ELSEN *v.* 'LE PATRIMOINE'(1) AND (2)

France, Court of Cassation. 6 January 1971

SUMMARY: *The facts*:—In 1964 a collision occurred in Andorra between two motor cars, one driven by Elsen, a Belgian national resident in Andorra, and the other driven by Boudet, a French national. Boudet was injured and his passenger, Mme. Bouillot, killed. Elsen was prosecuted in the *Tribunal des Corts*, the criminal court of Andorra; he was found guilty and the court also made an award of compensation in favour of Boudet and Mme. Bouillot's two surviving sons. Boudet and the sons of Mme. Bouillot instituted proceedings against Elsen and his insurance company, 'Le Patrimoine', in the French courts under Article 14 of the Civil Code, on the basis that Andorra was a foreign country. These proceedings gave rise to two separate appeals to the Court of Cassation.

The first decision reported below is the decision of the Court of Cassation on an appeal by Elsen from a decision of the Court of Appeal of Toulouse of 6 May 1968, holding the judgment of the Andorran *Corts* could not be pleaded as *res judicata*, being the judgment of a foreign court and therefore of no effect in France without an *exequatur*.

The second decision is on the appeal by Elsen from a decision of the Court of Appeal of Dijon (reported in R.G.D.I.P., 1968, p. 857, and *Annuaire François*, 1968, p.851) on an appeal by Elsen from a decision of the Tribunal de grande instance of Chalon-sur-Saone that it was competent under Article 14 of the Civil Code. Affirming the decision of the *Tribunal de grande instance*, the Dijon Court of Appeal distinguished an earlier decision of the Court of Cassation (22 March 1960, reported in 39 *I.L.R.* 412, *sub nom. Cruzel v. Massip*). The Court declared:

> … in its decision of 22 March 1960 the Court of Cassation was careful to state that its decision, motivated by the special legal position of Andorran citizens, was restricted to the application of Article 16 of the Civil Code, so that this decision reserves the question whether the Principality of Andorra constitutes a foreign country for the purposes of applying Article 14 of the Civil Code.
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> The Principality of Andorra, which is not subject to French legislation and is under a dual authority distinct from that of the French State, is, in consequence, a foreign country within the terms of Article 14 of the Civil Code. Under that Article, Elsen, a Belgian subject, may be brought before the French courts on account of obligations contracted by him towards the Bouillot brothers on the territory of the Principality of Andorra. The *Tribunal de grande instance* of Chalon-sur-Saône was therefore correct to declare that it was competent to adjudicate on the claim of the Bouillot brothers …

The legal status of Andorra and the history and nature of the rights of France over the territory are analysed in detail in the Conclusions of the *Avocat Général* which, since they were adopted in brief by the Court of Cassation in its two decisions, are, for their general interest, reproduced below (p. 17).

Held:—(1st judgment) Decisions of Andorran courts cannot be regarded as pronounced in the name of a foreign sovereign. The Valleys of Andorra are neither a State nor do they possess international legal personality, and the French State exercises there certain rights, in particular, that of the administration of justice, which is shared with the Bishop of Urgel.

(2nd judgment) For similar reasons, judicial decisions rendered in Andorra cannot be regarded as emanating from a foreign jurisdiction.

The following is the text of the judgment of the Court of Cassation on the appeal against the decision of the Court of Appeal of Toulouse:

Judgments which are subject to *exequatur* are those which have been pronounced in the name of a foreign sovereign.

The facts of the case as set out in the judgment under appeal are as follows. Elsen, on Andorran territory (where he is domiciled), unintentionally caused physical and material damage to Boudet, a French national. On this account he was sentenced by the *Tribunal*

des Corts, sitting in Andorra, to pay both a fine and compensation to Boudet. The latter brought an action in the court of his domicile against Elsen and his insurance company, 'Le Patrimoine', for compensation for loss suffered. The judgment under appeal, affirming the decision of the court of first instance, gave judgment in his favour, on the grounds that the Principality of Andorra was a foreign country, and therefore that the judgment of the Tribunal des Corts was of no effect in France without *exequatur*.

