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Lausanne Peace Treaty - the Turkish- Romanian Joint Arbitration Court Case Study: Nikola Kalfa's Case

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Abstract: The aim of this study are the relationships between Turkey and Romania, states with strong political, economic and socio-cultural ties, deeply rooted in history. Romania, which remained under the administration of the Ottoman State for several centuries, gained its independence after the Russo-Ottoman War of 1877-1878. Achieving its independence did not cause hostility between the two states, but Turkey-Romania relations were discontinued during World War I, when Romania joined the Allied Powers / Entente. Although relations between the two states cooled in 1916, they re-established in 1922. The new relations between the two states expressed not only good intentions and principles of assistance, but were based on a fair and solid basis of cooperation. After 1923, when the Lausanne Peace Treaty was signed, relations between Turkey and Romania headed a different direction. Lausanne Peace Treaty established some joint courts, and one of them is the Joint Turkish-Romanian Arbitration Court, which aimed to reach solutions to old, contested issues between the two states, but also for issues between the state and its citizen. This paper is a novelty in the field, because so far not all aspects of legal and economic relations between the two states have been debated. Relationships between Romania and Turkey were restored after the First World War and the Lausanne Peace Treaty. The body of the study, based on *Başkanlık Cumhuriyet Arşivi* (Directorate of the State Archives), BCA, and *The National Archives of the United States*, Washington deals with the functioning of joint courts, emphasizing the nature of the cases the courts deal with, and discusses in detail Nikola Kalfa's case, which was debated by the Turkish-Romanian Joint Arbitration Court. The final lines highlight the influences of the Lausanne Peace Treaty on social and economic relations between the two states, Romania and Turkey. The study, “**Lausanne Peace Treaty and the Turkish-Romanian Joint Arbitration Court. Case Study: Nikola Kalfa's Case**” is useful for domain researchers, for students

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interested in social history, economics, last but not least for studies in international property law. This study can be useful for master and doctoral students in the field of history, economics and law.

Keywords: Turkey-Romania relations; Turkish-Romanian legal agreements; Greek citizen; Romanian citizenship

JEL Classification: B15 Historical; Institutional; Evolutionary; K11 Property Law

1. Introduction

This study focuses specifically on the end of the World War I, which ended by peace treaties, but left behind many unsolved economic and legal issues, both between states and also, among nations. The resolution of comprehensive problems, such as agreements among states, which could not be fulfilled, as a result of direct or indirect effect of the war, or the financial debts that could not be paid, compensation for suffered damages, all were accomplished under the strict legal control of the winning states. However, in resolving these issues, no choice was made to apply political methods, nor was a national legal body elected. States emerging victorious from the war decided to set up joint arbitration courts. In this context, the joint arbitration courts, which are described as “supranational” judicial authority, that began their activity with the Treaty of Versailles, continued to a limited extent with the Peace Treaty of Lausanne. Joint arbitration courts differed in quality from the international arbitration method known and practiced in international relations for a long time.

1.1. Why this Study?

For this study the authors find out a few important issues to discuss about Joint Arbitration Courts, and by answering to some questions they try to do more for both Romanians and for Turkish, by informing the outsiders about social and juridical issues of the time: i. What do we know about Joint Arbitration Courts; ii. What was their goal; iii. Did the Joint Arbitration Courts accomplish their goals? This study attempts to give answers to these questions and draw the socio-historical environment of the time, which influenced some Romanian community members life.

1.2. Methodology

This research is based both on quantitative and qualitative variables for which we used some documents, which are part of the heritage of the *The National Archives of the United States*, Washington and the *Başkanlık Cumhuriyet Arşivi/Directorate of the State Archives, BCA*. For details about juridical cases on the Joint Arbitration Courts history the authors used as secondary sources, Şimşir, Bilal, 1994, *Lozan Telgrafları/Lausanne Telegrams II (Şubat-Ağustos/February-August 1923)*, Ankara: *Türk Tarih Kurumu Basımevi/Turkish History Association Publishing House* and Emin Ali Bey, 1926, “Lozan Ahidnamesine Göre Muhtelit Hakim Mahkemeleri/ Various Courts of Judges according to the Lausanne Treaty”, *Hukuki Bilgiler Mecmuası/Legal Information Journal*” Kanunuevvel/December, Yıl: 1, Sayı/no. 4. For Nikola Kalfa’s case we relied on periodicals of time as *Düstur*, İstanbul: Necmi İstiklal Matbaası, *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl/year4, No. 299, 16 Şubat/February 1926, *Milliyet Gazetesi*, 22 Temmuz/July 1928. For information about Republic of Turkey, as juridical part involved in this case the authors relied on Esirgen Örsten Seda study published in 2019, “*Lozan’ın Ardından Başlayan Bir Hukuki Mücadele: Karma Hakem Mahkemeleri/A Legal Struggle After Lausanne: Joint Arbitration Courts*”.

