

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Lozano Case

1903

VOLUME X pp. 747-748



NATIONS UNIES - UNITED NATIONS
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nical arguments, or as an inflexible rule of law — it can not govern in a positive way the case of María García de Padrón; and it being far from obligatory to decide it in accordance with the terms thereof, the positive duty of this Commission consists in deciding without taking into account a necessity which does not exist, resting upon a basis of absolute equity.

The preceding conclusion is in no way weakened by the circumstance that in the convention made in 1861¹ between Spain and Venezuela relative to Spanish claims, it was agreed that subjects of that nationality injured by revolutions were obliged to prove the negligence of the lawful authorities, and that this rule should be unalterable in the pending negotiations and those that might arise in the future, since if it be true that it was so agreed at that time it is also true that both powers retained the natural and absolute power to agree upon a different course whenever they might desire, and as they have in effect done by means of their above-cited protocol of the 2d of April of this year, which they negotiated for the settlement of the other claims which in their *entirety* must be decided *equitably*.

"The commissioners," says the protocol, "or, in case of their disagreement, the umpire, *shall decide all claims upon a basis of absolute equity*." Thus it is that the application of the rule of 1871 as a requisite in order that the claims, for the decision of which this Commission was established, might prevail and be decided favorably, is clearly incompatible with the principle of equity exclusively and imperatively set down for its judgments.

Having arrived at this point the occasion also appears to have arisen for the umpire, in accordance with the foregoing principles which he has established, to pronounce the decision which he believes equitable and fitting concerning the claim; but, as he understands that it was the intention of the commissioners to consider the case anew, if the umpire did not disallow it because of its revolutionary origin; and it is to be desired that in effect they may do so since they will once more evince their intelligence and impartiality, of which they have given so many proofs, the undersigned decides:

That this record return to the examination of the commissioners so that they may be pleased to decide the claim presented on behalf of María García de Padrón, considering that the principle of irresponsibility of States for damages which insurgents cause does not govern it, since it is not submitted for judgment on any other basis than that of absolute equity.

LOZANO CASE

Under the terms of the protocol the Commission is bound to receive and consider all documents submitted by either government.²

GUTIERREZ-OTERO, *Umpire*:

In the record of the claim made in the name of the Spanish subject, José Lozano, demanding the payment of 15,000 bolivars as indemnity for the damages which the revolutionary forces inflicted upon him in his mercantile establishment, situated in the city of Barquisimeto, on the 1st of October, 1899, there has arisen a preliminary question concerning the admissibility of the proof produced with the claim, since, while the Commissioner of Venezuela maintains that it is inadmissible because the evidence presented was given before the vice-consul of Spain, and because, therefore, the evidence given for

¹ British and Foreign State Papers, vol. 53, p. 1050.

² See Vol. IX of these Reports, p. 147, and *supra*, p. 438 and note, and *supra*, p. 596.

him was of no value, the Spanish Commissioner is of the opinion that the declarations made before the consular agents of his nation ought to be admitted, since many times it is the only means of which Spanish subjects have been able to avail themselves to prove the facts upon which they base their claims. In an exposition of his belief said commissioner stated:

That the consuls of his country were authorized to receive the declarations of witnesses; that said faculty is in general inherent in all consuls, and that, at all events, it is to be borne in mind that this Mixed Commission is not a tribunal of justice, but that it ought to take into consideration all proofs that may be presented, giving to them the weight which they ought to have in accordance with equity, as prescribed in the protocol.

This point concerning the inadmissibility of the proof was submitted to the decision of the umpire, who, in rendering such opinion, believes that the express clause of said protocol, signed in Washington, April 2, of this year, by the representatives of Spain and Venezuela, are to be applied, in which, rules that must be observed are prescribed for this Commission, which can not assume powers which the protocol denies it. nor refrain from fulfilling the obligations which it imposes upon it.

The second article of the protocol cited, provides:

The Commissioners, or umpire, as the case may be, shall *investigate and decide* said claims upon such evidence or information only as shall be furnished by or on behalf of the respective governments. They shall be bound *to receive and consider all documents or written statements which may be presented by or on behalf of the respective governments in support of, or in answer to, any claim.*

And since the documents or statements, which tend to support the claim here considered, have been presented in writing and by the legation of Spain in the name of the Government, the Commission is bound to examine and consider them in order to take them into consideration in pronouncing the judgment which it may deem justified by the merits.

Nevertheless, the question of admissibility of the proof presented shall not prejudice its efficacy, which shall be appreciated by the commissioners or the umpire, as the case may be, as they may determine to proceed in accordance with absolute equity without regard to objections of a technical nature, or provisions of a local legislature, as prescribed as a binding rule.

Therefore the umpire decides that the proofs submitted with the claim made in the name of the Spanish subject, José Lozano, is admissible, and that the claim should be returned for the investigation of the commissioners, in order that they may decide it, examining and taking into consideration said proofs.

MENA CASE

It is an accepted principle of international law that states are not responsible for damages and injuries caused by persons in revolt against the constituted authorities; but this principle under the terms of the protocol can not be invoked by Venezuela.¹

GUTIERREZ-OTERO, *Umpire*.

In record No. 5, presented in the claim of the Spanish subject Domingo Gonzalez Mena, in favor of whom the payment is claimed of 34,744 bolivars

¹ See Aroa mines case, Vol. IX of these Reports, p. 402; see also *supra* cases of Kummerow, p. 370; Sambiaggio, p. 499; J. N. Henriquez, p. 713; Salas, p. 720; Guastini, p. 561; Padrón, p. 741.