
CASE ANALYSIS OF GOVERNMENT OF THE REPUBLIC OF SPAIN V. S.S. ARANTZAZU MENDI [1939] A.C. 256

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ABSTRACT:

The abstract refers to a House of Lords case from 1939 in *Government of the Republic of Spain v. S.S. Arantzazu Mendi and Others*. The *Arantzazu Mendi* was seized by the Republican government in 1937 during the Spanish Civil War. The Nationalist government seized the same ship in 1938. The Republicans filed a writ in rem against the ship in April 1938, claiming ownership, which was served within British waters where the ship was located. The Nationalist government opposed this, claiming that the ship had been improperlyimpleaded as a foreign sovereign state. The lower court had to decide whether or not the Nationalist government was a foreign sovereign state. The lower court asked the Secretary of State for Foreign Affairs to give his opinion on this issue. The secretary responded:

“The Republic, whilst being the de jure and recognized government of Spain, is merely a government in a small portion of Spanish territory, whilst the defendants are in possession of the rest of Spain and are in no way subservient to any government.”

The only course to determine whether a party is a recognized foreign sovereign state is to refer this question to the Secretary of State for Foreign Affairs. The opinion given by the secretary is a statement of fact, and there is nothing to allow us to disagree with it on grounds of law. The government in Spain had been in possession of Spain de facto, and in no way subservient to any government. It had therefore certain characteristics of a sovereign state. The distinction between de facto and de jure recognition is irrelevant to a right to sovereign immunity. The government could therefore not be impleaded, and the writ in rem against the ship was dismissed.

Facts:

- The case of **Arantzazu Mendi** had developed against the backdrop of the Spanish Civil War (1936-1939). This particular event brought about a change in the thinking regarding how states would be recognised and also the concept of sovereign immunity.
- **The Ship:** A steamship named Arantzazu Mendi was involved in this case, which had been registered in the port of Bilbao in the Basque region of Spain in the province of Vizcaya. The ship was owned by a shipping company named Compañía Naviera Sota y Aznar, which was split along the same lines as the Spanish nation itself. The Sota faction, led by the firm's head, Sir Ramón de la Sota, supported the Republicans and the Basque nationalist movement, while the Aznar faction supported General Francisco Franco and the Nationalists.

The Timeline of Events:

- **June 1937:** By June 1937, the Nationalists had captured the port of Bilbao, and the Basque provinces had fallen into their hands. The Republican Government of Spain, which was still the de jure government and recognized by the international community, issued a decree on June 28, 1937, requisitioning all vessels registered in the port of Bilbao for the service of the Spanish State. At the time, the ship was not in Spanish waters; rather, it was on the high seas. The ship finally docked at London on August 11, 1937.
- **August 1937:** In order to prevent the Republican Government from taking possession of the ship, the owners, through the Nationalist-aligned faction of the company, applied for a writ in rem for possession of the ship on 24th August 1937. As a result of the writ, the ship was seized by the British Admiralty Marshal in the Surrey Commercial Docks. Although the writ was withdrawn on 12th April 1938, the ship was still in the custody of the Marshal because of unpaid arrest fees.
- **Early 1938:** The conflict escalated in early 1938. The Franco Nationalist Government issued a decree on 2nd March 1938, which demanded the ship for “public services connected with national defence.” The Nationalist Government informed the ship’s master, Captain Eugenio Renteria, of the requisition of the ship on 5th April 1938. The

owners of the ship, through their managing director in London, signed a notarial declaration on 13th April 1938, agreeing that the ship could be at the “free disposal” of the Nationalist Government.

- **April 13, 1938:** On April 13, 1938, the writ in rem was issued by the Republican Government, which marked the beginning of the present case. The writ was issued against the Arantzazu Mendi, with the master being named as a defendant. The Nationalist Government appeared in the case conditionally and asked that the writ in rem and the arrest warrant issued in the case be struck out. The main argument of the Nationalist Government was that the suit was filed against a foreign sovereign, namely the Nationalist Government of Spain, which cannot come under the jurisdiction of the English courts.