1.3. A Short Presentation of the Republic of Turkey Point of View on Joint Arbitration Courts

The Republic of Turkey, which emerged as an independent state after the victorious National Struggle, accepted the establishment of mixed arbitration courts in the Lausanne Peace Talks (Esirgen, 2019, p. 310). However, the Turkish Delegation in Lausanne largely argued on the idea of setting up joint arbitration courts, which were obviously to act under the influence of past events. However, in the end, the Turkish Delegation accepted the establishment of mixed arbitral courts, as a result of in progress negotiations, under quickly changing conditions. Particular importance was also attached to obtaining clear and precise assurances from the Allied Powers, that these courts had only limited jurisdiction. This situation developed in line with the Turkish Delegation’s goal to accept the principle of full independence against foreign intervention (Esirgen, 2019, p. 312).

2. Joint Arbitration Courts

2.1. Joint Arbitration Courts General Presentation

While peace was being established after the First World War, which for years caused an unprecedented destruction of the world, many complex legal issues caused by this terrible war between the former enemy states and their people had to be solved. It seemed impossible to solve these affairs, which were the remnants of the long and depressed war years, and a real and comprehensive solution had become necessary. Especially the victorious states found it necessary to solve the reconstruction under the direction and in the direction of their oppressive understanding. However, it was not possible to solve the issues among states after the war, neither through politics nor by the national courts of each state. Attempts to solve wartime problems through powerful and international institutions enabled the establishment of “Joint Arbitration Courts”. The Lausanne Peace Treaty, the last peace treaty after the First World War, also created a suitable environment for the international courts¹. According to Article 92 of the peace treaty, it was decided to establish a joint arbitral court between allied states (excluding Japan) on one hand and Turkey on the other hand, within 3 months from the date of entry into force of the convention. Two of the arbitrators of the joint courts, each of which will be composed of three arbitrators, will be appointed by the governments of the respective countries, while the other third and the chairperson over the court will be chosen from the neutral states, that have not entered the war, with the consensus of the two relevant states. If the concerned states do not agree on the chairperson, the right to vote is given to The Hague International Court².

In accordance with Article 93 of the Lausanne Treaty, the headquarters of the common courts is established in Istanbul³, and the former building of the Ministry of Education (*Maarif Nezareti/ Eđitim Bakanlıđı*) is leased to the National Real Estate Administration (*Emlak-ı Milliye*) in order to use the buildings of the Ministry of Education, in Çemberlitaş, Istanbul. During the time following the signing of the

¹ Emin Ali Bey, “Lozan Ahidnamesine Gre Muhtelit Hakim Mahkemeleri/Various Courts of Judges according to the Lausanne Treaty”, *Hukuki Bilgiler Mecmuası/Legal Information Journal*, *Kanunuevvel/December*, 1926, Yıl/year: 1, Sayı/no. 4, sp 189-190; Bilal ŐimŐir, *Lozan Telgrafları Lausanne Telegrams/ Lausanne Telegrams II (Őubat-Ađustos/February-August 1923)*, Ankara: *Trk Tarih Kurumu Basımevi/Turkish History Association*, 1994, p. 375.

² “Lozan BarıŐ AntlaŐması/The Lausanne Peace Treaty”, *Dstur*, 3. Tertip, Cilt 5, 11 Ađustos 1339/1923-19 TeŐrinievvel/October, 1340/1924, İstanbul: Necmi İstiklal Matbaası, 1931, pp. 93-99.

³ *Lozan BarıŐ Konferansı Tutanaklar-Belgeler/Lausanne Peace Conference Minutes-Documents*, Çeviren/translated by: Seha Ltf Meray, İkinci Takım, Cilt II, 3. Baskı/3rd edition, İstanbul: Yapı Kredi Yayınları, 2001, p. 34.

Lausanne Treaty and until to 1926, 6 arbitral courts were established. Joint Arbitration Courts' names and their establishment dates are as follows:

Turkish-French Joint Arbitration Court (1 December, 1925)

1. Turkish-British Joint Arbitration Court (19 April 1926);
2. Turkish-Italian Joint Arbitration Court (19 April 1926);
3. Turkish-Romanian Joint Arbitration Court (27 April 1926);
4. Turkish-Greek Joint Arbitration Court (12 May 1926);
5. Turkish-Belgian Joint Arbitration Court (15 July 1926).

