INTERNATIONAL CO-OPERATION IN LITIGATION: BELGIUM

by

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CHAPTER 3

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I. INTRODUCTION

Belgium is divided into twenty-six judicial districts (*arrondissements*). In each *arrondissement*, there is a court of first instance (*tribunal de première instance*), which functions as a court of general competence. Review of decisions of a court of first instance may be had in one of the three courts of appeal (*cours d'appel*) which sit in Brussels, Ghent, and Liège, and final review of questions of Belgian law may be had in the Court of Cassation (*Cour de Cassation*). In addition to these courts, there are several tribunals of special competence. Disputes that do not exceed 10,000 francs (about $ 200) and certain other controversies are heard by justices of the peace (*juges de paix*). Commercial matters are heard before commercial courts (*tribunaux de commerce*). Controversies between employers and employees are adjudicated by a special tribunal (*conseil de prud'hommes*) or, if the defendant does not object, by a court of first instance under its general adjudicatory powers.

Proceedings in the courts of first instance are governed by the *Code de Procédure Civile,* which is a modified version of the French *Code de Procédure Civile* of April 14, 1806. The influence of French law on Belgian procedure is pronounced and, either by design or as a consequence of common heritage, rules evolved in France are frequently adopted by the courts of Belgium.

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II. CO-OPERATION RENDERED BY BELGIUM

A. Service of Documents in Belgium

No provision of Belgian law proscribes service of judicial documents in Belgium – in any manner and by any person, but without compulsion on the person to be served – on behalf of litigation pending in a foreign country. The generally accepted view is that such service may freely be made.

A necessary consequence of this liberal attitude is that foreign documents may be served in Belgium by a foreign consul. Other methods of service are equally permissible. Specifically, no objection exists to service by mail. The Belgian conception, derived from principles applicable in domestic proceedings, is that service by mail takes place when the document is posted rather than when it is delivered by the Belgian post office.[1] Thus, service by mail in Belgium is not considered an encroachment on domestic sovereignty and, indeed, is an extremely efficacious manner of service. Under Belgian postal regulations, registered mail is delivered to the addressee personally or to any person who has a power of attorney to receive registered mail on behalf of the addressee.[2] The Belgian post office provides forms for such powers of attorney, which are frequently used, especially by commercial enterprises. The mail carrier delivers the mail and permits the signing of the return receipt only when the person taking delivery is known to be the addressee by the mail carrier or can produce identification or a power of attorney. In most cases, the mail carrier knows all of the persons on his route.

If service in the manner prescribed by Belgian law but without the intervention of Belgian authorities is desired, the services of a ministerial officer known as an *huissier* may be invoked. An *huissier* is appointed by the King, may act anywhere within the territory of the *arrondissement* for which he is appointed, and is entrusted with the task of service of process in domestic litigation.[3]

A decision of the court of first instance in Bruges holds void an act

[1] See generally Rigaux, *La signification des actes judiciaires à l'étranger*, REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 1963, No. 3, 468-69.

[2] Law of December 26, 1956, arts. 1, 18.

[3] See generally *Décret Impérial*, June 14, 1813, BULLETIN DES LOIS 508, No. 9646, LES CODES BELGES (30th ed. by J. Blondiaux et J. Masquelin, Brussels, Bruylant) [hereinafter CODES BRUYLANT] I, 878. A revised law (*Loi du 5 juillet 1963, réglant le statut des huissiers de justice*, MONITEUR BELGE [hereinafter MONIT.] 17 juillet 1963) is not yet in force.

by a Belgian *huissier* on request of a French court.[4] The Belgian *huissier*, upon direct instructions from the French court, had prepared a report on adulterous activities (*constat d'adultère*) of one of the parties to the French litigation. The decision indicates that a Belgian *huissier* may not act upon instructions directly from a foreign court. However, it does not consider improper an act, such as service, performed by a Belgian *huissier* upon request of a private litigant.

Recently, a Canadian solicitor, who had submitted a request for service directly to the clerk of the court of first instance in Brussels, received a reply from the public prosecutor of that court to the effect that the *huissier* was the appropriate official to execute the request. Apparently, the view taken in Brussels is that the *huissier* may deliver judicial documents relating to litigation pending elsewhere, but that he may not attempt to summon the person to whom the documents are delivered before the foreign court in the same way in which he would summon that person before a Belgian court. This limitation, which seems to prevent the *huissier* merely from embodying the summons in a formal document of the kind used in domestic litigation, does not appear to restrict in a significant way the power of the *huissier* to give assistance in serving foreign documents. The response given to the Canadian solicitor further indicates that a request must be addressed directly to the *huissier* in the *arrondissement* in which the person to be served resides. If the request is directed to the court or the clerk, the sender will probably receive a letter indicating the appropriate *huissier* with a suggesstion that the latter's assistance be invoked; the documents to be served will either be returned or be held by the Belgian court and handed over to the *huissier* when he presents the letter of employment. Thus, directing the request to the court merely adds an extra step, except when the appropriate *huissier* is unknown. The fees of the *huissier* for service are fixed by law. The powers of *huissiers* are territorially limited. However, if a request is sent to the wrong *huissier*, he will probably forward it to the proper one.

If the intervention of the Belgian authorities is necessary to effectuate service, a letter of request must be forwarded to the court of first instance in the *arrondissement* in which service is to be made. The letter should proceed through diplomatic channels – that is, through the Belgian Foreign Office and the Belgian Ministry of Justice

[4] Civ. Bruges, October 21, 1952, Bourneville v. Scharpe, Journal des Tribunaux (J. T.) 1953, 107.

to the appropriate court. Under a law enacted in 1869,[5] the Belgian Ministry of Justice must issue a letter of authorization before the executing court may turn the documents over to an *huissier* and order the service. The Ministry of Justice will refuse to issue the letter of authorization when service of the document would conflict with the public or foreign policy of Belgium. The nature of the foreign litigation – that is, whether it is civil or criminal – is ordinarily of no moment, but there is no guarantee that a request emanating from a foreign administrative tribunal will be honored. The issuance of the letter of authorization by the Ministry does not guarantee that the service will be made, since the court to which it has been sent may still refuse to comply with the request if, in its own view, the service would be contrary to Belgian law or public policy.[6] A judicial determination to that effect could be appealed by the Ministry – a not improbable eventuality, if the Ministry believed the decision to be in contravention to a treaty between Belgium and the requesting country or some other provision of internal law. An appeal from the appellate court's decision could finally be lodged in the *Cour de Cassation*.[7]

Belgium is a signatory to the Hague Conventions of 1905 and 1954 and the procedures set forth therein may be used by countries who are signatories. In addition, several bilateral treaties provide simplified methods for transmitting letters rogatory.[8] Under the treaty with France,[9] the letters may proceed from the prosecuting attorney of the

[5] Law relating to judicial organization of June 18, 1896, art. 139, MONIT. 26 Juin 1869, CODES BRUYLANT I, p. 889.

