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VOLUME I

NATIONAL REPORTS

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Bahrain

H. M. Al-Baharna*

On 14 Aug. 1971, the Ruler of Bahrain declared Bahrain an independent sovereign state. And on 15 Aug., the Ruler and the British Political Resident in the Arabian Gulf signed a 15-year Treaty of Friendship between the State of Bahrain and the United Kingdom. They also exchanged notes ending the previous "Exclusive Agreements" of 1880 and 1892 between Bahrain and Britain by virtue of which the British Government had assumed responsibility for Bahrain's defence and foreign relations for nearly 100 years. Before the

formal declaration of its full independence on 14 Aug. 1971, Bahrain was legally described as a "protected state" or as "an independent government in special treaty relations with Britain". Upon the attainment of full independence the title of the "Ruler of Bahrain" was changed into "Amir of the State of Bahrain". Bahrain became a member of the League of Arab States on 11 Sept. 1971, and was admitted to membership of the United Nations on 21 Sept. 1971.

I. CONSTITUTIONAL SYSTEM

The Amir has authorized his Council of Ministers to present a draft constitution in the course of 1972. Decree no. 12 for 1972 of 20 June 1972 (*al-djaridat al-rasmiyya* no. 974 of 22 June 1972) provides for the democratic election of a Constituent Assembly which is empowered to ratify a draft constitution for the country. According to art. 1 of the decree, the Assembly will be constituted as follows: (1) 22 members elected by universal secret suffrage. (2) Not more than 10 members nominated by a decree. (3) The Cabinet ministers who will be members *ex officio*. Under art. 6, the Council of Ministers shall submit a draft constitution to the Assembly, within four months, after which period the Assembly shall complete its consideration and approval of the said document within a period not exceeding six months from the date of its first meeting. Election procedures for the Constituent Assembly and the conditions of the right to vote are provided in Decree no. 13 for 1972 of 16 July 1972 (*al-djaridat al-rasmiyya* no. 978 of 20 July, 1972).

I. Nationality

Bahrain nationality is governed by the provisions of the Bahrain Nationality Law of 16 Sept. 1963 (*al-djaridat al-rasmiyya* no. 534 of 19 Sept. 1963). This law defines three categories of Bahrainis, namely Bahrainis by descent, Bahrainis by birth, and Bahrainis by naturalization. (1) A Bahraini by

descent is defined as a person born in Bahrain, after the passing of the Nationality Law of 1963, from a Bahraini father. If the said person is born outside Bahrain, his father or grandfather must have been born in Bahrain. (2) A Bahraini by birth is defined as a person born in Bahrain, after the passing of the Nationality Law, from a Bahraini father, born and domiciled in Bahrain, provided that the said person does not have another nationality. Also a person is regarded as a Bahraini by birth if he is born in Bahrain after the said law, from unknown parents; and a foundling shall be regarded as born in Bahrain, unless it is proved to the contrary. (3) As regards nationality by naturalization, the law states that any foreigner, of full capacity, who applies for Bahraini nationality, may acquire it by an order from the Amir, on the following conditions: (a) He must have established, by lawful means, normal residence in Bahrain for at least 25 consecutive years. This period can be reduced to 15 years only in the case of an Arab applicant. In both cases, the period required for naturalization shall commence after the date of passing the Nationality Law of 1963; (b) he must be of good character; (c) he must have a good command of Arabic; (d) he must have an estate registered in his name in Bahrain.

A naturalized Bahraini does not possess the right to vote or to nominate himself in an election before completing 10 years after his naturalization.

A naturalized Bahraini can lose his nationality

* Minister of State and Legal Advisor to the Government of Bahrain.

in the following cases: (1) If he voluntarily acquires a foreign nationality and the *Amir* orders the withdrawal of his nationality; (2) if he voluntarily abandons his Bahraini nationality and the *Amir* orders its withdrawal from him. A person's loss of the Bahraini nationality under the above provisions extends to his minor children.

2. Territorial Division

The territory of Bahrain is divided into eight municipal districts, namely, Manama town (the political and commercial capital), Muharraq island (including Hidd town), Northern, Western, Central and Southern districts, Rafa'a and Sitrah. The municipal administration of these districts is entrusted to a number of Municipal Councils, constituted from half elected and half nominated members.

3. State Organs

Before its independence, Bahrain was ruled by the *Amir* (previously entitled as Ruler) and the Council of State, which was established by a decree issued on 19 Jan. 1970, see Decree no. 1 for 1970 (*al-djaridat al-rasmiyya* no. 851 of 22 Jan. 1970). This Council, composed of 12 members, including a legal advisor, was delegated full administrative, executive and semi-legislative powers. The establishment of the Council of State which replaced a former "administrative council", marked a major step forward in the administrative and constitutional reforms in Bahrain. Under an *Amiri* Decree issued on 15 Aug. 1971, the Council of State was given a cabinet status and its members, who continued to hold their former portfolios, were attributed ministerial rank. The President of the Council became the Prime Minister. The decree conferred upon the new cabinet "all the powers and functions of the Council of State", which included the power to propose legislation to the *Amir*.

