

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Henry Neugass (United States) v. Austria and Hungary**

6 January 1928

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On behalf of the claimant in case styled and numbered as above <sup>1</sup> an award is sought against Austria based exclusively on a savings bank deposit of 38.57 kronen to the credit of claimant in the Bohemian Savings Bank, located at Prague, which before the war was embraced in the territory of the former Austrian Empire. Prior to the coming into effect of the Treaty of St. Germain on July 16, 1920, the principal Allied and Associated Powers had recognized the existence of Czechoslovakia as an independent State, and it was a party to that Treaty as an Allied Power (see preamble to Treaty of St. Germain).

The deposit upon which this claim is based is in a bank located at Prague in Czechoslovakia, which bank is not with respect to claimant an "enemy debtor" within the meaning of that term as found in the Treaty of Vienna, and the claim here asserted is not an "enemy debt" falling within the terms of that Treaty.

Applying the rules announced in Administrative Decision No. II to the facts as disclosed by the record herein the Commission decrees that under the Treaty of Vienna of August 24, 1921, the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

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ALEXANDER KARL RUDOLPH (UNITED STATES) *v.* AUSTRIA

(June 9, 1927. Page 53.)

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JURISDICTION.—WAR: CONFISCATION OF PRIVATE PROPERTY. *Held* that claim based upon confiscation of property in 1805 during Napoleon's campaign falls outside terms of Treaty of Vienna.

On behalf of the claimant in case styled and numbered as above <sup>2</sup> an award is sought against Austria for \$250,000, the value of property belonging to the claimant's grandfather who fought in the Prussian army allied with the Austrian army and whose property was confiscated in 1805 during Napoleon's campaign.

The Commissioner holds that the claim here asserted does not fall within the terms of the Treaty of Vienna.

Applying the rules announced in Administrative Decision No. II to the facts as disclosed by the record herein the Commission decrees that under the Treaty of Vienna of August 24, 1921, the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

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HENRY NEUGASS (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(January 6, 1928. Pages 54-59.)

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BONDED PUBLIC DEBTS AND STATE SUCCESSION: LIABILITY FOR INTEREST.—  
INTERPRETATION OF TREATIES: RULE OF EFFECTIVENESS.—INTERLOCUTORY

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<sup>1</sup> Original report: United States of America on behalf of Friederike Gottlieb, claimant, *v.* Austria and Bohemian Savings Bank, of Prague, *Impleaded*, docket No. 553.

<sup>2</sup> United States of America on behalf of Alexander Karl Rudolph, claimant, *v.* Austria, docket No. 891.

JUDGMENTS. Purchase in 1884 of six bonds 5 per cent "unsecured unified public debt" of Austrian Empire, issued October 1, 1868. Contribution by Austria and Hungary to service of debt proportionate to 71.348 per cent and 28.652 per cent, respectively (Austro-Hungarian conventions concluded in 1867, ratified and confirmed by statutes). Conversion of 71.348 per cent of debt into part of "Austrian unsecured debt", and of 28.652 per cent of debt into part of "Hungarian unsecured debt" (Treaty of St. Germain (Trianon), article 203 (186), annex). Distribution of "Austrian (Hungarian) unsecured debt" among Succession States by Reparation Commission, so that Austria (Hungary), being one of Succession States, solely responsible for liabilities incurred prior to July 28, 1914, which by their terms became due and payable prior to coming into force of Treaty (article 203 (186), paragraph 2). Issuance of new obligations by Succession States for period after that date. Relevant provisions of Treaty of St. Germain (Trianon) carried into Treaty of Vienna (Budapest). As each provision of Treaty must be given such reasonable construction in connexion with every other provision as to give effect to all of them, *held* that phrase "securities issued or taken over by the former Austro-Hungarian Government" (article 248 (231), Treaty of St. Germain (Trianon)) refers to "unsecured unified public debt" *supra*, and that, therefore, Austria liable for interest due on or prior to July 16, 1920 (date of coming into force of Treaty of St. Germain), and Hungary liable for interest due on or prior to July 2, 1921 (date on which United States declared state of war with Austro-Hungary ended), in respect of pre-war "Austrian (Hungarian) unsecured debt" and that bond-holders must look to new obligations issued by Succession States for interest accruing subsequent to these dates. Interlocutory judgments will be entered.

*Cross-references:* Am. J. Int. Law, vol. 22 (1928), pp. 693-698; Friedensrecht, VIII, Jahr Nr. 1/2 (1929), pp. 12-14.

*Bibliography:* Prossinagg, pp. 25-26; Bonyngé, pp. 35-37.