[6] See Cour de Cassation, 25 mars 1898, Capochiani v. héritiers Guzzolini, PAS. 1898, I, 126; Cour d'appel de Bruxelles, 30 juin 1897, Pas. 1897, II, 369; RÉPERTOIRE PRATIQUE DE DROIT BELGE, *Commission rogatoire* No. 44.

[7] On the role of the public prosecutor (*procureur du roi*) in the execution of letters rogatory, see *Circulaire du Ministre de la Justice du 14 mai 1888*, MONIT. 20 mai 1888;RÉP. PRAT. DR. B., *Commission rogatoire* No. 408; GUSTAVE BELTJENS, CODE DE PROCÉDURE CIVILE ANNOTÉ, *sub* art. 1035, No. 57; REVUE DE DROIT BELGE, Bruxelles, Bruylant 1886, 68–72; Tribunal civil de Bruxelles, 13 juin 1896, succession Consentini, BELGIQUE JUDICIAIRE (B. J.) 1897, 321; Cour d'appel de Bruxelles, 25 avril 1956, Procureur général en cause de Schumacher v. Jager, PAS. 1957, II, 107.

[8] Treaty with Germany of April 25, 1959, MONIT. 31 décembre 1959, CODES BRUYLANT I, 505; Treaty with Frauce of March 1, 1956, MONIT. 13 juin 1959, CODES BRUYLANT I, 501; *Déclaration* between Belgium and Switzerland of November 29, 1900, MONIT. 21 décembre 1900, CODES BRUYLANT I, 471; Treaty with United Kingdom of June 21, 1922, MONIT. 6 mars 1924, CODES BRUYLANT I, 476; Treaty with Czechoslovakia of July 19, 1927, MONIT. 14–15 mai 1928, CODES BRUYLANT I, 482; Treaty with Bulgaria of July 2, 1930, MONIT. 4–5 juillet 1932, CODES BRUYLANT I, 484; *Déclaration* between Belgium and Austria of December 1, 1930, MONIT. 31 décembre 1930, MONIT. 15 janvier 1950, CODES BRUYLANT I, 486; Treaty with Lithuania of December 12, 1930, MONIT. 15 décembre 1932, CODES BRUYLANT I, 487; Treaty with Yugoslavia of February 29, 1936, MONIT. 15 janvier 1938, CODES BRUYLANT I, 495.

[9] Treaty with France art. 1, *supra* note 8.

French court to the prosecuting attorney of the Belgian court. A recent treaty with Germany[10] permits transmission of documents from the president of the court in one country to the president of the court in the other. Some treaties provide for executing requests of administrative tribunals. In the absence of a treaty, however, a request from a foreign administrative tribunal may not be executed, unless the subject matter is within the civil competence of the Belgian court of first instance.

When the documents are presented to the *huissier* for service, he will proceed in exactly the same manner as if he were making service in Belgian litigation. The primary method of service is personal delivery,[11] which may be made wherever the person to be served can be found.[12] The documents may also be left with anyone residing at the domicile of the person to be served, whether the recipient is a relative, servant, or employee. Delivery to a domestic corporation is made at its domicile to the person designated for such purposes in its articles of incorporation, or, if he is not present, to an employee.[13] Corporations not formed under Belgian law are served at their place of business in Belgium.[14] Partnerships and other business associations are served at the administrative headquarters (*siège social*) of the organization if it is a business that has a legal personality. Otherwise, service is made at the domicile of one of the partners or members of the firm. Foreign business operations may be served by delivering the documents at any branch office (*succursale*) or center of operations (*siège d'opérations*) in Belgium. If the *huissier* finds no one at the addressee's domicile, he may leave the documents with a neighbor who is willing to receive the documents and to deliver them to the party to be served.

If none of these procedures can be followed, the *huissier* leaves the documents at the town hall.[15] In the larger cities, there is an employee at the town hall specifically designated to receive documents that are to be served on people domiciled in the town. The documents are accepted only if the town hall records show that the addressee is a domiciliary. An attempt is made, usually by the police, to deliver the documents left at the town hall to the addressee. In the normal case,

[10] Treaty with Germany art. 1, *supra* note 8.
[11] *Code de Procédure Civile* [hereinafter *Code Proc. Civ.*] art. 68.
[12] *Code Proc. Civ.* art. 68.
[13] *Code Proc. Civ.* art. 69, 6°.
[14] *Ibid.*
[15] *Code Proc. Civ.* art. 68.

documents are not left at the town hall unless delivery at the domicile or to a neighbor is impossible.

If personal delivery is made on the addressee or if the documents are left at his domicile or at the town hall, the *huissier* files a statement describing the steps taken to effect service and the manner of its execution.[16] Furthermore, when the documents are left with a neighbor or an employee at the town hall, the recipient signs the original copies of the documents which are returned to the court. In all cases in which delivery is not made to the addressee, the statement of the *huissier* must show that he attempted service at the real address of the person to be served and the *huissier* must file a certificate issued by the town hall stating that the person to be served resides at the address in question.

A few enactments of limited scope permit service by mail.[17] When permitted, service by mail is made by the *huissier*, who sends the documents by ordinary registered mail. Although this method does not provide a return receipt, a registration form is issued by the post office which the *huissier* attaches to his statement of service.[18]

Under article 61 of the Belgian Code of Civil Procedure, proof of service must follow a fixed formula. However, nothing prevents the *huissier* from complying with a request in letters rogatory for an additional statement of service in a specified form. Furthermore, a request for a method of service that is different from those normally used by the *huissier* will probably be honored if it is not contrary to Belgian law.

B. Obtaining Testimonial Evidence in Belgium

Belgian law specifically authorizes the taking of testimony on behalf of foreign courts and litigants, when a request is forwarded through the usual diplomatic channels.[19] There is no specific authorization, however, for securing testimony without the intervention of the Belgian government. Nevertheless, testimony may freely be taken in Belgium from anyone who voluntarily complies with a request that he give it. This freedom extends to any voluntary deposition, regardless of the citizenship of the deponent or that of the person taking

[16] *Code Proc. Civ.* art. 61.

