

Decisions of International Tribunals

EBERHARD P. DEUTSCH,* DEPARTMENTAL EDITOR

European Court of Human Rights

Certain French-speaking Belgians living in Flemish-speaking parts of Belgium filed complaints with the European Commission of Human Rights, for themselves and their children, contending that Belgian legislation, which effectively foreclosed education in the French language in those areas,[†] violated Articles 8, 9, 10, and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, and Article 2 of the Protocol of 1952.

In response to exceptions filed by the Belgian Government, the Commission rejected the complaints insofar as they were directed to Articles 9 and 10, but, after failure of its mediation efforts, referred the complaints in all other aspects to the European Court of Human Rights.

The Belgian Government's preliminary objections contended that the right to education in a child's native language, not being enumerated in Articles 2-13 of the Convention or Articles 1-3 of the Protocol, is not one of the "rights and freedoms set forth in this Convention," which Article 14 secures against "discrimination on any ground such as . . . association with a national minority"; that French-speaking Belgians do not, in any case, constitute a national minority; that Article 8 of the Convention protects only the family, and Article 2 of the Protocol guarantees respect only for parents' "religious and philosophical convictions," not their linguistic or cultural preferences, in the matter of education; and that the matters

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† The complainants' children were denied the right to attend French-speaking classes in the Flemish areas, and funds were withheld from and validation was denied to school-leaving certificates issued by institutions in those areas which did not conform to provisions for Flemish-language education.

of which complaint was made, fall within "the reserved domain of the Belgian legal order."

On February 9, 1967, the Court overruled these objections, holding that the questions raised thereby went to the merits of the case, and that disposition should not be made thereof on preliminary motion. The "reserved domain" argument was rejected on the ground that all provisions of the Convention and the Protocol relate to matters falling within the domestic legal order of the contracting states, and the Court is expressly authorized to determine all cases concerning the interpretation and application of these provisions. (*Cases Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*, Council of Europe, Directorate of Information, C(67) 4 [9/2/67].)

England

On December 13, 1966, Chief Justice Parker handed down a decision in *Regina v. Kent Justices*, [1967] 2 WLR 765, dealing with the extent of territorial waters for purposes of the Wireless Telegraphy Act. The justices of the peace for Kent County had convicted the operators of a radio station transmitting from an old fort almost five miles from the coast of Kent without the license required for such operation within the territorial jurisdiction of the United Kingdom.

In denying an application for certiorari, the Chief Justice held that "territorial waters," as used in the Act, encompasses waters over which the Crown might from time to time declare sovereignty. In this case, the applicable declaration was the Order in Council of 1964, under the base-line rules of which the fort in question, since it lay within three miles of a sand bank exposed at low tide, falls within the territorial jurisdiction of the United Kingdom.

The applicants' argument for the traditional three-mile rule of international law, as embodied in the Territorial Waters [Criminal] Jurisdiction Act of 1878, was rejected on the ground that the Wireless Telegraphy Act omitted any specific delineation of territorial waters as contained in the Jurisdiction Act.

Arbitral Commission on Property Rights and Interests in Germany:

Walter Bareiss

On January 28, 1965, the Third Chamber of the Commission

reiterated the Commission's uniform holding that nationals of the Allied Powers are not exempt from certain Equalization-of-Burdens taxes because they are not levied solely to defray war costs, notwithstanding intervening decisions by German courts apparently to the contrary. The decisions of the Federal Constitutional Court on which the complainant relied were distinguished on the ground that the question really decided in these cases was that the most important or controlling, rather than the sole, function of the taxes at issue was to defray war costs. (8 Decisions 147.) Leave to appeal was denied by the Plenary Session on November 5, 1965.

Barons Brincard

This case (8 Decisions 201, November 5, 1965) involved the classification of bearer shares for purposes of the provisions of the Settlement Convention for return of property, and restoration of rights and interests subjected to discriminatory treatment by the Third Reich.

German bearer shares owned by French nationals and on deposit with a Dutch bank were seized as enemy property and sold following the German invasion of Holland. The ultimate disposition of the shares could not be ascertained because of destruction of records. The complainants initially sought restitution of their share certificates.

Faced with the impossibility of locating the original or identifying the replacement certificates, they then modified their claim to one for restoration of the shareholder rights represented thereby.

The Commission recognized the dual nature of bearer-share certificates—in one aspect being corporeal property (governed by the *lex rei sitae*) in the nature of negotiable instruments, and in another aspect being documentary evidence (governed by the law of the company's domicile) of the holder's rights as a shareholder which exist (and may be extinguished) independently of the certificate. The dispossessed holder of a bearer certificate thus has two remedies, one for restitution against the new holder, the other for restoration—annulment and replacement of the converted certificate—against the company.