At present, the government is composed of the *Amir* and the Council of Ministers, the functions and powers of which include the following matters: (1) Responsibility for carrying out the general policy of the state both in internal and external matters, in accordance with laws, decrees and regulations. (2) the direction, co-ordination and supervision of the work of the state departments and public organizations; (3) proposing and drafting laws, decrees, and regulations to be submitted to the *Amir* for consideration and approval; (4) the preparation of the general budget of the state; (5) the preparation of a general state plan to develop the national economy, and the adoption of the

necessary measures for its implementation in accordance with the law.

The Council of Ministers is composed of a Prime Minister, a Minister of State and 10 other ministers for the portfolios of foreign affairs, finance, defence, justice, education, health, development, information, municipalities and labour. The said Cabinet meets twice weekly to discuss the daily business of the state and to supervise the execution of the policy of the state in the internal and external spheres.

4. Judiciary

The first regular court, with civil and criminal jurisdiction over Bahrainis, was established in Bahrain in 1926. This was known as the "Bahrain Court". A year later a "Small Court" was established to deal with minor offences and petty civil suits. Moreover, there existed beside those two courts, the *madjlis al-'urfi* (a customary tribunal of pearl merchants), which was dedicated to the settlement of disputes connected with the diving industry. *Madjlis al-'urfi* came to be known later as *madjlis al-tidjara* (a much broader tribunal of professional merchants). The latter comprised a committee of leading Bahraini merchants whose advice and recommendations were often sought by the regular courts on matters involving local trade practice or commercial custom. Later, the above mentioned courts were complemented by the institution in 1937 of a "High Court". The High Court acted as an appeal court, in both criminal and civil matters.

Bahrain is considered as the most progressive state in the lower Gulf in its judicial system. However, up to 1970, the judicial system suffered from two basic shortcomings: First, codification of civil and commercial laws, especially needed in view of the economic progress and development of business in the country in the last decade, was lacking. Secondly, there was a shortage of qualified Bahraini judges. The first qualified judge from the ruling family was appointed in 1963. In 1970, the door was opened for the appointment of other qualified Bahrainis (outside the ruling family) as judges.

The first serious attempt at improving the judicial system in Bahrain was made in 1954, when the government appointed a British-seconded judicial advisor whose responsibility was to assist the national judges on points of law and to advise the government on the drafting of the necessary codified laws required by the courts.

The judiciary has been greatly improved in recent years as a result of the appointment of a number of additional qualified judges. Further-

more, as a result of the implementation of the Judicature Law no. 13 for 1377 (*al-Jawida al-rasmiyya* no. 929 of 12 Aug., 1971), the national courts have been reorganized on a more efficient basis. The civil courts are divided into Small Courts (courts of first instance), a High Court, and a Supreme Appellate Court. These courts have full jurisdiction over all criminal, civil and commercial matters, as well as matters affecting the personal status of non-Muslim foreigners. Matters affecting the personal status of Muslims generally lie within the jurisdiction of the *Shari'a* Courts which are separate courts applying Islamic law.

These numerous developments have provided a considerably sounder foundation for Bahrain's judicial system, while foreign litigants, who must now resort to the national courts for adjudication, are guaranteed equal treatment with Bahrainis before the courts.

Termination of British Extraterritorial Jurisdiction: By agreement with the *Amir* of Bahrain, dating back to the beginning of this century, the British Government had retained extra territorial jurisdiction in Bahrain. This British foreign jurisdiction, based upon the authority of the Foreign Jurisdiction Acts, 1890 and 1913 (53 & 54 Vict., c. 37; 3 & 4 Geo. 5, c. 16), was first applied to the territory of Bahrain by virtue of the Bahrain Order in Council of 1913, but was not exercised in Bahrain until 1925. Originally, British extra territorial jurisdiction in Bahrain extended to all persons except Bahrainis. But during the last 12 years the British Government adopted a gradual process of transferring jurisdiction to the Bahraini national courts in respect of certain categories of

foreigners, including nationals of Arab and Muslim countries. In addition, jurisdiction was transferred to these courts in respect of certain subject matters irrespective of the nationalities of the persons involved. This process of progressive transfer of jurisdiction to the national courts of Bahrain in respect of foreigners gradually increased the jurisdiction of these courts during the period preceding the declaration of Bahrain independence on 15 Aug. 1971. However, steps towards the termination of British extra territorial jurisdiction were taken on 6 and 11 July 1971, when the *Amir* of Bahrain and the British Political Agent for Bahrain exchanged letters in which they agreed that the "general retrocession of Her Majesty's jurisdiction will be completed on 31 July 1971". This agreement, in effect, terminated the powers conferred by the Bahrain Orders in Council of 1959 to 1969, in respect of British exercise of jurisdiction over British subjects and non-Arab and non-Muslim foreigners in Bahrain.¹

It should be pointed out, however, that between 31 July and 31 Dec. 1971, the British Government continued, with the concurrence of the Government of Bahrain, to exercise limited jurisdiction over members of British forces and certain British subjects registered as being in the regular service or employment of the British Government. On 31 Dec. 1971, withdrawal of British military presence in the Gulf area was completed. Consequently, the Bahrain national courts now retain full jurisdiction, in all civil and criminal matters, over all foreigners residing in Bahrain.

