

ELIZABETH FILO AND BERTHA SALAY (UNITED STATES) *v.*  
HUNGARY

*(June 28, 1929. Pages 117-121.)*

This claim is put forward on behalf of Elizabeth Filo and Bertha Salay, mother and daughter, to recover against Hungary \$59,852.50 and \$758,302.00 respectively on account of damages alleged to have been inflicted upon them during June and July, 1919, by representatives of the Bela Kun régime which had temporarily and forcibly wrested the administration of the Government of Hungary from the duly constituted authorities. The claimants allege that while residing in Kassa in the newly-constituted Czechoslovakian republic they were arrested and taken into custody by Bolshevik soldiers of the Bela Kun régime who invaded and took possession of Kassa; that while under arrest they were brutally treated and subjected to physical injuries of a permanent nature; that they were unprotected by the soldiers and left to the mercy

of a mob of Bolshevik sympathizers, including communist women, who stripped them of their belongings and beat them; that they were subjected to degrading treatment; and that while they were confined, first in prison and later in a hospital, their apartment at Kassa was looted and damaged. They seek to recover for personal injuries, for humiliation and mental suffering, for the value of personal property taken from their persons by the mob, for the value of personal property taken from their apartment in Kassa, and for damage done to the apartment itself.

The jurisdiction of this Commission is challenged by Hungary on the ground that, at the time of the happenings complained of, claimants were not entitled to protection as American citizens and hence that the claims were not at their inception impressed with American nationality. On this issue the Commissioner finds that both claimants were born in Hungary; that John Filo, husband of the claimant Elizabeth Filo, emigrated to the United States in the "early eighties" and with claimants established a residence at Butte, Montana; that John Filo became an American citizen through naturalization on October 8, 1898; that the claimant Bertha Salay married at Butte, Montana, on November 22, 1896, Joseph Salay, a native of Hungary but then an American citizen through naturalization; that John Filo died at Butte, Montana, June 24, 1901; that in 1902 the claimants returned to Hungary where on September 3, 1902, Mrs. Filo reported to the police as residing at 40 Kovacs Street, Kassa; that on July 7, 1903, Mrs. Salay, at 41 Kovacs Street, Kassa, gave birth to a son named Alexander; that on December 24, 1904, a decree was entered at Butte in the District Court for Silver Bow County, Montana, at the instance of Joseph Salay, divorcing him from the claimant Bertha Salay on the ground that she had wrongfully deserted him and taken up her residence in Kassa, Hungary; that on June 17, 1906, Mrs. Filo purchased residence property at Kassa upon which she erected an apartment house in which the claimants and the minor Alexander Salay lived; and that the record is not clear with respect to the claimants' whereabouts from the middle of 1903 to 1910 but it is admitted by both that they resided in Kassa from 1910 to 1920, when, with Alexander Salay, they returned to the United States.

On this record and under the rule announced in the cases of Henry Rothmann<sup>1</sup> and Jacob Margulies<sup>2</sup> there is much support for the contention of Hungary that claimants herein were not entitled to protection as American citizens in June and July, 1919, at the time of the happenings complained of. But the record on this issue is far from satisfactory and the Commissioner will, for the purposes of this decision, assume that the claimants, having through the naturalization laws of the United States become American citizens prior to their return to the land of their birth, continued to be entitled to American protection until their return to the United States in 1920.

Leaving out of consideration for the moment the allegations with respect to the comparatively small items based on property lost and damaged at Kassa, which if established would fall within paragraph 2 of subdivision II of article 232 of the Treaty of Trianon, incorporated in the Treaty of Budapest, the Commissioner holds that the remainder of the claim does not fall within the Treaty. It is not embraced within section IV of part X, the "Economic Clauses" of the Treaty, that section being limited in its application to property.<sup>3</sup>

<sup>1</sup> See p. 253 *supra*.

<sup>2</sup> See p. 279 *supra*.

<sup>3</sup> Brueninger *v.* Germany (1923), III Dec. M. A. T. 20, Anglo-German Mixed Arbitral Tribunal; Richelle *v.* Germany (1922), II *ibid.* 403, Belgo-German Mixed Arbitral Tribunal; Edgley *v.* Germany (1923), III *ibid.* 217, Anglo-German Mixed Arbitral Tribunal, etc.

