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taken by the occupying power will be considered as abrogated without any further formality *pari passu* with the liberation of the territory. All laws, rules and orders made by the legitimate authority are binding for the whole of the Belgian territory, unless they provide for the contrary. They will be enforced by the administrative and judicial authorities as the liberation of the territory proceeds.

Another decree-law of the same date (*ibidem*), similar to a decree-law of May 31, 1917, declares null and void all measures of dispossession, affecting private or public property, taken by the enemy.[22] The property may be claimed against any possessor, without the owner having to pay any indemnity. The possessor can sue the person from whom he holds the goods. Claims are barred three years after the conclusion of the peace. It is forbidden, on penalty, to assist in the execution of measures of dispossession.

Penal Law.—Articles 113, 117, 118 *bis* and 121 *bis* of the Penal Code, dealing chiefly with high treason, have been modified and interpreted by the decree-law of December 17, 1942 (*Moniteur,* December 29, 1942).

According to article 113, any Belgian who takes up arms against Belgium shall be sentenced to death. This article has been completed by the new decree-law which provides that any kind of assistance to the armies of the enemy in the field (e.g., to drive an army-lorry) shall be assimilated to the former offence.

Article 117 assimilates the Allies of Belgium to Belgium herself for the application of provisions like those of article 113. The new decree-law interprets the term " Allies ": it means not only the States with which Belgium has entered into a treaty of alliance, but all States at war with a State with which Belgium is at war.

Article 118 *bis* provides penalties for assistance given to the enemy tending to the transformation of our public institutions as well as for any action by which loyalty to the King and the State has been shaken. Propaganda to such ends as well as propaganda with a view to undermining the spirit of resistance to the enemy is made an offence and the various crimes under article 118 *bis* may now be punished by death.

According to the new provisions, article 121 *bis* punishes more severely denunciation which exposes any person to any kind of hardship on the part of the enemy. The former text was generally more lenient. Moreover, it provided for punishment in particularly grave cases only when the person denounced himself had become the victim of such hardship.

A decree-law of April 29, 1943 (*Moniteur,* May 8, 1943) suspends any time-limits as regards offences the prosecution of which was prevented during the occupation either because their perpetration benefited the enemy or because the offenders were under the protection of the enemy.

This survey of Belgian legislation in exile ends on August 31, 1943. The first enactment made abroad was dated May 28, 1940.

LEGISLATION IN EXILE: LUXEMBOURG[1]

[*Contributed by* DR. ERNST J. COHN.]

THE legislation enacted by the Government of the Grand Duchy of Luxembourg during their period of exile in the present war is remarkable for one feature, which distinguishes it from the legislations of our other Allies: it is by far the least bulky one among them. That is, of course, partly due to the fact that only comparatively few Luxembourg citizens are living in Allied territory and that for this

[22] This decree-law is very important as regards private rights. In this respect it may even affect nationals of foreign countries (cf. also p. 7).

[1] On the legislation of other Allied Powers in exile see *Lachs,* " Polish Legislation in Exile," 24 *Jour. Comp. Leg.* (1942), pp. 57 ff., *Schwelb,* " Legislation in Exile: Czechoslovakia," *ibid.* 120 ff., *Official of the Royal Norwegian Ministry of Justice and Police :* " Legislation in Exile: Norway," *ibid.* pp. 125 ff., *Drucker,* " The Legislation of the Allied Powers in the United Kingdom, Czechoslovak Yearbook of International Law (1942)," pp. 45 ff., and the further literature quoted by *Schwelb,* l.c., p. 120, note 1.

reason some of the problems for which the other Allied Governments had to provide did not arise. But this is not the full explanation. The apparent scantiness of Luxembourg legislation in exile is in the first instance due to the fact that the Luxembourg Government faced the problems of emergency before they arose and provided for them in a manner which left little to be done when what had been anticipated actually happened. It was obvious that Luxembourg would not be able to resist an invasion by German troops. The Luxembourg Government in the pre-war period not only envisaged that possibility, but prepared to the full those measures which were needed to guarantee the continued existence of a lawful Government during the period of exile and to prevent the invaders from getting a hold on the foreign assets of the State and its citizens. The legislation of the Grand Duchy is therefore an example of a country which was fully prepared for the worst that could happen to it.

