



“... as long as mankind shall continue to bestow more liberal applause on their destroyers than their benefactors, the thirst of military glory will ever be the vice of the most exalted characters.”

Edward Gibbon,

The History of the Decline and Fall of the Roman Empire Volume I

Welcome to Jurists Chambers' Newsletter

THE LAW GAZETTE

In this monthly publication, we present overview of the recent legal developments in Bangladesh and highlight significant international legal issues.

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SUPREME COURT OF BANGLADESH

No blank cheque signing anymore? - Appellate Division allows leave to appeal

The Appellate Division of the Supreme Court of Bangladesh on 19 February 2017 granted leave to appeal to determine the legality of blank signed cheques retained by banks from borrowers.

In general, the Appellate Division bench headed by Chief Justice Surendra Kumar Sinha expressed dissatisfaction on the practice of the banks keeping signed blank cheques from borrowers. The appeal would be heard by the Appellate Division later this year.

BANGLADESH & ORS V. BLAST & ORS
Surendra Kumar Sinha CJ

[Excerpts from judgment]

In clause 'Firstly' of section 54 the words 'credible information' and 'reasonable suspicion' have been used relying upon which an arrest can be made by a police officer. These two expressions are so vague that there is chance for misuse of the power by a police officer, and accordingly, we hold the view that a police officer while exercising such power, his satisfaction must be based upon definite facts and materials placed before him and basing upon which the officer must consider for himself

before he takes any action. It will not be enough for him to arrest a person under this clause that there is likelihood of cognizable offence being committed. Before arresting a person out of suspicion the police officer must carry out investigation on the basis of the facts and materials placed before him without unnecessary delay. If any police officer produces any suspected person in exercise of the powers conferred by this clause, the Magistrate is required to be watchful that the police officer has arrested the person following the directions given below by this court and if the Magistrate finds that the police officer has abused his power, he shall at once release the accused person on bail. In case of arresting of a female person in exercise of this power, the police officer shall make all efforts to keep a lady constable present. (Paragraph 186)

On the plea of terrorism we cannot give a blank cheque to the law enforcing agencies to transgressing the fundamental rights of the citizens of the country. It should be borne in mind that a terrorist does not lose his fundamental rights even after commission of terrorist activities and there are laws for punishment of his crime, but he should not be deprived of his precious rights preserved in the constitution. (Paragraph 205)

Even if after investigation the police officer does not find any complicity of accused person, the Magistrate is not bound to accept the police report. It may direct further inquiry or further investigation over the death of the victim if he finds that the death is homicidal in nature.

The power of the Magistrate is not circumscribed by any condition. The Magistrate is not bound to accept the police report. (Paragraph 219)

Guidelines to the Magistrates, Judges and Tribunals having power to take cognizance of an offence:

(h) Whenever a law enforcing officer takes an accused person in his custody on remand, it is his responsibility to produce such accused person in court upon expiry of the period of remand and if it is found from the police report or otherwise that the arrested person is dead, the Magistrate shall direct for the examination of the victim by a medical board, and in the event of burial of the victim, he shall direct exhumation of the dead body for fresh medical examination by a medical board, and If the report of the board reveals that the death is homicidal in nature, he shall take cognizance of the offence punishable under section 15 of Hefajate Mrittu (Nibaran) Ain, 2013 against such officer and the officer in-charge of the respective police station or commanding officer of such officer in whose custody the death of the accused person took place.

(i) If there are materials or information to a Magistrate that a person has been subjected to 'Nirjatan' or died in custody within the meaning of section 2 of the Nirjatan and Hefajate Mrittu (Nibaran) Ain, 2013, shall refer the victim to the nearest doctor in case of 'Nirjatan' and to a medical board in case of death for ascertaining the injury or the cause of death, as the case may be, and if the medical evidence

reveals that the person detained has been tortured or died due to torture, the Magistrate shall take cognizance of the offence suo-moto under section 190(1)(c) of the Code without awaiting the filing of a case under section 4 and 5 and proceed in accordance with law. (Paragraph 222).

