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Limpens: Rapports Belges au VII▒ Congreès International de Droit Comparé

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RAPPORTS BELGES AU VII[E] CONGRÈS INTERNATIONAL DE DROIT COMPARÉ. Preface by *Jean Limpens*. Brussels: Centre Interuniversitaire de Droit Comparé. 1966. Pp. 538.

It has now become customary in several countries to publish the reports of their national representatives to the congresses organized every four years by the International Academy of Comparative Law. A wealth of materials has thus become available to lawyers from all over the world who have a professional or scientific interest in the laws of foreign countries. It is indeed fortunate that in Belgium, a country which has become the center of the European Economic Community, these reports have been published ever since the con-

gress of the Academy in 1937 at The Hague.[1] Last year a new volume appeared in this series containing the Belgian reports to the Seventh International Congress of Comparative Law held in August 1966 in Uppsala, Sweden.

It is not possible to review here thoroughly the twenty-five articles contained in this volume; they were written by some of the most outstanding Belgian legal scholars and cover a great variety of problems. Preference has therefore been given to a rather detailed analysis of the reports which are of greatest interest to American lawyers and to a brief overview of the other essays. These contributions to the congress have been grouped under four headings: comparative and international law, constitutional and administrative law, economic and commercial law, and, finally, various other legal topics.

I. Comparative and International Law

The number of international organizations attempting to bring about a regional or universal unification of law is increasing rapidly. Belgium participates actively in a great number of them, for example, the Benelux Committee for the Unification of Law, the Benelux Economic Union, the European Economic Community, the Council of Europe, the European Economic Committee of the United Nations, the International Institute for the Unification of Private Law, the Committee on Private International Law of The Hague, the International Labor Organization, and so forth. Although these various attempts toward a unification of the law are welcomed in all influential circles in Belgium, specialists are becoming increasingly concerned about their co-ordination. In their excellent report on this problem, Professor J. Limpens and his daughter, Miss A. Limpens, have compiled an impressive list of the most important overlapping activities of these organizations. Their analysis proves without doubt that the measures actually taken to cope with the problem are not completely satisfactory. The authors suggest therefore the creation of an advisory co-ordination committee, a proposal which deserves not only the greatest attention but also full support.

L. Van Bunnen deals with a different problem. In many countries, including the United States, the courts have been faced during the last decades with the issue of whether special protection should be given to the owners of famous trademarks. Confusion may be created by the use of these marks by others on similar as well as entirely different products. Furthermore, the trademark may lose part

1. The reports to the congresses of 1937 at The Hague, of 1950 in London and of 1954 in Paris appeared in the *Revue de droit international et de droit comparé*. The Belgian contributions to the congresses of 1958 in Brussels and of 1962 in Hamburg were published in book form in the collection of the *Centre interuniversitaire de droit comparé* directed by Professor J. Limpens.

of its original attractive power when it is widely used by others. Mr. Van Bunnen analyzes this problem under the laws of the member states of the European Economic Community. His thesis is that a special protection to the owners of well established trademarks has been given in one way or another in each of these countries. In The Netherlands this was made possible by article *4bis* of the Trademark Act of November 20, 1956, which provides that the registration of a trademark may be refused, even if it is demanded for a product which is not similar to one for which registration has already been granted to another person. In France and Belgium the problem is largely solved by the rule that one may specify in the registration certificate all the products to be covered by the trademark right, even if one does not actually use the brand for all these products nor intend to do so in the future. Furthermore, courts in these two countries have broadly interpreted the principle that the trademark right covers only similar products. In Germany, however, the registrant must use the trademark for all the articles listed in the certificate and his exclusive right is strictly limited to similar products. The courts in Germany have, therefore, been forced to base the special protection for famous trademarks on the law of torts. Mr. Van Bunnen has clearly set forth the law of these countries. Unfortunately, however, he does not analyze—in spite of the title of his report—the solutions given to this problem in Italy and Luxembourg.[2]

Among the three reports dealing with problems of international law, special attention must be given to the article written by Professor F. Rigaux on the conflicts between international and Belgian domestic law. The author makes a distinction in this respect between the general principles of international law, on the one hand, and the international treaties signed by the government and ratified by Parliament, on the other hand. Long ago, the Belgian *Cour de cassation* decided that the courts must respect the general principles of international law as part of the national law. However—and this may surprise foreigners—the Belgian Constitution does not authorize the *Cour de cassation* to annul judgments of lower courts violating these principles. It is expected, though, that the revised Constitution, which is now being discussed in Parliament, will grant such power to the *Cour*. Different rules are applicable with respect to international treaties. Since they are to a large extent comparable to national statutes, the *Cour de cassation* has the right to overrule a lower court decision violating an international convention. It is interesting to note that in France the interpretation of treaties is reserved exclusively to the Ministry of Foreign Affairs. The Belgian solution has

2. Actually, special protection to the owners of well-known trademarks has been given in Italy on the basis of the law on unfair competition. The solution given to this problem in France and Belgium has been adopted in Luxembourg.

