123

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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In the Name of God

CASES NO. 44, 45, 46, 47
CHAMBER THREE
AWARD NO. ITL 71-44/45/46/47-3

CASE NO. 44
SHAHIN SHAINE EBRAHIMI,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC
OF IRAN,
Respondent.

CASE NO. 45
MARJORIE SUZANNE EBRAHIMI,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC
OF IRAN,
Respondent.

CASE NO. 46
CECILIA RADENE EBRAHIMI,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC
OF IRAN,
Respondent.

CASE NO. 47
CHRISTINA TANDIS EBRAHIMI,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC
OF IRAN,
Respondent.

DISSENTING OPINION OF JUDGE PARVIZ ANSARI

Introduction

1. I have repeatedly expressed my reasons for dissenting to the Tribunal's injudicious and deplorable decision to admit the claims of Iranian nationals against the Government of Iran, and thus see no need to reiterate them here. See: the Dissenting Opinion of the Iranian Arbitrators in Case No. A18, Decision No. DEC 32-A18-FT (10 Sep. 1984), reprinted in 5 Iran-U.S. C.T.R. 275-337; also the Dissenting Opinion of Judge Parviz Ansari in Reza Said Malek and The Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 Jun. 1988).

2. From the point of view of both its logical premises and legal analysis, the present Interlocutory Award is unfounded and unjustified. However, since the errors in the present Interlocutory Award have been effectively rectified in Tribunal Award No. 427-831-3 (30 Jun. 1989) issued in Anita Perry-Rohani, et al and The Government of the Islamic Republic of Iran and Bonyad Mostazafan, I see no need to elaborate upon the reasons for my dissent to the present Award, and I will merely take up a few important points.

Similarity of the instant Case to the Mergé case

3. In the famous Mergé case, the Italian-United States Conciliation Commission ruled unanimously in its Award dated 10 June 1955 that since the habitual residence of Mrs. Florence Strunsky Mergé's family and the interests and the permanent occupational and professional life of the head of the family were not established in the United States, her prevailing nationality was not that of the United States, and the claim was therefore inadmissible.[1] The facts and

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[1] Mergé Case (U.S. v. Italy) 14 R. Int'l Arb. Awards 236, 248 (1955); [1955] Int'l Law Rep. 443, 456. See also: the Dissenting Opinion of the Iranian Arbitrators in Case No. A18, Decision No. DEC 32-A18-FT (10 Sep. 1984), pp. 68-71, reprinted in 5 Iran-U.S. C.T.R. 324-327.

circumstances in the claim brought by Marjorie Suzanne Ebrahimi bear great similarity to those in Mergé. Yet, although the Respondent has for its part repeatedly relied upon and invoked Mergé, the majority makes no reference to the Respondent's invocation of the aforesaid precedent when reciting the facts and the Parties' contentions. Even minimal principles of judicial procedure would have required that the majority state its reasons for having blatantly departed from recognized international arbitral precedents and practice.

4. In setting down principles and giving guidelines for determining the prevailing nationality of American women who have acquired dual nationality through marriage to foreign nationals, the Mergé decision expressly states in section V, paragraph 7 (c):

> With respect to cases of dual nationality involving American women married to Italian nationals, the United States nationality shall be prevalent in cases in which the family has had habitual residence in the United States and the interests and the permanent professional life of the head of the family were established in the United States.2

It is patently obvious that neither of these conditions has been met in the claim of Marjorie Suzanne Ebrahimi. An examination of the record makes it abundantly clear that the domicile of the Ebrahimi family, and the center of the interests and the professional and economic life of Ali Ebrahimi (the head of the family) were, unquestionably, solely and permanently in Iran. It should be pointed out that no evidence has ever been submitted in rebuttal of this fact, and that the Claimant has not even made any allegation to the contrary, either.

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2 14 R. Int'l Arb. Awards, at 247; [1955] Int'l Law Rep., at 456.