The impartial presidents of these courts are Monsieur Asar Hamriç and Baron de Nordenşold¹. Turkish members are Osman Bey, Professor Cemil, Memduh and Mehmed Ali Bey Efendi; French judges are Monsieur Moris Gondolf and Monsieur Seroyos; British, Italian, Romanian, Greek and Belgian judges are: Mister Garimston, Metruvicino, General Consul Monsieur Yunesko, Monsieur Kiryakopulo, Baron Rolan Dalbirik. An important part of these courts is the "Arbitration Commission". According to Article 93 of the Treaty of Lausanne, each concerned government has the duty to appoint one or more arbitrators to serve the government before the court. Although judges are completely impartial in their own right, and they are not bounded by the order and vote of the government appointing them to fulfill their judgement role, the arbitrators, on the contrary are obliged to act on the orders and instructions of the government that gave them the duty of enactment, and in particular to defend national interests².

According to a government order, issued by Turkish authorities, in May 1926, Turkish arbitrators organized themselves and established the United Council (Heyeti Müttehida), which was under the control of a general arbitrator. Turkish arbitrators were free arbitrators. They were appointed and dismissed by the Council of Ministers' decision, provided that, in matters falling within their field, they were submitted to the control of General Arbitrator. General arbitrator's duty was to mediate courts' contacts and meetings with state officials and public officers (Emin Ali Bey, 1926, p. 193). Until September 1927, Turkey's general arbitrator appointed for joint courts was Emin Ali Bey. When in September, Emin Ali Bey went to Vienna

¹ In rendering chairpersons and arbitrators' names, the authors preserved the spelling found in documents with Turkish periodicals and archives.

² "Lozan Barış Antlaşması/The Lausanne Peace Treaty", *Düstur/Formula*, pp. 94-95.

to take care of his health, Nazım Bey was on duty in his place¹. According to the Council of Ministers' decision, dated May 24, 1925, Emin Ali and Mehmet Ali Bey, were appointed as arbitrators of the Joint Arbitration Court, established in accordance with the Article 93, Chapter 5 of the Lausanne Treaty, paid with the amount of 200 TL per month².

2.2. Turkish-Romanian Joint Arbitration Court

The establishment of the Turkish-Romanian Joint Arbitration Court, one of the joint arbitration courts established on 24 December 1925, in accordance with Articles 92-96 of Lausanne Peace Treaty, was published in the Official Gazette "The Code of Procedure" (*Usul-ü Muhakeme Nizamnamesi*) in between 17-27 February 1926. According to Article 1 of procedure, the court comprises a chairperson and two arbitrators who are elected and appointed in accordance with Article 92 of the Lausanne Treaty. The court, headquartered in Istanbul (article 2), investigates and solves disputes within its jurisdiction according to the Lausanne Treaty (article 3). In addition, this court is guided by justice, rights and good faith (article 4). Although the common language in court is French, to all notes and documents emerging in court will be added the Turkish or Romanian translations, that are concluded by the Registry Office, at the request of the parties, on their own expense (Article 5). Established in accordance with Article 7 of the Procedure, the Registry Office consists of a Clerk General, clerks and other civil servants, who are in court service and will be under the order of the court chairperson³. Thus, the working method and institutional structure for the arbitration commission of the Joint Turkish-Romanian Arbitration Court are determined by Article 151 of the Regulation. The chairperson

¹ BCA, Muamelat Genel Müdürlüğü/General Directorate of Transaction, 30.10.0.0/45.288.2, 15 Eylül/September 1927.

² BCA, Kararlar Daire Başkanlığı/Decisions Department (1920-1928), 30-18-1-1/14-4-10, 24 Mayıs 1925.

³ *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl /year4, No. 299, 16 Şubat/February 1926, s. 984 (pp. 984-986); *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl /year 4, No. 300, 17 Şubat/February, 1926, (pp. 988-990); *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl/year 4, No. 301, 18 Şubat/February, 1926, (pp. 993-994); *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl/year 4, No. 302, 20 Şubat/February, 1926, (pp. 997-998); *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl/year 4, No. 303, 21 Şubat/February, 1926, (pp. 1000-1002); *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl/year 4, No. 304, 22 Şubat/February, 1926, (pp. 1005-1006); *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl/year 4, No. 305, 23 Şubat /February, 1926, (pp. 1009-1010); *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl/year 4, No. 308, 27 Şubat/February, 1926, (pp. 1021-1022).

of the arbitration commission is Baron de Nordenşold¹, alongside with the Turkish arbitrators, Mehmed Ali and the Romanian arbitrator, General Yunesko². This court was actually established on April 27, 1926, when it started its operations³.

In 1927, when Mehmed Ali Bey, the Turkish arbitrator of Turkish-Romanian and Turkish-Greek Joint Arbitration Court was appointed to Turkish-French Joint Arbitration Court, was followed by Prof. Ahmed Reşid Bey⁴. At the same time, Ahmed Reşit Bey, by the Council of Ministers' decision, September 9, 1928, at the proposal of the Ministry of Foreign Affairs, was appointed arbitrator to Turkish-Italian and Turkish-British joint arbitration court⁵. Analyzing the structure and procedure of the joint arbitration courts, in particular Turkish-Romanian Joint Arbitration Court established in accordance with the Lausanne Treaty, this paper proceeds to analysis "Nikola Kalfa's case", which is the main topic of this study. By answering a few questions, such as "How did this case manage to provoke a minor diplomatic crisis between Turkey and Romania?", "How did it start and how did it end?", this study provides information and details on the procedure of the court that dealt with the case of Nikola Kalfa.

