

native citizens or subjects, submitting themselves to the laws and regulations there established'.

Affirmed."

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β. Untere Bundesgerichte

Circuit Court of Appeals 2nd Circuit

Lehigh Valley R. Co. v. State of Russia. Aug. 8. 1927 (21 F. [2d] 396)

Anerkennung — Sowjetregierung — Fortdauer des alten russischen Staats — Vermögen des alten russischen Staats — Ausländische Regierungen als Kläger — Staat und Regierung — Diplomatische Vertreter.

1. Eine ausländische Regierung darf vor den Gerichten der Vereinigten Staaten klagen.

2. Die Entscheidung darüber, wer der Souverän *de jure* oder *de facto* eines ausländischen Staats ist, gehört als politische Frage nicht in die Kompetenz der Gerichte.

3. Das Gericht ist verpflichtet anzuerkennen, daß der Staat Rußland fortbesteht, obgleich die Sowjetregierung nicht anerkannt ist.

4. Diplomatische Vertreter dürfen, solange sie als solche anerkannt sind, Klagen im Namen des Absendestaates anstrengen. Entscheidend für deren Berechtigung ist lediglich die Anerkennung durch das State Department. Gerichtliche Prüfung dieser Frage ist nicht gestattet.

5. Der Wechsel in der Person des Gesandten beeinflusst nicht die Beziehungen zu seiner Regierung. Solange eine anders lautende Entscheidung der politischen Abteilung der amerikanischen Regierung nicht ergangen ist, muß das Gericht den alten Zustand als fortbestehend ansehen.

6. Die russische (alte) Regierung kann Klage führen, mindestens bis die neue Regierung anerkannt wird.

7. Die rückwirkende Kraft der Anerkennung bezieht sich nur auf Handlungen der anerkannten Regierung innerhalb des eignen Staatsgebiets.

Tatbestand. Im Jahre 1916 erlitt russisches Staatsgut Brandschaden in den Vereinigten Staaten. Die russische Regierung erhob Klage; nach Absetzung der zaristischen Regierung wurde die Klage im Namen des russischen Staats fortgeführt; Vertreter war der von den Vereinigten Staaten anerkannte Abgesandte der Kerensky-Regierung. Als dieser sich 1922 zurückzog, übergab er das russische Staatsvermögen in den Vereinigten Staaten der Obhut eines Finanzattachés der russischen Botschaft (Kerensky-Régime); das amerikanische State Department erkannte diesen als Verwalter des russischen Staatsguts an. Die verklagte Firma bestreitet in der Berufungsinanz die Legitimation des Finanzattachés, die Gelder für den russischen Staat einzuklagen und

macht geltend, daß eine spätere rückwirkende Anerkennung der Sowjetregierung zur Folge haben könnte, daß die Forderung von der Sowjetregierung noch einmal erhoben würde. Das Gericht bejaht die Legitimation des Finanzattachés zur Prozeßführung für den russischen Staat und verneint das Bedenken der Doppelzahlung im Falle einer Anerkennung der Sowjetregierung.

Aus den Gründen: "The defendant in error has recovered a judgment against the plaintiff in error for loss of explosives and ammunition while in transit from the United States to Russia and while in its possession as carrier in its freight yards at Jersey City, N. J. The loss is due to a fire and explosion occurring July 30, 1916, and it is admitted that the fire was incendiary in its origin. The action by the defendant in error was instituted by the Russian government, and after the deposition of the then government of Russia, pursuant to an order granted, the action was continued in the name of the state of Russia The right of a foreign government to sue is now well recognized It is equally a settled rule of law that the foreign relations of our government are committed by the Constitution to the executive and legislative departments of our government, and what is done by such departments is not subject to judicial inquiry or decision Who be the sovereign de jure or de facto of a territory is a political question; not judicial The state is a community or assemblage of men and the government the political agency through which it acts in international relations The foreign state is the true or real owner of its property, and the agency the representative of the national sovereignty

On July 5, 1917, Mr. Boris Bakhemeteff was recognized by our State Department as the accredited representative of the Russian government — the provisional Russian Government — as successor to the Imperial Russian Government. He continued as such until July 30, 1922. At that date he retired, and the custody of the property of the Russian Government, for which Bakhemeteff was responsible, was recognized by the State Department to vest in Mr. Ughet, the financial attaché of the Russian embassy. The Soviet government, which later secured control of the Russian Government, was never recognized by our State Department, and ever since the diplomatic status with our government was never altered by the termination of the ambassador's duties. Therefore the provisional Russian Government is the last that has been recognized, and after its ambassador retired its property was considered by the State Department to vest in its financial attaché. Prior to his retirement, and while the accredited ambassador, Mr. Bakhemeteff authorized the suits here considered, which were commenced July 23, 1918.

