

827-102

ORIGINAL DOCUMENTS IN SAFECase No. 827Date of filing: 4 May 1995

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

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

\*\* OTHER; Nature of document: statement of Mr AMELI  
\_\_\_\_\_

- Date 4 May 1995  
3 pages in English 1 pages in Farsi

## IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ

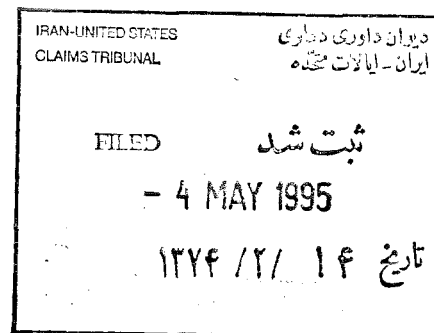
DUPLICATE  
ORIGINAL

نسخہ برابر اصل

In His Exalted Name

CASE NO. 827  
CHAMBER TWO  
AWARD NO. 563-827-2MOHABATULLAH SOBHANI,  
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN,  
Respondent.STATEMENT OF KOOROSH H. AMELI

1. As to the Award rendered in the present Case, I should note that although I would have preferred that the statements in paragraphs 9, 17 and 18 of the Award were merged or followed each other, when read together, they still make it clear that any confiscation of valuables from the Claimant, his arrest at Tehran airport in September 1980 and his imprisonment until 4 February 1981 were due to his smuggling admittedly US\$ 580,000 worth of gold and silver jewelry out of Iran, which with no stretch of imagination could have been considered as covered by the regulatory exemption of "customarily acceptable personal jewelry" at the time. The exempted jewelry is normally limited to a modest wedding gold ring and/or a modest gold watch for men such as the Claimant under the Iranian custom and practice for international airline passengers.

2. Enforcement of such a police law does not and should not distinguish between national and alien perpetrators and thus it is incomprehensible to argue, as the Claimant does, that because

of his resulting imprisonment he should not be considered to have enjoyed the benefits and obligations of an Iranian, and hence the Award does not take that argument into account. Award, para. 27. To the contrary, the Award has rightly included the Claimant's prison term in Iran as part of the relevant period in which he remained in Iran. Award, paras. 32 and 35. It is obvious that impossibility arising from violation of law is not considered an excusable event,<sup>1</sup> especially where the impossibility arises from clearly premeditated violation of law as smuggling of more than half a million dollars jewelry by an airplane passenger, discovered in the course of customs inspection.

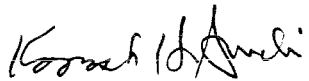
3. Moreover, it might be argued that the statement in paragraph 9 of the Award that "[t]he Claimant was released from prison on 4 February 1981 and thereafter he left the country ... alleg[ing] that he, with his wife and daughter, fled from Iran on or about 20 December 1981 via Afghanistan" would imply that his departure from Iran was motivated by his earlier imprisonment and the alleged actions of Iran that are the subject of his claims in this proceeding. But considering the Parties' arguments and evidence, the Respondent has convincingly demonstrated that the Claimant had drawn a check without fund in Tehran on his account with Iranians' Bank on 20 July 1980 in favor of an individual named, Homayoun Eshragh, in the amount of Rials 3,500,000 and that on the basis of a complaint by the payee together with certification by the bank for non-payment of the check due to non-sufficient fund, the Tehran Public Court had rendered a judgment on 10 June 1981 against Mr. Sobhani, the drawer, for one year imprisonment plus payment of a fine in the amount of Rials 872,000 under the Iranian Act on Drawing of Checks of 7 July

---

<sup>1</sup> See e.g., in a different context, Queens Office Tower Associates and Iran Air, Award No. 37-172-1 (15 April 1983), reprinted in 2 Iran-U.S. C.T.R. 247, 251 (as one of the conditions of excusable supervening event the claimant must show "that 'the event or circumstance which produces frustration is not attributable to the fault of the party alleging frustration.'")

1976.<sup>2</sup> The Tehran Public Magistrate had since 14 February 1981 also banned Mr. Sobhani's departure from Iran pending resolution of the complaint against him for drawing of the check without fund. Thus, it is reasonable to believe that if at all the Claimant fled from Iran, it was because he was a convicted fugitive from enforcement of the judgement, rather than due to his smuggling background.

Dated, 14 Ordibehesht 1374/ 4 May 1995  
The Hague

  
Koorosh H. Ameli

---

<sup>2</sup> This Act has its background in similar acts passed in 1958 and 1965 (1337 and 1344 A.H.) which were superseded respectively. As in a number of civil law countries, Iran has made it a crime to draw checks against insufficient fund.