II/IX. SOURCES AND CONTENTS OF LAW

The first attempt at systematic codification in Bahrain started in 1955, when a consolidated traffic regulation was promulgated. In 1956 a Penal Code was introduced for the first time. This was followed by a codified Labour Law which was brought into force in 1957, together with the Bahrain Employed Persons Compensation Ordinance. This process of developing the Bahrain judicial and legal systems, through the promulgation of British-inspired codes, has continued, albeit slowly, until the end of 1970. Between 1957 and March 1970, a Law of Criminal Procedure, a Law of

Contract, and a Law of Civil Wrongs were adopted.

In March 1970, the Council of State (now succeeded by the Council of Ministers) instituted a legal department (formerly a legal committee) to which it entrusted the task of drafting the necessary modern legislation, upon the recommendation of the Cabinet. Since its establishment, the legal department has assisted the state in the progressive promulgation of a number of laws which include such matters as land development, registration of births and deaths, administration of

¹ See Bahrain Termination of Jurisdiction Regulation 1972, Queen's Regulation no. 4 of 1972 (Persian

Gulf Gazette vol. 20 no. 1, May 1972).

estates of non-Muslim foreigners, cheques, civil and commercial procedure law, judiciary law, notary public law, and law of court fees.

In contrast to the pre-1970 legislation, the present trend reflects the influence of the Egyptian legal system, based on the *Code Napoléon*, rather than the British colonial legal pattern. In addition to these laws, the legal department has already prepared two important draft codes, namely, a commercial law and a company law, which are awaiting final approval.

The main body of law promulgated in Bahrain since 1955 includes the following legislation:

1. Law no. 13 for 1971 on the Organization of the Judiciary (*supra* I 4); Law no. 14 for 1971 on Notary Publics (*al-djarīdat al-rasmiyya* no. 929 of 12 Aug. 1971); Bahrain Penal Code, 1956; Code of Criminal Procedure, 1966.

2. Contract Law, 1969; Civil Wrongs Ordinance, 1970; Provisional Law no. 7 for 1970 on Land Development (*al-djarīdat al-rasmiyya* no. 875 of

16 July 1970); Law no. 11 for 1971 on the Administration of Estates of non-Muslim Foreigners (*al-djarīdat al-rasmiyya* no. 919 of 3 June 1971).

3. Register of Commerce Law, 1961; Law no. 10 for 1971 on Cheques (*al-djarīdat al-rasmiyya* no. 914 of 29 April 1971); The Labour Law, 1957; Bahrain Employed Persons Compensation Ordinance, 1957.

4. Law no. 12 for 1971 on Civil and Commercial Procedure (*al-djarīdat al-rasmiyya* no. 926 of 22 July 1971); Law no. 2 for 1972 on Court Fees (*al-djarīdat al-rasmiyya* no. 961 of 23 March 1972).

Since, 1958, legislation is published in the Bahrain Official Gazette (*al-djarīdat al-rasmiyya*) (in Arabic). – The body of very diverse regulations enacted prior to 1956 has been collected in *madjmū‘at al-ḥawānīn wa’l-‘lānāt* (1378/1958).

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(Completed in July 1972)

Bangla Desh

Bangla Desh, official name "People's Republic of Bangla Desh", formerly Eastern Pakistan. Since 26 March 1971, this country has been an independent state.

Upon completion of letter "B", the constitu-

tional framework and the legal system of the country were still in the process of development. Therefore a report on Bangla Desh must be published in the appendix to this volume.

Barbados

K. W. Patchett*

Barbados is a unitary state. Formerly a British colony founded in 1627 with a representative legislature from 1639, Barbados achieved independence on 30 Nov. 1966. It is a member of the

Commonwealth. The Constitution which came into operation on 30 Nov. 1966 is contained in the Schedule to the Barbados Independence Order, 1966 (S.I. 1966 no. 1455 of the United Kingdom).

I. CONSTITUTIONAL SYSTEM

1. Nationality

Nationality is uniform, but a citizen of Barbados automatically enjoys the status of a Commonwealth citizen. Citizenship is acquired as of right by birth or immediate descent or on registration by marriage or long-standing residence. It can be lost by renunciation or by deprivation in circumstances laid down by law (Const. ch. II; Barbados Citizenship Act, 1967-50).

2. Territorial Division

The territory is divided into 11 parishes which, since the dissolution of the local government system in 1970-1971, are no longer of importance in the constitutional system.

