



Judgement

Europe v Schultzheim
[2018] Del 1

1 Notes

Notes written by Imperium Anglorum on 8 February 2020. The text of the judgement was very lightly edited to correct typographical errors and updated citations.

Judgement given 21 March 2018. The Delegate acted *sua sponte* under inherent authority at executive discretion.

The defendant appealed to the Founder, who commuted the sentence to a ban of one week with a warning against further activities.¹

The actions taken here predate the passage of the High Crimes Act 2018.

2 Opinion of the Court

The Delegate (Imperium Anglorum).

[1] This case was taken *sua sponte*. That the Government has the authority to do this is without doubt. It is granted that authority from the Founder and holds judicial authority such that it can make determinations as necessary.

[2] The Government holds this authority both in consideration of the long-standing theories of regency in customary law but also explicitly in section 4 of the Government Act 2017.

[3] As the question of jurisdiction appears to me, quite important, I will devote some time to exploring ‘regency theory’. It is rooted primarily in three thinkers: the Founder, Jenesia, and Alsted. The first’s prominence is self-evident. The latter two were long-time regional delegates who supervised the region, combined, for much of the past decade. If anyone knows the responsibilities of government and the precedents of the region, it is them.

[4] Do not think that the Government Act 2017 came to abolish our customary laws. It came

¹ Commutation from the Founder at [3], Document 1 *infra* p 4.

to fulfil them. The history of the European Parliament is wound almost entirely in the empowerment of popular institutions via that law. Some could find it surprising that the first laws which we record were policies having to do with policies and later, treaties. This is because the European Parliament and all the institutions around it developed organically from the Founder’s grant of embassy- setting powers to the people of Europe.

[5] When the Founder ejected Jeux II (now known as Feux) from the region, he did so because—

Jeux II had unilaterally signed us up to some organisation called ‘The Republic’. Their constitution contained numerous articles that would require us to answer to them. The nations of Europe answer to nobody but themselves, and we can’t have a delegate who goes off doing things like this without asking anyone.²

It is this idea that *the nations of Europe answer to nobody but themselves* which developed into the European Parliament. And the mechanisms by which the region developed its voting structures, first through the approval of embassies, arose from the Founder’s declaration that—

I don’t want to accept invitations for embassies unless they’re approved by a majority vote. If someone wants to organise these on the forum and point me to them when they’re accepted at vote, I’ll be willing to accept them.³

[6] ‘Regency theory’ can be traced back to multiple sources. First, we must establish the Founder

² <https://www.nationstates.net/page=rmb/postid=444778>.

³ <https://www.nationstates.net/page=rmb/postid=73069>.

in fact possesses executive authority. As a matter of game mechanics, law, and custom, he does.

- [7] The Founder noted in the RMB, during a delegate transition, “For the transitional period between delegates, access to regional control has been restricted. I resume my position as Supreme Overlord of Europe until such time as I judge a new delegate fit to act as my Regent”.⁴ And Jenesia gives this meaning in implementation when he says:—

EuroFounder is the “owner” of the region. In his wisdom he allows a WA delegate to attend to the daily “nut and bolts” of running the region. It is Founder’s region.⁵

- [8] This underpinning is why the Government Act 2017 states in section 4 that—

The Founder will hold all executive authority in line with that set forth by law. The Delegate will hold all executive authority (1) entrusted to the Delegate by the Founder, (2) as set forth by law, and (3) intrinsic to the position.

And in section 7 that—

all judicial powers are vested in the Founder and may be exercised or delegated at the Founder’s discretion.

- [9] The region’s history, in the past, not of restricting, but rather, not entrusting executive authorities to the Delegate, is the starting point of determining whether judicial authority is delegated by the Founder to the Delegate.
- [10] I conclude it is. The main, if not only, judicial tools available to a region are the NationStates powers of Border Control and Communications.⁶ Both from the fact that I have used that authority before in various minor offences, but also from the fact that I still possess it, one can only come to the conclusion that I am delegated judicial authority from the Founder. The Founder himself has used the logic of access to regional controls as evidence for support. Six years ago, when a question of this sort arose, the Founder wrote,

⁴ <https://www.nationstates.net/page=rmb/postid=3965790>.

⁵ <https://www.nationstates.net/page=rmb/postid=11919936>.

⁶ The former for the ejection of persons from the region. The latter for the suppression of their posts.

It is worth noting that Alsted enjoys my full support as delegate, hence why I have granted access to the regional controls.⁷

- [11] The question of whether I, or successors, will always possess that authority, is one solely at the determination of the Founder and the laws which the Parliament, acting by powers created by cooperation between itself and the Founder, may pass.

