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U.S. District Court

## INTERNATIONAL LAW

### NATIONALIZATION

**Summary judgment granted against Iran for insurance companies where Iranian firm was nationalized with no basis of compensation.**

AMERICAN INTERNATIONAL GROUP, INC., ET AL. v. ISLAMIC REPUBLIC OF IRAN, ET AL., Dist.Ct., D.C., C.A. No. 79-3298, July 10, 1980. *Opinion* per Hart, J. *Joseph A. Artabane* for plaintiffs. *Thomas G. Shack, Jr.* and *John D. Adock* for defendants.

HART, J.: This cause has come on for hearing before this Court upon plaintiffs' Motion for Partial Summary Judgment on the issue of liability. Plaintiffs comprise three groups of insurance companies, who, collectively, represented all of the American insurance operations in Iran during 1979. American International Group, Inc. (hereinafter, "AIG") owned 35% of the equity of Iran America International Insurance Company; INA Corporation (hereinafter, "INA") owned 20% of the equity interest in Bimeh Shargh, an Iranian corporation engaged in the insurance business; Continental Corporation (hereinafter, "Continental") owned 10% of the equity interest in Hafez Insurance Company, Ltd., an Iranian corporation which, prior to mid-1979, was engaged in the business of issuing and selling general property and casualty insurance in Iran. Defendant Islamic Republic of Iran ("Iran") is a sovereign state and is a party to the bilateral Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, which entered into force June 16, 1957 (hereinafter, "the Treaty"). 8 U.S.T. 899, T.I.A.S. 3853, 284 U.N.T.S. 93. Defendant Central Insurance of Iran (Bimeh Markazi Iran) (hereinafter, "CII") is a governmental agency or instrumentality of Iran within the definition of 28 U.S.C. §6103(b), which was created in 1971 for the purposes of (a) carrying on the commercial enterprise and business of issuing reinsurance, underwriting large and specialized risks and the like, and (b) overseeing and superintending the insurance industry in Iran. CII engages in commercial and business activities within Iran and within the United States, and its commercial activitive have direct effects in the United States.

Article XI, paragraph 4 of the Treaty of Amity expressly provides:

> No enterprise of either High Contracting Party, including corporations, associations, and governmental agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

Article IV, paragraph 2 of the Treaty provides:

> Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

On June 25, 1979 the insurance industry in Iran was nationalized. The nationalization was effected by "The Law of Nationalization of Insurance Companies" which provides in part:

> Paragraph 1. To protect the rights of insurers, to expand the insurance industry over the entire State, and to instruct it in the service of people, from the date of ratification of this law, all insurance companies of the State are proclaimed nationalized with acceptance of the conditioned legitimate principle of possession.

Nationalization came without warning. Immediately prior to the time of nationalization CII officials assured officials of the Iranian insurance companies as well as officers of plaintiffs that no nationalization was intended. Immediately following nationalization defendant CII assumed control of plaintiffs' business and assets in Iran. The nationalization has had the effect of terminating all reinsurance and other business relations between the plaintiffs and defendants and the Iranian insurance companies in which plaintiffs had invested. Subsequent to the nationalization, relations between Iran and the United States have deteriorated to the point that the President determined on November 14, 1979 that a threat to the national security, foreign policy, and economy of the United States required a "freeze" on property located in the United States belonging to Iran. 44 Fed.Reg. 65956-65959 (Nov. 15, 1979). Simultaneously, Iran repudiated its debt obligations to the United States banks. Iran has consistently and notoriously failed to honor its duties, responsibilities, and obligations. The plaintiffs have not received compensation for their losses due to the nationalization, nor does the law of Iran, including "The Law of Nationalization of Insurance Companies," provide a mechanism for determining and paying compensation.

This Court has considered the legal memoranda and arguments of counsel and the affidavits and statements of material facts submitted therewith. It appears to this Court that no genuine issue exists as to any material fact. It also appears to this Court as follows:

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D.C. Superior Court

## CRIMINAL LAW & PROCEDURE

### PROBABLE CAUSE

**Police did not have probable cause to arrest defendant who was fumbling with cartons of cigarettes in public space where no theft had been reported.**

UNITED STATES v. HAIRSTON, Sup. Ct., D.C., Crim. No. M-7400-80, February 11, 1981. *Opinion* per Wolf, J. *Enid Hinkes* for defendant. *M. Wesley Clark* for U.S.