[17] *Arreté Royal* No. 97, February 13, 1935, MONIT. 15 février 1935, CODES BRUYLANT I, 347 (service by mail by the *huissier*); *Code Proc. Civ.* art. 69 bis, 2⁰ (service by mail when the defendant has neither domicile nor residence in Belgium).

[18] *Code Proc. Civ.* art. 69 bis, 2⁰.

[19] Law of June 18, 1869, art. 139, *supra* note 5.

the deposition, and regardless of the procedure used, the nature of the proceedings in which the testimony will be employed, or the place in which the examination is taken. If desired, an oath may be administered and the procedure of the foreign court may be employed. There are two significant limitations on the usefulness of this procedure. First, no compulsion may be applied to the deponent to effectuate the taking of the examination and, second, the sanctions provided by Belgian law for false testimony do not apply. The latter is the only conclusion that can be drawn from article 220 of the Penal Code, which provides that false testimony is punishable only when given under oath before a Belgian, or perhaps a foreign, judge.

Should compulsion or the application of Belgian perjury sanctions be necessary, assistance will be rendered by the Belgian courts in compliance with a proper request emanating from the foreign court in which the action is pending. If the request comes from a country with which Belgium has a treaty, the procedure set forth therein must be followed.[20] When a request comes from a country with which Belgium has no treaty, the Belgian court will execute the request if compliance is not contrary to Belgian public policy and reciprocity in fact is granted to similar requests issuing out of Belgian courts.[21] It is difficult to determine what measure of proof must be adduced on the question of reciprocity in fact, because few requests have been received in Belgium from non-treaty countries. What little experience exists indicates that there is no difficulty in securing execution of a letter of request.

If normal diplomatic channels are used, the letter is transmitted from the Belgian Foreign Office to the Ministry of Justice. As in the case of service,[22] the Ministry of Justice must authorize the renderring of assistance. When the letter proceeds through diplomatic channels, this authorization is usually appended to the letter by the Ministry. The letter is forwarded by the Ministry through the *procureur général* of the appropriate court of appeals to the prosecuting attorney of the court of first instance in the *arrondissement* in which the witness resides. The public prosecutor requests the president of the court to execute the letter and, if he agrees, the president appoints a judge to examine the witness.[23]

[20] See treaties cited in note 8 *supra*.
[21] Law of June 18, 1869, art. 139, provides for the execution of letters rogatory from a non-treaty country when duly authorized by the Ministry of Justice.
[22] See text at note 5 *supra*.
[23] See note 5 *supra*.

Submission through diplomatic channels is not required. Letters rogatory may proceed from court to court, from a party to the foreign litigation to the executing court, or from the consul of the requesting country to the court in Belgium. All that is necessary is an order of the foreign court, requesting assistance and indicating that the testimony is necessary, and the authorization of the Belgian Ministry of Justice. The latter can be obtained through the public prosecutor. Because the matter must be referred to the Ministry for authorization even when diplomatic channels are not used, use of one of the more direct approaches may not expedite the taking of the testimony. No aid will be given to a foreign commissioner who requests the assistance of a Belgian court in compelling testimony by unco-operative witnesses.[24] Under Belgian law, the foreign commissioner has no standing to seek aid from the Belgian court.

In view of the requirement of reciprocity in fact, a request emanating from a non-treaty country should include a promise of reciprocity. Further, a translation of the contents of the letters rogatory and any interrogatories attached thereto is advisable. In this connection, it should be noted that the official language of the courts in some *arrondissements* is French and in others Flemish; in Brussels, either of these languages may be used.[25] The translation should be in the language of the court expected to execute the letter.

The witness is summoned before the court by an *huissier* designated by the court and is examined as if his testimony were to be used in a Belgian case. The court will summon before it anyone found within Belgium regardless of citizenship, but there is no procedure for bringing anyone outside Belgium before the court. The judge will ask any interrogatories included in the letters rogatory and all other questions he believes relevant to the facts of the case. It is thus of great importance that the letters delineate the nature of the proceedings, specify particular questions that are to be posed, and describe general lines of inquiry to be pursued. Any matter that should not be inquired into should be stated in the letters. Counsel for the litigants in the foreign proceeding may be present and may ask the witness additional questions through the judge.[26] In all cases, the scope of examination

[24] *Cf.* LAURENT, LE DROIT CIVIL INTERNATIONAL VIII No. 58 (Bruylant-Christofle 1881).

[25] See Law of June 15, 1935, arts. 1, 2, 4, MONIT. 22 juin 1935, CODES BRUYLANT I, 804.

[26] *Code Proc. Civ.* art. 276. Usually, the examination of witnesses on behalf of foreign courts pursuant to letters rogatory occurs in the absence of the foreign litigants. If they want to be present, a request that they be notified should be contained in the letters rogatory. The litigants or their counsel will then be notified of the day and hour of the proceeding.

of a witness is determined in advance by the judge. Counsel for the litigants must adhere to this determination, and questions submitted by them must fall within its compass. In all cases, the witness must testify under oath.[27] The oath is a religious one (*invocation à la divinité*). The formula is as follows: "*Je jure de dire la vérité, toute la vérité, rien que la vérité. Ainsi, m'aide Dieu.*" (I swear to tell the truth, the whole truth, and nothing but the truth, so help me God).

Belgian law recognizes several privileges and grounds of incompetency that prevent a witness from giving any testimony. Parties and certain relatives may not testify under any circumstances.[28] Other relatives, interested persons, servants, and certain criminals may be declared incompetent by the judge,[29] but, in contradistinction to witnesses who are absolutely incompetent, are heard by the judge before he rules on their competency.[30] In divorce actions, servants and relatives, excluding descendants, are permitted to testify.[31] However, it is against Belgian policy to permit children to testify in such a proceeding.[32] Doctors, lawyers, clergymen, and other persons who are privy to secrets by virtue of their professions are not prohibited from testifying on these secrets, but in practice they refuse to do so and their refusal is accepted by the courts.[33]

In domestic proceedings, if the judge decides that the witness is incompetent, he may not rely on the testimony in his decision.[34] It is fairly certain, however, that if the testimony is to be taken for use abroad, the judge will ordinarily take it and forward the transcript even if he concludes that the witness is incompetent under Belgian law. The Belgian court assumes that the requesting court will decide

See *Circulaire du ministre de la Justice du 14 mai 1888*, *supra* note 7; REP. PRAT. DE DR. BELGE, *Commission rogatoire* No. 63; PANDECTES BELGES, *Commission rogatoire* No. 410; REVUE DE DROIT BELGE, 1886, 72; Cour de Cassation, 25 mars 1898, *supra* note 6; Tribunal civil de Bruxelles, 17 juillet 1895, Jacobsen v. Corradini, PAS. 1895, III, 313.