The Grand Duchy of Luxembourg is a constitutional monarchy.[2] Its Parliament consists of one House only, but a Conseil d'Etat of 15 members, seven of whom must be doctors of law, has to be consulted on every bill which is to be laid before the Chambre des Députés. The constitution contains a clause which is unique among modern constitutions. Every legislative act must be voted twice by the House. Between the first and the second vote there must be an interval of three months. But the House may by resolution dispense with this second vote in any individual case with the consent of the Conseil d'Etat. During the First World War the Government had been given power to enact economic emergency legislation. Some of the laws[3] enacted on the basis of these emergency powers both during and even after the First World War remain in force until to-day. The legality of the procedure adopted was questioned in 1937, but upheld by the Supreme Court of the Grand Duchy. It follows therefore that the House can delegate its legislative authority to the Government and in the absence of any provision to the contrary this may be done without a second vote, if the Conseil d'Etat agrees. These considerations proved to be of great importance in the present emergency. It may be added that under article 109 of the Constitution the seat of the Government may for important reasons be temporarily transferred anywhere.

The first precautions were taken very early—in fact at a time when most of the larger Western powers were still dreaming of "peace for our time." Already, on September 27, 1938—i.e., during the Munich crisis—the second vote clause of the Constitution was again suspended. By a law of the following day the Government was given very wide powers. These enabled the Government to issue statutory rules as far as these were needed to preserve the economic order, the security of the State and that of its individual citizen. The Government was entitled to issue orders in execution of this law, to impose fines up to 20,000 fr. or to convict to imprisonment for no more than three years and to impose both fine and imprisonment up to these limits together. They were also given power to order the confiscation of any property. An account of all measures taken under this law was to be given to the Chambre des Députés at its next regular meeting.

The Munich crisis passed by, but the Luxembourg authorities were not deceived by the lull. The law of September 28, 1938, remained in force. The powers granted to the Government under that law had, however, been granted for a limited period only. They were to expire on the 31st of December, 1939. Already in the Summer 1939 it became clear that the European crisis would not be over by then. Furthermore, events in Czechoslovakia had given an object lesson in sham legality and in the unfortunate consequences which resulted from

[2] The Constitution of the Grand Duchy is dated October 17, 1868. It was amended on May 15, 1919. A reprint with short explanations in *Kieffer, Luxemburger Bürgerkunde* (1933), pp. 154 ff., see also *Neyens*, article "Luxemburg" in 1 *Rechtsvergleichendes Handwörterbuch* (1929), pp. 128 ff.

[3] All the laws and decrees quoted in this essay are published in the *Memorial*, the official gazette of Luxembourg, copies of which may be obtained from the Consuls of the Grand Duchy.

it. To avoid a similar fate for the Grand Duchy, a new resolution of both Houses of Parliament of August 29, 1939, again suspended the second-vote-clause of the Constitution and on the strength of this resolution another law was passed on the same day which extended the time during which the Government should have the powers granted to it by the 1938 law for an indefinite period, i.e., until the passing of a new law restituting the normal functioning of the Constitution. The same law took measures to prevent the invaders from holding sham elections and form a Quisling Government with the help of the representatives thus elected. According to this law " in case of an European war and if the carrying through of elections should meet with insuperable obstacles or should prove to be extremely inconvenient, the Government is authorised to postpone the date of all elections—both of political and social bodies, especially those of the legislative assemblies, of communal and of professional bodies." In case the Government should be forced to make use of these powers all mandates received under the previous elections were to be considered as continuing until the time of the new elections, which are to take place as soon as the emergency will have passed. The result of these far-sighted precautions is that the setting up of a pseudo-legal Quisling régime in Luxembourg proved impossible, while the legality of the acts of the Government in exile appears to be beyond question.