Judicial Inquiry:

- In view of the fact that there were two claimants to power in Spain, Justice Bucknill of the Probate, Divorce, and Admiralty Division of the High Court followed the normal course of seeking information from the executive. The judge directed the Registrar to write to His Majesty’s Secretary of State for Foreign Affairs to clarify whether the Nationalist Government was a foreign sovereign state.
- On May 28, 1938, the Foreign Office issued a letter in response to the Registrar’s letter, which contained nine points. The most important point was that although the Foreign Office recognized the Republican Government of Spain as the de jure government of Spain, it also recognized the Nationalist Government of Spain as “a government which at present exercises de facto administrative control over the larger portion of Spain, including the Basque provinces.” The letter further stated that the Nationalist Government was “not a government subordinate to any other Government in Spain.” The above fact of state, which was furnished by the executive, was the crux of the entire case.¹

Issues:

The case raised a number of fresh legal issues that British law would have to grapple with when

¹ Gov’t of the Rep. of Spain v. S.S. Arantzazu Mendi, 33 *Am. J. Int’l L.* 583 (1939), available at <https://doi.org/10.2307/2190811>

it came to de facto governments and the law of sovereign immunity.

1. **Sovereign Immunity of de facto Governments:** The central question was whether a government that effectively controls affairs on the ground in a given territory, without being formally accepted as the de jure ruler of that state, was entitled to the same immunity as other foreign states under international law.
2. **The “One Voice” Doctrine:** The court was also required to interpret what was meant by the letter from the Foreign Office. Was it to be accepted as conclusive evidence of de facto rule by the de facto government, or was it to be scrutinized to determine how much control was actually vested with the Nationalist Government?
3. **Impleading a Sovereign:** The other issue was whether an action against a ship in rem, where a foreign government was not a party to the suit but was asserting an interest in that property, was to be regarded as impleading that government. The question was whether compelling a foreign government to come into court to assert its rights to property constituted a breach of the law of sovereign immunity.
4. **Possession as opposed to Custody:** The other interesting question was whether the Republican Government was correct that because the ship was under arrest by the Admiralty Marshal, it was impossible for the Nationalist Government to be said to be in possession of it. The question was whether being under arrest by the Admiralty Marshal meant that the owners of the ship, and hence the Nationalist Government, did not have any right of possession.²

Judgement:

This case began in the Admiralty Division, then proceeded to the Court of Appeal, and finally reached the House of Lords. In each of these courts, the ruling was the same: the Nationalist Government won the case, and the writ and arrest were vacated.

Admiralty Division (Justice Bucknill)

On June 17, 1938, Justice Bucknill issued his ruling in the case. He relied on the letter sent by

² Herbert W. Briggs, *De Facto and De Jure Recognition: The Arantzazu Mendi*, 33 *Am. J. Int'l L.* 689 (1939), available at <https://doi.org/10.2307/2192880>

the Foreign Office. By acknowledging the fact that the Nationalist Government had full administrative control and that it was independent of any other authority, the British government, in essence, recognized the Nationalist Government as a sovereign entity in the region. In arriving at the ruling, the learned judge relied on the principles established in the cases of “The Gagara” and “Luther v. Sagor.” In these cases, it had been established that a de facto government should be regarded as a foreign sovereign entity for the purposes of immunity. Since the Nationalist Government requisitioned the vessel by the consent of the owners, it had a legitimate interest in the vessel and thus should be granted immunity. Since the writ of the Republican government attempted to bind a foreign sovereign entity, the writ had to be vacated.

Court of Appeal

On November 1, 1938, the Court of Appeal (Slesser, Finlay, and Goddard L.JJ.) unanimously upheld the ruling of the Admiralty Division. In arriving at the ruling, Lord Justice Slesser explained: “What is meant by the expressions ‘de jure’ and ‘de facto’? ‘De jure’ means a government which ought to have sovereignty; ‘de facto’ means a government which has got sovereignty.” In arriving at the ruling, the learned Lord Justice explained that there can be no distinction in the legal immunities of the two entities. Once the British Crown recognized the Nationalist Government as the de facto rulers of the Basque provinces, the courts had to recognize their acts in the region as the acts of a sovereign entity.

House of Lords

On February 23, 1939, the final ruling came from the House of Lords. Lord Atkin, in the leading speech, followed the ruling of the lower courts and reasserted the legal principles involved in the case.

- **On the issue of Recognition:** Lord Atkin established the famous "One Voice" principle, wherein our state cannot speak with two voices on the same matter. From the reading of the letter from the Foreign Office regarding the “de facto administrative control,” he established the presence of all the attributes of a sovereign state, such as maintaining law and order, establishing and maintaining courts, and exercising independent powers and control. A government that possesses all these attributes and is not subject to another government would qualify as a foreign sovereign state.

