

CASE CONCERNING RIGHTS OF NATIONALS OF THE UNITED STATES OF AMERICA IN MOROCCO

Judgment of 27 August 1952

The proceedings in the case concerning rights of nationals of the United States of America in Morocco were instituted against the United States by an Application of the Government of the French Republic.

The submissions of the Parties related to the following principal points:

The application to nationals of the United States of the Residential Decree of December 30th, 1948, by which imports without official allocation of currency (imports from the United States) were, in the French Zone of Morocco, subjected to a system of licensing control;

The extent of the consular jurisdiction which the United States may exercise in the French Zone of Morocco;

The right to levy taxes on nationals of the United States in Morocco (the question of fiscal immunity); with particular reference to the consumption taxes provided for by the Shereefian Dahir of February 28th, 1948;

The method of assessing the value, under Article 95 of the General Act of Algeciras of 1906, of goods imported into Morocco.

In its Judgment, the Court held:

1. (Unanimously) The Residential Decree of December 30th, 1948, exempted France from control of imports, while the United States was subjected to such control; it thus involved a discrimination in favour of France. This differential treatment was not compatible with the Act of Algeciras, by virtue of which the United States can claim to be treated as favourably as France, as far as economic matters in Morocco are concerned. The French submissions, that this Decree is in conformity with the economic system which is applicable to Morocco, must therefore be rejected.

2. (Unanimously) With regard to consular jurisdiction in the French Zone of Morocco, the United States is entitled to exercise such jurisdiction in accordance with the terms of its Treaty with Morocco of September 16th, 1836, that is to say, in all disputes, civil or criminal, between citizens or protégés of the United States.

3. (By ten votes to one) It is also entitled to exercise consular jurisdiction in all cases, civil or criminal, brought against citizens or protégés of the United States, to the extent

required by the provisions of the Act of Algeciras relating to consular jurisdiction.

4. (By six votes to five) But the other submissions of the United States relating to consular jurisdiction are rejected: it is not entitled to exercise consular jurisdiction in other cases in the French Zone of Morocco. Its rights in this connection, which were acquired solely by the effect of the most-favoured-nation clause, came to an end with the termination by Great Britain of all its rights and privileges of a capitulatory character by the Franco-British Convention of 1937.

5. (Unanimously) The United States had contended that its nationals were not subject, in principle, to the application of Moroccan laws, unless these laws had received its prior assent. There is, however, no provision in any of the Treaties conferring upon the United States such a right, a right linked with the régime of capitulations which can only exist as a corollary of consular jurisdiction, so that if the co-operation of the United States Consular Courts is required to enforce a law (see 2 and 3 above), the assent of the United States is essential. But, subject to this, the contention of the United States is ill-founded. If the application of a law to citizens of the United States without its assent is contrary to international law, any dispute which may arise therefrom should be dealt with according to the ordinary methods for the settlement of international disputes.

6. (By six votes to five) No treaty provides any basis for the claim of the United States to fiscal immunity for its citizens. Nor can such an immunity, capitulatory in origin, be justified by the effect of the most-favoured-nation clause, since no other State enjoys it for the benefit of its nationals.

7. (By seven votes to four) As to the consumption taxes imposed by the Dahir of February 28th, 1948, these are payable on all goods, whether imported into Morocco or produced there: they are not, therefore, customs duties, the maximum rate for which was fixed at 12½% by the Signatory Powers of the Act of Algeciras. Citizens of the United States are no more exempt from these taxes than from any others.

8. (By six votes to five) Article 95 of the Act of Algeciras lays down no strict rule for the valuation of imported goods. A study of the practice since 1906 and of the preliminary work of the Conference of Algeciras leads the Court to

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the view that this Article requires an interpretation which is more flexible than those respectively contended for by France and the United States. Various factors must be taken into consideration by the Customs authorities: the value of merchandise in the country of origin and its value in the local Moroccan market are both elements in the appraisal of its value.

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A declaration is appended to the Judgment by Judge Hsu Mo, who expresses the opinion that the United States is not entitled to exercise consular jurisdiction in cases involving the application to United States citizens of those provisions of the Act of Algeciras which, for their enforcement, carried certain sanctions.

A joint dissenting opinion, signed by Judges Hackworth, Badawi, Carneiro and Sir Benegal Rau, is also appended to the Judgment.