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ORIGINAL DOCUMENTS IN SAFE

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Case No. 314Date of filing: 20 June 86

\*\* AWARD - Type of Award Final  
- Date of Award 20 June 86  
9 pages in English 9 pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ
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Date	20 JUN 1986 ۱۳۶۵ / ۳ / ۲۰
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CASE NO. 314

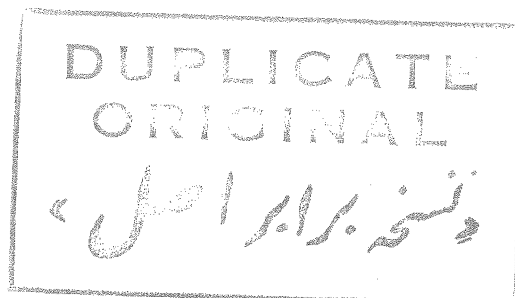
CHAMBER ONE

AWARD NO. 237 -314-1

CONSTANTINE A. GIANOPLUS,  
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN,  
Respondent.



AWARD

## I. The Proceedings

On 15 January 1982, Konstantine A. Gianoplus filed a claim seeking payment of \$11,232,000 as compensation for the alleged expropriation of his proprietary interest in Tana Data Systems ("Tana"), an Iranian company, engaged in the development and installation of computer systems.

Following the Pre-hearing Conference held on 10 October 1983, the Tribunal ordered the Claimant and the Respondent each to file certain documentary evidence within a specified period of time. The Claimant failed to do so within the established period of time, did not respond in any way to the Tribunal's Order, and made no showing of cause for its failure to comply with the Order. Consequently, the Tribunal informed the Parties in its Order filed on 20 March 1984 that it intended to proceed under Article 28, paragraph 3, of the Tribunal Rules and to decide the case on the basis of the pleadings and documents submitted. On 19 April 1984, the Claimant submitted certain of the documentary evidence that had previously been requested by the Tribunal and stated why he had not been able to provide the other evidence. He also requested that the Tribunal order the Respondent to produce certain evidence.

By Order filed on 1 May 1985 the Tribunal requested the Respondent to file copies of any of a number of documents that were in its possession. Filing some of these documents on 12 August 1985, the Respondent informed the Tribunal that it had not been able to find the other documents.

## II. Facts and Contentions

The Claimant, a United States national, owned 40 percent of the shares of Tana, an Iranian private limited company. The Claimant contends that this 40 percent interest was given to him

in 1977, when Tana was founded, as incentive to join that company and as compensation for his services to the company. The remaining shares of Tana were owned by two Iranian nationals, both members of the Nayeri family. Tana's business was the development and installation of computer programs and systems.

The Claimant contends that in March 1979 his proprietary interests in Tana were expropriated by actions for which, in his view, the Government of Iran is responsible. He states that he "was arrested by armed guerillas and summarily ordered to leave Iran." He alleges that he was compelled by the Iranian Ministry of Finance to sign a letter transferring his authorities in Tana as a condition for obtaining exit clearance which, he says, was required at the time to depart Iran. In the Claimant's view, this letter constituted a deprivation of his property rights in Tana because it provided in effect for the appointment of a government official as provisional manager of Tana. Moreover, the fact that it was impossible for him to return to Iran to manage the company and that he received no information concerning the company contributed to the depreciation of his rights.

The Claimant asserts that Tana's assets as of the time of the alleged expropriation consisted of 30 percent ownership of a building in Tehran, tangible assets, and expected commission from certain contracts. The Claimant estimates the value of Tana's share in the building at \$6,000,000. He asserts that at the time of his departure Tana owned tangible assets worth \$70,500.

