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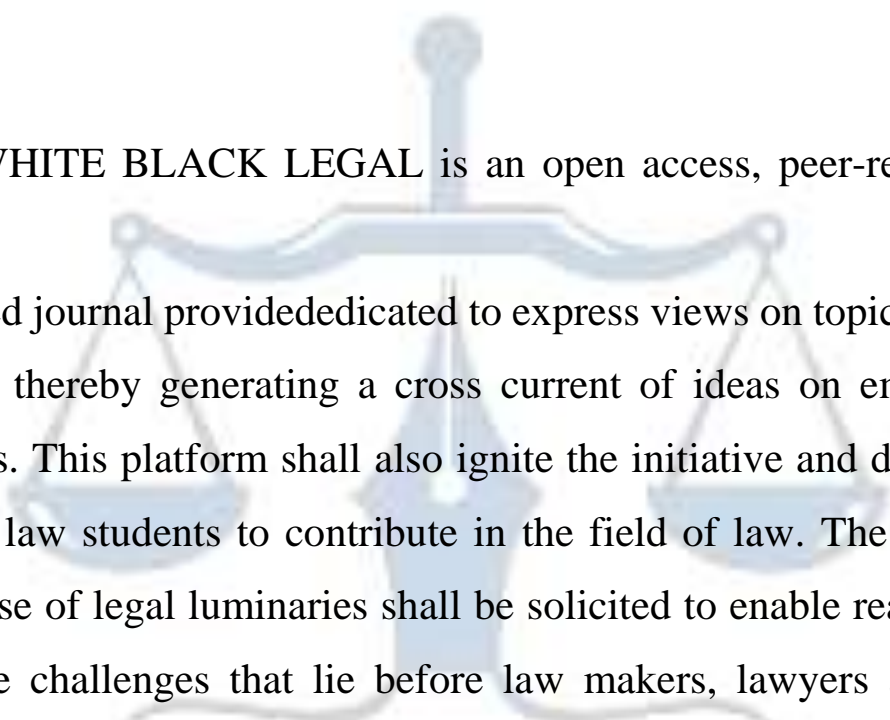


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

S. S. LOTUS CASE (FRANCE VS TURKEY) 1927 V. MAHALINGAM AND A. R. MUHAMMED RAQUIB.

AUTHORED BY - A. R. MUHAMMED RAQUIB & V. MAHALINGAM

NAME OF THE CASE WITH CITATION: -

France vs Turkey P. C. I. J (ser. A) No .10 (1927)¹.

PARTIES PRESENT IN THE CASE: -

The country of France and the country of Turkey.

JUDGES: -

Lord Finlay, Nyholm, Moore, De Bustamante, Altamira, Oda, Anzilotti, and Pessoa².

COUNSELS REPRESENTING FOR BOTH THE SIDES: -

France was been represented by – Basdevant, Professor at the Faculty of Law of Paris³.

Turkey was been represented by – Excellency Mahmout Essat Bey, Minister of Justice⁴.

FACTS OF THE CASE: -

On August 2, 1926 there were two ships sailing on the high seas. The French ship which was been named as the 'Lotus ship' with its officer of the ship named Lieutenant Demons and the Turkey ship which was been named as the 'Boz-Kourt' with its officer of the ship named Hassan Bey⁵. Both the ships were passing through the opposite direction in the open seas and suddenly there was a massive collision happened in the high seas between the French vessel and Turkish vessel. This collision occurred in the seas of Greece in Mytilene. Due to the massive collision between both the ships, the Boz – kourt vessel of the Turkey got sunked in the sea, the French ship, Lotus tried it's efforts to save the Turkish ship, but could fortunately rescue only 10 passengers from the Turkish ship, still eight people died in the Turkish ship due

¹ Citation for the case law – France vs Turkey P. C. I. J No. 10 (1927).

² The judges present in the lotus case.

³ Counsel representing on behalf of the petitioner.

⁴ Counsel representing on behalf of the respondent.

⁵ Rahul Mehta, "Case Comment on S.S Lotus (France v Turkey)", ssrn (2021).

to the ship got fully sunked in the sea. On August 3, 1926 when both the ships reached the Constantinople, the French officer Lieutenant Demons was been interrogated and investigated by the Turkish Nationals and their ship officer regarding the collision and adduced about the evidence of the same matter which led to the terrifying collision between both the ships on the high seas. On August 5, 1926 both the French and the Turkish ship officers have been arrested without prior information about their arrest and was been accused and gave them the charges of the which was been against the unintentional killing which was been referred to as the man slaughter. This was been done by the Turkish Nationals considering the accident which occurred in the high seas and also the death of the 8 passengers of their ship Boz – kourt . The French government became anger and questioned the Turkish Nationals regarding the arrest of their Lieutenant without giving them or their officer a prior information about the arrest and also gave him with the manslaughter which cannot be justified at all. On August 28, 1926 the case was been heard by the Turkey court where Lieutenant Demons argued that there is no jurisdiction of Turkish government to run this case which was against him. He also continued his argument that no country have the jurisdiction on the high seas and in the international waters and the oceans instead the country which was aviated the flag on the ship has the absolute authority to take up the case ie) the France. The Turkish court refused Demons argument . The court not only arrested Demons but also imprisoned him in jail for killing the passengers for 80 days and also with a fine if 22 pounds , considering him , Hassan Bey the ship officer of Turkey was been given a more punishment and as we as the penalty. This judgement given by the Turkey court discriminated the French National and the government and it also violated the international law concerning on the jurisdiction matters. Even though the French people saved the lives of the passengers amidst the tragedy and this decision cannot be accepted by the French government. So after the mutual consent between the France and Turkey, France filed a case in the PCIJ (Permanent Court of International Justice) which is located in the Hague, Geneva.