Although, however, the Valleys of Andorra enjoy certain privileges and franchises and their judicial institutions are separate from those of France, Andorra is neither a State nor an international legal person. The French State exercises there those rights which have devolved upon it, in particular that of the administration of justice, which is shared with the Bishop of Urgel, and judicial decisions rendered there cannot be regarded as being pronounced in the name of a foreign sovereign. It follows that, by deciding as it did, the Court of Appeal applied incorrectly, and therefore infringed, Article 546 of the Code of Civil Procedure.

[The decision of the Court of Appeal was therefore quashed, and the case referred to the Court of Appeal of Montpellier.]

The following is the text of the judgment of the Court of Cassation on the appeal against the decision of the Court of Appeal of Dijon:

A plaintiff of French nationality is entitled to claim the benefit of Article 14 of the Civil Code in an action against a foreign national for the performance of obligations contracted by a foreign national towards a French national only if the otherwise competent jurisdiction is not French in terms of that provision.

The facts of the case as set out in the judgment under appeal are as follows. Elsen, a foreign national, on Andorran territory (where he is domiciled), unintentionally caused the death of Mme. Bouillot, a French national. Her sons commenced an action against Elsen and his insurance company, 'Le Patrimoine', in the *Tribunal de grande instance* of Chalon-sur-Saône, within the jurisdiction of which they were domiciled. The judgment under appeal, affirming the decision of the court of first instance, dismissed a plea by Elsen and 'Le Patrimoine' that the court was territorially incompetent, on the ground that 'the Principality of Andorra, which is not subject to French legislation and is under a dual authority separate from the French State, is, in consequence, a foreign country within the meaning of Article 14 of the Civil Code'.

Although, however, the Valleys of Andorra enjoy certain privileges and franchises and their judicial institutions are separate from

those of France, Andorra is neither a State nor an international legal person. The French State exercises there those rights which have devolved upon it, in particular those of the administration of justice, which is shared with the Bishop of Urgel, and judicial decisions rendered there cannot be regarded as emanating from a foreign jurisdiction. It follows that the Court of Appeal, by according the Bouillots the benefit of Article 14 of the Civil Code, applied that provision incorrectly and therefore infringed it.

[The decision of the Court of Appeal was therefore quashed, and the case referred to the Court of Appeal of Montpellier.]

[Reports: R.G.D.I.P., 1971, pp. 1188 and 1189 (in French).]

NOTE: The following is an extract from the Conclusions of the *Avocat Général*:

Two questions alone remain which are of primary importance, the solution of which will determine the fate of the two appeals:

(1) Is Article 14 of the Civil Code applicable to an obligation arising in favour of a French national, and against an alien on Andorran territory? This is the question posed by the sole ground of appeal against the Dijon judgment.

(2) Is a judgment of an Andorran court of no effect in France without an *exequatur*? This is the first aspect of the first ground of appeal against the Toulouse judgment.

The reply to these two questions demands consideration of the legal status of Andorra and the institutions of that country which derive from its legal status and form a unity with it.

This is not useless erudition. It is necessary to an explanation and justification of the decisions of the Court in dealing with Andorran legal problems.

It has been said time and again that Andorra—both its legal status and its institutions—is a vestige of the past. A vestige which remains in some respects almost intact. A vestige of a past so far away that it is honestly impossible, for the solution of present difficulties, to use analogies based on contemporary legal concepts and institutions. It is a vestige, moreover, of a past which did not mind complexity in legal situations, which even enjoyed complex legal situations.

Until to-day, the case-law of your Court, when it has been faced with Andorran questions, has been adapted to these archaicisms and complexities. It has not played *Viollet-le-Duc*. It has been respectful, therefore, to historical accuracy.

For the historical truth it is clearly necessary to turn to the legal historians for information on the basic elements of the legal status of Andorra. We must both look to them and believe what they say. And when I refer to legal historians I am thinking in particular of M. Ourliac, and his Note in the *J. C. P.*, 1953, 7.739.