On behalf of the claimants it is sought to bring this part of the claim within part VIII. the "Reparation" provisions of the Treaty, under which Hungary is obligated to make compensation for damage, falling within defined categories (including injuries to the person), inflicted "by the aggression of Austria-Hungary and her allies." But in reparation claims originating after the United States became a belligerent only damages for which Hungary is jointly responsible with Germany and Austria because arising out of their joint aggression are within the Reparation provisions. So far as Hungary is concerned the "joint aggression" of the Central Powers terminated with the signing of the Armistice on November 3, 1918, whereby Hungary severed all relations with Germany and bound herself to prohibit the transport of troops or munitions to the German troops in Rumania. With the signing of that armistice Hungary's aggression, forming the basis of her liability arising under part VIII of the Treaty, came to an end. The invasion of Czechoslovakia by the Bela Kun régime seven months or more thereafter does not constitute an aggression of Hungary against the Allied and Associated Powers within the meaning of the Treaty provisions. This construction is in harmony with the decision of the Reparation Commission holding that Czechoslovakia could not maintain a reparation claim against Germany, Austria, or Hungary for damages inflicted by the invasion of Czechoslovakia by the Bela Kun régime.<sup>1</sup> It is also in harmony with the decision of the Umpire of the Mixed Claims Commission in the Eisenbach case<sup>2</sup> cited on behalf of claimant, where Germany was held liable for the planting of a mine during the period of American belligerency and prior to the armistice which resulted in damage to the claimant subsequent to the armistice. There it was held that the act of a belligerent in planting the mine, "while remote in time from the damage it caused, is not remote in natural and normal sequence. . . . The damage wrought was directly attributable to the hostile act of planting the mine and was directly in consequence of hostilities within the meaning of the Treaty of Berlin."

But in this case there was in legal contemplation no causal connection between the joint aggression of Hungary and her allies against the Allied and Associated Powers dealt with in part VIII of the Treaty, which terminated with the signing of the armistice, and the acts of the Bela Kun régime in forcibly seizing the reins of the Government of Hungary and invading Czechoslovakia some seven months or more after the armistice was signed.

Coming now to that branch of the claim made for property alleged to have been lost or damaged, which if established would fall within paragraph 2 of subdivision II of article 232 of the Treaty, the Commissioner holds that the claimants have failed to discharge the burden resting on them to prove their claim. The American Agent has been diligent in his efforts to have developed and to present to the Commission all of the facts bearing on the issues raised by the pleadings herein. The claimants have not exercised a like diligence. They have offered no evidence corroborating their own testimony. Alexander Salay, the minor son of the claimant Bertha Salay, was living with claimants in

<sup>1</sup> See opinion of Legal Service of Reparation Commission February 16, 1921, annex 656, opinion No. 183-B, dealing with "Right of Czechoslovakia to reparation"; decision of Reparation Commission No. 1019, dated March 11, 1921; and opinion of Legal Service of Reparation Commission dealing with Austrian and Hungarian claims, dated February 14, 1923, holding "that the Treaty of Trianon does not admit of a claim for reparation under annex I of part VIII in respect of military operations against the Bela Kun Government."

<sup>2</sup> United States of America on behalf of Eisenbach Brothers and Company, claimants, v. Germany, decided May 13, 1925, Decisions and Opinions, Mixed Claims Commission, United States and Germany, pp. 269-272.

June and July, 1919. He was not arrested but remained in Kassa. The material facts with respect to this claim must be fully known to him. It has been made to appear to the Commission that he is now and for some time has been residing in California. While the American Agent has urged that his testimony be taken by the claimants, it is not in the record nor is its absence accounted for. The same is true of numerous other individuals residing in Kassa who must have first-hand knowledge of the facts. In addition to the improbability of many of the material statements which claimants make, they are rebutted by the testimony of disinterested witnesses and in some particulars by official records and by statements previously made by the claimant Bertha Salay. Assuming that some of the claimants' statements are true, the truth is so blended with the false that it cannot be isolated.<sup>1</sup> This is a condition for which claimants alone are responsible and the consequences must be borne by them.

For the reasons stated the Commission decrees that the Government of Hungary is not obligated under the Treaty of Budapest to pay to the Government of the United States any amount on behalf of Elizabeth Filo and Bertha Salay, claimants herein.

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