2.3. The Case of Nikola Kalfa

The event was reiterated in time's journals and newspapers (see **Enclosure no.1**), as well as in archival documents, and provided good coverage of the event. This paper's purpose is to bring into researchers' attention relations between Muslims and Orthodox Romanians, and also to encourage them to cooperate in such situations. On April 26, 1928, interesting events took place during the Turkish-Romanian session of the Joint Arbitration Court, which had been set up to resolve legal issues between Turkey and Romania, unsolved issues from the past or which arose during

¹ Baron de Nordenşold was also the president of the Turkish-Greek Joint Arbitration Court. *BCA*, Kararlar Daire Başkanlığı/Decisions Department (1920-1928), 30-18-1-1/19-30-13, 06.05.1926. Baron de Nordenşold, who was the president of both courts, received a payment of TL 2,150, for his duty with the Turkish-Greek Joint Arbitration Court, and 850 TL, for his duty with the Turkish-Romanian Joint Arbitration Court. *BCA*, Kararlar Daire Başkanlığı/Decisions Department (1920-1928), 30-18-1-1/ 13-17-19, 25.03.1925.

² *Resmi Ceride (Resmi Gazete/Official Gazette)*, Yıl/year 4, No. 308, 27 Şubat/February 1926, p. 1022.

³ *BCA*, Muamelat Genel Müdürlüğü/ General Directorate of Transaction, 30-10-0-0 / 45-288-1, Dosya Ek/Attached File: 34, 25 Mayıs/May, 1926.

⁴ *BCA*, Kararlar Daire Başkanlığı/Decisions Department (1920-1928), 30-18-1-1/24-32-14, Dosya Ek/Attached File: 35-12, 22 Mayıs/May, 1927.

⁵ *BCA*, Kararlar Daire Başkanlığı/Decisions Department (1920-1928), 30-18-1-1/30-56-9, Dosya Ek/Attached File: 35-16, 9 Eylül/September, 1928.

and at the end of the First World War. On this session, the court had to decide on the cases following the examination of two petitions, one submitted on behalf of the Romanian government by the Romanian Ministry of War and the other one submitted by a Romanian citizen¹.

The first of these cases is the case of the return of nine cannons, or their cost, which were allegedly taken from Romania and transported to Turkey during the First World War, when Turkey and its allies occupied Romania². The Romanian Ministry of War's petition was reported to Turkish general arbitrator under the supervision of the joint court. Turkish arbitrators, based on the special article of the Procedural Procedure Regulation, firstly asked the court for permission to investigate whether this case is within the jurisdiction of the court or not. As a result of the research carried out with the permission obtained, it was seen that the court had no authority to deal with such cases. The Romanian government opposed the Turkish arbitrator's decision with a number of objections, and the petitioner's reply was to reject the Turkish arbitrator's decision. On the other hand, Ahmed Reşid Bey, professor of law, who used to teach General Law (*Hukuk-u Esasiye*) and General Law of States (*Hukuk-u Umumiye-i Düvel*), with the Faculty of Law was assigned as the arbitrator of the Turkish side with the Turkish-Romanian Court, as well as with the Turkish-Greek Court, completely agreed with the arbitrator's opinion. The chairperson, Monsieur Nordenşold, who did his best to authorize the court in this case, and the Romanian side's arbitrator, Monsieur Yunesko, the General Consul of Romania in Istanbul, who supported him, tried to convince Ahmed Reşid Bey. However, they didn't manage to turn the contradictory vote of Turkish arbitrator into a beneficial one. In this regard, Ahmed Reşid Bey wrote down his contradictory statement about the Ministry of War's case, and when the verdicts issued by the majority were finalized, the documents were signed by the chairperson and the Romanian arbitrator³. On April 26, 1928, after the opening of the court session, Turkish arbitrator Emin Ali Bey, present at the appropriate opening of the court audition, as soon as the court's decision was read, stood up and stated that the court had exceeded

¹ *The National Archives of the United States*, Political Relations Of States, Relations; Bi-Lateral Treaties, Political., War. Peace. Friendship. Alliance. Non-Aggression., Turkey And Romania, Neutral Commerce, Decimal File May 9, 1928- July 22. 767.71112, Serial No: 303, pp. 1-3.

² These cannons were captured by the Romanians in Pleven during the Russo-Turkish War of 1877-1878.