The basic elements of the legal status of Andorra are to be found in the Act of Paréage or Pariage, of 8 September 1278, an arbitral award in a dispute between the Comte de Foix, Roger Bernard III, and the Bishop of Urgel, an award which put an end to a very ancient conflict between the Counts of Foix and the Bishop of Urgel. This kind of treaty of peace contained a partition of rights over Andorra between the Count and the Bishop.

The rights shared between the Count and the Bishop (sometimes referred to as the Mitre of Urgel) were those of finance and those of justice.

Those relating to justice are of particular importance for our problem.

As for the financial rights, the Count and the Bishop were each to receive tribute from the Andorrans. Justice was to be administered at the top by two 'Viguiers', one to be appointed by the Count, the other by the Bishop.

In the Middle Ages, more or less all the other rights of sovereignty [*droits regaliens*] derived from the concept of justice (see Ourliac, *op. cit.*). The Count and the Bishop or their 'Viguiers' were to administer the government and make the laws at the same time as they administered justice.

The financial and judicial rights of the Count and the Bishop signify only that Andorra was in the legal situation of vassalage to the Count and the Bishop. The legal historians assure us that, in fact, Andorra was not a fief but allodial land placed outside the feudal hierarchy.

On the other hand, the Andorrans for a long time enjoyed certain franchises, that is to say, rights and privileges manifesting their autonomy. The institution of the General Council of the Valleys, of which we shall speak again, perhaps dates back to 1231, M. Ourliac writes.

The rights of the Counts of Foix passed to the King of Navarre, and then to the King of France, when Henry IV succeeded the last of the Valois.

In 1793, the Convention refused the tribute of the Andorrans which it erroneously regarded as a feudal payment. In 1801, the Andorrans requested from France the re-establishment of the 'relations' prior to the Revolution.

On 27 March 1806, the Emperor Napoleon issued a decree Article 1 of which provides as follows:

> A 'Viguier' shall be appointed by us, on the suggestion of the Minister of the interior … who shall be charged to assist, in the same way as the Viguier of the Bishop of Urgel, the Cortes and beds of justice in the Valley of Andorra, and he shall exercise all the privileges which conventions or usage have accorded him.

With the Decree of 27 March 1806 there is thus a return to the 'paréage' of 1278 (see Ourliac, *op. cit.*). It is still the Act of 1278 which today remains the basis of the legal physiognomy of Andorra.

We shall try to delineate this as far as possible.

First, the country of Andorra does not constitute a State. The most reliable writers on international law (George Scelle, *Précis*, pp. 83 and 167; Charles Rousseau, *Sirey*, 1935, 3.1 and *Droit international public*, 1953, p. 144; Andre Gros, International Court of Justice, Public Sitting of 7

October 1953, Rejoinder of the Agent of the French Government, *Repertoire Kiss*, II, 825), and the legal historians (Ourliac, *op. cit.*)—and see also to this effect, the Conclusions of M. Odent before the Tribunal des Conflits (2 February 1950) in the Radio-Andorra case (*Revue du droit public*, 1950, p. 418)—deny that the country of Andorra possesses full international personality. It is not disputed that the country of Andorra has no capacity to conclude treaties. The diplomatic protection of Andorrans is provided abroad by France. International lawyers and historians also deny Andorra the status of a vassal or protected State.

The Valleys of Andorra are a free territory—that is, it is free in origin, by reason of its allodial origin and its very ancient franchises; it is a free territory the status of which in international law is not comparable to that of any other.

There is no Andorran nationality. Nationality was 'alien' to medieval concepts (see Ourliac, *op. cit.*) and, according to modern ideas, only a State may confer nationality (see Niboyet, *Traité de droit international privé*, I, p.87). Since a decree issued by the General Council of the Valleys on 17 June 1930, and amended on 26 December 1941 by the representatives of France and of the Mitre [Bishop of Urgel], there has existed an Andorran citizenship.