Reported in 8 SCOB [2016] 1.

High Court bans 34 pharmaceutical companies from producing medicines

Twenty pharmaceutical companies have been banned from producing all medicines and 14 others from producing antibiotics by the High Court. The order was passed by Mr. Justice Syed Mohammed Dastagir and Mr. Justice Ataur Rahman Khan came after hearing of a rule issued earlier on a petition filed by the Human Rights and Peace for Bangladesh (HRPB) to stop production and marketing of substandard medicines. The order asked the Bangladesh drug regulatory authority to regularly monitor whether these companies continued to produce and market medicines and file a report to the High Court after every four months. The High Court has constituted a five-member committee to examine fresh application by those companies who have not had their license cancelled, if they agreed to abide by existing drug regulatory parameters. The committee consists of a representative each from World Health Organisation, Bangladesh Drug Regulatory Authority, Dhaka University's Pharmacy department and the Health Ministry. Earlier in August 2016 bans were slammed by the High

Court Division on production of all medicines by 20 pharmaceutical companies and anti-biotic drugs by 14 others. The High Court order directed the government to withdraw medicines of 34 errant pharmaceutical firms from the market.

Twenty companies banned from producing all medicines

Exim Pharmaceuticals, Avert Pharma Ltd, Bikalpa Pharmaceuticals Ltd, Dolphin Pharmaceuticals Ltd, Drugland Ltd, Globe Laboratories Pvt Ltd, Jolpa Laboratories Ltd, Kafma Pharmaceuticals Ltd, Medico Pharmaceuticals Ltd, National Drug Pharma Ltd, North Bengal Pharmaceuticals Ltd, Rimo Chemicals Ltd, Rid Pharmaceuticals Ltd, Skylab Pharmaceuticals Ltd, Spark Pharmaceuticals Ltd, Star Pharmaceuticals Ltd, Shunipun Pharmaceuticals Ltd, Today Pharmaceuticals Ltd, Tropical Pharmaceuticals Ltd and Universal Pharmaceuticals Ltd

Fourteen companies banned from producing antibiotics

Ad-dwin Pharmaceutical Ltd, Alkad Laboratories Ltd, Belsen Pharmaceuticals Ltd, Bengal Drugs and Chemicals (Pharma) Ltd, Bristol Pharma Ltd, Crystal Pharmaceuticals Ltd, Indo-Bangla Pharmaceuticals Ltd, Millat Pharmaceuticals Ltd, MST Pharma and Healthcare Ltd, Orbit Pharmaceuticals Ltd, Pharmic Laboratories Ltd, Phoenix Chemical Laboratory Ltd, Rasa Pharmaceuticals Ltd and Save Pharmaceuticals Ltd.

Bangladesh Bank circulars

1. Call borrowing limit for the Financial Institutions are now reset to 30% of the equity instead of 15% Net Asset. (29 January 2017)
2. Insurance Companies have been instructed by Bangladesh Bank to nominate a Chief Anti Money Laundering Compliance Officer (CAMLCO). Instead of the CEO being the CAMLCO, a company can now nominate anyone within the next to tier of the CEO. The CAMLCO will be responsible to appraise himself with all the national and international legal compliance factors. (19 January 2017)
3. Bangladesh Bank issues "Uniform Account Opening Form & KYC Profile Form" for Banks to be effective from 1 April 2017. The form was developed in compliance with the Section 23(1)(d) of the Prevention of Money Laundering Act 2012 and section 15(1)(d) of the Anti-terrorism Act 2009.

INTERNATIONAL COURT OF JUSTICE

Ukraine institutes proceedings against the Russian Federation before the International Court of Justice and requests the Court to indicate provisional measures

In the late afternoon of 16 January 2017, Ukraine instituted proceedings

against the Russian Federation with regard to alleged violations of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 and the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965. Both States are parties to these two instruments.