WOLF, J.: The Court has before it defendant's motion to suppress physical evidence and the government's opposition thereto. The Court heard testimony and oral argument on January 12, 1981 and took the motion under advisement. For the reasons given below, the motion is granted.

The testimony at the suppression hearing revealed the following facts: On July 17, 1980 Officer Edward J. Turner was on scooter patrol in uniform near 12th Street and New York Avenue, N.W. He was proceeding toward 5th and K Streets, N.W. looking for a suspect in a bank robbery of a few days earlier when, on 5th Street and slightly north of Massachusetts Avenue, N.W., he saw defendant bending over a shipping carton of cigarettes, staggering and fumbling with an open individual carton of Salem cigarettes. The officer parked his scooter and asked defendant if the cigarettes were his. Defendant walked away, but returned after the officer told him to do so. Again the officer asked defendant how he had obtained the cigarettes, and again defendant failed to provide an explanation. The officer testified that defendant, apparently inebriated, threatened to fight. The officer told defendant he would take the cigarettes and put them on the police property book. After children in the area helped him put the thirty cartons into the shipping carton, the officer stored the box in a nearby cafe. A little later, the officer found Mr. George Mitchell, proprietor of a neighborhood store, who, upon hearing the description of the seized cigarettes, realized they were missing from the steps of his premises where they had been placed a few minutes earlier. The officer retrieved the shipping carton, showed them to Mr. Mitchell who positively identified them as his. The officer returned to defendant and arrested him. Defendant is charged with petit larceny or, alternatively, receiving stolen property.

Defendant contends that the seizure of the

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## CAUSE

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shipping carton violated his Fourth Amendment rights because the officer had neither a warrant nor probable cause. The government argues that defendant lacks standing to contest the seizure, in that he either lacked proprietary interest in the goods or he abandoned them. Alternatively, the government maintains that defendant's inability to explain how he had acquired the cigarettes, plus his erratic behavior, gave the officer probable cause to seize the goods.

In oral argument the government, citing *Rakas* v. *Illinois*, 439 U.S. 128 (1978), challenged defendant's standing to contest the seizure. In *Rakas* petitioners moved to suppress as evidence a sawed-off rifle and rifle shells which police had seized during the search of an automobile in which petitioners were passengers. Petitioners did not assert a property or possessory interest in either the automobile or the rifle and shells. Nor did petitioners establish a "legitimate expectation of privacy" in the area searched. Accordingly, the Supreme Court ruled that the search did not involve petitioners' Fourth Amendment rights; thus, petitioners could not contest the search.

Here, the government argues that defendant first must assert a legitimate interest in the cigarettes before he can contest their seizure. The Court disagrees. *Rakas* involved a search which led to a seizure of contraband. In this case, there was no search, the goods seized were not contraband, and defendant is not charged with crimes of possession. Were the holding in *Rakas* to extend to this case, individuals carrying non-contraband items in public view would be without standing to challenge outright seizures unsupported by probable cause—a result inconsistent with the Fourth Amendment. Succeeding cases citing *Rakas* support this Court's conclusion that the *Rakas* holding does not address seizures of non-contraband items carried in public view. See *United States* v. *Salvucci*, 100 S.Ct. 2547 (1980) ("automatic standing" rule of *Jones* v. *United States*, 362 U.S. 257 (1960), overruled; defendants charged with *crimes of possession* must establish Fourth Amendment standing under *Rakas* criteria); *Godfrey* v. *United States*, 408 A.2d 1244 (D.C.App. 1979), *reh.* and *reh. en banc den.*, 414 A.2d 214 (D.C.App. 1980) (per curiam) (defendant had no legitimate expectation of privacy in trash bag in which he stored stolen goods).

The government argues, alternatively, that defendant abandoned the shipping carton before it was seized, and thus had no standing to contest its seizure. It is true that one who abandons property lacks standing to contest its seizure. *United States* v. *Boswell*, 347 A.2d 270, 273 (D.C.App. 1975). It is also true, however, that the government must prove abandonment by "clear, unequivocal and decisive evidence." *Id.* at 274. Here, the government has failed to do so. Although defendant walked away from the shipping carton when first questioned, he did return immediately. He did claim the cigarettes were his. The defendant's inebriated condition is as much an explanation for his erratic behavior as is a theory of abandonment. The Court cannot find that defendant abandoned the shipping carton. Thus, he does have standing to contest the seizure.

