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TEXT
TAGS: PHUM, PREL, GE, AR
QSUBJECT: ARGENTINE COURT ORDERS SCHWAMMBERGER
- EXTRADITION FOR WAR CRIMES

REF: BUENOS AIRES 6959

1. (C) SUMMARY. IN AN UNEXPECTED DECISION, AN ARGENTINE FEDERAL COURT FINESSED THE QUESTION OF WHETHER A NATURALIZED CITIZEN COULD BE EXTRADITED AND ORDERED THE RETURN OF FRANZ SCHWAMMBERGER TO GERMANY TO STAND TRIAL FOR ATROCITIES IN THE SECOND WORLD WAR. THE CKSE WILL BE APPEALED TO THE SUPREME COURT. SCHWAMMBERGER IS STILL A LONG WAY FROM EXTRADITION, BUT HAS TAKEN A MAJOR STEP IN THAT DIRECTION. END SUMMARY.

2. (U) IN A DECISION ANNOUNCED NOVEMBER 28, THE ARGENTINE FEDERAL COURMT FOR THE CITY OF LA PLATA ORDERED THE 1XTRADITION OF JOSEF FRANZEO SCHWAMMBERGER TO STAND TRIAL FOR WAR CRIMES IN THE FEDERAL REPQBLIC OF GERMANY. JUDEE BRETAL'C DECISION WAS UNEXPECTED BECAUSE THERE REMAINS

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PENDING IN ANOTHER FEDERAL COURT IN BUENOS AIRES THE QUESTION OF SCHWAMMBERGER'S ARGENTINE CITIZENSHIP. HIS ATTORNEYS HAVE ANNOUNCED THEY WILL APPEAL THE DECISION TO THE ARGENTINE SUPREME COURT.

3. (U) SBHWAMMBERGER, NOW 76, WAS CHARGED WITH PARTICIPATION IN MASS MURDER IN THE WARSAW GHETTO AND SEVERAL NAZI DEATH CAMS DURING THE SECOND WORLD WAR. -- HE WAS ARRESTED BY ARGENTINE AUTHORITIES IN NOVEMBER 1987 (REFTEL). EVIDENCE OF ATROCITIES WAS STRONG -- FORMER VICTIMS (NOW U.S. AND ISRAELI CITIZENS) CAME TO ARGENTINA TO TESTIFY AGAINST SCHWAMMBERGER. THE VALIDITY OF THE FRG-ARGENTINA EXTRADITION TREATY WAS NEVER IN QUESTION. THE DIFFICULT LEGAL ISSUE BEFORE THE COURT WAS WHETHER THE TREATY PERMITTED ARGENTINA TO EXTRADITE A NATURALIZED CITIZEN. THE COURT FINESSED THE ISSUE BY HOLDING THAT THE ACTS FOR WHICH SCHWAMMBERGER WAS TO BE EXTRADITED VOIDED A PRIORI ANY CLAIM HE MAY HAVE HAD TO ARGENTINE CITIZENSHIP IF THEY OCCURRED BEFORE HIS NATURALIZATION. SINCE THE COURT FOUND SUFFICIENT EVIDENCE OF SUCH ACTS TO EXTRADITE, IT ALSO FOUND THE EVIDENCE SUFFICIENT TO VOID HIS NATURALIZATION.

4. L(C) LEADERS OF ARGENTINA'S DAIA JEWISH UMBRELLA ORGANIZATION WERE DELIGHTED WITH THE DECISION. THEY NOTED TO POLOFF NOVEMBER 29 THAT THE JUDGE IN LA PLATA HAD CONSISTENTLY BEEN MORE SYMPATHETIC TO THE EXTRADITION PROCEEDING THAN THE JUDGE HANDLING THE CITIZENSHIP TRIAL IN BUENOS AIRES. UNDER SECRETARY OF JUSTICE RECONDO, WHO SUPERVISED EFFORTS OF THE FEDERAL PROSECUTORS IN THE EXTRADITION EFFORT, WAS PLEASED BUT CAUTIOUS. HE NOTED THERE WERE SEVERAL SUPREME COURT PRECEDENTS ON WHETHER AN ARGENTINE CITIZEN COULD BE EXTRADITED. SOME SUPPORTED THE LA PLATA COURT'S DECISION; SOME DID NOT. THE MOST RECENT PRECEDENTS, HE WARNED, DID NOT SUPPORT THE TRIAL COURT'S RULING.

5. (C) COMMENT. SCHWAMMBERGER HAS NOT BEEN EXTRADITED, BUT HAS UNDENIABLY TAKEN A BIG STEP

IN THAT DIRECTION. IF HE IS FINALLY RETURNED TO THE FRG FOR TRIAL, HE WILL APPARENTLY BE THE FIRST NATURALIZED ARGENTINE CITIZEN TO BE EXTRADITED FOR WAR CRIMES SINCE THE SECOND WORLD WAR.

GILDRED

ADMIN
END OF MESSAGE

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