In particular, Ukraine contends that, following the Orange Revolution of 2004, it has been subjected to increasing degrees of Russian pressure and intimidation. According to Ukraine, since 2014 the Russian Federation has escalated its interference in Ukrainian affairs to dangerous new levels, “intervening militarily in Ukraine, financing acts of terrorism, and violating the human rights of millions of Ukraine’s citizens, including, for all too many, their right to life”. It states that in eastern Ukraine, the Russian Federation has instigated and sustained an armed insurrection against the authority of the Ukrainian State. Ukraine considers that, by its actions, the Russian Federation is in violation of fundamental principles of international law, including those enshrined in the International Convention for the Suppression of the Financing of Terrorism (“Terrorism Financing Convention”).

Furthermore, in its Application, Ukraine contends that, in the Autonomous Republic of Crimea and City of Sevastopol, the Russian Federation has “brazenly defied the U.N. Charter, seizing a part of Ukraine’s

sovereign territory by military force”. Ukraine states that, “in an attempt to legitimize its act of aggression, the Russian Federation engineered an illegal ‘referendum’ which it rushed to implement amid a climate of violence and intimidation against non-Russian ethnic groups”. According to Ukraine, this “deliberate campaign of cultural erasure, beginning with the invasion and referendum and continuing to this day”, violates the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”).

With regard to the Terrorism Financing Convention, in paragraphs 134 to 136 of its Application,

“[134.] Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the Terrorism Financing Convention by:

- Supplying funds, including in-kind contributions of weapons and training, to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, in violation of Article 18;
- Failing to take appropriate measures to detect, freeze, and seize funds used to assist illegal armed

groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, in violation of Articles 8 and 18;

- Failing to investigate, prosecute, or extradite perpetrators of the financing of terrorism found within its territory, in violation of Articles 9, 10, 11, and 18;
- Failing to provide Ukraine with the greatest measure of assistance in connection with criminal investigations of the financing of terrorism, in violation of Articles 12 and 18; and
- Failing to take all practicable measures to prevent and counter acts of financing of terrorism committed by Russian public and private actors, in violation of Article 18.

[135.] Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation bears international responsibility, by virtue of its sponsorship of terrorism and failure to prevent the financing of terrorism under the Convention, for the acts of terrorism committed by its proxies in Ukraine, including:

- The shoot-down of Malaysian Airlines Flight MH17;
- The shelling of civilians, including in Volnovakha, Mariupol, and Kramatorsk; and
- The bombing of civilians, including in Kharkiv.

- [136.] Ukraine respectfully requests the Court to order the Russian Federation to comply with its obligations under the Terrorism Financing Convention, including that the Russian Federation:
- Immediately and unconditionally cease and desist from all support, including the provision of money, weapons, and training, to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals;
- Immediately make all efforts to ensure that all weaponry provided to such armed groups is withdrawn from Ukraine;
- Immediately exercise appropriate control over its border to prevent further acts of financing of terrorism, including the supply of weapons, from the territory of the Russian Federation to the territory of Ukraine;
- Immediately stop the movement of money, weapons, and all other assets from the territory of the Russian Federation and occupied Crimea to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals, including by freezing all bank accounts used to support such groups;
- Immediately prevent all Russian officials from financing terrorism in

Ukraine, including Sergei Shoigu, Minister of Defense of the Russian Federation; Vladimir Zhirinovskiy, Vice-Chairman of the State Duma; Sergei Mironov, member of the State Duma; and Gennadiy Zyuganov, member of the State Duma, and initiate prosecution against these and other actors responsible for financing terrorism;