The major portion of the value of Tana's assets, as alleged by the Claimant, lay in expected commission, or profit, arising out of two contracts which Tana had entered into prior to the Claimant's departure. First, Tana allegedly acted as a commission agent in bringing about the conclusion, in August

1978, of a contract between the Iranian National Railway and Afrowest Atlas Shipping Co., Ltd. for the supply of timber and wood products to the Iranian Railway. The total value of that contract is said to have been \$100,000,000, with Tana to receive a commission of two percent of that value, or \$2,000,000. Second, in September 1978, Tana, through an Iranian subsidiary called Data Domain Systems, allegedly entered into a contract with an organization described as the "Gifted and Bright, an international charitable organization devoted to the education of children." Under that contract, Tana was to have supplied a computer system consisting primarily of educational software, and it was to have received a net profit of approximately \$20,000,000. Thus, the Claimant asserts that the aggregate value of Tana's assets at the time of his alleged expropriation was \$28,070,500.

Originally the Claimant claimed 40 percent of that value as compensation for his allegedly expropriated share. In his last submission he admitted that "it [was] impossible at this time to prove" that part of the claim which relates to the contract with the Gifted and Bright. He requested "that the Tribunal . . . defer hearing this portion of the claim until and unless additional documentation is provided in the future substantiating" of his claim. Should the Tribunal not grant him more time to supply such documentation, he would "withdraw under protest this aspect of [his] claim". Consequently, the monetary relief sought in the Claimant's last submission is 40 percent of \$8,070,500, or \$3,228,200, plus costs.

The Respondent first raises a jurisdictional objection. In its view, the Claimant did not own the claim on 19 January 1981 because he had transferred his shares in Tana in 1979, and therefore the requirement of continuous ownership was not fulfilled.

On the merits, the Respondent denies that it had anything to do with the Claimant's letter of 14 March 1979 or that any effects of that letter can be attributed to the Government of Iran. It asserts that it has no ownership rights in Tana, and neither controls nor supervises it. In particular, the Government denies any involvement of the Ministry of Finance that could have resulted in that letter, and it states that in March 1979 no exit visa was required for a departure from Iran. In the Respondent's view, the letter merely shows a transfer of management authority within Tana's board of directors, but specifically excludes a decision to transfer the Claimant's shares in the company. The Respondent asserts that there is neither a substantiated allegation of expropriation, nor, absent any other evidence, any proof of expropriation in this case.

In addition, the Respondent asserts that the Claimant has not adduced any proof for the alleged assets of Tana. The Respondent has submitted a copy of Tana's income tax declaration for the year ending 28 March 1978 showing losses for that year. Whereas the Respondent stated at the Pre-hearing Conference that the balance sheets for 1979 also showed losses, it asserted in a subsequent submission that the company had been closed since 1978 and no financial statements had since been filed with the Ministry of Finance.

The Respondent requests that the claim be dismissed and seeks reimbursement of its costs.

### III. Reasons for Award

#### 1. Jurisdiction

The Tribunal has jurisdiction over this claim. The Claimant has submitted copies of relevant pages of his passport which show that he is a United States national.

Since the Claimant contends that his property was expropriated in March 1979 and that he has been paid no compensation since, he owned the claim from that time to the date on which the Algiers Declarations entered into force.

## 2. Merits

Apart from the considerable evidentiary problems with regard to the damage claims, the threshold issue in this Case is whether the Claimant has proven, or even asserted to the Tribunal's satisfaction, a substantive basis for his expropriation claim.

The Respondent does not deny that the Claimant owns 40 percent of the shares of Tana, an Iranian company founded in 1977. Tana's registration with the Corporate and Industrial Ownership Registration Office, a copy of which the Respondent submitted in evidence, confirms that ownership.

The only evidence submitted by the Claimant in support of the alleged expropriation is a letter dated 14 March 1979 and signed by the Claimant. The letter, carrying Tana's letterhead and addressed to "Mr. Homayoun Nayeri, Chairman", states that the Claimant, "Managing Director of Tana Data Systems would like to transfer [his] authorities to Mr. Hamid Nayeri". It appears that Homayoun Nayeri is the son of Hamid Hayeri. According to the registration documents, Mr. Homayoun Nayeri was, as well as Tana's Chairman, one of the three founders and original shareholders of the company, along with the Claimant and a Mrs. Jamileh Nayeri. According to the Claimant, Mr. Hamid Nayeri, unmentioned in the registration documents, in fact owned the 60 percent of the shares which those documents indicate Homayoun and Jamileh held. In any event, the letter continues with a nonexclusive list of transferred authorities. The letter then recites that "[t]hese actions have been taken due to special circumstances in Iran which will cause me to leave the country of Iran." Continuing that "[g]enerally, Mr. Nayeri will replace

me in the company until further notice", the document ends by pointing out that "[t]hese authorities will exclude decisions about my shares (stock) of the company".

