

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Benjamin Albert Kapp (United States) v. Hungary**

25 May 1928

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of Vienna to pay in other currency at a fixed rate of exchange at the election of the bearer. That obligation was not to pay crowns translated into the currency of a designated place of payment at the current rate of exchange, but was to pay in the currency of the designated place at a rate of exchange expressly fixed by the terms of the bond.

The maker of the bond agreed at the election of the bearer to pay at New York at the fixed rate of exchange of one hundred crowns equal twenty dollars United States gold coin. This provision is equally binding with all other provisions of the bond. To hold that the bearer for his convenience could demand payment in New York, but that the amount which he could demand must be stated in crowns translated into dollars at the current rate of exchange at the time of payment, would be to hold the quoted provisions meaningless.

While not applicable here<sup>1</sup> it is interesting to note that the Treaty of St. Germain, incorporated in the Treaty of Vienna, in dealing with debts (section III of part X) and providing for the conversion of Austrian currency into the currency of an Allied or Associated Power "at the pre-war rate of exchange", recognized the existence of Austrian debts arising out of contracts providing for a fixed rate of exchange and carefully safeguarded and preserved such contract rights (article 248 (d)).

As, under the Tripartite Agreement in pursuance of which this Commission was created, the Commissioner is empowered to determine the amount of such debts as are declared upon in this case, the claimant is not required as a condition to the assertion of this dollar claim to go through the idle ceremony of making demand for payment in New York even if the City of Vienna had an agency in New York upon which such demand could be made.

This opinion, in so far as applicable, will control the preparation, presentation, and decision of all claims falling within its scope. It will not control claims where the obligation, simply for the convenience of the bearer, is to pay at designated places outside of Austria or Hungary in kronen translated into the currency of the place of payment at the current rate of exchange at that time. Whenever the American, Austrian, or Hungarian Agent is of the opinion that the peculiar facts of any case take it out of the rules here announced, such facts with the differentiation believed to exist will be called to the attention of the Commissioner in the presentation of that case.

For the reasons stated an interlocutory judgment class B (1) will be entered in accordance with the rules of procedure announced in this Commission's Administrative Decision No. II (pages 34 and 35)<sup>2</sup> which shall among other things recite that the City of Vienna is indebted to Charles R. Crane in the principal amount of thirty-eight dollars forty cents (\$38.40) to which indebtedness no contract rate of interest applies.

#### BENJAMIN ALBERT KAPP (UNITED STATES) *v.* HUNGARY

(May 25, 1928. Pages 69-71.)

NATIONALITY OF CLAIM.—EVIDENCE: INTERROGATORIES, CLAIMANT AS WITNESS, UNSUPPORTED BUT UNREBUTTED TESTIMONY, PRIMA FACIE EVIDENCE. Ameri-

<sup>1</sup> This Commission's Administrative Decision No. II, pages 29 to 32, inclusive (note of the Secretariat: this volume, pp. 223-226 *supra*); Settlement of War Claims Act of 1928, enacted by the Congress of the United States, section 7 (d) (2); Act of the Commissioner of the Tripartite Claims Commission dated April 9, 1928, taken in pursuance of the Settlement of War Claims Act of 1928.

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

can objection against interrogatories propounded by Hungarian Agent to claimant for answer under oath concerning nationality. *Held* that, since record suggests possibility of relinquishment by claimant of American citizenship, and since interrogatories designed to elicit information in order to establish whether debts upon which claim based were impressed with American nationality throughout period of American belligerency, interrogatories are material and relevant. *Held* also that claimant is competent witness and that his unsupported but un rebutted testimony on material fact *prima facie* establishes that fact. American objection overruled.

A preliminary question is presented in this case to the Commissioner on motion of the American Agent objecting to interrogatories Nos. 4, 5, 6, and 7 propounded by the Hungarian Agent to the claimant for answer under oath.

The record as it now stands indicates that the claimant, born a German citizen, became an American citizen by naturalization on June 1, 1883.

The claim as originally filed was signed and sworn to by claimant on December 10, 1925, before the Vice-Consul of the United States of America at Frankfurt a. M., Germany. In this document claimant gives his address as Frankfurt a. M., Germany, Schumannstrasse 55. There is in the record another document signed by claimant October 6, 1927, and likewise sworn to before the American Vice-Consul at Frankfurt.