³ "Türk-Romen Mahkeme-i Hakemiyesindeki Hadise-i Cedide/ Events at the Turkish-Romanian Court Arbitration", 1928, in *Darülfünun Hukuk Fakültesi Mecmuası/ Darülfünun Journal of the Faculty of Law*, 6. Yıl/year, Sayı/no. 36, Mayıs-Haziran/May-June, İstanbul: Yeni Matbaa, pp. 1210-1228.

its limits as an authority which was invested with the capacity to make that decision¹. In addition, Emin Ali Bey protested against the court claiming that he held the jurisdiction, arguing that court's decision violated the Lausanne Treaty.

“I find in looking over the minutes of the meeting of the Third Committee of the Lausanne Conference on June 22, 1923, Proces Verbal No. 9, that M, Diamandy, Rumanian delegate, accepted the proposal of the committee of experts to the effect that the claims based on Article 73 of the draft of the Treaty (Article 67 of the final Treaty) should not fall within the competence of the Joint Arbitration Tribunals”².

He also stated, taht on the orders and directives of the Turkish government, the arbitrators would not participate in further discussions on the case, as well as in other similar cases, and he left the room. As Turkish Joint Arbitration Court's chairperson, Ahmed Reşid Bey, received the same directives from the Turkish government, and he left the court, as his fellow, Emin Ali Bey did³. The court, which had to take a step back as a result of the justified resistance of Emin Ali Bey, stated that, it would not be able to evaluate such cases, which fell under the Lausanne Treaty, Section I. Property, Rights and Interests. Article 67, which states:

“Greece, Roumania and the Serb-Croat-Slovene State on the one hand, and Turkey on the other hand undertake mutually to facilitate, both by appropriate administrative measures and by the delivery of all documents relating thereto, the search on their territory for, and the restitution of, movable property of every kind taken away, seized or sequestrated by their armies or administrations in the territory of Turkey, or in the territory of Greece, Roumania or the Serb-Croat-Slovene State respectively, which are actually within the territories in question. Such search and restitution will take place also as regards property of the nature referred to above seized or sequestrated by German, Austro-Hungarian or Bulgarian armies or administrations in the territory of Greece, Roumania or the Serb-Croat-Slovene State, which has been assigned to Turkey or to her nationals, as well as to property seized or sequestrated by the Greek, Roumanian or Serbian armies in Turkish territory, which has been assigned to Greece, Roumania or the Serb-Croat-Slovene State or to their nationals.

¹“Türk-Romen Mahkeme-i Hakemiyesindeki Hadise-i Cedide/ Events at the Turkish-Romanian Court Arbitration”, 1928, in *Darülfünun Hukuk Fakültesi Mecmuası/ Darülfünun Journal of the Faculty of Law*, 6. Yıl/year, Sayı/no. 36, Mayıs-Haziran/May-June, İstanbul: Yeni Matbaa, p. 1211.

² *The National Archives of the United States*, Political Relations Of States, Relations; Bi-Lateral Treaties, Political., War. Peace. Friendship. Alliance. Non-Aggression., Turkey And Romania, Neutral Commerce, Decimal File May 9, 1928- July 22. 767.71112, Serial No: 303, pp. 1-3.

³Türk-Romen Mahkeme-i Hakemiyesindeki Hadise-i Cedide/ Events at the Turkish-Romanian Court Arbitration”, 1928, in *Darülfünun Hukuk Fakültesi Mecmuası/ Darülfünun Journal of the Faculty of Law*, 6. Yıl/year, Sayı/no. 36, Mayıs-Haziran/May-June, İstanbul: Yeni Matbaa, p. 1211.

Applications relating to such search and restitution must be made within six months from the coming into force of the present Treaty”¹.

The Turkish press stated “the last event can now be considered closed and neither the President of the Turkish-Romanian Joint Arbitration Court nor the Romanian Government considers it to be necessary to referral to the Hague tribunal, as expected in some circles” (see Enclosure no. 2). In addition, the press explained the situation as, an indirect acceptance of the Turkish perspective on the issue². Before the first case was forgotten the court made a second mistake. In the same court, another decision was taken against the signature and spirit of the Treaty of Lausanne: The Turkish citizen of Greek origin, named Nikola Kalfa, filed a lawsuit against the Turkish government with the Turkish-Romanian Joint Arbitration Court for the return of his real estate situated in Zongüldak, on Midhat Paşa Street, and the payment of 32,802 gold liras for the period when the real estate was in the hands of the government. Nikola Kalfa applied to the court and claimed that he hold also the Romanian citizenship, and the court decided to give back his real estate and to pay back the damages he claimed from the Turkish government. But the inquiry of citizenship ties for persons coming from exchanges of citizens between the Turkish and Greek parties is an interstate matter, and the Joint Arbitration Tribunal cannot confirm the citizenship relationship with an arbitrator, as it is the task of the Joint Exchange Commission. This case was reflected in the Turkish newspapers of time, as follows: “*The Turkish citizen, Nikola kalfa, comming from the exchanged citizens following the Lausanne Treaty, filed a lawsuit against our government with the Turkish-Romanian Court of Arbitration. The lawsuit involved the return of his real estate located on Midhat Pasha Street in Zongüldak, and the payment of 32,802 Turkish lira in gold for the time when his real estate was under the control of the Turkish government. Nikola Kalfa filed a lawsuit in court because of his Romanian nationality. The court decided to return his real estate and to pay the amount requested from our government*”³.