- Immediately provide full cooperation to Ukraine in all pending and future requests for assistance in the investigation and interdiction of the financing of terrorism relating to illegal armed groups that engage in acts of terrorism in Ukraine, including the DPR, the LPR, the Kharkiv Partisans, and associated groups and individuals;
- Make full reparation for the shoot-down of Malaysian Airlines Flight MH17;
- Make full reparation for the shelling of civilians in Volnovakha;
- Make full reparation for the shelling of civilians in Mariupol;
- Make full reparation for the shelling of civilians in Kramatorsk;
- Make full reparation for the bombing of civilians in Kharkiv; and
- Make full reparation for all other acts of terrorism the Russian Federation has caused, facilitated, or supported through its financing of terrorism, and failure to prevent and investigate the financing of terrorism.”

With regard to CERD, in paragraphs 137 to 138 of its Application,

“[137.] Ukraine respectfully requests the Court to adjudge and declare that the Russian Federation, through its State organs, State agents, and other persons and entities exercising governmental authority, including the de facto authorities administering the illegal Russian occupation of Crimea, and through other agents acting on its instructions or under its direction and control, has violated its obligations under the CERD by:

- Systematically discriminating against and mistreating the Crimean Tatar and ethnic Ukrainian communities in Crimea, in furtherance of a state policy of cultural erasure of disfavored groups perceived to be opponents of the occupation regime;
- Holding an illegal referendum in an atmosphere of violence and intimidation against non-Russian ethnic groups, without any effort to seek a consensual and inclusive solution protecting those groups, and as an initial step toward depriving these communities of the protection of Ukrainian law and subjecting them to a regime of Russian dominance;
- Suppressing the political and cultural expression of Crimean Tatar identity, including through the persecution of Crimean Tatar leaders and the ban on the Mejlis of the Crimean Tatar People;

- Preventing Crimean Tatars from gathering to celebrate and commemorate important cultural events;
 - Perpetrating and tolerating a campaign of disappearances and murders of Crimean Tatars;
 - Harassing the Crimean Tatar community with an arbitrary regime of searches and detention;
 - Silencing Crimean Tatar media;
 - Suppressing Crimean Tatar language education and the community's educational institutions;
 - Suppressing Ukrainian language education relied on by ethnic Ukrainians;
 - Preventing ethnic Ukrainians from gathering to celebrate and commemorate important cultural events; and
 - Silencing ethnic Ukrainian media.
- [138.] Ukraine respectfully requests the Court to order the Russian Federation to comply with its obligations under the CERD, including:**
- Immediately cease and desist from the policy of cultural erasure and take all necessary and appropriate measures to guarantee the full and equal protection of the law to all groups in Russian-occupied Crimea, including Crimean Tatars and ethnic Ukrainians;
 - Immediately restore the rights of the Mejlis of the Crimean Tatar People and of Crimean Tatar leaders in Russian-occupied Crimea;
 - Immediately restore the rights of the Crimean Tatar people in Russian-occupied Crimea to engage in cultural gatherings, including the annual commemoration of the Sürgün;
 - Immediately take all necessary and appropriate measures to end the disappearance and murder of Crimean Tatars in Russian-occupied Crimea, and to fully and adequately investigate the disappearances of Reshat Ametov, Timur Shaimardanov, Ervin Ibragimov, and all other victims;
 - Immediately take all necessary and appropriate measures to end unjustified and disproportionate searches and detentions of Crimean Tatars in Russian-occupied Crimea;
 - Immediately restore licenses and take all other necessary and appropriate measures to permit Crimean Tatar media outlets to resume operations in Russian-occupied Crimea;
 - Immediately cease interference with Crimean Tatar education and take all necessary and appropriate measures to restore education in the Crimean Tatar language in Russian-occupied Crimea;
 - Immediately cease interference with ethnic Ukrainian education and take all necessary and appropriate measures to restore education in the Ukrainian language in Russian-occupied Crimea;
 - Immediately restore the rights of ethnic Ukrainians to engage in cultural gatherings in Russian-occupied Crimea;
 - Immediately take all necessary and appropriate measures to permit the free operation of ethnic Ukrainian media in Russian-occupied Crimea; and
 - Make full reparation for all victims of the Russian Federation's policy and pattern of cultural erasure through discrimination in Russian-occupied Crimea."
- Ukraine also filed on 16 January 2017 a Request for the indication of provisional measures. It states that the purpose of the Request is to protect its rights, pending the determination of the case on the merits.
- With regard to the Terrorism Financing Convention, in paragraph 23 of its Request, Ukraine requests that the Court indicate the following provisional measures:
- "(a) The Russian Federation shall refrain from any action which might aggravate or extend the dispute under the Terrorism Financing Convention before the Court or make this dispute more difficult to resolve.

