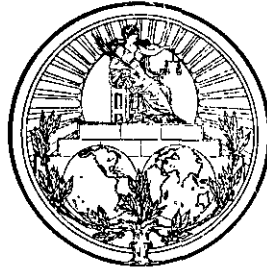


COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE FRANCO-ÉGYPTIENNE
RELATIVE A LA PROTECTION DES
RESSORTISSANTS ET PROTÉGÉS
FRANÇAIS EN ÉGYPTE

ORDONNANCE DU 29 MARS 1950 (DÉSISTEMENT)

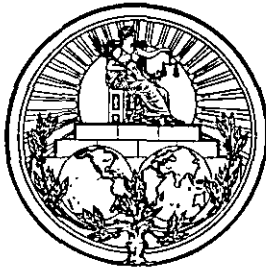


INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

FRANCO-EGYPTIAN CASE
CONCERNING THE PROTECTION
OF FRENCH NATIONALS AND
PROTECTED PERSONS IN EGYPT

ORDER OF MARCH 29th, 1950 (DISCONTINUANCE)



PREMIÈRE PARTIE

REQUÊTE INTRODUCTIVE D'INSTANCE

PART I

APPLICATION INSTITUTING PROCEEDINGS

APPLICATION INSTITUTING PROCEEDINGS

APPLICATION INSTITUTING PROCEEDINGS ON BEHALF OF THE GOVERNMENT OF THE FRENCH REPUBLIC SUBMITTED TO THE PRESIDENT AND THE JUDGES OF THE INTERNATIONAL COURT OF JUSTICE

[Translation by the Registry]

The undersigned, having been duly authorized by the Government of the French Republic and having selected as his address the French Embassy in The Hague ; having regard to Article 13 of the Convention regarding the abrogation of the Capitulations in Egypt, signed at Montreux on May 8th, 1937 ; having regard to Article 40, paragraph 1, of the Statute of the Court, has the honour to submit the following Application :

From May 15th, 1948, the Egyptian Government has placed in camps about forty French nationals or protected persons. Some of them have been liberated after April 1949, but, in most cases, under condition that they would leave Egypt. On August 10th, 1949, four French citizens or protected persons were still interned, namely : in Huckstep Camp, M. Gaston Bensimon, French citizen, *M^{lle} Doris Nadia Hazan*, French citizen ; in the Aboukir Camp, Mohamed Ismat Ragab Badawi, Tunisian ; in the European Hospital in Alexandria, M. Jacques Charbit, French citizen. Concurrently with these measures, the belongings of French citizens or protected persons have, in some cases, been sequestrated, in application of an Order of the Egyptian Government relating to the conflict in Palestine. In particular, were sequestrated :

- 1° the property of M. and Madame Messiqua, residing in Alexandria (decree of August 8th, 1948) ;
- 2° the property of M. Jacques Abdou Chemla (decree of August 8th, 1948) ;
- 3° the property of M. Victor Hazan, of Cairo (decree of September 24th, 1948) ;
- 4° the property of M. Jacques Charbit, of Alexandria (decree of September 5th, 1948) ;

- 5° the property of M. Marc Mosseri, of Alexandria (decree of September 5th, 1948). The sequestration applies to his personal effects and to the firm Mosseri & Co. ;
- 6° the property of M. Albert Guetta, Tunisian, French protected person (decree of November 30th, 1948) ;
- 7° the property of M. Alfred Cohen, Tunisian, French protected person (decree of July 10th, 1948). Further details will be given in the present Application, and by way of illustration, on the measures taken against M. Cohen by the Egyptian Government. As a Tunisian national, M. Alfred Cohen has the status of French protected person. According to a certificate of registration dated May 31st, 1943, issued by the French Bureau in Alexandria, Register IV, registration 379, his name is entered in the books of the French Consulate at Alexandria, Register II. C. No. 1623. In addition, M. Cohen is the holder of passport No. 188/D, delivered by the French Consulate in Cairo on April 18th, 1946, and valid until April 21st, 1951.

