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Case Digest

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CASE DIGEST

This Case Digest provides brief analyses of cases that represent current aspects of transnational law. The Digest includes cases that apply established legal principles to new and different factual situations. The cases are grouped in topical categories, and references are given for further research.

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1. ALIENS' RIGHTS

ALIEN IS INELIGIBLE FOR NATURALIZATION WHEN HE IS RELIEVED FROM MILITARY SERVICE AND WAIVES ALL RIGHTS UNDER IMMIGRATION AND NATURALIZATION LAWS

Upon receiving an induction notice in 1967, petitioner, a native of Argentina and a permanent resident of the United States since 1956, invoked a United States-Argentina treaty that rendered him exempt from United States military service. Petitioner understood that by invoking the treaty he would, pursuant to section 315 of the Immigration and Naturalization Act, forfeit any opportunity to become a United States citizen. In 1974 petitioner filed a petition for naturalization. On the basis of section 315 the naturalization examiner recommended denial. Petitioner argued before the district court that although his induction had been halted in 1967, he had not received an alienage exemption classification until 1972, and thus the Government had failed to meet its obligation under the statute to formally classify him. Petitioner further argued that his written acknowledgement was not an informed waiver of rights since he was not advised that seeking the exemption would bar his re-entry into the United States with immigrant status. Reasoning that the Government's obligation under the statute was fulfilled by allowing petitioner to avoid immigrant induction, the district court denied the naturalization petition. The court also concluded that petitioner had made a know-

ing and intelligent waiver of rights and that it was not necessary for the Government to advise petitioner of all of the consequences under the Immigration and Naturalization Act that might flow from his waiver. *Significance*—This decision makes it clear that the obligation of the Government under section 315 is fulfilled by refraining from any attempt to enlist the alien and that administrative reclassification is not a determinative criterion for validating an alien's waiver of rights. *In re Petition of Javkin*, 500 F. Supp. 711 (N.D. Cal. 1980).

EXECUTIVE ORDERS REQUIRING UNITED STATES CLAIMS AGAINST IRANIAN ASSETS TO BE SUBMITTED TO BINDING ARBITRATION ARE VALID EXERCISE OF PRESIDENTIAL POWERS

As part of the agreement to obtain the release of the hostages, the United States and Iran agreed to use a binding arbitration tribunal to settle the claims of United States nationals against Iranian entities. A later executive order suspended all claims pending in any United States court, and permitted them to be presented in that tribunal. A creditor of an Iranian entity, relying on the Foreign Sovereign Immunities Act of 1976 (FSIA), the International Emergency Economic Powers Act (IEEPA), and article II of the United States Constitution as authority, brought suit in district court to have the executive orders purporting to suspend lawsuits against Iranians declared unlawful and to have the previously authorized attachments nullified. The court held that the executive orders are within the authority vested by IEEPA, which explicitly authorizes the President to compel the transfer of any property in which any foreign country or national has any interest; to nullify, void or prohibit any acquisition or holding of any property in which any foreign country or national has any interest; and to void the exercise of any right with respect to any property in which any foreign country or national has any interest. The court held that IEEPA was consistent with the broad presidential powers to handle extraordinary foreign affairs situations and that the Congress never intended the passage of IEEPA to cripple the President's negotiating power. *Significance*—This is the first decision to determine the validity of the hostage agreement and the accompanying executive orders. *Chas T. Main International, Inc., v. United States*, 49 U.S.L.W. 2599 (D.C. Mass. Mar. 17, 1981).

INJURY OR INTENT TO INJURE IS NOT AN ESSENTIAL ELEMENT OF THE CRIME OF ASSAULT ON A FOREIGN OFFICIAL OR AN INTERNATIONALLY PROTECTED PERSON

Defendants threw paint on the United States and Soviet Union Ambassadors to the United Nations. They were convicted of assault on an internationally protected person and a foreign official in violation of 18 U.S.C. § 112(a). Although section 112(a) does not specifically refer to injury or intent to injure, it proscribes violent attacks or attempts to do violence to such persons, and imposes punishment of three years imprisonment, a \$5,000 fine, or both. Included in a section 112(a) violation are the elements of a violation under 18 U.S.C. 112(b), which proscribes threats, intimidation, abusive language, and harrassment aimed at foreign officials and is punishable by six months imprisonment, a \$500 fine, or both. The court of appeals affirmed the conviction, holding that proof of injury or intent to injure is not an essential element of a conviction under section 112(a). A section 112(a) violation and a section 112(b) violation are thus distinguished on the basis of whether the act is violent. *Significance*—Regardless of whether injury is intended or actually occurs, this decision allows the courts to impose the more severe section 112(a) penalty when a person is violent toward a foreign official or an internationally protected person. *United States v. Gan*, 636 F.2d 28 (2d Cir. 1980).

