IRAN LAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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**ORIGINAL DOCUMENTS IN SAFE**

Case No. 273 Date of filing: 26/12/90

** AWARD - Type of Award _____

- Date of Award _____

_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 26/12/90

7 pages in English 8 pages in Farsi

** CONCURRING OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

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- Date _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 273
CHAMBER ONE
DECISION NO. DEC95-273-1



REZA and SHAHNAZ MOHAJER-SHOJAEE,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
Respondent.



DECISION

1. On 29 October 1990 the Claimants REZA and SHAHNAZ MOHAJER-SHOJAEE ("the Claimants") filed a "Request for Additional Award or Correction of the Award or Other Relief" ("the Request"), seeking an additional award under Article 37 of the Tribunal Rules, or alternatively a correction of the alleged errors in the Tribunal's Award No. 490-273-1 (5 Oct. 1990), reprinted in __ Iran-U.S. C.T.R. ___ ("the Award"), or such other relief as may be granted. The Claimants argue, inter alia, that "the claims they sought to present before the Tribunal have indeed been omitted from the award," that they should not have been "dismissed without hearing and without being notified to supply additional evidence in support of the sworn evidence," and that the Respondent had offered no evidence "to rise to the level of proof refuting the sworn arguments and legal arguments previously offered." The Claimants also request an opportunity to be heard and to supply the Tribunal with any and all documents underlying their previously submitted pleadings and affidavits.

2. On 14 November 1990 the Government of the Islamic Republic of Iran, the Respondent in Case No. 273, filed a submission entitled "Comments on Claimants' Request for Additional Award or Correction of the Award or Other Relief," rebutting the Claimants' argument and requesting the Tribunal to deny the Claimants' Request.

3. The requirements for the issuance of an additional award are set forth in Article 37 of the Tribunal Rules. The Article provides, in relevant part, as follows:

> 1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

The Tribunal notes that the Award was served upon the Agent of the Government of the United States on 5 October 1990,

and that the Claimants filed their Request on 29 October 1990. Consequently, the Request was filed within thirty days after the receipt of the Award, as required by Article 2, paragraph 3 and Article 37 of the Tribunal Rules.[1] However, while the Request falls, prima facie, within the scope of Article 37, the Tribunal cannot agree that a claim which was presented in the arbitral proceedings was omitted from the Award. The Award specifically addressed the Claimants' contention that their dominant and effective nationality during the relevant period from the date the Claim arose to 19 January 1981 was that of the United States; indeed, it was expressly restricted to that issue.[2] Consequently, the Tribunal finds that there is no omission to be rectified in the Award. Therefore the Claimants' request for an additional award under Article 37 of the Tribunal Rules is denied.[3]

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[1] Article 2, paragraph 3 of the Tribunal Rules provides that "[t]he filing of documents with the Tribunal shall constitute service on all of the other arbitrating parties in the case and shall be deemed to have been received by said arbitrating parties when it is received by the Agent of their Government." See also Hood Corporation and The Islamic Republic of Iran et al., Decision No. DEC 34-100-3, pp. 1-2 (1 Mar. 1985), reprinted in 8 Iran-U.S. C.T.R. 53, 54.

[2] The Tribunal had previously indicated in Orders that it would decide this jurisdictional issue as a preliminary question, a procedure that is permitted by Article 21, paragraph 4 of the Tribunal Rules. Accordingly, the Award did not address the subject matter of the Claim. That does not constitute an "omission" on the Tribunal's part. In cases where the claimant fails to prove that his dominant and effective nationality is that of Iran or the United States, as the case may be, the claim is dismissed for lack of jurisdiction, without consideration of the merits. Consequently, there was no need, nor justification, for the Tribunal to address the subject matter of the Claim.