How is authority exercised over this territory?

The French State succeeded the King of France in the rights which he held in succession to the Count of Foix under the 'paréage' of 1278. It is the French State which exercises the rights deriving from the 'paréage' of 1278; it is not the President of the French Republic, it is the French State, represented by its organs, at the summit of which is the President of the Republic, certainly, but it is not the President of the Republic, it is the French State (see Ourliac, *op. cit.*).

The Bishop of Urgel possesses the same rights as the French State.

I think it might be said that the French State and the Bishop of Urgel are the joint supreme authorities in the country of Andorra. I think one might call them 'co-sovereigns' of the Valleys of Andorra; but 'co-sovereigns' in the sense in which the term 'co-governors' is used today. I apologise for this modern expression, but there have been governors in fact at all epochs.

Louis Delbez, in his *Principes du droit international public*, 3rd edition, 1964, p.252, describes this situation under the name 'co-imperium' and this term is quite attractive. I would, however, express reservations regarding the analogy with a condominium. You are aware that France and Great Britain exercise a condominium over the New Hebrides, but the term 'condominium' seems to me to imply the possession of the plenitude of the competences of a State; they may of course be exercised jointly, but their plenitude includes the right to dispose of the whole or a part of the territory; this neither the French State nor the Bishop of Urgel claims with regard to Andorran territory.

The status of Andorra is so original that it is useless if not dangerous to search for an analogy.

In the thirteenth century, the idea of the separation of powers was not in

the mind of any one: the French State and the Bishop, the supreme authorities in Andorra, unite in their hands all the rights of sovereignty [*droits regaliens*].

Acts of supreme administration are performed jointly by the French Government and the Bishop or by their Viguiers. The Prefect of the eastern Pyrenees is, moreover, permanent representative of the French Government in Andorra. The elected local organs, that is, the General Council of the Valleys and its President, and the Syndic *Procureur général*, themselves possess, in accordance with the traditional local franchises, important administrative functions.

The two co-sovereigns possess the power to make laws, but it must be remembered that Andorran law is essentially customary and the General Council of the Valleys makes use of a very extensive power to make regulations.

With regard to the administration of justice, the 'paréage' of 1278 provided, as you know, that it should be performed by the co-sovereigns and their Viguiers. For a long time there have also been 'bayles' and the 'judge of appeals'.

Civil jurisdiction is exercised at first instance by two 'bayles'. They are chosen from among the notables of the country, one by the French Government, the other by the Bishop.

Judgments of the 'bayles' may be referred on appeal to the 'judge of appeals'. He must be an advocate, and is appointed for life, by France and by the Bishop alternatively.

Against decisions of the 'judge of appeals', the parties were entitled to have recourse to one of the co-sovereigns.

Before the Revolution, the King of France would refer the case to the Parliament of Toulouse—this fact is of importance and is worth emphasizing. Since the decrees of 13 July 1888 and 19 January 1898, the case is brought before the Superior Court of Andorra which sits in Perpignan and has five members who are all French, under the chairmanship of the President of the *Tribunal de grande instance* of Peripignan. This Court gives judgment 'in the name of the French Government', that is, clearly, in the name of the French co-sovereign, as High Justiciar of Andorra.

As regards criminal jurisdiction, summary jurisdiction [*justice correctionnelle*] is exercised by the two 'bayles'. Serious criminal cases are tried by the *Tribunal des Corts*, which is composed of the two Viguiers—the French Viguier and that of the Bishop—and the judge of civil appeals. It was this criminal court which tried the prosecution brought against Elsen; there is no doubt that it possessed jurisdiction because it was a case of homicide.

I have put before your eyes this survey of Andorran institutions primarily for the purpose of the reply to be given to the problem dominating these proceedings, which one might be tempted to put in the curt form in which it has be put in the two judgments referred to us, that is: Is Andorra, for us Frenchmen, a foreign country?

I would, at the outset, be inclined to think that, posed in this form, this question has no answer because I would query whether, in the thirteenth century, such a question would have had any meaning.

