

In the arbitration procedure under the UNCITRAL Arbitration Rules concerning the Treaty of Friendship between the Kingdom of Egypt and Kingdom of Judea concluded on [13 May 34 BC] and the Contract between Kleopatra of Egypt and Herod of Judea of the same day regarding the Lease of Revenues of Certain Properties

Kleopatra Selene

v

Herod of Judea

ARBITRAL TRIBUNAL:

Wang Mang (President)

Marcus Tullius Tiro

Comosicus of Dacia

Responsum

submitted by Gaius Ateius Capito.

1. Introduction

- 1.1 By virtue of the competence bestowed on me by Caesar Augustus (*ius respondendi*) I am presenting this *amicus* brief to the Arbitral Tribunal on behalf of the Roman Republic. The intervention as *amicus* is properly before this Tribunal.
- 1.2 This intervention reflects Rome's policy to intervene in exclusive arbitrations over disputes between a Kingdom that is a client state of the Roman Republic and an investor of another Kingdom that is such a client state concerning and conducted on the basis of bilateral (investment) treaties, including treaties of friendship.
- 1.3 Above all, I contest the jurisdiction of the Arbitral Tribunal on the ground of non-conformity of the Treaty of Friendship between the Kingdom of Egypt and the Kingdom of Judea ("the Treaty") with the legal status of both Kingdoms as client states or *amici Romani*. The reasons given for my position are essentially threefold.
- 1.4 First, I take the view that the institution of "client kingship" (or client states) prohibits client states to enter into valid bilateral treaties amongst each other that provide for arbitration.
- 1.5 Second, I am of the opinion that the situation of treaties of friendship between client states of the Roman Republic creates a situation that is discriminatory for Roman citizens because they lack special protecting substantive and procedural safeguards under such treaties.
- 1.6 Third, I am of the view that investor-State arbitrations initiated on the basis of treaties concluded between client states illegally displaces litigation in the competent Roman courts and tribunals. These courts and tribunals exercise supreme supervision and control over the entire territorial dominion of the Roman state.

2. The institution of client kingship

- 2.1 The special Roman institution of client kingship “developed out of Rome’s first contacts with royal dynasties in the second century BC”.¹ Core principle is that the clients, *i.e.* the *rex* and the kingdom, show respect and loyalty in return for benefits and favours by the Roman state.
- 2.2 The creation of a client state, which, as alluded to before, is in the exclusive competence of the Senate and requires its approval, officially connects both client king and kingdom to the Roman State. This connection leads to special mutual obligations.
- 2.3 Both the Kingdom of Egypt and the Kingdom of Judea are Roman client states and thus, they are linked to the Roman State. Such relationships of client kingship are subject to *pacta sunt servanda*. The Roman state fulfils its duties as the patron of Egypt and Judea. The legal status of client states and the obligations of loyalty and cooperation *vis-à-vis* Rome involved, on the other hand, imply that clients have lost their capability of concluding valid treaties providing for arbitration between each other without consent of the Senate. If treaties were concluded in light of such obligations, client states are obliged to terminate the treaty concerned.
- 2.4 The Senate did not give any prior or subsequent consent. It follows that the Kingdoms of Egypt and Judea cannot rely on their Treaty and that they must refrain from initiating treaty-based investor-State arbitrations.
- 2.5 The Tribunal in the case at hand must reject jurisdiction. There is no valid consent to arbitration as the main prerequisite for arbitral jurisdiction. Only Rome may function as arbitrator in disputes between client states or between individuals of a client state and another state. No international treaties between client states can affect the allocation of rights and responsibilities as defined by the Roman state. In other words, client states may not set aside the rules arising from their relationship with Rome by concluding or maintaining in force international treaties between them. Any other result would not only interfere with and jeopardize Rome’s carefully established relationship and network with client states but ultimately challenge both the Roman claim for regional leadership and the territorial dominion.

3. Discrimination of Roman citizens

- 3.1 What is more, the situation of an arbitral tribunal vested with jurisdictional power concerning bilateral treaties concluded between client states discriminates Roman citizens who lack special treaty protection.
- 3.2 For example, if tribunals conduct arbitrations on the basis of bilateral treaties exclusively concluded between client states, investors of these states can demand both special substantive and procedural treatment by the host kingdom such as under most-favoured-nation clauses, umbrella clauses, and dispute settlement clauses in the treaty. Citizens of the Roman state, by contrast, who may freely establish investments in client states since Rome guarantees the institution of client kingship, cannot demand

¹ Roller, *op. cit.* p. 267.

treatment under treaties of friendship exclusively entered into between Roman client states.

- 3.3 Rome cannot accept such a discrimination of Roman citizens. As mentioned before, client states are under an obligation of loyalty and cooperation vis-à-vis the Roman state as their patron and, therefore, must avoid discriminations of Romans.
- 3.4 To avoid any appearance of discrimination, the Tribunal in the present case must reject arbitral jurisdiction.

4. Displacement of litigation in the competent Roman courts

- 4.1 Finally, I note that the Arbitral Tribunal's acceptance of jurisdiction as well as final and binding investor-State arbitrations initiated on the basis of client state treaties lead to an illegal displacement of litigation in the competent Roman courts.
- 4.2 Roman courts and tribunals and – obviously – the Senate are the highest guardians of the relationships between the Roman state and client states, between client states, and between individuals of client states and other client states.
- 4.3 Client kingship requires loyalty and cooperation to be exercised also with regard to that particular aspect. Above all, centralized dispute settlements conducted on behalf of Rome avoid divergences in interpretation in comparable legal circumstances and ensure legal disputes to be settled in a similar and constant manner.

5. Conclusion

- 5.1 The Arbitral Tribunal in the case at hand lacks jurisdiction concerning the Treaty of Friendship between the Kingdom of Egypt and the Kingdom of Judea and cannot hear Kleopatra Selene's claims against Herod of Judea.
- 5.2 Therefore, the Tribunal must decline jurisdiction in the present case.
- 5.3 I am prepared to make further written and oral submissions, in case it is required by the Tribunal.

[signature]

18 August 10 BC

Signature: _____

Date: _____

Gaius Ateius Capito