- The Russian Federation shall exercise appropriate control over its border to prevent further acts of terrorism financing, including the supply of weapons from the territory of the Russian Federation to the territory of Ukraine.
- The Russian Federation shall halt and prevent all transfers from the territory of the Russian Federation of money, weapons, vehicles, equipment, training, or personnel to groups that have engaged in acts of terrorism against civilians in Ukraine, or that the Russian Federation knows may in the future engage in acts of terrorism against civilians in Ukraine, including but not limited to the “Donetsk People’s Republic,” the “Luhansk People’s Republic,” the “Kharkiv Partisans,” and associated groups and individuals.
- The Russian Federation shall take all measures at its disposal to ensure that any groups operating in Ukraine that have previously received transfers from the territory of the Russian Federation of money, weapons, vehicles, equipment, training, or personnel will refrain from carrying out acts of terrorism against civilians in Ukraine.”

With regard to CERD, in paragraph 24 of its Request, Ukraine requests that the Court indicate the following provisional measures:

“(a) The Russian Federation shall refrain from any action which might aggravate or extend the dispute

under CERD before the Court or make it more difficult to resolve.

- The Russian Federation shall refrain from any act of racial discrimination against persons, groups of persons, or institutions in the territory under its effective control, including the Crimean peninsula.
- The Russian Federation shall cease and desist from acts of political and cultural suppression against the Crimean Tatar people, including suspending the decree banning the Mejlis of the Crimean Tatar People and refraining from enforcement of this decree and any similar measures, while this case is pending.
- The Russian Federation shall take all necessary steps to halt the disappearance of Crimean Tatar individuals and to promptly investigate those disappearances that have already occurred.
- The Russian Federation shall cease and desist from acts of political and cultural suppression against the ethnic Ukrainian people in Crimea, including suspending restrictions on Ukrainian-language education and respecting ethnic Ukrainian language and educational rights, while this case is pending.”

At the time of this newsletter going to press, the Court is holding public hearings from Monday 6 to Thursday 9 March 2017.

BOOKS OF INTEREST

Principles of Contractual Interpretation 2nd ed

Richard Calnan

Written with the busy practitioner in mind, this concise and insightful book sets out the principles that guide the courts in interpreting contracts.

Each principle is covered in its own dedicated chapter, supported by case law which illustrates how the principle works in practice and in its wider context. In addition to interpretation of contracts, the book also considers the implication of terms, rectification, and estoppel by convention.

This new edition considers the implications of key decisions of the Supreme Court in *Arnold v Britton* and *Marks & Spencer v BNP Paribas*, and *BNY Mellon v LBG Capital*. Other writing, including from judges writing extra-judicially, is also analysed.

This book provides an invaluable reference for lawyers drafting, interpreting and litigating on contracts.

Judges, Politics and the Irish Constitution

Edited by:

Laura Cahillane, James Gallen, Tom Hickey

This volume brings together academics and judges to consider

ideas and arguments flowing from the often complex relationships between law and politics, adjudication and policy-making, and the judicial and political branches of government.

Contributors explore numerous themes, including the nature and extent of judicial power, the European Court of Human Rights decision in *O’Keeffe v Ireland*, the process of appointing judges and judicial representation, judicial power and political processes.