- [12] But the question of whether Cabinet members will possess that authority is perhaps more a question of the exerciser of executive discretion. It is as of yet unclear whether a Cabinet member appointed by the Founder would report to the Founder rather than the Delegate. This could be the case where the Delegate lacks executive authority, for such a Delegate would be unable to remove that Cabinet member. But the jurisprudence on this question is undeveloped, simply because the question has not arisen.

- [13] Customary law is rooted not in statutes, but rather, simply in precedent. Things are permissible not because they are authorised by law, but because they have been done before. Section 2(a) creates the power for customary law to be created by executive discretion.⁸ And section 2(c) gives the authority to interpret customary law solely to the Founder (and is made exercisable via delegation thereof).

- [14] The main question is thus whether there has been undertaken action to eject members in comparable situations to the one here. The answer to that question is Yes.

- [15] Four years ago, the Founder ejected a WA member from the region.⁹ From today, it has been months, if not years, since the ejection of an elector. Perhaps the last one was during one of the Halloween events from one or two years ago, where this power was authorised by popular vote.¹⁰ However, the precedent shown by the Founder is significantly more clear.

- [16] Mizialand, at the time, was attempting to unseat the Delegate by clear and outright campaigning. For example, one of the posts she made to the RMB was—

⁷ <https://www.nationstates.net/page=rmb/postid=853550>.

⁸ Government Act 2017.

⁹ Someone we would now term an elector, and therefore, possessing of the kinds of political rights that are protected by legislation and by custom.

¹⁰ <https://www.nationstates.net/page=poll/p=69508>.

61 endorsements in 4 days, just 70 more to go! Thank you guys for your support. I implore all W A nations to endorse Mizialand as soon as possible. Remember, its not about ME its about WE!¹¹

Along with previous statements such as—

Please endorse me for the position of the WA delegate. I promise to create polls so all our friends here can have the pleasure of using this recently created tool which has been inexplicably denied.¹²

And the publication of a manifesto pledging certain actions to be taken after a possible victory.¹³

[17] The Founder responded by banning and ejecting the nation from the region, saying ‘Europe does not welcome destabilising influences’.¹⁴ This establishes a clear standard for which regional officers can eject electors for political activities: when those activities destabilise the government of the region.

[18] The question of what activities destabilise the region is up for interpretation. But it certainly does not include claims of malfeasance by regional members. Or claims that one can do a better job than the current Delegate. Or that the current Delegate is failing his or her duties.

[19] This too is clear. Six years ago, when blatant mischaracterisations¹⁵ were dispatched in a telegram campaign asking people to unendorse Alsted for what the author considered to be “board censorship”, no action was taken to eject that elector.

[20] But it is clear that this line is crossed when we hear from the Defendant things like the following:—

Anarchy is better than tyranny :)¹⁶

And—

¹¹ <https://www.nationstates.net/page=rmb/postid=5116534>.

¹² <https://www.nationstates.net/page=rmb/postid=5058296>.

¹³ <https://www.nationstates.net/page=rmb/postid=5058317>.

¹⁴ <https://www.nationstates.net/page=rmb/postid=5119394>.

¹⁵ <https://www.nationstates.net/page=rmb/postid=850841>.

¹⁶ <https://www.nationstates.net/page=rmb/postid=29824232>.

Instability is pretty fun and enjoyable. It gives the game a real punch. Dynamic!¹⁷

These are not political claims in as much as they are blatant attempts to destabilise the region. And customary law in the region, ‘i.e. the tradition in which power has been exercised in the region’,¹⁸ makes these activities an offence.

[21] This is compounded by the attempt of the Defendant to enlist foreign support for his attempts to destabilise the region. Without this evidence, one could argue a defence based on some kind of incoherent anarchist political theory. But such an argument falls apart when we directly observe the Defendant’s attempts to enlist foreign agents against the region. The nature of our democracy is one centred on European voices making the decision of who administers the region.

[22] Our custom is not that foreigners determine the administration of our government. Rather, it is that our region self-determines the composition of our government. This claim is and has been made in all manner of regional documents since our founding.

[23] Our regional recruitment telegrams explicitly note the security that our Founder provides. Our endorsement policy, being perhaps the most liberal endorsement swapping policy in NationStates, is a reflection of the region’s commitment that all WA members have influence, making it difficult to eject them should a raid in fact happen.

[24] A claim of an attempt to enlist foreign agents to subvert our democracy should be supported with evidence. Fortunately, the Defendant self-incriminates himself by posting publicly in foreign regions his attempts to rally foreign raiders.¹⁹ We see a post in the Rejected Realms, stating:—

I need 3 courageous WA freedom fighters to:

1. Join Europe
2. Endorse Wombelland²⁰

¹⁷ <https://www.nationstates.net/page=rmb/postid=29827869>.

¹⁸ See generally Government Act 2017 s 2.

¹⁹ While these attempts were suppressed by the governments of the North Pacific and the Rejected Realms, they are still available, and have been preserved on Europe’s RMB by civic-minded citizens.