3. State Organs

a. *The system of government* is a representative democracy. The government is drawn from and responsible to an elected House of Assembly. A general election must be held at least every five years. Suffrage is universal from the age of 18 and by secret ballot in constituencies (Representation of the People Act, 1971-15).

b. *The Queen of Barbados (Elizabeth II of England)* is Head of State; a Governor-General, appointed by the Queen, is her local representative. Their functions must usually be exercised on the advice of the Cabinet.

c. *Parliament* comprises the Queen, a Senate of 21 members (12 appointed by the Prime Minister, 2 by the Leader of the Opposition, 7 by the Governor-General) and a House of Assembly of 24 elect-

ed members. It has full powers to make law, but certain restrictions lie upon the Senate's power to deal with financial bills and to delay the legislative process.

d. *The government* consists of a Prime Minister, appointed by the Governor-General as the member of the Assembly "best able to command the confidence of a majority" of that House, not less than five other Ministers and Parliamentary Secretaries appointed on the advice of the Prime Minister from both Houses. The Cabinet, comprising the Ministers, is the principal instrument of policy and is collectively responsible to Parliament. A Leader of the Opposition is also appointed by the Governor-General from the Assembly.

Executive functions are discharged through Ministries and Statutory Boards. Civil Servants are appointed and disciplined by an independent Public Service Commission.

4. Judiciary

a. *Judicial functions* are exercised by an independent judiciary, comprising a Chief Justice and three judges with protected tenure of office (Const. ch. VII) and by professional magistrates appointed and disciplined by an independent Judicial and Legal Service Commission.

b. *The Supreme Court* comprises a High Court with full original jurisdiction to try civil and criminal matters and to hear constitutional issues and a Court of Appeal of three of the judges. Provision is made for trial by jury in the Supreme Court. Magistrates have a limited civil and criminal jurisdiction with appeal to a Divisional Court of the High Court. A single magistrate hears mainten-

* Dean, Faculty of Law, University of the West Indies, Cave Hill.

ance claims by married women, affiliation proceedings and related matters. An ultimate appeal lies from the Supreme Court to the Privy Council in London.

c. *Prosecutions* may be initiated by individuals, the police or the Director of Public Prosecutions who may intervene in any criminal matter. The Director is independent of government direction.

II. SOURCES OF LAW

The Constitution is the Supreme Law, prevailing over any inconsistent law, written or unwritten. Provision is made for the protection of fundamental rights and freedoms of the individual, enforceable through the High Court.

Other sources include the Common Law of England which remains the basic law, Acts of the Parliament of Barbados, statutory instruments

made thereunder and enactments of the United Kingdom prior to independence and extending to Barbados.

Acts of Parliament are collected in the Revised Laws of Barbados (1944) and in annual volumes under the title of The Laws of Barbados. Important judicial decisions are published in the West Indian Reports.

III. HISTORY OF LAW

Barbados was settled by the British in 1627, remaining under British rule until independence. Legal development owes much to the English jurisprudence on which it has always been closely modelled. The form and sources of the law, legal process and professions, the judicial system and the content of much legislation have drawn heavily upon their English counterparts. One notable difference was the institution of slavery calling for a system of slave laws and courts which came to an end with the abolition of slavery in 1833.

Attempts were made to associate Barbados constitutionally with other Caribbean territories in 1672, 1833, abortively in 1872 and in the Feder-

ation of the West Indies in 1957 to 1962. Certain judicial institutions have been shared in common: the West Indian Court of Appeal from 1919-1957, the Federal Supreme Court 1957-1962 and the British Caribbean Court of Appeal 1962-1966. Apart from the Privy Council in London, there is now no shared legal institution.

Increased participation in government by elected representatives since the Second World War and particularly after the grant of internal self-government in 1961 has led to the assumption by the state of responsibility for social and economic welfare which has been reflected in legislation.

IV. PRIVATE LAW

The Common Law is in force, supplemented by legislation analogous in principle to English statutes. Substantial differences exist in relation to *property and succession* where the law resembles

more nearly English law prior to 1925. Although the *family* structure and the incidence of illegitimacy show marked differences in Barbados, the legal position remains close to that in England.

V. COMMERCIAL LAW

There are strong resemblances to English law, notably in bankruptcy, bills of exchange, carriage of goods and sale of goods. Legislation, particu-

larly in company law, tends to be based upon models now replaced in England.

VI. STATE DIRECTION OF TRADE

The economy of Barbados has always been dominated by a single-crop industry: sugar, which has long received special legislative treatment (see, e.g., the Sugar and Fancy Molasses Production and Export Control Act, 1940-3, and the Sugar Industry (Rehabilitation, Price Stabilization and Labour Welfare) Act, 1947-13). Diversification through economic planning both of the private and of the public sector is being undertaken in accordance with the government's Development

Plan. Public utilities, natural resources and social services are increasingly controlled through statutory boards, whilst development in the private sector is encouraged by fiscal policies of tax exemptions and privileges for new enterprises and by state advice and financial assistance, especially for labour-intensive industries.

A Free Trade Association has been instituted with other Caribbean territories (Act 1967-35).

VII. INDUSTRIAL PROPERTY RIGHTS

Legislation follows the pattern evolved in England. Copyright, patent and trade mark law is analogous in principle to English legislation usu-

ally now replaced (see the Copyright Act, 1915-3, the Merchandise Marks Act, 1949-52, and the Patents Act, 1903-7).

VIII. PROCEEDINGS IN CIVIL LAW MATTERS

Strong similarities in court proceedings exist between Barbados and England. The rules of evidence generally follow the English model. Legal representation is permitted in all courts and is usu-

ally undertaken by barristers.

