

DECISIONS AND AWARDS

KARUBIAN *v* IRAN

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ROUHOLLAH KARUBIAN, *m*

v

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, *p*

(Case No. 419)

h mb T : Skubiszewski, *h m* ; Aldrich, Ameli,^[1] *M mb*

Signed 6 *M h* 1996^[2]

AWARD No. 569-419-2

The following is the text as issued by the Tribunal:

APPEARANCES

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 Attorneys
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 Claimant
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 Expert Witnesses

For the Respondent:

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 Dr. Jafar Niaki
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 Professor Ian Brownlie, Q.C.
 Professor Joe Verhoeven
 Counsel to the Agent
 Mr. Khosrow Tabasi
 Legal Adviser to the Agent

[¹ The signature of Mr. Ameli is accompanied by the words “Concurring Opinion.” This Opinion is not available at present.]

[² Filed 6 March 1996.]

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	Mr. Hossain Dadgar
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	Mr. Mohammad Isary
	Mr. Hossain Sedghi Nia
	Mr. Mohammad Taghi Madani Representatives of the Respondent
	Dr. Ahmad Hashemi
	Mr. Kamal Majedi Expert Witnesses
Also present:	Mr. D. Stephen Mathias Agent of the United States of America
	Mrs. Mary Catherine Malin, Deputy Agent of the United States of America

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I. INTRODUCTION

1. The Claimant, Rouhollah Karubian, seeks compensation from The Government of the Islamic Republic of Iran (“the Respondent”) in the total amount of U.S.\$4,091,582, as finally pleaded, for the value of four separate properties³ in Iran which he alleges were expropriated by the Respondent or

³ In the Statement of Claim, filed on 18 January 1982, the Claimant sought compensation in respect of five separate properties which he valued at U.S.\$13,006,100. At the outset of the Hearing, the Claim relating to a property at Varamin was withdrawn. In the final pleadings the amount claimed was adjusted to U.S.\$4,091,582. *See* *infra*, para. 92 and note 31 thereto.

subjected to other measures, attributable to the Respondent, that affected his property rights within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration. Interest and costs are also sought.

2. The Respondent submits that the Claimant is solely a national of Iran and, as such, cannot bring a claim against Iran before this Tribunal. Alternatively, it argues that the Tribunal lacks jurisdiction to hear the case on the basis that the Claimant's dominant and effective nationality is Iranian or at least not that of the United States. It further contends that if the Claimant is found to be a dual national whose dominant and effective nationality is that of the United States, the caveat in Case No. A18, *f*, para. 146, bars his recovery. It also denies that it has expropriated any of the properties at issue in this Case or subjected them to other measures affecting the Claimant's property rights.

3. On 3 March 1989 the Tribunal issued an Order declaring that, on the evidence before the Tribunal at that time, it appeared that the Claimant was, during the period between the time the alleged claims arose and 19 January 1981, a national of both Iran and the United States. The Order stated that:

to reach definitive conclusions as to the dominant and effective nationality of the Claimant, as well as the Tribunal's jurisdiction over the Claims presented by the Claimant and the relevance, if any, to the merits of the Claimant's other nationality, the Tribunal will have to examine further the nationality issue, together with other issues, such as the facts and applicable laws relating to the alleged acquisition and ownership of the property which constitutes the basis of this Claim as well as the actions by the Respondent allegedly affecting them. The Tribunal therefore decides to join all jurisdictional issues, including the issue of the Claimant's nationality, to the consideration of the merits of this Case.

4. While listing this Case for hearing, the Tribunal decided, in its Order of 14 February 1994, that:

No new documents may be introduced prior to the Hearing unless the Tribunal so permits and unless the request for the introduction of new documents is filed at least three months before the Hearing, the request is accompanied by the documents themselves, and an explanation is given of the circumstances that have prevented the filing of the documents earlier.

5. Two months before the Hearing, the Claimant submitted two new documents, filed at the Tribunal on 21 November 1994. The Tribunal, in its Order of 6 December 1994, reserved decision on the admissibility of these new documents in so far as they concerned matters other than the notice of witnesses. In view of the outcome of this Case, *f*, para. 164, it is unnecessary for the Tribunal to take a decision on the admissibility of these documents.

6. The Hearing in this Case was held on 19 and 20 January 1995.

7. At the Hearing, Professor Joe Verhoeven, Counsel to the Respondent, made a detailed argument on the question of the applicability of the standard of compensation in the Treaty of Amity⁴ to dual nationals. The Claimant requested that he be given an opportunity to reply to the Respondent by way of a post-hearing submission. At the close of the Hearing and in its Order of 27 January 1995, the Tribunal stated that it would decide in due course whether to permit such a submission. In view of the outcome of this Case, *f*, para. 164, it is unnecessary to make any determination on the standard of compensation applicable under the Treaty of Amity. Thus, there is no need to address the Claimant's request for a post-hearing submission on this issue.

