

In the matter of an *ad-hoc* arbitration
between MENOSGADA and NOVUM OPPIDUM MENOSGADAE PROXIMUM
(together: Claimants) and the CIVITAS OF THE BOII (Respondent)

PARTIAL AWARD ON PRELIMINARY OBJECTION

- (1) In the treaty between the Civitas of the Boii and the Civitas of Menosgada on the unification of the two civitates of 120 BC (the “TREATY”), it is agreed that, among other things, also Novum Oppidum Menosgadae proximum remains “*immediate*”. The ordinance on the reorganization of the Civitas of the Boii incorporated Novum Oppidum Menosgadae proximum into the administrative district of Menosgada. There is a dispute as to whether this is compatible with the Treaty.
- (2) The Treaty first contains general provisions on the transfer of sovereignty, on the incorporation of the hitherto Menosgada territory into the territorial authorities of the Boii, on the acquisition of citizenship by the dependents of Menosgada, on the representation of the Menosgada population in the Comitia of the Boii, on the law to be applied in Menosgada in the future, on the transfer of the Menosgada civil servants and the stipends of former Mensogada civil servants as well as their surviving dependents. In further provisions, the Civitas of the Boii assumed special obligations with regard to certain institutions of the Civitas of Menosgada. Among other things, § 2 stipulates: “*The towns of Menosgada and Novum Oppidum Menosgadae proximum remain immediate under the Civitas of the Boii.*”
- (3) The Treaty also states: “*Any dispute between the Contracting Parties concerning the application or interpretation of this Treaty shall be resolved through submitting the matter to an ad-hoc sole arbitrator.*”
- (4) The ordinance on the reorganization of the Civitas of the Boii of 112 BC marked the beginning of the so-called territorial reform in the Civitas. In the 1st part, 4th section of the ordinance, it is determined that Novum Oppidum Menosgadae proximum become part of the administrative district of Menosgada.
- (5) The explanatory memorandum to the draft of the ordinance states that its object and purpose is to implement the formation of efficient administrative units.

- (6) The Claimants, Menosgada and Novum Oppidum Menosgadae proximum, submitted the matter to arbitration, requesting an award declaring that the Civitas of the Boii violated the Treaty through incorporating Novum Oppidum Menosgadae proximum into the administrative district of Menosgada.
- (7) I was appointed as Sole Arbitrator by agreement of all Parties.
- (8) While Respondent agrees that, in principle, the Treaty provides for arbitration, the Respondent objected to the Claimants' ability to invoke any rights under the Treaty. According to the Respondent, the Claimants have neither been signatories to the Treaty nor have they standing to exercise the rights of the dissolved Civitas of Menosgada. The Respondent adds that, in any case, the rights of the dissolved Civitas of Menosgada could not be exercised against the consent of the administrative district of Menosgada which refused to participate in the present arbitration.
- (9) The Claimants state that they were not pursuing their own rights in these proceedings, but were asserting the rights of the dissolved Civitas of Menosgada under the Treaty. They argue that they were legitimated to do so as the supreme self-governing bodies of the territory of the dissolved Civitas of Menosgada, the administrative district of Menosgada, had refused to participate in the legal dispute. This refusal was understandable because the district would have to act against its own interests if it participated in these proceedings. However, this should not lead to a situation in which the dissolved Civitas is denied legal and judicial protection.

ANALYSIS

- (10) The Claimants are not claiming on the basis of their own rights, but are asserting the rights of the dissolved Civitas of Menosgada. The still existing self-governing bodies, which can be regarded as representatives of the population of the dissolved Civitas, are legitimated to do so.
- (11) In principle, they can only act jointly on behalf of the dissolved Civitas.
- (12) If, however, one of these bodies fails, then the other bodies appointed to do so may exercise the rights of the dissolved Civitas under the Treaty, because for actions of this kind, the dissolved Civitas must not be left without rights and protection. It cannot be right that one of several eligible claimants should be able to cause the

lawsuit to fail on this procedural question by refusing to intervene for partly unobjective, partly erroneous considerations. The same must apply if one of the entities with joint standing refuses to join the proceedings because it would otherwise cut its own flesh.

- (13) In this case, the district is quite obviously refusing because it is to dispute that a part of it, Novum Oppidum Menosgadae proximum, is to be hived off again, *i.e.* that it suffers a loss in size, economic power and administrative power.
- (14) For these reasons, I REJECT the preliminary objection raised by the Respondent.

Date: [110 BC]

Seat of the arbitration: City of Rome

QUINTUS MUCIUS SCAEVOLA AUGUR

- Sole Arbitrator -