Provision is made for *arbitration*, again on the English pattern (Arbitration Act, 1958-23).

IX. PRIVATE INTERNATIONAL LAW

Barbados follows the Common Law. There is little legislation, except in relation to reciprocal enforcement of foreign judgments (Reciprocal Enforcement of Judgments Act, 1922-3, and

Foreign Judgments (Reciprocal Enforcement) Act, 1937-8) and formalities for the execution of wills (Wills (Amendment) Act, 1967-14).

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(Completed in September 1972)

Belgium

Jan Limpens^{*}
Guy Schrans⁺⁺

The Kingdom of Belgium (*Royaume de Belgique*, *Belgisch Koninkrijk*) is a constitutional monarchy and a unitary state.

I. CONSTITUTIONAL SYSTEM

1. Nationality

Art. 4 of the Constitution of 7 Feb. 1831 (Const.) provides that Belgian nationality is acquired, retained and withdrawn in accordance with the rules laid down by Civil Law. These rules were consolidated by a Royal Regulation of 14 Dec. 1932.

a. Belgian nationality can be *acquired* through birth (application of the *ius sanguinis* principle, with some special provisions concerning illegitimate children), the exercise of a personal option (this mode is limited to those persons who satisfy certain legal conditions), through naturalization granted by the legislature according to Const. art. 5 (there are two kinds of naturalization: the "great" naturalization, which confers upon the recipient all civil and political rights enjoyed by the Belgian citizen, and the "ordinary" naturalization, which confers only the civil rights and some political rights)¹, and through marriage (a foreign woman who marries a Belgian citizen, or whose husband acquires Belgian nationality through option, becomes a Belgian citizen; she may, however, waive this right). Special provisions govern the acquisition of Belgian nationality by unemancipated children of persons acquiring Belgian nationality.

b. Belgian nationality is *lost* by persons who acquire voluntarily another nationality, by a Belgian woman marrying an alien (unless she makes a statement to the contrary), by a Belgian woman whose husband voluntarily acquires another nationality, and by the unemancipated children where the Belgian parent, in whose custody they are, acquires another nationality. A

special provision applies in cases of dual nationality: a person who is exempted, by a royal decree, from his military obligations in Belgium loses Belgian nationality. In some cases, conviction for a criminal offence may entail loss of Belgian nationality (Royal Regulation of 1932 art. 18 *bis*); this applies, however, only to Belgians of foreign descent (e.g., persons who became Belgian citizens through option, naturalization, etc.).

2. Territorial Division

Belgium is a unitary state, divided into nine Provinces, the boundaries whereof can be modified only by the Legislature. The organs of the Province are the Governor (who is, at the same time, the representative of the Executive in the Province, and who is appointed by the King), the Provincial Council and the Permanent Provincial Board (*Députation permanente*, *Bestendige Deputatie*). They have limited powers.

The territory is further divided into Municipalities (*Communes*, *Gemeenten*). Their organs are the Mayor (*Bourgmestre*, *Burgemeester*), the Municipal Council and the Board of Mayor and Aldermen. They also have limited powers, though these in actuality are much broader than those of the Provinces (e.g., in the fields of primary education, local police, etc.).

A Law of 26 July 1971 provides for the creation of metropolitan Councils (*Conseils d'agglomération*, *Agglomeratieraden*) in large urban areas, and of Federations of Municipalities (*Fédérations de communes*, *Federaties van gemeenten*) elsewhere. These new institutions have powers of a technical nature as regards the administration of the Municipalities concerned. A Law of 23 July 1971 regulates the

^{*} Professor at the Universities of Ghent and Brussels, Director of the Centre interuniversitaire de droit comparé.

⁺⁺ Professor at the University of Ghent.

¹ For instance, a person having only an "ordinary" naturalization may not be elected to Parliament, cannot become a Minister of the Crown, is not entitled to become a member of a trial jury, etc.

merger of neighbouring Municipalities to form greater administrative units. A Constitutional Amendment of 24 Dec. 1970 has granted decision-making powers concerning cultural activities to decentralized Cultural Councils (*Conseils culturels*, *Cultuurraden*) for both the Flemish speaking and the French speaking communities in Belgium. The powers of the Cultural Councils have been further defined by a Law of 21 July 1971; it should be noted that the concept of "cultural activities" comprises, e.g., promotion of scientific research, public libraries, broadcasting and television, recreation, sport and tourism. In the near future, decision-making powers concerning some economic and environmental questions of regional interest will also be assigned to regional organs still to be created, for the economic regions of Flanders, the Walloon Provinces and the territory of Brussels (Constitutional Amendment of 24 Dec. 1970).