This claim is asserted by the United States on behalf of Henry Neugass, an American national through naturalization, against Austria and Hungary jointly for 705.60 gulden, the aggregate amount of 48 coupons detached from six bonds and filed herein, six of which coupons became payable by their terms on October 1, 1917, and six on April 1 and October 1 of each year thereafter, ending with April 1, 1921.

The bonds in question were all acquired by the claimant in 1884. They were of the issue of October 1, 1868, and have not matured. While they are in terms obligations of the former Austrian Empire, they recite (in translation) that they form:

"... an integral part of the 5 per cent unified public debt... which said debt arose in accordance with the law of 20th June 1868 from the transforming of the different sorts of the funded general public debt as existing at the end of 1867, and for the payment of the interest of which the lands of the Crown of Hungary contribute, according to agreement, the yearly quota determined in Article XV, 1867".

The coupons upon which this claim is based are payable in silver gulden or florin, which terms are used interchangeably, one of them appearing on some and the other on the rest of the coupons.

The record presents two questions for decision:

1. To what extent, if at all, is Hungary liable for the coupons here presented, and

2. When, did the liability of Austria and/or Hungary for the payment of said coupons terminate and the liability of the Succession or Cessionary States

(including Austria and Hungary), resulting from the dismemberment of the former Austrian Empire and the former Kingdom of Hungary, attach?

From the record it appears that for some 18 years prior to 1867 the State known internationally as the Empire of Austria claimed and exercised jurisdiction over the lands of the Holy Hungarian Crown. In 1867 the former Austrian Empire and the former Kingdom of Hungary as they existed on and prior to July 28, 1914 began to function under separate constitutions, and the Austro-Hungarian Dual Monarchy came into existence as a *de facto* and constitutional union with limited powers. The debt evidenced by the bonds to which the coupons here presented appertained was created prior to 1868.

By formal conventions entered into between the former Austrian Empire and the former Kingdom of Hungary, as independent States, ratified and confirmed by statutes enacted by their respective lawmaking bodies,<sup>1</sup> it was agreed that Hungary should annually contribute to the service of the debts incurred prior to 1868, which debts came to be known as the "unsecured unified public debt", the liability of Austria and of Hungary therefor being 71.348 per cent and 28.652 per cent respectively.

This was the situation with respect to the bonds and coupons in question when the Treaty of St. Germain and the Treaty of Trianon were negotiated and signed. So far as concerns the questions here presented the provisions of these Treaties are substantially identical. Under them the Austro-Hungarian Dual Monarchy was dismembered and substantial parts of the territories of the former Austrian Empire and of the former Kingdom of Hungary were ceded, some to new and some to existing States, all of which, including the existing Republic of Austria and the existing Kingdom of Hungary, will be hereinafter referred to as "Succession States".<sup>2</sup> The financial clauses (part IX) of the Treaties made elaborate provision for the apportionment between the Succession States as they now exist, including Austria and Hungary, of the secured and unsecured pre-war indebtedness of the former Austrian Empire and the former Kingdom of Hungary, fixing sole responsibility on each Succession State for the portion of such indebtedness allocated to it. We are here concerned only with the pre-war unsecured bonded debts of Austria and/or Hungary as they existed on July 28, 1914, which consisted of (a) the bonded debt of the former Austrian Government for which it alone was liable, (b) the bonded debt of the former Hungarian Government for which it alone was liable, and (c) the unsecured unified public debt already referred to created prior to 1868, nominally of the former Austrian Government but for the payment of interest on which Austria and Hungary were liable in the proportions of 71.348 per cent and 28.652 per cent respectively.

A feature of the comprehensive refunding plan worked out by the makers of these Treaties was the segregation of the liability of the former Austrian Government from that of the former Hungarian Government with respect to the unsecured unified public debt and the allocation to each of a sole liability computed on the percentages hereinbefore mentioned.

This was the purpose of the first paragraph of the annex following article

<sup>1</sup> Austrian laws of December 21 and December 24, 1867, of June 20, 1868, and of December 30, 1907, and Hungarian laws Nos. XII of December 27, 1867, VII of June 11, 1868, and XVI of 1903.

<sup>2</sup> As to Austria these States are: Austria, Czechoslovakia, Italy, Poland, Roumania, and the Serb-Croat-Slovene Kingdom (Yugoslavia). As to Hungary these States are: Hungary, Austria, Czechoslovakia, State of Fiume, Poland, Roumania, and the Serb-Croat-Slovene Kingdom.

