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

Chapter VIII. Decisions of national tribunals

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Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Austria

COMMERCIAL COURT OF VIENNA

R. PETER PANUSCHKA v. PETER SCHAUFLER: JUDGEMENT OF 29 NOVEMBER 1965[1]

Service of legal process within the headquarters seat of the International Atomic Energy Agency —Inviolability of the headquarters seat—Immunity of the IAEA and its property from legal process—Article III, section 9 (a) and article VIII, section 19 of the Agreement regarding the Headquarters of the IAEA[2]

Plaintiff, proprietor of a loan office, applied for leave to effect execution by garnishment and assignment of the defendant's salary from the International Atomic Energy Agency in satisfaction of his executable claim for 2,450 schillings, plus 6 per cent interest from 24 August 1965, 1/3 per cent commission and 233.30 schillings in costs, in accordance with an order of the Commercial Court of Vienna of 5 October 1965 (12 Cg 802/65) for payment of a promissory note.

The Court dismissed the application and observed that under article III, section 9 (*a*), of the Headquarters Agreement, the service of legal process may not take place within the headquarters seat of the IAEA except with the express consent of, and under conditions approved by, the Director General. A garnishee order would constitute the service of legal process, since it would take effect upon service, and service would therefore have to be effected within the headquarters seat of the IAEA. Article VIII, section 19, of the Headquarters Agreement further provided that the property of the IAEA should enjoy immunity from every form of legal process except in so far as in any particular case the IAEA should have expressly waived its immunity. It was, however, understood that no waiver of immunity should extend to any measure of execution. It followed that the IAEA might not be prohibited by the Court from disposing of its property in a given manner; it followed also that the IAEA enjoyed immunity under international law, which it might waive but which, in the case of a measure of execution, it would not waive. Although this last provision related first and foremost to measures of execution against the IAEA, its wording also covered measures of execution which were directed primarily against other persons but in which the IAEA was in some way involved. In view of the clear wording of the law, there was no occasion to seek a declaration by the Federal Ministry of Justice under the terms of the third paragraph of article IX of the Introductory Act to the Civil Jurisdiction Act (*Einführungsgesetz zur Jurisdiktionsnorm*), since the immunity of the IAEA was not in doubt. It had also been unnecessary to establish whether the IAEA voluntarily submitted to the jurisdiction of the Austrian courts in the present case, since it was already established, under the terms of the Headquarters Agreement, that the question of its so submitting did not arise in the case of measures of execution.

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[1] Twelfth Division. 12 Cg 802/65-2.

[2] United Nations, *Treaty Series*, vol. 339, p. 110.

2. United States of America

U.S. DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

MENON v. ESPERDY: JUDGEMENT OF 15 NOVEMBER 1965[3]

The right to claim "G-4" status for a member of the immediate family of a United Nations official belongs to the United Nations, not to the member of the family—United States Code, title 8, para. 1101 (a) (15) (G) (IV)

Relator, Mrs. Menon, petitioned for a writ of *habeas corpus* to challenge the validity of an exclusion order and subsequent notice directing her deportation from the United States. She was the legally separated wife of a United Nations staff member who, after a short period of duty at Headquarters in New York, had been permanently assigned to overseas missions. She had come on a visitor's visa to New York, on her own initiative, and her husband had not requested for her, through the United Nations, the "G-4" visa provided for members of the immediate families of officers or employees of international organizations under title 8 of the United States Code (Aliens and Nationality). Before the Court she contended, *inter alia*, that she was entitled to "G-4" status as of right.

The Court held that the exclusion order was valid and dismissed the writ of *habeas corpus*. As to relator's claim to "G-4" status, the Court said:

> "The Court finds lacking in merit relator's argument that she is entitled as of right to "G-4" status since she is the spouse of a United Nations employee... Such statutory grant is a matter of legislative grace involving the foreign relations of the United States with certain international organizations... We need not decide here what reasons compelled officials at the United Nations to reach their decision. No basis appears, moreover, to inquire. Suffice it to say, that organization clearly rejected Mrs. Menon's claim; they rejected it in 1962 when her husband was last in the United States and again in 1964."

[3] 248 F. Supp. 261 (1965).