Luxembourg was not drawn into the war during its first few months. That period offered a further useful demonstration of German methods of economic and financial penetration. It was felt that it was not enough to guarantee the continuation of the lawful existence of the Government and other political bodies during an eventual period of exile, but that arrangements should be made to prevent the foreign assets of the country and its citizens from falling into the hands of the invader. A number of Luxembourg companies and individuals owned considerable assets in the United States, partly directly, partly through the mediation of Belgian banking houses. While it could perhaps be expected that United States legislation would prevent any utilisation of these assets by the invader,[4] it was clear that American legislation would and could not facilitate the utilisation of these assets by those lawful owners who would succeed in escaping from Luxembourg if, as would of course frequently be the case, only one or a few members of the board of a company or one or a few of the partners in a commercial partnership would reach freedom. The Luxembourg Government decided to provide for such cases in the most far-reaching way. There was some precedent for this course in Swiss legislation. Swiss law permitted companies which had registered with the Swiss Government for this purpose, to transfer their seat temporarily abroad to another country in case of a national emergency without losing their Swiss nationality as a result of such transfer. The Luxembourg decree of February 28, 1940, goes even further. It requires no registration with the Government and no vote by the general meeting or the majority of partners. A resolution by those who are entitled to administer the company or partnership, the board of directors or the managing partners is sufficient. The requirements of publicity are relaxed to an extent which shows how much the Government refused to be led away by considerations of prestige from the clear purpose of defeating any invader. If publication of the change in the Luxembourg Register of Commerce and the Memorial is impossible, publication in two newspapers published in the country where the new registered office is, suffices. In case of an emergency all the rules regarding the form and manner of convocation of the general meeting and the board of directors, including of course the rules concerning the place where the meeting is to take place, are suspended. The mandates of directors and managing partners are extended in the same way as those of the Government. Both the general meeting and the board of directors are given power to delegate their authority to third parties. Whenever the general meeting is prevented from exercising its functions on the ground of " force majeure," all its rights pass

[4] This was, in fact, done with great promptness, see Executive Order No. 8,405, of May 10, 1940, i.e., of the same date on which Luxembourg was invaded.

ipso jure to the board of directors. Finally, article 6 of the same decree dealt with the most likely case that some of those entitled to manage a company or partnership should escape, while others, probably the majority, would remain in occupied territory. For this case it was necessary to provide an arrangement, enabling those who have reached freedom to act and preventing those who would be exposed to enemy pressure from interfering with such acts and from handing over foreign assets to the invader. Article 6 suspended, therefore, the authority of all those residents of occupied territory who are authorized to dispose about the property of any company or commercial partnership, in so far as assets are concerned, which were outside any part of Luxembourg territory before its occupation.