II. FACTS AND CONTENTIONS: NATIONALITY

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8. The Claimant was born in Teheran on 21 March 1912. His parents were Iranian. He holds an Iranian Identity Card issued at Tehran in 1918.

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9. The Respondent states, and it is not disputed by the Claimant, that he received his primary and secondary education in Iran.

10. In December 1934, at the age of 22, the Claimant went to the United States as a student on a scholarship to the Colorado School of Mines where he graduated with a Bachelor's Degree in Petroleum Engineering in June 1938. He entered the California Institute of Technology, Pasadena, in September 1938 and graduated in 1939 with a Master of Science Degree in Geology. In September 1939, it is contended, he entered the University of California, Berkeley, where he completed his studies in May 1940.

11. The Respondent submits that the Claimant studied in the United States as an Iranian holding an Iranian Passport and that the means by which he undertook his studies there were derived from Iran.

12. Following completion of his studies in the United States, the Claimant returned to Iran in 1940. He resided there until he, his wife, and their children moved to the United States in 1948. The Claimant has resided in the United States continuously since 1948.

⁴ Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3553, 8 U.S.T. 900.

13. From time to time the Claimant has returned to Iran using his Iranian Passport. The Claimant's son, John F. Karubian, stated at the Hearing that his father had visited Iran no more than ten times between 1948 and 1978, the average duration of these trips being approximately two weeks each and none of them longer than one month.

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14. The Claimant contends that in 1942 he was a liaison officer in Iran between the Iranian, Soviet and United States Armies. During the years 1948 to 1961 he was president of Amir and Company, an import and export fine arts business based in New York. The Claimant and his wife, Touba, a graduate of the New York School of Interior Design, relocated to California in 1961 and commenced a similar business under the name of "Touba Kay Galleries" in Beverly Hills. This business continued until 1978 when they liquidated the business and retired. Since retirement, the Claimant has continued occasionally to deal in and appraise arts and antiques. The Claimant has been a member of the American Appraisers' Association since 1950. He has also been a member of other professional associations such as the Beverly Hills Board of Realtors and the Geothermal Institute of America.

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15. Because the Claimant was born in Iran and because his father was Iranian, he was, under Article 976, paragraph 2 of the Iranian Civil Code, at all relevant times, and still is, a national of Iran.

16. The Claimant, his wife and children moved to the United States in March 1948. The Respondent contends that the assertion that the Claimant immigrated to the United States is groundless because he departed for the United States on an Iranian passport which indicates that it is not valid for the purposes of emigration. There is no evidence of the date on which the Claimant commenced the formal United States naturalization process, but it is clear that he was issued a Certificate of Naturalization on 6 April 1954.⁵

17. After obtaining his Certificate of Naturalization the Claimant obtained a United States passport, and he has maintained it since then. In 1968 the Claimant also obtained an Iranian passport and subsequently acquired another in 1973 after the loss of the former.

⁵ The Claimant's Naturalization Certificate was issued under the name of Richard Kay. That name was adopted after he arrived in the United States to facilitate his immigration and that of his family. Subsequently, after deciding that the name change was unnecessary, he and his family assumed their original names, the Claimant's being Rouhollah Karubian, and a court order to that effect was obtained in 1956.

18. The Respondent argues that the Claimant's United States nationality is rendered null and void pursuant to Article 989 of the Iranian Civil Code because the Claimant acquired United States nationality without abandoning his Iranian nationality in accordance with Iranian law. The Respondent, therefore, is of the view that the Claimant does not have standing to claim against Iran.

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19. The Claimant and his wife, Touba Karubian, were married in Tehran in September 1940. Three children were born of the marriage; all three were born in Iran.

20. The Claimant's three children were subsequently naturalized as citizens of the United States. They all reside in Southern California within the immediate residential area of the Claimant, and all are married to United States citizens. The Claimant has several grandchildren, all of whom, he says, are United States citizens. The Claimant's son graduated from the University of California at Los Angeles and is an economist who has worked for the United States Government and for American corporations involved in the defence industries. His youngest daughter is an attorney who practises law in the State of California.

21. As contended, the oldest brother, sister and younger brother of the Claimant went to the United States in 1947, 1948 and 1959, respectively. Since their respective arrivals they have resided continuously in the United States, have become naturalized citizens of the United States (with the exception of the younger brother), and have children who are all United States citizens. The younger brother has served in the National Guard of the United States.