5. All of the professional and economic activities of Ali Ebrahimi (the head of the family) took place in Iran, and it was also the locus of his business affairs, as well as the place where his companies were registered and had their operations. A brief glance at the relief sought in these Cases proves this point. The multi-million dollar claim brought by the Ebrahimi children seeks compensation for the alleged expropriation of their proprietary interests in Gostaresh Maskan Company. Gostaresh Maskan Company is a private joint-stock construction company owned by the Ebrahimi family, in which Ali Ebrahimi was the majority shareholder, Chairman of the Board, and chief executive officer. The Company is registered only in Iran, which is also the sole locus of its commercial activities. There can thus be no doubt whatsoever that Iran was the sole center of the interests and the professional and occupational life of the head of the Ebrahimi family.

6. Moreover, the domicile of the Ebrahimi family was in Iran. Here too, a glance at the relief sought by Mrs. Ebrahimi will prove this point. The principal element of the relief sought in the claim brought by Mrs. Ebrahimi is for compensation for the alleged expropriation of her proprietary interest in the residence occupied by the Ebrahimi family. This residence, in which Ali Ebrahimi also enjoys a proprietary interest, and which as alleged in Mrs. Ebrahimi's Statement of Claim has an estimated value of more than $1 million, is located in Tehran. Furthermore, according to the evidence in the record, Mrs. Ebrahimi, who holds an Iranian passport as well as an identity card, habitually and invariably declared expressly, in the application forms submitted by her to the Passport Office, that her permanent residence was in Iran. Based on the foregoing, it cannot be disputed that the habitual residence of the Ebrahimi family, and the interests and the permanent professional life of the head of the family, were established in Iran; consequently, in accordance with the ruling

in Mergé, Mrs. Ebrahimi's prevailing nationality is that of Iran.

Participation in elections

7. Mrs. Ebrahimi holds an Iranian identity card, no. 2098, issued upon her request by the Iranian Consulate in Washington, D.C. on 30 September 1977. Page 1 of her identity card clearly shows that Mrs. Ebrahimi went to the polls on 1 April 1979 and participated in the referendum held to determine the political system which Iran was to have after the Revolution.

8. An important point deserves to be noted before we enter into a discussion of the significance of the Claimant's participation in the referendum on the Islamic Revolution in Iran. The Claimant initially refused to submit her Iranian identity card to the Tribunal. As a result of the Respondent's repeated requests, and its objections to the Claimant's failure to submit the necessary documents, the Tribunal issued an Order wherein it directed the Claimant to submit the originals of her United States passport, Iranian identity card and Iranian passport. The Claimant presented only the originals of her United States passport and Iranian identity card, simply alleging that she "has not been able to find her Iranian passport." Therefore, the Claimant's participation in the Iranian elections would never have been disclosed, and the Tribunal would not have discovered this fact, if the Tribunal had not granted the Respondent's justified request and ordered the Claimant to produce this additional evidence. This instance demonstrates, once again, the difficulties faced by the Iranian Government in responding to the allegations of dual national claimants. In principle, by failing to submit sufficient evidence or by submitting only selectively chosen evidence which supports their position, such claimants have placed the Iranian Government in a difficult situation, one which at times

makes it virtually impossible for it to mount a proper defence. Relying on self-serving affidavits which they have submitted on their own behalf, the dual national claimants deny that certain events have ever taken place, alleging for example that they have never travelled outside the United States or attended Iranian schools, etc., and in most instances, unfortunately, the Tribunal expects Iran to present rebuttal evidence disproving the non-occurrence of such events! Yet, it is not at all clear how the Iranian Government can be expected to find access to such private and personal documents, which are only in the possession of those claimants themselves. To remedy this deficiency, the Tribunal must issue the appropriate Orders directing the claimants to produce sufficient evidence. By refusing to issue such Orders where necessary, the Tribunal denies the respondent his right to a defence.