ISSUES RAISED IN THE CASE :-

1. Whether the country of Turkey violated the international law in the jurisdiction exercising on the Turkish courts based on the jurisdiction between the France and the turkey where the dispute involved the international matter⁶?

⁶ S. Allen, D. Costelloe, M. Fitzmaurice, P. Gragl & E. Guntrip (eds.), “The Lotus Case in Context – Sovereignty, Westphalia, Vattel and Positivism ,” oxford University press (2019).

2. Whether there should be any form of compensation to be paid to the affected country due to the infringement of the rights relating to the jurisdiction ?

PRINCIPLE INVOLVED IN THE CASE:-

The lotus case established two sets of principles.

They are :-

1. The first principle was relating to the jurisdiction matters. A state can take decisions within their territory, but outside it's borders they are not liable to do so without any kind of the international agreements or the enactments between the states. There should be some involvement of the special laws governing and international tribunal must have been applied.
2. The second principle which lists down in the lotus case is that which is pertaining to the power or the authority enforced. The state can exercise it's powers and functions within its country of the jurisdiction or within its territory. There might be no special provision provided for the state to use it's power within the jurisdiction. The main idea is that in the broader extension of jurisdiction concerning outside the territory, it can't be applied.

ARGUEMENTS MADE BY THE PETITIONERS :-

In the given case, France representing for the petitioner, they have argued that the Turkey doesn't have the jurisdiction to take up the case in their court. They argued that the state which has the flag flew in the ships vessel have the exclusive jurisdiction over the matter and offered the concept of the state practice in support and part of their argument. They challenged the Turkish court to release the ship officer Lieutenant Demons or to transfer the pending case to their court where they can try the case and pronounce the judgement.

ARGUMENTS MADE BY THE RESPONDENTS :-

The Turkish government and the court claimed for the jurisdiction under the Article 6 of Turkish Penal code. They also argued about the powers vested with the sovereign state and the authority to decide about the powers. They further added that sovereign state may act on any wish unless if it violates the explicit and contravene provisions specified under the international law.

DECISION / JUDGEMENT OF THE CASE :-

The judgement was been made during the 12th session in the permanent court of international justice. On August 7, 1927 judgement was delivered with the counsels representing for both the petitioners and respondents and the judges along with the President Huber and the Vice – President Mr. Weiss. The PCIJ answered and gave judgement on the issues which was been put forth to the international court.

First the court saw that there is no right vested for Turkey to try the French National in there state, as both the countries have the concurrent jurisdiction of matters relating to the collision in the high seas. Later PCIJ told that although France having jurisdiction because of flag aviated, there are not been given with the complete jurisdiction of the authority. According to this matter the court told that Turkey had taken the correct decision and rights in its laws and filed suit against France which is specified in the Article 15. The first argument which the country of France was been made as void and it is been rejected.

Second the court also rejected the view upon the payment of the compensation amount which was to be paid to Mr. Demons by the Turkish Nationals. This argument was been rejected seeing and pointing on the view of the rejection of the first argument.

The court told that Turkey did not violate the concept of the jurisdiction under the international law. They told that Turkey had the jurisdiction and the concept of the flag in the vessel was been taken away and it is been removed.

ANALYSIS:-

In the case concerning about the collision occurred in the high seas, there is no specific law governing between the states. The concept of the ‘flag state principle’, was been rejected and been taken away. But this concept can be seen and viewed from the United Nations Convention on the law of sea (UNCLOS)⁷.

⁷ UNCLOS – It is an agreement which establishes the rules to be followed for the world’s oceans and the seas. It was adopted in the year 1982 , but came into effect in the year 1994.

CONCLUSION :-

The court arrived to the conclusion stating that there is no law which is been governing under the international law. As in the case of the collision of the ships in the high seas no law will come into force. So in the said situation, France cannot claim that there ship has aviated the flag and which vessel has flag they can try and hear the case. This contention was been rejected and told as null. The court also ruled about the Turkish court have the authority to try the offence, because there are no specific international law governing between the countries in the international spheres.

Under the control of the international law, it's still now a debatable place where there is a existence of the international law, the question arises about the jurisdiction in the international law to take up the matters and hear in the particular and specific courts. As the international courts lagging on this concept, it cannot be claimed by the state stating about the existence, power, authority, jurisdiction etc.



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