Luxembourg was occupied by German troops on May 10, 1940. The Grand Duchess and her consort, as well as four out of the five members of the Government, succeeded in escaping to Belgium. After the fall of Belgium the Government moved to France and from there to London, where the Grand Duchess and the Foreign Secretary arrived by aeroplane from Lisbon at the beginning of the Battle of Britain. The invaders purported to incorporate the country into the Third Reich. No attempt was made to set up a Quisling régime. The far-reaching precautions taken in pre-invasion times left comparatively little to do to save the country's foreign assets and to make them available to those who had reached non-occupied territory. Article 6 required extensions in various respects. These were effected by a Grand Ducal decree enacted at Montreal on February 5, 1941, while the Grand Duchess was temporarily in Canada. Article 6 had suspended the authority of residents of enemy territory to dispose about foreign property or foreign rights of companies and partnerships only in so far as such property or rights formed part of the assets of the company or partnership at the time of the occupation of Luxembourg. The decree extended, with effect from May 9, 1940, i.e., retrospectively, the suspension to all such foreign assets, including even those which became foreign assets after the invasion of the country. On the other hand, article 6 had not expressly stipulated that those persons who were members of the board of directors or managing partners would be able to exercise as *negotiorum gestores* all the powers of the full board, if they reached countries of refuge. It seems that the draftsmen responsible for the decree of February 28, 1940, expected that this would result automatically from the application of that decree, but the strict rules of literal interpretation of statutes which prevails in the Anglo-American legal world frustrated that intention. The Grand Ducal decree, therefore, ordered expressly that every director, manager, partner or other person whose signature in the name of the company or partnership has the same legal value as that of the directors, partners or managers, residing in occupied territory, could exercise all the powers granted by law or by the articles of association to the full body entitled to administer the company or partnership. The decree adds that the acts of these persons need not be confined to a mere *negotiorum gestio*, but that they could continue the entire commercial activity of the company or partnership. To avoid any doubts, the decree mentions expressly that all the quorums provided by the articles are suspended. If, therefore, one of the directors of a company incorporated in Luxembourg has succeeded in reaching an Allied or neutral country, he is fully entitled to dispose about any assets of the company outside occupied territory and to continue all the commercial activities of the company without any restrictions whatsoever.

The wide extension of these powers made it necessary to prevent their abuse by persons working in secret or open collaboration with the enemy. For this reason, only persons who had their permanent and effective habitation outside Luxembourg since May 1, 1940, are considered as residing outside enemy territory. The Minister of Justice can grant a dispensation from this requirement. It follows that third parties who are in any doubt about the question whether the person with whom they are dealing had his or her effective and continuous

residence outside occupied territory, are well advised if they require a dispensation from the Luxembourg Government. This dispensation will be granted in all cases where investigations show that there is no collaboration with or advantage to the enemy. Occupied countries in the sense of all these regulations are not only those countries which are in effective occupation by German troops, but all countries whose communications are controlled by Germany and her allies without regard as to whether or not there is a state of war between the individual country concerned and the Grand Duchy or not. It appears that this includes not only Vichy France before its occupation, but also Finland, the Balkan countries, the countries overrun by Japanese troops, etc.

The far-reaching precautions taken by the Luxembourg Government made it unnecessary to resort to a wholesale seizure of foreign assets, in the way provided by the Dutch decree of 1940 and by section 11 of the Norwegian decree of April 22, 1940. However, the rights of the statutory administration of the National Savings Bank had to be transferred to the Treasury of the Grand Duchy, as none of the members of its Board succeeded in escaping from occupied territory. The decree of February 5, 1941, declared the administration vested in the Treasury and invalidated all acts done by the statutory administration—which consisted entirely of civil servants—as invalid with retrospective effect. This decree made the valuable deposits of the Bank in the U.S.A. accessible to the Government. But the Government of Vichy handed those assets which had fallen into their hands over to the occupying power.[5]

By a decree of December, 1940, the members of the Consular corps had been given power to receive declarations regarding the liquidation and dissolution of commercial and holding companies. This proved to be insufficient, since by the decree of February 5, 1941, those members of the board, partners and managers who had succeeded in reaching freedom were enabled to carry on the full activities of Luxembourg companies and partnerships as far as circumstances permitted. For this reason the Consuls were authorized to receive all declarations concerning commercial and holding companies existing before May 10, 1940. By a further decree of February 12, 1943, the same power was granted to those Belgian Consular agents who, under the Convention about the economic union between Belgium and Luxembourg, are charged with the defence of Luxembourg interests in places where Luxembourg is not represented by a Consul or Vice-Consul. The formation of companies under Luxembourg law is, however, at present impossible. Neither are the Consuls permitted to deal with companies incorporated after the invasion as these must necessarily be suspect of being under enemy control.