[27] *Code Prov. Civ.* art. 262(2).

[28] *Code Proc. Civ.* art. 268.

[29] *Code Proc. Civ.* art. 283. Of interest is the provision that a witness, who has dined or drunk with one party at the latter's expense since the issuance of the court order naming him as a witness, must be declared incompetent on the application of an opposing party.

[30] *Code Proc. Civ.* art. 284.

[31] *Code Civil* art. 246.

[32] See Cour d'Appel Bruxelles, 25 avril 1956, *supra* note 7. In this case, the court held that it was against public policy to hear a son pursuant to letters rogatory in a case in which his mother was a litigant.

[33] Article 458 of the *Code Pénal*, which dates back to 1867, threatens with punishment persons who disclose secrets that came into their possession by virtue of their profession. Disclosure in court is excepted, however. See XAVIER RYCKMANS, LES DROITS ET LES OBLIGATIONS DES MÉDECINS No. 180 (Bruxelles, Larcier, 1954).

[34] *Code Proc. Civ.* art. 291.

itself whether the testimony may be used in the foreign proceeding [35] and that a request from a foreign court that the witness's testimony is necessary is sufficient proof that the witness is competent under foreign law. However, in the event that the privilege or incompetency is based on a public policy of Belgium rather than evidentiary considerations, the testimony will not be taken. It is on this ground that a Belgian court will refuse to take the testimony of parties.

The interdiction against party testimony is alleviated by the availability of court interrogation of parties (*l'interrogatoire sur faits et articles*). This form of interrogation under oath [37] differs little from that employed in taking the testimony of witnesses, except that usually only the judge is present [38] and the party is not subject to a penalty for false testimony.[39] When the examination of a party is sought, the letters should make clear that interrogatories, not testimony, are requested. This will avoid the delay attendant upon the communications necessary to adjust the form of the examination.

Under Belgian law, false testimony in civil matters is punishable by between two months and three years in prison.[40] To date, the Belgian courts have never had occasion to decide whether this penalty applies to testimony given in connection with letters rogatory issued by a foreign court.[41] A witness who fails to appear when summoned may be fined;[43] if he fails to appear again, the judge may order that he be forcibly brought before the court (*mandat d'amener*).

After the testimony is concluded, the judge dictates a summary to the clerk.[44] There is no strict formula for the manner of preparation or content of the summary: The judge has almost complete discretion. Questions asked by a party or his counsel and answers given thereto are ordinarily reflected in the summary. The text is read to the witness

[35] Belgian scholars assume that the Belgian court, in executing letters rogatory, has no power to prejudice the decision by the foreign court. See PANDECTES BELGES, *Commission rogatoire* No. 424; G. SPÉE, DES COMMISSIONS ROGATOIRES EN MATIÈRE COMMERCIALE DANS LE DROIT INTERNATIONAL, B. J. 1889, 1186. Conversely, the hearing of a witness by a foreign court does not prevent the Belgian court from excluding the testimony of the witness. See Tribunal civil de Bruxelles, 17 juillet 1895, Jacobsen v. Corradini, PAS. 1895, III, 313.

[36] *Code Proc. Civ.* arts. 324 *et seq.*

[37] Royal Decree of November 4, 1814, art. 2.

[38] *Code Proc. Civ.* art. 333.

[39] Cool ép. Day v. Champaux-Chapelle, Cassation, May 3, 1853, PASICRISIE BELGE (PAS.) 1853, I, 227. About PASICRISIE, see note 76 *infra*.

[40] *Code Pénal* art. 220.

[41] *But see*, for an affirmative answer, PANDECTES BELGES, *Commission rogatoire* No. 394, quoting a report of *Procureur général* Verdussen.

[42] *Code Proc. Civ.* art. 263.

[43] *Code Proc. Civ.* art. 264.

[44] *Code Proc. Civ.* art. 271.

who is asked by the judge whether he affirms its accuracy.[45] If the witness proposes modification, appropriate corrections are made, but the original text is retained in legible form.[46] The court is also free to resume its questioning to clarify the modification.[47] The document that emerges from this process (*procès-verbal*) must be signed by the judge, the clerk who took down the statement, and the witness.[48] Reasonable requests as to the form of the record usually will be honored by the Belgian courts. Thus, if a verbatim transcript of the testimony is sought, there is substantial likelihood that it will be furnished.

C. Obtaining Tangible Evidence in Belgium

Belgian law does not prohibit the voluntary production of tangible evidence for use in a foreign proceeding. In the event production is not made voluntarily, however, there is no effective way to compel it. The view that compulsory production of documents is unavailable in Belgium is bolstered by the absence of statutory authorization for such production. The only provisions of Belgian law intruding upon the guarantee of domestic privacy are those providing for the power of the *juge d'instruction* to seize any material, no matter where situated, for use in criminal cases and investigations,[49] and for the power of the public prosecutor to do the same, when the crime has been committed recently.[50] Because many commercial matters, such as patent infringement and failure to pay commissions, are considered penal, the powers of investigation given in criminal cases assume substantial importance.[51]

If a request for the production of tangible evidence is incorporated in letters rogatory, the court examines the person who is said to have the documents as a witness and asks him whether he possesses or controls the documents and whether he will surrender them for forwarding to the requesting court, permit copies to be made, or allow the court to examine them. Should the witness refuse, no compulsion is applied and

[45] *Code Proc. Civ.* art. 274.
[46] *Code Proc. Civ.* art. 272.
[47] *Code Proc. Civ.* art. 273.
[48] *Code Proc. Civ.* art. 274.
[49] *Code d'Instruction Criminelle art.* 87 (1808).
[50] *Code d'Instruction Criminelle* arts. 35 *et seq.*
[51] It must be noted that these powers of investigation may be used only in executing letters rogatory provided by the extradition law. See PANDECTES BELGES, *Commission rogatoire* No. 427; RÉPERTOIRE DE DR. BELGE, *Commission rogatoire* No. 139.

no further efforts to obtain possession of the documents are made. The procedure is the same if the person examined is a party.

