

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

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Alexander Tellech (United States) v. Austria and Hungary

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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.

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

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

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; Bonyngé, 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

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."

the laws of Austria he also possessed Austrian nationality by parentage. This created a conflict in citizenship, frequently described as "dual nationality". When the claimant was five years of age he accompanied his parents to Austria, where he continued to reside.

In August, 1914, the claimant, while residing in Austria a short distance from the Russian border, was subjected to preventive arrest as an agitator engaged in propaganda in favor of Russia. After investigation he was interned and confined in internment camps for 16 months. He then took the oath of allegiance to the Emperor of Austria and King of Hungary and was impressed into service in the Austro-Hungarian army. A decision of the sharply controverted claim that this oath was taken under duress and that he protested that he was an American citizen is not necessary to a disposition of this case. It appears that in 1915 and later representatives of the Government of the United States in Austria interested themselves in securing his release, but the application was denied.

In July, 1916, the claimant deserted from the Austro-Hungarian army and escaped into Russia, where he was arrested and held by the Russian army authorities as a prisoner of war until the outbreak of the Kerensky revolution, when he was released and thereupon returned to Prague, where he still lives and where he is practicing medicine.

The action taken by the Austrian civil authorities in the exercise of their police powers and by the Austro-Hungarian military authorities, of which complaint is made, was taken in Austria, where claimant was voluntarily residing, against claimant as an Austrian citizen. Citizenship is determined by rules prescribed by municipal law. Under the law of Austria, to which claimant had voluntarily subjected himself, he was an Austrian citizen. The Austrian and the Austro-Hungarian authorities were well within their rights in dealing with him as such. Possessing as he did dual nationality, he voluntarily took the risk incident to residing in Austrian territory and subjecting himself to the duties and obligations of an Austrian citizen arising under the municipal laws of Austria.

Assuming that the claimant suffered the loss and injury alleged and had not lost his American citizenship by taking the Austrian Army oath, the Commissioner finds no provision of the Treaty of Vienna or of Budapest obligating Austria and/or Hungary to make compensation therefor.

Wherefore the Commission decrees that under the Treaty of Vienna and the Treaty of Budapest the Government of Austria and the Government of Hungary are not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

MAX FOX (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 73-74.)

JURISDICTION: DUAL NATIONALITY, DETERMINATION OF NATIONALITY BY MUNICIPAL LAW.—RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—ENROLMENT IN ARMY, IMPRESSMENT INTO MILITARY SERVICE, DURESS. Enrolment in 1914 of claimant, a national of Hungary and United States, residing in Hungary, in Austro-Hungarian army, followed in May, 1915, by his being compelled to render military service. Oath of allegiance to Emperor (King) of Austria (Hungary), taken under duress. *Held* that claim for compensation