3. State Organs

The Constitution (art. 26, 29 and 30) distinguishes the Legislature, the Executive and the Judiciary.

a. The legislative "power" is exercised jointly by the King and the Parliament. The latter consists of a Chamber of Representatives and a Senate, both of which have identical powers and are constituted along similar patterns (it should be noted, however, that, of the 175 Senators, only 106 are elected directly by the people; 46 are elected by the Provincial Councils and 23 are recruited through co-optation). Every member of the three branches of the Legislature may initiate legislation, i.e., file Parliamentary Bills. In practice most of the laws enacted by the Legislature originate from Bills filed by the Ministers of the Crown. Besides being a branch of the Legislature, Parliament also has other important functions, e.g.: it must pass annually the accounts law (which approves the expenditures made by the Executive during the preceding year) and vote upon the yearly budgets; it must decide annually upon the size of the Armed Forces; it grants "great" and "ordinary" naturalization; if the King has no male issue, he cannot designate his successor without the consent of Parliament, nor can he, except with such consent, become the Head of another State; the Chamber of Representatives appoints the members of the Audit Court (*Cour des Comptes*, *Rekenhof*); the Senate may nominate candidates for appointment as judges in the Supreme Court (*Cour de Cassation*, *Hof van Cassatie*); the Chamber and the Senate may alternately nominate candidates for appointment as judges in the Council of State (*Con-*

seil d'Etat, *Raad van State*), etc. As has already been mentioned, some powers regarding cultural, economic and environmental matters have been constitutionally transferred from Parliament to regional organs.

b. The executive authority is vested in the King acting through the Ministers of the Crown who may be appointed and dismissed at the King's discretion (Const. art. 65). In actuality, the government is the direct emanation of the majority in Parliament. The Executive's primary task consists of issuing the regulations and decrees necessary for the implementation of the laws (Const. art. 67); it is understood, however, that it has no powers other than those formally conferred on it by the Constitution and by laws passed in accordance with the Constitution (Const. art. 78). In actual practice, the Executive enjoys in fact – if not in law – primacy over Parliament, since it is better equipped and organized to assume the various duties imposed by the management of a modern state. The number of civil servants may give an indication of the progressive growth of the Executive: there were 14 500 civil servants in 1855, and 214 000 in 1965. While the population has increased since 1855 by 147 per cent, the number of civil servants has increased by 1476 per cent.

c. As far as the relationship between Legislature and the Executive is concerned, Parliament not only participates in the Legislative process and performs functions of an administrative nature, as outlined above, but it is, under the Belgian constitutional system, also the government making power, and as such, entrusted by the Constitution with a constant control of the government's policy. In return, should there be a conflict with Parliament, the Executive is entitled to dissolve the Chamber and/or the Senate, the people being called upon to arbitrate upon the conflict through the channel of elections.

4. Judiciary

Pursuant to a Law of 10 Oct. 1967, which was prepared with care by the late Prof. Ch. van Recpinghen, in collaboration with Prof. E. Krings, the Judiciary has been substantially re-organized. The new law – known as the Judicial Code, here cited Jud.C – has come into effect gradually between 10 Oct. 1967 and 1 Nov. 1970.

a. There is no Constitutional Court in Belgium. Moreover, according to standing case law, the courts are not entitled to pass judgement on the constitutionality of the laws enacted by the Leg-

Justice. The latter is deemed to abide by the Constitution.

b. The organizational structure of the ordinary law courts can be summarized as follows, starting from the lowest level:

(1) The *Justice of the Peace* (*Justice de paix, Vrederecht*). There is one Justice of the Peace for each of the 222 judicial cantons. The court is composed of one judge, assisted by a clerk. He acts in civil and commercial matters where the value of the claim does not exceed B.F. 25 000, i.e., US \$ 559. Moreover, he has sole jurisdiction (without pecuniary limit) over a number of local matters, such as leases, alimony, etc. He also acts as a conciliator in non-litigated cases, e.g., family disputes. From his decision an appeal lies to the Tribunal of First Instance or the Tribunal of Commerce, if the value of the claim exceeds B.F. 3 500, i.e., US \$ 80. This judge also forms a *Police Court* and as such has jurisdiction over minor offences, e.g., traffic offences.

(2) There is a *Tribunal of First Instance*, a *Labour Tribunal* and a *Tribunal of Commerce* in each of the 26 judicial districts. The Tribunal of First Instance has jurisdiction in both civil and criminal matters. It has a general jurisdiction in all civil matters, and also hears appeals from decisions in civil matters originally tried before the Justice of the Peace. Its decisions in civil matters are subject to an appeal to the Court of Appeal. It should also be stressed that the Presiding Judge of the Tribunal of First Instance has the power to act alone in certain matters, such as the commissioning of experts to assess damages, provisional orders especially in disputes between spouses, and injunctions, attachment and sequestration proceedings. In criminal matters, the Tribunal of First Instance has jurisdiction over all violations which are not reserved to the Police Courts or to the Court of Assizes. It hears appeals from the decisions of the Police Courts; and from its own decisions appeal lies to the Court of Appeal. Finally, a special section of the Tribunal of First Instance has jurisdiction over juveniles.

(3) The *Labour Tribunal* consists of a professional judge assisted by two social judges representing the employers and the employees. It has jurisdiction over individual labour disputes, over accidents at work and the application of workmen's compensation laws, as well as over litigations with respect to social security. From its decisions an appeal lies to the Labour Court of Appeal.