Various preliminary attacks by motions to dismiss the complaint have been made, and the District Court has in each instance properly denied them, recognizing the principles of law referred to and their application to the fact that there has been no change recognized in the

government or agency for Russia by the political branches of our government. Mr. Ughet, by the State Department's determination, is entitled to the custody in the United States of the property of Russia, and as part of that duty he was authorized to continue the suits for the state of Russia. This duty became obvious. It became important to avoid efforts to destroy the right of action as a basis of keeping its property, when motions to dismiss were made and delays occurred which would give rise to the bar of limitation to sue. The question of Mr. Ughet's power under his agency is generally important, because of the change in name of the plaintiff in the action to the state of Russia in substitution of the Imperial Russian Government. We must judicially recognize that the state of Russia survives.

Abatement of the action or a dismissal could only be sustained by reason of the non-existence of the state, or the action of our government to no longer recognize the agency once accredited and never revoked. The action was properly started by an unquestioned agency. The attorney and the agency thus employed were obliged to continue until some other government was recognized. It has been recognized that diplomatic agents of one state, while in another, may commence and maintain actions on behalf of their state while they are recognized as such

Proof of the agency or of the diplomat is dependent entirely upon the political fact of the recognition by the political department of the government. The courts may not independently make inquiry as to who should or should not be recognized. The argument of the plaintiff in error is directed entirely toward the court making its own investigation, in expectation that there would be some other government found, either *de facto* or *de jure*. This we may not do If it be a fact that there is a Russian Socialist Federated Republic now in charge of the government of Russia, it would bring no different result here.

Where there is a change of government, foreign states must of necessity judge for themselves whether they will continue their accustomed diplomatic relations with the prince whom they choose to regard as the legitimate sovereign. It matters little whether the recognized state co-operates in it or not It is for the executive and legislative departments to say in what relations any other country stands toward it. Courts of justice cannot make the decision Nor does the personal withdrawal of an ambassador affect the relations with the government And, unless the political department of our government has decided otherwise, the judiciary recognizes the condition of things with respect to another country which once existed, and is still subsisting because of no other recognition

The granting or refusal of recognition has nothing to do with the recognition of the state itself. If a foreign state refuses the recognition of a change in the form of government of an old state, this latter does not thereby lose its recognition as an international person The suit did not abate by the change in the form of government in Russia;

the state is perpetual, and survives the form of its government The recognized government may carry on the suit, at least until the new government becomes accredited here by recognition.

The argument that the plaintiff in error may at some future time, if the Soviet régime is recognized by our government, be compelled to pay again what it is obliged to pay now, is fallacious. It is only the acts performed in its own territory that can be validated by the retroactive effect of recognition. Acts therefore performed outside its own territory cannot be validated by recognition

Following these principles, we agree with the contention of the defendant in error that the state of Russia, as a plaintiff, may continue the prosecution through the agency vested in Mr. Ughet, and the plaintiff in error will be protected as against any possible future claims of a subsequent recognized government of Russia, if payment be made as directed in this judgment . . .”¹⁾

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b) Einzelstaatliche Gerichte.

1) Court of Appeal of New York.

**Fred S. James & Co. v. Rossia Ins. Co. of America. Feb. 14, 1928
(160 N. E. 364)**

Anerkennung — Das Nationalisierungsdekret des Sowjet-Staats.

1. *Die Sowjetregierung ist von den Vereinigten Staaten niemals anerkannt worden, und deren Verordnungen erhalten vor amerikanischen Gerichten nur insoweit Geltung, als Gerechtigkeit und Billigkeit (nach amerikanischem Maßstab gemessen) es verlangen.*

2. *Wenn mit moralisch unanfechtbaren Mitteln Privateigentum konserviert wird, so werden die amerikanischen Gerichte ein solches Vorgehen unterstützen, wie auch immer die Frage des Fortbestehens der Privatgesellschaften nach dem Nationalisierungsdekret rechtlich zu entscheiden sei.*

3. *Selbst bei Aufrechterhaltung des Dekrets kämen die Gelder der bolschewistischen Regierung und nicht dem Kläger zugute.*

Tatbestand. Eine russische Versicherungsgesellschaft Rossia besaß eine Tochtergesellschaft (die Beklagte) in den Vereinigten Staaten, der sie zum 1. April 1919 (dem Tag, an dem der russische Staat nach dem Nationalisierungsdekret das Vermögen der Privatversicherungsgesellschaften übernehmen sollte) fast ihr Gesamtvermögen übertrug. Der Kläger war Gläubiger der alten russischen Gesellschaft; er beanstandet

¹⁾ Vgl. hierzu Cornell Law Quarterly, Bd. 13, 1928, S. 297 ff.; Mich. Law. Rev. Bd. 7, 1928, S. 800 ff.; Yale Law. Jour. Bd. 37, 1928, S. 360.