Some courts may, in addition to asking about the physical location and condition of the evidence, inquire about its contents or characteristics. A refusal of the witness to answer would seem to constitute a refusal to give testimony, which is punishable by fine. This indirect method of obtaining information concerning tangible evidence is ineffective in the case of a party, because no sanction exists for the refusal of a party to answer questions other than the presumption, proper in proceedings pending in Belgium, that the documents are presumed to contain evidence that is damaging to the position of the party refusing to produce them. Another defect in this procedure is that, even if the court is successful in eliciting the details of the contents of documents that the witness refuses to produce, the resulting testimony may not be admissible under the rules of the requesting court.

When the witness produces the evidence, the Belgian court will not rule on the relevancy or competence of the evidence, but transmit whatever is received to the foreign court unless in so acting it would act contrary to Belgian public policy. The evidence requested must be sufficiently described in the letters rogatory to permit the court and the person who possesses the evidence to identify it.

D. Obtaining Proof of Official Documents in Belgium

Under Belgian law, registries of birth,[52] death,[53] marriage,[54] and divorce [55] are maintained in each town or *commune* by the *officier de l'état civil.*[56] Every record in these categories is prepared in duplicate and each year one set of records is transferred by the record keeper to the court of first instance for the *arrondissement* in which the town or *commune* is situated. Both copies of the record are considered official and are accepted in Belgian courts as proof of the facts stated therein.

A copy of an entry in these registries may be obtained by any person either from the clerk of the court of first instance or from the appropriate *officier de l'état civil.* These officials are authorized to prepare

[52] *Code Civil* arts. 55 *et seq.*

[53] *Code Civil* arts. 77 *et seq.*

[54] *Code Civil* art. 76.

[55] *Code Civil* arts. 264, 294, 311. Every divorce and separation, in addition to being transcribed by the *officier de l'état civil,* is noted next to the appropriate marriage record.

[56] There are also registers of nationality and residence (*registres de population*). See *Loi du 2 juin 1856*, MONIT. 7 juin, 1856, CODE BRUYLANT II, 397; *Arrêté royal du ler avril 1960*, MONIT. 30 avril 1960.

copies,[57] summaries,[58] or statements that no record of a specified tenor has been found in their files.[59] The attesting official will sign a statement to the effect that the copy conforms to the record kept in his office. The fee for preparing the copy and the attestation is about one dollar.

If it is necessary to authenticate an attested copy, the attesting person obtains the signature of the chief clerk and the president of the court of first instance of the *arrondissement* in which the document is situated.[60] A file of signature specimens of the officials in the district is maintained by the president of the court for just this purpose. Although the authentication refers in terms only to the genuineness of the signature of the attesting official, it implicitly certifies the authority and incumbency of that official, inasmuch as the president of the court does not authenticate the signature of an official who was not empowered to issue the attested copy. If further authentication is necessary, the person requesting the copy may obtain certificates from the Belgian Ministries of Justice and Foreign Affairs. The certificate of the Ministry of Foreign Affairs authenticates the certificate of the Ministry of Justice. The Ministry of Justice certifies the signature of the president of the court of first instance and that the person whose signature appears in the prior authentication is in fact president of the court. However, it does not certify the authority of the president of the court.

Other official registries maintained in Belgium include: (1) a registry of all documents affecting real property [61] (*bureau de conservation des hypothèques*), which is found in each *arrondissement* and which is accessible to anyone; (2) a commercial registry [62] (*registre du commerce*) which contains, *inter alia*, the names, addresses, and members of all Belgian businesses and a listing of each issue of the official gazette, *Moniteur Belge* or *Belgisch Staatsblad*, referring to the business, and is found in the office of the clerk of the *tribunal de commerce*, or, if the *arrondissement* does not have a *tribunal de commerce*, at the court of first instance; (3) a registry of patents [63] (*brevets d'invention*), presently maintained by the Department of Economic Affairs and

[57] *Code Civil* art. 45.
[58] *Ibid.*
[59] *Ibid.*
[60] *Code Civil* art. 45.
[61] Law of December 16, 1851, art. 1, MONIT. 22 décembre 1851. See also art. 127.
[62] Law of May 30, 1924, MONIT. 11 mai 1927, CODES BRUYLANT I, 955. See also Law of July 3, 1956, MONIT. 25 juillet 1958, not yet in force.
[63] Law of May 24, 1854, MONIT. 25 mai 1924; Royal Decree of May 24, 1854, MONIT. 25 mai 1924; Royal Decree of May 24, 1854, art. 16; CODES BRUYLANT I, 721.

Energy; and (4) a registry of trademarks [64] (*marques de fabriques et de commerce*), which are deposited with the clerk of the *tribunal de commerce* in each *arrondissement* and forwarded to a central registry in the same office that maintains patent records. Authentication of copies of records relating to real estate or records in the commercial registry may be obtained in the same manner as authentication of records prepared by the *officier de l'état civil.* Copies of patents and trademark records are authenticated by the Ministry of Economic Affairs and Energy.

All legislative enactments and executive acts are published in the *Moniteur Belge,* the use of which is facilitated by a periodic index that is privately printed. Private printers also publish volumes containing most court decisions and the various codes. The code volumes usually appear every four years and are supplemented periodically. The custodian of judgments is a court official (*greffier*) who is empowered to issue copies of the judgments, but only to the parties to the actions.

Certain private transactions are given a quasi-official cast in Belgium by the intervention of a notary public. In Belgium, the notary (*notaire*) is an *officier ministériel,* who, like the *huissier* and *greffier,* is appointed by the King. Marriage settlements, real estate transactions, and contracts relating to most business companies are executed before a notary.[65] Although many of the documents executed before the notary are placed in the official registry or published in the *Moniteur Belge,* the notary retains the original documents and in many cases he is in possession of papers that do not appear in the registry. In the case of a marriage settlement, the marriage record contains only an entry that a settlement exists;[66] to determine its contents, the notary must be consulted. Copies of documents retained by the notary may be obtained only by a party to the transaction.[67] A copy of a document on file with a notary is accepted as evidence by the Belgian courts.