¹ Lausanne Treaty, Section I. Property, Rights and Interests. Article 67” http://sam.baskent.edu.tr/belge/Lausanne_ENG.pdf, accessed on 29, May, 2021.

² *The National Archives of the United States*, Political Relations Of States, Relations; Bi-Lateral Treaties, Political., War. Peace. Friendship. Alliance. Non-Aggression., Turkey And Romania, Neutral Commerce, Decimal File May 9, 1928- July 22. 767.71112, Serial No: 303, pp. 1-3.

³ “*Nikola Kalfa isminde mübadil bir Türk tebası Zonguldakta Midhat Paşa Caddesindeki emlakinin iadesi ve bu emlakın hükümetin elinde olduğu müddet için de 32.802 Altun Liranın tesviyesi zmnunda hükümetimiz aleyhine, Muhtelit Türk-Romen Hakem Mahkemesi nezdinde bir dava ikame etmişti. Nikola Kalfa, Romanya tabiyetinde bulunduğu sebebiyle mahkemeye müracaat etmiş ve mahkemecede iadesine ve hükümetimizden istediği zayıatın tesviyesine hükm edilmiştir*”. *Milliyet Gazetesi*, 22 Temmuz/July, 1928, p. 1.

However, the Turkish-Romanian Joint Arbitration Court declares that it has no jurisdiction to return Turkish real estate requested by Romanian government, but it states that it is authorized to interrogate a Greek citizen's case, who was exchanged with a Turkish citizen by the Lausanne Treaty decision, as "Lausanne Peace Treaty VI. Convention Concerning the Exchange of Greek and Turkish Populations Signed at Lausanne, January 30, 1923, states:

"As from the May 1st 1923, there shall take place a compulsory exchange of Turkish nationals of Greek Orthodox religion established in Turkish territory, and of Greek nationals of the Moslem religion established in Greek territory. (Article 1) The following persons shall not be included in the exchange provided for in Article 1: a) The Greek inhabitants of Constantinople; b) The Moslem inhabitants of Western Thrace (Article 2)"¹.

Thus, violating the spirit of the Treaty of Lausanne. *Milliyet* Newspaper's comment against this wrong decision of the court was: "Let us remember that our representative, Emin Ali Bey, left the hearing following the decision of the Turkish-Romanian court, that was recently accused of being against the Lausanne Treaty and that the spirit of the treaty was accepted by revoking the decision. In the same court, another decision was taken against the spirit and significance of this treaty"².

Despite Turkish opinion that Nikola Kalfa is a Turkish citizen of Greek origin, who falls under the category of "population changed following the Lausanne agreement", on June 28, by the decision of the President of the Court, Baron Nordenşold Turkey decides to return the properties from *Zongüldak* and pay a compensation to Nicola Kalfa, who claims also to hold Romanian citizenship. According to the Turkish arbitrators, "deciding whether a person is a citizen of a country is a matter for the Joint Population Exchange Commission and not under the jurisdiction of the

¹ Lausanne Peace Treaty VI. Convention Concerning the Exchange of Greek and Turkish Populations Signed at Lausanne, January 30, 1923 https://www.mfa.gov.tr/lausanne-peace-treaty-vi_-convention-concerning-the-exchange-of-greek-and-turkish-populations-signed-at-lausanne_.en.mfa accessed on 29 May, 2021

² "Birincisi unutulmadan ikinci bir hatada daha bulunan bu mahkemenin kararı ajanımızca tebliğ edilmiştir. Muhtelit Türk-Rumen Mahkemesinin geçenlerde Lozan muahedesine muhalif olarak ittihaz edilen bir kararı üzerine umumi ajanımız Emin Ali Beyin celseyi terk ettiği, bundan sonra karardan rücu edilmek suretiyle muahedenin ruhuna avdet olunduğu hatırlardadır. Aynı mahkemede işbu muahedenin imza ve mana-yı ruhuna muhalif bir karar daha ittihaz edilmiştir", *Milliyet Gazetesi*, 22 Temmuz/July, 1928, p. 1.

Arbitration Commission. Moreover, within the Lausanne Treaty, Turkey stipulated that such compensations should not be allowed¹.

