

CASE OF CERTAIN NORWEGIAN LOANS

Judgment of 6 July 1957

Proceedings in the case of certain Norwegian loans, between France and Norway, had been instituted by an Application of the French Government which requested the Court to adjudge that certain loans issued on the French market and on other foreign markets by the Kingdom of Norway, the Mortgage Bank of the Kingdom of Norway and the Smallholding and Workers' Housing Bank, stipulated in gold the amount of the borrower's obligation and that the borrower could only discharge the substance of his debt by the payment of the gold value of the coupons and of the redeemed bonds. The Application expressly referred to Article 36(2) of the Statute of the Court and to the Declarations of Acceptance of the compulsory jurisdiction made by France and by Norway. For its part, the Norwegian Government raised certain Preliminary Objections which, at the request of the French Government which the Norwegian Government did not oppose, the Court joined to the merits.

In its Judgment the Court upheld one of the grounds relied upon by Norway, which the Court considered more direct and conclusive: the Objection to the effect that Norway was entitled, by virtue of the condition of reciprocity, to invoke the reservation relating to national jurisdiction contained in the French Declaration, and that this reservation excluded from the jurisdiction of the court the dispute which has been referred to it by the Application of the French Government. Considering that it was not necessary to examine the other Norwegian Objections or the other submissions of the Parties, the Court found by twelve votes to three that it was without jurisdiction to adjudicate upon the dispute.

Judge Moreno Quintana declared that he considered that the Court was without jurisdiction for a reason different from that given in the Judgment. Vice President Badawi and Judge Sir Hersch Lauterpacht appended to the Judgment of the Court statements of their individual opinions. Judges Guerrero, Basdevant and Read appended to the Judgment of the Court statements of their dissenting opinions.

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In its Judgment the Court recalled the facts. The loans in question were floated between 1885 and 1909; the French Government contended that the bonds contained a gold clause which varied in form from bond to bond, but which that Government regarded as sufficient in the case of each bond, this being disputed by the Norwegian Government. The convertibility into gold of notes of the Bank of Norway having been suspended on various dates since 1914, a Norwegian law of December 15th, 1923, provided that "where a debtor has lawfully agreed to pay in gold a pecuniary debt in kroner and where the creditor refuses to accept payment in Bank of Norway notes on the basis of their nominal gold value, the debtor may request a postponement of payment for such period as the Bank is exempted from its obligation to redeem its notes in accordance with their nominal value". Protracted diplomatic correspondence ensued which lasted from 1925 to 1955, in which the French Government contended that it would not seem that a unilateral decision could be relied upon as against foreign creditors and requested the recognition of the rights claimed by the French holders of the bonds involved. The Norwegian Government, being unprepared to agree to the various proposals for international settlement put forward by France, maintained that the claims of the bondholders were within the jurisdiction of the Norwegian courts and involved solely the interpretation and application of Norwegian law. The French bondholders refrained from submitting their case to the Norwegian courts. It was in these circumstances that the French Government referred the matter to the Court.

Such being the facts, the Court at the outset directed its attention to the Preliminary Objections of the Norwegian Government, beginning with the first of these Objections which related directly to the jurisdiction of the Court and which had two aspects. In the first place, it was contended that the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, can be seised by means of a unilateral application, only of legal disputes falling within one of the four categories of disputes enumerated in paragraph 2 of Article 36 of the Statute and relating to international law. In the view of the Norwegian Government, the loan contracts were governed by municipal law and not by international law. In the second place, the Norwegian Government declared that if there should still be some doubt on this point it would rely upon the reservation made in the following terms by the French Government in its Declaration accepting the compulsory jurisdiction of the Court: "This declaration does not apply to differences relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic". The Norwegian Government considered that by virtue of the clause of reciprocity which is embodied in Article 36, paragraph 3, of the Statute and contained in the corresponding Norwegian Declaration, Norway had the right to rely upon the restrictions placed by France on her own undertakings. Convinced that the dispute was within the domestic jurisdiction, the Norwegian Government requested the Court to decline, on grounds that it lacked jurisdiction, the function which the French Government would have it assume.

The Court considered the second ground of this Objection and noted that the jurisdiction of the Court in the present case depended upon the Declarations made by the Parties on condition of reciprocity; and that since two unilateral declarations were involved such jurisdiction was conferred upon the Court only to the extent to which the Declarations coincided in conferring it. Consequently, the common will of the Parties, which was the basis of the Court's jurisdiction, existed within the narrower limits indicated by the French reservation. The Court reaffirmed this method of defining the limits of its jurisdiction which had already been adopted by the Permanent Court of International Justice. In accordance with the condition of reciprocity Norway, equally with France, was entitled to except from the compulsory jurisdiction of the Court disputes understood by Norway to be essentially within its national jurisdiction.

The French Government pointed out that between France and Norway there existed a treaty which made the payment of any contractual debt a question of international law and that in this connection the two States could not therefore speak of domestic jurisdiction. But the aim of the treaty referred to, the Second Hague Convention of 1907 respecting the limitation of the employment of force for the recovery of contract debts, was not to introduce compulsory arbitration; the only obligation imposed by the Convention was that an intervening power should not have recourse to force before it had tried arbitration. The Court could, therefore, find no reason why the fact that the two Parties were signatories to the Second Hague Convention should deprive Norway of the right to invoke the reservation in the French Declaration. The French Government also referred to the Franco Norwegian Arbitration Convention of 1904 and to the General Act of Geneva of September 26th, 1928. Neither of these references, however, could be regarded as sufficient to justify the view that the Application of the French Government was based upon the Convention or the General Act: the Court would not be justified in seeking a basis for its jurisdiction different from that which the French Government itself set out in its Application and by reference to which the case had been presented by both Parties to the Court.

The Court noted that from one point of view it might be said that the ground of the first Objection which was based on the reservation in the French Declaration was solely subsidiary in character. But in the opinion of the Court, the second ground could not be regarded as subsidiary

in the sense that Norway would invoke the French reservation only in the event of the first ground of this Objection being held to be legally unfounded. The Court's competence was challenged on both grounds and the Court was free to base its decision on the ground which in its judgment was more direct and conclusive. Not only did the Norwegian Government invoke the French reservation, but it maintained the second ground of its first Objection throughout. Abandonment could not be presumed or inferred; it had to be declared expressly.

The Court did not consider that it should examine whether the French reservation was consistent with the undertaking of a legal obligation and was compatible with Article 36, paragraph 6, of the Statute. The validity of the reservation had not been questioned by the Parties. It was clear that France fully maintained its Declaration including the reservation, and that Norway relied upon the reservation. In consequence, the Court had before it a provision which both Parties to the dispute regarded as constituting an expression of their common will relating to the competence of the Court. The Court gave effect to the reservation as it stood and as the Parties recognised it.

For these reasons, the Court found that it was without jurisdiction to adjudicate upon the dispute which had been brought before it by the Application of the French Government