203 of the Treaty of St. Germain<sup>1</sup> and the corresponding provision of the Treaty of Trianon,<sup>2</sup> the practical effect of which was to convert 71,348 per cent of the unsecured unified bonded debt into a part of the "Austrian unsecured debt" and the remainder, or 28,652 per cent, thereof into "Hungarian unsecured debt". This conversion of the joint liability with respect to the unsecured *unified* bonded debt into several liabilities left but two classes of *unsecured* bonded debts to be dealt with, namely, Austrian debts and Hungarian debts, and removed many of the difficulties of apportioning and fixing liability with respect to these debts and interest thereon, as from the dates of the coming into force of the relevant Treaties, among the two groups of Succession States (including Austria and Hungary), which differed in their composition. Such segregation, allocation, and distribution was in fact made by the Reparation Commission in pursuance of the authority conferred upon it by the terms of the Treaties (see authorized publication of the Reparation Commission numbered VII, entitled "Distribution of the Pre-War Austrian and Hungarian Debt").

The Treaty of St. Germain provides that each Succession State, including Austria, shall be liable for such portion of the unsecured bonded debt of the former Austrian Government as may be fixed by the Reparation Commission calculated on a prescribed basis, such liability to attach from "the date of the coming into force of the present treaty", viz., July 16, 1920. The Treaty further provides that "The Austrian Government shall be solely responsible for all the liabilities of the former Austrian Government incurred prior to July 28, 1914", save where otherwise specifically provided. Under this provision the pre-war liabilities of the former Austrian Government which by their terms became due and payable prior to the coming into force of the Treaty became a liability of the existing Austrian Republic.

But from the coming into force of the Treaty on July 16, 1920, the liabilities of the former Austrian Government as such ceased to exist and in lieu thereof there was substituted a new liability of the Succession States, including Austria.

The Treaty of Trianon, which came into force on July 26, 1921, contains like provisions with respect to Hungary.

All these provisions constitute part of the program for making effective a comprehensive but complicated debt-refunding plan made necessary by the dismemberment of the territories of the debtor nations. They are carried into the Treaties of Vienna and of Budapest entered into between the United States

<sup>1</sup> The first paragraph of the annex following article 203 of the Treaty of St. Germain reads as follows:

"The amount of the former unsecured Austrian Government bonded debt, the responsibility for which is to be distributed under the provisions of article 203, shall be the amount of that debt as it stood on July 28, 1914 after deducting that portion which represents the liability of the former Hungarian Government for that debt as provided by the additional Convention relating to the contribution of the countries of the Sacred Hungarian Crown to the charges of the general debt of Austria-Hungary approved by the Austro-Hungarian Law of December 30, 1907, B.L.I. No. 278."

<sup>2</sup> The corresponding provision of the annex following article 186 of the Treaty of Trianon reads as follows:

"In addition to the former unsecured Hungarian Government bonded debt to be divided as above, there shall also be divided among the several States, in the same proportion, the amount of the former unsecured Austrian Government bonded debt which represents the liability of the former Hungarian Government for that debt, as provided by the additional Convention relating to the contribution of the countries of the Sacred Hungarian Crown to the charges of the general debt of the Austro-Hungarian State approved by the Austro-Hungarian Law of December 30, 1907, B.L.I., No. 278."

on the one part and Austria and Hungary respectively on the other. The United States on behalf of its nationals is taking the benefit of this plan. Its nationals are bound thereby. The American Department of State has, in accordance with the provision of the annex following article 203 of the Treaty of St. Germain [article 186 of the Treaty of Trianon],<sup>1</sup> delivered to the Reparation Commission lists of bonds of Austria and of Hungary reported by American nationals, who upon their surrendering the old obligations of Austria or Hungary are entitled to receive, through the Caisse Commune established under the sanction of the Reparation Commission, new obligations of the Succession States. Where the obligations surrendered are a part of the "Austrian unsecured debt" the new obligations are under the Treaty to provide for interest from July 16, 1920, and where the surrendered obligations are a part of the "Hungarian unsecured debt" the new obligations are to provide for interest from July 26, 1921.

In Article 248 [231] of section III of part X of the Treaty of St. Germain [Trianon], dealing with and defining "debts" falling within that section,<sup>2</sup> it is provided:

"In the case of interest or capital sums payable in respect of securities issued or taken over by the former Austro-Hungarian Government the amount to be credited and paid by Austria [Hungary] will be the interest or capital in respect only of the debt for which Austria [Hungary] is liable in accordance with part IX (financial clauses) of the present Treaty, and the principles laid down by the Reparation Commission."