While the Government was thus endeavouring to take charge of all legitimate interests of its subjects outside the power of the invading forces a complete disregard both of international law and of the Luxembourg Constitution reigned in Luxembourg itself. As a result of the incorporation of the country in the Reich, German law was introduced. The results were arbitrary confiscation, arrests, terror judgments, and the introduction of the German anti-Jewish legislation,[6] which is contrary to the rule of equality before the law expressly laid down in article 11 of the Luxembourg Constitution. The Luxembourg Government decided not to wait until the end of hostilities with a clear and definite pronouncement of its attitude to these measures on the part of the occupying power. It had obviously no power to prevent the carrying through of these measures themselves. But it could tell the people of Luxembourg what it intends to do after the restoration of freedom, so as to encourage the oppressed

[5] See on this decree *Drucker*, l.c. (above note 1), and *Barnett Hollander, Confiscation, Aggression, and Foreign-Funds-Control* (1942), p. 161 ff. The applicability of the decree was affirmed in *Anderson* v. *N.V. Transandine Handelsmatschaapij*, 28 NYS (2d) 547. See 24 *Jour. Comp. Leg.* (1942), p. 125.

[6] On the methods adopted by the occupying power in this respect and the extent to which Jewish property in Luxembourg was confiscated, see "The Persecution of the Jews," Conditions in Occupied Territories, A Series of Reports issued by the Inter-Allied Information Committee in London, No. 6 (1943), pp. 10 ff.

and to discourage those who intended to profiteer from the occupation. By a decree of April 22, 1941, the complete abrogation of all the measures taken by the occupying power was declared. This is to come into force as soon as the country is liberated and in accordance with the progress of its liberation. These measures would therefore be rescinded if the liberation is gradual in those parts of the territory which have regained freedom, even although in other parts, still in the hands of the invader, oppression might still reign. There is to be no intermediate stage. The restitution of the country's sovereignty results automatically in the return of the liberal constitution which was in force before the invasion. The occupation is not allowed to leave a permanent imprint upon the structure of the law of the country. On the other hand, all the laws, decrees, rules and orders enacted by the Government in Exile come into force in the country automatically with the progress of its liberation. The administrative and judicial authorities are charged with their due execution without any further announcement.

It is clear that this very general decree does not more than lay down a fundamental rule whose application to the complex realities will prove a most difficult task. The main problem is, of course, constituted by the very far-reaching spoliation of public and private bodies and persons which, as everywhere, has taken place in Luxembourg. Confiscations have, in Luxembourg, been nearly entirely confined to the property of those who offered active resistance and to Jewish property. There has not been the same amount of wholesale seizures as, e.g., in Poland. On the other hand, the number of forced sales, with varying degrees of pressure, is very large and the undertakings affected by them are so important that, for instance, the entire insurance business of the country and the majority of its banking houses and heavy industrial firms are now in German hands.[7] The attitude of the various Allied Governments to this important problem reveals characteristic differences. The Polish Government has, so far, declared null and void only those confiscations and forced sales whose subject-matter constitutes property of Polish subjects—a somewhat surprising restriction.[8] The Norwegian Decree of October 3, 1941, only annuls the transfer of rights in stocks and shares of Norwegian companies to foreigners, persons who have acquired their Norwegian citizenship after the date of the invasion not being considered as Norwegian citizens in the sense of that decree. There is no provision in Norwegian law, so far, regarding the forced sale of property other than stocks and shares in Norwegian companies, and there is no provision against the acquisition even of such stocks and shares by Quislings who exploited the situation of the country for their personal benefit. The Czechoslovak Government has stated that it does not recognize and will never recognize the transfer or disposal of any property, public or private, effected since September 27, 1938, under the pressure of the extraordinary political situation or the occupation of the country. But this is merely a resolution by the Government and not technically an enactment.[9] It is a programme for future legislation, not a legislative act itself. The Dutch Government has not yet dealt with the problem at all. The Government of the Grand Duchy, like the Governments of Belgium, Greece and Yugoslavia,[10] decided to lay down a number of comprehensive rules to make the consequences of their attitude clear to those who should be tempted to take part in the illegal activities of the occupying power. A second decree of April 22, 1941, declares that every infringement of the rights of property,

[7] See " The Penetration of German Capital into Europe," No. 5 of the Series of Reports on Conditions in Occupied Countries issued by the Inter-Allied Information Committee, London, 1942, p. 15.

