

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Administrative Decision No. IV**

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## ADMINISTRATIVE DECISION No. IV

(October 2, 1924, pp. 141-144.)

PROCEDURE: APPROVAL BY COMMISSION OF AGREEMENT BETWEEN AGENTS.—

ESTATE CLAIMS: EXCEPTIONAL WAR MEASURES.—DAMAGE: RULES FOR DETERMINATION. Claims for damage resulting from prevention by German exceptional war measures of transmission of money or securities to American heirs in German estates. Agreement between American and German Agents that under Treaty of Versailles, Article 297 (e) and (h), carried into Treaty of Berlin, Germany liable for damage, and that, in order to determine damage, value of money and securities as of date of repeal of exceptional war measures shall be deducted from value when measures applied (evidence submitted of rate of exchange for German mark between August 9, 1917, and January 11, 1920). Agreement approved by Commission.

*Cross-references:* A.J.I.L., Vol. 19 (1925), pp. 609-612; Kiesselbach, *Probleme*, pp. 280-282 (German text); Witenberg, Vol. I, pp. 140-143 (French text).

*Bibliography:* Borchard, p. 138; Kiesselbach, *Probleme*, p. 13; Prossinagg, p. 14.

ANDERSON, *American Commissioner*, delivered the opinion of the Commission, the Umpire and the German Commissioner concurring—

The Agents of the two Governments have agreed upon and submitted for the approval of the Commission a basis for adjusting claims filed on behalf of American nationals for damages resulting from the prevention by exceptional war measures in Germany of the transmission of their share of decedents' estates in Germany to which they became entitled prior to or during the war. This proposed basis is embodied in a Memorandum signed by the two Agents and filed September 16, 1924.

This Memorandum states that "A large number of claims have been filed with the American Agent by heirs to German estates, in most of which the facts and records upon which their validity depended were only to be found in Germany, and all of the claims of this character in which any proof whatever had been filed by American claimants were sent to Germany last spring for the purpose of perfecting the proofs and agreeing upon the facts in each particular claim", and that "in order to progress this work it was necessary for the American and German Agents to consider the nature and extent of the liability of Germany upon claims of this character".

It appears from the Memorandum that the two Agents are both of the opinion that Section 296 of the Treaty of Versailles does not deal with the estate claims as such, but that Section 297 (e) and under some circumstances Section 297 (h) apply to such claims. They accordingly agree that when "an obligation arose from an heir, administrator, or executor to transmit money or securities to an American national and he was prevented from so doing by an exceptional war measure, liability on the part of Germany for the resulting damages would seem to be established".

It further appears from this Memorandum that the Decree adopted by the German Government on August 9, 1917, provides in Article 1 "The enactments of the Decree prohibiting payments to England of September 30, 1914, are applicable against the United States of America" and that consequently thereafter the payment of cash to American nationals by an executor, administrator, or heirs was prohibited. Evidence is presented with the Memorandum showing that the rate of exchange for the German mark on August 9, 1917, was 14.2 cents to the mark.

It further appears from the Memorandum that the Decree adopted by the German Government on November 10, 1917, recites that—

“The enactments of the paragraphs 5 to 11 and 13 of the Decree relating to the report of property in Germany of nationals of enemy states of October 7, 1915, are applicable to the property of American nationals,”

and that paragraph 10 of the Decree of October 7, 1915, which is the material paragraph in this connection, reads as follows:

“It shall until further notice be unlawful to remove abroad, either directly or indirectly, property belonging to nationals of enemy states, in particular securities and money without the authority of the Imperial Chancellor.”

It further appears that “By this Decree an executor, administrator or heir was prevented from sending to American heirs securities which had come into his possession and to which they were entitled upon the distribution of an estate” and that “the American heirs \* \* \* were, therefore, entitled at such time to the value of such securities which they were thus prevented from receiving by the Statute enacted by the German Government”.

It is also shown by this Memorandum that “These two Decrees, the first on August 9, 1917, as to cash, and the second on November 10, 1917, as to securities, were repealed on January 11, 1920.” Evidence is submitted with the Memorandum showing that the rate of exchange as of January 11, 1920, was approximately 2 cents to the mark and this rate has been accepted by the two Agents as being applicable for purposes of computation in these cases.