Contrasting judicial and academic perspectives are provided on the role of the European Court of Human Rights and the nature of exhausting domestic remedies, including a contribution from the late Mr. Justice Adrian Hardiman.

The role of specific judges, social and political disputes and case law are examined and socio-economic rights, the rule of law and electoral processes are all addressed.

Philosophical Foundations of Tax Law

Edited by:
Monica Bhandari

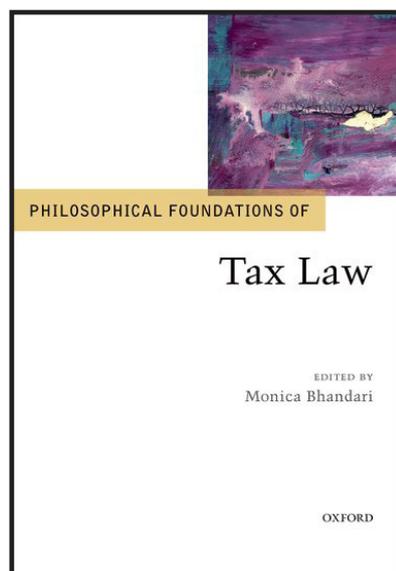
Tax law changes at a startling rate - not only does societal change bring with it demands for change in the tax system, but changes in the political climate will force change, as will many other competing pressures.

With this pace of change, it is easy to focus on the practical and forget the core underpinnings of the tax system

and their philosophical justifications. Taking a pause to remind ourselves of those principles and how they can operate in the modern tax system is crucial to ensuring that the tax system does not diverge too far from what it should be or could be. It is essential to understand the answers to some of the seemingly basic questions that surround tax before we can even begin to think about what a tax system should look like.

This collection brings together major themes and difficult questions in the philosophical foundations of tax law. The chapters consider practical issues such as justification, enforcement, design, and mechanics, and provide a full and coherent analysis of the basis for tax law.

Philosophical Foundations of Tax Law allows the reader to consider how tax systems should move forward in the modern world, with a sound philosophical basis, to provide the practical tax system that the state requires and citizens deserve.



INTERNATIONAL CONFERENCES

Chatham House International Law Programme - Accountability: International Crimes in Syria and Iraq

29 March 2017
Chatham House, London

Accountability: International Crimes in Syria and Iraq Speakers - ZEID RAAD AL HUSSEIN, UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS - AMAL CLOONEY, BARRISTER, DOUGHTY STREET CHAMBERS - CHRISTIAN RITSCHER, FEDERAL PUBLIC PROSECUTOR, GERMAN FEDERAL COURT OF JUSTICE - CHAIR: ELIZABETH WILMSHURST, DISTINGUISHED FELLOW, INTERNATIONAL LAW PROGRAMME, CHATHAM HOUSE

Venice School of Human Rights – Human Rights as Our Responsibility (9 – 17 June 2017)

27 April 2017
Venice Academy of Human Rights

Admissions to the Venice School of Human Rights – Human Rights as Our Responsibility (9 – 17 June 2017), organised by the European Inter-University Centre for Human Rights and Democratisation (EIUC) are open until 27 April 2017, early bird 30 March 2017 with 10% discount.

26th Annual SLS-BIICL Workshop on Theory In International Law

3 May 2017

British Institute of International
and Comparative Law, Charles
Clore House, 17 Russell Square,
London WC1B 5JP, UK

The 2017 Conference on Theory and International Law seeks to understand better the behaviour of those who shape international law - international and domestic judges, arbitrators, and state officials. Inspired by ground-breaking research that opens the “black box” of international decision-making, this Conference invites participants to theorise, experiment and speculate.

YOU ARE WELCOME TO CONTRIBUTE.

Your thoughts, comments and ideas would be respected
and treated in confidentiality. Please write to
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