The Claimant has not demonstrated that upon leaving Iran he surrendered his proprietary interest, as opposed to his management authority, in the company. To the contrary, the letter, on which he relies, unambiguously divorces from the "transfer [of] authorities" any decision on ownership of his stock. Under appropriate circumstances government interference depriving an owner of effective use and control of property may give rise to a claim for expropriation. Here, however, though the Claimant had apparently served as Tana's managing director since its founding, his minority, 40 percent interest in the company did not assure him that position, because the majority shareholders would always have had the power to appoint someone else. Moreover, evidence which the Claimant himself produced indicates that for at least some time after leaving Iran he was not excluded from participation in the affairs of the company. A letter on Tana stationery, dated 20 June 1979, from one A. R. Fattahi to Lucas Copsidis of Afrowest Atlas, recites that the author had discussed Tana's affairs with the Claimant during a then recent trip to New York, a discussion the Claimant acknowledges. Thus, the 14 March 1979 letter itself can not constitute such a change in the control of the company as to deprive the Claimant, as he asserts, of his proprietary interests.

In addition to the text of the letter, the Claimant points out that Mr. Hamid Nayeri, to whom he transferred his authorities, was at that time Deputy Court Minister of Iran, and had subsequently continued to hold a government position. He asserts that Mr. Homayoun Nayeri, his Iranian partner, also had to leave the country after March 1979. He contends, therefore, that when the Ministry of Finance made him write the letter, the Government of Iran knew, or should have known, that it had



deprived him of his share of Tana. The Respondent denies these allegations. It asserts that none of Mr. Hamid Nayeri's actions may be attributed to it, for in his dealings with Tana Mr. Nayeri was acting in a personal capacity unrelated to his governmental office. In the absence of any further details or evidence, the Claimant's allegation in this respect can not suffice to demonstrate government interference in his proprietary interest in Tana.

This result is not changed by the statement in the letter that the actions were taken "due to special circumstances in Iran" which would cause the Claimant to leave the country. The generality of this statement does not allow the Tribunal to infer from it the kind of government interference that the Claimant has alleged in his pleadings. It remains therefore the Claimant's unsupported allegation that he was compelled by the Ministry of Finance to sign the 14 March 1979 letter as a condition of being allowed to leave Iran. The Respondent denies this allegation. Absent any further explanation as to why and under which circumstances such action was forced upon the Claimant, the Tribunal cannot find that the Claimant has demonstrated government interference constituting a deprivation of his property rights in Tana.

In view of these findings the Tribunal does not need to deal with the further evidentiary issues in this case.

The Respondent should be awarded costs of arbitration in the amount of \$2,000.

#### IV. Award

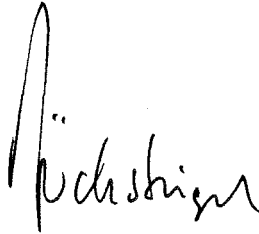
For these reasons,

THE TRIBUNAL DETERMINES AS FOLLOWS:

The claim of KONSTANTINE A. GIANOPLUS is dismissed.

The Claimant is obligated to pay the GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN costs of arbitration in the amount of \$2,000.

Dated, The Hague  
20 June 1986



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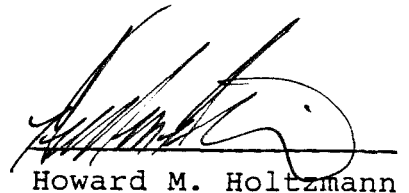
Karl-Heinz Böckstiegel  
Chairman  
Chamber One

In the name of God



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Mohsen Mostafavi

  
Howard M. Holtzmann