- **On the issue of Immunity:** He established that the concept of sovereign immunity is based upon the principle of reciprocity and the desire to avoid friction between nations, and that it applies equally to both *de facto* and *de jure* rulers. The jurisdiction over the *de facto* sovereign would provoke as much affront and belligerent action as it would over the *de jure* sovereign.
- **On the issue of Possession:** He dealt with the case of the Admiralty Marshal by establishing the distinction between custody and possession. The Marshal may have had custody of the vessel because it had been arrested, but it did not have possession because the vessel belonged to the owners and, with their consent, the Nationalist Government.

Finally, the House of Lords dismissed the case, and the writ and the arrest of the *Arantzazu Mendi* were set aside once and for all³.

Classification of Sources of Law (Article 38 ICJ Statute Analysis):

The Legal Weight of the *Arantzazu Mendi* Decision: An Article 38(1) Analysis

To fully acknowledge the significance of the *Arantzazu Mendi* decision, it is of great importance to understand the sources of law used by the British courts against Article 38(1) of the Statute of the International Court of Justice (ICJ). Even though this was a domestic English case, the judges relied on sources that mirror the classic categories of international law.

1. International Custom (Article 38(1)(b))

The central rule applied in this case was the doctrine of **Sovereign Immunity**.

Under the ICJ Statute, this aligns with Article 38(1)(b): "international custom, as evidence of a general practice accepted as law." Lord Atkin and Justice Bucknill did not invent the concept of immunity for this specific case; rather, they applied the already established customary rule that states generally do not exercise jurisdiction over one another. Essentially, the court accepted that this custom applies just as much to *de facto* governments as it does to *de jure* states, provided they perform the same sovereign functions.

³ The *Arantzazu Mendi*, 19 Asp. Mar. L. Cas. 224 (P. 1938) (Eng.), available at MANU/MT/0014/1938

Furthermore, the "Foreign Office Letter" of May 28, 1938, serves as a clear example of **State Practice**. As an official diplomatic act by the UK executive recognizing the Nationalist Government, this correspondence provided the evidentiary basis of how the state was behaving, a key component in establishing customary law.

2. General Principles of Law (Article 38(1)(c))

Beyond specific customs, the judges frequently turned to broader legal concepts, specifically **Comity** and **Independence** to justify their reasoning.

These fit squarely into Article 38(1)(c) as "general principles of law recognized by civilized nations." For instance, Lord Atkin explicitly emphasized the need to avoid "international friction" and "injured pride." This reasoning relies on the principle of the Comity of Nations; the mutual courtesy and respect states owe one another. Additionally, the court used the principle of "Independence" (verifying that the Nationalist Government was not subordinate to any other entity) as the essential test for determining sovereignty.

3. Judicial Decisions (Article 38(1)(d))

Finally, the court had relied heavily on already established English case laws to interpret these international obligations. In the language of Article 38(1)(d), these served as "subsidiary means for the determination of rules of law."

The judges wove together several key precedents to construct their argument:

- ***Luther v. Sagor*** was used to establish that *de facto* and *de jure* recognition carry the same legal weight.
- ***The Gagara*** provided the precedent for recognizing a provisional government as sovereign.
- ***The Cristina*** was cited to reinforce that immunity regarding state-owned ships is absolute.
- ***Banco de Bilbao v. Sancha*** confirmed that within the territory controlled by the Nationalists, the laws of the *de facto* government overrode those of the *de jure* Republican government.

By examining the judgment this way, we can see that *Arantzazu Mendi* was not decided in isolation. The court had constructed its judgment by using the domestic **Judicial Decisions** (Art. 38(1)(d)) to interpret **International Custom** (Art. 38(1)(b)), all while being guided by the **General Principle** (Art. 38(1)(c)) that independent entities must be treated with comity.⁴⁵

Analysis:

The decision of the House of Lords on *Arantzazu Mendi* is notable because it managed to bridge the gap between diplomatic theories and politics. The decision, which granted legal equivalence to a de facto insurgent government and a de jure state, provided a practical approach that supports “effective control” as opposed to “lawful title.”

De Facto vs. De Jure Recognition

The decision is primarily notable for blurring the distinction between de facto and de jure recognition.