On July 11th, 1948, the Egyptian Ministry of Finance sequestered the property of M. Alfred Cohen. Other decrees sequestered the assets of several companies of which he is a shareholder. These measures applied also to the personal belongings of M. Cohen, including his shares in those companies. The order of July 11th, 1948, was taken by application of a proclamation of the Egyptian Government known as "Proclamation 26".... This proclamation, dated May 31st, 1948, is based on a decree of May 13th, 1948, proclaiming martial law in the entire territory of the Kingdom of Egypt. Proclamation 26 and the decree of May 13th, 1948, proclaiming martial law, have been put into force, although the text does not expressly declare it, in connexion with the military action taken by the Egyptian Government in Palestine. The purpose of Proclamation 26 is clearly made apparent, although by way of indirect reference, in the Preamble preceding the actual text of the Proclamation, and consisting in a declaration of His Excellency Nokrachi Pasha, Prime Minister :

"In connexion with Proclamation 26 providing for the administration of property belonging to individuals interned or placed under surveillance, I wish to call attention to the fact that the Government, convinced that no one, whether Egyptian or foreigner, living under the sky of Egypt, would allow himself to be disloyal to this country, in no way intended to take measures restricting individual freedom or the exercise of individual rights. The policy of the Government since the proclamation of martial law, and which it is determined to follow, has been not to take any such measures whatsoever, except in cases of extreme necessity and for the safeguard of the superior interests of the country and the protection

of its armies. However, the Government has to its regret recently seen proofs to the effect that a number of persons and corporations owning property in Egypt have taken action contrary to the safety of the State. In those conditions, the Government was compelled to take urgent measures to prevent them from persisting in activities dangerous to the safety of Egypt and the Arabic States in general. Therefore, I hasten to declare that the measures which the Government has had to take to safeguard the security of the State will be applied only within the limits of the considerations which dictated them, so that all, whether Egyptian or foreigner, will rest assured that no measure whatsoever will be taken against them contrary to their freedom or to the administration of their property, as long as their activities do not exceed the limits permitted by law, and do not give rise to suspicion."

The purpose of Proclamation 26 is shown also by statute No. 73 of 1948, adding another case to those in which martial law can be proclaimed by application of the fundamental legislation on the matter. Said statute No. 73 of 1948 is specially referred to in the decree of May 13th, 1948, proclaiming martial law. Article 1 of this statute provides :

Article 1 : "The provisions of statute No. 15 of 1923 on martial law, amended by statutes Nos. 23 of 1940, 21 of 1941 and 81 of 1944 notwithstanding, martial law may be proclaimed for the protection of Egyptian armies and to secure their supplies, their lines and means of communication and other matters related to their movements and military tasks outside the Kingdom of Egypt."

It is not intended for the moment to draw conclusions, one way or the other, from the reasons given by the Egyptian Government for the exceptional measures it has taken. It was necessary, however, to mention these reasons here and to lay stress on their close relation to the operations taking place at the time in Palestine.

Proclamation 26 applies to three categories of persons :

- 1° all physical persons interned or placed under surveillance in application of martial law ;
- 2° all corporations, associations or institutions of any kind whatsoever under control of a person in the first named category, or in which any such person has important interests ;
- 3° any non-resident person whose activity is contrary to the safety and security of the State.

The measures taken against M. Cohen with regard to his personal property cannot come under paragraph 2, which applies only to corporations, nor do they come under paragraph 1, concerning physical persons interned or placed under surveillance.

M. Cohen has neither been interned nor placed under surveillance. In fact, he left Egypt on May 27th, 1948, taking the plane at Cairo airport. A regular exit visa was stamped on his passport by the Egyptian authorities. Now, obviously, had he been in any way under surveillance of the Egyptian police, an exit visa would not have been granted. Consequently, it is only under paragraph 3 concerning non-residents acting contrary to the security of the State that the Egyptian Government can act against M. Cohen. It is incumbent, therefore, upon the Egyptian Government to show evidence that M. Cohen's activities have been contrary to the security of the Kingdom.

Also, the proclamation of the Egyptian Government declares, as previously stated, that all persons, whether Egyptian or foreign, can be assured that no measure will be taken against them as long as their activities do not exceed the limits permitted by law.

Now, the Egyptian Government has never shown that M. Cohen did anything dangerous to the security of the Egyptian State. On the other hand, the measure taken against him is contrary to the principles of international law and the provisions of the Convention of Montreux of May 8th, 1937.

Friendly negotiations have been conducted for nearly fifteen months to obtain the repeal of the measures taken against French citizens and protected persons in Egypt, and notably the release from sequestration of M. Cohen's property. Diplomatic negotiations having been in vain, the Government of the French Republic has decided to lay the dispute before the International Court of Justice. In view of the foregoing, and subject to the subsequent presentation to the Court of any memorials, counter-memorials, and in general of any documents or evidence, may it please the Court:

to give official notice to the French Government that for all notifications and communications concerning the present dispute, the French Government has elected domicile at the French Embassy at The Hague; to notify the present Application, in conformity with Article 40, paragraph 2, of the Statute of the Court, to the Egyptian Government. To judge and declare, whether the said Government enters an appearance or not, and after such time-limits as the Court may fix, in the absence of an agreement between the Parties: