held that the United Nations had sovereignty immunity and therefore that its "monies which it is in the process of transmitting to its own employees cannot be interfered with *en route* unless and to the extent the sovereign consents ...". The Court noted that the United Nations could notify the Court of such consent either directly or through the Department of State.