The Memorandum points out that “The repeal of these two Statutes ended any statutory interference by the German Government with the sending of money and securities by executors, administrators and heirs to American nationals entitled to them”, and the Agents have therefore agreed that it was proper to deduct from the value of securities and money, ascertained as of the date of the application of these statutes, their value when these statutes were repealed, in order to determine the loss caused by the application of these exceptional war measures.

The Agents call attention to paragraph 1 of the German law of August 31, 1919, relating to the execution of the Treaty of Versailles, which paragraph reads:

“With regard to debts to enemies, the payment and the acceptance of payments, and also all communications between the interested parties with regard to the settlement of such debts, is prohibited otherwise than through the Clearing House.”

The Agents point out, however, that this law was enacted by Germany in view of the clearing-house system, as provided in Article 296 of the Treaty of Versailles, which provision reads as follows:

“Each of the High Contracting Parties shall prohibit, as from the coming into force of the present Treaty, both the payment and the acceptance of payment of such debts, and also all communications between the interested parties with regard to the settlement of the said debts otherwise than through the Clearing Offices.”

The two Agents, therefore, consider and agree that “these provisions refer exclusively to debts and have no reference to the claims of American citizens for payments from estates” inasmuch as “the obligation of a German executor, administrator, heir or legatee to an American heir was not a debt obligation within the provisions of the Treaty.”

After full examination and consideration of the questions presented and the provisions applicable thereto of the Treaty of Berlin, the Commission hereby decides that the above-stated basis for ascertaining Germany's financial

obligations with respect to the estate claims referred to in that Memorandum and the method of computing the amount of such obligations conform to and are sustained by the provisions of the Treaty of Berlin. The Commission accordingly adopts and will apply in such claims the above-stated basis of liability and method for determining the amounts to be awarded.

Done at Washington October 2, 1924.

Edwin B. PARKER  
*Umpire*

Chandler P. ANDERSON  
*American Commissioner*

W. KIESSELBACH  
*German Commissioner*

### ADMINISTRATIVE DECISION No. V

(October 31, 1924, pp. 175-194; *Certificate of Disagreement by the Two National Commissioners, October 21, 1924, pp. 145-175.*)

NATIONALITY OF CLAIMS: AT ORIGIN, CONTINUOUS NATIONALITY, INFLUENCE OF CHANGE ON RIGHTS.—ESPousAL, JURISDICTION AND NATIONALITY OF CLAIMS: PRACTICE AND LAW.—NATURALIZATION: EFFECT ON STATE OBLIGATIONS.—INTERPRETATION OF TREATIES: (1) VALUE OF CUSTOM, PRACTICE, (2) FUNDAMENTAL RULE.—LAW AND JUSTICE.—WAR: RESPONSIBILITY UNDER GENERAL INTERNATIONAL LAW, TREATY OF BERLIN.—LAW OF TREATIES: EXCHANGED RATIFICATION INSTRUMENTS PART OF TREATY. *Held* (1) that there is no established rule of international law that State is entitled to assert, and international arbitral tribunal to exercise jurisdiction over, claim of private nature only if claim is impressed with State's nationality from origin to presentation or even final adjudication: (a) *nationality at origin*: there certainly is general *practice* not to espouse private claims unless in point of origin they possess nationality of claimant State (reasons of practice: State injured through injury to national, it alone may demand reparation; naturalization transfers allegiance, not existing State obligations; possibility of abuse), but it is doubtful whether practice universally recognized as rule of *law*; practice, moreover, suffers exceptions from agreements defining jurisdiction of international arbitral tribunals, and for the interpretation of which, unless their meaning is obscure, custom and practice are irrelevant; (b) *continuous nationality*: implied injustice (deprivation of private claimant of remedy, and practically of right itself, through change of nationality) raises doubts as to character as rule of *law*; rule rejected by some tribunals, recognized by others, but as mere rule of *practice*, jurisdiction, agreed upon between parties; and (2) that under Agreement of August 10, 1922, all claims based on rights fixed by Treaty of Berlin, and from origin to November 11, 1921 (coming into force of Treaty of Berlin), impressed with American nationality, are within Commission's jurisdiction: (a) definite and clear language of Agreement makes custom and practice irrelevant: fundamental rule governing interpretation of treaties and international conventions that "it is not permissible to interpret what has no need of interpretation"; (b) Commission not concerned with question of conformity to general international law of German acts causing damage, but only with Treaty of Berlin, which merges obligations already existing under international law with obligations imposed by victor and existing since November 11, 1921;