(4) The *Tribunal of Commerce* is composed of a professional judge assisted by two businessmen. It has jurisdiction over all litigation between businessmen and over some other claims concerning

acts of commerce. It hears appeals from decisions in commercial matters originally tried before the Justice of the Peace. It also has special jurisdiction in corporate matters and bankruptcy. From its decisions an appeal lies to the Court of Appeal.

(5) There is also, in each of the 26 judicial districts, a *District Tribunal* (*Tribunal d'arrondissement, Arrondissementsrechtbank*), composed of the Presidents of the Tribunal of First Instance, of the Labour Tribunal and of the Tribunal of Commerce; it has powers to adjudicate on conflicts of jurisdiction.

(6) Finally, there is in each Province a *Court of Assizes* which has jurisdiction over major criminal offences (e.g., homicide, murder, rape, etc.) as well as over political and press offences. This Court convenes quarterly, when there are cases to be heard. It is presided over by one member of a Court of Appeal assisted by two professional judges, the latter being members of the Tribunal of First Instance. A finding as to: "Guilty or not?" is made by a jury of 12 lay members. The decisions of this court are not subject to appeal but they may be quashed by the Court of Cassation.

(7) The three *Courts of Appeal* (Brussels, Ghent and Liège) hear appeals lodged against the decisions of the Tribunal of First Instance or the Tribunal of Commerce. Each Court of Appeal consists of three sections: the civil section (which hears appeals in civil and commercial matters), the criminal section (which hears appeals in criminal matters) and the juvenile section (which hears appeals from decisions in juvenile matters by the special juvenile section of the Tribunal of First Instance). The Courts of Appeal have special jurisdiction in some matters, e.g., income taxes. In the near future, Courts of Appeal will also be established at Antwerpen and Mons (Constitutional Amendment of 11 Jun. 1970).

(8) The *Labour Courts of Appeal* are composed of a professional judge assisted by two social judges representing the employers and the employees. They decide appeals from decisions of the Labour Tribunal.

(9) The *Court of Cassation* in Brussels has power to quash judgments which infringe the law, i.e., which make a wrong application of the substantive law or of procedural provisions. It may, upon petition of one of the parties or upon request of the Court's Attorney-General (*Procureur Général, Procureur-Generaal*) when the parties do not seek cassation, examine the decisions of all courts from which no further appeal lies. It is not entitled to deliver judgments on the merit of the cases before it, but only on the application of the legal provisions alleged to have been violated by the lower court. When the Court of Cassation reverses a

decision, it sends the matter down to another court of the same rank for re-trial. If the second court delivers the same verdict as the first one, the Court of Cassation may again quash and refer the case to a third court, which is then obliged to decide according to the views of the Court of Cassation (see Jud.C art. 1110-1121).

c. The administrative judiciary is not organized by the Constitution. The *Council of State* was created by an ordinary Law of 23 Dec. 1946. Its main judicial functions consist of the power to annul illegal decrees and regulations issued by administrative authorities, and to advise the Executive on the award of damages to persons prejudiced by an administrative act. There is also in the Council of State a legislative section, which advises the Executive and Parliament on Bills and on draft decrees or regulations. The Law of 21 July 1971 concerning the Cultural Councils (*supra* 2) provides that a newly established section of the Council of State shall decide on possible conflicts (1) between statutes enacted by the National Parliament and rules laid down by Cultural Councils, or (2) between rules laid down by the French-speaking and those laid down by the Flemish-speaking Cultural Councils. There are also various lower administrative boards with judicial functions, which are, however, limited to specific fields, such as elections, social security, etc.

d. The *Prosecution* (*Ministère Public*, *Openbaar*

Ministère) as organized by the Judicial Code, deals principally with criminal matters. It prosecutes persons who have violated a criminal statute or regulation. The head of the Prosecution in the Court of Appeal is called the *Procureur général*, assisted by *Avocats généraux* and *Substituts du Procureur général* (the distinction between them being a matter of seniority). In the Tribunals of First Instance and in the Tribunal of Commerce, the Prosecution is headed by a *Procureur du Roi*, assisted by *Substituts du Procureur du Roi* and in the Labour Tribunals by an *Auditeur du travail*, assisted by *Substituts de l'Auditeur du travail*. Whenever a criminal Prosecution is instituted before the Justice of the Peace, this is done by an *Officier du Ministère Public*, who is ordinarily a police officer. It should be noted that the functions of the *Procureur général* and of the *Avocats généraux* in the Court of Cassation are ordinarily not of a prosecuting nature, since this court does not deal with the merit of the cases; their main task consists of advising the court upon the legal issues before it. Finally, the law provides that the Public Prosecutor's Office must be heard in certain matters other than criminal, such as: litigations concerning the status of persons, fiscal matters, bankruptcy, divorces, obligations contracted by minors, matters involving public policy, etc. While the members of the ordinary law courts are independent from the other state organs, the members of the Prosecution are under the Minister of Justice's authority.

