

ایالات متحده - 183-48

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Case No. 183Date of filing: 20 JAN 1984

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- Date of Award 17 JAN 1984
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
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** DISSENTING OPINION of _____
- Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دادگاه دعوی ایران - ایالات متحده

183-48

183-1

CASE NO. 183

CHAMBER ONE

AWARD NO. 104-183-1

ALEXANDER LYONS LIANOSOFF
Claimant,
and
THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دادگاه دعوی ایران - ایالات متحده
FILED - ثبت شد	
DATE	۱۳۶۲ / ۱۰ / ۲۰
20 JAN 1984	
183	003

AWARD

DUPLICATE
ORIGINAL

«جذخ. رام. اف»

I. Facts and Contentions

On 18 December 1981, Mr. Alexander Lyons Lianosoff ("the Claimant") filed a claim against the Government of the Islamic Republic of Iran for damages amounting to \$ 15,141,785.75 with interest allegedly arising out of the unlawful cancellation of a licence granted to the Claimant's family to operate fisheries in the Caspian Sea; failure to comply with an arbitral award in favour of the Claimant's family in respect of the cancellation; and the subsequent expropriation of the interest of the Claimant's family in the Caspian Fisheries.

The facts alleged by the Claimant in support of his claim can be briefly stated as follows. In 1876, the Claimant's grandfather, Stepan Lianosoff, a Russian citizen, entered into an agreement with the Government of Iran whereby he became entitled to establish and operate fisheries along the Caspian coast of Iran. On Stepan's death some time prior to 1906 his rights under the agreement passed to his children Martin, Leon and Veronica. Martin subsequently sold his share to the Russian Government. The agreement had been renewed several times and was still in force when it was cancelled in 1918 by the Government of Iran. It was agreed between the Lianosoff family and the Government to submit the subsequent dispute to arbitration. A five-member board was constituted which rendered its decision in 1923. It ruled that the cancellation was unjustified and should be compensated, and recommended that a new fifteen-year agreement should be concluded based on an allocation of 50% of the net profits to the Government. The Government took no steps to comply with the findings of the arbitrators, despite continued requests by the Lianosoff family. Subsequently, in 1953, the Government nationalised the Caspian Fisheries. The Claimant alleges that he is a United States national and that on the death of his father, Leon Lianosoff, in 1977, he inherited his father's share of the claim.

In its Statement of Defence, filed on 1 November 1982, the Respondent asserted, inter alia, that the claim falls outside the jurisdiction of the Tribunal. It contends that the Claimant's father was a citizen of Iran until his death, and that the Claimant himself held Iranian citizenship at least until 1964. The inference is that the claim does not fulfil the requirement of continuous ownership by a national of the United States as provided in Article VII (2) of the Claims Settlement Declaration.

On 28 February 1983, the Claimant filed a Reply and Comments on the jurisdictional questions raised in the Statement of Defence, and, at the request of the Tribunal, filed a further Brief on 13 June 1983, addressing the question of continuous ownership of the claim.

The Claimant states that his father, Leon Lianosoff, was deprived of his Russian nationality by virtue of his expatriate status at the time of the Russian Revolution in 1917. He remained stateless, never assuming Iranian or any other nationality but continuing to live in Iran as a stateless refugee. The Claimant himself held Iranian nationality until his naturalisation as a citizen of the United States on 6 August 1965. He has remained a citizen of the United States to the present time.

The Claimant argues that, insofar as the claim was owned by a national of any country, it was owned by a national of the United States. From the earliest date at which it could be said to have arisen, 1918, until 1977, it was vested in Leon Lianosoff, a stateless person. The Claimant asserts that the claim cannot for this reason be said to be outside the jurisdiction of the Tribunal, as this is not a correct application of the doctrine of continuous ownership, which is subject to a number of "inherent exceptions".

II. Reasons for Award

The basis and scope of the Tribunal's jurisdiction is laid down in precise detail in the Claims Settlement Declaration. Article II (1) provides:

"An international arbitral tribunal (the Iran-United States Claims Tribunal) is hereby established for the purpose of deciding claims of nationals of the United States against Iran and claims of nationals of Iran against the United States..."

Article VII defines the terms used "for the purposes of this Agreement". The relevant definition of a "national" is given in Article VII (1) as:

"(a) a natural person who is a citizen of Iran or the United States..."

The term "claims of nationals" is defined in Article VII (2) as meaning:

"claims owned continuously, from the date on which the claim arose to the date on which this Agreement enters into force, by nationals of that State..."

The question before the Tribunal is thus not, as the Claimant's arguments tend to suggest, one of "the rigid application" of a general underlying doctrine of continuous ownership. It is rather a matter of interpreting the specific provisions of the instrument from which the Tribunal derives its jurisdiction. Were it otherwise, there might be some scope for the arguments advanced by the Claimant as to the inherent limitations of that doctrine. O'Connell, for example, draws a clear distinction between cases where a Tribunal is acting pursuant to an agreement which expressly embodies the requirement of continuous nationality, and cases where there is no such written requirement. Where such a provision exists, he says,

"The tribunal may entertain only such claims as the parties agree to present to it, and if the parties expressly or by implication reserve claims where the injured individual was not at both relevant points of time a national of one party the tribunal is bound by this limitation". (D. P. O'Connell, International Law, 2nd ed. 1970, Vol. Two, p. 1034).

The words of the Claims Settlement Declaration are clear on their face and do not admit of any ambiguity as to the meaning to be given to the continuity of claims of nationals in the circumstances of this case. The Tribunal further points out that it is generally recognized that a provision which establishes the scope of the jurisdiction of an arbitral tribunal should be given a restrictive interpretation.

The elements giving rise to the claim as presently formulated arose respectively in 1918, when the original agreement was cancelled; 1923, when the arbitral award was rendered; and 1953 on the expropriation of the Lianosoff family's remaining interest in the fisheries. At none of those dates was the claim vested in a United States national so as to fulfil the first requirement of continuous ownership. There is no indication of the existence of any factors throughout this period which would have served to attach the claim in any way to a United States national. If the Claimant's father was stateless, as contended, that fact does not operate to put him in a more favourable position than would have obtained had he kept his Russian nationality.

The claim fails to fulfil the requirement of continuous ownership embodied in Article VII (2) of the Claims Settlement Declaration.

The Claimant's alternative argument, asserted in the Brief filed on 13 June 1983, that the claim arose in 1979, when the present Government of the Islamic Republic of Iran

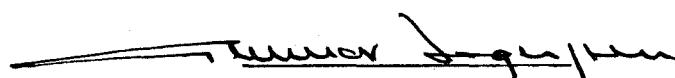
repudiated its predecessor Government's undertaking to pay compensation for the losses suffered by the Lianosoff family, appears untenable. The correspondence, allegedly with one of the late Shah's Ambassadors, cannot be taken to constitute a clear or enforceable commitment to make any particular reparation or pay any specific amount in compensation, or to give rise to an independent cause of action.

For the foregoing reasons,

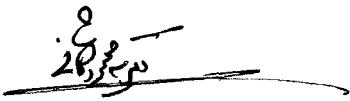
THE TRIBUNAL dismisses the claim of Alexander Lyons Lianosoff for lack of jurisdiction.

Each Party shall bear its own costs of arbitration.

Dated, The Hague
17 January 1984



Gunnar Lagergren
Chairman
Chamber One



Mahmoud M. Kashani
Concurring



Howard M. Holtzmann