22. The Claimant's father arrived in the United States in 1959. He passed away in 1961 and was buried in Los Angeles.

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23. The Claimant asserts that in 1951 he purchased a residential property for his family in Forest Hills, New York, and that the present family residence in Beverly Hills was purchased around 1963. He also contends that he owns or has been the owner of several other substantial pieces of real estate located in the United States.

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24. The Claimant belongs to numerous civic associations in the United States. His memberships include the Los Angeles County Museum of Art, the American Association of Retired Persons and the Concerned Citizens for the

Safety of Beverly Hills. He has also served as the President of the Iranian Jewish Cultural Organization of California.

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25. On the evidence presented by him, the Tribunal is satisfied that the Claimant has paid taxes in the United States since 1961; has held a California Driver's License; and is the holder of a social security number in the United States. The Claimant also contends that he has voted in Presidential, state and local elections in the United States since his naturalization.

III. LEGISLATION AND RELATED OFFICIAL ACTS

26. In order to understand fully the facts and contentions relating to the properties involved in this Case, it is necessary to review first the relevant Iranian land reform legislation and other official acts of the Respondent. The Tribunal will therefore discuss these before examining the facts and contentions related to the specific properties in question.

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27. On 27 June 1979, the Revolutionary Council of the Provisional Government of the Islamic Republic of Iran adopted the Act Concerning Abolition of Ownership of Mawat [Undeveloped] Urban Lands and the Manner of their Development ("the 1979 Act"). Its Preamble declared:

Whereas under Islamic standards mawat [undeveloped] land is not recognized as anyone's property, it is at the disposal of the Islamic Government, and ownership deeds that were issued during the former regime with regard to mawat lands lying within or outside city boundaries, are contrary to Islamic standards and against the interests of the people.

The relevant provisions of the 1979 Act were as follows:

Article I: In connection with lands lying within the legal (25-year) boundaries of cities, where such boundaries exist, and also in other cities within the limits to be determined and announced by the Ministry of Housing and Urban Development,

⁶ The Tribunal understands that mawat land is land which is undeveloped and has no prior record of development.

⁷ English title of the Act as translated by the Tribunal's Language Services Division. The Parties have presented different English translations for this title. The Tribunal has previously referred to this Act as the "Act to Abrogate Ownership of Never Utilized Lands and the Manner of Development Thereof." *S Z m z u fh . v. I m pub fI*, Award No. 550-412/415-3, para. 19 (19 Oct. 1993) [*p* 29 IRAN-U.S. C.T.R. 295].

the Government shall, in a gradual manner and with due observance of the detailed urban plan in each region, inform those individuals who were, under the standards of the former regime, recognized as owners of such lands, to take measures to develop and improve those lands within a specified period. In the event no action is taken by them within the stipulated period, they shall be afforded no priority, and such lands will be taken over by the Government without compensation.

Note: Those persons who have procured a small piece of land for their personal residence, and do not own a residential unit, shall be given, by the Government, a minimum period of three years to develop their lands.

Article 3: The manner of notification to those individuals who were recognized as the owners of such lands in the former regime, classification of lands as mawat [undeveloped], and the manner of development and improvement, as well as the conditions of transfer of the said lands, the determination of the area of land referred to in the Note to Article 1 in each region, and other matters relating to the implementation of this Act shall be in accordance with the By-Laws which are to be prepared by the Ministry of Housing and Urban Development, and approved by the Council of Ministers.

Article 4: The Ministry of Housing and Urban Development shall implement this Act.⁸

28. The application of the provisions of the 1979 Act was extended on 25 September 1979 to the region beyond the 25-Year City Limit of Tehran out to the city's "Protective Border," the extent of which is not known, by the Law Concerning the Abolition of Ownership of Mawat [Undeveloped] Urban Lands Situated within the Legal Twenty-Five-Year [Development] City Limit of Tehran and its Protective Boundary⁹ ("the Urban Lands Extension Act").

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29. On 13 August 1979 the Regulations to the 1979 Act¹⁰ were approved by the Council of Ministers pursuant to Article 3 of the 1979 Act. The Regulations to the 1979 Act, , provided guidelines on (a) how to determine whether a piece of land was mawat; (b) what constituted acceptable development and improvement of that land in order to obtain a certificate to the effect that the land was not mawat; (c) how to interpret the Note to Article 1; (d) how to notify the owners of lands specified in that Note of the

⁸ Published in Official Gazette No. 10025 on 24 July 1979 and announced to the public by Notice No. 7/2064 dated 2 July 1979. English translation by the Tribunal's Language Services Division.

⁹ Published in Official Gazette No. 10257 dated 14 May 1980.

¹⁰ Published in Official Gazette No. 10075 dated 25 September 1979.