On this basis, the Commission rejected the defendant's contention that the Commission had no jurisdiction because the sale of the shares took place in Berlin, outside the sovereign territory of the Federal Republic, holding that it is the situs of the rights as to which

restoration is claimed which governs, and that, in this case, the seats of the companies involved were in the Federal Republic.

The Commission also rejected the contention that the instant claim fell within the terms of the exclusion, from the provisions of Article 10 of the Settlement Convention, of claims dealt with under Chapters 3 and 4 of the Convention, pointing out that Chapter 3 deals with claims concerning property, rights, and interests situated in Germany and owned, for the most part, by German nationals or foreign nationals resident in Germany, and that the application of Chapter 4 is restricted to victims of Nazi persecution.

The Commission then held that the remedy provided by German law—the Securities Validation Law of 19 August 1949—for persons deprived of shareholder rights is inadequate in the present case, primarily because that law requires that the claimant identify a particular third party liable to make restitution of the rights in question, which the instant claimants are not in a position to do.

Finally, the Commission handed down a declaratory judgment to the effect that the complainants are entitled to the relief they seek, and requiring the Federal Republic to take all measures necessary to afford that relief.

Dr. Joseph Beerwald

The First Chamber of the Commission held, on November 9, 1965, that it had no jurisdiction to decide whether the Equalisation-of-Burdens Tax does, or can, have retroactive effect, since the Commission's competence as to this Tax, under Article 6 of Chapter Ten of the Settlement Convention, extends only to questions relating to exemptions from, not to the incidence of, the Tax. (8 Decisions 226.) Commissioner Bennett filed a lengthy dissenting opinion.

India

In *Rashid Hasan Roomi v. Union of India* (All India Reporter 1967 Allahabad 154), a minor of Indian birth was abandoned by his father when the latter migrated to Pakistan after the partition. Despite his continued residence in India, where he voted and was elected to political office after having become of age, the erstwhile minor was detained in 1965 pursuant to an order issued under the Foreigner's Internment Order, 1962, on the contention that he was

a Pakistani national. On his petition challenging the arrest, the High Court recently ordered his release. Citing Cheshire in *Private International Law*, the Court held that while the rule that the domicile of an infant follows that of his father is generally laid down in absolute terms, it is subject to an exception in the case of abandonment of the infant when the father changes his domicile.

THE INTERNATIONAL LAWYER'S CALENDAR

All ABA activities shown in boldface

Compiled by Donald K. Duvall

1968

For information write to:

(Date not yet selected)

4th Extraordinary Conference of the Latin American Law faculties, Buenos Aires, Argentina

Facultad de Derecho, Universidad de Buenos Aires, Calle Viamonte 444, Buenos Aires, Argentina

(Date not yet selected)

1st Session, UN Commission on International Trade Law, New York

United Nations, New York

(Date not yet selected)

11th Quadrennial Session, Hague Conference on Private International Law

66A, Zeestr., The Hague, Netherlands

April 25-27, 1968

American Society of International Law Annual Meeting, Washington, D.C.

American Society of International Law, 2223 Massachusetts Avenue, N.W. Washington, D.C. 20008

May 10-11, 1968

American Society of International Law regional meeting, "The Individual and International Law," Los Angeles, California

Professor Carl Q. Christol, Institute of World Affairs, University of Southern California, Los Angeles, California 90007

May 13-18

20th Congress, Association of Attenders and Alumni, Hague Academy of International Law, Oslo, Norway

Peace Palace, The Hague, Netherlands

May 17-18

Regional Conference, American Society of International Law under the co-sponsorship of the University of Southern California and the Los Angeles County Bar Association, University of Southern California, Los Angeles, California 90007

Professor Carl Q. Christol, University of Southern California, Los Angeles, California 90007

May 24

Spring Meeting of Council and Section of International and Comparative Law, ABA, Washington, D. C. Dean Acheson, Lunch Meeting, "The Current Corruption of International Law and Policy"

Katherine Drew Hallgarten
Secretary
1521 New Hampshire Avenue,
N.W., Washington, D.C. 20036