There were no "securities issued or taken over by the former Austro-Hungarian Government" as such, and the only securities answering the substance but not the letter of this description is the unsecured unified public debt hereinbefore dealt with. As each provision of the Treaty must be given such reasonable construction in connection with every other provision as to give effect to all of them, the Commissioner holds that the phrase "securities issued or taken over by the former Austro-Hungarian Government" found in these paragraphs refers to the unsecured unified public debt the liability for which, for all of the purposes of the Treaties, had been apportioned 71.348 per cent of the total and no more to Austria to be treated as a part of "the Austrian unsecured debt" and 28.652 per cent of the total and no more to Hungary to be treated as part of "the Hungarian unsecured debt".

The Commissioner holds that the existing Republic of Austria is liable (other Treaty requisites of liability being present) for all interest which became due on or prior to July 16, 1920, in respect of the pre-war "Austrian unsecured debt". Bondholders must look to the new obligations issued by the Succession States for interest accruing subsequent to that date.

Likewise the Commissioner holds that the existing Kingdom of Hungary is liable (other Treaty requisites of liability being present) for all interest which

<sup>1</sup> The provision referred to reads as follows:

"Holders of unsecured bonds of the old Austrian Government Debt [Hungarian Government debt] held outside the boundaries of the States to which territory of the former Austro-Hungarian Monarchy is transferred, or of States arising from [out of] the dismemberment of that Monarchy, including Austria [Hungary], shall deliver through the agency of their respective Governments to the Reparation Commission the bonds which they hold, and in exchange therefor the Reparation Commission shall deliver to them certificates entitling them to their due proportionate share of each of the new issues of bonds corresponding to and issued in exchange for their surrendered bonds under the provisions of this annex."

<sup>2</sup> See also "Definition of debts", Administrative Decisions No. II, pp. 22-25 inclusive (note of the Secretariat: this volume, pp. 219 *et seq.* *supra*).

became due on or prior to July 2, 1921 (the date on which the United States declared the state of war with Austro-Hungary ended), in respect of the pre-war "Hungarian unsecured debt". Bond-holders must look to the new obligations issued by the Succession States for interest accruing subsequent to that date.<sup>1</sup>

It follows that the United States on behalf of the claimant herein is entitled to an award against Austria for 377.57 silver gulden, being 71.348 per cent of the aggregate amount of the coupons presented herein which by their terms became due on or prior to July 16, 1920, and also an award against Hungary for 202.17 silver gulden, being 28.652 per cent of the coupon, presented herein which by their terms became due on or prior to July 2, 1921.

Interlocutory judgments herein will be entered in accordance with the rules of procedure announced in Administrative Decision No. 11 at page 35.<sup>2</sup>

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ESTATE OF ALEXANDER ORTLIEB (UNITED STATES) *v.* AUSTRIA  
AND EDWARD COUMONT, EXECUTOR OF ESTATE OF LOUIS  
ORTLIEB

(January 6, 1928. Page 60.)

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**JURISDICTION.—DEBTS.** *Held* that claim for unpaid annuities over period 1917-1920 falls outside terms of Treaty of Vienna: no debt which fell due during period of belligerency arising out of pre-war transaction or contract.

*Bibliography:* Prossinagg, p. 31.

This case having come before the Commission for decision upon the statement of facts submitted by the American Agent, and due consideration having been had, the Commissioner finds that the claim does not fall within the terms of the Treaty of Vienna of August 24, 1921, it appearing that it is based exclusively on a demand for payment of four annuities of \$2,000.00 each payable in the United States on December 25 of the years 1917, 1918, 1919, and 1920, under the will of decedent claimant's brother, an Austrian national, which annuities remain unpaid except for three sums aggregating \$1,650,000 received in 1923 and 1924, the last annuity fully paid being that for the year 1916, and it further appearing that there is no debt herein asserted which fell due during the period of belligerency arising out of a pre-war transaction or contract within the meaning of the Treaty of Vienna and Administrative Decision No. II; therefore it is by the Commission.

*Decreed,* That under the Treaty of Vienna of August 24, 1921, and in accordance with its terms the Government of Austria is not obligated to pay to the Government of the United States any amount on behalf of the claimant, Estate of Alexander Ortlieb, deceased, and the case numbered and styled as above<sup>3</sup> is hereby dismissed.

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<sup>1</sup> The conclusion here reached is in harmony with the decisions of the Anglo-Hungarian Mixed Arbitral Tribunal (see *British Clearing Office v. Hungarian Clearing Office*, J. H. Gosschalk *v.* Hungarian Government, V. Dec. M. A. T. pp. 53-58).

<sup>2</sup> This volume, p. 227 *supra*.

<sup>3</sup> Original report: United States of America on behalf of Estate of Alexander Ortlieb, deceased, claimant, *v.* Austria and Edward Coumont, Executor of Estate of Louis Ortlieb, deceased, *Impleaded*, docket No. 811.