To qualify as a notary, one is required to complete a four-year course of instruction that in many respects is similar to the education undertaken by prospective attorneys. There are presently between 1150 and

[64] Law of April 1, 1879, MONIT. 3 avril 1879, CODES BRUYLANT I, 727; Royal Decree of March 8, 1935, arts. 12–13, MONIT. 16 mars 1935, CODES BRUYLANT I, 733.

[65] The basic act governing their qualifications and conduct dates back to 1803. See Law of March 16, 1803 (*Loi du 25 ventôse an XI*), BULLETIN DES LOIS Nos. 258, 593, CODES BRUYLANT I, 835.

[66] *Code Civil* art. 76(10).

[67] A notary may issue a copy of a record to a stranger only with the authorization of the president of the court of first instance. *Loi du 25 ventôse an XI*, art. 23, *supra* note 65.

1200 notaries in Belgium, and in general their status in the community is high.

E. Obtaining Proof of Belgian Law

Belgian law does not provide for rendering assistance to foreign courts or litigants in determining the law of Belgium. Nonetheless, the Ministry of Justice will provide the Department of State or Foreign Affairs of a foreign country with an opinion as to whether a given person is a Belgian citizen.

The text of any Belgian law is easily obtainable. All legislative measures, royal decrees, and ministerial decrees are officially published in the *Moniteur Belge*.[68] Article CXXIX of the Belgian Constitution also requires the publication of all provincial and communal regulations; the former are published in the *mémorial administratif* of each province and the latter are generally published by proclamation and by posters.[69] Most commodity exchanges and commercial markets have established regulations, copies of which may be obtained from the national association of the industry involved or the *chambres de commerce* in Belgium. In some countries, the Belgian consulate may provide copies of Belgian laws. In addition, all Belgian consulates are willing to certify that a particular law is still in effect. Should the text of a published judgment become material, an authenticated copy thereof may be obtained from the *procureur général* of the court of appeal or of the *Cour de Cassation*.[70]

III. CO-OPERATION SOUGHT BY BELGIUM

A. Service of Belgian Documents Abroad

In Belgium, service of process is never a basis for judicial competence and performs only a notice-giving function. Furthermore, the validity of service is not dependent on actual delivery of the documents to be served. All that need be shown is that the appropriate efforts to effectu-

[68] Publication is required by article 129 of the Constitution, implemented by Law of April 18, 1898, arts. 1, 5, 9, MONIT. 15 mai 1898, CODES BRUYLANT III, 559.

[69] Provincial Law of April 30, 1836, art. 102, MONIT. 23 décembre 1891, CODES BRUYLANT III, 49.

[70] The *procureur général* has the power to authorize delivery of copies of criminal decisions and documents. See E. de le Court, procureur général près la cour d'Appel de Bruxelles, mercuriale prononcée le 2 septembre 1963, *La communication des dossiers répressifs par le procureur général*, J.T. 1963, 501.

ate service were made under the provisions of the Code of Civil Procedure.[71]

Service on a person without a known domicile in Belgium is made by the *huissier*. If the person to be served has a known address in a foreign country and no treaty exists between Belgium and that country, the *huissier* forwards the documents by registered mail without a return receipt. Proof of service is made by attaching to the original copy of the documents the postal form used for the registration of the mail, stamped by the post office. Service is considered complete when the *huissier* deposits the registered mail with the Post Office: This is the last official act that takes place in Belgium.[72]

When a treaty exists between Belgium and the country in which the person to be served resides, the procedure provided by that treaty is used.[73] Thus, if service is to be made in one of the Hague Convention countries, the *huissier* sends the documents by registered mail to the Belgian foreign office. The documents are forwarded to the Belgian consulate in the foreign country which delivers them to the appropriate local authorities for delivery to the person to be served. Under the treaty with France,[74] the *huissier* is permitted to mail the documents directly to the addressee. That treaty also provides for documents to proceed from prosecuting attorney to prosecuting attorney. In practice, the *huissier* forwards a copy of the document to the addressee by registered mail even if he has made service in another manner pursuant to treaty. The only exception to this practice is that the *huissier* does not make duplicate service by mail to Germany.[75]

In two recent decisions,[76] the *Cour de Cassation* has held that,

[71] The basic provision for service outside Belgium is article 69 bis of the *Code de Procédure Civile*. This provision applies to fiscal and penal matters as well as to civil actions.

[72] See generally F. Rigaux, *La signification des actes judiciaires à l'étranger*, *supra* note 1. See also Cour d'Appel de Liège, Nov. 19, 1913, Delzizian v. Laloux, Kosters & Bellemans, *Les conventions de La Haye de 1902 et de 1905 sur le droit international privé*, RECUEIL DE LÉGISLATION ET DE JURISPRUDENCE 1912, 1200; Cour d'Appel de Bruxelles, Febr. 2, 1912, Hoeben v. Muller, JOURNAL DE PROCÉDURE ET DES OFFICIERS MINISTÉRIELS (BRUXELLES) 1912, 210; Trib. de Commerce de Liège, May 11, 1903, *id.* 1903, 206; Trib. de Commerce de Liège, March 4, 1902, Lambert v. Perdry, PANDECTES PÉRIODIQUES (P.P.) 1902, 645; Trib. civil de Charleroi, Nov. 27, 1900, Mehltersheimer v. Etat belge (fiscal matter), BELGIQUE JUDICIAIRE (B.J.) 1903, 1275; Trib. correctionnel de Gand, Nov. 6, 1902 (penal matter), B.J. 1903, 430.

[73] See treaties cited in note 8 *supra*.

[74] Treaty with France, *supra* note 8.

[75] At the turn of the century, Germany objected to the use of the mails for this purpose. See F. Rigaux, *supra* note 1, at 469.