The Court finds that *United States* v. *Pannell*, 383 A.2d 1078 (D.C.App. 1978), cited by defendant, controls the instant case. In *Pannell* police officers observed appellees carrying a television set on 14th Street. After receiving unsatisfactory answers as to its ownership, the officers seized the set. They did so in the absence of any information linking appellees to criminal activity. The

government argued that the seizure was valid because the officers had probable cause to believe the set had been stolen. The Court of Appeals disagreed, explaining that the officers would have been justified in seizing the property only if they had reason to believe that a crime (petit larceny or receiving stolen property) had been committed *and* that appellants had committed it. In other words, the seizure was lawful only if supported by probable cause to arrest. 383 A.2d at 1079-80. The court explained:

> "Although Officer Vincent knew that a burglary had taken place in the area, it had occurred more than eighteen hours before and he was not aware of what, if anything, had been taken. The knowledge that a burglary has occurred in a particular area is hardly a basis for seizing property carried by citizens. Under these facts, we cannot say that the trial court erred in finding the seizure to be in violation of the Fourth Amendment [footnote omitted]. To hold otherwise would be to authorize seizures incident to a 'Terry' stop." 383 A.2d at 1080-81.

Here, the officer lacked probable cause to arrest defendant. The officer had no knowledge that a theft had occurred, much less that defendant had committed it. Although defendant's inability to explain how he obtained the cigarettes may have been suspicious, it did not give the officer probable cause to believe that a crime had been committed. See *Daugherty* v. *United States*, 272 A.2d 675 (D.C.App. 1971) (no probable cause to arrest defendant carrying television set in neighborhood with many burglaries even after defendant gave suspicious explanation). That the officer *later* learned of a theft of cigarettes is, of course, irrelevant in determining whether probable cause existed at the time of the seizure. Absent probable cause to arrest, the officer lacked a legal basis to seize the cigarettes.

Therefore, it is, by the Court, this 11th day of February, 1981,

ORDERED, that defendant's motion to suppress is hereby GRANTED and the shipping carton of cigarettes seized and testimony about its subsequent identification may not be utilized as evidence by the government.

## NATIONALIZATION

(Cont'd. from p. 385)

(1) Defendants' nationalization without a mechanism for adequate compensation violates the Treaty of Amity and, independently, international law. The weight of authority manifestly states that international law, as reflected in the Treaty, requires prompt, adequate, and effective compensation. *Banco Nacional de Cuba v. Sabbatino*, 193 F. Supp. 375 (S.D.N.Y. 1961), *aff'd*, 307 F.2d 845 (2d Cir. 1962), *rev'd on other grounds*, 376 U.S. 398 (1964); *Banco Nacional de Cuba v. Chase Manhattan Bank*, No. 60 Civ. 4663, slip op. (S.D. N.Y.) Jan. 4, 1980). The "Law of Nationalization" does not provide a mechanism for determination and payment of prompt compensation relevant to this case (Aghayan affidavit, ¶¶8, 10). There has been no compensation either paid or offered. Though the exact scope and precise requirements of the Treaty and international law may be subject to interpretation, the defendants in this case have failed by any interpretation to meet even the minimum standards set by the Treaty and international law.



(2) Venue and jurisdiction is proper in this Court regardless of the fact that plaintiffs have not exhausted their remedies by seeking judicial or administrative redress in Iran. Resort to such legal means is unnecessary when such remedy is impracticable or futile. *Eisen v. Eastman*, 421 F.2d 560 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970). At the time of nationalization Iran was in such a state of turmoil that recourse to the Iranian courts was impossible. *Stromberg-Carlson Corp.* v. *Bank Melli Iran*, 467 F.Supp. 520, 532 n.3 (S.D.N.Y. 1979). Plaintiffs' employees were in physical danger, forced out of Iran, and generally unable to perform most of their ordinary duties during the period following the nationalization decree. Further, the United States severed all diplomatic relations with Iran on April 7, 1980, and imposed a ban on travel to and from Iran on April 17, 1980. Executive Order No. 1211, Fed.Reg. 26685 (1980). It is absolutely clear that the Republic of Iran has shown a complete and utter disregard for international law by its seizure and holding of diplomatic hostages for a period exceeding eight months and its disdain of all diplomatic and international efforts to obtain their release. It is well settled in international law that where local remedies would be ineffective or meaningless or would not meet the international standard of minimum justice, the alien need not subject himself, in the first instance, to the local courts or administrative tribunals. *Interhandel Case* (Switzerland v. United States), [1959] I.C.J. 6. *Restatement (Second) of the Foreign Relations Law of the United States* (1965) §208.