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| June 3-July 19 | 5th Session, Academy of American and International Law, Dallas, Texas | Southwestern Legal Foundation
3315 Daniels,
Dallas, Texas 75205 |
| June 3-28 | 12th Summer Program, Parker School of Foreign and Comparative Law, New York, New York | Willis L. M. Reese, Director
Parker School of Foreign and Comparative Law, Columbia University, 435 West 116th Street, New York, New York 10027 |
| July 1-3 | Conference of Law Association for Asia and the Western Pacific, Kuala Lumpur, Malaysia | W. F. Cook, Executive Officer,
174 Phillip Street, Sydney,
N.S.W., Australia |
| July 8-12 | Meeting, International Bar Association, Dublin, Ireland | c/o Mr. Plunkett, Incorporated
Law Society, Four Courts,
Dublin 7, Ireland |
| August 5-9 | Section Meetings of International and Comparative Law Section, ABA, Philadelphia, Pennsylvania | Katherine Drew Hallgarten,
Secretary
1521 New Hampshire Ave.,
N.W., Washington, D.C. 20036 |
| August 25-31 | 53d Conference International Law Association, Buenos Aires, Argentina | George Worsley, 3 Paper Buildings, The Temple, London, E. C. 4, England |
| September 4-8 or 12-15 | International Congress of Catholic Jurists, Dublin, Ireland | International Secretariat of Catholic Jurists, 1 route de Jura, Fribourg, Switzerland |
| October 18-21 | 5th International Law Symposium, Brussels, Belgium | c/o European Insurance Committee, 2, rue de la Chaussee d'Antin, Paris 9, France |
| 1969 | | |
| (Date not yet selected) | 2nd Session, Diplomatic Conference on the Law of Treaties and Activities of International Law Commission, Geneva | United Nations, New York |
| (Date not yet selected) | International Congress of Criminal Law, Europe | Pierre Bouzat, Secretary General, International Association of Penal Law, 43 Ave. Aristide Briand, Rennes, France |
| (Date not yet selected) | 23d Congress, International Association of Lawyers, London, England | Andre De Bluts, General Secretary, 51 Av. F. D. Roosevelt, Brussels 5, Belgium |
| (Date not yet selected) | 32d International French-Language Congress of Legal and Social Medicine, Genoa, Italy | Instituto di Medicina Legale e delle Assicurazioni, Via de Toni, Genoa, Italy |
| March 30-April 6 | 29th Conference, International Maritime Committee, Tokyo, Japan | c/o Japanese Maritime Law Association, The Faculty of Law, University of Tokyo, 7 Hongo, Bunkyo-ku, Tokyo, Japan |

July	16th Conference, Inter-American Bar Association, Rio de Janeiro, Brazil	John O. Dahlgren, Secretary General, 1730 K St., N.W., Washington, D.C. 20006
August 11-15	Section Meetings of International and Comparative Law Section, ABA, Dallas, Texas	Katherine Hallgarten, Secretary 1521 New Hampshire Ave., N.W., Washington, D.C. 20036
September 25-29	United Nations Advisory Committee on Technical Assistance to Promote the Teaching, Study Dissemination and Wider Appreciation for International Law, New York, New York	United Nations, New York
<i>1970</i>		
May	5th Congress, International Society for Military Law and Law of War, Dublin, Ireland	Prof. J. Leaute, Secretary-General, Faculte de Droit, Institut des Sciences Criminelles et Penitentiaires, Esplanade, Strasbourg, France
July	13th Conference, International Bar Association, Tokyo, Japan	c/o Japan Federation of Bar Associations, Hosokaidan Bldg., 1-1 Kasumigaseki, Chiyoda-ku, Tokyo, Japan
August 10-14	Section Meetings of International and Comparative Law Section, ABA, St. Louis, Mo.	Katherine Hallgarten, Secretary 1521 New Hampshire Ave., N.W., Washington, D.C. 20036
<i>1971</i>		
July 1-10	Section Meetings of International and Comparative Law Section, ABA, New York	Katherine Hallgarten, Secretary 1521 New Hampshire Ave., N.W., Washington, D.C. 20036
July 12-16	Section Meetings of International and Comparative Law Section, ABA, London, England	Katherine Hallgarten, Secretary 1521 New Hampshire Ave., N.W., Washington, D.C. 20036
<i>1972</i>		
August 4-11	Section Meetings of International and Comparative Law Section, ABA, San Francisco, California	Katherine Hallgarten, Secretary 1521 New Hampshire Ave., N.W., Washington, D.C. 20036
<i>1973</i>		
August 3-10	Section Meetings of International and Comparative Law Section, ABA, Washington, D.C.	Katherine Hallgarten, Secretary 1521 New Hampshire Ave., N.W., Washington, D.C. 20036