²⁰ <https://www.nationstates.net/page=rmb/postid=29825408>.

And a post in the North Pacific stating:—

Oi lads, I need 10 WA nations who want to cause some havoc. What you can do to cause havoc:

1. Join Europe
2. Endorse a nation called 'Wombelland' (I won't directly link or else I'll be 'found out'.)
3. Remain until the game updates without endorsing 'Imperium Anglorum'.²¹

[25] Under customary law, such blatant attempts, not to internally change the composition of government, but rather, to destabilise the polity, is illegal. This is made all the more clear by the Defendant's attempt to subvert the domestic sovereignty of the European people.

[26] Precedent is much less clear on the terms of sentences. Obviously, this shall be punished with a ban. It was that instrument which was used in the past. But the length of that ban is very much unclear.

[27] We know not the composition of the ban list at different times. But I recall that when I became Delegate, the list was nowhere as short as it is today. I cleared practically the entire ban list when I became Delegate. That would imply a period of multiple years, or rather, a period long enough that nobody can easily recall the offences which were punished.

[28] Absent such knowledge, I deliver a sentence of two years: roughly the period between the affair with Mizialand and the time at which I became Delegate and cleared the ban list of names.

3 Documents

3.1 Commutation from the Founder

Lightly excerpted from original. Added as an appendix in an revision on 7 February 2020.

[1] Inviting non-European WA members into the region to "cause some havoc" made your intentions appear malign and I'm not surprised IA ejected you for this. I have to be able to trust the delegate as I'm not active enough to keep a watchful eye on Europe, so the delegate needs to have full access to the regional

controls to manage the region on my behalf. Thus far IA has performed admirably in this role so I'm not sure why you take such issue to him. IA is usually happy to involve others in the governing of the region - I believe his interests lie more with involvement in the WA than governing the region.

[2] If you wish to enact actual regime change in Europe you're welcome to do so, but involving an unsuspecting third party that happens to have a high endorsement count is unfair. I'm all for a measure of political shenanigans in Europe as it helps keep the region active, but I'd rather nothing quite so underhand take place here.

[3] IA's decision was the right one to make, however I'm reluctant to leave someone who does appear to wish to be active in the region's community on the ban list for too long. I will instruct IA to lift the ban after 1 week. Unless Wombelland announces an intention to run for the position of the delegate and sets out why they should be supported in this, any further action to propel this nation to the position of delegate won't be looked upon kindly.

3.2 Request for clarification (Imperium Anglorum)

Verbatim.

[1] A few questions, if you would have the time to answer:

[2] 1. Do you intend for this to be a judgement? I can conceive of it two different ways: (1) as a judgement or (2) as a reduction in sentence. I think it could be interpreted that this is a judgement, and therefore, should be published or entered into the rolls. Either way, if you are to instruct me to lift the ban after one week (also, is this one week from the start of the ban or one week from today?), then explanation will be necessary, since I wrote in the last paragraph a sentence of two years. And I would like to attribute that to the correct person.

[3] But in seeing it as a judgement, it seems a bit more personal and tailored to the events of this situation. If it were a judgement, the following precedents, I think, could be held to apply.

[4] 2. Thus, is there any precedent you want to set with this judgement? Because in reading it, I could see a number of different possibilities: (1) that nations should not attempt to involve

²¹ <https://www.nationstates.net/page=rmb/postid=29824301>.

third parties which do not want their help, (2) that foreign infiltration attempts can be punished at a maximum of one week, (3) that campaigning is only permissible if one were to announce an intention to run for the Delegacy, and (4) that desire for activity can lead to reductions in sentencing.

[5] If it were only the fourth one, I would characterise it as something of a commutation. But the other three points could also be held as a decision to be applied in the future. As you act as the fount of justice, I would like your guidance on this matter. And either way, I think it should be released to the public so to explain past actions (but with an explanatory note if you do not intend it to guide future actions).

[6] 3. Any thoughts on his attempts to create something of a separate government, which it seems takes the same name as Europe (and claims by the name of Europe Exile Government that it is representative of the region), by fiat rather than by any kind of democratic legitimacy. I cannot conceive of it as reasonable that a Delegate would be able to create laws that cannot be justified by precedent or by ratification on the part of the people. That would fall directly into violating precedents requiring democratic action which you (or your colleague) established here:

page=rmb/postid=444778

[7] With the greatest hope for your guidance, sincerely yours,

– Imperium Anglorum

3.3 Response from Founder

Verbatim.

[1] I'd consider it a commutation. I've hopefully made it clear enough that his actions weren't welcome and that I'm prepared to intervene where I see fit. There's no need to set precedent by it as it's not something that needs codifying in any rule book. When it comes to the functional administration of the region, Europe is more a benevolent dictatorship (or perhaps, in NS parlance, a Father Knows Best State).