But if it is desired, at all costs, willy nilly, to put the legal status of the Valleys of Andorra in modern terms, I would give the following answer.

If by French territory is understood the space over which the governmental organs of our country exercise, by virtue of the will of the French people, the plenitude of State competences, then in that case the territory of Andorra is certainly foreign territory, since the authority of the French governmental organs over Andorra has its origin not in the will of the French people, but in a contractual instrument: the act of 'paréage' of 1278. It is this instrument which both determines and limits the competences of the French governmental organs over the territory.

It limits them, in the sense that the French governmental organs do not possess the plenitude of State powers over Andorra. France does not claim to possess in respect of Andorran territory rights identical to those which it possesses over the territory of a French department.

If this is what is meant when one considers describing Andorra as foreign territory, then the country of Andorra is certainly a foreign territory.

But in fact the question to which you have to reply today cannot be the question whether the country of Andorra is a foreign territory in the absolute sense of public law.

The question put to you is the following. Granted the complexity of the legal regime in Andorra, granted the links which bind the French State and the country of Andorra, and which have for seven centuries contractually involved French nationals in the legal life of the country, in the life of some of its fundamental institutions, are there not, as was once the case in relations between France and the countries placed under its protection, fields in which what is Andorran cannot be treated, by us as French nationals, as alien? I emphasize 'treated, by us as French nationals, as alien' ?

In the case of the position of Andorrans in France and outside France, there is no doubt that the answer must be in the affirmative. I have mentioned that the diplomatic protection of Andorrans abroad is provided by our country. Andorrans enjoy in France the same rights as French nationals. They are not subject to any of the legal dispositions concerning aliens: they require no aliens' identity card; the passport issued to Andorrans by the Syndic *Procureur Général* of the Valleys once it is endorsed by the French Viguier constitutes authority to reside in France for an unlimited period of time.

In a dispatch dated 14 September 1933, the Minister for Foreign Affairs, and in a circular of 30 August 1918, the Minister of Justice, declared that Andorrans were not deemed to be aliens but French nationals.

Similarly, as regards judicial matters, does Andorra not also avoid the consequences of an absolute definition as foreign territory?

In my view, judicial matters are exactly the field in which we should choose to regard Andorra as assimilated to France.

It is a striking fact that justice figures as the foremost of the sovereign rights which in 1278 devolved upon the Count of Foix and which were subsequently held by the King of France. It appears in the first rank of the rights restored to the French State by the Decree of 27 March 1806, which is the most recent instrument of basic positive law.

Moreover, the exercise of the sovereign right of dispensing justice by the French State is shown by the delegation provided for in these instruments to judges of French nationality or appointed by the French Government: the Viguier of France, who is a member of the French diplomatic corps; the 'bayle' chosen by our government; the judge of appeals appointed alternatively by our government and by the Bishop; the Superior Court in Perpignan composed exclusively of French nationals.

Of course, the French State shares these important rights with the Bishop of Urgel.

But this consideration has not up to the present time checked either your Court or the Courts of Appeal: for more than a century, the case-law of your Court has tended to assimilate Andorra to France injudicial matters, and the decisions of the appellate courts have been to the same effect.

According to the decisions of your Criminal Chamber, there are no extradition proceedings between France and Andorra. On 9 May 1845 (*Sirey*, 1845.1.396), your Criminal Chamber held that the extradition of a French national prosecuted for a crime, who had fled to Andorra, was validly effected on the request of a French magistrate alone, acting in virtue of a lawful warrant. The Syndic General of the Valleys had authorised the extradition on the request by the French magistrate alone. In that judgment, Andorra was described as a 'neutral territory', which was apparently intended by those who drafted it to mean a territory neither foreign nor French, territory of an indeterminate character.