2. EUROPEAN ECONOMIC COMMUNITY

COMMUNITY LAW AUTHORIZES A MEMBER STATE OF THE EUROPEAN ECONOMIC COMMUNITY TO PRESCRIBE PENALTIES FOR A CONTRAVENTION OF THE PROHIBITION AGAINST FISHING WITHOUT AUTHORIZATION IN ITS FISHERY LIMITS.

The attorney general of Ireland sued the master of a fisheries vessel registered in Spain for violating Irish fisheries legislation by having nets with undersized mesh on board and by fishing within the exclusive fisheries limits of Ireland. The attorney general alleged that the master committed those acts on July 10, 1978, while his vessel was positioned twenty nautical miles off the baseline, whereas pursuant to Council Regulation No. 1376178 of June 21, 1978, Ireland had previously extended its fishery limits to 200 nautical miles from the baseline. The accused responded that the London Fisheries Convention of 1964, to which Spain and Ireland are parties and which addresses twelve mile limits,

created antecedent rights for him that are preserved by article 234 of the Treaty of Rome (Treaty). The Circuit Court for the County of Cork, Ireland referred to the Court of Justice of the European Communities for a preliminary ruling on the interpretation of article 234 and the regime applicable to the fishery limits of Ireland. That court ruled that article 234 provides that the Treaty's provisions shall not affect the rights and obligations arising from agreements between Economic Community member states and non-member states that were concluded before the Treaty entered into force. Since Ireland did not join the Community until after the London Fisheries Convention, this would seemingly mean that the 1964 provisions would still be binding. Article 234 is, however, without prejudice to the member state's obligation to take all appropriate steps to eliminate incompatibilities between such an agreement and the Treaty. Also, since Council Regulation No. 1376178 prohibited Spanish-registered vessels from fishing without authorization in Community member states' fishery limits, but provided no penalties for contravention of this prohibition, it is consistent with Community law for Irish authorities to take all appropriate measures to ensure its implementation. *Significance*—This decision is the first attempt to carefully delineate and restrict the otherwise broad applicability of article 234 of the Treaty of Rome when Community rules which take account of the general development of international law in the field of fishing on the high seas are superimposed on a regime which previously applied in exclusive fishing zones. *Attorney General v. Burgoa*, Case No. 812/79 (Dur. Ct. Jus., Oct. 14, 1980).

3. JURISDICTION AND PROCEDURE

EXECUTIVE BRANCH ASSERTIONS OF NEED FOR FLEXIBILITY IN FOREIGN POLICY WILL NOT AUTOMATICALLY LIMIT A COURT'S ASSERTION OF JURISDICTION TO DETERMINE PROPERTY CLAIMS

Plaintiff, a United States corporation, sued defendant, the State of Iran, to recover alleged contractual debts and to attach Iranian assets that were frozen pursuant to Executive Order No. 12170. Pending before the court were defendant's motion to dismiss on grounds of lack of subject matter and personal jurisdiction, improper venue, and insufficiency of service, and a motion to quash filed by several United States government agencies. The United States Government filed a suggestion of interest requesting that the district court stay the instant pending proceedings

for an indefinite period. The Government argued that certain regulations of the Treasury Department prohibited the court from further consideration of the case and, alternatively, that the court should exercise its equitable powers to stay the proceedings due to the potential foreign policy ramifications of the court's decision. District Judge Greene rejected the alternative contention. According to the court, the Treasury regulations in question had been interpreted as vehicles to channel the anticipated flood of litigation and not as prohibitions against court action. The court acknowledged that the Treasury regulations did limit transfers of frozen assets and indicated that any pending decisions would be evaluated in light of the regulations. In rejecting the Government's foreign policy argument, Judge Greene balanced the Government's interests in the unhampered conduct of foreign policy against citizens' rights to seek redress for property claims. Though the Government claimed that court proceedings might restrict the President's flexibility either in using the Iranian assets as a bargaining lever or in responding to Iran's sovereign immunity defense, the court found these assertions too vague to justify an indefinite stay of the proceedings. The court did, however, grant a stay of seventy days since the Court of Appeals for the District of Columbia had granted a ninety day stay in a similar case. *Significance*—This decision indicates the reluctance of the courts to accept executive assertions of foreign policy interests as limitations on the jurisdiction of the courts or as barriers to citizens' property claims. *National Airmotive Corp. v. Iran*, 499 F. Supp. 401 (D.D.C. 1980).