[3] The Claimants' argument that they were denied an opportunity to present the Tribunal with adequate evidence to support their Claim also is without merit. The Tribunal in its Order of 19 December 1989 invited the Claimants to "file by 12 March 1990 any evidence in rebuttal together

(Footnote Continued)

4. The Claimants also seek, alternatively, a correction of the alleged errors in the Award. In this respect, the applicable provision of the Tribunal Rules is Article 36, which provides, in relevant part, as follows:

> 1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

The Tribunal notes that the Claimants filed their Request within thirty days after the receipt of the Award, thus complying with Article 36 of the Tribunal Rules. However, because the Claimants' Request does not identify any "errors in computation, any clerical or typographical errors, or any errors of similar nature," it does not, prima facie, fall within the scope of Article 36. Accordingly, the Tribunal denies the Claimants' request for correction.

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(Footnote Continued)
with a brief, restricted to the issue of the Claimants' dominant and effective nationality." The Claimants did not file any further evidence, nor did they react to the Respondent's "Request to Expedite the Consideration of the Case," filed on 18 April 1990. See the Award, supra para. 1, para. 9. Moreover, while the Claimants argue that "[n]o notice was given granting or denying an oral hearing under Article 25 of the [Tribunal] [R]ules," that "[n]o notice was given under Article 28 (3) of the [Tribunal] [R]ules that an award would be made on the evidence before the [Tribunal]" (emphasis in original), and that "[n]o notice was given under Article 29 of the [Tribunal] [R]ules that the hearings would be closed" (emphasis in original), they were informed in advance that the Tribunal intended to make a preliminary decision on its jurisdiction. In its Order of 19 December 1989 the Tribunal emphasized that it "intends to decide its jurisdiction on the basis of the documents submitted in this Case after receipt of the [Parties'] filings." The Claimants, however, neither commented on that intended procedure nor, as noted, submitted the filing they were entitled to make.

5. The Claimants further seek "such other relief as may be granted." In this connection, the Tribunal notes the Claimants' remaining arguments, specifically that the Tribunal never specified that additional documentary evidence underlying the sworn statements would be required, and that the Respondent had offered no evidence to rise to the level of proof refuting the affidavits submitted by the Claimants.[4] However, the Tribunal concludes that these arguments do not constitute a request for relief, but rather an attempt to reargue certain aspects of the Case where the Claimants disagree with the Tribunal's reasoning in the Award.[5] Consequently, the Claimants' request must be denied.[6]

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[4]The Claimants also argue that "[n]o request under Article 24(2) of the [Tribunal] [R]ules was made by the Chamber for a summary of evidence [the Claimants] intended to present in support of the facts," and that the Tribunal's Order of 19 December 1989 "did not make clear that the Chamber wished to make an evidential[] inquiry going beyond what the Claimants had previously offered." (emphasis in original). These arguments are equally without merit. Under Article 24, paragraph 2 of the Tribunal Rules, a summary of evidence is to be required if the Tribunal "considers it appropriate"; the Tribunal thus has discretion to require a summary of evidence, but has no obligation to do so. Also, the Tribunal informed the Parties in its Order of 19 December 1989 that "it intend[ed] to decide its jurisdiction on the basis of the documents submitted in this Case after receipt of [the Parties'] filings." See supra note 3. Such a preliminary decision on jurisdiction obviously contemplates not only the possibility that the Tribunal will find that it has jurisdiction; it is equally possible, as a matter of principle, that the Tribunal will dismiss the claim for lack of jurisdiction. The latter turned out to be the case here.

[5]Specifically, the Claimants' argument conflicts with the Tribunal's findings in the Award concerning the allocation of the burden of proof. See the Award, supra para. 1, para. 9, where the Tribunal held that the determination of a claimant's dominant and effective nationality "requires the claimant to carry its burden of proof and present the Tribunal with adequate evidence, including documentary proof."