Since Andorra does not possess international personality, it is to France that foreign States address themselves when they wish individuals prosecuted in their courts to be surrendered if they are in Andorra. Two decisions of the Montpellier Court of Appeal on 18 and 30 October 1962 [*Gaz. Pal.* 1963.1.73: *R.G.D.I.P., 1963, p. 936*;[1]], on the lines of the decision of the Criminal Chamber of 9 May 1845, accepted as lawful the return to the French police, without any formal proceedings, of wanted persons. These judgments hold that the handing over by the Andorran authorities to the French authorities is not extradition. The Court of Appeal declared that the 'suzerainty' of the French co-Prince over Andorra 'does not allow that territory to be regarded as foreign'.

In a judgment of 12 May 1859 (*Sirey*, 1859.1.975) the Criminal Chamber stated: 'The Valley of Andorra is, in regard to our country, in an exceptional position. According to ancient usages sanctioned by the Decree of 27 March 1806, we exercise there a right of suzerainty and, *through our*

[1. *Sub nom. Re Boedecker and Ronski*, 44 *I.L.R* 176; and *Re Lothringer*, 44 *I.L.R.* 182.]

Viguier administrative and judicial activities which do not allow the territory to be regarded as foreign.'

On 23 July 1952, the Montpellier Court of Appeal was called to pronounce on the question whether an Andorran is required to provide *cautio judicatum solvi*. It held (*J.C.P.*, 1953.7339, with a Note by M. Ourliac) that the Andorran was not required to do so.

The decision was based on a number of reasons, in particular the privileged position of Andorrans in France. But the reason which the Court placed first in its judgment was the following:

'The suzerainty of the French co-Prince over this territory is principally manifest in the administrative and judicial activities of our Viguier, which does not allow the territory to be regarded as foreign.'

This judgment was the subject of an appeal, which your Court dismissed [1st Civil Chamber, 22 March 1960, *Bulletin Civil*, I, p. 138: *R.G.D.I.P.*, 1960, p. 639;[2]] The fundamental ground for the judgment was the following:

> However, the contested decision emphasizes that the territory of the valleys of Andorra, a fief without international personality, is 'a coseigneury, a remnant of feudal institutions, and the suzerainty of the French co-Prince, the President of the Republic, is apparent principally in the administrative and judicial acts of the Viguier of France. It is similarly not contested that the Superior Court of Andorra, composed exclusively of French judges, sits at Perpignan [France]. The Court of Appeal rightly deduced from this special juridicial situation that Andorrans cannot, for the purposes of Article 16 of the Civil Code, be considered as foreigners subject to *cautio judicatum solvi*.

Of course, this was only a question of the application of Article 16 of the Civil Code; it was only a question of *cautio judicatum solvi*.

But observe the capital importance which this decision of your Chamber attached to the judicial activities of the Viguier of France—which are performed only in the *Tribunal des Corts*—and the composition of the Superior Court in Perpignan 'composed exclusively of French judges'. These are the facts, and the only facts on which the decision of your Chamber was based—I emphasize this because they are valid as much, and perhaps more, with regard to Article 14 as to Article 16.

Another fact in favour of the absence of a boundary between France and Andorra from the judicial point of view is the fact that French judicial decisions are effective in Andorra without any preliminary *exequator* proceedings.

May one compare with your case-law a decision of the *Conseil d'Etat* and a judgment of the *Tribunal des Conflits*?

A firm, Le Nickel, had obtained from the French Government and the Bishop of Urgel a mining concession in Andorra. A decision of the President of the French Republic pronounced the cancellation of the

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[2 39 *I.L.R.* 412, *sub. nom. Cruzel v. Massip*.]

concession, the company thereupon appealed to our *Conseil d'Etat*. It dismissed the action (1 December 1933, *Sirey*, 1935.III.1, with a Note by Charles Rousseau) on the following ground: 'The decision in question does not constitute an act of a French administrative authority annulment of which may be requested by means of an action for *excès de pouvoirs*'.