the disadvantage that it may lead to conflicting interpretations of the convention in the different states which are party to it. In the past, similarity of a treaty to a national statute has induced most courts and legal scholars to accept the theory that a conflict between a treaty and a more recent statute should be settled in favor of the latter. Recently, however, Mr. Hayoit de Termicourt, a very influential magistrate of the *Cour de cassation,* has stated that this thesis should be limited to treaties which impose obligations only upon the state. On the other hand, the international conventions which grant rights to the citizens directly or impose certain obligations upon them, should be respected by the courts even when they are incompatible with more recent statutes. This viewpoint, Professor Rigaux points out, is gaining acceptance. Some persons, however, would like to go even a step further, and have proposed an amendment to the Constitution which would have the effect of applying this solution to all treaties.

Professor P.-E. Trousse's report is a thorough investigation of the extraterritorial jurisdiction of Belgian criminal courts. According to article 3 of the *Code pénal* every criminal offense committed on Belgian territory by a Belgian citizen or a foreigner shall be punished in conformity with Belgian law. Article 4 of the Code provides that criminal offenses committed abroad by Belgian citizens or foreigners shall only be punished in conformity with Belgian law in the instances enumerated by statute. Implementing the latter article, the Code of Criminal Procedure stipulates that Belgian courts have jurisdiction over all crimes committed by Belgians abroad and over three categories of penal infractions committed by foreigners abroad: crimes against the safety or the reputation of the Belgian, or a foreign, state; crimes committed in time of war against Belgian citizens; and crimes committed by Belgian citizens prosecuted in Belgium to which aliens are accessories. Professor Trousse examines these provisions thoroughly as well as the court decisions implementing them.

Professor M. Litvine analyzes in his report the impact of international aviation law upon Belgian national law. The author comes to the conclusion that the great majority of the principles laid down in the international conventions in this field have been adopted by the Belgian legislature.

II. Constitutional and Administrative Law

Three articles deal with constitutional law problems, although this branch of the law does not have in Belgium the importance which it has in the United States. Indeed, Belgian courts are not competent to invalidate statutes infringing upon the supreme law of the country. Although the legislature has seldom violated the Constitution, it has often been said that it has almost unlimited powers. In

fact—and this is the subject treated by Professor A. Mast in his report —it is the executive which, with the approval of the majority in Parliament, exercises most powers. Several times the legislature has temporarily delegated part of its powers to the executive: almost all important bills are presented to the House of Representatives and to the Senate by the executive branch; and never has the legislature refused to ratify a treaty signed by the government. Several other examples of the pre-eminence of the executive branch could be given. Fortunately, however, this situation has not led—and, according to Professor Mast, will not lead—to what is euphemistically called the personalization of power. Indeed, Parliament still has the last word in all important political affairs. It controls the activities of the administration, and can dismiss at any moment the cabinet as a whole or one or more of its members. Moreover, the concentration of all political powers in the hands of one person is not a likely occurrence in Belgium for several other reasons: the presence of the King, the division of the country into two linguistic communities, and the attachment of the population to civil liberties.

Two of these aspects are analyzed in the reports of Mr. A. Van Welkenhuyzen and Professor M. Somerhausen. The latter author shows how Parliament controls the activities of the administration by voting the budget, by approving or disapproving the administration's expenditures, by interpellations of the government, by addressing written or oral questions to members of the cabinet, by parliamentary inquiries, and so forth. Mr. Van Welkenhuyzen, on the other hand, stresses the fact that the legislature has usually strictly respected the civil rights guaranteed by the Constitution. The author emphasizes his thesis by a thorough examination of the relevant statutes.

The two reports dealing primarily with administrative law questions were written by Professors M.-A. Flamme and L. Moureau. Professor Flamme has made a very complete study on the legal provisions governing the commercial and industrial activities of the public authorities in Belgium. Although a thorough review of this article would lead us too far afield, it may be recalled that great parts of the Belgian national economy are directly or indirectly controlled by the central government or other public authorities, and the subject treated by Professor Flamme is therefore of great importance. Professor Moureau, on the other hand, has written a report on the limits of the so-called discretionary powers of the administrative authorities. The phrase "discretionary powers" means in this context the competence granted to the authorities to achieve certain goals by the means which they consider to be most appropriate. Professor Moureau shows clearly how the exercise of these powers is controlled by the courts as well as the *Conseil d'Etat.*

III. Economic and Commercial Law

The reports which will be reviewed under this heading deal with national economic planning and with the law on investments, business associations, and negotiable instruments.

Although Professor H. Buch examines primarily the recent attempts in Belgium to plan the economy, he also gives a good survey of the statutes authorizing the government to interfere in private economic affairs. As to the former, the author stresses that it is premature to characterize the Belgian economy as being "planned." Indeed, the Act of July 30, 1963 merely authorizes the government to draft a program of the desirable economic goals and of the means appropriate to realize them. The government has not been given the power to implement any such program. Furthermore, a long-term plan dealing with the problems of the economic structure of the country does not exist. Thus Professor Buch believes that the present "programmation" is doomed to disappear unless it is replaced by more radical measures.