Following the flagrant violation of the Lausanne Treaty's spirit and the interpretation of the treaty to the detriment of the Turkish government, the Turkish arbitrator Emin Ali Bey was concerned about the court's decision and sent a letter to Baron Nordenşold, the chairperson of the Joint Court of Arbitration, by which he reported his decision both in accordance with his official duty and, also in accordance with his patriotic feelings. The Turkish press had a violent reaction to court's decision and stated that the court had gone beyond its scope: *"It is known that the examination of the nationality of the exchanged persons is a matter of interstate understanding, and that it belongs to the Lausanne Exchange Commission. The Joint Arbitration Tribunal may not grant the nationality of an arbitrator. However, in the case of the return of Turkish real estate approved by Romania, the Turkish-Romanian Arbitration Court, which declared it unauthorized, decided to consider the case of a Greek citizen exchanged with a Turkish citizen, thus violating the spirit of the treaty. Firstly, it was shown that Nikola Kalfa is a Romanian citizen, dissatisfied with the Turkish laws, which he criticized, being invited on Romanian territory. However, the law should express the arbitration of the Turkish nation. Secondly, the issue of compensation, your solution, because of the Treaty of Lausanne, the Allied Powers demanded from the Turkish government 22 million pounds of gold. Our delegation stated that "compensation or waiver is possible". Finally, the Turkish thesis was accepted, and the principle of mutual renunciation was approved. In this case, when requesting the return of the goods from Turkey or when a Turkish citizen requests a property from the Allies, they must accept the goods as they were at the time of return. Even if the issue of compensation has been resolved, the claimants cannot receive compensation even if the claimants want to pay the amount. This breach of the spirit of the treaty is against the Turkish government. Against this fact, our representative, Emin Ali Bey, resigned following the communication of the decision; his decision is both official, following a patriotic feeling, transmitting in a letter his decision to Baron Nordenşold, the head of the Turkish-Romanian court"*².

¹ *The National Archives of the United States, Political Relations Of States, Relations; Bi-Lateral Treaties, Political., War. Peace. Friendship. Alliance. Non-Aggression., Turkey And Romania, Neutral Commerce, Decimal File May 9, 1928- July 22. 767.71112, Serial No: 395, p. 1-2.*

² *"Malumdur ki mübadillerin tabiyetini tedkik etmek bir mesele-i beyneddüveliyedir. Ve Muhtelit Mübadele Komisyonuna aiddir. Muhtelit Hakem Mahkemesi, bir hakemle tabiyeti tensib edemez. Halbuki Romanyanın tensib ettiği Türk emlakinin iadesi davasında adem-i salahiyet beyan eden Muhtelit Türk-Romen Mahkemesi, Türk tabiyetindeki bir mübadil Rumun davasını ederek salahiyet kararı vermiş ve bu suretle muahedenin ruhunu ihlal etmiştir. Filhakika evvela Nikola Kalfa Romen*

By this letter, Emin Ali Bey, expressed his “sadness and surprise” and stated that “the court not only exceeded the powers conferred on it by the Treaty of Lausanne, but biasedly reflected Turkish laws regarding nationality”. The Turkish arbitrator added that, unfortunately, the court had entered a delicate field, where Greece and Turkey were still in dispute, and awarded compensation that did not fall under the jurisdiction of the Lausanne Treaty¹. By this letter, which was also published in the Turkish press, Emin Ali Bey stated²:

“Mr. President:

The clerk of your Tribunal has today communicated to me as representative of the Turkish Government the report of the decision rendered in Affair No 5, that of Nicolas Kalfa versus the Turkish State.

I have observed with profound stupefaction and regret in reading this decision that the Court has not only exceeded the powers conferred on it by the Treaty of Lausanne but has at the same time disregarded the most elementary rules of international courtesy in allowing itself to criticize adversely one of the sublime emanations of the sovereignty of my country, its legislation respecting civil status.

I am accordingly obliged to state without loss of time that the pertinent passages of this judgment are, insofar as my Government is concerned, void and non-avenus.

Moreover, the Court in exceeding its powers in this sentence has desired to mingle in a conflict of nationalities which is at present the subject of diplomatic controversy between States, asking the Turkish State to recognize an exchanged Greek citizen