[76] Cour de Cassation, March 4, 1954, Société de vente, d'achat et de commission, I PASICRISIE 577 (1954) [PASICRISIE (PAS.) is a non-official publication of Belgian decisions published by Emile Bruylant, 67 rue de la Régence, Bruxelles]; Cour de Cassation de Belgique, March 2, 1961, Ripoll v. Koninckx, I PAS. 721 (1961).

contrary to the rule prevailing in the absence of a treaty, service in Spain was not complete until the Belgian consulate in Spain handed the documents to the Spanish authorities in accordance with the treaty. Since these decisions fail to elaborate on the analysis employed and are inconsistent with earlier determinations, they have been subject to criticism. However, it would seem that the conception that service is complete as soon as the Belgian authorities complete their last action and irrespective of whatever remains to be done to effectuate the service is of questionable merit. The generally accepted consequence of that view, which makes various limitations of time, including that within which the addressee must file an appearance, run as of the date at which the Belgian authorities completed their part in the service scheme, would seem unreasonable. It permits the addressee's rights to be curtailed or even foreclosed because the foreign authorities delayed or neglected to take reasonable steps towards putting the document in the possession of the addressee after they received it from the Belgian authorities.[77]

If the address of the person to be served is not known to the parties or the *huissier*, the document is handed to the prosecuting attorney of the court of first instance.[78] Generally, no further action is then taken. However, the Belgian court will insist upon a demonstration that the person to be served could not be located, including a description by the party requesting service of the efforts undertaken to locate the addressee. Because many nations maintain registries of citizenship and residence, the occasions on which the person to be served cannot be found are infrequent.

The same procedure employed in civil proceedings is followed in serving persons in criminal matters. This leads to a somewhat unusual result: Since in criminal cases service is made by the prosecuting attorney who hands the documents to the *huissier* for delivery, the *huissier* will simply hand the documents back to the prosecuting attorney when the addressee's whereabouts are unknown. In spite of the mere formalism of this maneuver, service is not considered complete before the documents are delivered back to the prosecuting attorney.

[77] See F. Rigaux, *supra* note 1, at 465.
[78] *Code Proc. Civ.* art. 69 bis, 3°.

B. Obtaining Testimonial Evidence Abroad

Under Belgian law, testimony is taken only pursuant to court order.[79] Ordinarily, the testimony is taken before a judge especially appointed for the purpose.[80] In courts having many members, one or more judges usually specialize in the taking of testimony.

When testimony is needed from a person outside of Belgium, the Belgian court issues letters rogatory or requests the Belgian consul in the foreign country to take it.[81] When the witness is in a country that is a member of the Hague Convention, letters rogatory proceed from the public prosecutor of the Belgian court to the Ministry of Justice, to the Ministry of Foreign Affairs, and then to the Belgian consulate in the foreign country which presents them to the appropriate authorities. This conforms to the procedure of Article IX of the Convention. Several bilateral treaties provide for simpler means of transmittal.[82] For example, documents destined for France or Germany are transmitted from one ministry of justice to the other.[83] In case of an emergency, the documents may even be sent directly from the Belgian court to the German court.[84] Since under Belgian law testimony is taken only pursuant to court order, letters of request take the form of a judicial decision which sets forth the substance of the controversy, the reasons why the testimony is needed, the lines of inquiry the foreign court should pursue, and, in some cases, specific questions to be posed. After the letters have been prepared, they are signed by the judge and the *greffier* and authenticated by the president of the court.

Under article 255 of the Code of Civil Procedure, a Belgian court may also request a consular official to take the testimony of a named person or persons; the consular official may administer an oath and the statement taken has the status of testimony.[85]

Letters rogatory are frequently used in criminal cases by public prosecutors and *juges d'instruction*. It is very common for the public

[79] *Code Proc. Civ.* arts. 252 *et seq.* The basic characteristic of testimonial evidence in Belgium is that it is taken pursuant to court order.

[80] Article 255 of the Code of Civil Procedure provides that, if the witness is too far from the court, the court may request a judge of another tribunal to take his testimony.

[81] Law of June 18, 1869, art. 139, *supra* note 5.

[82] See treaties cited in note 8 *supra.*

[83] Treaty with France, *supra* note 8, art. 5; Treaty with West Germany, *supra* note 8, art. 4 (1).

[84] Treaty with West Germany, *supra* note 8, art. 4(2).

[85] See Cour d'appel de Gand, 9 avril 1887, Barré v. Warnurg *et cons.*, PAS. 1887, II, 241; Cour d'appel de Liège, 17 mars 1892, Waillot v. Laguerre, PAS. 1894, II, 112; Tribunal civil de Gand, 7 avril 1956, Anna-Maria v. Lucien Henri, BULLETIN DE LA FÉDÉRATION DES AVOUÉS, 1956, No. 3, 511.

prosecutor to send his letters directly to his counterpart in the foreign country. This type of communication is most frequent between Belgium and France, the Netherlands, Luxembourg, and Germany. The *juge d'instruction* always uses diplomatic channels. Both of these officials have, on occasion, successfully invoked the aid of Interpol in obtaining such information as a person's address and his criminal record. Some of the Belgian courts of special competence, particularly the commercial courts, resort to letters rogatory when necessary. Whether or not an administrative tribunal uses letters rogatory depends on the political relations between Belgium and the foreign country and the existence of a treaty authorizing their use.

Since a statement that is not considered testimony in Belgium still has some probative value (*présomption de l'homme*), a party may seek to take a statement or affidavit from a person in a foreign country without an order of a Belgian court and without using letters rogatory.[86] One of the most efficacious methods for obtaining such voluntary testimony is through the Belgian consul or, when permitted, by direct application to the foreign court.

The Belgian court accepts as evidence the transcript of testimony received from the foreign court to which the letters rogatory were addressed.[87] Foreign testimony is given less weight than testimonial evidence obtained in Belgium only if it was not taken in accordance with the law of the country executing the request or was not taken under oath. However, in Belgian practice testimonial evidence plays a relatively unimportant part when compared with documentary evidence, and the distinction between one type of testimonial evidence and another is probably rather elusive.

C. Obtaining Tangible Evidence Abroad

Belgian courts and litigants have no effective method to secure non-testimonial evidence if the person possessing or controlling it refuses to produce it voluntarily.[88] Nevertheless, letters rogatory are frequently used to request such evidence, and it is common to append a request for tangible evidence to a request for testimonial evidence.

[86] There is some judicial evidence that an affidavit taken in a foreign country will not be accepted as testimony. See Cour d'appel de Bruxelles, January 2, 1872, II PASICRISIE 386 (1874). See generally Rigaux, *La Force probante des écrits en droit international privé*, REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 66–67 (1961).

[87] See Liège, 29 décembre 1869, Daussoigne v. Daussoigne, PAS. 1870, II, 140; Civ. Bruxelles, juillet1895, Jacobsen v. Corradini, PAS. 1895, III, 313.

[88] See text preceding note 49 *supra*.