II. SOURCES OF LAW

1. Constitution

The Constitution of the Kingdom of Belgium was enacted on 7 Feb. 1831, after the separation of Belgium from The Netherlands. Its principal provisions have remained unchanged since that date. The Constitutional Amendments of 1893, 1920 and 1921 had important political implications, since they ultimately resulted in the institution of universal suffrage, but they did not affect the basic features of the Kingdom's charter. Recent Constitutional Amendments of 24 Dec. 1970 have introduced some provisions concerning the relationship between the linguistic communities co-existing in Belgium, and the adaptation of the Belgian constitutional system to international conventions, to which Belgium has adhered, and to international communities, of which it has become a member. The basic structures of the Kingdom and its institutions have, however, remained substantially unchanged.

2. Legislation

Legislation is constitutionally enacted by the Legislature, i.e., Parliament acting together with the King. In theory (Const. art. 69), the King can refuse to sanction and to promulgate a law passed by Parliament, and thus veto it. This rule, however, has been much reduced in scope through unwritten political practice, and has become obsolete. In times of crisis – and on some other occasions – Belgium has had a system of *government by decrees*. Then an important part of the legislative power is delegated, for a limited period, to the Executive.

At this point, it should be stressed that, although courts cannot pass judgment upon the constitutionality of the laws, they are prohibited, under Const. art. 107, from applying decrees and regulations which conflict with the laws. A decision thus declaring a decree or regulation illegal relates only to the specific litigation before the court, and has

no effect erga omnes, as does an annulment by the Council of State.

Formally, only five Codes are in effect in Belgium: the Civil Code (*Codem Napoléon*); the Code of Civil Procedure (*Nieuw Judiciaal Code*); the Commercial Code; the Criminal Code, and the Code of Criminal Procedure.

Most of these Codes have a Napoleonic origin. Needless to say, they have often been amended and supplemented. According to the 1831 Constitution, it was "necessary" to revise the Codes "within the shortest period". This only materialized for the Code of Civil Procedure (1876, again entirely revised by a Law of 10 Oct. 1967), the Commercial Code (1872), the Criminal Code (1867) and the Code of Criminal Procedure (1878). Formally, the Civil Code remained unrevised (2), but Napoléon would hardly recognize his cherished piece of law-making if he were to glance at the latest edition of the Belgian Civil Code. Legal writers are now advocating an entire revision of the Civil Code (see the special issue of the *Tijdschrift voor Privaatrecht* 1966 no. 4).

Some Acts of Parliament were also enacted or consolidated under the name of Code, with respect to registration fees, succession duties, traffic rules, etc.

Private publishers have compiled useful collections of laws and regulations concerning subjects such as labour and employment legislation, taxation, professional ethics, public law, etc. Although these collections are known as "Codes", they should not be considered as an official codification of the legislation concerned.

Finally, it should be noted that the *company law* is only a part of the Commercial Code; the relevant legal provisions were consolidated in 1935, and amended since. Economic and financial legislation is neither consolidated nor codified, although there have been expressions of intention so to do in the near future.

3. Customary Law

The customary private law has been superseded by the Napoleonic legislation. At the time of the abrogation of the customary law, approximately 110 local customs were in effect in the present Belgian territory (mainly in Flanders and in Brabant).

Sometimes, however, generally recognized customs can be enforced by the courts in civil and commercial matters, when they are not contrary to statute law or in conflict with legally concluded contracts (Cass. 24 Feb. 1966, Pas. 1966.I.818). Moreover, in some cases, the Civil Code refers to customs as an additional source of law, e.g., with respect to easements, leases, and the implementa-

tion of contracts.

Exceptionally, the courts have stated that an established custom can supersede a provision of a Code. For instance, contrary to CC art. 1154, interests on a current account may be capitalized for a term shorter than one year without notice (the so called *anatocism*).

4. Court Decisions and Precedents

Court decisions and precedents are a source of law only to the extent that they can be used for the clarification or interpretation of an obscure rule of law, or for the solution of a conflict in respect of which no solution can be found in the traditional sources of law. In those cases, precedents can be of great value to the judge, since, under CC art. 5, it is a denial of justice and a criminal offence (see Crim.C art. 254) to refuse to give judgement because the law is silent, obscure or incomplete on the question in issue.

Except for one rather exceptional instance (see *supra* I 4 b) precedents are not legally binding in Belgian law. It should be stressed, however, that the opinions of the Court of Cassation and the Courts of Appeal enjoy a great persuasive authority and that important parts of tort law are based solely upon the judicial interpretation of the concise legal provisions laid down in CC art. 1382-1386.

5. Legal Writing

Legal writing (*doctrine*) can hardly be called a source of law in Belgium. It can, however, have an important bearing upon the development of the law, to the extent the views expressed in it are adopted by the Legislature or by the Judiciary.

6. International Treaties

International treaties are also an important source of law in Belgium. They are concluded by the King and must normally be approved by Parliament in the form of a regular statute and be published in the State Gazette (*Moniteur Belge, Belgisch Staatsblad*). They have the same authority and the same effect as statutory legislation. Since 1971, Belgian law recognizes the primacy of self-executing provisions of treaty law over national legislation (Cass. 27 May 1971, J.T. 1971, 460). It is therefore possible that when the provisions of a new statute conflict with an earlier treaty, the treaty provisions will prevail. It should be noted, in this connection, that certain international conventions – such as those establishing the European Communities – delegate to "supranational" au-