(3) Plaintiffs can assert their rights to recover damages in this Court for violations of the Treaty and international law. First, the right of individuals and companies to enforce a private right of action in a United States court under the property protection provisions of a treaty of friendship, commerce, and navigation has consistently been upheld. *Asakura v. Seattle*, 265 U.S. 332 (1924); *Kolovrat v. Oregon*, 366 U.S. 197 (1961); *Head Money Cases*, 112 U.S. 580 (1884); *Hauenstein v. Lynham*, 100 U.S. 483 (1879). Second, since Article IV, paragraph 2 of the Treaty is self-executing, plaintiffs have a right of action before this Court. The Treaty clearly meets the criteria considered significant in determining whether a Treaty is self-executing and, therefore, capable of enforcement in a United States court. *People of Saipan v. United States Department of Interior*, 502 F.2d 90, 97 (9th Cir. 1974), *cert. denied*, 420 U.S. 1003 (1975).

(4) The Act of State Doctrine does not preclude this Court from awarding summary judgment in this case. First, the theory underlying the Act of State Doctrine is inapplicable in this litigation. The Court is not asked to judge the validity of defendants' expropriation of plaintiffs' interests in Iran, but rather defendants' failure, in violation of the Treaty and international law, to make adequate provision for the determination and payment of prompt, adequate, and effective compensation. Second, the Act of State Doctrine does not preclude judicial review where, as here, there is a relevant, unambiguous treaty setting forth agreed principles of international law applicable to the situation at hand. *Banco Nacional de Cuba v. Sabbatino, supra*. Third, the Act of State Doctrine does not apply since defendants' failure to compensate plaintiffs occurred in connection with a commercial activity of defendants. *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682 (1976).

(5) The doctrine of sovereign immunity does not preclude this Court from awarding summary judgment in this case. First, on December 19, 1979, regarding plaintiffs' Motion for a Writ of Attachment, this Court decided that under the Treaty the defendants have waived any sovereign immunity. Hence, the law of the case doctrine dictates that this Court not reconsider that issue. Article XI, paragraph 4 of the Treaty eliminates sovereign immunity with respect to defendants and their property. Second, even if the narrow view of the Treaty urged by the State Department in *Electronic Data Systems Corp. Iran v. Social Security Organization of the Government of Iran* (No. CA3-79-218-F, N.D. Tex. June 21, 1979, *appeal pending*, No. 79-2641, 5th Cir.) is accepted, Article XI, paragraph 4 of the Treaty still waives sovereign immunity. Under the narrow interpretation, CII and its property are clearly subject to jurisdiction since CII is a commercial entity. Therefore, Iran, which is inseparable from CII and of which CII is the alter ego with respect to the matters relevant here, is subject to the jurisdiction of this Court to the same extent as CII. Iran and its instrumentality (CII) are "in effect one person, one juridical person." *Electronic Data Systems Corp. Iran v. Social Security Organization of the Government of Iran*, No. 79 Civ. 1711 (S.D.N.Y. May 23, 1979), *remanded*, 610 F.2d 94 (2d Cir. 1979). *Accord, Banco Nacional de Cuba v. First National City Bank*, 478 F.2d 191 (2d Cir. 1973). Third, the defendants and their property do not enjoy any immunity pusuant to the terms of the Foreign Sovereign Immunities Act, 28 U.S.C. 1601, *et seq.* (1976). The third clause of Section 1605(a)(2) provides:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case . . .
>
> (2) in which the action is based . . . upon an act outside the territory of the United States in connection with a commercial activity of the foreign state else-