What does this decision imply? Indisputably, it means that, when the President of the Republic acts as an organ of the French State as cosovereign of Andorra, he acts not in the capacity of a French administrative authority, but in the capacity of the supreme Andorran administrative authority. This is quite correct. The *Conseil d'Etat*, having the task of supervising the French administration and not the Andorran administration, had no right to review the legality of the Andorran administrative decision which was submitted to it. The *Conseil d'Etat* was certainly right. There is no doubt that, when the President of the Republic performs an act of Andorran administration, he acts as the Andorran administrative authority.

The *Tribunal des Conflits* for its part rendered a judgment which might disturb us, but should not do so. This was a decision on 2 February 1950, in the case of the Radio-Andorra radio station. This decision of the *Tribunal des Conflits* was motivated by considerations different from those in the decision of the *Conseil d'Etat* in the *Le Nickel* case.

An action had been begun by the company operating Radio-Andorra against Radiodiffusion Francaise, following the jamming of broadcasts from Radio-Andorra by our radio station by order of the French Government, which intended to satisfy complaints made by the governments of a number of States about infringements by Radio-Andorra of international rules allocating wave-lengths.

The *Tribunal des Conflits* (2 February 1950, *J.C.P.*, 1950.5542, with a note by Rivero; *Revue du Droit Public*, 1950, p.418, with the Conclusions of M. Odent, and a Note by Waline) held that the jamming decision taken by our ministers had the character of an act of state and was therefore outside any judicial control whatsoever.

But we may extract the following from among the reasons for the decision, for it may be of interest to us: 'The measure was ordered by the Government in the circumstances set out above, with regard to a station situated in a territory which is not French, which is not subject to French legislation and is under a double authority distinct from that of the French State …'.

For the *Tribunal des Conflits*, the territory of Andorra is therefore not French.

This is of course so. I have already expressed my opinion that if is meant by French territory the territory over which the governmental organs of our country exercise the plenitude of the powers of the State, Andorra, over which our government exercise only powers limited by agreement, is certainly a foreign territory.

But I have also observed that the real question to which you have to reply today is not whether the country of Andorra is or is not a foreign territory

in the absolute sense of public law. The question put to you is a question similar to that which your Chamber on 22 March 1960 properly regarded as of a relative character.

You said, in your decision of 22 March 1960: 'Andorrans cannot be regarded, for the purposes of Article 16 of the Civil Code, as foreigners …'

You have to declare, in the case of the appeal against the Dijon judgment, whether, for the purposes of Article 14 of the Civil Code, Andorran territory is to be 'regarded' as foreign territory. In the case of the appeal against the Toulouse judgment, you have to decide whether, with regard to their effect in France, judgments rendered by Andorran courts are not to be assimilated to French judgments and therefore exempt from the need for *exequatur*.

I have given you the reasons based on the unique facts of the legal status of the country of Andorra which justify an affirmative reply to these two questions.

I have cited your previous decisions and those of the appellate courts. I emphasize yet again the facts which impelled the decision of your Chamber on 22 March 1960, and which, I repeat, apply as much to these two appeals, in particular the rôle of the Viguier of France in criminal proceedings.

Paul Goule writes in the *Répertoire de droit international* of La Pradelle and Niboyet, that the decisions of Andorran courts are effective in France without *exequatur* (see also *Juris-Classeur de Droit International*, Vol. 6, fasc. 584 A, No. 19)

There is no doubt that if you found yourself faced with a decision of a civil court, for example, a decision of the Superior Court of Perpignan, composed exclusively of French judges, you would not hesitate for a moment to declare an *exequatur* unnecessary.

But the decision in question now was rendered by the *Corts* and with primitive procedural formalities.

[The *Avocat Général* then discussed whether this fact should have any influence on the decision of the Court, and concluded:]

Until today, thanks to your case-law, there has been no judicial barrier between France and Andorra.

I hope that you will remain faithful to these precedents, and that, modelling your decisions of today on your decision of 22 March 1960, you will declare that the valleys of Andorra cannot be deemed, for the purposes of Article 14 of the Civil Code, to be a foreign country, and that judgments of Andorran courts have effect in France without preliminary *exequator* proceedings.

I submit, therefore, that the two decisions under appeal should be quashed …'