- **The Criticism:** The decision has come under criticism from several quarters, especially from Herbert W. Briggs, who has contended that de facto and de jure recognition are two distinct legal principles. The former is a political acknowledgment of an uncertain state of affairs, while de jure recognition is an acknowledgment of legitimate title. The decision of the House of Lords has blurred this distinction to an extent that has led to de facto and de jure recognition being legally identical. The decision has come under severe criticism from scholars who feel that it allows subjective legitimacy to override constitutional law.
- **The Defence:** However, it must be noted that this decision was an effort to avoid conflict. If British courts were to deny immunity to the Spanish government while the executive branch of the government continued to treat it as a legitimate government in Spain, it could have led to a dangerous conflict. The decision has effectively asserted that as long as a government is able to function effectively by levying taxes, holding

⁴ Statute of the International Court of Justice, Int'l Ct. Just., <https://www.icj-cij.org/statute>

⁵ Gov't of the Rep. of Spain v. S.S. *Arantzazu Mendi*, 33 Am. J. Int'l L. 583 (1939), available at <https://doi.org/10.2307/2190811>

court, and maintaining law and order, it is granted a certain level of immunity.

"The One Voice Doctrine"

This case formed the bedrock of the principle of deference of the judiciary to the executive, especially where foreign affairs are concerned. The idea of Lord Atkin that a state cannot be said to "speak with two voices" helps maintain constitutional integrity and prevents foreign political disputes from making their way to the courts.

This doctrine was invoked in 1938 to justify the continuation of Britain's policy of non-intervention where the Spanish Civil War was concerned, recognizing Franco's grip on Spain without actually approving of his coup. This doctrine continues to be followed in England, as evidenced by the recent case of *Maduro Board v. Guaidó Board*, which involved Venezuelan gold. The Supreme Court of the UK relied once again on the Foreign Office to determine which of the rival presidents was the legitimate ruler of Venezuela; the court cited *The Arantzazu Mendi* as precedent.⁶

Strategic and Corporate Context

- **Maritime Lawfare:** The case illustrates the strategic potential of maritime law. It appears to have been a 'lawfare' case in which the Republican government was using legal manoeuvres to prevent the Nationalists from gaining access to the merchant fleet. The legal nicety was the House of Lords' ruling on the difference between 'possession' and 'custody.' They held that a ship in arrest remained in possession of its owners. In effect, the shield of sovereign immunity was not to be circumvented through legal manoeuvres such as arrest in advance.
- **Corporate Conflict:** This was not a normal commercial clash at the crossroads of politics. The Sota and Aznar families were not passive actors. Their internal fights over the direction the company should take, were a major factor that impacted the outcome of the case. The Aznar faction's willingness to agree to Franco's requisition formed the legal foundation (possession) for the Nationalist Government to claim immunity. In the absence of such an agreement the outcome could have been different. The Nationalist

⁶ Marcus Teo, *Denouncing the 'One Voice' Doctrine*, 45 *Oxf. J. Legal Stud.* 26 (2025), available at <https://doi.org/10.1093/ojls/gqae032>

Government might have appeared to have no more than a claim to possession, without actual possession. It demonstrates that in civil wars, corporate loyalties can be as important as military ones.⁷⁸

Conclusion:

- Arantzazu Mendi is a key foundation of English public international law. It reaffirmed the definitive test of sovereignty for the court: effective administrative control. Where a de facto government exists and functions on the ground, it is eligible to receive the same respect and immunity as a de jure sovereign state.
- It also established the “**One Voice**” doctrine, which ensures that British courts cannot go against the foreign policy of the British government. This protected the British courts from the political minefield of the Spanish Civil War and continues to guide them today in balancing competing claims from fractured states such as Venezuela or Libya.
- Ultimately, the decision was a **pragmatic success**. By not prying behind the de facto control of Franco to question the legitimacy of his title, the House of Lords chose international comity and the avoidance of potential conflict over the rights of the de jure government. The legacy of the Arantzazu Mendi is the understanding that in the international arena, consolidated power is legitimate power.

⁷ Herbert W. Briggs, De Facto and De Jure Recognition: The Arantzazu Mendi, 33 *Am. J. Int'l L.* 689 (1939), available at <https://doi.org/10.2307/2192880>

⁸ The Arantzazu Mendi, 9 *Ann. Dig.* 60 (1938–1940), available at <https://www.cambridge.org/core/journals/annual-digest-and-report-of-public-international-law-cases/article/abs/arantzazu-mendi/3CDC54D42C4EC2738B8B8C8BB0151DD5>