This is the extent of the record disclosure with respect to the citizenship of the claimant on and prior to December 7, 1917, and since that time. The memorial presented by the United States on behalf of the claimant recites that the claimant "became a naturalized citizen of the United States on June 1, 1883" but does not allege that the claimant has since remained, or remained until the coming into effect of the Treaty of Budapest, an American citizen.

The record as it stands suggests the possibility of claimant's having returned to the land of his birth and taken up his residence there under circumstances which would operate as a relinquishment of his American citizenship. Not only the Hungarian Agent but the Commissioner is entitled to a full disclosure of the facts with respect to claimant's residence in Germany as affecting his citizenship and as affecting the impressment of this claim with American nationality.

The interrogatories propounded by the Hungarian Agent to the claimant to which the American Agent objects are designed to elicit information concerning the citizenship of the claimant in order to establish whether or not the debts respecting the bonds upon which this claim is based were impressed with American nationality throughout the period of American belligerency. They are therefore directed to the very root of the right of the United States to maintain this claim and are material and relevant. Whether or not they go far enough to require a full disclosure by the claimant with respect to steps if any taken by him to preserve his American citizenship while residing in the land of his birth, is a question which the American Agent may well wish to consider.

The Commissioner has heretofore held <sup>1</sup> that a claimant is a competent

<sup>1</sup> *Note by the (Commissioner's) Secretary.*—The holding referred to is set forth in the minutes of the Commission as follows:

January 6, 1928, page 89: "The American and Austrian Agents gave oral notice of submission, in the case of United States of America on behalf of Edward Cucuel, claimant, *v. Austria*, docket No. 1103-A, of the question whether or not the claimant had established a *prima facie* case by his affidavit as to the time of his acquisition of the bonds which are the subject-matter of the claim."

January 28, 1928, page 97: "The Commissioner announced his oral opinion as to the admissibility and weight to be given to the affidavit of the claimant as to when

witness before this Commission and that his unsupported but un rebutted testimony on a material fact *prima facie* establishes that fact. But where the Agent of either respondent Government is not satisfied with the claimant's testimony in any particular case or wishes to test the source or accuracy of the information upon which such testimony is based, or the credibility of the witness, or require a disclosure of other material facts within the claimant's knowledge, such Agent under such circumstances will be accorded the privilege of propounding interrogatories to the claimant to be forwarded by the American Agent to and answered under oath by the claimant and thereupon returned to this Commission and filed as evidence in the case in question.

The Commissioner confidently expects the Agent of Austria and the Agent of Hungary to exercise this privilege in good faith and in no case to propound interrogatories that are immaterial or irrelevant or for delay only.

The objection of the American Agent to the interrogatories propounded by the Hungarian Agent is overruled.

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### ALEXANDER TELLECH (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 71-73.)

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**JURISDICTION: DUAL NATIONALITY, DETERMINATION OF NATIONALITY BY MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF CIVIL, MILITARY AUTHORITIES: ARREST, INTERNMENT, IMPRESSMENT INTO MILITARY SERVICE.** Arrest in August, 1914, of claimant, a national of Austria and United States, residing in Austria, as an agitator, followed by his internment and his being impressed into service in Austro-Hungarian army. *Held* that claim for compensation for lost time, suffering and privation falls outside terms of Treaty of Vienna (Budapest): citizenship is determined by municipal law, and since under Austrian law, to which claimant voluntarily subjected himself, he was Austrian citizen, Austrian and Austro-Hungarian authorities were within their rights.

*Cross-reference:* Friedensrecht, VII. Jahr Nr. 6 (1928), pp. 49-50.

*Bibliography:* Prossinagg, p. 22; Bonyngge, p. 28.

This claim is put forward by the United States on behalf of Alexander Tellech for compensation for time lost and for alleged suffering and privation to which he was subjected, first through internment in Austria, and then through enforced military service in the Austro-Hungarian army. The claimant was born in the United States of Austrian parents on May 14, 1895. Under the Constitution and laws of the United States he was by birth an American national. Under

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he acquired the bonds which are the subject-matter of the claim in Docket No. 1103-A, United States of America on behalf of Edward Cucuel, claimant, *v.* Austria. The Commissioner held that the claimant's affidavit is admissible and makes a *prima facie* case and in the absence of rebutting evidence will sustain an interlocutory judgment and that this rule will be applied generally in all such cases but that each respondent Agent shall be permitted to propound to the claimant (to be transmitted by the American Agent) interrogatories for the purpose of searching the conscience and testing the credibility of the claimant as a witness in his own behalf and ascertaining the facts, in any case in which such Agent entertains doubt as to the truth of the testimony in the record."