

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

---

## **RECUEIL DES SENTENCES ARBITRALES**

**Lettie Charlotte Denham and Frank Parlin Denham (United States) v. Panama**

22 May 1933

VOLUME VI pp. 312-313



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2006

article, the seventh, which permitted the presentation of claims arising out of damages sustained after the signing of the convention; that such article seventh of the Mexican-American Convention was suppressed in the Panama-United States Convention and that article VIII of the convention between Mexico and the United States, was left in the convention with Panama as article VII, without advertency of the fact that it contained a phrase which was incompatible with the suppression agreed upon.

It would seem, therefore, that if in negotiating the Panama convention, the clause was suppressed which allowed claims for loss or damage accruing after the signing of the compact, the intention of the High Contracting Parties was that claims should be restricted to those in which the loss or damage accrued before such signing and not afterwards.

Moreover, the undersigned Commissioner entertains the opinion that apart from the intention of the parties, as gathered from the antecedents of the convention, the nature of the two conflicting texts would also indicate that article VI should prevail over article VII, because the latter deals with the effect of the proceedings and decisions of the Commission while the former deals with the question of terms. Therefore, in determining the term within which a certain claim must have arisen in order to be admissible, it would appear to be more natural to follow the provision dealing with the general subject of terms than following another provision dealing with some other subject. In support of this reasoning, it may be noted that article VII of the Panama convention would have been more in harmony with the other provisions therein if the phrase above referred to had been omitted.

---

LETTIE CHARLOTTE DENHAM AND FRANK PARLIN DENHAM  
(UNITED STATES) *v.* PANAMA  
(May 22, 1933. Pages 244-246.)

---

PROTECTION OF ALIENS: MURDER, PROSECUTION, PUNISHMENT OF OFFENDER.

Murder in March, 1918, of employer by discharged employee, promptly sentenced to 18 years and 4 months imprisonment. Release after 3 years and 1 month due to reductions under Panamanian Penal Code and general Panamanian law. *Held* that, though original sentence was not inadequate by international standards, reduction by general law enacted on occasion of Armistice following World War resulted in inadequate punishment for which Panama liable. Damages allowed for each of claimants.

*Cross-references:* Annual Digest, 1933-1934, pp. 248-249; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de los Norteamericanos Lettie Charlotte Denham y Frank Parlin Denham, Registro No. 6. (Publicación Oficial, Panamá, 1934.)

*Bibliography:* Hunt, Report, p. 246, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 68-69; Borchard, "The United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), pp. 101, 102; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 461-462; Annual Digest, 1933-1934, p. 249.

In March 1918, in the Province of Chiriquí, Panama, Segundo González, a discharged employee of James F. Denham, waylaid and murdered his former employer.

González was promptly arrested, tried and convicted. He was sentenced to imprisonment for 18 years and 4 months. After serving three years and a month

he was released on May 14, 1921, by an executive resolution. The brevity of his actual imprisonment was due to a conditional reduction of the term for which he was sentenced by one third on account of good behavior, in conformity with the Penal Code, and to a further reduction of the original term by one-half under the provisions of a general law enacted by the National Assembly, whereby a partial remission of penalties was granted to prisoners of good conduct, on the occasion of the signing of the armistice at the close of the World War.

The United States claims that Panama is liable to Denham's widow and legitimate son, first, on the ground that Denham's murder resulted from a failure to furnish proper protection to aliens in the Province of Chiriquí; and, second, on the ground that Denham's murderer was not adequately punished.

The Commission finds that the evidence is insufficient to prove that the murder of Denham resulted from a failure on the part of the authorities to afford proper protection to aliens in the Province of Chiriquí, and therefore finds no liability on the first ground asserted by the United States.

It is the opinion of the Commission, however, that González was not adequately punished. The original sentence was not in the opinion of the Commission inadequate by international standards. Nor would the conditional reduction of the term of that sentence by one-third under the provisions of the Penal Code of Panama, have given rise to an international liability. The conclusion of the Commission rests solely upon the result brought about by the act of the National Assembly above referred to. The Commission recognizes that the reduction under that act did not arise from any inclination on the part of the Government to favor this particular prisoner or to extenuate offenses against aliens. But, liability for failure to punish adequately crimes against aliens is not based upon discrimination in favor of the individual offender or upon any breach of the local laws. The international obligation is clearly established and each country has the power of so arranging its interior jurisprudence as to give that obligation effect. The failure of an individual criminal to serve an adequate term may give rise to an international liability even where the original sentence is adequate. *Putnam v. Mexico*, 1927, *Opinions of Commissioners* under 1923 Convention, p. 222. It has been held also that a nation is not relieved from its obligation by the fact that the failure to punish results from a general amnesty. *West v. Mexico*, 1927, *Opinions of Commissioners* under 1923 Convention, p. 404. In the *West* case the amnesty prevented even the beginning of a prosecution. The Commission sees no logical distinction between that case and a case where an act of the legislature interrupts the service of a sentence before adequate punishment has been inflicted.

In arriving at the measure of the liability, the Commission has taken into account the fact that González was actually imprisoned for a period of slightly more than three years. There was not a total failure to punish.

The Commission decides that the Government of Panama is obligated to pay to the Government of the United States \$2,500 in behalf of Lettie Charlotte Denham and \$2,500 in behalf of Frank Parlin Denham, without interest.

---

FRANCISCO AND GREGORIO CASTAÑEDA AND JOSÉ DE LEÓN R.  
(PANAMA) *v.* UNITED STATES  
(May 22, 1933. Pages 676-677.)

---

JURISDICTION: CLAIMS ARISEN AFTER SIGNATURE OF CLAIMS CONVENTION.—  
INTERPRETATION OF TREATIES. *Held* that Commission has jurisdiction to