6. The Tribunal finally notes that the Claimants request an opportunity for a hearing. The relevant provision in this respect is Article 15, paragraph 2 of the Tribunal Rules, which provides that the Tribunal shall hold a hearing "if either party so requests at any stage of the proceedings." The Tribunal has held that Article 15, paragraph 2 of the Tribunal Rules "should be interpreted, in the light of the particular circumstances of each case, to mean that hearings are to be held upon the reasonable request of a party made at an appropriate stage of the

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[6]The Tribunal has consistently held that it will not review its own awards when a party seeks to reargue certain aspects of the case or questions the conclusions of the Tribunal. See, e.g., Jonathan Ainsworth and The Islamic Republic of Iran et al., Decision No. DEC 94-454-3, para. 3 (4 Oct. 1990), reprinted in __ Iran-U.S. C.T.R. __; World Farmers Trading, Inc. and Government Trading Corporation et al., Decision No. DEC 93-764-1, paras. 2-3 (3 Oct. 1990), reprinted in __ Iran-U.S. C.T.R. ___; Harris International Telecommunications, Inc. and The Islamic Republic of Iran et al., Decision No. DEC 73-409-1, paras. 2-3 (26 Jan. 1988), reprinted in 18 Iran-U.S. C.T.R. 76,77; Sedco, Inc. and The Islamic Republic of Iran et al., Decision No. DEC 64-129-3, para. 6 (22 Sept. 1987), reprinted in 16 Iran-U.S. C.T.R. 282, 283-84; Ford Aerospace & Communications Corporation and The Government of the Islamic Republic of Iran et al., Decision No. DEC 59-93-1, para. 4 (23 Apr. 1987), reprinted in 14 Iran-U.S. C.T.R. 255, 256; American Bell International, Inc. and The Islamic Republic of Iran et al., Decision No. DEC 58-48-3, para. 5 (19 Mar. 1987), reprinted in 14 Iran-U.S. C.T.R. 173, 174; Paul Donin de Rosiere et al. and The Islamic Republic of Iran et al., Decision No. DEC 57-498-1, para. 4 (10 Feb. 1987), reprinted in 14 Iran-U.S. C.T.R. 100, 101.

The Tribunal has not decided whether it has inherent power to revise an award under exceptional circumstances. See, e.g., World Farmers Trading, Inc., para. 3, supra; Dames and Moore and The Islamic Republic of Iran et al., Decision No. DEC 36-54-3, pp. 18-21 (23 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 107, 117-18; Mark Dallal and The Islamic Republic of Iran et al., Decision No. DEC. 30-149-1, p. 2 (12 Jan. 1984), reprinted in 5 Iran-U.S. C.T.R. 74, 75; Henry Morris and The Government of the Islamic Republic of Iran et al., Decision No. DEC 26-200-1, p. 2 (16 Sept. 1983), reprinted in 3 Iran-U.S. C.T.R. 364, 365.

proceedings." World Farmers Trading, Inc. and Government Trading Corporation et al., Award No. 428-764-1, para. 16 (7 July 1989), reprinted in 22 Iran-U.S. C.T.R. 204, 209. However, in view of the fact that the Claimants' request for a hearing was not made during the arbitral proceedings but after the issuance of the Award, the Tribunal need not consider whether the request was made "at an appropriate stage of the proceedings." Because the request was made only after the closing of the proceedings, the Tribunal denies the request as untimely.[7]

7. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

The Request for an Additional Award or Correction of the Award or Other Relief, filed by REZA and SHAHNAZ MOHAJER-SHOJAEE on 29 October 1990, is hereby denied.

Dated, The Hague
26 December 1990

Bengt Broms
Chairman
Chamber One

In the Name of God

Howard M. Holtzmann

Assadollah Noori
Concurring

[7] The Tribunal notes that the Claimants requested a hearing in this Case in 1983. However, the Tribunal subsequently bifurcated the proceedings, and decided to determine the issue of the Claimants' dominant and effective nationality as a preliminary issue. See the Tribunal's Orders of 2 August 1984, 21 January 1987 and 19 December 1989. The Claimants never requested a hearing on this preliminary issue until after the Award was issued.