Most interesting to American lawyers and businessmen should be the article written by Mr. G. Schrans and Mr. V. Wieme on the legal rules governing foreign capital investments. The regulations in this area are extremely favorable: foreigners may claim the same advantages as Belgian investors. The Schrans and Wieme report is divided in four parts. In the chapter on financial aid, the Acts of July 17 and 18, 1959, are analyzed. These statutes empower the government to stimulate the national economy or the economic development of certain regions of the country by substantial financial aid to persons or groups creating, enlarging, transforming, or modernizing factories. In times of economic recession additional subventions may be awarded. The Acts provide further that aid can be given to certain financial institutions in order to enable them to grant low-rate loans for projects aimed at the economic expansion of the country. Under certain circumstances the government can even guarantee certain loans, namely when those asking for them cannot give sufficient guarantees to the bank themselves. In the second part of the report special attention is given to foreign exchange controls. Since the Belgian government pursues a policy of encouraging commercial relations with foreign countries, the regulations in this area are very supple and liberal. In the third part the authors examine the legal rules with respect to the issuing of bonds or stock on the Belgian capital market. Compared to United States law, the securities regulation in Belgium is of a limited scope. Finally, Mr. Schrans and Mr. Wieme analyze articles 196 and following of the Co-ordinated Laws on Business Associations, which stipulate when foreign corporations have to comply with Belgian domestic law. This report is complemented by the study of Mr. S. de Moffarts d'Houchenée on

the tax measures taken by the legislature to favor investments. It is not possible to review this report in detail. It must thus suffice here to note that Belgian tax rates are low compared to those of neighboring countries and that various tax reductions are awarded to encourage investments. The Schrans and Wieme and d'Houchenée reports, then, show that Belgian law is extremely favorable to foreign investors. American businessmen are becoming more and more aware of these advantages and have invested a great deal in Belgium during the last decades. A lot could be said about the political implications of the Belgian economic policy in this respect. However, this is not the appropriate place to discuss this controversial issue.

Professor J. Van Ryn examines the legal aspects of corporate mergers. Special attention is given to three types of fusions. The first and most important is the acquisition of the stock of a corporation by another corporation. Since these transactions are legal, some very powerful holding companies have been created. The fact that these trusts are not submitted to any special governmental regulation or control has often been criticized. Professor Van Ryn shares this concern. Another type of merger is achieved by contracts and gentlemen's agreements between two or more corporations creating a new company which is charged to define the common industrial, commercial, or financial policy of the contracting parties. According to Professor Van Ryn these agreements are null and void, because the law provides explicitly that no board of directors may delegate its powers to another corporation. The number of these corporate fusions is nevertheless increasing rapidly. The third type of merger analyzed by Professor Van Ryn is the joint venture or temporary partnership. This is the only class of corporate groupings with which the Co-ordinated Laws on Business Associations deal. The most important legal provision is that these partnerships have no legal status (*"personnalité juridique"*) which has of course far-reaching consequences. At the end of his report Professor Van Ryn deals briefly with the problem of the application of Belgian and Common Market antitrust provisions to mergers. Since most European governments at the present time view corporate fusions favorably, these antitrust laws do not frighten businessmen.

To complete this review of the articles concerning commercial law, mention must be made of two short reports, one written by Professor J. Baugniet on the "one-man corporation" and the other by Professor J. Heenen on travelers checks.

IV. Various Other Subjects

The remaining articles analyze a wide range of legal problems. Among the most valuable to foreign lawyers are the reports of Professor J. Constant on the protection of the family in Belgian criminal

law, Professor J.-G. Renauld on the evolution of the law regarding property rights, Mr. R. Bützler on the Civil Code provisions on breach of contract, Professor P. Horion on the notion of "enterprise" in Belgian labor law, Professor F. Van Isacker on Belgian film copyright law, and, finally, the late Professor C. Van Reepinghen and Professor J. Krings on out-of-court jurisdiction. With respect to the last two authors, it is perhaps worthwhile to note that they drafted the new Belgian Code of Civil Procedure which was recently adopted by Parliament. The reports of Mr. P. Golding on the distinction between "public" and "private" law in Belgium before 1800, Professor Onclin on canon law, and Mr. J. Hoeffler on land reapportionment are probably of less interest to American lawyers.

V. Conclusion

Each of the twenty-five articles of this book is a carefully written synthesis of an important aspect of Belgian law by a specialist in the field. The reports, therefore, form a very reliable source of information. Furthermore, since a number of studies deal with problems which are somewhat neglected in the main law treatises, this publication is also of great interest to foreign lawyers who are already familiar with the law of this country. In short, it is to be hoped that many American lawyers, scholars as well as practitioners, will read or consult this book.

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