9. Mrs. Ebrahimi made no attempt to leave Iran and return to the United States in the last months of 1978, even though the revolutionary events and developments were at their climax. She remained in Iran throughout the months of the Revolution, and even continued to remain there until July 1979 -- i.e., fully four months after the final victory of the Revolution. Mrs. Ebrahimi also participated in the important referendum which was to decide the form of government in Iran, doing so without being compelled in any way, and of her own free will. In this connection, an important question comes to mind, namely, why did she go to the trouble of voting? The indisputable historical fact is that it was in no sense mandatory to participate in the referendum which was held on 1 April 1979 shortly after the victory of the Revolution for the purpose of deciding Iran's future political system. The only conceivable logical answer to this question is that Mrs. Ebrahimi was interested in the political destiny of the country whose nationality she had obtained and in which she had lived for many years, and thus wanted to have a voice in deciding what sort of government

it would have.

10. As to the significance and legal ramifications of voting in a political election in a foreign state, it shall suffice to point out that the 1952 United States Immigration and Nationality Act[3] regarded this act as constituting grounds for stripping United States citizens of their United States nationality. Although this provision was subsequently revised [4] and the legislature no longer regards this act as grounds for deprivation of United States nationality, the point which merits reflection is the gravity of the act per se, in the eyes of the legislature. Although United States nationals may no longer be penalized by loss of their United States nationality for participating in the elections of a foreign country, the passage of subsequent legislation cannot do away with the odiousness of that act per se. In other words, even if participation in a political referendum of a foreign country does not now entail loss of United States citizenship, the minimal consequence of such an act is, to fundamentally weaken the bond of United States nationality. This is particularly true in the case of Mrs. Ebrahimi, since she participated in the fateful referendum of a country of which she was a national as well. It is my opinion, therefore, that in assessing Mrs. Ebrahimi's nationalities, this single act on the Claimant's part (viz., her participation in the political referendum of revolutionary Iran) means that her dominant and prevailing nationality is that of Iran.

11. Taken altogether, a number of reasons will demonstrate that the Claimant's prevailing and effective nationality is

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3 Sec. 349 (a) (5), Immigration and Nationality Act of 1952, 8 U.S.C. 1481 (a) (5).

4 Sec. 2, Act of Oct. 10, 1978, P.L. 95-432, 92 Stat. 1046.

that of Iran. These reasons, in so far as they are reflected in the evidence, are as follows:

a. Choice of a habitual family residence in Iran, in view of Article 1005 of the Iranian Civil Code; [5]

b. That the head of the family established his interests in Iran and made it the permanent locus of his professional and economic life;

c. The Claimant's voluntary participation in the referendum on Iran's political system;

d. Her failure to take steps to relinquish her Iranian nationality.

The foregoing reasons and other circumstances leave no room or credibility whatsoever for the position that the prevailing nationality of Mr. Ebrahimi is that of the United States.

12. Many of the aforementioned facts and events hold true for the other Claimants (i.e., the Ebrahimi children) as well. It should also be added that according to the identity cards issued to them, both Cecilia Radene and Christina Tandis Ebrahimi were born in Iran. Therefore, in addition to the points set forth in paragraph 11 (parts a, b and d) above, pursuant to Article 1006 of the Iranian Civil Code, [6]

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[5] Pursuant to Article 1005 of the Civil Code, "The domicile of a married woman is the same as that of her husband..."

[6] Pursuant to Article 1006 of the Civil Code, "The domicile of a minor child or a legally incompetent person is the same as that of his natural or legal guardian."

the Ebrahimi children's Iranian nationality predominates and prevails over their United States nationality, in light of the fact that the legal guardian of the Ebrahimi children had his domicile in Iran.

Conclusion

13. Firstly, it is an established principle, from which there can be no derogation, that the Claimants cannot themselves, as Iranian nationals, bring claims against the Iranian government before an international forum; nor can any government bring those claims before such a forum on their behalf.

Secondly, the Iranian nationality of all these Claimants predominates and prevails over their United States nationality; and from this point of view as well, the Tribunal lacks jurisdiction over the claims brought before it.

The Hague,
15 September 1989

Parviz Ansari