tebasıdır demek için Romen topraklarında misafir olduğu Türkiyenin kanunlarını tenkid etmek gibi bir göstermiştir. Halbuki kanun Türk milletinin hakemiyetinin ifade. Saniyen, tazminat meselesi, muahedenamenin lozanda düvel-i itilafiyeye Türk hükümetinden 22 milyon altın lira tazminat istemişti. Heyet-i murahhasamız bilmukabil tazminat veya feragat dedi. Nihayet Türk tezi kabul edilmiş ve müteakiben feragat esası tensib olunmuşdu. Böyle olunca Türkiyeden bir mal iadesi talep edilirken veyahut türk tebasından biri düvel-i itilafiyeden bir mal talep ederken o malı bulunduğu halde kabul edeceklerdir. Tazminat meselesi hal edilmiş olsa bile bunlar tazminat isteseler de alamazlar. Ruh-u muahedenin bu suretle ihlali Türk hükümeti aleyhine karşısında umumi ajanımız Emin Ali Bey, hem vazife-yi resmîyesine, hem hissiyat-ı vatanperverane icabatına tevfikan tebliğ edilen hükmü tebliğden istikaf etmiş ve bir mektupla bu nokta-yı nazarımızı muhtelit Türk-Romen mahkemesi reisi Baron Nordenşold'e bildirmişdir”. Milliyet Gazetesi, 22 Temmuz/July, 1928, p. 1.

¹ *The National Archives of the United States*, Political Relations Of States, Relations; Bi-Lateral Treaties, Political., War. Peace. Friendship. Alliance. Non-Agression., Turkey And Romania, Neutral Commerce, Decimal File May 9, 1928- July 22. 767.71112, Serial No: 395, p. 1-2.

² *The National Archives of the United States*, Political Relations Of States, Relations; Bi-Lateral Treaties,

Decimal File May 9, 1928- July 22. 767.71112, Serial No: 395, published as enclosure no 1-2 of the *Milliyet Gazetesi*, 22 Temmuz/July, 1928, p. 1.

following to the Lausanne Treaty, the plaintiff in the action, as a Rumanian subject, in respect of his property in Turkey, and to exempt him from the application of certain international legislation.

Moreover, the Court tends to condemn the Turkish State indirectly to the payment to the plaintiff of an indemnity categorically refused by the Treaty.

This is manifestly an unauthorized interpretation.

In view of these facts, I inform you with regret that neither my official duties nor my patriotic feelings permit me to accept this judgment which is in violation of a Peace Treaty signed as a result of great sacrifice.

In returning the sentence to you I beg you to accept etc.”

It is understood that despite all the efforts of the Turkish General arbitrator, there was no change in the court decision. The court’s decision was reconsidered five years later, at the Council of Ministers’ meeting. Findings on Nikola Kalfa’s case, who claims to be also a Romanian citizen, were investigated on the meeting of the Council of Ministers on 31/12/933, by a letter submitted by the Turkish-Romanian Joint Arbitration Court, sent by the Ministry of Foreign Affairs (*Hariciye Vekilliği*), dated 29, 06, 1933, registered 38349/731 (official document attesting the court’s decision), as well as the details of the commission organized in this circumstance. As a result of this examination, the Joint Arbitration Court understood this issue and exceeded its authority. The court understood that the cause of the disagreement between Turkey and Romania was in fact the nationality of the applicant, and as a matter within its jurisdiction, the transactions concerning Nikola Kalfa’s property were in accordance with the fourth paragraph of Article 65 Lausanne. It was decided that the fulfillment of the court decision was not necessary, because it was understood that the case was solved and concluded by the misinterpretation of a contractual provision¹.

¹ BCA, Kararlar Daire Başkanlığı/Decisions Department (1928-), 30-18-1-2 /41-92-20 Dosya/File: 24-16, 31 Aralık/December, 1933.

4. Conclusions

Joint Arbitration Courts were the property by the Republic of Turkey and were established based on the Lausanne Peace Treaty, signed in 1923. Joint Arbitration Courts, based on their structure and methods of operation and management, sought to provide a solution to the legal problems between Turkey and some allied powers. To this end, the Turkish-Romanian Joint Arbitration Court was established, which set out to work to resolve the issues between Turkey and Romania. One of the first cases dealt with by this court was Nikola Kalfa's case, Greek citizen, who also claimed Romanian citizenship, demanding the restitution of his property in Turkey and the payment of compensation for the period in which he could not benefit from his property. This case, which, on a small scale provoked a diplomatic crisis between Turkey and Romania, the court, contrary to the spirit of the Lausanne Treaty, considered the applicant justified and decided that the requested property and compensation should be paid by Turkey. However, about five years later, the Council of Ministers re-examined this issue and following the re-examination, it was found that the court in question exceeded its authority in resolving this issue, which led to the disagreement between Turkey and Romania on defendant's nationality, accepting it as a matter within his jurisdiction. The Council of Ministers decided that the trial's execution in this case, which was resolved in violation of the Lausanne Treaty, was not necessary.

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Enclosure 1.
Picture of the Turkish-Romanian Joint Court captured during the meeting
Source: Milliyet Gazetesi, 22 Temmuz/July, 1928, p. 1.



Enclosure 2.
The article “A New Weirdness of Turkish-Romanian Court” published by Milliyet Gazetesi *Source: Milliyet Gazetesi, 22 Temmuz/July, 1928, p. 1.*