[8] *Drucker*, l.c. pp. 54 ff.

[9] 24 *Jour. Comp. Leg.* (1942), p. 129.

[10] On the Belgian decrees of January 10, 1941, *Moniteur* vol. pp. see below. For Greece, see Emergency Act, No. 3,066—1941, " Measures for the Defense of the National Economy against the Acts of the Enemy " and for Yugoslavia Standing Order for the transfer and disposal of property in the Kingdom of Yugoslavia after April 6, 1941, dated May 28, 1942.

whether belonging to the State, the communities, public bodies or private individuals, which has taken place since May 10, 1940, is wholly void and ineffective. The nullity extends not only to confiscations and seizures, but includes forced sales and every other measure constituting an infringement of proprietary rights in the widest sense of the term. An action for restitution lies against every person having such goods in his or her possession. The plaintiff is not bound to compensate the defendant for the price which the latter has paid. The action is therefore not based on unjust enrichment, but is a proprietary action for the restitution of the plaintiff's property to the defendant. The defendant, however, may have the right to claim damages from his vendor on the ground that the latter failed to transfer a valid title to him and this right is expressly reserved in the decree. The action for restitution must be brought within three years from the conclusion of the peace treaty. It is obvious that the restitution of property will result in considerable economic changes and it is obviously desirable that these should be terminated as quickly as possible. A period of three years appears ample time within which *bona fide* claimants may put forward their claims. On the other hand, persons who have taken part in the irregular measures taken by the occupying power or who have bought, sold, accepted or given away any property which forms the subject of these irregularities will be punished. The punishment provided by the decree corresponds to the limits set to the Government by the law of September 28, 1938, i.e., the maximum period of imprisonment is three years and the maximum fine 20,000 francs. The Courts of the Grand Duchy are given power to deal with violations of Luxembourg property without regard to the place where they have been committed and even in cases in which the accused cannot be found in the Grand Duchy. This rule applies to prosecutions only; it is not a rule of private international law.

The two Luxembourg decrees of April 22, 1941, follow with a few minor alterations the course adopted by the Belgian Government in two decrees of January 10, 1941. The first of these decrees is a literal reproduction of a Belgian decree of May 31, 1917. It is obviously of advantage that in this way the experience made during the liquidation of the results of the last war is being made available once more. The economic ties between Luxembourg and Belgium also justify the close approximation between the two legal systems on questions with which the Courts of both countries will be concerned. On the other hand, the problem is of infinitely greater magnitude in the present war than it was in the First World War. Especially the number of forced sales is beyond comparison with anything experienced then. It will be clear that the law as in force at present in both countries will require very considerable additions and amendments. In many cases the original property will not any longer be in existence. Businesses have been dissolved, companies merged, goods sold abroad to Germany or even to neutral countries. It may be doubted whether the ordinary civil law, especially the law of delicts and of unjust enrichment, will possess sufficient flexibility to be capable of adaptation to the complexities of the position. In many cases persons who have spent years in exile will be unable to prove their ownership or to finance a costly lawsuit. Above all, very difficult problems of the law of conflict of laws will arise. It is therefore submitted that the whole problem should be considered as a question of international importance. It may well be found to be a question which should be the subject of an international agreement between the United Nations with a view to secure uniformity of treatment, a precise delimination of the jurisdiction of the individual national courts or tribunals and—last but not least—an effective execution of any judgments rendered against persons residing in Axis and neutral territory.

[11] *Schwelb*, 24 *Jour. Comp. Leg.* (1942), p. 124.