The *juge d'instruction* and the public prosecutor have wide investigatory powers in criminal cases, which include many proceedings that are commercial in nature. Because of the greater freedom in obtaining documents and objects in criminal matters,[89] letters rogatory emanating from a *juge d'instruction* frequently request the foreign court not only to procure tangible evidence, but also to use its powers of compulsion, if necessary. Apparently, it is not generally known in Belgium that many foreign courts, and particularly those in the United States, may use their compulsory powers to secure the production of tangible evidence in execution of letters rogatory. It may well be that, if a Belgian court were apprised of the foreign court's having used compulsion to secure production of documentary evidence in aid of a Belgian civil proceeding, it would refuse to consider the material obtained.

D. Proof of Foreign Official Documents in Belgium

Proof of foreign official records in Belgian litigation is characterized by the same flexibility that is commonly found in legal systems that do not have the strict rules of evidence prevailing in common law countries.[90] The contents of a foreign official record or the absence of a record may be established in Belgium by an official publication, a copy of the record with or without attestation and certification, a summary, or a statement that upon proper search no entry of a specified content has been found.

A document purporting to be an official publication of an official document will be accepted as such if the opponent raises no objection or if the document appears to have been officially printed or is commonly accepted in the foreign courts as proof of the original. Should there be an objection, the court may ask the party introducing the document to obtain a certificate from a lawyer licensed to practice in the foreign country or a member of that country's foreign service stating that the alleged official publication is considered official by the courts of the foreign country.

Any copy or summary of a statement of no entry is accepted by the Belgian court, if the proffered document does not appear suspicious and no objection is interposed. If the opponent objects, the proponent must establish that the document was prepared by a person authorized to do so in the foreign country. A simple attestation to this effect by

[89] *Code l'Instruction Criminelle* art. 87 (1808).
[90] See generally Rigaux, *supra* note 86, at 46–47.

a foreign official suffices. Authentication is not necessary, unless the opponent objects specifically to the attested copy. If this occurs, the court considers the objections raised by the opponent and requests authentication only if they seem weighty. Belgian authentication requirements are flexible, informal, and easily satisfied. All that is necessary is authentication by the administrative organization of the foreign country in whatever fashion permitted by the foreign law and a certificate by an appropriate official in the Belgian consulate in that country. Once authenticated, no further dispute over the accuracy of the document is permitted.

Treaties with several West European nations eliminate any requirement that birth, marriage, death, divorce, adoption, and legitimization records be authenticated.[91] The Belgian-Austrian treaty also eliminates the requirement of authentication of judicial decisions.[92] Usually, these treaties, when not eliminating authentication requirements altogether, require little more than that copies of foreign official records be signed by a competent official of the foreign country.

E. Proof of Foreign Law in Belgium

Belgian courts are not expected to be conversant with the law of foreign countries, and the responsibility for pleading and proving such law is on the party relying on it. The pleadings must set out the foreign law in detail and if reliance is placed on a statute or regulation it must be translated and set out *in haec verba*.[93] Ordinarily, foreign law is proved by a properly authenticated text of the applicable law, the introduction of persuasive source material, or by the testimony of one or more experts. A statutory text is highly persuasive, but the court must be assured that it still is in force. If the opponent does not object to the proffered text of foreign statutes or regulations, no further proof of the authenticity of the text will usually be required. A Belgian court accepts any proof on an issue of foreign law that is

[91] Treaty with France, dated November 29, 1922, MONIT. 14 décembre 1922; Treaty with Great Britain, dated December 21, 1928, MONIT. 11 janvier 1929; Treaty with Italy, dated October 24, 1950, MONIT. 22 décembre 1960; Treaty with Luxembourg, dated June 6, 1923, MONIT. 25–26 juin 1923; Treaty with Monaco, dated March 28, 1924, MONIT. 7–8 avril 1924; Treaty with the Netherlands, dated May 2, 1924, MONIT. 10 mai 1924; Treaty with Switzerland, dated August 6, 1935, MONIT. 23 septembre 1935; Treaty with Sweden, dated April 18 May 28, 1959, MONIT. 19 août 1959 (providing for simplified authentication).

[92] Treaty with Austria, dated October 25, 1957, MONIT. 28 juin 1960, CODES BRUYLANT I, 563; Treaty with Austria, dated June 16, 1959, art. 5(3), MONIT. 28 octobre 1961, CODES BRUYLANT I, SUPPLÉMENT 1963, 45.

[93] See generally PAUL GRAULICH, PRINCIPES DE DROIT INTERNATIONAL PRIVÉ No. 22 (Paris, Dalloz, 1961).

reasonable and that is not objected to by the opposing party. In criminal cases, the procedure is much the same, with the burden generally falling on the public prosecutor to prove the applicable law except when the defendant invokes foreign law by way of defense.

The opinion of an expert must be in writing. It may be based upon the particular facts in the case or set forth the general principles applicable in cases of the type under consideration. If a conflict arises between the experts for the parties, counsel are given an opportunity to resolve the disagreement by commenting upon the opinions of the experts or by furnishing supplemental opinions. Although no provision of law prevents it, the court probably will not appoint its own experts.

It is rare for a Belgian court to engage in its own research of foreign law. When the proof presented by the parties is not sufficient, the court will request additional proof. Inasmuch as the court need not render a decision until its request has been complied with, there is a definite incentive for the party with the burden of proof to present the necessary additional material. Only when it is impossible to prove the foreign law, will the court resort to the presumption that the law of the foreign country is identical to Belgian law.

The determination of the court of first instance on issues of foreign law is subject to review *de novo* in the court of appeals. It is settled case law that review of court of appeals decisions on issues of foreign law cannot be obtained in the *Cour de Cassation*.[94]

[94] See Cour de Cassation, March 23, 1926, Prince d'Arenberg v. Procureur général près la Cour d'appel, I PASICRISIE 317 (1926). For more recent decisions, see Cour de Cassation, January 16, 1958, S.A. Centratex v. Lecluse, I PASCIRISIE 505 (1958); Cour de Cassation October 4, 1956, Closset v. Declercque, I PASICRISIE 88 (1957); Cour de Cassation, March 26, 1953, Eyck v. Office des sequestres, I PASICRISIE 581 (1953). See also R. Hayoit de Termicourt, Procureur Général près la Cour de Cassation, *La Cour de Cassation et la loi étrangère*, discours prononcé le ler septembre 1962, JOURNAL DES TRIBUNAUX, September, 1962, 469–76. The views expressed by the *Procureur Général* indicate that the *Cour de Cassation* may reverse itself on this point.